



Neutral Citation Number: 2016 EWHC 37 (QB)

Case No: M357/16

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ELECTION COURT

**IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983 AND
IN THE MATTER OF THE LONDON ASSEMBLY ELECTION FOR WEST
CENTRAL HELD ON 5 MAY 2016**

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 19th January 2017

Before:

COMMISSIONER JOHN BOWERS QC

Mandy Richards

Petitioner

- and -

1) Tony Devenish

2) Charlie Parker (The Returning Officer)

Respondents

Mandy Richards, the **Petitioner** in person
Tony Devenish, the **First Respondent** in person
Timothy Straker QC of counsel, for the **Second Respondent**
Sappho Dias for the Witness **Mr Hancock**

Hearing dates: 8th and 9th of December 2016

Approved Judgment

Note: This the final judgment of the Election Court. It is confidential to the parties and their legal advisers. It is of no legal effect until handed down in the Royal Courts of Justice on a date to be fixed, following which a Certificate will be sent to the High Court pursuant to section 145(2) of the Representation of the People Act 1983.

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Introduction

1. This is the first petition challenging the result for a constituency in the London Assembly (being part of the Greater London Assembly (“GLA”). This case was heard on 8 and 9 December 2016 at Westminster City Hall.
2. The GLA is made up of one directly elected Mayor and 25 London Assembly Members. Londoners voted for this form of government in a referendum in 1998 and the GLA was established in 2000. There are 14 Assembly constituencies of that Assembly of which West Central is one of the most affluent, taking in the areas of Royal Borough of Kensington & Chelsea, Hammersmith & Fulham Council and Westminster City Council. The election which is challenged was held on 5 May 2016. The Petitioner, the Labour Party candidate, lost the election by 14564 votes with 67775 votes cast for Mr Devenish as opposed to 53211 for her. Besides Ms Richards and Mr Devenish, the following candidates stood although they were well behind the two main candidates:

Egan, Clive Keith	UK Independence Party (UKIP)
Mullin, Annabel Jean Charlotte	London Liberal Democrats
Nadel, Jennifer Dunham	Green Party
3. Both Labour and Conservative representatives including Ms Richards herself saw it as an “unwinnable” seat for Labour.

The statutory framework

4. I now set out the statutory provisions directly relevant to this Petition. By section 36 (2A) of the Representation of the People Act 1983 (inserted by section 17 and schedule 3 of the Greater London Authority Act 1999) ‘Authority elections’ are to be conducted in accordance with rules made under section 36 (2A) by the Secretary of State. The relevant rules are the Greater London Authority Election Rules 2007, SI 2007 No 3541.

5. By s127 of the 1983 Act an election may be questioned on the ground that the person whose election is questioned was disqualified, not duly elected or on the ground the election was avoided by corrupt or illegal practices. Here the ground relied on in the Petition is that Mr Devenish the Conservative Party candidate was “not duly elected”. The essential claim in the Petition is to the effect that there has been an error in the adjudication of the election by the relevant election officials.
6. By s48 of the 1983 Act, the election is however not to be declared invalid if it was conducted substantially in accordance with the law and the act or omission did not affect the result. This was most authoritatively interpreted in *Morgan v. Simpson* [1975] 1 QB 151.

The conduct of the election

7. The Greater London Returning Officer (“GLRO”) has overall responsibility for GLA elections. For the 2016 elections, Mr Jeffrey Jacobs was GLRO. He serves as Chief Executive of the GLA. The GLRO manages the nominations process for Mayoral and London-wide Assembly Member candidates and also announces the London-wide Assembly Member and Mayor of London results from 14 local totals. The GLRO also established London Elects to run the elections and coordinate the roles and responsibilities of the GLRO, the 14 Constituency Returning Officers (“CROs”) and Borough Returning Officers (“BROs”) and to issue guidance to them. For the 2016 elections, the BROs were Nigel Pallace (Deputy Constituency Returning Officer, Hammersmith & Fulham), Tony Redpath (Deputy Constituency Returning Officer, RBKC) and the Second Respondent Mr Parker (Westminster CC).

Use of the electronic counting system

8. The election was conducted in a conventional manner save for the electronic counting of votes. By rule 48, the GLRO had provided an electronic counting system consisting of computer hardware, software and other equipment for the purposes of counting the number of ballot papers, verifying the ballot paper accounts, and counting the votes cast on the ballot papers. The GLRO had procured the electronic counting system from IntElect who had provided the same

service for the 2012 GLA elections. Candidates and agents had the opportunity to view the electronic counting machines, and to be briefed on the process, in advance of the election. Ms Richards' election agent took advantage of this opportunity and viewed the counting machines and was briefed on the counting process. She did not raise any concerns about either the machines or the process at the time of the election or indeed in her Petition. Further, Ms Richards had 11 polling and 15 counting agents. None detected anything irregular about this or indeed any other aspects of the Election.

The Petition

9. The Petition was particularised by Ms Richards on 1 June 2016 having been presented a few days earlier. She is an experienced candidate and Labour Party activist. She spoke of herself as a “participation worker, which means I support young people getting into politics” and elsewhere as a journalist.
10. Mr Devenish as First Respondent did not obtain legal representation so that the defence of the Petition largely fell to the Second Respondent the Returning Officer who instructed Mr Straker QC, through Messrs Sharpe Pritchard.
11. The only possibility of amendment of an Election Petition is provided by s129 (6) of the 1983 Act. Halsbury's Laws of England Volume 38A on Elections at para 786 makes clear that a petition may only be amended in the 21 days in which it may be presented. The Volume cites *Hobson v Fishburn* (1988) Times, 21 November for this proposition. This is explained partly because by section 128(4) of the Act the proper officer of the authority for which the election was held has, shortly after the petition has been presented, to publish it in the area of the authority.
12. No formal amendments to the Petition were indeed requested at any point by Ms Richards but she went well outside the terms of the Petition both before and at the trial. I did however accept that a benevolent approach should be taken to the width of the Petition. Ms Richards put before me her Petitioner's document headed “Election Petition Witness Statement – Mandy Richards” dated 26 July

2016. She thereafter failed to comply with directions for submission of a statement in advance of the trial and gave her evidence through an updated Case Summary which was itself amended on the morning of the trial.

13. Throughout this Judgment, I direct myself in accordance with the important recent authority of *Baxter v Fear* [2015] EWHC 3136 to the effect that the court should not hypothesise as to how people might vote (although the factual background was somewhat different). The *Baxter* case generally demonstrates that a psephological approach is not appropriate. Jay J said “Parliament cannot be treated as somehow empowering the judicial arm of Government to peer into the voting booth, whether by drawing informed, probabilistic inferences or otherwise”. This is relevant because some part (but not all) of the Petition did invite me to speculate as to how particular sections of the population might have voted and as to expected turnout. I direct myself however that if the Petitioner was able to demonstrate a clear under counting of those who were likely to have voted this could give rise to an inference successful candidate would not be duly elected, subject to the under counting being sufficient to overcome the majority.

14. There were several previous hearings before the trial took place

- a. A preliminary hearing on 26 July 2016 before Mr Justice Phillips
- b. on 29 September 2016, when I said that I saw no basis for granting a full scrutiny but that I would reconsider the matter if anything significant came out in evidence at the Trial. I also considered Ms Richards’ extensive request for release of documents most of which I rejected.
- c. On 25 November I heard application dated 16 November 2016, - for scrutiny, and adjournment.

15. At both of these hearings which I conducted, amongst other things, I warned Ms Richards about the limits of the petition and of the importance of attending on time for hearings and the Trial.

The Petitioner’s case

16. Although I will address the terms of the Petition one by one later, it is important that I set out how the case developed. Miss Richards in her Opening Statement says “The purpose of this Trial is to establish the Means and Opportunity for vote tampering, election rigging or adjudication error to have occurred. I believe the evidence indicators of this (*sic*) in the submissions that follow are strong.” In fact, the trial was to consider only the terms of the Petition. Given that she was a litigant in person however I gave Ms Richards much more leeway than I would have accorded to a represented party to develop several themes above and beyond (and indeed well outside) the confines of the Petition but that is ultimately what this case must be about as Mr Straker rightly reminded me. I should say that the witnesses (including Ms Wilkins) were rightly horrified by the allegations of tampering and said she had never come across any evidence in her long experience.
17. Further and in particular, Ms Richards sought to develop complaints about alleged surveillance of herself which she thought was connected with her political activism (but of course in any event even if proved this would have had nothing to do with the two defendants to the Petition) as follows: At paragraph 1.8 of her Opening Statement she says “Since raising these concerns and complaints with the police and my local authority the harassment has escalated including increased surveillance conducted via electronic communications, surface mail, mobile phone, landline telephone, human surveillance & most worryingly home intrusions. Electrical tampering has made my home and car inhospitable environments having received second degree burns as a result of static electrical emissions. There have also been frequent electrical surges and outages, as well as boiler and circuitry issues generating emissions that have been measured on professional monitoring equipment and deemed severely detrimental to my health and which are potentially life threatening. Over the past year these incidents have been repeatedly reported to Hackney police, my local environmental health department at Hackney Council and to Peabody Housing, who own the freehold on my building. As yet no satisfactory remedial action has been undertaken by any of them.”

18. Paragraph 1.26 and 27 of her Opening Statement states: “This Petition as set out calls into question the legitimacy of the West Central 2016 London Assembly election and forms part of the context of the allegations outlined in terms of Human Rights infringements conducted against myself and my family under the guise of RIPA legislation. There has been an appalling abuse of power here. Laws devised to protect citizens, used to sanction campaigns of unwarranted harassment against individuals merely aspiring to serve their community. The conspiratorial motivation here to prevent me from becoming an elected representative is stark. My disclosures to date regarding state-sponsored organised crime have the potential to trigger a major national public scandal and I believe form a significant part of the narrative here. I can therefore not underestimate the potential for risk of harm given the serious personal impact thus far as outlined.”
19. One feature which she did not actually plead was fraud although that notion hovered around much of what she said in evidence. This was a typical interchange:

“In the case that I cited earlier, Bordesely Green and Aston, what happened was that members of the political party actually commandeered identities to secure batches of postal votes on false pretences, and the way in which they are able to do that, they leave it so late in the process that the electors are not going to check the identities of those individuals, so it could be that fraudulent postal votes batches were sent out to -- not fraudulent postal votes, but were sent out to people who were fraudulent participants. So that is part of the responsibility of the Returning Officer, to determine whether or not postal votes that have been dispatched are to real people or not.

Q. In this case there is no such allegation of fraud is there?

A. I have intimated that I am not certain what has happened, that is why an investigation is needed.”

20. There is a major problem with introducing these matters even above and beyond the issue of lack of relevance to the Petition, namely that Ms Richards has another extensive ongoing claim in the High Court relating to monitoring and brought inter alia against the Investigatory Powers Tribunal, the Undercover Policing Inquiry the Metropolitan Police, MI5, MI6 and altogether 22 different public bodies and private companies. Much of her Opening Statement might indeed have been more relevant to that litigation (if indeed even relevant to that) than the Petition itself. For instance, paragraph 1.12 states “It is sadly my belief that members of my own political party have indeed acted unlawfully against me in this respect having colluded in the facilitation of this type of mistreatment and manipulation, and in the process undermining my political, professional and personal life”. I made it quite clear to her that it was important to keep the issues in the Petition separate from the other claim. Ms Richards at the trial persisted in raising such matters and indeed asked several of the witnesses whether he or she had any connections with the police or armed forces (and then followed it up in a few cases with written questions).

The Hearing

21. The other singular and distinctive feature of the trial was the large number of witnesses whom Ms Richards called under pressure of a witness order. On the first day of the Trial there were called Ms Diane Abbott MP (MP for the area in which Ms Richards lived), Mr Alistair Craft (Labour Party Regional Organiser), Mr Jeremy Roger Evans (who fought Ms Richards in as previous election in Havering & Redbridge in 2012 for the GLA), Mr Matthew Goddin (Ms Richards’ campaign manager and agent in 2012), Mr Angell (Director of Progress which is described below), Mr Anthony Devenish (who won the seat), Mr James Cockram (Conservative Party agent at this election), Ms Zoe Wilkins (Electoral Services Manager for Hammersmith & Fulham and who had been involved in elections since 1996), Ms Susan Loynes, Mr Jacobs, Ms M Lynch (Ms Richards’ agent) and Mr Dan Simpson (London Labour Party Regional Director). On Day 2 she called Mr Daniel Sweeney local organiser for the Labour Party, covering the Hammersmith and Fulham Borough. I also received a written statement from Mr Olive, whom she sought to have attend.

22. All parties to the Petition agreed in advance that the trial should be heard in a two-day timeframe and it was so completed after Ms Richards helpfully gave me a list of how long she needed to cross examine each one. She called a mixture of Labour colleagues, Conservative opponents and election officials. In the case of Mr Jacobs, I allowed Mr Straker to take him through his evidence which was given in the form of a statement. Mr Straker called Mr Parker and Mr Pyroyiannos.
23. Mr Straker did not use his right to cross examine many of these witnesses. Many indeed could give no evidence which was relevant whatsoever.
24. The most extraordinary feature of this evidence however is that all bar one of the persons whom Ms Richards called doubted Ms Richards' case and they gave evidence which was directly or indirectly contradictory (and often hostile) to that case. Interestingly, Ms Abbott MP (whose political views might have appeared aligned to those of Ms Richards and was her constituency MP for many years) made it clear that if she had been asked by Ms Richards she would have advised he against bringing this Petition. Although she did not ask for any of these witnesses to be treated as "hostile", I did allow her to in effect cross examine these witnesses.
25. I put particular weight on Ms Diane Abbott's evidence as an experienced politician. She said at various points in her testimony
- a. "Just to say that you did not advise me you were going to take this petition. Had you asked my advice I would have argued against it".
 - b. "Ms. Richards, you are trying to say that internal Labour Party issues in some way affected the adjudication of the election, and I am saying that cannot be true.
- Q. Why do you say it cannot be true?
- A. Because I have fought many elections, and I am as confident as I can be that this election did not have administrative faults. That is not something I have experienced. And as I say, how can you link -- you know, issues that at work, issues about electronic emissions in your

house, issues about the Labour Party, with the technical adjudication of this election?"

Q. "THE COMMISSIONER: Ms. Abbott, I just have one question if I may. You said I think that had Ms. Richards asked you about the petition, you would have advised against her bringing it. Can you just explain?"

A. "To be honest with you, Ms. Richards has become an obsessive."

26. Ms. Richards ranged far and wide in her questioning of all of these witnesses. She sought to ventilate issues relevant to her political prospects or inter Labour Party disputes.

27. This an example of questions which she asked of Mr Simpson:

"MS. RICHARDS: There were discussions and when Jeremy Corbyn's name would come up there would be a tone of derision around the room and jokes at his expense. What I am trying to establish is, in terms of the left or right leanings within the party where would you say the organisation of the London regions sits, in terms of its political allegiances?"

28. I record these further features of the Trial

- a. I made limited further orders for further disclosure at the end of the Trial and I have considered the fruits of that process (and indeed further written submissions made by Ms Richards before the cut-off date which I imposed of 25 December and afterwards).
- b. given certain comments that I make below, I should make it clear that Ms Richards arrived one hour late on the first day of the Trial without any clear excuse (thus keeping many witnesses attending under witness order hanging around) although she did apologise. She was a few minutes late on day 2 and had been late on each of the preliminary hearings I heard;
- c. there was an official transcript running at the Trial and I quote extensively from it.

The general conduct of the election

29. I should now describe the election officials. It is important to see how experienced these persons were and that they had received significant training and had engaged in extensive planning for the elections. On day 2 I heard both the Constituency Returning Officer Mr Parker and Mr Martin Pyroyiannos. The latter was Manager, Legal and Electoral Services Support has been involved in elections for 15 years. Mr Pyroyiannos administered the GLA elections in Islington in 2000 and for the West Central constituency in 2004, 2008, 2012 and 2016. He led on Westminster City Council's piloting of e-counting at the 2002 and 2006 all-out City Council elections. He had also been seconded to various Government Departments to advise on elections.
30. Mr Parker the GLA Returning Officer told me "I have had five sets of local elections, two sets of European elections, two general elections, one police and crime, one full GLA election and in addition to that, I have had the referendum and also the one person, one vote referendum that I have overseen and at no stage in all of those has there been a complaint about the management or outcome of any of my elections that I have overseen."
31. I received some general evidence which I should record from both sides of the political spectrum about this election "team" and the general conduct of the election (and of course most of these people were called to give evidence by Ms Richards herself):
- a. Mr Goddin: "I am confident that the system in the GLA is robust and I am still confident now".
 - b. Mr Devenish (the successful candidate): "Nobody raised a single issue with me, it appeared to be as professional as it always is".
 - c. Mr Cockram "I was very impressed with the way the elections were managed. I was particularly impressed with the contact I had from Mr. Parker and his team. I found it to be very efficient".

32. Although she sought to undermine each of the officers in turn, all were in my judgment careful, experienced and meticulous professionals who were not in any way politically biased against Ms Richards.

33. Of perhaps of most relevance in this regard however is the commentary of Ms Margaret Lynch who was the highly experienced election agent for Ms Richards and was at the time a national nominating officer for the Labour Party, a senior position. She found the election process quite robust. On being cross examined by Mr Straker she said:

“You know, I prepared quite fully for the count and I attended a demonstration of the counting system, which was organised by London Elect for their agents and others.

Q. With which demonstration and with which counting system you were content?

A. I was content. I thought it was very robust.

Q. I do not think you have identified any errors in the adjudication of this election?

A. “No.”

34. It is also significant that there was a great level of scrutiny at the time of the election itself and no one cried foul, least of all Ms Richards herself. Mr Parker told me:

“There was no complaint and indeed, throughout the day, there had been regular discussions and people had commented on how smoothly, and how efficiently the count was run and indeed, I am led to understand it was conducted much more effectively than in 2012.”

Ms Richards did not seek a recount although she now says that she was told that this was only possible if the difference was less than 2000. The London Assembly Election Review Panel report for 2016 did not make any comment about the West

Central constituency. There was also an audit by the Mayor's Office for Policing and Crime, an audit immediately undertaken after the election.

35. I now first deal specifically with the terms of the Petition. I accept the submission of Mr Straker QC that the first three matters in the petition relate to voter behaviour and not a breach of rule or duty. I direct myself that it is necessary for the Petitioner to establish her case on the civil standard of proof; suspicion is not enough.

Allegation 1 regarding turnout

36. Point (i) alleges an error in adjudication. Basically as she put it “I am saying it seems irregular that there was not a higher turnout”. Ms Richards claims that the West Central results indicate that comparatively the 2012/2016 increase in voter turnout demonstrated across all constituencies in the London Assembly Region was at least 80% lower in West Central than anywhere else. In real terms the average rise in turnout across the 14 constituencies in London was 25,648 votes. In West Central the rise was just 3,902. Ms Richards relied in her submissions on this helpful table:

Sample London Assembly turnout figures 2012/2016

	2000	2004	2008	2012	2016	Increase
Merton	114,330	120,088	167,437	153,785	187,455	33,670
Greenwich	94,697	108,771	149,238	133,659	164,897	31,238
Hackney	17,586	128,665	197,893	195,321	231,531	36,210
Hav & Red	108,975	129,347	167,922	143,759	172,806	29,047
West Central	106,600	116,101	166,379	149,419	153,321	<u>3,902</u>

My judgment on this allegation overlaps with the next two which are closely linked.

37. I do not think it surprising that there are differences in turnout in different London boroughs and over time between elections. To go further into this would I believe breach the principle in *Baxter v Fear* referred to above but if I am wrong that this analysis is excluded by that doctrine, I accept this evidence of various witnesses as to likely reasons. Firstly, it is notable that the average number of eligible electors in the West Central constituency was 15% lower than the London average. Secondly, Mr Simpson (who was an experienced agent) said:

“In a constituency that votes heavily for the Conservative Party you might expect it to have a higher turnout in elections where the Conservative Party is doing well, and a slightly lower turnout in elections with when the Conservative Party is defeated on a London wide basis.” This happened this time when Mr Khan beat Mr Goldsmith in the Mayoral election.

38. Thirdly, there were specific reasons why this constituency may have a lower turnout. Mr Devenish put it in this way

“Look, West Central, anybody who follows politics knows, is very different from much of London. We have a very transient population in parts of the constituency, we have many people who are nationalities of other European and Commonwealth countries who can vote but do not vote. Therefore, the turnout often, my own council ward in Westminster has a much smaller electorate than any other council ward in Westminster, and I win on a 20% turnout, because that is the way the demographics of central London often work. Anybody who reads any book on the almanac of British politics et cetera knows that.”

39. Fourthly, Mr Parker offered another reason when questioned by Mr Straker:

“Q Given your experience in Oldham and elsewhere in relation to elections, are there particular challenges about this particular area in terms of a transient population?”

A. So, there are I think particularly in Westminster, significant amount of churn, so about 30% of the population churns every year. There are, in particular, in Kensington issues about eligibility, because of different nationalities are eligible for different types of election. Finally, I think it would be fair to say that that this year, because of the introduction of IER, we have had a whole host of other issues about updating the register, changes and the variations in the register that was used previously. This most notably, this would affect Hammersmith, Kensington and ourselves around student populations as well.”

40. There is another possible explanation for the low percentage turnout namely that there were more persons registered to vote than was normal, given that the EU referendum was to be held soon after. Ms Wilkins reminded me that “as you may recall, people were registering for the European referendum right up until midnight on the day that that register closed and the system crashed”.

41. I should also note that Ms Lynch who had been involved in many elections in this area saw nothing strange about the low turnout

Allegation 2; Lower than the London average

42. As a second limb, Ms Richards says in the Petition that the number of ballots cast in West Central was 33271 or 18% lower than the London average. Again the table provided by Ms Richards makes this clearer than words can:

Sample London Assembly turnout figures 2008/2012

	2000	2004	2008	2012	2016	Decrease
West Central	106,600	11,610	166,379	149,419	153,321	16,960
Merton	114,330	120,088	167,437	153,785	187,455	13,652
Greenwich	94,697	108,771	149,238	133,659	164,897	15,579
Hackney	17,586	128,665	197,893	195,321	231,531	2,572
Hav & Red	108,975	129,347	167,922	143,759	172,806	24,163

43. I however see nothing sinister in there being differential turnout across the years. Again I believe that this is covered by the *Baxter* principle but if this is incorrect I record that this pattern may well reflect (as several witnesses conjectured) the “pull” of those contesting the Mayoral election in which voters are more likely to be interested than the West Central constituency.
44. Further, Mr Parker told me “when you actually look at the turnout figures, they are comparable and in some cases bigger than other parts of London. So, by way of example, we are at the turnout was bigger than Lambeth and Southwark, the city and east”. I dismiss this allegation.

Allegation 3: Decrease in turnout over time

45. Point (iii) alleges that the number of votes cast at the 2016 election was low compared to previous elections. She went on in the statement “– The figures above illustrate this discrepancy. It is recognised that there was a drop in turn out broadly between 2008 & 2012. Electoral roll data can potentially be examined to explore the demographics of this and how this compares with the change between 2012 & 2016 also. Had I been granted the opportunity to adjourn further scrutiny in this respect could have been conducted – I maintain that the Court should order Full Scrutiny of electoral rolls”. Ms Richards also relies on “The average drop in turn out across London constituencies in 2012 was 13,289. In Havering & Redbridge, where I was a candidate, it was 24,163. I lost by a much smaller margin of 3,939 votes. These figures indicate a discrepancy in both elections where I have been a London Assembly candidate.”
46. The total number of votes cast in the constituency in 2016 (153321) was lower than 2008 (166,379) but higher than 2012 (149419), 2004 (116101) and 2000 (106600). I believe that the reasons already given govern this allegation too and that these changes should not occasion surprise. Turnout goes up and down for many different reasons. It does not reflect on the duties of election officials nor prove that Mr Devenish was otherwise than duly elected.

Allegation 4: Postal Voting

47. As to the fourth allegation in the Petition, it is a fact that some 19000 persons who were eligible to vote by post in the constituency did not do so. Ms Richards claims that “Anomalies discovered so far, in Kensington and Chelsea, postal vote returns the published turnout indicates that 15,056 postal votes were issued, there only appear to be 13,457 on the list that I received, suggesting that 1,599 were missing at the outset. The respondents have flagged a figure of 19,678 eligible postal votes from across the constituency who did not vote across the West Central GLA constituency.” I do not accept that any were “missing” having heard the evidence. These potential voters chose not to vote. The number originally given to Ms Richards was an error because of a computer error. I regard it as a wild theory that Ms Richards (in her opening and closing submissions) thought that it may have been possible for postal votes to have been “harvested”. By that, she meant that they were taken from one election and to position them in another election to be counted elsewhere within the GLA constituencies.

48. It is also not for the court to examine *why* people did not use their postal votes. There is no breach of duty by the Retuning Office or any administrator as far as I can see. I regard the conspiracy hypotheses put forward by Ms Richards in this regard as wholly unfounded.

49. I accept the evidence of Mr Pyroyiannos on this topic as follows:

a. “What I can say, in terms of the Westminster postal ballots, for example, was that two postal voting agents were appointed by Margaret Lynch and sat through all our receipt and opening of postal votes, checked everything that we did from start to finish, including going into the ballot boxes at that time, checked what postal voting statements had been rejected. The only day that they were not there was on polling day itself, when we had two representatives of the Cabinet Office who attended our final opening. So in terms of probity

and doing things correctly, I am very content with that.”

- b. “our return rate of postal votes was from recollection, again, 65.1% when the London average was 67-something percent and it was at a level that I would have expected it to be, given some of the issues that have been described by Mr. Parker and others”.

50. Further, Ms Wilkins also told me “We provided the marked postal voters list to Ms. Richards. And I believe what happened was that she may then have tried to sort that spreadsheet to show which electors voted which had not. Unfortunately, I suspect what happened is that only the final column where the marked show where somebody has either voted or not voted was the only thing that got sorted, which had the effect of moving all the Ys to the top of the page if you like and moving all of the no votes at the bottom of the page. But unfortunately the information that accompanied that yes or no marker did not move with the rest of the entries. So it would look like there was 100% turn out in the first 14,000 or so entries and obviously is not what ----“

51. Mr Jacobs wrote on 19 December 2016 to Ms Richards after the trial

“I am satisfied the postal vote (PV) figures on the London Elects website are accurate, reflecting the distribution of votes cast. Second, it is to be expected that there are differences between PV figures published in different places: they are taken at different stages of the verification and count process and refer to different things The initial count of postal vote envelopes returned will be higher than the number of ballot papers that go through to the count. That is because some envelopes may not include a PV statement or indeed a ballot paper – and so must therefore be set aside. In other cases, the PV statement may be included but not be signed – so these envelopes must be set aside also. And so on. Then at the count stage, some of the ballots will be adjudicated as having been spoilt so will not be included in the total of good votes.”

52. As to the suggestion by Ms Richards that there were problems with the algorithms applied to the counting of postal votes, Mr Jacobs said “And I would want to emphasise as I tried in the witness statement, to be absolutely clear that this was an issue only and only, absolutely only in respect of the mayoral ballot, where there was a computer software issue, which was investigated both on the night and subsequently – and subsequently audited following the investigations that we did.”

53. It is also worth noting that Regulations 68 and 69 of the RPR 2001 deal with, respectively, persons entitled to be present at proceedings on receipt of postal ballot papers and agents of candidates who may attend proceedings on receipt of postal ballot papers. Ms Richards attended a session in Hammersmith & Fulham on polling day. She made no complaint about the proceedings being undertaken at the time. She did not attend any session in Westminster or in the Royal Borough; however, two of her postal vote agents attended almost all Westminster sessions and agents from the Labour Party attended each Hammersmith & Fulham session as well. None of her agents attended at RBKC. Officials from the Cabinet Office also attended an opening session in Westminster on polling day.

Ballot boxes

54. I do not accept that it was possible to “clone” a ballot box as it was put by the Petitioner to Mr Pyroyiannos in Ms Richards’ cross examination of him. In her Closing Remarks she said that “there are floating boxes out there that no one has any control of”. I regard this as far-fetched.

55. She also asks why “the boxes for West Central [were] all collated together. All other constituencies counted votes Borough by Borough”. This description of the count is incorrect. The Returning Officer explains in his witness statement that the Olympia venue hosted the constituency level counts for four constituencies: (i) West Central, (ii) Croydon & Sutton (iii) Merton & Wandsworth and (iv) South West. Moreover, the A3 floor plan of Olympia, which was enclosed with Sharpe Pritchard’s letter dated 14 October 2016, showed how Olympia was divided into areas for each of the 4 constituencies mentioned above and not into boroughs.

The Petitioner stood as a candidate in the election for the West Central GLA constituency but not for any of the individual boroughs which make up the constituency.

56. Ms Richards claimed that there were irregularities in the way in which ballot boxes were dealt with. I accept the evidence of Mr Parker: “At close of poll in Hammersmith & Fulham, ballot boxes were delivered to Hammersmith Town Hall where they were checked in. Ballot boxes were then transferred to 2 council removal vans and transported in sealed roll-cages to the count venue. One of the DCROs, Martina Reid, accompanied the boxes in one van and a council employee, Simon Price, accompanied the other van to the venue. In RBKC, the presiding officers returned the ballot boxes to the Town Hall where they were checked in and loaded onto two lorries and then transported to the venue. Election staff accompanied the ballot boxes on the journey to the count venue. In Westminster, the ballot boxes were taken to the Queen Mother Sports Centre where they were checked in and then transported to the count venue by council officers. Stuart Love, Director of City Management at Westminster, accompanied the ballot boxes to Olympia and he checked that they were all accounted for at the count venue. The checking-in exercise conducted by each authority was done to ensure all the correct equipment and paperwork had been recorded as returned and completed. No unauthorised persons were present at any of the local authority check-ins; indeed, there was a police presence at the venues.” Further correspondence from the Returning Officer’s solicitors after the Trial reflect that the correct number of ballot boxes were accounted for. I will return to this subject in a coda to this Judgment.

Allegation 5; request for a scrutiny

57. As to the fifth paragraph in the Petition (which is a wrap up request for a “scrutiny of the returns from each polling station in relation to the lists of eligible voters and ballots completed”), there is no need for a full scrutiny given the weakness of the allegations made. Ms Richards has had the opportunity to inspect election documents (although she claims that she could only afford to buy them in the few weeks before the Trial so that she only had a limited time to review them).

Although she made some late allegations about them, to her credit she did not proceed with them at the hearing. I thus dismiss all of the allegations in the Petition.

The Influence of Progress

58. I will now deal with several matters which are as I have already indicated beyond the scope of the Petition but were ventilated at the Trial. Ms Richards did not confine her allegations to members of the opposition parties: As an example in her Statement “It is my belief that sadly members of my own political Party have indeed acted unlawfully against me in their mistreatment and manipulation of my political career and in so doing have elicited the advantageous cooperation and collusion of Conservative candidates and election officials in the process of distorting election outcomes”. I think this is a calumny.
59. A large segment of the evidence called by Ms Richards was called because she sought to establish collusion between electoral officials and Progress. Progress is I believe best described as a “ginger” or pressure group of Labour Party members operating within the Labour Party. I doubt that it has anything like the degree of influence (malign or benign) ascribed to it by Ms Richards, and certainly not the malign influence she sees. At paragraph 1.14 of her Opening Statement she says “Progress’s influence in political stage management is well established. It is the self-styled political military machine on the right-wing arm of the Party responsible for Blair’s accession to Downing Street in 1997. A group that has had a vice-like grip on the party since 1995 following the death of John Smith. Until that is, the recent rise of Momentum and the second coming of JC. With Jeremy Corbyn having been unanimously elected twice following the high profile and acrimonious split between the Progress – led Parliamentary Labour Party (the PLP) and the grassroots membership mobilised by Momentum.”
60. This interchange demonstrates the case which she sought to make on this point when she was being cross examined by Mr Straker:

“So the character of collusion between that internal part of the Labour Party and the Returning Officer and the election officials is that there was collusion to enable to you stand but to secure that you were defeated; is that it?

A. That is what I am speculating.

Q. That is what you are speculating. Can you suggest any occasion when the Returning Officer or the election officials actually met with that part of the Labour Party in order to carry that plan into effect?

THE WITNESS: They are part of the political structure locally.”

61. I asked Ms Richards to define the precise case she was making about collusion in the course of the Closing Remarks (as there had been several versions put forward) as follows:

“THE COMMISSIONER: When you say there is an element, what evidence do you rely on for the proposition, which is obviously an exceptionally serious one, which is what I mentioned the first time we met in the High Court, an exceptionally serious allegation. What evidence do you rely on for the proposition? That there was a conspiracy between Progress and the Returning Officer and his staff at West Central Assembly?

MS. RICHARDS: The experience that I have been subject to as an activist throughout my political life within the Labour Party. There has been a consistently negative undertone to the way in which my potential candidacies have been received by the organisation. It was not possible to fully get disclosure on that through the cross-examination that I gave yesterday, but as I have said I did not expect anyone to admit that they had been harassing, bullying.

THE COMMISSIONER: What evidence do you rely on? I am not asking you what you do not rely on. I am asking you what you do rely on.

62. This interchange is also significant during the course of Ms Richards' cross examination by Mr Straker:

"MR. STRAKER: Can you suggest any motivation on the part of the Returning Officer as to why he might want to do that?

A. I -- I would not want to suggest, no, I would not want to suggest why. I can think of reasons why, but I would not want to suggest why.

Q. He does it for random reasons?

A. Not for random reasons, it has got to be mutually beneficial purpose to any agreement of that nature, surely.

Q. You are suggesting that the Returning Officer is going to benefit from your losing at the poll at the behest of an internal part of the Labour Party, is that it?

A. When you say benefit, it depends what that benefit, how that benefit manifests itself."

63. The collusion was not pleaded (or even hinted at) in the Petition but I allowed her to develop it in the trial although I had asked her to particularise it earlier. I find nothing to support it let alone prove it and it would have required a conspiracy of monumental and criminal proportions which simply did not occur.

Electronic counting

64. No complaints about the electronic counting appear in the Petition and this is why I discharged the witness order against Mr Hancock of IntElect (about which I gave a separate judgment on Day 1 of the Trial) but I do briefly record that the GLRO had procured the electronic counting system from IntElect who had provided the same service for the 2012 GLA elections. Candidates and agents had the opportunity to view the electronic counting machines, and be briefed on the process, in advance of the election. Ms Richards' election agent took up this

opportunity and viewed the counting machines and was briefed on the counting process. She did not raise any concerns about either the machines or the process. One aspect that she wished to pursue with Intellect was algorithms but this was only of relevance to the first and second preferences for the Mayoral election. There is no reason to have an algorithm arrangement when talking about a first past the post system.

Other aspects of the trial

65. I should mention some other aspects of the trial. I have already given separate short judgments about the request on Day 1 to call Mr Jason Kitcat the former Leader of Brighton & Hove City Council on Day 2 to give expert evidence. I did not allow this (especially given that she had been correctly told by Sharpe Pritchard as long ago as 1 August 2016 that any applications for expert evidence should be made promptly) . I have in fact read the report of Mr Kitcat dated 12 June 2016 as “A briefing for the London Assembly Election Review Panel” which was in the Agreed Bundle. It deals purely with e counting in general, is not related to the West Central constituency and does no more than pose a series of questions.
66. Following the hearing, Ms Richards applied to me to ask further questions of the witnesses. I refused that application. I did however allow her to address further questions to Mr Jacobs which he answered without any order to do so and several Labour Party colleagues.
67. I also reject a suggestion made by Ms Richards that she was not permitted to see what was happening at the time at the count. Mr Parker told me and I accept “I had the documents to be able to read out where we were in terms of the final draft poll result. And if a candidate or agent wanted to scan that briefly, as clearly it is at a very headline level and is a composite result around each of the candidates, that was made available. Nobody saw that as being unusual or different from any

normal circumstances. And certainly nothing was removed whereby the candidates or agents could not view that.”

Conclusion

68. In summary I think that there were (as Mr Straker submitted) convincing and compelling evidence from Mr. Parker and Mr. Pyroyiannos to indicate that all matters in terms of the steps, which are required to be taken have been taken in relation to the election, leading to an exercise where the court should declare that there has been a due election as opposed to an undue election. The election was so conducted as to be substantially in accordance with the law and the act or omission did not affect its result, so that the election stands.

69. I accordingly dismiss all aspects of the petition.

Coda

70. I must however confess to some surprise in the evidence presented at the Trial that no clearer tally was retained of the number of ballot boxes received at the count centre. Mr Pyroyiannos explained “it is not a statutory function to have a number for the number of ballot boxes that were returned to the count venue. So, while Westminster City Council officers recorded the number of ballot boxes received at close of poll – to ensure that the correct number of ballot boxes were (i) placed on the vehicles transporting the ballot boxes to Olympia and (ii) placed in the holding area for ballot boxes at Olympia – these were not retained and are therefore not held by Westminster City Council. The same applies in respect of the Royal Borough of Kensington & Chelsea”.

71. Although I recognise that it is not a relevant statutory requirement I do think it would be good practice for that tally to be retained and I make this as a recommendation. I emphasise that I am not suggesting any illegality and it in no way can be said to invalidate the election. I am satisfied that the ballot boxes were handled appropriately as were all other aspects of this Election.