



Neutral Citation Number: [2021] EWHC 1329 (Ch)

Case No: PT 2021-000063

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
PROPERTY, TRUST AND PROBATE LIST

**IN THE MATTER OF THE WORLD FEDERATION OF THE KHOJA SHIA ITHNA-
ASHERI MUSLIM COMMUNITIES**

AND IN THE MATTER OF THE CHARITIES ACT 2011

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18th May 2021

Before :

THE HONOURABLE MR JUSTICE MELLOR

Between :

DR MOHAMED H JAFFER

Claimant

- and -

(1) SAFDER JAFFER
(2) DR MUNIR DATOO
(3) ZAFFAR KHAKOO
(4) SAJJAD RAJAN
(5) ARIFALI HIRJI

Defendants

(6) RUQAYYA DATOO NANJIANI
(7) HER MAJESTY'S ATTORNEY-GENERAL

Matthew Smith (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Claimants**
Robert Pearce QC (instructed by **DAC Beachcroft LLP**) for the **First to Sixth Defendants**

Hearing date: 13th May 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10 am on Tuesday 18th May 2021.

THE HON MR JUSTICE MELLOR

Mr Justice Mellor:

Introduction

1. I have to determine two interim applications in this Part 8 claim which was commenced by the Claimant on 22 January 2021, pursuant to permission granted by Marcus Smith J on 4 January 2021. The claim concerns the World Federation of the Khoja Shia Ithna-Asheri Muslim Communities ('the Charity'), an unincorporated association registered under the Charities Act 2011. An unfortunate dispute has arisen over challenges to the conduct of elections in January 2020 for the post of President of the Charity for the term 2020-2023 and the eligibility of the First Defendant (hereafter D1 and no relation to the Claimant), who was declared to be the winner of that election by the Electoral Commission of the Charity on 21 February 2020, to stand for office and what the Claimant terms the purported appointment of the First to Sixth Defendants (generally, the Ds and 'the Interim Office Bearers') as "interim office bearers" of the Charity at a meeting in July 2020. The Seventh Defendant, Her Majesty's Attorney-General, has given no indication of any intention to participate in these proceedings.
2. Before I describe the events which have led up to this action and the current applications, I need briefly to outline how the Charity is organised and operates.

The Charity

3. The Khoja Shia Ithna-Asheri are a worldwide community of approximately 150,000 persons, linked by ethnicity. They follow the Shia Ithna-Asheri faith, a branch of Islam. Originally from Gujarat, they have local communities, known as Jamaats, in Africa, Australasia, Europe, India, North America, Pakistan and elsewhere. There are approximately 100 Jamaats.
4. The Charity has a written constitution dated May 2017 and its objects are:
 - i) to promote the Khoja Shia Ithna-Asheri faith throughout the world;
 - ii) to relieve poverty among the members of the Community (i.e. all those persons throughout the world who are of the Shia Ithna-Asheri faith);
 - iii) to educate members of the Community.
5. The Charity's income varies but in the year to 31 December 2019 was reported to be over £15 million.
6. The Jamaats in the regions listed above are grouped into six Regional Federations. Each Jamaat and Regional Federation has its own constitution, and is self-governing. The six Regional Federations are the members of the charity. A Jamaat which is outside the territory of a Regional Federation may be an associate member of the Federation. There is one such associate member, a Jamaat in Dubai.
7. The charity's constitution provides for two committees, or councils, the Conference and the Executive Council ('ExCo'). The Conference is said to be the supreme governing body of the Charity. It is made up of around 154 people. It meets triennially and may also hold extraordinary meetings at other times. The Executive Council meets as

needed. It is a body of up to 70 members, made up of the Office Bearers and groups of councillors who are, respectively, appointed by the President, elected by the Conference, and appointed by the six Regional Federations of Jamaats. The constitution also provides for an Electoral Commission, whose function is to conduct elections required by the constitution.

8. The constitution provides for six Office Bearers: the President, Vice President, Secretary General, Assistant Secretary General, Honorary Treasurer and Assistant Honorary Treasurer. The Office Bearers are the “charity trustees” of the charity for the purposes of the Charities Act 2011. They hold office for simultaneous terms of three years.
9. The President is elected triennially by an electorate of eligible voters in Jamaats and the number of such electors is about 47,500. Clause 20 of the Constitution sets out details of how the election must be conducted. This is supplemented by a document entitled ‘Standard Operating Procedures’ (‘the SOP’), adopted by Conference on 4 December 2010. The Vice President, Treasurer and Assistant Treasurer are elected by Conference. The Secretary and Assistant Secretary are appointed by the President.

The 2020 Election

10. The most recent triennial election for the office of President was held on 30 and 31 January 2020. There were approximately 47,424 eligible voters, of whom around 9,200 voted. The result of the election is expressed in Electoral College points. The First Defendant, Safder Jaffer, received 53.03 points out of a total of 88. The runner-up, Dr Jiwa, received 18.26 points. The First Defendant was therefore elected by a substantial margin. The result of the election was announced by the Electoral Commission on 21 February 2020.
11. A triennial meeting of the Conference was convened for 13-15 March 2020 and was due to be held in person in Mombasa, Kenya. In the normal course of events:
 - i) the Office Bearers who were in post from 2017 to 2020 (“the Former Office Bearers”) would have stood down at the end of the Conference;
 - ii) Safder Jaffer, the President-elect, would have taken office at the end of the Conference;
 - iii) the Conference would have elected the three new Office Bearers it is required to elect;
 - iv) the new President would have appointed the two new Office Bearers he is required to appoint;
 - v) the new team of Office Bearers would have held office to the next triennial conference in 2023.

Complaints about the Election and subsequent events

12. At various times, a number of complaints have been made about the conduct of the 2020 Election and the eligibility of the First Defendant to stand as a candidate. For example, on 19th March 2020, solicitors for the Claimant sent a lengthy letter before

claim setting out his concerns about the electoral process. These complaints form the first limb of the Claimant's claim in this action. The letter of 19th March was responded to by solicitors acting for the Former Office Bearers, as the six trustees of the Charity, on 24 April 2020. I stress that it is not my role at this stage of this action to assess or decide on the validity of the various complaints or the responses to them, but I simply observe that a number of the points made by the Claimant concern a lack of adherence to the terms of the Constitution or SOP.

13. I have no doubt that, in the normal course of events, the complaints lodged by then about the conduct of the 2020 election would have been considered at the Conference planned to start on 13 March 2020 which could have and might well have been adjourned to receive reports about the conduct of the election. In fact, two reports were published. The Electoral Commission of the Charity published a reasonably lengthy final report on 26 June 2020 which considered some but not all of the complaints which have been made about the election. In addition, a Report was published by the Presidents Strategic Sub-Committee ('the PSS') on the 2020 Presidential Election. The PSS has no formal status in the Constitution but its Report relates how it was formed at an ExCo meeting held between 30 November-2 December 2018. The PSS comprises the President of the World Federation and the Presidents of the six Regional Federations, and is clearly intended to exert influence in the Charity. Its purpose is stated as '*to strategize key matters and challenges faced by the Community and to discuss issues of great importance to the Community, at times of emergencies; man-made, natural or otherwise and to give our recommendations for action to the Exco*'.
14. The PSS Report (which I am told was issued on 24th May 2020) is relatively short and deals with matters at a relatively high level. Nonetheless, it made a firm recommendation to ExCo that the 2020 Election should be annulled and the then current Electoral Commission should be dissolved. The Report concludes by emphasising '*adherence to our constitution is of paramount importance. Therefore we are sending a message for the future organisation of WF [the World Federation] that sticking to the legal and substance form of our constitution is the only sustainable way forward.*'
15. As a result of the inability of the Conference to meet in March 2020, the Charity Commission made an Order dated 26 June 2020 under the Charities Act 2011 s 105 (which took effect by way of authorising temporary amendments to the Constitution) the effect of which was to:
 - i) require the triennial Conference that had been due to meet in March 2020 to commence no later than 1 June 2021, set on the assumption that the pandemic would have subsided before then;
 - ii) prohibit the holding of an Extraordinary Conference earlier than 1 June 2021;
 - iii) provide that the Former Office Bearers should continue to hold office until the conclusion of the next Conference;
 - iv) authorise the Office Bearers and Exco (but not the Conference) to meet remotely until the next Conference.
16. I understand that the Charity Commission declined to order that ExCo had the power to annul the Election, the Former Office Bearers objecting to such an order being made.

17. A remote meeting of Exco was held on 27 and 28 June 2020. The Claimant alleges that the sole purpose of this meeting was to consider the 2020 Election. The events of this meeting and the subsequent one on 25 July 2020 form the basis of the second limb of the Claimant's claim in this action. In brief, the Claimant alleges that the Former Office Bearers resigned *en masse* to curtail the meeting on 27/28th June at which, so it is alleged, ExCo was about to resolve to annul the 2020 Election. I understand that the resignations were amended to take effect after 30 days. The Ds' position is that the Former Office Bearers resigned because of the pressure they were under and because of the criticisms made of them. The Charity Commission has made clear its view that the Former Office Bearers were not permitted to resign *en masse*.
18. The Former Officer Bearers then convened a further remote meeting of ExCo on 25 July 2020 at which the only business was the appointment of interim Office Bearers. A number of complaints are made about the conduct of this meeting, with participants being muted, not allowed to speak, points of order and requests to speak ignored, items added to the agenda without notice or the approval of the meeting etc. In short, it is alleged that no proper meeting took place. Once again, I stress that I am not able to assess or rule on any of these alleged complaints.
19. At the 25 July 2020 meeting, elections were held, pursuant to which the First Defendant was elected as President, the Second Defendant as Vice President, the Third Defendant as Treasurer and the Fourth Defendant as Assistant Treasurer, in each case "for the remainder of the 2017 – 2020 extended term". That meant until early June 2021 at the latest, i.e. the end of the Conference which the Commission's Order of 26 June 2020 required to be convened to start no later than 1 June 2021. The First Defendant then appointed the Fifth and Sixth Defendants as Secretary and Assistant Secretary, for the same period.
20. In addition to the complaints about the conduct of the meeting, the more serious issue is whether ExCo had any power to conduct an election of the President at all. In particular it is said that ExCo has no power under the Constitution to elect the President, a point which seems to have very considerable force in view of the fact that the purported justification for proceeding with that election was under a provision of the constitution (clause 19.1.3) which gives ExCo '*the sole right to fill any vacancy occurring on the Executive Council as a result of resignations, incapacity, death or otherwise, by appointing such member as it deems fit.*' That provision plainly concerns resignations etc of a member of ExCo as regards his or her position as a member of ExCo. Bearing in mind the detailed provisions in clause 20 of the Constitution regarding the procedure for electing the President, I confess that it is difficult even at this stage of the action to see that there is any answer to the point that clause 19.1.3 does not give ExCo power to conduct an election for the position of President of the Charity.
21. Since the 25 July 2020 meeting, the First to Sixth Defendants claim to have been successfully discharging the functions of the Office Bearers and that the full range of the charity's previous activities has continued.
22. Since that meeting, various submissions and complaints have been made to the Charity Commission from both sides of this dispute. At one point in August 2020, the Charity Commission understandably objected to having to consider contentions from five

different individuals or groups, four of which were legally represented. It is not necessary to set out all these developments. Suffice to say that the Charity Commission:

- i) took the view that the resignation *en masse* of the Former Office Bearers was invalid;
 - ii) despite being asked to do so, declined to make a further Order to confirm the First to Sixth Defendants as interim Office Bearers, in succession to the Former Office Bearers, until the Conference could meet;
 - iii) stressed the need and desirability for the disputes which had arisen to be resolved internally within the Charity. To that end the Commission refused to grant permission to the Claimant to bring these proceedings at least until after a mediation had been conducted;
 - iv) stressed the need for all parties to focus on finding an agreed solution based on ensuring that the outcome of the 2020 Election was scrutinised by Conference and if it is found to be unsafe that the electorate of the charity (not a management layer within the Charity) should be given an early opportunity to vote again, using a process which is validated.
23. The Claimant prepared proceedings and other documents required by the Charity Commission's guidance in CC38 – Charities and Litigation. On 13th August 2020, he applied to the Commission for permission to bring these proceedings. As I have indicated, the Commission refused permission on the basis (a) that the parties had not explored mediation and (b) out of concern about the likely costs for the Charity.
24. In due course a mediation occurred in November 2020 but it did not result in any resolution. In the meantime, the Claimant had applied to Court for permission pursuant to s.115(5) of the Act. The Claimant was granted permission by Marcus Smith J by his Order dated 4th January 2021.

The proceedings and these interim applications

25. This part 8 claim and supporting evidence was filed and served on 22nd January 2021. As I have indicated, the claim has two limbs: the first concerns the 2020 Election and the second concerns the elections held at the ExCo meeting on 25 July 2020. In these proceedings, the Claimant seeks the following principal final relief:
- i) A declaration that the election held on 30-31 January 2020 for the post of President of the Charity was void and of no effect or should be disregarded;
 - ii) A declaration that the purported appointment or election of the Defendants as Office Bearers of the Charity on 25 July 2020 was void and of no effect or should be disregarded;
 - iii) The appointment of a receiver to conduct a fresh election for the post of President of the Charity; to manage the affairs of the Charity pending that election and to investigate the financial activities of the Charity;

- iv) An injunction restraining the Defendants from holding themselves out as Office Bearers of the Charity; further or alternatively, an injunction restraining the First Defendant from holding himself out as President-Elect of the Charity.
26. The Ds sought an extension of time to serve their evidence in response to 8th March 2021, an extension which was not opposed.
27. On 8th March 2021 the Ds issued their interim application which is now before me. That application came before Michael Green J in the Interim Applications Court on 18th March 2021 and was adjourned by him to be heard as an Application by Order. On 1st April 2021, the Ds filed evidence, or further evidence, in response on the claim. The Claimant issued his own interim application dated 28 April 2021. A considerable body of evidence has been served on the two applications, so I was provided with a bundle of over 1,200 pages plus a number of authorities. The various witness statements reveal a large number of disputes of facts which I cannot resolve at this interim hearing. However, it is clear that the Court should make some orders of an interim nature, as I explain below.
28. The evidence served on behalf of the Claimant contains a number of detailed allegations about how provisions of the Constitution and SOP were not adhered to. The evidence served on behalf of the Ds addresses these points in detail but the general tenor of the Defendants' evidence is that, even if the Constitution and SOP were not strictly adhered to, it would not have made any difference to the outcome of the 2020 Election. Once again, that is not something I am able to or do resolve on these interim applications.
29. However, it seems to me that the Claimant's complaints have impact at two different levels. One level involves the individual complaints, whether assessed individually or cumulatively. On my reading of the evidence, the Claimant's evidence also conveys a more general accusation of a malaise in the running of the Charity due to insufficient attention being paid to the requirements of the Constitution and SOP.
30. I should make it clear that the Claimant is a member of the Khoja Shia Ithna-Asheri Community who was entitled to vote in the impugned Presidential election, he is Chairman of the Mombasa Jamaat and a member of the ExCo. Even though he does not bring his claim in a formal representative capacity, he is, in a sense, representing all those who have raised concerns or complaints about the 2020 Election and about the 25 July 2020 Meeting of ExCo.

The Ds' Application

31. The Ds seek relief under three heads:
- i) First, the Ds seek an Order authorising them to discharge the functions of the Office Bearers until they are replaced in accordance with the constitution of the charity or an Order of the Court or the Charity Commission.
 - ii) Second, the Ds seek an Order that the Conference convened to commence on 21 May 2021 can be held remotely.

- iii) Third, the Ds seek authority for the Conference to vote on resolutions (1) to affirm the election of Safder Jaffer as President and (2) to direct that a further election be held for the post of President.
32. Originally, there was a dispute as to whether the Ds required permission to seek this relief under s.115(2). In the event, the day before the hearing before me, the Charity Commission made an Order granting permission. In its covering letter, the Commission referred to a lack of clarity in the nature of the application but explained that it had given permission *if and insofar* as the claim and/or counterclaim met the definition of charity proceedings in s.115(8) of the Act.
33. In the course of argument, Counsel for the Ds drew attention to the following points by way of explanation and clarification of the nature of the relief claimed. So far as the first head of relief is concerned:
- i) That the authority was deliberately temporary and would last only until brought to an end in accordance with its terms (see paragraph 33i) above;
 - ii) That the form of wording used (i.e. *authorising them to discharge the functions of the Office Bearers etc.*) was designed so that the Court was **not** being asked to affirm either the election of the President in the 2020 Election or the elections held at the ExCo meeting on 25 July 2020.
34. As for the third head of relief, Counsel for the Ds submitted:
- i) The two resolutions are intended to make clear that a delegate who is satisfied that the election was valid may nevertheless vote in favour of holding another one, if he thinks this is the best course.
 - ii) These resolutions are within the powers of the Conference, but that it would be of assistance to the Conference for the Court to make an Order in the terms sought, to minimise the possibility of the Conference becoming tied up in legal or procedural matters and to enable it to focus on the real issues.

The Claimant's Interim Application

35. As I have mentioned, the Claimant issued his own application for interim relief on 28 April 2021, seeking (1) an Order appointing a receiver/independent person to perform the functions of the Electoral Commission in respect of fresh elections for the post of President of the Charity; alternatively (2) expedited directions for trial because such Orders are in the best interests of the Charity and/or are just and convenient.
36. I leave over the second part of the interim relief claimed by the Claimant, which can be considered at a Case Management Conference which is already set for 23 June 2021.

Principles

37. In respect of a charity, the Court, in the form of a Judge of the Chancery Division has a wide inherent jurisdiction and, when that jurisdiction is invoked, can make such orders as are required in the best interests of the charity.

38. Mr Smith for the Claimant correctly drew my attention to the guidance provided by the Court of Appeal in *Speechly v Allott* [2014] EWCA Civ 230 as to the correct approach to cases (such as the present) in which it is alleged that there has been a breach of the rules of an unincorporated association. The Court of Appeal endorsed the view, at [21], that the rules of such an association take effect as a contract amongst the members. Accordingly, the task of the Court in a case such as the present (see [28]) is to consider (a) what do the rules of the association require? and (b) what is the effect of any non-compliance which is established?
39. Due to the complicated organisational structure of the Charity, Mr Smith also made some submissions about the effect of the ‘multi-tiered participation structure’ (as he put it) of the Charity. He submits, correctly, that the Constitution and the SOP confer rights (and duties) on various categories of person, including the grassroots members, even though he accepts that the grassroots members of the Community are not themselves members of the unincorporated association. He points out that the grassroots members may be able to enforce their rights under the Contracts (Rights of Third Parties) Act 1999. He points out, to my understanding, that if (for example) delegates at the Conference are instructed to vote in particular ways (e.g. simply voting in favour of a particular candidate or side in this dispute) such purported waiver of any breaches of the Constitution by Conference may not result in a waiver of rights held by grassroots members. These are not matters I can attempt to resolve on these interim applications, but they tend to reinforce the importance of Conference conducting itself correctly.
40. Mr Smith also drew my attention to a recent decision of the High Court in *Rahman v Ashikmiah* [2021] EWHC 324 (Ch) in which it is suggested at [7] that the Court does not, in such cases, undertake some general supervisory role over the affairs of the charity in question and that its role is limited to determining the respective rights of the parties as a matter of contract.
41. Those principles have much greater application at any trial of these proceedings but have less significance (a) at this interim hearing where (b) the Court is having to deal with circumstances which are not dealt with in the contract between the members. In order to break the stalemate which exists between the two sides in this dispute, it is necessary, in my view, to consider what course to take in the best interests of the Charity.
42. In that regard, Mr Smith submits that:
 - i) the Constitution cannot oust the jurisdiction of the Court to rule on the Claimant’s complaints, relying on *Rai v Ahir* [2014] EWHC 2299 (Ch) (Penelope Reed QC sitting as a Deputy Judge of the Chancery Division) at [62];
 - ii) at this interim stage, the Court should not make an Order which authorises the ratification of rights conferred on grassroots members, relying by way of analogy on *Qureshi v Association of Conservative Clubs Limited* [2019] EWHC 1165 (Ch) (Sarah Worthington QC sitting as a Deputy Judge of the Chancery Division) at [65], *Rai* at [48].
43. I agree that any interim order I make at this stage should not have the effect of granting summary judgment against the Claimant on any part of his claim and therefore I have

inserted suitable provisos into the Order in order to leave these issues open for further argument at trial.

44. Mr Pearce QC for the Ds submits that the Court will not interfere with the past or future exercise of fiduciary discretions save in exceptional cases (the “non-intervention principle”) and that principle applies to charities as much as to other trusts, as confirmed by the Supreme Court in *Lehtimäki v Cooper* [2020] UKSC 33 at [120] – [123], [216], reported as *Children’s Investment Fund Foundation (UK) v Attorney General* [2020] 3 WLR 461, UKSC. On that basis, he submits that:
- i) The responsibility for considering the Claimant’s claims about the election rests in the first instance with the Conference.
 - ii) Its members are fiduciaries in relation to the exercise of their powers.
 - iii) The Conference has power to order a fresh election, and it should be permitted to consider whether to do so.
 - iv) The Court should not take that responsibility out of its hands; and finally,
 - v) The question whether to order a fresh election does not fall within the class of special cases in which the Court would be justified in pre-empting the exercise of a fiduciary discretion.
45. Those submissions are all very well, but they clearly do not address the question as to whether ExCo had any power to conduct the elections at the meeting of 25 July 2020.

Relief on the Claimant’s Interim Application

46. I address the first part of the interim relief sought by the Claimant. Despite the submissions made in support by Mr Smith for the Claimant, it is clear to me that the only basis upon which I would be justified in granting such relief was if the Claimant had established his complaints made in these proceedings to the summary judgment standard. Although there were threats to make an application for summary judgment in some of the early correspondence, there is no application for summary judgment on the Claimant’s claim before me and any such application would have been hopeless in view of the large body of disputed evidence before me.
47. In addition and in any event I see considerable merit in allowing Conference to consider the 2020 Election and to resolve on the way forward, before the Court should intervene. In case there is any doubt that Conference has power to annul an election for the position of President and decide to hold a fresh election process (since the Constitution does not expressly provide this power), I confirm that Conference does have such powers, at least on the temporary basis required to resolve the disputes surrounding the 2020 Election.
48. Accordingly, I dismiss the first part of the Claimant’s interim application and adjourn the second part to the CMC, at which I hope the parties and the Court can consider what is required in the light of what transpires at the forthcoming Conference.
49. It may be that the appointment of an independent person (and three very promising candidates were presented in the Claimant’s evidence) to oversee a fresh election

process for the position of President of the Charity would be a very good way forward, in the sense that it would more or less put an end to this costly and unfortunate litigation. However, at least in the first instance, such a process can only be initiated by a decision of Conference. I point out that if Conference does not resolve to hold a fresh election for the position of President of the Charity, then the Claimant's claim continues with the prospect that, if it cannot be resolved by agreement, at some point in the future when a trial of his claim can take place, the Court will have to resolve the disputes over the conduct of the 2020 Election and the ExCo meeting of 25 July 2020. Those disputes may be resolved in the Claimant's favour or they may not – I express no view on that. However, a resolution in the Claimant's favour say next year has the potential to cause further disruption in the affairs of the Charity.

Relief on the Ds' Interim Application.

50. Parts of the Ds' interim application are the counterpoint to the Claimant's application. Hence, as I have already indicated, I have formed the clear view that Conference should have the opportunity to consider the complaints made about the 2020 Election.
51. I note that:
 - i) the Agenda for the aborted March 2020 Conference was circulated on 13 December 2019 following the ExCo meeting held on 2 November 2019;
 - ii) at the ExCo meeting held remotely on 23 and 24 January 2021, it was resolved that Conference should convene and start on 21 May 2021, adopting the Agenda for the March 2020 Conference with certain amendments, namely that item 20 (concerned with a report from the Electoral Commission on the 2020 Election) will also include the PSS Report and will be moved to item 3 of the Agenda;
 - iii) if a fresh election is to be held, the process takes a minimum of 120 days or so, and is likely to be considerably longer due to the continuing uncertainty caused by the pandemic.
52. Although the Claimant's Counsel developed a submission which involved fresh elections being held for the position of President, followed by Conference, I am satisfied that the additional delay such a course would cause would not be in the best interests of the Charity. I have concluded that it is in the best interests of the Charity for the Conference to meet without further delay and for that reason, my Order directs that the meeting of Conference may be held remotely by suitable electronic means which enable each participant to communicate with all other participants.
53. To the extent necessary, I confirm the convening of the Conference to commence on 21st May 2021, and I confirm that once commenced, Conference may continue or adjourn as necessary in order to complete its business.
54. Whilst I have reached no concluded views on the complaints about the conduct of the ExCo meetings on 27-28 June and 25 July 2020, I draw attention to the useful guidance issued by the Charity Commission as to the conduct of meetings of a charity – see CC48 – Charities and meetings. All participants have to recognise the additional challenges of holding any meeting remotely which will be amplified by the large number of

attendees at Conference. It is very likely that Conference will take longer (possibly considerably longer) than if it had been able to meet in person.

55. Due to these proceedings being extant, it is highly likely that any complaints about the conduct of the Conference will be drawn to the attention of the Court. If it were to transpire that there were significant failings in the conduct of the Conference, that may prompt an application for additional relief from the Court and/or further intervention in the running of the affairs of the Charity.
56. I remind all participants at the Conference of the submission I recorded above made by Counsel for the Ds, namely that each participant is a fiduciary in respect of their powers. In brief, this means that **each participant must vote in the best interests of the Charity** and not, for example, with regard to any personal allegiance they may hold to one candidate or another or to one side of this dispute or the other.
57. In this regard I also remind the Interim Office Bearers that they are purporting to act as the six trustees of this Charity and are required to act as if they are the trustees of the Charity, again in the best interests of the Charity and without regard to any personal allegiances they may have to one side or the other.
58. Similar principles apply to any person in this Charity to whom particular tasks have been delegated and here I single out the members of the Electoral Commission and the members of the PSS.
59. For a workable Conference to take place, it seems clear to me that someone must undertake the functions of the Office Bearers. Notwithstanding the views of the Charity Commission, the Former Office Bearers have indicated no desire to resume their previous positions. In the circumstances, the only practical way forward is to permit the Interim Office Bearers (appointed at the ExCo meeting of 25 July 2020) to discharge the necessary functions during the forthcoming Conference. In acceding to this first part of the Ds' Application, I stress that I am **not** affirming the elections which were held at the 25 July 2020 ExCo meeting. For the avoidance of doubt, I am also **not** affirming the result of the 2020 Election.
60. If the Conference (a) resolves to affirm the outcome of the 2020 Election for President and (b) elects persons to the positions of Vice President, Honorary Treasurer and Assistant Honorary Treasurer, then the President can make his appointments to the positions of Secretary General and Assistant Secretary General. In those events, the authorisation in my Order to the Interim Office Bearers will cease, since such authorisation will no longer have any purpose. However, any such resolution and elections will remain subject to whatever the Court may order at any trial of the Claimant's claim.
61. If, however, Conference resolves to hold a fresh election for the position of President, then my authorisation to the Interim Office Bearers will continue until the conclusion of a Conference held after the results of that election are known. If Conference resolves to hold a fresh election, I would encourage Conference to give serious consideration to appointing an independent person to conduct and oversee the fresh election. Such an appointment may significantly reduce the scope for future disputes.

62. My Order will include a general permission to apply to the Court in the event that unexpected events occur.
63. I turn to the third part of the Ds' Interim Application. As drafted, the resolutions I was asked to authorise struck me as somewhat leading – in the sense that they suggested the answers desired by the Ds. For that reason, I have re-drafted the resolutions which Conference must consider to make each one as neutral as possible. These are set out in the terms of the Order which I have annexed to this Judgment.

Costs

64. For the reasons explained above, the First to Sixth Defendants have been largely successful on their application and the significant part of the Claimant's application (leaving aside the adjournment of his request for case management directions) has failed.
65. Both sides served costs schedules for this hearing. They show that very considerable sums of money have been spent already in these proceedings – well over £100,000 on each side. The Claimant has confirmed he is bearing his own costs of this claim. It was also submitted on the Claimant's behalf that the former Office Bearers stated that they would not look to the Charity for their legal costs and, as far as I am aware, the costs of the Ds are not being borne by the Charity. Notwithstanding that, the scale of the costs already expended is very concerning. Those levels of costs should be considered by Conference and should provide additional impetus to efforts to resolve the current dispute as soon as possible.
66. Ordinarily, the Court is encouraged, for a one-day hearing such as the present, to summarily assess costs if it is possible to do so. I will require further submissions on costs in the light of this judgment on (a) the correct order as to costs and (b) whether I can or should conduct any form of summary assessment. In particular, I need to know whether the costs schedules which have been submitted cover all the work which has been conducted on each side in these proceedings to date. It is clear that it is at any trial of these proceedings that much of the evidence served on these applications will need to be considered. In such circumstances, it would be unfair and premature (in advance of trial) to award one side or the other significant costs of witness statements which, although served on these interim applications, will have primary relevance at any trial.