

Neutral Citation Number: [2021] EWHC 324 (Ch)

Case No: PT-2019-MAN-000065

**IN THE HIGH COURT OF JUSTICE**  
**[BUSINESS AND PROPERTY COURTS IN MANCHESTER]**  
**PROPERTY, TRUSTS & PROBATE LIST (ChD)**

Manchester Civil Justice Centre  
Date handed down: 18 February 2021

**Before His Honour Judge Stephen Davies sitting as a High Court Judge**

**IN THE MATTER OF THE SHAHJALAL MOSQUE AND ISLAMIC CENTRE  
AND IN THE MATTER OF THE CHARITIES ACT 2011**

**And between :**

- (1) MOHIBUR RAHMAN**
- (2) ABUL HASAN MATIN**

**Claimants**

**- and -**

- (1) MOHAMMED ASHIKMIAH**
- (2) HER MAJESTY’S ATTORNEY  
GENERAL**
- (3) MOTOSIR ALI**
- (4) SHAWKAT ALI**

**Defendants**

**Steven Fennell** (instructed by **Slater Heelis LLP**) for the **Claimants**

No appearance by or for the First and Second Defendants

**Gary Pons** (instructed by **direct access**) for the **Third and Fourth Defendants**

Hearing dates: 28, 29 January 2021  
Date draft judgment circulated: 3 February 2021

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**APPROVED JUDGMENT**

This judgment is to be treated as being handed down at 10:00am on 18 February 2021 and emailed to the parties and sent to Bailii. I direct that pursuant to CPR PD 39A paragraph 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.

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**His Honour Judge Stephen Davies**

**His Honour Judge Stephen Davies:**

**Introduction and summary of decision**

1. These proceedings, which are charity proceedings for the purpose of the Charities Act 2011, concern the affairs of the Shahjahal Mosque and Islamic Centre in Rusholme, Manchester (“**the Mosque**”), which is an unincorporated charity, formed in 1967 and now governed by a constitution adopted in 2015 (“**the Constitution**”).
2. In summary, a dispute has arisen concerning a membership application process which took place in summer 2018. A total of 608 applicants paid their membership fees with cheques drawn on the account of the wife of the First Defendant who was, and remains, the Chairman of the Mosque (“**the Chairman**”). However, those cheques were not accepted by her bank. Although she paid the same amount by bank transfer as soon as this came to her attention, one faction within the Mosque, represented by the claimants, contend that there is no power to admit the 608 applicants as members in such circumstances, because the payment was made too late by reference to the condition as to time for payment contained in the membership application form. Another faction within the Mosque, represented by the third and fourth defendants, contend that the membership fees were paid within the time for payment as provided for by the Constitution and that insofar as the payment condition contained in the application form was validly authorised it is contrary to the Constitution and of no effect.
3. The practical significance of this dispute is that if the 608 applicants did not become valid members then they could not have voted in the elections for a new Executive Committee which were scheduled to be held in October 2018. The claimants believed that the 608 applicants would have supported the Chairman and his faction, who they accuse of financial mismanagement. As a result of the dispute those elections did not take place and the Chairman and the remainder of the Executive Committee, which is divided as between the two factions, has effectively remained in place ever since.
4. It is a matter of regret that for whatever reason or reasons (and I have been told that it took some time to obtain the permission of the Charity Commission to give its permission) the proceedings were not issued until July 2019 and then not tried until January 2021, not least because in the meantime the affairs of the Mosque have been deadlocked and it has not been possible to elect a new Executive Committee. Mr Pons, counsel for the third and fourth defendants, contends that by reference to the Constitution, which requires a fresh membership application process every two years, the case has now become academic, so that even if I was to decide the issues in the claimants’ favour I should decline to grant relief.
5. The case was tried over 2 days, during which I heard from a number of witnesses and received persuasive submissions from Mr Fennell, counsel for the claimants, and from Mr Pons. The Chairman was removed as a defendant at an earlier hearing and took no active part in the case thereafter. The Attorney General has also taken no active part. In the circumstances I may refer to the third and fourth defendants simply as the defendants, whilst

noting that there remains an outstanding costs issue as between the claimants and the Chairman which I must resolve after this judgment is handed down.

6. In short, my determination is that the claim fails. My reasons appear below.

### **The Constitution of the Mosque**

7. It is common ground that the constitution of a charitable unincorporated association such as the Mosque operates as a matter of contract as between the members of that association. The court does not, in any case such as the present, undertake some general supervisory role over the affairs of the Mosque. Its role is limited to determining the respective rights of the parties as a matter of contract. I am not concerned with the truth or otherwise of the allegations of financial mismanagement made against the Chairman.
8. As recorded in the Preamble to the Constitution, in 1967 the Muslim community of Bangladeshi origin living in Manchester and adjoining towns decided to establish a Mosque of their own from donations and contributions from members of that community. A property in Rusholme was identified and acquired and opened as a Mosque. In 1975 the general body of members of the Mosque adopted the first constitution and elected the first executive committee. The constitution was updated in 1987 and the current version is that dated July 2015.
9. The four aims and objectives of the Mosque are identified in clause 3 of the Constitution. The first three are the charitable purposes of the advancement of the Islamic faith of the Bangladeshi Muslim inhabitants in the area of benefit, the advancement of education and other facilities and the relief of poverty, sickness and distress. The fourth is the establishment, maintenance and management of the Mosque to further those objects.
10. Clause 4 is headed Membership and, in addition to clauses identifying those eligible for membership, and clauses giving the Executive Committee certain discretionary powers in relation to membership, which are not relevant here, contain the following three clauses of direct relevance to this case.

Clause 4.3: “There shall be a prescribed biennial membership fee as recommended by the Executive Committee and approved by the general body of members in the Annual General Meeting. This fee shall be due on admission to the membership.”

Clause 4.5: “A member failing to pay the membership fee within 30 days of the due date shall automatically lose the status of a bona fide member of the Mosque.”

Clause 4.7: “Memberships once closed shall not be open until after two years.”

11. It is common ground between the parties that clause 4.7 has always been operated in practice so that every two years there is a membership application process within which all those wishing to be members of the Mosque for the following two years must participate, including all existing members. Thus no one is automatically entitled to have their membership renewed without participating and no one is entitled to be admitted to membership within each two year period.

12. Moreover, although Mr Fennell did not formally concede this, I accept Mr Pons' submission that clauses 4.3 and 4.5, read together, are quite clear that the membership fee is due on admission to membership and a member, once admitted, has 30 days from admission to pay the membership fee, failing which he or she automatically loses his or her status as a member. It is unnecessary to speculate as to the precise reason or reasons for this provision. It would clearly have been open to the members to have adopted clauses which required the membership fee to be paid at the time of application and provided that payment of the membership fee was a precondition of admission to membership. They did not. They chose to allow members 30 days from admission within which to pay the membership fee.
13. There is no express provision requiring applicants to be notified that they have been admitted to membership. Unless there was room for implying a term, it appears to follow that the 30 day period runs from admission rather than notification of admission. However, nothing turns on that distinction in this case.
14. Clause 5 is headed Executive Committee and, in summary, provides for 21 members to be elected for a two-year term of office and to include nine honorary officers, including a Chairman, General Secretary and Treasurer.
15. Clause 5.4 states that: "It shall be the duty of the Executive Committee to carry out the general policy of the Mosque as outlined in clause 3 and, subject to any condition imposed by the membership through resolutions of Annual General Meeting ["AGM"] or extraordinary General Meeting ["EGM"], to provide for the administration, management and control of affairs and property of the Mosque".
16. Clause 5.7 permits the Executive Committee to create subcommittees and to nominate members of subcommittees to carry out work in the particular field. Clause 5.9 states that the honorary officers will be responsible for the day to day running of the Mosque, taking all action necessary in consultation amongst themselves with a simple majority.
17. Clause 5.10 assumes importance in this case and provides as relevant that: "Executive Committee shall have the power to adopt and issue standing orders and/or rules necessary for the betterment of the Mosque ... provided they shall not be inconsistent with or contrary to provision and spirit of Mosque Constitution".
18. Clause 6 is headed Meeting and makes provision for the Executive Committee to meet as often as necessary, but not less than once a month, with agreement or approval requiring a simple majority of those attending, but no provision as to who is responsible for convening such meetings. It also makes provision for AGMs to be held in June or July of each year on 21 days' notice and also for EGMs to be held on seven days' notice, again with agreement or approval by simple majority of those attending. Clause 7 provides that the quorum for Executive Committee meetings is 8 members and for AGM's and EGM's 51 members.

### **Events prior to July 2018**

19. It is common ground that historically a procedure had been adopted under which an open period of 30 days was allowed for membership application forms to be completed and submitted, accompanied by payment by cash or cheque. In addition to individual applications, persons known as collectors would canvass for and sign up willing applicants

and forward completed application forms with payment, sometimes - as in this case - via large aggregated cheques, to the Mosque. There would be a membership application collection day procedure on the last day, where those involved would check through the application forms and payments and enter each successful applicant onto the register of members.

20. It is also common ground that the format of the membership application form had varied over the years. I have been shown the application form used in 2014 and that used in 2016.
21. The 2014 version contained a Note stating (amongst other things): “Any false information or failure to provide the necessary documents (where required) or non-realisation of the cheque will render the application form invalid without refund of the fees”.
22. However the Note on the 2016 version contained no such equivalent provision, although it did require the applicant to state his or her understanding that the membership fee was non-refundable.
23. There is no evidence as to why the words included in the 2014 version were omitted from the 2016 version. There is no suggestion that it was the result of a considered decision taken by the Executive Committee or the members in general meeting. It appears from what I can discern to have been left to the inclination of those tasked with drawing up the application form. There is no evidence that it was ever a matter of contention. That is not surprising, because - as Mr Fennell emphasised - it was a neutral provision in that it did not favour any particular faction.

### **Events from July 2018**

24. Before I refer in detail to the relevant events and, in particular, to the relevant minutes of relevant meetings, it is also important to emphasise that until after 1 September 2018, after the membership application collection day, there is no suggestion from the minutes or any other contemporaneous documentation that there was any disagreement as to the format of the membership application form and, specifically, the payment provisions contained within it. Again, that is not surprising in the absence of any evidence that those canvassing for any particular faction anticipated difficulties in obtaining payment for their applications. It is against that background that I will have to consider the evidence of the Treasurer, Mr Afique Miah, that in July 2018 he and others had protested about the inclusion of those payment provisions.
25. More generally, I should observe that the minutes of the relevant meetings are not always models of clarity. That is perhaps not surprising, given that they were not produced by a professional secretary. Most, although not all, of were produced by the General Secretary, Mr Anwar Ahmad Choudhury. He tended to produce typed up minutes after the event from his own notes, where those original notes are not before the court. Some minutes produced by others are handwritten. I should not, therefore, treat these minutes as if they contain an accurate verbatim account of what was discussed and what was agreed at each meeting.
26. Nonetheless, I have no doubt that they, together with the other contemporaneous documents, are more likely to be accurate than the subsequent witness evidence, both contained in the witness statements and given orally in court. As will already have become clear, by the time

the statements were produced the two factions were already at loggerheads and pressing for a version of events which supported their respective cases in order to improve their prospects of success in any subsequent elections to the Executive Committee. Although both Mr Chowdhury and Mr Miah claimed in their evidence to be neutral, it is apparent that both are and were members of the competing factions. They both gave evidence which was at times confused, confusing and partisan. It would be unsafe in my judgment to place any great weight on their evidence insofar as uncorroborated. The safer course in my judgment is to place more weight on the contemporaneous documents, assisted by my assessment of the likely probabilities and such other evidence as I can accept as reliable. Where I have to make a choice, I am more inclined to prefer the evidence of Mr Chowdhury over that of Mr Miah. The evidence of Mr Kabir Ahmed, MBE, JP, DL, the appointed Election Commissioner, was scrupulously independent but ultimately inconclusive in relation to the key matters in dispute. Finally, I was unable to place any weight on the evidence of Mr Shawkat Ali, the fourth defendant, since it was clear that he had no real recollection of the matters in dispute.

27. The first relevant Executive Committee meeting was held on 1 July 2018. The handwritten minutes were not taken by Mr Chowdhury, who was not present. Most of the meeting dealt with the financial issues which are not for this court. Towards the end there is an item titled "Election" with the following words: "will be held on Sunday, 21 October 2018. Membership fees will be £30 per applicant for two years. Form's design will be informed by chair".
28. There is no difficulty about the membership fee, since it will be recalled that the Executive Committee was required to recommend the biennial membership fee by clause 4.3 of the Constitution. The concluding words are more opaque. What is clear is that it refers to the membership application form and that the Chairman was not being asked to produce it by himself. Given that Mr Chowdhury as the General Secretary did produce it, as would be expected, I am satisfied that the minute records agreement that he should liaise with the Chairman as to its design. Is design limited to the physical appearance of the form or does it include its content? In my judgement it is impossible to separate the two and I accept Mr Fennell's submission that it does include content. I see no reason not to conclude that this was the informal delegation of the task of producing and agreeing the format and content of the membership application form to the General Secretary and the Chairman, as was permitted by clause 5.7.
29. There was then an AGM held on 8 July 2018. Under item 6, headed "membership for the year 2018-2020", it was recorded that the AGM unanimously agreed to fix the membership fee at £30. It was also recorded that the General Secretary pointed out that according to the Constitution the deadline for submitting the membership form should be 30 days from the AGM date, but he asked for and obtained approval for the forms being made available on 13 July 2018 with the 30 days deadline being extended to 5pm on 13 August 2018. Two points may be made about this. The first is that Mr Chowdhury is clearly wrong in what he said about what the Constitution requires. He appears to have confused the 30 days period of grace between admission to membership and the membership fee becoming due with the date of opening membership applications and closing membership applications. The second is that there is no suggestion that there was any discussion, still less approval of, the membership

form or any particular payment terms and, specifically, the equivalent of that which was in the 2014 application form as recorded above.

30. Nonetheless, I accept Mr Chowdhury's evidence that between 1 and 8 July 2018 he produced the first draft of the membership application form, using the 2014 version as a starting point, which he attached to his third witness statement, and discussed its format and agreed some amendments with the Chairman and the Treasurer. This evidence is entirely consistent with the changes from the 2014 version to the draft and from the draft to the final version and with the record of the meeting of 1 July 2018 that the Chairman would have input into the design of the application form. I also accept and prefer Mr Chowdhury's evidence to that of Mr Miah that on the 13 July 2018 Mr Chowdhury took the final version of the application form to the Mosque where, having showed it to the Chairman and the Treasurer for their approval, which was forthcoming, he produced a number of copies using the office photocopier and then made them available for collection after prayers. I reject as implausible Mr Miah's evidence that he and a number of other executive committee members saw and objected to the payment provision and that although they requested Mr Chowdhury to remove it he refused. That seems to me to be implausible because: (a) there was no obvious reason why anyone should object to the payment provision, and Mr Miah was unable convincingly to explain why there was objection; (b) if he and a number of other executive committee members had objected there was no reason why an Executive Committee meeting should not have been called to raise this as an issue - even if it was too late to recall the application form it was not too late to instruct those present on the 13 August 2018 to disregard that provision and allow more time for anyone whose cheque was not honoured to pay.
31. The membership application form as sent out contained precisely the same provision as did the 2014 form as set out above. The form was split into three parts. The first part was the application form itself, to be completed to include the details of the applicant or applicants (it was possible to include more than one applicant member on the same form) and which included the applicant's confirmation that he or she met the criteria for admission and the Note. The second part was headed for official use only and envisaged that it be completed by those receiving the application form to record the date of receipt of the form and the fee, to allocate a membership serial number and to record acceptance of the membership application "subject to terms and conditions with cash/cheque, received with thanks". The third part was to be used as a receipt to be given to the collector.
32. Mr Fennell submitted that as a matter of contract the draft membership application form amounted to an invitation to treat, in the sense that it contained the terms and conditions upon which the Mosque was prepared to consider membership applications. Completion and return of the completed membership application form and the requisite fee would then amount to an offer to become a member, which would be accepted subject to those terms and conditions by the Mosque on the membership application collection day. Mr Fennell submitted that it followed that this application form had a legal existence independent of the Constitution, which would only govern the relationship between members as and when they were admitted to membership. He submitted that because of the two-year membership provision this applied even where the application was from an existing member. He submitted that it followed that

it was irrelevant even if, as the defendants contended but the claimants denied, the payment provisions were inconsistent with the Constitution, because the General Secretary had implied or ostensible authority to send out a membership application form containing such a provision.

33. Mr Pons submitted that on a proper analysis the applicants were clearly making an application for membership on the basis of the Constitution, and that applied as much to the conditions for admission to membership as it did to their rights and duties once admitted as members.
34. I agree with Mr Pons' submission. In my judgment it is impossible to divorce the membership application process from the Constitution. Anyone making an application for membership would know that membership was governed by the Constitution, which is expressly referred to in the second declaration each applicant makes on the membership application form to "uphold the constitution". On Mr Fennell's analysis anything contained in the Constitution relating to the qualifications for membership and the procedure and conditions for obtaining membership would be irrelevant, in that neither the individual applicant nor the Mosque could rely upon them in the event of any dispute. In my judgment it is clear that on any objective analysis of the application process both individual applicant and his or her prospective fellow members were applying for membership on the basis that the Constitution would govern everything to do with their membership, including the application process.
35. I accept Mr Fennell's submission that it was both possible and permissible, both as a matter of contract and pursuant to the Constitution, for the membership application form to contain conditions which went above and beyond those appearing in the Constitution, and that this could include a condition such as that appearing in this case so long as properly authorised and not inconsistent with the Constitution contrary to clause 5.10. I reject Mr Fennell's submission that it was both possible and permissible for the membership application form to contain such a condition even if not properly authorised or even if inconsistent with the Constitution, simply on the basis that Mr Chowdhury as General Secretary had actual or ostensible authority on behalf of the Mosque to produce and send out the application form in the terms which he did. The terms of the Constitution operate as a contract between members and the individual members cannot be prevented from relying on their rights under the Constitution as against each other by reference to doctrines of agency which can have no application to such a case.
36. Mr Pons also submitted that the particular condition relied upon by the claimants was internally inconsistent and thus devoid of sensible meaning because, read literally, it provided that the application form would be rendered invalid in the event of non-realisation of the cheque without refund of the fees whereas, by definition, no fees would need to be refunded if the cheque was not honoured. Whilst it is of course true that if a cheque is not honoured there is nothing to refund, and whilst I accept that it is inherently unlikely that this provision was intended to cover the situation where, as here, the cheque was refused, a further payment made, but the admission was nonetheless declined because the payment was too late, nonetheless I discern no real inconsistency. It is clear, in my judgment, that the provision



prohibiting a fee refund was only ever intended to apply to the other two cases, namely provision of false information or failure to provide the necessary documents. It seems to me that the particular condition is perfectly straightforward and makes perfect sense on any sensible interpretation of the words used.

37. Moreover, I am satisfied that not only was it authorised by the Executive Committee by delegation to the General Secretary and Chairman as an ad hoc subcommittee under clause 5.7, but it was also expressly approved in a subsequent meeting of the Executive Committee on 12 August 2018. The minutes of that meeting, taking place the day before the membership application collection day, record under the heading “organise day of membership application collection” the following:

“The General Secretary explained the members present at the meeting that according to guidelines of the constitution if any member pay the membership subscription by bank cheque and if it is dishonoured the membership will be null and void. And on the day of membership form collection all application of membership will be recorded in a register book with the serial number.

The treasurer suggested that behind the cheque the serial number should be noted against the member who will pay by cheque. The member present agreed on the secretary and treasurer proposal.”

38. Whilst again it would appear that Mr Chowdhury had misunderstood the Constitution, nonetheless he was clearly explaining to the meeting the effect of the payment condition as contained in the membership application form. Furthermore, there can be no suggestion that this was an idle observation. The statement was being made in a meeting the day before the final day for submission of application forms and payment, at a time when it was important for the process to be understood and agreed. Mr Miah in his capacity as treasurer responded by proposing that the serial number allocated to each member should be noted against the cheque by which his or her membership fee was to be paid. The point of doing so could only have been to ensure that if the cheque was not met then it would be possible to identify which member had not paid the requisite membership fee. Crucially, it was recorded that the members present agreed on the proposals of the secretary and the treasurer. It follows, in my judgment, that what was proposed and agreed was that any applicant who paid by cheque which was not accepted would have his or her membership rendered void and that such applicants could be identified because their applications would be cross-referenced to the relevant cheque in question.
39. It was suggested by Mr Pons that the minute was unreliable because it included a separate entry which had been cut and pasted from an earlier meeting. However I see no reason not to accept Mr Chowdhury’s explanation that this was simply an error, where he consciously cut and pasted the entry because the meeting had discussed and recorded the update from the previous meeting, but in error he forgot to update the section which he had cut and pasted before finalising the minutes. Such an error does not seem to me in any way to invalidate the accuracy of the entry relevant to this case.

40. It was also suggested by Mr Pons that it was too late for the Executive Committee to approve the membership application form by this time, because it had already gone out almost 4 weeks previously. However there is no restriction on the matters capable of approval by the Executive Committee and, in any event, as I have already indicated what mattered was how the process was to be undertaken the following day. It would have been possible for the Executive Committee to have agreed by a majority that the specified sanction for non-realisation of the cheque should not apply. Instead, in my judgment they approved it.
41. Finally, even after the dispute arose, the matter was revisited at a meeting which was held on 1 September 2018, at which Mr Chowdhury was not present and the handwritten minute was taken by the Office Secretary. The meeting was clearly quorate, being attended by 19 members, including the Chairman and Mr Miah. It was also a fractious meeting, because the Chairman was unhappy that the Office Secretary had made the Executive Committee aware of the fact that the cheques had not been honoured and payment had subsequently been made by bank transfer. The minute, however, clearly records one member requesting that the meeting should consider terminating the memberships of those whose fees were not paid in time. It then records that this was proposed and that apart from the Chairman and a couple of other members the majority agreed. It then records that at the same time disruption occurred when a cousin of the Chairman entered the meeting and some pushing occurred, with the result that the Chairman ended the meeting. Although Mr Miah suggested in his evidence that no resolution had been passed before the disturbance took place, I do not regard that evidence as reliable. Whilst it is true that there was then a subsequent meeting, on 12 September 2018, at which it appears that the matter was discussed again and, so it would appear from the minute, the Executive Committee accepted that all of the membership, including the 608 disputed applicants, should be valid in the interests of the Mosque and the wider community, there was a still further meeting on 17 November 2018, which was also quorate - albeit only narrowly - and at which the original resolution was reinstated. Although Mr Pons argues that this meeting was not valid because it was not convened by the Chairman, there is no basis in my judgement for implying that only the Chairman could convene a meeting.
42. In the circumstances, I am satisfied that the payment provision in the membership application form was validly authorised by the Executive Committee in accordance with the Constitution.
43. However, in closing submissions, Mr Pons contended that whatever might have been decided in any of these Executive Committee meetings, it was not valid since it was inconsistent with the Constitution, and it is to this vital issue that I finally turn.

**Was the payment provision in the membership application form inconsistent with the Constitution?**

44. The question is whether the payment provision is inconsistent with or contrary to the provision and spirit of the Constitution. If it is, then it is clear that as a matter of contract the Executive Committee did not have the power to issue the payment provision as a rule applicable to the membership application process, with the result that the payment provision is of no effect.

45. Mr Pons' argument is that clauses 4.3 and 4.5 envisage three stages, first the application process, second the admission to membership stage, when payment becomes due, and third the 30 days' time to make payment of the membership fee. He submits that this has the beneficial effect of maximising membership by not requiring payment to be made with the application and by not having to reject otherwise satisfactory members simply because their cheque is not honoured, when they can pay if given time. He submits that, whilst it is perfectly open to the Executive Committee to provide for a 30 day window within which membership applications may be made accompanied by cheque, it is inconsistent with the provisions of the Constitution and contrary to its spirit to stipulate for no 30 day period post admission to membership to allow payment to be made if the cheque is not honoured. He submits that, whilst the Mosque has a legitimate interest in ensuring payment is received promptly and without difficulty, that cannot justify cutting across the 30 day time period for payment provided for by the Constitution so as to automatically void the membership application of anyone whose cheque is not honoured on first presentation. He submits that this does not require the Mosque to spend time and effort repeatedly chasing defaulters, since the loss of membership status in clause 4.5 happens automatically after 30 days.
46. Mr Fennell's argument is that it is perfectly legitimate for the Executive Committee to adopt a policy which in substance gives applicants 30 days within which to apply and to pay. He submits that if an applicant chooses to pay by cheque instead of paying by cash then it is incumbent on that applicant to ensure that sufficient funds are in the account and that the cheque is otherwise properly completed so that it will be honoured. He submits that there are good policy reasons for adopting this bright line policy and that it encourages prompt collection of what is, in effect, the Mosque's only substantial source of income.
47. Mr Pons' riposte is that there is a fundamental difference between a provision such as in the Constitution, which allows a member 30 days from admission to pay, and a provision such as in the membership application form, which requires the application form to be accompanied by payment and which allows no time gap between admission to membership and the time for payment so that there is no time to rectify any difficulties. He makes the point that, under the system as operated, even if an applicant submitted his or her application form with a cheque on the first day of the 30 day open application process it would not be opened and determined and the cheque presented until the last day, so that in practice the applicant does not receive any period of grace in which to remedy any payment problem. He submits that it follows that in substance the requirements of clauses 4.3 and 4.5 of the Constitution are not met.
48. Having given this point careful consideration I am satisfied that Mr Pons' arguments are to be preferred. Clauses 4.3 and 4.5 are indeed clear and mandatory in their terms and effect. They do allow applicants who are admitted to membership 30 days from admission to make payment. The payment provision in the membership application form as produced in its final form and approved by the Chairman and Treasurer on 13 July 2018 and by the Executive Committee on 12 August 2018 did not allow applicants 30 days from admission to make payment, because they did not allow those applicants who chose to pay by cheque any time to pay by alternative means if the cheque was not honoured. Even if there were good grounds

for imposing such a rule - and I am not persuaded that there are sufficiently good grounds for departing from the clear terms of the Constitution - that would be irrelevant because the Constitution does not give the Executive Committee the power to depart from the Constitution if it believes that it is convenient to do so where such departure is inconsistent with or contrary to the provision and spirit of the Constitution, as I am satisfied the payment provision is.

49. It is worth noting that on a literal reading of the payment provision the same draconian consequence would not apply to an applicant who inadvertently enclosed only £20 instead of the required £30 with his or her application form. There is nothing in the wording of the application form which renders it invalid if the correct fee is not paid or which would justify the person processing the application in refusing to admit the applicant as a member on that basis. It would follow that the Constitution would allow such an applicant 30 days to make payment. Indeed the same would appear to apply to an applicant who enclosed neither cash nor cheque. These observations demonstrate even more clearly in my view that the very particular payment provision in this case, which only applies to “non-realised cheques”, cannot be justified as in accordance with either the express terms or the spirit of the Constitution.

### **Consequences**

50. It follows that the claimants are not entitled to the declaratory relief sought and the claim must fail.

### **Would relief have been refused as academic?**

51. If I had found in the claimant’s favour I would not have refused to grant declaratory relief. Whilst I see the force of Mr Pons’ submission that the only consequence of granting declaratory relief now would be to restrict the constituency of those eligible to vote for the new Executive Committee whose only function would be to set in train the process for the next membership application process, nonetheless it seems to me to be right that those members who had properly applied should be entitled to have their contractual rights vindicated as far as possible. That is especially so when, on this analysis, the only reason why that did not happen earlier was the refusal of those on the Executive Committee who see the 608 applicants as forming part of their constituency to accept that they were not entitled to be admitted to membership. Finally, since this point was not pleaded, and only has traction because of the delay in determining the dispute within the two year membership period, which is not solely or obviously the fault of the claimants, it would have been unjust to allow the defendants to succeed on a ground only taken in the skeleton argument for trial.