IN THE HIGH COURT OF JUSTICE **M/350/14**

QUEEN'S BENCH DIVISION

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983 AND IN THE MATTER OF A MAYORAL ELECTION FOR THE LONDON BOROUGH OF TOWER HAMLETS HELD ON 22 MAY 2014

BETWEEN:

(1) ANDREW ERLAM

(2) DEBBIE SIMONE

(3) AZMAL HUSSEIN

(4) ANGELA MOFFAT

Petitioners

-and-

(1) MOHAMMED LUTFUR RAHMAN

(2) JOHN S WILLIAMS (RETURNING OFFICER)

Respondents

JUDGMENT

INTRODUCTION

1 22 May 2014 was Election Day throughout the United Kingdom. There was a nationwide election for members of the European Parliament. Many local authorities had council elections and a few local authorities had mayoral elections. The London Borough of Tower Hamlets had all three. While undoubtedly making practical sense to hold all the relevant elections on the same day, conducting three simultaneous polls necessarily presented considerable challenges for returning officers, both in ensuring that polling proceeded in an orderly and lawful manner and in arranging for three different sets of ballots to be correctly counted.

2 In Tower Hamlets there was a full council election with all 45 seats in 20 wards being contested. Between the 2014 election and its preceding election in 2010 there had been a wholescale re-drawing of the ward boundaries and the number of wards had been increased from 17 to 20. In most of the wards, there were candidates from six main parties, Conservative, Liberal Democrat, Labour, the Green Party, UKIP and a party local to the Borough known as Tower Hamlets First (THF).

3 In the election for Mayor, there were ten candidates, one from each of the six parties listed above, one from the Trade Union and Socialist Coalition and three Independent candidates.

4 The Mayoral election is conducted on the transferable vote system. Each elector has two votes and chooses his first and second preferences. The ballot paper, therefore, lists the candidates in alphabetical order with two columns of corresponding boxes for the voter to mark first and second preferences. When the votes come to be counted, the first step is to count the first preference votes for each candidate. If, at the conclusion of that process, a candidate has received more than half of the first preference votes cast, that candidate is elected. If no candidate has received more than half of the first preference votes, the second stage is, in essence, a run-off between the two candidates with the most first preference votes. The remaining candidates drop out of the race and the ballot papers showing their names as first preferences are re-examined to determine the second preferences shown on those ballot papers. Second preference votes for candidates other than the two front-runners are disregarded and the second preference votes for those two are counted and added to their first preference votes from the initial round. The first and second preference votes for the two front-runners are then totalled and the candidate with the higher total declared the winner.

5 The drawback of this system is that it is possible for candidate A to receive 49.9% of the first preference against his main rival B's 20% (or even 10%) but for B to receive all the second preference votes of the eliminated candidates and to be elected. In effect the election is won by the voters' second choice of candidate.

6 The Tower Hamlets Mayoral election of 2014 turned out to be a two-horse race, the principal contenders being Mr John Biggs, the Labour Party candidate, and the outgoing Mayor Mr Lutfur Rahman, the THF candidate.

7 At the count following the poll, the first preference votes for those two candidates were:

Mr Rahman: 36,539 (43.38%)

Mr Biggs: 27,643 (32.82%)

8 The candidate coming third, Mr Christopher Wilford (Conservative), totalled roughly 8.5% and no other candidate received more than 6%. The second preference votes shown on the ballot papers of the eight eliminated candidates (to the extent that they were for Mr Biggs or Mr Rahman) were then counted and added to the total. Though Mr Biggs received approximately eight times as many second preference votes than Mr Rahman it was not sufficient for him to make up the gap from the first round. The final result was

Mr Rahman: 36,539 (first) + 856 (second) totalling 37,395

Mr Biggs: 27,643 (first) + 6500 (second) totalling 34,143

Mr Rahman was thus re-elected Mayor of Tower Hamlets.

9 As will be seen, both Mr Rahman's campaign and his election had proved very controversial within the Borough and on 10 June 2014, the four Petitioners presented a Petition to have the election set aside on several grounds, principally the alleged commission by the First Respondent (Mr Rahman) or his agents of corrupt and illegal

practices contrary to the Representation of the People Act 1983 ('the 1983 Act'). The Petitioners also alleged that the Second Respondent, the Returning Officer Mr John Williams, had failed to conduct the election in accordance with electoral law and that the election should be set aside on that ground independently of their case against Mr Rahman.

10 On 15 July 2014 the First Respondent applied to dismiss the petition under Rule 13 of the Election Petition Rules 1960 and/or the inherent jurisdiction of the court for want of particularity and abuse of process. That application was heard by the Divisional Court[1] on 28 and 29 July 2014. The Court rejected the application to strike out the Petition and directed that the Petition should be heard by an Election Commissioner appointed under the 1983 Act.

11 On 29 July 2014 I accepted the appointment as Election Commissioner to try this Petition.

12 Between 3 and 6 November 2014 I conducted the Scrutiny to examine the original ballot papers and to extract certain ballot papers and other documents in relation to allegedly false or illegal votes. I thereafter issued my formal report on its findings.

13 The hearing of the Petition commenced on 2 February 2015. On the first day of the hearing, counsel for the Petitioners and for the Returning Officer announced that their respective clients had reached an agreement whereby the Petitioners would no longer pursue their allegations against the Returning Officer and the Returning Officer undertook that, in the event that the Petitioners were successful against Mr Rahman, he would not seek an order for his own costs against them.

[1] Supperstone and Spencer JJ

14 Consequently, the case against the Returning Officer, which mainly turned on his conduct of the count, was not proceeded with and a great deal of evidence dealing with the events at the count did not need to be adduced or challenged. This judgment, therefore, will not need to explore the Returning Officer's conduct or do more than contain a cursory account of the events following the close of poll at 10.00 pm on 22 May 2014.

15 The trial occupied the court from 2 February to 13 March 2015. Written final submissions were served on 20 March 2015 and final oral submissions were heard on 24 March 2015.

16 The principal counsel for the parties were:

The Petitioners: Mr Francis Hoar

The First Respondent: Mr Duncan Penny QC

The Second Respondent: Mr Timothy Straker QC

I trust both leading counsel will forgive me if I do not repeat 'QC' on each occasion I mention them in the remainder of this judgment.

THE LAW

The law: election courts and their procedures

Election petitions

17 Before dealing with the law relating to election petitions, it is necessary briefly to rebut the criticism made in certain quarters after the high profile case of *Watkins v Woolas*[2] (referred to hereafter as '*Woolas*') in which the election of Mr Philip Woolas as Member of Parliament for Oldham East and Saddleworth in 2010 was set aside by an election court on the ground that Mr Woolas had committed an illegal practice contrary to s 106 of the 1983 Act (which will be discussed in detail later in this judgment).

[2] [2010] EWHC 2702 (QB) (Election court); reported as *R (on the application of Woolas) v Election Court* [2010] EWHC 3169; [2012] QB 1; (Divisional Court)

18 The criticism is usually voiced in terms of 'unelected judges unseating democratically elected politicians', the obvious implication being that this process is itself undemocratic.

19 There are two answers to this criticism. First the resolution of disputed elections by the courts is not a power the judges have arrogated to themselves. It is a task laid upon them by Parliament, a task, what is more, that the judiciary originally resisted tooth and nail. As the history of election courts set out in *Woolas* in the Divisional Court shows[3], when, in 1868, it was proposed that election disputes should be referred to the courts, the then Lord Chief Justice, Sir Alexander Cockburn Bt (ironically the country's leading expert in electoral law), wrote a stern letter of protest to the Lord Chancellor and earned himself an unflattering cartoon in *Punch* for his pains[4]. All to no avail. The reason is obvious: if, as Parliament believed, and has continued to believe, politicians cannot be trusted to resolve election disputes fairly, then who is left but the judiciary? Election courts have thus lasted from 1868 to the present.

20 The second reason is that the criticism itself begs the question. If a candidate is elected in breach of the rules for elections laid down in the legislation, then he cannot be said to have been 'democratically elected'. In elections, as in sport, those who win by cheating have not properly won and are disqualified. Nor is it of any avail for the candidate to say 'I would have won anyway' because cheating leads to disqualification whether it was necessary for the victory or not. In recent election cases, for example, it has been proved that candidates were elected by the use of hundreds (in Birmingham, thousands) of forged votes: would anyone seriously claim that those candidates had been 'democratically elected'?

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3 [2010] EWHC 3169 at paras 22 ff.

4 *Punch* 29 February 1868 'A Legal Difficulty'

21 A local election may be questioned by a Petition under s 127 of the 1983 Act which provides:

> ***An election under the local government Act may be questioned on the ground that the person whose election is questioned -***
>
> ***(a) was at the time of the election disqualified, or***
>
> ***(b) was not duly elected,***
>
> ***or on the ground that the election was avoided by corrupt or illegal practices or on the grounds provided by section 164 or section 165 below, and shall not be questioned on any of those grounds except by an election Petition.***

22 In this case, the court is not concerned with the first two grounds set out in s 127 for setting aside an election, namely the fact that the candidate was disqualified or the fact that he was not 'duly elected'. Although it could rightly be said that any candidate whose election can be set aside for any reason connected with the election was 'not duly elected', in practice this provision is largely confined to cases where, on re-examining the votes and removing on the ground of formal defects any votes previously admitted, the candidate ceases to have a preponderance of the votes. Neither of these grounds was raised in the current Petition and the court need not deal further with them.

23 The ground that 'the election was avoided by corrupt or illegal practices' brings into play further sections of the 1983 Act. Section 159(1) provides:

> ***If a candidate who has been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.***

24 The reference to reporting relates back to s 145 and 158. Section 145(1) states:

> ***At the conclusion of the trial of a Petition questioning an election under the local government Act, the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or***

whether the election was void, and the determination so certified shall be final to all intents as to the matters at issue on the Petition.

25 Thus the first duty of the election court trying a petition seeking to set aside an election on the ground of corrupt or illegal practices is to determine whether they occurred. It then has a duty to report contained in s 158:

> ***(1) The report of an election court under ... section 145 above shall state whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt or illegal practice.***
>
> ***(2) For the purposes of sections 159 and 160 below-***
>
> ***(a) if it is reported that a corrupt practice other than treating or undue influence was committed with the knowledge and consent of a candidate, he shall be treated as having been reported personally guilty of that corrupt practice, and***
>
> ***(b) if it is reported that an illegal practice was committed with the knowledge and consent of a candidate at a parliamentary election, he shall be treated as having been reported personally guilty of that illegal practice.***
>
> ***(3) The report shall also state whether any of the candidates has been guilty by his agents of any corrupt or illegal practice in reference to the election; but if a candidate is reported guilty by his agents of treating, undue influence or any illegal practice, and the court further reports that the candidate has proved to the court-***
>
> ***(a) that no corrupt or illegal practice was committed at the election by the candidate or his election agent and the offences mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent, and***
>
> ***(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election, and***
>
> ***(c) that the offences mentioned in the report were of a trivial, unimportant and limited character, and***

(d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents,

then the candidate shall not be treated for the purposes of section 159 as having been reported guilty by his agents of the offences mentioned in the report.

26 These provisions are not entirely straightforward. Section 158(1) is clear enough. The court is to report whether a corrupt or illegal practice has been committed by or with the knowledge or consent of the candidate and, if so, which. I shall deal later with the question of the agents whose acts bind the candidate, but the distinction should be made between s 159(1) (above) which requires the corrupt or illegal practice to have been committed by the candidate or his agents before the election can be avoided and s 158(1) which requires the election court to report 'whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election' which is a slightly different concept.

27 Under s 158(2)(a), if a corrupt practice is proved to have been committed not by the candidate himself but with his knowledge and consent, then he is personally guilty of the corrupt practice unless the corrupt practice involves treating (see below) or undue influence, in which case, to be reported as personally guilty the candidate himself must have participated in the commission. The candidate, however, is personally guilty under s 158(2)(b) of any *illegal* practice committed with his knowledge and consent even if not participating personally in it.

28 Section 158(3) legislates for the case where corrupt and illegal practices are proved to have been committed by the candidate's agent but not with his knowledge and consent. The effect of the subsection is that where corrupt practices do not involve treating or undue influence, the candidate remains personally guilty of the offence; but where the

corrupt practice involves treating or undue influence or the allegation is one of an illegal practice, then the candidate does have a statutory defence. This is one of the few areas in the 1983 Act where the onus is placed on the Respondent to a Petition to prove a defence[5] and, to succeed, the candidate must prove all four of its ingredients. The sting is in the tail: ingredient (d) requires that 'in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents', so that if, for example, the candidate's agents are found to have been guilty of personation under s 60 or of postal vote fraud under s 62A (even without the candidate's knowledge or consent) then not only is the candidate guilty of *that* corrupt practice but he cannot avail himself of what would otherwise be a defence to allegations of treating, undue influence or illegal practices.

29 Thus the process is:

a) the court determines that the candidate has, by himself or his agents, been guilty of corrupt or illegal practices - s 145;

b) the court reports that finding - s 158;

c) that finding renders the election void - s 159.

30 The consequences for a candidate of being found guilty by himself or his agents of corrupt or illegal practices are serious. In addition to having the election declared void, under s 160 that person is incapable of

a) being registered as an elector for any national or local election;

b) being elected to the House of Commons;

c) holding any elective office (including being a Mayor or councillor).

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5 To the civil standard.

31 This disqualification lasts, in the case of corrupt practices, for five years and, in the case of illegal practices, for three years.

32 These penalties are entirely separate from any criminal sanctions that might be imposed if the candidate concerned is prosecuted to conviction for an electoral offence. If, by any chance, the conviction precedes the election court, the candidate is obliged to vacate his office under s 173 of the 1983 Act.

33 An important feature of this ground for avoiding an election is that the petitioner does not have to prove that the corrupt or illegal practices were likely to have affected the result of the election. Mere proof of the practices by the candidate or his agents is sufficient to avoid the election. Thus, to take an extreme example, a person elected to Parliament with a majority of 20,000 in his constituency who is proved to have arranged only one bogus vote to have been cast through personation, will forfeit the election and suffer disqualification for five years under s 160.

34 The final grounds for avoiding an election are the grounds provided by ss 164 and 165. Section 165 is irrelevant here.

35 Section 164 is usually referred to as 'general corruption' and states:

> ***(1) Where on an election Petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in reference to the election for the purpose of promoting or procuring the election of any person at that election have so extensively prevailed that they may be reasonably supposed to have affected the result –***
>
> ***(a) his election, if he has been elected, shall be void, and***
>
> ***(b) he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.***

(2) An election shall not be liable to be avoided otherwise than under this section by reason of general corruption, bribery, treating or intimidation.

(3) An election under the local government Act may be questioned on the ground that it is avoided under this section.

36 This section replaces what was once the common law rule relating to general corruption. In the past, particularly in the nineteenth century, it would happen that an election had been tainted with corruption or other illegal conduct but those seeking to set it aside could not prove any actual involvement in the wrongdoing by the candidate or his agents. Thus a body of law evolved to the effect that an election could be avoided on this ground but only if it could be shown that it was likely to have affected the result of the election.

37 Consequently, the ingredients of s 164 which have to be proved by a petitioner seeking to avoid an election under that section are that:

a) corrupt or illegal practices or illegal payments, employments or hirings were committed by someone;

b) they were committed at an election for the purpose of promoting or procuring the election of a candidate at that election[6]; and

c) they prevailed so extensively that they may be reasonably supposed to have affected the result of the election.

38 The key points to note about s 164 are:

a) the petitioner does not have to prove that the corrupt or illegal practices were committed by the candidate or his agents - only that they were directed to securing his election; but

6 Not necessarily the successful candidate but there would be obvious difficulties in establishing that the corruption had affected the result of the election if it had only been directed towards securing the election of one of the losers.

b) the petitioner does have to prove that the corrupt or illegal practices are likely to have affected the result; and

c) avoidance of the election under s 164, while not involving the lengthy period of disqualification that attends findings of corrupt or illegal practices against the candidate himself, nevertheless rules out the candidate from standing at the re-run of the election.

The functions of the court

39 An election court is, in some ways, a unique tribunal. Election petitions are presented and pursued in a very similar manner to claims made in the civil courts and, procedurally, the basic rules to be applied are those of the Civil Procedure Rules ('CPR'). Accordingly election proceedings have an adversarial character. Nevertheless, election petitions differ in a number of ways from civil actions.

40 An election judge occupies an intermediate position between that of a civil court judge, whose function is (in general) to determine the issues as between the parties to the action being tried, and a coroner, whose function is an inquisitorial function to determine the cause of death and surrounding circumstances. A civil judge has little or no inquisitorial powers: he is trying an adversarial dispute between the parties. A coroner's inquest is not (or should not be) an adversarial process, although coroners usually permit interested parties to participate either in person or through legal representatives.

41 An election court possesses elements of both systems. The election judge must hear and determine the issues between the Petitioner and the Respondent: to that extent he is a civil court judge. He must also enquire more widely into possible electoral malpractice both in the electoral area in question and in the wider electoral area. In the present case the

questioned election, as it happens, encompasses the entirety of the electoral area (the Borough of Tower Hamlets) but where the petition concerns only one or two wards within a larger electoral area, the election judge is charged under s 145(3) of the 1983 Act with the duty to state 'whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the area of the authority for which the election was held or in any electoral area of that authority's area'. It may be recalled that, in my judgment in the Birmingham Election Case[7], I reported that the wholesale falsification of postal votes had not been confined to the wards of Aston and Bordesley Green, the subject of the Petitions, but had been widespread in those wards of Birmingham where the Labour Party was attempting to counteract the collapse of the Labour vote in the Muslim Asian community following the invasion of Iraq in 2003.

42 The practical consequence of the combined adversarial and inquisitorial nature of an election court is that an election judge must necessarily be more interventionist than would normally be the case. In criminal cases, judicial intervention during evidence is usually kept to a minimum and, in civil cases, though the level of intervention is often higher (particularly if the case involves technicalities which require explanation), it is still not an important part of the process. In election cases, however, the inquisitorial function, though falling well short of the control of proceedings exercised by a coroner, does mean that judges ask a lot more questions than would be the norm in civil cases.

43 In the present case, as in many Petitions, the resources available to the protagonists were limited. Indeed the Petitioners conducted the case throughout with the aid of counsel, Mr Hoar, instructed under the direct access scheme, but without the help of solicitors. There

[7] Petition M/307/04 (Aston), M/309/04 (Bordesley Green): judgment reported at [2005] All ER (D) 15. Judgment affirmed by Divisional Court [2005] EWHC 2365

was necessarily, on both sides, a considerable amount of what I described as 'DIY evidence gathering', made more difficult by the number of potential witnesses for whom English was not their first language (in some cases, a language not spoken at all). The focus of the parties being, quite properly, the pleaded issues, it was left to the court to examine the wider picture.

44 I felt that at some times Mr Penny, who, as a leading criminal practitioner, was perhaps more used to the cloistered calm of the Old Bailey, found the level of judicial intervention somewhat unsettling (though he concealed his understandable irritation admirably). Such is, however, the inevitable nature of an election court.

Burden and standard of proof

45 In general terms, an election court is a civil court not a criminal court. Many of the matters it has to consider, however, involve conduct which amounts to the commission of criminal offences under the 1983 Act or other electoral legislation.

46 The general burden of proof both in respect of the charges of corrupt or illegal practices and in respect of the allegation of general corruption must necessarily rest on the Petitioner. Although there are instances when the burden may shift to the Respondent (such as under s 158(3) cited above), they do not affect the general rule itself.

47 There was no controversy at the hearing about the standard of proof the court must apply to the charges of corrupt and illegal practices. It is settled law that the court must apply the criminal standard of proof, namely proof beyond reasonable doubt. This was

definitively decided by the Court of Appeal in *R v Rowe, ex parte Mainwaring*[8], a decision binding on this court

48 In respect of general corruption, there are two aspects to the case under s 164:

a) proving that there has been general corruption designed to secure the election of the candidate;

b) showing that this may reasonably be supposed to have affected the result.

49 My rulings in this regard having been unchallenged to date, I shall apply the criminal standard of proof to the issue of whether there has been general corruption and the civil standard of proof to the issue of whether it may reasonably be supposed to have affected the result.

50 Thus the court will apply

a) the criminal standard of proof to the charges that Mr Rahman and/or his agents have been guilty of corrupt or illegal practices;

b) the criminal standard of proof to the question of whether there has been general corruption; but

c) the civil standard of proof to the question of whether the general corruption may reasonably be supposed to have affected the result of the election.

The law: agency

51 The general rule in election cases is that in respect of corrupt or illegal practices a candidate is responsible for the actions of his agents, even if those actions are committed without his knowledge and consent or, indeed, contrary to his express instructions. This

8 [1992] 1 WLR 1059. Interestingly, another case from Tower Hamlets.

general principle is then limited by provisions, such as those contained in s 158 cited above, which afford a candidate a defence if, in relation to some practices, he did not have the requisite knowledge and consent of the actions of his agents. The starting point remains, however, that a candidate is, until a mitigating factor is established, responsible for the acts and omissions of his agents.

52 All candidates are required by the 1983 Act to have an official election agent. In the present case, the official election agent for THF and Mr Rahman as Mayoral candidate was Mr Alibor Choudhury. In general terms, whatever the position of agents in the wider sense, the election agent is treated as the candidate's agent for all purposes and it is to be noted that under s 158, for example, it is the knowledge and consent of the candidate or his election agent that is determinative of the candidate's personal responsibility.

53 Electoral law has always drawn the concept of agency very widely. In the days when those standing for election (particularly to Parliament) would be members of the upper classes, it was not supposed that they would do their own electioneering. It was taken for granted that others would carry out the hard work of persuading voters. In an era before political parties were professionally organised, the candidate would collect a body of dedicated supporters who would campaign on his behalf. Electoral law took the position that those who participated in the candidate's campaign would be treated as agents for the candidate. By contrast, members of the wider public who merely manifested support for the candidate would not be 'agents' for electoral purposes.

54 The increasingly professional organisation of political parties crystallised the distinction between agents and public. Where a political party set up a campaign team, the members of that team would *prima facie* be treated as the candidate's agents. The candidate might

not know all the individual members of the team and might not have any idea of what they were getting up to: none the less, the members of the 'team' would be his agents.

55 The *locus classicus* of the definition is a case arising out of the General Election of 1874 *the Wakefield Case XVII*[9]:

> ***By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of the agent's authority ... but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of agency were put upon acts done at an election, it would be almost impossible to prevent corruption. Accordingly, a wider scope has been given to the term 'agency' in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object.***

56 'Agent' is thus not by any means restricted to the candidate's official election agent but covers a wide range of canvassers[10], committees[11] and supporters[12]. The candidate is taken to be responsible for their actions even though he may not have appointed them as agents. Knowledge of what they are doing does not need to be proved against a candidate for him to be fixed with their actions.

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9 (1874) 2 O'M&H 100.

10 See for example *Westbury Case* (1869) 20 LT 16 and *Tewkesbury Case, Collings v Price* (1880) 44 LT 192.

11 See for example *Stalybridge Case, Ogden Woolley and Buckley v Sidebottom* (1869) 20 LT 75.

12 See for example *Great Yarmouth Borough Case, White v Fell* (1906) 5 O'M & H 176.

57 The *Great Yarmouth* case cited above sets out the principles very clearly[13]:

> ***There are principles, and the substance of the principle of agency is that if a man is employed at an election to get you votes, or, if, without being employed, he is authorised to get you votes, or, if, although neither employed nor authorised, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you … Now that is, as I apprehend, clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not in accordance with their wish, but which are directly contrary to it.***

58 Clearly agency connotes some connection between the agent and the candidate. If, unknown to the candidate and without his consent, members of the public who support his candidature (or his party) engage in corrupt or illegal practices to ensure his election, those unofficial 'supporters' may well not, in law, be deemed to be his agents, although this might set up a situation of general corruption under s 164. What the law is designed to achieve is to make a distinction between the candidate's 'team' of supporters and canvassers and wholly unconnected members of the public who may support the candidate and engage in unsolicited acts of a corrupt or illegal nature on his behalf.

59 It must be said that, in practice, where electoral malpractice is established, particularly in the field of vote-rigging, it is very rare indeed to find members of the general public engaging in DIY vote-rigging on behalf of a candidate. Generally speaking, if there is widespread personation or false registration or misuse of postal votes, it will have been organised by the candidate or by someone who is, in law, his agent. Though the burden of proof is not thereby altered, a court is entitled to work on the basis that systematic vote-rigging is overwhelmingly likely to be the work of the candidate or his agents.

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[13] Although the two judges disagreed on whether the alleged 'agent had been one in fact.

60 As is customary in election cases, there has been considerable controversy in the present case as to who may properly be taken to be Mr Rahman's agents for election law purposes and who may not. Understandably Mr Hoar has sought to cast the net as widely as possible and, equally understandably, Mr Penny has sought to narrow the field. I shall deal with the factual question of agency when I discuss the history and structure of THF.

The law: corrupt and illegal practices

61 Most election petitions concentrate on one aspect of corrupt and illegal practices: in recent years, the emphasis has been on the corrupt and illegal practices surrounding the falsification of votes, particularly postal votes. The current case, however, raises a host of allegations of corrupt and illegal practices made against Mr Rahman.

62 The Petition alleges the following practices ('C' = corrupt; 'I' = illegal):

a) Personation contrary to s 60 of the 1983 Act (C);

b) Voting when not entitled to do so contrary to s 61(1) (I)

c) (Possibly) double voting contrary to s 61(2) (I);

d) Postal vote offences contrary to s 62A (C);

e) Tampering with ballot papers etc, contrary to s 65 (I);

f) Making false statements about a candidate (in this case Mr Biggs) contrary to s 106 (I);

g) Payment of canvassers, contrary to s 111 (I)

h) Bribery contrary to s 113 (C);

i) Treating, contrary to s 114 (C);

j) Undue influence involving the threat of spiritual injury contrary to s 115 (C);

k) Undue influence involving intimidation at polling stations, voters going into polling booths together or leaving campaign material inside polling booths contrary to s 115 (C)

l) Undue influence involving the misleading of voters by claiming that Mr Rahman was a Labour Party candidate contrary to s 115(C);

m) 'General corruption' in the Borough designed to secure Mr Rahman's election.

Personation and related ballot offences

63 Personation is, in essence, the casting of a vote unlawfully. In its original form it involved a person who was not entitled to vote assuming the identity of a voter registered on the electoral register and casting that voter's ballot. In the days of a very limited franchise, even small amounts of personation could have serious consequences, though that was mitigated by the fact that, with a tiny electorate, detecting a non-voter trying to cast someone else's vote was relatively easy. The huge increase in the electorate brought about by universal franchise made personation less attractive, in that the risks involved remained the same but the number of false votes likely to be needed to sway the result had greatly increased.

64 By the 21st century, however, a combination of the extremely lax rules relating to the registration of electors and the introduction of postal voting on demand made personation once again viable. The ease of postal vote fraud and the difficulty of policing it led to such a great upsurge in personation that, in the Birmingham Case, the number of false votes was virtually half of all votes recorded as having been cast for the winning candidates.

65 Section 60 of the 1983 Act provides:

(1) A person shall be guilty of a corrupt practice if he commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person shall be deemed to be guilty of personation at a parliamentary or local government election if he –

(a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or

(b) votes in person or by post as proxy -

(i) for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or

(ii) when he knows or has reasonable grounds for supposing that his appointment as proxy is no longer in force.

(3) For the purposes of this section, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.

66 A conviction for personation after trial on indictment carries a maximum sentence of two years imprisonment[14].

67 The significance of s 60(3) is that the offence of personation in the case of postal votes requires the personator to return the ballot paper. Merely applying for and receiving a postal vote in a false name does not constitute personation under s 60(3): the ballot paper must actually be returned. Personation at a polling station, on the other hand, is fairly obvious.

68 Section 61 creates two offences potentially relevant here:

(1) A person shall be guilty of an offence if -

[14] See the 1983 Act s 168(1)(a)(i).

(a) he votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector, at a parliamentary or local government election, or at parliamentary or local government elections, knowing that he is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or

(b) …

(c) …

(2) A person shall be guilty of an offence if-

(a) he votes as elector otherwise than by proxy either-

(i) more than once in the same constituency at any parliamentary election, or more than once in the same electoral area at any local government election …

69 Section 62A was introduced in response to the problems caused by postal voting on demand. The relevant parts of s 62A read:

(1) A person commits an offence if he -

(a) engages in an act specified in subsection (2) at a parliamentary or local government election, and

(b) intends, by doing so, to deprive another of an opportunity to vote or to make for himself or another a gain of a vote to which he or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts -

(a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);

(b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote;

(c) inducing the registration officer or returning officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote;

(d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient

....

(5) A person who commits an offence under subsection (1) or who aids, abets, counsels or procures the commission of such an offence is guilty of a corrupt practice.

70 This offence carries the same penalty as that created by s 60[15].

71 The ambit of s 62A is deliberately wide. It encompasses false registrations because the person who uses the name of a falsely registered voter to apply for a postal or proxy vote will either be using the name of 'some other person' under s 62A(2)(a) or (if the person applying does so in his own name but knowing that he is falsely registered) be 'making a false statement' under s 62A(2)(b).

72 Finally under this head comes tampering with documents under s 65. Section 65(1) reads:

> ***(1) A person shall be guilty of an offence, if, at a parliamentary or local government election, he-***
>
> ***(a) fraudulently defaces or fraudulently destroys any nomination paper; or***
>
> ***(b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or declaration of identity or official envelope used in connection with voting by post; or***
>
> ***(c) without due authority supplies any ballot paper to any person; or***
>
> ***(d) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or***
>
> ***(e) fraudulently takes out of the polling station any ballot paper; or***
>
> ***(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or***
>
> ***(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.***

73 Before considering these various offences, regard must be had to the rules for determining who is entitled to be registered to vote in an election. Patently a wholly fictitious person whose name had been entered on the register cannot be entitled to vote and anyone who uses the identity of such a person commits personation. What, however,

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15 See the 1983 Act s 168(1)(a)(i).

is the position where the person who is entered in the register does actually exist but may not be entitled to be registered at that address?

'Ghost voters' and the right to be registered

74 In my judgment in the Slough Election Case[16], I used the term 'ghost voters'[17] to encompass people whose names were entered on the electoral register where either they did not reside at the address stated or, in some cases, did not exist at all.

75 Section 2 of the 1983 Act provides:

> ***(1) A person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he -***
>
> ***(a) is registered in the register of local government electors for that area;***
>
> ***(b) is not subject to any legal incapacity to vote (age apart);***
>
> ***(c) is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and***
>
> ***(d) is of voting age (that is, 18 years or over).***

76 Section 4 provides:

> ***(3) A person is entitled to be registered in the register of local government electors for any electoral area if on the relevant date he-***
>
> ***(a) is resident in that area;***
>
> ***(b) is not subject to any legal incapacity to vote (age apart);***
>
> ***(c) is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and***
>
> ***(d) is of voting age.***
>
> ***…***
>
> ***(6) In this section-***

---

16 *Simmons v Khan* M/326/07 Judgment delivered 18 March 2008.

17 Though I am widely credited with the invention of this term, any credit must actually go to Mr Gavin Millar QC who introduced me to the term in the Slough case.

… 'qualifying Commonwealth citizen' means a Commonwealth citizen who either—

(a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or

(b) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) any description of such leave;

… 'the relevant date', in relation to a person, means-

(a) the date on which an application for registration is made... by him...

77 Residence is covered by section 5:

(1) This section applies where the question whether a person is resident at a particular address on the relevant date for the purposes of section 4 above falls to be determined for the purposes of that section.

(2) Regard shall be had, in particular, to the purpose and other circumstances, as well as to the fact, of his presence at, or absence from, the address on that date.

For example, where at a particular time a person is staying at any place otherwise than on a permanent basis, he may in all the circumstances be taken to be at that time-

(a) resident there if he has no home elsewhere, or

(b) not resident there if he does have a home elsewhere.

78 The Representation of the People (England and Wales) Regs 2001[18] ('the 2001 Regs'), Reg. 26, requires a person applying for registration as an elector to state in his application (*inter alia*) the address in respect of which he applies to be registered and 'at which he is resident on the date of the application' and to sign a declaration that the particulars are true.

79 Thus in order for an elector lawfully to vote at a local election for a particular local authority ward, he must meet the eligibility criteria and have a 'residence' within the

[18] SI 2001/341, as amended

boundaries of the Ward. A temporary visitor cannot lawfully register and vote. Similarly someone who, in the words of s 5 has 'a home elsewhere' cannot put himself on the register of a ward for the purposes of an election without residing in that ward. Relatives from abroad who are over in England for a short holiday cannot lawfully register and vote.

80 Consequently, the device of moving individuals (even if otherwise eligible to vote somewhere else) into a property shortly before an election, registering them to vote and moving them out immediately after the election constitutes a clear breach of the residence qualification. Those people are not 'resident' in any sense of the word and, in the vast majority of cases, will be found to have had a 'home elsewhere'. It goes without saying that, if such persons only pretend to move in for the purpose of being registered and voting, and do not set foot in the premises, their registration is undeniably fraudulent.

81 In this context, it should be noted that under s 13D(1) of the 1983 Act, providing to a registration officer any false information for any purpose connected with the registration of electors is a criminal and thus an electoral offence.

Summary of the position concerning ballot fraud

82 Where a non-existent person is registered on the electoral register, anyone who casts the vote of that person, whether in person or by post, commits the offence of personation under s 60.

83 Where a person who does exist but who does not reside at the address stated (or who would be ineligible to vote even if he did so reside) is entered in the register, then

a) if his vote is cast by someone else, that person commits personation;

b) if he casts the vote himself, he is guilty of an offence under s 61(1).

84 If a person is legitimately registered at two addresses within the same electoral area and casts both votes, he is guilty of double voting contrary to s 61(2): furthermore if one of the addresses is not legitimate because he does not reside there, then the vote cast from that address would also amount to an offence under s 61(1). If that person induced someone else to cast one of his two votes while he cast the other, then both he and the user of the second vote would be guilty of personation in respect of that second vote.

85 Inducing a genuine voter to hand over the documents necessary to register a postal vote in order to complete the application for a postal vote with false particulars and subsequently to use the postal vote supplied is a corrupt practice under s 62A.

86 Inducing a postal voter to hand over a completed Personal Voting Statement ('PVS') and a blank ballot paper and subsequently completing the ballot paper and submitting the PVS and ballot to the Returning Office constitutes personation under s 60 and an illegal practice under s 65.

87 Intercepting a completed postal ballot and altering the votes shown on the ballot paper is an illegal practice contrary to s 65.

Making false statements about a candidate

88 This is a relatively unusual ground for setting aside an election. The relevant parts of s 106 read as follows:

> ***(1) A person who, or any director of any body or association corporate which-***
>
> ***(a) before or during an election,***
>
> ***(b) for the purpose of affecting the return of any candidate at the election,***
>
> ***makes or publishes any false statement of fact in relation to the candidate's personal character or conduct shall be guilty of an illegal practice, unless he***

can show that he had reasonable grounds for believing, and did believe, the statement to be true.

(2) A candidate shall not be liable nor shall his election be avoided for any illegal practice under subsection (1) above committed by his agent other than his election agent unless-

(a) it can be shown that the candidate or his election agent has authorised or consented to the committing of the illegal practice by the other agent or has paid for the circulation of the false statement constituting the illegal practice; or

(b) an election court find and report that the election of the candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

(3) A person making or publishing any false statement of fact as mentioned above may be restrained by interim or perpetual injunction by the High Court or the county court from any repetition of that false statement or of a false statement of a similar character in relation to the candidate and, for the purpose of granting an interim injunction, prima facie proof of the falsity of the statement shall be sufficient.

(4) . . .

(5) …

(6) A candidate shall not be liable, nor shall his election be avoided, for an illegal practice under subsection (5) above committed by his agent other than his election agent.

89 The first point to note is that it is an offence and an illegal practice for anyone to make a false statement about a candidate under s 106(1). The person making the statement does not need himself to be a rival candidate or otherwise concerned in the election.

90 The normal rule, however, that a candidate is responsible for the defaults of his agents is limited in the case of s 106 by s 106(2). If the false statement is made by the candidate himself or his election agent, then, clearly, he remains liable for it. In cases where the statement is made by his agents in the wider sense of the term, it must be shown that

a) the candidate or his election agent authorised or consented to the making of the statement; or

b) the candidate or his election agent paid for the circulation of the statement; or

c) the court is satisfied that the making or publishing of the statement 'procured or materially assisted' the election of the candidate'.

91 The court does not need to consider these provisions in detail because it is common ground in this case that the statements about Mr Biggs of which the Petitioners complain were made or published by Mr Rahman or his election agent Mr Choudhury. It is also a common ground (and commented upon by Mr Penny) that Mr Biggs did not avail himself of the right to apply for an injunction restraining repetition under s 106(3).

92 What then are the ingredients of the offence?

a) the statement must relate to a 'candidate';

b) it must be a statement of fact

c) in relation to his personal character or conduct;

d) it must be made for the purpose of affecting the return of the candidate;

e) it may be made 'before or during' the election.

93 If these matters are proved, the onus is then on the maker of the statement[19] to show that

a) he genuinely believed the statement to be true and

b) he had reasonable grounds for that belief.

94 The first question is thus: who is a 'candidate'? Considerable stress was placed by Mr Penny on s 118A of the 1983 Act[20] which is headed 'Meaning of Candidate'.

[19] Again to the civil standard.

95 The relevant parts of s 118A read:

> ***(1) References to a candidate in this Part[21] of this Act shall be construed in accordance with this section (except where the context otherwise requires).***
>
> ***(2) ...***
>
> ***(3) A person becomes a candidate at an election under the local government Act-***
>
> > ***(a) on the last day for publication of notice of the election if on or before that day he is declared by himself or by others to be a candidate at the election, and***
> >
> > ***(b) otherwise, on the day on which he is so declared by himself or by others or on which he is nominated as a candidate at the election (whichever is the earlier) ...***

96 This is more precise than the provision it replaced – s 118 of the original 1983 Act –

> ***"candidate" ... in relation to an election under the local government Act, means a person elected or having been nominated or having declared himself a candidate for election, to the office to be filled at the election***

97 The effect of s 118A seems to be that, if a person has declared himself (or been declared) as a candidate, his candidature commences on the 'last day for publication of notice of the election'. If between that date and nomination he declares himself (or is declared), then his candidature commences on the earlier of the date of declaration and the date of formal nomination. Either way, a person cannot be a 'candidate' as defined by s 118A earlier than the 'last day for publication of notice of the election'.

98 In the present case, the 'last day for publication of notice of the election' was (by common consent) 14 April 2014. Mr Penny therefore argued that, for the purposes of s 106,

a) a false statement could only be made about a 'candidate';

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[20] Inserted by the Political Parties, Elections and Referendums Act 2000 s 135.

[21] Part II, which contains s 106.

b) Mr Biggs only became a ‘candidate’ on the ‘last day for publication of notice of the election’ (14 April) and thus

c) only statements made about Mr Biggs on or after 14 April fell to be considered under s 106.

99 That said, this argument would not by itself dispose of the Petitioners’ case under s 106 because Mr Penny accepted that press releases issued by Mr Rahman and Mr Choudhury on 15 April and 23 April 2014 would come within the relevant period (although, of course, he disputed that those press releases were contrary to s 106). It would mean, however, he argued, that any press release or other communication made by Mr Rahman or Mr Choudhury prior to 14 April 2014 could not contravene s 106 and must not therefore be taken into consideration.

100 Does the definition of a candidate under s 118A restrict the ambit of s 106? There is no doubt that the draftsmen of the 2000 Act which inserted 118A were not directing their minds to the application of s 106. The main purpose of s 118A, as the explanatory note to the 2000 Act indicates was to fix with precision the period during which the rules relating to candidates’ expenses were to apply. Nevertheless, as s 118A applies to the whole of Part II of the 1983 Act and thus to s 106, it can be said that a section drafted for one purpose has affected a section not intended to be affected whether the draftsmen wanted to or not.

101 Were Mr Penny’s argument to be correct, it would lead to very unfortunate consequences. It would mean that s 106 had to ignore the fact that, for wider purposes, a person is usually declared as a candidate well before the ‘last day for publication of notice of the election’ (or, in the case of a Parliamentary election, the dissolution of Parliament). In the

current case it was obvious from (at the latest) mid-2013 that Mr Rahman would stand for re-election to the Mayoralty and by that time Mr Biggs had already been adopted and declared as the official candidate for the Labour Party. The restricted meaning sought to be placed on s 106 in the light of s 118A would mean that nothing these gentlemen said about each other, however false or scurrilous, would attract the sanctions of s 106 or entitle the victim of the calumny to apply to an injunction under s 106(3). The person defamed would thus be much worse off than he would have been prior to the 2000 reform because, prior to that, he would have been a 'candidate' from the moment he had declared himself as such.

102 Secondly, of course, it would mean that, on the day before the 'last day for publication of notice of the election', one declared candidate could publish a gross falsehood about another declared candidate (for example that he had been convicted of some offence meriting real public disgust, such as child abuse). This could cause a substantial number of electors to refuse to vote for the defamed candidate with the result that his traducer is elected but the former would have no redress under the s 106 of the 1983 Act. Common sense would revolt against such a construction of s 106 unless the wording of ss 106 and 118A forced the court into such a position.

103 In the event, I consider that Mr Penny's argument, though cogently reasoned, is wrong. The key words in s 118A are 'except where the context otherwise requires' and the context of s 106 clearly does so require. Section 106 covers statements made 'before and during an election'. Now, 'during an election' is clearly intended to cover the period between the dissolution of Parliament in the case of a Parliamentary election or the 'last day for publication of notice of the election' in the case of a local election and the day of the poll itself. That period is thus coterminous with the period during which, for the

purposes of election expenses and the like, a person is a 'candidate' within s 118A. If, therefore, a relevant statement for the purposes of s 106 is capable of being made 'before' this period, it must be capable of being made before the date on which a person becomes a 'candidate' within s 118A.

104 Furthermore, the wording of s 106(1)(b) is deliberately wide: 'for the purpose of affecting the return of any candidate at the election'. Although s 106 usually refers to statements made to the detriment of a candidate, the wording is wide enough to encompass a false statement made in favour of a candidate (for example, that he was a substantial philanthropist or had been awarded a medal for bravery) which might affect his electoral chances, albeit positively rather than negatively.

105 Under the definition of 'candidate' existing prior to 2000, there was no apparent conflict between s 106 and what was then s 118. A person who had declared himself a candidate was a candidate for the purposes of s 106 and that was that. This position has been preserved, perhaps by the back door, by the insertion of the words 'except where the context otherwise requires' into s 118A.

106 Thus, in my judgment, Mr Biggs was a candidate from the time he was formally selected as the Labour Party candidate and declared himself as a candidate for the 2014 Mayoral election.

107 What, however, if this is a misreading of ss 106 and 118A and that a court can only have regard to statements made about a candidate in the narrow period immediately preceding polling day? Would this require the court to disregard all that had gone before? Clearly not. Statements, even if made within the limited period contended for, must be regarded in context. If the context is that those statements are simply the latest statements in a

long-running campaign to publish falsehoods about the candidate, the court can and should view the statements within the prescribed period in the context of the campaign as a whole.

108 To take a simple example: if, in the week before the start of the period, Candidate A publishes a press release containing a false statement about Candidate B and a week after the start of the period says 'I stand by everything I have said about Candidate B', the court must view the later statement in the context of the former and treat is as repeating by reference or incorporation the earlier falsehood.

109 If, therefore, the court were to conclude in the present case that there had been a campaign mounted by Mr Rahman and Mr Choudhury against Mr Biggs involving the repetition of the same falsehoods both before and after the 'last day for publication of notice of the election', the court would have to take the statements made after that date in the context of the campaign as a whole and not in isolation.

110 In that event, the question whether the effect of s 118A is to restrict the ambit of s 106 to the period when a person is a 'candidate' for the limited purposes of s 118A would become somewhat academic because the earlier statements would form part and parcel of the campaign as a whole.

111 The next requirement is for the statement to be a statement of fact relating to the 'candidate's personal character and conduct'. This was considered by both the Election Court and the Divisional Court in *Woolas*. In some ways *Woolas* was a mirror image of the current case. In the current case, the allegation is that one of the false statements made about Mr Biggs was that he was encouraging extreme racists such as the so-called English Defence League ('EDL'). In *Woolas* it was said that Mr Woolas (Labour) had accused his

Liberal Democrat opponent Mr Watkins of encouraging and seeking the support of extreme Islamist fundamentalists. In the event, the Election Court and the Divisional Court held that the statements made about Mr Watkins had impugned his personal character and conduct and had been false. The Election Court had made these findings about three different statements but the Divisional Court, for reasons that will be explained, agreed with the Election Court that two of the three statements engaged s 106 but differed from that Court as to the effect of the third.

112 The upshot was that the decision of the Election Court that Mr Woolas had been guilty of an illegal practice was upheld by the Divisional Court. His election was set aside and he was automatically debarred from standing or voting in an election for three years.

113 The Divisional Court, in a magisterial judgment by Thomas LJ (as he then was) carried out a careful analysis of the reported cases on s 106 of the 1983 Act and its predecessors back to 1895 when the provision was introduced. The Court drew a distinction between statements made about a candidate in his political capacity and those made about his personal character and conduct. The Court accepted, however, that a statement might start out as being purely political but might go further and attack the candidate's personal character.

114 This is well illustrated by the Divisional Court's own findings as to the statements made. The first statement considered was one that Mr Watkins had reneged on a promise to live in the constituency. Disagreeing with the Election Court, the Divisional Court held that, although this statement did carry with it the obvious imputation that Mr Watkins was an untrustworthy man who did not scruple to break promises, this was a matter relating to his political position not his personal character. The Court pointed out that politicians are

frequently accused (fairly or unfairly) of going back on promises made and that to treat these accusations as coming within s 106 would be a substantial curtailing the right of free political debate. Consequently, although this statement was false, it did not qualify for consideration under s 106.

115 The two other statements considered amounted to an accusation that Mr Watkins was not only 'wooing' the Islamic extremist vote but was prepared 'to condone threats of violence in pursuit of political advantage'[22]. In respect of one of the statements[23], the Court found:

> ***that Mr Watkins had not rejected the endorsement of him by those who advocated violence and was refusing to condemn their threats of violence, this was again a statement that Mr Watkins was a man whose personal character was such that he refused to condemn threats of violence. In the same way as the statement in "The Examiner[24]" it ceased to be a statement about the political support he was wooing, and became a statement about his personal character as a man who refused to condemn threats of violence[25].***

116 Thomas LJ went on to say[26]:

> ***There is in our judgment a very significant difference between a statement that goes to the political conduct of a candidate and one that goes beyond it and says something about his personal character. We can think of no reason why Parliament cannot have intended that, where a statement was made about the personal character or conduct of a candidate, it did not intend due care to be exercised. Freedom of political debate must allow for the fact that statements are made which attack the political character of a candidate which are false but which are made carelessly. Such statements may also suggest an attack on aspects of his character by implying he is a hypocrite. Again, imposing a criminal penalty on a person who fails to exercise care when making statements in respect of a candidate's political position or character that by implication suggest he is a***

22 *R (on the application of Woolas) v Election Court* [2010] EWHC 3169 para 121.
23 In a publication called *Labour Rose*.
24 The local newspaper in the constituency.
25 *Woolas* para 122
26 *Woolas* para 124

hypocrite would very significantly curtail the freedom of political debate so essential to a democracy. It could not be justified as representing the intention of Parliament. However, imposing such a penalty where care is not taken in making a statement that goes beyond this and is a statement in relation to the personal character of a candidate can only enhance the standard of political debate and thus strengthen the way in which a democratic legislature is elected.

117 This Court has thus gratefully adopted and applied the distinction laid down in *Woolas*, a decision, of course, binding upon it.

118 *Woolas* is also very helpful as to the interaction of s 106 and Article 10 of the European Convention on Human Rights which enshrines the principle of freedom of speech. The Divisional Court was not persuaded that s 106 was incompatible with Article 10 – indeed it was not argued in such stark terms.

119 The Divisional Court rejected any suggestion that Art 10 would grant immunity to a statement that was made by someone who knew that the statement was false or did not believe it to be true, for such a statement would be dishonest. The Court held[27]

The right of freedom of expression [under Art 10] ***does not extend to the publishing, before or during an election for the purpose of affecting the return of any candidate at an election, of a statement that is made dishonestly, that is to say when the publisher knows that statement to be false or does not believe it to be true. It matters not whether such a statement relates to the political position of a candidate or to the personal character or conduct of a candidate when the publisher or maker makes that statement dishonestly. The right to freedom of expression under article 10 does not extend to a right to be dishonest and tell lies, but section 106 is more limited in its scope as it refers to false statements made in relation to a candidate's personal character or conduct.***

[27] *Woolas* para 106.

120 What, though, of statements made by someone who believes them to be true but has no reasonable ground for that belief, a situation characterised by the Divisional Court as one of negligence as opposed to dishonesty? The Court did not go so far as to hold that Art 10, so to speak, trumped s 106 in such a way as to remove from the ambit of the section all statements made honestly but negligently. The answer was much more nuanced. The Art 10 right to freedom of speech is to be balanced against the candidate's right to reputation under Art 10(2). The court must make what Thomas LJ calls a 'value judgment'[28] and act proportionately.

> ***If the manner in which a false statement relates to the personal conduct or character of the candidate is in reality insubstantial, though on its ordinary reading s 106 might apply, it may well be inconsistent with Article 10 for a court to construe s 106 as applying to it***.

121 Finally, the statement must be made 'for the purpose of affecting the return of any candidate at the election'. This need not detain us. The statements in the present case were admittedly made for the purpose of dissuading the voters of Tower Hamlets from voting for Mr Biggs.

122 No apology is made for the lengthy disquisition on the provisions of s 106 of the 1983 Act. The case under s 106 has occupied a great deal of the trial and of the evidence called. Mr Rahman has sought by argument and evidence not simply to establish a genuine and reasonable belief in the truth of the statements complained of but also to establish their essential truth. This part of the Petition can only be satisfactorily disposed of if the Court proceeds from a clear statement of the legal principles engaged by s 106 and applies those principles in accordance with the guidance laid down in *Woolas*.

Payment of canvassers

[28] *Woolas* para 103

123 Section 111 of the 1983 Act may be considered self-explanatory:

> ***If a person is, either before, during or after an election, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting or procuring a candidate's election-***
>
> ***(a) the person so engaging or employing him, and***
>
> ***(b) the person so engaged or employed,***
>
> ***shall be guilty of illegal employment***.

124 The Petitioners' allegation is that, in the course of the election, canvassers were spoken to who alleged that they had been paid to canvass for Mr Rahman and THF. If proved, this would be an illegal practice.

Bribery

125 The relevant parts of s 113 read

> ***(1) A person shall be guilty of a corrupt practice if he is guilty of bribery.***
>
> ***(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf--***
>
> ***(a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or***
>
> ***(b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or***
>
> ***(c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter,***
>
> ***or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter.***
>
> ***For the purposes of this subsection--***
>
> ***(i) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure any money or valuable consideration; and***

(ii) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment; and

(iii) ...

(3) ...

(4) ...

(5) A voter shall be guilty of bribery if before or during an election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(6) ...

(7) In this section the expression "voter" includes any person who has or claims to have a right to vote.

126 Although not incorporated into electoral legislation, it is helpful in this context to compare this section with s 1 of the Bribery Act 2010 ('the 2010 Act'), the current criminal statute on the topic. This Act was much referred to by Mr Penny and it is clearly sensible to see to what extend the two provisions are congruent.

127 The 2010 Act s 1 reads:

1 Offences of bribing another person

(1) A person ("P") is guilty of an offence if either of the following cases applies.

(2) Case 1 is where--

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage--

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where--

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

128 The 2010 Act is directed to different ends from the 1983 Act. The bribe must relate to the performance of a 'relevant function' though this is widely defined by s 3 and includes 'any function of a public nature'. It is not suggested that bribery under the 1983 Act is coterminous with bribery under the 2010 Act but the latter is useful as to the modern concept of what activities do and do not constitute bribery.

129 Bribery was the original reason why Parliament decided to hand over the resolution of disputed elections to the courts. In the 19th century and before, bribery was a relatively simple matter of banknotes (or, more probably, sovereigns) being pressed into the greedy hands of voters on their way to the poll, remembering, of course, that, in 1868, the poll was still an open declaration of vote and not a secret ballot. Similarly the class of person likely to be a candidate would normally have at his disposal jobs that could be offered to wavering voters in return for their suffrage.

130 Clearly, we have long since moved on from those halcyon, though corrupt, days. It would be very rare nowadays to find a candidate handing over cash to individual voters, and employment has become a great deal more complex.

131 In essence the allegation against Mr Rahman is that considerable money was paid to organisations (including media organisations) operating within the Bangladeshi community by way of grants, with the corrupt intention that those who belonged to or benefited from those organisations would be induced to vote for him and for THF.

132 Consequently what is alleged is potentially covered by s 113(2)(a): 'directly or indirectly' 'gives any money ... to or for any other person in order to induce any voter to vote or refrain from voting' and s 113(2)(c): 'directly or indirectly' 'makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter'.

133 Mr Penny is surely right to argue that bribery under s 113 of the 1983 Act involves proof of intention: recklessness (*a fortiori* negligence) would be insufficient. The intention must be that of the person paying or causing the money to be paid over[29]. In this case the intention would have to be that of Mr Rahman or his agents.

134 The bribe must operate on the mind of the person bribed at the time of the election[30] and, of course, it is open to the briber to withdraw the offer of the bribe before polling day. Clearly the longer the period of time that elapses between the payment of the alleged bribe and the election itself, the more difficult it becomes to prove a corrupt intention to

[29] *Wallingford Election Petition* (1869) 19 LT 766; *Norfolk, Northern Division Case* (1869) 21 LT 264
[30] *Windsor Case, Herbert v Gardiner* (1874) 31 LT 133.

bribe voters on the part of the briber and the requisite effect on the mind of the person bribed.

135 Nevertheless, as a matter of law, it is open to a court considering s 113 to hold that a payment of a sum of money to an organisation made with the intention of inducing the members or beneficiaries of that organisation to vote in a particular way is capable of amounting to a bribe contrary to the section. Whether that can be established in the current case is another matter and that will be discussed at the appropriate place in this judgment.

Treating

136 Treating, like bribery, was once an election offence at common law but is now made an offence by s 114 of the 1983 Act. Also like bribery, it was a regular feature of 18th and 19th century elections, made possible by a limited electorate and the absence of a secret ballot. In essence, treating consists of corruptly plying electors with food and drink to obtain their votes and is amusingly (though accurately) portrayed by Dickens in *Pickwick Papers* when Mr Pickwick attends the Eatanswill Election.

137 Section 114 provides

> ***(1) A person shall be guilty of a corrupt practice if he is guilty of treating.***
>
> ***(2) A person shall be guilty of treating if he corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person-***
>
> ***(a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or***
>
> ***(b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.***
>
> ***(3) ...***

138 The two key elements are:

a) the treating must be done corruptly, in the sense that it is done intentionally, knowing that what was being done was wrong and with the object of inducing votes;

b) at least one person 'treated' should have been corrupted and induced to vote for the candidate for whose benefit the treating was provided.

Undue influence: general

139 The offence globally referred to as 'undue influence' is alleged in various forms in the Petition. These allegations may, however, be roughly divided into two categories: undue spiritual influence and misconduct of several types at polling stations.

140 Undue influence is contained in s 115 of the 1983 Act:

(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.

(2) A person shall be guilty of undue influence--

(a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or

(b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, an elector or proxy for an elector either to vote or to refrain from voting.

141 It will be recalled that undue influence is covered by s 158 which is discussed above and that s 158 affords a candidate a defence where the undue influence is committed by his agents without his knowledge or consent.

142 Undue influence within s 115 is linked to the law relating to undue influence developed in civil cases whereby transactions such as contracts, gifts or wills may be set aside on proof that undue influence has been exercised on one of the parties to the transaction.

143 As framed in s 115, the corrupt practice of undue influence includes both undue influence strictly so called, where the mind of the voter is overborne by moral or religious pressure (or by deception) on the part of someone perceived by the voter to possess authority, and what may be better characterised as duress, where physical means are used to prevent or impede the voter from exercising a free choice. The Petitioners' case falls within both categories. It is said that undue religious influence was exercised so as to convince Muslim voters that it was their religious duty to vote for Mr Rahman and THF, and it is also said that physical intimidation occurred at polling stations (along with other misconduct at polling stations).

144 At this point in the judgment, I propose to carry out a measure of pruning. Earlier I listed the allegations made by the Petitioners under s 115 as consisting of:

a) undue influence involving the threat of spiritual injury;
b) undue influence involving intimidation at polling stations, voters going into polling booths together or leaving campaign material inside polling booths;
c) undue influence involving the misleading of voters by claiming that Mr Rahman was a Labour Party candidate.

145 Bearing in mind the burden and standard of proof relating to corrupt practices, I could not be satisfied that the allegations of voters going into polling booths together or of THF supporters leaving campaign material inside polling booths were capable of amounting to

undue influence and I do not propose to discuss the extent to which these practices might or might not have been within s 115.

146 Similarly the evidence relating to voters being told that Mr Rahman was the Labour Party candidate was much too flimsy to amount to a viable case of 'fraudulent device' contrary to s 115(2)(b). I do not propose to discuss this allegation further.

147 The two aspects of undue influence which do merit serious discussion of the law are:

a) spiritual influence;

b) intimidation at polling stations.

Undue influence: 'spiritual injury'

148 The court was aware, and, even if it had not been, it would have been frequently reminded by counsel, that election cases involving allegations of spiritual influence have been very rare since 1900. Even before that time, cases of spiritual influence in mainland Britain were few and far between. It is very tempting (and Mr Penny did not shrink from the role of tempter) to regard undue spiritual influence as a historical anomaly, designed to counter the baleful influence of the Roman Catholic clergy of (largely the southern counties of) Ireland over elections in the late 19th century. Can it be supposed, ran the rhetorical question, that undue spiritual influence can have any meaning in the secular society of 21st century Britain?

149 The court must, however, resist the siren voices. What is now s 115 has a long legislative history. On each occasion that election law has been consolidated and updated its provisions have been re-enacted. Section 115 is itself a re-enactment of the Representation of the People Act 1949 s 101 so that it can be said that these provisions have been considered by Parliament at least twice since the Second World War and it was

not thought appropriate to delete reference to spiritual injury. There have also, of course, been several Acts of Parliament, including within the last decade, which have amended or added to the 1983 Act. This part of s 115 cannot properly, therefore, be considered a dead letter or obsolete.

150 It should also be stated that the general rule of English law is that, if a statutory provision is considered and construed by the courts in reported cases, then when that provision comes to be re-enacted or consolidated, Parliament has a choice. It can either reject the construction placed on the provision by the courts and replace the provision with one which represents Parliament's true intentions or it can re-enact the provision unchanged. If Parliament chooses the latter course, it is taken to have adopted the provision with its judicial construction, so to speak, built in. As, therefore, the provision in relation to undue spiritual influence has been carried forward from statute to statute for well over a century, Parliament must be assumed to have approved the construction placed on it by the courts during that period.

151 Furthermore, before considering the Irish cases from the 19th century, it is necessary to stress that the law relating to undue spiritual influence is not and cannot be construed as applying only to the Christian religion (*a fortiori* only to the Roman Catholic branch of it). Patently in the United Kingdom of the 1880s and 1890s no religion other than some form of Christianity was sufficiently represented in any part of the country to be psephologically significant. It is therefore inevitable that the decided cases should arise out of instances where the spiritual influence alleged was that of the Christian church. In considering those cases, therefore, it is necessary to strip out those elements which are peculiar to Christianity and, more particularly, to Roman Catholicism, in order to ascertain the basic legal principles being applied by the courts.

152 Accordingly, just as undue spiritual influence under s 115 of the 1983 Act is not confined to Christianity, it is equally not confined to religions which have the Christian sacraments or an equivalent, the threat of withdrawal or refusal of which can be used by clergy to influence voters. Similarly, it is not an essential ingredient of the section that the spiritual influence should be that of a monotheistic religion or of a religion which contains a belief in an afterlife where punishments and rewards are meted out for conduct in this life. In an appropriate case undue spiritual influence could be created by what some might regard as a cult, such as Mr Moon's 'Unification Church' or even 'New Age'.

153 When the problem of clergy influencing votes first arose, the courts were minded to take a relatively indulgent view. In *County of Longford*[31] Fitzgerald J said:

> ***In the proper exercise of that influence on electors, the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition of those he addresses. He must not hold hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not, for instance, threaten to excommunicate, or to withhold the sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter. If he does so with a view to influence a voter, or to affect an election, the law considers him guilty of undue influence.***

154 By 1892, however, attitudes had hardened, both on the part of the clergy and on the part of judges trying election cases. Outside Ireland, few except historians of 19th century politics now remember Charles Stewart Parnell, the founder and leader of the Irish Parliamentary Party and the standard-bearer of Irish nationalism in the 1880s. Indeed he tends to be remembered more for his fall from grace following a sensational divorce suit

31 (1870) 2 O'M & H 6.

brought by his mistress's husband in 1890. At the time, however, Parnell's advocacy of Home Rule and the agitation for land reform through the Land League were hugely controversial. Although the Roman Catholic clergy of Ireland were in general supportive of Home Rule, they were appalled by the conduct of Parnell and none more so than Dr Nulty, the Bishop of Meath.

155 The General Election of 1892[32] resulted in a number of election cases, particularly in the County of Meath. Both *Northern Division of the County of Meath*[33] and *Southern Division of the County of Meath*[34] resulted in the respective elections being set aside on the ground of undue spiritual influence. Dr Nulty, having preached sermons on the topic, issued a pastoral letter which was read out from the altars of the churches in his diocese on 3 July 1892 and, in an interesting echo of the present case, published in the local newspapers. Dr Nulty did not pull any punches. He condemned Parnellism (despite the fact that the unfortunate Parnell had died in 1891) in the most extreme terms:

> ***Now Parnellism strikes at the root, and saps the very foundations of the Catholic faith ... all the successors of the Apostles[35] have solemnly warned and taught their respective flocks that Parnellism was unlawful and unholy, that it was in distinct, direct, and essential antagonism with the principles of Christian morality, and even dangerous to their faith as Catholics, and consequently that they should shun and avoid it. They who refuse to accept that teaching or that principle on the unanimous authority of the whole Irish hierarchy deprive themselves of every rational ground or motive for believing in the truth of any of the other doctrines of religion ... [N]o intelligent or well-informed man can continue and remain a Catholic so long as he***

32 Leading to Mr Gladstone's last ministry, as head of a minority government dependent on Irish Nationalist support.
33 (1892) 4 O'M & H 185.
34 (1892) 4 O'M & H 130.
35 Meaning the 29 Catholic bishops and archbishops of Ireland.

elects to cling to Parnellism... I earnestly implore you then, dearly beloved, to stamp out by your votes at the coming election, this great moral, social and religious evil[36].

156 In *Meath South* Andrews J provided the court's response to Dr Nulty:

Having spent my life in Ireland, I well know the weight which a since member of the Roman Catholic Church attaches to what emanates from his clergy – the credence he desires to give to their teaching, the trust he reposes in their guidance, and the sanctity with which he regards their sacred office – and I cannot entertain a shadow of doubt that the powerfully written pastoral of the Bishop of Meath was calculated, in this Roman Catholic constituency, to seriously interfere with the free will of the electors in the exercise of their franchise at the late election...

I shall not occupy time in going through the pastoral in detail, and, as has been done so frequently, repeating the passages of it, which plainly threaten with spiritual injury and loss those electors who should vote in support of the Parnellite candidate, and are as plainly directed to induce the electors to refrain from so voting, and to vote for the chosen candidate of the clergy.

157 Both the Catholic Church's preferred candidates were duly unseated and suffered the pains of a finding of corrupt practices.

158 What principles emerge from the Irish cases? The first is that, while clergy of all religions are fully entitled, as are all citizens, to hold and to express political views and to argue for or against candidates at elections, there is a line which should not be crossed between the free expression of political views and the use of the power and influence of religious office to convince the faithful that it is their religious duty to vote for or against a particular candidate. It does not matter whether the religious duty is expressed as a

[36] Cited by Andrews J in *Meath North* (1892) 4 O'M & H 185 at p 192.

positive duty – 'your allegiance to the faith demands that you vote for X' – or a negative duty –'if you vote for Y you will be damned in this world and the next'. The mischief at which s 115 is directed is the misuse of religion for political purposes. A strong case can be made out for saying that the rule against misuse of religion is even more necessary in a country which prides itself on being a secular democracy than it might be in a state where there is a universal and dominant religion which is part of the fabric of society. It is noticeable that other democratic countries, such as France, operate rules against the misuse of religious influence on electors.

159 The second thing we get from the Irish cases is that the question of spiritual influence cannot be divorced from a consideration of the target audience. Time and again in the Irish cases it was stressed that the Catholic voters were men of simple faith, usually much less well educated than the clergy who were influencing them, and men whose natural instinct would be to obey the orders of their priests (even more their bishops). This principle still holds good. In carrying out the assessment a distinction must be made between a sophisticated, highly educated and politically literate community and a community which is traditional, respectful of authority and, possibly, not fully integrated with the other communities living in the same area. As with undue influence in the civil law sphere, it is the character of the person sought to be influenced that is key to whether influence has been applied.

160 Very little argument was directed to the potential effect of Art 10 of the ECHR on this aspect of electoral law or as to its interaction with Art 9 (religious freedoms) and Art 3 of the Protocol (free and fair elections). The court proposes to adopt the approach of the Divisional Court to Art 10 in *Woolas* discussed above. As Thomas LJ points out, the right of free speech in Art 10 is not absolute: it is subject to 'such formalities, conditions,

restrictions or penalties as are prescribed by law and are necessary in a democratic society'. In applying Art 10, therefore, a balance must be struck between the right of free speech itself and the competing rights and obligations that arise in a democratic society.

161 In the case of undue spiritual influence, the balance is very well articulated by the judgment of Fitzgerald J in *Longford* (above) albeit written some three-quarters of a century before the ECHR was even contemplated. The priest or other religious authority has the right of the ordinary citizen to hold and express political views and the law will protect that right. There is, as has been said, a line beyond which the priest may not go and that line is reached when the priest uses his religious and moral influence to attempt to 'appeal to the fears, or terrors, or superstition of those he addresses', to 'hold hopes of reward here or hereafter', or to 'denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter'.

162 I shall examine the claims of undue spiritual influence later in this judgment but at this stage it is sufficient to say that, if the principles laid down by the decided cases are applied, it is quite open to a court to find that there has been undue spiritual influence even in the Britain of May 2014. Equally, in applying those principles, it is irrelevant which religion is engaged, provided that the tests are met.

Undue influence: intimidation

163 The word 'intimidation' itself does not appear in s 115 of the 1983 Act. It does occur, however, in s 164, but in a somewhat negative way. Intimidation *per se* was undoubtedly a ground for questioning an election at common law and was much invoked in the 19th century[37]. Section 164 (the general corruption section) covers 'corrupt or illegal practices or illegal payments, employments or hirings committed in reference to the election' but

[37] See, for example, the *Nottingham Town Case* (1866) 15 LT 57.

provides in subsection (2) that 'An election shall not be liable to be avoided otherwise than under this section by reason of general corruption, bribery, treating or intimidation'.

164 Unless, therefore, intimidation amounts to a corrupt or illegal practice under some other section of the 1983 Act, it cannot be invoked in support of a case brought under s 164.

165 Intimidation must thus come within the wording of s 115 in order to amount to a corrupt practice.

166 Stripping away the words that are not apt to apply to intimidation, the relevant paragraphs of s 115(2) would read:

> ***(a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal … injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, …***
>
> ***(b) if, by … duress …, he impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of an elector … or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, an elector …either to vote or to refrain from voting.***

167 Under paragraph (a) therefore there must be the use (or threat of the use) of force, violence or restraint, or the infliction (or threat of infliction) or injury, damage or harm, and this must be directed towards inducing or compelling a person to vote or abstain. The requirements of paragraph (b) are perhaps somewhat less onerous but even here it must be shown that some person by duress (ie physical duress) impedes or prevents (or intends to do so) the 'free exercise of the franchise of an elector'.

168 Consequently the section requires a high degree of physical intimidation to be applied to the voter, which is perhaps why intimidation cases under s 115 have been relatively rare in the 20th and 21st centuries. It is not necessary for the person complaining of intimidation to prove an actual assault or the physical barring of electors from polling stations. If the level of force or violence is such as induce a voter to change his mind as to his vote or to refrain from voting altogether, the section is satisfied. It is not essential to prove that any individual voter did change his vote because s 115(2)(b) makes an intention to induce the voter so to act an offence. Nevertheless, the intimidation must reach quite a high level before s 115 is engaged. Whether the situation at the polling stations reached that level will be examined later in this judgment.

169 From what has been said above it will be apparent that the issues raised by this Petition comprise several electoral offences (including general corruption under s 164) and the law relating to those offences is often complex. It is now necessary to deal with the history of the events leading up to this Petition and to examine whether the facts proved do establish one or more of the offences alleged.

BACKGROUND

170 In dealing with the facts in this case, the court will employ the terms 'Bangladeshi' and 'Bengali' to describe residents of Tower Hamlets where they or their families originated in what is now Bangladesh and are thus what may be described as being of 'Bangladeshi heritage'. These were the terms universally used in the Petition by the parties and the witnesses, and they cover, of course, both those born in Bangladesh and those born in Britain to Bangladeshi families.

171 It is a truism to say that Tower Hamlets is a multi-racial community. The area now covered by the London Borough Hamlets has always been one of the most multi-racial areas, if not *the* most multi-racial area of the United Kingdom. In the Middle Ages, weavers from northern Europe moved into the parishes east of the City of London and their numbers were greatly increased by the influx of French Huguenots following the Revocation of the Edict of Nantes in 1685. Although weaving declined in the 18th century, the area retained its connection with cloth and the clothing industry and, in the 19th century, Jews moved into the Hamlets, refugees from persecution in Central and Eastern Europe, a high proportion of whom were engaged in that industry.

172 Along the Thames, the development of the Port of London took off in the 18th century with the beginning of the construction of the huge docks that dominated the area for two centuries. Like all ports, the Thames-side area became very cosmopolitan, with South Asian seamen (known as Lascars) and Chinese moving into docklands. In the 19th century, in common with many port areas at the time, Tower Hamlets acquired an unenviable reputation for poverty and crime, culminating in the notorious murders perpetrated in Whitechapel by 'Jack the Ripper' in 1888.

173 Twenty-first century Tower Hamlets contains a wide social mix, with areas of relative deprivation in the poorer parts of the Borough and areas of middle-class affluence, particularly in the area of the former St Katherine's Dock. Canary Wharf is, of course, one of the major financial centres not only of London but of the world. The Borough also contains, of course, the Tower of London itself.

174 It is true to say that the area has a long history of electoral problems. A disproportionate number of reported election cases relate to Tower Hamlets and it is significant that the

First Respondent's list of authorities contains two Tower Hamlets cases out of a total of 27, the earlier being back in 1895. The Metropolitan Borough Councils which were incorporated into Tower Hamlets when the Greater London Council was formed in 1965 (Bethnal Green, Poplar and Stepney) also had a history of political conflict with central Government, particularly the Borough of Poplar which, under George Lansbury, led what was described as a 'rates revolt', and the Borough of Stepney, of which Clement Atlee, later Prime Minister, was Mayor in the 1920s.

175 Tower Hamlets has had a Bengali population since at least the 18th century and by the 1920s there was a significant Bengali population, caused by Bengali seaman being paid off, or jumping ship, in London's docks, particularly in the aftermath of the Great War. The main influx of people from East Pakistan (after 1971, Bangladesh) came in the 1960s and 1970s. Of those immigrants, the majority hailed from the Sylhet Division in the north-east of Bangladesh, famous for its tea plantations[38]. The language (other than English) spoken by almost all the Bangladeshi community is Bengali, with many using the Sylheti dialect. Almost universally Bangladeshis adhere to the Muslim faith.

176 Bangladeshis are not the only Muslim residents of Tower Hamlets but they make up the overwhelming majority. There are other Muslim communities (notably Somalis) but their numbers are not particularly significant from an electoral perspective.

177 The Borough is believed to be the local authority area with the highest percentage of Muslims in the United Kingdom. The court was told that today some 35% of the residents are Muslim. Indeed, in the 2011 census 35% said they were Muslim, 27% said they were Christian and 34% said they had no religion or refused to state a religion. The Borough's

[38] Sylhet, together with its neighbouring region of Assam, produces the fragrant tea named after the latter.

once thriving Jewish community was down to less than 1%, smaller than the Hindu or Buddhist communities.

178 The 2011 census showed that the Bangladeshi population of Tower Hamlets was 32% of the total, which compares with the figure of 3% for London as a whole and less than 1% for England. The census reported that 'Tower Hamlets has the largest Bangladeshi population in England'. Residents describing themselves as 'White British' amounted to 31% of the population: black ethnic groups made up 7%. The conclusion of the census was that 'More than two thirds (69 per cent) of the borough's population belong to minority ethnic groups (ie not White British): 55 percent belong to BME (Black and Minority Ethnic) groups and a further 14 per cent from White minority groups'.

179 These official statistics are relevant to the court's approach to the politics of Tower Hamlets. Whatever may be the position in the rest of London or in the country at large, in Tower Hamlets Muslims in general and Bangladeshis in particular are not in any real sense a 'minority': in both instances they are the largest community in comparison to other religious and ethnic groupings. Although, therefore, Mr Rahman and his associates constantly refer to the Bangladeshi community of Tower Hamlets as if it were a small beleaguered ethnic minority in a sea of hostile racial prejudice, the court must look at the reality of the religious and ethnic makeup of the Borough.

180 Some things were common ground between the parties and may therefore be approached by the court as being uncontroversial. The first is that the Bangladeshi community is a closely-knit community with a very strong sense of identity and solidarity. The second is that, in general, the community may be described as imbued with a respect for the traditional social framework as it existed in Bangladesh. This is, of course, not universal.

There are, no doubt, many (particularly among the young) who reject the traditional ways of the older generation and wish to adopt the more relaxed social *mores* of the other communities in the Borough. None the less, the traditionalist element in the Bangladeshi community is strong – far stronger than would be the case in, for example, the segment of the population describing themselves as 'White British'.

181 Thirdly this conservatism (the lower-case letter 'c' is vital in this context) is bolstered by the fact that a significant proportion of Bangladeshis do not speak English as a first language, including Bangladeshis who were born in Britain and, in some cases, whose parents were born in Britain. It seems not uncommon to find residents who are British citizens, fully entitled to vote, but who do not speak English to any real extent. This is not intended as any criticism of the community: it is simply a matter of observable fact. Experience teaches that, in any community, the inability to communicate readily with members of other communities is bound to be more inward-facing. The sense of community cohesion and solidarity is increased but at a cost of increasing alienation from other communities.

182 Fourthly, and this, too, was not in dispute, a very substantial proportion of the Bangladeshi community is genuinely and devoutly religious, certainly to a far greater extent that would be found in most non-Muslim communities. The court was told that there were some 45 mosques in the Borough and the community is also well-served by clergy. As will be seen, a letter was written to the press, which will be discussed in more detail later, signed by no fewer than 101 imams and religious teachers and it was not suggested that this was the totality of the Muslim clergy within the Borough. It was accepted on both sides that the Muslim community, especially the older, more traditional,

members of the community, would tend to treat religious leaders with considerable respect, particularly when pronouncing on matters of faith.

183 On this topic, it is again right to say that Islam, like many other religions, places considerable emphasis on loyalty and obedience: disloyalty to the faith – *a fortiori* apostasy – is treated with great seriousness. It would be wrong, therefore, to treat Tower Hamlets' Muslim community by the standards of a secular and largely agnostic metropolitan elite.

184 The result of all this is that, rightly or wrongly, politicians in Tower Hamlets have tended to regard the Muslim community in general and the Bangladeshi community in particular as potentially forming a relatively coherent voting bloc. A politician who 'secures the Muslim vote' may consider himself well on the way to being elected by an electorate where Muslims represent the largest religious group and account for over one in three of the population. Whether it is fair or unfair of politicians to regard Tower Hamlets' Muslim population as possessing such homogeneity is something which may be debatable but what is not debatable is that that this is precisely how politicians have regarded the Borough's Muslim population in the past. As will be seen, these considerations played their part in the bizarre series of events which led to Mr Rahman being de-selected as the Mayoral candidate of the Labour Party in 2010.

185 Now it must be emphasised that, in discussing the nature of the Muslim and Bangladeshi communities of Tower Hamlets, what we are concerned with is the mainstream of those communities. No doubt there are in the Tower Hamlets Muslim community, as in other Muslim communities, those who have adopted a very extreme form of Islam and who regard terrorism and acts of violence as being justified in the name of the faith.

Throughout Mr Rahman's political career, his political enemies have, from time to time, attempted to suggest that he has links with extreme Islamist organisations and is happy to solicit their votes. As will be seen, this, too played a part in Mr Rahman's deselection in 2010.

186 It should therefore be stressed that this court has not heard a shred of credible evidence linking Mr Rahman with any extreme or fundamentalist Islamist movement, something he himself has always denied. Such suggested links have played no part in this case and form no part of the court's findings. Accordingly, the only permissible approach is that Mr Rahman is not associated with extreme radical Islam and neither openly nor covertly seeks its support.

HISTORY

Tower Hamlets in the 1990s

187 Normally an election court is charged with examining events in the immediate run-up to an election. Recently, courts have concentrated on voter fraud which is, inevitably, a last-minute affair. In this case, however, the court has heard a great deal of evidence of political life in the Borough for the last three decades – indeed back to a time well before Mr Rahman entered politics. Much of this ancient history is concerned with the attempt to discredit Mr Biggs.

188 Sadly, it must be said that the history of events in Tower Hamlets does not show the Labour Party in a favourable light. For much of the period the Tower Hamlets Labour Party was in what was described as some form of 'special measures' which meant in practice that major decisions such as the selection of a candidate for Mayor were taken at regional or national rather than at local level.

189 All political parties are prone to a degree of in-fighting but this seems to have been carried to considerable lengths in the Labour Party from (at least) the mid-1990s to the present. One of the more surprising aspects of the case has been the willingness of members of the Labour Party, including members of its National Executive Committee ('NEC'), to campaign *against* the Party and in favour of rival candidates. This has been combined with the willingness, even eagerness, of people who are still members of the Labour Party to attempt to destroy the reputation of the Party's official Mayoral candidate, Mr Biggs, who is currently an official Labour Party member of the London Assembly.

190 In the early 1990s control of the Borough was in the hands of the Liberal Democrat Party under the name 'Liberal Focus'. It was at this time (1993) that a member of the British National Party ('BNP') called Derek Beackon was elected a councillor for the Millwall ward at a by-election. Beackon was the BNP's first councillor ever. He was not particularly effective, largely because he was shunned by all the other councillors and vilified by the media, and he was duly unseated when, a few months later, in 1994 there was a 'whole council' election. No further member of the BNP or of any far right racist party has ever thereafter come remotely near winning a seat in the Borough and, by 2014, the BNP had for many years been a completely spent force in Tower Hamlets.

191 It is fair to say, however, that Beackon's election was accorded a reaction bordering on hysteria both among other politicians in Tower Hamlets and in the national and local media. It was used, for decades afterwards, to justify the claim that racism stalked the Borough and that only constant vigilance would prevent Tower Hamlets from becoming a fascist, not to say Nazi, outpost in the East End. As will be seen the BNP and later the EDL have proved a very useful bogeyman with which to affright the citizens, especially

the non-white citizens, of Tower Hamlets. In reality the political support for these organisations has long been negligible, verging on the non-existent, and the court was not told that either organisation had even contested a seat in 2010 or 2014.

192 The election of 1994, which saw the end of Mr Beackon's brief and inglorious career as a councillor, proved a triumph for the Labour Party which was returned with a working majority. Mr Biggs had been the leader of the Party in opposition and even his political adversaries conceded, albeit reluctantly, that he was entitled to the credit for mustering the electoral forces to unseat Beackon and, as it turned out, to keep far right extremists off the council from that day to this. In view of the later attempts to brand Mr Biggs a racist, it is significant that, back in 1994, he was seen as the spearhead of the anti-racist movement in the Borough.

193 If anyone expected, however, that the Labour Party would relish its triumph at the polls and settle down to govern the Borough in accordance with its socialist principles, they would have sadly misjudged the Tower Hamlets Labour Party. Within months of taking office, the Labour Party had split down the middle. Mr Biggs, now Leader of the Council, represented the right wing of the Party (though he himself would say – indeed *did* say – the 'centre' of the Party) and was faced with a very militant and vocal left wing anxious to displace him.

194 The Labour takeover of Tower Hamlets resulted in them dismantling some of the administrative structures that had been put in place by Liberal Focus, in particular the administrative division of the Borough into groupings of wards. The details are no longer relevant but this re-organisation of structures necessarily led to a re-organisation of staff, especially at senior levels. Mr Biggs wished to preserve a degree of continuity and was

mindful of the requirements of employment law. He therefore proposed that those who had been in senior posts under the former régime should be assured of at least an interview for the new posts which would be needed under the new dispensation. The left, by contrast, wanted to have somewhat of a clear-out of the old staff (as being 'tainted' with their service for the old régime) and their replacement by, one might say, more sympathetic employees. This dispute was, for some reason, referred to as the 'assimilation issue', although, as all parties conceded, it had no connection with assimilation in the sense of members of ethnic or cultural minorities being 'assimilated' into mainstream British life.

195 There was, however, an inevitable racial angle. The left argued that a wholesale purge of old staff and replacement by new would enable the Council to increase the number of employees recruited from the Bangladeshi community. This meant that what was essentially a dispute about staff re-organisation could be presented by the left as a dispute about race. Anybody who supported Mr Biggs's plan for staff re-organisation could be denounced by the left as racists, trying to keep Bangladeshis from being employed at the Town Hall. Although this dispute was pursued with the utmost personal vituperation, which one has little doubt many in the Party, particularly in the left faction, thoroughly enjoyed, it had, of course, absolutely nothing to do with racism whatsoever. Accusations of racism were the common currency of left/right infighting in the Labour Party but, viewed objectively, none of the participants was remotely racist in any sense that would be understood by a person not in the emotionally over-heated committee rooms in the Town Hall.

196 As will be seen, a feature of all these left/right disputes is the ubiquity of the phrase 'dog-whistle politics'. The wise folk of the Oxford English Dictionary fight shy of defining this term but as good a definition as any may be found in Wikipedia:

> ***Dog-whistle politics is political messaging employing coded language that appears to mean one thing to the general population but has an additional, different or more specific resonance for a targeted subgroup. The phrase is used only as a pejorative, because of the inherently deceptive nature of the practice and because the dog-whistle messages are frequently themselves distasteful, for example by empathising with racist or revolutionary attitudes. The analogy is to a dog whistle, whose high-frequency whistle is heard by dogs, but is inaudible to humans.***

197 The advantage of the cliché is that one may take a completely innocent, indeed anodyne, statement of a political opponent and claim that it contains a 'coded' message often, as Wikipedia remarks, of a racist nature. It is a cliché much employed by the media-political class but it must be remarked that, in real life, it is usually invoked to accuse political opponents of saying something which they had not said and had had no intention of saying. In short, the 'code' often exists only in the mind of the person crying 'dog-whistle politics' at his adversary.

198 This political dog-fight, to retain the canine metaphor, within the Labour Party of 1994/5 would probably have been long since forgotten but for a bizarre episode which was exhumed by Mr Rahman's team during the 2014 campaign in circumstances which will be detailed below.

The affair of the bogus fax

199 In October 1994, as part of the internecine strife in the Tower Hamlets Labour Party, somebody went into a newsagents and used a pay-fax machine to send a fax. This fax purported to have been sent by Councillor Pola Uddin, later Baroness Uddin, who was, at

that time, politically associated with Mr Biggs. Though the fax itself has disappeared, it is clear that it contained strongly worded, not to say scurrilous, accusations of racism against Mr Biggs and others of his faction. It was quickly established that Ms Uddin had not been the author of the fax and knew nothing about it. The finger of suspicion was pointed at Councillor Jalal Ahmed and he was made the subject of disciplinary proceedings.

200 These proceedings polarised the factions. A leading member of the left wing faction was Mr Michael Keith. Pausing there, Mr Keith is one of two people who loom large in this case without either side wanting to call him as a witness[39]. Mr Keith is an academic who was in a relatively junior post in 1995 but has now risen to be a Professor at the University of Oxford and holds, amongst other posts, that of Director of the ESRC Centre on Migration Policy and Society. Mr Keith was a Councillor and a very active member of the Labour group. He took the view that the accusations against Councillor Ahmed were unjustified and that the disciplinary procedures were unfair.

201 Three days before the disciplinary hearing, on 17 February 1995, Mr Keith wrote a strongly worded letter to all members of the Labour Group and to others, including the local Labour MPs. This was accompanied by a four-page memorandum. At this point it must be stressed that the letter and memorandum were written by Mr Keith in his personal capacity as a Councillor and member of the Labour Group and were directed to persuading those conducting the disciplinary hearing not to take action against Mr Ahmed.

[39] The other is Mr Ted Jeory of whom there will be more later.

202 As has been said, Prof Keith was not called to give evidence or to explain these two documents and any criticism that may be made of them is made in the consciousness that their author has had no opportunity to defend them or his position.

203 Mr Keith, as he then was, engaged in a task familiar to lawyers, namely that of saying that on the one hand it was not proved that Mr Ahmed had sent the hoax fax so he should be 'acquitted' of the charge but, on the other hand, the contents of the hoax fax were entirely justified in any event.

204 By any standards other than that of political infighting, both the letter and the memorandum would appear to an outside observer to be a little intemperate. Mr Keith accuses senior party members of 'bad faith' and describes the proceedings as 'one of the most disreputable episodes that I have ever come across in over fifteen years of working in the Labour Party'. The memorandum is entirely concerned with what Mr Keith sees as 'coded' messaging. I hope Mr Keith will forgive me if I were to say that the memorandum is a document that could only have been written by a professional academic.

205 Mr Keith's view of what constituted 'coded' racist references is very much all-embracing. For example, he regarded the term 'Eastenders' as a racist term as connoting only the white inhabitants of the East End, a view which might appear somewhat eccentric to devotees of the popular and long-running soap opera of that name whose cast is far from exclusively Caucasian.

206 One of the targets of Mr Keith's ire was a leaflet that had been put out by the Liberal Focus team. Entitled 'Focus Fights for Mrs X' it related how an elderly lady living on 'possibly Wapping's most dangerous estate' was, in essence, living in fear of attacks by

thugs and nothing was being done to help her. The vice in this leaflet was that it contained a photograph of a large black man in a very aggressive pose. It was said to be the boxer Mike Tyson but this is not easy to verify from the photocopies that remain. At all events, it was described as 'the Mike Tyson leaflet'. It was just about tenable to describe *this* leaflet as playing to racial fears.

207 Mr Keith, however, took this as a starting point in an examination of the supposed racism of the Labour Group and, in particular, Mr Biggs's faction of it. As Mr Keith rightly pointed out, what should have been an internal dispute had been externalised by the parties by frequent 'leaks' to the local media. The battle was thus being fought out in the press as well as in the committee room. In October 1994 Mr Biggs had, in an internal memorandum that was immediately leaked to the press, referred to his opponents as 'the loony left' and compared them to the very left wing council of the Borough of Lambeth. 'Loony left' as a term of abuse is now very *vieux jeu* but in 1995 it was capable of raising hackles. It certainly raised those of Mr Keith.

208 Mr Keith's memorandum contains the following passage:

> ***In the same way as I believe the Liberals spoke racism through the coded images of the Black boxer (the Mike Tyson leaflet) and the coded language of 'Eastenders' (as a code for whiteness) it is equally the case that the use of the term 'loony leftism' has long been a code in the tabloid press for local authorities that wish to address issues of racism (and also sexism and homophobia). In this context it is proper to see John Biggs' use of the loony leftism accusations in the same light, they cannot be freed from their bigoted connotations, as the East London Advertiser made clear when they subsequently went to town in their usual poisonous way when John Biggs' assimilation memo was 'leaked' to them. In short I would also accuse John Biggs of racism, no more and no less than those who put together the Mike Tyson leaflet or the Labour party equivalent that I shall refer to below.***

209 What this rather extreme passage appears to mean is this: ‘Loony Left’ is a term of abuse used by tabloid newspapers for left-wing councils. Left-wing councils oppose racism, sexism and homophobia. Ergo, those who use the term ‘loony left’ are encouraging racism, sexism and homophobia. Ergo, by using the term ‘loony left’ Mr Biggs has aligned himself with those who encourage racism, sexism and homophobia. Ergo, Mr Biggs is as much a racist as those responsible for the Mike Tyson leaflet. All this was, of course, in the context of a defence of Mr Ahmed on a charge of sending a bogus fax.

210 The logic of this passage does not survive scrutiny but the passage was the only part of the memorandum in which the accusation of racism is specifically levelled at Mr Biggs. The context makes it clear that Mr Keith is not accusing Mr Biggs of racism in any sense other than his own, very special, sense that the use of the term ‘loony left’ implies lack of sympathy with those who oppose racism, sexism and homophobia. It could not be said that Mr Keith was accusing Mr Biggs of racism in any sense that would be comprehensible to the man in the street.

211 Later in his memorandum, Mr Keith mentioned a leaflet produced by the Labour Party itself. This leaflet has also been preserved. It was entitled ‘Tower Hamlets Labour News’. Under the title ‘A PRISONER IN HER HOME’ the leaflet stated that the East End had become a ‘dangerous place to live’, that pensioners live in fear of attack and that ‘drugs, crime and racial violence blight our estates’. The page ends ‘Labour – for a safer East End’. This, one might think, is very much the common currency of political leaflets in areas where crime is a problem. Far from being ‘racist’ it stigmatises racial violence. But it was illustrated by a photograph of an elderly woman sitting in her kitchen with a cup of tea but with a black bar obscuring her eyes and the woman was white. Now while it might be said that, in 1995, the majority of the Borough’s elderly residents would have been

white, the colour of this woman struck Mr Keith as being racist – again in the very special sense in which he appears to have understood the term. Presumably had the woman been Bangladeshi, it would have been seen as a racist slur on, say, the Afro-Caribbean population. In real terms, this leaflet, unlike the 'Mike Tyson leaflet' could not conceivably been seen as racist by anyone other than a far left political activist pursuing an internal party war.

212 One thing can be said about the Labour leaflet, however: Mr Keith does not lay the responsibility for it at Mr Biggs's door.

213 To summarise the memorandum:

a) the memorandum was not an official or 'Labour Party' memorandum; it was a personal document produced by Mr Keith for a very specific and limited purpose and, to be fair to Mr Keith, he has never claimed anything else;

b) the only passage in which Mr Biggs is stigmatised as a 'racist' is, in context, no more than an expression of Mr Keith's view that there are racial connotations in the use of the term 'loony left';

c) even if the Labour leaflet referred to in the memorandum could by any stretch of the imagination be described as 'racist', Mr Keith is not accusing Mr Biggs of involvement in its production.

214 The sequel can be quickly stated. The hearing took place. Mr Ahmed failed to convince a majority of the committee of his innocence and a motion was proposed for him to be suspended from the party for three months. When Mr Ahmed gave evidence before this court, he maintained he had not been responsible for the rogue fax but astonished everyone by saying that he had himself voted in favour of the suspension. He explained

this by saying that he was seeking adoption as a Parliamentary candidate and, if he were only suspended for three months, he would have, so to speak, 'served his time' before the selection process took place. It must be said that Mr Ahmed was not a satisfactory witness. He admitted to bearing Mr Biggs a grudge arising from what he saw as Mr Biggs having blocked his, Mr Ahmed's, Parliamentary ambitions and his evidence was vituperative. Whether his account of supporting his own suspension was true or false is not something the court has to decide.

215 Eventually Mr Biggs's opponents were able to oust him from the leadership of the Council and, some years later, Mr Keith himself was able to assume that rôle.

216 One might have thought that the affair of the hoax fax was dead and buried but, as will be seen, memories of long ago intra-party battles last for ever amongst the politically committed.

217 It is important to remember, though, that 1995 was well before Mr Rahman became a Councillor.

MR RAHMAN'S POLITICAL HISTORY

Mr Rahman enters politics

218 Mr Rahman was born in what is now Bangladesh in 1965 and his family moved to England when he was still a child. The court was told that he went to school in Tower Hamlets and has lived most of his life in the Borough. He obtained a law degree and qualified as a solicitor, practising with Maxwells from 1993 to 2002 and thereafter at McCormacks, where he became a partner specialising in children and family law, remaining a partner until 2010.

219 Mr Rahman's *curriculum vitae* shows him as having joined the Labour Party in 1989 but it was not until 2001 that he was selected as a ward candidate. In 2002 he was elected as a Labour Councillor for the Spitalfields and Banglatown Ward and represented that ward continuously until he was elected Mayor in October 2010. In 2007 he sought selection as a Parliamentary candidate for the Bethnal and Bow constituency but was defeated by Ms Rushanara Ali, who won the seat in 2010.

220 In 2008 Mr Rahman became leader of the Labour Group and, as Labour held a majority of Council seats, Leader of the Council. This being the Tower Hamlets Labour Party, however, Mr Rahman had scarcely become leader when a faction arose within the party determined to oust him. The leading light in this faction was Mr Helal Abbas, who had been Council Leader in the early 2000s. The faction, again inevitably, used the media in its campaign, suggesting that Mr Rahman had links with Islamist extremists. At the same time, Mr Rahman's espousal of what were seen as left-wing policies earned him the obloquy of the right-wing media which were ready to accept the allegations of his flirting with extremism.

221 Mr Rahman was the subject of a leadership challenge from Mr Abbas in 2009 which he managed to defeat. By 2010 less than two years after his becoming leader, Mr Rahman was at odds not only with Mr Abbas but also with Mr Joshua Peck, his deputy Leader

222 Whilst all this must have been unpleasant and disruptive for Mr Rahman, it is also true to say that it was not helped by his own attitude. Mr Rahman, both in his evidence before the court and in his conduct as Council Leader and later as Mayor, has shown himself to be someone who perceives racism everywhere. Any criticism or any opposition is necessarily racially motivated, whatever the context. Any organisation with which he is in

dispute is, equally necessarily, 'institutionally racist', whether it is the Labour Party or the BBC. This attitude has been adopted by his close associates, for whom a cry of 'racist' is usually the first reaction to any criticism of Mr Rahman.

223 In 2010 the question arose whether Tower Hamlets should have an elected Mayor. The Labour Party at national and regional level was not keen on a Mayor for Tower Hamlets and the Borough Labour Party was instructed by Mr Ken Clark, the Party's regional director, to oppose the proposition. Mr Rahman, on the other hand was keen on an elected Mayor, considering himself (not unreasonably) as potentially fitted for that rôle. He therefore campaigned in support of the petition. Although there were widespread suspicions that some of the names supporting the petition were bogus, the petition reached the necessary level for a referendum to take place as to whether there should be an elected Mayor. Again the regional Party instructed the local Party to oppose the referendum and again Mr Rahman campaigned in its favour.

224 In May 2010 Tower Hamlets, therefore, had its first three-fold election, something which, as Mr Williams ruefully admitted, is every Returning Officer's nightmare. In this year there was the General Election and there was also a full council election. The third election was the referendum as to whether Tower Hamlets should have an elected Mayor. The local elections were a resounding success for the Labour Party which secured three quarters of the available seats. It was also a success for the pro-Mayor party because the voters of Tower Hamlets endorsed the proposition for a directly elected Mayor by nearly two to one. The Mayoral election was subsequently fixed for October 2010.

225 Mr Rahman resumed his seat as but no longer as Council Leader[40] because he had set his sights higher. What he wanted was to become Tower Hamlets' first elected Mayor. As will be seen, however, Mr Rahman had racked up an impressive tally of enemies, not least in the upper echelons of the Labour Party. What happened thereafter cannot be said to reflect any credit on that Party.

THE 2010 MAYORAL ELECTION

226 As Leader of the Council and as someone who had just led his party to a resounding election victory, Mr Rahman might reasonably have supposed that he would at least have been shortlisted for the selection of the Labour Party's Mayoral candidate. The shortlist was, however, controlled by the Party at regional and national level and, as has been said, Mr Rahman had ruffled too many feathers. Consequently, when the shortlist was published it consisted of Mr Biggs and two candidates from the Bangladeshi community, neither of whom were well-known locally. Mr Rahman suspected that the local Party was going to be faced with a 'Hobson's choice' of Mr Biggs.

227 Mr Rahman did not take this lying down. He consulted his solicitors. They challenged the shortlist as having been drawn up in breach of the Party's own rules. The Labour Party decided to run the selection procedure again and to institute a new appeal process. Mr Rahman attended a second selection panel and was again refused admittance to the shortlist. He appealed. At first he was told his appeal was successful and he held a launch event only to be told later that his appeal had, in fact, been rejected and he would not be on the shortlist. Mr Rahman started legal proceedings in earnest. The Party appeared to cave in. A consent order was made by the High Court whereby the Party's General

[40] Mr Helal Abbas became Leader.

Secretary gave an undertaking that Mr Rahman would go forward for selection and the Party agreed to pay Mr Rahman his £35,000 costs.

228 The selection took place on 4 September 2010. A transferable-vote ballot was held among members of the Party in Tower Hamlets. The other candidates included Mr Biggs, Mr Helal Abbas and Mr Keith. Mr Rahman was successful and his candidature was announced by Mr Clark (clearly through gritted teeth). But Mr Rahman's adversaries had not finished there.

229 On 17 September 2010 a nine-page document was submitted to Labour's National Executive Committee described as a 'statement' of Mr Helal Abbas. It contained as astonishing catalogue of very serious allegations against Mr Rahman. They may be summarised as follows. Mr Rahman was said to have:

a) procured his selection as candidate by fraud, including ghost voters and voters not resident in the Borough (names and addresses were given);
b) grossly abused his position as Council leader by (*inter alia*) getting rid of the Chief Executive, appointing unsuitable staff and intimidating those who were not overtly devout Muslims;
c) maintained links to the Islamic Forum of Europe ('IFE') which was said to be an extremist Islamist organisation;
d) made threats of violence to Mr Abbas and his supporters;
e) colluded with the IFE to obtain a positive vote in the referendum in direct opposition to Labour Party policy.

230 Mr Abbas gave evidence for the Petitioners. He was unable to provide any explanation as to why he had not raised any of these complaints earlier, in particular during the period

when Mr Rahman was attempting by the use of legal proceedings to obtain a place on the shortlist. One might have thought that the time to make the accusations was before the vote to select the candidate but in fact this document was produced nearly a fortnight later by Mr Abbas (who had come a poor third in the contest). Unsurprisingly, Mr Abbas did not inform Mr Rahman of his accusations before sending the document to the NEC.

231 What happened next was a meeting of the NEC on 21 September 2010. The meeting was attended by several very senior members of the Labour Party including Ms Harriet Harman, Ms Angela Eagle, Mr Keith Vaz, Mr Jack Dromey and Mr Dennis Skinner[41]. Also amongst those attending was Ms Christine Shawcroft, a long-standing member of the NEC, who may, I think fairly, be described as on the far left of the Labour Party. She gave evidence and made no secret of the fact that she was and is very supportive of Mr Rahman and is very critical of, indeed hostile to, Mr Biggs. Ms Shawcroft is one of those mentioned above who are happy to campaign for Mr Rahman against their own Party and its official candidate.

232 Ms Shawcroft is a methodical person and, after the NEC meeting, she came home and wrote up a detailed memorandum – virtually unofficial minutes of the meeting. This document was put in evidence. I had no hesitation in accepting Ms Shawcroft's evidence about the meeting and the accuracy of her minutes. They do not make happy reading.

233 First and foremost, despite Ms Shawcroft's strong advocacy of Mr Rahman, there was no decision to confront Mr Rahman with Mr Abbas's allegations or to ask him whether he had any answer to them. Indeed the NEC itself did not trouble to communicate Mr Abbas's statement to Mr Rahman. He only discovered it later through the agency of his

[41] Mr Skinner is recorded as having left the meeting before the decisions were taken.

supporters on the Committee. The Committee did not even decide to hold an investigation. It did not summon Mr Abbas and ask him to justify his serious allegations.

234 A resolution was passed to suspend Mr Rahman, unseen and unheard. Next, the NEC decided, then and there, to select and impose a new candidate. There was no suggestion that the Tower Hamlets Labour Party might be consulted, still less that there might be a new ballot. It was not even suggested that, as Mr Biggs had come second in the original ballot, he might, so to speak, move up to become the candidate. The NEC simply decided *ad hoc* that it would vote, then and there, between Mr Biggs and, of all people, Mr Abbas, whose accusations could have been, for all the NEC knew about it, a complete tissue of malicious falsehoods. 16 voted for Mr Abbas and 2 for Mr Biggs. The upshot of the meeting was thus that Mr Rahman, completely unaware of the accusations and given no opportunity to counter them, was summarily sacked as candidate and his accuser substituted.

235 Ms Shawcroft believed that the selection of Mr Abbas was motivated by the desire 'not to leave themselves open to the charge of deselecting a Bangladeshi and replacing him with a white man'. Given Mr Abbas's lack of support in the previous ballot, Ms Shawcroft's belief has a lot going for it.

236 Although this judgment will have to be critical of Mr Rahman in many respects, in the matter of his deselection the court cannot but sympathise with him. His treatment by the NEC was, by any standards, utterly shameful and wholly unworthy of the Party which, rightly, prides itself on having passed the Human Rights Act 1998.

Mr Rahman fights back

237 The NEC did not trouble to tell Mr Rahman of its decision immediately. According to Mr Rahman, whose evidence on this point I accept, he did not learn of his deselection until a week later, 24 or 25 September 2010. By this time, the Mayoral election was less than a month away, having been fixed for 21 October. If, however, the NEC believed it had thwarted Mr Rahman's ambitions, they had mistaken their man.

238 With the deadline for nomination fast approaching, Mr Rahman mobilised his supporters. He obtained sufficient signatures to be nominated and got his nomination papers in before the deadline. Clearly he had to stand as an independent candidate and his 'party organisation' was no more than he was able to cobble together in the few days remaining before the election.

239 In the event, Mr Rahman's revenge was complete. On 21 October, very unusually for a transferable-vote election, he obtained more than 50% of the first preference votes and twice as many votes as Mr Abbas. He was duly elected Mayor.

240 Whatever else may be said of Mr Rahman – and much will be said – his courage and resolution in standing and winning the 2010 deserves considerable admiration.

Mr Rahman and the Labour Party

241 Perhaps the saddest, indeed most pathetic, aspects of this case is the attitude of Mr Rahman to the Labour Party. One might have thought that, after the indefensible way in which he had been treated in September 2010, Mr Rahman would have wanted nothing further to do with the Labour Party. The contrary is the case. Despite his ignominious deselection and his heavy defeat of the official Labour candidate at the poll, Mr Rahman dreamed that, once the dust had settled, the Party would beg him to return and he would be re-born as the Labour Mayor of Tower Hamlets. This was not *wholly* unreasonable. Mr

Rahman has always had before his eyes the example of Mr Ken Livingstone who was deselected as Labour candidate for the 2000 London Mayoral election, stood as an independent, was elected and was thereafter welcomed back into the Labour fold. Mr Rahman is, however, no Ken Livingstone.

242 Notwithstanding four years as Mayor when his relations with the Tower Hamlets Labour Party were poisonous and a 2014 election campaign which his own counsel called 'a dirty campaign', Mr Rahman still believes that the call will come. Indeed he told the court that he was convinced that, but for the current Petition, he would already be back in the Party.

243 When taxed with the shambolic organisation or, more strictly, lack of organisation of THF when it was set up as a party, Mr Rahman's explanation was that he regarded the formation of THF as only a temporary measure, designed to last for only a few months, whereupon he and the THF Councillors would be re-admitted to the Labour Party.

MR RAHMAN AS MAYOR

244 Some aspects of Mr Rahman's running of the Borough between 2010 and 2014 are relevant to this Petition, in particular the question of the allocation of grants and the use of council facilities for his own political purposes. Similarly the court has heard evidence about the polarisation of politics during his Mayoralty and the increasingly confrontational behaviour of his close associates, especially Mr Alibor Choudhury. To the extent that those matters bear on issues in the Petition, they will be examined here.

245 What the court will *not* do, however, is conduct an assessment of Mr Rahman's administration in general. Mr Rahman's supporters have waxed lyrical as to the virtues of his government, citing education, housing and the like. His opponents have damned him as an egotistical autocrat whose every action is designed for his own personal or political

benefit. As the court stressed more than once, this is the trial of an election petition and not a public enquiry into the governance of Tower Hamlets.

246 To some extent there was an enquiry, albeit not a public enquiry, into the running of the Borough when, in circumstances that will be related below, the Secretary of State for Communities and Local Government appointed PwC to carry out a 'Best Value' investigation of certain aspects of Mr Rahman's government, in particular the allocation of grants. Insofar as the PwC report[42] is relevant to the issues in the Petition, it will be treated as a source of factual information.

Mr Rahman's level of control

247 To a large extent, the criticisms of Mr Rahman as an autocrat are well founded. As it was agreed that, on this point, the PwC report was factual, it seems sensible to quote the relevant passage:

> ***2.112*** ***Under current local government legislation, any function is an executive function, unless it is specifically reserved (in whole or in part) to the Full Council. Within the framework provided by relevant statutes, the Mayor has reserved to himself substantially all of the decision making powers which it is legally possible for an executive mayor to exercise. Accordingly, in relation to large areas of the Authority's activities, including the areas of focus for the Inspection, the Mayor has ultimate decision making power. Even where the Mayor chooses to delegate decision making powers over particular matters, he retains the right to make decisions on those matters.***
>
> ***2.113*** ***Since July 2012, the Authority has had no Chief Executive. One of the Authority's Corporate Directors has since that time (with a short hiatus) fulfilled the role of Head of Paid Service, as required by statute, however the Head of Paid Service has not had the full powers of a Chief Executive delegated to him under clause 3.5.5 of the Authority's constitution. These powers have remained with the Mayor. This means that, for most purposes,***

[42] *Best Value Inspection of the London Borough of Tower Hamlets Report* 16 October 2014

the Head of Paid Service, other statutory officers (being the Section 151 Officer and the Monitoring Officer), as well as other Corporate Directors are all directly accountable to the Mayor.

2.114 The Mayor presides over a Cabinet of up to nine elected Members chosen by him. The Mayor has delegated to members of the Cabinet decision making powers over matters within their portfolio, subject to consultation with the Mayor and to his having no objection to the decision proposed; in other words the Mayor has effectively retained a veto. To date, we understand that these delegations have not actually been used.

248 Mr Hoar was therefore justified in his comment that, in practice, Mr Rahman's power as Mayor is greater than that of any other elected executive mayor in Britain. This power is consolidated by the fact that his cabinet has been chosen from his close cronies, some of whom, it must sadly be said, have little to recommend them beyond blind loyalty to their leader.

249 Mr Rahman's right-hand man is and has for some time been Mr Alibor Choudhury who serves as the cabinet member for resources, in effect the Borough's Chancellor of the Exchequer. He is also, as we shall see, the Treasurer (indeed the only officer apart from Mr Rahman himself) of the political party THF. Mr Rahman's relationship with Mr Choudhury came out quite clearly in the course of the lengthy period during which both men gave evidence.

250 I shall consider Mr Rahman as witness at a later stage but it seems wise to examine Mr Choudhury at this stage before looking at his various rôles. Mr Choudhury was a very unsatisfactory witness. He was arrogant, indeed cocky, and did not hesitate to tell bare-faced lies in the smug assurance that the mere lawyers listening him would not have the wit to see through them. He also came over as an immature man who possessed, and did not shrink from expressing, outrageous views. The court was told that he had, in his

youth, been convicted of some criminal offence but what it was was never revealed and it played no part in the case. In making the assessment of Mr Choudhury's character and credibility the court had more than sufficient material to go on without dredging back into his past: his supposed conviction was disregarded.

251 In describing Mr Choudhury as Mr Rahman's right-hand man, perhaps the slang term 'hatchet-man' would be more appropriate. The *modus operandi* of the two men would be that Mr Rahman would retain a statesmanlike posture, making sure that he always said the right thing – particularly in castigating electoral malpractice – while what might be called 'the dirty work' was done by Mr Choudhury. This was especially apparent in the campaign against Mr Biggs which will be discussed below, in which, on the surface at least, Mr Choudhury would be responsible for the attempted character-assassination of Mr Biggs while Mr Rahman claimed to have had no input into – indeed, on occasion, not even to have read – the press releases put out in his name.

252 As has been indicated earlier in this judgment, however, electoral law does not permit the candidate to sit back, smiling benignly, while his associates get on with electoral malpractices in order to procure his election. The candidate is liable for the actions of his agents, especially his election agent. Mr Choudhury was Mr Rahman's official election agent.

Mr Rahman gathers support

253 As an independent Mayor, Mr Rahman originally stood alone. He had no party and he faced a Council with a large majority from the party that had rejected him. Over the months following his election, however, a number of Councillors decided that their personal loyalty to Mr Rahman outweighed their loyalty to the party under whose banner

they had been elected and, one by one, they declared themselves to be 'independent'. In reality they had formed a loose and unofficial political party whose common theme was support for Mr Rahman as Mayor. They were not exactly unrewarded for their defection. Like all mayors, Mr Rahman had a cabinet whose membership was entirely in his gift. By the end of his Mayoralty the cabinet consisted of his close associates.

254 Now we come to the more sensitive areas. The bald fact is that all the defecting Councillors were Bangladeshi. The Mayor's unofficial party was seen as being a Bangladeshi party and, it must be said, (contrary to the protestations of the Mayor and his witnesses), the party came to see itself as the Bangladeshi party. Although stoutly denied by Mr Rahman's partisans in evidence, the reality is that the focus of the Mayor and his cabinet became more and more on the Bangladeshi community. This perception was heightened by the policy adopted by Mr Rahman towards grants of Council money and it was not assisted by the fact that, on one view of the figures, the Council's housing budget had been skewed toward those areas of the Borough (mainly in the western wards) where support for the Mayor and his associates was strongest.

255 As time passed and criticism of the Mayor and his administration mounted both within the Borough and in the national media, the Mayor and his close associates withdrew into their bunker. In their minds, they were being targeted because they were Bangladeshi and Muslim: so their critics were necessarily racists and Islamophobes. The Mayor's refusal to engage with Councillors (other than those of his unofficial party) became more marked. This led to two incidents which were explored in evidence.

256 The first incident occurred when Mr Rahman was being pressed in the Council Chamber to answer Councillors' questions but refused to do. The Council's Monitoring Officer (in

effect, Head of Legal) intervened to say that requiring him to answer questions was in breach of his rights under the European Convention on Human Rights. The court was asked to accept that the Monitoring Officer had come up with this preposterous advice entirely off her own bat but common sense would seem to indicate that she would never have intervened in this way unless she had been put up to it by Mr Rahman. Needless to say, her intervention did not convince the Mayor's critics and the court remained baffled by this interpretation of the ECHR.

257 Secondly, the Councillors who were not aligned with Mr Rahman became so exasperated that they proposed a motion to attempt to compel him to answer questions in the way that all other elected mayors answer questions. At this point, the Deputy Mayor, Councillor Ohid Ahmed shouted that the motion was only being proposed because Mr Rahman was Bangladeshi. Once more the cries of 'racist' were heard.

Usefulness of the EDL

258 All parties agreed – and it is probably a matter on which judicial notice may properly be taken – that the EDL was an overtly racist organisation, particularly hostile to Muslims. It was also agreed that it is an organisation which does not shrink from violence or attempting to provoke violence in others. In Tower Hamlets and indeed, in the UK, political terms it is wholly negligible. As far as can be ascertained, it does not often seek democratic election and, when it does, its level of failure is absolute. Its membership is tiny, though undoubtedly noisy.

259 The EDL's *modus operandi* appears to be that, from time to time, it proposes a march, usually through an area with a large BME, preferably a large Muslim, population. A march by the EDL in Tower Hamlets in September 2013 featured in the evidence. Once

the march is proposed, all the political and community organisations in the area normally vie with each other in demanding that the march be banned. If it is not, then, they plan a large counter-demonstration. Pausing there, this is (certainly on the evidence before the court) an opportunity for each group to castigate the supposed half-heartedness of the others and to adopt a 'more anti-fascist than thou' posture. The march occurs: the assembled political and community groups stage their counter-protest. Sometimes a few heads get broken. The police and (subsequently) the street cleaners deservedly earn substantial overtime. The dogs bark and the caravan moves on. Everyone congratulates themselves that they have 'seen off the fascists'.

260 No apologies are made for this somewhat cynical view of the EDL's activities, because the uses to which the EDL was put by Mr Rahman and THF were equally cynical. Apart from causing a brouhaha once a year or thereabouts, the power and influence of the EDL is, in somewhere like Tower Hamlets, non-existent.

261 But the EDL does have its uses. Because it dislikes Mr Rahman – undoubtedly, in the case of the EDL, because he is non-white – the EDL seizes on any criticism of Mr Rahman and repeats it on social media. This enables Mr Rahman and his cohorts to argue as follows: criticisms of Mr Rahman by his political opponents are adopted and repeated by the EDL: the EDL is a racist organisation: therefore anyone who criticises Mr Rahman is giving aid and comfort to the EDL: therefore anyone who gives aid and comfort to the EDL is himself a racist: therefore it is racist to criticise Mr Rahman. This series of propositions informed all the responses of Mr Rahman and his team to criticisms and may be taken to be an epitome of the thought processes of Mr Alibor Choudhury.

262 Truly, in Tower Hamlets, if the EDL did not exist, like Voltaire's God, it would be necessary to invent it.

THE FORMATION OF THF

263 In the summer of 2013 it appeared that Mr Rahman and the Councillors who supported him were not going to be invited to re-join (or, in some cases, to join) the Labour Party in the immediate future. It was therefore decided that the unofficial party of Mr Rahman and his team ought to be constituted as a formal political party in order to contest the 2014 Mayoral and Council elections. Although the name chosen was Tower Hamlets First the constituent documents of the party made it clear that it was the party of Lutfur Rahman and that its primary objective was to secure his re-election as Mayor.

264 The requirements for registration of a political party are laid down in the Political Parties, Elections Referendums Act 2000 ('PPERA'). Section 22 provides that no person may stand as a candidate on behalf of a party unless that party is registered with the Electoral Commission. The relevant parts of s 24 read

> ***(1) For each registered party there shall be-***
>
> ***(a) a person registered as the party's leader;***
>
> ***(b) a person registered as the party's nominating officer; and***
>
> ***(c) a person registered as the party's treasurer;***
>
> ***but the person registered as leader may also be registered as nominating officer or treasurer (or both).***
>
> ***(2) The person registered as a party's leader must be-***
>
> ***(a) the overall leader of the party; or***
>
> ***(b) where there is no overall leader of the party, a person who is the leader of the party for some particular purpose.***
>
> ***(3) The person registered as a party's nominating officer must have responsibility for the arrangements for-***

(a) the submission by representatives of the party of lists of candidates for the purpose of elections;

(b) the issuing of such certificates as are mentioned in section 22(6); and

(c) the approval of descriptions and emblems used on nomination and ballot papers at elections.

(4) The person registered as a party's treasurer shall be responsible for compliance on the part of the party-

(a) with the provisions of Parts 3, 4 and 4A (accounting requirements and control of donations, loans and certain other transactions)

(b) unless a person is registered as the party's campaigns officer in accordance with section 25, with the provisions of Parts V to VII (campaign expenditure, third party expenditure and referendums) as well.

265 Section 26 of PPERA states:

(1) A party may not be registered unless it has adopted a scheme which-

(a) sets out the arrangements for regulating the financial affairs of the party for the purposes of this Act; and

(b) has been approved in writing by the Commission.

(2) The scheme must in particular determine for the purposes of this Act whether the party is to be taken to consist of-

(a) a single organisation with no division of responsibility for the financial affairs and transactions of the party for the purposes of Part III (accounting requirements), or

(b) a central organisation and one or more separate accounting units, that is to say constituent or affiliated organisations each of which is to be responsible for its own financial affairs and transactions for the purposes of that Part.

(3) In the latter case the scheme must-

(a) identify, by reference to organisations mentioned in the party's constitution, those which are to constitute the central organisation and the accounting units respectively; and

(b) give the name of each of those organisations.

(4) The scheme must in every case include such other information as may be prescribed by regulations made by the Commission.

(5) Where a draft scheme is submitted by a party for the Commission's approval, the Commission may either—

(a) approve the scheme, or

(b) give the party a notice requesting it to submit a revised scheme to them, as they think fit.

266 Under s 28, in order to be registered, a party must send to the Commission an application complying with Schedule 4 to the Act and accompanied by a declaration under s 28(2) that it intends to contest one or more elections. Under s 28A the party may include a request for the registration of up to 12 descriptions to be used on nomination papers or ballot papers (though the Commission has the power to disallow inappropriate or misleading descriptions) and s 29 permits a request for up to three emblems to be used on ballot papers, Section 41 provides

(1) The treasurer of a registered party must ensure that accounting records are kept with respect to the party which are sufficient to show and explain the party's transactions.

(2) The accounting records must be such as to-

(a) disclose at any time, with reasonable accuracy, the financial position of the party at that time; and

(b) enable the treasurer to ensure that any statement of accounts prepared by him under section 42 complies with the requirements of regulations under subsection (2)(a) of that section.

(3) The accounting records must in particular contain-

(a) entries showing from day to day all sums of money received and expended by the party, and the matters in respect of which the receipt and expenditure take place; and

(b) a record of the assets and liabilities of the party.

267 Schedule 4 sets out the requirements for an application. It must state the party's registered name and the address of its headquarters. It must give the name and home address of the leader, the nominating officer and the treasurer and (if there is one) the campaigns officer.

Importantly, the application must be accompanied by a copy of the party's constitution and a draft of the financial scheme proposed to be adopted under s 26. The leader, the nominating officer, the treasurer and (if applicable) the campaigns officer must all sign the application and, if anyone has two capacities it must be made clear that he is signing in both capacities.

268 Given that THF had indubitably been registered as a political party by the Electoral Commission on 18 September 2013, during cross-examination questions were directed to Mr Rahman about this. After all, if Sch 4 had been complied with, he must at least have seen and signed the relevant documentation.

269 Accordingly the court asked him about the party's constitution and received this reply:

> ***Q.*** ***As I understand it, an application for registration must be accompanied by a copy of the party's constitution?***
>
> ***A.*** ***Sure.***
>
> ***Q.*** ***So, there is a constitution?***
>
> ***A.*** ***I do not believe there is a constitution, so I do not know how they got over that. (Laughter)***
>
> ***MR. HOAR: There is no constitution?***
>
> ***THE WITNESS: There may be aims and objectives set out, I do not believe there is a constitution.***

270 Mr Rahman was equally numb and vague about the existence of a financial scheme under s 26.

271 When it was explained to him that there must have been *some* kind of constitution and financial scheme for the Commission to have permitted registration, Mr Rahman replied blandly that he had left everything to Mr Alibor Choudhury.

272 Eventually the constitution and financial scheme were unearthed and Mr Choudhury gave evidence about them.

273 What may be said with certainty is that whatever the documentation necessary to be produced to satisfy the Electoral Commission to permit registration, that documentation formed no part of the running of the party. At all times the party had two officers and two officers only: Mr Rahman, the leader, and Mr Choudhury, the treasurer. When asked who the nominating officer was, Mr Rahman said it was Mr Choudhury. Reference to s 24 of PPERA above will show that it is permissible for the leader to be nominating officer or treasurer (or both) but it does not permit the treasurer to be nominating officer. Thus the party should have had a separate nominating officer if Mr Rahman was not prepared to undertake the task, and it is a sign of the complete disregard for PPERA manifested by Mr Rahman and Mr Choudhury that these formalities were not even paid lip service.

274 The financial arrangements were even more bizarre. It can be said that because the Commission rubber-stamped the application for registration it may be inferred that the Commission was satisfied. All one may say, with the greatest of respect for the Commission, that the enquiries into the structures of THF cannot have been excessively rigorous.

275 The reality is that there was no responsible financial scheme whatsoever. Mr Rahman and Mr Choudhury admitted quite freely in evidence that the party had never had (or even proposed to have) a bank account. The court was told an elaborate rigmarole of how party donations were logged in some kind of Excel spreadsheet and they were called off in kind rather than in cash by asking ‘donors’ to pay the party’s bills. Although donations and

expenditure are statutorily required to be made through the treasurer, this rule was conveniently ignored.

276 Despite frequent requests made by Mr Hoar and the polite raising of judicial eyebrows at the apparent lack of documentation, neither Mr Rahman nor Mr Choudhury produced any books of account or even the much-mentioned Excel spreadsheet.

277 In short, the financial affairs of THF were, at best, wholly irresponsible and at worst, dishonest. While documents were produced apparently showing that 'donors' had paid some expenses of the party, those payments had obviously not passed through the treasurer or been recorded in any books of account. True returns of expenses were made to the Electoral Commission (incomplete as it turned out in the case of the party's most generous donor) but beyond a few invoices addressed to people who were not officials of THF, which they seem to have paid, the finances of THF were shrouded in mystery.

278 Again, the excuse given for the chaotic nature of the party's structure and finances was that re-admission to the Labour Party was just around the corner so it wasn't worth bothering for a couple of months or so. Although the court accepts that Mr Rahman would like to be re-admitted to the Labour Party, it does not accept that, in the summer of 2013 – or indeed at any time thereafter until the election in May 2014 – Mr Rahman or Mr Choudhury had entertained any serious belief that the invitation would arrive. As will be seen, they embarked on a political campaign, largely targeting the Labour Party, their principal rivals, which their own counsel described as 'dirty'. No rational person, viewing the campaign waged by THF against Labour in 2013-4, would have regarded it as a campaign designed to achieve a reconciliation with the Labour Party.

Was THF in real terms a 'one-man band'?

279 This was a major plank of the Petitioners' case. In both opening and closing they submitted that the reality of THF was that it was a vehicle for re-electing Mr Rahman as Mayor and for obtaining as many Councillors as possible who would be linked to him by personal loyalty alone. Is this fair?

280 The starting point must be the history of the 'defections' from other parties to Mr Rahman during the course of his first Mayoralty. These defections were not wholly from the Labour Party and many of the 'defectors' had had a varied political history, including membership of the Respect Party and (in one case) of the Conservative Party.

281 Even before THF was formally registered, it would have been hard to detect any factor linking the informal grouping of 'independent' Councillors beyond personal support for Mr Rahman. Again, it is very difficult to ascertain any coherent policy being followed by Mr Rahman and his supporters beyond promoting the interests of the Bangladeshi community. Insofar as Mr Rahman's politics can be crudely categorised as 'right' or 'left', they are clearly on the mid- to far-left of the spectrum. To that extent, it would be virtually impossible to distinguish them from the policies that Mr Rahman and his colleagues pursued when they were the controlling Labour group on the Council or from the policies (absent the Bangladeshi element) that would have been followed if Labour had won the Mayoral election in 2010. It was certainly not any discernible ideological programme that bound the 'independent' group together. Again it must reluctantly be said that the 'defections' were not without an element of personal ambition as a number of the defectors ended up with cabinet posts which would have been unlikely to come their way had the Labour Party remained in power.

282 When questioned about the shambolic nature of THF, both Mr Rahman and Mr Choudhury expostulated that theirs was a brand-new party and could not be expected to have the level of organisational sophistication to be expected of the national Labour or Conservative Parties. What was also lacking was any coherent political agenda beyond the personal aggrandizement of Mr Rahman and the well-being of the Bangladeshi community.

283 None of this was concealed when the party was registered. The 'descriptions' contained in the application for registration under s 28A of PPERA were seven:

a) Mayor Lutfur Rahman's Team
b) Lutfur Rahman's Team
c) Lutfur Rahman's Progressive Alliance
d) The Mayor's Team
e) Mayor Lutfur Rahman's Independents
f) Mayor Lutfur Rahman's Community Alliance
g) On Your Side in the East End

284 An earlier version of the list had some eight out of eleven names involving either 'the Mayor' or 'Lutfur Rahman' or both.

Selection of candidates

285 In the course of cross-examination it was pointed out to Mr Rahman and to Mr Choudhury that the party's constitution contained a mechanism for selecting candidates: this seemed to come as a considerable surprise to both. In evidence, both made it quite clear that no such procedures were ever followed.

286 There was considerable exploration of this issue at trial but the upshot can be briefly stated. There seems to have been no selection process for any of the current 'independent' Councillors who wished to stand as candidates for THF. Subject to obtaining Mr Rahman's approval if they wished to select a new ward following the boundary changes, these Councillors were free to stand as THF candidates if they wished.

287 As for new candidates, the selection process was very simple. The prospective candidate was vetted by Mr Rahman with the assistance of Mr Choudhury, and occasionally the odd other Councillor, and then approved or disapproved by Mr Rahman personally. There was no selection procedure and no appeal. Not all the chosen candidates were members of the Bangladeshi community. Some, like Mr Stephen Beckett and Mr Stuart Madewell had come over to Mr Rahman from the Labour Party. It was suggested in cross-examination of Mr Rahman that these non-Bangladeshi candidates were selected in wards where their election was unlikely or even highly improbable while the Bangladeshi candidates were selected for the winnable seats. Whether that suggestion is fair or unfair the court does not need to decide. As it turned out, the only THF candidates to be elected were members of the Bangladeshi community: the non-Bangladeshi candidates were unsuccessful.

288 In reality, the selection of candidates was made by Mr Rahman personally on the basis of the prospective candidate's commitment to Mr Rahman personally. Tellingly, in the course of his evidence, Mr Rahman, more than once, referred to THF's candidates as 'my candidates' and that is what, in reality, they were.

Electioneering

289 The court was told a great deal about the presentation of THF before and during the election. Again, it is unnecessary to go into this in enormous detail. Virtually every press-

release was focused on Mr Rahman as was virtually all the coverage in the media, particular in the Bangladeshi media which were, for the most part, strongly supportive of him and his re-election.

290 The election literature, even when ostensibly directed towards the election of THF candidates in the wards, majored on the re-election of Mr Rahman as Mayor and stressed that the public should vote for THF candidates as Councillors so that they could assist Mr Rahman in his governance of the Borough. In general, perhaps somewhat crude, terms, one may trawl through the literature for a long time and still not come up with any statement of policy or ideology for THF beyond that of securing the re-election of Mr Rahman and the election of a body of loyal Councillors who would do his bidding.

291 A short extract from the witness statement of Mr Madewell about his campaign to be elected as Councillor for Wapping and St Catherine's Ward says it all:

At all times when we knocked on residents doors we introduced ourselves as:
"Tower Hamlets First – supporters of Lutfur Rahman"
We made it clear in our conversations with residents that we were campaigning on behalf of the Mayor and were not employed by the Council.

Conclusions as to the nature of THF

292 The evidence in this case all points in one direction. THF was the personal fiefdom of Mr Rahman. He directed its operations, he selected his candidates, and those candidates campaigned on the basis that their job, if elected, was to give personal support to him. THF had no other aim, objective or ideology beyond the continuation of Mr Rahman in the office of Mayor of Tower Hamlets. The accusation of the Petitioners that THF was a one-man band has been fully made out by the evidence, much of that evidence coming from Mr Rahman himself and from his witnesses.

THE EVIDENCE

293 In general, where this judgment needs to resolve a conflict of evidence, this will be done in context. Two aspects of the evidence, however, should be dealt with in a separate section before addressing the issues raised by the parties.

Mr Rahman's evidence

294 Mr Rahman himself gave evidence for four days and, even then, the court had to 'guillotine' Mr Hoar's cross-examination. Although faced with searching, hostile and, it must be said, occasionally mildly offensive questioning, Mr Rahman was unfailingly courteous and polite. With regret, that is the only positive thing that can be said about his evidence.

295 Election courts deal with politicians. As a generalisation, politicians do not welcome questions unless from friendly sources. It is a well-recognized trait of politicians, especially when questioned by the media, to avoid answering the question and to say, instead, what they conceive their 'message' to be. Even when feared interviewers ask the same question repeatedly – the name of Mr Jeremy Paxman comes to mind – it rarely elicits anything but the prepared non-answer. While this may make for entertaining broadcasting, it is sometimes less than helpful in a court of law.

296 Mr Rahman exemplified this trait to an extreme level. Faced with a straight question, he proved himself almost pathologically incapable of giving a straight answer. He was also extremely discursive so that his non-answer to the question would often ramble on until interrupted by a repetition of the question or, occasionally, an attempt (normally unavailing) for the court to obtain an answer by re-phrasing the question. Mr Hoar's

complaint that the length of his cross-examination was due to the failure of Mr Rahman to answer questions was by no means unjustified.

297 In short, Mr Rahman was evasive and discursive to a very high degree.

298 Sadly, it must also be said that he was not truthful. In one or two crucial matters he was caught out in what were quite blatant lies. They will be instanced at the appropriate point in the judgment.

299 On matters that were uncontroversial (largely matters of past history) I saw no reason not to accept his account as being substantially correct. On any matter that was controversial, however, I felt obliged to treat his evidence with considerable caution and, in most instances, where his evidence conflicted with that of other witnesses, I preferred their testimony to his.

300 Again, and with regret, it must be said that his grip on reality was not always 100%. This judgment has already instanced his long-running fantasy that tomorrow would bring an invitation to re-join the Labour Party. His evidence as a whole displayed a tendency to close his mind to any version of the facts that did not accord with his world-view.

301 Though it genuinely pains me to say so, I did not find Mr Rahman to be a reliable witness.

Interpreters

302 A large number of witnesses for both the main parties gave evidence through interpreters. The overwhelming majority of these witnesses were clearly people for whom English was

not the first language and, in some cases, not a language they spoke at all. These witnesses needed an interpreter and it was right that they should have one.

303 There were, however, one or two witnesses for whom the interpreter was obviously a tactical manoeuvre. These witnesses are always easy to detect because they cannot stop themselves from showing that they have fully understood the question in English before any translation is provided. Often they forget entirely and answer the question (in English) before the interpreter has had the chance to open his mouth. Employing an interpreter, however, gives such a witness the opportunity to assess the question and to work out his answer in, so to speak, slow-motion rather than having to come out with it immediately where hesitation or an unguarded reply might adversely affect the evidence.

304 It may be necessary to indicate when dealing with such a witness's evidence whether this tactic was employed, though it must be said in this context that when an interpreter was requested by the editor of a newspaper which publishes in English, one felt that one's credulity was being pushed to its outermost limits.

AGENCY

Mr Rahman's 'agents'

305 The nature of the party is relevant to the determination of who is to be regarded as being Mr Rahman's agents for the purposes of electoral law. The very wide ranging nature of agency in electoral law has already been discussed. The very personal nature of Mr Rahman's government of the Borough and of the campaign for his re-election means that the net of agency is spread very wide, certainly wider than might be the case with an established mainstream political party. The party's candidates were hand-picked by Mr

Rahman alone and the numerous party activists regarded their primary loyalty as being a personal loyalty to Mr Rahman.

306 It seems incontestable that the candidates selected by Mr Rahman to contest the ward seats must be taken to be within the category of his agents. Insofar, therefore, as they engaged in electoral malpractice on behalf of THF, while that malpractice will have been directed towards securing their own election, it will also have been directed towards securing the re-election of Mr Rahman as Mayor. To the extent therefore that they engaged in personation, false registration, double-voting or tampering with ballot papers, they did so as the agents in electoral law for Mr Rahman and the fact that he did not know the extent of these activities and made many lofty pronouncements castigating electoral malpractice will not assist him.

307 Similarly there is no doubt that Mr Rahman made wide use of the facilities and staff of the Council to carry out electoral activities on his behalf. Statements were issued by 'the Mayor's Office' which had no bearing on the running of the Borough but were obvious electioneering. Those members of staff who engaged in these activities were probably agents in the common law sense of Mr Rahman and they must be taken to be his agents for electoral purposes.

308 But, as the discussion of the law of agency above makes clear, the category of agents is wider still. Canvassers are agents, as are supporters who are equipped with rosettes or T-shirts and sent off to campaign outside polling stations. And, as will be seen, members of the wider community who commit themselves to the re-election campaign and work alongside Mr Rahman and his close associates may properly assume the status of agents for electoral purposes.

PERSONATION AND OTHER VOTING OFFENCES

309 The evidence clearly showed that there was personation and that other voting offences took place. The questions were first how widespread were those offences and secondly could it be shown that they had been committed by Mr Rahman or those considered by electoral law to be his agents.

False registration

310 False registration is often the first step in vote-rigging. Ghost voters are registered which are, as said above, either fictitious names or persons who exist but who do not reside at the address concerned. The latter category comprises those who have no connection at all with the property at which they are registered and those who have a connection with the property but are not resident there in the sense that the law requires.

311 In an electoral area with a huge electorate such as Tower Hamlets, identifying ghost voters is a difficult task. It is time-consuming and faces the problem that what the investigator is trying to achieve is, essentially, to prove a negative, to establish that Mr X does *not* reside at the address shown in the electoral register. The time and resources available to an election petitioner are always going to be very limited and, however hard he tries, the petitioner is unlikely to do more than scratch the surface of false registration. This, of course, enables a respondent to say – as Mr Penny did say repeatedly – 'the Petitioners have only proved a handful of false registrations in an electorate running well into six figures: treat it as *de minimis*'.

312 While it may be true that, for the purposes of establishing 'general corruption' under s 164 of the 1983 Act, numbers matter, and the paucity of proved ghost voters may be fatal to proving that they affected the result of the election, this is not true where the

responsibility for the false registration can be laid at the door of the candidate. As explained above, one bogus vote, if arranged by the candidate or someone who is in law his agent, will unseat the candidate, however large his majority.

313 A number of witnesses gave evidence that they had visited properties to make enquiries as to whether those whose names appeared on the register in relation to those properties actually lived there. One of those witnesses was Mr Andrew Gilligan, who is a well-known journalist, albeit one who has always been very critical of Mr Rahman. His evidence, which was only half-heartedly tested in cross-examination, was to the effect that he had visited a number of properties and discovered that those registered were not known there or even, in one case, that the property appeared to be completely unoccupied (312 The Highway). I saw no reason not to accept Mr Gilligan's evidence about these properties.

314 I do not propose, in what is a long judgment, to go through the properties at which false registrations were proved. The numbers of false registrations was not large, certainly well under 100. In seems more fruitful to concentrate on those properties where there is an ascertainable link between the registration and those who are the agents of Mr Rahman.

315 The first of these properties is Flat 16, Prioress House, Bromley High Street, E3 3BD. This property cropped up more than once and appears to have been used as an accommodation address for THF candidates. In this context it will be recalled that THF candidates are incontestably agents of Mr Rahman for electoral purposes and that it is irrelevant whether the candidate's primary motive is his own election and the election of his chief only a secondary motive. The candidate is bound.

316 The first candidate was Monir Uzzaman (*aliter* Monirazzuman) Syed who stood for THF in Bromley North. Also registered at this flat were four people, two people with Italian names, one with a Lithuanian name and one with an Asian name. In a witness statement Mr Syed claimed to have lived there at the time of the election but to have moved away immediately afterwards for personal reasons. He was not called to give evidence to support his witness statement and it is noticeable that the address he did furnish on one statement was in Ilford. Mr Syed had an interesting relationship with this property. In 2013 he applied to be a candidate for the Labour Party but I was told by Mr Chris Weavers, the Labour Party electoral agent, whose evidence I accept, that Mr Syed had been turned down (*inter alia*) on the ground that he could not satisfy the Party that he genuinely lived at that address. Mr Syed then tried his luck with THF whose selection processes (ie interview with Mr Rahman) seem to have satisfied that party that he was indeed resident at 16 Prioress House. It is remarked by the Petitioners that Mr Syed, being an estate agent, would have access to information about likely properties whose address could be used for electoral purposes.

317 One of the more curious witnesses in the case was a man who stood as a THF candidate in the May election as Aktaruz Zaman in St Peter's Ward. At that time he gave his address as 312 The Highway, to which we shall return. He was unsuccessful. He then decided to stand, again for THF, in the election for the ward of Blackwall and Cubitt Town in the election that had been postponed from May 2014 because of the death of a THF candidate. Mr Zaman told the court that he decided that being called 'Zaman' was not a good idea because it meant he came last on the ballot paper (this being alphabetical) and he also decided that he needed a change of air. Consequently he changed his name to 'Mohammed Aktaruzzaman' and suddenly decamped from The Highway to 16 Prioress House (within days of the May election). He must presumably have moved in just as Mr

Syed was moving out. Sadly for this man, moving his name to the other end of the alphabet did him no good. He was not elected for Blackwall and Cubitt Town either.

318 When canvassing for the election Khales Uddin Ahmed (the successful Labour candidate for Bromley North Ward) visited a number of properties including 16 Prioress House. His evidence, which I accept on this point, is that, in May 2014 the only resident was a European male and that Mr Syed did not live there. When Mr Gilligan called, in June 2014, he found that no person whose name appeared on the register lived at that address.

319 I am completely satisfied that neither of these two THF candidates ever resided at 16 Prioress House. Their registration was false and it follows that, when they voted in the election (as it is not contested they did), they were guilty of an offence under s 61 of the 1983 Act. Now, clearly, when Mr Zaman voted in the postponed election he cannot have voted for Mr Rahman who had been elected back in May. Nevertheless Mr Zaman's mendacity in respect of 16 Prioress House did not bode well for his attempt to convince me that he resided at 312 The Highway at the date of the May election, at which he had also voted.

320 The reality was that at all material times Mr Zaman was the owner of a house in Shoreham-on-Sea where he lived with his wife and family. When taxed with this he said that he had split up with his wife and that the Shoreham property had been repossessed by the mortgagees (Santander) in 2012. This did not quite explain why he had registered himself at The Highway in 2012 but, having failed to answer correspondence or the canvass for two years had been removed from the register. He did not re-register himself at The Highway until 7 March 2014. A plethora of documentation was produced piecemeal during the trial relating to the Shoreham property, much of it contradictory.

What the documents did include, however, was the office copy entry of the title at the Land Registry. This showed that Mr Zaman continues to be the owner of the property to this day and that there had never been a registered mortgage (as opposed to a court charging order which had been made for another purpose).

321 I was satisfied that Mr Zaman had lied about the Shoreham Property and, taken with the other evidence about the condition of 312 The Highway, had lied about ever being resident there. His was a false registration and his votes for himself and for Mr Rahman unlawful.

322 Next we have Mr Kabir Ahmed. He is one of several brothers and is an active member of the Mayor's team. Mr Ahmed was a Labour Councillor in the previous administration and was one of those who had 'defected' to Mr Rahman and become an independent. He was 'selected' as a THF candidate for Weavers Ward in 2014 and stood unsuccessfully.

323 For some time Mr Ahmed had given his address as 236a Bethnal Green Road, E2 0AA, a flat above a shop. This was said to be a property with four double en-suite bedrooms and a shared living room. The other occupants were said to be: Mr Ahmed's wife Sibly Rahman, his brother Mohammed Ansar Hussein, a Mohammed Mokit and Ala Uddin, who was said to work in the shop on the ground floor. According to Councillor Mohammed Abdul Mukit MBE, who knew Mr Ahmed well, he was not actually resident at that address, although he undoubtedly used it as an address for receiving mail. Both Mr Mukit and Mr Gilligan stated that the room allegedly occupied by Mr Ahmed and his wife was completely bare except for one bed, one chair and one desk.

324 Mr Ahmed's non-residence in the Borough was a matter of some notoriety. Councillor Peter Golds, an indefatigable letter-writer had written to various people to complain about

this more than once and had raised it in open council. Councillor Mukit confirmed that Mr Ahmed actually lives at 52 Gants Hill Crescent, Ilford IG2 6TT[43]: he had attended his wedding, the invitation to which had given that property as Mr Ahmed's address. Mr Ahmed admitted in cross-examination that he paid no rent for 236a Bethnal Green Road and that he spent a lot of time in Gants Hill visiting his elderly parents.

325 Mr Gilligan told the court that Tracesmart and credit records he had checked also showed Mr Ahmed and his wife as resident in Gants Hill.

326 Applying the statutory test of residence set out above, I am quite satisfied that 326a Bethnal Green Road was not such a 'residence' as would entitle Mr Ahmed to be registered to vote from that address and I am equally satisfied that this was a mere accommodation address, used for administrative purposes. I did not accept that Mr Ahmed had any genuine belief that this was his residence: he quite clearly knew that the falsity of the residence was well-known to his political opponents and he continued to use that address.

327 It follows that Mr Ahmed's registration was a false registration and that his votes were unlawful.

328 At this point I should mention the mysterious case of Mr Shahed Ali. He was registered as being resident at two separate addresses, Flat 38 Welstead House, Cannon Street Road, E1 2LJ and 17 Harkness House, 101 Christian Street, E1 1RX. Both these addresses were in the same division of Whitechapel Ward (WH3) whose polling station was Henry Gosling Primary School. Mr Ali, though submitting a witness statement on behalf of Mr Rahman, was not called as a witness.

[43] In the London Borough of Redbridge.

329 Absent any explanation being tendered to the court, it would appear that Mr Ali had himself registered twice in the ward in which he was standing (indeed stood successfully) as a THF candidate. On the face it, both addresses cannot have met the residence test and the inescapable inference is that at least one of them is false.

330 In dealing with the case of Mr Shahed Ali, the court is in no way embarrassed by the refusal of the parties to adduce his evidence or other evidence concerning his electoral behaviour. During the course of the Scrutiny, representatives of the Metropolitan Police removed the two ballots cast from these addresses in the Mayoral election and, it is understood may have obtained by another route the ballots cast in the ward and European elections. Mr Ali was arrested but it was decided that there was insufficient evidence to charge him with an electoral offence.

331 The court, both before the hearing and at the hearing, indicated that the case of Mr Ali should be investigated and that, absent explanations being tendered, the court was entitled to draw adverse inferences from the evidence about Mr Ali's conduct. Given the inquisitorial functions of the court, as was made clear, this was a course open to the court.

332 Were Mr Ali's the only instance of a THF candidate being involved in an apparent false registration, the court would have hesitated to come to conclusions but, as it is, putting it at its lowest, his conduct is at least *prima facie* of the same pattern as that of Messrs Syed, Zaman and Ahmed.

333 What we get from this is that, out of 44 THF candidates standing in the ward elections, three can be shown to have been guilty of false registration (Mr Zaman twice over) and a fourth potentially so. Mr Rahman cannot escape the consequences of these electoral frauds committed by his hand-picked candidates: they are his agents.

334 In the circumstances it is unnecessary to examine the other properties where false registration was discovered by witnesses such as Councillor Mukit and Mr Gilligan. I accept that the amended 'Ghost Voter' schedule annexed to the final written submissions of the Petitioners is, in general terms, accurate. That schedule, in its final form, is confined to registrations where it can be shown from documents extracted at the Scrutiny that votes were cast for Mr Rahman.

335 The false registrations are sufficiently numerous to demonstrate that false registration was not the random action of over-enthusiastic members of the public. The false registrations must have been organised. As the beneficiary of the organisation was THF, both Mr Rahman and his candidates in the wards, it would be wholly unrealistic to hold that the organisation of these registrations was other than in the hands of THF supporters, agents within the terms of electoral law. If there were no evidence of Mr Rahman's own candidates engaging in this practice, then it might just have been possible to deliver a Scottish verdict of 'not proven' as, in effect, Mr Penny invites the court to do. In the real world there is no meaningful alternative to a finding that most, if not all, of the false registrations were organised by persons who were agents.

Personation

336 Anyone who votes in the name of another person who is falsely registered commits personation. Anyone who has falsely registered himself and then votes commits an offence under s 61(1) of the 1983 Act.

337 Sufficient has already been said to show that, apart from the first three candidates mentioned (whose offence was under s 61(1)), there was an appreciable number of false

registrations, each one of which, if a vote was cast in that name, amounted to personation under s 60.

338 At this point I shall return to Councillor Shahed Ali. He was registered at two addresses in the Whitechapel Ward. Two polling cards were issued and, on polling day, two people turned up at the WH3 polling station and voted – for Mr Rahman. Now one can quite understand the dilemma of the police. In order to charge someone with an offence, there must be evidence that points to that offence. Unlike civil proceedings where one may plead a case in the alternative, the criminal prosecutor must be able to put forward a case that has a realistic prospect of conviction. Charge someone with offence A, it may well be a complete defence for him to say 'Ah, but I was committing offence B: I am innocent of offence A' and, with some exceptions, to be acquitted.

339 This court is not so limited. The fact that two votes were cast in the name of Mr Ali means one of two things: either Mr Ali voted twice – an offence (thus an illegal practice) under s 61(2) – or someone else cast his second vote which is undoubtedly personation under s 60 whether or not he did so with Mr Ali's knowledge or consent. Either way an electoral offence is committed.

340 If the second vote was cast by someone other than Mr Ali, would it be with his knowledge and consent? It is theoretically possible that the occupant of the property where Mr Ali was not living found the polling card and said to himself 'this gives me the opportunity to cast an additional vote for Mr Rahman and his party' but the likelihood cannot be great. First, of course, it would be undoubted personation which carries serious consequences if detected. Secondly, given that Mr Ali was one of the candidates in the ward, the mystery voter would be taking a considerable risk that someone at the polling

station would unmask him, particularly as the polling stations were beset by eager supporters of THF and, indeed, the candidate might also be known to the polling officers at the station.

341 Viewing this realistically, it is inconceivable that the second vote was cast by a member of the public without the knowledge and consent of Mr Ali. The court can be satisfied that one of two things must have happened:

a) both votes were cast by Mr Ali – illegal practice under s 61(2)

b) second vote was cast by someone else with Mr Ali's connivance – personation (corrupt practice) under s 60.

Conclusion on false registration and personation

342 It follows that the court is satisfied that false registration, false voting contrary to s 61(1) and personation by persons who are in law the agents of Mr Rahman has been proved to the requisite standard.

Other voting frauds

343 Unlike other recent election cases, postal vote fraud has not played a major part in this Petition. That is not to say, however, that such fraud was absent.

344 One of the drawbacks of election petitions, as has been said above, is that (in general) neither party has large resources to conduct investigations or to amass evidence. Consequently at the Scrutiny the court tends to be presented with a list of suspect properties at which it is said there may be false registrations and false votes cast in those names. The list is usually very short, in comparison with the number of electors, though it may be sufficiently large to exceed the majority of the winning candidate. Clearly, with

an electorate the size of that for the Mayoral election, any list for the Scrutiny would represent a drop in the ocean.

345 Even at the Scrutiny, though, the court is only concerned with those names from the list of suspect addresses where the name was used actually to cast a vote and to cast it for the candidates whose election is being challenged. The court thus ends up with a modest tally of suspect ballot papers, for which the accompanying documents can be found (such as application to be registered, application for a postal vote or the voter statement that accompanies the postal ballot). Even if voter fraud is established, neither the parties nor the court have any idea whether it is the tip of a large iceberg or the few rogue items in an otherwise impeccable poll - or somewhere in between.

346 Voter fraud does, however, display certain patterns and, if those patterns are found and no coherent explanation advanced to negative the inference to be drawn from them, a court is entitle to draw an adverse inference from the patterns.

347 Furthermore, if it can be shown that there has been systematic voter fraud in favour of a particular candidate which goes beyond the occasional random fraud, then it is legitimate for a court to draw the inference that those committing this fraud come within the wide category of 'agents' for whom the candidate is responsible even if it is impossible for the individual fraudsters to be identified.

348 The allegations of postal vote fraud take two forms:

a) obtaining from postal voters incomplete postal vote documentation, completing it and using it to cast a ballot: this is personation contrary to s 60 of the 1983 Act and a corrupt practice;

b) obtaining completed postal vote documentation from a postal voter (with or without his knowledge or consent) and altering the votes shown on the ballot paper: this is the illegal practice of tampering with a ballot paper contrary to s 65(1) and, if the altered vote is accepted by the returning officer, personation.

349 The former of these frauds can be achieved in more than one way. The first is to make an application for a postal vote ('ATV') on behalf of an existing person, to complete the details with one's own particulars and thereafter to use the postal voting documentation to cast the ballot. This is not only personation under s 60 but a corrupt practice in itself under s 62A.

350 The second is to obtain a copy of the voter's ATV and to use it to complete his personal voting statement ('PVS') which must accompany the postal ballot before submitting the PVS and the ballot paper to the returning officer.

351 The third is to persuade the voter to hand over a completed and signed PVS but a blank ballot paper, to complete the ballot and submit both to the returning officer.

352 The latter of the frauds is self-explanatory. It does not matter whether the voter is persuaded to hand over his completed PVS and ballot paper to the fraudster for onward transmission to the returning officer or whether the fraudster simply intercepts the documents between the voter and the returning officer.

353 The principal evidence of the former frauds was the testimony of Councillor Mukit and, to a smaller extent, Mr Gilligan, and the expert evidence of Mr Robert Radley.

354 It has already been indicated that Mr Gilligan's veracity and reliability were not put in issue by Mr Rahman's counsel. I accept his evidence, though it is limited on this topic.

355 The reliability of Mr Mukit was put in issue. Unfortunately for Mr Rahman, Mr Mukit was cross-examined on his instructions about one episode (the Water Lily wedding event, set out below) where it was suggested to Mr Mukit that his evidence was deliberately untruthful. Mr Mukit stuck to his guns. Subsequent evidence was turned up that completely vindicated Mr Mukit's account and, at the same time, established that the account of the same incident given by Mr Rahman had not been the truth.

356 The court accepted Mr Mukit as a truthful and reliable witness.

357 Mr Mukit knows the Weavers Ward well, having lived there for over thirty years. For the 2014 election he canvassed a large number of properties in the ward. He discovered a considerable quantity of addresses where there appeared to be no trace of the voter whose name appeared on the register. Though some of his evidence was admittedly hearsay, it painted a pattern of postal voters having been asked by supporters of Mr Rahman to hand over their postal votes and of voters having handed completed ATV forms to Mr Kabir Ahmed and his brothers. Mr Mukit was astonished to discover several voters who told him that they had voted by post at a time when the postal votes had not yet been sent out. It turned out that these voters had been induced to hand over their completed ATV forms in the belief that they were actually voting. Mr Mukit discovered evidence that at one address, 7 Bacon Street E1 6LF, seven postal votes had been 'collected by Mr Rahman's men' which apparently meant that they had collected the completed PVSs but uncompleted accompanying ballot papers.

358 One of the voters mentioned was an elderly lady, Gulab Bibi. This lady gave evidence in response to a witness summons (properly using an interpreter). Other members of her family also gave evidence. Both she and her family were adamant that she had cast her postal vote herself. A chance question from the Bench, however, revealed that what she had done was to sign a document and hand it over (clearly the PVS) and she denied ever having put a cross on a piece of paper. On the face of it this was a further instance of the first of the two frauds having been perpetrated on this lady (and the electorate).

359 Mr Gilligan told the court:

> ***We also visited another address, 37 Cavell Street, E1, a small block of about twelve flats reserved for elderly Bangladeshi people, where I was told that a number of the residents had had their blank ballot papers taken from them against their will by supporters of Lutfur Rahman and Tower Hamlets First. Through the translator, one resident told me that this had indeed occurred. She said: "A woman came and said, we are here from Lutfur Rahman's party. Many people of your age have voted for him already, so I'm here to take your vote. They came to me and took my signature and then took the blank ballot paper from me. I normally go to the polling station. I told them I was used to doing it myself and didn't understand why it was different this year. I am a long-term Labour supporter and would never have supported Lutfur Rahman…"***

360 Mr Radley is a very senior and well-respected document expert. He was initially appointed as the parties' joint expert pursuant to Directions Order No 6. He was subsequently asked by the Petitioners to conduct further tests and, in this matter, he was regarded as instructed by (and was paid by) the Petitioners. At a later stage Mr Rahman's legal team posed a large number of questions to Mr Radley, mainly asking him to comment on extracts from articles and textbooks on various aspects of questioned documents. The time limits for Mr Radley to examine and report on the documents were inevitably conditioned by the times fixed for the hearing and the court is fully aware that

he was not given anything like the full amount of time he would have preferred to complete the tasks laid on him. That he managed to produce a series of reports as detailed as he did is a tribute to his professionalism under pressure.

361 His findings were, understandably, not challenged by either side although, quite properly Mr Rahman's counsel submitted that the conclusions to be drawn from them were very limited.

362 At this point it must be emphasized that the core documentation on which Mr Radley was asked to work consisted of ballot papers extracted at the Scrutiny and the documentation supporting those ballots. In the event he reported on 15 ballots from Lansbury Ward, 14 from St Katherine's and Wapping Ward and 105 from Weavers Ward.

363 Much was made in cross-examination of Mr Radley by Mr Penny of the fact that very few institutions maintain what might be terms a 'library of inks', in other words a database of all available inks with their chemical analysis so that any questioned ink can be compared with the library and identified, much in the way that, say, DNA or fingerprints are identified. Most, if not all, of those institutions round the world are governmental bodies and are not available to document examiners in the private sector such as Mr Radley. Though this is undoubtedly the case, it was not determinative of the conclusions that could properly be drawn from Mr Radley's findings as to the inks deployed on the questioned documents.

364 What Mr Radley discovered was that, of the sample analysed, two groups of documents, each roughly one quarter of the total appeared, in each case, to be written in the same ink. Thus 50% of the documents displayed only two types of ink. Mr Radley considered this,

in his experience, to be unusual, particularly bearing in mind, of course, that each of the individual documents ought, in theory, to have been produced by a different person.

365 Mr Hoar, in his final submissions, frankly accepts that the findings about the inks 'cannot in and of itself be conclusive' and he is right, but, as he also points out, this is not the sum total of Mr Radley's findings.

366 The next strange feature was that many of the documents showed indentations (known as 'ESDA impressions') that were inconsistent with what one would expect to find if all the voting documents had been completed by their ostensible authors.

367 Mr Radley examined a large number of PVS which had the feature that the date of birth was written in a firm hand but the signature and the X marks on the ballot paper appeared to be in a shaky or slow and methodical hand, thus indicating that they had been completed by more than one person. This was an unusual feature and one that should not have been found if all the documents had been genuine.

368 The examination of the X marks on the ballot papers displayed an unusual feature described as 'touching up' by adding a foot to the X. Mr Radley, whose experience of examining ballot papers is considerable, considered this to be striking. The numbers involved were certainly not consistent with mere coincidence.

369 Many of the unusual features were present in groups of documents ostensibly emanating from the same household, a finding which is consistent with documents from several voters in one household coming into the hands of a third party who later completed them.

370 It is not without significance that a large proportion of the questioned documents came from Weavers Ward where there was already the evidence of Councillor Mukit as to the activities of Mr Kabir Ahmed and his brothers and as to other voter irregularities within the ward.

371 None of these pieces of evidence is necessarily conclusive in isolation. The question is whether, taking all the evidence of the first category of voter fraud mentioned above, the court can be satisfied to the appropriate standard that voter fraud in this category had occurred. In my view it can and I am so satisfied.

372 Furthermore the pattern and number of the irregularities, particularly in Weavers Ward is such that, in my judgment, it would be perverse to come to any conclusion other than that these frauds were organised by persons who meet the criteria of agent described above.

373 The court is therefore satisfied that agents of Mr Rahman were guilty of breaches of s 62A of the 1983 Act and thus of corrupt practices.

374 Turning to altered voting papers, one can be somewhat briefer. The Scrutiny extracted all the voting papers which had been altered so as to change the original first preference vote for another candidate to a first preference vote for Mr Rahman. Time did not permit the extraction, though requested by Mr Hoar, of the ballots where the second preference had been so altered.

375 The returning officer's solicitors then prepared a very helpful schedule of the altered ballots. 46 altered ballots showing a change from another vote to a first preference for Mr Rahman had been accepted into the count. 26 had been altered from a first preference vote for Mr Biggs to a first preference vote for Mr Rahman. Based on experience of this

type of fraud, I felt that it was on the borderline of showing a pattern of fraud, particularly as, given the virulent nature of the campaign, the likelihood of any voter choosing Mr Biggs and then changing his mind to Mr Rahman (or *vice versa*) was very low.

376 Even, however, with the other evidence of interception of ballot papers between the voter and the returning officer, I considered that there was insufficient evidence to satisfy the court to the criminal standard that the second category of voter fraud had occurred.

Conclusions on other voter frauds

377 With regard to the unlawful completion and use of voting documents by third parties, the court was satisfied that both corrupt and illegal practices had taken place and had been committed by persons who were, in electoral law, the agents of Mr Rahman.

378 With regard to the unlawful alteration of ballot papers already completed, the court could not be satisfied to the requisite standard that corrupt of illegal practices had taken place and no finding is made on that issue.

FALSE STATEMENTS CONTRARY TO s 106 OF THE 1983 ACT

379 The case advanced by the Petitioners can be summarised quite shortly. They say that, virtually from the moment Mr Biggs was adopted as the Labour Party's Mayoral candidate, Mr Rahman and Mr Choudhury decided to run their campaign on the basis of portraying him as a racist. This, it is said, was a crude but ultimately successful attempt to persuade the Muslim and, in particular, the Bangladeshi electorate, that the Labour candidate was racially prejudiced, inherently hostile to those of non-white ethnicity and to those of the Muslim religion. If he were elected, he would use his powers to the detriment of ethnic 'minorities' whom he did not believe were truly 'British'.

380 A useful starting point is the Oxford English Dictionary in which can be found:

> ***Racism***
>
> ***A belief that one's own racial or ethnic group is superior, or that other such groups represent a threat to one's cultural identity, racial integrity, or economic well-being; (also) a belief that the members of different racial or ethnic groups possess specific characteristics, abilities, or qualities, which can be compared and evaluated. Hence: prejudice, discrimination, or antagonism directed against people of other racial or ethnic groups (or, more widely, of other nationalities), esp. based on such beliefs.***
>
> ***Racist***
>
> ***An advocate or supporter of racism …***

381 There can be no doubt that to call a man a racist is to make 'a statement of fact in relation to [his] personal character or conduct' (s 106). In the multi-racial, multi-cultural society that is 21st century Britain there can be few more damaging statements to make about anyone. To make such a statement about a white candidate in an electoral area that had a majority of BME citizens would be a serious matter indeed.

382 When put on the spot by the court, Mr Penny, somewhat grudgingly, admitted that to call a man a racist was a statement about his personal character or conduct. He submitted, understandably, that Mr Rahman and Mr Choudhury had not branded Mr Biggs a 'racist' *tout court*. They had merely criticised him for making 'racially insensitive remarks', and those criticisms were true, alternatively were genuinely and reasonably believed to be true by his client.

383 The court must therefore examine what was said about Mr Biggs in the course of 2013/4 and, in particular, what was said about him on and after 14 April 2014.

384 Much of what occurred in 2013 may safely be dismissed as the cut and thrust of local politics where quarter is neither sought nor given. To that extent, it is well outside the ambit of s 106. Two incidents in the summer of 2013 highlight the line taken by Mr Rahman and his supporters that any critic of the Mayor is playing into the hands of the far right EDL and is therefore engaging in 'dog-whistle politics'. The obvious sub-text is that those who criticise Mr Rahman are covertly seeking support from those within the Borough who sympathise with the EDL or who are racists.

385 The first of these incidents was, undoubtedly, started by the Labour Party. On 15 May 2013 it issued a press release headed 'Mayor targets Decent Homes funding to his supporters'. This document contained a table, the figures in which tended to show that the refurbishment of homes under the Decent Homes programme had been concentrated in three wards, Shadwell, St Dunstan's and Stepney Green, and Whitechapel. It was said that these were the wards 'mainly represented by the Mayor's supporters'. As Mr Biggs pointed out, this was not, on its face, a claim that Mr Rahman's administration was favouring the Bangladeshi community in general because the table showed that a number of wards with a large Bangladeshi population had missed out on the housing programme. It was a claim, rightly or wrongly, of what Mr Penny, with great daring in the circumstances, referred to as 'pork-barrel politics'. The court will adopt that term *faute de mieux*.

386 'Pork-barrel politics' is a 19th century American expression and, as a phenomenon, such politics are as old as democracy itself. In essence the phrase means that those in power channel public money, projects and jobs to areas either occupied by their existing supporters or occupied by people who might become supporters if the pork-barrel came their way. As will be seen when we consider bribery, all pork-barrel politics is, ethically,

a form of bribery of the electorate, its ethical dubiousness in no way diminished by its universal practice by politicians of all stripes. It is when we come to draw the line between pork-barrel politics (unethical but legal) and bribery (unethical and illegal) that the difficulties start to arise.

387 That the figures quoted by the press release were correct was confirmed by Councillor Rabina Khan, the Cabinet Member responsible for housing. There was much cross-examination as to whether the criticism of cronyism in the housing programme was fair or unfair. Fortunately the court is not concerned with the rights and wrongs of the dispute save to say that Ms Khan's assertion that, in allotting housing money, the Mayor always followed the advice of his officials fell a little flat in the light of the evidence of his attitude to council officials when it came to allocating grants.

388 What is of interest, however, is the Mayor's reaction. On 18 June 2013 his office issued a press release stating in terms that the Labour press release was 'inflammatory', had been adopted by the EDL and was pandering to racist prejudice. The press release contained a quotation from Ms Khan:

> ***The irresponsible and dangerous claims made by Labour have found their audience and are now doing the rounds with the EDL to stoke up fear within the community that some residents and areas are more deserving than others… In a crucial election year, residents expect responsible leadership from John Biggs and Labour and that they wouldn't resort to the 'dog whistle' politics of the far right***.

389 Though still within the safety zone of legitimate political debate, this was a harbinger of things to come.

390 The second incident actually concerned the EDL, which had announced one of its periodical marches for Tower Hamlets earlier in the year. Well before the date of the march had been announced, the local Labour Party had fixed to hold an evening barbecue for its members on Saturday 7 September 2013. As ill-luck would have it, the EDL later announced it would hold its march on the afternoon of 7 September. This coincidence provided Mr Alibor Choudhury with an opportunity that was too good to miss.

391 A press release was issued by Mr Choudhury on 27 August 2013, suggesting that, instead of coming out on to the streets in protest against the EDL march, Labour would be having a 'fun day'. Mr Choudhury quoted himself as saying 'while a diverse community coalition gathers to show the EDL that Tower Hamlets is no place for hate, John Biggs and his Labour chums will be letting their hair down over nibbles'. The press release re-visited the housing dispute of May/June and repeated the charge that this was fuelling EDL propaganda.

392 By itself this could be regarded as a justifiable piece of tail-tweaking by the Mayor but it did tie into the underlying theme that Labour and Mr Biggs were not averse to wooing the racist vote.

393 More seriously, on 23 August 2013 Mr Rahman had organised a letter to be published in *The Guardian* demanding that the Home Secretary ban the proposed EDL march. The letter had a great number of signatories, including local Members of Parliament, clerics of various religions other prominent citizens. Mr Rahman took good care however to ensure that Mr Biggs was neither informed of the letter nor asked to be a signatory. When the letter was published by *the Guardian* therefore the absence of the Labour Mayoral

candidate stuck out like a sore thumb, as was the intention. Again, legitimate politics – just – but part of the pattern.

394 On 22 September 2013 the London edition of the BBC's *Sunday Politics* programme carried a feature on Tower Hamlets. In the course of it, Mr Biggs was interviewed standing in the street and he made the following comment à propos Mr Rahman:

> ***All his councillors are from the Bangladeshi community and the primary focus of his policy making has been on the Bangladeshi community. A very important community in Tower Hamlets but not the only community in Tower Hamlets. My vision is about a more outward looking borough where different communities work together, live together and maximise our opportunities. The real tragedy of Tower Hamlets is that we've got masses of high value jobs coming into the area but not a lot of local people getting them. That's the real story. And what we don't want to have is small communities that are separate from each other and are very inward looking because the world will pass them by***.

395 The first two sentences were later said by Mr Rahman and Mr Choudhury to be 'racially insensitive'. What is the reality? The first part of the first sentence was indubitably true. All the Councillors now under the THF banner *were* Bangladeshi. Was the second part of the sentence true? The answer has again to be 'yes'. Jumping ahead in time, the factual state of affairs disclosed by the PwC investigation established beyond question that public money had been massively channelled into the Bangladeshi community and that the lion's share of grant money had been awarded to Bangladeshi organisations.

396 The court was asked to take Mr Biggs's sound-bite as being racist but of course it was nothing of the kind. The proposition can be tested by reversing the facts. Assume that, in this multi-ethnic borough, a white man had been elected Mayor and had thereafter appointed only white people to his Cabinet and had given a preponderance of grant

money to organisations run by and for white people. If a non-white politician in the Borough had then criticised this, who would be considered the racist – the white Mayor or his non-white critic? The question answers itself. It is important to realise that racism is not the exclusive property of those whose skins are white.

397 The court was also asked to accept that this broadcast had immediately caused enormous outrage among the Bangladeshi community. This was the opposite of the case. The immediate reaction was in fact non-existent. Some time later Mr Rahman posted a blog on the website *Huffington Post* and on 4 October 2013 Mr Rahman wrote a long letter to Mr Iain McNicol, the General Secretary of the Labour Party. This letter made a number of complaints about the Tower Hamlets Labour Party and Mr Biggs, going back to the housing row and including as the sixth item on the list Mr Biggs's sound-bite. Inevitably the letter alleged that this was encouraging the EDL and, equally inevitably, out came the dog-whistle – 'These smears, of which the best are mere falsehoods and the worst are nasty, cynical blasts on the proverbial dog whistle that have demonstrably stirred up racial tensions, fall gravely beneath the standard I expect of a party I myself joined in 1989 and served loyally for many years.' The letter concluded by demanding that the Labour Party carry out an investigation and provide an 'informed and thorough response'.

398 This letter, which by implication invited the national Labour Party to disown, or, at least, to distance itself from Mr Biggs, was a clever letter, as one would expect from an intelligent lawyer. Interestingly, unlike most communications on all sides in this election, it was not leaked to the media or published as a press-release. It was put to Mr Rahman that he cannot sensibly have expected a response and his answers were, as ever, evasive. The cleverness of the move is obvious. If the Labour Party were to distance itself from Mr Biggs that would, naturally, be a victory for Mr Rahman: if it rejected the complaints,

it was supporting racism and dog-whistle politics: if it said nothing, it was deliberately shutting its eyes to the racially inflammatory conduct of its Mayoral candidate.

399 Nor was this accidental, because hand-in-hand with the campaign to depict Mr Biggs as a racist went a campaign to describe the Labour Party as a whole as being 'institutionally racist'. This court is not concerned with that campaign and, in any event, s 106 of the 1983 Act does not stretch to false statements about a political party. In considering what followed, however, it should be borne in mind that the accusation that Mr Biggs was a racist was made in the context of saying that the party he represented was itself racist.

400 Returning to the absence of outrage, this was surprising. Tower Hamlets has a very large and very active Bangladeshi press in both English and Bengali as well as no fewer than eight television channels broadcasting in Bengali. These media are all strongly, vehemently and occasionally intemperately supportive of Mr Rahman and hostile to his political opponents. Surely the sound-bite would have been a gift - but protest came there none.

401 On the last day of evidence this gap was sought to be filled by calling Pola, now Baroness, Uddin. This was not a good idea. She did not succeed in supporting the thesis that the broadcast had caused immediate outrage and her credibility was comprehensively demolished by cross-examination about the six-figure expenses defalcation that had led to her suspension from the House of Lords.

402 Even Mr Alibor Choudhury was silent in the autumn of 2013. He later claimed that Mr Rahman had told him not to use the broadcast for political purposes for the time being, but why this was so was never explained. At all events, Mr Choudhury did keep quiet for some five months and the broadcast did not surface again until February 2014.

Press release 19 February 2014

403 At some point in February 2014 it is clear with the benefit of hindsight that Mr Rahman and Mr Alibor Choudhury decided to run their campaign by branding Mr Biggs as a racist. The peg on which to hang the campaign was going to be the September broadcast which had lain dormant for five months.

404 Consequently, on 18 February 2014 Mr Choudhury sent a letter to the complaints department of the Equality and Human Rights Commission ('EHRC'). As will be seen, at this stage any response from the EHRC was irrelevant: what was important was that the letter had been written. The letter complained, in terms, that the local Labour Party 'appear to be centring their campaign to unseat Lutfur on racial grounds'. He quoted the first sentence of the sound-bite (but not the remainder) and, having protested that he was 'as British as Mr Biggs is', stated that the sound-bite was 'a clear appeal to racial prejudice' and linked it to the (previous) EDL march.

405 The letter went on to state that on 25 September 2013 there had been a bomb threat at the East London Mosque (in fact it had turned out to be a false alarm) and on the following day 'a suspicious package' arrived at the Town Hall (if true, which is unclear, another false alarm) and he suggested that 'these sinister incidents were the work of extremists whipped by Mr Biggs's outburst. The letter went on to make a number of other allegations and demanded a 'prompt and thorough response'.

406 The following day, before any response had been or could have been received, Mr Choudhury went public with a press release over the headline 'John Biggs: Dividing the East End. Labour Mayoral hopeful reported to the Equality and Human Rights Commission over inflammatory and divisive comments.'

407 The release started ‘Pressure was today mounting on Tower Hamlets Labour Mayor hopeful John Biggs after he was referred to the Equality and Human Rights Commission for remarks made on the BBC’s Sunday Politics programme.’ There followed lengthy quotations from Mr Choudhury (perhaps unsurprising, given that he was the author of the press release). It contained the following remark: ‘John might want to think of me as a foreigner but I was born here and am as British as he is.’ This appears to have been entirely gratuitous as nothing Mr Biggs had said (or even that Mr Choudhury had alleged that Mr Biggs had said - by no means the same thing) had remotely suggested that Mr Choudhury and his fellow Bangladeshis were not British.

408 Mr Choudhury then decided to go back in history.

The comments reported to the Commission are the latest in a long line of racially charged comments by the Labour Mayoral hopeful. In 1998, he campaigned against the creation of Banglatown and in 2013 his dog-whistle claims on housing were picked up and gleefully used as propaganda by the EDL who marched on the borough just a couple of months later.

409 Finally there was the suggestion that Mr Biggs had caused ‘far right patrols on our streets and bomb threats to the Town Hall and East London Mosque.’

410 The reference to Banglatown was a distortion of the facts. Back in 1998 there had been a campaign to rename the ward of Spitalfields as Banglatown. Mr Biggs had objected to losing the name Spitalfields because of its long and historic connection with the East End and the current Borough. In reality, as Mr Choudhury was fully aware, a typical British compromise was reached whereby the ward became ‘Spitalfields and Banglatown’ as it has remained to this day. None the less this was being represented in the press release as a racist attack on the Bangladeshi community.

411 Now, unlike the broadcast, this press release *did* cause outrage and the local Labour politicians, including both the local MPs[44] issued a joint statement condemning what they described as 'lies and character attacks'.

412 Mr Alibor Choudhury was in no way abashed and went on social media referring to Mr Biggs as 'John Bigot'.

'***Black cardigans'***

413 The next episode was both deeply unpleasant and mildly ludicrous. In this context it should be said that Council meetings, especially those open to the public, are by no means places of dignified quiet. I was told by Councillor Golds that any criticism of Mr Rahman or his colleagues or indeed any attempt to ask questions would habitually be met with shouts of 'racist' or similar from the Mayor's party. Nor were members of the public silent. The public gallery was, the court was told, often filled with raucous supporters of the Mayor who would shout abuse at those opposed to him, frequently in unacceptable terms. For example Mr Golds was subject to abuse both because he is Jewish and because he is gay. Though one might have thought that any Mayor would discourage anti-semitic homophobic abuse, no attempt seems to have been made by him to curb the activities of these supporters.

414 On 26 February 2014, at a Council meeting open to the public, Mr Choudhury lost control of himself: he pointed to a Labour Councillor and former (non-elected) Mayor, Ms Ann Jackson, and shouted 'Oswald Mosley had his blackshirts, John Biggs had his black cardigans.' This outburst was extraordinary in itself but Mr Rahman made no attempt to ask Mr Choudhury to withdraw the remark or to apologize. In the end, the Council voted to remove Mr Choudhury's right to speak.

[44] Ms Rushanara Ali (the UK's first Bangladeshi MP) and Mr Jim Fitzpatrick.

415 What made the incident even more indefensible was that Ms Jackson was wearing a black cardigan because she was in mourning for a relative.

416 Mr Choudhury was subsequently asked (in private) by Mr Rahman to apologize to Ms Jackson but it was made clear that the apology was only tendered because she had been in mourning. The most he would say was that his remarks had been 'ill advised'.

417 Needless to say the outburst was fully reported in the local press and on social media.

418 When Mr Choudhury was cross-examined about this deplorable and puerile episode he was entirely unrepentant and as his evidence progressed became more and more extreme. He asserted that he had been entirely justified because Mr Biggs was no different from Sir Oswald Mosley and had started a 'race war' in the Borough. His evidence at this point did him –and his leader – no favours. It must be said that Mr Rahman himself seems to have maintained press silence on this episode.

The EHRC's responses

419 One suspects that Mr Choudhury had had little hopes that the EHRC would actually help him – it was the letter of complaint itself that fuelled the press release. Fortune does sometimes favour the bold, however, because a senior solicitor of the EHRC wrote a very ill-advised response. The relevant paragraph read:

> ***The Commission agrees that you are rightly concerned about the remarks made by the Labour Mayoral candidate on the BBC's Sunday Politics show. However such remarks should more appropriately be reported to the police. Whilst the Commission is the regulator of the Equality Act 2010 for matters concerning discrimination and human rights, incitement to racial hatred is a police matter as it was made a criminal offence by the Race Relations Act 1976 and is not covered by the Race and Religious Hatred Act of 2006. Similarly, the publication of material***

that is likely to incite racial hatred may be a criminal offence under the Criminal Justice and Public Order Act 1994.

420 While the letter contains no more than statements of the applicable law, it does not take much imagination to see how it may be represented as being an acceptance by the EHRC of Mr Alibor Choudhury's complaints.

421 It is at this point that we meet the other significant figure whose presence was sensed throughout the trial but who was not called as a witness. Mr Ted Jeory is the News Editor of the Sunday and Daily Express Online. He has a keen interest in Tower Hamlets and makes clever use of his somewhat unusual surname to produce a blog entitled 'trialbyjeory'. Having received a copy of the EHRC letter from Mr Choudhury, and realising that it was going to be used to claim that the EHRC was agreeing he had a case, Mr Jeory took up the cudgels on Mr Biggs's behalf and wrote to the Commission pointing out the use to which its letter was likely to be put.

422 When Mr Jeory's intervention reached the EHRC, it hit the panic button. Its Chief Legal Officer was wheeled out to issue a strong retraction in a letter dated 11 April 2014:

In our letter, we expressed a view about remarks made by John Biggs on the BBC "Sunday Politics" broadcast on 22 September 2013. Mr Biggs is the Labour mayoral candidate for Tower Hamlets. I have now had the opportunity to review this letter and to discuss with colleagues. On re-assessment, in my view, this letter was inaccurate in going outside the remit of the Commission and in appearing to proffer an opinion in a situation where, as the letter makes clear, the matter is property the remit of other authorities, who are appropriately placed to address any issues arising.

423 The date of this letter is important as will be seen.

Press release 15 April 2014

424 On any view of s 118A of the 1983 Act this release appeared at a time when Mr Biggs was incontestably a 'candidate'. It has to be read, however, in the context of the preceding press releases and, in particular, to that of 19 February to which it is the follow-up.

425 What had happened in the interim was that on 31 March 2014 the BBC had broadcast an edition of *Panorama* which detailed the results of its investigation into the channelling of grant money predominantly to Bangladeshi organisations. The immediate result of the programme was that on 4 April the Secretary of State appointed PwC to carry out a Best Value investigation of the Council and, in particular, its policies with regard to allocating grants and the sale of Council properties. It should be said that Mr Biggs took no part in the programme. The programme was made by John Ware, and Mr Gilligan played a part in it. The parties did not, in the end, insist that I should watch the programme and I have not done so.

426 I shall return to the programme when I consider bribery.

427 The 15 April press release initially concerned with the broadcast but was headed 'John Biggs urged to distance himself from divisive journalists and apologize for Bangladeshis only remark.' The first part contains the statement that Mr Ware and Mr Gilligan had claimed that the Mayor had channelled money into Islamist extremist organisations: whether it is correct that this was claimed I do not know. The release contained a quotation from Mr Rahman in which he condemns the allegations of links to extremists and continues: 'They are divisive nonsense that smears the entire Muslim community in the East End and I urge John Biggs to distance himself from those peddling them and to retract his own offensive comment that I am working only for one community.'

428 There is, inevitably, a quotation from the author of the release, Mr Choudhury: 'Cllr Alibor Choudhury reported Biggs' remarks that Mayor Rahman was only working for the Bangladeshi community to the Equalities and Human Rights Commission who stated that he was "rightly concerned" but that the issue appeared to be a hate crime and therefore a matter for the police.' Mr Choudhury then went into direct speech: 'John Biggs needs to apologize for his own divisive remarks and distance himself from those journalists and pundits coming in from outside to damage our sense of community and cohesion in the lead up to the elections.'

429 What this press release was clearly implying was that the EHRC had substantiated Mr Choudhury's complaint and confirmed that what Mr Biggs had said was a 'hate crime' and a matter for the police. But, by the time he drafted this press release, Mr Choudhury knew perfectly well that the EHRC had retracted its earlier letter and had distanced itself from the view expressed in that letter. Mr Choudhury knew therefore that what he was saying about the EHRC was no longer true.

430 To imply that a man has been guilty of a hate crime and that this has been endorsed by a body such as the EHRC clearly meets the test of being a statement about the candidate's personal character and conduct. And it was false. And Mr Choudhury *knew* it was false. To use the admirably robust term employed by Thomas LJ in *Woolas*, it was dishonest.

431 The press release of 15 April 2014, therefore, did amount to a breach of s 106 of the 1983 Act. But there was more to come.

Press release of 23 April 2014

432 The previous press releases had been much repeated, expanded upon and embellished on social media. There were those in Mr Rahman's camp who felt that the racism charge

needed a bit more body. One of Mr Rahman's hand-picked candidates who was not Bangladeshi was Mr Stephen Beckett, another former member of the Labour Party. With the elephantine memory of the political activist he recalled the (otherwise) long-forgotten spat about the bogus fax some 19 years earlier. He fossicked in his archives and found Mr Keith's letter and memorandum, together with a photocopy of the two leaflets discussed and a clip of press cuttings from the period – though not, alas, the bogus fax itself. These were duly dusted off and handed to a delighted Mr Choudhury.

433 What Mr Choudhury concocted was the press release of 23 April 2014.

FORMER LABOUR LEADER ACCUSED JOHN BIGGS OF RACISM

LEAKED INTERNAL MEMO REVEALS BIGGS' QUESTIONABLE 20 YEARS RECORD ON RACE

Labour Mayoral hopeful John Biggs was facing mounting criticism today on his questionable record on race issues as a leaked internal memo from the Labour Party revealed that concerns had been raised regarding Mr Biggs's apparent prejudice as early as 1995.

Professor Michael Keith, now Director of the Centre for Migration Policy and Society at Oxford University and a former Labour council leader in the borough, wrote to Labour Councillors and MPs saying:

"In short, I would accuse John Biggs of racism" after Biggs was apparently involved in the production of an inflammatory election leaflet.

This is not the first time Biggs has been mired in a face row. In 1998 he campaigned against the creation of Banglatown to be added to Spitalfields Ward and in 2013 his Labour Group made false claims that housing allocations were being targeted to Mayor Lutfur Rahman's supporters – claims that were gleefully used as propaganda by the EDL.

Recently, Biggs caused controversy with irresponsible remarks on the Sunday Politics show claiming Mayor Rahman was only serving the Bangladeshi community, at a time when the EDL were planning to march through Tower Hamlets.

Cllr. Alibor Choudhury of Tower Hamlets First, who reported Biggs to the Equalities and Human Rights Commission for the remarks said:

"John Biggs' 20 year record of dubious racially-charged remarks is there for anyone to see. This latest revelation shows that he doesn't have the cultural sensitivity to run a diverse borough like Tower Hamlets."

434 One can leave aside for the present the issues of Banglatown and the housing figures. On the subject of the *Sunday Politics* show, it need only be said that the press release was demonstrably and deliberately false in suggesting that the broadcast had *preceded* the EDL march and thus, by implication, might have encouraged it.

435 What is this press release conveying? The answer is straightforward. What the release is intended to convey is:

a) John Biggs is a racist;

b) his colleagues in the Labour Party have known he was a racist for 20 years;

c) he was denounced as a racist in a 'Labour Party memorandum' 20 years ago;

d) he was expressly called a racist by a prominent member of the Labour Party, now an Oxford Professor;

e) he was involved in producing an 'inflammatory' (in the context, meaning 'racist') leaflet.

436 Mr Penny attempted unavailingly to convince me that all this press release meant was that Mr Biggs occasionally said and did things that were considered 'racially insensitive'. It did not mean that. The reader of that release would get the message loud and clear: 'John Biggs is a racist – and his own party think so too.'

437 This was the final official blast in the campaign to brand Mr Biggs as a racist. Mr Rahman and, in his quieter moments, Mr Choudhury, denied that there was any such campaign, but a straight question to Mr Beckett let the cat out of the bag:

THE COMMISSIONER: Mr. Beckett, why did you disinter this document and give it to Mr. Alibor Choudhury?

A. At the time, your Lordship, I was very concerned about the remarks that Mr. Biggs made on the Sunday Politics Show.

Q. That was in the September of the year before; yes?

A. That is right. I can remember speaking to Alibor Choudhury and asking whether or not we had received an apology or an explanation for Mr. Biggs' remarks, which I understand we hadn't. It prompted me to look back in my files at the time when I shared Labour group membership with Mr. Biggs. In looking through my files it helped prompt my memory and, of course, this document is very helpful for the court today.

Q. In what way?

A. It indicates that John Biggs has a history of racially insensitive language.

Q. So the purpose of giving the document to Mr. Alibor Choudhury would be, as it were, to support an argument that Mr. Biggs was a racist?

A. Yes. Fundamentally, yes, that is what it does.

438 Now, to be fair to Mr Beckett, he went on to say that he himself did consider Mr Biggs to be a racist, though he graciously conceded that he did not consider Mr Biggs to be a Nazi or someone who might have enlisted in the Gestapo.

439 Returning to the press release and comparing it with the analysis already carried out of the letter and memorandum of Mr Keith, it is apparent that the press release contains a number of serious factual misrepresentations and is a gross travesty of what Mr Keith had said. First and most importantly, no honest person reading Mr Keith's memorandum and doing so in its express context, would consider that Mr Keith had accused Mr Biggs of being a racist in a sense that would be understood by the ordinary reader.

440 Secondly, the quotation 'I would accuse John Biggs of racism' was not only taken completely out of context (the remainder of the sentence having been deliberately

excised) but was factually untrue because Mr Keith was not, at that point, referring to the allegedly 'inflammatory' leaflet.

441 Thirdly, neither the paragraph quoted nor the memorandum as a whole contained any statement connecting Mr Biggs with the production of the leaflet – even if it could properly be called inflammatory (which is extremely dubious).

442 Fourthly, the clear suggestion made by the press release was that this was a 'Labour Party' memorandum with some sort of official seal of approval instead of being, on its face, a personal document written to persuade a disciplinary committee not to discipline Councillor Ahmed.

443 That this press release was a gross and intentional travesty of the truth is not simply the view of the court. When Professor Keith saw the press release, he hit the roof. The following day he said publicly:

To dredge up out of context comments that were made almost twenty years ago to smear someone's character scrapes the gutter. I've known John Biggs for decades and, while we have had our differences at times, there is no doubt in my mind that he works for the benefit of the whole community in Tower Hamlets. To try to paint him as a racist is a cynical act of electoral dirty politics. He is the best candidate to represent all the communities of the borough in these difficult times and I am happy to support him.

444 Inevitably, having been given the Lie Direct by Professor Keith, Mr Choudhury did not issue a retraction. He let the press release do its work. As it did. The media loved it. Social media had a field day. And there was credible evidence that canvassers on the doorstep and THF activists at polling stations were saying 'John Biggs is a racist' to anyone (particularly in the Bangladeshi community) who would listen.

445 The release spawned wild allegations which, thanks to social media, went the rounds. Perhaps the wildest was the allegation that, if elected Mayor, Mr Biggs would close down mosques. Now it is easy to display a loft disregard for this kind of rumour. Clearly any reasonably educated person would know that a Mayor would not have the power to shut down mosques and, even if he had it, would not commit political suicide by attempting to do so in a borough with a 35% Muslim population. Such rumours, however, do have traction amongst the less sophisticated members of a community which had been cynically encouraged by Mr Rahman and his friends for several years to see itself as isolated, under threat and victimised.

446 At this point, the question has to be posed: is Mr Biggs a racist in the way that any ordinary person would understand the term? I need waste little time on this. Mr Biggs's political record speaks for itself and I have had the advantage of seeing Mr Biggs give evidence under testing cross-examination.

447 At the end of the day, not even Mr Rahman's counsel was prepared to argue that Mr Biggs was a racist. The highest he was able to put it was that, from time to time, Mr Biggs makes remarks which his political opponents claim are 'racially insensitive'. And Mr Rahman himself was not prepared to call his opponent a racist. One may trawl through Mr Rahman's lengthy witness statements but nowhere will one find a statement remotely approaching an expression of belief that Mr Biggs is a racist. When faced in the witness-box with a straight question from the court as to whether he considered Mr Biggs a racist, Mr Rahman, as was his wont, evaded the question and commenced a lengthy discourse on the subject of Mr Biggs's unfortunate remarks.

448 In short, neither Mr Rahman nor his counsel was prepared to say 'John Biggs is a racist.'

449 Consequently the claim that Mr Biggs was a racist was always false and, put in that stark form, Mr Rahman knew it was false. For what it is worth, the court has grave doubts as to whether even Mr Choudhury ever really believed Mr Biggs was a racist. He made exaggerated and ever more absurd allegations in the witness-box and his astonishing outburst in the Council Chamber in the 'black cardigans' episode equally shows him to be lacking in self-control. The court has no doubt, however, that, in compiling the press release of 23 April 2014 Mr Choudhury knew exactly what he was doing and what he was doing was deliberately concocting a wholly dishonest case for proclaiming Mr Biggs a racist, based on a distortion of a nineteen-year old document.

450 The court is satisfied, therefore, to the requisite standard that the press release of 23 April 2014 contained false statements concerning the personal character and conduct of Mr Biggs and that Mr Rahman did not have a genuine belief in the truth of those statements and neither he nor Mr Choudhury had any reasonable grounds for belief in their truth.

451 Consequently, even if Mr Penny's arguments as to the effect of s 118A of the 1983 Act were to be correct and the court were restricted to statements made on or after 14 April 2014, both the press release of 15 April and the press release of 23 April 2014, whether viewed in isolation from what went before or even in isolation from each other, were both breaches of s 106 of the 1983 Act. On this aspect, therefore, the Petitioners' case succeeds.

PAYMENT OF CANVASSERS

452 The next series of allegations to be considered is payment of canvassers, contrary to s 111 of the 1983 Act.

453 It must be said that the evidence here was limited. Ms Sabina Aktar, an unsuccessful Labour candidate in Stepney Green, and her father, Mr Faruk Ali told the court that, while out canvassing, they had encountered two women canvassing for THF who were from West Ham. When taxed with why they were canvassing in Tower Hamlets, they said they were being paid to do so by Mr Alibor Choudhury but might change to canvassing for Labour if made a better offer. The women were later seen canvassing in the vicinity of Redcoat Youth Centre polling station[45] on election day. Ms Victoria Obaze, another unsuccessful Labour candidate in Stepney Green claimed to have met someone after the election who claimed to have been paid by THF to canvass. Mr Miftah Uddin said that from time to time he saw a group of THF campaigners in the Stepney Green ward, where he lives, and, on speaking to them on one occasion, he was told that they were from East Ham and were being paid by Alibor Choudhury.

454 It is noticeable that Stepney Green was the ward where Mr Choudhury himself was the THF candidate and another senior member of Mr Rahman's circle, Mr Oliur Rahman[46] was his running-mate.

455 It is also noticeable that Mr Choudhury was the party treasurer and, as has been seen, the man through whose hands the finances of the party passed, involving no bank account and, so far as documentation produced to the court is concerned, no records or books of account of any kind.

456 The court accepts that, as Mr Penny argued, none of the 'paid' canvassers has been identified and Mr Choudhury stoutly denies making any such payments. By the same token, three of the witnesses are clearly partisan, being Labour candidates or a close

[45] Stepney Green Ward district 3.
[46] Not, apparently, any relation of Mr Lutfur Rahman.

relative. On the other hand, it seems an extraordinary story for these witnesses to have invented and, as there are three separate incidents, to have invented independently.

457 Although it was well tested by cross-examination, the court sees no good reason to disbelieve these witnesses.

458 There was also evidence involving text messages said to have been sent from the Mayor's Office from which it was said the court could infer use of paid council staff to canvass for THF. This evidence was unclear and somewhat confused and did not establish a separate breach of s 111.

459 In respect of the payment of canvassers evidence by the four witnesses listed above, the court is satisfied that there was a breach of s 111 of the 1983 Act.

BRIBERY

460 There are two aspects to the case of bribery. The first concerns the substantial grants made by the Council to organisations representing or serving the Bangladeshi or other Muslim communities. The second concerns the use of Council money to pay a Bengali language television channel and its chief political correspondent to promote Mr Rahman's campaign.

Grants

461 As for the facts relating to grants, the court is entitled to rely and does rely on the factual conclusions of the PwC report. This is a document in the public domain and, where I summarise its conclusions or quote its own summaries, the details can easily be accessed by those interested.

462 What the report shows is that:

a) a high proportion of grant decisions were made by Mr Rahman personally, aided by one or two close associates, normally Mr Choudhury and Councillor Asad;

b) in an abnormally high number of instances, the decisions substantially altered or completely ignored the results of the investigation and recommendation procedures carried out by officers of the Council;

c) enormous sums of public money had been paid to organisations in excess of that which Council officers had recommended and, in many instances, to organisations that had not even applied for grants;

d) the reason offered by Mr Rahman and Mr Choudhury for these discrepancies was that they were applying 'local knowledge', though what that 'local knowledge' involved other than local knowledge of the needs of their own political careers was never made clear to the court;

e) the processes by which the final figures were reached were largely undocumented.

463 By way of an example, one may cite two paragraphs of the PwC report:

4.71 Of the 327 applications that were successful in the final MSG 2012-2015 awards, a total of 15 applications receiving aggregate funding of £243,500 did not meet minimum eligibility criteria and so were not scored by officers. Officers did not recommend any applications for awards that did not meet the minimum eligibility criteria, rather recommendations for funding were made by Members in September 2012 for all bar one of these 15 ineligible applications. The remaining ineligible application was one of the 32 increases to recommended awards following the final review process where the applicant had not requested a review, as discussed in 4.54 above.

4.72 Further, 21 applications totalling £455,700, which did meet the minimum eligibility criteria, but did not meet the minimum quality threshold score of 40, were successful in the final awards. This was 18 applications and total awards of

£407,700 more than those recommended by officers, as discussed in paragraph 4.36 above. We note one organisation, which was recommended by officers but did not meet the minimum quality threshold, was not successful in the final awards.

464 By way of another example, grants totalling just under £100,000 were handed out to ten organisations, all Bangladeshi or other Muslim organisations, for lunch clubs when none of them had even applied for a grant[47].

465 The so-called '954 Fund', apparently taking its name from the fact that the initial amount available for grants from the Fund was £954,000, was again criticised by PwC who said[48]: 'Of the £522,000 approved awards from the 954 Fund, £352,000 was awarded without an open application process and [the balance of] £170,000 related to the Mela[49]…'

466 PwC analysed the increases between officer recommendations and the final sums fixed by the Mayor in two maps of the Borough by ward showing which wards had had their grants increased (in some cases massively increased) and which wards had had their grants reduced from officer recommendations. A comparison of those maps with how people voted in 2014 shows an interesting correlation between how much money was channelled to the ward and how many voters turned out for THF. In Stepney Green, the total recommended by officers was £99,708. By the time it had been signed off by Mr Rahman and Mr Choudhury, the grant total had become £258,500 (an increase of over 150%). Of course, it may be pure coincidence that Stepney Green happened to be the ward where Mr Choudhury was the THF candidate.

467 Shadwell's grant increased from £204,386 to £460,750. Shadwell returned two THF candidates, one of whom was Ms Rabina Khan. Bow East, on the other hand, saw its

47 PwC report paras 4.125 & 4.126.
48 Para 4.128.
49 The Boishakhi Mela, a Bangladeshi religious festival to mark the Bengali New Year.

grant reduced from the officers' recommendation of £99,397 - cut by roughly a third to £67,000. But then, Bow East returned three Labour Councillors.

468 PwC attempted to marry up the grants to the known levels of deprivation in the Borough but could not find any real correlation:

> ***The Authority has stated that the "Authority has provided PwC with a wealth of analysis demonstrating clearly that resource has followed need". The Authority have stated also that there are "clear and direct references to relevant needs analysis within the grant specification documentation". Figure 6 below, when reviewed in conjunction with the overall award data presented in the table at paragraph in 4.68 above, and our knowledge of the decision making process as a whole, does not clearly demonstrate the basis on which relative deprivation has been a consideration in the decision to make the final MSG 2012-2015 awards. This is in light of the fact that certain areas in the east of the Borough, with levels of deprivation equal or greater to those wards situated in the west, were awarded less monies in the final MSG 2012-2015 awards than had been recommended by officers in August 2012.***

469 Evidence was given on this topic by Mr Rahman, Mr Choudhury, Councillor Asad and Councillor Mahum Miah. Mr Miah was ostensibly the Chairman of the Corporate Grants Programme Board (CGPB). His evidence was that he regarded his function as simply that of chairing the meeting. He claims to have taken no real part in any decision making and left everything to other people (usually Mr Choudhury). Mr Miah was not an impressive witness. When Mr Hoar opened his case, he stated that the allegations of malpractice against Mr Miah were so grave that, if they were established, it would be necessary formally to name him in the report. Having seen Mr Miah and having heard his evidence, it is clear that he is not (whatever he may feel) a major player in the Mayor's inner circle. He struck the court as a man who would essentially do what he was told by anyone with a stronger character than himself. While the allocation of grants that occurred under this

supposed chairmanship was certainly grossly improper and possibly (the court does not need to decide this) unlawful under local authority law, he seems merely to have nodded the decisions through without making any waves.

470 When Mr Rahman, Mr Choudhury and Mr Asad gave evidence, they sought to convince the court that the process had not been improper. They had applied their knowledge – their 'local knowledge'- to the applications. Where organisations had failed to meet the eligibility criteria or to achieve the minimum point score, they had invited the organisations to apply for the grant to be reconsidered and this was how organisations deemed totally ineligible or who had failed, so to speak, to 'make the cut' had found themselves the grateful recipients of tens of thousands pounds of public money.

471 To cut short what was often detailed and lengthy examination of this question, it is sufficient to say that none of the three men concerned gave credible evidence about the processes whereby, by the time that the Mayor made his final decision, eligible organisations had substantially increased their original entitlement, while ineligible organisations had suddenly and inexplicably become eligible for large sums of money. Though the court was told that documents existed which would explain the process, none were produced to the court and, more significantly, none were produced to PwC which remained as much in the dark as the court. Not that it would have helped if documents *had* been offered to the court which had not produced to PwC because the court had been assured by Mr Robin Beattie, the official co-ordinating the data being supplied to PwC (patently a reliable witness), that PwC had been provided with all the relevant documentation.

472 The matter, however, did not rest there. The Petitioners called Ms Deborah Cohen. Ms Cohen now has a senior post with an NHS Foundation Trust but, at the relevant time, she was a senior officer of Tower Hamlets Council. Her final title was Service Head for Commissioning and Health, Education, Social Care and Welfare. One of her functions was overseeing grants programmes in her field.

473 Ms Cohen had first-hand knowledge of the Mayor's buccaneering approach to grant-making and his total disregard of the established rules and procedures of his Council. Ms Cohen decided to become a 'whistle-blower' – not this time a dog-whistle. She provided material to the makers of the *Panorama* programme and, when the PwC inspectors came on the scene, she gave valuable information to them and is acknowledged as so doing (albeit anonymously) by the inspectors. Unfortunately for Ms Cohen, her identity was revealed to her employers: the programme-makers had engaged a young woman of Bangladeshi heritage to act as an undercover reporter, posing as a grant applicant or similar. At one point they sent this woman a copy of the material they had obtained from, amongst others, Ms Cohen, whom the material named. The woman seems to have decided that her loyalty to the Bangladeshi community translated into loyalty to Mr Rahman and she turned the material over to his office.

474 Though Ms Cohen, as a whistle-blower, could hardly be sacked, her life was made intolerable and, in September 2014, having assisted the inspectors to the best of her ability, she left for Cambridgeshire.

475 She gave evidence in particular of two incidents. The first occurred in October 2013. The officers had prepared a spreadsheet containing their recommendations for grants. Councillors Choudhury and Asad asked for the document, saying they needed to show it

to Mr Rahman. About a week later the two Councillors returned, sat Ms Cohen down and dictated to her what Mr Rahman had decided. The results were dramatic. What Ms Cohen saw as good and useful programmes, such as the grant to the Alzheimer's Society, had been slashed in order to free substantial funds for organisations that officers had either declared ineligible or eligible only for modest grants. All three men on oath flatly denied this episode and said that Ms Cohen was lying and the document she had written up[50] was, in effect, a forgery. PwC confirmed that the changes said to have been dictated to Ms Cohen had been the ones implemented[51].

476 The second incident occurred in mid-December 2013. Mr Rahman called for a list of all organisations that had been shortlisted for contracts in the Domiciliary Care programme. At a meeting with Ms Cohen, attended by Councillors Asad and Choudhury, Mr Rahman handed her the list with crosses marked against those whom he had arbitrarily decided to exclude. Ms Cohen wrote on the document 'X are written by Mayor'. Ms Cohen was somewhat shaken by this high-handed procedure. The following day, she consulted her superiors and members of the Council's legal team. Immediately after these meetings she wrote a manuscript note and later typed it up as a file note. The note contains the following:

> ***I told RMG[52] that it was really difficult and I felt quite shaky and found it impossible to challenge what the Mayor was asking me to do in front of 2 other councillors. RMG was sympathetic and said it was bordering on bullying. I said that the Mayor had been very pleasant throughout … and he said that this was an 'informal meeting' at which he was 'trying to help me and my officers' as he knew things about some organisations eg that some of them were shams just set up for the tender'. However he was also clear about some organisations that he on no***

50 Which was actually marked at the time by Ms Cohen 'dictated to me by Cll's AA [Asad] and AC [Choudhury]'.
51 PwC report para 4.101.
52 Mr Robert McCulloch-Grahame. Ms Cohen's line manager.

account wanted put through to tender stage and this was totally inappropriate and outside procurement rules.

477 What is important about this incident is not the merits or demerits of the conduct of Mr Rahman and his Councillors, although it may be remarked in passing that public contracts are strictly governed by European law and UK regulations, all of which seem to have been flatly ignored. What is important is the evidence of Messrs Rahman, Asad and Choudhury who denied that the meeting had ever taken place and asserted that the contemporaneous documents, including the list with the 'Xs' were false and concocted. These allegations were put to Ms Cohen in cross-examination by Mr Penny, with increasing desperation, as it became obvious that Ms Cohen was a totally honest witness.

478 In order to justify the attack on her, it was suggested, both in cross-examination and in the evidence of Mr Rahman and Mr Choudhury, that Ms Cohen was lying because she bore the administration a grudge either for not promoting her or, though the evidence on this was very confused, for criticising her for delays in signing contracts. Mr Choudhury teetered on the brink of suggesting that Ms Cohen was another member of the ranks of racist or, indeed, fascist enemies by whom Mr Rahman was encircled.

479 Having heard the evidence of Ms Cohen, Mr Rahman, Mr Asad and Mr Choudhury on these incidents, I had not the slightest doubt that Ms Cohen was telling the court the truth and that the three men were quite deliberately lying.

480 In closing, Mr Penny, as a realist, obviously recognised that he had a problem with these incidents but submitted (albeit in much more elegant language) 'so what?' Did Ms Cohen's evidence do any more than confirm the Mayor's approach to grants and contracts

which is already abundantly documented in the PwC report? In short, was Ms Cohen's evidence important in considering the bribery allegation?

481 Mr Penny's argument is not without merit. Ms Cohen did little beyond confirming, though emphatically, the fact that the making of grants and the allotting of contracts was in the hands of Mr Rahman and that he exercised his powers in disregard of the Council's officers, the members of the Council and, arguably, both local authority and public procurement legislation.

482 The importance of her evidence, however, goes beyond the narrow issues of the two incidents described. Faced with evidence about incidents which might, on one view, be peripheral to the central case, the men involved could have attempted to explain them away or to adopt Mr Penny's line of questioning the importance or relevance of the incidents. They did not choose to go down this route. Instead they chose to lie and lie blatantly and to instruct counsel to make wholly gratuitous allegations of perjury and forgery against a blameless civil servant.

483 Given that, on these and other issues, the court has been asked to accept the evidence of Mr Rahman and Mr Choudhury as being truthful, it is not without significance that they have been caught out in obvious and, ultimately, unnecessary falsehoods.

484 Where does this bring us when considering this aspect of bribery? What has been proved may be summarised as follows:

a) the administration of grants was firmly in the personal hands of Mr Rahman, assisted by his two cronies, Councillors Asad and Choudhury;

b) in administering the grants policy, Mr Rahman acted in total disregard of the Council's officers, its members and, almost certainly, the law;

c) grants were increased, substantially and unjustifiably, from the amounts recommended by officers who had properly carried out the Council's investigation and assessment procedure;

d) large grants were made to organisations who were totally ineligible or who failed to meet the threshold for eligibility;

e) grants were made to organisations that had not applied for them;

f) the careful attempts of PwC to marry up grants to ascertainable levels of deprivation and need in the Borough had resulted in the conclusion that it was impossible to do so: grants were not based on need;

g) the lion's share of grants went to organisations that were run by and/or for the Bangladeshi community;

h) the main thrust of Mr Rahman's political campaigning both as leader of the Council and later as Mayor was to target the Bangladeshi community and to convince that community that loyalty to the community meant loyalty to him;

i) even within the Bangladeshi community, grants were targeted at the wards where support for Mr Rahman and his candidates was strongest while wards where their chances of success were slim lost out.

Conclusions on bribery by grant

485 It must be confessed that this is by far the aspect of the case that has occasioned the court the most difficulty. Bribery by grant is, patently, some distance away from the simple and straightforward bribes paid by aspiring politicians in the days of Mr Disraeli's first ministry.

486 Some questions may easily be answered. Was it a purpose (albeit not the only purpose) of these grants to convince the beneficiaries of the activities of the organisations concerned

that the Mayor was looking after their community and the continuance of this benefit depended on his being re-elected in 2014? The answer to this question is undoubtedly: yes.

487 Were those grants which were improperly made (whether by increasing the grant from the officers' recommendations, or by making grants to those deemed ineligible, or by making grants to those who had not sought them) targeted at the Bangladeshi community in general and at that community in the wards likely to vote for Mr Rahman and to return THF Councillors? Patently, yes.

488 Was the making of those grants corrupt? Again, this seems inescapable.

489 Clearly by any ethical or moral standards this is bribery: but is it bribery contrary to s 113 of the 1983 Act? It is this which has greatly exercised the court's mind.

490 To return to s 113(2)

(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf-

(a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or

(b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or

(c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter,

or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter.

491 The grant money was obviously not given directly to the voters and it is probably right to say that it was not given to another person 'on behalf of any voter'. Was it, however, given 'to or for any other person in order to induce any voter to vote or to refrain from voting'? Section 113(2)(a) does not require that the recipient of the money – the 'other person' - should be the person doing the inducing of the voter: that is covered by paragraph (c). Under paragraph (a), if payment by the candidate to X induces Y, the voter, to vote for the candidate (or not to vote for his rival), then this paragraph is met.

492 The court was particularly interested in those instances of grants being paid to those who were ineligible and, to an even greater extent, to those who had not applied for them. Leaving aside the impropriety of distributing largesse to those who had not asked for it, one may ask, what is the purpose of this exercise? The lunch clubs are a very good example. They were given money without having applied for it. The beneficiaries tended to be older and less well-off members of the Bangladeshi community. There was cogent evidence, which the court accepted, that close supporters of Mr Rahman would make it clear to those attending the lunches that they owed their good fortune to Mr Rahman, with the pretty obvious inference that the only way it was going to continue would be if Mr Rahman remained in office.

493 I have, therefore, and not without some hesitation, come to the conclusion that the requirements of paragraph (a) have been met.

494 The next stage is to consider the opening words of the section. As has been said, Mr Rahman did not provide the grant moneys 'directly' – that is to say, out of his own pocket. Did he, however, 'indirectly … by any other person on his behalf' give money to the favoured organisations? That he indirectly gave the money and did so 'by any other

person' seems indisputable. The 'other person' was his own Council and the local taxpayers who funded it.

495 The question that has caused the court the most trouble is whether the grant payments may be said to have been made 'on behalf of' Mr Rahman. At one level, they are made 'on behalf of' the Council but, on another level, if they are deliberately channelled in certain directions by the man who has *de facto* control over who gets what and are done so with the purpose of inducing those who benefit from the grants to vote for him, the payments can be said to be made 'on his behalf'.

496 Here the court is assisted by a comparison with the Bribery Act 2010. Channelling public or company money to a recipient in order to induce him to perform a relevant function is precisely what s 1 of that Act is penalising. Arms company X promises the Defence Minister of Ruritania that, if the Ruritanian army acquires twenty of X's new tanks, the contract will contain a 'commission' or 'finder's fee' paid to Y Limited, a company nominally controlled by the Minister's brother-in-law. This is indeed the basic stuff of international bribery and precisely the mischief at which the 2010 Act is aimed. The key element is, however, that the money is paid indirectly (in this case by the Minister's own government) and received indirectly and the money involved will not be the money of the payer (because the bribe will be found out of the money paid by the army for the new tanks).

497 Mr Penny argued very attractively that, even if the court concluded (contrary to his main argument) that Mr Rahman had indeed abused his position to channel grant money to organisations run by or for the Bangladeshi community and had done so, in part at least, in order to secure their votes, then this should properly be regarded as being an example

(albeit a serious example) of 'pork-barrel politics' but not bribery contrary to s 113 of the 1983 Act. In short, his conduct fell on the right side of the line that separates the two.

498 Attractive though the argument was, the court was unconvinced. The difference between 'pork-barrel politics' and bribery is that the former is not in the hands of a single individual or directed to the election of an individual candidate. The reason why Mr Rahman's conduct is on the wrong side of the line is because he was, in reality, the sole controller of the grant funds and he manipulated them for his own personal electoral benefit.

499 A man in control of a fund of money, not his own, who corruptly uses his control to make payments from the fund for the purposes of inducing people to vote for him is, in the judgment of the court, within the opening words of s 113(2) and thus guilty of bribery.

500 It follows that the court is satisfied that the conduct of Mr Rahman and his agents Mr Asad and Mr Choudhury in making grants does amount to the corrupt practice of bribery under s 113 of the 1983 Act.

Bribery and the media

501 There is no doubt that the relationship between Mr Rahman and the Bengali media has always been very close. Most of that media is strongly – in the case of the *London Bangla* often intemperately – partisan.

502 There is also no doubt that sums of grant money were disbursed to media organisations, sometimes for worthy causes. It is noticeable, though, that all these grants were made to media organisations serving the Bangladeshi community: the court was given no evidence of any grant of public money to any media organisation serving any other community. Mr

Rahman's counsel made much of the fact that a grant once thought to have been made to the *Bangla Mirror* was in fact made to a sister organisation the British Bangladeshi Who's Who, though why it should be thought proper for public money to be spent on a publication in which, unsurprisingly, Mr Rahman himself featured prominently, was never explained.

503 Though the payments to press organisations may (just) colourably come the right side of the line that separates ingratiating oneself with the press from outright bribery, payments to the Bengali televised media went further, and, once more, the factual conclusions of the PwC report confirm it.

> ***2.99 On 21 January 2013 the Office of Communications ("Ofcom"), which, amongst other things, regulates the content of television broadcasts, issued a bulletin in which it set out findings against five separate broadcasting companies; ATN Bangla UK Limited, Bangla TV (UK) Limited, Prime Bangla Limited, Channel S Global Limited and Runners TV Limited. The subject matter of these findings was a broadcast each of the companies had aired which purported to be for the purposes of disseminating information about services of the Authority to sections of the community within the Borough. The findings were that the advertisement was in breach of section 321(2)(b) of the Communications Act 2003 and Rule 7.2.2(g) of the Code of Broadcast Advertising as it constituted political advertising. Ofcom concluded "we considered that the advertisement served to portray the Mayor of Tower Hamlets, Lutfur Rahman, in a positive light".***
>
> ***2.100 In response to a Members Enquiry, the Service Head for Communications and Marketing disclosed that the Authority had made payments to each of the five companies as a fee for the broadcast.***
>
> ***2.101 The Authority has stated that it did not agree with Ofcom's ruling, but it did not in fact challenge it. Therefore, the facts indicate that Authority monies were used to pay for an informational broadcast that was ruled by the responsible regulator to be intended to "promote the image and reputation of the Mayor" in breach of various codes including the Authority's own.***

2.102 The Authority has asserted that it has made a number of process improvements subsequent to this Ofcom Broadcast Bulletin, including introducing a Communications Protocol.

504 What PwC is reporting can be summarised as follows. Mr Rahman caused the Council to pay public money by way of 'fees' for broadcasts which were ostensibly about the Borough and its administration but which were in fact personal political broadcasts on behalf of Mr Rahman, promoting him to the Bengali-speaking electorate of Tower Hamlets. In the context that Mr Rahman fully intended to stand for re-election when his first term of office expired, the broadcasts cannot be regarded as other than intended to promote his political career. Furthermore, despite earlier adverse rulings from Ofcom, both Mr Rahman and the television companies persisted in publicising Mr Rahman and earned further adverse rulings from Ofcom when they did.

505 Channel S seems to have been a particular favourite of Mr Rahman and it is noticeable that it was paid more than its four rival channels.

506 Does this meet the criteria of s 113 of the 1983 Act? It involves a payment made 'indirectly' 'by or on behalf of' Mr Rahman to 'another person' in order for that person to induce voters to vote for Mr Rahman. It was undoubtedly corrupt in the sense that Mr Rahman knew that it was wrong for him to spend public money in this way and he persisted even after the initial Ofcom rulings.

507 In the circumstances, the court must find that, in relation to payments to the media, Mr Rahman was guilty of bribery.

508 The chief political correspondent of Channel S was a man called Mohammed Jubair. The dealings with Mr Jubair were murky in the extreme. Mr Rahman seems to have arranged

for him to be employed by the Council (at taxpayers' expense), apparently to advise on media relations with the Bangladeshi community. It is pointed out that, while there was an advisor in relation to the small Somali community (though not covering media relations with that community), there was no advisor (media or otherwise) in respect of any other of the Tower Hamlets communities and no media advisor engaged to deal with community relations as a whole. It is difficult not to see this as a further example of Mr Rahman's administration being heavily skewed towards his own community rather than the entire Borough.

509 The payments made to Mr Jubair were subjected to the scrutiny of PwC and did not come up to that scrutiny. They were, to a significant extent, unaccounted for and some £20,000 of expenditure was not represented by time sheets.

510 Mr Jubair was not called to give evidence. Beyond Mr Rahman's evidence, there was no evidence before the court to show that Mr Jubair had carried out any work on behalf of the Council. The reality is that Mr Jubair's function was to publicise Mr Rahman and his achievements and to ensure that favourable coverage continued in the media, particularly Channel S with which he remained closely associated.

511 In the view of the court, public money was misused to pay a publicist for Mr Rahman.

512 Given Mr Jubair's close connection with Channel S[53] and the links between that company and Mr Rahman, it seems sensible to regard Mr Jubair's appointment as being part of the corrupt relationship between Mr Rahman and Channel S rather than a free-standing episode of bribery.

[53] It is not entirely clear what else, if anything, Mr Jubair did to earn his money.

TREATING

513 As originally framed the case on treating was quite widely spread but, by the conclusion of the trial, this came down to two episodes. The first in time appeared when Mr Choudhury gave evidence about election expenses and disclosed documents showing that a Women's Eid Reunion was held at the Mulberry School for Girls in Richard Street E1 on 1 December 2013. Invitations for this event were issued in the name of Mr Rahman and food was provided to the ladies for free. Mr Rahman attended and made a speech. But for the fact that Mr Choudhury had declared the cost of this event as election expenses, however, there would be nothing to raise a suspicion of treating. The court heard nothing else about this event and such evidence as exists is all too shadowy to justify a finding to the requisite standard of proof of treating.

514 The second event was much more significant. It was indubitably a political event because, putting it neutrally, a declaration of expenses relating to this event was made by Mr Choudhury to the Electoral Commission.

515 In the Canary Wharf complex is a venue known as the East Winter Gardens. ('the EWG') The EWG is owned by Canary Wharf Group plc and is let out for functions, its facilities and situation making it a fairly expensive and upmarket venue. Mr Howard Dawber is the company's strategic advisor, responsible for (*inter alia*) the company's external relations with national and local politicians, corporate social responsibility and, in 2012, the company's involvement with the London Olympics.

516 The company, the court was told, makes regular and generous political donations. All of these are fully declared and entirely within the law. In January 2014 it acceded to a request from, putting this again neutrally, Mr Rahman and his associates to host a

substantial dinner for some 600 guests. Mr Dawber agreed that the company would provide the venue and the staff and, after further representations from the Town Hall, agreed to pay the cost of the catering at the event. Ostensibly, the event was to celebrate Mr Rahman's three years in office as Mayor and his achievements in that office.

517 In reality, it was a political promotion event in support of Mr Rahman's candidacy in the forthcoming Mayoral election. There was a PowerPoint presentation and an accompanying brochure. These concentrated virtually exclusively on Mr Rahman whose photograph appeared on almost every page. Mr Rahman made a speech in which, to be sure, his re-election was not omitted. The event was attended by what might refer to as the Great and the Good of Tower Hamlets. There were representatives of local religious communities most of whom, to be fair to Mr Rahman, had benefitted substantially from Council largesse, irrespective of denomination. Prominent among the guests was Mr Hafiz Moulana Shamsul Hoque[54], the Chairman of the Council of Mosques of Tower Hamlets, whom we shall be encountering again under 'spiritual influence'. Those attending were even given a 'party bag' consisting of political promotional items such as promotional mugs.

518 Canary Wharf Group did not stint its guests. Although the final figures are not entirely clear, the total cost to the company (fully and properly declared and appearing in its accounts) was well in excess of £40,000. Mr Choudhury declared the political donation to the Electoral Commission at a much lower figure, later claimed this was a mistake and put in a revised figure during the course of the trial (and after Mr Dawber had given his evidence as to the real cost of the event).

[54] Various spellings of the name are to be found in the documents. This version is that of Mr Hoque himself in his witness statements.

519 Mr Rahman and Mr Choudhury made two assertions about this event. The first was that it was organised by Mr Choudhury acting as the (at this stage unofficial) agent of Mr Rahman and thus purely in a political capacity. This was untrue. It turned out that it had been almost entirely organised by a paid official of the Council who had arranged it in his working hours. Again small and unnecessary lies.

520 The other assertion was that this was a fundraising event and had raised the sum of £56,000. This story got somewhat embellished along the line and, by the time Mr Choudhury had finished with it, guests were sponsoring tables for the benefit of the Mayoral campaign. The overwhelming majority of the evidence was to the effect that this event had not been a fundraising event and that the guests had neither paid nor been asked to pay for their tables. Mr Rahman was able to call one witness, Bashir Choudhury, who claimed to have paid for two tables. He was very weak on the details and said he had 'paid' for the tables by meeting one of THF's printing bills some months later. Beyond that there was no evidence of actual funds raised at all. Given that THF had no bank account into which sponsorship or other donations could be paid and that there were no books of account through which the money could pass, the court was entitled to take – and did take – this story with a large pinch of salt.

521 Those who attended the dinner saw no evidence of any fundraising. Mr Dawber did not, nor did Fr O'Brien (representing the Roman Catholics) nor did Mr Silver, a senior and respected member of the Jewish community. These witnesses were accepted as being truthful and reliable.

522 The clear conclusion of the court is thus that this was a political dinner, at which food and drink were served, for the sole purpose of promoting Mr Rahman and his Mayoral

campaign. The guests did not pay for their meal. To that extent, the event ticks the boxes for the offence of treating. And yet. And yet…

523 This event was four months before the election. There was no evidence that any of the guests who were not previously committed to Mr Rahman's cause were persuaded by this hospitality, however lavish, to award him their vote. As has been said, the more distant the episode relied on as treating from the election itself, the more difficult it is to establish that an electoral offence has been committed.

524 Though I am sure that a sterner and more rigorous judge than myself would harden his heart and find this to be treating, I am inclined to give Mr Rahman the benefit of the doubt.

525 Consequently the court is not satisfied to the requisite standard of proof that Mr Rahman has been guilty of treating and this part of the Petition does not succeed.

UNDUE SPIRITUAL INFLUENCE

526 This is, without any doubt, the most troublesome part of the case. In the Britain of 2015 anything that concerns Islam is extremely sensitive. Whatever this judgment says on the subject of spiritual influence is likely to prove controversial and may cause offence, either genuine or feigned. As has already been pointed out, when this judgment discusses the relevant law, it would have been easy to evade the issue by holding that, notwithstanding the clear words of the statute, spiritual influence should be treated as obsolete.

527 To evade an issue or to reach a 'fudged' solution in the hope of avoiding offence would be an abdication of the judicial function. It may sound pompous to cite the old Latin tag *fiat Justitia ruat caelum* (let justice be done though the heavens fall) but a court that

works on any other principle and does so for fear of the consequences is betraying the trust that the public reposes in it.

528 It is accepted, therefore, that this section of the judgment cannot help but be controversial.

529 The Petitioners' case may be summarised as follows. In formulating his campaign, Mr Rahman, as well as playing the race card, was determined to play the religious card. The campaign would be targeted at Tower Hamlets' Muslim population with a stark message: 'Islam is under threat: it is the religious duty of all devout Muslims to vote for Mr Rahman and his party.'

530 It was not, the Petitioners said, the first time that the religious card had been played. There was a persistent history of Mr Rahman attacking his opponents who happened to be Muslim by claiming that they were not, unlike himself, devout and pious Muslims. When leader of the Council, Mr Rahman had caused controversy by issuing a formal invitation from the Council, seemingly without consulting his colleagues, to the Imam of Mecca to pay a visit to the Borough. Clearly the Imam of Islam's holiest place is a man who would be accorded the highest respect, even reverence, by the faithful. When he arrived, Mr Rahman took good care to ensure that he personally gave the Imam a conducted tour of Tower Hamlets with photographers in attendance. On the face of it, there was not the slightest harm in all this and is it light years away from the offence of spiritual influence. On the other hand, it did Mr Rahman no harm electorally when he ran as an independent for Mayor and it was a sign of things to come.

531 In the 2014 campaign, Mr Rahman realised that it would be all very well him and his supporters claiming that true Muslims should vote for him or even that it was their religious duty to do so, but, because he and his associates were politicians, not clerics,

such a campaign would be seen as a political campaign and not as a religious movement. The only way to give real credibility to the campaign would be to obtain the open support of the Borough's Muslim clergy.

532 The Petitioners' case is that Mr Rahman solicited and obtained the support of the clerics, largely through a close relationship between himself and Mr Hoque, the Chairman of the Council of Mosques. Though perhaps not in the same league as the Imam of Mecca, the Chairman is someone of considerable power and influence amongst the Muslim clerics of the Borough and to have him as an ally would be a trump card in Mr Rahman's re-election bid.

533 The Petitioners rely on two incidents involving Mr Rahman and Mr Hoque. The first of these occurred at a meeting held by a Bangladeshi organisation known as 'Tower Hamlets Jagroto' at the Water Lily, a venue in Mile End Road, on 4 May 2014. The guest of honour was Mr Rahman and the event was avowedly a political rally in his support. Mr Rahman shared the platform with a number of Muslim clerics, with Mr Hoque prominent in the front row.

534 The official version, as related by Mr Rahman and Mr Hoque (to whom we shall return) was that this was no more than a political rally with no religious content. The meeting was, however, attended by an enthusiastic young supporter of Mr Rahman called Syed Naem Ahmad who posted a long report of the meeting on social media. Mr Ahmad gave evidence and the court is satisfied that the account posted by him is substantially accurate. It was common ground that all, or virtually all, to those attending were from the Bangladeshi community.

535 The report seems originally to have been intended for the *Bangla Mirror* newspaper but was given general currency by Mr Ahmad's post. Under the heading 'Jagroto Tower Hamlets organises meeting in support of Lutfur Rahman', the relevant parts of the report read:

> ***Reject hatred and discrimination, says (sic) Islamic scholars and community leaders…***
>
> ***Prominent Islamic scholars and community leaders in Tower Hamlets have urged the general public to vote for Mayor Lutfur Rahman to retain equal rights and the development of the borough. Islamic Scholars, Mosque Imams, Islamic Teachers, Community Leaders and elderly people from different wards of Tower Hamlets made this appeal to general people in a meeting held in Water Lily in East London on 4 May. The meeting was organised by Jagroto Tower Hamlets.***
>
> ***The leaders said that once highly deprived Tower Hamlets was now placed in higher grid of national evaluation list in education, development and housing. After a long struggle against racism and discrimination, Tower Hamlets is now the first choice for people of all races and religious background. One group of people, who never appreciate development and cohesion are now practicing dirty tricks to stop this progress. They want to achieve their goal by dividing the community. Ulamae[55] Keram and Community leaders said that we have been treated as second class citizens because of our faith and race. We become targets in election time which is causing panic and tension in the community.***

[55] Ulama (as it is generally anglicized) signifies an important religious scholar.

We have noticed that Islamic Scholars, mosques and Imam of Kaba[56] have been targets of political misrepresentation. We condemn these actions and call upon [text missing here]

Council of Mosques' Chairman Maolana Shamsul Haque[57] Presided over the meeting and Jagroto Tower Hamlets leader Maolana Syed Naseem Ahmed conducted it. The Executive Mayor of Tower Hamlets addressed the audience as Chief Guest.

[There then followed a list of some 24 people who with 'others' are said to have made speeches. The list contains politicians, journalists and Muslim religious leaders.]

In his speech Mayor Lutfur Rahman expressed his gratitude towards Islamic scholars for supporting and encouraging him and asked for their blessing so that he can be on the path of truth, honesty and have faith in Allah always. He said that, I grew up in Tower Hamlets and witnessed how my ancestors worked and suffered hard just for their survival. I was to present a safe and developed borough to our next generation. I want to work for everyone irrespective their race, religious belief and cultural background. He also said that my religious belief and Bangladeshi heritage is my pride. I will never forget the love and affection that the people of this borough have shown to me and I will always keep it up. I want to serve you as a child of yours.

Maolana Shamsul Haque said that the society of Islamic scholars want good relations and cohesion in the society. However, when some people target us on purpose, it is our moral duty to protect us. I want to express without any hesitation that religion never creates division in society but unites everyone. He urged

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56 The Imam of Mecca referred to above. The Kabaa or Ka'aba (normal western spellings) is situated within the Al-Masjid al-Haram Mosque in Mecca and is the holiest place in Islam, towards which all Muslims turn to pray.

57 Mr Hoque mentioned above.

everyone to vote for Mayor Lutfur Rahman to retain truth, righteousness and practice religious belief.

536 The second of these episodes occurred at a wedding reception held on 11 May 2014, again at the Water Lily. This, too, was attended by Mr Rahman as guest of honour and the senior Muslim cleric present was again Mr Hoque. The wedding was apparently well-attended and was used by Mr Rahman as a political platform. He made a lengthy speech[58] beginning:

Here present Chairman of Council of Mosques [Mr Hoque], Scholars of Islam, my respected brother Sirqjul Haque and the respected audiences, Salam. … I was very shy and worried to hear all the praises and appreciations by the Islamic Scholar[59] (Presenter). I am very grateful to you all for the generous comments you made. I will say few words; first of all I am grateful to Allah. I am grateful that God gave me opportunity to serve you & to look after you…

537 Later in the speech Mr Rahman said:

The only BME place is in Tower Hamlets, there are 15 directly elected Mayors exist (in the UK), only in Tower Hamlets the BME, Bangladeshis and Muslims. There are no places like this leadership. In order to move from this some people provided misinformation from Panorama to Dispatch and by walking door to door, they also provided untrue statements. What is the reason behind this, the reason is that at any cost they don't want this leadership. Insha'Allah, my belief is that if the people of Tower Hamlets and you want this leadership no one can be able to move us from Muslims Bengali leadership, Insha'Allah.

538 He ended:

I am very grateful to those Islamic clerks and scholars, who are here today. I know your time is valuable. I will only ask you all to pray for me and my team, salam.

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58 All citations from this event are from an English translation as the event seems to have been conducted throughout in Bengali.

59 Who had introduced Mr Rahman's speech and urged the audience to vote for him.

539 He was followed immediately by Mr Hoque. There are two slightly different translations of what he said but none of the differences are of any significance. I shall adopt that of Mr A. K. Asad, the interpreter engaged by the Petitioners. Mr Hoque said:

> ***Today we, our relatives, neighbours and the residents of Tower Hamlets living in this community, we are fortunate that we are able to give a gift from our community to the people of Britain we have decided to nominate our Mayor again, the Mayor is also present here, Insha'Allah; we will pray now and would like to thank the two families who have invited us.***
>
> ***At this moment the responsibility we have as we are celebrating the wedding event, we will elect the Mayor again and celebrate his victory. I urge all of you to keep in mind that the forthcoming election will be held on 22nd. We have to forget 'win or lose'; this election is to sustain our own existence and asking you to prayer. I think the Mayor would like to say you all 'Thank you'.***

540 Before turning to the main feature of the case on spiritual influence, the court must deal with how the protagonists presented these two events. Mr Hoque was called to give evidence. He was one of the witnesses who insisted on an interpreter while making it quite clear that he understood English perfectly well. Indeed it would have been surprising if someone occupying his position could carry out his functions without at least a working knowledge of English.

541 Be that as it may, his account of both events differed markedly from that given above. Like Mr Rahman he denied that his intervention at these events had carried a marked religious slant or that he had urged faithful Muslims to vote for Mr Rahman. Had matters remained there, the court might have found it difficult to disentangle the truth. In respect of the first event, however, the court had the near-contemporaneous account of Mr Ahmad which was clearly truthful and, given that Mr Ahmad was a supporter of Mr Rahman, one that was most unlikely to be fabricated.

542 In relation to the wedding event, the account given by Mr Rahman and Mr Hoque was sabotaged by the fact that this was a wedding and, at weddings, people take videos. A video turned up showing the speeches, including that of Mr Hoque, and a translation was provided. This showed a very different series of events from that depicted by Mr Rahman and Mr Hoque.

543 Obviously a court will be very wary of disbelieving evidence given on oath by a cleric, especially a senior cleric, of any faith. The external evidence, however, strongly indicated that Mr Hoque had not told the truth about these events. The evidence he gave about the next element was also very unsatisfactory. Sadly, the court was not able to treat Mr Hoque as a reliable witness.

544 What did become clear was that Mr Hoque was a friend and associate of Mr Rahman who lent himself willingly to Mr Rahman's re-election campaign. It may be the case – indeed the court assumes it is the case – that Mr Hoque genuinely believed that it was in the best interests of the Muslim and, in particular, the Bangladeshi community for Mr Rahman to be re-elected. What is apparent from the history of the two events (and earlier events such as the EWG dinner) is that Mr Hoque and Mr Rahman were working hand-in-glove and that, at the very least, Mr Hoque's activities on behalf of Mr Rahman were carried on with the latter's knowledge and consent.

545 Although evidence was only adduced of these two incidents at which Mr Hoque publically endorsed Mr Rahman's candidature, it seems extremely unlikely that Mr Hoque's message was confined to these episodes or that he otherwise kept silent about his support, but the court will confine itself to those episodes where credible evidence exists.

546 On 16 May 2014 (6 days before the election) the *Weekly Desh*, a newspaper published in Bengali and in English with a circulation of about 20,000 (mainly in the Borough), carried a letter. The letter was solely in Bengali and no English version appeared in the paper. There is an accepted translation of the letter which the court will adopt.

547 The letter was signed by 101 Imams and other religious leaders and scholars. Leading the list was Mr Hoque. There was no suggestion that any of the signatures on the letter was other than genuine – the letter had indeed been signed by 101 Muslim leaders. It was said, at one stage, that the number 101 has a special significance in Islam but this was not expanded upon. Patently, however, for 101 prominent clerics and scholars to sign a letter in a single London Borough, albeit one with a large Muslim population, is a serious matter and the letter was intended to be taken seriously.

548 Before dealing with the letter itself, it is necessary to recall that this election campaign was widely conducted in the media (by all parties). The letter in the *Weekly Desh* was not just a matter between the newspaper and its readers. It was given enormous prominence in the other media, especially the Bangladeshi media, and, inevitably, on social media. The effect of the letter, therefore, went a great deal wider than the 20,000 readership of the *Desh*.

549 Bearing in mind that any grammatical infelicities are the responsibility of the translator and not the authors of the Bengali original, the text of the letter is as follows:

> ***BE UNITED AGAINST INJUSTICE***
> ***MAKE LUTFUR RAHMAN VICTORIOUS***
> ***Creating opportunities, making provisions and providing services to the citizens on behalf of Her Excellency the Queen. In this case everyone has a freedom of right to choose a candidate who is suitable and able to provide the services. However we are observing that the media propagandas, narrow political interests etc involving the***

Mayoral election of Tower Hamlets Council have created a kind of a negative impression which in turn have created confusions amongst the public, divided the community and put the community in question. We are further observing that today's Tower Hamlets have made significant and enviable improvements in the areas of housing, education, community cohesion, inter-faith harmony, road safety and youth developments. In order to retain this success and make further progress it is essential that someone is elected as Mayor of the Tower Hamlets Borough on 22nd May who is able to lead these improvements and who will not discriminate on the basis of language, colour and religious identities.

We observe that some people are targeting the languages, colours and religions and attempting to divide the community by ignoring the cohesion and harmony of the citizens. This is, in fact, hitting the national, cultural and religious 'multi' ideas of the country and spreading jealousy and hatred in the community. We consider these acts as abominable and at the same time condemnable.

With utmost concern we observe that by shunning the needs and opportunities of the Tower Hamlets Council and its citizens, Islamophobia, which is the result of the current political stance and which has derived from false imagination, has been made an agenda for voting and voters. The mosques and religious organisations have been targeted. It is being publicised that any relationship [involvement] with the religious scholars and clerics are condemnable and is an offence. Religious beliefs and religious practice are being criticised. One of the local former councillors of the Labour Party has stated in the BBC's Panorama programme that 'Religions divide people'. Even in the same programme the honourable Imam of the Holy Kaba Sharif was presented in negative and defaming ways and thus all the religious people, particularly the Muslims, have been insulted and thrown in to a state of anxiety. We cannot support these ill attempts under any circumstances. We believe that it is not an offence to be a Muslim voter, an imam or Khatib[60] of a mosque and have involvement with all these. Under no circumstances it is acceptable to give a voter less value or to criticise them on the basis of their identity. As voters, like in any other elections we also have a right to vote in the forthcoming Tower Hamlets Mayoral Election and we should have the opportunity to cast our votes without fear. As a cognisant group of the community and responsible voters and for the sake of truth, justice, dignity and development we express our unlimited

60 The Khatib delivers the narration or sermon at Friday prayers in the mosque

support for Mayor Lutfur Rahman and strongly call upon you, the residents of Tower Hamlets, to shun all the propagandas and slanders and unite against the falsehood and injustice.

550 Although this document speaks of 'the community' throughout in a neutral fashion, it must be recalled that the letter was published solely in the Bengali language in a newspaper whose readership (at least in its Bengali editions) was restricted to Bengali speakers. It had not appeared in the English section of the newspaper. In the context 'the community' means, and is intended to be taken as 'the Bangladeshi community'.

551 What is this document? Although written in a foreign language by clerics of a different faith, Dr Nulty would have had no difficulty in recognizing this document. It is a pastoral letter, remarkably similar to his letter to the faithful of County Meath and published in the *Drogheda Independent* on 2 July 1892. In other words it is a letter from an influential cleric – in this case 101 influential clerics – informing the faithful as to their religious duty. As with the Bishop, the Imams' message is clear; our religion is under attack, our enemies despise us and wish to humiliate us; it is your duty as faithful sons and daughters of the [Church][Mosque] to vote for candidate X: only he will defend our religion and our community. As the Imams' letter puts it '[our opponents are] spreading jealousy and hatred in the community. We consider these acts as abominable and at the same time condemnable'. The Bishop could not – indeed did not – express it more succinctly.

552 There is another echo of the Bishops' letter. The 101 signatories (which must represent a high proportion of the Imams and teachers of the Borough) may be compared with Dr Nulty's invocation of the entire Roman Catholic hierarchy of Ireland (the 29 prelates) as supportive of his views. The numbers themselves are irrelevant. What the Imams are

saying, as the Bishop was saying, is: 'this is not the view of one man: this is the considered consensus of your religious leaders'.

553 It is not unknown for clergymen to write to the press. Earlier in 2015, a number of Anglican bishops wrote a fifty-page 'open letter' to the media, mildly criticising politicians of all parties and calling for a new politics. This was fairly harmless and did little beyond earning the hapless clerics the label of having produced a party political pamphlet for the Labour Party in the coming General Election.

554 There is a world of difference, however, between what might, if unkindly, be termed a general ecclesiastical bleat about how politics has gone to the dogs, and a specially targeted letter aimed at one particular body of the faithful, telling them their religious duty is to vote for candidate A and not for candidate B.

555 What was the effect of the letter? First, as has been pointed out, it was widely reported in the other press and broadcast media and on social media. Its influence stretched well beyond the readers of the *Weekly Desh*.

556 Secondly there is a substantial body of credible evidence that the Imams' message that it was the duty of faithful Muslims to vote for Mr Rahman entered the general campaign, with religious duty being mentioned in canvassing before the poll and to voters attending polling stations on election day (see below under 'intimidation').

557 How the letter came to be written is shrouded in mystery. In addition to Mr Hoque, evidence was called from one of the other 100 Imams but he shed little light on the logistics of the letter's production. Mr Hoque maintained that someone else must have drafted it and that it was presented for his signature (he signed first) when it was in its

final form. Who actually drafted it was never made clear. Experience would indicate that to compile a letter and to get 101 different people to agree with it and to sign it is a major undertaking.

558 Then there is the timing – carefully arranged to appear on the last Friday before the election, doubtless in order to be much discussed at Friday prayers.

559 Although the official line was that this document was compiled entirely by the clerics involved, it is noticeable that much of the language does bear a striking resemblance to that of the political messages put out by Mr Rahman's campaign. Although Mr Rahman claims to have been taken by surprise by the appearance of the letter, it beggars belief that neither he nor his close associates knew that it was coming out. Given the close relationship between Mr Rahman and Mr Hoque it would be astonishing if, during the arduous process of obtaining the agreement and signature of all the Imams, no word of it slipped out to Mr Rahman.

560 The only inference one can draw from the evidence is that, at a relatively early stage, Mr Rahman decided to run his campaign on the basis that it was the religious duty of faithful Muslims to vote for him and to enlist the support of Mr Hoque to deliver what might be termed the *imprimatur*[61] of the senior Muslim clergy.

561 This brings one back to the target audience. As has been set out above, everybody in the case agreed that a high proportion of the Bangladeshi population of Tower Hamlets were traditionalist, conservative and strongly religious. The letter was deliberately pitched at Bengali speakers (to the exclusion of English speaking Bangladeshis) and lined up a very large number of very senior clerics to sign it. There can be no doubt that the target

[61] Catholic metaphors seem inevitable.

audience would take advice about their religious duties from so many senior clerics and scholars very seriously indeed. A sophisticated metropolitan readership might smile patronisingly on the earnest strictures of the Bishops of the Church of England but many traditionalist and pious Muslim voters of Tower Hamlets are going to accept the word of their religious leaders as authoritative.

562 Though it is true to say that the world has moved on considerably since 1892, there is little real difference between the attitudes of the faithful Roman Catholics of County Meath at that time and the attitudes of the faithful Muslims of Tower Hamlets. To some extent the proof of the pudding is in the eating. If Dr Nulty had not known his target audience well, he would not have couched his pastoral letter in the terms he did. If those responsible for the Imams' letter had not thought that it would have a significant influence on the votes of the Bengali-speaking devout Muslim voters of Tower Hamlets, they would not have gone to the considerable trouble of organising the letter and obtaining 101 signatures to it. One cannot put a document of that kind into the public domain and then say 'I didn't think it would have any effect.' If that were the case, why do it?

563 If this part of s 115 of the 1983 is still good law – and in the judgment of the court, it is – and if the interpretation placed on the statute by the courts (albeit in the 19th century) is still valid – and in the judgment of the court, it is – then it must be said that no meaningful distinction can be drawn between the conduct of Mr Hoque and the others responsible for organising the Imams' letter and that of the Bishop of Meath.

564 Controversial though it may be, and likely to cause offence, it is none the less the clear duty of this court to hold that the participation of the Muslim clerics in Mr Rahman's

campaign to persuade Muslim voters that it was their religious duty to vote for him and, in particular, the Imams' letter, did, however unwittingly for most of the signatories, cross the line identified by Andrews J between what is permissible and what is impermissible.

565 Sadly, therefore, the court feels it has no option but to find that there was undue spiritual influence contrary to s 115(2) of the 1983 Act.

566 But that is not the end of the story. If, as is clearly the case, the influence was likely to affect the result of the election, such a finding would avoid the election but, by itself does so only under the general corruption provisions of s 164. The next question is thus whether the candidate or his agents have been guilty of undue influence.

567 In view of the findings of the court as to the close relationship between Mr Rahman and Mr Hoque and what may, I hope not too facetiously, be described as their 'double-act' at various functions, it is right to class Mr Hoque as being within the category of 'agents' in the wider sense required by electoral law.

568 Is Mr Rahman, however, assisted by s 158? If the candidate himself commits a corrupt practice, then he is personally guilty. If he does not commit it himself but it is committed with his knowledge and consent he is personally guilty unless the corrupt practice is treating or (as here) undue influence. Thus knowledge and consent of undue influence do not, by themselves, make the candidate personally guilty. Where undue influence is committed by an agent of the candidate, the candidate is guilty by his agents of the corrupt practice unless he can prove the four elements of s 158(3).

569 In the light of the findings above, it seems inescapable that Mr Rahman was himself a party to the undue spiritual influence of the clerics, in which case s 158(3) does not arise.

If, however, the court is wrong about that, subs (3) must be considered. Mr Rahman does not fare well with this subsection.

570 Can Mr Rahman prove that '(a) … the offences mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election'? Clearly not: they were carried on with his sanction and connivance and he gave no contrary orders. Indeed he seems both to have invited and to have approved of the exhortations delivered by Mr Hoque in his presence.

571 Can he assert '(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election'? The evidence is all to the contrary.

572 Under (c), can one say 'that the offences mentioned in the report were of a trivial, unimportant and limited character'? Again, no.

573 Finally can it be shown '(d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents'? Given the findings of personation, other voting offences, making false statements, paying canvassers and bribery, this cannot be shown.

574 Though it may thus be academic whether Mr Rahman is regarded as personally guilty of undue influence or guilty through his agents, as set out above the court finds Mr Rahman personally guilty.

UNDUE INFLUENCE: INTIMIDATION AT POLLING STATIONS

575 A great deal of evidence was devoted to this issue on both sides – indeed on *all* sides as the Returning Officer filed several lever-arch files of statements from polling station staff and police officers (very helpfully arranged by polling station for ease of reference).

576 As the court commented perhaps somewhat wryly, listening to the evidence would convince anyone other than a hardened judge that the witnesses had been describing two entirely different elections or, perhaps, the same election but in parallel universes.

577 The Petitioners' witnesses painted a picture of rowdy mobs of THF supporters at polling stations, in red T-shirts or with THF rosettes and sustained by food and drink handed out from the boots of campaign cars, haranguing voters, obstructing entry to polling stations and generally putting as much pressure as they could on voters who were Bangladeshi (or otherwise appeared to be Muslim) to do their duty to their community and their faith by voting for Mr Rahman and THF.

578 The witnesses called for Mr Rahman, on the other hand, painted a picture of a jolly family atmosphere at the polling stations with everyone in high spirits, excited to be voting, friendly and welcoming.

579 With a few exceptions, the witness statements for the returning officer covering events outside the polling stations (mainly police officers) and inside (mainly polling staff) described an atmosphere of hushed, almost cloistral, calm. In the light of the two other groups of statements, an unkind person might remark that the policemen and polling staff had appeared to take as their rôle models the legendary Three Wise Monkeys.

580 In the real world, this was always going to be a problematic election. Tower Hamlets, together with some 16 other electoral areas, had been singled out by the Electoral

Commission in consultation with local election officials such as Mr Williams for more rigorous management of the election that would normally be the case. The consultation process, which ultimately involved the police and the political parties, resulted in a lengthy Protocol being drawn up to regulate every aspect of the election. It was not confined to polling day itself but covered the registration of postal voters, the handling of postal votes and several other issues where it was felt difficulties might arise.

581 The Protocol was, and could only be, a voluntary document. The political parties were invited to sign up to it as a voluntary code of conduct. Except for the Conservative Party (and the court never really got to the bottom of why they had not signed) all the political parties and independent candidates signed the Protocol. Though various aspects of the Protocol were touched on in evidence, the only one that proved important was the provision concerning the number of representatives that should be allowed to attend polling stations.

582 What the Protocol said was that only two representatives per candidate should attend any given polling station. It turned out that what should have been said was that only two representatives per *political party* should attend at each polling station and that, indeed, was the rule put in place for the postponed Blackwall and Cubitt Town election in July. Two representatives per candidate was, if strictly applied, a recipe for chaos. In the larger wards there would be the candidates for the Mayor, three ward candidates and (potentially) no fewer than eight candidates in the European election. There were ten candidates for the Mayoralty and most of the political parties (including one or two independents) contested each of the ward seats. As THF was only fielding candidates in the two local elections, it did mean that it was, even under the Protocol, entitled to eight representatives in the larger wards.

583 In the event, the Protocol did not inhibit THF and there was a great deal of credible evidence to show that far more than the two representatives per candidate turned up at some polling stations.

584 Both Mr Hoar and Mr Penny have produced detailed schedules setting out their respective cases in relation to individual polling stations. It is no disrespect to their industry that this judgement (already lengthy) does not follow them round the polling stations. When assessing whether there has been undue influence contrary to s 115 of the 1983 Act, the court ought to stand back and look at the bigger picture.

585 However the evidence is viewed, there is no doubt that THF sent a very large number of its supporters to polling stations and that, in many cases, their numbers at given polling stations were well in excess of those prescribed by the Protocol.

586 There is equally no doubt that many of the THF supporters were, at best, enthusiastic, at worst, highly over-excited, and that their enthusiasm caused their behaviour to exceed what many voters attending polling stations considered to be the acceptable limits of political canvassing.

587 The evidence showed quite clearly that there was a considerable degree of organisation in place. Supporters were supplied with T-shirts and rosettes, together with leaflets and other political material. Clearly there is nothing wrong in that: all political parties do it. Arrangements were made for the supporters to be supplied with food and drink. Again, nothing wrong with that. If, however, you are running a political party (even one as chaotic as THF) and you let loose a mob of excitable, politically committed, young men on to the streets, then you are responsible in electoral law for their behaviour. To the extent, therefore, that breaches of s 115 were committed by THF supporters at polling

stations, those supporters were in law 'agents' for whose conduct the candidate is liable. That said, the court has no doubt that those running the campaign, especially Mr Choudhury, knew exactly what their supporters were up to and took no steps to calm them down.

588 Thus, while Mr Rahman made great show of having agreed to and signed the Protocol and of urging his followers to respect it, neither he nor Mr Choudhury were going to let the Protocol get in the way of putting pressure on Bangladeshi voters at the polling stations.

589 Looking at the evidence in the round, the court is satisfied that supporters of THF at polling stations behaved as follows – not all the time and not at all polling stations but sufficiently to have alarmed voters (of all ethnicities).

590 Groups of supporters would approach voters, particularly Bangladeshi voters and harangue them in a manner that appeared to some onlookers to be rather aggressive. Several witnesses from different polling stations used the phrase 'running the gauntlet' to describe their passage into the polling station. Others spoke of feeling 'harassed'.

591 Both English and Bengali speaking witnesses attest to THF supporters shouting, amongst other things, that

a) it was the duty of Bangladeshi voters to support Mr Rahman: this was normally expressed as support for Mr Rahman rather than for THF as a party;

b) similarly it was the religious duty[62] of all faithful Muslims to support Mr Rahman;

c) Mr Biggs was a 'racist';

[62] Bengali expressions were used which the Court accepted as conveying the concept of a religious duty placed on faithful Muslims.

d) the Labour Party was 'racist' and 'Zionist'[63];

e) anyone voting Labour had been brainwashed against Islam.

592 Though Mr Penny did his best to counter the allegations by calling many witnesses who claimed to have attended polling stations without observing anything amiss, the body of evidence to the contrary was overwhelming and convincing. By contrast, the witnesses for Mr Rahman were not always very impressive. Quite obviously Mr Rahman and his team had rounded up a large number of sympathetic voters and had handed them pro forma witness statements with only the name of the witness and of the polling station to be filled in. Witnesses whose command of English turned out in the witness box to be rudimentary nonetheless produced polished English prose in their witness statements containing words that appeared to baffle them in cross-examination. The occasional witness claimed to have typed out his witness statement himself, oblivious to the fact that its appearance was absolutely identical to that of other (allegedly unconnected) witnesses. The nadir came when one witness gave a graphic account of how he had attended a polling station to cast his vote and found it a haven of tranquillity, only to be confronted by Mr Hoar with absolutely incontrovertible evidence that the witness had, in fact, voted by post well before polling day and could not have voted in person on the day.

593 The court was obliged to treat many of the witnesses called by Mr Rahman with a considerable degree of caution.

594 Though it is right to say that a high proportion of the witnesses called for the Petitioners were involved with other political parties – some were candidates for other parties – there was a core of evidence from witnesses who had no apparent axe to grind. Furthermore,

63 At Cyril Jackson Primary School – Lansbury Ward district 2 – a particular 'hot-spot' of THF misbehaviour, a THF activist was actually given a warning by PC Grimes, one of the police officers in attendance. There were also shouts that Mr Ed Miliband was a 'Zionist'.

even those witnesses who did have allegiance to parties other than THF frequently gave evidence that was corroborated from other sources.

595 A few examples will suffice.

596 Ms Janet Digby-Baker OBE, who had worked in the Borough for over fifty years and had been honoured for services to children and families, told the court of overt harassment outside the polling station at Cyril Jackson Primary School mentioned above (as well as misconduct in polling booths)[64]. She felt sufficiently outraged to write an article about it for the *East London and Docklands Advertiser*, only to be subjected to a torrent of abuse from partisans of Mr Rahman on that newspaper's website. The court had no hesitation in accepting her evidence and, to be fair, Mr Penny made no submission to the contrary.

597 Ms Beverley Charters also attended Cyril Jackson. She met Bangladeshi voters who said they were too nervous to vote because there was, at the time she spoke to them, no police presence and they felt intimated by the mob of THF supporters. They went away but later returned and Ms Charters helped them to find a policeman who escorted them through. She was told by police officers that they had had to do this with voters on several occasions throughout the day. Ms Charters herself was jeered at and 'catcalled' by THF supporters. It was obviously a very unpleasant experience. Ms Charters herself was a patently truthful witness and the court accepted her evidence.

598 Ms Elsie Gilding MBE, another well-respected local citizen, said she found the whole experience 'intimidating'.

[64] Given that, back in 1963, Ms Digby-Baker had taken six months out to assist the Civil Rights campaign in the USA and had worked for Martin Luther King, she may be taken to know something about being on the receiving end of electoral malpractice and to be someone who is not easily alarmed.

599 Ms Chrissy Townsend was a polling station agent for the Labour Party in Lansbury Ward and spent the day visiting the five polling stations in her ward. She was obviously an apprehensive witness and her witness statement said 'I have not come forward until now because I have been frightened of intimidation and threats.' She said:

> ***I went to Aberfeldy Culloden School[65]. I went there with my husband in the car with a colleague who was also a polling agent. When we approached the area of the polling station in Aberfeldy Street we were besieged with canvassers for Tower Hamlets First, so much so that I felt intimidated. People were banging on windows with the THF leaflets. The situation was so bad that I thought there was going to be some sort of accident. I could not even open a door and we had to go down another road, Dee Street, where the polling station is situated where there were more people there. I noticed that Ohid Ahmed, the then Deputy Mayor, was present. I got out of the car and got into conversation with an elderly lady who told me that she was frightened to go in and vote and said that she had decided not to vote as a result of the intimidation. I offered to help her get to the polling station but she said she was going home***.

600 Ms Townsend saw a Labour candidate from the Bangladeshi community, Shiria Katun:

> ***She was surrounded by people, dozens of men, some taking photographs. She seemed much stressed and there was a lot of pushing and shouting.***

601 At St Saviour's Primary School[66] Ms Townsend found more THF supporters taking photographs of voters and discovered a distressed young Bangladeshi woman who said that the supporters had spat at her and called her names. The woman was very frightened and Ms Townsend called one of the attendant police officers to assist.

602 Ms Townsend was another patently honest and reliable witness.

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65 Lansbury Ward district 4.
66 Lansbury Ward district 1.

603 At the Tiller Leisure Centre[67] the Petitioner Ms Moffat actually saw a young Bangladeshi man in tears after being told that he would not be a good Muslim unless he voted for Lutfur Rahman.

604 Several witnesses[68] at Old Palace Primary School polling station[69] speak of voters 'running the gauntlet' of THF supporters and having to pass through a 'corridor' of those supporters to get into the polling station.

605 Redcoat Youth Centre[70] was the subject of much evidence. The two Labour candidates, Ms Victoria Obaze and Ms Sabina Akhtar, gave evidence. There was credible evidence of the polling station being beset by what were estimated to be 20-30 THF activists and that they shouted that Ms Obaze was not a Muslim and Ms Akhtar did not really live in the Borough, that all non-THF candidates were 'not good Muslims' and that anyone who did not vote for Mr Rahman was 'not a good Muslim'.

606 There was a great deal more evidence of a similar nature concerning a score or more of polling stations but the above examples should suffice.

607 It cannot be denied that the conduct of Mr Rahman's supporters at polling stations on election day caused considerable disquiet at the time. Witnesses, including Councillor Peter Golds, a man of very considerable political experience, told the court that they had never before seen anything approaching this level of misbehaviour.

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67 Canary Wharf Ward district 3.

68 Including Randall Smith, Cllr Khales Uddin Ahmed, Ms Sheenagh McKinlay and polling station officers Mr Danny Warren and Mr Peter Hubbard.

69 Bromley North Ward district 3.

70 Stepney Green Ward district 3.

608 The fault did not lie with the Protocol. Although the Protocol could be – and has been – criticised for not having thought things through, it was only a voluntary code and Mr Rahman's supporters had no hesitation is disregarding it.

609 Similarly, the fault did not lie with the polling station officers who seemed to have coped remarkably well with often rowdy behaviour both outside and inside polling stations. Though this judgment has proceeded on the basis of not examining complaints of misbehaviour in polling booths, there is evidence to show several incidents of people insisting on accompanying voters into the booths and polling staff having to prevent them.

610 Nor is this judgment inclined to blame the Metropolitan Police. Policing Tower Hamlets under its current political régime is not an easy task. Many in the Police feel that the imputation of 'institutional racism' made by the Macpherson Enquiry, albeit 16 years ago, still dogs the Force and they are conscious that, in Mr Rahman, whose personal control of the Borough is tight, they are dealing with a man whose hair-trigger reaction is to accuse anyone who disagrees with him of racism and/or Islamophobia. In the circumstances it would be unreasonable to expect of the police anything other than an approach of considerable caution.

611 In policing the polling stations, their primary concern was not the provisions of the 1983 Act: their primary concern was the possible commission of public order offences. Though officers did intervene from time to time to cool things down and to attempt to disperse over-large crowds of supporters, they cannot be criticised for failing to react if such conduct fell short, as usually it did, of a public order offence.

612 The responsibility for the conduct of THF supporters at polling stations rests solely on the supporters themselves and on those who sent them out to the polling stations to ensure that the Bangladeshi community 'did its duty' by Mr Rahman.

613 The Petitioners and many of their witnesses were appalled by the behaviour of THF activists at polling stations, both at the time and when giving evidence to the court. The Tower Hamlets poll was seen by many in the wider media as one which had been marred by this behaviour.

614 The question the court has to answer, however, is whether this conduct crossed the line into the commission of an electoral offence under s 115 of the 1983 Act.

615 This is not an easy question to answer. Before the provision that is now s 164(2) the answer would have been straightforward. The conduct that the court has found took place at polling stations on 22 May 2014 would undeniably have amounted to the common law offence of intimidation. Intimidation is what it was and what it was intended to be by those organising it. Those who experienced it described it as 'intimidation' and said that they had been 'intimidated'.

616 The effect of s 164(2) – 'An election shall not be liable to be avoided otherwise than under this section by reason of general corruption, bribery, treating or intimidation' – is that a court may not make a finding of intimidation pure and simple. The conduct described as 'intimidation' must be shown to come within one or other of the sections defining corrupt and illegal practices. (Illegal payments, employments and hirings, though mentioned by s 164(1) can be ignored in this context). In practice this means that the intimidatory conduct must be shown to be within the terms of s 151(2)(a) or (b).

617 To come within s 115(2)(a), the conduct described must have involved the use of (or the threat of) 'force, violence or restraint' or the infliction of 'temporal … injury, damage, harm or loss… to induce or compel that person to vote…' For paragraph (b) the conduct must amount to 'duress' which 'impedes or prevents or intends to impede or prevent the free exercise of the franchise … or so compels, induces or prevails upon or intends so to compel, induce or prevail upon an elector …to vote…'

618 Though there was no evidence that any voter had actually been induced to change his vote from one of the other candidates to Mr Rahman or to THF, there can be little doubt that the intention of the THF activists was to 'induce or prevail upon an elector to vote that way'. Thus the purpose and intention of the conduct is clear. Was there, however, the use or threat of sufficient 'force, violence or restraint' to comply with paragraph (a) or sufficient 'duress' to comply with (b)?

619 As has been said when discussing the law, rightly or wrongly, s 115 demands quite a serious level of violence before it will permit an election to be avoided. Even though a great deal of the Petitioners' evidence has been accepted and even though those present felt that they had been subject to unacceptable intimidation, the court cannot be satisfied that the violence or duress reached the level required by the section. It is appreciated that there may well be two views about this and it is quite possible that a differently constituted court might feel that this approach is unduly cautious.

620 Bearing in mind the level of proof required for a court properly to be satisfied to the criminal standard, this element of the case falls short – only just, but it does fall short – of reaching that level.

621 With considerable misgiving, therefore, the court must reject that part of the Petitioner's case based on undue influence at polling stations.

622 If the court is correct in this approach, then this is unquestionably an unfortunate result. It is obviously undesirable that voters attending polling stations should be subjected to the level of intimidation that was inflicted on 22 May 2014. Equally obviously the conduct of the THF supporters, orchestrated, as I have no doubt it was, by Mr Choudhury, was deplorable, even indefensible.

623 The court is aware that electoral law is the subject of a current investigation by the Law Commission[71] and that part of its remit is the re-defining and reclassification of electoral offences. In the view of this court, s 115(2) sets the bar much too high for dealing with intimidatory behaviour during the conduct of the poll.

624 The court appreciates that many in Tower Hamlets will be disappointed, even horrified, that the 1983 Act does not penalise thuggish conduct at polling stations of the sort that occurred in 2014 but the court feels that it would not be right to stretch s 115, even if to do so might mete out rough justice to Mr Rahman's foot-soldiers.

GENERAL CORRUPTION

625 The court need not spend long on general corruption, largely because those corrupt and illegal practices that it has found proved are found to have been committed by Mr Rahman or by his agents for whom he is responsible.

626 As has been said, when examining the issue of general corruption the court should have regard to all the corrupt and illegal practices proved to have been committed in the

[71] Not to be confused with the Electoral Commission.

electoral area in question and to decide whether they have 'extensively prevailed' and whether they may be 'reasonably supposed to have affected the result'.

627 Viewed in isolation, given the fact that they were spread over several wards and must necessarily have involved different THF activists in those wards, it is not difficult to conclude that personation and other voting offences 'extensively prevailed' in Tower Hamlets. The scale of those offences capable of being proved to the satisfaction of this court, however, is well below the level necessary to have affected the result. At most, only a few hundred dubious vote (possibly fewer) can be shown against Mr Rahman's winning margin of over 3,000. Viewed in isolation, therefore, the facts do not establish general corruption in respect of personation or other voting offences.

628 The unlawful payment of canvassers was not proved to a level that would be sufficient to trigger either requirement of s 164.

629 In respect of the other corrupt and illegal practices, the circumstances of this election are such that they necessarily operated Borough-wide. The objective was to ensure that the Borough's electorate as a whole returned Mr Rahman as Mayor. In relation to the making of false statements about Mr Biggs (which were repeated and embellished across the Borough and beyond), the bribery of the Bangladeshi electorate by the distribution of grants and the use of undue spiritual influence can all be said to meet the test of having 'extensively prevailed'.

630 Did these three offences, whether viewed individually or globally, meet the test of being 'reasonably supposed to have affected the result'? It is always difficult for a respondent whose election has been achieved following 'extensively prevailing' corrupt and illegal practices to say 'Yes, of course there was extensive corruption and illegality but it didn't

make any difference: I would have won anyway.' That invites the retort: 'If it was useless, why do it?'

631 Looking at the matter realistically, it is impossible to say that the three electoral offences listed above were not likely to have affected the result. If a fair campaign had been mounted against Mr Biggs or if the Mayor had not sprayed public money round his core constituency or if he had not enlisted the help of the Muslim clergy to put unlawful pressure on Muslim voters, the result would have been very different.

632 In view of its findings as to the personal responsibility of Mr Rahman and his agents, the question of whether there was also general corruption under s 164 of the 1983 Act may seem academic but, for the sake of completeness, it is confirmed that the court is satisfied that general corruption did take place and met the criteria of that section.

WIDER CONSEQUENCES OF THE FINDINGS OF CORRUPT AND ELECTORAL PRACTICES

633 One of the tasks of an election judge is contained in s 145(3) of the 1983 Act:

> ***Where a charge is made in the petition of any corrupt or illegal practice having been committed at the election the court shall, in addition to giving a certificate, and at the same time, make a report in writing to the High Court as required by sections 158 and 160 below and also stating whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the area of the authority for which the election was held or in any electoral area of that authority's area.***

634 The result of the decisions reached in this judgment will be that Mr Rahman's election will be avoided and he will be disqualified from standing in the new election. The

findings will necessarily lead to adverse consequences for Mr Rahman. The position of Mr Choudhury will be considered below.

635 From those decisions, particularly the decisions above on the issue of general corruption under s 164, it follows that the court will have to report that 'corrupt practices have extensively prevailed at the election in the area of the authority for which the election was held.' Given the nature of THF as a 'party' and the reality of its control by Mr Rahman, this means that the election of all THF Councillors must be taken to have been achieved with the benefit of the corrupt and illegal practices found by this judgment to have been committed.

636 This court has not been charged with deciding the validity of the election of any of those Councillors. It is far too late for anyone to petition to avoid their individual elections. So far as electoral law is concerned, therefore, each of those Councillors is fully entitled to retain his or her seat until the next election in 2018.

637 This is obviously unsatisfactory but the solution to the problem lies well outside the remit of this Election Court.

638 With a sense of relief, therefore, that particular problem *can* be avoided by the Court, though it will probably be sitting on the desk of the new Secretary of State for Communities and Local Government when he or she takes office after 7 May 2015.

MR ALIBOR CHOUDHURY

639 At the outset of the trial, Mr Hoar indicated that he would seek to have Mr Choudhury formally named under s 145 of the 1983 Act. Mr Choudhury was therefore informed that this might take place. On more than one occasion throughout the trial, and certainly

before he gave evidence, it was reiterated that this was a potential course of action. At the conclusion of the evidence the court stated that Mr Choudhury should have the opportunity to make written submissions either in person or by a legal representative at the same time as the written submissions for the parties. The court also indicated that he was at liberty to appear before the court on the day fixed for oral submissions and to present his case for not being named, whether in person or by a legal representative.

640 Mr Choudhury did not avail himself of these opportunities. The court considers that it has the power to name Mr Choudhury under s 145 and has no hesitation in formally naming Mr Choudhury as personally guilty of corrupt and illegal practices. This means that he must vacate his office as Councillor forthwith and will suffer the statutory period of disqualification under s 160 of the 1983 Act.

THE PETITIONERS

641 Little has been said so far about the four Petitioners, Mr Erlam, Ms Simone, Mr Hussein and Ms Moffat. All of them gave evidence, though, in the event none of it proved pivotal. Mr Hussein, who is, incidentally, himself a member of the Bangladeshi community, was savagely cross-examined, presumably on instructions, though to no ascertainable forensic purpose.

642 Although they all had political connections and, indeed, Mr Erlam had unsuccessfully stood for election as a Councillor, representing a political party of his own devising. The four Petitioners came into this Petition as members of the public, electors of the Borough who are given the right to bring election petitions by the 1983 Act.

643 To bring an election petition as a private citizen requires enormous courage. If things go wrong and the petition is dismissed, the Petitioners face a potentially devastating bill of

costs which, unless they are very fortunate, may well bankrupt them. There is no access to public funding: Parliament has left the policing of fair and democratic elections to the chance that concerned citizens will become involved at their own expense. Whether that is an appropriate and sufficient way to protect democracy is open to question.

644 If the bringing of an election requires courage in ordinary circumstances, bringing a petition to try to unseat Mr Rahman required courage of a very much higher order. The Petitioners knew that Mr Rahman would deploy all his resources to defeat them and could rely on the Bangladeshi media to back him all the way. The Petitioners would be portrayed as racists and Islamophobes, attempting to set aside the election (by a large majority) of a Mayor whose government of the Borough had been inspirational, for no better reason than the fact that he was a Bangladeshi. And so it proved. The Petitioners have been duly vilified - but they have hung in there.

645 As will be seen when we turn to counsel, the Petitioners could not afford to engage solicitors. They have had to carry out much of the leg-work of preparing this case under Mr Hoar's direction and they have worked tirelessly.

646 The Petitioners have been greatly aided by Councillor Golds. The court considered Mr Golds to be an impressive man and a reliable witness, and much of his evidence in this case has been accepted. But Councillor Golds is himself merely a private citizen in this matter and any help given to the Petitioners has been given from his own resources.

647 The court expresses surprise that this Petition was not brought by the Labour Party. The Mayoral campaign had been directed throughout towards destroying the reputation of Mr Biggs, its official candidate, and many of the votes obtained by THF candidates in the wards would otherwise have gone to Labour. Labour was (and is) the most likely

beneficiary of any decision avoiding the election and disqualifying Mr Rahman from standing in the new election.

648 It may be that the Labour Party simply thought the game not worth the candle and was not prepared to risk its money. On the other hand it may be, like so many others who have come up against Mr Rahman, the Party was not prepared to risk the accusations of racism and Islamophobia that would have been bound to follow any petition.

649 The four Petitioners, then, have shown exemplary courage in bringing and persevering with this Petition. They have endured a difficult, exhausting and anxious eleven months.

650 And they have been vindicated.

THE RETURNING OFFICER

651 Following the agreement reached between the Petitioners and the Returning Officer before the beginning of the hearing, Mr Williams played little part in the trial. His counsel only appeared on the opening day, on the day when Mr Williams himself gave evidence and on the day of final oral submissions.

652 Nevertheless it is appropriate to include a short passage in this judgment about Mr Williams. The criticisms made of him in the Petition were very largely criticisms of alleged failures by his staff, whether at polling stations or at the count, and there was very little criticism of Mr Williams personally. Those criticisms have been unreservedly withdrawn – and rightly so.

653 Mr Williams faced a formidable task. He was conducting three simultaneous elections, two of which, as this court has found, were marred by serious and widespread electoral

malpractice on the part of the Mayor and his inner circle. There is no doubt that far too many people attended the count and the behaviour of many who attended was regrettable.

654 Mr Williams was much criticised in the media for the length of time that the count took but the circumstances were such that this was inevitable and he seems to have made the correct decisions, even if they disappointed some in the press.

655 All in all, Mr Williams did a completely professional job in very difficult and trying circumstances. He is a man of considerable experience in elections – indeed may be considered an expert in the subject – though that expertise was sorely tested in 2014.

656 As the court has found so often with professional returning officers, Mr Williams was a man who kept his head when all around were losing theirs.

657 I cannot leave Mr Williams without paying tribute to his solicitors, Messrs Sharpe Pritchard LLP and, in particular to Mr Emyr Thomas, a partner in that firm. Mr Thomas has provided invaluable logistic support to the court and it is fair to say that, without his help and that of his partner Mr Badcock, the management of this case would have been well-nigh impossible.

COUNSEL

658 The court has been much assisted by counsel for the parties.

659 Mr Straker's interventions, albeit, in the event, necessarily limited, were, as ever magisterial.

660 Mr Penny, though not (before this hearing) a particular specialist in electoral law conducted Mr Rahman's case as well as it could possibly be conducted. There were times

when he obviously found Mr Hoar to be 'unplayable', and he was not alone. None the less, he never deviated from a complete professionalism in his approach. The court was greatly assisted by Mr Penny's detailed and acute analysis of the issues and of the evidence and it is not his fault that the court has frequently not been persuaded that he is right.

661 For Mr Hoar, this has been a complete *tour de force*. He accepted the case on the basis of direct access. That is to say that his four clients, members of the public, could not afford to instruct and therefore did not instruct solicitors. Mr Hoar, with such assistance as his lay clients could give him, has thus single-handedly conducted the entirety of the case: pleadings, witness statements, disclosure, directions, the Scrutiny, preparation of the trial and conduct of the trial. Though he occasionally allowed his enthusiasm to get the better of his judgment, he has carried the entire case on his back and has brought it to a successful conclusion. By any standards this was a considerable feat and worthy of the admiration of the court.

THE LAW COMMISSION

662 As has been pointed out above, the whole question of electoral law is currently being investigated by the Law Commission. This is a very welcome development. The Commission has a long and distinguished history of applying rigorous analysis to legal problems and difficulties, and coming up with sensible and workable solutions that command public support.

663 This Petition has thrown up a number of issues which, while already on the Commission's agenda, can only benefit from examination of how those issues arise in a real-life situation such as the present.

664 First and foremost, this case highlights to an even greater extent than previous election cases I have tried, the unsatisfactory nature of the election petition as a way of protecting democracy. Police forces can and do act when evidence is presented to them of electoral wrongdoing but they do not have the resources to be pro-active and they remain heavily dependent on information supplied by the political rivals of the alleged wrongdoers.

665 The Petition system is obsolete and unfit for purpose. It is wholly unreasonable to leave it to defeated candidates or concerned electors, like the present Petitioners, to undertake the arduous and extremely expensive task of bringing proceedings and pursuing them to a conclusion entirely at their own expense and with the risk of bankruptcy if they fail to surmount the Grand National sized fences placed in the path of Petitioners. We do not leave it to the victim of burglary or fraud (*a fortiori* the victim of rape) to bring civil proceedings against the perpetrator as the only way of achieving justice. Why do we leave it to the victims of electoral fraud to go it alone?

666 Furthermore, if they do win and are awarded their costs against the respondent, the latter, who is turned out of office and frequently then prosecuted to conviction, is unlikely to be able to pay those costs. A petitioner's victory is often Pyrrhic.

667 Secondly, the whole scheme of corrupt and illegal practices and the arbitrary distinctions between the two should be reconsidered, and a rational table of electoral offences with their ingredients and their penalties clearly set out.

668 Thirdly, the offences themselves need urgent re-visiting. It may be that the court has taken an over-strict view of the requirements to be proved to establish an offence under s 115 of the 1983 Act in the case of intimidation and the court was extremely reluctant to reach the conclusion that the unacceptable behaviour of THF supporters at polling

stations fell just below the threshold. The Commission has already indicated that it intends to examine the whole question of intimidation and the court hopes that this judgment may assist.

669 Again, undue spiritual influence (which is always going to be controversial) needs reconsideration. If it is to be retained (and the court is neutral on that topic), it should be more clearly articulated and, if thought appropriate, re-stated for a 21st century environment.

670 The formulation of bribery is not without difficulty, as this judgment shows, and would benefit from greater clarity. Serious consideration should also be given to amalgamating treating – surely an obsolescent if not obsolete concept in the modern world[72] - with the overall offence of bribery.

671 Finally, although it has been proved against Mr Rahman in this case, this court respectfully wonders whether, in the light of the elaborate and expensive apparatus of the modern political party, it is still necessary to make payment of canvassers a criminal and electoral offence.

FORMAL CONCLUSIONS

672 The court is satisfied and certifies that in the election for the Mayor of the London Borough of Tower Hamlets held on 22 May 2014:

a) the First Respondent Mr Rahman was guilty by his agents of corrupt practices contrary to:

i) s 60 of the 1983 Act;

ii) s 62A of the 1983 Act;

[72] As witness the affair of the UKIP sausage-rolls.

b) the First Respondent Mr Rahman was guilty by his agents of illegal practices contrary to:

   i) s 13D(1) of the 1983 Act;

   ii) s 61(1)(a) of the 1983 Act;

c) the First Respondent Mr Rahman was personally guilty and guilty by his agents of an illegal practice contrary to s 106 of the 1983 Act;

d) the First Respondent Mr Rahman was guilty by his agents of an illegal practice contrary to s 111 of the 1983 Act;

e) the First Respondent Mr Rahman was personally guilty and guilty by his agents of a corrupt practice contrary to s 113 of the 1983 Act;

f) the First Respondent Mr Rahman was personally guilty and guilty by his agents of a corrupt practice contrary to s 115 of the 1983 Act.

673 The court is also satisfied to the relevant standard of proof and certifies that in the election for the Mayor of the London Borough of Tower Hamlets held on 22 May 2014:

a) there were corrupt and illegal practices for the purpose of promoting or procuring the election of the Respondent Mr Rahman at that election and

b) those corrupt or illegal practices so extensively prevailed that they may reasonably be supposed to have affected the result of such election.

674 The court therefore declares the election of Mr Rahman as Mayor of the London Borough of Tower Hamlets to have been avoided by such corrupt or illegal practices pursuant to s 159(1) of the 1983 Act and also to have been avoided on the ground of general corruption pursuant to s 164(1)(a) of the 1983 Act.

675 It is declared that Mr Rahman shall be incapable of being elected to fill the vacancy for the office of Mayor of the London Borough of Tower Hamlets under s 164(1)(b) of the 1983 Act.

676 Mr Rahman is a solicitor of the Senior Courts and the court is obliged by s 162 of the 1983 Act to bring this judgment to the attention of his professional body, the Solicitors' Regulation Authority. It is ordered that a copy of the judgment be sent to the SRA.

677 The court will also report and certify that Mr Alibor Choudhury was guilty of a corrupt practice contrary to s 113 of the 1983 Act and illegal practices contrary to ss 106 and 111 of the 1983 Act.

678 As the court is required to consider the matter under s 145(3) of the 1983 Act, the court finds that corrupt practices extensively prevailed at the election both of the Mayor and of the Councillors for the twenty wards of Tower Hamlets held on 22 May 2014.

679 These conclusions will be embodied in the certificate of the court and will be the subject of the court's report to the High Court under sections 145, 158 and 160 of the 1983 Act.

680 Their effect is firstly that Mr Rahman's election as Mayor on 22 May 2014 was void, that is to say, it is as if it had never taken place. He has not lawfully been Mayor since that date. Secondly, as has been said, Mr Choudhury must immediately vacate the office of Councillor. Thirdly it will be Mr Williams's task to arrange for a new Mayoral election and for a by-election in the Ward of Stepney.

AFTERWORD

681 The evidence laid before this court, limited though it necessarily was to the issues raised in the Petition, has disclosed an alarming state of affairs in Tower Hamlets. This is not the consequence of the racial and religious mix of the population, nor is it linked to any ascertainable pattern of social or other deprivation. It is the result of the ruthless ambition of one man.

682 The real losers in this case are the citizens of Tower Hamlets and, in particular, the Bangladeshi community. Their natural and laudable sense of solidarity has been cynically perverted into a sense of isolation and victimhood, and their devotion to their religion has been manipulated – all for the aggrandisement of Mr Rahman. The result has been to alienate them from the other communities in the Borough and to create resentment in those other communities. Mr Rahman and Mr Choudhury, as has been seen, spent a great deal of time accusing their opponents, especially Mr Biggs, of 'dividing the community' but, if anyone was 'dividing the community', it was they.

683 The Bangladeshi community might have thought itself fortunate to have been the recipient of the Mayor's lavish spending but in the end the benefits were small and temporary and the ill effects long-lasting. It was fool's gold.

684 Central government has already had to intervene once, and, on 4 November 2014, the Secretary of State, Mr Eric Pickles, announced the appointment of commissioners to take over a number of functions of the Mayor and Council, particularly in relation to grants. It is obviously not for this court to suggest, still less recommend, any further course of action but it seems likely that the governance of this Borough will have to be examined in the not too distant future.

685 On past form, it appears inevitable that Mr Rahman will denounce this judgment as yet another example of the racism and Islamophobia that have hounded him throughout his political life. It is nothing of the sort. Mr Rahman has made a successful career by ignoring or flouting the law (as this Petition demonstrates) and has relied on silencing his critics by accusations of racism and Islamophobia. But his critics have not been silenced and neither has this court.

686 Events of recent months in contexts very different from electoral malpractice have starkly demonstrated what happens when those in authority are afraid to confront wrongdoing for fear of allegations of racism and Islamophobia. Even in the multicultural society which is 21st century Britain, the law must be applied fairly and equally to everyone. Otherwise we are lost.