

# **BIRMINGHAM CITY COUNCIL**

## **MEETING OF THE CITY COUNCIL**

**TUESDAY, 09 JANUARY 2024 AT 13:15 HOURS**  
**IN COUNCIL CHAMBER (EXTRAORDINARY MEETING), COUNCIL**  
**HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB**

### **A G E N D A**

#### **1 NOTICE OF RECORDING**

Lord Mayor to advise that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite [\(please click this link\)](#) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

#### **2 DECLARATIONS OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.



**Birmingham City Council**  
**City Council**

9 January 2024



**Subject:** Retention of Honorary Alderman Status  
**Report of:** Marie Rosenthal – City Solicitor  
**Report Author:** Robert Connelly  
Assistant Director for Governance  
[robert.connelly@birmingham.gov.uk](mailto:robert.connelly@birmingham.gov.uk)

Does the report contain confidential or exempt information?  Yes  No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:

## 1 Executive Summary

1.1 To consider a petition (set out in full in Appendix A) that:

“We, the undersigned, request the Lord Mayor to call an extraordinary general meeting of the council in accordance with Section 249 of the Local Government Act 1972 to remove from former Lord Mayor Mohammed Afzal the title and privileges of alderman and any other honorary titles and positions held with the council in the light of the ruling of the election court made on 24th February 2023. Following an election petition brought by Mr Afzal against the 2022 election result in the Aston ward, the judge stated that Mr Afzal ‘*had the audacity to issue these proceedings in the knowledge that the allegations quite properly made by the respondents in the course of the election campaign were truthful.*”

1.2 A copy of that judgment can be found at appendix B.

- 1.3 Due to the original meeting called on 18<sup>th</sup> May 2023 to consider the retention of Honorary Alderman status not going ahead, this meeting has been convened to consider this report.

## **2 Recommendation**

- 2.1 That the Council considers and votes individually on each of the following recommendations:
- 2.1.1 That Council reviews its policies in terms of the appointment and removal of the title of Honorary Alderman with a report to be brought back to Council to consider.
  - 2.1.2 That Council makes a recommendation to future Lord Mayors that former Lord Mayor Mohammed Afzal is not asked to undertake any official duties as the Lord Mayors Deputy.
  - 2.1.3 That Council makes a recommendation to future Lord Mayors that former Lord Mayor Mohammed Afzal should not attend any official events in his capacity as a former Lord Mayor.

## **3 Background**

- 3.1 Section 249 of the Local Government Act allows a Council to confer the title of Honorary Alderman on any former Lord Mayor, who in the opinion of that Council has rendered eminent services to the Council.
- 3.2 In order to bestow the title of Honorary Alderman a resolution must be passed by not less than two thirds of the members voting on it at a meeting of the Council specially convened for the purpose, usually by way of an extraordinary general meeting.
- 3.3 Birmingham City Council has instituted a Roll of Honorary Aldermen to which are admitted former Aldermen or Councillors of the City, the former City of Birmingham or the former borough of Sutton Coldfield who have:
- (a) Rendered a minimum of 15 years' service as a member of any of these Councils or
  - (b) Served for at least 12 years as a member of any of these Councils and given particularly notable service.
- 3.4 Following an extraordinary meeting held on 24 May 2022 it was resolved that the City Council admit Councillor Muhammad Afzal to the Roll of Honorary Aldermen.
- 3.5 Once admitted to the Roll of Honorary Aldermen, Honorary Aldermen are entitled to:

- The same parking privileges as Councillors
- A limited number of business cards
- A limited number of letterheads
- If attending City Council meetings, they may sit in the Honorary Aldermen's box

3.6 Whilst the petition has sought to remove the title of Honorary Alderman from former Councillor Mohammed Afzal, it is not proposed to consider this at this meeting pending the review of Council policies on both the appointment and removal of such titles (recommendation 1).

3.7 In terms of "*other honorary titles and positions*" these are covered at recommendations 2.1.2 and 2.1.3 and relate to Mohammed Afzal's role as a former Lord Mayor.

3.8 Whilst not a formal honorary title, former Lord Mayors may be asked to attend official engagements should both the Lord Mayor and the Deputy Lord Mayor not be available. When acting in such a capacity former Lord Mayors will be referred to as the "*Lord Mayors Deputy*" and will only act in that capacity for the duration of that engagement (recommendation 2).

3.9 In addition, former Lord Mayors may be invited to civic engagements (such as civic lunches) and it will be for Council to determine whether to make a recommendation that former Lord Mayor Mohammed Afzal should not attend official events in his capacity as a former Lord Mayor (recommendation 3).

#### **4. Response from Muhammed Afzal**

4.1 Following receipt of the petition, Muhammad Afzal was invited to submit representations in response by 19<sup>th</sup> April in order that the Council could take these into account when considering the petition.

4.2 Representations were subsequently received on 11<sup>th</sup> May 2023 and the Council's response of 2<sup>nd</sup> June 2023 and can be found at Appendix C.

4.3 Mr Afzal has not yet submitted any further representations, but in the interests of fairness he may do so at any time prior to the meeting

#### **5. Legal Implications**

5.1 The legal implications on the petition have been set out in appendix C.

## **6. Financial Implications**

6.1 There are no financial implications arising from this report.

## **7. Public Sector Equality Duty**

7.1 There are no equality implications arising from this report.


## Appendix A

We, the undersigned, request the Lord Mayor to call an extraordinary general meeting of the council in accordance with Section 249 of the Local Government Act 1972 to remove from former Lord Mayor Mohammed Afzal the title and privileges of alderman and any other honorary titles and positions held with the council in the light of the ruling of the election court made on 24th February 2023. Following an election petition brought by Mr Afzal against the 2022 election result in the Aston ward, the judge stated that Mr Afzal 'had the audacity to issue these proceedings in the knowledge that the allegations quite properly made by the respondents in the course of the election campaign were truthful.'"

Signature: 

Name: Colin Green

Date: 24.03.2023

Signature: 

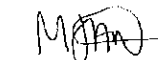
Name: Paul Tilsley

Date: 24.04.2023

Signature: 

Name: Baber Baz

Date: 24.04.2023

Signature: 

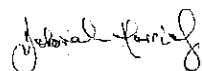
Name: Morriam Jan

Date: 24.03.2023

Signature: 

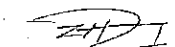
Name: Ayoub Khan

Date: 27.03.2023

Signature: 

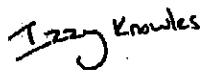
Name: Deborah Harries

Date: 27.03.2023

Signature: 

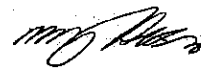
Name: Zaker Choudhry

Date: 28.03.2023

Signature: 

Name: Izzy Knowles

Date: 04.04.2023

Signature: 

Name: Mumtaz Hussain

Date: 24.04.2023

We, the undersigned, request the Lord Mayor to call an extraordinary general meeting of the council in accordance with Section 249 of the Local Government Act 1972 to remove from former Lord Mayor Mohammed Afzal the title and privileges of alderman and any other honorary titles and positions held with the council in the light of the ruling of the election court made on 24th February 2023. Following an election petition brought by Mr Afzal against the 2022 election result in the Aston ward, the judge stated that Mr Afzal 'had the audacity to issue these proceedings in the knowledge that the allegations quite properly made by the respondents in the course of the election campaign were truthful.'

Signature [Handwritten Signature]

Name ROGER HARPER

Date 24/3/23

Signature.....

Name.....

Date.....

Signature [Handwritten Signature]

Name [Handwritten Name]

Date 26/3/23

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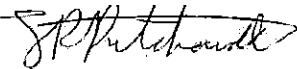
Signature.....

Name.....

Date.....



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Signature: 

Name: Julien Pritchard

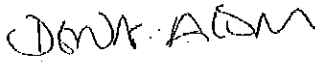
Date: 03.04.2023

Signature: 

Name: Rob Grant

Date: 03.04.2023

We, the undersigned, request the Lord Mayor to call an extraordinary general meeting of the council in accordance with Section 249 of the Local Government Act 1972 to remove from former Lord Mayor Mohammed Afzal the title and privileges of alderman and any other honorary titles and positions held with the council in the light of the ruling of the election court made on 24th February 2023. Following an election petition brought by Mr Afzal against the 2022 election result in the Aston ward, the judge stated that Mr Afzal 'had the audacity to issue these proceedings in the knowledge that the allegations quite properly made by the respondents in the course of the election campaign were truthful' "

Signature 

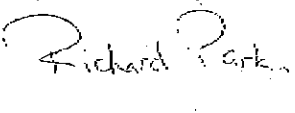
Name Councillor Dierdre Alden

Date 31 March 2023

Signature 

Name Councillor Matt Bennett

Date 31 March 2023

Signature 

Name Councillor Richard Parkin

Date 31 March 2023

Signature.....

Name.....

Date.....

Signature.....

Name.....

Date.....

Signature.....

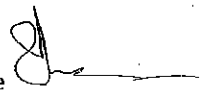
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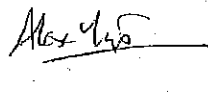
Name Councillor David Barrie

Date 31 March 2023

Signature 

Name Councillor Gareth Moore

Date 31 March 2023

Signature 

Name Councillor Alex Yip

Date 31 March 2023

Signature.....

Name.....

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Name.....



Neutral Citation Number: [2023] EWHC 376 (KB)

Case No: M377/22

**IN THE ELECTION COURT**  
**HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

**IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983  
AND IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE  
ASTON WARD OF BIRMINGHAM CITY COUNCIL HELD ON THE 5TH OF MAY  
2022.**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24 February 2023

**Before :**

**HIS HONOUR JUDGE FOSTER SITTING AS ELECTION COMMISSIONER**

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**Between :**

<b>MUHAMMED AFZAL</b>	<b><u>Petitioner</u></b>
<b>- and -</b>	
<b>AYOUB KHAN</b>	<b><u>Respondents</u></b>
<b>MUMTAZ HUSSAIN</b>	
<b>DIRECTOR OF PUBLIC PROSECUTIONS</b>	

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**Mr Mike O'Brien KC and Mr Harjot Singh Solicitor Advocate** (instructed by **Twinwood Law Practice**) for the **Petitioner**

**Mr Ragveer Chand** (instructed by **Caroline Street Legal**) for the **First Respondent**

**Mr Sham Uddin** (instructed by **Red Lion Solicitors**) for the **Second Respondent**

Hearing dates: 8 February 2023  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 24 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....  
HIS HONOUR JUDGE FOSTER

## **His Honour Judge Richard Foster sitting as Election Commissioner:**

1. On 8th February, 2023 I heard the Petitioner’s application for permission to withdraw the petition pursuant to section 147 of the Representation of the People Act 1983 (“RPA”) which provides:

“147 Withdrawal of petition.

(1) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner and at the prescribed time and place.

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the constituency or local government area to which the petition relates.

(3) Where there are more petitioners than one, the application shall not be made except with the consent of all the petitioners.

(4) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.”

2. In view of the need for a prompt resolution of this application for case management reasons I gave my decision with brief reasons following the hearing of the application, but indicated that I would provide a written judgment. I granted permission. I now provide my written judgment.

### The election

3. The Aston Ward is a two membered ward and so is represented on Birmingham City Council by two councillors. Prior to the election the Petitioner had been one of the two elected councillors. So far as is relevant to this Petition the result at the election on 5th May, 2022 was:

Ayoub Khan (Liberal Democrat) 3012 votes

Mumtaz Hussain (Liberal Democrat) 2542 votes

Muhammad Afzal (Labour) 2463 votes

Nagina Kauser (Labour) 2223 votes

So the First and Second Respondents were duly elected, the Petitioner coming third.

### Procedural background

4. On 25th May, 2022 the Petitioner issued the petition seeking a determination that the First and Second Respondents (hereafter I will refer to them as “the Respondents”, the Director of Public Prosecutions having taken no active part in the proceedings) were not elected and that the election was void. This was upon the grounds that the Respondents had during the election campaign made false allegations that the

Petitioner was bribing voters with the provision of packs of dates. It is relevant to point out that the election took place during Ramadan and that the consumption of dates is a traditional way in which Muslims end their fast at sundown.

5. On 9th December, 2022 I gave directions which included the following:
  - “Petitioner to serve his evidence by 5th January, 2023
  - Respondents to serve their evidence by 27th January, 2023
  - Trial of Petition in Birmingham commencing 6th February, 2023 (time estimate 10 days)”
6. These directions were complied with, so the Petitioner did not receive the Respondents’ evidence until 27th January, 2023, ten days prior to the trial date.
7. In the light of the evidence served by the Respondents the Petitioner sought the permission of the court to withdraw the petition. That evidence included doorbell video footage of the Petitioner and his supporters giving packets of dates to electors with Labour Party stickers on them, and further evidence that this was a widespread practice throughout the ward during the election campaign. The trial date was therefore adjourned until 13th February, 2023 to allow this application to be heard on 8th February, 2023.
8. No point is taken regarding compliance with any procedural requirements and I am satisfied that they have been complied with.
9. Rule 12 of the Election Petition Rules 1960 stipulates various requirements upon an application for permission to withdraw a petition. These have been complied with, time having been abridged by me by order dated 2nd February, 2023 under my powers pursuant to Rule 3.1 (2) (a) of the Civil Procedure Rules. In any event there is now an unresolved conflict in these requirements since the repeal of sections 148-153 of RPA.

#### The Parties’ submissions

10. The Petitioner’s position is straightforward. He accepts the evidence served by the Respondents and would in any event no longer seek to adduce any evidence at the hearing of the petition. Mr O’Brien, KC on his behalf submits that it would now be “impracticable” (to use his word) to continue with the petition and that having satisfied the court that there has been no improper collusion there is no good reason why the court should not grant the permission sought. His client accepts, as he must, his liability to pay costs, although he will have arguments regarding the basis for assessing such costs. He submits, the purpose of the requirement for permission to withdraw is to guard against improper collusion and the affidavits served deal with this. In any event his client is a 78 year old man who has no intention of ever standing for any elected office again. He withdraws all allegations made in the petition and accepts the relevant parts of the evidence served by the Respondents.
11. The First Respondent consents to the application, but urges upon me in my judgment to set out in the clearest terms the reason for the withdrawal, namely the acceptance by the Petitioner of the overwhelming evidence of illegal election practices. A clear

indication in those terms would satisfy the public interest, short of a formal finding as such.

12. The Second Respondent opposes the application. Mr Uddin of counsel on her behalf argues that the public interest demands a full and thorough investigation by me, utilising my inquisitorial role. Furthermore my inquiry should not be restricted to just the conduct of the Petitioner but should extend to others whose misconduct is indicated by the evidence. I should serve upon them the appropriate notice of my intention to inquire into any corrupt or illegal practices by them so to give them the opportunity to be heard and have representation. In so far as those individuals are also witnesses they have also been untruthful in their witness statements. If this requires a re-listing of the trial this is what must happen. To proceed in any other way would “sweep under the carpet” (to adopt his submission) the clearest evidence of serious election malpractice.

### The law

13. In the old case of County of Durham (Northern Division): Glaholm and Store V Elliot (1874) Grove J stated:

“The withdrawing of an election petition must be by leave of the judge and if the judge saw that the withdrawal was the result of any compromise, of any giving and taking so as to prevent evidence being brought forward, which ought to be brought forward, not in the interest of either of the parties, but in the interest of the constituency, and of purity of election, the judge ought not to allow a petition to be withdrawn; he ought as far as he would have power to do so, insist upon the petition being proceeded with”.

14. Notwithstanding the above dicta, the judge allowed the petition to be withdrawn because of the procedural difficulties for it to continue by virtue of the adversarial process in which a judge could not partake. However that concern is overcome by section 140 of RPA which makes it clear that the nature of an Election Court is now inquisitorial:

“140 Witnesses.

(1) Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in an action tried in the High Court

(2) On the trial a member of the election court may, by order signed by him, require any person who appears to him to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3) The election court may examine any person so required to attend or who is in court although he is not called and examined by any party to the petition.

(4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent, or either of them”

15. This case only confirms what is obvious from the statutory framework that an Election Petition is not a purely private law action but rather an inquiry into the

conduct of an election in the public interest. This was again confirmed in the more recent case of *Greene V. Forbes* [2020] EWHC 676 (QB) where Robin Knowles J (sitting in the Divisional Court) said at paragraph 55:

“The wider questions are moreover of general public importance. Take a case where cogent evidence had been heard of corrupt practices at the point when Parliament was dissolved and the respondent wished that evidence to be taken no further (and so to escape the provisions on the consequences of a finding by the Election Court of corrupt or illegal practice). Or take a case where a respondent was close to the point of being fully vindicated in respect of allegations of corrupt practices and the petitioner wished to avoid that outcome. It is important that the question whether and how a petition could proceed is left for determination on facts such as those.”

16. In the circumstances of that case the court went on to grant permission to withdraw the petition, put this way at paragraph 62:

“In the present case the papers show that withdrawal is the proper course. The allegations in the Petition are not maintained. Some at least should not have been made. The application to withdraw is not opposed.”

17. Finally, *Khan v. The Election Commissioner* [2005] EWHC 2365 Admin. which is no more than a reminder of the requirement to give non-parties the opportunity to be heard and represented before making adverse findings against them. This is in any event clear from section 160 (1) of RPA which provides:

“160 Persons reported personally guilty of corrupt or illegal practices.

(1) The report of the election court under section 144 or section 145 above shall state the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt or illegal practice, but in the case of someone—

(a) who is not a party to the petition, or

(b) who is not a candidate on behalf of whom the seat or office is claimed by the petition, the election court shall first cause notice to be given to him, and if he appears in pursuance of the notice shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.”

18. None of these cases are binding on me, but do provide some assistance in an area where there is a paucity of case law.

19. Also relevant to my consideration of this application is the consequences of a finding of corrupt or illegal practices. This is contained in section 160 (4) and (5) of RPA as follows:

“Subject to the provisions of subsection (4A) and section 174 below, a candidate or other person reported by an election court personally guilty of a corrupt or illegal practice—

(a) shall during the relevant period specified in subsection (5) below be incapable

of—

(i) being registered as an elector or voting at any parliamentary election in the United Kingdom or at any local government election in Great Britain,

(ii) being elected to the House of Commons, or

(iii) holding any elective office; and

(b) if already elected to a seat in the House of Commons, or holding any such office, shall vacate the seat or office as from the date of the report.

(4A) The incapacity imposed by subsection (4)(a)(i) above applies only to a candidate or other person reported personally guilty of a corrupt practice under section 60, 62A or 62B above or of an illegal practice under section 61 above.

(5) For the purposes of subsection (4) above the relevant period is the period beginning with the date of the report and ending—

(a) in the case of a person reported personally guilty of a corrupt practice, five years after that date, or

(b) in the case of a person reported personally guilty of an illegal practice, three years after that date.”

### Discussion

20. This application gives rise to a number of competing considerations. It is however clear that an Election Petition although begun by a private individual is not just a private law action. The Election Court has a duty where appropriate exercising its inquisitorial role to investigate any allegations of corrupt or illegal practice the consequences that flow from a finding of such practices. I reject the Petitioner’s submission that the only purpose of the requirement for the court’s permission to withdraw a petition is to ensure there has been no improper collusion between the parties.
21. Nevertheless the court must also be mindful of the court’s resources in accordance with the overriding objectives of the Civil Procedure Rules.
22. If I acceded to the Second Respondent’s submissions this would inevitably mean the trial of the petition now fixed for 13th February, 2023 would have to be adjourned for some time so as to allow non-parties the opportunity to seek legal advice and representation. It would also substantially increase the scope and length of any trial, and the consequent costs. Such costs would be incurred not only by the Petitioner but also by the First Respondent who consents to the Petitioner’s application.
23. The Director of Public Prosecutions is a party to these proceedings, and although he has taken no part in them he has been served with all relevant material at each stage and I am able to arrange for this judgment to be referred to him which I shall do. He is under a statutory duty by virtue of section 181 (1) of RPA “to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require”.



Additionally, it is open to any party to refer the matter to West Midlands Police directly who will not hitherto have seen the Respondents' evidence. In this regard specific criminal offences are created by sections 113 and 114 of RPA similar to the findings of corrupt or illegal practice which an Election Court could make, with similar consequences as regards disqualification from standing for election contained at section 173. By virtue of section 176 of RPA proceedings must be commenced within 12 months of the election, so before 5th May, 2023.

24. It seems clear from the statutory framework that Parliament envisaged that in appropriate cases a criminal prosecution would be an alternative to an Election Court making findings.
25. Any misconduct in these proceedings could be the subject of Contempt of Court proceedings pursuant to Rule 23.14 and Part 81 of the Civil Procedure Rules.
26. The Petitioner is 78 years of age and I am told through Mr O'Brien KC that he has no intention of standing for elected office again. In any event no mainstream political party would support his candidature given the circumstances of this case. For the purposes of considering the issues arising on this application I am satisfied that the Petitioner will not be standing in any future election. I make my decision upon this basis.

#### Decision

27. The Petitioner has withdrawn all the allegations contained in the petition and does not seek to challenge the Respondents' evidence. I am satisfied that the reason why the Petitioner now seeks to withdraw the petition is because there is conclusive evidence that indeed he and his supporters did supply electors with packets of dates containing Labour Party stickers on a widespread basis during the election campaign. Section 151 (2) of RPA provided that a report to the High Court must "state the circumstances attending the withdrawal". That provision has been repealed, but in the place of a report to the High Court I state in clearest term in this judgment that I am satisfied that the reason for the Petitioner seeking permission to withdraw the petition is the overwhelming evidence served on behalf of the Respondents of illegal election practices in which he participated.
28. The effect of this judgment will be that the Respondents will have been vindicated. Furthermore, given the circumstances of the Petitioner as set out in paragraph 26 no practical purpose would be served by a formal finding by an Election Court of corrupt or illegal practices following a full trial of the petition. The acceptance of such practices by the Petitioner and the reasons for the withdrawal of the petition as set out in this judgment serves the public interest. Additionally, I will be arranging for a copy of this judgment to be sent to the Director of Public Prosecutions reminding him of his statutory duty imposed by section 181 (1) of RPA.
29. If the Second Respondent (or indeed any other party) wish to pursue the allegations further then they can do so along the lines discussed at paragraphs 23 and 25 above. This would prevent the First Respondent needing to continue with the petition in circumstances where he consents to its withdrawal. The exercise of the duties of the Director of Public Prosecutions and the Crown Prosecution Service to make charging decisions and if need be for criminal proceedings to follow would be a far more

appropriate way to consider the conduct of the Petitioner and any non-parties rather than the costs and delays which would arise for all concerned if this petition were to continue. I am satisfied that notwithstanding the statutory limitation period there is still time for due process to take its course, especially bearing in mind the evidence which the Respondents are able to provide.

30. Accordingly, as indicated shortly after the hearing of this application, I grant permission for the petition to be withdrawn.

### Costs

31. The Petitioner concedes that he is responsible for the Respondents' costs. This must in any event follow by virtue of section 147 (4) of RPA. The Respondents claim costs on the indemnity rather than the standard basis.
32. I heard argument on this issue following the announcement of my decision. The Petitioner argues that I must look at the conduct of the Respondents on two aspects. First, their failure to disclose the evidence upon which they rely until the deadline in accordance with the court's directions. Secondly, he criticises some of the items claimed as revealed by the costs schedules served in advance of the hearing of this application.
33. At the hearing I ordered indemnity costs up to and including 6th January 2023, and standard basis costs thereafter. I confirm that order in this judgment. For the avoidance of doubt that order is in favour of all three Respondents.
34. The Petitioner had the audacity to issue these proceedings in the knowledge that the allegations quite properly made by the Respondents in the course of the election campaign were truthful. He persisted with the Petition and served evidence from himself and others which was and he must have known to be false. Such conduct should properly be met with indemnity costs.
35. The Respondents cannot be criticised for their forensic strategy in not serving their evidence until the Petitioner had served his – indeed a tactic vindicated by the outcome of the petition. Nevertheless they could have served at least part of the crucial evidence or given an indication of its existence shortly after receiving the Petitioner's evidence in an endeavour to avoid the escalation of costs which inevitably occurs in the run up to a trial. It is for this reason that I award only standard basis costs after 6th January 2023.
36. The criticism of some of the claims for costs is a matter for a Costs Judge in due course. I order a detailed assessment of the costs. In the meantime, on a broad brush approach, I award the First and Second Respondents interim costs of £10,000 each to be paid within 28 days. The £2500 in court as security can be paid out in the sum of £1250 each to the First and Second Respondents respectively in part payment of the interim costs order.

### Permission to appeal

37. The Second Respondent asked for permission to appeal, which I refused.

### Post hearing note

38. Since the hearing of this application research has revealed that sections 148 to 153 of RPA have been repealed by Paragraph 5 to Schedule 17 of the Political Parties, Elections and Referendums Act 2000. Surprisingly, this repeal is not reflected in the Act as reproduced in [legislation.gov.uk](http://legislation.gov.uk). This does not affect the substance of my judgment or decision, although submissions were made to me at the hearing of the application upon the basis that sections 148 to 153 were still in force.



## Robert Connelly

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**Subject:**

FW: FW: Birmingham City Council - Title of Honorary Alderman

**From:** Robert Connelly <Robert.Connelly@birmingham.gov.uk>

**Sent:** Friday, June 2, 2023 4:31 PM

**To:** Consultants-Osmans Solicitors <consultants.osmansolicitors@gmail.com>

**Cc:** [REDACTED]

**Subject:** RE: FW: Birmingham City Council - Title of Honorary Alderman

Dear Sirs

I have now had the opportunity to fully consider your representations.

Dealing firstly with your proposition that the motion is illegal and ultra vires.

The Council's constitution, as set out in Part B (which I have already forwarded to you) sets out the procedure in which an extraordinary meeting may be requested. It is our view that the meeting has been correctly called but I would also draw your attention to schedule 12 of the Local Government Act 1972 which provides that such a meeting may be called at any time by the Chairman of the Council. As such it seems highly unlikely that any court considering the matter would conclude that the meeting has not been properly called. As you will appreciate the meeting has been called by Councillors themselves who wish to debate the matter.

In terms of your proposition that there is no express provision within s249 to withdraw an honorary title that is something we agree with.

Nevertheless we would refer you to *R v Bristol ex parte Everett* [1999] 1 WLR 92 where Richards J held that there was to be implied a power to withdraw an abatement notice, although the legislation made no such express provision. On appeal the Court of Appeal said the judge was clearly right: [1999] 1WLR 1170. That being so I consider that the analogy given by this case provides powerful support for the proposition that an honorific alderman can have that honour withdrawn.

Furthermore, the law does not compel the impossible: see *Winchester College v Hampshire County Council* [2008] EWCA Civ 431. If your argument is correct it would mean that someone who is subsequently discovered to have committed the most heinous of crimes cannot have the honorary title withdrawal which cannot be right.

The approach to the petition received calling for your client's title to be withdrawn is not without precedent. As you have set out in your representations s249 applies not only to the title of honorary alderman but also to title of honorary freemen or freewoman. As you are no doubt aware, the Duke of York used to hold the honorary title of Freeman of the City of York but this was subsequently removed in April 2022. The circumstances relating to the Duke of York are well known but it is worth highlighting that, as far as I am aware, no judicial findings have been made against him.

The same cannot be said of your client where it has been judicially held that he persisted with an election petition on the basis of evidence he must have known to be false. Indeed the Election Commissioner has sent his judgment to the Director of Public Prosecutions to consider further action.

In addition East Devon District Council in September 2021 took a similar approach when removing the honorary title of alderman from a former Councillor.

If your client would sought to challenge the legality of the Council's approach, presumably by way of Judicial Review, I am satisfied that Council would be successful in defending any such claim.

In terms of your second ground that other honorary alderman may have criminal convictions but have still retained their title. Whilst we note that you alleged that your client is being discriminated and victimised, the reality of the situation is simply that the Council has not previously received any petitions that such titles be withdrawn.

I also consider that this proposition is without merit as if your argument is correct the basis that if one person escapes attention then that must mean it absolves all. In my view that must be plainly wrong. I am aware that concerns have been raised by elected members that your client's conduct (as set out in the Elections Court judgment) strikes at the heart of a democratic council, which I assume is one of the reasons why the petition was submitted.

Finally, in terms of fairness, we are satisfied that your client has been given considerable time to make representation and such representations can be still be received at any time before the Council determines the motion before it.

To summarise I am satisfied that e Council's approach is legal and should your client wish to challenge that, then he is of course entitled to do so. In light of this please take this as formal notice that we will be re-scheduling the extraordinary meeting on a date to be confirmed following consultation with the Group Leaders.

Regards

Robert Connelly  
Assistant Director Governance & Deputy Monitoring Officer  
Birmingham City Council  
Council House, Victoria Square, Birmingham, B1 1BB  
Tel: 0121 303 2443  
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PA Janet Lescott:  
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**From:** Consultants-Osmans Solicitors <[consultants.osmansolicitors@gmail.com](mailto:consultants.osmansolicitors@gmail.com)>  
**Sent:** Thursday, May 11, 2023 1:38 PM  
**To:** Robert Connelly <[Robert.Connelly@birmingham.gov.uk](mailto:Robert.Connelly@birmingham.gov.uk)>; [REDACTED]  
**Subject:** Re: FW: Birmingham City Council - Title of Honorary Alderman

Dear Robert,

We write further to our client's instructions. We herein below submit brief objections :

1. We believe the motion is illegal and ultra vires because section 249 of the Local Government Act 1972 does not give power to the Birmingham City Council to remove Honorary Title from our client. The same title Honorary title was given with respect to the rendered eminent services to the council as past member of that council.

2. Section 249 states as follows: 249[F1Honorary titles].

(1) A principal council may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, confer the title of honorary aldermen [F2or honorary alderwomen] on persons who have, in the opinion of the council, rendered eminent services to the council as past members of that council, but who are not then [F3members] of the council.

(2) No honorary alderman [F4or honorary alderwoman] shall, while serving as a [F5member] of the council, be entitled to be addressed as alderman [F6or alderwoman] or to attend or take part in any civic ceremonies of the council as an alderman [F7or alderwoman].

(3) Services rendered to the council of an existing county, county borough, borough or urban or rural district the area of which becomes wholly or partly included in a new county or district shall be treated for the purposes of subsection (1) above as services rendered to the council of the new county or district, as the case may be.

(4) An honorary alderman [F8or honorary alderwoman] of a principal council may attend and take part in such civic ceremonies as the council may from time to time decide, but shall not, as such, have the right—

(a) to attend meetings of the council or a committee of the council (including a joint committee upon which they are represented); or

(b) to receive any such allowances or other payments as are payable under sections 173 to 176 above [F9or Part 8 of the Local Government (Wales) Measure 2011].

[F10(4A) A principal council may spend such reasonable sum as they think fit for the purpose of presenting an address, or a casket containing an address, to a person on whom they have conferred the title of honorary alderman or honorary alderwoman.]

[F11(5) Subject as follows, a relevant authority may admit to be honorary freemen or honorary freewomen of the place or area for which it is the authority—

(a) persons of distinction, and

(b) persons who have, in the opinion of the authority, rendered eminent services to that place or area.

(6) In this section "relevant authority" means—

(a) a principal council;

(b) a parish or community council;

(c) charter trustees in England constituted—

(i) under section 246 of the Local Government Act 1972,

(ii) by the Charter Trustees Regulations 1996 (SI 1996/263), or

(iii) under Part 1 of the Local Government and Public Involvement in Health Act 2007.

(7) The power in subsection (5) above is exercisable by resolution of the relevant authority.

(8) A resolution under subsection (7) above must be passed—

(a) at a meeting of the relevant authority which is specially convened for the purpose and where notice of the object of the meeting has been given; and

(b) by not less than two-thirds of the members of the relevant authority (or, in the case of charter trustees, of the trustees) who vote on it.

(9) A relevant authority may spend such reasonable sum as it thinks fit for the purpose of presenting an address or a casket containing an address to a person on whom the authority has conferred the title of honorary freeman or honorary freewoman under subsection (5) above.

(10) The admission of a person as honorary freeman or honorary freewoman does not confer on that person any of the rights referred to in section 248(4) above.]

1. The council's interpretation of the section 249 is flawed. The council does not have power to bring any motion to take away title which has already been given to our client for eminent services to the council as past member of that council. It does not deal, with future conduct. Nor give powers to remove Honorary titles or bring motion on that basis. The council's position rests on a misunderstanding of section 249, but it is also internally inconsistent and incompatible with council's obligations under the ECHR with *AM (Ethiopia) v SSHD* [2010] 1 WLR 48 at §10]; *Assange v Swedish Prosecution Authority* [2012] 2 AC 471 at §§10, 98, 112, 122



2. If the motion goes ahead we would submit that the council will be acting beyond its power.

3. The procedure adopted by the council is obviously unfit and is clearly unlawful for the reasons set out in relation to each of the submissions.

4. As per our client's instructions, we submit that our client is being discriminated due to his age as he is an old person and is being singled out due to his age and race.

5. Secondly we also submit that there are other Honorary Alderman who have criminal convictions and still retain the title of Honorary Alderman. There are counsellors, former Lord mayors and already Aldermen who have or may have convictions, but no action has been taken against them. The reason for that is section 249 does not stipulate to take away title for any future actions/conduct. There are no statutory provisions for that. This is a case where our client is being discriminated and victimised.

6. With respect to not providing an opportunity to submit representations, we submit that it is a fundamental principle of common law that fairness very often requires those who may be adversely affected by decisions to have the opportunity to make representations in order to influence them in their favour. The extent of that opportunity will vary according to the context, but since the right to make representations must be effective, individuals must ordinarily be informed of the factors which weigh against their interests: *R v SSHD ex parte Doody* [1994] 1 AC 531 at 560D-G (**'Doody'**).

7. The more significant the rights or interests at stake, the greater the opportunity that must be given. Decision-making powers which have "*enormous consequences*" for individuals, or which "*gravely affect*" a person's future, such as whether to demolish a person's house (*Cooper v Wandsworth* (1863) 143 ER 414 at 417 or what the length of a custodial sentence should be (*Doody* at 551), will require notice, an opportunity to be heard in advance of the decision, and "*an explicit disclosure of the substance of the matters on which the decision-maker intends to proceed*" As for human rights decisions, where "*the right to be heard may literally be a matter of life and death*" (*FP (Iran) v SSHD* [2007] EWCA Civ 13 at §43), these are "*of such moment that only the highest standards of fairness will suffice*": *R v SSHD ex parte Thirukumar* [1989] Imm AR at 414 (**'Thirukumar'**).

8. The Birmingham City council's decisions as to whether to remove the Honorary title from our client indisputably have grave consequences for our client. The decisions concern a wide range of his fundamental rights arising out of the provisions of the European Convention on Human Rights ('ECHR'). They also involve BCC's exercise of statutory powers to exclude individuals from the Honorary Title.

***Scope of common law obligation of procedural fairness***

9. As explained above, a long line of jurisprudence, re-stated in *Ridge v Baldwin* [1964] AC 40 at 64-73, and re-iterated ever since, makes plain that if a decision which may adversely determine an individual's rights or interests is to be taken, the individual must ordinarily be given an opportunity to make representations in advance with a view to obtaining a favourable result, or afterwards with a view to procuring its modification: *Doody* at 560D-G and *Thirukumar* at 409, 414. In order to realistically, achieve this they must be furnished with the information about the case against them which would allow the representations to be worthwhile: *Doody* at 560D-G; *Thirukumar* at 414; and *Ridge v Baldwin* at 79, 129. In this case, our client has not been given the copies of the evidence which is the basis to bring a motion against him.

10. These obligations are imposed on decision-makers both so as to secure better decisions, and to respect the dignity of the individual: *Osborn* at §§67-69; *Pathan* at §52]; Paul Craig, *Administrative Law* (2021, 9<sup>th</sup> ed.) at §12.002 The obligations can apply even where the representations would make no difference to the outcome: *Pathan* at §126.

11. The obligations of procedural fairness are particularly stringent in the human rights context.

(1) While many decisions will turn on personal facts or allegations (e.g. *Kanda v Malaya* [1962] AC 332 at 337, that is not always the case. The principle remains the same: In *Doody* a life prisoner "whose future depends vitally on the decision of the Home Secretary as to the penal element" was entitled to "know what factors the Home Secretary will take into account ... for without it there is a risk that some supposed fact which he could controvert, some opinion which he could challenge, some policy which he could argue against, might wrongly go unanswered" (563H) Fairness required disclosure of information about relevant facts, policies and/or opinions, and the opportunity to make representations on

them, even though the penal element of a sentence being fixed comprised both retributive and deterrent elements, the latter of which had little to do with him.

(2) In *Edwards v Environment Agency* [2007] Env LR 9 in the statutory planning context, where common law rights of procedural fairness are ordinarily met by public consultation (see *Ridge v Baldwin* at 65, 71-2, 75-6 and *Bushell v Secretary of the Environment* [1981] AC 75 at 94-7, 107, 119, 121, 283, 285), failure to disclose a critical internal report on dust emissions nonetheless breached the Environment Agency's obligations of common law fairness to members of the public (see §§103-6

12. The right to make representations must be effective or "worthwhile" (see *Doody* at 560D-G). It is not a right to simply supply relevant facts to a decision-maker.

13. We request the Council to reject this Motion based on the representations, it serves no purpose or function to the Council or the citizens of Birmingham; except validating Mr. Ayoub Khan's own political agenda of discrediting my extensive, committed and distinguished Council service and reputation. We submit the Procedure is procedurally unfair and illegal.

We submit that the actions by the Birmingham City council are irrational, illegal, unreasonable and disproportionate. We also seek full disclosure of all the documents which will be the basis of bringing a motion against our client. We submit we will exercise our right to submit detailed objections upon receipt of full disclosure.

If the council decide to proceed with the motion, we will have no option but to issue legal proceedings against the council.

We submit that we will refer to these correspondence on the issue of costs. If we can assist any further please do not hesitate to contact us.

We look forward to your response as a matter of urgency.

**Yours sincerely,**

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