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Case No: M354/15

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Date: 18-03-2016

**Before**:

**HIS HONOUR JUDGE SAFFMAN**

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**Between:**

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| **CHARLES JOHN PARKINSON** | **Petitioner** |
| **- and -** | |
| **GINA LEWIS** | |
| **GRAHAM CAWLEY** | |
| **MARGARET DOLPHIN** | |
| **STEVE ROBINSON** | **Respondents** |

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MR. PARKINSON appeared in person.

**MS. AILEEN MCCOLGAN** (instructed by **Messrs Steel and Shamash**) for the **first and second Respondent**

The third Respondent was unrepresented.

**MR. TIMOTHY STRAKER QC AND MS. SAPPHO DIAS** (instructed by **Messrs Sharpe Pritchard**) for the **the fourth Respondent**

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# JUDGMENT

**JUDGE SAFFMAN :**

1. I am dealing with a petition brought under section 127 of the Representation of the People Act 1983. By section 145(1) of the 1983 Act, the purpose of such a petition is to determine whether the respondents to the petition were duly elected in the local election to which the petition relates, or whether the election is void and thus needs to be rerun.

2. This petition concerns the local election held on 7th May 2015 for the election of councillors to Winsford town council in Winsford Cheshire, where we sit today.

3. 7th May 2015 was a big day in election terms. In addition to it being the date of the last general election, it was also the date upon which many local elections were held. Indeed, in Cheshire and Chester alone I am told there were 97 local elections for which one returning officer, Mr. Steve Robinson, the fourth respondent in this petition was responsible. He was also the returning officer in this area for the general election. He is represented in this petition by Mr. Straker QC and Miss Sappho Dias.

4. For the purpose of its local elections, as well as of course for the purpose of the effective representation of its residents, Winsford is divided into wards, one of which is the Over ward.

5. The petitioner, Mr. Charles John Parkinson who acts in person, was standing for election as a councillor for that ward. So too were the first three respondents to the petition Mrs. Georgina Lewis, known as Gina Lewis, Mr. Graham Crawley, and

Mrs. Margaret Dolphin. There were other candidates as well, nine in total; for the three available seats.

6. Ms. Aileen McColgan acts for Mrs. Lewis and Mr. Crawley. Mrs. Dolphin has been present both yesterday and today but has taken no active part in the proceedings to date nor has she taken any part in the proceedings yesterday or today, despite an invitation to do so if she wished. She preferred instead to regard herself merely as an interested observer.

7. The first three respondents were successfully elected. The petitioner was unsuccessful. Indeed, in terms of votes, he came sixth, he received 518 votes. Mrs. Lewis received 833, Mr. Crawley 759, Mrs. Dolphin 678, Mrs. Lynda Jones got 664, and Mrs. Lewis's husband, John, got 633. It is fair to say that, and I say this with the greatest of respect to Mr. Parkinson, he came well down the field.

8. His petition however is premised on the assertion that the first three respondents were not duly elected, because their nomination as candidates in the election was flawed. I have already made reference to section 127; subsection 1(b) permits an election to be questioned by petition on the grounds amongst one other that the person whose election is questioned was not duly elected. By section 128, it is clear that Mr. Parkinson, as a candidate in that election, has the standing to present a petition questioning the election of the first three respondents on that basis.

9. How does he say that the election was flawed so that these three respondents were not duty elected? It is appropriate, I think, at this point, to look briefly at the statutory framework governing local elections insofar as it is relevant to this petition.

The starting point is the Representation of the People Act 1983, to which I have already referred. Section 36(1) provides that elections for councillors for local government areas in England and Wales shall be conducted in accordance with rules made by the Secretary of State. The relevant rules are the Local Election (Parishes and Communities) England and Wales Rules 2006, which I shall call the 2006 Rules.

10. By schedule 2 these rules deal with the conduct of an election of councillors of the parish or community where the poll is not taken together with a poll at another election. Schedule 3 deals with the election of councillors where the poll is taken together with the poll at a relevant election. Everybody in this case agrees that since this poll was taken with the poll for the general election schedule 3 applies.

11. Rule 4.1 of the 2006 Rules, stipulates that each candidate must be nominated by a separate nomination paper in the form of the appendix to the Rules. In fact, it transpires that the nomination papers, which I am concerned, do not actually conform to the precedent set out in the relevant appendix to the Rule.

12. In paragraph 22 of her skeleton argument Ms. McColgan touches upon this. She argues that by note 1 of the nomination paper in this case the papers incorrectly draw the attention of candidates and electors to the rules for filling up nomination papers contained in schedule 2 of the 2006 Rules. That, in fact, is clearly so, and it is clearly an error where, as here, schedule 3 applies. In fact, it would seem that the precedent itself referable to schedule 3, wrongly makes reference to schedule 2. So, in fact, in that respect the nomination papers do actually comply with the precedent as required by Rule 4.1.

13. It would seem to me that to that extent the precedent form annexed to the Rules needs amendment. Be that as it may, in fact the nomination papers for the first three respondents and some of the other candidates did depart from the precedent in the annex to schedule 3 of the Rules, because the precedent contains the following wording almost at the beginning of the nomination paper after the reference to the election to which it relates, and the ward and the town. The wording of the precedent is:

> "*We the undersigned being local government electors for the said ward/parish/community, do hereby nominate the under mentioned person as a candidate at the said election.* "

14. The nomination papers with which I am concerned omit the word "ward". It may be thought that this is an unfortunate omission in the circumstances of this case for the reasons which I shall come to.

15. Rule 4 goes on to set out what information the nomination paper must contain. It includes stating the home address of the candidate in full. I mention that because much attention in this case has been paid to the case of R v Election court *ex parte Shepherd* 1975 QB 13.19. This was a Divisional Court decision which considered what the effect was in law of a failure to insert in the nomination paper a correct home address. That was decided on the basis of the Rules applicable at the time, namely the Local Election (Principal Areas) Rules 1973. The 2006 Rules and the 1973 Rules create essentially the same obligation.

16. I move on from Rule 4 to Rule 6. It is Rule 6 that is at the nub of the petitioner's case. That requires:

> "6.—(1) *The nomination paper must be subscribed by two electors as proposer and seconder."*

17. It is, by use of the word "must", a mandatory provision. An elector for this purpose is defined by Rule 6 (7). Rule 6(7)(a) is the relevant sub-rule for the purpose of this petition. It states:

> "(7*) In this rule 'elector'—*
>
> *"(a) means a person who is registered in the register of local government electors for the electoral area in question on the last day for the publication of notice of the election."*

18. I emphasise "for the electoral area". The wording is actually reproduced on note 6 of the precedent nomination paper, annexed to schedule 3 of the Rules. Electoral areas are defined in section 203 of the 1983 Act. It is agreed that since Winsford is warded that is divided into wards, the effect of that definition is that in this case the proposer and seconder must be registered for the Over ward since that is the electoral area in question.

19. In fact, neither Mrs. Dolphin's proposer nor seconder were registered as electors for the Over ward. Her proposer and seconder were, respectively, a Mrs. and Mr. Hassle, who are actually registered as electors in the Swanlow ward. As for Mrs. Lewis and Mr. Crawley, it is an agreed fact that, while in each case their proposer was a resident of the Over ward, their seconders were not.

20. The parties have in fact been able to agree a number of facts in this case, in anticipation that the case may have been dealt with as a special case stated, rather than a hearing at which evidence is heard. In the statement of agreed facts, it is agreed that Mrs. Lewis' seconder was Councillor Donald Beckett of Dean Ward.

The statement of agreed facts records that Mr. Crawley, while proposed by a resident of Over ward, was seconded by Councillor Brian Clarke of Gravel Ward. In fact, in both his witness statements Mr. Robinson asserts that Mrs. Lewis was seconded by Councillor Clarke, rather than Councillor Beckett, but either way it is clear and indeed accepted by Ms. McColgan on behalf of her clients, Mrs. Lewis and Mr. Crawley, that their the nomination papers were accordingly defective.

21. Mrs. Dolphin's witness statement clearly implies, if it is not actually expressed, that she too accepts that as it turns out, although she did not know it at the relevant time, her nomination paper was likewise defective.

22. This case, therefore, is overarchingly concerned in my judgment therefore, with the question of what therefore is the legal effect of the admitted failure by all three candidates to comply with rule 6.1.

23. This case calls for little in the way of determination of fact in order to gain a route to my determination of that legal effect. One such finding that may inform the ultimate decision is whether any of the successful candidates actually knew at the time that they submitted their nomination paper, or indeed perhaps at any time thereafter up until expiry of the deadline for submissions of nomination papers and the declaration of their validity, that their nominations did not comply with the Rules.

24. Mr. Parkinson was prepared to concede yesterday that Mrs. Dolphin did not know that there had been a failure to comply with the Rules in respect of her nomination paper. That is clearly the purport of her witness statement and, on the basis of that, Mr. Parkinson told me yesterday that he clearly now accepted that was the actual

position. His position with regard to Mr. Crawley and Mrs. Lewis was I think much more nuanced. His position was that in effect he did not know whether they knew or not. Indeed, that is what he said in writing in his petitioner's representation dated the 14th December 2015. In that document he said:

> *"As to whether Graham Crawley, Gina Lewis,* or" – (he then mentioned Margaret Dolphin although his position has changed about her) -- *"were aware of the invalid nominations, I cannot answer that question."*

25. As regards Mrs. Lewis, he sought to question her yesterday as to her knowledge. I may be doing him a disservice but I did not get the impression that he accepted that she was necessarily oblivious to the fact that her seconder's address gave rise to a flaw in her candidature. I am however satisfied that that was the case.

26. Her evidence on this was in my view quite compelling, she said, and I accept, that she did not even know who her proposer and seconders were. Her agent arranged that for her and indeed completed much, albeit not all, of her nomination paper. She said she only discovered that there was actually a problem when she got the election petition, albeit, as I understand her evidence, she had been alerted to the possibility of a problem earlier when her husband (who was also a candidate) received a letter from Mr. Robinson dated 21st April 2015, 20 days after her nomination had been declared valid. The letter of the 21st April to Mr. Lewis pointed out that his nomination paper was inaccurate because his proposer and seconder were from outside the ward.

27. I should say that I do not overlook that Mrs. Lewis' oral evidence did not accord wholly at least with the impression given by her witness statement. In that witness statement she does not mention that her agent had secured her proposer and seconder. Anybody reading the witness statement would I think be forgiven for getting the impression that she herself obtained the signatures of proposers and seconders. Nevertheless, I accept what she told me, not least because I accept that, bearing in mind she secured 833 votes from residents in the Over ward, it would be vanishingly unlikely that if she had known that proposers and seconders needed to come from the Over ward she would have been unable to find two who would have been prepared to propose and second her.

28. As regards Mr. Crawley, he did not appear yesterday, or indeed today. Apparently he is on holiday. Mr. Parkinson was therefore unable to question him as he had Mrs. Lewis. That was unfortunate. Apparently Mr. Crawley had been told by his solicitor that he need not attend, albeit that he is a party. That decision was taken without any reference to Mr. Parkinson, or for that matter the fourth respondent's advisers. If Mr. Parkinson had seen fit to pursue a position with regard to Mr. Crawley, along the lines that he knew his proposer and seconder did not comply with the Rules then, in fairness to Mr. Parkinson, and indeed Mr. Crawley, it may well have been necessary for the matter to adjourned for Mr. Crawley's attendance.

29. Over lunch yesterday, however, Mr. Parkinson decided that he would not pursue his contention that Mr. Crawley was actually aware that his proposer and seconder were ineligible. I made it clear to him that, in the light of that concession, I would only be

able to deal with this matter on the premise that Mr. Crawley's error was an innocent error and Mr. Parkinson graciously accepted that.

30. Accordingly, I decide this matter against the background that none of three candidates who are respondents to this petition knew that their proposer and/or seconders rendered them in breach of the requirements of Rule 6.

31. I should add that Mr. Parkinson, in his written documents, has questioned what the proposers and seconders themselves knew about the appropriateness of them acting in those capacities and whether they knowingly flouted the rules. It was also an issue raised by Mrs. Justice Lang when she considered whether this case could actually go forward as a special case stated. There is no evidence that these proposers and seconders knew that they were ineligible to act, but even if they did I cannot see that that would make any difference to the results if the candidates themselves were innocent as I have found them to be. A view, as I understand it, which is shared with both counsel.

32. The position of the returning officer accords with that of Mr. Parkinson, namely that the failure to comply with Rule 6 means that the first three respondents were not duly elected bearing in mind that the requirement is not just that the candidates are elected but that they are duly elected; that is elected in accordance with the primary and secondary legislation.

33. After this point, however, Mr. Parkinson and the returning officer part company somewhat, in that the returning officer's position is that the election being void must be rerun. Mr. Parkinson says that there should be a declaration that he is duly

elected as councillor for the Over ward, along with the only other two candidates whose proposers and seconders came from the ward, and who thus had valid nomination papers, namely Janet Fitzmaurice and Brandon Parkey. He makes the point that the nine candidates for this ward, only those three complied with the Rules.

34. The position of the first three respondents is that their election should stand and the petition be dismissed.

35. I think I can deal with the issue of the declaration that Mr. Parkinson seeks quite briefly. In my view, I have no power to make it. The electoral court's jurisdiction on section 127 petitions is prescribed by statute in the shape of section 145 of the 1983 Act. The court can determine whether the respondents who were candidates were duly elected or whether the election is void. There is no power granted by section 145 to declare that the successful candidates were not duly elected but that the petitioner is.

36. As Mr. Straker QC pointed out from paragraphs 37 of his skeleton argument, there is a doctrine in electoral law of "thrown away votes" whereby the votes for a candidate who is subsequently disqualified are deemed to have been thrown away and so do not count, so that the candidate who has the next highest total of votes is declared elected in his or her stead. That, however, is dependant upon the electorate having been publicly notified before the election by one of the candidates that he/she believes that the other candidate is disqualified. The theory being, as I understand it, that if electors armed with that information chose to vote for the vulnerable candidates, they knowingly take the chance that their votes may be wasted. There

was no such public notice and so the votes thrown away doctrine does not get off the ground.

37. Mr. Parkinson criticises the returning officer for not telling him that he could issue a public notice. It is Mr. Parkinson's evidence that he could have done so. It is also the unchallenged evidence of Mr. Andrew Hyde, the constituency organizer for Mr. Parkinson's political party, which happens to be the liberal democrats, that it would have been well within the capabilities of the local party operation or machinery to give the relevant notice.

38. Mr. Hyde speaks in his witness statement of pretty impressive printing and distribution capabilities. He makes the point that the returning officer knew of the defects from at least the 15th April, 22 days before the election but never told him of the possibility of invoking the votes thrown away procedure.

39. Indeed, Mr Parkinson goes further. He points out that the returning officer sent a letter to Mr. Lewis on the 21st April 2015, the letter to which I have already referred, which points out that the only redress is an electoral petition after the election, when in fact that is not the only weapon in the armoury of a candidate who feels that wrong has been done.

40. It is not clear how Mr. Robinson's observations to Mr. Lewis assist Mr. Parkinson, but in my judgment, that does not matter. The fact is that in the circumstances for the reasons I have given, there is simply no power on a section 127 petition to accede to Mr. Parkinson's request for a declaration that he is duly elected.

41. I should say that I do not overlook the point made by Mr. Parkinson about what he referred to as "estoppel" but which I think might more accurately be described as a reasonable expectation that Mr. Robinson would advise him of the options open to him. After all, he points out, there was actually a meeting on the 15th April between Mr. Robinson and Mr. Hyde, when the defects in the nomination papers were discussed and indeed accepted by Mr. Robinson. I have to say that I do not accept that that assists Mr. Parkinson. I agree with Mr. Robinson, that it is not the function of the returning officer to offer advice; it runs counter to the obligation of a returning officer to remain entirely neutral. As for estoppel, insofar as that is a different point to reasonable expectation, it is not clear what Mr. Parkinson asserts that Mr. Robinson estopped from doing bearing in mind, that even Mr. Robinson contends that this election was void.

42. Let me now turn to the basis upon which Ms. McColgan argues that despite the admitted flaws in what she says are the nomination papers of the three candidate respondents, as distinct from their nominations themselves, their election is saved. She argues that that is the effect of Rule 8(7), or if that is not so, then by the effect of section 48 of the 1983 Act.

43. I shall deal first with Rule 8.7, although in her oral final submissions Ms. McColgan was candid enough to admit that was not her major plank. She was of the view that her section 48 point was the stronger.

44. Rule 8(7) states as follows, I quote:

> *"(7) The returning officer's decision that a nomination paper is valid shall be final and shall not be questioned in any proceeding whatsoever."*

45. I should add that that sub-rule is immediately followed by Rule 8(8), which states:

> *"Subject to paragraph (7), nothing in this rule prevents the validity of a nomination being questioned on an election petition*."

46. I have already referred to *R v Sheppard.* The court in that case had to consider the combined effect of the predecessors to Rules 8.7 and 8.8 of a 2006 Rules; namely Rule 8.6 and 8.7 of the 1973 Rules, to which I have actually already also referred. The wording of the 1973 Rules and the 2006 Rules is almost the same. The only difference is that the 2006 Rules use more modern language but the meaning is identical.

47. In *R v Sheppard* the successful candidate had not given his home address in his nomination paper as required by the 1973 Rules and indeed the 2006 Rules. His nomination paper contained an address but it was found as a fact not to be his home address. The nomination paper was accepted by the returning officer and declared valid and the candidate went on to win the election. The unsuccessful candidate issued a petition asserting that the successful candidate was not duly elected, because of the failure to comply with the Rule requiring disclosure of his home address.

48. It was argued by the successful candidate that his nomination paper had been declared valid and pursuant to the equivalent of Rule 8(7) in the 2006 Rules and that was an end to the matter; the returning officer's decision could not be questioned. "Not so" said the commissioner and the court. In essence Rule 8(7) was concerned merely with the <u>form</u> of the nomination paper. Any decision by the returning officer

that the form of the paper rendered it valid was not open to question, but and I quote from page 1324(h) of the case:

> *"Any attack on the nomination paper on grounds other than form, other than objections apparent on the returning officer's investigation, was in effect justiciable by means of an election petition*."

49. At 1325(a) of the report, Lord Widgery LCJ made the point that the defect complained about was not apparent on the form for inspection. Accordingly, he said that the returning officer's approval of that paper did not exclude the possibility of its validity being attacked for the substantial complaint; the substantial complain being that the address that did appear on the paper was not the candidate's home address as required by the Rules.

50. As Lord Widgery remarked at page 1324(e):

> "*The returning officer cannot possibly be expected to know where every candidate lives and where everybody who has supported his candidature is to be found"*.

The last phrase "*where everybody who has supported his candidature is to be found"*. Is itself apposite in the context of this case.

51. Of course, in the petition with which I am concerned, that would mean the proposer and seconder. At first blush therefore, *Sheppard* would appear to be authority against the first three respondents directly on the point about whether Rule 8(7) precludes an attack on the validity of the election of the first three respondents.

52. This is not so, says Ms. McColgan, there is a qualification in the observations of Lord Widgery. Rule 8(7) would bite to preclude an attack on matters apparent on the returning officer's investigation or apparent on the face of the nomination form or

paper. She argues that that is the case here. She points out that all votes have an electoral number; that of the proposer and seconder have to be included on the nomination paper. The electoral number consists of a prefix, denoting the polling district or in this case the ward and a number denoting the elector.

53. Mr. Straker argues that the electoral number does not, without some other form of referencing, reveal the ward in which the proposer or seconder is an elector. The point is made by Ms. McColgan that in each nomination paper with which I am concerned, it is clear on the face of the nomination paper that the polling district of the proposers and seconders differ from each other, certainly in respect of Mrs. Lewis and Mr. Crawley.

54. In Mrs. Lewis' case on its face the paper shows the proposer living in polling district KK1, but the seconder living in a polling district with a KL prefix. In Mr. Crawley's paper the proposer is in polling district KK4 but the seconder lives in a KM district. In each case there is, she argues, a clear discrepancy on the face of the documents. Ironically, there is no such discrepancy on the face of Mrs. Dolphin's paper because both proposer and seconder are husband and wife living together outside the Over ward.

55. I do not accept that this has the effect contended for by Ms. McColgan, of making the defect apparent on the form and thus bringing it within 8.7 and therefore making an attack nonjusticiable. First, that is because it is clearly the responsible of the candidates to make sure that the form is properly completed. I do not think that Ms. McColgan actually shrinks from that proposition but in any event authority for it is to be found in *Begum and Others v the Returning Officer for Tower Hamlets*

[2006], EWCA, civ 733 at paragraph 39, where it is said by Lord Clarke MR: "*it is important to note that it is the duty of the nominee either, himself or through an agent, to present valid nomination papers in time."*

56. Later in the same paragraph he goes on the say:

> "*Moreover, whatever can be said about the failings on the part of the returning officer, the respondents' responsibility to put the correct information on the forms was at no stage transferred to the returning officer."*

57. In *R. (On the application of de Beer) v. Balabanoff (Returning Officer for London Borough of Harrow)* [2002] EWHC 670 the same message is given. In that case Scott Baker J refers more than once to the candidates and the fact that how they completed their nomination forms makes them the authors of their own misfortune. Secondly, it appears not to be open in any event to the returning officer to examine the nomination papers and compare them with any other relevant information, such as that which may account for different election district prefixes.

58. In *de Beer* Scott Baker J cites Dyson J, as he then was, in *Sanders v Chichester*, which is more commonly known as the "*Literal Democrats' Case*". In that case counsel submitted that the returning officer had a power to examine and compare. The view of Dyson J in the Divisional court was that:

> *"The rules do not empower the returning officer to carry out the investigation of the kind suggested by counsel in that case."*

59. As Dyson J said in the Literal Democrats' case;

> *"The decision* (by which he meant the decision as to whether to hold a nomination paper invalid).*has to be taken by simply looking at the nomination paper of the candidate in question alone. The language of the rules is drafted to distinguish between the nomination paper of the candidate and his nomination."*

60. This last sentence is already clearly in direct homage to *Sheppard*, where Lord Widgery drew the same distinction between the nomination paper and the nomination. In short, rule 8(7) deals with the form of the nomination paper, rule 8(8) deals with the nomination of the candidate per se.

61. Ms. McColgan says that these defects, about which I am concerned, do actually deal with the nomination paper rather than the nomination. In my view, and with respect to her, that position cannot be sustained. If I were to find that it was so it would, in my view, fly in the face of the clear jurisprudence on this issue and would be a departure in terms from *Sheppard*, which as I have said, addresses specifically the fact that the returning officer cannot be expected to know where everybody who has supported the candidate is to found.

62. I should say that even if I am wrong in concluding that the returning officer has no power to carry out an investigation, because for example Dyson J's remarks were confined to the situation where the returning officer invalidates a nomination, rather than validates it, nevertheless, I do not think that the different prefixes is such an obvious issue as to make it apparent, to use the word in the sense used by Lord Widgery in *Sheppard*. The returning officer had 97 local elections as well as the general Parliamentary election. If ever he was entitled to take the view that the candidates had filled the papers in correctly, as was their obligation, then this was it.

63. Before I move on to Miss McColgan's second plank, the s48 argument, let me deal briefly with three further issues. One is the fact that the returning officer and his team run all nomination papers through some computer software, designed amongst other things to pick up the defects that afflicted these nominations. Regrettably, it did not work in the case of these respondents, but in my view the fact that this exercise was undertaken does not assist the first three respondents. Mr. Robinson described it as an informal service. It was not something that the returning officer is required to do. How could it be a requirement when the law clearly makes the candidate responsible for the accuracy of the form and compliance with the Rules?

64. Further, it can only, as Mr. Straker put it, be "something" of a check, because it is contingent for example on the time that may be available. A run through the computer could be made if a candidate brought his nomination paper in, in good time, but could not be made if he brought it in at or near the stroke of the deadline, as he/she is entitled to do.

65. In any event, the fact that it is not something the returning officer is required to do is clear from the case law cited by Ms. McColgan herself. At paragraph 10 of her skeleton, she refers me to *Greenway-Stanley v Paterson* [1977] 2 All ER 663, in which it is said

> *"that the returning officer's duty is confined to seeing that the nomination papers are in due form. Obviously that must include, if he so wishes, my emphasis) a check against the electoral role, because for example the subscribers have to give their electoral role numbers….."*

66. Secondly, I have touched already upon the defect in the printed parts of the form namely the failure to refer to the “ward” as per the precedent referred to in the Rule and the reference to schedule 2 of the notes rather than schedule 3. As I said, with regard to the latter, actually the nomination paper complies with Rule 4, if erroneously it refers to schedule 2. Technically there is no defect in the paper to that extent.

67. As regards the omission to refer to the word "ward", that may well be an omission which is apparent on the face of the form, even though in fact everybody had missed it until yesterday. As I mentioned, it is an unfortunate omission, because if the word "ward" had been there, it might have drawn attention to the fact that supporters must be residents of the ward, in which case we would not have been here today.

68. In my view however if it means that particular defect cannot be questioned under Rule 8(7) because the returning officer has declared the nomination paper valid, it does not mean that other defects which are not apparent on the face of the paper, like the location of proposers and seconders, cannot the be challenged under the authority of 8(8) on the basis that that goes to the nomination rather than the nomination paper.

69. Even if I am wrong on that, the fact is that that defect in the paper by the omission of the word “ward” does not form a ground in the petition and a petition is not susceptible to amendment.

70. It might not be a bad idea I would suggest, if nomination papers are in fact being supplied nationwide, for somebody to point out to the stationers concerned that the papers do not comply with the Rules if the word "ward" is omitted. It would be an

equally good idea; it seems to me, if somebody pointed out to the legislators that the reference to schedule 2 in the form annexed to schedule 3 may well be wrong.

71. Finally, I deal with the assertion that there is nothing on the face of the papers to alert subscribers to the fact that they are required to belong to the same ward as the candidate. Mrs. Lewis gave evidence that suggested that even the guidance for candidates was ambiguous on this issue. I do not see how this helps Miss McColgan, even if Mrs. Lewis is right.

72. The fact is that, as I have said, and as is clear from the cases, it is the responsibility of the candidate to get the nomination papers right. In any event, it is difficult to see how obscurity in the guidance would mean that rule 8(7) is engaged to the exclusion of 8(8) for matters not associated with the form of the nomination paper.

73. I now turn to what Ms. McColgan, herself, sees as her stronger point; it centres on the effect of section 48(1) of the 1983 Act. The subsection reads as follows:

> *"No local government election shall be declared invalid by reason of any act or omission of the returning officer or any other person in breach of his official duty in connection with the election or otherwise of rules under section 36 or section 42 above if it appears to the tribunal having cognizance of the question that —*
>
> *"(a) the election was so conducted as to be substantially in accordance with the law as to elections; and*
>
> *"(b) the act or omission did not affect its result."*

74. She argues that this has the effect of saving this election with the result that the first three respondents are entitled to remain in place.

75. Mr. Straker argues that section 48 has no application at all in this case. It is restricted to saving elections, which would otherwise be invalid by reason of any act or omission in breach of official duty by a returning officer. Insofar as it extends beyond returning officers it extends only to acts or omissions by any person in breach of their official duties under (in this case since it concerns England and Wales) section 36 of the Act. The effect is that it is a saving provision to cover acts and omissions only by those involved in the administration of the election rather than those actually taking part in the election.

76. In fact, official duty and breach of it is specifically addressed in section 63 of the Act. S63(3) sets out the persons to whom the section applies and are thus the people who have official responsibilities. They are all persons involved in the administration of the election rather than people involved in the process of being elected. That is "officials" rather than "candidates".

77. In addition I remind myself that section 48 stipulates that the election is saved, provided both sub parts (a) and (b) of the subsection are satisfied, if the official duty breached is one in connection with section 36. I shall not read out section 36, because it is a very long section, but each of the subsections in it, apart from subsection (1), clearly deal with administrative issues.

78. I accept however that that subsection (1), is however less obviously so restricted. It states;

> *"Elections of councillors for local government areas in England and Wales shall be conducted in accordance with rules made by the Secretary of State."*

79. It is said that that opens it up to candidates, not just administrators. So if section 36 is opened up to that extent so too is section 48 with the result that it does not just apply to those with official duties, i.e. administrators, but it covers acts and omissions by candidates as well.

80. Ms. McColgan prays in aid the fact that section 48 specifically makes reference to persons other than the returning officer and does so by the disjunctive use of the word "or" and further that it refers to "or otherwise of rules under section 36". So the disjunctive “or” is used for a second time. It means, she argues, that the saving provision extends beyond the administrators to candidates provided -- of course, that paragraphs (a) and (b) are established. This is because, Ms McColgan argues -- candidates they too have duties imposed by section 36(1) by virtue of the Rules to which that subsection refers.

81. She took me to the case of *Morgan v Simpson*, 1974 1QB 151, which she argued gave no support to the restricted meaning of section 48 that Mr. Straker contends for. That concerned section 37 of the 1949 Representation of the People Act, which was identical to section 48 of the 1983 Act.

82. Lord Denning MR observed that the section is expressed in the negative, which he felt at page 161(d) and (e) was a mistake. Perhaps more importantly, he embarked upon an exercise in distilling the law applicable to this section and which concluded with him postulating three propositions at page 164(e) to (h). I think it is probably worth reading those into the judgment:

> *"(1) If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election*

> *is vitiated irrespective of whether the result was affected or not. That is shown by the Patteny(?) case 20 MNH 77, where two out of 19 polling stations were closed all day and 5,000 voters were unable to vote.*
>
> *"(2) If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by breach of the rules or a mistake as the poles provided that it did not affect results of the election, this is shown in the Islington case, where 14 ballot papers were issued after 8pm.*
>
> *"(3) Even though the election was conducted substantially, in accordance with the law as to elections, nevertheless if there was a breach of the rules or mistake at the poles and it did affect the results then the election is vitiated. This is shown by Gunn v Sharpe 1974 QB 808, where the mistake in not stamping 102 ballot papers did affect the result.*

83. Miss McColgan makes the point that nothing in these propositions of Lord Denning limits them to breaches by an electoral official. In that case, Lord Denning sat with Stephenson LJ at page 167(b) he had this to say:

> *"The law as to elections is, to my understanding of the section, recognised as he embodied in the Act and the Rules and an election will stand if there had been breaches of the law but they are not substantial or have not affected the result."*

84. Miss McColgan makes the point that, in common with Lord Denning, Stephenson LJ does not limit this to breaches by officials. By "substantial", Stephenson LJ meant (page 168(f)).

> *"a departure from the procedure laid down by Parliament as to make the ordinary man condemn the election as a sham or travesty of an election by ballot*".

85. In my view however, that is perhaps more relevant to a discussion as to whether section 48(1)(a) is met rather than the issue as to whom section 48 is actually directed.

86. Mr. Straker makes the point that it is hardly surprising that the discussion in *Morgan* is not couched in restrictive terms as to the meaning of the relevant section because the case itself was actually dealing with a breach of duty by officials in not officially stamping ballot papers. It was not dealing with a breach of election rules by candidates. He argues that the fact that *Morgan* therefore gives no support to a restrictive reading of section 48 is neither here nor there, because in fact the court in that case was dealing with the effect of the corresponding section with regard to acts or omissions by an official. I respectfully agree with Mr. Straker that the observations made in that case must be considered in that context.

87. Ms. McColgan argues that is not the only context. That brings her to s48(1)(a). She argues that this election was conducted substantially in accordance with electoral law, because an ordinary man or woman would not condemn the election as a sham or travesty just because the candidates were proposed and/or seconded by people outside the relevant ward, when it was clear from their showing in the election, that they could easily have secured eligible proposers and seconders if they had applied their minds to it.

88. As for the second limb of section 48, namely 48(1)(b) that the act or omission (that is using ineligible supporters for nomination papers) did not affect the result. She argues that that is clearly so, indeed axiomatically so because this was a technical breach unbeknown to the electorate and it cannot be said to have influenced their voting pattern.

89. As to the contention that s48 is wide enough to save this election, she also prays in aid commentary by both the Law Commission and the Electoral Commission, and

the commentary in learned texts, namely Parkinson's Law and Conduct of Elections. I do not intend to cite all the references in these publications. Ms. McColgan has drawn attention to these in her skeleton arguments, particularly in paragraphs 12, 13, 14, 16, 17, 19. I have read them with care.

90. Perhaps I can summarise the position of the two Commissions by reference to what is said in what I think is a research paper issued by the Law Commission at tab 14 of the authorities bundle. Paragraph 1.40 is, says Ms. McColgan, a distillation of s127 and s48 of the 1983 Act and makes it clear there are only narrow circumstances in which a court can nullify an election. I need not quote the whole of paragraph 1.40, because much of it is irrelevant to the issue in which I am concerned. 2(a) is perhaps relevant:

> "*The court can annul the election resulting in the elected candidate being unseated and a new election being called, an election can be invalidated on one of three heads of challenge:*
>
> *"A breach of electoral law during the conduct of the election which was either fundamental or materially affected the results of the election."*

91. She makes the point that that distillation does not restrict that remedy simply to where there has been a conduct worthy criticism by an official.

92. Paragraph 1.59 of that document is instructive. It refers to s23 of the 1983 Act. S23 is in exactly the same terms as section 48 but deals with the Parliamentary elections, whereas 48 deals with the local elections. Paragraph 1.59 says:

> *"Section 23 extends to any act or omission by the returning officer or any other person in breach of his official duty otherwise of the Parliamentary Election Rules. This means that this ground not confined to breaches of electoral law by electoral administrator.*

> *Some election rules are targeted at candidates, chief among those are the requirements relating to nomination papers."*

93. Paragraph 160 deals with the "substantial" point, which is referred to in section 48(1)(a). When I say "substantial" point I mean the question about whether an election has been conducted "substantially" in accordance with the law and Rules. *Parker* is, of course, a very authoritative and respective work on election law. The editors of that tome have something to say at paragraph 1228.

> *"It is submitted that the requirement about the signatures and electoral numbers concerns the form of the nomination paper. Even if that argument is not accepted and the person nominated was elected, it is submitted that the saving provisions discussed in paragraph 19.85 below should be applied if the election is otherwise in order.* "

I will be corrected if I am wrong the saving provisions referred to are those in s48.

94. *Parker* goes on to say,

> *"The requirement that electors should subscribe the nomination paper of a candidate can only be intended to indicate that there is some support for the candidate's standing, because (subscription carries no commitment to vote for the candidate). If that candidate is' elected thereby showing that he is supported, it would be absurd to set aside the election because of an irregularity in the particulars of the subscribers."*

95. That argument is specifically endorsed by the Law Commission at paragraph 1.88 of their report of 2014 entitled "*Research Paper Legal Challenge of Elections*".

96. Of course, what the Law Commission says is the law, and I say this hesitatingly and with the greatest of respect to them may in fact not be the law. Even the Law Commission admits that the law is complex in the context of electoral law.

97. The joint consultation paper, joint between the English Law Commission of England and Wales Commission and the Scottish Commission and the Northern Ireland Commission at tab 15, says, at paragraph 3.13, that the grounds for challenging elections is not obvious, even on a careful reading of the 1983 Act. It remarks that the law on challenging elections is complex and inaccessible.

98. I understand the powerful arguments put forward by Ms. McColgan to the effect that section 48 saves this election. I accept that those arguments are boosted by the views expressed by the Law Commission and others.

99. I also understand that the electorate has spoken and that they have chosen these three candidates but I simply do not accept that s48 is applicable here if that section is given its ordinary meaning.

100. I do not say that s48 ought not to apply in this circumstance, perhaps it should, but as currently drafted it does not appear to me that it does. It seems clear to me that the reference to "*or any other person*", is a reference to an administrator or official because it refers specifically to official duties, defined in section 63 and referable to administrators/of officials. I do not think that the phrase "*or otherwise",* extends this section in the way suggested. It merely means that it refers to officials in connection with their official duties in connection with the election or their official duties in respect of matters otherwise than connected with the election. It seems to me that the meaning that Ms. McColgan would have me adopt stretches the meaning in a contrived and artificial way.

101. Even if one were to adopt a purposive approach to interpretation why, I ask rhetorically, should the section not be meant to cover only officials? That would permit the peoples' choice to remain in place and not be frustrated by an error by an official over which the successful candidate had no control - provided that paragraphs (a) and (b) are satisfied.

102. Even if I am wrong in concluding that there is no gateway into section 48, then I am not convinced in any event that this defect is not substantial. It is difficult to see why on the authority of *Sheppard* it is less serious than simply putting down the wrong address.

103. I have read *Sheppard* carefully and, whilst I will be corrected if I am wrong, it seems to me that nowhere does it suggest that in that case the wrong address confused or was likely to confuse any elector as to whom the candidate actually was. As has been suggested, it may be that the court was something short on analysis in *Sheppard* but what it found, in my view, is more important than why it found it.

104. I do not overlook Stephenson's LJ definition of “substantial”, and the issue of whether this breach would objectively be seen as making a sham of the election. However, I am not convinced that if the person in the street was told that the Rules specifically say that one has to have supporters from your own ward supporting ones nomination that that person would think it was shambolic if a person who flouted that rule could not take up their seat.

105. I also take Mr. Straker's point as regards s48(b). This act or omission permitted someone to stand in breach of a formal mandatory requirement and they won. How

does a mistake allowing someone to stand not affect an election when the ineligible candidates actually win the election? So even if there is a gateway into section 48 and Ms McColgan gets over the problems I mention with regard to s48(a), she faces formidable problems with regard to s48(1)(b).

106. Furthermore, I turn again to *De Beer* and the observations of Scott Baker J at paragraph 18 where he says:

> *"There is no scope for bending the rules in what seem or may seem to be meritorious cases."*

107. In my view that must apply equally to the court as it does to the returning officer. Parliament has laid down rigid rules for candidates. If Ms. McColgan's position was acceded to then quite simply those rules would cease to be rigid. I am far from convinced that that is actually the will of Parliament.

108. I should say that had I found that any of the candidates knew of the defects in their nomination, then my conclusion that s48 is no help to them would have been much easier to reach. That finding would have meant that that candidate was in effect guilty of an illegal practice, which all the commentators agree taints their election

109. Let me turn briefly to section 127 itself, because albeit Ms. McColgan did not refer to it specifically in her closing submissions, instead concentrating exclusively on the effect of rule 8.7 and s48, she does raise it in her skeleton arguments paragraph 25. Her point is that she questions Mr. Parkinson's entitlement to question the election on the basis that the respondents were not duty elected.

110. She argues that the first three respondents were elected by the relevant electorate in the absence of any substantial breach of election law, giving "substantial" the meaning ascribed to it by Stephenson LJ in *Morgan*.

111. I do not accept that. I agree with Mr Straker that each word in a statute carries weight. The section does not say "was not elected", it says "was not duly elected". That makes it necessary to ask whether the election was gained in compliance with electoral law. When Rule 6 is breached, as here such a question must be answered in the negative.

112. Finally, I touched on the fact that the nomination papers were distributed by the returning officer. By Rule 6.4, the returning officer has a duty to supply electors with the form and even prepare one for the candidate's signature if requested.

113. Mr. Straker accepts that if there is a duty to supply the nomination papers, then there is a duty to supply valid and non-defective ones. It seems to me that if the petition was grounded on the returning officer's breach of duty to supply valid nomination forms, then as long as s48(1)(a) and (b) were satisfied, section 48 may well save the election.

114. If however the election is questioned on other grounds to which section 48 is not susceptible, as I have found to be the case here, then that cannot be the basis for adopting the saving provisions of s48. In my view, you can have some acts and omissions that s48 would save and some that it would not. That is the position here.

115. Accordingly, I hold that the election for the Over ward is void and it will be necessary to rerun it. It may well result in the same outcome. That is of course a matter for the electorate of that ward to decide.

**Judgment on Costs**

116. The election court has power to award costs. That power derives from s154 of the 1983 Act. By section 183 those costs are considered in accordance with the Civil Procedure Rules. Accordingly, costs are considered in accordance with CPR Rule 44, which provides that the general rule is that the unsuccessful party shall pay the costs of the successful party, unless an alternative order is more appropriate, taking account of all the circumstances and the factors set out in Part 44 -- I speak from memory because I do not have CPR in front of me.

117. First, it is necessary to establish who the successful party is. It is true that I have allowed the petition. To that extent Mr. Parkinson has been successful. He has not been wholly successful because his application for a declaration that he be declared duly elected has not succeeded. That is a factor that Rule 44 provides can be taken specifically into account in deciding whether to depart from the general rule, and if so to what extent.

118. As for the third respondent, Mrs. Dolphin, I have received some very helpful written submissions as to costs from her counsel, Mr. Francis Hoare. Mrs. Dolphin has essentially taken a neutral stance in this petition. She has throughout sat quietly with all the other spectators rather than where one would normally expect a party to sit, which is in the well of the court. The only thing about which she was not neutral was the issue of whether Mr. Parkinson should be duly elected, but in reality I think I only know that because Mr. Hoare's submissions tell me that in paragraph 16 of his submissions. To that extent she is a successful party, but to that extent only. She does not seek any costs. Mr. Hoare's submissions are designed simply to persuade me that she should not be ordered to pay the costs of any other party.

119. Has the returning officer been a successful party? The orders that I have made accord precisely with his position; to that extent he is successful. But, on the other hand, the nomination papers which form the kernel of this case were supplied by him and they were defective. The omission of the word "ward", which I refer to at some length in my substantial judgment, in my view is not insignificant. The presence of that word may have sounded alarm bells for the candidates, that they must indeed get supporters from the Over ward.

120. I have been referred to the case of *Islington West*, a 1901 case, cited by Mr. Hoare in his submissions. It appears from that case that where a petition is caused by an irregularity for which a returning officer is responsible, he may be ordered to pay the costs occasioned by the irregularity, even absent misconduct on his part.

121. I do of course have considerable sympathy for the returning officer. His evidence is that he bought in these forms essentially from the reputable stationer. But at the end

of the day, it is accepted by Mr. Straker that the responsibility of the returning officer is that he distributes forms and that inevitably under those circumstances the responsibility extends to distributing valid forms.

122. Of course, the petition is not grounded on the irregularity in the form, to that extent the Islington case is to be distinguished, but nonetheless it is a circumstance which Part 44 permits me to take into account.

123. As for the first and second respondents, it cannot be said that they have succeeded, on any basis other than that Mr. Parkinson has not been declared duly elected. They sought dismissal of the petition but I have upheld it.

124. The question as to who pays costs, and the extent to which costs are paid is of course entirely a discretionary one. That discretion must be exercised judicially by taking account of all relevant factors and disregarding all irrelevant factors.

125. In my view, there is insufficient reason to depart from the general rule as regards costs, that the loser pays the winner's costs. It would seem to me that under those circumstances it would be inappropriate for the first and second respondent to recover any costs, if that is what is being suggested, notwithstanding that they were partially successful in the sense that Mr. Parkinson was not declared to be duly elected in their stead. I think the question is the principle of whether and the extent to which they should pay anybody else's costs.

126. I say that notwithstanding that I acknowledge that they were issued with defective papers, but the fact that is that the obligation was upon them to file with the returning officer defect-free nomination papers. They failed to do that.

127. I note what is said by Mrs. Lewis about ambiguity in the guidance and the notes, but really when all is said and done, it is not really rocket science that supporters should be from the relevant ward. Yesterday, I put to Mrs. Lewis the analogy of a golf club, would anybody even suspect that if I wanted to join a golf club and a proposer and a seconder were required, that that golf club would accept a proposer and seconder from a different golf club. Her response was that she knew nothing about golf clubs. In fact nor do I, but with respect, that may have been a reply which was a little disingenuous.

128. Tying up all these threads I am satisfied that it is appropriate that the petitioner obtains some of his costs but not all. I think it is right that a deduction is made to account for the issue on which he was unsuccessful, namely his application for a declaration that he is elected.

129. Further, I have to say that it was not clear to me until yesterday that he was not asserting that one or more of the candidates who were respondents were aware of the defect. Such a finding would have been a finding of an illegal practice, or indeed perhaps a corrupt practice, which would possibly have debarred the defaulting candidiate from standing for re-election, to say nothing of the reputational damage in the community. I emphasise that I have found that all the respondent candidates acted in good faith.

130. Taking all those matters into account, I am minded to start from the proposition that the petitioner should get 75% of his costs. The next question is from whom? Not, in my view from Mrs. Dolphin, for the reasons set out essentially in Mr. Hoare's submissions. She has taken no part in the proceedings, she has been neutral except

on the issue of the declaration that Mr. Parkinson sought about his due election, but it seems to me that that was an application which was unsupportable in law. She acted in good faith, on the basis of a defective nomination paper, where the defects in the form of an omission may or may not have been significant to the manner in which she completed the form and got her supporters.

131. As regards the returning officer, the contention is that he has been successful against the first and second respondents and should get some of his costs in relation to that, limited to those incurred in preparation of the skeleton argument and thereafter. I have to say that I am afraid that I cannot absolve him entirely from the need for this petition to be brought and pursued. I do not say that he was personally responsible for defective forms but he is vicariously responsible for defective forms.

132. As I have said, Mr. Straker accepts that by rule 6, the returning officer must provide forms and that it is implied that the duty therefore extends to providing valid forms. Especially, it seems to me, where the omitted word is not simply a superfluous word but is actually explanatory, even if perhaps subtly.

133. As for the first and second respondents, I have already set out some observations which I do not need to repeat. Taking account of all these factors, I will order that the returning officer pay 25% of the petitioner's cost and the first and second respondents pay 50% of his costs. I think it is appropriate that liability be several rather than joint and several and in my view that meets the justice of the case.

134. As for the returning officer, and the first and second respondents and the issue about the costs, the one against the other, it would of course not be appropriate in my view

to order the petitioner to pay any of their costs. His application for a declaration that he was duly elected was not likely to have added to their costs in any event, since it was hopeless in law. I acknowledge that the returning officer has been put to costs because of the fact that the first and second respondent's position was diametrically opposed to his and his costs would have been reduced if that were not the position.

135. The fact is that innocently and without personal fault, the returning officer found himself in breach of his duty to Mrs Lewis and Mr Cawley in supplying defective forms and that is a circumstance to be taken into account. I think all factors lead me to conclude that the costs of the returning officer and the first and second respondent should simply lie where they fall. In other words, each should simply pay their own costs. That will be my order.

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