

Neutral Citation Number: [2024] EWHC 2581 (Ch)

Case No: BL-2024-001143

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**CHANCERY DIVISION**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 11 October 2024

Before :

**Tom Smith KC**  
**(sitting as a Deputy Judge of the High Court)**

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Between :

- (1) IRFAN MOHAMMED
- (2) ALTAF KHANJRA
- (3) MAAZ MUSA
- (4) JAVID ADAM
- (5) IKRAMULHAQ PATEL
- (6) SAEED ADAM

**Applicants**

- and -

- (1) DAWOOD IBRAHIM PATEL
- (2) INAYAT ALI
- (3) ~~AHMED VALI~~<sup>1</sup>
- (4) FARUK BHARUCHA
- (5) ALI MOHMED VIKA
- (6) VALLI AHMED
- (7) GHAFUOR ADAM PATEL
- (8) SHAMSUDDIN IBRAHIM PATEL (GHISA)
- (9) ILYAS AKUBAT
- (10) ELYAS ADAM
- (11) SANAULLAH AHMED
- (12) IMTIAZ OUGRADAR
- (13) YAKUB PATEL
- (14) ALI PISAD
- (15) SIRAJ BAPU

**(as the Alleged Trustees and/or the Executive  
Committee of Masjid e Tauheedul Islam)**

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<sup>1</sup> Duplicate of the Sixth Respondent; struck-through to avoid renumbering.

(16) HIS MAJESTY’S ATTORNEY GENERAL

Respondents

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**Maxim Cardew** (instructed by **Five Pillars Law Limited**) for the **Applicants**  
**Faisal Osman** (instructed by **MWG Solicitors**) for the **First to Fifteenth Respondents**  
The Sixteenth Respondent did not appear and was not represented

Hearing date: 9 October 2024

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## JUDGMENT

**Tom Smith KC :**

### **Introduction**

1. This is an application arising out of an election (“**the Election**”) which took place between June and August 2024 for the Executive Committee of the association known as Masjid e Tauheedul Islam, which is a registered charity (“**the Charity**”). The Charity’s principal activity is the running of a mosque at 31 Bicknell Street, Blackburn (“**the Mosque**”) and the connected madrasah. The Applicants’ case is that the Election was not held in accordance with the Charity’s constitution and was therefore unlawful. The Applicants seek declaratory and injunctive relief.
2. The hearing of the application took place on 9 October 2024. The Applicants were represented by Maxim Cardew. The Respondents were represented by Faisal Osman. I am grateful to both counsel for their clear and helpful submissions.
3. For the reasons explained below, I grant in part the relief sought by the Applicants.

### **Background**

4. The objects of the Charity are to: advance the Islamic religion amongst the inhabitants of Blackburn and to teach the Islamic way of life by the faith and

literature set out by the Scholars of the Islamic University of Desband India in accordance with “Ahle-Sunnat-Wol-Jamaat”; and to advance education, including religious education by maintaining and managing a school for girls of the Islamic faith. I was told that the Charity now has around 1200 members.

5. As explained further below, the constitution of the Charity provides for its business to be conducted by an Executive Committee (“**the Executive Committee**”). In addition, there are four trustees who are to hold the property of the Charity (“**the Trustees**”) but who do not themselves have a role in its management.
  
6. The immediate context to the present application is that, on or around 14 June 2024, a notice was issued announcing an AGM for the Charity to be held on 4 August 2024 (“**the AGM Notice**”). The stated agenda items in the AGM Notice included “*The dissolution of the current Committee*” and “*The appointment of the new Committee*”. The AGM Notice also set out a nomination process for new candidates to be elected to the Executive Committee. This included that:
  - (1) all nominees had to meet the criteria outlined in the “*Criteria for Committee*” to ensure that they were fitting representatives for the role; and
  
  - (2) all nominees had to read, sign and submit the Code of Conduct.
  
7. The “*Criteria for Committee*” included 11 “*essential*” items and a further four “*recommended*” items. Materially for present purposes, the “*essential*” items included that: “*nominees cannot be in paid receipt of any financial remuneration/in kind benefit from the trust for services provided*” and “*nominees must not have a family member in the committee i.e. Brother, son or father*”.
  
8. The Code of Conduct comprised 26 items relating to a range of matters.
  
9. The AGM Notice also envisaged a timeline and process for voting on members to the Executive Committee under which voting would take place in advance of the AGM, following completion of the process to determine the eligible nominees, with the results of the election then announced at the AGM.

10. On 3 July 2024, 26 members wrote to the Trustees and the Executive Committee requesting that a Special General Meeting be convened.
11. On 22 July 2024, the Trustees of the Charity then distributed a further notice, purporting to call a Special General Meeting of the members on 11 August 2024 (“**the SGM Notice**”). The SGM Notice stated that the “*Board of Trustees*” had unanimously agreed to hold an SGM on 11 August 2024 at 5pm, with the following “*special item on the agenda*”:
  - “• *Executive Committee*
  - *Dissolution of the current Executive Committee*
  - *Announce new Executive committee*
  - *Any other matters related to Executive Committee*”
12. The SGM Notice also included a list of those candidates nominated to stand for election to the Executive Committee and details of how members could vote. This was for the most part to be done by attending in person at the mosque, with a valid photo ID, during the period from 29 July to 4 August 2024 at specified times. There was also provision for voting to take place online.
13. On 27 July 2024 certain members of the Charity sent a further letter to the Trustees and the Executive Committee requesting various further items be added to the agenda for the SGM including that “*The current flawed election process to be abandoned immediately*”.
14. No General Meeting was in fact held on 4 August 2024. Following completion of the voting process, on 7 August 2024, the results of the Election were posted on the notice-board of the mosque run by the Charity. The turn-out of members who voted was about 34% of the total members. Mr Osman notes that no complaint is made about the integrity of the voting process and there was no evidence before me to suggest that there was any issue in that regard.

15. Although not dealt with in the evidence, I was told by Mr Osman on instructions that the SGM duly took place on 11 August 2024 when around 280 people attended. On that occasion, the then Executive Committee resigned and the membership of the new Executive Committee was announced. There was then apparently a disruption which resulted in the police attending.
16. The present application was issued on 7 August 2024 and listed to be heard in the current window. On 3 October 2024, the Applicants received authorisation from the Charity Commission under section 115 of the Charities Act 2011 (“**the 2011 Act**”) to bring the proceedings. Evidence in response to the application on behalf of the Respondents was served on Friday 4 October 2024.
17. The present application is for interim declaratory and injunctive relief. No Part 8 claim form has yet been issued. I consider that such a claim form should be issued seeking final relief in an appropriate form, and I accept the Applicants’ undertaking to do this forthwith.

### **The Constitution**

18. The Charity is an unincorporated association. The governing document of the Charity is a written constitution apparently dating back to the 1980s (“**the Constitution**”). It was common ground that this document was the valid governing document of the Charity which was in force and effect.
19. It was also not said that any of the provisions of the Constitution as set out in the written document had been varied or waived, whether formally or informally. The Applicants in any case said that any variation or waiver, other than in accordance with the terms of the Constitution itself or by exercise of the statutory power available under section 280A of the 2011 Act, or a scheme, would have been ineffective.
20. As such, I am able to proceed on the basis that the operative terms of the constitution governing the Charity are as set out in the written Constitution.

21. The key provisions of the Constitution which are relevant for present purposes are as follows:

- (1) Clause 9: *“The Executive Committee shall consist of fifteen members elected at the General Meeting in accordance with the procedure laid down in this constitution who shall serve for a period of one year but shall be eligible for re-election.”*
- (2) Clause 12: *“Nominations in writing signed by two members for the election of a Committee member of the Association shall be received by the Secretary not less than seven days before the Annual General Meeting.”*
- (3) Clause 14: *“The Secretary shall act under the control and discretion of the Committee. He shall be responsible for the summoning of all necessary meetings of the Association or the Committee...”*
- (4) Clause 17: *“The Annual General Meeting of the Association shall be held in the month of December in each year at a date time and place to be decided by the Committee.”*
- (5) Clause 18: *“The Committee shall have power to summon a Special General Meeting of the Association at any time at its discretion upon giving the members proper notice thereof as hereinafter mentioned.”* (i.e. 14 days under clause 22)
- (6) Clause 19: *“Any ten members of the Association or more may require the Secretary by notice in writing specifying the agenda therefore to summon a Special General Meeting of the Association. Upon receipt of such notice the Secretary shall forthwith give not less than fourteen days notice to all members of the Association and to the Chairman and Committee for the time being of the Association of such meetings also specifying the agenda therefor.”*
- (7) Clause 20: *“At all General Meetings of the Association voting shall be confined to fully paid-up members of the Association and all members shall be*

*entitled to vote and have one vote. The Chairman of the Committee shall preside at all Annual Meetings. In the event of an equal number of votes being cast for any resolution or proposition before the meeting the Chairman of the meeting shall have a casting vote.”*

(8) Clause 22: *“Notice in writing or in such manner as the Committee shall from time to time direct of all General Meetings shall be given to members of the Association at least fourteen days before the date appointed and must state the objects of such meetings.”*

22. In addition, under clause 27 any member may propose an alteration of the rules of the Association (i.e. the Constitution) to be considered either at the Annual General Meeting or at a Special General Meeting, and may only be passed if “*three Fourths*” of the members approve it. It was not said that any such alternation had taken place in accordance with this clause in the present case.

23. The Applicants’ case is that the provisions of the Constitution set out above were not adhered to in the present case in relation to the Election and that the Election was therefore unlawful and the purported results invalid.

## **The Law**

24. The test for the grant of an interim injunction is familiar: see *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. In addition, the grant of the interim relief sought in the present case is likely to be finally dispositive of the relevant issues since part of the relief sought is that the Election be re-run forthwith. I was referred to the authorities dealing with the additional considerations to be taken into account when this is the position, including *NWL Ltd v Woods* [1979] 1 WLR 1294 and the commentary in the White Book, vol 2, para 15-18. In *NWL Ltd v Woods*, the House of Lords indicated that, in a case where the grant of interim relief may in practice be dispositive of the issue or issues, the court should take into account “*the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial*”.

25. So far as declaratory relief is concerned, the Court has jurisdiction to grant a declaration at an interlocutory hearing (CPR 25.1(1)(b)). I was referred to the test for the grant of declaratory relief set out by Neuberger J in *Financial Services Authority v Rourke* [2002] CP Rep 14 at [11]: “*It seems to me that, when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration.*”
26. In relation to standing, the Applicants are all members of the Charity and it was accepted that they had standing to bring the present application.

### **The Alleged Breaches of the Constitution**

27. The Applicants rely on five alleged breaches of the Constitution which they say occurred in relation to the Election.
28. The first alleged breach is that Clause 9 of the Constitution requires the members of the Executive Committee to be “*elected at the General Meeting*” (emphasis added). They further say that:
  - (1) “*The common law method of determining votes is by show of hands, and this method applies where there are no regulations or enactments to the contrary.*” *Shackleton on the Law and Practice of Meetings*, 16<sup>th</sup> ed., at 7-18;
  - (2) As no other method of voting is specified for the election of the Executive Committee “*at the General Meeting*” under Clause 9 the applicable method was therefore a show of hands;
  - (3) A member also would have a right to demand a poll (if they wished to) following a show of hands (*Shackleton* at 7-23).
29. The Applicants say that there was therefore a breach of the Constitution because the voting did not take place at the SGM but rather took place in advance of the SGM



with the result then announced in advance of the SGM and then apparently announced again at the SGM. The Applicants say that this is sufficient to mean that there has been a breach of Clause 9. However, they also add that the requirement for voting to take place at a meeting has a relevant practical benefit because it means that the members present at the meeting can consult together.

30. In response, the Respondents argued that the Constitution was not prescriptive in relation to the process for electing the Executive Committee. However, the principal thrust of their submissions was to contend that, even if there had been a technical breach, it would be inequitable for the Court to grant relief. In this respect, they emphasised that the Trustees and the existing Executive Committee have always been at pains to act in what they considered to be in the best interests of the Charity, that the voting process had been careful, diligent and secure, and that it had been a proper and responsible way to proceed at a time of tension within the mosque.
31. I would accept these submissions of the Respondents insofar as they go. On the material which I have seen, there is nothing to suggest that the Trustees and the existing Executive Committee have acted other in what they have considered in good faith to be the best interests of the Charity. Moreover, a cogent case can no doubt be made that the particular process which they chose to adopt was one which was objectively sensible and reasonable in the circumstances.
32. However, it seems to me that these submissions do not meet the case which the Applicants advance. The Applicants' case is that Clause 9 of the Constitution is indeed prescriptive and that, if there was to be a change in the procedure prescribed by that clause and the other provisions of the Constitution, this was a matter for the members, not the Executive Committee, to approve (by exercise of the alternation power in Clause 27 or using the procedure under section 280A of the 2011 Act). I accept these submissions. In my judgment, it is clear that the procedure mandated by Clause 9 of the Constitution was not in fact followed in relation to the Election and that there has been a breach of Clause 9 in this respect.
33. In my judgment, the effect of this is that the results of the Election purportedly announced on 7 August 2024, and then apparently again at the SGM itself, are

invalid and that the members of the new Executive Committee purportedly elected pursuant to these results have not validly taken office. This is because, unless Clause 9 is properly engaged, there is no power to elect the relevant individuals as members of the Executive Committee and any purported election is ineffective as a matter of law.

34. The second breach alleged by the Applicants is that the method of voting adopted for the purposes of the Election was not as specified in the Constitution. This alleged breach in fact covers essentially the same ground as the first alleged breach which I have already dealt with.
35. The third alleged breach concerns Clause 12 of the Constitution. This provides that: *“Nominations in writing signed by two members for the election of a Committee member of the Association shall be received by the Secretary not less than seven days before the Annual General Meeting.”* The Applicants say that this was breached in the present case because the deadline for nominations was 7 July 2024, in relation to a general meeting which took place on 11 August 2024.
36. A possible contrary interpretation of Clause 12 is that it merely prescribes a minimum period for the deadline for nominations in advance of the meeting, and does not preclude the Executive Committee from setting a deadline with a greater period of time in advance of the meeting. However, I am persuaded that this is not the correct interpretation. Looked at as a whole, it is clear that the scheme of the Constitution envisages that at least 14 days’ notice is given to members of a general meeting (Clause 22). In that context, it appears clear that the intention of Clause 12 was that members would have at least seven days in which to get nominations in after having received the (minimum) 14 days’ notice of the general meeting.
37. As such, I agree with the Applicants that there has also been a breach of Clause 12 in relation to the Election in the present case.
38. The fourth alleged breach also concerns the nomination process. In this respect, the Applicants say that the Trustees/Executive Committee had no power to impose additional criteria for eligibility to stand for election to the Executive Committee

beyond those provided for by Clauses 9 and 12, namely, that the individual be a “*member*” and be nominated in writing by two other members. The Applicants pointed in particular to the bar on paid employees of the Charity and on more than one family member and to the requirement to sign the Code of Conduct. Again, it was said that, if additional eligibility criteria were to be imposed, then this was a matter for the members to decide and not for the Executive Committee.

39. In response, Mr Osman again emphasised that the Trustees and the existing Executive Committee had at all times acted in good faith in what they considered to be the best interests of the Charity. He also argued that there was an implied power in the Executive Committee to impose additional eligibility criteria where this was in the interests of the Charity. It was also pointed out that the bar on more than one family member standing had been modified, so that more than one family member could stand for election with the family member with the most votes then being elected.
40. In my judgment, there must, at least to some extent, be an implied power in the Executive Committee to impose eligibility criteria for individuals to stand as candidates for election to the Executive Committee. I put to Mr Cardew the example of an individual who had been convicted of a relevant criminal offence and who would be barred from standing pursuant to sections 178 to 179 of the 2011 Act. It would be surprising if the existing Executive Committee did not have power to exclude such a person from standing for election, even though no such power is expressly set out in the Constitution. Mr Cardew was, I think, disposed to accept that such a limited power in the existing Executive Committee might be implied as a matter of law. But he emphasised that the criteria which were imposed in the present case went well beyond this.
41. Again, I agree with the submissions of the Applicants on this point. There is no basis on which a power in the Executive Committee to impose the criteria at issue in the present can be implied into the Constitution. The existence of such a power is not necessary in order to give effect to the Constitution. Rather, the scheme of the Constitution is that the imposition of additional eligibility criteria, beyond those

already stated in Clauses 9 and 12, are matters for the members themselves to decide on, for example, through exercise of the alteration mechanic contained in Clause 27.

42. Finally, the fifth alleged breach is that neither the Trustees nor the existing Executive Committee had power to vary the method of voting and the timeline for nominations of candidates to stand for election to the Executive Committee. I agree that this is the position under the Constitution. However, this is not an independent breach as such and, in my judgment, does not add to the other breaches alleged by the Applicants, which I have found to be made out.
43. I should make clear that, although I have found that breaches of the Constitution have occurred, I do not make substantial criticism of the Trustees or the existing Executive Committee in this respect. It is clear that this is a case where the Constitution dates back to the early days of the Charity and that, in practice, all concerned in the Charity may not have closely adhered to all of its terms: for example, I was told that AGMs had not been held for a number of years. Moreover, I have no reason to doubt that the Trustees and the existing Executive Committee were acting in what they thought were the best interests of the Charity. However, this does not alter the conclusion that clear breaches of the Constitution have in fact occurred in relation to the Election.

### **The Declaration Application**

44. In the circumstances, I am satisfied that I should make a declaration in the terms sought by the Applicants. In my judgment, the grant of such a declaration would be just to the parties and would serve a useful purpose. I also bear in mind that the matter has been fully argued before me and does not depend on any disputed issues of fact; and that it is in the interests of all concerned that the parties know the position as soon as possible so that the election process can be re-run and the position regularised.
45. I therefore grant a declaration that the election to the Charity's Executive Committee purportedly called by notice given on or around 13 June 2024 was unlawful and that the results announced on 7 August 2024 are invalid.

## **The Injunction Application**

46. So far as injunctive relief is concerned, the relief sought falls into two parts. The first part seeks orders, in effect, that the election process be re-run in a manner compliant with the Constitution. I agree that I should grant this relief. Although the grant of this relief will in practice be finally dispositive of the issues, I am able to conclude that the Applicants would be very likely to succeed on these issues at trial (since the issues are points of law which were fully argued before me and do not turn on any disputed issues of fact). Further, there is a good reason why this relief should be granted now so that the position in relation to the management of the Charity is regularised as soon as possible.
47. I will therefore make orders that:
- (1) There shall be a General Meeting of the Charity on 27 October 2024 at 7.15pm, at which elections of the Executive Committee shall take place in accordance with clauses 9 and 12 of the Constitution.
  - (2) The Trustees shall as soon as reasonably practicable and by no later than 5.00pm on 11 October 2024 give the members of the Charity 14 days' notice of the meeting.
48. The other part of the injunctive relief sought relates to the management of the Charity in the meantime. The consequence of the findings which I have made, and the declaratory relief which I have granted, is that the new purported Executive Committee has not been validly elected and is not therefore in office. However, it may be the case that another consequence of this is that the existing Executive Committee remains in office. I was not addressed in any detail on these possibilities or, for example, on whether there is any overlap between the membership of the existing Executive Committee and the new Executive Committee which was purportedly elected.

49. For these reasons, I am not persuaded that I should grant the relief sought by the Applicants sought at paragraphs 2 and 5 of the draft order.
  
50. Finally, I agree with the Applicants that, since the relief granted is likely to be finally dispositive of the issues, it would be appropriate to make an order staying the Part 8 claim. There will be in the usual way be permission to the parties to apply in case it becomes necessary to lift the stay for any reason.

### **Conclusion**

51. For the reasons explained above, I accede in part to the Applicants' application. I will hear the parties on consequential matters including costs, if agreement cannot be reached. My provisional view is that it would not be just or appropriate for the Respondents to have to bear the costs of this application personally.