



Neutral Citation Number: [2024] EWCA Civ 806

Case No: CA-2023-001062

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)
Insolvency and Companies Court Judge Jones (sitting as a Judge of the High Court)
[2023] EWHC 502 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 July 2024

Before :

LORD JUSTICE MOYLAN
LORD JUSTICE ARNOLD
and
LORD JUSTICE NUGEE

Between :

SYED AMINUL HAQUE
(representative / member of MUTTAHIDA QUAMI
MOVEMENT PAKISTAN unincorporated association)

Claimant /
Respondent

- and -

(1) ALTAF HUSSAIN

Defendant /
Appellant

(2) IQBAL HUSAIN
(3) TARIQ MIR
(4) MUHAMMAD ANWAR

Defendants

(5) IFTIKHAR HUSSAIN
(6) QASIM ALI RAZA
(7) EURO PROPERTY DEVELOPMENTS LTD

Defendants /
Appellants

Richard Slade KC (instructed by C. M. Atif & Co Solicitors) for the Appellants
Nazar Mohammad (instructed by direct access) for the Respondent

Hearing dates: 23 and 24 April 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Nugee:

Introduction

1. This appeal from the High Court concerns an unincorporated association founded in 1984 in Pakistan called Muttahida Quami Movement (“MQM”). A number of English properties were later acquired on trust for MQM. The Claimant, Mr Haque, claims that the beneficial interest in the properties now belongs to an organisation called Muttahida Quami Movement Pakistan (“MQMP”). MQMP is an unincorporated association that is registered as a political party in Pakistan. In essence Mr Haque’s case is that MQMP is MQM.
2. He brought an action on behalf of the members of MQMP asserting this claim. A trial of certain issues took place before ICCJ Jones sitting as a Judge of the High Court (“**the Judge**”). The Judge handed down his judgment on 13 March 2023 at [2023] EWHC 502 (Ch) (“**the Judgment**”) in favour of Mr Haque, and by his Order of that date declared that the properties were beneficially owned absolutely by the membership from time to time of MQMP.
3. Only some of the defendants actively defended the action and took part in the trial, namely the 1st, 5th, 6th and 7th Defendants. The 2nd Defendant initially instructed the same solicitors as them and joined in serving the Defence but then withdrew and took no further part; the 3rd and 4th Defendants took a neutral position (and the 4th Defendant in fact died before trial). I will refer to the 1st, 5th, 6th and 7th Defendants as “**the Active Defendants**”. The Active Defendants appeal to this Court with permission granted by Arnold LJ.
4. We have had the considerable benefit of submissions from Mr Richard Slade KC, who appeared for the Active Defendants, and from Mr Nazar Mohammad, who appeared for Mr Haque. For the reasons that follow, I prefer those of Mr Slade and would allow the appeal.

Facts

5. I can take the facts from the Judgment (and references in this section are to paragraphs of the Judgment), supplemented by the documents before us and certain helpful explanations provided to us by both counsel. MQM was formed as an unincorporated association to be a political party in Pakistan in 1984 [1], [58]. It was developed out of a student movement called the All Pakistan Mohajir Students Organisation which had been founded some years before by the 1st Defendant, Mr Altaf Hussain. “Mohajir”, which means “migrant” in Urdu, refers to those who left India for Pakistan on the partition of British India in 1947, many of whom settled in Sindh Province in the south of Pakistan, and in particular in Karachi (the capital of Sindh Province and the largest city in Pakistan), and their descendants; and MQM was founded as the Mohajir Quami Movement, “Quami” (sometimes transcribed as “Qaumi”) meaning “of the people”. It later changed its name to Muttahida Quami Movement, meaning United National Movement (“muttahida” meaning “united”), to reflect the fact that what had started as a predominantly south Pakistan party had spread to become a national movement.
6. Mr Altaf Hussain’s case was that he was responsible for founding MQM on 18 March 1984. There was some challenge to this at trial, but the Judge said that he did not need

to delve into the origins of MQM because it was quite clear on the evidence that at least until 23 August 2016 the membership considered Mr Altaf Hussain to be their “father”, the ideologue and a founder who received genuine and intense respect [59], and Mr Mohammad did not seek to dispute that before us.

7. By 2002 MQM was a well-established political party within Pakistan [61], and in that year it adopted a new constitution, subsequently amended in 2012 [62]. That does not appear to have been in dispute. But there was a heavily contested issue at trial as to which version replaced the 2002/2012 constitution. The Active Defendants’ case was that a new constitution was drafted in 2015 and adopted in October 2015. That was rejected by the Judge who found, after a detailed consideration of the oral and documentary evidence, that the Active Defendants had failed to establish that the 2015 constitution was adopted [105]. On the other hand he accepted Mr Haque’s case that an amended constitution was duly adopted and applied in April 2016 [105], notice of the amended constitution being given to the Election Commission of Pakistan¹, which produced a copy, marked in manuscript “23-4-2016”, of the constitution lodged [95], [96].
8. Those findings have not been appealed and it follows that it is now established that the April 2016 constitution was the one in force in August and September 2016 when, as appears below, the key events took place. Our attention was drawn to the following provisions of the April 2016 constitution (in the form lodged with the Election Commission):

- (1) Article 3 contained various definitions including:

“(a) “Movement” shall mean the Muttahida Quami Movement (hereinafter referred to as MQM). It shall work as a political party in Pakistan as permitted by the constitution and the law.

...

(d) “Committee” shall mean the Central Co-ordination Committee of MQM (hereinafter called as “the Committee”).”

- (2) Article 6 provided:

“ARTICLE 6 – ORGANISATION AND MANAGEMENT:

The Central Co-ordination Committee at the Federal level, Provincial level and local levels through the Central Executive Council and Wings/Committees shall administer the management and organization of the Movement

- (a) The management of the Movement shall be administered by

¹ Sometimes referred to in the Judgment as “Electoral Commission” but it would appear that “Election Commission of Pakistan” is more correct.

the Committee comprising of the following office bearers:

Convener One.

(Senior Deputy Convener minimum One and maximum as many as required.)

[Deputy Conveners Minimum Two & Maximum as many as required.]

[Members Minimum Fifteen & Maximum as many as required.]

...”

It then continued with similar details for provincial and local committees.

(3) Article 7 included the following:

“ARTICLE 7 – DUTIES AND FUNCTIONS OF THE OFFICE BEARERS.

(a) **Convener.**

The Convener shall preside over all meetings of the Committee and exercise his casting vote in the event of a tie. He shall be the Party Leader of MQM.

(b) **Senior Deputy Conveners.**

The Senior Deputy Convener shall preside over all the meetings of the committee. In absence of Convener he can act as “Party Leader” to deal with all the matters related to politics and election exercise.”

(4) Article 9 is particularly significant. It included the following:

“ARTICLE 9 – POWERS AND FUNCTIONS OF THE CENTRAL COORDINATION COMMITTEE.

(a) The Committee shall be the highest policy and decision making organ of the Movement. Its decisions shall be binding on all party organs and members Ordinary decisions shall be made by a simple majority of members present in a scheduled meeting. While in the important and major policy decisions 2/3 majority of the Committee shall be required.”

In the copy that was before the Court at trial, Article 9(b) is obscured by having been highlighted and then photocopied. This makes it difficult to read, but it is just possible to decipher the text and the Judge identified it as follows [97]:

“(b) The Central Coordination Committee shall seek guidance from Mr Altaf Hussain being the founder and ideologue, on the major issues, for his ratification.”

The Judge pointed out what he called a puzzling issue, namely that the previous version of Article 9(b) (in the 2002/2012 constitution) provided that the CCC should:

“seek guidance from Mr Altaf Hussain being the founder and ideologue, on the major issues, if it deem fit for ratification.”

This is not quite in the same terms as the 2016 constitution, although Article 9(b) was not one of the provisions referred to as having been amended [97]. The Judge speculated that there might have been a mis-typing (whether intentional or not) but made no finding to that effect [98]. He did however accept that the version in the April 2016 constitution was that registered with the Election Commission in Pakistan [98].

(5) Article 10 is also of significance. It provided as follows:

“ARTICLE 10 – AMENDMENTS:

No Rules and Regulations or any part of this Constitution shall be rescinded or amended except by a 2/3 vote of the Committee.”

(6) Article 13 provided:

“ARTICLE 13 – PARTY ELECTIONS:

- (a) All party offices shall be filled by elections of the members after every four years.
- (b) Until regular elections are held, the Committee shall fill existing vacant offices by a decision of at least 2/3 majority.”

(7) Article 13-A included:

“ARTICLE 13-A – NOTICE OF MEETING:

- (a) Every ordinary meeting may be held at a notice of three days.
- (b) An emergent meeting may be held at a notice of six hours.”

Counsel were agreed that an “emergent” meeting meant one called to deal with an urgent or emergency situation, which would seem to make sense in the light of this article.

(8) Article 14-A included:

“ARTICLE 14-A – OFFICE TENURE.

(a) Every Office Holder shall hold his office for 4 years from date of Notification.”

(9) Article 17 provided:

“ARTICLE 17 – INTRA-PARTY DISPUTES.

If a Party member has any complaint against any office bearers he or she will submit his or her complaint in writing to the Committee. The Committee thereupon shall constitute a Sub-Committee to investigate. Undertake a proper hearing and forward its recommendations to the Committee for the final decision. In either case the aggrieved member, if he / she so chooses has a right to appeal to the entire Committee whose decision with two third majority on this matter shall be final.”

9. It can be seen that the constitution provided for the Central Coordination Committee (“**the CCC**”) to be the highest policy and decision making organ of MQM, and also makes detailed provision for various other office bearers. Mr Altaf Hussain was not a member of the CCC nor indeed the holder of any particular office, but it was common ground that he was nevertheless accorded great deference by the CCC (also known as the “Rabta (or Rabita) Committee”), as indeed is reflected in the terms of Article 9(b) (in either version). The Judge summarised the position as follows: he had a special role as the founder and ideologue of MQM, and his special position and the respect in which he was held meant that he was listened to [68]. Mr Mohammad referred to him as a visionary whose role was an honorific one of giving guidance.
10. By 2016 Mr Altaf Hussain had long been in self-imposed exile in London. We were told by Mr Slade that he had been the target of a grenade attack in 1991 and had moved to London in January 1992, where he has lived ever since, being *persona non grata* in Pakistan. By 2016 a number of properties in London (freehold or in one case held on a long lease) had been acquired for the party’s use over the years and it was common ground that these were all held on trust for MQM [1]. The details are unimportant for present purposes but the pleadings refer to six properties, one in Mill Hill and the other five in Edgware, as well as a seventh property in Mill Hill which had been acquired, and formerly held, on trust for MQM but had been sold by the time the claim was brought (it appears it was sold in 2017). There were in evidence express declarations of trust, variously dated from 2001 to 2012 and signed by one or more of the defendants, in respect of each of the seven properties, in each case declaring that they held the property concerned on trust for “Muttahida Quami Movement” or on trust for “MQM”.
11. Elections for party positions were held on 30 April 2016. A total of 22 candidates were shown as successfully elected to the CCC on the official notification of returned candidates. It is not disputed that some members of the CCC were based in London and that the practice was for any members of the CCC that were in London to attend meetings of the CCC by telephone. Mr Slade told us that his position was that there were 8 such members, although he accepted that the Judge made no finding on the point

and that the precise number might be open to debate.

12. I come now to the key events of August/September 2016. They are in some respects contentious but for present purposes I propose to take them from the measured account given us by Mr Slade which I did not understand Mr Mohammad to take issue with. On 22 August 2016, Mr Altaf Hussain, speaking from London, and addressing workers on hunger strike in the Karachi Press Club, made a highly charged and emotional speech against human rights violations by the Pakistan military authorities and intelligence services (the ISI). There was a very severe backlash from the Pakistan military and civil disturbance in Pakistan with clashes between heavily-armed police and paramilitary Rangers on the one hand and protestors on the other; MQM's headquarters in Karachi were sealed off. The disturbances caused at least one fatality.
13. Mr Slade accepted that Mr Altaf Hussain's speech was very controversial; Mr Mohammad told us that it was perceived as anti-Pakistan and treasonous. It even resulted in him later being charged in England under the Terrorism Act, for which he faced trial at Kingston Crown Court, where he was acquitted in January 2022. It was not however thought necessary or appropriate at the trial before the Judge to go into the content of the speech, and the Judge did not do so.
14. Dr Farooq Sattar was then a Senior Deputy Convener of MQM in Pakistan and a member of the CCC. He was arrested on the night of 22 August 2016 but released the next morning. The Active Defendants' case is that after his release he spoke on the telephone to Mr Nadeem Nusrat (then the Convener of MQM and based in London) and through him invited Mr Altaf Hussain to step back temporarily from his role in MQM in order to calm the situation in Pakistan. That account of the telephone call was disputed, and although the Judge referred to the evidence of a number of witnesses on the point, he did not make any relevant findings. What is not in dispute however is that on the day after his speech (23 August 2016) Mr Altaf Hussain did issue an announcement both apologising for the distress he had caused the people of Pakistan and stating that he was stepping back from his role. He also said that he would pay special attention to his health as per the CCC's advice, and that he had been suffering from severe mental stress. The announcement was in Urdu and there were rival English translations before the Judge, the relevant statement being either (in Mr Haque's version):

“I hand over complete authority, organization, decision making and policy making to the Contact Committee [RABTA COMMITTEE].”

or (in the Active Defendants' version):

“I fully authorise Coordination Committee for organizational matters, decision making and policy making.”

The Judge, who was not provided with any expert evidence on the point, did not find it necessary to resolve which version was more accurate (although before us Mr Slade said that he was happy to accept Mr Haque's translation), but said that even on the defendants' version, it meant that Mr Altaf Hussain would stand back and take no further role, and hence that the CCC would no longer need to seek guidance from him under Article 9(b) (whichever version of that applied) [111]-[112].

15. The next day, 24 August 2016, a meeting was held on the roof-top of Dr Sattar's residence in Karachi. A note of the meeting (describing Dr Sattar as "Party Leader") indicates that the participants resolved to take certain important measures to "save the party" and "mitigate the adverse effect of the pronouncements on 22 August" (that is, Mr Altaf Hussain's speech). The measures suggested included that the party should be run from Pakistan with its headquarters at Karachi, and that a committee be formed forthwith consisting of "Members of CEC/Rabita Committee present in Pakistan and some old veterans of the Party" to undertake certain "emergent measures". These included amending the constitution and holding fresh intra-party elections. In the meantime Dr Sattar would "continue to hold the fort".
16. A newspaper report dated 27 August 2016 referred to the government of Pakistan having warned MQM on Friday (26 August) to dissociate itself from its chief Altaf Hussain or suffer the consequences, and reported the Prime Minister's spokesperson as saying that MQM would be allowed to continue their political activities in Pakistan "however they will have to amend their constitution and dissociate from their chief". Another newspaper report also dated 27 August reported a press conference held by Dr Sattar. It referred to him as having recently announced "the party's Pakistan chapter's dissociation from its London wing" and reported him as saying that MQM Pakistan had dissociated itself from Mr Altaf Hussain's anti-Pakistan statement and that "Now we have no connection with MQM founder Altaf Hussain and MQM London".
17. That was followed by a meeting on 31 August 2016 in Karachi. A note of the meeting (under the title "Amendment to the Constitution of Muttahida Quami Movement (Pakistan)") describes it as an emergent meeting of MQM's CCC. A list of attendees gives 20 names, with a further 3 members of the Committee noted as unable to attend since they were in jail. The meeting resolved to induct 4 new members of the Committee under Article 13(b). The Committee then resolved to omit Article 9(b) from the constitution, and to amend Article 7(b) to provide that in the absence of the Convener from Pakistan the most senior of the Senior Deputy Conveners present in Pakistan should preside over meetings of the Committee and act as Party Leader. A further meeting held the next day (1 September 2016) confirmed the resolutions and the minutes of the meeting.
18. The Active Defendants' submission to the Judge was that the meetings of 31 August and 1 September 2016 were ineffective to amend the constitution. By Article 10 an amendment required a 2/3 vote of the Committee, and of the 22 members of the Committee notified as having been elected in April 2016 only 11 were present, 3 being in jail, and 8 others (who Mr Slade suggested were the London members of the CCC) absent. There was in fact evidence before the Judge from Mr Mustafa Ali, one of the London members of the CCC, that he only discovered the constitutional changes made on 31 August 2016 through the media despite still being a member of the CCC, and that none of the CCC members in London at the time (which he said there were 10 of) had been able to take part in the 31 August and 1 September meetings [251]. Mr Mohammad accepted before us that none of the London members attended the meeting; his case was that they knew about it but chose not to take part, but he accepted that the Judge had made no findings to that effect. What the Judge did find was that the evidence did not establish that any attempt was made to hold the meeting by telephone to include any CCC members in London [130].
19. There was an immediate reaction to the removal of Mr Altaf Hussain from the

constitution from some London-based members of MQM, with tweets being posted to the effect that “We will not accept Minus one formula ... MQM is Altaf Hussain”, “No MQM without Altaf Hussain” and (in Urdu) “The Rabita Committee in Pakistan is working on a minus-one formula. MQM is nothing without Altaf Hussain.” Mr Slade summarised the Active Defendants’ position as being that despite all that Mr Altaf Hussain had done for MQM, Dr Sattar and his associates had cut loose from him without any attempt to ask him to explain himself. Mr Altaf Hussain believed that Dr Sattar acted as he did under pressure from the military and intelligence authorities and had acceded to their requirements that Mr Altaf Hussain be removed from MQM as a result of what must have happened during his arrest [117]. The Judge however found there was no evidence as to what happened during the arrest [117] and made no finding on the point.

20. Relations between Dr Sattar and his supporters in Pakistan and Mr Altaf Hussain and his supporters in London thereafter deteriorated. Another significant event took place on 21 September 2016 when members of MQMP (as it is now convenient to refer to the organisation in Pakistan) were instrumental in bringing forward resolutions before both the National Assembly and the Sindh Provincial Assembly calling for Mr Altaf Hussain to be prosecuted for treason under Article 6 of the Pakistan Constitution (a capital charge). The resolution in the Sindh Assembly was passed [146]. The same day Mr Nusrat strongly condemned the MQM Members of the Provincial Assembly who had been proposers of the resolution, and purported to dissolve the CCC. This was ratified by Mr Altaf Hussain who purported to empower Mr Nusrat to form a new CCC based in London [147]. On 2 October 2016 those in London expelled (or purported to expel) Dr Sattar as a member of MQM on the ground of betrayal [147]. Conversely MQMP removed (or purported to remove) the London supporters of Mr Altaf Hussain from membership of the CCC and subsequently expelled (or purported to expel) Mr Nusrat and others from the party [150].
21. Little need be said about subsequent events. MQMP held fresh elections in October 2016 [152], [164]-[165]. In November 2017 it amended its constitution again and duly notified the Election Commission [168].
22. The current position in summary is that MQMP is registered as a political party in Pakistan under the Elections Act 2017 under the name “Muttahida Quami Movement Pakistan”; its constitution as amended from time to time is lodged with Pakistan’s Election Commission; and it has participated in elections since August 2016 at all levels of government [7]. Meanwhile Mr Altaf Hussain and his supporters have continued to operate from London, advancing the politics and philosophy which he advocated when guiding MQM. But they have, as the Judge put it, “not been allowed to return to the fold of MQMP” or otherwise be involved with MQMP [170].

The Proceedings

23. Mr Haque issued his claim form on 3 September 2020, claiming on behalf of himself and all members of MQMP. The claim was brought against the 1st to 6th Defendants as trustees of the relevant properties for MQM, and against the 7th Defendant as a knowing recipient of trust funds. There was also a claim against the 5th and 6th Defendants as being liable for dishonest assistance or as constructive trustees.
24. The Particulars of Claim fall naturally into two parts. From paragraph 1 onwards, they

plead the background and the history (under the heading “Constitutional Development”), culminating in an assertion in paragraph 23 that MQMP is the beneficiary of all the trust assets. The remainder of the pleading (from half way through paragraph 23 to the end) alleges various acts of breach of trust and claims relief for breach of trust under numerous heads.

25. The Defence naturally follows the same course. On the first part of the claim it includes (at paragraph 16) the contention that because of the lack of ratification by Mr Altaf Hussain, or because of the failure to obtain the two-thirds majority required by Article 10 to amend the constitution, the purported amendments in August/September 2016 were of no effect and “accordingly MQM would still remain in being as a separate unincorporated association” and “MQMP would be operating as a separate and distinct unincorporated association”. Hence it was denied (at paragraph 50) that MQMP had any interest in the properties. The Defence then separately set out the answers to the particular allegations of breach of trust.
26. In these circumstances Master Clark made an Order on 7 October 2021 directing that the trial of the claim should be split into two stages, namely Stage 1 which “shall determine the constitutional issues”, identified as all matters addressed in the Particulars of Claim paragraphs 1 to 23 (excluding any allegation that the Defendants had failed to account for the proceeds of sale of the property that had been sold) and Defence paragraphs 1 to 50; and Stage 2 which “shall determine the breach of trust issues” again identifying the relevant paragraphs.
27. The trial of Stage 1 took place before the Judge over a number of days in November to December 2022 and January 2023, and as already referred to he handed down the Judgment on 13 March 2023.

The Judgment

28. The Judgment is divided into a number of sections. Section A ([1]-[12]) contains an introduction to the claim and the defence. Section B ([13]-[19]) summarises the statements of case and the issues at trial. Section C ([20]-[31]) considers a concern that the Judge had as to the proper role of trustees in a claim such as this. Section D ([32]-[57]) deals with some miscellaneous aspects of the trial, under the headings “Context”, “Witness Evidence Generally”, “Disclosure Issues”, “Expert Evidence” and “Submissions”. Section E is the longest section ([58]-[170]) and contains the Judge’s findings of fact. That is followed by a comparatively short discussion in Section F ([171]-[181]) of the consequences of the factual findings, and a summary of the decisions the Judge has made in Section G ([182]). Two appendices contain a detailed account of the evidence of each of the claimant’s and defendants’ witnesses ([183]-[225] and [226]-[271] respectively).
29. For the purposes of this appeal the most significant parts of the Judgment are as follows. First in the discussion of the issues in Section B, the Judge says this at [16]:

“From the statements of case to final submissions, both sides have concentrated in detail upon the following issues, as developed at this trial:

- (i) Whether MQM is now known as MQMP or is a separate

unincorporated association (“**the MQM Identity Issue**”); and

- (ii) If MQM is now known as MQMP, whether those now in control are acting unconstitutionally (including by the appointment of Mr Haque as a representative to bring these proceedings) because they should be bound by the 2015 Constitution and their purported authority stems from the unconstitutional actions of those who seized control and instigated the purported adoption of the 2016 Constitution after the 23 August 2016 apology (“**the MQM Constitutional Issue**”).

That therefore distinguishes between the question whether MQMP is the same as MQM and the constitutional questions. To anticipate, Mr Slade’s central submission is that the two cannot be divided in this way, because the answer to the identity issue depends on the answer to the constitutional issues.

30. At [17] the Judge referred to Mr Slade’s identification of what the constitutional issues were, which included such questions as whether the CCC was obliged to seek Mr Altaf Hussain’s guidance for any constitutional change in August 2016; whether Mr Altaf Hussain’s announcement of 23 August 2016 made any difference to that question; and whether the constitutional change in August 2016 was approved by the requisite majority of the CCC.

31. At [18] the Judge raises a concern as to whether it is proper for the defendants as trustees to be raising the constitutional issues at all. He then addresses those concerns in a passage which extends down to the end of Section C at [31]. The whole passage is too long to set out but the nature of the Judge’s concern can be seen from [18] as follows:

“It is of potential concern that the active Defendants may be raising matters concerning the interests of members and, maybe, former members under the contract of the Constitutions rather than addressing their positions as trustees of land. It is of concern that they may be doing so in their capacity as trustees to advance their personal interests/claims. Those concerns arise without any view needing or being taken of the merits of the claim. They arise when the active Defendants have not sought directions from the Court concerning their role as trustees and whether there is any other interested party who ought to have the opportunity to be represented in respect of constitutional matters.”

32. The conclusions the Judge reached on this question (which he recognised at [19] had not been raised by Mr Haque on behalf of MQMP but had been one which he raised himself) can be seen from [25]-[30] where he said that in raising the MQM Identity Issue the Active Defendants were doing so in part with a personal interest, and the problem was that they had not sought directions as to whether they were best placed to advance the defence to protect the members of MQM [25]. At [26] he continued:

“26. The position is more obviously serious in respect of the MQM Constitutional Issue. If MQMP is a separate association and not a beneficiary the issue will not arise. Therefore, the active Defendants’ case for this issue proceeds on the basis that MQMP is MQM and Mr Haque represents the membership of MQMP.

That being so, the active Defendants are raising the MQM Constitutional Issue not as members or former members with extant rights but as trustees defending claims which allege breach of trust and misappropriation against them including a failure to account. Those claims (assuming they have merit, which is not yet to be determined) will be on this scenario for the benefit of the MQMP membership and brought by a duly authorised representative of MQMP.

27. As a matter of principle, at least therefore, there appears to be much to be said for the proposition that the active Defendants should have recognised that the defences they are raising within stage one of the trial are defences attributable to their interests as members/former members not as trustees. That they should have asked the Court for directions including as to whether they should be joined as members to enable them to bring a cross-claim. If they had done so, the Court would also have had the opportunity to consider the issue of jurisdiction in the context of the MQM Constitutional Issue being raised for an unincorporated association which is a political party in Pakistan (including participation in national and local elections), organised in Pakistan and with a membership in Pakistan.”

At [30] he summarised his conclusion on this point as follows:

“The problem for this case, however, is that the MQM Constitutional Issue (at least) is not on the face of it a defence relevant to the alleged misconduct of the active Defendants as trustees. If they have, for example, misappropriated assets of the Trust, they should account for them.”

33. Having thus distinguished between the MQM Identity Issue and the MQM Constitutional Issue, and treated the latter as irrelevant to the defence to the claim, the Judge then addressed the MQM Identity Issue in Section E when considering his findings of fact. The relevant passages address the issue by asking whether Dr Sattar and his followers in August 2016 intended MQMP to be a new party or to be a continuation of MQM. That can be clearly seen for example from [118] where he refers to Dr Sattar’s evidence in relation to a meeting on 24 August 2016 as follows:

“Dr Sattar’s evidence was that *“All the members of the Rabita Committee and the lawmakers of MQM decided unanimously to remove Altaf Hussain as an ideologue leader, for he never held any official office within the Party. As the decision-maker in the Party per paragraph 9a of the Party’s 2002/12 Constitution (as amended in April 2016), the Central Coordination Committee was binding on all members, including me”*. Whilst this raises the issue whether this was constitutional, it is not evidence of an intention to form a new party. It is evidence of an intention to continue MQM without Mr Altaf Hussain.”

The Judge makes similar points at [119], [120], [122], [126] and [127]. Thus for example at [120] the Judge refers to the measures suggested at the meeting of 24 August

2016 as:

“entirely consistent with MQM continuing and inconsistent with a new association being formed.”

At [126] he says:

“The suggestion that a new party was being formed is also inconsistent with the fact that meetings were held on 31 August and 1 September 2016 to amend MQM’s April 2016 Constitution.”

Having set out the minutes of the meeting and the detail of the resolutions passed, he continued at [127]:

“These are the amendments challenged as void. However, that does not alter the fact that the intention of those voting was to amend MQM’s April 2016 Constitution.”

34. Two other points were made by the Judge in relation to the MQM Identity Issue. The first was that the Defendants’ own case was that Dr Sattar had “hijacked” MQM, and this was inconsistent with MQMP being a new party. Thus at [115] the Judge said:

“Mr Altaf Hussain’s evidence at trial was not that MQMP was established as a new political party after the apology but that Dr Sattar and his associates took advantage of his apology to exclude him from MQMP and hijack the association.”

And at [124] when referring to a press conference given by Mr Nusrat on 17 November 2016 (at a time when he was very supportive of Mr Altaf Hussain) he said:

“Nevertheless bearing in mind that Mr Nusrat was on side with Mr Altaf Hussain, it is notable that despite its content being critical of Dr Sattar and his associates concerning their actions and exclusion of Mr Altaf Hussain, there is no suggestion that a new political party was formed during the events following the 23 August apology. Indeed, the criticism related to Dr Sattar’s actions in respect of MQM. In particular, the decision to run MQM from Pakistan and to remove Mr Altaf Hussain’s name from MQM’s Constitution. This is entirely consistent with Mr Altaf Hussain’s above-mentioned recollections during cross-examination. His conclusion was not that a new party was formed but that MQM was being hijacked and, as a matter of fact, there could not be a MQM without Mr Altaf Hussain.”

He summarised this point at [151] as follows:

“...it was not at the time disputed that MQMP was MQM. The subsequent objection was to the hijacking or takeover of MQM. Those objections would not have been required if MQMP had been a new unincorporated association.”

And he reverted to it at [237] in his discussion of Mr Altaf Hussain’s evidence, as follows:

“It is to be noted that there is an inherent factual inconsistency between the allegation that a new party was formed and the allegation that Dr Sattar changed MQM’s constitution and excluded Mr Altaf Hussain from MQM at the request of the army, ISI and/or government.”

35. The other point the Judge made was in relation to the retaliatory actions on and after 21 September 2016 when each side sought to expel the other. Having referred to Mr Nusrat’s purported dissolution of the CCC and Dr Sattar’s purported expulsion as a member of MQM he said at [148]:

“In any event, those actions were based upon the premise that MQM had continued after 23 August 2016 under the leadership of Dr Sattar, not on the basis [that] Dr Sattar had formed a new party. In other words, that MQMP was MQM. If the opposite had been the position (MQM was independent from MQMP), there would have been no expulsion of Mr Altaf Hussain as occurred because he was never a member of MQMP (unless it was MQM). Whilst it might be argued by the active Defendants that the expulsion was part of the plot to misrepresent MQMP as MQM, the same could not be said for purported dissolution by Mr Nusrat of the CCC and formation of a new CCC. He would simply have distinguished the MQM CCC from the MQMP CCC if MQMP had been a new, distinct unincorporated association. In addition, it would not have been difficult to assert that distinction at the time and that did not occur.”

36. His conclusion at [160] was that:

“MQMP was MQM with only a change of name both as the same unincorporated association and as the political party.”

37. In Section F (under the heading “Discussion”) he picked up this finding of fact as follows at [171]:

“The findings of fact resolve the MQM Identity Issue without needing to trouble further with the distinction between the active Defendants’ position as trustees and their personal interests. The finding of fact being that MQMP is MQM. The use of MQMP was only a change of name.”

38. That is sufficient to explain the Judge’s reasons for coming to the conclusion that MQMP is MQM, which is the subject of the main ground of appeal.

39. Mr Slade also challenges the Judge’s conclusion that the constitutional issues in any event did not amount to a defence to the claim. So far as this is concerned, I have already referred to the concern expressed by the Judge in Section C of the Judgment. He reverted to the question in Section F at [172] to [181]. At [172(b)] he held that:

“The active Defendants may actively defend allegations of breach of trust because their conduct is under attack but the matters advanced concerning the MQM Constitutional Issue are matters for the membership of MQMP. They are not matters which touch on what the Defendants did or did not do as trustees of the Properties pursuant to

their fiduciary duties. The causes of action and relief prayed relating to removal and breach of trust do not depend upon the validity of resolutions passed (or not) by the CCC on 31 August and 1 September 2016.”

He therefore concluded at [174] that it would be “wrong to decide the MQM Constitutional Issue as a defence to the claim”.

40. He then considered the position on the MQM Constitutional Issue in case that were wrong and held that it was in any event in an unsatisfactory state [175]; the procedural lawfulness of the decisions on 20 August and 1 September 2016 remained an issue that would require a further hearing to resolve [180(a)]. At [181] he recorded that the parties were given the opportunity before hand-down to identify reasons for a further hearing, and recorded their position on that as follows:

“They have agreed that it is unnecessary as a result of the decision that MQMP is MQM but subject on the part of the active Defendants to the reservation of their position should there be an appeal of that decision, and it is successful.”

Mr Slade confirmed that this accurately reflects his position that in the light of the Judge’s conclusion that MQMP was MQM there was no point in having a further hearing so long as that conclusion stood.

41. Mr Slade challenges two further conclusions reached by the Judge in the course of his Judgment. The first concerns the effect of Mr Altaf Hussain’s announcement of 23 August 2016, where the Judge was faced with two rival translations (see paragraph 14 above), but held that on either version Mr Altaf Hussain was saying that he would stand back and take no further role in the decision making of MQM, with the result that the CCC would no longer need to seek guidance from him under Article 9(b) of the April 2016 constitution [112].
42. The other challenge is to the Judge’s conclusion on the construction of Article 9(a) of the April 2016 constitution at [134]. This was that the requirement for a “2/3 majority of the Committee” for important and major policy decisions meant a 2/3 majority of those members of the Committee present in a scheduled meeting. It was not to be construed as though it required a 2/3 majority of the CCC whether members attended the meeting or not.
43. At the end of the Judgment the Judge helpfully summarised the decisions he had made as follows [182]:

“Based upon the findings of fact and for the reasons set out above my decisions are:

- a) MQMP is MQM and its members are the beneficiaries of the Trusts.
- b) It has not been established that the 2015 Constitution was adopted and on the balance of probability it was not.
- c) The April 2016 Constitution was adopted.

- d) As at 23 August 2016 Mr Altaf Hussain stood down from any role in or involvement with MQMP. Whether temporarily or permanently that did not alter before his expulsion from MQMP when he formed a new association operating from London.
- e) A further hearing would be required to decide whether the resolutions passed on 31 August and/or 1 September 2016 breached the April 2016 Constitution.
- f) A further hearing is unnecessary. The MQM Constitutional Issue is not a defence to the claim against the Defendants as trustees.
- g) Even if it was a defence, the decisions on 31 August and/or 1 September 2016 have been superseded by events. The September 2016 Constitution was adopted by the CCC elected on 3 November 2016. The new CCC amended the September 2016 Constitution and have adopted by resolution the 2017 Constitution. It remains in force (subject to any later amendment).
- h) Even if Article 9(b) could be and is treated as restored and Mr Hussain's expulsion set aside, which is not relief the active Defendants seek or which they could seek as trustees, the decision to bring a claim was not a major issue requiring Mr Altaf Hussain's guidance or ratification.
- i) Under the 2017 Constitution, Mr Haque as representative of the members of MQMP (a matter not in dispute) is entitled to bring this claim on their behalf.

The second stage of the trial should proceed to decide whether the relief prayed for in the Claim Form should be granted.

44. By his Order dated 13 March 2023 the Judge declared as follows:

“The Properties are and 53 Brookfield Avenue was beneficially owned absolutely by the membership from time to time of the political party registered as Muttahida Quami Movement Pakistan (MQMP) under the Political Parties Order 2002 and or Elections Act 2017 (Pakistan), an unincorporated association formerly called and registered as Muttahida Quami Movement (MQM) and for whom the Claimant is the duly appointed representative for the purposes of this claim.”

(The Properties here referred to are the six properties identified as held on trust for MQM, and 53 Brookfield Avenue is the seventh property which was sold).

Grounds of Appeal

45. The Active Defendants appeal with permission granted by Arnold LJ on four grounds. I have already in effect referred to them but set them out here for convenience:
- (1) Ground 1(a) is that the Judge erred in considering that the identity issue could be decided without deciding the constitutional issues.

- (2) Ground 1(b) is that the Judge was wrong to conclude that the constitutional issues were not a defence available to the defendants.
- (3) Ground 2 is that the Judge misconstrued Mr Altaf Hussain's announcement of 23 August 2016 and ought to have held that it did not alter the obligation of the CCC under Article 9(b) of the April 2016 constitution to seek guidance from him on major issues.
- (4) Ground 3 is that the Judge misconstrued Article 9(a) of the 2016 constitution and ought to have held that it required a 2/3 majority of the entire Committee, not just of those who had turned up for a meeting.

Respondent's "preliminary issues"

46. Mr Mohammad in his skeleton argument on behalf of Mr Haque raised a number of "preliminary issues" which he invited the Court to consider before dealing with the substance of the Active Defendants' appeal. Mr Slade objected that these should have been raised by way of Respondent's notice. In principle I agree as these preliminary issues are in truth alternative reasons why the Judge's order should be upheld and should therefore have been the subject of a Respondent's notice, but the objection fell away after we indicated that we would give Mr Slade permission to rely on a supplemental skeleton dealing with the points.

Preliminary issue (a) – trustees must act unanimously

47. Mr Mohammad relied on the principle that trustees must act unanimously and said that the Active Defendants do not have the support of the other trustees (the 2nd to 4th Defendants) to bring the appeal.
48. The principle that trustees must act unanimously (unless the trust instrument or some statutory provision provides otherwise) is well established, but it applies to the exercise by trustees of powers or duties conferred on them as trustees: see for example, *Snell's Equity* (34th edn, 2020) §10-015 ("In general, any power or trust must be exercised by all the trustees"); *Lewin on Trusts* (20th edn, 2020) §28-072 ("trustees are generally required to act unanimously in the exercise of their powers"); *Luke v South Kensington Hotel Company* (1879) 11 Ch D 121 ("**Luke**") at 125-6 per Sir George Jessel MR ("Two out of three trustees have no power to bind cestuis que trust"); *Fielden v Christie-Miller* [2015] EWHC 87 (Ch) ("**Fielden**") at [19] per Sir William Blackburne. The reason for this unanimity principle is given by *Lewin* at §28-071, namely that:

"The office of co-trustees of a private trust is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee and therefore must execute the duties of the office in their joint capacity."

The principle therefore applies when trustees are acting in the exercise of their joint office as trustees on behalf of the trust estate. Thus in *Luke* the case concerned the power of two out of three trustee mortgagees to compound a debt owed to the trust estate; in *Fielden* the question was whether an alleged representation by one trustee estopped the trustees of a settlement of land as to the exercise of their powers of appointment.

49. This principle has no application to the right of any trustee sued for breach of trust to defend the action either at trial or on appeal. In the present case the claim is brought against each of the trustees seeking to make them personally liable for breaches of trust. Restitution and payment orders are sought from each of them individually, not out of the trust estate. They are therefore not defending the claim for the benefit of the trust estate; they are defending the claim for their own benefit to avoid being made personally liable for large sums of money. Like any other defendant sued personally each defendant has a right to defend himself as he thinks fit, regardless of what the other defendants choose to do. It would be startlingly unjust if the fact that one or more of six trustees chose not to defend a claim affected the right of the others to do so, and that cannot be the law. The same must apply to appeals.
50. I therefore consider that the unanimity principle does not prevent the Active Defendants from pursuing this appeal.

Preliminary issue (b) – estoppel

51. Mr Mohammad said that the Active Defendants were estopped from denying that MQMP was MQM on the basis that Mr Altaf Hussain accepted that no new party was formed after the August/September 2016 amendments, which he accepted without objection.
52. This point is tied up with Ground 1(a) of the appeal and it is more convenient to deal with it there.

Preliminary issue (c) – declining a further hearing

53. Mr Mohammad invited the Court to consider whether the appeal should proceed when the Active Defendants rejected a further hearing to determine the constitutional validity of the August/September 2016 amendments when they were offered an opportunity by the Judge.
54. I have explained what happened above (paragraph 40). Mr Slade’s position was that the Judgment made a number of findings, particularly the central finding that MQMP was MQM regardless of the outcome of the constitutional issues, that made a further hearing of no practical use unless and until those findings were successfully appealed. I agree with him that this is not a reason why the Active Defendants should be prevented from pursuing an appeal – indeed it seems to me the very reason why they should be free to do so.

Preliminary issue (d) – locus standi of trustees

55. By preliminary issue (d) Mr Mohammad contends that it is not for the trustees to raise the constitutional issues but for the members of MQM or MQMP.
56. This is the reverse of the proposition advanced in Ground 1(b) of the appeal and it is more convenient to deal with it together with Ground 1(b).

Preliminary issue (e) – propriety of English Court deciding constitutional issues

57. By preliminary issue (e) Mr Mohammad raises the question whether the English Court has jurisdiction, or is the proper forum for adjudicating on issues under Pakistani law.

58. The Judge briefly adverted to the question of jurisdiction at [172(g)] where he said:

“If the MQM Constitutional Issue was to be raised by members or former members of MQMP entitled to do so, it is not difficult to see that this Court might very well not accept jurisdiction to decide constitutional matters for an unincorporated association in Pakistan, which is also a registered political party with a large membership in Pakistan. The issue of jurisdiction has not been raised with the Court because this claim concerns breaches of trust in regard to trust property within the jurisdiction held by trustees living in this jurisdiction. The MQM Constitutional Issue which requires jurisdiction to be addressed is not relevant to a claim of breach of trust in dealings with the assets of the Trusts.”

59. As this illustrates, the question of whether the English Court has, or should exercise, jurisdiction over the constitutional issues is dependent on whether they give the trustees a defence to the claim for breach of trust. If they were entirely irrelevant to the claims for breach of trust, one can see that a question would arise whether the English Court ought to rule on them. But if they do provide the trustees with a defence, then one would have thought the English Court was not only entitled but bound to consider them.

60. In those circumstances it is more convenient to consider this issue with Ground 1(b) of the appeal.

Preliminary issue (f) – can the English Court review the decision of the Election Commission of Pakistan?

61. Mr Mohammad contends that the Active Defendants invited the English Court to question the legality of the decision of the Election Commission of Pakistan which accepted the August/September 2016 amendments; and that the English Court has no jurisdiction to challenge the decision of the Election Commission, which is a constitutional body under the law of Pakistan charged with supervising elections and political parties.

62. I accept the answer to this point given by Mr Slade. Mr Haque did not plead that the Election Commission had made any decision to accept the August/September 2016 amendments as constitutional or ratify them. He did plead in his Reply that registration of MQMP with the Election Commission amounted to a recognition that MQMP was a new name for MQM, but that was not supported by any evidence and not a finding made by the Judge. Indeed the Active Defendants relied in their Defence on the fact that MQMP’s constitution dated 31 August 2016 referred in its preamble to the “creation of a political party namely Muttahida Quami Movement Pakistan” and although we have not seen this document, it was admitted in the Reply that its preamble did contain these words. It is apparent that the question whether the effect of the Election Commission accepting the 31 August constitution of MQMP was to recognise MQMP as MQM, or instead to recognise MQMP as something new, is not something that can be said to be self-evident.

63. Mr Slade says that if Mr Haque had contended that the August/September 2016 amendments had been ratified by the Election Commission as constitutional that would have required further information, further disclosure, a focus on the question at trial,

and not least expert evidence of Pakistani law. Mr Haque did apply for permission to adduce expert evidence (including as to the remit of the Election Commission) but that was refused and the Judge was not addressed on, or made any findings as to, the remit of the Election Commission.

64. I accept Mr Slade’s submission that in those circumstances this preliminary objection fails.

Ground 1(a) – can the identity issue be decided without deciding the constitutional issues?

65. I can now come to the main issue which is that raised by Ground 1(a), namely whether the Judge was right to deal with the identity issue without deciding the constitutional issues (see paragraph 45(1) above). I agree with Mr Slade that the Judge here fell into error.

The nature of an unincorporated association

66. MQM was an unincorporated association. It is no doubt governed by the law of Pakistan but neither side sought to plead or prove any particular aspect of the law of Pakistan concerning unincorporated associations. In those circumstances an English Court will proceed on the basis that the relevant law of Pakistan is not materially different from English law. Under English law, an unincorporated association is not itself a corporate body with legal personality, but consists of a number of people who come together for some common purpose, whether that be for social, religious, political or other purposes (although not business purposes, since persons carrying on a business in common with a view of profit constitute a partnership under the Partnership Act 1890). The relationship is essentially a contractual one: a member of an association by agreeing to join the association agrees to be bound by the contract between him and each of the other members that is found in the rules of the association. This is all well established law: see *Conservative & Unionist Central Office v Burrell* [1982] 1 WLR 522 at 525C per Lawton LJ (with whom Brightman and Fox LJ agreed):

“I infer that by “unincorporated association” in this context Parliament meant two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will. The bond of union between the members of an unincorporated association has to be contractual.”

That was said in the specific context of the Income and Corporation Taxes Act 1970, but there is no reason to think that “unincorporated association” in that context had any different meaning from its meaning in the general law.

67. Such being the nature of an unincorporated association, the next question is what the position is where property is expressed to be held on trust for such an association. In the present case each of the seven properties concerned was expressly declared to be held on trust for MQM. Since these are all English properties, and the declarations of trust were made in England, there is no reason to doubt that the trusts are governed by English law even though the beneficiary in each case was declared to be MQM.

68. Save in the case where property is held on charitable trusts (where it is sometimes said that “charity itself” is the beneficiary), in English law a trust requires one or more persons (whether individuals or other legal persons) as beneficiaries. It is not of course suggested that MQM, which was formed for political purposes, was ever a charity. The difficulty however is that MQM is not a legal person so the beneficiary cannot in law be MQM as such. Indeed as Lewison J (as he then was) observed in *Hanchett-Stamford v Attorney-General* [2008] EWHC 330 (Ch), [2009] Ch 173 (“*Hanchett-Stamford*”) at [28]:

“Unincorporated associations do not have separate legal personalities. Almost all the myriad legal problems to which they give rise stem from this.”

69. In the case of assets held on trust for an association these problems have been worked out in a series of cases. We were not in fact referred to these, but the principles they establish are not controversial. I can summarise them as being that the trustees of an unincorporated association hold its assets on trust for the members of the association for the time being subject to their respective contractual rights and liabilities towards one another as members of the association: see *Megarry & Wade on the Law of Real Property* (10th edn, 2024) §12-096, *Neville Estates v Madden* [1962] Ch 832 (“*Neville Estates*”) at 849 per Cross J, *re Recher’s Will Trusts* [1972] Ch 526 (“*Recher*”) at 539F per Brightman LJ. In *Neville Estates* Cross J said that a gift to an unincorporated association might be (and indeed, as subsequent cases have said, usually is):

“a gift to the existing members not as joint tenants, but subject to their respective contractual rights and liabilities towards one another as members of the association. In such a case a member cannot sever his share. It will accrue to the other members on his death or resignation, even though such members include persons who became members after the gift took effect.”

70. In *Hanchett-Stamford* at [31] Lewison J summarised the position as follows:

“It follows, in my judgment, that the members for the time being of an unincorporated association are beneficially entitled to “its” assets, subject to the contractual arrangements between them... It is important to stress that this is a form of beneficial ownership; that is to say that in some sense the property belongs to the members.”

He went on to identify the nature of the members’ interests in a typical unincorporated association with more precision as being that the members are jointly entitled, but subject to the rules of the association, saying at [47]:

“The thread that runs through all these cases is that the property of an unincorporated association is the property of its members, but that they are contractually precluded from severing their share except in accordance with the rules of the association; and that, on its dissolution, those who are members at the time are entitled to the assets free from any such contractual restrictions. It is true that this is not a joint tenancy according to the classical model; but since any collective ownership of property must be a species of joint tenancy or tenancy in common, this

kind of collective ownership must, in my judgment, be a subspecies of joint tenancy, albeit taking effect subject to any contractual restrictions applicable as between members.”

71. Those being the principles, how do they apply in a case like the present? Take the case of a London property that was acquired in 2001 on trust for MQM. As a matter of law that means that the property was held on trust for the then members jointly, but on terms that it was to be used for the purposes of MQM. That meant that no individual member could claim to sever their share and realise it so long as MQM continued, and that if they died, or otherwise ceased to be a member, their share would accrue to the other members. That would include, as Cross J says in *Neville Estates*, any new members that had joined since 2001. This is because the rules envisage that members may come and go. All of this – the inability to take a severable share, the loss of the share on death or otherwise ceasing to be a member, the accretion of the share on a member leaving to the other members including new members – is not explicitly spelt out in MQM’s constitution (and is rarely made explicit in the rules of such an association), but is implicit in the contract formed when a person agrees to become a member of MQM.
72. It is also implicit in that contract that each of the members had a right to require MQM’s assets to be used only for its proper purposes – indeed Article 4 of the April 2016 constitution provided that the Movement should raise funds “for its functioning and to provide assistance of the People”. Again this is reflected in the authorities. In *Recher* Brightman J said at 538H-539A:

“As and when a member paid his subscription to the association, he would be subjecting his money to the disposition and expenditure thereof laid down by the rules. That is to say, the member would be bound to permit, and entitled to require, the honorary trustees and other members of the society to deal with that subscription in accordance with the lawful directions of the committee. Those directions would include the expenditure of that subscription, as part of the general funds of the association, in furthering the objects of the association.”

And then at 539D-E he said that the same applied to other funds given to the association such as donations and legacies. Such a gift takes effect in favour of the existing members of the association:

“as an accretion to the funds which are the subject-matter of the contract which such members have made inter se, and falls to be dealt with in precisely the same way as the funds which the members themselves have subscribed.”

See also *re Grant’s Will Trusts* [1980] 1 WLR 360 at 366A per Vinelott J:

“Each member is thus in a position to ensure that the subject-matter of the gift is applied in accordance with the rules of the association, in the same way as any other funds of the association.”

73. What this means is that although when a London property was acquired in 2001 on trust for MQM it belonged collectively to the then members, none of them could complain if they lost their share in it on ceasing to be a member, or if they had to share ownership

with any new members, or if the property was used for the purposes of MQM. It is in the nature of an association like MQM that it has a fluctuating membership and that its assets belong to the members for the time being, to be used in accordance with its purposes for the time being.

74. But it seems to me that all of this must be implicitly dependent on MQM being operated in accordance with its constitution. I will give an example why this must be so. Suppose an association of 100 members, with rules providing for a management committee of 12 with power by a 2/3 majority to expel members, to admit new members, and to change the rules. If the committee, acting at a duly constituted meeting, and by the requisite majority of 8 out of 12, and otherwise acting properly in accordance with the rules (that is, acting constitutionally), expels 10 of the old members, and admits 30 new members, none of the existing members can complain. The 10 expelled lose their interest in the assets of the association; and the other 90 old members have to share their interest in the assets with the 30 new members, but this was the contract that they agreed to when they became members. Similarly if the committee, again acting constitutionally, amends the rules, the members cannot complain that the assets are thereafter held and used in accordance with the new rules. Again that is the contract that they signed up to.
75. But suppose instead that 7 of the members of the committee get together without informing the others, purport to appoint 4 new members of the committee, and then with the agreement of the new committee members purport to exclude existing members of the association, admit new members of the association and change the rules, what is the effect? All these purported decisions are plainly in breach of the rules and unconstitutional. I do not see how they could have any effect on the existing property and contractual rights of the members. The members who are purportedly expelled never agreed to give up their interest in the assets of the association if they were unconstitutionally expelled. The other existing members never agreed to share their interest in the assets with new members who had been unconstitutionally admitted, nor did they agree that their assets could be used in accordance with new rules unconstitutionally adopted, or be at the disposal of a new committee unconstitutionally appointed. On the contrary the assets, it seems to me, continue to be held for the existing members to be applied in accordance with the existing rules of the association.
76. I do not think there is anything technical or obscure about these consequences. They are simply the working out of the principle that the assets of an unincorporated association are held on trust for the members from time to time in accordance with the contractual arrangements between them.

What does it mean to say that MQMP is MQM?

77. Against this background it is now possible to examine what is meant by the question characterised by the Judge as the MQM Identity Issue, or more simply whether MQMP is MQM. Mr Slade did not dispute that this question has to be answered, because the properties concerned are or were held on trust for MQM; that means that they can only be claimed by MQMP if MQMP is now the beneficiary of the trusts; and MQMP can only establish that it is the beneficiary of the trusts if it can establish that MQMP is MQM, as it is not suggested that MQM has ever voluntarily divested its interest in favour of MQMP.

78. But as set out above, if MQMP successfully claims the assets, the effect will be that the assets will thereafter be held for the current members of MQMP. And so when we ask the question whether “MQMP is MQM” what we really mean is whether the current members of MQMP can claim to be the current members of MQM. And for the reasons I have sought to explain, that can only be so if MQMP is a constitutional development of MQM, as it is only if that is the case that the current members of MQMP can claim to be the true members of MQM. If MQMP is an unconstitutional development of MQM, those who were members of MQM before August 2016 can say that they never agreed that they would lose their share in the properties if they were expelled by an unconstitutional CCC, nor agreed that their interest in the properties should be shared with members admitted by an unconstitutional CCC, nor agreed that the properties should be used for the benefit of an organisation that had unconstitutionally adopted different rules from the MQM of which they were members before August 2016, or that control of the properties should pass to an unconstitutionally elected CCC and unconstitutionally elected office bearers.
79. I therefore agree with Mr Slade that one cannot divorce the identity issue (is MQMP MQM or not?) from the overall constitutional issue (is MQMP as it currently exists a constitutional development of MQM as it stood in August 2016 or not?). As he neatly put it, the identity issue *is* the constitutional issue. He accepted that MQMP exists. It is registered as a political party in Pakistan. It has its own members, its own committees and office bearers, and its own constitution, the current version of which is registered with the Election Commission of Pakistan. It participates in elections at every level in Pakistan. Nothing decided by the English Court can affect any of that or alter its status as a political party in Pakistan. But unless it can show that it is a constitutionally valid development of MQM, it is necessarily in law a new and separate organisation from MQM as it was before the events of August 2016, however much it might seek to claim the mantle of MQM. It therefore cannot establish that it is the beneficiary of the trusts of the English properties.

The Judge’s reasoning

80. Mr Mohammad sought to uphold the Judge’s conclusion as a factual conclusion reached on the basis of the evidence before him. The Judge of course had the advantage of hearing oral evidence from a number of witnesses over a number of days, and was immersed in the whole sea of evidence in a way we cannot be. That means there are well-known limits on the ability of an appellate Court to disturb his factual findings. It is therefore necessary to examine with care the grounds for his conclusions on the identity issue.
81. I have referred to the relevant parts of his judgment above. As there set out, I think three strands of reasoning can be discerned. The first is that Dr Sattar and those around him did not intend to create a new party from scratch but to remodel the existing MQM: see the passages from the Judgment cited at paragraph 33 above. I readily accept that that finding as to the intentions of Dr Sattar and others involved in the formation of MQMP was one that was not only open to the Judge but plainly justified by the materials he referred to. But for the reasons given above, I do not think it answers the identity issue.
82. It is not uncommon for unincorporated associations to split into two or more factions, and to judge from the reported cases this would appear to be something which can

particularly affect religious organisations, where strongly held views on doctrinal differences can make them naturally fissile. Political parties are not immune from the same phenomenon. If a particular faction resigns *en masse* and founds an avowedly new organisation the question of identity does not of course arise; but the reported cases (and indeed one's own judicial experience) show that as often as not one or more factions claims to be the true successors of the organisation, often precisely because it enables them to lay claim not only to the spiritual or ideological inheritance of the original institution, but also to its material assets. As I have sought to explain, the only way in which such a claim can be assessed by a Court is by applying the rules laid down in the organisation's constitutional documents to see whether the faction concerned is or is not able to establish that it is the lawful successor to the organisation according to the contractual arrangements agreed between the members; it is not enough that the claimants assert that they intended to take over the existing institution rather than start a new one.

83. The second strand of the Judge's reasoning is that the Active Defendants' own case was that Dr Sattar had "hijacked" MQM, and this was inconsistent with MQMP being a new party: see the passages from the Judgment cited at paragraph 34 above.
84. I do not think this takes matters any further. Dr Sattar and his CCC presented themselves as introducing changes to MQM as a means of saving the party (see paragraph 15 above), and it is not surprising that the Active Defendants characterise this as Dr Sattar attempting to take over MQM. But their position is that Dr Sattar had rigged the composition of the CCC (by not inviting the London members and by co-opting others, no doubt supporters) and then used it to introduce the changes in an illegitimate and outrageous fashion. I see nothing inconsistent in these two positions. If Mr Haque is right and the changes introduced were validly and constitutionally introduced, Dr Sattar will have succeeded, quite lawfully, in changing the nature of MQM, so that MQMP will indeed be the continuation of MQM. But for reasons already given if the Active Defendants are right and these changes were not validly introduced then MQMP cannot claim to be the lawful continuation of MQM and it necessarily follows that in law it will be a new institution.
85. The third strand in the Judge's reasoning is that when each side purported to take action against the other, that indicated an acceptance on both sides that MQMP was MQM (see paragraph 35 above). The Judge makes two points in the Judgment at [148]. The first is that MQMP would not have expelled Mr Altaf Hussain unless MQMP was MQM as Mr Altaf Hussain was never a member of MQMP, unless this was part of a plot to misrepresent MQMP as MQM. I do not think this adds anything to the analysis. Dr Sattar was indeed claiming to have taken over MQM, and that MQMP was a valid, constitutional development of MQM. It was only logical for him in those circumstances to treat Mr Altaf Hussain as a member who could be expelled. That to my mind tells one nothing about whether MQMP was in fact a valid constitutional development of MQM or not.
86. The second point the Judge makes is that Mr Nusrat purported as Convener to dissolve Dr Sattar's CCC and appoint a new one. Again I do not think any particular weight can be placed on this. Mr Nusrat, who was then in Mr Altaf Hussain's camp, was faced with a situation in which MQMP, claiming to be the successor to MQM, had been instrumental in putting forward the resolutions in the Sindh and National Assemblies. By "dissolving" Dr Sattar's CCC, I do not see that Mr Nusrat was recognising it as the

legitimate CCC of MQM; if anything it is more consistent with a public denial that it represented, or had any legitimate right to claim to represent, MQM. It does not establish that MQMP was in fact a valid, constitutional successor of MQM.

87. In these circumstances I do not accept Mr Mohammad's submission that to allow the appeal on Ground 1(a) would require an impermissible disturbance of the Judge's factual findings. I consider that Ground 1(a) is made out for the reasons I have given and that it is indeed impossible to answer the identity issue without answering the constitutional issues.
88. Before leaving Ground 1(a), there are some miscellaneous points to pick up. The first is Mr Mohammad's preliminary issue (b) (see paragraph 51 above). He said that Mr Altaf Hussain initially accepted the August/September 2016 amendments, and that it was only after the resolutions brought forward on 21 September that he took a different view. He pointed to the Judge's findings at [113]-[114]:

"113. ...Mr Altaf Hussain had declared he would no longer be involved and, therefore, his guidance could not be sought. The CCC had to operate without him and apply the Constitution on the basis of that decision not to play any part in the operation of MQM for as long as that withdrawal was in place. The position was no different from when he had previously resigned, subject only to the issue of whether the withdrawal was temporary or permanent.

114. That was not an issue that was of concern until events in September 2016 when treason was alleged against him in the Sindh Assembly and the National Assembly. Mr Altaf Hussain's recollection was that he had been content to take no active part until that occurred. Mr Altaf Hussain also accepted that he was content until then with the fact that Dr Sattar and his associates had taken full control of MQM through the CCC. The events that followed his apology need to be viewed in that light. Namely in the context of Mr Altaf Hussain no longer participating in any role he previously had with MQM until about 21 September 2016."

Mr Mohammad submitted that that gave rise to an estoppel preventing Mr Altaf Hussain from taking the point.

89. Mr Slade said that Mr Altaf Hussain's position was more nuanced, and that in cross-examination he had explained that in August 2016 he had been assured that things would return to normal and he kept quiet. It was only when a hostile resolution by an ally of Dr Sattar was passed in the Sindh Assembly that Mr Altaf Hussain understood that since 23 August 2016 he had been cheated and misled. And in any event Mr Altaf Hussain's view was not capable of creating any estoppel binding on the other trustees. He had no authority to announce what arrangements bound the membership of MQM as a matter of contract.
90. I accept this latter submission. Even if Mr Altaf Hussain had expressly declared that the August/September amendments were validly introduced, I do not see that this would by itself later prevent him from changing his mind, far less that it would prevent any other member of MQM – including the other trustees – from taking the point that the

amendments were unconstitutional. If a rule change is introduced into the rules of an association without there being any power to do so, but the entire membership acquiesces in it and no one objects, no doubt it may be effective and binding on the members: see *Abbatt v Treasury Solicitor* [1969] 1 WLR 1575 at 1583D-H per Lord Denning MR and 1584D-F per Cross LJ. But that cannot be said here. There was undoubtedly evidence of London members of MQM immediately and vigorously reacting to the August/September amendments by refusing to accept them as valid (see paragraph 19 above). Quite apart from that, no question of an estoppel or acquiescence appears to have been pleaded.

91. The second miscellaneous point is that Mr Slade pointed to the fact that the Judge dealt at some length in the Judgment with matters occurring after 1 September 2016. He submitted that that could only have been to support his conclusion that MQMP was MQM, which in turn could only be the case if acts taking place after the contested amendments were relied on by way of ratification or acquiescence. But no such case had been advanced.
92. I do not think it is necessary to go into the details. When refusing permission to appeal, the Judge addressed this question by saying that he had not decided that there had been any ratification. That I accept leaves it unclear what the Judge thought these points went to, but in circumstances where none of the post-September events were relied on in the pleadings, and the Judge disavowed any finding of ratification, it is difficult to see how they could affect the analysis. Either the August/September amendments were valid or they were not. Subsequent (unpleaded) events do not it seems to me affect that question.
93. Mr Slade also took issue with the Judgment at [157]. Here the Judge, after referring to the actions of Mr Altaf Hussain and others in London in October 2016 said this:

“It is apparent, therefore, that Mr Altaf Hussain and his supporters were operating their own association following his expulsion from MQMP with the belief and message that there could be no MQM without the leadership of Mr Altaf Hussain. This new association was to be known as MQM but was not the association whose members were the beneficiary of the Trusts.”
94. Mr Slade submitted that that appeared to be a conclusion that the London MQM is a new association and not a continuation of MQM. He objected to that on the basis that the pleadings did not address events after August 2016, and that in any event this cannot make a difference to what he contends is the unlawfulness of the August/September amendments.
95. To my mind this finding of the Judge is all bound up with his conclusion that MQMP was MQM. On that basis it necessarily followed that the London MQM was indeed not MQM (as they could not both be), and hence must have been a new association. But I think Mr Slade is right when he said (as he did in closing submissions to the Judge below) that the scope of the dispute was whether MQMP was the beneficiary of the trusts and hence had title to sue. The claim was not concerned with who might or might not be entitled to the beneficial interest if the answer was that MQMP was not, and I do not regard anything the Judge has said in the Judgment as purporting to answer that question. Indeed it is not something that appears to be raised on the pleadings. No

doubt if MQMP is not the lawful successor of MQM there will remain a question as to who is now entitled to the beneficial interest in the seven properties that up until 31 August 2016 belonged to the then members of MQM subject to their respective contractual rights and liabilities towards one another as members of MQM; but it does not seem to me that the present action raises that question.

96. My overall conclusion on Ground 1(a) is that the appeal should be allowed. I deal below with how this should be given effect to in practical terms.

Ground 1(b) – title of trustees to raise the constitutional issues

97. Ground 1(b) is that the Judge was wrong to conclude that the constitutional issues were not a defence available to the defendants (see paragraph 45(2) above).
98. I can deal with this ground very shortly. The Judge was troubled by the idea of the Active Defendants seeking to raise the constitutional issues as trustees at all, regarding it as a matter for the members of MQMP not for the trustees (see paragraphs 31, 32 and 39 above).
99. To my mind this is all bound up with the Judge’s view that the identity issue was a separate issue from the constitutional issues. Having first addressed the identity issue and found that MQMP was MQM, it is not perhaps difficult to see why the Judge thought that the constitutional issues were not a matter for the trustees as they did not affect their position as trustees for MQMP. Indeed the Judge said that the constitutional issues only arose if MQMP was MQM (see Judgment at [26] cited at paragraph 32 above), in which case the constitutional issues would not affect the trustees’ liability for breach of trust.
100. But if I am right that the identity issue requires resolution of the constitutional issues, then the position is otherwise. A trustee sued for breach of trust by a person claiming to be his beneficiary is undoubtedly entitled to defend himself by denying that the claimant is his beneficiary at all: see *Lewin* §41-071 (“only beneficiaries ... and the other trustees have standing to take proceedings for breach of trust”). In the present case therefore the defendants were entitled to defend the claim by denying that they were ever trustees for MQMP and to do so on the basis that MQMP was not the same as MQM. This is exactly what they did (see paragraph 25 above). For the reasons I have given above under Ground 1(a), that question in my view requires the Court to resolve the constitutional issues, as MQMP can only claim to be MQM if it is a constitutionally valid development of MQM, as it is only if that is so that the current members of MQMP can claim the beneficial interest that before August 2016 belonged to the then members of MQM. If therefore the defendants as trustees defend the claim on the basis that MQMP is not MQM, they must logically be able to argue the constitutional issues as this is the foundation of their defence.
101. The Judge also appears to have thought that it was inappropriate for the trustees to raise the constitutional issues because on matters affecting the trust trustees ought to be neutral and not allow their personal interests to affect their conduct as trustees. With respect, this all seems to me beside the point. A trustee whose conduct is called into question is not obliged to act neutrally – he may defend his own conduct: *Fielden v Christie-Miller* [2015] EWHC 2940 at [55] per Sir William Blackburne. *A fortiori* a trustee sued for breach of trust is entitled to act in his own interests and defend himself.

He does not need to seek directions from the Court by way of *Beddoes* relief. He is not acting for the benefit of the trust but for himself.

102. Nor, to address a point made by Mr Mohammad, do I see that there was any need for the trustees to bring a counterclaim if they wished to raise constitutional issues. A defendant is entitled to defend himself without having to seek any positive relief by way of counterclaim.
103. I would therefore accept that Ground 1(b) is also well founded and allow the appeal on this ground as well.
104. Before leaving Ground 1(b) I should pick up two of Mr Mohammad's preliminary issues. The first is preliminary issue (d) where Mr Mohammad submits that it is not for the trustees to raise the constitutional issues but for the members of MQM or MQMP (see paragraph 55 above). This I think raises no separate issue and for the reasons I have given I do not accept the submission.
105. The other is preliminary issue (e) where Mr Mohammad raises the question whether the English Court has jurisdiction, or is the proper forum for adjudicating on issues under Pakistani law (see paragraph 57 above).
106. Again I do not think this really raises a separate issue. It was Mr Haque as claimant who invoked the jurisdiction of the English Court, and he was obviously not only entitled but right to do so as the defendants are in England and the claim is brought to enforce English trusts of English real property. There can be no doubt that the English Court not only has jurisdiction over the claim in the formal sense, but is also the most appropriate forum for resolution of the claim as a whole.
107. But the foundation of Mr Haque's claim is that MQMP is MQM. This was put in issue by the Active Defendants and for the reasons I have given that required the Court to resolve the constitutional issues. Indeed it was common ground at trial that the burden lay on Mr Haque to establish positively that MQMP was MQM. It is true that that means the English Court has to resolve questions as to the constitutional validity of acts in Pakistan in relation to a Pakistani unincorporated association, but that cannot be avoided. Whether MQMP is the beneficiary of the English trusts is a question that has to be answered before the breach of trust claims can be resolved; and that as I have explained does require the English Court to consider these questions. I therefore do not accept Mr Mohammad's submission in relation to this preliminary issue either.

Ground 2 – Mr Altaf Hussain's announcement of 23 August 2016

108. Ground 2 is that the Judge misconstrued Mr Altaf Hussain's announcement of 23 August 2016 and ought to have held that it did not alter the obligation of the CCC under Article 9(b) of the April 2016 constitution to seek guidance from him on major issues (see paragraph 45(3) above).
109. The rival translations of the relevant part of the announcement are set out at paragraph 14 above, and since Mr Slade said he was happy to accept Mr Haque's translation, I will repeat it here for convenience:

“I hand over complete authority, organization, decision making and

policy making to the Contact Committee [RABTA COMMITTEE].”

110. The Judge said of this (at [109]):

“Nothing could be clearer than that: Mr Altaf Hussain will take no further role in the administration or decision/policy making of MQM. In a context where the April 2016 Constitution provided that his role was to give guidance on major issues in the circumstances specified, this must mean that he would no longer be doing that having handed over complete authority.”

He therefore concluded that the CCC would no longer need to seek guidance or any decision from Mr Altaf Hussain as founder and ideologue [112].

111. Mr Slade had two submissions. The first was that it can be seen simply by reading the announcement that the Judge’s interpretation was a mis-reading. Mr Altaf Hussain did not say he was resigning as founder or leader or ideologue; he was not dissociating himself from MQM, nor purporting to amend the constitution; nothing in the announcement altered Article 9(a) and 9(b) of the April 2016 constitution. He was simply stepping back for health reasons.

112. I am not persuaded by this first submission. Article 9(a) of the constitution already provided that the CCC should be the highest policy and decision making organ of MQM, and, as Mr Slade accepted, although Article 9(b) required the CCC to seek guidance from Mr Altaf Hussain, it did not provide him with a veto: if the CCC had sought his guidance on some proposed measure and he had cautioned against it, this would not affect the ultimate right of the CCC to go ahead anyway. In other words the CCC was to seek his guidance and approval in the sense of obtaining his “blessing”; it was not obliged as a matter of law to obtain his consent. On the other hand his guidance as the founder and ideologue would no doubt be likely to have a significant effect in practical terms.

113. Under the constitution Mr Altaf Hussain had no other role. He was not the party leader – under Article 7(a) this was the Convener. He was not one of the office bearers. So when he made his announcement that “I hand over complete authority to the CCC” (including decision making and policy making), it is difficult to see what else he could have been referring to other than his role under Article 9(b). As Mr Mohammad put it, it seems perverse to read the announcement as “I have handed over power to you, but you must still consult me”.

114. Indeed Mr Altaf Hussain’s evidence was that he had resigned twice before in 2015 “to warn [the CCC] to perform their duties with responsibility”; on each occasion he reversed his decision after the CCC apologised, requested him to return and offered their commitment (Judgment at [234]). That certainly suggests that what Mr Altaf Hussain had in mind in his announcement was a similar stepping back from his role, and as I have said his only role under the constitution was that of being consulted under Article 9(b).

115. As a matter of interpretation therefore I agree with the Judge that Mr Altaf Hussain by his announcement was stepping back from his role of having to be consulted under Article 9(b).

116. Mr Slade's second submission was that this was only intended as a temporary measure. That was supported by the reference to Mr Altaf Hussain suffering from mental stress and paying special attention to his health as per the advice of the CCC. It was also supported by the telephone call which on the Active Defendants' case Dr Sattar had had with Mr Nusrat in which he had invited Mr Altaf Hussain to step back temporarily from his role in MQM in order to calm the situation in Pakistan (see paragraph 14 above). The Judge had not found it necessary to make any findings as to whether this call did or did not take place or, if it did, what was said in it, but Mr Slade submitted that if the call was as the Active Defendants said, then this could affect the way in which Mr Altaf Hussain's announcement was to be understood.
117. I have not found this quite so easy to resolve but in the end I am persuaded that Mr Slade is right. The effect of the announcement is admittedly a matter of interpretation of a written document. But to understand it, it is necessary to place it in context. It was addressed to the CCC, but if the Active Defendants are right that it was in response to an invitation by Dr Sattar for Mr Altaf Hussain to step down temporarily, I think it well arguable that it is to be read against that background which was (on this hypothesis) known by Dr Sattar to be the basis on which it was sought and given.
118. The Judge said that even if Mr Altaf Hussain was only stepping down temporarily, nevertheless the CCC could proceed without seeking his guidance for as long as that withdrawal was in place, which it still was until about 21 September (Judgment at [113]-[114]).
119. But I do not think this is necessarily a complete answer. Let it be supposed that the Active Defendants establish that Mr Altaf Hussain only agreed to step down as a temporary measure until the situation in Pakistan calmed down. It is I think well arguable that it would be implicit in such an agreement that Mr Altaf Hussain could resume his role again when satisfied that it was appropriate to do so, and if that is right, then I think it also arguable that although he was handing over full control to the CCC temporarily, what was not envisaged was that the CCC could use its temporary ability to proceed without consulting him so as to amend the constitution to abolish his role under Article 9(b) altogether. We have not heard any extended argument on the point, but for my part I think the true effect and extent of Mr Altaf Hussain's stepping back from his role cannot be finally determined without placing it in the context of any discussions that preceded it, and that this does require findings of fact as to any telephone calls between Dr Sattar and Mr Nusrat.
120. I would therefore allow Ground 2 to the extent of setting aside the Judge's conclusion and remitting the question as to the effect of Mr Altaf Hussain's announcement to be determined along with the other constitutional issues.

Ground 3 – requirement for 2/3 majority

121. The final ground of appeal, Ground 3, is that the Judge misconstrued Article 9(a) of the 2016 constitution and ought to have held that it required a 2/3 majority of the entire Committee (see paragraph 45(4) above).
122. I have set out Article 9(a) above (paragraph 8(4)) and repeat the relevant part of it here for convenience:

“Ordinary decisions shall be made by a simple majority of members present in a scheduled meeting. While in the important and major policy decisions 2/3 majority of the Committee shall be required.”

123. What the Judge said on this was as follows (at [134]):

“Article 9(a) therefore expressly provided that ordinary decisions should be by a simple majority of those present in a scheduled meeting. The following sentence (starting with “while”) is concerned with the different majority (2/3s not simple) required of members present in a scheduled meeting (as provided for in the first sentence) for important and major policy decisions. It is not to be construed as though it required a 2/3s majority of the CCC whether members attended the meeting or not.”

124. Mr Slade drew attention to the fact that a 2/3 majority is also required by Articles 10, 13(b) and 17. These respectively provide (see paragraphs 8(5), (6) and (9) above):

“No Rules and Regulations or any part of this Constitution shall be rescinded or amended except by a 2/3 vote of the Committee.” (Article 10);

“Until regular elections are held, the Committee shall fill existing vacant offices by a decision of at least 2/3 majority.” (Article 13(b));

and

“In either case the aggrieved member, if he / she so chooses has a right to appeal to the entire Committee whose decision with two third majority on this matter shall be final.” (Article 17).

125. He submitted that there was a difference between “the Committee” in Articles 9(a), 10 and 13, which meant the same as “the entire Committee” in Article 17, and “members present in a scheduled meeting”.

126. Mr Mohammad submitted that the Judge was right. He relied particularly on the “While” at the start of the final sentence of Article 9(a), which linked it to the previous sentence. He accepted that in Article 17 the “entire Committee” did mean all the members of the Committee so that a 2/3 majority was required of the whole Committee; but pointed out that Article 9(a) by contrast did not refer to the “entire” Committee.

127. I have not found this an easy question. There are points to be made on both sides. I have not found the comparison with Article 17 of much assistance, or Article 13(b): the Constitution contains a number of drafting infelicities and I think it is not profitable to try and discern from the provisions as a whole a coherent policy as to what sort of decisions require what sort of majority. I would however accept that the only sensible conclusion is that the “2/3 majority of the Committee” under Article 9(a) must mean the same as the “2/3 vote of the Committee” under Article 10, as a change to the rules is plainly capable of being an important and major policy decision and it would in such a case be a recipe for chaos if Articles 9(a) and 10 were taken to refer to different 2/3 majorities.

128. I start by considering the language of Article 9(a) itself. The penultimate sentence refers in unambiguous terms to a simple majority of those members of the Committee present at a scheduled meeting. The final sentence, beginning with “While”, is evidently intended to draw a contrast with that. I think it comes down to whether the two sentences, read together, are both dealing with decision-making by the members of the Committee present at a scheduled meeting, the contrast being solely between the simple majority required for ordinary decisions and the 2/3 majority required for important and major policy decisions (as the Judge held and as Mr Mohammad submitted); or whether the contrast is intended to be more fundamental, namely between a simple majority of those present at a scheduled meeting as compared to two-thirds of the entire Committee whether present or not.
129. In the end this is, as Mr Slade said, a short point and like many such questions is largely a matter of first impression. I have come to the conclusion, with admittedly considerable hesitation, that the Judge was right. I think both sentences of Article 9(a) are dealing with decisions made by the Committee at scheduled meetings – that is after all how committees and other bodies usually make decisions – and refer to the requisite majorities of those present, the contrast between the two sentences being simply intended to be between the type of majority needed at such a meeting. So although the first of the two sentences refers expressly to “a simple majority of members present” and the second does not, the latter is to be read as referring to the same pool of members as the first, namely those who are present. Or, to put it in mathematical terms, although the numerator is different, the denominator is the same. If it had been intended to draw the greater contrast between a simple majority of those present and a 2/3 majority of the entire Committee whether present or not, I think one would expect somewhat more definitive language to that effect: compare Article 17 which expressly refers to “the entire Committee”.
130. I also think the reference to a 2/3 vote in Article 10 provides some slight support for this interpretation. A body such as a committee normally makes decisions by voting at a meeting, and the reference to “a 2/3 vote” is I think most naturally read as 2/3 of those voting rather than a vote of 2/3 of the entire Committee. If for example there were a committee of 12 and only 10 members turned up and voted, I think a resolution would naturally be regarded as passed with a 2/3 majority so long as 7 of the 10 voted in favour (rather than requiring a vote of 8).
131. I would therefore dismiss the appeal on this Ground.
132. But I should make it clear that this does not mean that so long as those who happened to be present were in favour of a resolution it must be taken to have been valid. It is implicit in the requirement that there be a scheduled meeting that proper notice has been given to all the members of the Committee. The length of notice is specified in Article 13-A and for an ordinary meeting is a minimum of 3 days, and even for an emergent meeting requires a minimum of 6 hours’ notice (see paragraph 8(7) above). Mr Mohammad submitted that the use of the word “may” in Article 13-A(b) meant that giving 6 hours’ notice was a matter of discretion and that less notice could be given, but this is not how I read the article. It seems to me that the plain sense is that an emergent meeting may be held on as little as 6 hours’ notice but no less.
133. I also think it is self-evident that in order for such notice to be valid it has to be given to all the members of the Committee. If there is a Committee of 12 and notice is only

given to 7 of them, it is no good saying that those 7 met and were unanimous and so constituted a 2/3 majority of those present. I would have thought that a meeting could only be a properly scheduled meeting such as to bind the members of the association if proper notice has been given of it to all the members of the Committee.

134. For the reasons I have given however I take the view that if there is a proper meeting of the whole Committee and some members, despite being properly notified, do not attend, then resolutions can be passed by those present and be binding if they secure the support of the requisite majority, whether that be a simple majority for ordinary decisions or a 2/3 majority for important and major policy decisions.

Conclusion

135. I would dispose of the appeal as follows:

- (1) I would allow the appeal on Ground 1 and for that purpose accept both Ground 1(a) and Ground 1(b).
- (2) I would allow the appeal on Ground 2 and remit the matter for further findings of fact.
- (3) I would dismiss the appeal on Ground 3.

136. Mr Slade helpfully identified the consequences of this. In terms of the Judge's decisions as set out in the Judgment at [182] (see paragraph 43 above), he said that all of these decisions should be set aside except those in sub-paragraphs (b) (the 2015 Constitution was not adopted), (c) (the April 2016 Constitution was adopted) and the first sentence of (i) (Mr Haque is an authorised representative of MQMP and entitled to bring this claim on MQMP's behalf). To those I would add (e) (a further hearing would be required to decide whether the August/September resolutions breached the April 2016 Constitution). Subject to that, I accept Mr Slade's submission.

137. As to the way forward, Mr Slade suggested that the following would be required:

- (1) The constitutional issues should be remitted back to the High Court for a further hearing.
- (2) The purpose of this hearing will be to determine whether Mr Haque as representative of MQMP can prove that amendments made to the April 2016 Constitution of MQM on 31 August / 1 September 2016 were constitutional as a result of which Mr Haque has *locus standi* to bring the claim.
- (3) The hearing shall proceed on the basis that:
 - (i) As at 31 August 2016 the April 2016 Constitution was MQM's applicable constitution.
 - (ii) Articles 9(a) and 10 of that constitution have the meaning held by this Court.
 - (iii) The true effect and extent of Mr Altaf Hussain stepping down on 23 August 2016 remains an issue for that hearing.

(iv) Any findings made by the Judge as to the impact or significance of events after 1 September 2016 have been overruled.

(4) The parties shall apply to the High Court for further directions (which may include those in the Judgment at [176] and [177(a)]).

138. If the other members of the Court agree with me on the grounds of appeal, then this seems to me an appropriate way forward. But I would give the parties an opportunity to suggest, in the light of our judgments, any refinements to the precise order we make.

Lord Justice Arnold:

139. I agree.

Lord Justice Moylan:

140. I also agree.