

Neutral Citation Number: [2022] EWHC 255 (QB)

Case No: M375/21

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

Hartlepool Civic Centre,
15 Victoria Rd, Hartlepool TS24 8AY

Date: 28 January 2022

Before :

HHJ Kramer sitting as a Commissioner

Between :

Robert Buchan
- and -
Jennifer Elliott

Petitioner

Respondent

Ms Sackman (instructed by **Edwards Duthie Shamash Solicitors**) for the **Respondent**

Hearing dates: **28th January 2022**

JUDGMENT
(approved 7 February 2022)

HHJ KRAMER
(12:30 pm)

Friday, 28 January 2022

Judgment by **HHJ KRAMER**

1. Mr Robert Buchan was a candidate representing Hartlepool Independent Union in the 6 May 2021 local government election for Fens & Greatham ward of Hartlepool. There were three seats available. He came fourth, gaining 609 votes, just ten votes behind Ms Jennifer Elliott, representing Labour.
2. On 28 May 2021, he issued a petition under section 127 of the Representation of the People Act 1983 claiming Ms Elliott was guilty of illegal practices under section 106 of the 1983 Act by making a false statement about him in an election flier she distributed in the ward. He says that, as a result, Ms Elliott has not been duly elected and that her election is void and it must be held again.
3. This judgment follows the trial of Mr Buchan's petition. In the hearing, he represented himself, assisted by a McKenzie friend. Ms Elliott was represented by Ms Sackman of counsel.

The background facts.

4. The facts under this heading are not controversial and can be taken as my finding as regards the background. On 1 and 2 May 2021, at a time at which Mr Buchan was a candidate in the election, a flier written by Ms Elliott was distributed to residents in the Fens & Greatham ward. It is headed, "Your Labour candidates for the Fens & Greatham 2021 local council elections", and appears to be written by and on behalf of two other Labour candidates who were not successful in the poll. The flyer refers to residents being concerned about planning. In particular, it says:

"Residents have recognised that homes need to be built and people need to have places to live, but the houses need to be in the right places and the decisions about where to put them need to be well thought out."
5. It gives an example, a proposed housing development at Hill View. As to that, it says:

"The housing at Hill View, for example. It is clear that we need social housing in the borough but why must they go on green spaces when we have empty housing in the centre of the town? A priority for a Labour council would be the renovation of existing housing rather than new builds in rural areas."

6. The leaflet gets on to set out in bullet points suggestions as to how the issue of planning should be approached and makes the observation that the decisions of planning committees have been taken against the neighbourhood plans on too many occasions. After calling for better training for councillors who sit in the planning committee and a new complaints procedure regarding councillors' conduct, the document states:

"Three of your local candidates voted to grant planning permission at Hill View: James Brewer, Bob Buchan and Jim Lindridge. All went against the wishes of local residents and against the rural plan. Your current Conservative councillors also voted to accept the plans. Labour were the only party to vote against the new development."

The leaflet ends:

"Please vote for an open, fair and transparent planning process. Vote for residents' voices to be heard. Vote Labour on 6 May."

7. Mr Buchan was a standing member of the Hartlepool Borough Council planning committee. The Hill View development was a proposal for the construction of 18 social rent houses in Greatham. A planning application, H-2019-0527, was refused by the planning committee on 22 July 2020. Mr Buchan voted against that proposal. A revised application for permission, H-2020-0372, was considered by the council's planning committee on 13 January 2021. The committee resolved to grant permission by a majority of ten to one, only the Labour member voting against. Mr Buchan had been on the agenda to attend, but he was ill at the time of the meeting and sent a substitute member, Mr Tennant, also of the HIU, the Hartlepool Independent Union, who voted in favour.

8. There is no dispute as to the fact that Mr Buchan did not vote in favour, as he did not vote at all, he was not at the meeting. The question to which this gives rise is whether the incorrect statement in the flyer is a false statement for the purposes of section 106 of the Act, which renders Ms Elliott guilty of an illegal practice and would have the effect of avoiding the election.

9. I turn to the law which governs the exercise of the Election Court jurisdiction. It is to be found in the Representation of the People Act 1983. I will start with section 127.

Section 127 provides that:

"An election under the Local Government Act may be questioned on the ground that the person whose election is questioned (a) was at the time of the election disqualified or (b) was not duly elected or~..."

And this is the relevant bit:

"... on the ground that the election was avoided by corrupt or illegal practices~..."

I do not need to read on.

10. Section 159 (1) provides that:

"If a candidate who had been elected is reported by an Election Court personally guilty of any illegal practice, his election shall be void."

Section 145(1) provides:

"It is the task of the election court to determine whether a person whose election is complained of was duly elected or whether the election was void and to certify its decision. The certificate is final as to the matters in issue in the petition."

Section 145(2) provides:

"The election court shall forthwith certify in writing the determination to the High Court."

11. The court, however, has a part inquisitorial jurisdiction under section 145(3), for where corrupt or illegal practices are proved it must also make a report in writing to the High Court stating whether there have been or there is reason to believe that there has been an extensive prevalence of corrupt

practices in the electoral area of the authority. Nothing further needs to be said about this aspect of the enquiry, as there has been no evidence whatsoever of any corruption prevalent or otherwise.

12. In this case, the illegal practice is the alleged making of a false statement and section 106 is where we find the prohibition. Section 106 (1) reads

"A person~..." and I am going to leave out parts to which I need not refer, "... who, before or during an election, for the purposes of affecting the return of any candidate at the election, makes or publishes any false statement of fact in relation to the candidate's personal character or conduct shall be guilty of an illegal practice, unless he can show that he had reasonable ground for believing and did believe that statement to be true."

13. The commission of an illegal practice is a criminal offence and it is punishable with a level 5 fine, which nowadays would be an unlimited fine. That is section 169 of the Act.

14. The consequence of a finding that a candidate has been guilty of an illegal act, and thus avoiding the election, is that a new election has to be held as if a casual vacancy had arisen, section 135 of the Act. The consequence for the candidate in a case such as this is that they would be barred for a period of three years from the date of the court's report from holding certain electoral offices. That is section 160.

15. Looking more closely at the ingredients of the offence under section 106, we see that they require that:

- (a) Ms Elliott made a statement which relates to a candidate.
- (b) It must be a statement of fact.
- (c) It must be made in relation to Mr Buchan's personal character or conduct.
- (d) It must have been made for the purpose of affecting the election of Mr Buchan.
- (e) It must be made before or during the election.

These are all matters for Mr Buchan to prove to the criminal standard, that is to satisfy me so that I am sure that each elements of the offence has been established and the authority for that is

Regina v Rowe ex parte Mainwaring [1992] 1 Weekly Law Reports 1319, applied in **Erlam v Rahman [2015] EWHC 1215 (QB)**, at paragraphs 47 to 48.

16. If the court is so satisfied, it is nevertheless a defence for Ms Elliott to prove that, (a) she genuinely believed the statement to be true, and (b) she had reasonable grounds for that belief. These are matters for her to prove to the civil standard; that is to say that those facts are more likely than not.
17. There is no requirement to prove that the statement had the effect of swaying the result of the election. I say that, because in his evidence Mr Buchan said it did have this effect, given the closeness of the vote. Ms Sackman sought to counter this by pointing out that Councillor Lindridge, who also supported the planning development and voted for it, was elected for this ward with more than twice as many votes as Mr Buchan and Ms Elliott put together. But the impact of the statement on the vote is irrelevant.
18. Now, Ms Elliott does not dispute that Mr Buchan was a candidate at the time the statement was made, that it is a statement of fact, that the statement was made for the purpose of affecting his election, and that it was made before or during the election. Her case is that the statement relates to Mr Buchan's political, not his personal, character and conduct, and as a result, it does not come within section 106 of the 1983 Act.
19. She further argues that the gist of the statement is that Mr Buchan supported the granting of permission for the development and in that assertion, she is correct or, at the very least, Mr Buchan has not proved to the criminal standard that the statement is not true.
20. If, however, I conclude that Ms Elliott did make a false statement coming within the Act, she says that she had a genuine belief in its truth and reasonable grounds for so doing.
21. In these circumstances, those that I have just outlined, aside from a factual inquiry as to the genuineness and grounds of her belief and considerations as to whether the statement was merely

as to Mr Buchan's support for the grant, and in that respect false, the court has to focus on what constitutes a statement in relation to a candidate's personal character and conduct.

22. Before looking at the law on the application of section 106, it is well to start with the question as to how the court decides what meaning to ascribe to a statement.
23. Ms Sackman said that the meaning is that which it would be given by the reasonable voter in the Fens & Greatham constituency, but cited no authority for this proposition. The test which I apply is not far different. It is taken from Chitty on Contracts, paragraph 9-006, 34th edition, when dealing with the closely analogous situation of false statements made by way of misrepresentation. In a passage which refers to the case of **IFE Fund SA v Goldman Sachs International [2006] EWHC 2886 (Comm)** as authority for support for the statement, and the decision was affirmed in the Court of Appeal **[2007] EWHC (Civ) 811**. Chitty says:

"The question is not solely one of looking at the words used. The question is how the words would be understood by a reasonable person in the factual context."
24. The fact that, on Ms Elliott's admission, the flyer was directed at the voters of Greatham, where it was distributed and where the development was to take place, is part of that relevant context.
25. The authorities on the scope of section 106 were considered on the application of **R (Woolas) v Parliamentary Election Court [2012] Queens Bench 1**. The case concerned an attempt to overturn a Parliamentary election on the grounds that the winning candidate, Mr Woolas, had made section 106 false statements concerning a rival: the petitioner, Mr Watkins. There were three statements. The first two, that the rival had sought electoral support from Muslims who advocated violence, in particular against the petitioner, and had refused to condemn such extremists, were found to have been made dishonestly; that is made without any belief as to their truth. The third statement, that the petitioner had reneged on a promise to live in the constituency, was found to have been made without reasonable grounds.

26. An Election Court found that all three statements were false under section 106. It concluded that they were illegal acts which had rendered Mr Woolas's election void. He challenged that decision by judicial review and the Divisional Court dealt with the application of section 106.
27. The court held that the two statements linking the petitioner to violent extremists came within the section. The statements that Mr Watkins was wooing extremists was regarded as political hyperbole. But an allegation that he was willing to condone threats of violence in pursuit of political advantage was a statement about his personal character: he was a person who condoned criminal conduct. That is at paragraph 120 of the decision. Similarly, statements that he refused to condemn threats of violence were also an attack on his character. The allegation that he had reneged on a promise to live in the constituency, however, related to his political character, as it bore on his trustworthiness in relation to his political position, not making good on a promise which may have carried some weight with voters who preferred an MP to reside in their locality. That is to be found at paragraph 117 of the judgement. Accordingly, it held that falsehood did not fall within section 106.
28. In reaching these conclusions, the court reviewed the common law and the statutory origins of the law as now found in section 106 of the Act and for this purpose, it is necessary to refer to the authority in a little detail.

At paragraph 86 of the judgement, Lord Justice Thomas, as he then was, said that:

"The statutory rules had come about against a background of the decided cases."

29. He added that the Act had been a consolidation of the previous law and said at paragraph 86(c):
- "The consolidations were not only in the light of the decisions in **North Division of the County of Louth and Fairbairn v Scottish National Party** but also in the light of ..." and he referred to a number of cases, one of which was **Cockermouth Division of the County of Cumberland [1901] 5 O'M &H 155**. He added: "It is well established that the presumption is that Parliament has adopted the meaning given by the courts." And to that end, he looked in the judgment at how

the courts had approached the question of illegal conduct and personal conduct, as against political conduct.

30. At 87(ii), he said:

"A distinction must be drawn between a false statement of fact which relates to the personal character or conduct of the candidate and a false statement which relates to the political or public position, character or conduct of the candidate. In giving judgment in the Cockermouth case, Mr Justice Darling said at pages 159 to 160,

'I think the Act says that there is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct of the candidate and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind this statute would simply have prohibited at election times all sorts of criticism which was not strictly true, relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct. One can easily imagine this kind of thing: to say of a person that he was a fraudulent bankrupt it would be necessary probably to give examples but that sort of thing would undoubtedly be within the statute'."

Then at (iii), Lord Justice Thomas referred to the facts of Cockermouth, which I will just refer to, because they have, in a sense, a parallel which I am going to come back to, he said:

"The facts of the Cockermouth case illustrate what can clearly be viewed as statements in relation to political conduct. During the election campaign in 1900, in the middle of the Second Boer War, statements were made about a sitting MP who was a candidate for re-election, that he did nothing other than taking the part of the Boers and he had voted against sending money and supplies for the Boer War when the enemy was besieging British towns and wrecking British homes."

Lord Justice Thomas went on at (vi):

"It is clear from the Cockermouth case that one cannot simply imply from a statement attacking the political position of the candidate that the statement also reflects on his personal character, i.e. he was supporting the Queen's enemies."

31. The court set out its views in the judgment given by Lord Justice Thomas starting at paragraph 110. He said:

"In our view, the starting point for the construction of section 106 must be the distinction which it is plain from the statutory language that Parliament intended to draw between statements as to the political conduct or character or position of a candidate and statements as to his personal character or conduct. It was as self-evident in 1895 [*which is where we find the statutory predecessor of this section*] as it is today, given the practical experience of politics in democracy that unfounded allegations will be made about the political position of candidates in an election. The statutory language makes it clear that Parliament plainly did not intend the 1895 Act to apply to such statements. It trusted the good sense of the electorate to discount them. However, statements as to the personal character of a candidate were seen to be quite different. The good sense of the electorate would be unable to discern whether such statements, which might be highly damaging, were untrue. A remedy under the ordinary law in the middle of an election would be difficult to obtain. Thus the distinction was drawn in the 1895 Act, which is re-enacted in section 106 of the 1983 Act and which is reflected in the decisions to which we have referred above.

111. In our judgment Parliament clearly intended that such a distinction be made. A court has to make that distinction and decide whether the statement is (1) as to the personal character or conduct or a statement as to the political position or character of the candidate. It cannot be both."

32. At paragraph 112, some examples are provided:

"Statements about a candidate which relate, for example, to his family, religion, sexual conduct, business or finances are generally likely to relate to the personal character of a candidate. In our view it is of central importance to have regard to the difference between statements of that kind

and statements about a candidate which relate to his political position, but which may carry an implication which, if not made in the context of a statement as to a political position, impugn the personal character of the candidate.

113. For example, a statement made simply about a candidate's conduct as a businessman might imply he is a hypocrite, (as in *Bayley v Edmonds*¹¹ TLR 537 or *Borough of Sunderland; Storey v Doxford* 5 O'M &H 53). As his conduct as a businessman relates to personal conduct, such a statement is within section 106. However, a statement about a candidate's political position may well imply that he is a hypocrite or untrustworthy because of the political position he is taking. That is not a statement in relation to his personal character or conduct, it is a statement about his political position, though it might cast an imputation on his personal character. We do not consider that Parliament intended that such statements fall within section 106, particularly bearing in mind the fact that criminal liability attaches to statements made negligently. It would be difficult to see how the ordinary cut and thrust of political debate could properly be carried on if such were the width of the prohibition.

114. However, a statement about a candidate's political position can go beyond being a statement about his political position and become a statement that is a statement about personal character or conduct of the candidate."

33. An example is give in relation to corruption where Lord Justice Thomas said

"114....A clear illustration is to accuse a candidate of corruption, even if the corruption involves the conduct of a public or political office. What is said about the candidate is not a statement in respect of the conduct of the political office, but a statement that he is personally dishonest and committing a crime."

34. **Woolas** also deals with the interplay between section 106 and Article 10 of the European Convention on Human Rights, the right to freedom of expression, which is part of domestic law by virtue of the Human Rights Act 1998. But I do not need to consider these passages as Ms

Sackman does not rely on the article on the basis that the statement in this case is so clearly outside the scope of section 106.

35. As regards the evidence I have heard, that has been fairly limited and is directed to discrete issues and I shall refer to the key evidence when I come to my discussion and conclusions where it becomes relevant to a particular issue.

The parties' contentions.

36. I have already set out what is said by Ms Sackman in defence to the claim. She says planning decisions by councils are political acts; save where a decision is suitable for determination by council officers, they are entrusted to councillors, albeit sitting in a planning committee, as representatives of the electorate. It is their job to balance the competing needs of their communities, for example economic development against conservation or environment, to reach a balanced view within a framework of policies and guidance as to which interests should prevail. Thus, to make an incorrect statement as to a committee member's voting is, by definition, a statement concerning a political act, and thus political conduct.
37. Mr Buchan's case on this point is that it is not lawful for political parties to decide in caucus how they will vote in a forthcoming planning committee. Each member must decide for themselves whether to grant or withhold planning permission having regard to their assessment of the scheme, the views of their residents and their own conscience. In consequence, the act of voting is a personal one and a false statement as to how Mr Buchan voted relates to his personal conduct.
38. Ms Sackman's second point concerning the gist of the statement, which appears also in Ms Elliott's witness statement, is that the information which the statement in the flyer conveyed was that Mr Buchan supported the grant of planning permission. She pointed to evidence which she says indicated that he did; in particular, she says that the person he appointed as his substitute, Mr Tennant, voted for the scheme. She asks rhetorically: why would Mr Buchan choose a supporter of the scheme if he was against it? She also points to a post on Mr Buchan's Facebook page for

16 January 2021, three days after the vote. There is a picture there, or a banner, on which appears Councillor Moore of the HIU stating, "Election pledge delivered", and the text of the banner indicates that this has been achieved by the granting of planning permission for 18 affordable houses, which can only be a reference to the Hill View development. That post, this is not disputed, is still on his Facebook page.

39. Mr Buchan says that he did not support the scheme. He voted against it when first presented. How can it be said that he ever supported the scheme, as he was not present at the second vote? As regards Mr Tennant's involvement, he said it is illegal to seek to influence another councillor as to how they should vote. He did not select Mr Tennant on the basis of his views as to the development. That was a matter which Mr Tennant had to decide at the committee meeting. He made the point that it is essential that councillors do not approach applications in a prejudiced fashion but look at them with an open mind on the material presented at the meeting.
40. He explained the Facebook post by saying that he was in favour of affordable housing, but not at that location. By the time of his post, permission had been granted, so it was a done deal. He simply took the opportunity of pointing out that an HIU election pledge to provide affordable housing had been met. They did as they had promised. He was not seeking to indicate that he was in favour of this development, just the general point that HIU supports the provision of affordable housing. I should say that what Mr Buchan said in relation to this issue was part of his evidence and amplified in his final submissions.
41. As regards Ms Sackman's final argument concerning the question as to whether Ms Elliott had a genuine belief as to how Mr Buchan had voted, she asked me to accept Ms Elliott's evidence as to how she came to make the mistake and to conclude on this material that the belief was reasonable, ie she was not negligent in forming that view.
42. Mr Buchan argues that Ms Elliott knew that what she said was false and was using it to cause him maximum damage in the election. He says that that is obvious from the fact that the flyer was

circulated just five days before the election which gave him no time to respond. Further, Ms Elliott had viewed the hearing of the planning committee of 13 January 2021 online and must have seen that he was not at the meeting. He says that his case on these points is supported by evidence given by Patricia Allen, his partner, that there was a heated exchange which took place at the count, during which Ms Elliott had said that she had watched the online version of the hearing numerous times and said that he was there. He says that it cannot be correct that she saw him there at the meeting, because he wasn't there.

Discussions and conclusion

43. I shall start with Ms Elliott's point that what she said amounted to no more than stating that Mr Buchan supported the scheme, for which there was supporting evidence, as relied upon by Ms Sackman.
44. This seems to me very much a politician's argument. Instead of answering the question which has been posed, the person answering changes the question and answers that one instead. There is a difference between voting for a development and supporting it. Clearly the former will include the latter, but there is a difference between a councillor using the powers invested in them to vote to grant a proposal and simply supporting it, in the sense of demonstrating an outward expression of support. For present purposes, private undeclared support is irrelevant, as this case concerns an allegation that voters were liable to be misled, and therefore something overt has happened.
45. It is no answer to a false allegation as to how a council member exercised their voting powers to say that the allegation is substantially correct, because the proposal nevertheless had their support. To say that Mr Buchan voted contemplates that he has done more than lend the development his support; he has done something to bring it about. Had Ms Elliott limited her election flyer to saying that Mr Buchan had supported the revised development, there was evidence that he had. The flyer clearly related to the vote at which permission was granted, i.e. the 13 January vote. It

refers to the grant and the fact that only Labour voted against. It could not be referring to the earlier proposal which was voted down.

46. Mr Buchan, when cross-examined, sought to suggest that the flyer was unclear on this point as the date of the meeting was not identified. That seemed to me to be possibly another politician's foible, prevarication on this point to counter the suggestion that he had supported the proposal by selecting Mr Tennant and posting on his Facebook page; his point being that how could he possibly be said to have supported a proposal, when he had voted against it? That, of course, was a different proposal to the one which is referred to in the flyer.
47. As to the 13 January proposal being different to that earlier voted down, we have the evidence of Mr Young, who chaired the planning committee. His evidence was unchallenged on this point, and I accept his evidence that the original application involved construction on land which had been earmarked, in part, in the rural plan as not suitable for development. That was a plan devised in consultation with the local electorate. The development before the committee on 13 January 2021 revised the footprint of the development to remove this from the land upon which development was not to take place, and thus it brought it into line with the rural plan.
48. The 16 January posting on Facebook would appear to the reasonable elector in Fens & Greatham as an indication from Mr Buchan that he was relying upon the granted permission for the Hill View development as demonstrating that the HIU had kept its promise to cause the building of affordable homes. He says that the deal had been done by then, but that is not strictly accurate, as it could still have been the subject of challenge by way of judicial review by an interested party.
49. The posting ,and its potential impact, creates a reasonable doubt as to whether Mr Buchan did, indeed, not support the 13 January scheme, such that it would prevent me from being satisfied, so that I am sure, that a statement to the effect that it had his support was false. But as I have indicated, the actual statement made was more far-reaching than that, so that the question as to

whether he had demonstrated his support with the Facebook post does not answer the question concerning the falsehood of the statement as to voting.

50. As regards the involvement of Mr Tennant, there is no evidence as to what they discussed; albeit that Mr Tennant has changed parties, he too appears on Mr Buchan's Facebook page, so they seem to be on what appear to be good terms. He could have been called by Mr Buchan to give evidence as to what passed between them prior to his attendance at the 13 January meeting. Whilst the fact that he did not could raise a doubt as to whether his selection was Mr Buchan's way of supporting the scheme, he was not asked why Mr Tennant was not being called and it would be unfair to him to speculate on what might have been said and why he had not been called.
51. Accordingly, in the absence of countervailing evidence, I accept Mr Buchan's evidence that he did not choose Mr Tennant knowing that Mr Tennant would support the proposal. As he said, that is Mr Buchan, you must not prejudge the application before the committee meeting, which begs the question as to how Mr Buchan knows he would not have voted, had he attended and read and heard the arguments in favour. There is, however, no need to decide that issue in view of my conclusions as to the argument concerning the limited effect of the statement in the flyer; that is to say, it relates to voting, not support in general.
52. I shall now deal with the statement in the flyer, namely that Mr Buchan voted in favour of the development. That is incorrect as he was not there. The question, at this point, is as to what is to be made of the arguments as to whether this was political or personal conduct, and so to decide whether it comes within section 106. As has been seen from the case of **Woolas**, it cannot be both.
53. As I pointed out when hearing submissions from Ms Sackman, the question is one of construction, that is to say, it is one of law. Whilst the factual findings which concern the context against which the character of the statement is to be decided have to be proved by Mr Buchan to the criminal

standard, a determination as to whether the representation as construed falls within personal character or conduct is not subject to a burden of proof but is a decision of law.

54. Reading the flyer and the background information set out, and having looked at the background fact that there was disquiet about the Hill View planning application among some residents, it is obvious that the words in the flyer would be understood by a reasonable person amongst the voters in Fens & Greatham, who had read the rest of the flyer and were thus reasonably informed. that Mr Buchan had voted in favour of the grant of the Hill View planning application before the committee on 13 January 2021 and, it went on, had therefore done something which was opposed by a number of the voters.
55. It is axiomatic that the exercise of a vote in committee is a political act. The councillor is discharging a political function. Mr Buchan, had he been there, would not have been given the opportunity to vote because he was exercising a right vested in him as a member of the public, but because he was an elected representative of his ward. This was not his personal business. Just as voting not to send money and supplies to support the Crown during the Boer War in the **Cockermouth** case was treated as political conduct, so would voting for or against a planning proposal.
56. There is nothing in the incorrect statement as to Mr Buchan's voting which could be interpreted as merely being the occasion upon which he acted, but which reflected upon his personal character and conduct, such as the examples in **Woolas** at 114 relating to corruption. To illustrate this point with an example, if a politician took a bribe to vote for a planning development, whilst it was the political act which gave rise to the opportunity to engage in the corrupt practice, the taking of the bribe goes to personal conduct and character.
57. Mr Buchan's argument that the act of voting is personal, not political, was very much based on a premise that political means party political. He made the point that the HIU is a loose grouping,

the members are not whipped and you cannot decide an application for planning permission on party political lines.

58. This may well be the case, but the fact that your party does not, or cannot, dictate how you vote, and that the decision is yours to take, does not make the way in which one manifests the decision, namely by voting, into a personal, as opposed to political conduct. Politicians are entrusted to take these decisions on the public's behalf and when they discharge that trust, they are undertaking a political act which is correctly characterised as political conduct.
59. I can understand Mr Buchan's frustration at having an accusation levelled against him which was incorrect, and in his view, will have lost him his seat. But section 106 does not give him redress where, as here, his political conduct has been called into question.
60. Lastly, I shall deal with the defence of belief and whether it was reasonably held. It is here that I have to look more closely at the evidence. I bear in mind that the burden is on Ms Elliott. I deal with this for completeness, because my decision as to the nature of the statement relating to political conduct deals with the petition.
61. It is trite law, and one I do not propose to support with authorities, that witness demeanour is not a particularly useful guide in determining where the truth lies. It is more helpful to look at the objective facts, such as those found in contemporaneous documents or any agreed facts or objective narrative and compare that with the witness evidence. Ms Elliott told me that she expected Mr Buchan to have been party to the 13 January decision because he was on the planning committee. When she looked at the agenda for that meeting, he was shown as an attendee and there were no apologies. I have seen the agenda and that supports that part of her evidence. The agenda remained unchanged on the council website, even after the 13 January meeting. That has not been challenged, and that, therefore, gives the impression that those named attended.

62. Following the decision, she read an online newspaper report of the meeting, from a local newspaper, which indicated that all the councillors had voted in favour, save for one councillor, Councillor Richardson, who was a Labour councillor. From this, she concluded that Mr Buchan was present and must have voted in favour. The only other councillor who is named in the article was Councillor Moore, also part of the HIU grouping, which is a registered political party, Mr Buchan told me.
63. She says her view was reinforced by Mr Buchan's post on Facebook of Mr Moore's banner which, to her, looked as if he was supporting what had just happened three days previously. Nowhere in his post does he say he disagreed with the outcome. She said that before writing her flyer she had tried to check the minutes of the 13 January meeting. They should have been attached to the agenda for February, that being the meeting following the previous planning committee. She looked online but they were not there. For reasons she does not know, the minutes were attached to the agenda for 10 March, as appears from the front page of the agenda which has been produced in evidence. She says that Mr Buchan's name appears on that agenda and there were no apologies for absence. She took this as further confirmation that he was at the 13 January meeting. She overlooked going to the minutes themselves, which would have involved scrolling down the page. She said that she was a new councillor at this time and the paperwork was not familiar.
64. Ms Elliott was cross-examined on the basis that she knew that what she said was false and she denied that. She was asked about watching the committee hearing online. She said it was difficult to follow, due to the technology. The speaker would appear as a tile on the screen, not everybody's face appeared when they spoke; sometimes they just appeared as tiles with initials and at the bottom of the screen, there was a number which was the cumulative number of others who were taking part, that is to say, whose initials or face did not appear as tiles on the screen. She watched the hearing for about an hour as she only looked at the part dealing with Hill View,

but had missed the beginning when the apologies were read. In that way, she did not notice that Mr Buchan was not present.

65. Mr Buchan said in his evidence that the meeting was online and was recorded. He says that in his statement, but he said nothing further about it, either in his statement or in evidence.
66. Ms Allen has said that she was at the count to try and see how Mr Buchan's vote was going. She said that this was difficult, because a barrier had been put up in front of the counting table to protect against Covid. She told me that she thought that Mr Buchan had won. At one stage, she noticed him talking to someone who she then discovered was Ms Elliott. She approached them and heard Mr Buchan say that Ms Elliott was the woman who had told lies about him. She told Ms Elliott that Mr Buchan had not attended the second meeting and had voted against it at the first and she claimed that Ms Elliott was hostile and shouting and said that Mr Buchan had attended the vote, and had waved her mobile phone in front of her with some document on which she couldn't read. She said that Ms Elliott had claimed that she had seen the 13 January meeting on numerous occasions and that Mr Buchan was present. Ms Allen said she, however, did not raise her voice because if she had, the officials would have come over and Ms Elliott had said that she did not want to discuss the matter further and would get security to have her removed.
67. There is support for Ms Elliott's account as to her reasons for believing that Mr Buchan had been at the meeting; namely his membership of the committee, the printed agenda which didn't change, showing him as a member and no apologies, and his reaction vis à vis Facebook three days after the meeting.
68. It is the petitioner's case that at the count she was still maintaining that he was present. It seems unlikely that she would still have maintained this fact if she was aware that there was objective evidence, notably the recording of the online meeting, which proved otherwise. It is also unlikely that she would have watched the online meeting on numerous occasions or said that she had, because, first, why would she re-watch it, and secondly, due to the earlier point I just made, that if

she knew what was on it, she would hardly be putting forward the recording of the meeting as justification for her view that he was there.

69. It also seems to me unlikely that it was Ms Elliott who was being aggressive with either Mr Buchan or Ms Allen. It was Mr Buchan who was accusing Ms Elliott of lying. Ms Allen accepts she said that at the next election she would think up some lie about Ms Elliott. It was they who had the grievance and it is therefore much more likely that if anyone was raising their voices, it was going to be the aggrieved, rather than Ms Elliott; and it is much more likely that Ms Elliott would be the one who would be apologetic. The suggestion that it was Ms Allan and Mr Buchan who were raising their voices would also explain the fact that it was Ms Elliot who was the person, which is accepted, who was saying that she would call security. That is much more consistent with her facing a hostile verbal attack than she being the perpetrator.
70. As regards the different accounts of that exchange, I prefer Ms Elliott's account to that of Ms Allen, on the balance of probabilities, which is the test so far as the defence of genuine and reasonable belief.
71. I can see, and accept, that Ms Elliott had convinced herself by the information she had up to the date of the count, and seeing Mr Buchan's name on the document which referred to the 13 January minutes, which was the agenda to the 10 March minutes, that he had been at the meeting when she wrote her flyer and right up to the election. And I am satisfied that she was genuine in her belief that Mr Buchan was present and voted. That would be a logical deduction to make from the fact that it was known, and reported, that there were ten for, one against, and the only person against was a Labour member, who that certainly would not be Mr Buchan.
72. The final question is to whether her belief was reasonable. After all, she had managed to locate the whereabouts of the minutes for the 13 January hearing which would have demonstrated that Mr Buchan was not there, had she scrolled down to read them.

73. Ms Sackman says that there has been no negligence. I should be satisfied that it was reasonable to hold the view that she did, because even if, let us say, she had not looked at the 10 March agenda at all, there was sufficient material for her to reasonably conclude that Mr Buchan had taken part in the meeting.
74. Whilst there was evidence from which Ms Elliott could draw an inference that he was at the meeting, the documents that she had seen and the Facebook post, there was direct evidence available, such as from something on the face of the recording which showed his presence, for instance listening to it again to see if there were any apologies that had been offered, or to look at the minutes themselves. That is where the incontrovertible evidence, or the evidence which is most likely to be incontrovertible, was to be found and it does not appear, on her evidence, as if she looked at either.
75. As I said, and this is a trait of human nature, that having convinced herself that a certain state of affairs existed, Ms Elliot's belief was easily confirmed by looking at the agenda for the 10 March, whereas had she taken care, she should have looked at the minutes themselves. Accordingly, had she had to rely upon the defence of reasonable belief, whilst her belief was genuine, I would have concluded that it was not reasonable.
76. Having concluded, however, that the statement was one which related to political conduct and character and not personal conduct and character, I determine and certify that Ms Elliott was duly elected for the Fens & Greatham ward in the election of 6 May 2021 and will report to the High Court accordingly.