



Neutral Citation Number: [2022] EWHC 315 (Ch)

Case No: BL-2021-NCL-000006

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS AT NEWCASTLE
PROPERTY, TRUSTS AND PROBATE LISTS (Ch. D)

The Moot Hall
25 Castle Garth
Newcastle, NE1 1RQ

Before:

Her Honour Judge Claire Jackson

Between:

1. MR RAJU AHMED
2. MR HUSSAIN AHMED
3. MR SHOFIQUR RAHMAN
(As representing themselves and all other
members of the Shahjalal Mosque and Islamic
Culture Centre except for the Defendants)

Claimants

- and -

(1) MR HAJI ABDUL MUKITH
(2) MR SHAH FAZLUL KARIM
(3) MR AFSOR KHAN
(4) SHEIKH MOHAMMED SHAH JHAN
(5) MR AFRAZ HUSSAIN QURESHI

Defendants

Mr Simon Goldberg (instructed by **David Auld & Co**) for the **Claimants**
Mr Monsur Ahmed (Lay Representative) for the **Defendants**

Hearing date: 17th to 20th January 2022

I direct that, pursuant to CPR PD 39A para 6.1, no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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JUDGMENT

1. The Shahjalal Mosque & Islamic Cultural Centre (herein “SMICC”) is a religious building and facility serving the community in Newcastle. It is an unincorporated association governed by a written constitution approved by its members (herein “the Constitution”). A dispute arose between the parties during the COVID-19 pandemic in 2020 as to who was entitled to manage and operate SMICC and its property for and on behalf of its members. Despite restrictions having reduced, members returning to SMICC and an election taking place, the dispute has not resolved.
2. This judgment, following the expedited attended trial, therefore deals with the dispute as to the management and control of SMICC and its property. Whilst the Court has had time to consider its decision, this judgment has been handed down orally at a virtual hearing using CVP to ensure that the draft judgment was not circulated to the public, as happened with a draft order in the case.
3. In preparation for the trial the Court was provided with a Core Bundle, a Chronological Bundle, a skeleton argument from each party and an authorities bundle. Disputes arose between the parties as to the contents of the bundles. Those disputes were resolved prior to Mr Goldberg, Counsel for the Claimants, opening the trial. At trial, the Defendants were represented by Mr Monsur Ahmed, who is the son of the First Defendant. I took the unusual step of allowing Mr Ahmed to act as a lay representative for the Defendants at trial upon being told that the Defendants could not afford legal representation but were unable to represent themselves due to language difficulties. The Claimants did not oppose Mr Ahmed representing the Defendants at trial.

Background

4. SMICC has around 1600 members. It is not a registered charity. It beneficially owns two properties, 26-28 and 30-32 Sceptre Street, Newcastle, and legally operates bank accounts with Barclays Bank plc. Prior to the events complained of the signatories to the account were the First Claimant, the Fifth Defendant and Fozlur Rahman in their capacities as officers of the Executive Committee elected in 2018.
5. The parties do not dispute that the Constitution was adopted on 16 July 2000. There have been amendments to the Constitution approved by the members of SMICC. Clause 4 of the Constitution as originally drafted provides that members of the Executive Committee are to be the trustees of the property of SMICC. Clause 6b of the Constitution further gives the Executive Committee

control of SMICC's property. The Defendants' position is that in 2010 an amendment was made to Clause 4 of the Constitution by which the First to Fourth Defendants were confirmed as trustees. Whether such an amendment was made is an issue in the proceedings.

6. According to the pleaded case of the Defendants, which was signed with statements of truth at a time when they were legally represented by both solicitors and Counsel, pursuant to a Deed of Appointment dated 30 October 2009 the First Defendant appointed the Second to Fourth Defendants as replacement trustees of a trust created by a Declaration of Trust dated 25 November 1996 by which the two properties are held on trust for SMICC. The terms of the Declaration of Trust are not known by Claimants and the Declaration of Trust was not disclosed by the Defendants. In the skeleton argument of the Defendants the Defendants stated that there is no Declaration of Trust dated 25 November 1996. This was confirmed by the witnesses for the Defendants. The Defence in this regard was therefore untrue. The Defendants now rely on the trust provisions of section 10 of the TR1 forms for the two properties and the associated office copy entries as evidence of the appointment of the First to Fourth Defendants as trustees of the properties.
7. When Government restrictions were imposed on the numbers of people who could gather indoors due to the COVID-19 pandemic, the Executive Committee then in place took the decision to close SMICC. As a result of the continuation of the restrictions in May 2020, the Executive Committee took the further decision to postpone the Biennial General Meeting at which elections to the next Executive Committee would have taken place. When restrictions were again brought into force in November 2020 the ongoing executive committee again closed SMICC. The right of the Executive Committee to continue to exercise its functions and duties post May 2020 is an issue in the proceedings.
8. The Defendants, and approximately 100 of the members of SMICC, were unhappy with these decisions. On 18 November 2020, the Defendants wrote to the Claimants, stating that the Executive Committee had been dissolved on 31 May 2020 by reason of the failure to hold Executive Committee elections, and demanded that within 14 days the Executive Committee hand over control of the SMICC to the First to Fourth Defendants including the keys to the Mosque and control of its bank accounts. The Executive Committee did not do so.
9. The First to Fourth Defendants subsequently changed the locks to the Mosque and, with the assistance of the Fifth Defendant, as ongoing President of SMICC, removed the First Claimant and Fozlur Rahman from the mandate to the bank account. The Defendants thereby gained control by means of self-help over all the property of SMICC. Whether they were entitled to do so is an issue in the proceedings.
10. No explanation of the inherent contradiction that the Executive Committee had left office in May 2020, but the Fifth Defendant remained in post as President, has been forthcoming in the case, despite my drawing the contradiction to the attention of the Defendants in opening.
11. The Claimants also complain that the Defendants prevented the holding of Executive Committee elections on 2 August 2021 by banning the holding of public meetings at SMICC and preventing access to SMICC on the relevant date. This is not a significant issue in the case as it is clear from clause 13 of

- the Constitution that any such election would not have been valid as 21 clear days' notice of the elections had not been given to members.
12. In the summer of 2021, there were disturbances at the Mosque fuelled by the dispute between the parties. As a result of the disturbances, which were violent and resulted in injuries to individuals, the police were called to the Mosque on several occasions.
 13. The Claimants commenced these proceedings on 5 August 2021 asserting that the Executive Committee elected in 2018 remained the body with authority to run the day-to-day affairs of SMICC and seeking orders, the effect of which would have been, to return the day to day running of SMICC to that Executive Committee. The Claimants also issued an application for interim injunctive relief, to allow the Claimants to hold fresh elections for the Executive Committee. The application for interim relief was compromised on 11 August 2021 following extensive discussions between the parties.
 14. Central to the compromise was an agreement, scheduled to the Order made by consent, to hold fresh Executive Committee elections on 5 October 2021, which were to be presided over by an Election Commissioner, Mr Mohammed Zaman, whose identity was agreed by the parties. The terms of the agreement provided a mechanism for the holding of the elections, and for Mr Zaman to be the sole and final arbiter of the procedure to be adopted. An issue the parties had to grapple with was, because of the pandemic, there was no reliable and up to date list of members who had paid their subscriptions. Both parties agreed that there would have to be a period prior to the elections during which members could join and pay their subscriptions. The parties agreed that the process of vetting membership applications was delegated to Mr Zaman.
 15. The elections were held on 5 October 2021, and the Minar Panel (of which the Claimants are members) was elected as the new Executive Committee with 752 votes out of an electorate of 1180, approximately 64% of the vote. The opposing panel, the Next Generation Panel, did not accept the result and as a result the Defendants refused to hand over control of SMICC to the Executive Committee. The litigation has therefore continued with the issue of the validity of the 5 October 2021 elections added as an issue in the case by amendments to the pleadings.
 16. On 2 November 2021 the Claimants made a renewed application for interim relief, seeking orders which gave the Executive Committee elected on 5 October 2021 control of SMICC's affairs pending trial. HHJ Kramer granted that application at a hearing attended by the parties on 10 November 2021.

The Constitution of SMICC

17. Clause 4 of the Constitution provides for the Executive Committee. There is a dispute between the parties as to whether clause 4 of the Constitution as originally enacted has been amended or not. The Claimants say it has not; The Defendants say it has.
18. The Claimants contend that clause 4 reads:
“The Islamic Cultural Centre shall elect every two year at its Biannual General Meeting a President, a Vice President, a General Secretary, a Treasurer and 6 executive members as a panel. (The officers shall be ex-officio members of the executive). The President, General Secretary and the Treasurer shall also be the Trustees of the Mosque for their elected term. The Executive Committee shall meet at least once per calendar month”.

19. In contrast the Defendants contend that clause 4 reads:
“The Islamic Cultural Centre shall elect every two year at it Biannual general meeting a president, vice president, a general secretary, and an assistant secretary, a treasurer and six executive members as a panel. (The officer shall be ex office members of the executive). The President General Secretary and treasurer trustee’s power terminated. The trust deed of the organisation should remain as present registered until any violation from the trustee individual. The executive committee shall meet at least once per calendar month”.

20. In closing submissions, I asked Mr Ahmed what would constitute “*any violation from the trustee individual*”. He told me that this would have to be decided by members of SMICC at a meeting.

21. As to the remaining relevant terms of the Constitution:

21.1. Clause 6 of the Constitution provides for the duties and responsibilities of the Executive Committee. This provides that:

“A) The President shall preside at all meetings of the Committee, and the Executive Committee shall be responsible for the day to day running of the Islamic Cultural Centre. Every matter shall be determined by the majority of the votes of the members present and voting on the question, but in the case of equality of vote, the President will have the final casting vote.

B) It shall be the duty and function of the Executive Committee to carry out the General Policy and business of the Islamic Cultural Centre and to provide for the administration, management and control of the affairs and property of the Islamic Cultural Centre.”

21.2. Clause 7 of the Constitution provides for elections to the Executive Committee to take place biennially at the Biennial General Meeting by the members as determined by clause 12. Members are not eligible for election if they break any of the guidelines of the Mosque, if they have a criminal conviction or a current finding of bankruptcy.

21.3. Clause 8 of the Constitution provides for the term of office of the Executive Committee (two years from the end of May) unless re-elected.

21.4. Clause 12 of the Constitution establishes the membership requirement for SMICC. As originally agreed it provides:

“A) Membership is open to all Bangladeshi Muslims.

B) Voting membership of the Islamic Cultural Centre shall be open to all Bangladeshi Muslims living in the City of Newcastle upon Tyne postcode area (NE1 to NE7, and parts of NE13 and NE15 as outlined on the map enclosed). Every member on payment of such subscription is entitled to vote at any General Election. Any member wishing to vote or take part in the election biennially at the Biennial General Meeting must become a fully paid member by the second month of the financial year (end of May). Voting membership is open to all Bangladeshi Muslims over the age of 18 years.

C) Membership fees will be £10 per term. The Executive Committee has the power to determine the membership fees from time to time.”

21.5. It is to be noted that no map has been provided to the Court by any party despite each of their contested constitutions being before the Court. It is said that clause 12b was amended in 2019 to allow membership to all Bangladeshi Muslim residents of NE1 to NE7 and NE13 and NE15.

21.6. Clause 13 of the Constitution provides for the holding of meetings including a Biennial General Meeting in May at which the

Executive Committee elections are held. Twenty-one clear days' notice is to be given of the Biennial General Meeting. Any vote at the meeting is to be by way of a show of hands or a ballot.

21.7. Clause 14 of the Constitution as originally drafted provides the quorum requirements at an Executive Committee meeting and at the Biennial General Meeting. At the Biennial General Meeting the quorum is two-thirds of the fully paid members. The Defendants assert that this clause was amended in 2010 such that the quorum for the Biennial General Meeting was fifty members.

21.8. Clause 15 of the Constitution provides for the keeping of minutes and accounts and for the opening of a bank account in the name of SMICC, with the signatories to such cheques on such account (the Treasurer and either the President or Secretary), and the financial limits upon the signatories.

21.9. Clause 16 of the Constitution deals with amendments to the Constitution. It provides:

“A) Articles 3(a) and 3(b) will never be subjected to any change, alteration or amendments. This constitution may be amended by two thirds majority of the voting members at the Biennial General Meeting.

B) All amendments proposed by the members shall be submitted to the Executive Committee at least fourteen (14) days before the Biennial General Meeting.”

21.10. Clause 20 provides for the making and enforcement of rules by the Executive Committee. It is common ground that guidelines for the Mosque were approved by the Executive Committee under this provision in 2002. Mr Ahmed drew my attention to two clauses of the Guidelines. These provide that:

“I) Those who eligible and wish to become members to the institution require register through secretary of the mosque in individually. The applicant may require photographic ID to prevent Forgery.

J) Voter will need to show Membership card to Vote.”

The Issues

22. From the parties' statements of case and evidence a significant area of disagreement between the parties related to the disturbances which took place in 2021. Given the submission by both parties of video evidence it is unarguable that violent disturbances took place which resulted in injuries to members. Some of these incidents took place around the time of Friday prayers. On the first morning of trial Mr Goldberg confirmed that the Claimants no longer sought a final injunction against the Defendants due to the Defendants' compliance with the interim relief ordered by HHJ Kramer in November 2021. As a result, it was not necessary for the Court to consider the incidents or the responsibility for them at the trial. I have however in preparing this judgment watched all the videos the parties submitted for trial.
23. Whilst much was made in his written opening and oral closing submissions by Mr Ahmed of a planning application regarding the Mosque and made by the Claimants in 2020 this is not an issue in the case but rather is background to the dispute. I have taken the points made by Mr Ahmed into account in this judgment but am satisfied that they are not relevant to the issues which the parties agree are the issues in the case, being:

- 23.1. Are the parties bound by the result of 5 October 2021 elections?
 - 23.2. If not, are the Claimants the lawfully elected Executive Committee with authority to run the day-to-day affairs of SMICC as a result of the elections held in May 2018?
 - 23.3. If the Claimants do not have authority to run the day-to-day affairs of the SMICC, who does?
 - 23.4. Was clause 4 of the Constitution amended in 2010 to remove the President, General Secretary and Treasurer from their position as trustees and replace them with the First to Fourth Defendants?
 - 23.5. If not, should the Court order the First to Fourth Defendants to transfer the legal title of the premises at Sceptre Street to the Chairman, Secretary and Treasurer of the Executive Committee?
24. As a result of the submissions made by Mr Ahmed in closing submissions it is necessary for the Court to consider issues 4 and 5 first and then issues 1 to 3. I remind myself that given this is a civil case the burden of proof rests on the Claimants to prove their claim on the balance of probabilities.

The Law

25. Mr Ahmed made no submissions in relation to the law.
26. Mr Goldberg relies on 4 short propositions of law in support of the Claimants' case supported by authorities. The propositions of law relied upon by Mr Goldberg are:
 - 26.1. A constitution governing the operation of an unincorporated association is a contract between the members of the association (*In Re Sick and Funeral Society of St John's Sunday School, Golcar* [1973] Ch 51, 60);
 - 26.2. The Court is to ascertain the meaning which the Constitution would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties when the Constitution was approved (*ICS Ltd v West Bromwich BS* [1998] 1 WLR 896, 912 per Lord Hoffman);
 - 26.3. A Court may only infer a term into a contract where the term is reasonable and equitable, necessary to give business efficacy to the contract, so obvious it goes without saying, capable of clear expression and does not contradict any express terms of the contract (*BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 16 ALR 363);
 - 26.4. Parties to a contract can agree in a contract that a certain position will form the basis for a transaction, whether it be the case or not. Where that happens neither can subsequently deny the existence of the facts and matters upon which they have agreed, at least as far as concerns those aspects of their relationship to which the agreement was directed (*Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] EWCA Civ 386).
27. Mr Goldberg's pupil, Michael Hayward provided a note to the Court on a small point of law which appeared significant in pre-reading but which was in fact not relevant. In closing Mr Goldberg produced the Rehabilitation of Offenders Act 1974 and Kendell on Expert Determinations.

28. Mr Goldberg accepts that there has been no expert determination in this case but referred me to Kendall by way of analogy and to the proposition that where an expert determination is found to be final and binding, the grounds upon which it can be challenged are incredibly restrictive. At common law, they are: (a) material departure from instructions in a material respect; (b) fraud or collusion; and (c) actual bias. In the absence of an express provision, a mistake by the expert (even if obvious or manifest) is not a basis for challenging the determination unless it falls within the first category and thereby amounts to a failure by the expert to operate within the confines of the jurisdiction conferred on him by the parties (Kendall on Expert Determinations, 5th Ed (2014), paras 14.11-1 and 14.12).

The Witnesses

29. In preparing this matter for trial the parties exchanged witness statements. The Claimants served witness statements from the First Claimant and the Election Commissioner, Mr Mohammed Ahsan Uz Zaman. The Defendants served witness statements from Sorwar Ahmed, the First, Second, Third and Fifth Defendants. At the trial of this action both the Claimants' witnesses attended and gave evidence. The Defendants' witnesses attended trial save for Sorwar Ahmed and the First Defendant.
30. Sorwar Ahmed is said to have been part of the Next Generation panel who stood for election in the 2021 elections and who are, according to the Third Defendant, the source of the information and challenges used by the Defendants in disputing the result of that election. The witnesses who appeared for the Defendants at trial were unable to testify to those allegations, relying simply on what they had been told by the Next Generation panel. Sorwar Ahmed is therefore the only witness on behalf of the Defendants with, what is said to be, knowledge of the pleaded issues regarding the election. (I will address the eleventh-hour attempts by the Third Defendant to introduce new criticisms in the issues section of this judgment.) Mr Ahmed is therefore the crucial witness for the Defendants on the first issue in the case. Given Mr Goldberg could not test his evidence, in contrast to the ability of the Defendants to test the evidence of Mr Zaman, in my judgment it would be unfair for Mr Ahmed's statement to have weight placed on it.
31. The First Defendant provides evidence in this case as regards the history of the trustees. His evidence was important in the case as he could have addressed how the Deed of Appointment was signed in relation to a Declaration of Trust which is now said not to exist, the duties the trustees are said to be subject to and how it was appropriate for the First to Fourth Defendants to sign the Deed of Appointment in 2009 given the members of SMICC had agreed the trustees would be members of the Executive Committee, a question the other Defendants were unable to answer. Mr Goldberg did not have the opportunity to explore these issues with the First Defendant and as a result I have again determined that it is not appropriate that any weight is placed on his statement.
32. Given the evidence tended to the court in oral testimony by the Third and Fifth Defendants which, whilst being evidence tendered on behalf of the Defendants, provided clear and compelling evidence in favour of the Claimants, there is little to be gained from a detailed assessment of the credibility of the witnesses, save for Mr Zaman. In assessing the credibility of

all the witnesses who appeared before me, including Mr Zaman, I have considered both the evidence they gave and their demeanour.

33. In my judgment having read the witness statement of Mr Zaman and then listened to his oral testimony I am satisfied that Mr Zaman is an honest and credible witness. Indeed, Mr Zaman was by far the most impressive witness the Court heard from in these proceedings. He gave his evidence in a calm and controlled manner that was at the same time natural. He answered questions asked of him extremely clearly ensuring that the Court understood his answers in full. He was patient and courteous as a witness even when being asked the same question or variants thereof repeatedly. His evidence throughout his oral testimony was consistent but not suggestive of someone giving evidence by rote. His evidence was also consistent when compared with documents and with his witness statement. His demeanour when giving evidence was one of somebody who was comfortable answering questions, who did not hide from any questions and who wanted to ensure that his evidence was given fully, and which was understood by myself fully. He was a seriously impressive and credible witness and I accept his evidence in full.
34. All I would wish to note in relation to the remainder of the witnesses who appeared before me, save for Mr Qureshi, is that none were as impressive as Mr Zaman. Even allowing for language barriers each witness struggled with some areas of their testimony and the Defendants in their pleadings were guilty of over promising, presenting presumptions and hypothesis as facts, ignoring differences their pleaded case and ignoring the blatant contradiction sitting at the heart of their case.
35. In relation to Mr Qureshi there was clearly a language barrier as regards his giving evidence. English is not Mr Qureshi's first language and the Defendants failed to arrange an interpreter to assist him to give evidence. Nevertheless, I am satisfied that Mr Qureshi understood the questions asked of, and answered by, him as when he did not understand he said so.
36. I am further satisfied that Mr Qureshi gave his evidence honestly to the court not least because Mr Qureshi confirmed that the facts set out in the Defence filed by the Defendants and signed with a statement of truth by each of them were not true. The untruthfulness of the Defence was frankly obvious from the chronological bundle. In the Defence the Defendants assert at paragraph 7 "*it is denied that the Claimants remained in post as executive committee after 31st May 2020 as alleged in paragraph six or at all*". It was therefore a key point of the Defence that the Executive Committee left office at the latest on 31 May 2020. As already noted, Mr Qureshi was elected the President of SMICC in 2018. If the Defendants therefore truly believed that the Executive Committee had left office on 31 May 2020, Mr Qureshi's term of office as President terminated on 31 May 2020.
37. Yet it was Mr Qureshi's position as evidently demonstrated in the chronological bundle, that he remained in office as President in late 2020 and early 2021. This contradiction between the pleaded case of all of the Defendants and the evidence of Mr Qureshi was pointed out to the Defendants at the outset of the trial. During his evidence Mr Qureshi confirmed that it was his position that he remained President of the Executive Committee and that the Executive Committee remained in place after 31 May 2020. Mr Qureshi therefore gave evidence entirely contrary to the Defence of the Defendants showing in my judgment that when giving evidence he was telling the truth to

the Court and that the pleaded defence of the Defendants was not true. Given that this judgment is to be sent to Northumbria Police regarding an allegation of bank fraud I ask the Police to consider whether the signing of a statement of truth in the Defence which was known to be untrue on both this ground and the ground set out at paragraph 6 hereof by, at least, some of the Defendants, should also be investigated as a contempt of court.

38. Unfortunately, my comments regarding Mr Qureshi cannot end there. In accordance with the Constitution, he was a signatory on the bank account of SMICC. The other signatories were the First Claimant and Fozlur Rahman following the refusal of the Third Claimant to be a signatory on the account. Following the dispute arising between the parties, Mr Qureshi managed to change the bank mandate such that the Defendants became the signatories of the bank account. According to bank procedure two signatures were required to change the mandate. The First Claimant denies signing the relevant mandate and there is no evidence before me that Mr Rahman signed the form.
39. It was accepted by Mr Qureshi in his evidence that in order to change the bank mandate the bank would have required signatures from him, from the outgoing signatories and from the incoming signatories. During this stage of cross examination I accept that Mr Goldberg wrongly referred to the Third Claimant as the third signatory rather than Fazlur Rahman. For my purposes however nothing turns on that given the evidence provided by Mr Qureshi but I note that this will be a matter the police will wish to take into consideration in their investigation. When summarised Mr Qureshi's evidence regarding the bank mandate was that he called the bank to change the mandate. They told him to attend the bank which he did. They gave him a form to complete and sign. He completed it and signed it and the other trustees signed it and it was delivered to the bank. He accepted that the First and Third Claimants did not sign the mandate and he then admitted that either he or the other Defendants signed for the First and Third Claimants.
40. Mr Qureshi therefore admitted that either he or the trustees falsified the change of bank mandate form. This is a serious matter aggravated by the position of trust the Defendants held at the time. This matter must in my judgment be reported to the police and as a result a copy of this judgment will be sent to the Northumbria Police with reference 924 8/6/21, together with a transcript of the evidence of Mr Qureshi which I hereby order to be produced at the public expense.

Findings on the Issues

41. As already noted, given an issue raised by Mr Ahmed in closing on behalf of the Defendants the final two issues will be considered first.

Issue 4: Clause 4 of the Constitution

42. The Constitution of SMICC makes express provision for how it can be amended. The relevant clause, clause 16a, is set out in full at paragraph 21.9 above with the relevant quorum provided for in clause 14.
43. The Claimants state that there is no evidence to show that clause 4 of the Constitution was amended in accordance with clauses 14 and 16. The

Defendants submit that clause 4 of the Constitution was amended by a vote at a general meeting of SMICC in 2010. In their defence the Defendants state they will rely on three documents to evidence that the amendment took place. Those documents are said to be the Secretaries report dated 16 May 2010, the minutes of an AGM held on 16 May 2010 and a document entitled amendments dated 30 May 2010.

44. In my judgment there is no document before the Court to show that the Constitution was amended in 2010 as asserted. The first two documents the Defendants stated they would rely on are not before the Court but would, following the evidence of the Third Defendant, have supported the Claimant's contentions. The third document being a document entitled Amendments dated 30 May 2010 does not show that the amendments were passed in accordance with the Constitution. In this judgment I leave to one side a dispute as to when that document was dated given it was undated on 13 August 2021 when a copy was handed to Mr Zaman. At its highest this document simply shows that five individuals signed amendments to the Constitution. That is not what was required by the Constitution at the relevant time. The document does not show that the amendment was put to a quorate meeting that voted in favour of the amendments with the relevant majority.
45. Turning therefore to the evidence presented to the court the Claimants' witness Mr Ahmed was clear there is no record of the amendment in the records of SMICC so far as he is aware. Mr Zaman accepted that he had been handed a copy of the document headed Amendments by one of the parties to the dispute at a meeting on 13 August 2021. He further accepted that in producing the procedure for the election he had taken the document into account. However, he was clear he did this because he was not able to determine whether the amendment had been passed so he simply considered what both sides said when devising his procedure. Mr Zaman does not therefore assist the Court in this regard.
46. The Third Defendant was noticeably clear on this point: It had been impossible to get two-thirds of the members to attend Biennial General Meetings. As a result, changes to the Constitution could not be made. In 2010 the Executive Committee wished to make changes to the Constitution. They therefore asked members to attend meetings. SMICC held an AGM on the 16 May 2010 and it is to that meeting that the first two documents which the Defendants wished to rely on, but which were not before the Court, related. The Third Defendant stated that at that AGM a decision was taken that Biennial General Meetings would only require an attendance of fifty for the meeting to be quorate. The Third Defendant's clear evidence was therefore that clause 14 of the Constitution was amended at an AGM on the 16 May 2010 and that amendment then resulted in a quorate Biennial General Meeting on the 30 May 2010 at which the amendment to clause 4 was passed.
47. Accepting Mr Khan's evidence regarding May 2010 in full there is no evidence, whether documentary or witness testimony, to show that the Constitution was amended such that clause 4 was changed from the clause as originally drafted and approved by the members. In relation to the alleged amendment to clause 14 this is said by the Defendants to have occurred at an AGM, but as clause 16 of the Constitution makes clear an amendment to the Constitution cannot be made at such a meeting. The alleged amendment to change the quorum for a Biennial General Meeting therefore was, and is, not

valid. The required quorum for the Biennial General Meeting in 2010 therefore remained two-thirds of the members. There is no evidence that two-thirds of the members attended the meeting given the Third Defendant's evidence was that the allegedly amended quorum requirements were used for the meeting. There is then no evidence that the amendments to clauses 4 and 14 were put before the meeting or that they were passed by the relevant voting majority. As a result, there is no evidence before this Court to show that clause 4 of the Constitution was amended in 2010. Likewise, there is no evidence that in 2016, when the second property was purchased, that two-thirds of the members voted at a BGM by a two-thirds majority to amend clause 4 to put that property into a trust with the First to Fourth Defendants as trustees.

48. Mr Ahmed in closing submissions submitted that the Claimants could not deny that clause 4 had been amended given they had relied on the amendments both in terms of the panel they were part of in 2018, in submitting a panel of 11 members for election in 2021 and in seeking to amend the constitution in 2019. Mr Ahmed put no authority before the Court for such submission. In my judgment such a submission relies on the principles of estoppel but cannot succeed as there is no evidence that the Claimants or the members of SMICC have ever made a representation to the Defendants that clause 4 of the Constitution was amended. On the evidence before the Court it is the Defendants who have always represented that clause 4 of the Constitution was amended. Further there is no evidence of reliance by the Defendants on any words or behaviour of the Claimants. There is then no evidence as to how any reliance by the Defendants was detrimental to them. Finally looking at the equity of the situation the Defendants have sought to assert that the Constitution was amended when it was not, yet the Defendants were aware the Constitution was not amended in accordance with its terms. In my judgment therefore the Defendants are not entitled to rely on estoppel. In any event the election in 2021 cannot be an estoppel given its procedure was not governed by the Constitution for the reasons set out below.
49. On the evidence before the Court clause 4 of the Constitution as originally agreed by the members therefore remains in effect. As a result the proper trustees for the property of SMICC are the President, General Secretary and Treasurer of the Executive Committee. This is not the position at this time. That needs to be regularised and it is clear from the evidence of the Defendants that this requires a court order. Therefore the First to Fourth Defendants are ordered to transfer the properties held by them as trustees of SMICC to the President, General Secretary and Treasurer of the Executive Committee forthwith for them to hold on trust on behalf of SMICC for the term of their office. The Order I will make in this case will provide that if any or all of the First to Fourth Defendants refuse to make an appointment with the Claimants' solicitors to attend at their offices to execute a transfer to that effect within 7 days of today's date then a District Judge or Circuit Judge of this Court will execute the transfer on behalf of the defaulting individuals.

50. Given this conclusion it is not necessary for me to consider the fifth issue identified by the parties.

Issue 1: Control of SMICC

51. The order of 11 August 2021 in so far as it related to the election provided: *AND UPON the parties having agreed terms for the holding of elections to the Executive Committee and of the Arbiters of the Shahjalal Mosque and Islamic Cultural Centre as set out in the Schedule annexed hereto*

52. The Schedule provided:

1. *Elections to the Executive Committee and of the Arbiters of the Shahjalal Mosque and Islamic Cultural Centre (SMICC) shall take place on 5 October 2021 (the Elections).*
2. *The Elections shall be presided over by Mr Mohammed Ahsan Us Zaman (the Election Commissioner). Subject to the terms of this agreement, the Election Commissioner shall be the sole and final arbiter of the procedure to be adopted for and at the Elections.*
3. *The Election Commissioner shall draft and publish notice of the Elections required under clause 13b of the Constitution of the SMICC (the Constitution).*
4. *Any member of the SMICC who meets the criteria in paragraph 12b of the Constitution shall be entitled to vote at the Elections provided that they have submitted their application for membership and paid the appropriate subscription (which is £15) by 4pm on 22 September 2021.*
5. *The Election Commissioner shall take all necessary and reasonable steps to ensure the safety of members seeking to vote at the Elections including by seeking a police presence on the day of the Elections.*
6. *From the date of this agreement and until the result of the Elections are declared:*

6.1 any application for membership shall be made, and the relevant subscription paid, to the Election Commissioner who:

6.1.1 shall determine whether the application is accepted, having regard to the criteria at clause 12 of the Constitution, and his decision shall be final;

6.1.2 shall collect the subscriptions paid by members;

6.1.3 shall immediately after the Elections pay one half of such subscriptions to each of the Claimant's solicitors and the Defendants' solicitors, in each case to be held by those solicitors pending agreement between the parties or further order of the Court.

...

6.6 None of the parties shall make any verbal claim or announcement, or publish within the Mosque any notice or other written material, relating to the Elections or their claim to be the legitimate Executive Committee of the SMICC. Any such notice or literature currently published in the Mosque shall be taken down and/or removed forthwith.

53. It is therefore clear from the order as agreed between the parties that:

53.1. Mr Zaman was to conduct the elections;

53.2. In doing so he was to determine the procedure for the elections including applications for membership of SMICC.

54. Mr Zaman did conduct the election. It is clear from the evidence that despite being “*the sole and final arbiter of the procedure to be adopted for and at the elections*” Mr Zaman sought to engage with the parties or their representatives at the mosque and having done so he was responsive to their comments. He still however decided the procedure for both the election and for membership applications. His decisions in these regards were expressly agreed to be final, i.e. not subject to review (Kendall on Expert Determinations, para 7.8.3).
55. The election took place in accordance with the order on 5 October 2021. Having counted the votes Mr Zaman declared the Minar panel to be the victors. The Defendants do not accept that result and make a number of complaints in that regard. Unusually the complaints are contained in a document entitled “Defendant’s Note to the Court for use at the hearing listed for 10:30 AM on 20 October 2021”. HHJ Kramer deemed that to be the Defendants’ Defence regarding the elections. It became clear during the evidence of the Third Defendant that the allegations contained in that Note are allegations the Defendants are unable to give firsthand evidence in relation to and they have relied on the Next Generation panel, being the candidates linked to the Defendants, in regard to the complaints. No admissible witness testimony has been provided by that panel. Indeed it is to be noted that during his evidence the Third Defendant was at pains to state that the Trustees were not challenging the results themselves but were challenging the result on behalf of the Next Generation panel who had complained to them. This may be an issue I need to revisit in relation to the costs of the proceedings.
56. There are 13 complaints listed in the Note and which are said by the Defendants to result in the election being unlawful and unconstitutional. The complaints can be divided into three distinct groups. First there are complaints about the procedure announced by Mr Zaman for the election. Second there are complaints about the decisions taken by Mr Zaman under paragraph 6 of the Schedule to the Order, being his decisions regarding members of SMICC. Third there are complaints about the actual procedure on the Election Day.
57. All complaints therefore relate to the procedure for the election or the membership decisions taken in relation to the election. As already noted in relation to both of these matters Mr Zaman is said to have been either the sole and final arbiter or the final decision maker. His decisions were agreed not to be subject to review. Yet that is what the Defendants seek to do in this case. I accept that the order does not use the words final and binding. In my judgment, given this schedule was drafted by Counsel in relation to a dispute that was ongoing between the parties at the time and given that that dispute had already resulted in violence at the Mosque, it can be inferred that the parties in stating that Mr Zaman was the sole and final arbiter or final decision maker were agreeing that the decision would be binding on them.
58. Whether I am right in that regard or not, the Defendants agreed the Schedule to the Order and therefore by analogy with expert determination unless there is evidence of a breach of the contract represented by the Schedule to the Order they are unable to challenge the election results. The complaints before me all relate to Mr Zaman’s conduct. He was not party to the Order but was appointed pursuant to its terms. In my judgment it would be a breach of the Order on which either party could rely if Mr Zaman either exercised his

powers in bad faith, due to corruption or partiality on his side or if he materially failed to follow his instructions in his decision making.

59. The Defendants do not in the Note make any allegations of bad faith, corruption or partiality against Mr Zaman. The Third Defendant in his witness statement seeks for the first time to make such allegations. This is wholly inappropriate. Allegations of bad faith, corruption and partiality are serious allegations to make against somebody. If those allegations are to be made they needed to be made up front and expressly. They were not and no application has been made by the Defendants to amend their Note to raise such allegations. As a result, no properly constituted allegations of bad faith, corruption or partiality are before this Court. I therefore find that no such allegations have been proven.
60. Even if I had been willing to consider such allegations any allegations of bad faith, corruption or partiality had to be put to Mr Zaman during his evidence. The allegations made by the Third Defendant in his witness statement were not put to Mr Zaman. The Court cannot therefore accept those allegations following the evidence at trial. I therefore do not accept that the election results can be set aside on the basis of bad faith, corruption or partiality.
61. Turning to whether Mr Zaman followed his instructions, these were as per the Schedule to the Order. The Defendants are contractually estopped from contending otherwise. It is clear from that Schedule that, save in relation to issues of membership, Mr Zaman was the sole and final arbiter of the procedure, and he was free to design the process of the election without regard to the Constitution, save for clauses 13b and 12b of the Constitution. I will turn shortly to clause 12b. There is no suggestion that Mr Zaman did not give notice in accordance with clause 13b.
62. As to the remainder of the procedure Mr Zaman had to design this without strict adherence to the Constitution as it was simply not possible for an election to take place in accordance with the Constitution:
 - 62.1. it could not be held in May (the agreed date was October);
 - 62.2. it could not be held at a Biennial General Meeting presided over by the Fifth Defendant (as no such meeting could be called given the dispute between the parties);
 - 62.3. the effective quorum and voting clauses could not be enforced as they were disputed between the parties, and;
 - 62.4. membership could not be closed as at May 2021 (as the parties agreed the membership list needed to be updated).
63. Mr Zaman was therefore expressly to determine the procedure and to implement it. If he chose to follow the Constitution, in so far as he could, he was able to do so but he was not bound to. In therefore designing the procedure and not strictly following the Constitution Mr Zaman followed his instructions. No other vitiating factor has been shown as to why Mr Zaman's decision should not be final.
64. Grounds 7 to 10 of the Defendant's Note are accordingly dismissed as they all relate to the election procedure. It is to be noted that of those grounds the Defendants provided no evidence to show that the allegations made therein affected the outcome of the election. Indeed ground 8 was, as the ground itself noted, remedied before the election.
65. In relation to membership applications, Mr Zaman was to receive all membership applications and subscriptions. There is no evidence he did not

do so. He was then to determine whether the application was accepted “*having regard to the criteria at clause 12 of the Constitution*”. If an applicant satisfied paragraph 12b of the Constitution then that applicant was entitled to vote if they had submitted an application on time and paid the subscription (paragraph 4 of the Schedule) but given Mr Zaman was otherwise only to have regard to clause 12 of the Constitution if he chose to allow others to vote then he was entitled to do so. The procedure he adopted as to checking membership applications was part of the procedure of the election and he was not bound by the Constitution.

66. The complaints made by the Defendants regarding membership include complaints about the procedure during membership applications (grounds 1 to 5). None of those complaints have been evidenced at trial. This is particularly so in relation to grounds 1 to 3. Grounds 1 and 2 complain that Mr Zaman failed “*to verify the members prior to submission of membership forms according to clause 12b of SMICC Constitution*”. Mr Zaman gave very clear evidence, which I accept, that it had been his intention at the outset to verify eligibility at the application stage but he agreed not to do so when the representatives of both parties asked me to defer validity checks until election day. In my judgment if a party agrees to a procedure, the losing party cannot complain afterwards about the change of procedure.
67. As to ground 3 this complains that “*The membership form designed by the EC allows British Nationals to register as members at the time of registration.*” In my judgment this is a disgraceful ground of challenge for the Defendants to have pursued to trial given there is no requirement in the Constitution that membership is only open to Bangladeshi Nationals and given the Third Defendant admitted during his evidence that British Nationals and British Bangladeshi dual nationals are entitled to membership of the Mosque. The challenge under ground 5 (submission of 100 forms by individuals) was also not evidenced at trial.
68. Ground 6 also deals with membership procedure raising concerns as to errors in the members list released to the panels after the membership submission closing date had passed. The ground of complaint suggests that the members list contained a number of discrepancies, but the Defendants says 65 were identified to Mr Zaman prior to the election date. Mr Zaman’s clear evidence, which I again accept, is that when he produced the membership list he was aware that there were 65 potential duplications on it. Of these 43 were definite duplications caused in many cases by applications for votes for an individual being lodged by both the Claimants’ and Defendants’ supporters. For these 43 no membership cards were allocated.
69. Mr Zaman accepts that there were 22 further potential duplicate entries relating to cases where it appeared there were two individuals in a property who shared the same name. Mr Zaman said this is not rare. As a result he put in place a procedure to stop these potential duplicates resulting in invalid votes. I am satisfied having heard Mr Zaman’s evidence that he followed the membership procedure he set and having done so he was alert to the potential for errors on his list and as a result took proactive steps to avoid such posing an issue at the election. He did so having fully informed the relevant parties. The Defendants representatives were therefore aware of what was to take place on the Election Day in advance.

70. A final point made in ground six is that Mr Zaman allowed “*Members registered residing outside of the post code area*” to become members. When asked about this Mr Zaman was very clear. He had been given two versions of the Constitution but he was not instructed to resolve disputes in relation to competing versions of the Constitution. He therefore made a decision as to which version to apply. In my judgment he was fully entitled to do so under his instructions and his decision in this regard is final.
71. I pause to note that I am able to resolve this dispute as it is clear to me having regard to the amendment which was said to be passed in 2019 at an AGM, not a biennial general meeting, that the amendment is not valid. I am therefore satisfied that under the Constitution voting membership is limited to those living in NE1 to NE7 and those parts of NE13 and NE15 outlined on a map.
72. This does not make the decision of Mr Zaman invalid given he had discretion on procedure as already set out and given his decision was final. In any event the Defendants have provided no evidence as to what the effect of the limit on Clause 12b on the membership list of SMICC for the 2021 elections would be. They have not for example produced the map they say is attached to the constitution to show which areas of NE13 and NE15 should have been excluded. Nor have they produced any evidence as to who should not have been allowed to vote by reference to the voting list. The highest the evidence gets before this is court is that if the Court says every person on the list noted as having an NE13 or NE15 postcode could not vote (which is not what the Constitution says) then less than 100 people were on the list who should not have been. 100 votes would not change the outcome of this election.
73. Next there are the concerns raised by the Defendants in their Note as to the procedure for the election on the day it took place. The first complaint raised by the Defendants in this regard is that the checks Mr Zaman promised would be undertaken on Election Day did not happen. Mr Zaman denies that and gave clear evidence as to the checking procedure that was in place. I am satisfied that Mr Zaman is being truthful in this regard. I find that he, or his team, did check the voting status of every person who wished to vote either using identification or if it was an elderly person well known in the community using his knowledge of the community.
74. I am further satisfied that Mr Zaman did all that was required of him to set up a fair procedure and to implement that procedure. To the extent there were variations, such as to how membership cards were distributed, these were due to necessity, were known to the parties before the election and the amended procedure was fair and had built in safeguards as explained in his evidence by Mr Zaman. The issues raised at grounds 12 and 13 are therefore rejected. It is of concern in relation to these grounds that the only evidence the Defendants produced was a hypothesis that it would not have been possible during the polling hours for Mr Zaman to have checked every person's ID and the votes to be cast. Mr Zaman was very clear he did not personally check every identification, rather he had a group of people he had appointed who were in his opinion trustworthy and who assisted him. Therefore, all checks could have been undertaken in under two hours. The Defendants should not have pursued a complaint about this election based on a hypothesis let alone a hypothesis which was known by the observer representing the Defendants or the Next Generation panel during the election to be untrue.

75. This therefore leaves ground 11. Mr Zaman accepts that on the day of the election it was terrible weather. He accepts that the Minar panel took a room which was outside of his control next to the election venue and that in that room they may have posted people and they may have provided voters with tea and biscuits. Mr Zaman denies that any complaints about the behaviour in the room were drawn to his attention on the relevant date and it is noteworthy in this regard that an independent news company that attended the election on the relevant date had no complaint raised with them.
76. Mr Zaman accepts complaints were received by him in relation to the behaviour of both panels around the doors of the election venue and he gave clear evidence that he dealt with those complaints there and then. There is no evidence before me that Mr Zaman breached his instructions and knowingly allowed electioneering to take place in a room inside the polling station and there is no evidence that he allowed behaviour to take place within the election venue in breach of his instructions.
77. Therefore, in my judgment none of the grounds raised as a challenge to the election result by the Defendants in their defence provide a good or proper basis for setting aside the election result.
78. There were a number of other issues raised regarding the election by the Third Defendant in his witness statement and by the Defendants in their opening submissions. As already noted any dispute as to the election should have been raised in the Note which stands as the Defence. It is not legitimate to raise a complaint in a witness statement or written submissions for the first time. I do not therefore need to deal with those issues.
79. If it had been necessary for me to deal with those issues then I note that, save for one issue on which I substantively comment below, all the complaints raised in the statement relate to either procedure, membership or conduct on the day, eg that the panel elected had too many members under the effective clause 4 of the Constitution. The reasons why each new issue raised cannot be challenged before me are adequately addressed above, not least being the agreement that Mr Zaman was the sole and final arbiter of the procedure for the election, the disapplication of the Constitution under the agreement between the parties and the very clear and compelling evidence of Mr Zaman wherein, in my judgment he addressed and dispelled every complaint, legitimately raised or otherwise, by the Defendants.
80. Finally in his witness statement at paragraph 26 the Third Defendant seeks to impugn the results of the election because of the background of the Secretary elected. For the reasons which will become clear in this section of the judgment I do not name that individual.
81. In paragraph 26 of his statement the Third Defendant states, "*it is not lawful and constitutional that the current executive committee consists of a person convicted for a vicious crime against me*" and also questions the method designed by Mr Zaman for the nomination of persons for election. In support of this allegation the Third Defendant referred the court to three websites and to a letter from the Crown Court. The websites and the letter from the Crown Court refer to an incident from 2003 which led to criminal proceedings and a conviction of the unnamed individual in 2004.
82. This was not raised in the Note which stands as the Defence regarding the election. It is not appropriate for allegations of this nature to be raised in a witness statement not least because given the serious nature of the allegation

and the consequences for the individual if upheld he should have been offered the opportunity to be joined as a party to the proceedings. He was denied that right by the actions of the Defendants. I have not therefore taken the issues raised in paragraph 26 of the statement of the Third Defendant into account in reaching my decision as to the validity of the elections.

83. Even if I am wrong in that regard however I am satisfied that in accordance with the provisions of the Rehabilitation of Offenders Act 1974 that the Court could not declare the election invalid because of a single conviction of the unnamed individual. First, as the offence is on the evidence before me spent, all the evidence presented to the Court in that regard was inadmissible pursuant to section 4(2) of the Act. Second, given on the evidence the offence is spent, for all purposes of law the individual is to be treated as without that conviction pursuant to section 4(1) of the Act. This includes construing and applying the Constitution. Even therefore if the Defendants had properly pleaded this challenge to the election it could not have succeeded.
84. Astonishingly Mr Ahmed in his closing submissions suggested that the Constitution of SMICC should be given precedence by this Court over the Act. His rationale for such was that the mosque is a place attended by vulnerable people, being women, the disabled, young people and old people, and it is wrong that a person with a violent background attend the mosque and puts them at risk. There is no basis in law for this Court to ignore a statute rightfully and lawfully enacted. Nor is there any basis in logic for the Court to do so given society includes all the groups identified by Mr Ahmed.
85. For all these reasons in my judgment it is clear well beyond the balance of probabilities that the parties are bound by the result of the 2021 elections.
86. It is not therefore necessary for me to consider issues 2 and 3, although I note in passing that a compelling case was presented by Mr Goldberg on behalf of the Claimants in favour of the implication of a term into the Constitution. In any event, on the evidence before me, the only persons who had power to manage SMICC from May 2020 until the October 2021 elections were either the 2018 Executive Committee or the members, i.e. the body the Claimants represent. There is no ground on which the Defendants whether at their own behest or on behalf of one-quarter of the then members had the right or power to manage SMICC.

Conclusion

87. I am therefore satisfied on the balance of probabilities and based on all the evidence before me that the elections for the Executive Committee held on 5th October 2021 were valid and the result declared by Mr Zaman is binding on the parties. I am further satisfied that clause 4 of the constitution was not amended as the Defendants suggest in 2010. As a result, the Executive Committee currently in office shall remain in office and the two properties belonging to SMICC must be transferred by the First to Fourth Defendants into the names of the President, the General Secretary and the Treasurer of SMICC forthwith.
88. I therefore give judgment for the Claimants on the claim and dismiss the counterclaim of the Defendants. I will hear submissions from the parties as to the form of the Order, including costs.
89. I wish to make two further remarks in conclusion of this judgment. First it is a hallmark of this case that there has been much heat and little light as far as the

members of SMICC are concerned. Each party has accused the other of crimes, misdemeanours and spreading of misinformation or abuse. It is vital that the members of SMICC know who is entitled on their behalf to manage and operate their Mosque and their Cultural Centre. There is a risk that this judgment or parts thereof may be misinterpreted or misquoted to the members. As a result, and to avoid any confusion, I order that the Claimants must arrange for a notice to be prominently displayed within appropriate areas of the Mosque and the Cultural Centre informing the members of SMICC that this judgment is a publicly available document and that valid, approved copies of the judgment can be obtained from the Court Office or for free from BAILII (www.bailii.org) using case number [2022] EWHC 315 (Ch) and/or the case name Ahmed and others v Mukith and others. The notices should remain in place for a minimum of 14 days. The Defendants are ordered not to remove the notices from the Mosque and the Cultural Centre and not to ask or encourage others to remove the notices from the Mosque or Cultural Centre.

90. Second, it is clear having heard the testimony in this case that to date those responsible for the property of SMICC and for the management and control of SMICC have for many years had scant regard to the Constitution and rules governing SMICC. This culminated in Mr Qureshi ignoring the terms of the Constitution and seeking to effect a non-violent coup for which the Defendants may face further consequences. In acting as they did the Defendants unarguably breached the Constitution and placed themselves in a position they were not entitled to hold. The Defendants acted wrongfully before the election and had no valid reason to contest the election. Moving forward whatever has happened in the past has happened and the parties should now see where that gets them. The Trustees are to be removed. At the same time, the Executive Committee and the members of SMICC must learn to respect and abide by the terms of the Constitution. If changes are needed to the Constitution they must be passed in accordance with the Constitution.

15 February 2022