

Neutral Citation Number: [2008] EWHC B4 (QB)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION (Election Hearing)

18 March 2008

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983
AND IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE
CENTRAL BOROUGH WARD OF SLOUGH HELD ON THE 3RD MAY 2007

Before:

Richard Mawrey QC

BETWEEN

LYDIA EMELDA SIMMONS

Petitioner

and

ESHAQ KHAN

Respondent

JUDGMENT

Introduction

1. This election court was convened to try an election Petition brought under s 127 of the Representation of the People Act 1983 ("the 1983 Act") for the Central Borough Ward of Slough Borough Council. In this Petition, the Petitioner, Ms Lydia Emelda Simmons ("Ms Simmons"), challenges the election of Mr Eshaq Khan to Slough Borough Council at the election held on 3rd May 2007. At that election Ms Simmons was the candidate of the Labour Party and Mr Eshaq Khan that of the Conservative Party.
2. In the Petition Ms Simmons says that Mr Eshaq Khan's election should be set aside and a new election held on the grounds that:
 - (a) his election was procured by corrupt and/or illegal practices on the part of Mr Eshaq Khan and/or his agents; and/or
 - (b) there was "general corruption" in the Ward designed to secure his election.
3. Mr Eshaq Khan denies both allegations.
4. On 30th July 2007 I was appointed as Commissioner for the trial of the Petition under s 130 of the 1983 Act.
5. On 4th and 11th October 2007 I conducted the Scrutiny whereby the original electoral documents were examined. In essence, the process separated out the postal ballot papers showing votes cast for Mr Eshaq Khan. In respect of each of these ballot papers (to the extent that they could be located) there were also separated out:

- (a) the relevant application for a postal vote ("ATV");
 - (b) the relevant postal voting statement ("PVS");
 - (c) (where the elector had been entered on the register as a result of a single application) the relevant application for inclusion on the register ("AFR").
6. These documents were made available for inspection by the parties and by such handwriting experts as they chose to instruct.
7. The trial of the Petition was heard on 28th, 29th, 30th, 31st January and 1st, 4th, 5th, 6th, 7th and 25th February 2007 at Slough Town Hall.

Summary

8. In a nutshell, Ms Simmons alleges that what Mr Eshaq Khan and his electoral team did is as follows. During a period of some six weeks prior to the election of 3rd May 2007, they caused hundreds of false names to be entered on the electoral register for Central Ward. Applications for postal votes were made using those false names and the postal votes thus acquired were used to vote for Mr Eshaq Khan. As a result, it is said, Mr Eshaq Khan was elected as councillor by a majority of some 120 votes, proving a surprise result at an election where otherwise Labour performed better than the Conservatives in Slough.
9. This is again, therefore, a case where it is claimed that the introduction of postal votes on demand has made wholesale electoral fraud both easy and profitable.

The Birmingham Election Case

10. The first case on the problems caused by the introduction of postal voting on demand concerned the petitions relating to elections held for the Wards of Aston and Bordesley Green of Birmingham City Council on 10th June 2004. I was the Election Commissioner appointed to try those petitions and delivered my judgment on 4th April 2005¹. This judgment will be referred to as "the Birmingham Judgment".

11. As the Birmingham Judgment is currently the only reported case on many of the aspects of postal voting fraud - indeed it has been cited to the court by both counsel to support their arguments - it will be necessary to refer to its findings in this judgment. I shall try, however, to avoid lengthy repetition in this judgment of matters set out there, though some of the same ground will have to be covered.

Corrupt and illegal practices and "general corruption"

The 1983 Act

12. I was fortunate to have appearing before me two of England's leading experts on electoral law, Mr Gavin Millar QC who represented Ms Simmons and Mr Richard Price QC who represented Mr Eshaq Khan. I was thus provided with a clear exposition of the applicable law which I have no doubt was also provided to their respective clients.

¹ Petition M/307/04 (Aston), M/309/04 (Bordesley Green): judgment reported at [2005] All ER (D) 15. Judgment affirmed by Divisional Court [2005] EWHC 2365.

13. There is a legitimate public interest in ensuring that democratic elections are fairly and honestly carried out and that those elected to public office, whether at national or at local level, are properly elected. This factor, combined with the paucity of reported authority on the problems of electoral fraud, make it appropriate for this judgment to include a summary of the applicable law so that those who may read it can understand the issues involved.
14. Electoral law has developed gradually over the centuries. In earlier times there was a considerable amount of common law (i.e. law not codified into Acts of Parliament) governing elections. During the twentieth century, however, the law was fully codified and the principal governing Act is now the 1983 Act. There have been subsequent statutes, some of which will be discussed in this judgment, but the 1983 Act remains the main Act and most of the subsequent changes have been effected by means of amendments to the 1983 Act.
15. The 1983 Act cannot fairly be described as well drafted. As with many consolidating Acts, there was a tendency to gather up the existing law from all sources and simply tip it into the disorganised bag of a single Act of Parliament. Corrupt practices provide a very good example. The provisions relating to corrupt practices are scattered throughout the 1983 Act with no attempt to present them as a coherent body of rules. Given that they are all made relatively serious criminal offences, carrying in many cases sentences of imprisonment, this is unfortunate. By way of illustration, personation (of which more later) is covered by s 60, whereas bribery, "treating" and "undue influence" are not dealt

with until ss 113, 114 and 115 respectively, with most of the intervening material being irrelevant to corrupt practices.

Corrupt practices

16. The term "corrupt practices" is not defined in the 1983 Act. Instead a number of individual electoral misdeeds are declared to be "corrupt practices" in the sections of the Act concerned. Thus, instead of there being a list of corrupt practices, one has to look at a number of disparate sections to see whether the conduct prohibited by the section is, or is not, declared to be a corrupt practice.
17. Although the provisions relating to illegal practices may call for a different treatment, it seems inescapable that corrupt practices under the 1983 Act must be construed as being confined to those practices which are expressly declared to be corrupt practices by the Act. Corrupt practices are the most serious electoral offences and the electoral consequences for a candidate or for others of being found guilty of corrupt practices are more significant than those relating to illegal practices.
18. The two forms of corrupt practice with which the court is concerned here both relate to personation.
19. Personation has always been criminal. Section 60 of the 1983 Act provides:

(1) A person shall be guilty of a corrupt practice if he commits, or aids, abets, counsels or procures the commission of, the offence of personation.

- (2) *A person shall be deemed to be guilty of personation at a parliamentary or local government election if he -*
- (a) *votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or*
 - (b) *votes in person or by post as proxy -*
 - (i) *for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or*
 - (ii) *when he knows or has reasonable grounds for supposing that his appointment as proxy is no longer in force.*
- (3) *For the purposes of this section, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.*

20. A conviction for personation after trial on indictment carries a maximum sentence of two years imprisonment².

21. Section 60 is bolstered, in relation to postal and proxy votes, by s 62A, inserted by the Electoral Administration Act 2006 ("the 2006 Act") which will be discussed further below. The relevant parts of s 62A read:

- (1) *A person commits an offence if he -*
- (a) *engages in an act specified in subsection (2) at a parliamentary or local government election, and*
 - (b) *intends, by doing so, to deprive another of an opportunity to vote or to make for himself or another a gain of a vote to*

²

See the 1983 Act s 168(1)(a)(i).

which he or the other is not otherwise entitled or a gain of money or property.

- (2) *These are the acts -*
- (a) *applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);*
 - (b) *otherwise making a false statement in, or in connection with, an application for a postal or proxy vote;*
 - (c) *inducing the registration officer or returning officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote;*
 - (d) *causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.*

...

- (5) *A person who commits an offence under subsection (1) or who aids, abets, counsels or procures the commission of such an offence is guilty of a corrupt practice.*

22. This offence carries the same penalty as that created by s 60³.

23. The definition of personation will be discussed later in the context of the events said to have taken place in Slough.

Illegal practices

³

See the 1983 Act s 168(1)(a)(i).

24. The provisions relating to illegal practices are, if anything, worse drafted than those relating to corrupt practices. The 1983 Act makes many kinds of electoral malpractice into criminal offences. Although the Act is a consolidating Act there is no consistency in the treatment of those offences. Some of them are expressly stated to be "illegal practices" in the sections making them into offences. Some are not. Both Mr Millar and Mr Price were agreed that this seems to be no more than a function of how they were described in earlier legislation. Certainly no thought seems to have been given to defining the term "illegal practices" and there is no statutory definition in the Act.
25. Mr Price, as one would expect from the editor of one of the standard textbooks on electoral law, advances a relatively conservative (emphatically with a small "c") approach to the statute and urges the court to be cautious about treating as illegal practices those criminal offences which are not expressly so designated by the Act itself.
26. Mr Millar, on the other hand, urges a more robust approach. He characterises the 1983 Act as a "speaking statute" by which he means that the courts should apply a purposive approach to construction. The principal objective of the 1983 Act (as both counsel naturally agree) is to promote the democratic process by ensuring fair and honest elections. If, therefore, provisions of the Act genuinely admit of more than one interpretation, a court should adopt the construction that is most conducive to achieving this end.

27. The logic of Mr Millar's argument is, therefore, that, where the 1983 Act characterises a piece of misconduct relating to an election as a criminal offence, the court should treat that misconduct as an illegal practice whether or not it is so described in the relevant section.
28. This approach is clearly attractive. It surely cannot be the intention of Parliament, when making a piece of electoral misconduct into a criminal offence, to ignore the effect of that misconduct on the election to which it relates. After all, the purpose of the misconduct must always be to affect the result of the election to which it relates. If a candidate's election has been procured by the commission of criminal offences, Parliament cannot be saying that his election should stand merely because Parliament has omitted to write into the sections creating those offences words saying "these are also illegal practices".
29. Both counsel agreed that the question seems to be devoid of any decided authority. Both they and I overlooked the fact that, in the Birmingham Judgment, I had treated the offence of knowingly making a false statement in an application or form used for the purpose of postal voting contrary to Sch 4 para 8 of the Representation of the People Act 2000 ("the 2000 Act") as an illegal practice, notwithstanding the absence of express words making it an "illegal practice" in that part of the 2000 Act, a decision not challenged on appeal.
30. Assuming, though, that it is open to this court to decide which approach to take, I propose to deal with this petition on the basis that, where the 1983 Act or any related electoral

statute makes conduct in relation to an election into a criminal offence, that conduct does amount to an illegal practice for the purposes of avoiding an election whether or not this is expressly spelled out in the section concerned.

31. In the present petition, the principal electoral offences under this heading alleged to be involved are:
- (a) under s 13D(1) of the 1983 Act⁴, providing to a registration officer any false information for any purpose connected with the registration of electors;
 - (b) under s 61(1)(a) voting at an election knowing that one is subject to a legal incapacity to vote at that election;
 - (c) under s 65(1), various forms of misconduct concerned with tampering with ballot papers;
 - (d) under the 2000 Act Sch 4 para 8, knowingly making a false statement in an application or form used for the purpose of postal voting.

⁴

Introduced by the 2006 Act.

"General corruption"

32. This judgment will deal later with the law relating to the setting aside of elections but it seems convenient under the current heading to deal with the concept of general corruption.

33. Section 164 of the 1983 Act states:

- (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.*

34. This section replaces what was once the common law rule relating to general corruption. In the past, particularly in the nineteenth century, it would happen that an election had been tainted with corruption or other illegal conduct but those seeking to set it aside could not prove any actual involvement in the wrongdoing by the candidate or his agents. Thus a body of law evolved to the effect that an election could be avoided on this ground but only if it could be shown that it was likely to have affected the result of the election.

35. Consequently, the ingredients of s 164 which have to be proved by a petitioner seeking to avoid an election under that section are that:
- (a) corrupt or illegal practices or illegal payments, employments or hirings were committed by someone;
 - (b) they were committed at an election for the purpose of promoting or procuring the election of a candidate at that election⁵; and
 - (c) they prevailed so extensively that they may be reasonably supposed to have affected the result of the election.
36. Nobody could possibly quarrel with the first two of these requirements. The third is much more dubious today. One should treat with some caution a rule that dates from a period where Britain did not enjoy full democracy and a modest degree of electoral corruption was considered by many to be part of the robust tradition of elections so brilliantly captured by Hogarth. A period when it was - indeed could be - a matter of serious political debate whether the introduction of a secret ballot would undermine the constitutional rights of free-born Britons is remote indeed from the modern world.
37. In the democratic society of today, the citizen has the right to demand elections that are not only fair and honest but are transparently fair and honest. If an election is proved to have been tainted by corrupt or other improper practices which are directed towards

⁵ Not necessarily the successful candidate. but there would be obvious difficulties in establishing that the corruption had affected the result of the election if it had only been directed towards securing the election of one of the losers.

securing the election of a candidate, then surely the election of that candidate cannot be democratically acceptable.

38. Whatever may have been the position when Mr Pickwick attended the Eatanswill election⁶, in 2008 it seems wholly inappropriate for a petitioner who has proved "general corruption" should also have to undertake the burden of proving that it "may be reasonably supposed to have affected the result".
39. Ought a successful candidate to be able to say: "I accept I was elected following widespread fraud carried out in my favour but, if you cannot demonstrate to a court that the fraud affected the result, my election stands" ? In short, can he say: "we cheated but we would have won anyway" ? This is certainly not the rule one would apply in any other field of human endeavour. If your horse wins the Derby by fifty lengths but is found to have been drugged, it is no use your saying: "well, he was so good, he would have won the race even without the drugs" and expecting not to be disqualified.
40. This unsatisfactory state of affairs is highlighted in cases where, as here, there are allegations of widespread fraud in the use of postal votes. If a petitioner is able to establish such widespread fraud, ought he to have to prove that there were sufficient bogus votes to account for whatever margin of victory the successful candidate enjoyed ? If the winner won by, say 100 votes, ought the petitioner to have to prove in court that it

⁶ Published 1836/7 but possibly referring to an election just prior to the Reform Act 1832. The aficionado of electoral law will find the Eatanswill Election to be a treasury of corrupt practices, especially treating, undue influence and bribery.

was likely that there were 101 or more bogus votes, with the result that, if he can only show 99 bogus votes, the successful candidate can thumb his nose at both the petitioner and, more importantly, the electorate ?

41. In dealing with the present case, the court has, of course, to take the law as it is, however obsolete it might be, and to apply it. This will be done. But, in the view of this court, serious consideration should be given by Parliament to a wholesale revision of the provisions of s 164 to bring it into line with the needs of a transparent democratic society in the twenty-first century.

Challenging an election

42. A parliamentary election may be questioned by a Petition under s 120 of the 1983 Act and a local election by a Petition under s 127. Section 127 provides:

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.

43. This is another muddled and unsatisfactory section and was productive of a dispute at the commencement of the trial as to the nature of the case pleaded in the petition on which I was obliged to give a ruling on Day 1 of the trial.

44. For these purposes, the court is not concerned with the first two grounds set out in s 127 for setting aside an election, namely the fact that the candidate was disqualified or the fact that he was not "duly elected". Although it could rightly be said that any candidate whose election can be set aside for any reason connected with the election was "not duly elected", in practice this provision is largely confined to cases where, on re-examining the votes and removing on the ground of formal defects any votes previously admitted, the candidate ceases to have a preponderance of the votes. Neither of these grounds was raised in the current Petition and the court need not deal further with them.

Avoidance for corrupt or illegal practices

45. The ground that "the election was avoided by corrupt or illegal practices" which is relied on here, brings into play further sections of the 1983 Act. Section 159(1) provides:

If a candidate who has been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.

46. The reference to reporting relates back to s 145 and 158. Section 145(1) states:

At the conclusion of the trial of a Petition questioning an election under the local government Act, the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and the determination so certified shall be final to all intents as to the matters at issue on the Petition.

47. Thus the first duty of the election court trying a petition seeking the setting aside of an election on the ground of corrupt or illegal practices is to determine whether they occurred. It then has a duty to report contained in s 158(1):

The report of an election court under ... section 145 above shall state whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt or illegal practice.

48. Section 158(2) provides that where a corrupt or illegal practice other than treating or undue influence is proved to have been committed with the knowledge and consent of the candidate, he is to be treated as personally guilty of that corrupt or illegal practice. Section 158(3) obliges the court to state in its report whether any of the candidates has been guilty by his agents of any corrupt or illegal practice. There is a defence provided by this subsection for the candidate to prove that the corrupt or illegal practice was committed against his orders and without his connivance, that he took all reasonable steps to prevent it, that it was trivial and that his election was otherwise clean, but this defence, while being available to a charge of illegal practices, is not available when the charges are of the corrupt practices of personation under s 60 or of postal vote fraud under s 62A.

49. Thus the process is:

- (a) the court determines that the candidate has, by himself or his agents, been guilty of corrupt or illegal practices - s 145;
- (b) the court reports that finding - s 158;
- (c) that finding renders the election void - s 159.

50. The consequences for a candidate of being found guilty by himself or his agents of corrupt or illegal practices are serious. In addition to having the election declared void, under s 160, that person is incapable of
- (a) being registered as an elector for any national or local election⁷;
 - (b) being elected to the House of Commons;
 - (c) holding any elective office (including being a councillor).
51. This disqualification lasts, in the case of corrupt practices, for five years and, in the case of illegal practices, for three years.
52. These penalties, it need hardly be said, are entirely separate from any criminal sanctions that might be imposed if the candidate concerned is prosecuted to conviction for an electoral offence. If, by any chance the conviction precedes the election court, the candidate is obliged to vacate his office under s 173 of the 1983 Act.
53. An important feature of this ground for avoiding an election is that the petitioner does not have to prove that the corrupt or illegal practices were likely to have affected the result of the election. Mere proof of the practices by the candidate or his agents is sufficient to avoid the election.

⁷ Not applicable unless the candidate has been found personally guilty of a corrupt practice under s 60 or s62A or an illegal practice under s 61 - see s 160(4A).

Avoidance for general corruption

54. The final grounds for avoiding an election are the grounds provided by ss 164 and 165. Section 165 is irrelevant here. Section 164 has been discussed above.
55. The key points to note about s 164 are:
- (a) the petitioner does not have to prove that the corrupt or illegal practices were committed by the candidate or his agents - only that they were directed to securing his election; but
 - (b) the petitioner does have to prove that the corrupt or illegal practices are likely to have affected the result; and
 - (c) avoidance of the election under s 164 is not attended by the same dire consequences for the candidate of being reported as follow from his being found guilty of corrupt or illegal practices, personally or by his agents.

Who is an agent ?

56. As has been seen, a candidate in an election is, in many situations, liable for the acts of his agents. The concept of agency is much wider in election law than in other areas of the law such as contract.
57. This wider concept of agency is well summarised in *the Wakefield Case XVII*⁸:
***By election law the doctrine of agency is carried further than in other cases.
By the ordinary law of agency a person is not responsible for the acts of those***

⁸ (1874) 2 O'M&H 100.

whom he has not authorised, or even for acts done beyond the scope of the agent's authority ... but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of agency were put upon acts done at an election, it would be almost impossible to prevent corruption. Accordingly, a wider scope has been given to the term "agency" in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object.

58. "Agent" is thus not by any means restricted to the candidate's official "party agent" but covers a wide range of canvassers⁹, committees¹⁰ and supporters¹¹. The candidate is taken to be responsible for their actions even though he may not have appointed them as agents. Knowledge of what they are doing does not need to be proved against a candidate for him to be fixed with their actions.
59. As will be seen, this wide concept of agency is an important consideration in the present case.

Burden and standard of proof

⁹ See for example *Westbury Case* (1869) 20 LT 16 and *Tewkesbury Case, Collings v Price* (1880) 44 LT 192.

¹⁰ See for example *Stalybridge Case, Ogden Woolley and Buckley v Sidebottom* (1869) 20 LT 75.

¹¹ See for example *Great Yarmouth Borough Case, White v Fell* (1906) 5 O'M & H 176.

60. An election court is a civil court not a criminal court. Many of the matters it has to consider, however, involve conduct which amounts to the commission of criminal offences under the 1983 Act or other electoral legislation.
61. The burden of proof both in respect of the charges of corrupt or illegal practices and in respect of the allegation of general corruption must necessarily rest on the Petitioner. This was not controversial at the trial.
62. Similarly there was no controversy about the standard of proof the court must apply to the charges of corrupt and illegal practices. It is settled law that the court must apply the criminal standard of proof, namely proof beyond reasonable doubt. This was definitively decided by the Court of Appeal in *R v Rowe, ex parte Mainwaring*¹², a decision binding on this court.
63. What, however, of the charge of general corruption under s 164 ? Here there was controversy between the parties. There are two aspects to the case under s 164:
- (a) proving that there has been general corruption designed to secure the election of the candidate;
 - (b) showing that this may reasonably be supposed to have affected the result.
64. The former is a matter of factual proof. Mr Price submitted that a court should follow the rule for considering actual charges of corrupt or illegal practices and apply the criminal

¹² [1992] 1 WLR 1059.

standard of proof. He pointed to the undeniable fact that I had chosen to do so in the Birmingham Judgment and attempted, somewhat less convincingly, to convince me that this rule had applied to general corruption at common law by citing *the Warrington Case No VIII*¹³.

65. Mr Millar, on the other hand, argued that, as general corruption did not involve the making of findings of corrupt or illegal practices against any named individual, it would be over-strict to apply the criminal standard of proof: the civil standard (proof on the balance of probabilities) should suffice.
66. While conceding that there is much force in Mr Millar's arguments, I prefer, both in the interests of personal consistency and from an abundance of caution, to adhere to the course followed in the Birmingham Judgment and to consider the case under s 164 in accordance with the criminal standard of proof.
67. Both counsel are agreed, however, that, when assessing whether general corruption, once proved, may reasonably be supposed to have affected the result, the court is engaged in a more complex exercise than simply deciding whether facts are or are not proved. The court has to exercise a degree of judgment. Of course, there may be cases (the Birmingham petitions were classically such) where the extent of the frauds is so extensive that it is proved even to the criminal standard of proof that the result of the election *must*

¹³ (1870) 1 O'M&H 42.

have been affected by them. In other cases, it is much more a matter for the court's judgment.

68. Both counsel take the view that, as to this aspect of s 164, insofar as the court has to apply a standard of proof, the civil standard would be appropriate.

69. Thus the court will apply

- (a) the criminal standard of proof to the charges that Mr Eshaq Khan and/or his agents have been guilty of corrupt or illegal practices;
- (b) the criminal standard of proof to the question of whether there has been general corruption; but
- (c) insofar as any standard of proof is appropriate, the civil standard of proof to the question of whether the general corruption may reasonably be supposed to have affected the result of the election.

The relevant officers

70. Each Parliamentary constituency and each local authority must have a Returning Officer and an Electoral Registration officer ("the ERO"). For Slough Borough Council, as for many local authorities, the two positions are held by the same person. In Slough that person is the Director of Law and Corporate Governance, Mr Stephen Quayle. Mr Quayle is a solicitor of the Supreme Court and gave evidence before me. It is right to say at this stage that I found his evidence extremely helpful as well as being careful, accurate and to the point. I was able to accept his evidence completely.

Eligibility to vote

71. The category of those entitled to vote in local elections is wider than that of those entitled to vote in national elections. Sections 2 and 4 of the 1983 Act provides:

2 (1) A person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he C

- (a) is registered in the register of local government electors for that area;**
- (b) is not subject to any legal incapacity to vote (age apart);**
- (c) is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and**
- (d) is of voting age (that is, 18 years or over)...**

4 (3) A person is entitled to be registered in the register of local government electors for any electoral area if on the relevant date he -

- (a) is resident in that area;**
- (b) is not subject to any legal incapacity to vote (age apart);**
- (c) is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and**
- (d) is of voting age...**

(6) In this section -

..."the relevant date", in relation to a person, means -

- (a) the date on which an application for registration is made... by him...**

72. What residence entails is defined by s 5 of the 1983 Act:

(1) This section applies where the question whether a person is resident at a particular address on the relevant date for the purposes of section 4 above falls to be determined for the purposes of that section.

(2) *Regard shall be had, in particular, to the purpose and other circumstances, as well as to the fact, of his presence at, or absence from, the address on that date.*

For example, where at a particular time a person is staying at any place otherwise than on a permanent basis, he may in all the circumstances be taken to be at that time -

(a) *resident there if he has no home elsewhere, or*

(b) *not resident there if he does have a home elsewhere...*

73. Thus in order for an elector lawfully to vote at a local election for a particular local authority ward, he must meet the eligibility criteria and have a "residence" within the boundaries of the Ward. A temporary visitor cannot lawfully register and vote. Similarly someone who, in the words of s 5 has "a home elsewhere" cannot put himself on the register of a ward for the purposes of an election without residing in that ward. Relatives from abroad who are over in England for a short holiday cannot lawfully register and vote.

Postal voting on demand

The position in 2005

74. In the Birmingham Judgment, I said "the system of postal voting is a recipe for fraud"¹⁴. The reasons for that assertion were set out in detail in that judgment and need not be repeated at length here.

¹⁴

Para 18.

75. Nevertheless it is necessary to recapitulate the salient features of the postal voting system as it existed in 2004/2005 and see to what extent any attempts have been made to rectify its obvious flaws.
76. Postal voting on demand was introduced as a principle by the 2000 Act, which amended the 1983 Act accordingly. The detail was contained in the Representation of the People (England and Wales) Regulations 2001¹⁵ ("the 2001 Regulations").
77. The mechanics are contained in s 12 and Schedule 4 to the 2000 Act. Paragraph 2 of the Schedule lists the manner in which an elector may vote and gives a free choice whether to vote in person at a polling station (which will be referred to as a "personal vote") or to

¹⁵

S.I. 2001 No 341. These came into force on 16th February 2001.

vote by post (a "postal vote") or to vote by proxy or, in certain defined circumstances, to cast a personal vote at a polling station other than the one to which he is assigned.

78. I shall deal later in this judgment with the process whereby electors are entered on the Electoral Register. The right of an elector to exercise a postal vote, however, involves the creation of a version of the Register known as "the absent voters list", which is the responsibility of the ERO.
79. Under paragraph 5 of Schedule 4 to the 2000 Act the ERO must keep a special list, referred to in the Schedule as "the absent voters list", which consists of two sub-lists, the first being postal voters and the second being proxy voters. For the purposes of this Petition the court is only concerned with the former.
80. The process of registration on the absent voters list is initiated by an application made under Reg 51 of the 2001 Regulations. As will be seen, the formalities have been changed, but up to 2005 the application form needed to contain no more than the name and address of the elector, the address to which the ballot papers were to be sent (if different), a statement whether the application concerned only specified elections or all elections until further notice and a signature.
81. What has not changed, however, is the mechanics of registration on the absent voters list. If an application is received by the ERO which, on its face, purports to come from a person whose name appears on the Register and if that application is in the correct form

with the requisite particulars, the ERO and his staff have no choice but to enter that voter on the absent voters list. Neither then nor now is there any duty upon the ERO to carry out any checks and there are no resources for an ERO to be able to do so. Registration on the absent voters list is automatic.

82. A point of controversy with the system of registration of postal voters as it existed prior to 2005 was that it was permissible for the voter to ask for his postal vote to be sent to an address other than the one at which he was registered to vote. The opportunities for fraud afforded by this provision are too obvious to need underlining.
83. At the time of the Birmingham election, applications for postal votes could be made up to 5.00 pm on the sixth day before the date of the election¹⁶. This tended to cause administrative chaos when, as in Birmingham, the postal vote fraudsters flooded the ERO with hundreds of applications in the final days before registration closed.
84. Once the absent voters list has been compiled, the registers for use at polling stations are amended so as to show who is registered for a postal or proxy vote (and thus ineligible to vote at a polling station) and those who are not. In Slough this was achieved by the simple but effective method of issuing the Electoral Register to polling stations with the names of absent voters crossed through with a typed line. Names not crossed out were eligible to vote in person.

¹⁶ Under Reg 56(6) this excludes weekends and holidays.

85. There was no control over the way in which the application form was returned to the Elections Office. It could be handed to someone else to deliver and the practice had become common for canvassers of all political parties to "sign up" postal voters and to collect the application forms for onward transmission. Again, the opportunities for abuse are obvious.
86. Postal votes are sent out by the Returning Officer. Under Reg 71, with ordinary postal votes, the Returning Officer is to issue the ballot documents "as soon as reasonably practicable after he has granted the application to vote by post".
87. At that time the Returning Officer sent out a package to each postal voter, clearly marked that it contained election material (thus aiding theft). It contained several documents but the two key documents were the ballot paper itself and a "Declaration of Identity" ("the DOI"). The DOI was to be signed by the elector to verify his identity and his signature was to be attested by a witness whose name address and signature also appeared on the DOI.
88. The package contained a pre-paid envelope for the documents to be returned to the Returning Officer but there was no obligation to send them by post. It was perfectly lawful for someone to collect the documents from the voters and deliver them to the Returning Officer on their behalf. More opportunities for fraud.

89. The Elections Office processed the postal votes by checking that the DOI were apparently regular on their face - no other form of checking was obligatory or even practicable - and, if they were, the ballot papers went into the count.

What happened in Birmingham in 2004

90. In summary what happened in Birmingham in 2004 was that the local Labour Party¹⁷ had come to the conclusion that the Iraq War had alienated the traditional support for the Party in those areas where there was a large Muslim Asian population. Rival parties (the Liberal Democrats and the People's Justice Party) were running very much on an anti-war ticket and Labour feared that it would lose control of Birmingham City Council which it had held for many years.
91. Consequently, sections of the Labour party, led, in the Wards of Aston and Bordesley Green, by the candidates themselves, embarked on a massive programme of electoral fraud in which literally thousands of bogus postal votes were cast for the Labour candidates, securing their election by suspiciously large majorities in a year when Labour otherwise fared poorly. It did not assist the Party as a whole - it lost control of Birmingham - but it did secure a number of Asian Wards for Labour.
92. I need not set out the details of the frauds perpetrated in Birmingham here. Suffice it to say that I identified no fewer than fourteen types of electoral fraud committed in the two

¹⁷ The judgment emphasised that there was no evidence that the national Labour Party had known of or connived in the Birmingham frauds.

Wards concerned. As will be seen, these types of fraud by no means exhausted the possible methods of postal vote rigging: they just happened to be the fourteen types of fraud practised at the 2004 Birmingham election.

The Birmingham Judgment

93. The Birmingham Judgment, it must be confessed, is very long. In part this was dictated by the widespread and complex nature of the frauds committed by the Respondents and the extensive evidence by which they were proved.

94. In part, however, it was driven by the enormity of postal voting fraud. The introduction of postal voting on demand, however well intentioned, had opened the floodgates to serious, organised and extensive fraud of frightening proportions. Although a few lone voices had cried in the wilderness that such a system would be wide open to fraud, they had been disregarded.

95. Nowhere was this indifference to the potential for fraud more marked than amongst the politicians who had set up the postal voting system. The judgment quoted a recent official Government statement which asserted: "The systems already in place to deal with the allegations of electoral fraud are clearly working." I commented that this "indicates a state not simply of complacency but of denial".

What happened next

96. The Birmingham Judgment was delivered on 4th April 2005, the day before the calling of the 2005 General Election. Understandably, there was a measure of public disquiet. Time would not have permitted any reform of the system in time for that election, particularly with Parliament dissolved. There was, however, a considerable demand for reform to be considered once the new Parliament had been elected.

97. Public enthusiasm for drastic reform of the postal voting system was not matched by any marked enthusiasm on the part of politicians of any party. There was a tendency to play down what had happened in Birmingham. Worse still, there was a tendency to represent the problem as confined to the Muslim Asian community and a product of the social structures of that community - despite what was said in the judgment:

To suggest that Muslim Asians are prone to frauds of this kind whereas other communities are not would be racist and moreover would not be justified by any evidence before this court. I am aware that there are those on the fringes of politics who may seek to use this judgment for racist ends. There is no warrant for anyone to do so and I hope they will not.

98. Moving forward in time, the pattern of criminal convictions involving offences of postal vote fraud since 2005 demonstrates quite clearly that

- (a) such fraud is by no means confined to Britain's Muslim Asian community: it is a game at which all ethnic groups can and do play;
- (b) such fraud is not confined to inner-city predominantly working-class areas;
- (c) the Labour Party has no monopoly on electoral fraud: again, all parties can and do play.

99. Patently, the correct solution would have been to re-consider and, preferably, to abandon the system of postal voting on demand. It was (and is) doubtful whether such a system could ever be made to work without the risk of widespread fraud.
100. Equally patently, this was not going to happen. Far too much political capital had been invested in postal voting on demand for it to be scrapped. There remained a strong, though wholly unsubstantiated, belief that postal voting on demand had increased voter turnout. The reason why the belief was unsubstantiated was that, even when there appeared to be a modest increase in turnout, there was absolutely no way of knowing whether this was a result of increased voter participation or of electoral fraud (or a combination of both).
101. Similarly there persists a belief in some political circles, notwithstanding serious academic research indicating the contrary, that postal voting on demand favours one political party at the expense of the others.
102. Clearly, though, something had to be done. But what ? The answer took the limited and unsatisfactory form of the 2006 Act.

The 2006 Act

103. In the period following the Birmingham Judgment, some necessary changes were undoubtedly made. The deadline for registration of an elector on the Electoral Register and for registration of an application for a postal vote on the absent voters list was

extended from six days before an election to eleven days, though this period may itself still be unrealistically short.

104. Some necessary changes were equally undoubtedly not made. The right of the postal voter to have his ballot sent to another address was retained. All that happened was that the voter had to state a reason. As there were no guidelines as to what would be an acceptable reason and as the ERO had no authority or resources to investigate reasons given, any half-plausible reason would be - indeed had to be - accepted.
105. Similarly the right of political activists to handle election documents from applications to register voters through to completed postal ballot papers was not curtailed, even though this had been a major facilitator of the Birmingham frauds.
106. The 2006 Act itself contains 79 sections and two schedules. Only two sections out of the 79 deal with "anti-fraud measures". Section 15 adds a number of fresh electoral offences to the 1983 Act, the principal one being that of providing false information, inserted into the 1983 Act as s 62A which has been fully discussed above.
107. The other reform section was s 14. Though complex, the system it sets up may be summarised as follows:
 - (a) an applicant for a postal vote must provide the ERO with "personal identifiers";
 - (b) the personal identifiers concerned are
 - (i) the signature of the elector; and

- (ii) the date of birth of the elector;
 - (c) this information will normally be supplied at the time the elector applies for a postal vote as part of the ATV (application to vote by post) but, where electors were registered for postal votes prior to the 2006 Act coming into force, the ERO has the power to require the elector to provide personal identifiers as the price of remaining on the absent voters list;
 - (d) the ballot paper sent out to postal voters will be accompanied by a PVS (postal voting statement) which must be completed by the elector and returned with the completed ballot;
 - (e) the PVS will also contain the signature of the elector and his date of birth.
108. The object is, of course, for the Returning Officer and his staff to be able to compare the signature and date of birth on the PSV with that on the ATV before admitting the postal vote into the count.
109. This system was fully in place in time for the 2007 local authority elections.

The personal identifier system

110. Anyone who has had the fortitude to read the Birmingham Judgment will immediately appreciate that, of the fourteen types of postal vote fraud identified in that judgment, the system of personal identifiers tackles only one - the theft and misuse of postal ballot packages addressed to an elector who has genuinely applied for a postal vote. Plainly, in such an instance, unless the thief has access to the signature of the real voter and his date

of birth, the PVS produced by the fraudster will not match that on the ATV and the fraud - in theory at least - will be detected.

111. The remaining thirteen areas of fraud are untouched by the 2006 Act.
112. Clearly, operating the personal identifier system was always going to be very costly in terms of time and resources. If, in theory, the Returning Officer's staff had to compare each PVS with the appropriate ATV when the ballot arrives, this would greatly add to the labour involved in the process. If, as is likely, the bulk of the postal votes arrive at the last minute - they cannot even be sent out to voters until nominations for the election are closed - this will add to the difficulties.
113. The system also involves a comparison of signatures. Any handwriting expert will tell you - indeed Mr Hughes the handwriting expert called to give evidence *did* tell me - that one of the most difficult tasks that a handwriting expert can be called on to perform is the comparison of two signatures, one genuine and the other suspect, with no other material available to help in the task. It requires great expertise to distinguish between a deliberately forgery and a genuine signature which comes within the range of variation that we all produce in our signatures. In many cases even the most skilled handwriting expert has to confess himself unable to give a reliable opinion.

114. Those most at risk of having a genuine signature mistaken for a forgery are, of course, also the most vulnerable, such as the elderly, the poorly literate and those for whom neither English nor Roman script are matters of everyday familiarity.
115. Nonetheless, signature comparison is the task that is imposed on the Returning Officer's staff, officials who have no training in handwriting identification and are working under increasing pressure as the election approaches.
116. It may safely be said, however, that there is no problem so bad that the enthusiastic application of electronic technology cannot make it a good deal worse. Election authorities at both national and local level have been encouraged to use computer programmes designed to perform the signature comparison. Comparison of signatures by computer is inevitably even more haphazard than comparison by untrained staff using eyes and brain. The experience of the electronic system has therefore been that the computer rejects very large numbers of entirely genuine signatures leaving the Returning Officer with the unenviable choice between
- (a) getting his staff to check the rejected documents manually; or
 - (b) accepting the computer's verdict with the risk of disenfranchising a large number of honest postal voters.
117. This dilemma was dramatically illustrated by the 2007 elections to the Scottish Parliament where the numbers of genuine votes rejected because of reliance on computer technology is reckoned to have amounted to hundreds of thousands.

118. However it is performed, though, the personal identifier system must necessarily presuppose that all the postal votes received by the Returning Officer are checked. Once again, the gap between theory and practice is marked. Very few local authorities even try to achieve a 100% verification of personal identifiers. I was told by counsel that the prescribed minimum check is 20%. Mr Quayle's evidence was that he had started out with high hopes of a 100% verification but the technology had defeated him and his total had slipped well below that ideal.
119. If, therefore, some local authorities are only going to be capable of a 20% - or even a 60% - verification, the personal identifier system as a bastion against fraud loses much of its credibility. If a postal vote fraudster knows that up to 80% of his bogus votes may pass unnoticed through the system, he may consider the odds to be in his favour, though he might have to increase output to compensate.
120. The personal identifier system may thus be summarised as having four consequences:
- (a) it makes checking postal votes very much more labour-intensive and expensive;
 - (b) it risks disenfranchising a large number of entirely genuine voters;
 - (c) it provides only a minimal safeguard against only one of the many types of postal voting fraud; but
 - (d) it allows politicians to claim - and they do claim - that the problem of electoral fraud has now been solved.

121. All that can be said about the personal identifier system (though the Slough experience may be unrepresentative) is that it may have persuaded vote-riggers to channel their efforts into the forms of fraud which the 2006 Act left untouched.

122. One of the areas of fraud into which vote-riggers' efforts have undoubtedly been channelled is an area which did not form part of the Birmingham frauds and did not figure on the list of fourteen frauds. That is the fraud alleged in Slough.

The fifteenth fraud

123. It was perhaps surprising that the Birmingham case did not involve what is perhaps the oldest and is still one of the most effective forms of electoral fraud. Those masters of the pithy phrase, the Australians, call it "roll-stuffing" - the "roll" being, of course, the Electoral Roll or Register.
124. What roll-stuffing involves is casting votes by using names which appear on the Electoral Register but which relate to people who have no right to be on the Register. These fall into two categories
- (a) names of people who were once validly on the Register but have ceased to be so either because they have moved away from the address in question or because they have died;
 - (b) names of people which have been deliberately and fraudulently added to the list for the purpose of using their votes (whether those names relate to entirely fictitious people or to real people who are prepared to lend their names to the fraud).
125. This form of fraud was always said, traditionally, to be popular in Ireland: "voting the graveyard" was claimed to be a feature of Irish elections. That may well have been the thinking behind the introduction, by the Electoral Fraud (Northern Ireland) Act 2002, of measures, including personal registration of voters, to deter roll-stuffing. These measures have had a great deal of success in the Province but Parliament has fought shy of introducing them to mainland Britain.

126. How does it come about that roll-stuffing is so easy in Great Britain ?

The voter registration system

127. The system of registering voters in Great Britain may fairly be described as shambolic. As will be seen later, it causes perplexity and concern on the part of our European neighbours, many of whom regard the United Kingdom as a beacon of democracy, which kept the flame of democracy alive while continental Europe descended into totalitarian night. They are saddened to observe the authorities of the United Kingdom apparently indifferent to the debauching of democracy by widespread and persistent fraud.

128. The British system is not adopted by any of our neighbours.

129. In essence voter registration in Great Britain is a system for putting names on to the Register. Provided names get on the Register, it appears to be a matter of complete indifference as to how they get there, and the system contains no mechanism whatsoever for verifying that the names on the Register are properly included - or indeed that the names relate to real people. In a period when the citizen is required to produce his passport and a utilities bill even to open a very small bank account, registration for the highest duty of the citizen, that of choosing his government, requires no verification at all.

130. Each ERO is obliged by s 10 of the 1983 Act to conduct an annual canvass with reference to the date of 15th October in each year. This is a household canvass, meaning that each unit which is or appears to be a separate dwelling is sent a registration form.
131. In the past, the form used to be a blank registration form inviting the head of the household to fill in the names of all those resident in the dwelling on 15th October in that year who were (or would become in the next year) of sufficient age to vote and were otherwise eligible to vote. The form had to be signed by a member of the household.
132. In order to streamline the process, however, the habit of most ERO is to send out the form pre-printed with the names of those who were registered for that household for the previous year, inviting the recipient to confirm, delete or add names on the list. In many areas the recipient is invited to use the internet to respond and is provided with a PIN, printed on the form, to facilitate this. In most cases the recipient is requested to use the internet only if the existing details are to be confirmed and to return the paper form itself if there are any changes. Some authorities even permit amendment of the form on line. There is - there can be - no independent verification of the stated identity of the person sending the information to the ERO whether on paper or by internet.
133. What happens if the form is not returned ? No figures for the national average were produced to the court but Mr Quayle told me that the level of return in Slough was about 73%. Where the remaining forms are concerned, many authorities will try to fill the gap

by making house to house enquiries but there will always be a considerable number of properties where there is no return.

134. Common sense might dictate that if a household did not return the form the existing names should be removed from the Register, leaving any inhabitants to re-apply if they felt strongly enough. Such, however, is the fear that one voter might, by inertia, be lost from the Register that the almost universal habit is to keep the names on the Register for at least one more year.
135. It would be hard to devise a worse system of voter registration. Even if the system is working entirely honestly, there will inevitably be a large number of names on the Register of people who no longer have the right to vote because they no longer occupy the property against which they are registered. For example, Mr A registers himself in the annual canvass as resident at 1 Station Road on 15th October 2004. In December 2004 he moves to the other end of the country. In October 2005, the occupants of 1 Station Road do not bother to return the form or return it with Mr A's name still on it. At any time up to (at the earliest) October 2006, Mr A's name will remain on the Register and a vote cast in that name will be accepted by the Returning Officer.
136. In any community this system provides a fraudster's paradise. In areas with a mobile and transient population, the temptation to fraud must be almost irresistible. Imagine a property which is always in multiple occupation with, say, fifteen people living there. The occupants never stay long and are constantly being replaced. The owner of the property

receives the household registration form with fifteen names on it. He knows that they have all left but, by simply signing the form unaltered or by confirming it online or even by doing nothing, those fifteen names will remain on the Register and will provide fifteen votes that can safely be used by him for whichever candidate takes his fancy.

137. The Electoral Register is, of course, a public document. Anybody may obtain a copy. The unscrupulous local political activist can thus obtain his own copy, carry out a few discreet enquiries, discover that a considerable number of the names on the Register relate to people who no longer live at the address shown and take steps to appropriate their votes accordingly.
138. But the Register is not writ in stone on 15th October. It is a "live" Register. Any eligible person moving into the area may apply to put himself on the Register at any time. The only slight impediment is that mentioned above, namely that application to be placed on the Register must be made not less than eleven days before an election if the applicant wishes to vote at that election.
139. Application is simplicity itself. A form (the AFR) is filled in and sent to the ERO. This requires no information beyond the name and address of the elector. Amazingly, the applicant is not even obliged to provide his personal identifier. The registration of the elector is purely mechanical. Provided the form seems to be in order, the ERO must add the name to the Register. No form of verification is required: no enquiries are or can be made: the name is added. Even though the application may be and usually is signed, there

is no mechanism for comparing the signatures on the AFR with the signatures on any ATV (postal vote application) or on the PVS which accompanies the ballot paper.

140. Nothing therefore could be easier than to register false names on the Register for the purposes of exercising their votes.

What is the point of such a registration system ?

141. It may be asked what possible point there could be in a registration system such as that currently in force which, even if operated honestly, results in huge numbers of "dead names" remaining on the Register. Those dead names obviously inflate the apparent size of the electorate but, absent fraud, equally obviously they cannot vote.
142. The inflated Register clearly involves additional work for the ERO but, more importantly, the Register provides the basis, indeed the only basis, for calculating the size of the electorate at any given election.
143. The irony is this. What prompted the whole disastrous experiment of postal voting on demand in the first place was the perception of politicians that voter turnout percentages were too low. But the recorded percentages themselves were inevitably being falsified by the dead names on the Register. If the apparent electorate is inflated by dead names, the actual votes cast must mathematically be a smaller percentage than would be the case if the "total electorate" against which they are compared were to be confined to those actually entitled to vote.

144. Assume an electoral area has 100 votes on the Register. 20 of them are dead names. 60 votes are cast at the election. Under present methods of calculation those 60 votes are expressed as a percentage of the nominal electorate - $60/100$ and thus 60%. Low turnout - general gloom. The real calculation is, of course: persons actually entitled to vote 80: votes cast 60: percentage turnout $60/80$ and thus 75%. High turnout - general rejoicing.
145. It may be asked, therefore, why should one maintain an electoral registration system different from that of our democratic neighbours, which delivers artificially deflated voter turnout percentages leading to the introduction of ill-considered changes to the electoral process in the hope of increasing turnout?

Registration and postal voting

146. Before the introduction of postal voting on demand, the problem of roll-stuffing was containable. Where votes had to be cast in person, anyone wanting to use false names on the Register to cast votes had to produce actual voters who were prepared to go to polling stations to cast the votes. If the false name being used was that of a person who had once lived at the property but had moved on or died, there was always the risk that someone at the polling station might have known the real voter whose name was being used and who would thus unmask the imposter.
147. The sheer logistics of this species of personation thus made it impracticable to record more than a relatively small number of bogus votes. If the constituency or ward had a

small population and the contest was likely to be very close, this kind of tactic might just be sufficiently viable to justify the risks involved.

148. Postal voting on demand swept away all these worries for the fraudster. Gone was the risk that the bogus voter might be recognised at the poll. False names on the Register could be used wholesale to cast bogus votes in their hundreds with only minuscule risk of detection.
149. And the personal identifiers, paradoxically, made it easier. If a fraudster registers a fictitious person on the Register and applies for a postal vote, he can easily ensure that the ATV and the subsequent PVS of that fictitious person contain the same signature and date of birth. All he need do is keep a photocopy of the ATV to remind him when he comes to fill in the PVS. From the Returning Officer's point of view the vote is perfectly regular - the personal identifiers match exactly. They are, however, the personal identifiers of a non-existent person.
150. Mr Millar referred to these false names on the Register as "ghost voters", a useful term, though the votes they cast were far from phantasmal.
151. Postal voting on demand, therefore, put the roll-stuffers in business in a big way.

European concern

152. The concerns expressed in this judgment are by no means confined to the United Kingdom.
153. In 2006 the Parliamentary Assembly of the Council of Europe decided to carry out investigations to see whether it should initiate the Council's monitoring procedure for United Kingdom elections. Serious concerns had been expressed about the level of postal voting fraud. Monitoring by the Council of Europe is normally undertaken only for states where democracy is dubious or fragile such as, say Belarus. For that even to be considered in the case of the UK was little short of shaming.
154. The Assembly's Monitoring Committee sent a high-powered delegation led by two rapporteurs (strictly, rapporteuses), a former German Minister of Justice, Ms Herta Däubler-Gmelin, and a Polish Senator, Ms Ursula Gacek. The report of the delegation was published on 22nd January 2008¹⁸. It is damning.
155. The relevant parts of the decision read:
3. *From the findings of the rapporteurs, it is clear that the electoral system in Great Britain is open to electoral fraud. This vulnerability is mainly the result of the, rather arcane, system of voter registration without personal identifiers. It was exacerbated by the introduction of postal voting on demand, especially under the arrangements as existed before the changes in the electoral code in 2006. The 2006 changes to the electoral code enhanced the security of the postal voting arrangements,*

¹⁸

Ref: AS/Mon (2007) 38. It can be accessed on <http://assembly.coe.int>

but other shortcomings and vulnerabilities remain. Together with numerous British experts we strongly recommend to eliminate those.

4. *Despite the vulnerabilities in the electoral system, there is no doubt that elections in the United Kingdom are conducted democratically and represent the free expression of the will of the people of the United Kingdom. On these grounds, it can not be argued that the United Kingdom has fallen short on honouring its democratic commitments to the Council of Europe and we can therefore not recommend opening a monitoring procedure with respect to the United Kingdom.*
5. *It should be stressed however, that the United Kingdom delivers democratic elections despite the vulnerabilities in its electoral system. These vulnerabilities could easily affect the overall democratic nature of future elections in Great Britain. The Monitoring Committee should, in its periodic reports on the honouring of commitments by member states, pay special attention to electoral issues in the United Kingdom and, if the vulnerabilities noted are found to undermine the overall democratic nature of future elections in Great Britain, apply to initiate a Monitoring procedure with respect to the United Kingdom.*

156. In short, we avoided monitoring by a whisker and are still on probation.

The Slough Election

157. No apology is made for such a lengthy lead-in to the part of this judgment dealing with the Slough Election. That election has to be viewed in the light of existing electoral law and, in particular, those features of that law which render it, to use the expression of the Council of Europe, "vulnerable" to electoral fraud. Though some of what is said above may come as a matter of surprise, indeed of deep concern, to members of the public, the weaknesses of the system are very well known to political activists.

158. Thus the allegations of fraud made in Slough are made against people who (whether innocent or guilty) would none the less be fully aware of the multiple opportunities for serious vote-rigging provided by the laxity of the system.

Background

159. Slough is a prosperous town with an expanding population. The Slough Trading Estate, the court was told (with great pride and more than once), is the largest trading estate in Europe. Indeed the Slough Trading Estate has acquired national, even international, fame as a result of the television series *The Office*, though whether the talented Mr Ricky Gervais has thereby enhanced the reputation of Slough to any greater extent than the late Sir John Betjeman remains a matter of debate.

160. The Estate has provided employment prospects which have lured many newcomers to the town. Many of the recent newcomers have been immigrants from the accession states of eastern Europe and Slough now has a significant Polish community.

161. This situation has led to the population being fluid and transient. It has also led to housing problems, with properties being overcrowded and a ready market in short-term rented accommodation. These facts are undeniable and provide the background to the events that occurred in 2007, but I should say at the outset that there was a strong tendency, particularly on the part of Mr Eshaq Khan and his representatives, to

exaggerate the extent of Slough's growth, the fluidity of the population and the amount of overcrowding in the housing sector.

162. Central Ward of Slough, together with its adjacent Ward of Wexham Lea, has for some years had a large South Asian population, principally Muslims whose families originated in Pakistan, with a high concentration of families from Kashmir. It is a relatively close-knit community, a fact which has both advantages and disadvantages for any member of the community who might wish to engage in electoral fraud. On the one hand, a potential fraudster would be able to call on a wide network of relatives and associates to help him but, on the other hand, in a community where everybody knows everybody else, keeping that kind of activity a secret is not easy.
163. For administrative purposes, Central Ward is divided into five polling districts, labelled respectively C, CA, CB, CC and CD.
164. In 2004, following boundary changes, the whole of Slough Borough Council came up for election. Central Ward is a three-member Ward. The pattern with such Wards is that, following a whole-council election such as that of 2004, there is a year when no elections are held followed by three years in each of which one of the three seats is up for election. Assuming no further full council election, the pattern of one blank year followed by three annual one-member elections is then repeated.

165. In Central Ward in 2004 the result had been what a racing man would call a "handicapper's dream". When the 7,772 votes were counted, only seven votes separated the first three candidates. Labour and the Conservatives were neck-and-neck¹⁹. Mr Mohammed Aziz (Con) came first with 1274 votes, the Petitioner Ms Simmons (Lab) came second with 1269 and Mr Sumander Khan (Con) third with 1267. They became the elected councillors for the Ward. The turnout was 44.06%.
166. No election was held in 2005. In 2006, the first of the 2004 batch of councillors had to vacate office. The system was that office would be vacated in the reverse order of the 2004 result. Thus Mr Sumander Khan vacated office and stood for re-election in the 2006 poll. At that poll there were only two candidates, the other being Mr Shafiq Ahmed Chaudhry of the Labour Party. The photo finish of 2004 was not repeated. Mr Chaudhry won by a distance, securing 1656 votes against Mr Sumander Khan's 1305. The turnout was 44.33% - virtually identical to that in 2004.
167. Throughout the evidence before me flitted the fact that in 2006 the Conservative Party had made repeated complaints to Mr Quayle and others of voting irregularities said to be committed in the Labour interest. In particular, allegations were made of roll-stuffing, in many cases taking the form of double registration whereby a resident in one Ward would register himself temporarily in another Ward without taking himself off the Register in the Ward where he actually lived.

¹⁹ The Liberal Democrats did not field a candidate and the solitary other candidate, a Green, received only 406 votes.

168. In the end, though, these allegations had run into the sand. There was no petition following the 2006 election and the Conservatives did not mount a challenge to the registration of the electors they claimed were dubious. None the less Mr Eshaq Khan and his witnesses clearly thought it important that this court should be told that the Labour Party had been suspected of roll-stuffing in 2006.

169. Though the relevance of the 2006 allegations was necessarily marginal to the case before the court, those allegations did potentially throw some light on the events of 2007.

The 2007 election

170. Ms Simmons, having come second in 2004, was the next to vacate her seat. She stood for re-election in the Labour interest. Having initially favoured the former councillor as its candidate for the May election, in or about January 2007 the Conservative Party changed its mind and selected Mr Eshaq Khan as the candidate. For the first time in some years the Liberal Democrats decided to field a candidate and there were two fringe candidates, one for the Slough Party and one who claimed no party affiliation.

171. Mr Eshaq Khan is a Kashmiri. He was born in Kashmir in 1957 and moved to England in 1967. He owns and runs a carpet and furniture business in the Ward and has, for many years, been active in the Muslim and Kashmiri community, holding high office in a number of charitable and cultural organisations in that community. The statement of a character witness, Ms Patricia Powell, spoke as to his integrity. It is therefore clear that

Mr Eshaq Khan is a man of high reputation in his local community and I had no hesitation in accepting him to be a man of good, indeed excellent, character. I took all these matters into account in his favour when subsequently evaluating his evidence.

172. Mr Eshaq Khan had not previously served as a councillor although he had stood unsuccessfully for the Central Ward in 2001 and 2002.

173. Mr Eshaq Khan's official agent was Mr Dexter Jerome Smith who was and is a councillor and the leader of the Conservative Group on the Council. Mr Smith gave evidence before me at the trial. I should say at this point that at no stage in this dispute did anyone suggest that Mr Smith was in any way a party to the electoral frauds alleged against Mr Eshaq Khan and his agents or that he had any knowledge of them. I was entitled to treat and I did treat Mr Smith as an entirely honest, truthful and reliable witness and his evidence, as will be seen, was of considerable assistance to the court.

174. Every candidate needs a back-up team and Mr Eshaq Khan was no exception. Given that the members of a back-up team are likely to come within the definition of "agents" discussed above, the identities of those members are crucial to any trial where corrupt or illegal practices are alleged against the candidate or his agents.

175. Exactly who Mr Eshaq Khan's "agents" (in the statutory sense) were in this election was a matter of some controversy. Understandably Mr Eshaq Khan's instinct was to minimise their numbers and to disavow others who had helped in his campaign. By contrast, Mr

Millar argued for a much larger number of people who came within the category of agents and whose misdeeds might be visited on Mr Eshaq Khan.

176. Although I shall have to make findings on the subject in this judgment I will start with the uncontroversial names. Mr Eshaq Khan himself in his statement²⁰ named three agents

- (a) Councillor Mohammed Aziz (who, it will be recalled, came first in the 2004 poll) of 47 Wellesley Road;
- (b) Mr Altaf Khan* of 104 Wellesley Road;
- (c) Mr Tayyab Khan of 12 Spackmans Way.

177. Mr Smith, however, who was, of course, Mr Eshaq Khan's official election agent, produced a wider list²¹; in addition to Councillor Aziz and Mr Tayyab Khan he named:

- (a) Mr Sumander Khan* (the losing Conservative candidate in the 2006 election) of Wellesley Road;
- (b) Mr Naveed Khan*;
- (c) Mr Zahia Khan;
- (d) Mr Nadeem Khan, a solicitor;

(these last three are brothers and were sometimes referred to as "the three Khan brothers")
- (e) Mr Mahboob Khan.

²⁰ TB1/tab 27/p3 at para 15.

²¹ Day 6 pp 85.13 to 89.21.

178. Mr Smith said that the committee office was at the home of Sumander Khan.
179. In addition, ten names had signed Mr Eshaq Khan's nomination form. The names marked with an asterisk in the preceding paragraphs were among them. Of the ten people named, five were resident in Wellesley Road and two in Richmond Road.

Late registrations

180. In the weeks preceding an election all parties in the contest do their best to drum up support. This includes knocking on doors to ascertain whether the inhabitants are all registered to vote and if not (and, of course, if they are likely to be favourable) to persuade them to register to vote. Since the introduction of postal voting on demand, this activity often includes persuading both new and existing electors to apply for a postal vote.
181. Thus it is to be expected that there will be a run of new registrations and new applications for postal votes as an election approaches.
182. The rival parties are very alive to this practice and each monitors the others by obtaining from the ERO up-to-date lists of the latest registrations.
183. The eleven-day cut-off period meant that the last day for registration or for application for a postal vote was 18th April 2007.

184. The Labour Party team, led by Mr Safdar Ali, Chairman of the Slough Constituency Labour Party, and Councillor James Swindlehurst, the Party's 2007 Election Campaign Coordinator, noticed that there was an abnormally high level of new registrations in the Central Ward. The electorate for the Ward at the 2006 election had been 6,805. Natural attrition caused by the annual canvass had reduced that number to about 6,600 by the time the revised Register was published on 1st December 2006.
185. In the month or so preceding the 18th April cut-off date, however, there had been no fewer than 449 new electors registered in Central Ward, the lion's share being in the two polling districts of CA and CD. Wellesley Road which has been mentioned above is in district CD. The next highest number of new registrations in Slough was 286 in Chalvey Ward, little over half of the Central total.
186. The surge in registrations had been matched by a surge in applications for postal votes. Indeed (running ahead slightly with the story) later examination of the documents showed that the overwhelming majority of new registrations were accompanied by an application for a postal vote.
187. It was also noticeable that virtually all the newly registered names were Muslim Asian names. Mr Safdar Ali, who was familiar with the community, thought he recognized a number of names of people who did exist but who were actually living in other parts of Slough.

188. The Labour team believed all of this to be suspicious and started to investigate.
189. At an early stage they came across Hawtrey Close. The list of new registrations showed
- (a) 4 Hawtrey Close, 6 new names;
 - (b) 6 Hawtrey Close, 6 new names;
 - (c) 8-10 Hawtrey Close, 7 new names.
- A total of 19 people registered as new voters in the last week before registrations closed.
190. What was found on the ground, however, presented a somewhat different picture:
- (a) 4 Hawtrey Close contained not six people with Asian names but a Polish couple who were the only inhabitants and confirmed a total absence of Asians in the property;
 - (b) 6 Hawtrey Close was empty and derelict;
 - (c) 8-10 Hawtrey Close had once been an old people's home but this venture had failed some years before and the property was empty, boarded up and derelict.
191. In short, instead of 19 Asians living in 4-10 Hawtrey Close, there were none. All 19, however, had applied for and were sent postal votes.
192. This was perhaps the most dramatic finding of the team but enquiries at other properties revealed that considerable numbers of newly registered voters were not living in the houses where they were registered. Clearly roll-stuffing had been taking place.

193. The Labour Party wrote to Mr Quayle about Hawtrey Close before the election but, as everyone agreed was entirely reasonable, there was nothing he could do about it in the short time before the election.

194. The election therefore duly took place on 3rd May 2007 on the expanded Register.

The Election result

195. At the election the results were:

Mr Eshaq Khan (Con)	1439
Ms Simmons (Lab)	1319
Mr Gary Griffin (Lib-Dem)	187
Mr Sukh Sohal	51
Ms Ida Zaidi (Slough Party)	33

196. Mr Eshaq Khan thus had a majority of 120 and was declared elected.

197. As subsequent investigations showed, the nineteen ghosts of Hawtrey Close had voted to a man and, to a man, they had voted for Mr Eshaq Khan.

198. Although by no means a sensational result, the evidence showed that this result was against the run of form and that the apparent swing to the Conservatives was surprising. There was nothing in the result itself, however, to raise a *prima facie* case of fraud and I

placed little reliance on the somewhat unusual nature of the result in determining whether or not it had been the result of electoral malpractice.

The Petition

199. On 24th May 2007 Ms Simmons presented her petition to set aside Mr Eshaq Khan's election. This very exiguous, not to say ambiguous, document was the subject of considerable legal argument at the opening of the trial. The court ruled that it was adequate to permit Ms Simmons to pursue the case that:

- (a) Mr Eshaq Khan's election had been procured by corrupt and/or illegal practices on the part of Mr Eshaq Khan himself and/or his agents; and/or
- (b) there was "general corruption" in the Ward designed to secure his election.

200. Indeed the entire trial had been prepared on the basis that those were the two issues raised and no prejudice was caused to Mr Eshaq Khan thereby.

201. It was made clear both by the Petition and by the evidence originally served in support of it that what Ms Simmons was alleging was that a large number of bogus names had been deliberately and fraudulently entered on the Register in the month or so preceding the election, that most of those names had been used to cast postal votes and that those votes had secured Mr Eshaq Khan's election.

Challenges to the Register

202. Immediately after the election, the Labour Party embarked on a campaign of challenging the new registrations. It is not necessary to go into detail about the technicalities of the process. Suffice it to say that the challenge is made to the ERO on the basis that the elector has been improperly entered in the Register. The ERO writes to the elector concerned inviting him to attend a hearing and/or to submit evidence to show that he was properly registered. The ERO then holds a hearing at which the objector makes the case for saying that the name should be removed and the person whose name on the Register has been challenged has the opportunity to make representations to the contrary. The ERO considers the representations and any evidence filed and decides whether to remove or retain the name.
203. It is important to note at this stage that removal of a name from the Register is not retrospective. It does not, by itself, affect the validity of the vote cast in that name at any election preceding the removal. Thus the challenges mounted by the Labour Party to the registrations could not themselves alter the result of the poll. At best, a large number of successful challenges would confirm their belief that significant numbers of false names had been entered on the Register. The only way in which the challenges to the Register could be translated into a challenge to Mr Eshaq Khan's election itself was by using the results of the challenges to the Register as evidence in the Petition.
204. At the stage of the challenges, of course, nobody had any means of knowing for whom the ghost voters had voted. It was not until the Scrutiny was carried out (after the

challenge process had substantially come to an end) that it was known in whose favour the questioned votes had been cast.

205. A second important point has to be made. Both the time and the resources available to the Labour challengers and to the beleaguered ERO, Mr Quayle, were not unlimited. The challengers naturally concentrated on the most blatant cases, but they could not and did not get round to challenging *all* the possible false registrations of March and April 2007.

206. A various times before and during the trial, the court was supplied with schedules, with considerable detail, showing the challenges and a large amount of court time was (perfectly properly) spent on justifying or attacking the results of those challenges. It was stressed, however, in particular by Councillor Swindlehurst, whose evidence I accept on this point, that the schedules cannot and do not provide an exhaustive list of all the ghost voters at the 2007 election. The court is entitled to treat the challenged registrations as of the highest significance in establishing or countering Ms Simmons's case but at the end of the day the court must regard them as representative rather than as definitive.

Mr Eshaq Khan's dilemma

207. At the end of May 2007, Mr Eshaq Khan faced an uncomfortable dilemma. He had been served with a Petition seeking to unseat him on the ground of electoral fraud arising from allegedly false voter registrations. He was aware that his Labour opponents were proposing to challenge a large number of the late registrations and to seek to persuade the ERO to remove those names from the Register.

208. At the same time Mr Eshaq Khan, his team and his advisors must have realised that no amount of forensic wizardry could explain away phenomena such as the nineteen Hawtrey Close ghost voters. Whether innocent or guilty of participation in vote-rigging, therefore, Mr Eshaq Khan faced the prospect that Ms Simmons was likely to be able to prove *some* roll-stuffing: the question was - how much ?
209. The choices facing him were, essentially twofold. First, he could play safe and adopt a strategy of denying any participation in electoral fraud by himself or his agents. With a modicum of good fortune for Mr Eshaq Khan, Ms Simmons might fail to establish wrongdoing by Mr Eshaq Khan or his agents - particularly as this would have to be proved to the criminal standard of proof - and she might thus be thrown back on a case based on general corruption under s 164 of the 1983 Act. Although proving general corruption itself might not be an insuperable obstacle, Ms Simmons might well fail to establish it to a sufficient degree as to make it likely that the corruption affected the result of the election, particularly as Mr Eshaq Khan's winning majority was a respectable 120 votes. If Ms Simmons failed to prove a likely effect on the result, the Petition would fail.
210. Thus, adopting an entirely defensive strategy might see Mr Eshaq Khan home. Indeed were Mr Eshaq Khan and his agents to be entirely innocent of any vote-rigging, they would, presumably, be as much in ignorance of which way the ghost voters had cast their votes as were Ms Simmons and her team. The Scrutiny might therefore turn out to be a damp squib with as many or more of the ghosts having voted against the Conservatives as

for them. This is by no means an unknown result in vote-rigging Petitions where a full Scrutiny effectively kills off any hope of a Petition succeeding²².

211. The second choice facing Mr Eshaq Khan was the strategy of boldness. This would involve meeting Ms Simmons's challenges to the Register head-on in an attempt to establish either that there had been no false registration at all or that, if there had been false registration, the numbers involved were so insignificant as to defeat the Petition.
212. This would undoubtedly be a high-risk strategy. If Mr Eshaq Khan and his team were in fact behind the registration of ghost voters, it would be high-risk almost to the point of being suicidal, as it would necessarily involve committing a large number of further frauds in order to conceal the first series of frauds.
213. Did Mr Eshaq Khan really have a choice ? Probably not, because the Conservative Party seems to have decided that it had to resist the Labour challenges to the Register in Central Ward because it could not be seen to be condoning, let alone causing, bogus registrations. Certainly Mr Dexter Smith told me that he had discussed the matter with Mr Eshaq Khan and his team²³ and had encouraged them to obtain evidence to put before Mr Quayle to counter the Labour Party challenges.

²² As was the case in the Bethnal Green South and Mile End Globe Town Petitions which were heard before me on 29th January 2007.

²³ Day 6 pp 112 ff.

214. Whatever the reason, Mr Eshaq Khan and his team did decide that they would contest the challenges as far as they could. It is clear from the evidence of Mr Smith that, whatever the involvement or lack of involvement of Mr Eshaq Khan and his team in dubious registrations before the election, it was Mr Eshaq Khan and his team who organised the opposition to the Labour challenges to the Register.

The progress of the challenges

215. A considerable amount of evidence was necessarily directed towards the progress of the challenges, a process which continued from June until December 2007. Mr Quayle's records of the hearings and the copies he kept of the evidence submitted were made available to the parties and were much analysed.

216. The results of the challenges were re-examined in the light of the Scrutiny when it was known for whom the challenged names had votes. The result was the schedule produced by Ms Simmons which appears in Bundle Sch B1.

217. As stated above, Councillor Swindlehurst told me and I accept that it was not practicable to challenge all the 449 late registrations and the Labour Party concentrated on what it considered the most obvious cases of false registration. Even on that basis, the Labour Party was able to mount 209 challenges to the Register. Of the 209, some 145 names were deleted by Mr Quayle. As will be seen, the fact that the remaining 64 were retained on the Register is no guarantee of their being genuinely on the Register. Mr Quayle very properly worked on the basis of giving those who resisted the challenges the benefit of

the doubt wherever possible and, in the initial stages, Mr Quayle undoubtedly (and properly) accepted as genuine documents which subsequent investigation have shown to be spurious.

218. Ms Simmons's team took the 145 deletions and subsequently married them to the list of those who had cast postal votes. The ultimate version of the schedule contained 115 names of ghost voters in a mere 31 properties. Of the 115 votes, all were postal votes and all but three were treated as valid votes for Mr Eshaq Khan. The other three were rejected because of a failure to get the personal identifiers on the ATV and the PVS to match up. In view of the totality of the evidence and the circumstances of those three votes, I have no hesitation in coming to the conclusion that the overwhelming probability is that they would have been votes for Mr Eshaq Khan.
219. An analysis of the properties themselves is instructive. Of the 31 properties, four each were in polling districts C and CA, three were in district CB, none in CC and no fewer than 20 in CD.
220. There were, however, a number of occasions where the person whose name was on the Register successfully fought off the Labour challenge. In several instances, these people turned out to be genuine voters who were properly on the Register who had no difficulty in proving by means of genuine documents (bank statements, utilities bills and the like) that they resided at the address in question.

221. Unfortunately for the team organising the resistance to the challenges, many of the attempts to resist removal from the Register did not relate to genuine electors and the team attempted to resist removal of these names by producing documents to Mr Quayle which were also not genuine.
222. At some stage, somebody in the Conservative team came up with the idea that the best way to prove residence at an address would be to produce a tenancy agreement granting a tenancy of the property to the challenged voter. Of course, if such tenancy agreements were authentic, this would be very cogent, not to say definitive, evidence of residence sufficient to support registration.
223. Bright ideas, alas, can be carried too far. One or two tenancy agreements would have persuaded Mr Quayle to retain the names of those to whom they related on the register. Sadly, however, the organising team went over the top. I suspect that the court may not have plumbed the depths of the tenancy agreement question but, at the last count, no fewer than ten tenancy agreements seem to have been produced to Mr Quayle.
224. The drawback was that these tenancy agreements were, to all intents and purposes, identical. They had quite obviously been produced from a single computer-generated template file and filled in with (some) of the relevant details. All were incomplete in certain respects (the same respects) and most displayed a strange inability to produce a consistent typeface for the details entered into the template. Most of the documents did not, on examination, even purport to show a tenancy granted by the owner of the

property. Most showed what would be, if the document itself were genuine, an attempt by an existing tenant to grant a sub-tenancy which that tenant had no power to grant.

225. Mr Quayle was, as he freely admits, taken in by the first few. Why shouldn't he be ? On their face they purported to validate the residence of the challenged voter. It was not Mr Quayle's job to conduct an in-depth investigation, even if he had the time and resources to do it. Names were thus retained on the Register in consequence.

226. As the sequence progressed Mr Quayle realised that he was being taken for a ride. He started to notice the fact that the documents did not purport to be tenancies granted by the true owner of the property and he ceased to accept them as evidence of registration.

227. I shall deal later with the attempts made by Mr Eshaq Khan's witnesses to justify some of these tenancy agreements. Suffice it to say at this stage that the evidence before me left me in no doubt whatsoever that the ten tenancy agreements (and any more produced to Mr Quayle in this identical form which did not form part of the documents in court) were forgeries, deliberately concocted for the purposes of deceiving Mr Quayle into rejecting the Labour challenges to the Register.

228. These forgeries were not random pieces of dishonesty by unconnected individuals. They were, on their face, the product of a concerted campaign to resist the challenges to the Register. Given the identity of those who were concerting the campaign to resist the

challenge, the inferences capable of being drawn by the court as to the respective merits of the parties to the Petition do not need to be spelled out.

Preparing for trial

229. The Scrutiny produced a mass of documentation which Ms Simmons submitted to a handwriting expert, Mr Hughes. I shall deal with his findings later.
230. The case for Ms Simmons was based partly on the schedule, partly on evidence as to the overall irregularities and probabilities of the election, partly on evidence of individual properties where ghost voters were registered and partly on the handwriting expert.
231. In preparing for trial, Mr Eshaq Khan was the prisoner of the strategy he had adopted at the outset. His evidence was thus directed to showing that a substantial number of the alleged ghost voters had been real people genuinely resident, however temporarily, at the addresses concerned.
232. To this end Mr Eshaq Khan and his team amassed a large number of documents which were on their face formal witness statements in the proper form with the appropriate "statement of truth" from people registered as voters, deposing to their having been resident at the relevant addresses at the time of registration. These statements were presented to the court very shortly before the commencement of the trial. The statements were not statements taken by a solicitor or by anyone from the firm of solicitors instructed to represent Mr Eshaq Khan. They were produced by Mr Eshaq Khan to his solicitors who did no more than photocopy them and put them in a grey lever-arch file ("the grey file").

233. There were also witness statements that *were* undoubtedly taken by Mr Eshaq Khan's solicitors and these, too, were lodged with the court.

234. From this it will be apparent that, at trial, Mr Eshaq Khan and those representing him were committed to a policy of attacking Ms Simmons's schedule and to showing that a substantial number of the ghosts had been flesh and blood voters.

The trial - evidence of generalities

235. Much of Ms Simmons's case turned on the unusual nature of the events preceding the election in Central Ward. The principal witnesses were Ms Simmons herself, Councillor Swindlehurst and Mr Safdar Ali for the Petitioner and Mr Eshaq Khan and Mr Smith for the Respondent.

236. The starting point was to examine the raw statistics. The late registrations in Central Ward were 449 (indeed the total for April was 497). This compared with 286 late registrations in the highest of the other wards in 2007 and with 251 for Central Ward itself in the equivalent period preceding the 2006 election.

237. Just under half (222) of the late registrations in Central Ward were in polling district CD.

238. The overwhelming majority of the 449 names were Asian names.

239. No fewer than 324 of the 449 late registrations obtained postal votes - 72%. This compared with the overall average for the Ward of 21% of voters obtaining postal votes. All but one of the 324 actually voted by post - again a very unusual phenomenon. The 323 returned postal ballots showed 229 votes for Mr Eshaq Khan - as it happens, almost double his eventual majority. In the CD district, the 222 late registrations produced 176 postal votes - a proportion of 79% - of which 147 (83.5%) voted Conservative, again more than Mr Eshaq Khan's majority of 120.
240. The overall electorate of the Ward appeared to show a net increase of some 400 over the 2006 figures from roughly 6,800 to 7,200.
241. Could the sudden increase in the registered population of Central Ward be accounted for by other means ? Ms Simmons said not. Councillor Swindlehurst told me, and I accept, that, while all the parties do their best to whip up registration of voters in the weeks preceding an election, they tend to be scraping the bottom of the barrel and are lucky if they can find 50 or 100 people in an entire Ward who are unregistered and are prepared to be signed up. 449 was, in his view, well beyond anything that was credible in a canvass of genuine residents.
242. Mr Eshaq Khan argued, supported by Mr Smith, that the increase could be properly accounted for by the overall demographics of Slough.

243. Evidence was adduced by both sides to show that the population of Slough is rising and that Slough attracts workers because of its employment opportunities. It is clear that this does lead to over-occupation of premises and the court was shown the transcript of a television report and newspaper clippings to show that overcrowding was rife in Slough and indeed that garden sheds had been pressed into service to accommodate the influx of workers.
244. There were two objections, however, to taking this evidence very far. The first was that the preponderance of the evidence showed that the overwhelming majority of the incomers were from eastern Europe, particularly Poland, and were not indigenous British Asians from other parts of the UK or even from other parts of Slough. Thus the influx might have produced an increase in the electoral Register but it would not be an increase involving many Asians.
245. Secondly there was nothing to account for the sudden dramatic increase in the population of Central Ward in the four weeks preceding the election. The Slough Trading Estate may be an attraction but, as far as could be ascertained, it did not become in April 2007 a Berkshire Klondike.
246. The evidence, therefore, did not support an explanation for the sudden upsurge in the voting population of Central Ward (still less the upsurge in district CD of that Ward) in the spring of 2007 consistent with the prevailing demographics of Slough. There was no cogent reason why hundreds of Asians should suddenly have moved into the Ward,

particularly as the results of the challenges tended to show that they had as abruptly moved out of the Ward shortly after the election was over.

247. I had no hesitation in coming to the conclusion that the statistics relating to Central Ward produced by Ms Simmons and her team were consistent with a massive campaign of roll-stuffing in that Ward and could not plausibly be explained away by demographic means.

Proving and disproving the ghost voters

248. To a large extent, the schedule of challenges told its own story. True, it did not show a total of Conservative voters removed from the Register during the challenges which would be sufficient to achieve the magic figure of 120, being Mr Eshaq Khan's winning majority but, unless seriously undermined by Mr Eshaq Khan, it did show false votes at or over the 100 vote level. On the face of it, therefore, Ms Simmons was well on the way to establishing at least general corruption if not corrupt or illegal practices by Mr Eshaq Khan or his agents.
249. Both sides concentrated on a number of properties, Ms Simmons seeking to show that ghost voters had been registered at the property while not being resident there and Mr Eshaq Khan seeking to show that impugned voters had been real people actually resident at the relevant addresses.

250. I do not propose to rehearse the evidence of the witnesses as to all the properties concerned in what is already a very long judgment. I shall concentrate on the principal properties relied on by the parties.

Hawtrey Close

251. It seems appropriate to start with 4-10 Hawtrey Close. The owner of those four properties, Mr Mohammed Azam, a prosperous local businessman who runs a dairy, told me that 6 and 8-10 were derelict and boarded up pending redevelopment of the site. Indeed 8-10 had been derelict for five or six years. There was a Polish family in No. 4 in 2007 but that was all. No Asians and certainly not nineteen Asians.
252. Mr Price cross-examined Mr Azam on the basis of a draft witness statement from Mr Azam's rent collector to the effect that he had had problems with squatters and break-ins over the 2006/7 period but he wisely stopped short of taxing the court's credulity by suggesting that nineteen Asians had broken into the properties for the purposes of registering as voters and exercising postal votes for Mr Eshaq Khan and had then silently stolen away.
253. At the end of the day, the only sane conclusion that could be reached was that there had been no Asians living in 4-10 Hawtrey Close. All the nineteen registrations had been bogus and all the nineteen postal votes for Mr Eshaq Khan had been bogus.

43 and 41 Richmond Crescent

254. In the three weeks before the 18th April 2007 cut-off date, six people with Asian names were newly registered to vote at 43 Richmond Crescent and a further seven Asian names at No. 41. 43 Richmond Crescent is owned by Mr (Gul) Zahia Khan, one of the "three Khan brothers" mentioned above.

255. In respect of No. 43, Ms Simmons called Ms Edyta Jankowska, a Polish lady who had lived in the house since September 2006. Her evidence was that the entire house was occupied by her Polish family and their Polish friends. None of the six Asian people added to the Register had ever lived in the house. She told the court that the man who collected the rent, known to her as "Raj" collected mail which arrived at the premises addressed to "Khan".
256. Ms Jankowska's evidence represented something of a crunch point in this case. The alternatives were stark. There was no possibility of mistake: six adult Asian people cannot have moved into her small terraced house without her noticing. Either Ms Jankowska was telling the truth or she was telling lies.
257. When Mr Price cross-examined Ms Jankowska, therefore, his task was unenviable. He knew and I knew that in the grey file were three statements served by his client purporting to be formal witness statements by three of the challenged voters at 43 Richmond Terrace and, for good measure, a further four statements purporting to be from challenged voters at 41 next door. All these statements stated that the makers of the statements had in fact been living at the Richmond Crescent properties.
258. Unkindly but necessarily, I put Mr Price on the spot²⁴. I pressed him to say whether he proposed, in essence, to give Ms Jankowska the lie direct and put it to her in terms that

²⁴

Day 3 pp 64 ff.

the six Asians *had* been living at the property in April 2007. Though Mr Price fenced my requests with great skill, at the end of the day he could not bring himself to suggest to Ms Jankowska that she was lying. In this he was absolutely right, and his decision is what one would have expected from the consummate professionalism with which he conducted Mr Eshaq Khan's case. Ms Jankowska was patently an honest and reliable witness and any attempt to suggest otherwise would have been foolish.

259. Her next-door neighbour, Ms Skora Bozena, told the court that she had lived at No. 41 since 2004. She too was adamant that there were only Poles living in the house. No Asians had moved in during March/April 2007. She stated that mail did arrive for people with non-Polish names which was collected by the man who collects the rent for her landlord, a Mr Khan. In April 2007 a lot of brown envelopes arrived for the non-resident names and when the rent-collector took them away he said they were election letters.
260. Wisely, Mr Price did not challenge Ms Bozena either.
261. One might have thought that was the end of 43 and 41 Richmond Crescent but it was not, because Mr Eshaq Khan called a witness who sought to re-establish the Asian ghost voters. Mr Mahboob Khan (one of Mr Eshaq Khan's team) gave evidence to the effect that all thirteen of the disputed voters were actually living at those premises and that Ms Jankowska and Ms Bozena had been lying in their teeth. When asked by me what possible motive these ladies might have to perjure themselves, he was unable to suggest any reason and delivered himself of a deplorable piece of racism, suggesting that it was

well known that Poles were "easily manipulated" and would, in effect, do anything for the promise of a job or a house.

262. Having seen the two Polish ladies and Mr Mahboob Khan give evidence, there can be no real doubt which of them told lies. I accept the (largely unchallenged) evidence of Ms Jankowska and Ms Bozena. The evidence of Mr Mahboob Khan as to 43 and 41 Richmond Terrace, on the other hand, was a pack of lies from start to finish. Mr Eshaq Khan's insistence on calling Mr Mahboob Khan to give this evidence is hard to fathom but it did him no favours.

17 Diamond Road

263. Eight Asian names were added to the Register on the last date for registration. The only name lawfully on the Register was that of Ms Surjit Kaur, which was not one of these late registrations. Mr Azar Javed told the court that this was his property and that he had emptied the property in the spring of 2007 in order to carry out extensive building works. New residents (not the registered names) had moved into the house when the refurbishment was complete some time in May 2007 after the election. None of the disputed voters had been resident at 17 Diamond Road at all.
264. Though tested in cross-examination, this evidence was not seriously challenged and no contrary evidence was adduced.

265. There were thus eight ghost voters at 17 Diamond Road, seven voted Conservative and the eighth was one of those who failed to get his personal identifiers to tally. It is a pretty fair bet that this too was a vote for Mr Eshaq Khan.

13 Princes Street

266. Ms Aziza Raza gave evidence that she and her husband Mr Mohammad Ali Raza have lived at this address with their three children since June 2006. She had no knowledge of the four Asian adults alleged to have moved into the property early in 2007 and who had registered to vote just before the April deadline.

267. The team defending the challenges to the Register had made a real effort with 13 Princes Street. They had provided Mr Quayle with what purported to be a statement from Mr Mohammad Raza describing in detail how the four disputed names related to family members who had come to live at the property in December 2006, moving out in June 2007, and how he had given them a tenancy agreement. They also provided Mr Quayle with one of the famous tenancy agreements purporting to grant this tenancy. Mrs Raza, however, had no hesitation in denouncing these documents as forgeries and stating that the purported signature of her husband on both documents was false.

268. Mrs Raza's evidence was clearly credible and was accepted. What she proved, therefore, was not simply that the four ghost voters had not been residing at 13 Princes Street but that Mr Eshaq Khan's team had resorted to forgery in their attempt to persuade Mr Quayle to keep these four names on the Register.

47 Diamond Road

269. This property was owned by Ms Nighat Khan who lived in two rooms with her children. Her evidence was somewhat confused. Her witness statement deposed to the fact that five Asian names registered at that address had not been resident at the time but in court she was much more hesitant. What is significant about her evidence is that on Day 3 a typed letter arrived at court claiming to be from Nighat Khan seeking to retract her witness statement and stating that she was too ill to attend court. I indicated that a witness summons should be served and she appeared on Day 4.
270. In court she said that an Asian man, speaking Urdu and claiming to be a lawyer, had come to her house with this letter already typed and had told her that if she signed it she would not have to come to court. She had not, of course, really been ill nor did she wish to retract her evidence, but she says she was persuaded that signing the letter might get her out of attending court, which she was dreading. This evidence had the ring of truth and the question arose: who would want to "noble" this witness ? Clearly not Ms Simmons, whose witness she was. The only inference that can be drawn is that it was someone acting on behalf of Mr Eshaq Khan. The "lawyer" was not, I accepted, anyone from Messrs Penningtons (Mr Eshaq Khan's solicitors), still less Mr Price, and it is impossible to speculate who he was, or even whether he was a lawyer at all. None the less this episode cannot be said to have assisted Mr Eshaq Khan greatly.

271. Interestingly, Ms Nighat Khan was another victim of the duplicated tenancy scam in that a purported tenancy document (in the standard form) in favour of the disputed names had been produced to Mr Quayle to justify retention of the names on the Register. Although this was not put to the lady, other evidence adduced in the case makes it clear that this too was a forgery.

3 Charlotte Avenue and the Walthamstow Six

272. As anyone who has read the Birmingham Judgment will recognize, attempts to justify electoral malpractice have a tendency to descend into the surreal. The high point of surrealism in Slough concerned 3 Charlotte Avenue.
273. 3 Charlotte Avenue is a flat with two bedrooms and one reception room, owned by a Housing Association. In it live Ms Rafeez Perveen, her husband Mohammed Zahid and their five children. In April 2007, however, six further Asian names were registered at the property, all of whom obtained postal votes and voted for Mr Eshaq Khan.
274. Ms Perveen told me that none of these people had come to live in her small flat and agreed with the proposition that if six further adults had moved in, she would have been sure to notice.
275. Ms Perveen was not cross-examined.
276. None the less, as part of his case, Mr Eshaq Khan called Mohammed Basharat Khan. This gentleman gave evidence about a number of other properties but he also gave evidence about 3 Charlotte Close.
277. What he said was that his brother Gulzeb Khan, Gulzeb's wife Naseen Khan, daughters Iram Gul Khan and Uzma Khan, son Habib Khan and nephew Adeel Abbas had been living at an address in Walthamstow in east London. In April 2007, however, the whim

came upon them that Slough was the place to live. So they decamped, bag and baggage, to Slough where, on the strength of some (unspecified) family relationship they contacted Ms Perveen and her husband. Ms Perveen and her husband were, of course, only too delighted to accommodate Gulzeb Khan and his extended family and they came to an arrangement whereby the Walthamstow Six moved into the two-bedroomed flat at 3 Charlotte Close. Ms Perveen, her husband and their five children, he claimed, obligingly agreed that they would all go to her father's house to sleep at nights but otherwise the family continued to occupy the flat.

278. Consequently, according to Mohammed Basharat Khan, during the following weeks, no fewer than thirteen people (the original seven and the Walthamstow Six) were living happily cheek-by-jowl in this small flat. The sudden move to Slough seems to have affected nobody's work patterns because I was told that the only one of the Six apparently working was a driver with a base somewhere in London to which he was happy to commute.

279. Sadly, it appeared, Slough proved not to be the El Dorado that these visitors had hoped and, shortly (though of course coincidentally) after the May election, the Six decamped, bag and baggage, back to their original home in Walthamstow, glad, no doubt, of having had an opportunity to vote, there having been no elections in Walthamstow in 2007.

280. This farrago of nonsense was delivered with an entirely straight face. One did not know which to admire more - the insouciance with which this absurd cock-and-bull story was

narrated to the court or the contempt for the court's intelligence in supposing for an instant that any court would fall for it.

281. Calling Mohammed Basharat Khan to give evidence, which he must have known was going to be perjured, was a poor move for Mr Eshaq Khan. In fact, as it turned out, 3 Charlotte Close was the least of this witness's difficulties.

282. It is necessary to state at this stage that I considered Mohammed Basharat Khan to be a thoroughly dishonest witness whose evidence I rejected.

283. In my judgment, the Walthamstow Six never left Walthamstow but either lent their names and signatures to this fraud or were unknowingly used by their relative to obtain six false votes for Mr Eshaq Khan. In view of the fact that the grey file contained statements purporting to come from these people, the obvious inference is that they were parties to the fraud.

Double registrations

284. The industry of Ms Simmons's team unearthed a number of instances where alleged ghost voters in Central Ward were real people actually resident in the adjacent Wexham Lea Ward. One of those was Mohammed Basharat Khan himself who had simultaneously been registered with his wife and sister-in-law at 43 Diamond Road in Central Ward and at 57 Mirador Crescent in Wexham Lea Ward. In evidence Mr Khan was undaunted. His story was that his home was at Mirador Crescent but he had had to move out in April

2007 because the property was being renovated and was thus empty. He had moved into Diamond Road and registered to vote. The moment Mirador Crescent was available - after the election - he moved back.

285. In fact Mirador Crescent was not empty for renovation. In April 2007 four voters were registered at that address in forms which (to jump ahead slightly) the handwriting expert identified as having been completed by Mohammed Basharat Khan.
286. Sadly, Mohammed Basharat Khan and his family had not received their postal voting packages at 43 Diamond Road. They had all gone astray so he and his wife and sister-in-law had been obliged to go to the Town Hall to obtain duplicates to cast their votes. Mohammed Basharat Khan indignantly rejected the obvious suggestion from Mr Millar²⁵ that the reason why the family had not received their voting packages was that they had not been living at Diamond Road at the time and had failed to make arrangements to collect their packages from that address.
287. Once again, I disbelieved Mohammed Basharat Khan. He had not been resident at 43 Diamond Road and he and his family should not have cast any votes in Central Ward.
288. The one part of Mohammed Basharat Khan's evidence I did accept was his admission that he had been part of Mr Eshaq Khan's election team, albeit (he claimed) in a very minor capacity. For reasons which will become clearer when we consider the handwriting

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Day 8 pp 20 ff.

evidence, he was altogether too modest in his assertions. He was, in fact, a prime mover, playing a major part in the false registration of voters.

Other properties

289. The flavour of the evidence related so far - hard evidence of bogus registration adduced by Ms Simmons and untruthful or unreliable contrary evidence adduced by Mr Eshaq Khan - was maintained for other properties. Only a few further instances need be mentioned.
290. Four witnesses called for Mr Eshaq Khan attempted to justify copies of the notorious duplicated tenancy agreement. Perhaps the most endearing was Mr Haqnawaz Khan who attempted to convince the court that the document - purporting to show a tenancy of 73 Wellesley Road to one Muhammad Shahid - had been produced by his 14 year old daughter on her computer. To account for its similarity to the other nine tenancy agreements, this witness said he had obtained the form from Sumander Khan²⁶. When the court asked him whether his daughter had scanned the document into her computer (somewhat mischievously it has to be confessed, as the document is patently not a scanned document), he grabbed this apparent lifebelt and asserted that indeed that is precisely what this talented teenager had done. When it was pointed out to him that the document mis-spells "Wellesley" on more than one occasion - well, one knows how careless the young can be. The fact that other documents purporting to come from Mr Shahid contained an entirely different spelling of "Muhammad" as "Mohammed" was

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See para 174 above.

explained away as exemplifying the myriad versions of the Prophet's name. I did not believe a word of it. In my judgment the four names on the schedule for this address plus the elusive Muhammad (or Mohammed) Shahid - all of them postal voters for Mr Eshaq Khan - were false.

291. Richmond Crescent proved richer in ghosts than the Tower of London. No fewer than 38 ghost voters are listed in the schedule as occupying (or possibly haunting) numbers 4, 6, 19, 31, 37, 38, 41, 43, 50 and 66 Richmond Crescent. Its nearest rivals are Hawtrey Close (19 false voters) and Diamond Road (16 - 8 of them at 17 Diamond Road alone).
292. I have already dealt with the ghosts forensically exorcised from 43 and 41 by Ms Jankowska and Ms Bozena. 37 Richmond Crescent is owned by Mr Gulnawaz Khan, another witness called for Mr Eshaq Khan. Four voters were registered at that property in the last two weeks of registration. Mr Gulnawaz Khan is also privileged to have a talented daughter, though in this case possibly of somewhat riper years than the daughter of Mr Haqnawaz Khan. For, once again, I was told that it was the witness's daughter who had produced the (by now familiar) tenancy agreement which, in this instance, purported to show a tenancy granted to what Mr Gulnawaz Khan claimed were a group of relatives over from Kashmir, led by one Ahmed Iqbal. These relatives were said to have occupied the two rooms normally occupied by the witness's son while the son was away on holiday. How these relatives met the requirement of eligibility to vote remained somewhat of a mystery. Unsurprisingly, once the election was over, these ghosts had flitted back to their native Kashmir. Equally unsurprisingly, my disbelief was not suspended.

293. Mr Rashid Mahmood, a signatory of Mr Eshaq Khan's nomination form, sought to verify a tenancy agreement of 68 Wellesley Road showing a tenancy granted to a Ms Shazia Khan. This story was not helped by the fact that this lady appeared to have moved just after the election to 49 Maple Crescent in Wexham Lea Ward - an address at which there were double registrations in the names of Zafreen Ahmed and Shafreen Khan (both simultaneously registered at 45 Wellesley Road). I came to the conclusion that Shazia Khan was probably a real person, resident in Wexham Lea, who had allowed her name to be used for a fraudulent registration in Central Ward. The tenancy agreement (unexplained whether by daughters or otherwise) was one of the familiar forgeries.
294. Another signatory of the nomination form, who admitted actively campaigning for Mr Eshaq Khan, was Mr Altaf Khan. (Pausing there, in the course of the election one Altaf Khan had been arrested by the police for attempted personation at a polling station. It was common ground between the parties that the man arrested was a different Altaf Khan from the one giving evidence.) This Altaf Khan's evidence was very muddled. He was obliged to admit that 5 Colonial Road, which was owned by his uncle Karam Khan, was an address where one Raja A Khan had been double-registered with an address in Wexham Lea and the explanation that Raja A Khan was a relative over on holiday from Pakistan did not seem adequately to account for his electoral bi-location or his eligibility to vote. The witness was also strangely vague as to why someone called Yasir Khan should have been granting a tenancy (standard form, of course) of his uncle's property in Colonial Road to one Raja Afzal Khan.

295. 5 Colonial Road does not appear on the schedule because Mr Quayle had been deceived by the tenancy agreement into retaining the apparent tenants on the Register, but it is now clear that of the eight names registered at that property, seven of whom registered postal votes in favour of Mr Eshaq Khan, most, if not all were bogus. Oddly enough, the one registered voter at 5 Colonial Road not to vote at all was Mr Karam Khan who, as the owner, would have been fully entitled to do so.
296. Mr Altaf Khan himself owns 47 Wellesley Road and his brother owns No. 45 next door. When asked about Zafreen Ahmed and Shafreen Khan (of 49 Maple Crescent - see above) who were registered as living in this next-door house in April 2007, he appeared unable to recall them.
297. I did not find this gentleman a satisfactory witness.
298. Finally in this series there was 186 Stoke Road owned by Mr Eshaq Khan's brother. Mr Eshaq Khan's niece, Ms Raqzeen Khan, gave evidence to say that she and her husband Zulfiqar Khan had been living in Stoke Road, having moved from 82 The Cherries (in Wexham Lea Ward) shortly before the election. She was clearly determined to do her best for her uncle but it was not a very good best. She could not account for obvious errors in the electoral documents of herself and her husband, she appeared to have little understanding or recollection of how postal voting works and she even questioned the signature on her husband's PVS. This, combined with the fact that a number of the

relevant documents bore one of the questioned groups of handwriting, rendered her evidence completely unreliable. The kindest thing to say about this young lady is that her natural and understandable family loyalty may have taken precedence over strict veracity.

299. Even apart from the spurious tenancy agreements, there were other documents produced to Mr Quayle which completed the picture of a concerted attempt to deceive him into retaining names on the Register. By way of example only, he was sent two letters purporting to confirm the residence of ghost voters at 7 India Road and 12 Richmond Crescent. Unfortunately, those apparently unconnected letters were in the same handwriting - a handwriting later identified by Mr Hughes as being in the main group (Group A) of questioned handwriting. These were patent forgeries. As stated above, Ms Aziza Raza confirmed that a letter purporting to come from her husband to confirm ghost voters at 13 Princes Street was a forgery.

300. I have quite deliberately not touched on every property as to which evidence was given. In particular I have dealt fairly lightly with the properties where false registrations were the subject of evidence called by Ms Simmons. For the most part their evidence was either unchallenged or unshaken by cross-examination and I accepted it as reliable.

Why Wexham Lea ?

301. It seemed strange that so many people who were resident in Wexham Lea Ward were prepared to lend their names to voter fraud in Central Ward. This might have remained a mystery but for a chance question in cross-examination by Mr Price which revealed that

in 2007 there had been no Conservative candidate in Wexham Lea. No doubt it was thought that it would be a pity to have so many prime Conservative votes going to waste in Wexham Lea when with a modest amount of form filling these voters could perform what might be called a "virtual migration" across the Ward boundary and be registered in Central.

The Grey File

302. I return to the grey file of witness statements produced by Mr Eshaq Khan at the beginning of the trial. This file contained some 46 statements in a standard form. All purported to be made by voters registered in Central Ward whose registration was challenged by Ms Simmons. They were all in the correct form for a witness statement and were verified by a statement of truth. Many purported to support their evidence by producing documents such as passports, utilities bills, bank statements and the like.
303. These witnesses were not called to give evidence and Mr Price wisely did not seek to adduce any of these statements as evidence or to rely on their contents.
304. The fact remains, however, that Mr Eshaq Khan and his team got 46 formal statements signed and lodged with the court.
305. The overwhelming majority of these statements were, in my judgment, entirely fraudulent. Even if they were made by the people in whose names they appear, those people were induced by Mr Eshaq Khan and his team to make those statements with, in

each case, both the person making the statement and the person taking the statement being well aware that its contents were untrue.

306. As with the campaign to oppose the Labour challenges to the Register, neither Mr Eshaq Khan nor his immediate entourage can affect ignorance of the falsity of the statements in the grey file. Those statements were not taken by Messrs Penningtons; they were obtained by Mr Eshaq Khan and his agents.

307. The making and the production of those statements to the court are not matters this court can overlook. They represent a deliberate and concerted attempt to deceive the court by knowingly presenting false evidence. In short, an attempt to pervert the course of justice. Furthermore, that this should have been attempted in a courtroom where the Director of Public Prosecutions had a representative present throughout the trial is a measure of the desperation of the defence offered to this Petition.

The handwriting evidence

308. The final strand of the evidence was the handwriting evidence of Mr Hughes. Mr Hughes was not jointly instructed by the parties; he was instructed by Ms Simmons's solicitors alone. Mr Eshaq Khan did not instruct a handwriting expert. That said, however, Mr Hughes's evidence was not seriously challenged by Mr Price.

309. Mr Hughes examined the electoral documents, in particular the applications for a postal vote (ATV), the personal voter statements (PVS) and, in some cases, the application for

inclusion on the register (AFR). He also examined a number of other documents, including documents produced to Mr Quayle during the challenge process.

310. Mr Hughes discovered that a large number of documents could be grouped into a series of groups within which all the documents contained handwriting identifiable as being by the same person. These groups, originally four labelled A to D and later five with the addition of Group E, were analysed by him in his reports.

311. Now it has to be said that it is perfectly permissible for canvassers to fill in the formal parts of AFR and ATV. It is even lawful for a canvasser to fill in the formal parts of a PVS. Provided that the canvasser does not add the signature of the voter, no law is actually broken. Whether it is sensible to permit all this is another question and one on which the court (and the Council of Europe) may take a different view from that of Parliament, but that is the legal position.

312. It is also true to say that voters who may be poorly literate or have a limited command of English might welcome help from canvassers in completing forms. Thus the fact that a large number of forms have had their formal parts completed by the same hand is not *by itself* suspicious.

313. If however it can be shown that the hand completing the forms has completed a considerable number of forms which can be demonstrated to be fraudulent, that is another matter entirely. And that is what happened in Slough.

314. By far the largest group was Group A. This handwriting appeared on some 198 documents. Some of those documents unquestionably related to false registrations (e.g. Hawtrey Close, 17, 43 and 47 Diamond Road).
315. Whoever was the author of Group A was clearly both a major player in Mr Eshaq Khan's electoral team and a serial forger. Mr Hughes's evidence was admirably clear on this group. The undoubted author of Group A was Mohammed Basharat Khan.
316. Group B was also significant, with 79 documents. In cross-examination Mr Eshaq Khan himself admitted that some of the Group B documents were in his handwriting. His evidence on this was that he was based at headquarters. Canvassers in the field would discover people anxious to apply to be registered as voters and to apply for postal votes but would find themselves out of the necessary forms. The canvassers would telephone Mr Eshaq Khan with the details and ask him to complete the forms, whereupon canvassers would then make a second visit to the properties to obtain the relevant signatures.
317. Thus, when his handwriting appeared on documents which related to false registrations, this was entirely the fault of the canvassers who had fed him incorrect information which he, back at base so to speak, had accepted at face value and entered in the form.

318. In the light of Mr Hughes's evidence and Mr Eshaq Khan's (partial) admissions, the court must find that Mr Eshaq Khan was indeed the author of the Group B documents.
319. The Group B documents encompass a number of proved false registrations and in some instances Group B handwriting appears on the same document as Group A handwriting.
320. Having seen Mr Eshaq Khan in the witness box and having viewed the totality of the evidence, I am sorry to say that I did not believe his story that his sole involvement was completing forms at headquarters from information sent in from the field. On any showing Mr Eshaq Khan's was not a very large team to work this Ward and the rôles of the members of the team seem to have been fairly interchangeable. It therefore seems clear that Mr Eshaq Khan himself was actively engaged in the process of registration and, it must be said, false registration of voters.
321. I do not reach this conclusion lightly, bearing in mind Mr Eshaq Khan's hitherto excellent character and good works in the community, but it seems to be inevitable. His authorship of Group B documents, his involvement in the attempts to deceive Mr Quayle and his production of the grey file indicate a pattern of initial dishonesty in his anxiety to be elected, followed by ever more desperate dishonesty in his attempts to cover up his original frauds.

322. The identity of the authors of Group C (49 documents), Group D (45 documents) and Group E (the rest of the Hawtrey Close documents) was not established. It would be perverse to suppose, however, that they were not members of Mr Eshaq Khan's team.
323. Mr Hughes also identified 25 instances where the signatures on the PVS did not match those on one or more of the other corresponding electoral documents. All these instances were instances of postal votes being cast for Mr Eshaq Khan.

Was personation involved ?

324. Where the false name on the register was that of a fictitious person, then
- (a) causing that name to be put on the register would involve a corrupt practice under s 62A;
 - (b) applying for a postal vote in that name would also involve a corrupt practice under s 62A;
 - (c) using that vote in an election would be personation contrary to s 60 and thus a corrupt practice.
325. The question was raised whether personation would be involved if the name entered in the Register was that of a real person who actually lived elsewhere. Clearly causing the name to be entered in the Register and applying for a postal vote would involve corrupt practices under s 62A but would it be personation if the vote were actually cast ?
326. I was told by both counsel that the question had never been decided, though both counsel agreed that it would be absurd if the practice were not personation.
327. In my judgment, using the name of a real person to register a name on the Register when that person is not qualified by residence (or for some other reason) to vote in that constituency or ward and then using that name to cast a vote is as much personation as using the name of a fictitious person. If the real person consents (*a fortiori* if he actually completes the offending documents), he is himself guilty of personation and those who induce him to commit that fraud are likewise guilty. Obviously, if the name of the real

person has not been used with his knowledge or consent then that name is, to all intents and purposes, a fictitious name properly so called and thus expressly within s 60.

328. Thus I find that, to the extent that the names of real persons not resident in Central Ward were falsely registered at addresses in Central Ward and those names subsequently used to obtain and cast postal votes, then whether or not those persons consented to or participated in the process, the offences of personation and false information were committed.

"Reasonably supposed to have affected the result"

329. General corruption being abundantly proved - indeed it was not very hotly contested - I have to consider whether such corruption may reasonably be supposed to have affected the result.

330. Mr Price's final submissions were very much directed towards showing that, if sufficient inroads could be made into Ms Simmons's schedule of 112 contested votes, it would be possible to say that the court could not be satisfied that the corruption may have affected the result. Despite the lucid and attractive way in which Mr Price argued this point, he came up against a number of obstacles:

- (a) his client's witnesses having proved a pitifully inept bunch of liars, the inroads into the schedule were few and far between;

- (b) the evidence showed quite clearly that there was a significant number of false registrations which did not appear on the schedule because Mr Quayle had been deceived into leaving the names on the Register;
- (c) the schedule itself was not the full picture: it was only representative of the full picture.

331. In any event, given the substantial efforts made by Mr Eshaq Khan and his team to rig this election, there is a certain irony in his counsel having to argue that, despite all their efforts, they did *not* affect the election as Mr Eshaq Khan would have won anyway.

332. Although it is impossible to make any accurate estimate, it seems likely that the lion's share of the 229 postal ballots cast for Mr Eshaq Khan resulting from the late registrations were the product of this general corruption, certainly more than the 120 of his majority.

333. In my judgment the evidence in this case is such as to make inevitable a decision that the general corruption involved in the Central Ward must reasonably be supposed to have affected the result.

Mr Price

334. Before setting out my conclusions, I feel it appropriate to express my sympathy for Mr Price and my admiration for the way in which he conducted his case. This is not to belittle Mr Millar, whose performance was, as always, masterly, but Mr Price found

himself in a most unenviable position. Finding oneself with a client who is not only dishonest but has organised a wholly fraudulent case based on widespread perjury may well be commonplace for a practitioner at the Old Bailey, but for a specialist civil practitioner such as Mr Price the experience must have been both alarming and embarrassing.

335. The skill displayed by Mr Price was remarkable. He never once endorsed the wilder bogus claims he was instructed to put forward and did his best, by testing the case against his client and by invoking the standard of proof, to secure what would have amounted to a Scottish verdict of "not proven". This was a highly professional performance in the best traditions of the Bar.

336. Similarly, his solicitors, Messrs Penningtons, whose integrity like that of Mr Price is above question, behaved with the utmost propriety throughout.

Conclusions

337. Applying, therefore, as I must, the criminal standard of proof, I am satisfied and certify that in the election for the Central Ward of Slough held on 3rd May 2007:

- (a) the Respondent Mr Eshaq Khan both by himself and by his agents was guilty of the corrupt practice of personation contrary to s 60 of the 1983 Act;
- (b) the Respondent Mr Eshaq Khan both by himself and by his agents was guilty of corrupt practices contrary to
 - (i) s 62A(2)(a)

(ii) s 62A(2)(b)

(iii) s 62A(2)(d)

of the 1983 Act;

(c) the Respondent Mr Eshaq Khan both by himself and by his agents was guilty of illegal practices contrary to

(i) s 13D(1) of the 1983 Act

(ii) s 61(1)(a) of the 1983 Act

(iii) s 65(1) of the 1983 Act

(iv) Sch 4 para 8 of the 2000 Act.

338. I am also satisfied to the same standard of proof and certify that in the election for the Central Ward of Slough held on 3rd May 2007:

(a) there were corrupt and illegal practices for the purpose of promoting or procuring the election of the Respondent Mr Eshaq Khan at that election and

(b) those corrupt or illegal practices so extensively prevailed that they may reasonably be supposed to have affected the result of such election.

339. Consequently I declare the election of Mr Eshaq Khan as councillor for the Central Ward of Slough to have been avoided by such corrupt or illegal practices pursuant to s 159(1) of the 1983 Act and also to have been avoided on the ground of general corruption pursuant to s 164(1)(a) of the 1983 Act.

340. It is declared that Mr Eshaq Khan shall be incapable of being elected to fill the vacancy for the Central Ward of Slough under s 164(1)(b) of the said Act.
341. As I am required to consider the matter under s 145(3) of the 1983 Act, I find that there is no reason to believe that corrupt practices have extensively prevailed at the election of 3rd May 2007 in any other part of the area of Slough Borough Council.
342. My conclusions will be embodied in the certificate of the court and will be the subject of my report to the High Court under sections 145, 158 and 160 of the 1983 Act.

Afterword

343. In the afterword to the Birmingham Judgment I said:
- In this judgment I have set out at length what has clearly been shown to be the weakness of the current law relating to postal votes.*
344. Despite the marginal changes brought about by the 2006 Act, that fundamental weakness remains. Great Britain's system of voter registration may well have been a quaint but harmless anomaly while personal voting was the norm but the introduction of postal voting on demand has made it lethal to the democratic process.
345. I have been appalled in this case by the ease with which these substantial frauds were committed. The only reasons they came to light at all were the incompetence of the fraudsters and the blatant nature of the frauds. If Mr Eshaq Khan and his team had been able to resist the temptation of Hawtrey Close and, to a lesser extent, 3 Charlotte Avenue

and the Polish ladies of Richmond Crescent, Mr Eshaq Khan might well have been safe in his council seat.

346. There is no reason to suppose that this is an isolated incident. Roll-stuffing is childishly simple to commit and very difficult to detect. To ignore the probability that it is widespread, particularly in local elections, is a policy that even an ostrich would despise.
347. What makes it so sad is that the whole concept of postal voting on demand is based on a demonstrably false premise. The rationale is that the decline in voting figures is due to the difficulty and inconvenience of personal voting. One can well see that, for professional politicians, the alternative rationale, namely that voters are disillusioned with politics and politicians and indifferent to their activities, is unthinkable.
348. But ease of voting has nothing to do with it. At about the time Mr Eshaq Khan was being elected to Slough Council, France was electing a new President. Historically the turnout for national elections in France is much the same as in the United Kingdom, the United States of America and the other developed democracies - a percentage in the low sixties.
349. In the spring of 2007, however, the electors of France got interested in their Presidential election with its twelve candidates ranging from the mainstream to the wildly eccentric. In the election almost 85% of the electorate voted. And this was in a country which has *personal* registration of electors²⁷ and *personal* voting, with no postal votes²⁸. The

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Normally by presenting oneself at the local Mairie (town hall) with an identity card or other

difficulties of voting in person at the Town Hall seem not to have deterred these voters. Six weeks later, in the elections for the National Assembly, the percentages were back at the Western democratic norm of around 60%.

350. It's not *how* you vote that brings out the voters. It's the choices you are given.

351. I concluded the Birmingham Judgment with the words:

The systems to deal with fraud are not working well. They are not working badly. The fact is that there are no systems to deal realistically with fraud and there never have been. Until there are, fraud will continue unabated.

352. It would have been pleasant to conclude this judgment by saying that this had now all changed. But I cannot. Despite the 2006 Act, the opportunities for easy and effective electoral fraud remain substantially as they were on 4th April 2005.

proof of identity.

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Though a small amount of strictly controlled proxy voting takes place.