PT-2021-000063

Neutral Citation Number: [2024] EWHC 135 (Ch)

Case No: PT-2021-000063

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUST AND PROBATE LIST

Rolls Building
Fetter Lane
London, EC4A 1NL

31 January 2024

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

AND IN THE MATTER OF THE CHARITIES ACT 2011

Before :

NICOLA RUSHTON KC

(Sitting as a Deputy High Court Judge)

- -

Between :

DR MOHAMED H JAFFER

Claimant

- and -

(1) MR SAFDER JAFFER
(2) DR MUNIR DATOO
(3) MR ZAFFAR KHAKOO
(4) MR SAJJAD RAJAN
(5) MR ARIFALI HIRJI
(6) MS RUQAYYA DATOO NANJIANI
(7) HIS MAJESTY'S ATTORNEY GENERAL

Defendants

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Mr Jonathan Davey KC and **Mr Matthew Smith** (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Claimant**
Mr Robert Pearce KC and **Mr Matthew Mills** (instructed by **DAC Beachcroft LLP**) for the **First to Sixth Defendants**
The **Seventh Defendant** was not represented and did not attend

Hearing dates: 21-24 November, 27-29 November and 1 December 2023

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Approved Judgment

This judgment was handed down remotely at 10 a.m. on 31 January 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

Contents

Nicola Rushton KC:

1. These are charity proceedings, for the purposes of the Charities Act 2011 ("**the 2011 Act**"), concerning the World Federation of the Khoja Shia Ithna-Asheri Muslim Communities ("**the Charity**"), a substantial religious charity which was established in 1976 and operates internationally.

2. The Charity's headquarters are in Stanmore in the UK, and it is registered with the Charity Commission under charity number 282303. It is an unincorporated association with a tiered structure detailed below. Its current constitution was adopted in May 2017 ("**the Constitution**").

3. The First to Sixth Defendants hold (or held until their resignations) positions as the Charity's six "Office Bearers". Under its Constitution, the Office Bearers are its charity trustees for the purposes of the 2011 Act (clause 19.1.1). The Charity also has a large Executive Council ("**ExCo**") of about 70 members, which meets approximately 6-monthly. The Claimant, Dr Mohamed Jaffer ("**Dr Jaffer**") is a member of ExCo.

4. The Seventh Defendant, the Attorney General, has taken no active part in these proceedings. In this judgment where I refer to "the Defendants", I mean the First to Sixth Defendants only.

5. There are two main areas of dispute between the parties. The first concerns the conduct of the election in January 2020 for President of the Charity, which the First Defendant, Mr Safder Jaffer ("**Mr Jaffer**") won or apparently won by a large margin. The issues include whether he was eligible to stand at all.

6. The second area of dispute concerns the handling and documenting of very substantial donations from a single donor ("**the Donor**"), who is based in the Middle East, by the predecessors of the current Office Bearers, in particular over the period 2015 to 2019. Those donations were mainly directed to be used for four recipient organisations, two in Iraq and two in Lebanon.

7. Dr Jaffer and Mr Jaffer are related, but fairly distantly.

8. As a consequence of an interim order of Mr Justice Mellor of 18 May 2021 ("**the May 2021 Order**"), the First to Sixth Defendants were authorised to discharge the functions of the six Office Bearers until they were replaced in accordance with the Constitution, an order of the court or of the Charity Commission, without prejudice to whether they had in fact been properly elected/appointed. The Third and Sixth Defendants have since stood down and not been replaced, so the four remaining Defendants are presently the only Office Bearers and trustees.

9. The current terms of office of all the Office Bearers are in any event due to come to an end in May 2024. A new Presidential election will be taking place some weeks before then, although the date for this has not yet been fixed as far as I'm aware.

10. By his claim, so far as maintained at trial, Dr Jaffer seeks declarations that the conduct of the 2020 election breached the Constitution and related rules, and that Mr Jaffer was ineligible to stand, and he seeks the appointment of a receiver in respect of the affairs of the Charity in two respects:

i) To discharge the functions of the Charity's Electoral Commission for the 2024 Presidential election; and/or,

ii) To undertake an investigation into the financial affairs of the Charity relating to the donations from the Donor.

11. While the second branch of the receiver application has at times been expressed more broadly on behalf of Dr Jaffer, e.g. "to investigate the financial affairs of the Charity", his pleaded case and arguments have always related to donations from the Donor and so as far as I am concerned, the application is limited as set out above.

12. The trial of this claim took place over eight sitting days between 21 November and 1 December 2023. In addition to those in court it was attended remotely by a large number of interested members of the Khoja community.

13. Mr Jonathan Davey KC, leading Mr Matthew Smith, appeared for the Claimant. Mr Smith took a notably active role in cross examination and submissions, in line with recent encouragement to juniors from the Lady Chief Justice, the Master of the Rolls and the Heads of the Divisions. Mr Robert Pearce KC, leading Mr Matthew Mills, appeared for the Defendant trustees of the Charity, also very effectively. I am grateful to all counsel for their clear and helpful written and oral submissions, and for the efficient conduct of the trial. I also wish to thank in particular the Claimant's solicitor Ms Antrobus for the excellent bundle management.

The Issues

14. The six issues for trial ("**the Issues**"), as settled at the PTR on 11 April 2022, are:

1) Did the conduct of the 2020 Presidential election fail to adhere to the Constitution and/or Standard Operating Procedures in some or all of the ways alleged at paragraph 14 of the Points of Claim?

2) If so, what is the consequence of any such failures?

3) Was Mr Jaffer ineligible to stand for election as President of the Charity in January 2020 for any of the reasons alleged at paragraph 18 of the Points of Claim?

4) If so, what is the consequence of that ineligibility?

5) What is the consequence, if any, of the resolutions passed or purportedly passed at the meeting of Conference in May 2021, that it was not in the best interests of the Charity to hold a fresh election for President, and that it was in the best interests of the Charity to affirm the election of the First Defendant as President?

6) Should the court appoint a receiver to conduct a fresh election for President, to manage the affairs of the Charity pending the election and/or to investigate the financial affairs of the Charity?

15. Issue 6 has since been narrowed, given the passage of time, so that it is now whether a receiver should be appointed to carry out the functions set out at [10] above.

16. There are also a number of legal and factual sub-issues relevant to the financial limb of Issue 6, which I ordered at a second PTR on 19 October 2023. The terms of those sub-issues were confirmed at trial. I will refer to these where they arise below.

BACKGROUND

17. This background section is based on facts and matters not in dispute between the parties (including agreed parts of the Chronology, and unchallenged evidence and documents), except where stated to be a finding based on what I heard and read at trial.

The Charity

18. The Khojas are a community of followers of the Shia Ithna-Asheri Muslim faith, who originate from Gujarat in India but subsequently spread throughout many parts of the world but especially Africa, Europe, North America and Australasia. The Khojas number around 150,000 people worldwide. They represent a very small fraction (less than 1%) of all Shia Ithna-Asheris. I was told during the hearing that there are around 200 million Shias worldwide, and the Ithna-Asheri make up about 65% of all Shias. Despite their relatively small numbers, the Khojas undertake what I understand to be disproportionately extensive charitable work, especially through the Charity.

19. Local communities of Khojas are organised into "jamaats", of which there are around 123 worldwide. Each jamaat has its own constitution, rules for applying for membership and office-holders. Charitable and other activities relating to the Khojas' religious faith are organised through the jamaat.

20. The Charity is structured so that, by clause 3.1 of the Constitution, its only full Members are its Regional Federations, of which there are presently six. A Regional Federation is an umbrella organisation for jamaats in a particular geographical region. Each Regional Federation also has its own constitution, rules for membership by jamaats, and office-holders. A Regional Federation, and indeed a jamaat, may be independently recognised as having charitable status in its own country.

21. The six Regional Federations are: (i) the Federation of Khoja Shia Ithna-Asheri Jamaats of Africa ("**AFED**"); (ii) the Federation of Australasian Communities ("**FAC**"); (iii) the Council of European Jamaats ("**CoEJ**"); (iv) North America Shia Ithna-Asheri Muslim Communities ("**NASIMCO**"); (v) the India Federation; and (vi) the Pakistan Federation.

22. A jamaat which is a member of a Regional Federation of the Charity is known as a "**Constituent Member**" under the Constitution (clause 2.17).

23. If a jamaat is in a part of the world where there is no Regional Federation, it can join the Charity directly, but it will only have "**Associate Member**" status. This is significant because Associate Members do not have voting rights (clause 3.1). There is, and was at the relevant time, one such jamaat which was not a member of a Regional Federation and so was only an Associate Member, which was the Dubai Jamaat. Although clause 2.22 of the Constitution allows for the "Middle East" to be a Geographical Region, no such Regional Federation has been created.

24. The Charity is run on a day-to-day basis by the six Office Bearers who are volunteers and meet weekly, with the assistance of the Secretariat in Stanmore which has employed staff. The six Office Bearers are: the President, the Vice President, the Honorary Treasurer, the Honorary Assistant Treasurer, the Secretary General and the Assistant Secretary General. The Secretary General and the Assistant Secretary General run the Secretariat and have responsibility for administrative functions. By paragraph 2.1 of the May 2021 Order, the functions of these six offices were to be discharged by the First to Sixth Defendants respectively.

25. The President is elected by the grassroots members of the Constituent Member jamaats (clause 20.1 of the Constitution). I will come back to the detailed requirements of that election, but I note this means that there are more than 40,000 voters spread across jurisdictions throughout the world, voting by paper ballot, making it inevitably a logistically challenging election to conduct. The votes cast are translated proportionately into Electoral College votes to determine the winner (clause 20.3 of the Constitution). The President has significant powers of appointment of other office-holders.

26. In addition to the Office Bearers, the Constitution creates three bodies: Conference, ExCo and the Electoral Commission.

Conference

27. The Conference is a large meeting of around 150 people, normally convened by ExCo under clause 9.1 of the Constitution. Under that clause, an Ordinary Conference is to take place once every three years, and there is also power to call an Extraordinary Conference.

28. By clause 10 of the Constitution, those entitled to attend and vote at Conference are delegates sent by the Regional Federations, plus all the members of ExCo, which includes the Officer Bearers. Conference can pass most resolutions by a simple majority. It can exercise, or direct the trustees or ExCo to exercise, any of the Charity's powers, and confirm or alter its own decisions or decisions of ExCo or the Secretariat (clause 17).

29. The election for President also normally happens once every three years. The Ordinary Conference usually takes place at the end of a President's term, after the election of the new President, with the new President formally taking over at the end of the Conference.

30. In 2020 there was an election for President on 30-31 January and there was due to be an Ordinary Conference on 13-15 March, but that Conference was delayed by the pandemic and the process was also disrupted by disputes over the Presidential election. Ultimately that Ordinary Conference did not begin until 21 May 2021 (in line with the May 2021 Order), so the next Conference is not now due until May 2024.

ExCo

31. ExCo comprises the six Office Bearers, eight Ordinary Councillors, eight Appointed Councillors and a number of Nominated Councillors (clause 19.1.1 of the Constitution). The Vice President, Treasurer, Assistant Treasurer and the eight Ordinary Councillors are all elected by the Ordinary Conference (clauses 19.1.2(a) and (d)). The Secretary General, Assistant Secretary General and the eight Appointed Councillors are appointed by the President (clauses 19.1.2(a), (b) and (e)). The Regional Federations and other members nominate the Nominated Councillors (clause 19.1.2(f)).

32. Clause 19.2.1 provides that ExCo "… *shall implement decisions of the Conference and shall subject to any direction, decision or rules made by the Conference manage [the Charity] and may exercise the powers of [the Charity] between meetings of the Conference*."

33. ExCo has specific powers to formulate policies which further the aims of the Charity and recommend them to Conference for approval (clause 19.2.2), to make rules and to establish committees (clauses 19.2.3 and 19.2.4). There is no formal provision for how frequently ExCo should meet, but in practice it meets about once every six months.

34. It is clear to me from all the evidence which I heard and read at trial that ExCo's size, the widespread residencies of its members and the infrequency of its meetings mean that it cannot manage the affairs of the Charity on a day-to-day basis, and it does not try to do so. However the available transcripts of its meetings show that its attendees are highly engaged in the matters under discussion, which include reports on the Charity's fundraising and spending, organisation of its internal affairs and policy decisions.

35. Provision was made during the pandemic for ExCo to meet remotely (by the Charity Commission) and similarly for Conference (by the May 2021 Order). However these provisions were temporary. My understanding is that the Extraordinary Conference which took place on 11 June 2023 and recent meetings of ExCo were hybrid meetings, some of those attending being present in person and others joining online.

The Electoral Commission

36. The Electoral Commission comprises 3 individuals, elected at the Ordinary Conference, one as Chairman, but who thereafter are not Conference delegates (clause 27 of the Constitution). Their primary function is to conduct the Presidential election which is to happen nearly 3 years later, although they are also responsible for conducting any other votes and elections which may arise. The Secretariat assists the Electoral Commission with the conduct of votes and elections. I consider this to be in accordance with the division of responsibilities under the Constitution, given the Secretariat's resources.

37. Clause 27 also provides that the Chairman of the Electoral Commission "…*shall act as the Returning Officer for all voting and elections of the [Charity] including any held at the Conference*."

38. The procedure for the Presidential Election is set out in clause 20 of the Constitution and fleshed out in the Standing Operating Procedures for Electing the President (the "**SOP**"). The version of the SOP which was in force in 2020 was that approved by Conference in December 2010. I refer to particular provisions below where they arise.

39. The SOP have recently been substantially amended (the "**2023 SOP**"), in large part reflecting issues which are the subject of this litigation, at the Extraordinary Conference on 11 June 2023. The 2023 SOP were passed by an overwhelming majority and were seconded by, among others, Dr Jaffer. The Presidential election which is due to take place in 2024 will therefore be under the 2023 SOP. My decisions as to the effect of the (old) SOP may not be relevant to the forthcoming election, where the provisions have changed.

40. Separate from the Electoral Commission, paragraph 3.3 of the SOP provides for ExCo to appoint two Executive Councillors "... *to witness the counting of the votes [in the*

Presidential election]; these individuals shall be known as the Returning Officers… the Returning Officers shall not be part of the Electoral Commission". There was some dispute at trial as to the correct description and status of these two Executive Councillors, who for the 2020 election were Mr Mohamed Merali (who appeared as a witness for the Claimant) and Ms Mariam Hassam.

41. My determination is that under the SOP, the role of these two ExCo Councillors was solely to witness the counting of the votes in the Presidential election, and they were not intended to fulfil the normal role of a "returning officer". Their description as such is inconsistent with clause 27 of the Constitution, which states that the Chairman of the Electoral Commission shall act as the "Returning Officer". It is clear to me, from clause 27 and the SOP more generally, that the Electoral Commission is given the responsibilities associated with being a Returning Officer, including inviting nominations, managing the electoral process and announcing the results. In any event, if there is a conflict between provisions of the Constitution and of the SOP, then I consider that as a matter of construction, the Constitution must take precedence. This is because (a) the Constitution is the dominant constitutional document, under which the SOP are created (under clause 2.21) and (b) the SOP state that they set out "*additional guidelines within the framework provided in the Constitution"*.

42. Finally I observe that the word "member" is used in different ways in the Constitution and the SOP, sometimes capitalised and sometimes not, and not necessarily consistently. Generally "Member" is used to mean a Regional Federation and "member" to mean either a jamaat or an individual, but I have had regard to context as well where necessary.

The 2020 Presidential Election

43. On 2 November 2019 there was an all-day meeting of ExCo in Birmingham, which was intended among other things to set the date and location of the forthcoming Ordinary Conference, and make provision for the prior Presidential Election. The agenda was circulated to members of ExCo on 3 October 2019.

44. The then Chairman of the Electoral Commission was Mr Mujtaba Datoo, and the other Commissioners were Mrs Waheeda Rahim and Dr Jaffer Dharsee, all of whom had been elected at the Ordinary Conference in 2017. Mujtaba Datoo provided a witness statement on behalf of the Defendants dated 31 March 2021, but he sadly died on 30 June 2021.

45. According to the draft minutes and the transcript which has been obtained of the meeting on 2 November 2019, Mujtaba Datoo explained the processes and timeline for the election and fielded various questions, including hypothetical questions about eligibility of voters and of candidates for the Presidency. He also said that the dates being suggested for the election were 28, 29 and 30 January 2020.

46. Paragraph 2.2 of the SOP provided that an election for President should take place on one of three days selected by the Electoral Commission in consultation with the "Members" (meaning in my view the Regional Federations) and ExCo. Paragraph 2.10 provided that the "members" will organise the elections on one of the three days set. I consider that in context this must also have meant the Regional Federations. This is also how Mujtaba Datoo interpreted it, according to the transcript.

47. This provision meant different Regional Federations could conduct the election on different days, with the potential that knowledge of results in one region might affect the election in another. This was a concern expressed at the ExCo meeting, and this led to discussion about reducing the election to two (alternative) days. (In the 2023 SOP this has been changed, so the election now takes place on only one day.)

48. Following these debates, a resolution was proposed and passed unopposed by ExCo which among other things provided for the election to take place on "either" of the dates named by the Electoral Commission, meaning on one of two days. The actual dates were not specified in the resolution. There is an issue as to whether this reduction was valid.

49. On 4 December 2019 Mujtaba Datoo issued a notice on behalf of the Electoral Commission inviting nominations for President from the Regional Federations, to be sent within 30 days to the Charity's office in Stanmore, that is by 17.00 on 2 January 2020.

50. By paragraph 2.5 of the SOP, a candidate for President must be a "registered member" of a Constituent Member and be nominated by any "member Federation".

51. There is a dispute between the parties as to the meaning of "registered member". However there is no dispute, and it is clear that:

    i) Nominations could only come from a Regional Federation; and,

    ii) A candidate would not be eligible if they were only a member of a jamaat which was an Associate Member of the Charity.

52. This matters because the First Defendant, Mr Jaffer, had for several years prior to November 2019 lived in Dubai and been a member only of the Dubai Jamaat, and was known as such. This is at the root of the fact that when he was nominated for President, a number of people questioned whether he was eligible to stand.

53. It is clear that Mr Jaffer himself was concerned that he was not eligible at the time of the ExCo in November 2019, at which he discussed the issue with Mujtaba Datoo. It is further clear that as a result, he took steps in November 2019 to become a member of the Milton Keynes Jamaat ("**MKJ**"), for himself, his wife and his two children. Mr Jaffer (only) had been a member of MKJ many years earlier, when he had lived in the UK. He also owned a flat in the area, although it was let out to tenants. There is controversy around the steps Mr Jaffer took to join MKJ, and whether these were effective to make him eligible to stand for President. However, it is agreed that his application for membership of MKJ completed and became effective on 22 November 2019.

54. As noted, it was on 4 December 2019 that the Electoral Commission invited nominations for President from the Regional Federations, to be received by 2 January 2020.

55. On 8 January 2020 the Electoral Commission issued a notice that four people had been nominated: Mr Jaffer (by four Regional Federations), Dr Husein Jiwa (by three), Mr Asakhusein Rashid (by two) and Mr Aunali Khalfan (by one). All of Mr Jaffer's nominations had been submitted and received after 22 November 2019.

56. By paragraph 2.8 of the SOP, the Electoral Commission was therefore required to activate the electoral process. Its notice of 8 January stated that the nominations had all

been accompanied by letters of consent and agreements to stand down from conflicting posts if elected. It stated that voting would take place on 30 and 31 January 2020, and each Regional Member would decide which date of the two, in consultation with the Electoral Commission. The notice also included a paragraph prohibiting use of the Charity's logo or archived material in candidates' campaign literature.

57. The Presidential election proceeded on 30 and 31 January 2020 with these four candidates. Each Regional Federation held their vote on one or other date.

58. Under the SOP, the Electoral Commission was responsible for sending out ballot papers to Regional Federations (paragraphs 5.3 and 6.2). The ballots were numbered, and the total sent was based on "voter lists" which had been submitted by the Constituent Members to the Electoral Commission. Copies of the lists were sent back with the ballots. The Electoral Commission's address is the same as the Secretariat (paragraph 4.6).

59. Paragraphs 5.2 (first sentence) and 5.5 of the SOP both provided that Constituent Members had to provide their lists of eligible voters at least 120 days before the end of the term of the President.

60. Paragraph 5.4 provided:

> "The registered voter list originally provided to the Commission by the member Federation or Constituent Member will be the basis for those eligible to vote for the [Charity's] Presidential elections."

61. Paragraph 5.1 provided that the Electoral Commission was responsible for maintaining an "*electronic Central register of voters entitled to vote for the President*…" and that the register "… *will be made up of a list of eligible voters of each member Federation or Constituent Member and shall be provided by the member based on their records."*

62. The second sentence of paragraph 5.2 provided: "… *Such register will include the name and address of each voter…".* "Register" appears to mean the electronic register in paragraph 5.1.

63. Despite paragraph 5.1, there is no dispute that the Electoral Commission and the Secretariat have never in fact maintained any such single central register; rather the ballots sent out have been based on the voter lists submitted.

64. It is agreed that (a) the Electoral Commission set a deadline of 13 November 2019 for the submission of voter lists for the 2020 election; (b) MKJ submitted their list of eligible voters on 11 November 2019; and (c) Mr Jaffer's name was not on that list. This is unsurprising because the Executive Committee of MKJ did not meet to discuss and approve Mr Jaffer's application until 12 November 2019, and he did not pay his subscription, which it is agreed activated his membership, until 22 November 2019.

65. An issue between the parties is whether the voter list submitted by a jamaat also defines whether a person is a "registered member" of that jamaat for the purposes of paragraph 2.5 of the SOP, and so eligible to stand as President. Obviously in the vast majority of cases, the name of the person being nominated will appear in the voter list submitted by the Constituent Member of which they are said to be a member. The issue however is whether "registered member" means that their name appeared on that voter list. There is

no dispute that if one equated to the other, Mr Jaffer was not eligible to stand for President.

66. Under paragraphs 2.10 and 3.2 of the SOP, after organising the elections in their areas "members" are required to submit their votes to the Electoral Commission by return courier, using the prepaid waybill supplied, at least 30 days before the end of the term of the current President. It is recommended this is done within 48 hours.

67. Under the SOP, counting is undertaken both locally at the jamaats and centrally by the Electoral Commission at Stanmore. By paragraph 6.3, *"[t]he Returning Officer selected by each of the Constituent Member's Managing Committee will oversee the presidential elections and will be responsible for the counting of the ballots and announcing the results locally*." I consider that immediate announcement of the local result by the local returning officer was expressly permitted by this provision, there having been some disagreement about this.

68. Paragraph 6.4 of the SOP provided that the original ballot papers and eligible voter lists, with the result notification signed by the local returning officer, were to be sent by approved courier to the Electoral Commission, to be counted.

69. As I have already discussed, clause 20.3 of the Constitution and paragraph 3.3 of the SOP provide that the counting of the votes by the Electoral Commission at Head Office is to be witnessed by the two Executive Councillors appointed by ExCo for that purpose.

70. On 3 February 2020 the Electoral Commission issued a notice, addressed to the Secretariat, Regional Federations and ExCo councillors, that following the conclusion of voting, the Electoral Commission and the two ExCo witnesses would meet on 16 February 2020 (a Sunday) at the offices of the Secretariat to count the votes.

71. Also on 3 February 2020, in a report expressed to be made to ExCo, and sent to the then Secretary General, Mr Shan Hassam ("**Mr Hassam**"), the Electoral Commission reported that the election had taken place, ballot papers were being returned, it was expected that all ballots cast would be received within about ten days, and they had "*set February 16, 2020 to count the ballots at the WF Secretariat office in Stanmore, UK. We have also notified the two EXCO observers. At that time, we will have an official count of the ballots cast."* That letter also set out and considered a number of complaints which had been made to the Electoral Commission about the election, including from two of the candidates, Dr Jiwa and Mr Rashid. Most were rejected by the Electoral Commission, for reasons set out in the letter, although some, including Mr Rashid's, were said to be still under investigation.

72. In an email of 5 February 2020, Dr Jaffer replied to that report, setting out various ways in which he said the conduct of the election had breached the SOP or Constitution.

73. In his Points of Claim Dr Jaffer has listed 15 ways in which he claimed the conduct of the Presidential election breached the Constitution, the SOP and/or requirements of natural justice, 14 of which are still pursued. I consider these individually below. Many reflect complaints discussed by the Electoral Commission in their letter of 3 February 2020 and/or raised by Dr Jaffer in his email of 5 February 2020.

74. Much later the Electoral Commission produced a 10-page report on the election, dated 26 June 2020, for an ExCo meeting in June 2020, signed by its 3 members ("**the EC Report**"). The EC Report rejected all of the complaints which had been made. I am asked by the Defendants to have particular regard to that report.

75. The count at Stanmore took place on 16 February 2020, but it was not attended by either of the two ExCo Councillors who had been appointed as witnesses. There is some controversy as to how this came about. I heard evidence from one of those Councillors, Mr Merali, but I also had the benefit of contemporaneous email and WhatsApp messages, on which I place reliance.

76. In a WhatsApp to the two Councillors dated 29 January 2020, Mujtaba Datoo said "*I am writing to inform you as the appointed Councillors by the Executive Council to witness the counting of the votes at the World Federation that the Electoral Commission will be counting the returned ballots on Sunday 16 February 2020 at the WF Secretariat at Stanmore starting at 10am. It is hoped that all ballots will by then have been received."*

77. However Mr Merali thought he would be unavailable on 16 February, because he had arranged Umrah, or pilgrimage to Mecca, for himself and his family for a week from 15 February. He replied by WhatsApp: "… *I was thinking that the tentative date was 9/2 but not push to 16/2. My wife is in London and I was to come on 5/2 to count on 9/2 and go to Umrah on 15/2 with Jawad family…".* He asked for advice, saying he might be unable to attend if the count was on the 16th.

78. In evidence Mr Merali said that he had thought the count would be on 9 February, because he understood that the votes would be received by 3 February. His wife was in London for medical treatment in early February, so he had made plans to accompany her, attend the count and then leave for Umrah.

79. The letter which the Electoral Commission sent via Mr Hassam to all ExCo Councillors on 3 February confirmed the date of the count as 16 February. On 8 February, Mr Merali sent his apologies by email to Mr Hassam. He said his "estimate" had been that the count would be on the 9th but now it had been announced as the 16th, he would not be able to attend.

80. There is no evidence that the date of the count was ever set as the 9th and then changed to the 16th, as has at some points been suggested. In my view the evidence all consistently points to the conclusion that early on Mr Merali made an assumption that the count would be on the 9th, which was not unreasonable based on what he knew about the election, and he made plans on this basis, before the Electoral Commission had confirmed the date. Mujtaba Datoo told him on 29 January that the date would be the 16th, and the Electoral Commission formally confirmed this on 3 February. Mr Merali was then faced with a clash and so I conclude he withdrew, with regret, as a witness to the count.

81. There were some delays in the return of ballots by jamaats, although most had been returned by 14 February 2020. In the event Mr Merali was unable to undertake pilgrimage because his wife had an accident on the 13th, and he had to stay with her. On the 14th he emailed the Electoral Commission expressing concern about the delays in the return of ballots, and asking if the count might be postponed to 23 February.

82. Then on 16 February, the morning of the count, the other Councillor, Mariam Hassam, emailed the Electoral Commission to say that she would not be attending the count either (having sent an email the previous day saying that she would). She said this was because she had not received a spreadsheet of the breakdown of votes cast by each jamaat in advance, and in the absence of Mr Merali, she felt it was unfair to expect one individual to oversee the entire vote, and ensure a transparent process necessary to instil confidence amongst ExCo and the grassroots. Ms Hassam did not give evidence.

83. Given that neither of the two ExCo Councillors would be attending the count, Mujtaba Datoo asked Mr Hassam on 16 February whether other observers could be provided urgently. The Defendants say that the President of the Stanmore Jamaat provided four independent and respected members of the local community to act as independent witnesses in place of the two ExCo Councillors.

84. The Claimant says that it was a clear breach of the Constitution and SOP to proceed with the count without the two ExCo Councillors present. The Defendants' position is that it was acceptable not to delay the count beyond 16 February 2020 so the ExCo Councillors could attend, because the members of the Electoral Commission had already travelled to Stanmore from abroad to conduct it, and there was some urgency to announce the result before Conference started on 13 March 2020. I return to this issue below.

85. The four candidates also had the right to send observers to the count. Only Mr Jaffer sent one who remained throughout. It appears from Electoral Commission reports that Mr Rashid's observer attended but withdrew after an hour on Mr Rashid's instructions because the ExCo witnesses were absent. Dr Jiwa and Mr Khalfan did not send observers, Dr Jiwa because he said he was dissatisfied with the response to issues he had raised about Mr Jaffer's eligibility; Mr Khalfan because he said he trusted the process.

86. On 18 February 2020 the Electoral Commission reported to the Secretary General the outcome of the election, provisionally since a request from Mr Rashid for arbitration was outstanding. Of the 88 Electoral College votes, 53.03 (about 60.3%) were awarded to Mr Jaffer, 18.26 (20.7%) to Dr Jiwa, 15.12 (17.2%) to Mr Rashid and 1.6 (1.8%) to Mr Khalfan. Mr Jaffer therefore received the most votes by a substantial margin.

87. No challenge has been made to the actual counting of the ballots. The Electoral Commission's paperwork has been reviewed by both the Claimant's and the Defendants' solicitors. I accept these figures as a correct tally of the Electoral College points for each candidate, based on the ballots accepted by the Electoral Commission. There are disputes as to whether all these ballots should have been accepted, but not the accuracy of the count itself.

88. On 21 February 2020 the Electoral Commission issued a notice to the "Members" of the Charity (apparently the Regional Federations) that Mr Jaffer had received the largest number of Electoral College points and so had been duly elected as the President of the Charity for the 2020-2023 term. Shortly afterwards, Mr Jaffer received letters of congratulation from all the 6 Regional Federation Presidents.

89. The EC Report states that Mr Rashid made various complaints about the election, and was not satisfied with the Electoral Commission's response. It states he was offered arbitration under paragraph 4.14 of the SOP but because he did not sign a declaration required by sub-paragraph 4.14(b) agreeing to be bound by the arbitrators' decision and

refraining from public statements, the arbitration could not proceed. I return below to the issue of whether there was a failure to offer arbitration, either to Mr Rashid or to others.

90. The Conference which had been due to take place on 13 – 15 March 2020 was then postponed due to the pandemic, with no new date being given at that time.

91. The complaints about the election did not die down. On 19 March 2020 Dr Jaffer's solicitors sent pre-action letters of claim to the Secretary General and the then Office Bearers, copied to the Charity Commission, seeking a fresh Presidential election on grounds of alleged widespread election irregularities, substantial breaches of the Constitution and SOP and ineligibility of the winner, threatening to seek interim relief.

92. On 17 April 2020 there was a meeting of a subcommittee of ExCo called the President's Strategic Subcommittee ("**the PSS**"), to consider and advise on the issues which had arisen concerning the election. The PSS consisted of the 2017-2020 President and the presidents of the six Regional Federations. It had been formed at an ExCo in December 2018, and its stated intention was to strategise serious challenges, discuss issues of importance and make recommendations for action to ExCo. It is agreed that the PSS does not have any formal decision-making powers, but rather is intended to provide guidance and seek to resolve problems.

93. The PSS undertook an investigation into the election issues, although the Electoral Commission and Mr Jaffer declined to meet it. On about 24 May 2020 it issued a 2-page report ("**the PSS Report**") in which it unanimously recommended to ExCo that the Presidential Election be annulled and the Electoral Commission dissolved. The Claimant places particular reliance on the PSS Report. The reasons the PSS gave were:

    i) The "*…amended SOP applied by the Electoral Commission did not have constitutional basis"* because 24 hours' notice of amendment had not been given to the November ExCo. Any steps after that, whether following correct procedures or not, were therefore ineffective because the start of the process was flawed;

    ii) The count had proceeded in the absence of the two ExCo Councillor witnesses;

    iii) The Electoral Commission had failed to respond adequately to questions about the eligibility of a candidate, when brought to their attention on 28 January 2020, in advance of the election.

94. Given the events which followed, it is not necessary for me to resolve whether ExCo had any power to annul an election. However there is no express provision of the Constitution allowing it to do so, which suggests it does not.

95. On 26 June 2020, following contact with Veale Wasbrough Vizards for the former Office Bearers and with Dr Jaffer's solicitors, the Charity Commission made an order under section 105 of the 2011 Act, authorising a temporary amendment of the Constitution to delay Conference and hold it remotely, and allowing the former Office Bearers to remain in office in the interim. This was subject to a long-stop that the reconvened Conference take place by 1 June 2021, with no Extraordinary Conference in the meantime. It also authorised ExCo to meet and vote remotely. It appears this order was in response to the pandemic rather than directly to Dr Jaffer's election challenges, although the postponement had meant Conference could not consider the election issues.

96. An online ExCo took place on 27 and 28 June 2020. On the first day it received the EC Report, to which Mujtaba Datoo spoke, and also the PSS Report. Mujtaba Datoo then resigned as Chairman of the Electoral Commission, for health reasons. There was a general discussion about the electoral issues, including whether ExCo or only Conference could annul a Presidential election. On the second day, a debate began on a resolution to accept the PSS recommendation to annul the election, but the ExCo meeting was then terminated when all the Office Bearers (purportedly) resigned *en masse*.

97. Subsequently there was a further ExCo meeting of questionable status on 25 July 2020 at which Mr Jaffer was purportedly elected as "Interim President" and the Second to Fourth Defendants as Vice President, Treasurer and Assistant Treasurer respectively. Mr Jaffer also then purported to appoint the Fifth and Sixth Defendants as Secretary General and Assistant Secretary General, and eight Councillors to ExCo. It seems unlikely that this ExCo was properly convened and/or was able to make these decisions, but it is not necessary for me to rule on this for the purposes of this judgment.

98. The governance of the Charity remained in this unsatisfactory twilight state until the May 2021 Order of Mr Justice Mellor regularised the position on an interim basis.

99. In the meantime the Charity Commission on 7 August 2020 made clear that it was unhappy with and did not accept the validity of the decision of the previous Office Bearers all to resign, and was not inclined to grant permission to any party to bring charity proceedings. Given that five different parties were approaching it, it refused to take any further action unless it received an agreed proposal from both "sides". On 24 September 2020 it duly refused to give Dr Jaffer permission to issue charity proceedings.

The Present Proceedings and Subsequent Events

100. On 15 October 2020 Dr Jaffer applied to the court for permission under s.115(5) of the 2011 Act to issue the present proceedings. He was granted permission by Mr Justice Marcus Smith, on the papers, on 4 January 2021, on an application which was without notice to the Defendants,. The proceedings were served on 25 January 2021.

101. Immediately before this, on 23 – 24 January 2021, a remote meeting of ExCo took place which resolved to convene an Ordinary Conference on 21 May 2021.

102. On 8 March 2021 the Defendants applied to Court for interim relief authorising them to continue to discharge the functions of the Office Bearers; enabling the Conference due for 21 May 2021 to take place remotely; and authorising Conference to vote on two resolutions concerning the annulment of the election and affirmation of Mr Jaffer as President. Dr Jaffer issued a cross application on 28 April 2021, essentially for the appointment of a receiver to conduct fresh Presidential elections. These were the applications which came before Mr Justice Mellor on 13 May 2021.

103. In his judgment of 18 May 2021, reported at [2021] EWHC 1329 (Ch), Mellor J concluded at [46] that he could only grant the relief sought by Dr Jaffer if Dr Jaffer had established his case to a summary judgment standard, which he had not, as the issues could only be resolved by a trial. The Judge therefore dismissed Dr Jaffer's application.

104. In any event, Mellor J concluded that Conference should be given the opportunity to resolve on the way forward, and he confirmed it had the power to annul the Presidential

election and decide to hold a fresh election [47]. He observed at [49] that appointing an independent person to oversee a fresh election might be a very good way forward, and he commented approvingly on the persons suggested by Dr Jaffer to fulfil the role of receiver (two of whom are also proposed to me). However he considered this could only be initiated by Conference, and that if Conference did not resolve to hold a fresh election, then the claim would continue to trial if it could not be resolved by agreement.

105. He concluded that it would be in the best interests of the Charity for Conference to meet without further delay, and he made orders authorising the Defendants to fulfil the functions of the Office Bearers and for Conference to meet remotely to consider and vote on two resolutions: whether to call a fresh election, and whether to affirm the election of Mr Jaffer. He did so expressly without affirming or not affirming the elections, and without prejudice to arguments as to the effects of the two intended resolutions. He also reminded all participants in Conference that each of them was a fiduciary in respect of their powers, which meant they had to vote in the best interests of the Charity and not with regard to any personal allegiance, as did the Office Bearers [56-57].

106. At [60] he said this:

> "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."

107. On the same day as the judgment was handed down, 18 May 2021, a further notice of the Ordinary Conference was issued by the Secretariat and an agenda, process document and explanatory note were circulated to delegates. Despite a number of requests for an adjournment, the Conference proceeded, on a remote basis, over the two weekends of 21 – 23 and 29 – 30 May 2021. Voting took place electronically. Transcripts have been obtained of much of the proceedings, and I have been taken to parts of these.

108. Ultimately Conference passed resolutions:

    i) To affirm the decision to reduce the number of election days in the 2020 Presidential election from 3 to 2 (by 87 votes to 11);

    ii) Not to hold a fresh Presidential election (by 93 to 23); and

    iii) To affirm the election of Mr Jaffer as President (by 98 to 19).

109. Dr Jaffer's position is that the Conference was "a fiasco" because there was insufficient time for proper preparation. In any event, he says, the resolutions cannot affect the court's conclusions as to the validity of the 2020 election or Mr Jaffer's eligibility, although he accepts they may be relevant to the court's discretion whether to appoint a receiver.

110. Dr Jaffer continued with his claim, which came before Deputy Master Glover for directions on 23 June 2021. On 7 July 2021 Dr Jaffer served Points of Claim. The

Defendants served their Defence on 28 July 2021. On 8 September 2021 Dr Jaffer served Points of Reply. The Defendants more recently served Amended Points of Defence dated 15 August 2023, but there were no consequential amendments to the Points of Reply.

111. On 31 March 2022 Deputy Judge Richard Farnhill heard: (i) an application by Dr Jaffer dated 18 November 2021 for answers to a detailed request for further information on financial matters, and delivery up of a video and (ii) an application by the Defendants, just issued on 24 March 2022, for permission to rely on a further statement from Mr Jaffer exhibiting a report from accountants Moore Kingston Smith (the "**MKS Report**").

112. At that hearing Deputy Judge Farnhill:

    i) Ordered the Defendants to provide a copy of the video, but did not order them to answer any requests beyond those they had already answered voluntarily;

    ii) Gave the Defendants permission to rely on the further witness statement and the exhibited MKS Report, but only on condition that (a) the Defendants sent Dr Jaffer all drafts and earlier versions of MKS's instructions, and all correspondence with MKS relating to the scope of their instructions and (b) the Defendants sent Daniel Barton of Alvarez & Marsal Disputes and Investigations LLP ("**A&M**"), who were forensic accountants engaged by Dr Jaffer, all documents and information provided to MKS in the course of their engagement.

113. His order recorded that the reason for conditions (a) and (b) was to enable the Claimant to test the MKS Report in submissions and/or cross-examination at trial. He also ordered that the Defendants were not required to identify or allow to be identified any individual donor, and could require A&M to sign a non-disclosure agreement and give undertakings not to disclose the documents, or the identity or "*…any information which identifies or may reasonably be used to identify any person who has donated to [the Charity]".*

114. Importantly the Defendants do not rely on the MKS Report as expert evidence, nor do they have permission for expert evidence. They rely upon it as evidence that they have discharged their duties as trustees, by investigating the actions of the previous Office Bearers. Connected with this, no permission was given to Dr Jaffer for any expert report from A&M in reply. It was recognised that it might be difficult for the Claimant to challenge and the Defendants' witnesses to answer questions on the MKS Report in cross examination, since the author was not giving evidence. This was the reason for the various ancillary orders for disclosure made by Deputy Judge Farnhill.

115. One consequence of permission to introduce the MKS Report being granted was that the trial listed for May 2022 had to be vacated. By an order of Deputy Judge Amanda Hardy QC of 11 April 2022, at the first PTR, the trial length was extended from 4 to 10 days, a list of issues was approved and the trial timetable agreed.

116. Ultimately the trial could not be re-listed until November 2023, when it came before me. I also heard what became a second PTR on 19 October 2023, when I dismissed the Defendants' application for an order that the Claimant provide advance notice of points they would be raising on the MKS Report in cross examination. Instead I ordered the parties to file a list of the legal and factual sub-issues relevant to the question of whether the Court should appoint a receiver to investigate the financial affairs of the Charity, to be drawn from the parties' statements of case and associated legal issues. I ruled on the

final content of this list of 14 sub-issues (3 legal and 11 factual) at the start of the trial. I consider them below on the question of whether a receiver should be appointed.

117. The delay in the claim coming to trial has had pragmatic effects on the remedies sought by Dr Jaffer. Mr Jaffer's term as President is coming to an end. I believe that by the time this judgment is handed down, ExCo will have met, on 31 December 2023, to determine the timetable for the next Presidential election, to take place before the Conference in May 2024. Dr Jaffer no longer seeks annulment of the 2020 election, but rather seeks declarations that there were breaches of the SOP and/or Constitution, and Mr Jaffer was ineligible to stand, but that his actions are not to be treated as void. Dr Jaffer also asks for a receiver to be appointed to conduct the forthcoming 2024 Presidential election.

118. In addition Dr Jaffer asks for a receiver to be appointed by the court to carry out a further investigation into donations to the Charity from the Donor, arguing that the MKS Report has itself strengthened the case for such an appointment.

119. The truth is that, as Mr Pearce submitted in closing, the focus of Dr Jaffer's case has changed. Whereas originally this case was predominantly about the conduct of the 2020 Presidential election and Mr Jaffer's eligibility, by the time of trial the main focus had switched to the propriety of the very substantial donations to the Charity which had been made by the Donor, especially over the period 2015 to 2019, during the term of the previous Office Bearers. These were agreed to amount to more than £34 million over 5 years, mainly directed to be used for specific projects in Iraq and Lebanon. This became the focus of the majority of the cross examination on behalf of the Claimant.

120. At the start of the trial I ruled that the Claimant's Points of Claim did sufficiently put in issue whether these donations had been properly applied in accordance with the Constitution of the Charity, and whether the Defendants had properly interrogated the actions of their predecessors. I concluded that his pleaded case was not limited to whether an inference should be drawn that the funds had not been properly applied only from certain answers or alleged failures to answer questions at the May 2021 Conference or in correspondence, or from the fact it was said no report was made to ExCo about the source or application of those funds. I said it might not ultimately be possible or necessary to conclude on the evidence available whether the funds had been applied in accordance with the Charity's Constitution, in order to decide whether a receiver should be appointed. However, as set out below, I have reached conclusions on all these issues.

The Donor

121. The identity of the donor of these substantial donations to the Charity has remained strictly confidential throughout the trial, to the extent that I am not aware myself of his identity (although the main parties are). He has been referred to throughout, as I do in this judgment, as the Donor. This anonymity is at his request and is a matter of great importance to him, although many donors do prefer to remain anonymous. It is sufficient for the purposes of this judgment to say there is no dispute that he is a wealthy and prominent businessman, based in the Middle East, whose profile is such that preserving his anonymity is considered necessary for the security of him and his family. Significant steps have therefore been taken during this trial to maintain that anonymity, while also ensuring that the issues could be properly ventilated, and to allow as much of the trial as possible to be in public, especially as it has been followed remotely by many in the Khoja community.

122. Similarly, steps have been taken for a long time within the Charity to maintain the Donor's anonymity, by both the current and previous Office Bearers. Mr Jaffer has nevertheless given evidence that he knows the Donor's identity and has met him on a number of occasions to discuss the use of his donations, as the previous Secretary General, Mr Hassam, also did. He tells me that another senior member of the Charity, Mr Ahmed Daya ("**Mr Daya**"), who was at one point the Charity's Treasurer, handled the relationship with the Donor for many years. I am told the Charity's accountant, who has been in office since 1992, knows who the Donor is. There is no dispute that the Donor, his wife or companies associated with them have been making donations to the Charity since at least the early 2000s, although the size of the donations increased from 2014.

123. One consequence of his requirements for anonymity, as confirmed by the MKS Report, is that the Donor has requested that the Charity's records concerning him are kept in hard copy only and not electronically. The authors of the MKS Report knew his identity and state in the report that they have been able to confirm from open source documents that the Donor is a high net worth individual, that his companies are large and well-established, and that he has a high profile. The documents relating to the Donor which were available to MKS have also been provided confidentially to Dr Jaffer and to Mr Barton at A&M, including a copy of the Donor's passport from 2019. The Claimant and a small circle of his advisers are therefore also aware of the Donor's identity.

124. These points are important because I have concluded, on the basis of the evidence I have seen, that the Donor's genuine and justified need for anonymity has been the primary driver of the cautious and very low profile way in which his donations have been reported by the past and present Office Bearers to ExCo and Conference, where information about them has been reported at all. I consider this in more detail below.

The MKS Report

125. MKS were instructed by the Defendants' solicitors in March 2022 to provide an opinion on whether there were any financial irregularities concerning the acceptance and application of donations from the Donor to the Charity, and whether the funds received were applied in furtherance of the Charity's objects, during the period 2015 to 2019. Among other things MKS were asked to review the Charity's information and documentation relating to the receipt of donations from the Donor and connected entities in that period, and taking account of the requirements of due diligence on the identity and source of funds of the Donor, to express an opinion on whether the Charity had complied with its legal and/or regulatory obligations under UK money laundering regulations. MKS was also asked to review, in relation to the four main recipient organisations, the sufficiency of due diligence on them, and to express an opinion on whether the evidence established that the funds were used in furtherance of the Charity's objects. MKS was also asked to recommend any further investigations they considered necessary.

126. MKS reported that the four organisations in Iraq or Lebanon which received the largest total amount of donations from the Donor in the relevant period were:

    i) Al Ayn Social Care Foundation (Iraq) ("**ASCF**");

    ii) Al Yatem (Iraq) ("**Al Yatem**");

    iii) Al Imam Al Hakim Philanthropic Foundation (Syria and Lebanon) ("**IAHPF**");

iv) Imam Al Sadr Foundation (Lebanon) ("**ISF**").

127. MKS requested relevant policies, documents and information from the Defendants and were supplied via solicitors with much of this. One obviously relevant document which existed but was not sent to MKS was the Charity's "Know Your Donor" ("**KYD**") Policy. The specific donations that MKS were asked to look at were selected by the Defendants.

128. In summary, in their report MKS concluded that:

i) Charity Commission guidance contains little by way of prescriptive requirements, and overall the approach envisaged is risk based and proportionate, depending on the circumstances of the charity, its donations, activities, resources and recipients. The minimum requirements were:

a) appropriate internal and financial controls;

b) proper and adequate financial records;

c) that the Charity gave careful consideration to due diligence, monitoring and verification; and

d) took reasonable and appropriate steps to know, broadly, who their beneficiaries were.

ii) Given the nature, amounts and jurisdictions involved in the transactions MKS were asked to look at, those transactions were high risk;

iii) From 2018 the Charity had in place a Financial Procedures Manual and an Anti-Fraud and Anti-Money Laundering Policy and Response Plan;

iv) Given MKS's understanding of the Donor's circumstances, the arrangements which had been put in place by the Charity to safeguard his identity and the source of his donations were reasonable;

v) In their opinion, during the period 2017-2019 the Charity had carried out sufficient and appropriate due diligence checks on the Donor, bearing in mind his circumstances. However MKS had not been provided with information or documents for the earlier years because the relationship had been handled by a predecessor (Mr Daya) who had not provided, nor been asked to provide, his files;

vi) Checks relating to politically exposed persons and sanction checks were not carried out by the Charity until 2019;

vii) In relation to the four recipient organisations, although previous trustees had carried out risk assessments, these had not been formally documented or recorded, which would have been best practice, but MKS did not consider there to have been any breach of Charity Commission guidance in that regard;

viii) Similarly as to expenditure by the four recipients, while there was evidence of due diligence having been carried out by the Charity, best practice would indicate more comprehensive records should be kept, but again this did not amount to a breach of Charity Commission guidance;

ix) For each of the four recipients, the Charity had provided a large volume of material which indicated extensive due diligence and monitoring had taken place, and any documentation which might be lacking did not indicate non-compliance with Charity Commission guidance, but rather that the Charity's formal record keeping procedures could be improved;

x) The only further work proposed was that documents be obtained from Mr Daya, so a similar review of the Donor's donations could be done for 2015 and 2016.

129. Dr Jaffer's position, pressed by counsel, was that the Defendants had controlled and limited the instruction of MKS so much as to render the report unsuitable for dispassionately assessing what had happened and whether remedial steps were required. In any event, they said, the findings MKS did make only showed that a further, much fuller investigation is required. They also submitted that the MKS Report was plainly obtained for the purposes of the litigation, and to try to shut the claim down, not to enable the Office Bearers to carry out their duties as trustees as the Defendants claimed.

130. The Defendants' position was that the report was commissioned in furtherance of their duties to investigate allegations about the conduct of the affairs of the Charity by their predecessors, and its use in litigation was at most a subsidiary purpose.

131. I have concluded that the Defendants clearly did obtain the MKS Report at the very least primarily for the purposes of this litigation, to rebut allegations by Dr Jaffer that the previous Office Bearers had conducted insufficient due diligence into the donations from the Donor, and into recipient organisations, and that the current Officer Bearers had not investigated these matters sufficiently. I have reached this conclusion on the basis of:

i) The detailed references to Dr Jaffer's claim in the instructions to MKS, and the fact that the instructions say the report may be used in evidence on the issue of whether the Defendants have taken steps to investigate allegations of financial impropriety against their predecessors;

ii) The timeframe in which the MKS Report was sought, which was obviously directed to the deadline for updating witness evidence;

iii) Written comments most probably made by the Third Defendant (the Treasurer, Mr Zaffarali Khakoo ("**Mr Khakoo**")) and the Charity's compliance officer, Ms Malika Alibhai ("**Ms Alibhai**") on 10 March 2022 on a draft of the report received and reviewed by them and Mr Jaffer before it was finalised by MKS. I consider that those comments show they were very concerned about how the report would be received by Dr Jaffer in the litigation. They included the comments:

a) "*Do we need to have this statement in? Could it lead to claimant asking for more information here?*" by Mr Khakoo, on a statement by MKS that not all documents had been exhibited but could be provided on request;

b) "*Is this point necessary, as it is still within the objects so not necessary to bring up?"* by Ms Alibhai, on a statement that the extent of the overlap between the Shia Muslim community and the Shia Ithna-Asheri faith was not a matter on which MKS could provide an opinion [being accountants];

c) "*This could be problematic as a recommendation as it is impractical to do at this stage*" by Mr Khakoo, on a recommendation in the draft that a more detailed exercise could be undertaken to identify what individual amounts sent to the recipients were spent on. This recommendation was removed from the final draft. There would have been no need to object to its inclusion, as opposed to simply not following it, if his concern was only the practicality of putting it into effect, not how it would be received by Dr Jaffer.

iv) The Defendants immediately applied for the report to be admitted in evidence, as an exhibit to a witness statement, as soon as it was received;

v) There is little or no evidence of the Defendants taking active steps in relation to the financial management of the Charity in response to the contents of the MKS Report. I do note that the Defendants' position is that suggested improvements had already been implemented, meaning this point does not carry much weight. Mr Khakoo did report to ExCo in September 2022 that an independent firm had carried out a review of allegations regarding donors and payments on sample transactions, and that they had seen no evidence of non-compliance with charity law, although they had identified improvements which should be made in documentation and which had been implemented. However I consider that this was probably an after-the-event utilisation of the report, rather than indicating why it was obtained.

132. However, the fact that the MKS Report was obtained with the aim of strengthening the Defendants' case in this litigation does not mean it cannot be effective for that purpose. I do approach the MKS Report with a degree of caution because (a) it is not expert evidence and has not been obtained in accordance with CPR Part 35; (b) the transactions which MKS were specifically asked to consider were selected by the Defendants, their solicitors and/or Ms Alibhai, albeit this was generally because they were the largest ones; (c) although Mr Jaffer and Mr Khakoo were cross-examined in relation to its contents, the makers of the report could not be; and (d) it is therefore a document, and not a contemporaneous one, but rather one created for the purposes of the litigation.

133. However I also bear in mind that the conditions which Deputy Judge Farnhill imposed when giving the Defendants permission to rely on the statement exhibiting the MKS Report, were intended to give Dr Jaffer and his team the best opportunity possible to probe and challenge the contents of the report. This is an opportunity of which they have taken maximum advantage. Having done so, they have not suggested that MKS were not competent or were not objective. Their criticisms are that the material provided to MKS was limited (especially in time as regards the Donor, since nothing pre-dated 2017) and was pre-selected by the Defendants, not by MKS in the manner of an audit process, and that this reduces considerably the value of MKS's conclusions.

134. The central purpose of the MKS Report in this litigation is to shed light on whether the Defendants have discharged their duties. From that perspective I consider it is helpful to me, not merely because they instructed a report to be obtained (for motives which were primarily to defend their position in litigation), but because that report can help confirm for them as trustees and for me whether the receipt, handling and utilisation of these large donations from the Donor has put at risk and, importantly, continues to put at risk the integrity of the Charity, in the sense of making sure that its donations are used for its proper objects and its financial management is properly conducted.

135. In particular I have concluded that the MKS Report is useful in casting light on:

    i) Whether the donations from the Donor were used in accordance with the objects of the Charity, because it provides positive evidence as to what they were used for;

    ii) Whether the Charity complied with Charity Commission guidance in handling these donations in this historical period; and

    iii) Whether there is any positive evidence of money-laundering having taken place.

136. Furthermore, where the authors of the MKS Report have seen relevant documents, and were able to reach positive conclusions about what those documents actually demonstrated, then I accept those conclusions as reliable. This is especially so as regards the Donor, where the parties have agreed that MKS was to have more information about him than I am to have myself. As I have indicated, there is no dispute that MKS are a reputable firm of accountants with particular expertise in charity matters and that, within the scope of their instructions, they have acted competently.

137. In particular, I therefore accept MKS's conclusions that:

    i) The Donor is who he says he is, is genuinely a wealthy businessman with substantial corporate and business interests, and either he or his wife, or companies closely associated with them, did make all of the substantial donations to the Charity which MKS was asked to examine, and that the Donor had face to face meetings with representatives of the Charity between 2017 and 2019;

    ii) The four recipient organisations are genuine and well-established charitable organisations in their own right, operating in Iraq or Lebanon/Syria;

    iii) Payments have been made to those recipient organisations, as intended by the Donor and the relevant Office Bearers of the Charity, and have essentially been used by those organisations for their intended purposes.

138. Given those conclusions, and the fact MKS do not anywhere state that they have seen any evidence of money-laundering, I have also concluded, as submitted to me by the Defendants, that there is no actual evidence at all of money laundering in relation to the donations associated with the Donor. The transactions were high risk, primarily because of the identity of the Donor and the countries where the recipient organisations were located, which affected what was appropriate monitoring and checking. However it does not follow from this that the transactions in fact were or might have been money-laundering, by which I mean the illegal process of enabling large amounts of money from criminal activity to appear to have come from legitimate sources. My conclusion is that there is no evidence whatever that the receipt and use of these donations was money-laundering, and ample evidence that they were genuinely meant and used for assisting persons in need in those countries. Whether they were used in accordance with the charitable objects of the Charity is a specific sub-issue to which I will return.

THE WITNESSES

139. During the course of the trial, I heard live evidence from the following witnesses. For the Claimant I heard from: Dr Jaffer, Mr Mohsin Kanji, Mr Anverali Rajpar, Mr Amirali

Somji, Mr Husein Jiwa and Mr Mohamed Merali; and for the Defendants from Mr Jaffer and Mr Khakoo. Mr Rajpar and Mr Somji gave evidence by remote video link from abroad.

140. On behalf of the Defendants I also received and have considered a witness statement dated 31 March 2021 from Mujtaba Datoo, who is now sadly deceased.

141. In addition the bundle included statements from a number of witnesses for the Defendants who were available but were not cross-examined, as Mr Jaffer and his team elected to concentrate their available time on Mr Jaffer and Mr Khakoo. Those witnesses were: Mr Jaffer Dharamsi (current Chairman of the Electoral Commission), Mr Salim Rehmatullah (current President of CoEJ), Mr Gulam-Abbas Aly (current Secretary General of FAC), Mr Arif Jacksi (current President of NASIMCO) and Mr Iqbal Panju (administrative secretary to the Charity, an employee). I have read and considered the contents of those statements. I have not considered the statements from two other individuals where it was not possible to obtain permission for the makers to give evidence from abroad.

142. My impressions of the witnesses who gave live evidence were as follows. I say at the outset that I have concluded that all of the witnesses were acting in good faith and with honourable intentions and were seeking to assist the court by relating matters as they genuinely perceived and recalled them. I also consider that all were and are motivated to act in the best interests of the Charity as each saw them.

143. However it was also apparent to me that the positions and perceptions of the main protagonists, by which I mean Dr Jaffer and Mr Jaffer, and also to some extent Mr Kanji, have become deeply entrenched, so they are now intensely distrustful of those on the other side, while believing passionately in the correctness of their own positions. This manifested itself, among other things, in a tendency to make speeches from the witness box rather than answering the questions.

144. I also observe that since this is a Part 8 claim, there was a large number of witness statements from the main protagonists, including ones exhibiting documents, acting as precursors to the statements of case or dealing with procedural matters. Nevertheless by the time it reached trial, the claim had morphed into something much more closely resembling a Part 7 claim, with statements of case, and extensive and contested live evidence.

145. Since these are charity proceedings, the parties were not obliged to comply with Practice Direction 57AC concerning the preparation of witness evidence for trial (see paragraph 1.3(8) of PD 57AC) and have not done so. It is obvious that large parts of many of the witness statements have been prepared by that party's legal team, with e.g. similar phrases being repeated in the statements of different people. Those statements also include very extensive amounts of comment, both on documents and on the evidence of witnesses from the other side. Given that PD 57AC does not apply, I have not treated these features as casting doubt on whether the contents are the authentic evidence of the makers. However it has sometimes made it difficult to discern what is actually factual evidence, particularly in the statements of the main protagonists.

The Claimant's Witnesses

Mr Mohsin Kanji

146. Mr Kanji is a member of ExCo, resident in Kenya, who has been involved with the Charity's affairs for about 20 years. A large number of the witness statements in support of Dr Jaffer's case were from Mr Kanji (a total of eight, dated from October 2020 to September 2023, as compared to four from Dr Jaffer). It was clear from his evidence that he has detailed knowledge of the Charity's affairs and has done much of the necessary work in running this claim. He is significantly younger than Dr Jaffer, who is in his seventies, so this division of responsibility is not very surprising. He denied when cross examined any business or financial relationship with Dr Jaffer, and says he was independently concerned about the matters which led to this claim, and I accept that evidence.

147. Mr Kanji was a measured witness who was at pains to explain his points fully. He also clearly had a strong conception of what he considered the right position on a point about the Charity's workings to be, and found it difficult to acknowledge when he might be wrong. Quite often when asked a question which challenged his perception, he would make a different point rather than answering that question. It was apparent to me that he believes strongly that Mr Jaffer was not eligible to be President, that the outcome of the election did not reflect the true wishes of the electorate, and that something has gone wrong in the way the Charity is managed, and these suspicions have become so firmly entrenched that he found it difficult to accept any proposition from Mr Pearce in cross examination, e.g. about whether steps taken by Mujtaba Datoo to manage the logistics of the election were reasonable.

148. My conclusion is that he was an honest, knowledgeable and well-meaning witness, but one whose strong feelings have coloured his perceptions, especially about Mr Jaffer and the election, and made it difficult for him to hear any new information.

Dr Mohamed Husein Jaffer

149. Dr Jaffer came across as a strong-willed, combative and somewhat maverick individual who is accustomed to getting his own way, whether by charm or force of personality. He patently believes very strongly in the correctness of his own position and could not accept any challenge from Mr Pearce on behalf of the Defendants. He made frequent allegations, unsupported by evidence, that those who disagreed with him were biased, had been bribed by money being given to their particular charitable projects (such as an eye clinic) or had been bulldozed, and that there was a "clique" who opposed him. However he did so almost playfully, as if he did not expect the allegations to be taken entirely seriously, but wanted to make an impact. He claimed that the Conference in May 2021 was a fiasco and a sham, that those who passed the three resolutions had failed to read Mellor J's judgment and failed to exercise their votes properly because they had decided in advance how they would vote. This was despite the fact that the transcripts show there was lengthy debate on the proposed resolutions, and indeed that Dr Jaffer participated significantly in the first weekend of the Conference (he was unwell during the second). He was also prone to assert positions which were incorrect and refuse to accept any corrections: for example, he asserted that the Charity's objects were limited to assisting Khoja communities, and would not accept that they were wider than this. He frequently made speeches rather than answering the questions put to him by counsel.

150. It is also notable that Dr Jaffer was sending colourfully worded emails about the election to officials in the Charity from an early stage, describing it as a "*sham election rife with process violations and irregularities*" on 9 February 2020, and claiming in an email of 24 February 2020 to ExCo Councillors that "…*since, Marhum Mulla Asgharali MM Jaffer died, the Community has been hoodwinked with sham elections engineered to ensure the puppet masters candidate of choice is given the Presidency by whatever means necessary*" and "*the responsibility lies with each one of us to do what is necessary to take back charge of our Institution from the mischief of the puppet masters*."

151. Mr Pearce described Dr Jaffer in closing as volatile, saying that even appointing a receiver was unlikely to resolve the situation for long, and I consider there is some force in that submission.

152. My conclusion is that while Dr Jaffer feels strongly that the Charity has gone in a wrong direction, his strength of feeling does not usefully inform me about the correctness of his case. I do not accept his allegations of corruption, which are unsupported by any evidence, and which I consider are more an indication of his disbelief that others can legitimately disagree with him.

Mr Anverali Mohamedali Rajpar

153. Mr Rajpar is a former President of the Pakistan Federation, from 2017 to 2020, and so was a member of the PSS, who contributed to the PSS Report. He gave evidence remotely from Tanzania. His evidence was directed to the 2019-2020 period, especially the PSS Report.

154. Mr Rajpar was a very straightforward and forthright witness, who directly answered the questions put to him and made concessions which seemed reasonable and appropriate. I accept his evidence.

155. Mr Pearce challenged the conclusions of the PSS Report (which was prepared in June 2020) in cross examination of Mr Rajpar. Mr Rajpar accepted that since the resolution to reduce the election window from 3 to 2 days was passed unopposed by the ExCo in November 2019, it did not really matter than they were not given 24 hours' notice that this would be discussed. On the question of the replacement of the two ExCo witnesses with four witnesses supplied by the local jamaat, he said he did not think this mattered because the votes were counted in the presence of people who were, to his knowledge, trustworthy. On the question of whether the Electoral Commission had responded properly to questions about Mr Jaffer's eligibility, he said he agreed with the Commission because according to the Constitution, a candidate only needs membership of one jamaat. In relation to the May 2021 Conference, he agreed that once Conference had decided to affirm the result and not to hold a fresh election, that should have been the end of the arguments about the election. In relation to the forthcoming Presidential election, his view was that the Charity should run the election itself, or if someone from outside were to be brought in, it should be someone from "the community" (by which it appears he meant the Khoja community).

Mr Amirali Somji

156. Mr Somji is a former Electoral Commissioner, from the 2009 Presidential election. He is 88 years old, gave evidence remotely from Tanzania where he lives, and appeared to be

a little deaf, but was nevertheless able to give evidence effectively. He was cross examined by Mr Mills on behalf of the Defendants.

157. Mr Somji's statement was directed to the circumstances of the 2009 election. There were disputes around that election also, and arbitrators were appointed.

158. Having heard all of the evidence at trial, I do not consider that events around the 2009 election have any direct relevance to the issues before me. I am not asked to make any findings in relation to it and will not be doing so. Mr Somji's evidence was not therefore ultimately relevant to the issues I have to decide.

Dr Husein Jiwa

159. Dr Jiwa is a member of ExCo and was another candidate in the 2020 Presidential election. As noted above, he came second in the vote as counted. He is a doctor and is resident in the UK. He has been involved with the Charity for over 30 years, and is a former President and Vice-President of CoEJ.

160. Dr Jiwa was an earnest and careful witness. He agreed that there was mutual respect between himself and Mr Jaffer, and volunteered that there still was. He agreed that he felt rather sore that his campaign in Pakistan had not gone as well as he would have liked, including feeling that Mr Jaffer had got a speaking slot which should have been his.

161. It is not disputed that Dr Jiwa raised questions with Mujtaba Datoo shortly before the election (prompted by social media speculation) about Mr Jaffer's eligibility, and Mr Jaffer's use of photographs or video stills in his campaign which included the Charity's logo. (This led to the direction of 8 January 2020 that no candidate was to use the logo.)

162. Dr Jiwa said in evidence that he had just wanted to resolve the eligibility issue, and said "*It should not go to the way we have gone today"*. He said he believed at the time that Mr Jaffer could not be eligible for membership of MKJ because he lived in Dubai, and this was why he had pursued the matter. He expressed concern about the polarisation in the Khoja community and loss of confidence in the Charity's decision-making.

163. My impression of Dr Jiwa was that he had been very concerned about Mr Jaffer's eligibility, but is now more concerned about the effect this ongoing dispute is having on the Charity and the confidence of its members in it. This manifested itself for example in his unwillingness to criticise others, including the Charity Commission. So far as it goes, I accept his evidence.

Mr Mohamed Merali

164. As already noted above, Mr Merali is a member of ExCo and he was appointed to act as one of ExCo's two witnesses to the count. He is a retired chartered accountant with homes in both the UK and Mombasa. He is a member of the Stanmore and Mombasa jamaats.

165. As set out above, I have reached my conclusions as to how it came about that he was unable to witness the count from the contemporaneous emails and WhatsApps and from his oral evidence, which was detailed and convincing on how this came to pass. The impression I gained was that he was frustrated and disappointed that he had been unable to witness the count. While he was critical of other aspects of the electoral process, he

was not involved in these in the same way, so his views were sketchier. I accept his evidence on the matters around his inability to attend the count in February 2020, but do not consider that his evidence adds anything on the other election issues.

The Defendants' Witnesses

Mr Safder Jaffer

166. Mr Jaffer came across as defensive in his evidence. He frequently avoided answering the question put to him, also having a tendency to make speeches and statements instead. He clearly believes he has been doing the right thing, and has been working hard for the Charity and displayed a strong sense of feeling unappreciated for all he has been doing. When asked questions about financial aspects of the Charity he repeatedly deflected them to the Treasurer, Mr Khakoo, even though one might have expected him to be able to answer, given Mr Jaffer works as an actuary. However the impression I gained was that this was rooted in defensiveness and fear of getting caught out.

167. He was especially evasive and defensive around the circumstances of his application to rejoin MKJ. There was no dispute that at the relevant time he and his family were living in Dubai, and he gave evidence that while he owned a flat in Milton Keynes, it was let out. However on the form he completed to join the jamaat, he had filled in an address in Milton Keynes in the boxes headed "Home Address". In cross examination he repeatedly tried to avoid answering the question whether this address was his home, instead trying to explain why he had filled the form out in this way, only eventually confirming, in response to a question from me, that it was not his home.

168. However, there is no evidence that the address on this form misled anyone at MKJ at the time, or was intended to do so. Mr Jaffer was well known to be resident in Dubai, and had given a Dubai phone number. Similarly, everyone in the courtroom understood the true factual position. Mr Jaffer was extremely uncomfortable explaining himself in evidence, but he was not in my view untruthful as a witness.

169. Overall my conclusion is that Mr Jaffer was an honest witness but he was not comfortable with having to explain himself, and was somewhat reluctant to do so. There is no dispute that he has spent a lot of time on the Charity's affairs while acting as President and I note Mr Rajpar said he'd been doing a good job. However it is clear that this dispute has cast a pall over his entire period as President, and my impression is that he resents this fact.

Mr Zaffarali Khakoo

170. Mr Khakoo was the only other Defendant to provide a witness statement, and the only other witness who in the event gave live evidence for the Defendants. He is an accountant with over 25 years of audit experience and is a partner at one of the "Big 4" accounting firms. He lives in the UK. Mr Khakoo was cross examined by Mr Smith for Dr Jaffer.

171. Mr Khakoo was a straightforward and honest witness who generally answered the question rather than making speeches, and came across as doing his best to assist the court in his answers. He clearly understood the financial aspects of the Charity on which he was questioned, and fielded a lot of questions related to the MKS Report even though he was not responsible for it. Despite Mr Pearce's concerns that he would be ambushed, Mr Khakoo dealt fairly comfortably with these, although there were inevitably some

factual points where he did not have the answer. I do not consider that this undermined his evidence, and in some cases the answers were later provided from the documents. In some respects Mr Khakoo appeared slightly embarrassed that he was not able to give a fuller answer, given he was an accountant. However, on the evidence I have seen I am quite convinced that he was doing a good job of his role as Treasurer of the Charity.

172. Part of his cross examination focused on the acquisition of a substantial building at the Stanmore jamaat, in which Mr Khakoo was involved. Since this is not directly relevant to the issues which I have to resolve, and since I consider that there was a risk of Mr Khakoo being ambushed in this regard, I will not be making any findings on that matter.

Other witness statements

173. I have listed at [140] and [141] above the other witnesses whose statements I received in evidence on behalf of the Defendants. Mujtaba Datoo's statement covered his actions as Chairman of the Electoral Commission, including the preparation of the EC Report.

174. The main thrust of the statements from the other Presidents of Regional Federations is to emphasise the disruptive effect that this litigation is having on the Charity, which they say is contrary to its best interests and is demotivating younger professionals from becoming involved in its management. I accept that evidence, which seems to me to be inherently very likely. Mr Rehmatullah is the President of CoEJ and his statement also addressed an issue relating to subscription fees paid by MKJ. I will refer to the contents of these statements on specific points where relevant.

THE LEGAL FRAMEWORK

Dr Jaffer's standing to bring the claim

175. Dr Jaffer brings this claim pursuant to s.115(5) of the 2011 Act, with the permission of the court. In his skeleton it is said that he brings the claim in two alternative ways:

    i) As a grassroots member, seeking to enforce the terms of the Constitution (which takes effect as a contract between the Members of the unincorporated association which is the Charity), relying on the Contracts (Rights of Third Parties) Act 1999 ("**the 1999 Act**"); and,

    ii) By invoking the court's inherent supervisory jurisdiction over charities.

176. The Defendants deny that Dr Jaffer has any right to bring this claim on a contractual basis. However they accept that he has standing to invoke the court's inherent jurisdiction, under his second limb of claim. It is also agreed that the court's powers under the second head are no less extensive than under the first, so far as the remedies now sought are concerned, and there are no relevant differences in approach.

177. Accordingly it is unnecessary for me to determine whether Dr Jaffer has a contractual basis of claim, it being agreed that I should proceed solely on the basis of the court's supervisory jurisdiction, which is what I will do.

178. I do note though that there were significant obstacles to the claim in contract, since the parties to that contract are the Regional Federations and not grassroots members. Since

the Charity was founded in 1976, the Constitution is a contract created before 11 May 2000, so by s.10 of the 1999 Act, that Act does not apply to it, and Dr Jaffer has not pleaded that it has been sufficiently varied since so as to amount to a new contract. There must also be doubt whether the Regional Federations ever intended to confer individual rights to enforce the Constitution on each of the thousands of grassroots members, within the meaning of s.1(2) of the 1999 Act. A contractual claim also has the issue that, on the face of it, a judgment would not bind other grassroots members.

The Court's power to appoint a Receiver in respect of a Charity

179. There is no dispute that I have the power, at the conclusion of this trial, to appoint a receiver. The power arises under s.37 of the Senior Courts Act 1981 and as an aspect of the Court's inherent supervisory jurisdiction over charities. Section 37(1) provides:

> "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

180. The decision of Sir Robert Megarry V-C in *Attorney-General v. Schonfeld* [1980] 1 W.L.R. 1182, concerning the powers of a receiver and manager appointed in respect of an educational charity, confirms that the court has this power of appointment in respect of a charity. The Vice-Chancellor said at 1187F:

> "In holding that the receiver has this power [to appoint substitute governors], I bear in mind that the power to appoint a receiver is purely equitable in its origin; indeed, it was one of the oldest remedies of the Court of Chancery. The remedy is one to be moulded to the needs of the situation; within proper limits, a receiver may be given such powers as the court considers to be appropriate to the particular case."

181. There the agreement between the parties ends. There is a deep divide between them as to the principles I should apply in deciding whether to appoint a receiver (for any purpose). It is on any view a rarely exercised power – counsel have not been able to identify any direct authority on the principles to apply when considering whether to appoint a receiver in respect of a charity, although there is authority on the principles applicable when deciding whether to appoint a receiver in respect of a trust more generally.

182. Consequently the first of the legal sub-issues which arise under Issue 6 is:

> "What principles govern the exercise of the Court's power at the conclusion of trial under section 37 of the Senior Courts Act 1981 and/or the Court's supervisory jurisdiction over charities to appoint a receiver to investigate the financial affairs of the Charity?"

183. The Claimant's position is that the test is simply whether an appointment is in the best interests of the Charity. Mr Smith's submission orally in closing was that this is an "*open textured principle*", that is, it gives a wide, unstructured discretion to the court. It is said that this is the same principle as applies when deciding whether to remove a charity trustee, which he said was a more draconian act than appointing a receiver on a temporary basis to perform a particular function.

184. Reliance is placed by the Claimant on the earlier decision of Mellor J in the present case where he said at [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*." This is an important statement of principle, but Mellor J was not considering appointing a receiver (having concluded that Dr Jaffer's case did not meet the summary judgment standard necessary for this to be considered).

185. The Claimant also relies on the general principle that any decision whether to appoint a receiver depends on all the circumstances – *VB Football Assets (VBFA) v. Blackpool Football Club (Properties) Limited and others* [2019] EWHC 530 (Ch) at [7] (a non-charity case). I also see this as uncontroversial as far as it goes.

186. As to the removal of a charity trustee, the Claimant relies on the statement of Nourse LJ in an unreported decision refusing permission to appeal in *Weth v. Attorney General and others* (10 July 2000) at [57], where the Lord Justice of Appeal said that the facts demonstrated that it could not reasonably be thought to be in the best interests of the charity for Mr Weth to continue to be a trustee.

187. In truth I do not consider it necessarily the case that appointing a receiver is less draconian than removing a trustee. Where there are other trustees who are being left in post, removing one trustee may have less impact on the management of the charity than appointing a receiver alongside the existing trustees, restricting what they can all do and removing functions from all of them, albeit temporarily.

188. The Defendants' position is that the appointment of a receiver is a draconian remedy which should only be granted where the interests of the Charity require this and no lesser remedy is appropriate. Mr Pearce's submission was that while it is necessary that an appointment would be in the best interests of the Charity, this is not sufficient; the court must also be satisfied that nothing less would properly protect the interests of the Charity.

189. He prayed in aid two additional principles he said applied: (a) in relation to trusts generally, that for a receiver to be appointed, it is necessary that the trust estate would otherwise not be properly protected or the due administration of the trust could not be guaranteed, and (b) a benevolent approach to trustees where charities are concerned.

190. As to the first, the Defendants relied on extracts from ***Lewin on Trusts (20th edition, 2020),*** and from ***Snell's Equity (34th edition, 2019)***. ***Snell*** states at 19-022:

> "The court has power to displace executors or trustees by appointing a receiver, provided that a strong case is made out, e.g. on establishing misconduct, or where there is a breach of trust or improper management endangering the trust property."

191. ***Lewin*** states at 40-037:

> "It has long been the rule of the court not to appoint a receiver, and so take the administration of the trust out of the hands of the trustees, the natural curators, upon very slight grounds…"

192. At paragraphs 40-033 to 40-040 the authors of ***Lewin*** give examples both of cases where the court has been willing to appoint a receiver over a trust, and those where it has refused to do so because the grounds were too slight. These show that situations where a receiver has been appointed have fallen essentially into three categories (or some combination of the three):

    i) cases where misconduct or impropriety by the trustees justifies this;

    ii) impracticality situations, where the trust cannot function effectively, e.g. because the trustees are deadlocked, or are refusing to act or because (like in *Schonfeld*) who controls the trust or whether it has assets is the subject of litigation;

    iii) where the trustees have consented to the appointment of a receiver (although this in itself may not be considered sufficient) and/or have surrendered their fiduciary discretion to the court, none of which applies here.

193. On the other hand, cases where courts have refused to appoint a receiver include where one of the trustees is no longer available, or the trustees are in reduced circumstances, or where only one trustee is guilty of misconduct and the others do not consent to a receiver being appointed. In effect, the remaining trustees can manage the trust in these cases.

194. The Defendants also draw my attention to the conditions which have to be satisfied before the Charity Commission can exercise its analogous power to appoint an interim receiver or manager under s.76 of the 2011 Act, which are that it is satisfied:

> "(1)… (a) that there is or has been [a failure to comply with an order or direction of the Commission [, a failure to remedy any breach specified in a warning under section 75A,] or any other] misconduct or mismanagement in the administration of the charity, or
>
> (b) that it is necessary or desirable to act for the purpose of -
>
> (i) protecting the property of the charity, or
>
> (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity."

195. Of course these are powers deriving solely from statute, whereas the High Court has an inherent power of appointment which is not subject to such statutory restrictions, but it could be said that these provisions indicate the seriousness of the situations which would justify invoking this power, and possibly that they were intended to reflect the type of situation where the court would have exercised this power.

196. As to the special position of charities, Mr Pearce placed particular weight on the observations of Falk J (as she then was) in *Re Keeping Kids Company* [2021] EWHC (Ch) 387 as to the benevolent approach which the courts take towards charity trustees, and how this affects the context of a claim against them. At [848] she said:

> "As Mr Westwood pointed out, the courts have long taken a benevolent approach towards charity trustees in circumstances where (as here) no dishonesty or wilful misconduct is alleged. There are good reasons of public policy for this approach. It reflects the real risk that any other approach would deter individuals who would

> otherwise be well suited to becoming charity trustees from doing so. It also reflects the court's recognition of the public service that charity trustees provide."

And at [911] she concluded:

> "The charity sector depends on there being capable individuals with a range of different skills who are prepared to take on trusteeship roles. Most charities would, I would think, be delighted to have available to them individuals with the abilities and experience that the Trustees in this case possess. It is vital that the actions of public bodies do not have the effect of dissuading able and experienced individuals from becoming or remaining charity trustees. Disqualification proceedings, or the perceived risk of them, based on wide ranging but unclear allegations of incompetence rather than any want of probity, carry a high risk of having just that effect, and great caution is therefore required. This is particularly so for individuals otherwise involved in the management of businesses, and professionals for whom additional regulatory issues may arise: in fact, the sorts of individuals whose experience is often most needed. The result of proceedings being brought in other than the clearest of cases is likely to be to deter many talented individuals who take the trouble to understand and appreciate the risks either from charitable trusteeship at all, or at least from all but the most wealthy, well endowed, charities which are likely to have least need of their skills."

197. Those were directors disqualification proceedings, but Mr Pearce submits that the same considerations apply here, and indeed that the same comments would apply to the abilities and experience of these Defendants.

198. Related to this is the well-established "non-intervention principle", discussed in the decision of the Supreme Court in *Children's Investment Fund Foundation (UK) v Attorney General and others* [2020] UKSC 33 ("***CIFF***"), on which the Defendants also rely. In relation to this principle Lady Arden said at [120]:

> "… There is no doubt in my judgment that there is a well-established "non-intervention principle" which means that the role of the court is to ensure that the trustees of a charity exercise their discretion properly and that the court does not interfere in the trustees' exercise of a discretionary power unless they act improperly or unreasonably."

(See also Lord Briggs' analysis, for the majority, at [216] – [218].)

199. Lady Arden also confirms in the *CIFF* case at [69] that "…*the High Court has two relevant bases of jurisdiction that can be invoked in the case of charities: its jurisdiction over trusts generally and its jurisdiction over charities.*"

200. In my view Mr Pearce is correct in saying that the principles to be applied when deciding whether to appoint a receiver in respect of a trust apply equally to a charity, and also that the "benevolent approach" which the courts take to charities will feed into the decision whether to appoint a receiver. I consider it is over simplistic to say, as the Claimant does, that the question is simply whether appointing a receiver would be in the best interests of the Charity, although clearly that is a necessary requirement.

201. My conclusion, on the limited available authority, is that in deciding whether to appoint a receiver for either of the purposes sought, I need to be satisfied that this is necessary or clearly desirable and in the best interests of the charity, because something has gone seriously wrong in its operation or management which is not being and/or cannot be effectively addressed by its current trustees, or there is a clear risk this will happen, making due allowance for the fact the trustees are volunteers performing a public service.

202. Usually appointing a receiver is an interim measure pending a decision whether to replace the trustees. In most cases there will be a risk to the charity's property or that it will not be applied in accordance with the charity's objects (as with the s.76 power in the 2011 Act), but I can see other situations might arise where there is some other serious risk to the proper functioning of the charity. To take an extreme example, if I were to be satisfied that the Charity was incapable of conducting a Presidential election at all, I consider that could be a situation justifying the appointment of a receiver to do so.

203. I also accept the Defendants' submission that in the ordinary course of events (and where a charity is not already publicly in crisis), appointing a receiver would be likely to have a negative effect on its public perception, affecting its ability to fundraise and recruit volunteers, which it is appropriate to bear in mind when deciding whether to appoint one. That risk is likely to be heightened where a charity is successful and has a significant public profile, as the Charity does.

THE OBJECTS OF THE CHARITY

204. Clause 4 of the Charity's Constitution states:

> "The objects of the Federation shall be:
>
> 4.1 to promote the Shia Ithna-Asheri faith throughout the world;
>
> 4.2 to relieve poverty amongst the members of the Community; and
>
> 4.3 to educate members of the Community."

205. "*The Community*" is defined at paragraph 2.2 of the Constitution as meaning "… *all those persons throughout the world who are of the Shia Ithna-Asheri faith"*.

206. Importantly, this means that these three objects are not restricted to the 150,000-odd members of the Khoja community, but extend to all followers of the Shia Ithna-Asheri faith in the world. Such followers number something like 130 million people, living throughout the world including in places where there are few if any Khojas, like Iraq and Lebanon. I was told during the hearing, and it was not disputed, that the population of Iraq is about 65% Shia Ithna-Asheri and of Lebanon is about 30%.

207. It became apparent during the trial that there is nevertheless a fairly widespread misapprehension among the Charity's members that its objects of poverty relief and education extend only to Khojas. Even Dr Jaffer expressed this view during his evidence. Inevitably this has resulted in doubts being expressed as to whether the Charity can or should fund charitable activities in countries such as Iraq and Lebanon which have no Khojas. It is clear to me that there is no such restriction to Khojas-only in the Constitution. The fact activities are for the relief of poverty or provision of education to

Shia Ithna-Asheri communities more generally is not in itself grounds for objection. What should be the Charity's priorities is of course a separate matter.

208. There is no real dispute about this interpretation, at least among the parties' representatives. It is plainly the correct interpretation of the Charity's objects clause.

FINDINGS ON THE SIX ISSUES

209. I turn therefore to the six issues which were approved at the first PTR, and my findings on them. I will look first at the election issues and then the financial ones regarding the Donor. For the election issues and for the financial issues I will then in each case consider whether a receiver should be appointed.

The Election – eligibility of Mr Jaffer to stand as President

210. I deal first with Issues 3 and 4, relating to the eligibility of Mr Jaffer to stand as a candidate for President of the Charity.

Issue 3: was Mr Jaffer ineligible to stand?

211. The key provision is paragraph 2.5 of the SOP, which states:

> "A Candidate for presidential elections must be a registered member of a Constituent Member and must be nominated by any member Federation"

212. There is now no dispute as to most of the essential facts on this issue; the real dispute is as to the correct interpretation of this paragraph and whether Mr Jaffer satisfied it.

213. The Defendants' position is that "*registered member*" means recorded as a member by a jamaat which is a Constituent Member, in the jamaat's own records. They say further that the relevant date of membership is either the date of nomination for President (being various dates from 28 November to 18 December 2019 in the case of Mr Jaffer), or the end of the nomination period (2 January 2020). Since Mr Jaffer became a member of MKJ on 22 November 2019, it is said he was eligible on all of the possible dates.

214. The Claimant's position is that Mr Jaffer was not a "*registered member*" of a Constituent Jamaat because of any of the following:

    i) "*Registered member*" means that his name must have appeared on the list of eligible voters which was submitted by MKJ on 11 November 2019. His name was not on that list because he did not become a member until 22 November 2019.

    ii) Mr Jaffer had to be eligible to stand for election as President of MKJ before he could be eligible to stand as President of the Charity. The Claimant submits that he was not eligible to stand as president of MKJ because under its constitution there was a one year "waiting period" after joining, before a member of MKJ could stand to be president of the jamaat.

    iii) It is said that MKJ was not a Constituent Member of CoEJ because it had not paid the relevant subscription fee for that year, and so its membership had lapsed.

The status of Mr Jaffer – Claimant's points (i) and (ii)

215. There is no dispute that because Mr Jaffer was not a member of MKJ on 11 November 2019 when its voter list was submitted, he was not eligible to *vote* in the Presidential election because his name did not appear on MKJ's list.

216. The Claimant's submission is that the Defendants' interpretation is "reductivist" and that "*registered member*" must mean that his name appeared on the voter list submitted by MKJ, because the register which the Electoral Commission was obliged to maintain (even though it did not) had to be compiled from those voter lists. It is said that the only way therefore that the Electoral Commission could confirm a candidate was a "*registered member*" was by checking the voter list submitted by their jamaat. The Claimant also submits that the phrases "*registered member*", "*registered voter*" and "*eligible voter*" are used interchangeably in the SOP. It is said that it would be absurd for a candidate to be eligible to stand as President even though they had not satisfied the "careful safeguards" for who could be a voter. Finally it is said this would be contrary to the Electoral Commission's longstanding policy that local rules of the jamaat also applied to the election of the President, because local rules on who could be nominated should apply.

217. I essentially accept the Defendants' submissions on this point. My determinations are:

    i) "*Registered member*" means simply that a person has been accepted as a member of a Constituent Member jamaat, according to the local rules of that jamaat. While a person will almost certainly be a registered member if their name appears on the voter list submitted by their jamaat (unless they have left or been removed since the list was submitted), this would just be a convenient way for the Electoral Commission to check; they could also check by contacting the jamaat and asking the jamaat to confirm if the candidate is registered with them as a member.

    ii) Whether a person is a "*registered member*" can be determined at any date, and depends only on whether they had joined the jamaat as at that date.

    iii) Being on the voter list is not the same as being a "*registered member*". Being on the voter list means that a person was registered as a member of the jamaat when the list was prepared and submitted. The voter list defines who can vote in the Presidential election, and it is received by the Electoral Commission for that purpose. Although there is some inconsistency in the SOP, generally it refers to "eligible voter" or "registered voter" in the sections referring to voters whereas the different phrase "registered member" is used in paragraph 2.5.

    iv) This is neither a reductivist nor an absurd reading of paragraph 2.5 of the SOP, but is its natural reading.

    v) While there was an obligation in paragraph 5.1 on the Electoral Commission to maintain an "*electronic Central register of voters entitled to vote for the President*", I do not consider that this equates to a requirement to maintain a central register of *all grassroots members at all times*. In practice all that was needed were the voter lists submitted by the jamaats, which were used to identify the number of ballots needed and then sent back with those ballots.

vi) The relevant date on which a candidate must be a "registered member" of that jamaat is when they are nominated by a Regional Federation, or the date on which nominations formally open if this is later. Paragraph 2.4 of the SOP stated that "*the Electoral Commission must receive eligible nominations within 30 days from the invitation for candidates…"* I conclude therefore that for a nomination to be valid, the candidate must be eligible when the nomination is received. Here nominations opened on 4 December 2019 (the India Federation having submitted a nomination for him on 28 November 2019). Mr Jaffer was eligible on 4 December 2019, and on all the subsequent dates on which he was nominated again.

vii) Many of the witnesses referred to "local rules" applying. This must mean the local rules *determining who is a member of the jamaat,* because the requirement in paragraph 2.5 is that they are a registered member of the jamaat. It cannot mean that local rules as to who is eligible to be president of the jamaat – or indeed the Regional Federation – are to be applied. That would involve implying into paragraph 2.5 additional requirements which are not necessary. They would also vary from jamaat to jamaat. Mujtaba Datoo's interpretation of paragraph 2.5, including in the EC Report and the Electoral Commission letters, was therefore in my view correct. (I do not consider it necessary to refer to a draft paper Mr Datoo apparently prepared on about 7 January 2021, which I consider is a less reliable source given it was produced after this litigation had started.)

viii) This is also the answer to the Claimant's point (ii) above. It is irrelevant whether a candidate would be eligible to be president of his local jamaat or of a Regional Federation: those are different offices with different eligibility requirements.

ix) The PSS Report is irrelevant to the question of Mr Jaffer's eligibility. The PSS has no constitutional status to determine whether a candidate is eligible, which is in any event a matter of objective interpretation of the Constitution.

x) This interpretation does not mean there are no safeguards on who can become President of the Charity. The biggest safeguard is that a candidate needs to be nominated by a Regional Federation, and so will have to build up a sufficient reputation to do so. Mr Jaffer had sufficient reputation to be nominated by four Regional Federations – more than any other candidate.

218. Plainly it will be highly unusual for a person to be nominated as President who is not also eligible to vote in that election, but that does not mean this must be wrong. Mr Jaffer had previously been a member of MKJ. He developed his standing within the Charity sufficient to be considered for the Presidency while being a member of the Dubai Jamaat. However, due to what I consider is best described as a quirk in the Constitution, that membership did not permit him either to vote or to stand in the Presidential election. After consulting with Mujtaba Datoo at the ExCo on 2 November 2019, he recognised that this problem meant he would have to join a jamaat which was a member of a Regional Federation, and for various practical reasons he chose MKJ. The fact he was resident in Dubai and was already a member of the Dubai Jamaat was no barrier to him doing so. It is apparent from the minutes of their meeting that MKJ's committee were fully aware of the relevant facts when they decided that they could not treat his application as being one for reinstatement, but it could be treated as a new membership application, which they then granted.

219. To be clear, I do not consider that Mr Jaffer acted dishonestly when he completed his membership form with the address of his Milton Keynes flat (which was let out and was not his home) in the section headed "Home Address". I accept his evidence that he was wishing to emphasise that he did have a connection with Milton Keynes, and he knew that the committee knew he resided in Dubai, so he was not misleading MKJ, as shown by the fact he gave a Dubai phone number. The minutes of the MKJ committee meeting of 12 November 2019 support this: the committee discussed and approved his application on the basis he was active in the wider Khoja community, and would be coming to Milton Keynes more often. Most of the discussion was that leading to their conclusion that it could not be treated as an application for "reinstatement" but only as a new application, because it was 10 years since his membership had lapsed, and this application included his wife and children for the first time.

220. Equally it is not surprising that many people, including Dr Jiwa and Mr Rashid, and the Electoral Commissioner Waheeda Rahim formally queried whether Mr Jaffer was eligible to stand. It is in my view unfortunate that the Second Defendant, Dr Munir Datoo (then the President of the Stanmore Jamaat) responded as negatively as he did to Mrs Rahim's initial query on 3 February 2020 whether the Secretariat had checked with MKJ that Mr Jaffer was a member: if the Secretariat had done so, this could have taken the heat out of the issue much earlier. However I consider that the Electoral Commission's final conclusions in their letter of 3 February 2020, and in the EC Report, that Mr Jaffer was eligible, were correct, subject only to considering the Claimant's point (iii).

<u>The status of the Milton Keynes Jamaat – Claimant's point (iii)</u>

221. On the issue of whether MKJ was a Constituent Member of CoEJ, the Claimant relies on clause 4.3 of the CoEJ Constitution, which states:

> "A Member Jamaat failing to pay their subscription by 31 March of each year or within fourteen (14) days of their application being approved, shall forfeit their right as a member of CoEJ until such time when their arrears are settled in full."

222. The Claimant submits that MKJ should have paid an annual subscription of £2,000 to be a member of CoEJ, but since it only paid £500 in the relevant year, to 31 March 2019, it had automatically forfeited its rights as a member of CoEJ.

223. The President of CoEJ, Mr Rehmatullah, filed a witness statement on behalf of the Defendants dated 22 February 2022, on which he was not cross examined. He says at paragraph 4 that "*[CoEJ's] members in England include the Zainabiya Islamic Centre (also known as the Milton Keynes Jamaat)"* and at paragraph 5 that "*[t]he Milton Keynes Jamaat has paid the following subscriptions to COEJ in recent years… (4) 2019 - £500 received on 15 February 2019…"*

224. The Claimant asserts that it was common ground that the correct subscription for MKJ was £2,000, but this is denied by the Defendants. Mr Pearce said in submission that this figure appeared to have been derived indirectly by Mr Kanji from the published accounts for MKJ together with a letter from CoEJ to a different jamaat, in Leeds, which stated that subscriptions were calculated as 10% of subscriptions received by the jamaat subject to a £500 minimum and a £2,000 maximum. Such a calculation is set out in Mr Kanji's fourth witness statement. However there is no evidence specific to MKJ that its

subscription was £2,000, and certainly none that it had ever been asked to pay that sum or that it was in arrears.

225. The Defendants also rely on a letter from CoEJ to their solicitors dated 12 February 2021, which states:

> "*As per your request received through the World Federation of KSIMC, the Council of European Jamaats ("CoEJ") confirms that Milton Keynes Jamaat ("MK Jamaat") is our member and that it has paid its subscription fee every year. Below are the dates on which the MK Jamaat has paid said subscription fee:*
>
> *2016 - £500 received on 25.02.2016*
>
> *2017 - £500 received on 11.09.2017*
>
> *2018 - £500 received on 19.02.2018*
>
> *2019 - £500 received on 15.02.2019*
>
> *2020 - £500 received on 07.02.2020*
>
> *2021 - £400 received on 04.01.2021*
>
> *... We can confirm MK Jamaat have always paid their subscription fee…*"

226. In view of this evidence, it is clear that CoEJ has regarded MKJ as being one of its members, and as having paid its required subscription fees, for all the years listed, which includes the year in question (2019-2020).

227. My conclusion is that it is for CoEJ to determine whether a jamaat has paid what it considers to be the correct subscription fee and so whether it is or was a member at any time, and that while its conclusion could be challenged by MKJ, it cannot be challenged by a third party such as Dr Jaffer, especially in proceedings to which neither CoEJ nor MKJ is a party.

228. I am not therefore going to go behind CoEJ's statement in their letter of 12 February 2021 that MKJ has paid its subscriptions for the relevant years, and the implicit if not explicit statement that it was a member in all of those years. This is also implicitly if not directly confirmed by Mr Rehmatullah in his statement, even though the Claimant argues that he only confirms whether MKJ was a member as at February 2022, not November 2019. This is at best a point of extreme technicality and the Claimant did not cross examine Mr Rehmatullah on this or anything. I have accordingly concluded that for the purposes of this litigation, MKJ was a Constituent Member of CoEJ at all material times, and in particular in November/December 2019, as required by paragraph 2.5 of the SOP.

229. My conclusion on Issue 3 is therefore that Mr Jaffer was eligible to stand as President of the Charity in the 2020 Presidential Election.

Issue 4: the consequences of any ineligibility

230. In those circumstances it is not necessary for me to go on to consider the consequences of a finding that he was ineligible.

231. However, since the point was fully argued, I will state my conclusions briefly, which are:

    i) If Mr Jaffer had been ineligible to stand for election, then I would have accepted the Claimant's contention that his election was a nullity, and I would have made a declaration to that effect.

    ii) There is no direct authority on this point, but the parties have referred me to the contrasting *obiter* statements of judges in two cases: Walton J in *Brown v. Amalgamated Union of Engineering Workers* [1976] ICR 147 at 160B and HHJ Anthony Thornton QC in *Norbrook Laboratories v. Carr* [2013] EWHC 476 (QB) at [145]. In the first, Walton J makes the brief comment that "…*unless some factors emerge which demonstrate that the whole election was a nullity—for example, that the candidate declared elected was not duly qualified*...", the candidate elected would not be deprived of his office. In the second, the judge in a complex dispute concerning an unincorporated association, said that the court would not except in exceptional circumstances declare that an officer's election was void, even if they were not eligible, because members are entitled to change or not follow their rules or waive eligibility requirements, so long as the decision is made after full and fair consultation.

    iii) Here, I do not accept, as the Defendants argue, that the voters in January 2020 made the decision to elect Mr Jaffer regardless of any ineligibility arising from his residence in Dubai. In any event they are not the members of the unincorporated association which is the Charity. The eligibility requirements are fundamental, and I consider the voters could not be said to have knowingly waived them.

232. I consider separately the effect of the resolutions passed at the May 2021 Conference, under Issue 5.

Issues 1 and 2: other allegations as to the validity of the Election

233. Dr Jaffer's Points of Claim ("**PoC**") make a series of (now) 14 allegations of ways in which the conduct of the Presidential election is said to have breached the SOP and/or the Constitution. The remedy sought (in addition to the appointment of a receiver) is declarations as to such breaches as are found to have occurred. Given the lapse of time since the 2020 election took place, a re-run of that election is not now sought.

234. The Defendants accept that the court's supervisory jurisdiction over the Charity may extend to regulating the composition of its trustee body (which is here determined by a combination of elections and appointment by the President), and that remarks made by Lady Arden in the *CIFF* case at [69] indicate the extensive jurisdiction which the court has over charities. She cited with approval a passage from the decision of the Court of Appeal in *Construction Industry Training Board v Attorney General* [1973] Ch 173, where Buckley LJ said at 186:

> "It is a function of the Crown as parens patriae to ensure the due administration of established charities and the proper application of funds devoted to charitable purposes. This it normally does through the instrumentality of the courts…"

235. As the parties agree, in exercising this jurisdiction, the court's function is to act in the best interests of the charity. It is also agreed that the Electoral Commission (and the

attendees of the May 2021 Conference) acted as fiduciaries in respect of their powers, as was emphasised by Mellor J in his judgment at [56].

236. However the Defendants emphasise that the court should not generally substitute its own judgment for that of fiduciaries in the exercise of their discretion where different conclusions could reasonably be reached (the non-intervention principle, which I discuss at [198] above), this not being a case where the fiduciaries have surrendered the exercise of this discretion to the court.

237. They submit that: (a) I should take an analogous approach to that which would have applied in contract, and say that any breaches of the SOP or Constitution were immaterial; and (b) I should not interfere with any discretion exercised by the Electoral Commission to modify the rules in the interests of practicality, because this was to ensure a fair election. They say it would not be in the best interests of the Charity to intervene, even by making declarations of non-compliance with the Charity's rules, if any breaches were non-material or a reasonable exercise of discretion.

238. The Defendants rely among other things on paragraph 4.1 of the SOP as giving a degree of discretion to the Electoral Commission in running the election. This states:

> "The Electoral Commission will have the objective of ensuring the smooth and fair running of the electoral process, its duties set out in the Constitution, and it shall be accountable to the Executive Council with respect to the application of the electoral process set out in this document."

239. The Defendants also rely by analogy on authorities outside the charity sphere concerning minor breaches of election rules, the effect of which is said to be that there is a high bar to be crossed before a court will interfere with an election on grounds of breaches of the rules, particularly where this has not affected the outcome.

240. In *Rahman v Ashikmiah* [2021] EWHC 324 (Ch) HHJ Stephen Davies, sitting as a High Court Judge, concluded that in a case concerning alleged breaches of contract in respect of the constitution of a charitable unincorporated association, he was not undertaking a general supervisory role over the affairs of the charity, but only determining the respective rights of the parties (there as a matter of contract). While the present case is one concerning supervisory jurisdiction and not contract, this emphasis on the focused scope of the dispute still in my view applies.

241. My conclusion is that the Electoral Commission, as fiduciaries and given the objective in paragraph 4.1, did have some discretion to modify or waive requirements in the SOP where they considered this was in the interests of the smooth and fair running of the election. I consider that the logistical challenges of the Charity's Presidential election are such that it would be extremely difficult to comply precisely with all of its requirements all the time, and those who approved the SOP must be taken to have intended the Electoral Commission to have a degree of discretion to deal with unexpected problems and impracticalities, which is reflected in paragraph 4.1.

242. Accordingly I have concluded that the approach I should take to the allegations under Issue 1, as they are set out in the PoC, is:

i) To make findings as to whether there has been non-compliance with the Constitution or SOP in each case, and if so whether this amounted to a material failure, and whether this was waived or ratified;

ii) If I conclude there has been such non-compliance, to consider whether the Electoral Commission's response was one which was within the reasonable range of options open to them as fiduciaries, and if it was, I will simply say so in my judgment;

iii) I will only make a declaration of non-compliance if a breach was material, the Electoral Commission's response was not in my view within this reasonable range, and if I further conclude it would be in the best interests of the Charity to make such a declaration, e.g. to ensure that future elections are conducted correctly;

iv) I will consider what if any is the consequence of any non-compliance (Issue 2).

243. The Claimant also asserts that the non-compliances amounted to breaches of natural justice. This was not separately addressed before me in written or oral submissions, and I do not treat this as adding anything to the allegations of non-compliance themselves.

244. I will consider under Issue 5 the effect if any of the two resolutions which were passed by Conference as a result of the May 2021 Order.

Reduction of election window from 3 to 2 days

245. The allegation (paragraph 14(1) of the PoC) is:

> "In breach of clause 2.10 of the SOP, the Electoral Commission set a two-day window (not a three-day window) for the elections to take place"

246. Paragraph 2.10 of the SOP provides:

> "The members will organise the elections on one of the three days set and agreed by the Electoral Commission in their respective areas…"

247. There is no dispute that ExCo at the meeting on 2 November 2019 resolved that the election should be held on "either" of the days set by the Electoral Commission, and that the election period then set by the Electoral Commission was 30-31 January 2020. The election period was therefore reduced to two days, which on the face of it does not comply with paragraph 2.10. The Claimant says this was a clear and serious non-compliance, which probably affected voter turnout.

248. The Defendants submit that:

i) Item 9 on the Agenda for the ExCo meeting, which was circulated more than 24 hours in advance, gave sufficient notice of any amendment to the SOP which ExCo chose to debate, as this reduction was. Item 9 stated: "*Standard Operating Procedures for Election [of] the President of The World Federation of KSIMC*".

ii) Any non-compliance was immaterial;

iii) Exco voted unanimously in favour of the motion, including Dr Jaffer, on 2 November 2019, so he and ExCo waived any breach;

iv) The May 2021 Conference ratified ExCo's resolution.

249. My conclusion is:

i) The reduction of the election window from 3 days to 2 was a breach of paragraph 2.10 of the SOP which was material because it made a significant difference to the options available to the Regional Federations for setting the election date (even if there were good reasons for the reduction).

ii) The inclusion simply of an item referring to the SOP on the Agenda for the ExCo on 2 November 2019 was not sufficient notice of a proposed amendment to the SOP to reduce the election period from 3 to 2 days.

iii) Since ExCo voted unanimously to approve the reduction from 3 days to 2, in full cognisance of the SOP provision requiring 3 days, any failure to give sufficient notice was waived by ExCo (including Dr Jaffer).

iv) Most importantly, any non-compliance was clearly ratified by Conference in May 2021, when (due notice having been given), it passed by 87-11 a resolution ratifying ExCo's November resolution setting a 2 day election window.

v) No declaration is therefore appropriate. Given the ratification, it is not necessary or appropriate to consider the consequences of the original non-compliance.

Extension of time granted to Gujarat for their voters lists

250. The allegation (paragraph 14(3) of PoC) is:

> "In breach of clauses 4.1 and/or 5.5 of the SOP and/or in breach of the implied duties pleaded at paragraph 12 above, the Electoral Commission granted an extension of time to submit voters lists in Gujarat (but not to the other members who had not submitted their lists by the cut-off dated pleaded above)."

251. Paragraph 5.5 provides that:

> "The cut-off date for providing the list of eligible voters of each member will be 120 days before the end of the three year term of the President."

252. The Electoral Commission set a cut-off date of 13 November 2019, being 120 days before the last day of the March Conference when the outgoing President normally stood down.

253. In the Claimant's closing submissions, the complaint is that while the deadline for Gujarat was extended several times, ultimately to 27 January 2020, seven other groups of voters were prevented from voting.

254. There is no dispute that the Council of Gujarat ("**COG**") failed to submit their voter list by the deadline and asked for an extension. A report from the Electoral Commission of 26 January 2020 says that it granted such a request 3 times, to 21 December 2019, because it considered this was in the spirit of providing every opportunity possible to the grassroots members to vote. However, although lists were provided by 21 December 2019, they were unreadable and/or password protected, which ultimately led to Gujarat organising its own ballot papers (a separate alleged breach).

255. As to the grant of an extension to COG, my conclusion is that this was a breach of paragraph 5.5 of the SOP but (a) it was not material because the extension expired before nominations had even closed and (b) in any event, granting such an extension was a matter within the Electoral Commission's discretion, in ensuring a smooth and fair election. No declaration of breach is therefore appropriate. The consequence was that the voters in Gujarat (of whom there were a large number) were enabled to vote whereas otherwise they would have been disenfranchised.

256. As to the other categories of voters whom the Claimant alleges were unfairly prevented from voting:

    i) The Hyderabad, Pakistan jamaats only complained on 30 January 2020 that their Presidents had not submitted updated voter lists. Mujtaba Datoo informed them by email on the same day that it was too late for there to be any additions to the submitted voter lists. I consider this was a reasonable exercise of discretion and not rendered unfair by the concession given to COG.

    ii) As to the other categories of voters, the Claimant's complaint is set out in his solicitors' letter of 8 September 2021, which says that the Electoral Commission did not make any public announcement giving an extension of time, and sets out various categories of voter who they claim were prevented from voting.

    iii) The Charity's Administrative Secretary Iqbal Panju ("**Mr Panju**") has provided a witness statement in which he confirms he had no knowledge of any request being made to the Electoral Commission for an extension of time by any of the voter groups listed in that letter. Mr Panju was not cross examined and I accept his evidence.

    iv) There is therefore no evidence that the Electoral Commission received a request for any extension of time, nor refused the same, from any of these other groups, let alone that it acted unreasonably in doing so.

    v) I do not consider therefore that there was any non-compliance in this respect.

<u>Acceptance of voter lists that did not include names and/or addresses</u>

257. The allegation (paragraph 14(4) of the PoC) is:

> "In breach of clause 5.2 of the SOP, members submitted lists of voters which did not contain (in the case of Europe) the name and address or (in the case of Africa) the address of each voter."

258. Paragraph 5.2 of the SOP provides, so far as relevant:

> "Such register [i.e. of the eligible voters] will include the name and address of each voter and will include other information (unless prohibited by local laws) based on the rules applicable within the Constituent Member's governing rules…"

259. There is no dispute that:

    i) Some jamaats within CoEJ would not provide the names and addresses of their voters, because they said that this would breach European data protection laws. In

their letter of 3 February 2020, the Electoral Commission reported that while they considered this was incorrect, they had reached a compromise under which the jamaat would retain the list subject to a right in the Commission to inspect, and the jamaat would only submit the number of voters, so numbered ballots could be issued. The Electoral Commission said it also checked these figures against historical data for consistency. I note paragraph 4.9 of the SOP requires the Electoral Commission to ensure that its "register" complies with UK data protection legislation.

ii) A similar accommodation was reached with FAC, due to Australian data protection laws.

iii) As to certain African jamaats, Mr Panju explains that in January 2014 AFED asked the then Electoral Commission if they could use the address of the jamaat as the voter's address. The reason given was that the "*majority of our Jamaats in Africa are having an issue of obtaining the personal addresses of their members…"* The Commission replied that according to paragraph 5.2 of the SOP, this matter was governed by the jamaat's local rules governing elections of the president of the jamaat. Mr Panju confirms that thereafter, some jamaats in Africa gave the address of the jamaat as the address for all their voters.

260. My conclusion is:

i) Correctly interpreted paragraph 5.2 requires the provision of the name and address of each voter, and the derogations for local laws or local jamaat rules only apply to the other information which may be provided.

ii) Therefore provision of a list of voters which did not include names and/or addresses was a breach of paragraph 5.2, and I consider it was material because it greatly reduced the information provided about each voter.

iii) However I consider that in all of these cases, the Electoral Commission's decision to allow a derogation from these requirements was within the scope of its discretion to facilitate a smooth and fair election because:

a) As to the CoEJ and FAC jamaats, it was reasonable to accept that it was not clear whether provision of names and addresses breached data protection law, and so to reach the compromises it did, which allowed the vote to proceed in those jamaats.

b) As to the AFED jamaats, it was reasonable for the previous Electoral Commission to have accepted that it was impractical in many cases to obtain addresses, and to rely instead on the jamaat to confirm who were its members and to allow them to do this by reference to their local rules.

iv) The consequence of the non-compliance in all these cases was that a significant number of voters in Europe, Australasia and Africa were permitted to vote where a literal application of the rules would have prevented them from doing so. I consider this was greatly preferable to excluding them, given that these people were all in fact confirmed members of Constituent Member jamaats, and the issue

> preventing the provision of their names and/or addresses was not one which could be readily resolved, but which did not in reality call into doubt their identities.

Failing to create and maintain an electronic central register of voters

261. The allegation (paragraph 14(5) of the PoC) is:

> "In breach of clause 4.3 of the SOP, the Commission failed to create and maintain a Central register of voters."

262. Paragraph 4.3 of the SOP states:

> "The Commission will be responsible for creating and maintaining a Central register of voters, which will be based on each Constituent Member's eligible voting members list."

263. Paragraph 5.1 of the SOP also states:

> "The Electoral Commission is responsible for maintaining an electronic Central register of voters entitled to vote for the President of the World Federation of KSIMC. The Electoral Commission may not forward this to their personal email address and cannot keep these records outside of The World Federation Secretariat offices. Such register will be made available to the Electoral Commission during working hours and will be made up of a list of eligible voters of each member Federation or Constituent Member and shall be provided by the member based on their records."

264. There is no dispute that no Electoral Commission has ever created a single central register of all the voters eligible to vote in the Presidential Election, based on the lists submitted by the jamaats, and that this Electoral Commission certainly did not.

265. There is no explanation in Mujtaba Datoo's witness statement or in the EC Report as to why this is the case. Mr Panju does give the following explanation:

> "I have been asked about paragraph 5.1 of the SOP, which requires the Commission to maintain an electronic central register of voters. The Commission has not yet created this. I am informed by Mr Dharamsi [current Chairman of the Electoral Commission] and believe that he is trying to action this. In the 2020 election and the previous elections the approach has been to work afresh from the eligible voters' lists submitted by the Jamaats (via the Federations). These will be up to date at the time they are sent but they have never been collated into a centralised list held by the Commission."

266. Given the process followed for an election, it is not difficult to understand why in practice a single central register of voters has never been created. The lists submitted by jamaats are used to determine the number of ballots to be issued to the jamaat, and the ballots are sent out with the list. Therefore what the Electoral Commission needs is a list for each jamaat, rather than a single central register. It is also important that each list is up to date, so the Electoral Commission requires fresh lists before each election, but the election only happens once every 3 years, so a register would serve no useful purpose in the interim and would become out of date.

267. As the Defendants submit, there is no evidence that the absence of a central register has had any effect on the election or impeded the Electoral Commission from carrying out its tasks in any way. It seems tolerably plain therefore that creating such a central register would be an onerous but ultimately pointless task.

268. It is not surprising that the 2023 SOP no longer includes any requirement for the Electoral Commission to maintain a central register. Indeed the whole of the procedure for providing lists of voters to the Electoral Commission and then receiving ballots has been done away with. The 2023 SOP simply provides that the "Members" (i.e. the Regional Federations) are to organise the elections in their areas and then submit the votes cast to the Electoral Commission.

269. In these circumstances my conclusions are:

    i) The failure to create a central register as required by paragraphs 4.3 and 5.1 of the SOP was a non-compliance with those provisions;

    ii) However, this was non-material since it does not appear that the central register would have served any purpose which was not better served by the receipt of individual lists of voters;

    iii) If this is not correct then in any event it would not be in the interests of the Charity to make any declaration of non-compliance since (a) the register would not have served any useful purpose and/or (b) the 2023 SOP which will govern the next election does not require one to be maintained.

    iv) This non-compliance had no legal or practical consequence.

<u>Permitting Mr Jaffer to use the Charity's logo in campaign material</u>

270. The allegation (paragraph 14(6) of the PoC) is:

> "In breach of clause 4.10 and/or in breach of the implied duties pleaded at paragraph 12 above, the Electoral Commission permitted the First Defendant to use the Charity's logo on his campaign material for the first five weeks of the campaign and thereby to represent himself as the preferred candidate of the Charity and failed generally to monitor utilisation of the Charity resources."

271. Paragraph 4.10 of the SOP provides:

> "The Commission will monitor the usage of [the Charity's] resources by Candidates."

272. The Claimant alleges that the Electoral Commission failed to monitor the use of the Charity's resources because it was not aware of or did not consider Mr Jaffer's use of the Charity's logo before being told of this by Dr Jiwa and then took two weeks to respond to this. It is also alleged that Mr Jaffer continued to use the logo after the Electoral Commission told candidates not to.

273. There were a number of photographs in the bundle from Mr Jaffer's campaign material. He explained in oral evidence that one of these was from a video in which he had been interviewed (long before the campaign), with the logo of the Charity in the background

on the left, to which someone had later added Mr Jaffer's campaign slogan. There was also a flyer for an event on 1 January 2020, with a photo of Mr Jaffer and the logo.

274. On 8 January 2020 the Electoral Commission sent a letter to all Regional Federations and ExCo members announced the nominations which had been received. This letter included the following paragraph, under the heading "Endorsement and Campaign":

> "Neither the Electoral Commission nor the World Federation is endorsing any of the nominees. The nominees must **not** give an impression either implied or otherwise in their manifesto and campaign that they are the preferred one by the Electoral Commission or the Organisation and furthermore **NOT TO USE** any archived material of the Organisation in their manifesto except for what is available on The WF social media. The use of **WF logo** in any form in the campaign is **NOT** allowed. This is to provide a level playing field for all the Nominees." [emphasis in original]

275. In his statement, Dr Jiwa says on this point:

> "During my trip to Daresalaam, Tanzania in the last week of December 2019, I met the Electoral Commissioner at the Community Centre after the evening prayers. At this chance meeting I raised with him my concerns on Safder Jaffer using the Charity logo in his campaign material which I felt was inappropriate and misleading the electorate that he was the Charity's endorsed or preferred candidate. The Electoral Commissioner responded by saying the SOP was silent on the matter. However, about 2 weeks later in a letter declaring nominees, he seemingly contradicted that earlier position."

276. In his oral evidence Mr Jaffer said that while he had used a "blurred" version of the logo before the Electoral Commission issued its directive on 8 January 2020, after that he instructed his campaign team to remove every version of the logo, and said he did not believe it was displayed after that date. He said there had been nothing from the Electoral Commission before that date which said that the logo should not be used.

277. There is no evidence of Mr Jaffer using the logo after 8 January 2020, and given the strength of the Electoral Commission directive, this is not surprising. I accept his evidence that he did not do so.

278. My conclusions on this issue are:

i) The explicit and strongly worded directive in the letter of 8 January 2020 most probably came about in response to Dr Jiwa's complaint to Mujtaba Datoo about Mr Jaffer's use of the Charity's logo. It seems likely that upon consideration, Mr Datoo concluded that this might be covered by paragraph 4.10 of the SOP.

ii) I do not consider that the fact the Electoral Commission did not themselves observe and take steps to prevent candidates from using the logo or other archived material before Dr Jiwa complained about this means that they failed to monitor usage of the Charity's resources. This was not an obvious use of the Charity's resources (a phrase which would more naturally indicate money or materials), and I consider that the Electoral Commission acted reasonably, and within the requirements of

> "monitoring" by responding to the complaint and issuing the directive that they did, when they did.

iii) I determine therefore that there was no non-compliance in this regard.

Allowing the COG's ballot papers to be printed in India, not centrally

279. The allegation (paragraph 14(7) of the PoC) is:

> "In breach of clause 6.2, the Gujarat Region's ballot papers were printed in India as opposed to being printed centrally and sent by the Electoral Commission to the Constituent Member."

280. Paragraph 6.2 of the SOP provides:

> "The Commission will send each member the list of eligible voters from the Electoral Register along with the requisite number of ballot papers which must be the vehicle to cast the vote."

281. The Claimant's allegation is that 24 jamaats in COG received ballots which had been printed in India and not sent from Stanmore.

282. There is no dispute that this happened (admitted in the Amended Defence paragraph 45).

283. The Defendants' position is that this became necessary as a result of the problems with reading the voters lists submitted by COG and consequent delay. In the Electoral Commission's letter to the Secretary General of 3 February 2020, it is explained that because the deadline for readable lists had had to be extended to 27 January 2020, it was no longer practical for the ballots to be printed in Stanmore and couriered to Gujarat in time for the election on 30 or 31 January 2020. Therefore the Electoral Commission had asked a satellite office of the Charity in India to print the ballots, which were numbered by reference to the voter lists, and to deliver them by local drivers to the COG jamaats.

284. The Defendants say this was a reasonable variation of the SOP procedures to enable voters in COG to vote on the election day. There is no evidence that this affected the voting in any way.

285. My conclusions are:

i) This was a non-compliance with paragraph 6.2 of the SOP.

ii) However, I consider that it was a reasonable and sensible modification of the process, to allow ballots in the correct, numbered format to be provided to the COG jamaats in time for the election. Mr Kanji suggested in evidence that the ballots could still have been flown from Stanmore, but I accept it was reasonable of the Electoral Commission and Secretariat not to attempt to do that, but instead to arrange local printing and delivery. Further, these variations did not affect the voting itself, but did prevent the disenfranchisement of a large number of voters in Gujarat.

iii) I therefore determine that the non-compliance was not material.

iv) In any event, I consider that the Electoral Commission's response was within the reasonable scope of its discretion to manage the election.

v) There is no evidence that this non-compliance had any consequences at all.

Distribution of COG's ballots and return of ballots other than by the returning officers

286. The allegation (paragraph 14(8) of the PoC) is:

> "In breach of clause 6.3, the ballots in the Gujarat region were distributed and the elections returned by persons other than returning officers appointed by the Constituent Member or its managing committee."

287. Paragraph 6.3 of the SOP provides:

> "The Returning Officer selected by each of the Constituent Member's Managing Committee will oversee the presidential elections and will be responsible for the counting of the ballots and announcing the results locally."

288. On the facts, there is no dispute that:

i) 24 jamaats in COG received ballots which had been delivered by private, local drivers rather than couriers from the UK - see my observations under the previous allegation, at [283]. The completed ballots were also collected by private, local drivers, and not by couriers from the UK.

ii) The Kera Jamaat held their vote in a shop and not in the community centre where they were based.

289. The Defendants' explanation as to COG, related to the previous allegation, is that the distribution and collection of the ballots was also arranged through the Charity's office in India, as part of the same arrangements made because of the delays and issues with the COG voter lists.

290. The Defendants contend that there is no evidence that using local drivers affected either the integrity of the election or the result. The Claimant has not introduced or relied on any evidence that there was any such effect, and I accept the Defendants' contention.

291. As to the Kera Jamaat, on 14 February 2020, the Electoral Commission received a written complaint from seven members of the Kera Jamaat, Gujarat, India that the chairman of that jamaat had organised the election in a way which prevented them from being able to vote. The Electoral Commission also referred in their letter of 3 February 2020 to complaints having been received from Kera Jamaat, which they were reviewing.

292. In his statement dated 21 January 2021, Dr Jiwa says this about the ballot at the Kera Jamaat:

> "On 4th February the Secretary General circulated to ExCo members the Electoral Commission report dated 3rd Feb 2020. The report contains amongst other issues and complaints, a formal complaint from Kera jamaat officials that the ballots were handled by individuals other than the Jamaat officials and that a CCTV recording from the Community centre was presented showing that polling was being held in

> a shop across the road as opposed to being held at the designated voting station, the Community Centre. The Electoral Commission noted that it was going to review the complaint but there was no update of any such review at the time of interim results being announced on 18th February 2020. Upon receiving the interim results, I sent an email to the Electoral Commission and the Secretary General raising concern on the serious issues of ballot handling in Kera. To date I have received no response."

293. The EC Report reported at paragraph 15.10:

> "Kera Jamaat ballots. The EC received notification that their election was not held at the Jamaat centre, but at a local venue belonging to one of the Jamaat officers. Apparently, there are rival factions at this centre and the centre was not made available for polling. However, the voting was recorded and submitted. EC had tabled this anomaly pending its impact on the election. There were 35 votes cast by Kera Jamaat. The EC deemed this count (whether included, excluded or redistributed) did not impact the results of the electoral points and the winner. Such local conflicts are beyond the purview of the EC and hopefully they will be resolved by the office bearers and their goodwill ambassadors."

294. My understanding is that this description in the EC Report of the problems which arose in Kera is not disputed. I accept the account in that report as accurate.

295. My conclusions on this allegation are:

i) As to the use of drivers in relation to the 24 COG jamaats, my conclusions are the same as in relation to the previous allegation, for the same reasons, as set out at [285] above.

ii) As to the Kera jamaat, the evidence clearly suggests that the ballot at this jamaat was not conducted in accordance with paragraph 6.3 of the SOP, by the local officers there, in that all or part of the ballot was conducted in a local shop and not in the community centre which was the polling station. This appears from the complaints to have had the effect of preventing some voters from voting.

iii) However, I do not consider that the Electoral Commission or any other official of the Charity at its head office in Stanmore can be held responsible for this breach of the rules by those local officers.

iv) I consider that the way in which the Electoral Commission handled this matter was reasonable and appropriate in that:

a) The complaint was investigated;

b) The Electoral Commission considered whether the disputed ballot could have affected the outcome of the election and concluded that the number of votes cast was so small in the context of the overall election that it did not;

c) There is no evidence that it could have controlled or resolved the local disagreement in the Kera Jamaat, so I conclude that it did what it could, which was to exhort relevant office bearers to help resolve the split in that jamaat.

v) I do not consider therefore that there was any relevant non-compliance with the SOP for the purposes of the matters before me.

vi) Insofar as there were relevant non-compliances, these had no consequences, or as to Kera Jamaat, consequences which were so tiny as to be wholly insignificant.

Counting the votes on 16 February 2020 and disregarding votes received thereafter

296. The allegation (paragraph 14(9) of the PoC) is:

> "In breach of clause 20.2 of the Constitution, the Electoral Commission insisted on counting the votes on 16 February 2020 and disregarded ballots which were, or might otherwise have been, returned thereafter."

297. Clause 20.2 of the Constitution provides, so far as relevant:

> "… Each member shall submit its votes to the Electoral Commission by post at least 30 days before the end of the term of office of the President."

298. In addition, paragraph 2.11 of the SOP provides:

> "The Electoral Commission will announce the result of the election for the post of President at least 5 days before the date set for the ensuing Ordinary Conference."

And paragraph 6.4 of the SOP provides in part:

> "… As a recommended practice the election results from each member Federation or Constituent Member should be submitted within 48 (forty eight) hours of the election taking place."

299. There is no dispute that the Electoral Commission informed ExCo and the Secretariat on 3 February 2020 that the count would take place in Stanmore on Sunday 16 February 2020, and that it did in fact take place on that day. The EC Report states at 15.2 and 15.3:

> "15.2 Most members mailed their results on time. Based on experience we were aware that packages for some places take several days longer. So, the EC set the counting of votes date on February 16, 2020 and announced the date to the Secretariat and to the ExCo on 3 February 2020 (see Appendix 9). The candidates were informed of this and were asked whether they themselves or their representatives would like to attend.
>
> 15.3 Some Jamaats had not returned their ballots to the Secretariat's office. Two reminders and a final one to submit by 14 February 2020 were sent to them. Phone calls were also made to each, informing them that the votes would be counted on February 16."

300. The Claimant alleges that the votes of the Nampula Jamaat in Africa were disregarded as they were returned after the date of the count.

301. The last day of the Conference was expected to be 15 March 2020, which was conventionally the day when the outgoing President stepped down. 30 days before this

was 14 February 2020, so in my view it was correct that this was set by the Electoral Commission as the final deadline for jamaats to send in their votes for counting.

302. As to the Nampula Jamaat, the EC Report also states, at 15.15:

> "After February 16, 2020 the Secretariat received the ballots from a member, Nampula (Mozambique). This was added to the declared results and did not alter the winner."

303. My conclusions on this allegation are therefore:

i) I reject the contention that the Electoral Commission breached clause 20.2 by counting the ballots on 16 February 2020 because:

a) The 30 day limit in paragraph 20.2 is the deadline for the submission of votes, not for the count, and the Electoral Commission correctly set 14 February 2020 as the final deadline for submission of votes;

b) It was clearly reasonable for the Electoral Commission to conduct the count shortly after this, on 16 February 2020.

ii) I accept the explanation in the EC Report as to how the Nampula Jamaat's votes were handled, i.e. that they were counted, even though they arrived after the deadline, and were added to and did not affect the declared result. This treatment was in my view fair and did not constitute any failure to comply with paragraph 20.2 of the SOP.

Counting the votes in the absence of ExCo's two witnesses

304. The allegation (paragraph 14(10) of the PoC) is:

> "In breach of clause 20.3 of the Constitution and/or clause 3.3 of the SOP, the Electoral Commission counted the votes in the absence of the two returning officers appointed by ExCo and in the face of the objections of those two returning officers that the count should be postponed until all votes had been received and could be conducted in their presence."

305. Clause 20.3 of the Constitution provides:

> "**Counting of Votes**
>
> The Executive Council of the Federation shall appoint two Executive Councillors to witness the counting of the votes at The World Federation. The Electoral Commission will then calculate the proportion of the votes received by each candidate within each Member and apportion the Electoral College points based on the number of delegates that Member is entitled to in proportion to the number of delegates that the Member gains at The World Federation Conference as per Clause 10.1 of The Constitution. The candidate receiving the highest number of aggregate Electoral College points shall be declared President-Elect.
>
> The formula shall be: Number of Electoral College Points received by candidate per Member equals (Total Votes Received by the candidate in that Member divided

> by total Votes Cast within that Member) times Number of Delegates allocated to that Member. The Member shall not round up or otherwise of the result of this formula."

306. Paragraph 3.3 of the SOP provides:

> "Clause 20.3 The Executive Council of the Federation shall appoint two Executive Councillors to witness the counting of the votes; these individuals shall be known as the Returning Officers. The Electoral Commission will declare the candidate receiving the largest number of aggregate Electoral College points as the President-Elect of the World Federation. In addition, the Returning Officers shall not be part of the Electoral Commission."

307. I have already concluded at paragraphs [40] – [41] above that the correct analysis of these and other provisions in the SOP is that these two ExCo Councillors are properly to be described as witnesses to the count, and not as returning officers.

308. There is no dispute that Mr Merali and Ms Hassam did not attend or witness the count on 16 February 2020. I have set out above at [75] – [84] my findings as to how and why that came about, as a matter of fact, and the arrangements which were made for four alternative witnesses provided by the Stanmore Jamaat to attend and witness the count.

309. The Claimant alleges that:

    i) The Electoral Commission, without consultation with Mr Merali, changed the date of the count of the vote. I reject that contention, for the reasons set out at [78] to [80] above. My conclusion is that the date of the count was only ever set by the Electoral Commission as 16 February 2020, but that Mr Merali made an assumption that it would be on 9 February which proved to be incorrect.

    ii) The Electoral Commission counted the votes in the absence of Mr Merali and Ms Hassam. This is agreed.

    iii) The Electoral Commission was not prepared to give Ms Hassam the spreadsheet of votes which she had requested until the day of counting.

    iv) It is said that it is unclear who arranged the four alternative witnesses.

310. The Defendants agree the essential facts as to what occurred. They rely on the fact that both Mr Rajpar and Mr Merali agreed in evidence that the four observers were trustworthy and respected. The Defendants submit that either there was no non-compliance, or that it was not material.

311. As to Ms Hassam's decision to withdraw, on 4 February 2020 she emailed the Electoral Commission asking (after saying she would be attending the count on 16 February):

> "Would it be possible to get a spreadsheet of what number of votes jamaats have submitted beforehand? What will be the plan of action if all the ballots have not been received by Sunday 16th February?"

Mujtaba Datoo replied to her on 5 February saying:

> "We are in the process of sorting this out; we have past experience to guide us but want to ensure accurate and transparent counting. A spreadsheet has been developed but we are checking all the data and it will be ready for the February 16 meeting. We expect all ballots to have come in by February 15, 2020. Hence we set this meeting on February 16, to ensure maximum delivery time.
>
> In the meantime, thank you for confirming to attend to witness the counting of votes."

On 14 February Mr Merali sent his email saying he was surprised they were going ahead with the count on the 16th when they had not received all the ballots (having already said he was unable to attend), and suggesting the count be deferred to the following weekend. Ms Hassam then emailed Mujtaba Datoo and the Secretary General at 08:18 on 16 February, saying:

> "The responsibility of acting as a Returning Officer, appointed by the Executive Council of the World Federation (as outlined by clause 3.3 of the SOP, and clause 20.3 of the Constitution) is not one I take lightly. I have been reflecting on the role for some time and it is with regret that I feel compelled to not attend the count at WF secretariat offices on 16th February 2020 to determine the President for the World Federation for the coming term.
>
> It is my belief that the World Federation must be held to the highest of standards, by the community at large and more specifically by the Executive Council. Part of the role of the Returning Officer is to ensure the integrity of the election process and the counting of votes. This is a weighty responsibility, to be shared between the two individuals appointed by the Executive Council. I would expect any individual appointed to this role to be held to these high standards, and for them to have carried out the necessary preparation in order to fulfil this responsibility. In my earlier communication to you, I had requested that the spreadsheet with the breakdown of votes be sent in advance of the count. Whilst you have assured me that it will be ready "on the day" this should have been given in ample time for this be reviewed. With this not having been received, I feel I am ill prepared to discharge my duties as required.
>
> I have also been informed by my co-officer, Amirbhai Merali, that he will not be attending. In the absence of my colleague, I feel it is unfair to expect one individual to be able to oversee the entire vote, and ensure the transparent process required to instil confidence amongst the Council and our grassroots. It would be remiss of me to endorse the count without the necessary due diligence having been carried out, and the required checks and balances in place."

312. Ms Hassam was not called to give evidence, and did not provide a statement, on behalf of either party.

313. On the question of who arranged the four alternative witnesses, the EC Report states at paragraph 15.6:

> "Over the weekend the EC discussed with the Secretary General the possibility of independent observers. The President of Hujjat (Stanmore) Jamaat provided four

> independent, respected members of the local community, to serve as independent observers."

314. I accept this explanation as to how those four witnesses were provided. Two of the Claimant's witnesses, Mr Rajpar and Mr Merali, agreed in cross examination that the four substitute witnesses were people they knew to be trustworthy and respected. I accept their evidence on that point.

315. As I have stated above, there is no evidence that the integrity of the count or the correctness of the result was affected in any way by this substitution of different witnesses. Nevertheless it is apparent that there has been disquiet among ExCo Councillors and others in the Charity about the fact that neither of the ExCo witnesses attended the count. In the PSS Report, one of the three reasons which they gave for recommending that the election be annulled was that:

> "The two Returning Officers appointed by the Exco were not in attendance at the count. The fact that the count continued without the presence of the Returning Officers appointed is in breach of Clause 20.3 of the WF Constitution."

316. The concerns raised by this issue are also evident in the fact that in the 2023 SOP, the new provision on ExCo witnesses to the count is in the following terms:

> "3.3 In accordance with Clause 20.3 of the Constitution, the Executive Council of the Federation shall appoint two Executive Councillors to witness the counting of the votes. In the event that none of the appointed Executive Councillors are present to witness the counting of the votes, an extraordinary Executive Council meeting shall be convened specifically to discuss the agenda of vote counting."

317. I note that in the 2023 SOP therefore (a) it is confirmed that the role of the two ExCo Councillors is to act as witnesses and not returning officers, and (b) more stringent controls have now been put on what to do if neither is in attendance, in that an ExCo meeting must now be called to decide what to do.

318. My determinations on this allegation are:

    i) As noted above, I reject the contention that the Electoral Commission changed the date of the count.

    ii) I consider that it was plainly right, and not in breach of any provision of the Constitution or the SOP, for the Electoral Commission in principle to plan to proceed with the count on 16 February 2020 given (a) all jamaats were obliged to return their votes by 14 February 2020; and (b) the President elect needed to be announced at least 5 days before the start of the Conference on 13 March 2020 (paragraph 2.11 of the SOP).

    iii) Unfortunately Mr Merali was unable to attend the count because of a combination of his assumption which proved to be incorrect that it would take place on 9 February, his plan to undertake pilgrimage in the week from 15 February, and his wife's accident on 13 February.

iv) By the time Ms Hassam said, early on 16 February 2020, that she would not be attending the count either, the Electoral Commission had travelled to Stanmore (in some or all cases from abroad). As a matter of practicality, the Electoral Commission and the Secretariat acted reasonably in arranging four alternative, independent witnesses and proceeding with the count, rather than delaying a further week as Mr Merali had requested (no doubt influenced in part by his own availability). I consider it unfortunate that Ms Hassam also decided to withdraw as a witness, apparently at least in part in solidarity with Mr Merali. I suspect that this aspect of the election would have proved less contentious if she had remained.

v) This was clearly however a non-compliance with paragraph 3.3 of the SOP.

vi) I consider that it was material, since the presence of the ExCo Councillors is clearly intended to provide reassurance to ExCo and the wider grassroots membership that the count was conducted properly and fairly. This conclusion as to materiality is supported by the emphasis placed on it in the PSS Report and the changes in the 2023 SOP.

vii) However, given the situation with which the Electoral Commission was faced on the morning of 16 February 2020, when Ms Hassam withdrew as well, I consider that the steps they took to find four alternative witnesses, who would be and were in fact regarded by the wider community as independent and respected, was within the reasonable range of options open to them as fiduciaries to ensure the smooth and fair running of the election.

viii) It is not in my view appropriate therefore to make any declaration of non-compliance in this regard.

ix) Further, I am reassured by the amendment which has been made in the 2023 SOP that steps have been taken to prevent a similarly contentious situation from arising in the future.

x) There was therefore no legal or substantive consequence to this non-compliance, but it did have the effect of reducing confidence in the election among members of ExCo and probably the wider membership.

Failure of FAC to include a list of eligible voters when they returned their ballots

319. The allegation (paragraph 14(11) of the PoC) is:

> "In breach of clause 6.4 of the SOP, the Australasian Regional Federation failed to enclose a list of eligible voters when returning its ballot papers as witnessed by the Candidate Mr Rashid's appointed witness to the counting. Since he was thereafter immediately withdrawn by Mr Rashid (given this anomaly and the absence of the returning officers appointed by ExCo), it is unclear if (and the Electoral Commission has not reported whether) other Regions submitted the eligible voters list (marked when ballots were issued as required by the Electoral Commission) and/or results notification signed by the respective local returning officers. Only the First Defendant was represented during the counting."

320. Paragraph 6.4 of the SOP states:

> "The original ballot papers used to cast the vote and the eligible voters list along with the result notification signed by the Returning Officers of the Constituent Member or Federation, must be sent by approved courier to the Electoral Commission at the Secretariat's address. As a recommended practice the election results from each member Federation or Constituent Member should be submitted within 48 (forty eight) hours of the election taking place."

321. The Amended Defence admits that two of the three Australian jamaats did not include a voter list with their ballots.

322. The Claimant's final written submissions seek to dramatically expand this allegation to include alleged failures to return voter lists by jamaats in AFED, CoEJ, the India Federation, the Pakistan Federation and NASIMCO. I do not consider that any such expanded allegation has been properly pleaded: paragraph 14(11) of the PoC does not in my view sufficiently raise this as an issue by stating that it is "unclear" whether other regions submitted eligible voter lists. Further, this is not a proposed expansion of their case which was raised in oral submissions.

323. The Defendants' skeleton and closing submissions substantively address only the point relating to FAC, confirming my conclusion that this was the only aspect fairly put in issue.

324. On FAC, the failure to return voter lists was a consequence of the fact that there was an issue concerning whether lists including names and addresses would breach Australian data protection law. Since no list was submitted by those jamaats in the first place, none was sent out with the ballots papers or returned with the used ballots.

325. My conclusions on this point are therefore the same as relating to the allegation in paragraph 14(4) of the PoC, at paragraph [260] above, including as to consequences. I determine that there was a material non-compliance, but the Electoral Commission's decision to allow a derogation was within the scope of its discretion to facilitate a smooth and fair election.

<u>Delivery of cast ballots by hand to the Secretariat rather than by courier</u>

326. The allegation (paragraph 14(12) of the PoC) is:

> "In breach of clause 6.4 of the SOP, several of the Constituent Members cast ballots were not returned by courier to the Electoral Commission but were delivered by hand to the Charity's Secretariat."

327. Paragraph 6.4 of the SOP is set out at paragraph [320] above.

328. The Claimant's final written submissions are that the ballots from the following four jamaats were returned by hand, and that this breached paragraph 6.4: Milton Keyes, Stanmore, Watford and Wessex (which appears to be in Hampshire). There is no dispute that these four jamaats did return their ballots to the Secretariat at Stanmore by hand.

329. I note that the Claimant is alleging therefore that the Stanmore jamaat should have couriered the ballots to itself, which I consider shows the lack of reality of this allegation. When it was put to Mr Kanji that given that all these jamaats were close or very close to

the Secretariat, this was not a serious issue at all, he did not answer the question, saying only that there was what he said was quickly becoming a plethora of violations.

330. The Defendants' position is that the non-compliance is immaterial.

331. My conclusion is:

i) This is technically a non-compliance with paragraph 6.4 of the SOP, but it is plainly immaterial.

ii) The purpose of the requirement that the jamaats use an approved courier to return the ballots to Stanmore is to ensure they are returned safely and speedily, given there are jamaats located across the world, and paragraph 6.4 of the SOP recommends their return within 48 hours. For those jamaats which are very close to – or in the same building as – the Secretariat to return their ballots by hand also meets those requirements and may be more convenient and so acceptable.

iii) This non-compliance had no consequences.

Failing to bring election irregularities to ExCo's attention

332. The allegation (paragraph 14(13) of the PoC) is:

> "In breach of clause 4.13 of the SOP, the Electoral Commission repeatedly failed to bring alleged election irregularities to the attention of ExCo, notwithstanding the receipt by the Electoral Commission of written complaints."

333. Paragraph 4.13 of the SOP states:

> "If the Electoral Commission is informed of any Election irregularities; it will then within 24 hours inform the Secretariat which in turn will inform the Executive Council within 48 hours of it being notified."

334. The Claimant alleges in their final written submissions that the Election Commission failed to inform the Secretariat and/or that the Secretariat did not inform ExCo of written complaints by:

i) Dr Jiwa, in letters of 14 February 2020 and 19 February 2020 (concerning Kera Jamaat).

ii) Mr Kanji, in his complaints of 11 January 2020, 18 January 2020, 20 January 2020 and 23 January 2020.

iii) Dr Jaffer, in his emails of 19 January 2020, 5 February 2020 and 9 February 2020.

iv) Mr Merali, in a complaint concerning the Bangalore Jamaat (date not specified), and one dated 10 February 2020.

v) Mr Rashid, in his complaints of 31 January 2020, 3 February 2020, 11 February 2020 and 16 February 2020.

vi) Others, in particular a letter from CoEJ of 2 February said to allude to concerns about election irregularities, and from the Kera Jamaat (referred to above at [291]) dated 14 February 2020.

335. The Points of Claim plead only failures by the Electoral Commission. Despite this, the Claimant has sought to expand the allegations to ones that the Secretariat failed to inform ExCo. Since these expanded allegations are not pleaded, I do not consider that the Claimant can properly raise these for the first time in their written closing submissions. The Defendants' skeleton refers to the fact that paragraph 4.13 of the SOP requires only that the Electoral Commission reports to the Secretariat, and does not treat the Claimant as also making a case concerning failure to report by the Secretariat.

336. I consider therefore that the Claimant can only pursue its allegations against the Electoral Commission, and not any allegation of failure by the Secretariat to report to ExCo.

337. The Defendants also submit that:

i) Paragraph 4.13 refers only to election irregularities, not alleged election irregularities;

ii) Emails from the Electoral Commission concerning the election were routinely copied to the Secretary General and/or the Secretariat;

iii) In any event, the Electoral Commission did also report to ExCo by its email and letter dated 26 January 2020, its letters dated 3 February 2020, 10 February 2020 and 18 February 2020 and the EC Report of 26 June 2020.

iv) Since ExCo was a body of around 71 members located all over the world, which could not then meet remotely, it was unrealistic to suggest it could effectively direct the operation of a fast-moving election. There was also a lot of email and social messaging which included ExCo members, from which they would have known what was happening;

v) Any relevant breach was therefore immaterial.

338. I have concluded that "election irregularities" in paragraph 4.13 of the SOP means allegations of election irregularities, or reports of matters which might amount to election irregularities, not matters determined to have been election irregularities. This is because:

i) It refers to the Electoral Commission being "informed" of them. Since I consider that it is the Commission itself which, at least in the first instance, determines whether there was an irregularity, this must mean being informed of an allegation or matter;

ii) The time frame required for a report to the Secretariat, of 24 hours, would not make sense if it referred to determined irregularities, since this would probably require an investigation and take some time;

iii) Logically and as a matter of transparency, one would expect the Electoral Commission to be reporting all complaints and issues, at the time and whether they turned out to be well-founded or not. This was in fact what the evidence shows that

the Electoral Commission did – it reported a large number of complaints which it then rejected.

339. However:

i) Where an email to the Electoral Commission had also been openly copied to the Secretariat, I do not consider that the Electoral Commission was obliged separately to report it to the Secretariat;

ii) Where a person had already raised an issue or complaint, I do not consider the Electoral Commission was obliged to re-report each time it was raised again, whether by the same person or a different person. This is because the terms of paragraph 4.13 of the SOP refer to informing the Secretariat, following being "informed of any election irregularities". Therefore it is the substance of the alleged irregularity which needs to be reported, not by whom this was alleged, so once is enough.

340. Accordingly, I do not consider that the Electoral Commission had a separate obligation to report to the Secretariat any of the following letters and/or emails relied on by the Claimant, since they were all copied to the Secretariat or repeated complaints already made and sent to the Secretariat:

i) Either of Dr Jiwa's letters;

ii) Mr Kanji's emails of 18 January 2020 (sent on by Dr Jaffer to the Secretariat); 20 January 2020 (copied to the Secretary General); and 23 January 2020 (copied to the Secretary General);

iii) Dr Jaffer's own email of 19 January 2020, sent to the Secretariat; and his emails of 5 and 9 February 2020 (copied to all of ExCo and the Secretary General);

iv) Mr Merali's reference to having orally discussed the complaint about Mr Jaffer's eligibility on 10 February. By then this had already been raised with the Electoral Commission and the Secretariat, including by Dr Jiwa;

v) Mr Rashid's emails of 31 January 2020 and 16 February 2020 (both copied to the Secretariat).

341. The Electoral Commission's following letters or reports to the Secretariat, or subsequently to ExCo, did include reporting the following issues or complaints:

i) 26 January 2020: this letter reported the COG issues, which appeared to be election irregularities;

ii) 3 February 2020: whether the reduction of the election window from 3 to 2 days was valid; the COG issues; CoEJ not sending names and addresses in some cases because of data protection concerns; an (unspecified) complaint from candidate Mr Rashid; an (unspecified) complaint concerning Kera Jamaat;

iii) 10 February 2020: Mr Merali being unable to attend the count; possible delays in ballots being returned;

iv) 18 February 2020: non-attendance of Mr Merali and Ms Hassam and the appointment of 4 observers instead; Dr Jiwa's complaint about eligibility of a candidate;

v) The EC Report also reported on a number of complaints and issues, but this was in June 2020, many months after they originally arose, so is not directly relevant.

342. My conclusions on this allegation are:

i) The great majority of the instances relied upon by the Claimant were not in my view non-compliances because the complaint was either copied to the Secretariat or repeated one which had been;

ii) The Electoral Commission as a matter of course reported allegations of election irregularities to the Secretariat where the Secretariat had not been copied in;

iii) The Secretariat was therefore aware, at the time, of all or almost all of the alleged election irregularities reported to the Electoral Commission. There was at least very substantial compliance with paragraph 4.13 of the SOP;

iv) Insofar as there are any individual complaints that were not separately notified to the Secretariat within 24 hours, I do not therefore consider that this was material;

v) While this was not pleaded as an allegation, substantive reports on election irregularities were also made to ExCo by the Electoral Commission;

vi) Insofar as there was any non-compliance, it had no consequence in that all complaints were considered by the Electoral Commission and reports were made to the Secretariat and the ExCo at least of all the complaints which were of any significance.

Failing to invoke the arbitration process

343. The allegation (paragraph 14(14) of the PoC) is:

> "In breach of clause 4.14 of the SOP, the Electoral Commission failed to invoke the arbitration process in respect of complaints received by it (including those made by the Claimant, Mr Kanji, Mr Rashid and Dr Jiwa) and instead proceeded to evaluate and adjudicate on those complaints, eventually unilaterally disposing of them, even though many of those complaints were against the Electoral Commission itself."

344. Paragraph 4.14 of the SOP provides:

> "Complaints from Candidates or members regarding the electoral process will be subject to arbitration as highlighted here in below."

A detailed arbitration process, under the heading "appeal process" is then set out, in sub-paragraphs [a] to [g].

345. The Claimant alleges that the Electoral Commission was obliged but failed to invoke the arbitration process in respect of complaints made by others including the Claimant, Mr Kanji, Mr Rashid and Dr Jiwa, and instead adjudicated on them itself.

346. The Defendant's position is that arbitration was only available under this paragraph to Candidates and "Members", meaning the Regional Federations. Mr Rashid requested arbitration but failed to sign a declaration agreeing to be bound by the process, and so it did not proceed. Dr Jiwa did not request arbitration, and the Claimant and Mr Kanji were not entitled to arbitration.

347. As to Mr Rashid (who I understand is now deceased), on the facts, and in particular the emails available in the bundle:

    i) Mr Rashid raised a formal complaint about the election with the Electoral Commission on 3 February 2020, focusing on Mr Jaffer's eligibility, but also making other complaints about the process and especially Mr Jaffer's campaign. He did not specifically request arbitration, complaining instead that the Electoral Commission would get to choose the arbitrators even though the complaints were about their conduct.

    ii) The Electoral Commission sent a detailed response to this email, giving what appear to me to be considered answers to each of the points raised.

    iii) On 11 February 2020 Mr Rashid sent a further email stating that his email of 3 February was a formal complaint and complaining that he had not heard from them about compliance with the arbitration process.

    iv) The Electoral Commission replied to this email on 12 February 2020, saying they had now set up a three person independent arbitration to deal with his complaints of 31 January and 3 February, under paragraph 4.14(b) of the SOP, and giving the names of the arbitrators.

    v) Sub-paragraph 4.14(b) states:

    > "On receipt of such a complaint, the Commission will appoint up to three independent arbitrators and ask the parties concerned to sign a declaration accepting to be bound by the decision of the arbitrators and to refrain from public statements thereafter. No retorts shall be responded to by either party under any circumstances, be it provoked or otherwise. The parties will also confirm their email and fax contacts to which future correspondence sent will be deemed to have been received by them subject to any evidence to rebut this assumption."

    vi) On 15 February, Mr Rashid emailed the Electoral Commission to say his observer would be attending the count. On 16 February he emailed again saying he was withdrawing his observer, because the ExCo witnesses were absent, and complaining about the lack of voter lists returned by FAC.

    vii) On 17 February the Electoral Commission emailed Mr Rashid giving him an extension for returning the signed declaration under sub-paragraph 4.14(b).

viii) Mr Rashid replied twice on 17 February, complaining about the deadline, saying he still wished to proceed with arbitration, and asking who the other party to the arbitration would be.

ix) On 20 February the Electoral Commission replied to Mr Rashid giving a final deadline of 5pm on that day for return of the signed declaration. They also said that, in respect of parties, the arbitrators' role was to arbitrate on the complaints as set out in his emails.

x) Mr Rashid replied on the same day, again complaining that the Electoral Commission would not say who the other party to the arbitration was. He again complained about what he said were "arbitrary deadlines", said he still wanted to exercise his right to arbitration, but said nothing about the request for a signed declaration.

xi) On 21 February 2020 the Electoral Commission emailed Mr Rashid, saying that in respect of his request as to who the other parties were, they had previously told him that the arbitrators' role was to adjudicate on his complaint. Since he had failed to submit a signed declaration, they said the appeal process had now come to an end.

348. In the EC Report the Electoral Commission gave the explanation:

> "After three extensions to Candidate Rashid as stated above and his failure to sign the arbitration declaration, the EC concluded that the arbitration was not going to proceed and declared the winner of the election in a circular dated 21 February 2020."

349. I have seen no evidence that Dr Jiwa requested arbitration in respect of his complaints, or complained at the time that he had not been offered this. There is no evidence of any complaint and request for arbitration by any of the Regional Federations.

350. My conclusions on this allegation are:

i) I accept the Defendants' submission that the arbitration process in paragraph 4.14 is only available to candidates in the election and Regional Federations, and not to grassroots members or ExCo Councillors. Read in context, "member" in this clause means "Regional Federation", even though it is not capitalised. I do not consider that the arbitration process was intended to be available to all of the more than 40,000 grassroots members.

ii) In order for the arbitration process to be triggered, it was necessary for a candidate or Regional Federation to say they wished to invoke it, as Mr Rashid did. I do not consider that the correct interpretation of paragraph 4.14 of the SOP is that any complaint expressed by a candidate or Regional Federation will trigger the arbitration process even if they do not ask for this, as this would not accord with the parties' expectations.

iii) Therefore the arbitration process was not triggered by Dr Jiwa's complaints about the election process, because he did not ask for arbitration. In his witness statement Dr Jiwa does not complain that the arbitration process was not followed – his complaint is that the Electoral Commission failed to address his complaints, and he

says he tried to approach the Charity Commission, and requested an emergency ExCo meeting to discuss them.

iv) While Mr Rashid clearly triggered the arbitration process, and was offered 3 arbitrators, by sub-paragraph 4.14 the arbitration could not proceed unless he signed a declaration agreeing to be bound by the results and to refrain from public statements. The Electoral Commission gave Mr Rashid extensions and due warning that the arbitration would not proceed unless he did this. In failing or refusing to do so, Mr Rashid himself terminated the arbitration process.

v) There was accordingly no non-compliance by the Electoral Commission in not proceeding with arbitration for Mr Rashid, and no non-compliance in relation to any other complaint, because no other candidate or Regional Federation sought to trigger the arbitration process.

Mujtaba Datoo acting alone, without the rest of the Electoral Commission

351. The allegation (paragraph 14(15) of the PoC) is:

> "In breach of clause 4.5 of the SOP, the Chairperson of the Electoral Commission acted unilaterally and without the remaining members of the Commission up until a few weeks before the voting. The absence of the other members of the Electoral Commission was pointed out to the Chairperson of the Electoral Commission by Councillors during the Exco meeting of 2 November 2019. When the Chairperson of the Electoral Commission stated that he had identified and spoken to potential arbitrators, he was asked whether he had done so in consultation and with the consent of the Electoral Commission to which he responded that he had only prepared the groundwork but not spoken to the Electoral Commission. The power vested in the three-member Electoral Commission and its collective working was highlighted in a complaint letter to the Chairperson of the Electoral Commission three weeks before the voting but was not addressed."

352. Paragraph 4.5 of the SOP provides:

> "The Electoral Commission will work on a simple majority where there is ambiguity."
>
> In addition, paragraph 4.2 provides:
>
> "The Conference shall elect 3 (three) Commissioners who will form the Electoral Commission."

353. The Claimant alleges, in general terms, that Mujtaba Datoo acted unilaterally and without the remaining members of the Commission, giving as an example the dismissive reaction to Mrs Rahim when she queried whether Mr Jaffer's membership of MKJ had been confirmed. However this negative reaction was actually from Dr Datoo, the Second Defendant.

354. The Defendants' position is that the Electoral Commission was entitled to regulate its own processes, so that there was no relevant breach, alternatively any breach was immaterial.

355. My conclusions on this allegation are:

i) It is apparent from the contemporaneous correspondence that Mujtaba Datoo did frequently act on behalf of the Electoral Commission as a whole, for example in sending emails or responding to questions. However, I see no reason why the Chairman could not act on behalf of the whole Electoral Commission in this way, if the remaining members agreed to or acquiesced in him doing so. It would be reasonable to expect that they would have concurred, there is no evidence of them objecting to him acting on behalf of them all, and I consider they must have known that he was doing so given the involvement they did have in the electoral process.

ii) The meaning of paragraph 4.5 of the SOP is that where the Electoral Commission disagree between themselves on a course of action, they will act by a majority. It does not require every act of the Electoral Commission to be expressly agreed or voted on between themselves.

iii) There is no evidence of Mujtaba Datoo acting contrary to the agreement of his two fellow Commissioners.

iv) Accordingly, the fact that Mujtaba Datoo acted on many occasions on behalf of the Electoral Commission as a whole, does not amount to any non-compliance with paragraph 4.5 of the SOP.

Overall Conclusions on the Election Issues

356. In conclusion therefore, there were no non-compliances in relation to the Presidential election other than ones which were immaterial, or within the scope of the discretion of the Electoral Commission to conduct a smooth and fair election, or which in the interests of the Charity, would not justify the making of a declaration of non-compliance.

357. Having now examined the allegations and the evidence in relation to this election in minute detail, I have reached the very firm conclusion that this election was conducted by the Electoral Commission with a high degree of competence, practicality and respect for the importance of both the rules and of fairly exercising some discretion so as to enable voters to exercise their rights to vote as far as possible. This was a complex type of election to manage logistically, but my conclusion is that the 2020 Electoral Commission conducted it impressively well and with conspicuous fairness.

358. On the facts, it follows that I have seen nothing in the conduct of the 2020 Presidential Election which leads me to believe that the Charity's own Electoral Commission would not be well able to conduct the 2024 Presential Election. I will return under Issue 6 to the question of the appointment of a receiver, but my findings under Issues 1 to 4 strongly indicate that there is no justification for appointing a receiver to conduct the 2024 election. Given the contentiousness the elections have provoked in the past, the Charity may choose to take external advice on running the next one, but I see that entirely as a matter for ExCo, the Office Bearers and the current Electoral Commission to consider, in the exercise of their various fiduciary duties and powers.

Issue 5: Consequences of the Two Resolutions passed at the May 2021 Conference

359. Given my conclusions on Issues 1 to 4, I can take this relatively shortly.

360. As noted at [108] above, the May 2021 Conference, which took place as a consequence of the May 2021 Order, passed the following two resolutions, by substantial majorities:

    i) Not to hold a fresh Presidential election; and

    ii) To affirm the election of Mr Jaffer as President.

361. Although it was not until Mellor J's order of 18 May 2021 that it was confirmed that this Conference would definitely take place starting on 21 May 2021, ExCo had set this date at its meeting in January 2021. The agenda for the original March 2020 Conference had been agreed by ExCo in November 2019 and notice circulated on 13 December 2019. This agenda was slightly revised in January 2021, with the report on the election being moved to the top. Most of the relevant papers had been circulated at least to the members of ExCo well before May 2021. Although a fresh notice of meeting, agenda and papers including Mellor J's judgment (which participants were instructed to read, along with a process note and an explanatory note), were not sent out to attendees until 18 May 2021, the Conference was clearly expected by the delegates and I accept that much of the preparatory work had been done. In March 2021, in the context of trying to agree an earlier date for the court hearing, the Defendants' solicitors said in correspondence that a May hearing would be too late. However, once the matter came before him in May 2021, Mellor J was satisfied that the best course was for the Conference to proceed on the dates which had been notified, even if this meant time-pressured final preparations.

362. There was urgency because the Charity Commission had ordered that the Conference should take place by 1 June 2021, and it was in any event desirable that the Conference should take place swiftly, given how long it had been delayed. While requests were made by email to adjourn the Conference, the Secretary General's response was that the Office Bearers had no power to do so, and it appears this was accepted.

363. While Dr Jaffer says the proceedings were a fiasco, I have had the benefit of seeing the transcripts of the Conference, and the agenda papers. In my view these show that discussions were extensive and careful. I also do not accept the contention that the Chair Mr Asaria behaved in a biased way. Dr Jaffer said during the debate that he took Mr Asaria's word that he had no conflict of interest. I note also that while the Chair was elected unopposed, there was an opportunity for others to stand against him, but no one did.

364. Ultimately, while Dr Jaffer may be unhappy that the May 2021 Conference proceeded, and with how it progressed, it was unquestionably validly called and conducted, so its resolutions are effective as such. The issue is as to their effect.

365. The Claimant's position on Issue 5 is that:

    i) A resolution of Conference could not abrogate the rights of the grassroots electorate in the Presidential Election. If Mr Jaffer's election was a nullity, a resolution of Conference cannot affect that, although it is accepted that it could affect the court's exercise of its discretion as to remedy.

    ii) The court is now being asked to appoint a receiver to run the 2024 election. Conference was not asked to vote on a resolution on that question, so its resolutions are irrelevant.

366. The Defendants' position is that:

i) The Conference resolutions concluded the issues as to Mr Jaffer's eligibility, and whether a fresh Presidential election should be held.

ii) There is no substance to Dr Jaffer's complaints as to how the Conference was run, in particular that delegates had failed to read Mellor J's judgment and were not acting in accordance with their fiduciary duties when voting.

367. My conclusions on this issue are:

i) Since I have determined that Mr Jaffer was eligible to stand for election as President, and so was validly elected, there is no conflict with Conference's resolution to affirm his election;

ii) There would therefore have been no grounds to have a fresh election in any event, so again, Conference's resolution not to do so creates no conflict.

iii) From my review of key parts of the transcript of the Conference, I do not consider there is substance to Dr Jaffer's complaints about how the Conference was conducted, in particular that there was any unfairness by the Chair or that delegates had failed to read Mellor J's judgment (many delegates in fact referred to it).

iv) If I had concluded that Mr Jaffer was not eligible and so his election was a nullity, I would, on the basis of these resolutions and the fact that it was accepted by witnesses that Mr Jaffer has done a good job as President, have made a declaration of nullity but would also have made an order affirming the decisions he made during his apparent Presidency as being effective.

Issue 6.1: Should the Court appoint a receiver to conduct the 2024 Presidential election?

368. The basis of the Claimant's application to appoint a receiver to conduct the 2024 Presidential election, as summarised in the final submissions made on his behalf, is:

i) There has been a failure to adhere to the Constitution and the SOP in the conduct of the 2020 election. (While there is a reference to earlier elections, I am making no findings in relation to these).

ii) The Electoral Commission in 2020 failed to act collectively.

iii) There is a perception of disenfranchisement among significant numbers, as shown for example by the petition organised by Jabir Chatoo in August 2020 from around 500 people, which sought a referral to the Charity Commission.

iv) This will be on any view a complex election to conduct. If an experienced professional is appointed to do so, in consultation with the Office Bearers, this should ensure compliance with the Constitution and SOP (now the 2023 SOP), impartial adjudication on disputes, courteous and prompt engagement with those who raise concerns and the creation of a central register of voters.

369. As to this final point, no central register is required under the 2023 SOP at all, since the balloting is now to be conducted locally, with the completed ballots then being sent to the Charity's head office for the final count.

370. The Claimant proposed three alternative experienced professionals to take on the role of receiver. I do not understand there to be any objection to the competency or qualification of any of them. He has also offered to pay the costs of the receiver, although there was some discussion before me as to whether this would be appropriate in terms of their independence.

371. The Defendants' position is:

    i) They have called extensive evidence, from Mr Jaffer but also from the other Presidents of the Regional Federations, that the imposition of a receiver for any purpose would cause a loss of confidence in the Charity and risk bringing about its collapse, which was not challenged in cross examination.

    ii) Therefore a receiver should only be appointed if it would be absolutely essential to further the interests of the Charity.

    iii) The 2020 election was properly conducted.

    iv) The correct test is not whether there is "a risk" that the governing rules will not be adhered to in the 2024 election, as contended by the Claimant.

    v) The 2023 SOP are simpler and easier to apply, and there is no reason to think the current Electoral Commission and the Charity more generally will be unable to run the election in accordance with them.

    vi) There was no challenge to the competence of the current chair of the Electoral Commission, Mr Fayyaz Datoo, to run the election.

    vii) The Charity received a presentation at its June 2023 Extraordinary Conference from an external provider of electoral services, but took the decision to run the election itself.

    viii) Mr Rajpar was correct in his evidence when he said the Charity should run the election itself.

372. Applying the principles which I concluded at [201] above should apply when considering whether to appoint a receiver in respect of a charity, my determinations are:

    i) On the basis of my findings as to the conduct of the 2020 Presidential Election, I reject the contention that something went seriously wrong in the management of the Charity so far as the conduct of that election is concerned.

    ii) Further, there is no reason to think that the current Office Bearers or Electoral Commission, who will act as fiduciaries in conducting the election, will be unable to conduct the forthcoming election effectively, no challenge having been made to the competence of the current Chairman or other members of the Electoral Commission.

iii) Appointing a receiver to conduct the 2024 election is not therefore necessary or desirable, and as such could not be in the best interests of the Charity.

iv) Furthermore, the principles of non-intervention and taking a benevolent approach to charities would strongly indicate not intervening in the Charity's conduct of the next election on the facts of this case, especially given the unchallenged evidence from a number of senior figures in the Charity, which I accept, that appointing a receiver to conduct the election would be likely to cause serious damage to confidence within the Charity, and in its activities.

v) Therefore I dismiss the application to appoint a receiver to conduct the 2024 Presidential election.

vi) In any event, even if the appropriate test was simply whether the appointment of a receiver was in the best interests of the Charity, on these findings my conclusion would be that such an appointment would not be in the best interests of the Charity.

Issue 6.2: Should the Court appoint a receiver to investigate the financial affairs of the Charity related to the donations from the Donor?

373. This issue is framed in more general terms in the List of Issues, as "*Should the court appoint a receiver ... to investigate the financial affairs of the charity?*"

374. However, as I noted when giving judgment on the first day of trial on the terms of the list of sub-issues concerning whether to appoint a receiver to investigate the financial affairs of the Charity, there is no dispute that this aspect of the case relates to donations from the Donor, and over the period 2014 to 2019 (in reality, from 2015). I concluded that the issue was limited to the factual issues raised by the parties' statements of case, but that the Claimant had put in issue how payments from the Donor were handled and whether they had been properly applied in accordance with the Charity's objects.

375. Since the Claimant's pleaded concerns relate to a period before the current Office Bearers took office, the application for a receiver is put on the basis that the Defendants failed properly to investigate the earlier donations or to respond properly themselves to what they knew, or ought to have known, or what the MKS Report has revealed.

376. Both sides say that the MKS Report supports their position:

i) The Claimant says that it demonstrates the seriousness of the existing problems and previous failures in how the Charity's finances were handled, including breaches of its KYD policies and Charity Commission guidance more generally. He says it identifies widespread failures in documentation, and that the Charity has not applied its own policies on the correct issue of receipts (issuing them to a different company from the one which made the donations).

ii) The Defendants say that the MKS Report has given the Charity a generally "*clean bill of health*", and that it has satisfied the purpose of showing that the current Office Bearers have taken sufficient or more than sufficient steps to investigate what happened previously and to improve practices for documenting and monitoring donations and payments to beneficiaries.

377. At the second PTR on 19 October 2023, I ordered the parties to try to agree a concise list of legal and factual issues relating to whether the Court should appoint a receiver to investigate the financial affairs of the Charity, to be drawn from their statements of case, including necessary legal issues. The purpose was to assist me, or the eventual trial judge, to determine whether there was a legal and factual basis for appointing a receiver. I will address those sub-issues next, in the final form ruled on by me on Day 1, starting with the remaining legal issues (I dealt with the first at [179] to [203] above.)

Legal sub-issues on Issue 6.2

Responsibilities of Office Bearers if aware of prior financial irregularities

378. Sub-issue (2) is:

> "What, if any, are the responsibilities of Office Bearers if aware of claims or evidence of financial irregularities including any occurring prior to them becoming Office Bearers?"

379. The Claimant's position is that the Office Bearers are duty bound to investigate if they have reason to think there may have been irregularity in the financial affairs of the Charity, either during their tenure or prior to it. He says they are also bound to consider action against their predecessors if matters come to their attention which require this (relying on ***Lewin*** at 41-101):

> "**Where the breach of trust has already been committed**
>
> If the breach of trust has already been committed, the co-trustee should bring an action for the restoration of the trust fund to its proper condition or, at least, take such other active measures as in all the circumstances may be most prudent. but a very simple case, he would be well advised to seek the directions of the court as to what, if any, steps he should take."

380. The Defendants submit that that passage in ***Lewin*** relates to the duty of one trustee to investigate a *current* co-trustee, not a predecessor. It also pre-supposes a breach of trust has been committed by the other trustees, which has not been pleaded and could not be decided without the previous trustees being joined. They submit that the correct position is as stated in ***Lewin*** at 21-122:

> "**Duties of new trustee in relation to trust papers**
>
> The trust papers may, of course, be voluminous. Although they are required primarily for the purpose of enabling the trustees to perform their duties on acceptance of office, we do not consider that there is any separate obligation binding a new trustee to master the contents of the papers in their entirety, nor necessarily to obtain all of them from the outgoing trustee. Such a scrutiny could be onerous on the trustee and, if there is a charging clause, expensive for the trust. Still less is the new trustee required to hunt for breaches of trust committed by his predecessors, as he is entitled to assume that they have behaved properly, though if a possible breach comes to his notice, he should investigate it."

381. Therefore, they say, the Defendants are only required to investigate if a possible breach of trust comes to their attention.

382. Paragraph 41-101 in ***Lewin*** is within the section on a trustee's duties when they know of a breach of trust by a co-trustee, and in my view it pre-supposes that both are current trustees and there has been a breach of trust. The Claimant has not pleaded or relied on any allegation of breach of trust by the previous Office Bearers, so a case cannot be run on the basis of failure to investigate or take action in respect of a previous breach of trust. I agree with the Defendants that the relevant section of ***Lewin*** in this context is paragraph 21-122, relating to the duties of new trustees in relation to trust papers, cited above.

383. My conclusion therefore is that the current Office Bearers' obligations were, if they became aware of claims or evidence of previous financial irregularities, to carry out appropriate investigations with a view to ensuring that the Charity's property and affairs are now properly protected, and that it was only if a possible breach of trust by the previous trustees came to their notice that they were obliged to investigate this.

<u>The responsibilities of members of ExCo, collectively and/or individually</u>

384. Sub-issue (3) is:

> "What, if any, are the responsibilities of members of ExCo, collectively and/or individually, to ensure that the Charity's funds are properly applied in accordance with the Charity's objects?"

385. The Claimant's position is that ExCo is entrusted by clause 19.2.1 of the Constitution to manage the Charity and exercise its powers between meetings of the Conference. As regards finances, it has a number of specific powers set out in the Constitution, including directing the Office Bearers how to apply properties and funds (clause 23), authorising expenditure, except that "*in case of urgency the President shall have the power to expend or donate a sum not exceeding five thousand pounds (£5,000) in any one year without the prior sanction of [ExCo]*" (clause 24.2), inspecting books of account (clause 24.3) and receiving the annual accounts (25.3). It is submitted that the Defendants do not understand the proper division of responsibilities between the Office Bearers and ExCo, over-estimating the former.

386. The Defendants submit that, as stated by Deputy Judge Farnhill in his judgment of 31 March 2022 at [10], the Office Bearers are the Charity's trustees, and so as a matter of law they must have primary responsibility for managing the Charity. Similarly, the Deputy Judge said at [24]:

> "… As I have noted, the relationship between the Executive Committee and the Charity Trustees is not entirely clear from the Constitution. What is clear, however, is that the Trustees are the Office Bearers and that the Trustees have responsibility for the day-to-day management of the Charity, not the Executive Committee…"

387. The Defendants submit that while ExCo has oversight over the Office Bearers, it does not have day-to-day responsibility for the Charity's affairs, and since it is a body of over 70 members, across the world and changing frequently, meeting about twice a year, it would be impossible for it to manage the Charity's financial affairs in detail.

388. They also submit that any rights and obligations of ExCo are of it as a body, and not of individual Councillors. Deputy Judge Farnhill ruled at [25] that ExCo's power at clause 25.3 of the Constitution to ask the Office Bearers for financial details could only be exercised by it collectively, and not by individual Councillors.

389. Clause 19.1.1 of the Constitution states, so far as relevant:

> "It is noted that for the purposes of the Charities Acts, the Office Bearers are the charity trustees who bear ultimate responsibility for the management and administration of the Federation "

390. Dealing with the straightforward point first, it is plainly correct, as Deputy Judge Farnhill ruled, that the rights and obligations of ExCo are to be exercised by it collectively as a body, if necessary by resolutions of the majority, in a meeting. It cannot be the case that individual ExCo Councillors were contemplated to be able to exercise the powers in the Constitution individually. This means that in practice ExCo will really only be able to exercise its powers through meetings. With over 70 members, it will be difficult for it to agree on a course of action unanimously, which is what would be necessary in order to do so outside of a properly constituted meeting (although a meeting could also subsequently ratify a "decision" taken outside a meeting).

391. There is a tension in the Constitution regarding the role of ExCo, because while clause 19.2.1 states that ExCo is to exercise the powers of the Charity between the (triennial) meetings of the Conference, ExCo is itself a large body which meets too infrequently to manage the Charity. Like Deputy Judge Farnhill, I consider that the starting point is that the Office Bearers are the charity trustees, so as clause 19.1.1 confirms, they are the ones with primary responsibility for the management and administration of the Charity.

392. My conclusion is that the division of responsibility is that ExCo creates policies, and receives and approves the accounts, but implementation, including managing the Charity's finances, handling donations and approving, monitoring and arranging payments to recipient organisations must be the responsibility of the Office Bearers, with the assistance of the employed staff at the Secretariat.

393. As to the £5,000 limit in clause 24.2, I was told by Mr Khakoo that this clause has always been treated as relating only to personal expenses of the President, and not to paying the ordinary expenses of the Charity or to paying beneficiaries. I have concluded that this is the only sensible interpretation of this clause. It would be unworkable, as well as being inconsistent with the Office Bearers' roles as trustees, if it was treated as meaning that ExCo must give advance authorisation for every payment to a beneficiary or payment for running costs (even assuming that expenses in an approved budget are treated as authorised).

394. Similarly, clause 23.2, which says "*Subject to Clause 7* [not relevant] *the Trustees shall not deal with any of the properties or funds of the Federation except in accordance with the instructions of the Conference or the Executive Council*" cannot mean that the Office Bearers have no powers to deal with the Charity's funds or property except at the specific direction of ExCo, as this would prevent them complying with their fiduciary obligations as trustees to manage and protect the assets and interests of the Charity. It must mean that ExCo and Conference can set policy and make decisions as to the priorities of the Charity, and give direction to the Office Bearers, oversee them and hold them to account, but that

the Office Bearers are to implement policies, make discretionary decisions as to the use of funds, and take the decisions necessary to manage the Charity, in accordance with its objects.

395. Accordingly I determine that the duty and responsibility of ExCo, undertaken collectively, in terms of ensuring funds are properly applied in accordance with the Charity's objects, is to:

    i) Receive the annual accounts, and ask the Office Bearers including the Treasurer for such further detail as they require (clause 25.3);

    ii) Receive reports from the Treasurer on the records of income and expenditure, including the use of donations (clause 24.3);

    iii) Formulate policy and strategy on use of the Charity's funds, give appropriate direction to the Office Bearers, and oversee whether this is done (clauses 23.2);

    iv) Agree rules and regulations for the furtherance of the objects of the Charity, and oversee their implementation by the Office Bearers (clause 19.2.3).

396. If the Charity's members consider, understandably, that the division of responsibility between the Office Bearers and ExCo should be clearer, then that would be a matter for amendment of the Constitution, but it cannot be framed in a way which prevents the Office Bearers exercising their fiduciary duties as trustees. If the Charity wishes to amend the Constitution, it would make sense for it to take advice from a specialist in English charity law.

Factual sub-issues on Issue 6.2

Payments made exceeding £34m by the Donor and remitted to Iraq and Lebanon

397. Sub-issue 4 is framed as:

> "Were substantial payments, amounting to more than £34 million in recent years, being made to the Charity by a single individual donor in the Middle East (the "Donor") and remitted to entities in Iraq and Lebanon?"

398. The answer is yes, this is agreed. The following agreed table sets out the donations received from the Donor which were donor-directed, i.e. where the destination for the funds was specified by the Donor, and their percentage of the overall donations to the Charity in these years. It is further agreed that all or almost all of these sums were directed to be and were paid to recipient charities in Iraq or Lebanon.

	2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Charity income (in £)	12,485,837	17,644,151	17,733,721	18,182,386	12,716,695	15,884,112	10,539,908

From the Donor	6,675,190	8,740,601	10,427,787	10,875,169	5,557,573	3,605,919	507,463
% from the Donor	53%	50%	59%	60%	44%	23%	5%

399. The total amount donated by the Donor, as donor-directed funds, over the period 2014 to 2019 was therefore around £45.8m.

Membership of the Charity and fund-raising activities in Iraq and Lebanon

400. Sub-issue 5 is:

> "As regards Iraq and Lebanon:
>
> (a) Are there any Constituent Members or Associate Members of the Charity in Iraq and Lebanon?
>
> (b) Has the Charity ever conducted fund-raising seeking funds for application therein?"

401. As to (a), the parties agree there are no Constituent Member jamaats in Iraq or Lebanon.

402. As to (b):

i) The Claimant says no, except for the occasional disaster relief appeal;

ii) The Defendants say that such fund-raising has been done over many years, and that their evidence on this was not challenged. In particular they rely on:

a) Since September 2021, fund-raising for new floor tiles at the Shrines in the Al-Kadhyimiyya Mosque near Baghdad in Iraq. Dr Jaffer agreed in cross examination that this fund-raising had taken place, saying £3-4m had been donated, although he did not personally support this.

b) Dr Jaffer also admitted fundraising took place for blankets and tents following an earthquake in Iran.

c) Donations in response to a national TV appeal, following a disaster in Iraq (among other countries) in 2009;

d) Funding which was secured in 2014 and 2015 for assisting Syrian and Iraqi refugees, with partner agencies in Lebanon and Iraq respectively;

e) Winter appeals conducted in 2017 and 2020, the beneficiary countries being Syria, India, Pakistan, Lebanon, Iraq, Gaza, Nepal, Bosnia & Herzegovina and Bangladesh.

403. Overall, my determination on this issue is that while some other fund-raising has been carried out by the Charity for partner agencies or recipients in Iraq and Lebanon, this is occasional and is different in nature and scale from the planned, long term, systematic and extensive funding of the projects in Iraq and Lebanon which were specifically supported by the Donor.

Increase in the proportion of turnover represented by the Donor's payments

404. Sub-issue 6(a) is:

> "Did the payments increase from about 5% of the Charity's total turnover to about 50% of the Charity's total turnover?"

405. Assuming the period intended is 2014 onwards, this is answered by the table at [398]. In fact the donations were relatively consistent at around half of the Charity's total donations from 2014 to 2018, falling thereafter so they were only 5% in 2020.

Was the application of such payments ever considered by ExCo?

406. This is sub-issue 6(b).

407. The Claimant says no. Dr Jaffer's evidence was that the reports were very vague as to what the Charity was doing in Iraq and where the money was going, and that the reports to ExCo should have been clearer, not just using the Charity as a "post box".

408. The Defendants say this was considered by ExCo, directly and indirectly. They rely on the following:

    i) Treasury reports to ExCo, which often included a breakdown of aid distribution which showed how much was being spent in Iraq, and on Syrian refugees in Lebanon. There was an example in the bundle from the meeting pack for the ExCo on 10-12 December 2021, including pie-charts labelled with the total disbursed in each of the 4 years 2018 to 2021, with labels for "Iraq Relief" in 2018 and 2019 and "Syrian Refugees" also in 2018 and 2019. Dr Jaffer denied in evidence that earlier reports had included such information. In contrast Mr Khakoo gave positive evidence that he had gone back and checked the packs for 2015, 2016 and 2017, and he was sure each had included similar charts, the same format being used throughout. I accept Mr Khakoo's evidence on this point.

    ii) Provision of the annual accounts to ExCo since at least 2010. Copies of these accounts from 2013 were in the bundle. There is a separate item in the accounts for grants awarded over £30,000. As to the 4 beneficiary organisations which are the subject of challenge in these proceedings, these accounts include:

        a) A named line for ASCF for every year from 2013 to 2018 inclusive;

        b) A named line for Al Yatem for every year from 2014 to 2019 inclusive;

        c) A named line for IAHPF for every year from 2016 to 2018 inclusive;

        d) A named line for ISF for every year from 2013 to 2019 inclusive.

The transcript for the May 2021 Conference records Mr Ahmed Hassam, a former President of the Charity, as stating, in response to questions as to how information about these donations had been provided, "… *We have been presenting accounts every Executive Council Meeting, at the conferences as well...*" On being questioned about reports to ExCo in cross examination, Dr Jaffer denied that the Charity's accounts had ever been presented to ExCo. I do not accept this assertion from Dr Jaffer, which I do not consider credible. He may be misremembering the position or may not have been present, but I consider it is not credible that the Charity's annual accounts, which have been prepared every year and which appear each year as part of a much longer, detailed Trustees Annual Report, have never been actually presented to ExCo.

iii) The fact that the annual accounts also included items headed "Amanat Funds", and in some years (2015, 2016, 2017), "DT Fund". The Defendants say that both of these comprised or included donations received from the Donor, for the relevant years in the bundle which are 2013 to 2019. A note to the accounts states: "*Amanat Trust - Third-party funds held on behalf of donors to be utilised for charitable purposes in accordance to their instructions*." The Defendants say that "Amanat funds" are donations which are unrestricted as to their object. I do not understand this to be disputed. Where DT Fund appears, the explanation is: "*This fund is used for relieving poverty and assisting in emergency crises throughout the world*." In each case "DT Fund" appears under the heading "Restricted Funds".

iv) Remarks which they submit were made by participants at ExCo meetings and which show the makers are aware of the Donor, e.g. a Councillor at the November 2019 meeting saying "*I know one donor has given majority of, most of it*".

v) Discussion of payments to the Middle East during the October 2009 and May 2021 Conferences, which are attended by ExCo members.

vi) The extensive powers in the Constitution which ExCo has to hold Office Bearers to account (many of which I have referred to above).

409. "Restricted funds" (also known as directed funds) are funds which are accepted by a charity from a donor subject to a condition that they are spent on a specific project. I do not understand it to be disputed that it is legitimate and common for charities to accept such restricted funds. Such funds have to be classified in the accounts as "restricted funds". Both sides agree that the Charity receives a lot of restricted funds. Mr Kanji said in his evidence that the Charity has "*a lot of restricted funds*", including charitable trusts for specific purposes (including Khoja-only) managed closer to the grassroots members.

410. My conclusion on this issue is that the *application* of the very substantial funds from the Donor to projects in Iraq and Lebanon has been regularly reported to ExCo in the annual accounts and trustees reports, which normally included listing all four of the recipient organisations, by name, with the total amounts they had received. Further questions about this use of funds could readily have been raised by Councillors during Treasury discussions. I have not seen evidence of significant discussions of the use of these donations in Iraq and Lebanon (other than the questions raised at the May 2021 Conference, which I consider further below), but I do consider that ExCo had the information and opportunity necessary to do so, whether or not this was taken up.

Were reports made to ExCo about the source of funds used to make the payments?

411. Sub-issue 6(c) is:

> "Has a report been made to ExCo about the source of the funds used to make the payments?"

412. The Claimant says no. He also says that Mr Khakoo's evidence was that even he was not sure which jurisdiction these donations were coming from.

413. The Defendants' position is that during the Defendants' tenure of office, ExCo has never asked for such a report, but the Defendants have always presented the Charity's annual financial statements to ExCo for approval (including the statements referred to on the previous sub-issue), and have answered questions put to them on the Charity's finances.

414. My determination on this issue is that no or no effective report has been made to ExCo about the source of the funds which came from the Donor. While the inclusion of funds from the Donor in the accounts under the headings "Amanat Fund" and/or "DT Fund" may be sufficient from an accounting perspective, this does not give any information to the reader indicating the source of the funds, or even that it is essentially one donor (treating the Donor, his wife and companies as one source for these purposes).

415. Other large donors or sources of funding are sometimes listed by name in the accounts. In truth, the source of the donations from the Donor, and the scale of the donations from that single source, is obscure in the accounts and Treasury reports. In the years where there is a heading in the accounts of "DT Fund", most of the Donor's donations appear to be under that heading (the note to which is very generic), there being relatively little allocated to "Amanat Fund".

416. My conclusion is that this obscurity is connected to the Donor's strong desire for anonymity. It is striking that there is a fair level of detail in the accounts and Treasury reports about how the Donor's donations have been *used*, but very little information, even in a generic sense, about their *source*.

417. On the question of the jurisdiction from which these donations came, Mr Khakoo said on several occasions during his evidence that he did not know or was not sure which jurisdiction or banking system the Donor's donations came from. He said cautiously that he thought it was now the UK, but it had been the BVI. He appeared to be genuinely not sure, rather than trying to protect the Donor, but he certainly had difficulty answering this question. This is somewhat surprising given his role as the former Treasurer, even though the questions related to a period before he took on that role.

The Charity moving funds from a source in the Middle East to Iraq and Lebanon

Were payments properly applied in accordance with the Charity's objects?

418. Sub-issue 6(d) is:

> "Did it make sense for the Charity to move money from a source in the Middle East to a destination in the Middle East, especially where the Charity had no control or resources on the ground in Iraq or Lebanon, including what, if any inferences, are to be drawn from any answers to this question at Conference in May 2021?"

419. This is closely related to sub-issue 14, a key point of dispute, which is:

> "Are the payments [from the Donor] being properly applied in accordance with the Constitution of the Charity?"

420. The question of inferences to be drawn from answers given during the May 2021 Conference is covered in detail under the next sub-issue, so I will deal with it there.

421. The Claimant says no to both of these questions. In closing, this was expanded as follows:

i) The Constitution requires ExCo to manage the Charity between meetings of Conference. ExCo had no oversight of the payments from the Donor or their onward transmission to beneficiaries, even though they amounted to tens of millions of pounds. Even if the Office Bearers are entitled to decide how to apply funds, no minutes have been produced from the period reviewed by MKS to explain the decisions, and no Office Bearer from that period has been called to give evidence. All the former Office Bearers replied to the Claimant's solicitors, in substantially identical form, saying they had no access to documents or information since they left office but it is apparent that the former Treasurer (Mohamed Bhaloo) and the former Secretary General (Shan Hassam) nevertheless assisted the Defendants by providing information to MKS.

ii) Whether or not as a matter of construction the objects of the Charity permit payments to non-Khoja adherents of the Shia Ithna-Asheri faith, there is no sensible explanation for why the Charity would expend up to 60% of its resources, or significant resources in monitoring the application of the Donor's funds, on benefiting non-Khojas, without first seeking the approval of ExCo, Conference and/or grassroots members. No proper explanation has been given why the Charity allowed itself to be a conduit for these payments, other than the assertion it was not unlawful, but this does not mean it was a good idea. There is no evidence of any attempt to ensure that the payments benefited Shia Ithna-Asheris. The Defendants' counsel tentatively submitted that the objects "*extend to manifesting the tenets of the Shia faith by relieving need among non-Shias*" but it is not within the Charity's objects to make donations to those who are neither Khoja nor Shia Ithna-Asheri.

iii) The only explanation from the Defendants of the Charity's role in moving substantial sums from a source in the Middle East to the Charity and then back to the Middle East is to suggest that donors trust the Charity and expect it to conduct "*the usual and necessary*" due diligence on recipients. Aside from the substantial holes in the Charity's compliance processes, this explanation is not supported by the available contemporaneous documents. These indicate that the Charity was merely acting as conduit. Records show that one man, Hassan al-Hakeem, wore numerous hats: agent for the Donor; source of supposed due diligence on some sampled recipients; issuing receipts on behalf of recipients and being the source of reports from the recipient to the Charity. This illustrates a systemic problem faced by the Charity, which has caused the Claimant to bring this claim.

iv) There is no sensible explanation why the Charity, an English registered charity with headquarters in the UK, would accept millions from a source in the Middle East simply in order to transfer the same funds straight back to the Middle East.

422. The Defendants say yes, on both issues. Their position, as summarised in closing, is:

i) These payments are within the scope of the Charity's objects and its mission statement, which is to "*enable its members to promote the values and practices of the Islamic Shia Ithna Asheri faith for the spiritual and material wellbeing of humanity at large*". The Charity's objects include all those of the Shia Ithna-Asheri faith, not only Khojas, and Mr Jaffer's evidence was that the four main recipient organisations are all Shia Ithna-Asheri.

ii) The majority of the funds from the Donor was given as restricted funds, and so could only be used for their specified purposes, which was provision to these four organisations. It would have been a breach of trust to use them for another purpose.

iii) ExCo's role in the distribution of charitable funds is limited.

iv) There is unchallenged evidence that the four main recipient organisations were well-established charities which were carefully monitored by previous Office Bearers (I note that much of this evidence, especially as to due diligence and monitoring, comes from the MKS Report):

a) ASCF is a UK registered charity and a registered NGO in Iraq. The Charity has had a relationship with it since 2006. The Grand Ayatollah in Iraq gave the previous Office Bearers references for the ASCF trustees. The previous Office Bearers visited ASCF in 2014, 2016 and 2017. They reviewed all of ASCF's accounts, systems, policies and Procedures. The Charity kept over 220 files relating to ASCF.

b) IAHPF is a registered non-profit foundation in Lebanon. The previous Office Bearers obtained copies of the registration certificate and the passports of the IAHPF trustees. They visited IAHPF five times during 2016 to 2019, during which they reviewed IAHPF's compliance procedures. In January 2017 they prepared a report on IAHPF's work. The Charity received copies of IAHPF's annual accounts in 2016 and 2017.

c) Al Yatem is a registered NGO in Iraq and with the UN. It is the "Orphan Charity Foundation". Al Yatem was recommended to the previous Office Bearers by the Head of the Iraqi Red Crescent, the highest possible recommendation for a charity. All six previous Office Bearers visited Al Yatem. The previous Office Bearers performed due diligence on Al Yatem's trustees. They received Al Yatem's annual reports for 2015, 2016 and 2017. The 2015 report expressly stated that Al Yatem had taken preventative controls to prevent money laundering and the financing of terrorism. In 2017, the previous Office Bearers visited Al Yatem and produced a 'visit report' with recommendations to Al Yatem on how to improve.

d) ISF is an established NGO in Lebanon, set up in the early 1960s, which is now a special consultant to the UN Economic and Social Council. It was recommended to the previous Office Bearers by the Lebanese Red Cross, the highest possible recommendation for a charity. ISF works with a number of UK charities, and the Norwegian Aid Committee. The previous Office Bearers visited ISF five times between 2016 and 2019. During those visits,

the previous Office Bearers reported that ISF has "fantastic structures" in place. In 2016, ISF signed the Charity's Due Diligence form. In 2015, 2016 and 2017, the previous Office Bearers received bespoke reports from ISF explaining how the Charity's money had been spent. In February 2017, ISF provided a "narrative report" on its activities in 2015 and 2016. MKS concluded that ISF had provided the Charity with "*a significant amount of financial information relating to their donations, and the way in which it has been spent*".

v) There is evidence that the previous Secretary General, Mr Hassam, repeatedly discussed with the Donor where the Donor's money could go, including suggesting Khoja projects, showing there was a dialogue between the Donor and the Charity.

423. On the Defendants' point (v), the confidential bundle included handwritten notes (redacted to preserve the anonymity of the Donor) made by Mr Hassam of direct meetings between himself and the Donor, in person or by phone, between July 2017 and June 2020 when Mr Hassam resigned as Secretary General. These were kept non-electronically at the Donor's request. The notes indicate that the two men also exchanged some information by WhatsApp, but I have not seen these messages.

424. Those notes show there were detailed, direct discussions between Mr Hassam and the Donor on at least 24 occasions over that period, including Mr Hassam proposing possible projects for the Donor's funds and the Donor stating what donations would be made and what he wanted them used for. Other things which I have concluded are apparent from those notes are:

i) The meetings began in July 2017 because Mr Hassam, as an Office Bearer, wanted a direct relationship with the Donor, so it was not just through Mr Daya, although Mr Daya continued to play a role until at least the first half of 2019.

ii) Mr Hassam pressed projects in India, Pakistan and Africa, and ones which were Khoja related, but the Donor was more interested in ones in the Middle East, especially Iraq.

iii) The Donor was very interested in the monitoring of the projects for which his donations were used, and whether funds were being properly used.

iv) The whole relationship had a businesslike and professional tone.

v) Covid disrupted the relationship from March 2020. There are indications that Mr Hassam and the Donor agreed that it would be easier for the Donor to make some donations direct and/or not through the Charity. However there is reference to the Donor continuing to make a contribution of $30k per month for at least that year, which it appears was towards the Charity's general administrative costs.

425. Also within the bundle was an exchange of emails between Mr Jaffer and Mr Daya in March 2021. Before the current Office Bearers took over, Mr Daya's access to the bank account holding funds from the Donor, and his contact with him, was cut off. It is obvious that Mr Daya was angry and upset about this. His email of 28 March 2021 to Mr Jaffer makes various angry allegations that funds have been misappropriated by Mr Jaffer. Mr

Jaffer's reply of 30 March 2021 politely refutes the allegations. Neither party called Mr Daya to give evidence.

426. I should emphasise therefore that I have seen no evidence whatever to support any such allegations of misappropriation, by Mr Jaffer or by any other current or previous Office Bearer. The Claimant's submissions refer to these allegations in a couple of places, and rather coyly say that this correspondence suggests the funds had been "*misappropriated*" by Mr Jaffer. I therefore make it clear that I place no weight on the allegations, which I consider, on the evidence I have seen, to have had no substance, and will not refer to them further in this judgment.

427. Mr Jaffer said in evidence that his relations with Mr Daya had improved since these emails, that this rift between them was why papers were not sought from Mr Daya at the time of the MKS Report, but that they might possibly now be obtained.

428. I do note in terms of the operation of the Donor's donations, that Mr Daya says in his email that for more than 11 years he had been channelling funds from a very generous donor to the Charity, for its use and for distribution to some other charities. He said this had been under his supervision and control and the Donor had never been in touch with the Charity directly, and that it was through Mr Daya and many times at his discretion that the funds were disbursed by the Charity. Mr Daya says his access was cut off 18 months earlier (i.e. the second half of 2019) and that he had been told by the then Treasurer Mr Bhaloo that funds from the Donor in this account were part of the handover of Charity funds to Mr Jaffer's new team.

429. I treat this description with some caution because Mr Daya was clearly wishing to emphasise the significance of his role, and the trust that had been placed in him by the Donor, and he has not given evidence, but I consider that it does give some insight into how the relationship between the Donor and the Charity had been handled in its earlier years, before 2017.

430. My determinations on these two related sub-issues are therefore:

    i) The Donor's donations were very predominantly either directed to the four specified charities in Iraq or Lebanon, or made as general donations for the Charity to use for administrative expenses or at its discretion.

    ii) I accept the Defendants' evidence, strongly supported by the material seen by the authors of the MKS Report, that the four recipient organisations were highly reputable charities, NGOs and/or non-profit organisations, and that their use of the Donor's donations was monitored by the Charity's Office Bearers to a significant extent over the 2015 to 2019 period which MKS considered, including through many on-the-ground visits by the former Office Bearers. Further, this monitoring was supported and requested by the Donor. I also accept Mr Jaffer's evidence, which was not challenged, that these four charities are Shia Ithna-Asheri.

    iii) Although the Claimant complains that there is no evidence of any attempt to ensure that the payments benefited Shia Ithna-Asheris, I consider that where a recipient organisation plainly appears to be Shia Ithna-Asheri, and the Office Bearers have no reason to think that it is not, then bearing in mind that about two-thirds of the world's Shias are Ithna-Asheri, it is reasonable for the Office Bearers to proceed

on the basis that the beneficiaries are also. I do not consider that the Charity's objects clause requires the Office Bearers to carry out intrusive enquiries into the exact faith of either those running or those benefiting from recipient organisations. A broad brush and sensitive approach by the Office Bearers is permissible in this respect.

iv) I have set out at [204] to [208] why the objects of the Charity extend to education and the relief of poverty throughout the Shia Ithna-Asheri community, as well as the promotion of that faith. I consider therefore that the Donor's donations were used for purposes which were within the objects clause of the Charity, at any rate for the period 2015 to 2019 for which there is evidence, and there is no reason to believe this has changed since.

v) Since most of the funds were restricted funds, they could not properly have been used by the Charity other than for their directed purpose, without a breach of trust.

vi) While the Charity had occasionally provided funds to relief operations in Iraq and Lebanon, these were not destinations where they did so on a regular basis, or where they had on-the-ground members, so inevitably they could only work through partner organisations such as the four used. However this did not stop them from carrying out due monitoring of the use of the funds.

vii) I do not consider that the Charity simply allowed itself to be used as a conduit for these donations, certainly for the period from mid-2017 onwards when Mr Hassam took direct control of the relationship with the Donor. There is ample evidence from the MKS Report of the Charity's Office Bearers independently checking and monitoring the recipient organisations, which is not consistent with it simply being a conduit.

viii) Whether it was nevertheless appropriate to accept these donations, which in 2014 to 2018 amounted to about half of all the donations received by the Charity (and about a quarter in 2019), even though they were required to be used in Iraq and Lebanon rather than in countries where there were Khojas, or where the Khoja community had particular interests, was very much a matter within the discretion of the then Office Bearers, as the trustees of the Charity. On the one hand, these were not the Charity's usual beneficiaries. There were also difficulties created in reporting the Donor's donations to ExCo or the members of the Charity which resulted from his justifiable need for anonymity. On the other hand, this was an opportunity to do good, on a very substantial scale, which was within the Charity's objects, and which appears to have made good use of the Charity's distribution and organisational abilities.

ix) I consider that the decisions made by the current and previous Office Bearers to accept these donations, on the terms on which they were made, were ones which were within the scope of their reasonable discretion as trustees of the Charity. I do not therefore consider that it would be appropriate for me to second-guess them.

x) With the benefit of hindsight, it would have been preferable for the previous Office Bearers in particular to have found a way of reporting to ExCo the nature and scale of the Donor's donations, which was consistent with his need for anonymity. It was not in my view possible for ExCo effectively to hold the previous or current Office

Bearers to account, as they have an obligation to do, if they were given as little information about the Donor's donations as they were. I have concluded that the intentional obscuring of his involvement, albeit for the valid reason of protecting his identity, has significantly contributed to an atmosphere of suspicion and distrust within the Charity.

xi) However, I am entirely convinced that the donations themselves and their use to benefit the four recipient organisations, were proper and within the objects of the Charity. I hope that this provides some reassurance to the members of the Charity going forwards.

Inferences to be drawn from answers or failures to answer questions at May 2021 Conference or subsequently

Presentations on finances at Conference from Mr Khakoo and Assistant Treasurer

Commendations from contributors to the financial Q&A at the Conference

Were the 6(e) questions answered adequately by Defendants or Charity's employees?

431. Sub-issues 6(e), 9, 10 and 11 all relate to questions or presentations on financial matters at the May 2021 Conference and they overlap. I will therefore deal with them together.

432. Sub-issue 6(e) is:

> "What (if any) inferences are to be drawn from the answers or failures to answer the following questions:
>
> i) As regards the "*admin fee and gifts*" referred to in the Points of Claim:
>
> a) What proportion thereof was allocated to administration fees, and what proportion was allocated to gifts?
>
> b) What constituted the component parts of such fees, given that the Charity does not charge administration costs?
>
> ii) What portion of the payments were spent in accordance with the specific directions of the Donor?
>
> iii) What were the values of the largest single payments made in each year in the 3-year period immediately prior to May 2021 (the date of the Conference)?
>
> iv) What kind of compliance programme did the Charity have in place to identify and stop money laundering?"

433. Sub-issue 9 is:

> "During the May 2021 Conference, did the Third Defendant and Fourth Defendant give detailed presentations on the financial affairs of the Charity?"

434. Sub-issue 10 is:

> "The Claimant admits that the presentation on the Charity's finances was followed by a question and answer session. Did all those who contributed to the question and answer session commend those responsible for the financial affairs of the Charity for their work?"

435. Sub-issue 11 is:

> "The Defendants admit that the questions pleaded in paragraph 22 of the Point of Claim were asked during the May 2021 Conference. Were those questions answered by the Defendants and/or the Charity's relevant employees adequately and/or as fully as the nature of the session permitted?"

436. The Claimant's position is:

i) He does not know what proportion of sums within "admin fees and gifts" were allocated to administrative fees and what to gifts, beyond the very limited answers given by Mr Jaffer in his Sixth Statement (28 March 2022) where he says that contrary to Dr Jaffer's allegations, they have not been used to "*raise funds for their election war chest*" by him or his predecessors, and that "admin fees" are only charged on very limited projects, typically managed through other charities, are small, are not deducted from all donations, and only cover a small part of the Secretariat's costs. In 2023 the amount recouped this way was said to be £23,330 or 0.18% of all donation income of nearly £13m. The Claimant suspects all of these items were from the Donor's donations, and that the label was used to hide the fact admin fees were still being collected although the Charity had agreed to stop doing this in 2018. If it is mainly gifts, it should not be treated separately from donations.

ii) Neither Mr Khakoo nor the Charity members generally understand how admin fees and gifts are allocated, as shown by Mr Khakoo's unfamiliarity with how much had been collected.

iii) If all of the Donor's donations were applied in accordance with the agreements with him, on terms that the Office Bearers satisfied themselves were in line with the Charity's objects, then this ignores the role entrusted to ExCo under the Constitution. Also, the Defendants have refused to check the minutes of meetings of the former Office Bearers, and Mr Khakoo candidly accepted that he suspected there were no such minutes, despite Mr Jaffer having previously said (in response to an application for of them) that it would be too burdensome to investigate this with the previous Office Bearers.

iv) As to sub-issue 6(e)(iii), according to a table in the MKS Report, the largest single payments from 2015 to 2019 were:

14/10/2015	GBP 870,000
19/04/2016	GBP 885,000
03/05/2017	GBP 1,140,000
16/08/2018	GBP 450,000
22/11/2019	USD 1,300,000

I note there is no dispute that this is the answer to this sub-issue.

v) As to the compliance programme to identify and stop money laundering:

a) The Charity's KYD policy was not shared with MKS. There is no credible explanation for this because at the same time as papers were supplied to MKS, Mr Khakoo commissioned TIAA (an international business assurance provider specialising in internal auditing) to review the policy, and he exhibited their report and the KYD policy to his witness statement.

b) It was not clear that MKS were provided with relevant grant-making policies. MKS found no evidence of a formal risk assessment in connection with payments to high risk areas, as the Defendants accept. Mr Khakoo's evidence indicated that key indicators of money laundering were not identified by the Charity in relation to the Donor. MKS's original recommendation for further work was removed at the Defendants' request. Aid payments by IAHPF included large amounts used for cash payments to people affected.

vi) It is agreed that detailed presentations were given by Mr Khakoo and Ms Alibhai at the Conference, but it is said these did not address the above questions.

vii) It is denied that all those who contributed to the Q&A commended those responsible for the financial affairs of the Charity.

viii) No adequate answers have been given to these questions, whether at the May 2021 Conference, or in correspondence from the Defendants' solicitors in June 2021, or at ExCo in November 2019, or in the course of these proceedings.

437. The Defendants' position is:

i) During the May 2021 Conference, Mr Khakoo, the Assistant Treasurer and Ms Alibhai, the Charity's Compliance Officer, gave presentations on the financial affairs of the Charity. I note it is agreed that this happened.

ii) All the questions referred to in issue 6(e), and repeated in paragraph 22 of the Points of Claim, were asked by one delegate, Mr Rasool Bhamani. He prefaced his questions by saying "*Zaffar bhai, Sajjad bhai and Sister Malika, you know, kudos to doing a great job in very difficult circumstances, so thank you for that. I've got a number of questions...*" Mr Khakoo and Mr Jaffer gave detailed answers to his questions, following which Mr Bhamani was satisfied and withdrew his objections to approving the Charity's accounts for 2017, 2018 and 2019.

iii) At the Q&A session, six delegates (including Mr Bhamani) asked a total of 11 questions. All of them commended the treasury team for their work before they asked their questions. Transcript records support this, and I therefore accept the Defendants' evidence on this point.

iv) Nobody asked who the Donor was. The court should not find that the Defendants concealed information which they were not asked to provide.

v) No impropriety should be inferred from the answers to the questions asked since:

a) They were asked with no prior warning, related at least in part to events before they took office, and had to be answered 'on the spot'. The answers given were as full as the circumstances reasonably permitted.

b) Mr Bhamani, who asked the questions, was satisfied with the answers. No other delegate has sought to pursue these questions any further.

c) The Claimant's skeleton confirms that he has no evidence to challenge the Defendants' evidence in relation to "admin fees and gifts". He is simply speculating. In contrast, Mr Khakoo gave a clear account of this issue and the improvements and changes which he implemented.

438. The reference to "admin fees and gifts" is to a line in the Treasury Report to the Conference, which states that of the total cost of £3,134,874 for the Secretariat for the 3 years 2017 to 2019, £1,433,103 came from "Admin Fee & Gift". Similarly for 2020, £416,873 out of a total cost of £933,174 came from "Admin Fee & Gift".

439. It appears from the handwritten notes by Mr Hassam of his conversations from the Donor that the Donor was paying a regular monthly sum of $30,000, or $360,000 per year to the Charity in addition to any restricted funds for specific projects. It appears likely that this monthly payment was intended as a general donation which could be used for the Charity's running costs. If so, then it is likely that these sums from the Donor are included within the "Admin Fee & Gifts" figure. This would mean that around 60 to 70% of the Charity's running costs in the years 2017 to 2020 were being covered by the Donor's monthly payments.

440. In considering these related sub-issues on the questions asked at Conference, I have found it helpful to go back to the questions which Mr Bhamani actually asked, and the answers he was given by Mr Khakoo and Mr Jaffer. I bear in mind also that because this Conference had been delayed from March 2020 to May 2021, they were having to answer questions about finances under the *previous* Office Bearers' administration, whereas normally Conference would be hearing from the Office Bearers who had been responsible for the period being reported on, at the end of their term of office.

441. The transcript of Conference shows that Mr Bhamani asked as follows, so far as relevant:

> "The first question is the question about the category of admin fees and gifts. Could you kindly give me a sort of a breakdown of what portion of those funds are allocated to admin fees and what portion is allocated to gifts and what do we mean by gifts? The reason why I ask that is because on your website and I think what Sajad bhai, speaker just speaking before me, alluded to is there is a zero policy, zero admin policy. That's also stated on the website, so that's the first question. The other question is I think Salim, sort of, alluded to, how much of the funds that we've received are spent based on the direction of donors? Whilst I know World Federation has a number of projects and people donate to that, I understand that they are donor led donations. I just need to gauge how many of those donations are. Again, something that Salim bhai also mentioned, does it really make sense for us to move money from source to destination, especially when we have no control of the resources on the ground? So, you know, I think it's something that I think Zaffar

> bhai you also alluded to in your presentation that we're looking at moving away from these large donations. Following on from that question, do we have a figure of the largest donation in the past three years to compare to the present three years, yes? If there's some sort of it gives us a sense of the volume of these donations.
>
> Finally I think, again, it's what Zaffar bhai you mentioned in your presentation that some of these large donations have stopped because they were geared to work which will be carried out in the Middle East, and we know particularly in the West where we're living, you know, there's a big compliance issue and there's an issue about money laundering and financing, and where this money is going to on the ground and blah, blah, blah. So, what compliance programme do we have in place to identify and stop any potential money laundering issues, and especially when it comes to these large amount of donations? So, these are some of the questions I have and I would be grateful if you could address it. Thank you."

442. In response, Mr Khakoo said:

> "Rasool bhai, in terms of your questions around admin and gift, admin is a very small proportion, the vast majority of that amount is gifts that we receive from donors. I find I do not have some of the data that you request around the funds received from donations as a percentage, the large donors, you know, that's not something that we monitor as such except to say going back to my earlier comment that we are increasing the diversity of our donor base and we will continue to do that going forward. Now, there was a question around, you know, receiving money and, you know, the risk of money laundering. Let me assure you and we have Malika bai, our compliance officer here, what we have done very well over the last few months is we have come in, we really tightened compliance as a whole, which was a continued journey from where the previous office bearers had left off.
>
> We know exactly who our donors are, so that number one of AML is know your donors. Now we've got documentary support for all our donors and we understand exactly where their funds are coming from. Number two, any project, and I repeat, any project whether it's donor led or not, goes through our decision making process. If we as trustees are not comfortable with those projects and we are not comfortable with the needs assessment, or we are not comfortable that the reporting is good, we will not make payments to those projects. We then will follow-up and Malika bai spends most of her time doing this, making sure that we follow-up on all the reporting, making sure that we understand exactly where our funds are used."

443. And Mr Jaffer followed up with:

> "… we have large donors, very generous donors who basically tell us, "You spend what you feel as trustees is appropriate for different projects,"… and capital projects of course where, you know, I don't like the word 'post box' with due respect. The reality is that if I am a donor and I want to give a contribution to Hyderi's project I want to send it to World Federation, I don't consider that as post box, I consider that as an appropriate mechanism to provide your input to that project which we support. It is part of what we do and with all the other projects for that matter, be it in the East or the West…"

444. In my view it is significant that the person who actually asked these questions, Mr Bhamani, was sufficiently satisfied with the answers that he withdrew any objection to approving the accounts for the relevant years 2017 to 2019. They were good questions, but they were not easy ones for Mr Khakoo to answer, especially without notice and on an accounting period for which he was not responsible. I consider that he and Mr Jaffer made a reasonable stab at answering them, in the circumstances, and that most of the listeners, like Mr Bhamani, would have been reassured and found the answers helpful.

445. After that however, Mr Bhamani's questions got sucked into what in my view can only be described as Dr Jaffer's campaign against the Defendants. They were repeated in the Points of Claim in early July 2021, and characterised as questions which the Defendants had failed to answer in such a way that an inference should be drawn that the Donor's funds were not being applied in accordance with the Charity's Constitution.

446. My conclusion is that it was not right to ask that such an inference be drawn from this exchange of questions and answers, and I decline to draw any such inference.

447. I conclude that the correct inference is that Mr Khakoo and Mr Jaffer did their best to answer these questions in the circumstances. They were not able to answer them fully, but Conference and the questioner were sufficiently satisfied with their answers to approve the accounts for the relevant years.

448. In the two years since, more information on each of these questions has become available and has been made available to the Claimant, including from the MKS Report and through this litigation. I determine that the only proper inference is that the Defendants have done their best to answer these questions, but some of them are complex questions which are not capable of simple answers.

449. As to the other sub-issues, my determination is:

    i) The answer to sub-issue 9, is yes, detailed presentations were given by Mr Khakoo, the Assistant Treasurer and Ms Alibhai at the Conference, and while they did their best to answer these questions, they were not able to do so fully.

    ii) The answer to sub-issue 10 is, yes, all the delegates who asked questions also commended the finance team.

    iii) The answer to sub-issue 11 is, yes, those questions were answered by Mr Khakoo, Mr Jaffer and/or Ms Alibhai adequately and as fully as they were able to do in the circumstances, with the information available to them. They were not able to answer them completely, but this was reasonable in the circumstances.

<u>Have the Defendants complied with their responsibilities regarding these payments?</u>

450. Sub-issue 7 is:

> "Have Ds1-6 complied with any responsibilities to which they are subject in respect of the foregoing matters in so far as relevant to the payments mentioned in Issue 4?"

451. The Claimant says that the answer is no. He says:

i) The production of the MKS Report was an attempt to airbrush past failings rather than embrace his attempts to investigate them, as shown by the comment on the draft MKS Report asking for its remarks on risk assessment to be "toned down".

ii) While the MKS Report is long and detailed, notwithstanding that it sets out respects in which the Charity's policies and practices have been lacking, there is no evidence that the Defendants have taken any steps to improve matters in response to the report. They have not carried out the more detailed and specific exercise which was recommended in the draft report because they say it would be impractical at this stage.

iii) The Defendants have not shared the MKS Report with ExCo or Conference, even though they would be interested in it and would be able to effect positive change. This is because the MKS Report was obtained for the litigation, not for any other reason.

452. The Defendants say this is covered by their answer to the second of the legal sub-issues.

453. My conclusions are:

i) This issue concerns the current Office Bearers' responsibilities to investigate payments made during the period of office of their predecessors.

ii) As such, I accept the Defendants' submission that they had no obligation actively to investigate whether there was any breach of duty by their predecessors. Their obligations extended to taking steps to ensure that the Charity was properly managed now, including correcting anything which was previously insufficient, in accordance with Charity Commission guidance. The MKS Report was a historical investigation. Where the Defendants were satisfied that insufficiencies which had existed in the past had since been remedied, they did not need to do more.

iii) Unless the MKS Report had uncovered evidence of actual or potential breaches of trust by the previous Office Bearers, which has not been alleged, I do not consider that the Defendants were under any obligation to undertake further and more extensive investigations. This includes obtaining papers from Mr Daya and minutes of previous meetings (which would have been even further in the past than Mr Hassam's involvement with the Donor). While it might be sensible for the current Office Bearers to seek to do so, I do not consider they are obliged to do so.

iv) Mr Khakoo has reported to ExCo the fact that the MKS Report was obtained (without naming the authors), and he summarised its contents (I quote this report in full below at [467]). Given that it relates to a historical period, and the then Office Bearers are no longer in office, I do not consider that the current Office Bearers have to disclose the MKS Report to ExCo, since it will have limited relevance to holding the current trustees to account.

<u>Was Dr Jaffer able to discharge his responsibilities as found under sub-issue 3?</u>

454. This is sub-issue 8.

455. The Claimant's position is that neither he nor ExCo as a whole has been able to discharge their responsibilities, because there has been no report to and no decision by ExCo as to whether to receive, or how to apply, the funds donated by the Donor. It is said this is implicitly admitted because the Defendants' evidence is that all funds were applied in accordance with agreements with the Donor and on terms that the Office Bearers first satisfied themselves that such grants were "*in line with the Charity's objects*" and were applied "*at the direction of the [Office Bearers]"*.

456. The Defendants say this is covered by their answer to the third of the legal sub-issues.

457. My conclusions are:

    i) I agree with the Defendants' submission that Dr Jaffer in his individual capacity has no relevant responsibilities, for the reasons set out at paragraphs [384] to [396] above.

    ii) The issue as formulated relates to Dr Jaffer and not ExCo as a whole. The question of whether ExCo has been able to discharge its responsibilities would in any event be too broad and non-specific.

Concerns about the Charity's auditors

458. Sub-issue 9 is:

> "As to the Charity's auditors:
>
> (a) In respect of the foregoing matters, in so far as relevant to the payments mentioned in Issue 4, have the Charity's auditors ever highlighted any concerns?
>
> (b) Was D3 entitled to take comfort from the fact (if it be such) that the Charity's auditors had not highlighted any concerns?
>
> (c) It is admitted that the Charity's auditors had been in post for 15 years as at the date of the May 2021 Conference but when was the relevant audit partner last rotated?
>
> (d) Is the relevant audit partner a member of the Community?
>
> (e) Has D3 produced a paper on the topic of audit partner rotation and what (if anything) should be inferred from that?
>
> (f) What (if any) inference is to be drawn from the fact that the motion to re-appoint Haysmacintyre LLP passed unopposed at the May 2021 Conference?"

459. The following points are not in dispute:

    i) The audit opinions are unqualified and there is no evidence that the auditors have ever highlighted any concerns, as Mr Khakoo confirmed in evidence.

ii) It is agreed that Haysmacintyre LLP have acted as the Charity's auditors for over 10 years. It is also not contested that they are highly experienced charity auditors.

iii) The previous, longstanding audit partner retired in 2021, and Mr Vikram Sandhu has signed off the accounts since then.

iv) The previous senior auditor partner was a member of the Khoja community but the current one is not.

v) At the May 2021 Conference, no alternative auditor was proposed when suggestions were invited. The motion to reappoint Haysmacintyre LLP therefore passed unopposed.

vi) Mr Khakoo did not produce a paper on audit rotation before he stepped down in June 2023.

460. The Claimant says that "*…the management letters which the auditors sent to Ds have not been disclosed and no witness is to be called from the auditors*." The Defendants say this complaint was made for the first time in the Claimant's trial skeleton. I agree that is far too late to raise such a point, and nothing can be inferred from this.

461. On the remaining points, the Claimant's position is:

i) Mr Khakoo was not entitled to take comfort from the fact the Charity's auditors had not highlighted any concerns because the MKS Report raises issues which have not been investigated or addressed, and he accepted in cross examination that a £300,000 payment had not been properly included in a list of grant payments.

ii) No inference should be drawn from the fact Conference reappointed Haysmacintyre LLP, since if they had not, there would have been no auditor in post.

462. The Defendants' position is:

i) There is nothing of concern in any of these points.

ii) The right time for Mr Khakoo's paper to be presented would have been at the 2024 Conference, but he has stood down. Nothing leads from this.

iii) The question about the £300,000 payment was an ambush. In fact documentary evidence shows the £300,000 was a transfer from the Charity's savings account. It was a payment to IAHPF and was included in the accounts in the total of grants for 2015, although it was omitted from the list of substantial grants, which is an oversight.

iv) The ethnicity of the audit partner is irrelevant to whether they do a good job.

463. I accept the Defendants' explanation in (iii) above. This does not mean that the 2015 accounts were substantively inaccurate, since the grant total was correct.

464. My conclusion on the other matters remaining in dispute is:

i) The auditors have never raised any concerns. It would be reasonable for the Office Bearers, then and now, and ExCo and Conference to be reassured by this. In the circumstances, it was also reasonable for Mr Khakoo to take comfort from this, insofar as this related to matters before he took office.

ii) It is significant that a new audit partner was appointed in 2021. It is no longer important how long the previous partner had been in post, although it would be good practice for there to be regular rotation. Whether the new audit partner is a member of the Khoja community is irrelevant since he is an external professional appointed to provide services to the Charity.

iii) The fact Mr Khakoo had not produced a paper on auditor rotation before he stood down is not significant given (a) a new audit partner has been appointed since 2021; (b) Haysmacintyre LLP is a substantial, leading firm of auditors of charities which can rotate the partner in any event. This is a matter that the new Treasurer can pick up after the May 2024 Conference if there are still concerns, but I see this as a matter for decision by the Charity's own officers and bodies.

iv) Overall none of the points about the auditors raise any concerns.

Are the affairs of the Charity conducted with transparency?

465. This is sub-issue 13. It covers in an overarching sense many of the other issues.

466. The Claimant's position is that they are not. He says there is an absence of real transparency as opposed to the appearance of it. He relies on:

i) Mr Rashid's complaint to the PSS on 21 May 2020, alleging that the Charity is scared that a new person will expose issues such as sending money to a fictitious orphanage in Syria, £25m using the Charity as a "post office" to send money to Lebanon, Syria and Iraq; and alleged money laundering by receiving fake gift aid money and then returning it to those who donated it.

ii) Mr Chatoo's concerns expressed to the Charity Commission in August 2020, which included allegations of:

a) Consistent resistance to scrutiny of the way donations are collected, receipted and handled and lack of transparency and accountability in the distribution of donations to beneficiaries who in some cases are unknown.

b) Payments being made to other charities, allowing the Donor to 'route' donations through the Charity, creating concerns as to money laundering and the origin of donations.

c) Apparent use of the Charity's bank accounts as a post office or clearing bank.

d) Money laundering by receiving cash donations in the names of others and fake gift aid claims where money is returned to the 'donor' as clean money.

e) Provision of a list of charities who received over £45 million from 2013 to 2018 but a lack of detail in reports on the activities of the recipients.

f) Why such large sums are being used in the Middle East where there are no Khoja communities.

g) Funds being spent on projects that were excessive, not feasible or not in the best interests of the community and the Charity.

iii) The fact the MKS Report has not been discussed at ExCo or Conference.

iv) Receipt and onward movement of donations from the Donor or any Donor-related entity has never been discussed at ExCo.

v) Therefore the Claimant says the real issues are:

a) whether it is right that ExCo has no role at all in the oversight of millions of pounds passing through the Charity's bank accounts; and,

b) whether there are any good reasons for these payments.

Even if acceptance and payment of the Donor's funds was within the Charity's objects, this does not explain why the Office Bearers allowed the Charity's bank accounts to be used as a conduit. While the Office Bearers say this is solely a matter for them, they have also refused to provide copies of minutes of their meetings approving the application of these funds. Mr Khakoo's recently-adopted Payments Approval Process does not explain how these decisions are consistent with ExCo being able to exercise oversight of financial matters. Contemporaneous documents only increase concern, e.g. Mr Hassan al-Hakeem's multiple roles.

vi) It is therefore necessary to conduct a forensic audit, reviewed by ExCo and Conference, so that the wrongs said to have been done are not repeated.

467. The Defendants' position is that the Charity's affairs have been conducted with transparency, and the Claimant has not set out his position clearly. In closing they relied on the following:

i) The Charity publishes annual accounts on the Charity Commission website.

ii) At every ExCo meeting and Conference, the Office Bearers give detailed presentations on the Charity's finances.

iii) Mr Khakoo gave an update to ExCo on the MKS report at its meeting in September 2022, which is recorded in the minutes as follows:

> "Zaffar Khakoo also gave an update on compliance and highlighted the engagement of a highly respected independent review of some of the allegations made in respect of the donors and payments made in the past through lawyers to review a sample of the donors and payments made during 2015 to 2019. The firm issued a 144-page report of all the work they had performed and concluded that they did not see any evidence of non-compliance of Charity Law though they did identify need of improvements in documentations which have been implemented. He added that since taking the office, several process improvements have been made."

iv) At a two-day meeting on 19-20 February 2022, ExCo debated at length the issue of donor confidentiality and resolved:

> "[The Charity] takes anonymity of donors prudently. As such it is resolved that the donor lists of [the Charity] should not be shared outside the circle of the Trustees, authorised auditors of the institution and in instances where legally required by UK Law"

v) The emails from Mr Rashid and Mr Chatoo on which the Claimant relies were not written to the Defendants or the previous Office Bearers. Mr Rashid wrote to the PSS and Mr Chatoo wrote to the Charity Commission. Neither the PSS nor the Charity Commission recommended any investigations into the Charity's finances.

vi) The Claimant's reliance on clause 24.2 of the Constitution is misplaced (see above at [392] re interpretation of this clause). In practice, this power has never been used.

468. I have already made findings on most of these points. As to the additional ones:

i) I accept the Defendants' point that Mr Rashid's complaint was made to the PSS and Mr Chatoo's to the Charity Commission, so neither was made to the current or former Office Bearers. It is significant that the Charity Commission did not recommend any investigation and did not take any steps in response to these allegations, which predated these proceedings by 6 months. Further, while the PSS did recommend annulment of the election, it did not recommend any financial investigation. More importantly, the MKS Report found no evidence of any such misconduct, and I have seen none. Ultimately I have concluded these are unfounded allegations which do not merit any further investigation.

ii) There is no issue with the Charity's accounts, which have been published.

iii) It is significant that ExCo has, in 2022, resolved that the identities of donors should not be shared beyond the trustees, auditors and as required by law. It would be inconsistent with this resolution for reports to be made to ExCo identifying the Donor on the basis that this was supposedly needed for reasons of transparency and accountability.

iv) I have made determinations above at [384] to [396] as to the division of responsibilities between ExCo and the Office Bearers under the Constitution, and these do not support the Claimant's analysis.

v) My conclusion is that generally speaking, Mr Khakoo and the rest of the Treasury team have made reports which were transparent as to the Charity's finances, sources of donations and details of the projects for which donations were used. However, during the relevant period of 2014 to 2020, the nature and extent of the Donor's donations was intentionally kept obscure, at his request and because of the strong concern which he had to preserve confidentiality and anonymity, which I accept was for justifiable security reasons. This has continued with the current Office Bearers, because those reasons remain, but because the Donor's contributions are now far less, it is unlikely to generate the same degree of concern.

vi) I consider that the commission of the MKS Report has more than adequately addressed any concerns as to transparency so far as the Donor and the use of his donations are concerned, and that the limited report given by Mr Khakoo to ExCo was sufficient. I do not consider that transparency or accountability requires ExCo to see the full report.

vii) The MKS Report has identified errors, including the issue of receipts in the name of a different Donor-related company from the one which actually made the donations. It also made a number of recommendations for formalising the Charity's policies and processes, many of which Mr Khakoo says he has already done. Given the positive TIAA report, and my assessment that he was a reliable witness more generally, I accept his evidence that these improvements have been implemented. However a lack of formal policies in the past does not in any event equate to a lack of transparency. As to the submissions about Mr Hassan Al-Hakim, the fact he has in the past apparently taken on a number of different roles including being an intermediary for the Donor, obtaining reports from beneficiary organisations, and issuing (a small number of) receipts on behalf of the Charity was not satisfactory, but he has long since ceased to fulfil these conflicting roles. There is certainly no lack of transparency by the current Office Bearers in this respect.

Conclusions on whether to appoint a receiver to investigate financial matters further

469. On the basis of all of my findings on the financial sub-issues, and applying the principles on the appointment of a receiver set out at [201] to [203] above, I have concluded that it would plainly not be in the best interests of the Charity to appoint a receiver to carry out a further investigation into the Donor's donations, or any similar financial investigation, and I decline to do so. This is for the following reasons:

i) On the basis of the MKS Report, the Charity's approach during all or part of the 2015 to 2019 period to due diligence on the four recipient organisations in Iraq or Lebanon, and on the Donor, was too informal, although in fact there were no concerns of substance, and Charity Commission guidance was met. Improvements in due diligence on the Donor (including obtaining copies of his and his wife's passports) were implemented by the previous Secretary General by at least 2019, and Mr Khakoo has substantially improved formal compliance and monitoring, including engaging Ms Alibhai to undertake compliance.

ii) I do not consider therefore that there is evidence that something has gone seriously wrong in the operation or management of the Charity even during the 2015 to 2019 period, and I have concluded that the operation and management of the financial affairs of the Charity have improved since that time, under Mr Khakoo's leadership.

iii) While Mr Khakoo has now stood down, there is an Assistant Treasurer in post who has relevant qualifications, and who no one has suggested is not competent. A new Treasurer and Assistant Treasurer will be elected at the May 2024 Conference. On the information available and the evidence to date, I do not consider that there is any serious risk to the operation or management of the financial affairs of the Charity in the immediate future either.

iv) As I have already explained, I do not consider that the correct approach is simply to ask whether it would be in the best interests of the Charity to appoint a receiver to conduct a further investigation into the financial affairs of the Charity related to the Donor over the period 2014 - 2019. In any event though, whether this is a sufficient or only a necessary condition, my conclusion is that to appoint a receiver to undertake such an investigation would not be in the best interests of the Charity because the problems identified by MKS do not justify this, this was a historical period and compliance processes have now been improved, and the relevant Office Bearers are no longer in post.

v) In addition, I accept the unchallenged evidence of Mr Jaffer and the Presidents of the various Regional Federations, that to appoint a receiver to investigate any aspect of the affairs of the Charity, and I have no doubt this applies with particular force to financial affairs, would seriously damage the standing of and confidence in the Charity, both internally on the part of its members and externally by its donors, beneficiaries and partner organisations, potentially fatally. I would need to be very confident that appointing a receiver would provide essential benefits to the Charity which outweighed these risks if I were to appoint one. I do not consider that the evidence in this case remotely approaches the strong case which would be necessary.

vi) I accept the Defendants' submission that the Charity has able trustees (now down to four) who should be allowed to carry out their offices without the imposition of a receiver. Any external advice which they choose to take is a matter for their discretion as fiduciaries.

vii) Accordingly I refuse the application to appoint a receiver for this or any purpose.

470. The claim is therefore dismissed.