

IN THE HIGH COURT OF JUSTICE

Petition No. M373/21

QUEEN'S BENCH DIVISION

THE ELECTION COURT

AND IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983

AND IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE
COLHURST WARD OF OLDHAM COUNCIL, HELD ON 6th MAY, 2021

AND IN THE MATTER OF AN APPLICATION FOR PERMISSION TO WITHDRAW
THE PETITION

B E T W E E N :

MONTAZ ALI AZAD

Petitioner

- and -

ABDUL JABBAR

First Respondent

- and -

CAROLYN WILKINS, RETURNING OFFICER FOR OLDHAM COUNCIL

Second Respondent

GROUND OF THE APPLICATION TO WITHDRAW

INTRODUCTION

1. These Grounds are filed in support of an application to withdraw the legal government election petition ('the Petition') issued by Montaz Ali Azad ('the Petitioner's') on 24.5.2021. The Petition challenged the result of the local government election for Oldham Council held on 6.5.2021 ('the Election'), at which Abdul Jabbar was declared elected. The said Abdul Jabbar is the First Respondent to the Petition. The Second Respondent was the Returning Officer in the Election.

2. The Petitioner was an independent candidate in the Election. The result of the election was as follows:

Name of candidate	Party	Number of votes
AZAD Montaz Ali	Independent	2171
BETTERIDGE Jean	Green Party	104
CAHILL David James	Conservative Party Candidate	237
JABBAR Abdul	Labour Party	2242
SCHOLES Mick	Liberal Democrats	67

3. It will be seen that the margin by which Mr Jabbar was elected was only 71 votes.
4. The Petition was issued on the grounds that the Petitioner's agents were unable to attend a number of polling stations due to being excluded by the Second Respondent's agents. The Petitioner's allegation, set out in the Petition, was that those officers wrongly excluded his agents.
5. On 27.8.2021, the Court ordered that the Petition be assigned to an appointed Commissioner, pursuant to s 130(3)(a) and (b) of the Representation of the People Act 1983 ('the RPA'). The Petition was assigned to His Honour Judge Saffman, an appointed Commissioner, shortly thereafter (and HHJ Saffman will hereinafter be referred to as 'the Commissioner'). The Commissioner now sits as the Election Court. Pursuant to s 130(5) of the RPA, the Commissioner has for the purposes of the trial of the Petition the same powers and privileges as a judge on the trial of a parliamentary election petition.
6. This document contains the grounds on which the application to withdraw the Petition, pursuant to s 147 of the RPA, is made. They are affirmed by a statement of truth and the Petitioner also files a witness statement in which he affirms the truth of the factual matters set out within it and of his intention to withdraw the Petition. These Grounds also set out the Petitioner's compliance with the requirements of r. 12 of the Election Petition Rules 1960 ('the Rules'), which must be satisfied before the Election Court may permit the Petitioner to withdraw the Petition.

THE GROUNDS OF THE APPLICATION

7. This order is being sought because the Petitioner asserts that it has not been possible for him to establish through evidence the length of the period within which the Petitioner's agents were unable to attend a number of polling stations due to being excluded by the Second Respondent's agents. His allegation, set out in the Petition, was that those officers wrongly excluded the Petitioner's agents. The Petitioner accepts that the allegation is denied by the Second Respondent (who has responded that they were excluded due to clerical errors) and that it could not be established that they were wrongly excluded unless and until there was a trial. Without evidence establishing the period within which the Petitioner's agents were excluded, it would not be possible to establish how many electors voted within this period unobserved by the Petitioner's agents excluded from polling stations – irrespective of whether the Second Respondent's officers acted unlawfully in excluding them. Thus, the Petitioner accepts that he is unable to prove that the exclusion of his agents could have affected the result of the election.
8. The Petitioner accepts that the exclusion of those agents were not acts that would in themselves render the election not substantially conducted in accordance with election law. In consequence, pursuant to the principles established in *Morgan v Simpson* ([1975] QB 151), he cannot establish that the election was void and should be re-run.

THE PROCEDURE FOR AN APPLICATION TO WITHDRAW

9. Section 147 of the RPA expressly provides that the Election Court may grant a petitioner's application to withdraw a petition. The Commissioner is the Election Court, as is set out above. Thus, it is respectfully submitted that the Commissioner may grant this Petitioner's application to withdraw the Petition.
10. Pursuant to r. 12 (1) of the Election Petition Rules 1960 ('the Rules') an application to withdraw a petition shall be made 'at such time and place as the [Divisional Court or an Election Court] may appoint'. The Court is asked to appoint a time and day for the

hearing of the application and to do so by making an order in the terms of the first draft order submitted.

11. Pursuant to r. 12 (2) (a) of the Rules, the parties to be served are
 - i. The First Respondent Abdul Jabbar, by serving it on her solicitors, Edwards Duthie Shamash Solicitors, of 12 Baylis Road, Waterloo, London SE1 7AA, who had confirmed in writing that they are authorised by the Respondent to accept service on her behalf;
 - ii. The Director of Public Prosecutions, at the following addresses: 102 Petty France, London SW1H 9EA; and
 - iii. The Returning Officer and Second Respondent, by serving it on her solicitors, Sharpe Pritchard LLP, Elm Yard, 10-16 Elm Street, London, WC1X 0BJ.

The formal requirement is for the above persons to be served with the application for withdrawal at least seven days before the date appointed by the Commissioner (as the Election Court) for the hearing of the application to withdraw the Petition. However, this application will be served on the above before a date is appointed as well as after a date is appointed.

12. Pursuant to r. 12 (2) (b) of the Rules, once the Commissioner appoints a date for the hearing of the application to withdraw, the Petitioner will publish notice online and in print of the intended application in the Oldham Evening Chronicle (<https://www.oldham-chronicle.co.uk/>), a newspaper circulating in the Ward to which the Petition relates. The Petitioner will ensure that this advertisement is published seven clear days before the date the court appoints as the date on which this application may be dealt with; and the advertisement will display the date of the hearing, pursuant to r. 12 (2) (b) of the Rules. Before the date of the hearing, the Petitioner will serve certificates of service confirming the service of the application notice and this witness statement of the First and Second Respondent and the Director of Public Prosecutions.

13. The Petitioner submits that there is nothing in the Rules or the Representation of the People Act 1983 to displace the common law and case-law on the statutory interpretation that: (a) the word 'publish' applies equally to online as to paper publication (*Godfrey v Demon Internet Ltd* [2001] QB 201 at 208–209); and (b) an advertisement is 'published' online as soon as it is read by any person (*Bata v Bata* [1948] WN 366). Insofar as the purpose of the 1983 Act and the Rules is to ensure wide dissemination of the fact that an application is being made for the Petition to be withdrawn and is thereby different from the purpose of statutes concerned with defamation or other matters: (i) newspapers and other material are commonly read as much if not more online as in paper form; and (ii) there is no longer a right of substitution and so the purpose of publication of a forthcoming application is now otiose. That said, to avoid unnecessary argument, the advertisement will be published in print as well as online.

14. The right to apply to be substituted as a petitioner on an application to withdraw a petition contained in s 150 of the Representation of the People Act 1983 ('the 1983 Act') was repealed by the Political Parties Elections and Referendums Act 2000 Sch 17. However, no consequential amendment has been made to the r 12(3) of the Rules, or to s 147 of the 1983 Act, the former of which continues to contain a requirement that an application notice must 'contain a statement to the effect that on the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner'. Pursuant to the ruling of Mr Commissioner Straker QC in *Re Appleby Ward of North West Leicestershire District Council; Roberts v Blunt* [2012] EWHC 481 (QB), this provision is obsolete and there is no requirement for the application to refer to a 'right' of substitution that no longer exists. The Petitioner will not thereby include in the said advertisement a statement (that would be wrong in law) that a person may apply to be substituted as a petitioner.

15. The Returning Officer is respectfully reminded of her duty to publish this application notice in the Constituency once the Commissioner sets a date for the listing of the application, pursuant to r. 12 (4) of the Rules.

THE LISTING OF THIS APPLICATION AND COSTS

16. Attached to the application are the drafts of the two order the Petitioner is applying for, namely: (a) an order pursuant to r. 12 (1) of the Rules, listing a hearing on a date on which this application may be heard; and (b) an order permitting the Petitioner to withdraw the Petition. The Petitioner asks the Commissioner to make the first Order on paper,
17. After the court sets a date for the hearing of the Petitioner's application to withdraw the Petition, the Petitioner will again serve the application notice and the order listing the application.
18. The Petitioner accepts that, on the Petition being withdrawn, he must pay the reasonable and proportionate costs of the Respondent, in the light of this withdrawal. However, given that the order sought grants the Respondents their costs, his position is that it would not be reasonable or proportionate for the Respondents to be represented at any hearing of the application to withdraw. While it is accepted that there must be a public hearing, the Petitioner cannot be substituted and so the Commissioner would, it is respectfully submitted, be bound to grant the order sought. In consequence, any submissions about the order (if it cannot be agreed) can be resolved by short written submissions without the need for the hearing – which must be listed but will effectively be a formality – to be attended.
19. In this respect, it is noted in passing that the need for a hearing of an application to withdraw a petition is a relic of a previous era, in which another candidate in the impugned election or four electors in the electoral area could be substituted. It is difficult to see circumstances in which a Commissioner could refuse an application to withdraw in a petition in which the petitioner would not prosecute the petition. But were there such circumstances (for example where an allegation or allegations of serious corruption was or were made that might conceivably be pursued by the court in its inquisitorial role without the assistance of a petitioner) they do not apply in this case.
20. Accordingly, the Court is respectfully asked to list a formal hearing of the application to withdraw and: (a) to encourage the parties to co-operate in agreeing

to the application being granted and to an order; and (b) to excuse the parties from attending the formal hearing of the application. This is sought in order to reduce the costs of the Petition.

FRANCIS HOAR

STATEMENT OF TRUTH

I believe that the facts stated in these Grounds are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.


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MONTAZ ALI AZAD

Date: 25/11/2021