

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

In the Matter of the Representation of the People Act 1983
And in the Matter of a Mayoral Election in the
London Borough of Tower Hamlets held on 22 May 2014

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 August 2014

Before :

THE HONORABLE MR JUSTICE SUPPERSTONE
THE HONOURABLE MR JUSTICE SPENCER
(Sitting as a Divisional Court)

Between :

(1) ANDREW ERLAM
(2) DEBBIE SIMONE
(3) AZMAL HUSSEIN
(4) ANGELA MOFFAT

Petitioners

- and -

(1) MOHAMMED LUTFUR RAHMAN
(2) JOHN S. WILLIAMS

Respondents

Francis Hoar for the **Petitioners**

James Laddie QC and Sarah Hannett

(instructed by **Messrs K & L Gates LLP**) for the **First Respondent**

Timothy Straker QC (instructed by **Messrs Sharpe Pritchard**) for the **Second Respondent**

Hearing date: 28 July 2014

Judgment

Mr Justice Supperstone :

This is the judgment of the Court to which both members have contributed.

Introduction

1. The Petitioners, all electors in the London Borough of Tower Hamlets (“the Borough”), have presented a petition challenging the Mayoral Election in the Borough held on 22 May 2014. The First Respondent, Mr Mohammed Lutfur Rahman, was the successful candidate. The Second Respondent, Mr John S. Williams, was the returning officer.

2. The petition was presented on 10 June 2014.
3. On 9 July 2014 the Petitioners applied for a Protective Costs Order (“PCO”).
4. On 15 July 2014 the First Respondent applied to dismiss the petition under Rule 13 of the Election Petition Rules 1960 and/or the inherent jurisdiction of the court for want of particularity and abuse of process, on the basis that the Petitioners make a number of extremely serious allegations against him and/or his (unnamed) agents, including allegations of fraud and election offences, which are almost wholly un-particularised.
5. By e-mail dated 25 July 2014 Mr Francis Hoar, for the Petitioners, informed the parties that the Petitioners would apply to adjourn the PCO application at the hearing on 28 July 2014, and that if the application to adjourn was not successful, the application for a PCO would not be pursued.
6. On 28 July 2014 we heard the application to dismiss/strike out and the application to adjourn the application for a PCO.
7. On 29 July 2014 we announced our decisions in relation to the two applications in the following terms:

“First, the First Respondent’s application to dismiss the petition. Having considered the submissions made by counsel and the documentation before the court, we have reached the firm conclusion, for reasons which we will give at a later date as soon as practicable, that:

- (i) the petition is not a nullity, in whole or in part;
- (ii) it is not appropriate to strike out any of the grounds contained in the petition for want of sufficient particularity;
- (iii) however, in our discretion we shall order that further particulars of the allegations in the petition be given in response to the Request for Further Information by the First Respondent dated 15 July 2014 and in relation to paragraph 6 of the petition as requested by the Second Respondent in the letter from Sharpe Pritchard dated 18 July 2014, such further particulars to be given by 4pm on 18 August 2014.

Second, the Petitioners’ application to adjourn their application for a protective costs order. We refuse this application to adjourn and dismiss the application for a protective costs order dated 9 July 2014.”

8. We now give our reasons for the two decisions.

(1) The application to dismiss the petition

9. Mr James Laddie QC, for the First Respondent, submits that in breach of Rule 4(1)(d) of the Election Petition Rules 1960 (“the 1960 Rules”) and in breach of common law requirements of fairness, the petition does not disclose the factual allegations with

sufficient or any particularity; that being so, he submits, the petition should be struck out as being an abuse of process.

Legislative Framework

The Representation of the People Act 1983

10. The procedure for questioning a local government election is set out in Part III of the Representation of the People Act 1983 (“the 1983 Act”).

11. Sections 127-135A of the 1983 Act relate to the “Questioning of a local election”, which includes the mayoral election which is the subject of the present petition. Section 127 provides that

“127 Method of questioning local election

An election under the local government Act may be questioned on the ground that the person whose election is questioned—

- (a) was at the time of the election disqualified, or
- (b) was not duly elected,

or on the ground that the election was avoided by corrupt or illegal practices or on the grounds provided by section 164 or section 165 below, and shall not be questioned on any of those grounds except by an election petition.”

12. Section 164 states:

“164 Avoidance of election for general corruption etc

(1) Where on an election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in reference to the election for the purpose of promoting or procuring the election of any person at that election have so extensively prevailed that they may be reasonably supposed to have affected the result—

- (a) his election, if he has been elected, shall be void, and
- (b) he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.

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

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

13. Section 165 states:

“165 Avoidance of election for employing corrupt agent

(1) If at a parliamentary or local government election a candidate or his election agent personally engages as a canvasser or agent for the conduct or management of the election any person whom he knows or has reasonable grounds for supposing to be subject to an incapacity to vote at the election by reason—

(a) of his having been convicted or reported of any corrupt or illegal practice within the meaning of this Act...

the candidate shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election is held.

(2) A local government election may be questioned on the ground that the person whose election is questioned was, at the time of the election, by virtue of this section incapable of being elected.”

14. Section 129 of the 1983 Act provides, so far as is material:

“129 Time for presentation or amendment of petition questioning local election

(1) Subject to the provisions of this section, a petition questioning an election under the local government Act shall be presented within 21 days after the day on which the election was held.

(2) If the petition complains of the election—

(a) on the ground of a corrupt practice, and

(b) specifically alleges that a payment of money or other reward has been made or promised since the election by a candidate elected at the election, or on his account or with his privity, in pursuance or furtherance of corrupt practice,

it may be presented at any time within 28 days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

(3) If the petition complains of the election—

(a) on the ground of an illegal practice, and

(b) specifically alleges a payment of money or other act made or done since the election by the candidate elected at the election, or by an agent of the candidate or with the

privity of the candidate or his election agent, in pursuance or in furtherance of that illegal practice,

it may be presented at any time within 28 days after the date of that payment or act, whether or not any other petition against that person has been previously presented or tried.

(4) If the petition complains of an election where election expenses are allowed on the ground of an illegal practice, it may be presented at any time within 14 days after the day specified in sub-section (5) below.

(5)

(6) An election petition presented within the time limited by sub-section (1) or sub-section (2) above may for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice could, under this section, be presented. ...”

15. Section 182 provides for the making of rules of procedure. The relevant rules are the 1960 Rules.

16. Section 128(3) of the 1983 Act provides:

“(3) The petition shall be in the prescribed form signed by the petitioner and shall be presented in the prescribed manner—

(a) in England and Wales, to the High Court;”

17. Section 185 provides that “prescribed” means “prescribed by rules of court”. This is a reference to the 1960 Rules.

The Election Petition Rules 1960

18. Rule 4 of the Election Petition Rules 1960 provides as follows:

“4.-(1) A petition shall be in the form set out in the Schedule to these Rules or a form to the like effect with such variations as the circumstances may require, and shall state—

...

(d) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved;

and shall conclude with a prayer setting out particulars of the relief claimed.”

The Petition

19. The material parts of the petition read as follows:

“4. At the election the first named Respondent and/or his agents were guilty of:

(a) electoral fraud in a variety of forms amounting to corrupt and/or illegal practices. These included in particular:

(i) personation;

(ii) casting votes, including postal votes, in the names of people not entitled to be on the electoral register;

(iii) acquiring the voting papers of electors, including those issued to postal voters, marking votes for the Respondent on those papers and then casting the resulting fraudulent votes; and/or

(b) making false statements as to the candidate John Biggs, in particular that he was a racist, contrary to s.106 of the Representation of the People Act 1983; and/or

(c) employing canvassers for payment or promise of payment, including in particular to operate in groups in and around polling stations, for the purpose of procuring the Respondent's election contrary to s.111 of the Representation of the People Act 1983; and/or

(d) the corrupt practice of undue influence contrary to s. 115 of the Representation of the People Act 1983, including in particular through the activities of groups of persons both in and around polling stations on the day of the election.

5. Further or in the alternative there were corrupt and/or illegal practices for the purpose of promoting or procuring the election of the First Respondent at the election and the said corrupt and/or illegal practices, so extensively prevailed that they may reasonably be supposed to have affected the result of the election.

6. There were multiple acts or omissions of the second named Respondent and/or his officials in breach of official duty in connection with the election and/or under the Mayoral Elections (Combination of Polls) Rules which acts/omissions affected the result and/or meant that there was substantial non-compliance with the law as to elections. In particular:

(a) agents of the First Respondent (other than lawfully appointed polling agents attending for the purpose of detecting personation) were allowed to enter polling stations;

(b) the statutory procedure for voting at polling stations was not followed, in particular agents of the First Respondent were permitted to canvass for votes inside polling stations, to accompany voters into the compartment when they cast their vote and to leave campaign material of the First Respondent in and around the voting compartments;

(c) the Second Respondent failed to comply with and/or abused the statutory rules for the appointment of counting agents and/or for permitting those not entitled to do so under the rules to attend the count, and the efficient separating of ballots and/or counting of votes was impeded by the large numbers of the First Respondent's supporters/agents attending the court."

The Parties' Submissions and Discussion

20. In support of his submission that Rule 4(1) provides that the Petition "shall state" the matters set out in, inter alia, paragraph (d) Mr Laddie referred to the decision of the Divisional Court in *Scarth v Amin* [2008] EWHC 2886 (QB) where Tugendhat J said at paragraph 15: "The requirements of Rule 4 are mandatory, so that if they are not complied with the petition will be struck out". That case concerned Rule 4(1)(b) which provides that a petition shall state "the date and result of the election to which the petition relates". However, the court rejected the submission that the petition failed to comply with Rule 4 by omitting to set out the votes given for each candidate. In reaching that conclusion the judge stated:

"16. All legislation must be interpreted in the light of the objective which the legislature must be taken to have been pursuing. There are competing public interests at stake. On the one hand, the rules requiring timely and proper presentation of a petition are strict, because it is in the public interest that there should be early clarity as to who has been elected. ...

17. On the other hand, there is a countervailing public interest that there should be free elections 'under conditions which will ensure the free expression of the opinion of the people': see article 3 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Part II of Schedule 1 to the Human Rights Act 1998. ... For there to be free elections there must be a procedure for determining what opinion the people have expressed in cases where an election is questioned, and for elections to be declared void in appropriate cases. It would be wrong in principle to adopt an interpretation of the 1960 Rules which placed conditions upon the presentation of valid petitions which were more restrictive than necessary to achieve the certainty that is required, and which obstructed the determination of what opinion the people had expressed."

21. Mr Laddie submits that the recent history of election petitions demonstrates that, by and large, failure to comply with the mandatory provision of the 1960 Rules is fatal to a petition. A petition, he submits, presented in breach of a mandatory provision is a nullity, and so falls to be dismissed.
22. The First Respondent contends that the only power to amend a local election petition out of time derives from s.129(6) of the 1983 Act, but this is limited to specific types of allegations (namely illegal practices constituting a payment of money or other act made or done since the election). No such allegations have been made in this case and therefore the power to amend in sub-section (6) does not arise.
23. Mr Laddie submits that Rule 4(1)(d) requires the facts relied on to be set out with “sufficient particularity”. This must mean, he submits, “sufficient” for the Respondent, the court, and the public at large to understand what is alleged, in particular so that the Respondent has an opportunity to answer the allegations made by the petition in the evidence he files. Mr Laddie submits that the allegations in the petition are almost wholly unparticularised (save in relation to the alleged statement in paragraph 4(b) of the petition which is itself unparticularised as to the alleged person making the allegation, date, context or form). Moreover the unparticularised allegations are of matters which constitute fraud, deceit, conspiracy and corruption and they should, Mr Laddie submits, have been pleaded in accordance with the requirements of CPR 16.4(1)(e) and Practice Direction 16, paragraph 8.2 (which apply to these proceedings by virtue of Rule 2(4) of the 1960 Rules).
24. Whilst not conceding that the lack of particulars in relation to the facts relied on in support of the grounds put forward in the petition amounts to a breach of Rule 4(1)(d), Mr Hoar accepts that the Respondents are entitled to more detailed particulars in order that they can address the particular allegations that are being made. Indeed the Petitioners maintain their offer to provide further particulars pursuant to the requests made by the First Respondent on 15 July 2014 and by the Second Respondent on 18 July 2014. He does not seek to amend the petition, but only to be allowed to give further particulars.
25. It seems to us that the starting point must be section 127 of the 1983 Act, which provides that the method of questioning a local election is by an election petition on specified grounds only. An election may be questioned on the ground that the person whose election is questioned (a) was at the time of the election disqualified, or (b) was not duly elected, or on the ground that the election was avoided by corrupt or illegal practices or on the grounds provided by section 164 or section 165 (see paragraphs 11-13 above). Consistent with this, section 129 (which stipulates the time in which a petition must be presented or amended) refers in sub-sections (2) to (4) and (6) to specific grounds. The 1983 Act is silent as to the form or extent of the particulars that should be provided in the petition in relation to the grounds relied upon.
26. Rule 4(1) of the 1960 Rules requires a petition to “be in the form set out in the Schedule to these Rules or a form to the like effect with such variations as circumstances may require”. Rule 4(1)(d) provides that the petition “shall state... the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved”. The reference to “the grounds” is clear; it is to the specific grounds referred to in section 127 of the 1983 Act. As a matter of construction, primacy is given in rule 4(1)(d) to the requirement to

state the grounds on which relief is sought. The obligation to *set out the particulars with sufficient particularity*, contained in the subordinate clause which follows, is important but subsidiary to the primary requirement to state the grounds. The potential grounds are limited to those set out in s. 127. It will always be clear whether the petition does or does not state a permissible ground. By contrast, the “facts relied on” will be infinitely variable. What amounts to “sufficient particularity” is consequently bound to be less clear. It will necessarily vary from petition to petition and depend on the circumstances of the individual case. No assistance is to be obtained from the forms set out in the Schedule to the Rules. In any given case there may well be differing views, genuinely and properly held by the parties (and their legal advisers), about whether the facts relied on have been provided with “sufficient particularity”. Different judges may legitimately reach different conclusions on the issue.

27. It appears to us hardly surprising, therefore, that on occasions when a petition has not set out with sufficient particularity the facts relied on, as required by Rule 4(1)(d), judges have been “prepared to assume that that deficiency would not in itself render the petition invalid but would be capable in principle of being remedied by the provision of particulars” (see *Saghir and others v Najib and others* [2005] EWHC 417 (QB), per Richards J at paragraph 53. See also *Hussein and others v Khan and others* [2006] EWHC 262 (QB) per Ouseley J at paragraph 50).
28. Mr Laddie relies on the decision of the Court of Appeal in *Ahmed v Kennedy* [2003] 1 WLR 1820 where the court held that it had no power to extend time (per Simon Brown LJ at paragraphs 32 and 43). However that decision does not, in our view, assist the Petitioners. The court was there concerned not with the sufficiency of particulars but with the requirements under section 136(3) of the 1983 Act and Rules 6(1) and 19(1) which, read together, provide on their face that “within five days after giving the security”, a period which “shall not be enlarged”, the Petitioner shall serve on the respondent “(a) a notice of the presentation of the petition and of the amount and nature of the security, and (b) a copy of the petition” (paragraph 7). Simon Brown LJ stated (at paragraph 28) that “there *was* here ‘a complete failure to give the notice within the prescribed time’ since the notice served was simply not the notice required”. He concluded that there was “a fundamental failure to effect timeous service of a proper notice” (paragraph 31).
29. Both Halsbury’s Laws (see Vol. 38A 2013 5th Edition, paragraph 808) and Atkin’s Court Forms (2nd Edition, Vol. 18(1), (2008 Issue), at paragraph 16) support the submission made by Mr Hoar that it is and has been the practice in election courts, at least since the mid-nineteenth century, to order that further particulars be given when they are required. Mr Laddie submits that the references in Halsbury’s Laws and Atkin’s Court Forms to the nineteenth century case law indicates that this may well have been the practice, but it should no longer be so, as this would run counter to the express terms of Rule 4(1)(d) of the 1960 Rules. Mr Laddie pointed out (by reference to the extracts before the court), that there is no reference to or analysis of the recent case law in Halsbury’s Laws.
30. However Mr Timothy Straker QC, for the Second Respondent, has brought to our attention, since the hearing, passages in Halsbury’s Laws (see in particular paragraphs 780 and 789 and the footnotes thereto) where Rule 4(1)(d) and the modern cases are referred to. Paragraph 780, in so far as is material, states that the election petition:

“must be in the prescribed form, and must state... (4) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved⁷. It is sufficient for the petition to allege the grounds generally, and a petition alleging that the respondent and his agents are charged with bribery, corruption and undue influence, and also with illegal practices, would in form be sufficient.”

Footnote 7 cites the 1960 Rules, r4(1)(d). Footnote 8 cites Lancaster County, Lancaster Division case (1896) 5 O’M and H 39 at 41 per Bruce J (see para 33 below); and states “Such a form has the advantage of not affording occasion for an order for the immediate service of particulars”. (Paragraph 780 is under the heading “Parliamentary, European Parliamentary and Welsh Assembly Elections”, but the same principles apply to local government elections (see paragraph 789 and footnote 8 thereto).

31. In Atkin’s Court Forms the only reference to Rule 4(1)(d) is in a footnote (at page 429) to a form (“Election petition: grounds of petition”), but it does not appear in the text dealing with “particulars and requests for further information” (at pages 352-353).
32. Since the hearing we have conducted some further research of our own on the matter. Neither Schofield’s Election Law (Vol. 1 at Chapter 17), nor Parker’s Law and Conduct of Elections (Vol. 1 at Part 19) discuss the issue. However the leading earlier textbook “The Law of Parliamentary Elections and Election Petitions” (Fraser, 3rd Ed. 1922) does assist (see, in particular, at pages 217-221), and has reinforced our conclusion.
33. For example, in *Lancaster* (see para 30 above), Bruce J said at pages 41-42:

“I should much prefer to see in a petition, instead of a general allegation of corrupt and illegal practices, separate paragraphs setting out the character of the offences charged against the respondent, so that he might be informed from the first of the general character and nature of the charges preferred against him.”

Specifically with regard to “Particulars” (at p217-218) Sir Hugh Fraser states:

“Where the petition is drawn in such a way as to make it uncertain what are the precise charges alleged, it is the practice to order immediately particulars in writing of the nature and character of the charges alleged. Such particulars are known as ‘short particulars’, and the order usually requires these particulars to be ordered within seven days...

A petitioner will also be ordered to give full particulars of charges specified. These particulars are known as ‘long particulars’, and are now usually ordered to be delivered ten days before the trial if there be under 80 charges, or twelve

days if over 80 charges, or sixteen days if over 120 charges. There is, however, no inflexible rule of practice as to the period before the day appointed for trial at which such particulars must be delivered; the time to be fixed for their delivery must depend on the particular circumstances of each case...”

34. Consistent with this description of the prevailing practice, we note that in the Forms and Precedents of petitions and particulars, at Appendix V of Sir Hugh Fraser’s treatise, particulars of the facts (as opposed to the grounds) are for the most part stated in general terms only: see, for example the pleading of the ground of undue influence in Form 22, and the pleading of the ground of personation in Form 23. Even the precedent for “short particulars”, in Form 36 gives only the most general outline of the facts relied upon.
35. This confirmation of traditional election court practice is of particular interest in view of Mr Laddie’s contention and acceptance that the 1960 Rules represent the consolidation of over 100 years of electoral practice. We note in this regard that the 1960 Rules (by Rule 22) revoked and replaced the Parliamentary Election Petitions Rules 1868-1875 and the Municipal Election Petitions Rules 1883. The explanatory note to the 1960 Rules, though not part of the Rules, states that the Rules “replace in modern form (with a few minor and consequential changes in procedure) the Rules relating to parliamentary and local government election petitions”.
36. It does not appear to us that the practice of ordering particulars to be given has changed substantially over this whole period, even though, as Mr Laddie observes, the 1868 General Rules only required (by rule II) that the petition “briefly state the facts and grounds relied on to sustain the prayer”. We note that rule VI provided that evidence need not be stated in the petition, but that the Court might order “such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial”. The 1960 rules expressly contemplate, in Rule 17, the provision of particulars “in pursuance of an order or otherwise”. Mr Laddie accepted that there is still, as there always had been, power in the Court to order particulars of the petition. His submission, however, was that Rule 4(1)(d) required a bare minimum of “sufficient particulars”, which was lacking in the petition in the present case.
37. We disagree. The petition in the present case states the grounds as required. Further, paragraphs 4 and 6 (if not in paragraph 5) set out in general terms the facts relied upon in support of the individual grounds. Mr Hoar acknowledges that the facts have not been given with “sufficient particularity” for the purposes of complying with Rule 4(1)(d), however it cannot be said that the petition is devoid of facts. Indeed Mr Laddie concedes that is so, at least in relation to paragraph 4(b) of the petition. In those circumstances Mr Laddie accepted, during the course of his oral submissions, that even on his argument the petition was not a nullity, but at most a nullity in part. We have difficulty with the concept of partial nullity. Either the petition as a whole is a nullity or it is not. Sensibly, we think, Mr Laddie at that point observed that “nullity” may be an inapt way of describing the position. We go further: in our view the petition is plainly not a nullity in whole or in part. Certainly the facts relied on in support of the grounds on which relief is sought have not been stated with sufficient particularity for trial. However there is nothing in the 1983 Act, nor in the 1960 Rules, that inhibits the court from exercising its powers, under the CPR or in its

inherent jurisdiction, to order the Petitioners to provide further particulars of the facts relied upon in support of the grounds so as to comply with the requirements of Rule 4(1)(d).

38. The First Petitioner in his latest witness statement dated 24 July 2014, made on behalf of all the Petitioners, sets out at paragraph 61 what he describes as “a digest of the factual allegations that are supported by the evidence that we have collected so far”. Paragraph 61 contains 36 sub-paragraphs and runs to some six pages. The First Petitioner states (at paragraph 59), and Mr Hoar emphasises, that they do not amount to formal particulars. Nevertheless they do contain facts that no doubt will be relied upon in support of the grounds in the petition. No issue was taken by Mr Hoar as to the further information that has been requested by the Respondents (see paragraph 24 above). We consider that the information requested by the First Respondent and the particulars requested by the Second Respondent should now be provided by 4pm on 18 August 2014, and we have made an order to that effect.
39. In the light of this conclusion we do not consider it necessary to consider Mr Hoar’s alternative submission that to construe Rule 4(1)(d) as requiring the dismissal of the petition rather than permitting the court to order further particulars beyond the 21 day period set out in Rule 4 would be contrary to the Petitioners’ rights under Article 6 and Article 3 of the First Protocol of the ECHR.
40. We shall limit ourselves to two observations. First, if Mr Laddie were correct in his submission that section 129 of the 1983 Act, read together with Rule 4(1)(d), requires the facts relied upon in support of the grounds in the petition to be provided within 21 days after the day on which the election was held, then the Petitioners’ challenge would have to be not just to the Rules (the subordinate legislation), but also to the 1983 Act (the primary legislation). Second, it appears to us, for the reasons advanced by Mr Laddie, that a court is likely to find that the strict time limits in section 129 of the 1983 Act do not infringe ECHR Article 6 or Article 3 of Protocol 1. The observations of Simon Brown LJ in *Ahmed v Kennedy*, at paragraph 40, support the argument that any restriction on those rights pursues a legitimate aim, namely that “it is undesirable to have someone serving in public office with doubts surrounding the legitimacy of his election”. Further, the strict time limit is arguably proportionate (having regard to the test for proportionality as most recently formulated by Lord Sumption in *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 39 at paragraph 20; and see also *R (Barclay) v Lord Chancellor* [2010] 1 AC 464, per Lord Collins at paragraph 64).

(2) Application for adjournment of the application for a protective costs order

41. On 9 July 2014 the Petitioners made an application for a protective costs order (“PCO”), which was accompanied by a witness statement made by the First Petitioner.
42. Paragraph 7 of the application states: “Until now, Mr Erlam has provided the bulk of the funding for the Petition himself. He has been assisted by the other Petitioners and by fundraising for a fighting fund from members of the public, but this has so far only achieved limited funds”. Paragraph 8 states: “The letter of 30.6.2014 [from the First Respondent’s solicitors indicating that the First Respondent expected to incur costs ‘in the hundreds of thousands of pounds’] has put the Petitioners in a position where it

would be difficult for them to continue the proceedings in the face of the risk of a costs order against them that would be likely to bankrupt them”. The Petitioners seek an order that the Respondents are not permitted to recover from them more than £25,000 plus VAT of their costs; and that the Petitioners’ future costs are to be capped in the amount of £50,000 plus VAT (see paragraphs (3) and (4) of the draft order).

43. The general principles governing PCOs were set out by the Court of Appeal in *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600, and are not in issue.

44. Lord Phillips MR stated at paragraph 74 that:

“(1) A protective costs order may be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that: ... (iv) having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved, it is fair and just to make the order; and (v) if the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.”

45. There is no proper evidence of the financial position of the Petitioners before the Court. Mr Laddie made this point in his skeleton argument (at paragraphs 55-57) dated 23 July 2014 (perfected on 25 July 2014). At paragraph 57 he stated:

“It has been indicated by counsel for the Petitioners that they intend to serve evidence of their means by no later than the morning of 24 July 2014. The First Respondent reserves the right to respond to such evidence if and when it is received, but notes that no explanation has been given as to why that evidence could not have been served at the same time as the application for a PCO, on 9 July 2014, fully two weeks ago.”

46. No evidence of means was served by the Petitioners. Instead on 25 July 2014 (by email at 16:02) Mr Hoar informed the Administrative Court Office and the parties that the Petitioners would be applying to adjourn the application for a PCO; and if this application was not successful, the application for a PCO would not be pursued.

47. Mr Hoar did indeed apply before us to adjourn the application for a PCO. He informed us, in response to questions from the Court as to why evidence of means had not been produced, that two of the Petitioners have relatively substantial means and they had not wished previously to disclose their means, but were now prepared to do so. The other two petitioners, Mr Hoar said, were not of substantial means.

48. We consider that there has been a deliberate failure by the Petitioners to disclose their financial means. We are not satisfied that any good explanation has been put forward which would warrant granting an adjournment to give the Petitioners an opportunity to rectify what they must have appreciated was a fundamental defect in their application for a PCO.

49. In so far as it is necessary to have regard to the merits of the substantive application, it appears to us that Mr Straker may well be correct in his submission that the protective costs regime is inapt for an election petition. Elections and election petitions are specially provided for with their own particular legislative regime, which includes provision as to costs. By section 154 of the 1983 Act all costs of or incidental to the presentation of an election petition and the proceedings consequent upon it, except as provided for by the Act, shall be defrayed by the parties to the petition in such proportions as the election court or High Court may determine. We understand that a PCO has never been made in an election case. There are, in our view, good reasons why this is so, but it is not necessary for us to decide the point and we do not do so.

Conclusion

50. For the reasons we have given:

(1) we dismiss the First Respondent's application to dismiss the petition; and we order the Petitioners shall by 4pm on 18 August 2014 file at Court (or as otherwise directed by the Commissioner if then appointed) and serve on the Respondents further particulars of the allegations in the petition in response to the Request for Further Information served by the First Respondent on 15 July 2014 and in relation to paragraph 6 of the petition as requested by the Second Respondent in the letter from Sharpe Pritchard dated 18 July 2014;

(2) we dismiss the Petitioners' application for an adjournment of their application for a PCO; and we dismiss the Petitioners' application for a PCO.

51. We direct that any applications and submissions on the issue of costs shall be filed and served by 4pm on Friday 29 August 2014. We shall not, however, be in a position to rule on such applications before the end of the first week in September.
52. In a separate judgment, Supperstone J (sitting alone as one of the rota judges for election cases) will give his reasons in relation to the other orders and directions he made on 29 July 2014.