Neutral Citation Number: [2011] EWHC 971 (Ch)

Case No: 4290 of 2010

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 April 2011

Before :

HHJ DAVID COOKE

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Between :

Ghalib Hussain (1) Abdul Sattar (2)	**Claimants**
- and -	
Wycombe Islamic Mission and Mosque Trust Limited (1) Tasawar Iqbal (2)	**Defendants**

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- -

Tina Kyriakides (instructed by **Reynolds Parry Jones**) for the **Claimants**
Arshad Ghaffar (instructed by **Gordons Solicitors LLP**) for the **Defendants**

Hearing dates: 13, 14, 17-19 January 2011

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Approved Judgment

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

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HHJ DAVID COOKE

HHJ David Cooke:

1. Wycombe Islamic Mission and Mosque Trust Limited (which I will refer to as 'the company') is a company limited by guarantee, incorporated in 1983 with a view to construction of a mosque for the Muslim population of High Wycombe. Although the company is a nominal defendant in this claim it has taken no separate part, and where I refer to 'the defendant' it is to Mr Iqbal, the second defendant. The company now owns three mosques in that town, which, according to the evidence, are mainly but not exclusively used by Muslims of the Sunni school of thought. At the heart of this case is a long running factional dispute about the best way to run those mosques. It is said that there are 15,000 or more Muslims in the High Wycombe area, of whom 2,000 or thereabouts are regular worshippers at the 3 mosques. There are other mosques in the area controlled by different organisations.

2. The two factions involved in this dispute are known as the Seva group (led by Mr Abdul Rashid) and the Thara group (led by Mr Mohammed Riaz) respectively. They are named after two towns in Pakistani Kashmir from which, it seems, many of the early Muslim immigrants to the Wycombe area originated. Membership of the two groups is not confined to those whose family background is in one or other town; according to the evidence there has in more recent times been immigration from other areas, and also movement within the UK which has brought to High Wycombe Muslims from other backgrounds. Each group includes people whose backgrounds are from the other town, and others who are from neither. The evidence before me is that the two groups between them comprise the majority of worshippers at the mosques and that Thara is the larger. Each accepts that there are users of the mosques who are members of neither group. No percentages are available.

3. Each group espouses the aim of having the affairs of the mosques run harmoniously for the benefit of the whole Muslim community of the area. Sadly however, this shared aim has not led them to be able to agree with each other how it should be achieved. The difference between them is presented in this case as being between those who believe that the affairs of the mosque should be managed by elected representatives (the position of the claimants and the Seva group) and those who believe the representatives should be selected, by a means other than elections, (the position of the defendant and the Thara group). It is no doubt not as simple as that, but the selection/election dichotomy is a convenient way of summarising the essence of the respective positions, and one which they both adopted.

4. It is clear that the affairs of the company and the mosques have not been run with any great degree of adherence to the procedures for management of a company incorporated under the Companies Acts, to the point where there is great uncertainty over who is a member of the company, what if any documents comprise its constitution and who, if anyone, is in a position to act as a director (however named). The claim seeks declarations on these matters, and if it is found that there is no effective board of directors, declarations as to whether the members (if they can be identified) may requisition a meeting or, if not, an order to convene a general meeting under s 306 Companies Act 2006 for the purpose of appointing directors. The defendant's position is that there is an existing valid board of 12 members (referred to as the Management Committee) and that all parties, and all members of the company, are bound in the circumstances which I will set out below to implement an arrangement for the transfer of the mosques and their administration to a charitable trust, the trustees of which will be appointed by a process of selection, not election.

The management committee, he says, should be left to get on with that implementation. He seeks no relief beyond a dismissal of the claimant's claims.

5. An outline of the relevant chronology for the purpose of setting the scene and identifying the issues is as follows.

   i) The company was incorporated in 1983, as a company limited by guarantee, with five subscribers, of whom three gave evidence: Mr Rashid (leader of the Seva group), Mr Sattar (the second claimant) and Mr Asghar. The other two, Mr Ismail and Mr Chouglay are now too old and infirm to do so. It was registered with conventional memorandum and articles of association, providing inter alia:

      a) For a single object: "The advancement of the religion of Islam and the education of the public in Islam throughout the United Kingdom in particular in the area of Wycombe"

      b) That the subscribers "shall be members" (Art 5).

      c) That membership was open to any person "on payment of the subscription current at the date of his or her application and on such person undertaking to abide by the rules of the Society, subject always to the approval and acceptance of the Council of Management who may reject any application for membership without assigning any reason therefor" (Art 7).

      d) That the annual subscription should initially be £1, but that a General Meeting might decide on a different amount (Art 6).

      e) For an Annual General Meeting at which each member would have one vote. There were conventional provisions for 14 or 21 days notice in writing of any general meeting.

      f) For management by a Council of Management (equivalent to directors), initially consisting of the five subscribers (Art 32) but otherwise to be appointed by resolution of the members.

      g) There were conventional provisions for retirement by rotation, and for advance notice of any proposed resolution to appoint a person to the Council other than someone recommended by the Council itself.

   ii) No AGM or other general meeting called by proper written notice was ever held. In 1985, an election was held at which candidates were put forward for what was called the "Mosque Committee". The evidence is that on this and later similar elections, no written notice was sent to any person in the capacity of member of the company, but announcements were made at the mosques that elections would be conducted on a specified day. Anyone who attended at the mosque was allowed to vote. A similar election was held in 1987, and others later, though not every two years. The last was in 1997. The question arises (though it is not necessary for me to resolve it in order to determine the issues before me) whether the persons elected by this process were ever lawfully appointed as members of the Council, so that where I refer to the Council or persons acting as members of it, that must be taken to be subject to that caveat.

iii) No register of members can now be found. The claimants' case is that there was a register, but no application was ever made by anyone else to be a member, the Council never approved anyone as a member and no one other than the five subscribers was ever entered in the register; accordingly only they were ever members of the company. The defendant's case is that there never was a register, but that by virtue of the way the company's affairs were conducted, anyone who attended the mosque became a member of the company (at least if he paid £1 in the collections held at prayer meetings).

iv) By 1999 there was discussion on the Mosque Committee of a new constitution being required, particularly to ensure that only those of the Sunni school of thought should be allowed to participate in Mosque affairs. A minute dated 24 October 1999 (p227) records that a draft had been discussed, and

> "…we need to have a proper constitution…in order to obtain control so not to allow other people representing other schools of thought to participate… we need proper membership (registered) in order for Sunni people to represent our mosque."

Neither the memorandum nor the articles of association restricted the company's membership, control or activities by reference to the Sunni or any other school of thought.

v) In 2000, a minute (presumably of the Mosque Committee) records that "a new selection committee (sic) was formed for Wycombe Islamic Mission & Mosque Trust Ltd. The following were members of the Mosque Committee to run affairs of the Mosque [*list of names*]". There was no election and it appears the names were simply agreed between the then members of the Mosque committee and representatives of the Seva and Thara groups.

vi) On 6 May 2001 the Mosque Committee discussed the question of a new constitution and the fact that no election had been held for some time, and resolved to appoint a five man subcommittee to draft a new constitution, consisting of two from each group and one independent person. It was further agreed that the document they produced would be approved without amendment by the main committee and then

> "The constitution would be read out in all three mosques on Friday and we would seek majority approval. Both groups would co-operate in obtaining approval from the public…when [the] constitution is approved then [a] date for election will be announced"

vii) The draft new constitution so produced still clearly recognised that it was the constitution of a limited company, but was not set out as a conventional set of memorandum and articles. Among its provisions were:

a) A statement of a "Prime Object" that

> "This is a company formed by Sunni Muslims for the benefit of Sunni Muslims of High Wycombe… the management of all the mosques… must remain in the

hands of Sunni Muslims. **This clause is unalterable**" (emphasis in original).

b) Provision for management by a Management Committee of 25 persons, and by clause 2.1 that "no person shall be eligible for membership of the Management Committee unless he is a follower of the religion of Islam according to the true Sunni faith…"

c) Provision for elections for membership of the Management Committee on 19 August 2001 and at two yearly intervals thereafter, including:

> "3.12 All the Muslim people who come to vote in the election… can only vote if they bring proof of their identity… all voters must be 18 years of age and be permanent residents of High Wycombe
>
> 3.13 All the people who vote in the 2001 election will automatically become registered members… The Management Committee to announce publicly to remind the people to register 3 months prior to an election in future.
>
> 3.14 Registering as a voter will not give a person an automatic right to stand for the Management Committee. For this clause 2.1 will apply."

Thus, it can be observed, there was no explicit provision for how anyone would become a member after the 2001 election. Membership of the company and voting were not restricted to those of the Sunni school (though membership of the Management Committee would be). Nor were women excluded from taking part in either capacity, though I was told that up to now the women Muslims of High Wycombe have for whatever reason left these activities to men. I record that both parties before me stated their position to be that there was no reason why women should not participate fully.

d) The draft constitution was approved by the Management Committee on 3 June 2001 and read out at all three mosques at Friday prayers on 15 June 2001, having been announced orally the previous Friday. No vote was taken but members of the mosque attending were asked if they had any objections, and none were raised there and then. They were told that if they had any questions, they could be raised with any member of the Management Committee. There is a dispute over whether it was said that they had up to 14 days to do so.

e) On the same day all five members of the constitution subcommittee signed a certificate (p263) recording the procedure that had been followed and stating that after signature by the Chairman and Secretary the constitution would be "posted to Companies House (in the form of the [company's] Articles and Memorandum of Association)". This was done (for some reason twice) by letters dated 25 June (p 268) and 8 August 2001 (p 275).

f) Certain members of the mosque raised written objections: Mr Chouglay (one of the five subscribers) and Mr Mohammed Zahir, who had been a member of the five man constitution sub committee. A letter dated 23 June from Mr MN Syal has also been disclosed, and two lists of points said to be respectively 'representations made by the youth community' and 'public objections to the 2001 constitution' though it is not clear in either case who made them. Mr Zahir's objections (p269) raised various matters alleged (it is not clear on what basis) to be defects in the procedure for drafting the new constitution and holding the mosque meetings. Mr Syal pointed out that the new constitution had not been professionally drafted, and alleged that holding elections for positions of authority would exacerbate rather than diminish conflict. The two general lists of proposed amendments set out various detailed points which were suggested as meriting either amendment of the existing draft or additions to it. I do not think these objections, other than Mr Chouglay's letter, have any bearing on the issues before me, as will appear.

g) Mr Chouglay's letter (p266) is directly relevant, since the claimant's case is that notwithstanding this letter he is to be taken as assenting to, or acquiescing in, the adoption of the new constitution. I refer to it in more detail below.

h) Neither of these objections caused the management committee to reconsider the terms of the 2001 constitution. Although the Thara group continued to maintain that they rejected it, it appears that the majority at least of the members of the committee regarded it as being in force from then on.

viii) The first election for members of the Management Committee was held on 19 August 2001, as provided for in the new constitution. The names of 2051 people who voted in it were recorded, and it is the claimants' case that accordance with paragraph 3.13 of the new constitution, they thereby became members of the company. Members of both groups put themselves forward for election, although the Thara group did so under protest, deleting from the nomination form certain words referring to the new constitution.

ix) There was a second election of 13 July 2003. This time the Thara group did not participate. There is no record of those who voted in it and so no means of knowing whether any of them were not on the list taken in 2001.

x) In 2004, the dispute between the two factions led to the issue of proceedings in the Companies Court in which Mr Riaz (the leader of the Thara group) and two others sought declarations to the effect that they were members of the company. The defendants named in the action were Mr Rashid (leader of the Seva group) and the company itself. Those proceedings were stayed on Tomlin terms after the two groups agreed to the involvement of a respected spiritual leader, Pir Alludin Siddiqui. A meeting was held attended by various members of the two groups, at the end of which a written agreement was produced dated 2 April 2004 (p442-3) which sought to set out the way forward. There are many issues surrounding this agreement; the defendants contending that Pir Siddiqui acted as arbitrator, that the agreement produced is binding on the company and on all members of the two groups, and that the

process conferred on Pir Siddiqui a continuing authority to give further directions with legally binding effect on all such persons, and the claimants contending that Pir Siddiqui was involved only as mediator, that the participants in the meeting had no authority to bind the company or anyone else, that the terms of the agreement are in any event too uncertain to be enforceable and cannot displace the provisions of the company's constitution, and that although they do not doubt Pir Siddiqui's spiritual eminence, he has no authority to give legally binding directions to the company or any of its members or potential members.

xi) I shall return to these issues, but for the moment continue the narrative. The agreement (I will call it "the settlement agreement" without anticipating the issue as to who if anyone might be bound by its terms) provided that the existing Management Committee would resign and be replaced by a new committee of 22 people, 11 of whom would be selected by each of the two factional groups. The new committee was to oversee the production of a new constitution. This new committee was established, its members being appointed (by what process is not clear; there were certainly no elections of any kind) on behalf of the two rival groups.

xii) Pir Siddiqui suggested two barristers who might be instructed to draft a new constitution, Mr Abdul Quayoom and Mr Faizal Siddiqui. The management committee selected Mr Quayoom, and wrote him a letter of instruction to prepare a new constitution document. This he did, the document produced (p448) being recognisably intended to be a composite form of memorandum and articles of Association of a company limited by guarantee. Setting aside differences from its professional drafting, it bore a number of similarities to the 2001 constitution. It was immediately accepted by the representatives of the Seva group, but rejected by those of the Thara group. The management committee sent it to Pir Siddiqui with a letter dated 3 June 2005 (p474) recording that it had produced "extensive disagreement" on the committee, which had resolved "that the new drafted constitution should be presented to you for direction and guidance."

xiii) On 9 July 2005 Pir Siddiqui replied to the effect that he had read the draft constitution which would give too much power to "the winning party after the election" which would not be conducive to harmony, and that he was recommending that a further constitution be formulated "to provide harmony and cooperation of the Muslim community". It was suggested in evidence that this letter was written after he was lobbied by members of the Thara group, but it was not said that the letter did not represent Pir Siddiqui's views. He also wrote an undated letter to the other barrister he had originally suggested, Mr Faizal Siddiqui, asking him to prepare a new constitution (p476C).

xiv) On 31 August 2005, apparently after the undated letter referred to above had been written, Pir Siddiqui signed another document, headed "Letter of Appointment". This document, it is clear, was prepared on behalf of the Thara group and submitted to Pir Siddiqui for his signature. In a number of respects it took the position of that group, for instance:

a) it begins with a declaration that Pir Siddiqui is "the arbitrator charged with the responsibility of resolving the dispute [between the claimants

and defendants in the 2004 Litigation] … and **having authority to give directions for resolution of the dispute**" (emphasis in original)

b) it gave instructions to Mr Faizal Siddiqui "to draft a new constitution governing the structure and affairs of the mosque", it being a key argument of the Thara group that his remit should be wider than preparing a constitution for the existing limited company whereas in contrast the Seva group maintains that the company structure should be kept and the debate should be limited to the appropriate form of constitution for administering the Mosque through that company

c) it concluded "the said constitution will not be open to challenge by the parties or otherwise unless I decide to the contrary… I retain authority as aforesaid in relation to any matters arising herein".

xv) This was fairly promptly followed by a letter written by the secretary of the Mosque committee Mr Akram (a member of the Seva group) dated 16 September 2005 asserting that the "Letter of Appointment" had been issued without the consent of the Mosque committee which had the sole authority to give such instructions, denying the power claimed for Pir Siddiqui to give binding directions and stating that the committee would not be responsible for Mr Faizal Siddiqui's costs.

xvi) There was then a meeting at the main mosque on 30 October 2005, attended by Pir Siddiqui. The parties are in dispute about what was said at that meeting; the claimants maintaining that Pir Siddiqui told the meeting that there would be elections held for a new Mosque committee within three months. There was then a meeting of the Mosque committee on 3 November 2005, at which, it is clear, it was resolved that formal instructions should be given to Faizal Siddiqui. A letter was immediately produced dated 3 November 2005 and signed by two members of the Thara group, Mr Ilyas and Mr Qadeer, purporting to be "formal notification of engagement and instruction to draft a completely new constitution for WIMMTL" (i.e. the company) and stating that it superseded "the previous inadvertent instructions of 16 September 2005", i.e. Mr Akram's letter. To this, Mr Faizal Siddiqui responded on 8 November 2005 accepting the instructions and stating his intention to proceed "with the assistance of the committee and the community. There will be a need to initiate a consultative process… anyone who participates in the consultative process will have to accept the validity of the process and its arbitrary jurisdiction. This will require them to sign a declaration of confidence in the process, before they can express their views."

xvii) A second letter of instruction to Mr Faizal Siddiqui was sent dated 9 November 2005, again on the headed notepaper of the company but this time setting out the instructions in a manner more suggestive of the position of the Seva group; referring particularly to articles of Association and the need to comply with company law, making reference to the alleged statement by Pir Siddiqui that there should be an election within three months, and asking Faizal Siddiqui, purportedly in accordance with a recommendation from Pir Siddiqui "to provide a framework and guidelines to start the election process… within four weeks". This document (p 482-3) was prepared for signature by Mr Ilyas and Mr Akram and, if so signed, would therefore have been sent from representatives of each group. The copy produced shows only Mr Akram's

signature. Mr Faizal Siddiqui said he thought he must have received a copy signed by both of them, but it is clear that he regarded his instructions as stemming from the letter of 3 November in any event, as shown in his reply of 8 November and the notice referred to below.

xviii) Faizal Siddiqui prepared a form of notice dated 11 November 2005 to be circulated among the members of the Mosque and the committee. The stated that he had been asked by Pir Siddiqui "who was appointed to mediate in the dispute of the Mosque committee, to draft a constitution to govern the affairs of the Mosque and the community" and also by Mr Ilyas and Mr Quadeer to become engaged in this work. He announced that members of the public would be invited to meetings "to give me their views in confidence", that he proposed then to prepare a draft circular amongst members of the community, take written submissions and then "the final version of the constitution will be drawn up and be used as the governing instrument of the Wycombe Islamic Mission and Mosque Trust Ltd". In fact the notice contained details of three separate meetings to be held on 22 November 2005, the first referred to as the "Ilyas group" at 4 PM (ie the Thara supporters), the second referred to as the "Akram group" at 5:30 PM (ie the Seva supporters) and finally "any members of the public to attend at 7 PM".

xix) Faizal Siddiqui required each person attending these meetings to sign a document as follows:

> “SUBMISSION TO THE PREPARATION OF THE CONSTITUTION
>
> We the undersigned do hereby submit and declare that we are participating in the process of the preparation of a constitution for the High Wycombe Mosque Trust Ltd. This process has been initiated by the decision of Hazrat Pir Alluddin Siddiqui to appoint Sheikh Faizal Aqtab Siddiqui, barrister… to prepare and finalise the constitution of the said Mosque. By giving our views to be taken into account when preparing the constitution we agree and submit that this process shall bring finality to the disputes between the two parties to the Mosque. We are confident in the said process and desire a swift outcome to the dispute between the parties in the form of a full and final constitution prepared by Sheikh Faizal Aqtab Siddiqui.”

xx) There are disputes about what went on at these meetings. The claimants and their witnesses maintained that when the submission document was produced they objected to it, but agreed that they would sign it when they were told it was merely a record of their attendance. They also said that Faizal Siddiqui had told them that the document he would produce would be a draft for consideration and that if it was not approved by all parties they could "throw it in the bin". Faizal Siddiqui said that on the contrary he had taken great pains to stress to everybody that it was his intention to produce finality and that they had to sign the submission document to agree to go along with whatever solution he produced. He had been asked to find a solution in numerous other similar disputes and would not waste his time by getting involved on a merely advisory basis. I do not doubt that his version was correct.

xxi) Following these meetings, Faizal Siddiqui sent a draft document under cover of a letter dated 21 December 2005. In that letter, he set out what he considered to be the advantages and disadvantages of a selection process and an election process respectively, said that in his view the election process had failed to produce harmony in the Mosques and concluded "in my judgment the selection process as depicted in the Trust Deed and attached herewith would be a more suitable working structure for the Muslims of High Wycombe."

xxii) The document he produced was not a constitution for a limited company, but a draft trust deed intended to establish a charitable trust to administer the mosques presently owned by the company. His letter did not deal with any process by which the assets vested in the company would be transferred to the trust. The following points can be noted from the draft document and the covering letter:

a) it was envisaged that there would be up to 24 trustees, all of whom must be members of the Sunni school of thought

b) the trustees would be appointed by the members of a separate body, the "Supervisory Council". This would be established first, and its members would not themselves be trustees. There would be a process of selection from people who put themselves forward to be members of the Supervisory Council. Once appointed, according to his covering letter they would hold office for life "except in case of resignation, insanity, criminal conviction and bankruptcy, in which case another member shall be chosen by the remaining members."

c) The covering letter envisaged that there would be seven members of the Supervisory Council, who would themselves be appointed by an "initial selection panel". He proposed three possibilities for forming this panel, namely "an agreed panel of recognised Muslim scholars from the UK", a panel consisting of Pir Siddiqui, Pir Shah (another spiritual leader), and a third person approved by them, or "a person agreed and nominated by everyone tasked with this responsibility". Faizal Siddiqui did not address the obvious questions as to how and by whom a choice was to be made between these three methods, or, if for instance the panel of scholars was to be the chosen mechanism, how and by whom its members would be "agreed".

d) The draft trust deed in fact provided for five rather than seven members of the Supervisory Council, and that rather than holding office for life, they would hold office for a period of seven years only. The Supervisory Council appears to have been envisaged as a self-perpetuating body, since the draft provided that in the event of a vacancy the remaining members of the Supervisory Council would nominate a replacement. It went on to say however that "the said nomination must carry the unanimous support of all the trustees", raising but not answering the question what would happen if such support could not be obtained.

xxiii) The solution proposed by Faizal Siddiqui thus as comprehensively coincided with the position supported by the Thara group as the previous document prepared by Mr Quayoom had matched that of the Seva group. As with Mr

Quayoom's draft, it met with a partisan response; on 12 January 2006 the members of the Seva group on the management committee wrote a letter to Faizal Siddiqui rejecting the idea of a trust deed as negating what they regarded as the promise given by Pir Siddiqui that elections would be held, and purporting to withdraw his instructions. On 13 January Mr Riaz and others from the Thara group wrote to Mr Akram asserting that he had "falsely" told Mosque members at prayers on the previous Friday that they could choose between the Quayoom draft and the Faizal Siddiqui document whereas, according to them, only the latter was on the table for discussion. On 26 January 2006 the members of the Thara group on the management committee wrote a letter to Faizal Siddiqui asking him to "proceed with the current process which has been agreed by all the parties" and stating that the letter previously written by the members of the Seva group did not have the authorisation of the management committee.

xxiv) And so the dispute went on. It does not appear that Faizal Siddiqui ever produced a further draft of his document, although clearly one would have been necessary before anything could be implemented. More letters were written by each side denouncing the position taken by the other. The defendants have commissioned various petitions, which have attracted large numbers of signatories, supporting the position of the Thara group. The claimants maintain that the signatures have been obtained by misrepresenting the position to those who have been asked to sign, and they call in question the ability of many members of the community for whom English is not their first language to understand the somewhat complex language of the petition declarations. If the position of the defendants is truly supported by a majority of worshippers at the mosque, the claimants say that will emerge if a vote is taken at a properly held meeting at which all persons interested in participating have the opportunity to do so.

xxv) In October 2006, the 22 member management committee disbanded itself and was replaced by a 12 member committee consisting of six members from each of the Thara and Seva groups, appointed by the outgoing committee. Its legitimacy is in question, as is that of the 22 member committee it succeeded.

xxvi) It is the defendant's case that a meeting of the 12 man committee was held on 25 February 2009 which resolved to "endorse the Constitution drafted by Faizal Siddiqui". Whether that meeting was held at all is in dispute. The members of the Seva group did not attend, having objected to the shortness of the notice given (one day). Furthermore two of their witnesses said that they had been to the mosque at the time the meeting was supposed to take place and found that the room in which it was to be held was empty and in darkness. In any event, it is now accepted that such a resolution could not have the effect of changing the constitution of the company, since the Faizal Siddiqui document is not in the form of a constitution for a company and any new constitution would have to be approved by the members of the company.

6. In order to begin unravelling the thread of this dispute, I start with some general points. The first is that it is not in dispute that the land and buildings comprising the three mosques administered by the company are vested in the company and constitute its assets. Any change in that position, and particularly any transfer of the mosques can only be undertaken by a properly authorised act of the company. "Properly

authorised" means in effect either authorised by the members of the company, or by the proper exercise of powers validly delegated to those acting in the capacity of its directors (either acting themselves, or by further valid delegation). If the 2001 constitution is in force, it contains a number of provisions which may (the point has not been argued before me) be relevant as to the exercise of any such powers.

7. The second is that the court must decide who has the capacity to act as either a member or director of the company, and whether any valid legal act has been entered into by any such person on the basis of law and legal principle. The court does not form its own opinion as to who ought to be members of the company, except to the extent of interpreting those provisions of the Constitution of the company which set out who is and who is not entitled to membership. Nor can the court deem anyone to be a member of the company if he has not become a member in accordance with the relevant provisions of the constitution of the company and the law, particularly the Companies Acts. Although this is a company formed for religious purposes, in deciding the questions before it the court is not exercising a religious judgment but a legal one. Where, as in this case, those involved in a dispute have invoked the assistance of religious or community leaders to identify a solution, the court's task is to determine whether in the circumstances the effect has been to bind anyone (and if so whom) in law to accept a particular outcome. If not, it has no power and no function to express an opinion as to whether, in deference to the spiritual or other authority of those leaders, those involved ought to follow what is recommended by them.

8. Thirdly, in this case the affairs of the company and its mosques appear to have been treated largely as the private preserve of the two groups who are, effectively, the parties to this litigation and were the effective parties to the 2004 action. On the evidence before me, neither of these groups has any formal constitution. Neither of them has a list of members, nor any procedure by which anyone becomes, or ceases to be, a member. Insofar as anyone is a member of one of the groups, there is no evidence to indicate whether he gives any commitment by doing so, or receives any in return from other members. There is no definable process by which anyone becomes a leader of either group, or is otherwise authorised to represent it or its members. This is not to say that de facto leaders may not emerge by some process of consensus. Although there may be meetings of those who regard themselves as members, it seems that at the most these are initiated by someone regarded as being in a leadership position, and called by an informal process of notifying others who might be interested in attending. This is obviously not sufficient to ensure that everyone who might be interested gets to know about the meeting in time, and would be easily open to manipulation.

9. It is of course possible for an unincorporated association to exist on a basis which can be found to constitute a contract between the various members of it. The terms of the contract may include the granting of authority to one or more individuals to act on behalf of the members generally, in relation to the affairs of the association. This is how the law analyses an unincorporated club; the members may for instance commit themselves when joining to pay a subscription, and authorise those who are appointed as the officers of the club to enter into contracts on behalf of the members, for instance to pay for the use of premises in which the club will meet. But in each case this analysis requires that the terms of any contract must be identified with sufficient certainty, and that if any authority is said to have been given by the members, the content of that authority must also be identified with sufficient certainty. In principle,

these questions are determined according to the ordinary law of contract and agency. It is of course much easier to decide what the members may or may not have agreed if there is some form of written constitution or rules of the Association, although it is not absolutely essential that there should be one.

10. The Seva and Thara groups are not however in my judgment associations of this kind. They are, as it seems to me, at the most loose and fluctuating groups of people whose ideas are, for the time being, sufficiently similar. They might be said to be akin to highly informal political parties. Being a member of such a group does not commit anyone to hold a particular opinion, or to do anything in pursuance of it. No doubt, if a view is expressed by someone who is regarded as a leader or spokesman for the group, that may be influential in determining the view of the individual members or followers of the group. But it cannot, it seems to me, bind any of them to take any particular step. Ultimately, they must make their own minds up. Perhaps, if someone is not sufficiently in accord with the general consensus among the members of the group, they may either wish to leave, or no longer be welcome by the others. If so, there is no obligation on a particular member to stay in the group, or on the other members to allow him to do so. So far as the position of those who are regarded as leaders is concerned, that depends entirely on their continuing to command sufficient support from the other members of the group. They are not formally appointed, and having no formal position or authority they could not be formally removed, but no doubt if rivals for leadership emerge, either one or the other will emerge by consensus, or the group may fracture with each taking away a set of supporters.

11. Thus, there is no express or implied legal authority at any stage between those who are held out as leaders and those who are followers. The leaders may lead those who are content to be followers, for as long as they are so content. But any of them may cease to be a follower at any time, and whether he does or not, he is not bound in law by anything that his leader has done.

12. Furthermore, the two groups have absolutely no status so far as concerns the constitutional affairs of the company. Being accepted as a leader of either group, or as a member of that group, confers no right or entitlement in relation to the affairs of the company. Individuals who are members of either group might or might not be members of the company with the right to stand for appointment to the management committee or to vote as members. But those rights, if any, derive from the constitution of the company and not their membership of the Thara or Seva group.

13. It is the claimant's case that the 2001 constitution, although not adopted by a resolution of the members, is nevertheless binding on the company by reason of having been assented to by all the members of the company at or about the time of the meeting in June 2001. The first issue for me to determine therefore is who were the members at that date.

Membership of the Company in 2001

14. I have referred to the relevant provisions of the original articles of Association above. It cannot be doubted, in my view, that the five original subscribers became members upon incorporation of the company; article 5 expressly states so. Mr Gaffar submitted that there is no evidence that the subscribers ever paid the annual subscription of one pound required by article 6, and that the subscribers would not be members unless they committed to pay the annual subscription of one pound, or would have ceased to be members if they failed in fact to make that payment. I do not accept that; payment

of a subscription pursuant to article 6 is not a precondition of admission to membership for a subscriber under article 5. Where article 7 refers to membership being "open to any persons on payment of the subscription current at the date of his or her application ..." this in my judgment clearly refers not to subscribers but to "such other persons as the Council shall admit to membership in accordance with the conditions hereinafter contained ...". Any such person would no doubt have to pay his first annual subscription before being admitted as a member, and thereafter would be liable to pay subscriptions as the articles from time to time required. The articles do not however provide that a member in default (whether or not a subscriber) automatically ceases to be a member. Nor is that the general position in law; if in default the company may sue him for the subscriptions but, absent a provision in the constitution, it has no power to expel him from membership.

15. There is no evidence that any other person was expressly admitted as a member pursuant to article 7. Mr Gaffar submitted on behalf of the defendants that it was "understood that all worshippers at the mosques were entitled to membership by virtue of their donations by way of subscription fee of one pound annually". But the evidence was that nobody had ever demanded or paid any amount identified as a membership subscription. Members attending the mosque would make donations to the collections held every week, giving as much or as little as they could afford. No record was kept of these donations, except in the case of individual large amounts. There was no register of members. There was no process by which a worshipper at the mosque applied or agreed to become a member of the company, or to be bound by the rules of its constitution. There was no process for "approval and acceptance" (as required by article 7) by the membership Council of any new members. The relevant statute at the time was the Companies Act1985, which defined "member" in section 22 as follows:

> “22 (1) [subscribers]
>
> (2) every other person who agrees to become a member of the company, and whose name is entered in its register of members, is a member of the company ”

16. A person (other than a subscriber) whose name is not in the register of members is not, therefore, a member of the company. If he has satisfied all the conditions for membership but has not been entered in the register, he may be entitled to an order for rectification of the register. If and when it is rectified, he would become a member, but not before.

17. Mr Gaffar submitted that it was "plain" that membership of the company was treated as the same as worshipping at the mosques, but I do not accept that. It could not in my judgment be said on the evidence before me that the management council (even supposing one was validly appointed, which is in dispute) had determined that the process of application for membership and approval as a member of the company should be so reduced in formality that anyone who attended the mosque would be treated as a member of the company. Rather, the evidence is that no distinction was made between members of the company and "members", which really meant only worshippers, of the mosque. Insofar as worshippers at the mosque were consulted about decisions, it was not because they were treated as being members of the company, but because it was thought right by those holding themselves out as having authority to manage the affairs of the mosque to do so.

18. Mr Gaffar pointed to a number of documents which he said showed that the original five subscribers were no longer members of the company. I do not accept that they have the effect he contended for.

    i) The first was a statement of the first directors of the company (bundle, volume 1, page 23), which names a Mr Gul Mohammed as a director although he was not one of the five subscribers. He is not stated to be a member, and whether or not it was right to name him as a director seems to me to have no bearing on whether anyone else was a member of the company.

    ii) Secondly, he referred to the annual return of the 1986 (v1 p 37) which he said referred to four of the five original subscribers as being "past members". The document does not bear out that interpretation. The page in question is one half of a double-page table headed "list of past and present members" and although the four names are set out on the left side of the page there is no other information filled in on the table that would indicate whether they are being named as past members or present members. Other annual returns contained no information at all about members; the table provided for such information being simply crossed through.

    iii) Thirdly he referred to a document filed at Companies House purporting to be the minutes of a meeting of members held on 19 May 1995. Four people were recorded as present, none of whom was one of the five subscribers. Three were directors at the time and one, Mr Riaz, was not even a director. The document begins "all members being present" and purports to record a resolution deleting articles 58 and 59 of the company's articles of Association (which dealt with the requirement to have annual accounts audited). Without any supporting evidence to show how it was that these four individuals felt themselves entitled to be considered members of the company, let alone the only members of the company, this document seems to me to be nothing more than assertion on the part of whoever produced it.

    iv) Fourthly he referred to a set of minutes dated 24 October 1999 (v1 p 227) of the mosque committee then acting, which appeared to represent the start of the process that resulted in the 2001 constitution. As indicated above, whether or not that committee had been validly appointed is open to question. They set out the objective to secure that the mosques were solely controlled by those of the Sunni school of thought, saying "due to current circumstances we need to have a proper constitution… in order to obtain control so as not to allow other people representing other schools of thought to participate. Our Mosque and Centres are only for Sunni (Hanafi) school of thought". This document, it seems to me, says nothing about whether the five original subscribers were members of the company or not and if anything it appears to recognise that it would be necessary to establish a register of members so as to determine who was and who was not entitled to participate as a member of the company.

    v) Finally, he pointed to evidence from the defendant's witnesses that one of the original subscribers, Mr Asghar, had been expelled from membership by Mr Rashid, the then chairman of the mosque committee acting, on the grounds that he had violated the teachings of the Koran by selling alcohol in his shops. This it seems to me takes the matter no further. Disregarding for the moment questions about whether any directors were validly in office, there is no power under the original articles of Association for the directors, let alone the

chairman, to expel anyone from membership on these grounds or any other. I should record that Mr Asghar's evidence, and that of Mr Rashid, was that he had not been expelled from any position, but had voluntarily resigned from membership of the committee. Even if the point had been right and Mr Asghar was no longer a member, that would only mean that there were four members instead of five.

19. There is no firm evidence, then, that prior to August 2001 anyone one apart from the original subscribers was treated as a member of the company, acted in any way as if he were such a member, asserted that he was such a member or was recorded by the company in any register of members or similar document as being such a member. The suggestion that all worshippers at the mosques, or the even wider proposition (which was also put) that all Muslims in the Wycombe area, became or must be regarded as members of the company is in my view untenable.

20. In my judgment, therefore, on the evidence before me no person other than the five original subscribers ever became a member of the company prior to the purported adoption of the 2001 constitution.

Validity of adoption of 2001 constitution

21. The next issue for determination is whether the 2001 'constitution' has been validly adopted to amend or replace the memorandum and articles of association with which the company was incorporated. It was not argued before me that the company could not in principle have changed its constitutional basis by so adopting the 2001 constitution, and it is common ground that the normal procedure for making any such change would involve special resolutions of the members of the company passed in accordance with the provisions of the then relevant statute, the Companies Act 1985. Any such resolution could in principle have been passed at a validly held meeting of the members, or by following a written resolution procedure as provided in that Act. There is no suggestion however that any special resolution was so passed. The meetings at the mosques were not, as I have held, meetings of the members of the company. Even if they had been, no proper notice of them or of any special resolution was given, and no resolution of any kind was put to the meetings. It is to say the least doubtful whether a valid general meeting can be held by assembling people in three different locations. The company did not purport to hold any meeting of the five subscribers who, as I have found, were in fact the only members, nor did it purport to follow any procedure to have a written resolution passed by those members. The fact that the management committee then acting approved the constitution before and after it was read out at the meetings is clearly not in itself sufficient to give it legal effect; that committee may or may not have been a validly constituted board of directors but even if it was, the directors as such had no power to amend the memorandum and articles.

22. Ms Kyriakides on behalf of the claimant however submits that this is a situation in which the *Duomatic* principle applies, in that on the evidence all the five members of the company agreed or assented informally to the adoption of the 2001 constitution through the procedure that was adopted, however defective it may have been in terms of legal formality, and that informal agreement has the same effect as if the constitution were approved by special resolution. Save for one point, the principle of this submission is not disputed, but its applicability on the facts is denied, the defendant's contention being that on the evidence Mr Chouglay did not approve of the

2001 constitution, particularly in the light of his letter of objection sent after the constitution was read out at the meetings at the mosques.

23. Mr Gaffar referred me to article 25 of the original articles of Association of the company. This provides that "no member other than a member duty registered, who shall have paid every subscription and other sum (if any) which shall be due and payable to the Society in respect of his membership, shall be entitled to vote… at any General Meeting". There being no evidence that any of the five subscribers had subsequently paid any subscription monies to the company, he submitted that this article meant that they had no power to consent to the adoption of the Constitution on a *Duomatic* basis. This was not a point pleaded, but in any event I do not accept the submission; article 25 is concerned with votes at a general meeting which is the procedure provided for by the Articles for taking decisions, whereas the *Duomatic* principle is concerned with the overriding ability of the membership company acting by unanimous assent to conduct its affairs, even if they do so in a manner inconsistent with the procedures provided by its formal constitution. It operates on the basis that no one other than the members of a company has standing to object to the way in which the members deal with its affairs. As between themselves, the members may decide matters without following any of the procedures that they have previously laid down, and restrictions provided for the way in which those other procedures were to operate are of no account.

24. I was referred to a number of authorities in relation to the application of the *Duomatic* principle, and particularly whether the necessary assent can be inferred from acquiescence. Helpfully, since the conclusion of the trial, the relevant law has been summarised and applied by the Court of Appeal in *Schofield* v *Schofield and others* [2011] EWCA Civ 154. I extract the following from the judgment of Etherton LJ, with whom the other two Lords Justices agreed:

> "21. … *Re Duomatic Ltd* [1969] 2 Ch 365 concerned the validity of payments made to directors of a company for their personal benefit, even though none of the directors had contracts of service, no resolution had ever been passed authorising them to receive remuneration, and they were not entitled to remuneration under the company's articles. On the liquidator's application for repayment of the payments, Buckley J held that certain of the payments were to be treated as properly authorised because they were made with the full knowledge and consent of all the holders of voting shares in the company at the relevant times. Buckley J (at page 372B) endorsed the following statement of the principle by Astbury J in *Parker and Cooper Ltd v Reading* [1926] Ch 975 at 984:
>
> "Now the view I take of both these decisions is that where the transaction is intra vires and honest, and especially if it is for the benefit of the company, it cannot be upset if the assent of all the corporators is given to it. I do not think it matters in the least whether that assent is given at different times or simultaneously."

22 Buckley J stated the principle his own words, as follows (at page 373C):

".... I proceed upon the basis that where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be."

23 Mr Berry referred us to *Re Home Treat Ltd* [1991] BCLC 705, in which Harman J said that, in this context, acquiescence is as good as actual consent. He said (at page 709):

"The decisions show that the law is that the consent of all members expressed together is as good as a special resolution. It is also clear that acquiescence by shareholders with knowledge of the matter is as good as actual consent. In this case the silence of Mr Mohanan is, in my view, as good as acquiescence and establishes that he as much as his wife had assented by conduct to this change in the objects of the company."

24 Mr Berry referred to the following statement of the principle in the judgment of Mummery LJ in *Monecor (London) Limited v Euro Brokers Holdings Limited* [2003] EWCA Civ 105:

"62. I see nothing in the circumstances of the present case to exclude the *Duomatic* principle. It is a sound and sensible principle of company law allowing the members of the company to reach an agreement without the need for strict compliance with formal procedures, where they exist only for the benefit of those who have agreed not to comply with them. What matters is the unanimous assent of those who ultimately exercise power over the affairs of the company through their right to attend and vote at a general meeting. It does not matter whether the formal procedures in question are stipulated for in the Articles of Association, in the Companies Acts or in a separate contract between the members of the company concerned. What matters is that all the members have reached an agreement. If they have, they cannot be heard to say that they are not bound by it because the formal procedure was not followed. The position is treated in the same way as if the agreed formal procedure had been followed. …"

…

> 32 What all the authorities show is that the Appellant must establish an agreement by Lee to treat the meeting as valid and effective, notwithstanding the lack of the required period of notice. Lee's agreement could be express or by implication, verbal or by conduct, given at the time or later, but nothing short of unqualified agreement, objectively established, will suffice. The need for an objective assessment was well put by Newey J in the recent case of *Rolfe v Rolfe* [2010] EWHC 244 (Ch) at [41], as follows:
>
> "... I do not accept that a shareholder's mere internal decision can of itself constitute assent for *Duomatic* purposes. I was not referred to any authority in which it had been decided that a mere internal decision would suffice. Further, for a mere internal decision, unaccompanied by outward manifestation or acquiescence, to be enough would, as it seems to me, give rise to unacceptable uncertainty and, potentially, provide opportunities for abuse. A company may change hands or enter into an insolvency procedure; in either event, it is desirable that past decisions should be objectively verifiable. In my judgment, there must be material from which an observer could discern or (as in the case of acquiescence) infer assent. The law applies an objective test in other contexts: for example, when determining whether a contract has been formed. An objective approach must, I think, also have a role with the *Duomatic* principle." ”

25. In the present case, three of the five members gave evidence in support of the claimant's case confirming that they assented to the adoption of the 2001 constitution. They are Mr Rashid, Mr Asghar and Mr Sattar. The other two members were Mr Ismail and Mr Chouglay, and neither of them was called as a witness. Mr Ismail is now 100 years old and in poor health, with no recollection of the relevant events. Mr Rashid gave evidence in his first witness statement that Mr Ismail attended the meeting at which the Constitution was read out and did not object to it. He also said "Mohammed Ismail and I worked together for a very long time in mosque matters, and I know from my own knowledge of his views, which were expressed to me, that he was in favour of the company adopting the 2001 constitution." He was not challenged on this evidence, and I accept it.

26. Mr Chouglay is also now old, being over 85 years of age, and did not give evidence. The first claimant Mr Hussain in his witness statement said that he had spoken to Mr Chouglay who had told him that he "expressly voted in favour of the new constitution." This cannot be literally correct, since that was no vote was taken. Mr Hussain said in cross-examination that Mr Chouglay had signed three statements confirming this, but they were not being produced in evidence because Mr Chouglay's son had subsequently told Mr Hussain that he did not want the statement to be given in evidence to the court and had no memory of the relevant events. I was shown one of them, at my request. In the circumstances I do not rely on that statement, but I take Mr Hussain's evidence as hearsay evidence of Mr Chouglay having confirmed to him orally that he agreed to the adoption of the 2001 constitution.

27. Mr Chouglay did of course write a letter to the committee on 20 June 2001 after the meetings held at the mosques, which I have referred to above (p 266). In that letter he said as follows:

> "Last Friday we heard an explanation of the new constitution of the High Wycombe Mosque Committee. I was pleased to learn that the High Wycombe Mosque Committee is to be run in accordance with the law of the land. However I was saddened by the fact that you have deemed it necessary to hold elections in order to decide who will manage the affairs of the High Wycombe Mosque and other Islamic centres.
>
> 1. In this regard my view is that there should be no elections for the administration of the Mosque… because holding elections is synonymous with playing politics in the house of God and this should be prevented at all costs. My suggestion, with your agreement, is that we propose to the Muslims of High Wycombe that any Muslim that has lived in the area for a period of time nominate himself to serve in the administration committee of the Mosque voluntarily. He should not be nominated by another person. On the contrary he should nominate himself for this service.
>
> 2. As regards the election, my second point is that the Muslims of High Wycombe should be consulted as to whether elections are in fact at all necessary for the running of the Mosque…
>
> 4. To preserve unity amongst Muslims in High Wycombe and to ensure that the Mosque and other institutions remain fully functional in the generations to come, it is necessary that all forms of factionalism and group-ism being eradicated so that faith, brotherhood and unity can be allowed to develop further, God willing.
>
> 5. If for some reason a majority of the Muslims in High Wycombe decide in favour of elections, which in my opinion is highly unlikely, this should be carried out in the spirit of brotherhood and unity and non-Muslim presiding officers should not be involved.
>
> I am hopeful that all members of the Committee will give due consideration to these concerns. "

28. Mr Gaffar's submission is that this letter shows clearly that Mr Chouglay was opposed to holding elections, and that since the 2001 constitution provided for elections as a

means of appointing the management committee, he cannot possibly have approved of that constitution or be taken to have assented to its adoption.

29. There was some further hearsay evidence of Mr Chouglay's attitude. Mr Rashid in particular was questioned about this. He had said in his witness statement that the committee had not replied to Mr Chouglay's letter "which was regarded as an observation, more than an objection and because… ' a majority of the Muslims in High Wycombe' at the Jubilee Road Mosque and at the other two mosques had indeed decided in favour of elections." That is no doubt putting the matter too highly; the worshippers at the three mosques in question do not appear to constitute a majority of all Muslims in the High Wycombe area even if (which I doubt) it could be said that because there had been no objection at the meetings to a constitution providing for elections, that amounted to a 'decision' in favour of elections.

30. In cross-examination, it was put to Mr Rashid that the fact that Mr Chouglay had been at the meeting at the Mosque when the Constitution was read out and did not object to it there and then did not indicate that he was accepting it. Mr Rashid replied that if he wanted to object to the adoption of the Constitution he could have done so at that meeting. He went on to say "after that I saw him and asked about his letter and he told me that it's a good thing I have done to write a constitution, but my personal opinion is that it is good if there is no elections. I said if two groups don't agree the last resort is an election and he said 'yes, you are saying right' ". I am conscious of the dangers inherent in relying on hearsay evidence of the opinion of Mr Chouglay, particularly when the reporter has an interest in the outcome, but note that there was no evidence from witnesses for the defendant to contradict what Mr Rashid said, nor any documentary or other evidence that Mr Chouglay continued or followed up the points made in his letter to the committee, although he must have known that his letter had not caused the committee to reconsider the terms of the 2001 constitution and abandon the principle of holding elections for membership of the committee.

31. As is clear from the authorities referred to above, whether or not Mr Chouglay assented to the adoption of the 2001 constitution is a matter to be determined objectively from an assessment of all the evidence. In this case, we have some second hand evidence of his views as stated to Mr Rashid and Mr Hussain. An inference can also be drawn from his conduct, in that he did not make or pursue any objection to the adoption of the 2001 constitution other than writing his letter. The question is whether that conduct in all circumstances would lead an objective observer to conclude that Mr Chouglay must have assented to the adoption of the Constitution.

32. Mr Chouglay's actions must in my view be seen against the background circumstances in which the 2001 constitution came to be prepared and presented to worshippers at the mosques. It is clear from all the evidence on both sides that worshippers generally were aware that discussions about a new constitution had been going on for some time and that the committee had appointed its five person subcommittee to prepare a new draft. They were also aware of the proposal that the new constitution would be presented to worshippers by being read out at Friday prayers. It was an event of great significance, intended to bring about a clear direction for the affairs of the Mosque, one which it was hoped would command general support. In view of the factionalism that had attended the conduct of the mosques affairs in the past, it could not be expected that everybody would agree with every aspect of the proposed Constitution, but it might reasonably have been hoped that if it did command general support the rival groups would in future feel able to work within it to resolve their differences.

33. It is important to note also that the mechanism for appointment of the management committee by elections was only part of the Constitution. There were other provisions of great significance, not least those which set out the intention that the conduct of the mosques' affairs should be restricted to those adhering to the Sunni school of thought, a restriction which was not contained in the original memorandum and articles of Association, and one that appears to have been thought particularly important by the committee which began discussion of the need for a new constitutional document. There was thus a great deal riding on the introduction of a new constitution, and there would be good reason why someone might be prepared to accept that a new constitution had been put in place which carried general approval, even if he individually might have preferred that some provisions of it were expressed in different terms.

34. Mr Chouglay's letter, in my view, shows that he attached great importance to achieving these objectives. It does not, in my view, show that he objected to the adoption of the 2001 constitution, although it certainly does show that he would have preferred that it did not provide for elections for membership of the management committee. He begins by referring to the meetings as giving "an explanation of the new constitution of the High Wycombe mosque committee" and saying that he "was pleased to learn that at High Wycombe mosque committee is to be run in accordance with the law of the land". These references in my view suggest that he acknowledged and accepted that a constitution was to be introduced by virtue of the process that had been announced, and that he approved of that fact. The process may not have been one that was legally appropriate, in the sense that it complied with the requirements of the Companies Acts, but it was the process that had been announced to worshippers at the mosques and that was all that Mr Chouglay (and indeed anyone else involved) was concentrating on at the time.

35. In relation to elections, it seems to me that Mr Chouglay in his letter was expressing his own view that elections were undesirable, but not indicating that he would not support the adoption of the new constitution at all, if a different view was taken. In his first numbered paragraph, he said "my <u>view</u> is that there should be no elections" and he proposed an alternative: "my <u>suggestion</u>, with your agreement, is that we propose ..." (my emphasis). He appears to recognise that the process is under discussion by the committee and on a wider stage, and to be putting forward suggestions for consideration by the committee rather than stating a position of objection unless specific changes are made. It may well be that he did not appreciate that he was in a position to exercise an effective veto over the adoption of the Constitution, but whether he did or not, the language in which he expresses his proposals is not suggestive of opposition to the adoption of the Constitution in its entirety, but of proposals for consideration by others which, in his view, might have improved it.

36. This approach in my view is also apparent in the fourth numbered paragraph, in which Mr Chouglay expresses his view of the importance of the eradication of factionalism, and the fifth numbered paragraph in which he sets out his view as to how elections should be conducted if "for some reason a majority of the Muslims in High Wycombe decide in favour of elections". This passage of course cannot be read as anticipating that the question whether there should or should not be elections would itself be referred to a vote amongst members of the public; Mr Chouglay knew that the decision would be taken by the committee following the presentation of the draft constitution to members of the mosques at the prayer meetings the previous Friday

and no doubt taking account of the level of support or objection which it had received. Mr Chouglay clearly recognises however that his view as to the desirability of elections may not be shared by the majority of worshippers at the mosques, and indicates by his letter that if that is the case, he is prepared to go along with it. He concludes his letter by expressing the hope that the members of the committee will give due consideration to his concerns. This in my view indicates that Mr Chouglay accepts that the decision whether to proceed with the Constitution and if so whether with or without amendment, is one for the committee, and by implication acknowledges that the committee may not agree with the particular point of view that Mr Chouglay has expressed.

37. Mr Chouglay clearly must have known following the submission of his letter that the constitution was nevertheless regarded as having been adopted. He must have known of the elections that were held the same year, in reliance upon the terms of that constitution. And yet there is no evidence that he took any steps to protest or object, or to pursue his view that affairs would be better conducted without elections. Given the significance of this event in relation to the affairs of the mosques, the only inference that can be drawn from this silence, it seems to me, is that Mr Chouglay accepted that the Constitution had been adopted and the changes that it set out to make had become effective, notwithstanding his personal reservations about some of them. This inference from his conduct supports the hearsay evidence given by Mr Hussain and Mr Rashid, and I therefore find that Mr Chouglay also assented to the adoption of the 2001 constitution. It thus in my judgment became binding on the company by operation of the *Duomatic* principle.

38. I have not dealt in any detail with the objections raised by Zahir Mohammed, Mr Syal and others. Only Mr Mohammed's letter objected outright to the adoption of the constitution; the other representations concerning the detailed provisions of the Constitution rather than the question whether it should or should not be adopted. Mr Mohammed's objections on matters such as the notice given of the meetings at the mosque and the fact that no formal vote was taken seem to have been founded on the mistaken belief that such meetings were being held as general meetings of members of the company, whereas in fact they were merely consultative. None of the points made caused the members of the committee acting at the time to consider that the provisions of the Constitution they had presented to the public meetings should be revisited. None of the objectors was, on the basis that I have found, a member of the company and so none of them had any legal standing which would enable them to prevent the adoption of the Constitution by the members acting unanimously. Nor in my view is it necessary that the objections they raised should have been considered individually by the five subscribers in order to render their assent to the new constitution effective. What those five members approved was the result of a process in which a constitution was prepared and submitted to worshippers at the mosque by the committee then acting, and approved after an opportunity had been given for further representations to be made. They were, in law, entitled to do so.

39. I should record that no argument was presented to me that, and I have therefore not considered whether, any of the terms set out in the 2001 constitution are incapable of taking effect by reason of being ultra-vires or in conflict with the general law.

Consequences of adoption of the 2001 constitution

40. Certain consequences follow from the finding that the 2001 constitution was validly adopted. In considering what they are, I should say that I approach the construction

of that document on a broad and purposive basis, recognising that it has not been professionally drafted and does not purport to deal with every variation of circumstances or every detail of the procedures it provides for. A certain degree of interpolation is required.

41. Bearing this in mind, my first conclusion is that is that when a committee was elected pursuant to the provisions of that constitution later on in the year, it became the duly appointed committee, equivalent to the Board of Directors, with authority to manage the affairs of the company. Secondly, as provided by paragraph 3.13 of that constitution, those who were registered as voting in the election automatically became registered members of the company. There was no longer any requirement for them to pay any subscription or make any other form of application to become members, nor is there any continuing requirement to pay subscriptions in order to maintain their membership. I have referred above to the provisions of the Companies Act 1985 to the effect that a person becomes a member of a company if he (a) agrees to be a member, and (b) is recorded as such in the register of members. No doubt, no specific form of agreement was entered into when an individual sought to vote in the election. Some may have been unaware that they would thereafter be regarded as members of the company. But many such voters will have been aware of the terms of the Constitution having had it read out at the prayer meetings in general in my view persons seeking to vote at the election should be taken as impliedly agreeing to become members of the company. No doubt if any individual voter takes a different view, he may seek to resign his membership or have the register rectified to exclude him. So far as the register is concerned, a record was taken of those voting in the 2001 elections, and although it is no doubt not in the form usually adopted for a register of members, I see no reason in principle why it should not be treated as being such a register.

42. The constitution provided that there should be 25 members of the Management Committee. The procedure adopted in the 2001 election, which was not spelt out in the Constitution itself, was that each person voting was entitled to vote for up to 25 candidates. A list of candidates was prepared, divided into "Group A" and "Group B". These were respectively the candidates from the Seva and Thara groups. No challenge has been made to that procedure, which presumably was determined by the committee acting at that time to be appropriate. It does not necessarily follow that the company is obliged to adopt exactly the same procedure in future, or that if the court gives directions for holding a meeting it would do so on the same basis.

43. A further election was held in 2003. It appears that this took place outside the time specified by the Constitution, but nothing would appear to turn on that. Members of the Thara group refused to participate in this election, but that of itself would not invalidate the results. In my judgment, the committee elected by that process must also be taken to have been validly constituted.

The proposed Trust Deed

44. I come now to what is the central question in this litigation, namely whether the company, or more generally the worshippers at the mosques, are in the circumstances bound in law to take the steps necessary to arrange for the affairs of the mosques to be governed by a trust deed along the lines of the draft produced by Faizal Siddiqui, as the defendant and the members of the Thara group maintain.

45. This point has been put in a number of ways at different times. The members of the Thara group, and the defendant's witnesses generally, have referred to the draft trust deed as if it is already in force as the constitutional document of the limited company. Para 26 of the Defence pleads that "the Deed of Trust has been adopted by the Company acting by its management committee and has the support of members of the public and members of the company", although no details are given of how, when and in what sense it is said to have been "adopted". The document produced as a result of the disputed meeting on 25 February 2009 (p565) refers to a decision "to endorse the adopted new constitution", and goes on to say "the new constitution will now act as a foundation document upon which Wycombe Islamic Mission and Mosque Trust shall be governed."

46. Mr Gaffar however accepted on behalf of the defendant in the course of the hearing that the document drafted by Faizal Siddiqui is not and never can be a document which governs the constitution of a limited company. For it to be implemented, assuming its terms could be finalised, it would be necessary to transfer the property presently held by the limited company (i.e. the mosques and any other assets) to the trustees in order that in future it should be held upon trust by the trustees, rather than by the limited company. If any such transfer were made, the limited company would thereafter have no assets and no role to play in the administration of the affairs of the mosques, which would be governed from then on by the terms of the trust. The question is therefore whether in the circumstances either the company is already bound in law to make such a transfer, or, if the company itself is not already so bound, whether its members are bound in law to take whatever action is necessary to cause the company to make a transfer of its assets.

47. The principal suggested source of a binding obligation is the agreement scheduled to the Tomlin order pursuant to which the 2004 proceedings were compromised. In his witness statement, the defendant took the position that the company was directly bound to the terms of that agreement because it was a party to the proceedings and "agreed to bind itself to the mediation agreement and the arbitrated outcome of that" (para7). This was not a point which Mr Gaffar seemed to rely upon in his skeleton argument or submissions. In my view, it is not in any event made out on the evidence. The company was indeed named as a party to the proceedings, but only as a nominal defendant. The 2004 litigation was in reality contested between members of the two rival groups, and the meeting which led to the Tomlin order was held between delegates appointed, apparently on an ad hoc basis, by those two groups and not by the management committee or members of the limited company acting as such. Although the Tomlin order was signed by a firm of solicitors describing themselves as "solicitors for the defendants" there is no evidence of any meeting of the management committee of the company authorising the settlement agreement to be entered into, or authorising any individuals to commit the company to whatever might be the outcome of the process that led to that agreement. The representatives of the two groups who attended the settlement meeting no doubt assumed that between them they were able to speak for the company, but they had no legal right to do so.

48. Secondly it is argued that the process that led to the Tomlin order has a binding effect not only on the individuals who were present at the meeting which resulted in the agreement scheduled to that order, but also on others who were not so present. At paragraph 12 of his witness statement, the defendant says that "pursuant to the authority vested in him by the parties [ie the parties to the 2004 litigation] on 9 July 2005 Pir Alludin Siddiqui the mediator of the above dispute acting as arbitrator gave '

directions for resolution of the dispute'…" and at paragraph 13 "the above direction bound not only the parties including the company but also the wider Thara and Seva groups that they represented, and hence the majority of the Muslim community of Wycombe". In his skeleton argument, Mr Gaffar submitted that "what is important is that both sides to the dispute and the community as a whole accepted the authority vested in Pir Alludin Siddiqui to resolve the dispute in the mosque".

49. In the course of their evidence generally, witnesses for both sides showed a tendency to refer to "the community" in general terms, for instance in asserting that "the community" agreed with or accepted this or that proposition, or that "the community as a whole" supported their own position in some respect. Underlying this seems to be what is in my view a fallacy that the Seva and Thara groups between them have authority to conduct the affairs of the limited company, or in more general terms the affairs of the mosques, and to speak for all persons who may be interested in worshipping at the mosques or taking part in their affairs. I have no doubt that as a matter of practicality the groups exercise an important influence in forming opinion among Mosque users and their leaders, but for the reasons given above in my judgment the leaders of such loosely formed and fluctuating groups do not acquire by virtue of their position any authority to enter into any legal commitment on behalf of anyone other than themselves. They have no power in law arising merely from being recognised as a leader of the group to bind anyone who is a member of that group, let alone anyone else. They may no doubt express a view on subjects of concern to users of the mosque, and that view may be influential among their own supporters, or even with people who are not affiliated to that group. But all such people are entitled to make their own minds up as to what to do, and they are not in any way bound to follow the advice of the group leaders.

50. There is no evidence that anybody who did not attend the 2004 settlement meeting gave any specific authority to those who did do so, empowering them to enter into commitments on their behalf. In my judgment, therefore, nothing agreed at that meeting could ever have been binding on anyone other than someone who was at that meeting and joined in the agreement reached. As to whether anything was agreed at the meeting which could be binding on those present, and if so what the effect would be, it is necessary to look at the evidence of what transpired at the meeting, and particularly the document produced to record its result (p442).

51. There is first the question of the position of Pir Alludin Siddiqui and whether he was given authority to make decisions which would be binding on any individuals present, in the sense that such individuals would afterwards be legally bound to take steps to comply with his decisions, whether or not they agreed with such decisions. This was presented in terms as being whether he was appointed as arbitrator or mediator, it being accepted that in principle parties to a dispute may submit that dispute to an arbitrator and agree to be bound by his decision, whatever it may be. An arbitration agreement is a form of contract, and whether or not parties to a dispute have entered into an arbitration agreement, and if so what is the scope of the authority conferred on the arbitrator, are matters to be determined objectively on construction of all the relevant evidence, and in accordance with normal contractual principles. Particularly relevant in this case in my judgment, is whether the parties acting were intending to create legal relations between themselves.

52. In general terms, I am satisfied on the evidence that all the individuals who were involved in requesting Pir Siddiqui to become engaged in the affairs of the mosques

and the disputes that had arisen did so because they regarded him as a spiritual authority whose opinion could be widely respected. In general terms, I do not doubt that everybody involved hoped and expected that the involvement of Pir Siddiqui would lead to an outcome which put an end to the disputes of the past. But it is abundantly clear that the exact nature of his involvement was never very precisely formulated. The individuals present at the meeting considered themselves to be representing their own groups and indeed all the users of the mosques. They did not, it seems to me, regard themselves as entering into any private arrangement amongst themselves as individuals, nor were they involving Pir Siddiqui in the resolution of any dispute about matters between themselves as individuals. Thus, it seems to me, they did not intend to confer on him authority to resolve any such private dispute.

53. Insofar as what was under consideration was involvement of Pir Siddiqui in a dispute affecting the company and users of the mosques generally, in my judgment the individuals participating at the meeting did not address the question whether he was doing so with a view to producing a legally binding result, and if they did, they had no legal standing on behalf of the company or anyone else to confer any authority such as an arbitrator might have on Pir Siddiqui.

54. It follows in my judgment the Pir Siddiqui did not have an arbitrator's authority to dictate a solution which would be legally binding either on the individuals participating in the meeting, or anyone else. I should say that there are a number of other factors which are in my judgment strong indicators against these arrangements being construed as providing the sort of continuing authority on which the defendants relied:

i) The term "arbitrator" does not appear to have been used at the time Pir Siddiqui was asked to become involved, or at the meeting on 2 April 2004. There are however references in documents surrounding the meeting, such as the letter written to the court seeking an adjournment, to "mediation".

ii) The agreement attached to the Tomlin order does not ascribe any particular role to Pir Siddiqui at the meeting, let alone after it. It refers to "a gathering of divergent groups" having taken place "in the presence of" Pir Siddiqui, which does not suggest a situation in which the groups attended to present their cases to him and received his decision, but rather that in his presence and no doubt with his assistance they came to their own decision.

iii) Certain references in the agreement are suggestive of decisions being taken, but it is not clear whether these are decisions of Pir Siddiqui, or decisions of those participating in the meeting. Thus, the preamble to the numbered points are set out recording that "after long and lengthy discussion the following judgment was attained" could be referring to a judgment pronounced by Pir Siddiqui, or the collective judgment of the participants in the discussion. The provision that "both parties involved are ordered to withdraw [the] court case" could be referring to an order issued by Pir Siddiqui, or to decisions by the two groups directed to those of their members who were parties to the court case. Taken as a whole, the documentation does not show any clear agreement that Pir Siddiqui would have the status of an arbitrator.

iv) The content of the agreement attached to the Tomlin order does not expressly provide for any continuing role on Pir Siddiqui's behalf. It provides for the existing management committee to be dissolved, and a new committee to be

put in its place, the members of whom would be appointed by the two rival groups. In relation to the new constitution it provides that "the new constitution will be overseen by this new committee and will be formalised during their tenure". The evidence was that Pir Siddiqui had provided the names of two barristers who might be approached to draft the constitution, but it was left to the new committee to decide which of them to approach. The agreement as recorded in writing does not make reference to these barristers, still less does it expressly provide that the committee or the company must adopt a constitution drafted by either of them. This suggests that the matter was to be left in the hands of the new committee. There was no evidence that it was agreed at the time that any disagreement arising would be referred back to Pir Siddiqui for his resolution.

55. It is also the case, in my judgment, that most of the points recorded in the agreement could not have had legal effect, simply because the participants in that agreement had no standing to make the decisions expressed:

i) The first provision was that the present executive committee "will dissipate immediately". No doubt, the members of the executive committee then in office would be entitled to resign, and in so far as the participants in the meeting were also members of the executive committee they could in principle have agreed at a meeting that they would resign. However, for the reasons given above, in my judgment the participants at the meeting had no authority to commit any other member of the executive committee to do so.

ii) The second provision was that a new committee would be formed with each group providing 11 members. The participants at the meeting had simply no standing to agree any such thing. Appointment of new members of the management committee (if all the existing committee had resigned) would be a matter for the members of the company in general meeting. It was not a matter reserved to members of the Seva and Thara groups, still less to the ad hoc representatives of those groups who attended the meeting.

iii) Equally, the statement that "every Sunni Muslim … will be a member of the mosque" was not a matter which could be put in place by decision of those present at the meeting. No doubt it was not intended to be taken literally in any event. Insofar as it required a change to the company's constitution, that would have to be accomplished by a vote of the members of the company.

56. It follows in my judgment that the 22 man committee that was purportedly put in place and acted from then on was not properly appointed and had no standing to enter into commitments on behalf of the company. The same would apply to the 12 man committee that succeeded it. Mr Gaffar suggested that the members of the company had acquiesced in the holding of office by the members of those two committees, and that they should therefore be treated as being validly appointed. I do not accept that submission; not only (as Ms Kyriakides pointed out) was the point not pleaded, there was no evidence before the court as to the attitude of members of the company to the holding of office by the members of these committees at any point in time, and it would be difficult to conclude that they had any unified point of view given that, as I have held, there were by this time over 2000 members of the company.

57. There can in my judgment be no binding effect on the company flowing from any of the decisions purportedly taken by those committees. In particular:

i) It remained the case that any changes to the constitution of the company would have to be decided upon by the members, and not by the management committee (even if one had been validly appointed). Thus, the instructions to Mr Quayoom to prepare a draft constitution could only have led to a document which could be put to the members for them to vote upon, and not one which the committee itself could adopt.

ii) When Mr Quayoom's draft was rejected by the members of the Thara group and the matter was referred again to Pir Siddiqui, that could never in my judgment have led to any authority being conferred upon Pir Siddiqui to impose a new solution that was legally binding on the company or its members. The committee then acting had no power to confer any authority on behalf of the company. The letter of reference to him seeks his guidance, and does not in terms purport to give him any extra authority in any event. On either count, the company could not be bound to adopt his recommendation that Mr Faizal Siddiqui should draft another new constitution.

iii) Although Pir Siddiqui signed a document claiming the authority to resolve the dispute, he was not in a position to assume an authority that had not been given to him by the company or its members.

iv) When a request was made to Faizal Siddiqui to draft another constitution, that request was made on behalf of the committee then acting. That request could never have bound the company to adopt whatever solution he proposed; insofar as it might have required action to be taken by the members of the company (e.g. to vote for the adoption of a new constitution in place of the 2001 constitution) the committee could not have committed the members to vote to accept his document, even if it had been validly appointed, which was not.

v) When Faizal Siddiqui produced his draft document recommending, instead of amendments to the Constitution of the company, that the whole system of provision of mosques in High Wycombe be transferred from the company to a newly established trust, he was not in my view acting in accordance with the request that had been made to him by the committee, but in pursuance of a wider remit which he felt had been conferred upon him by Pir Siddiqui. I do not doubt that he approached his task in good faith and with the intention of producing a system which would resolve the differences that had plagued the mosques in the past. But he did not, in my judgment, have any power conferred upon him to produce a solution which would be legally binding upon the company or its members. Pir Siddiqui had no authority to confer such a power, because neither the company nor its members had given that power to him.

vi) The 12 man committee then acting had no standing to take a decision binding on the company to "adopt" the draft trust deed prepared by Faizal Siddiqui. Even if that committee had been validly appointed, the manner in which the meeting was convened does not seem to me to satisfy the procedural requirements of the 2001 constitution, and the circumstances are strongly suggestive of an attempt to spring a meeting on the members of the Seva group in circumstances in which they would be unable to muster a full attendance. But in any event the committee had no standing to take a decision on behalf of the company and even if procedures had been properly followed, the decision

purportedly taken would be of no effect. The company is not therefore bound by that purported decision to transfer its assets to a trust.

58. Faizal Siddiqui's draft trust deed does not in my view acquire any binding character by virtue of the way in which he conducted his consultation process, or the "submission" document that he required to be signed by participants in the consultation. Any effect of the submission document would in any event be limited to the individuals who signed it. Mr Gaffar pointed to the fact that Mr Rashid and others had signed this document, but did not analyse in any way how it was said to be binding upon him. It is hard to see that this document could be construed as taking effect as a contract. It would be entirely artificial in my view to see each such document as a contract between Faizal Siddiqui on one hand and the individual signing it on the other; Mr Siddiqui was not in any sense making an individual agreement with each person who attended his consultation meetings. Nor was there any collective agreement between the persons who signed the submission document pursuant to which, say, certain members of the Seva group agreed to sign the document in consideration of certain other members of the Thara group doing likewise. The two groups attended separate meetings and could not know, other than in a general way, who might attend the meeting of the other group, let alone the third meeting of the non-aligned worshippers at the mosque. In my judgment, the submission document represents an understandable attempt by Faizal Siddiqui to extract a commitment by those who were sufficiently interested to attend his consultation meetings, but it is a commitment that at best is binding only in moral terms and not one that imposes any legal obligation.

The present position

59. It seems to me therefore that the present position is that the company has no validly appointed management committee. The power to appoint a new committee is in the hands of the members of the company, who presently comprise those who registered to vote in the 2001 election. If and when such a committee is appointed, that committee will have charge of the affairs of the company, and therefore of the mosques, including the responsibility to decide whether any, and if so what, new arrangements should be put in place. If it is thought appropriate to transfer the mosques to a trust, the committee would have to determine, no doubt with the benefit of appropriate legal advice, what steps should be taken towards that end. Such consideration would no doubt include whether such a transfer falls within the powers conferred on the management committee by the terms of the 2001 constitution, or whether it requires the sanction of the members in general meeting.

60. A newly appointed committee might also consider whether to propose to members any amendments to the 2001 constitution, which would have to be approved by special resolution of the members in general meeting. There would also of course be the possibility that a sufficient number of the members might exercise the powers given by the Companies Acts to requisition a general meeting to consider resolutions proposed by them.

61. Decisions will thus have to be taken both at the level of the individual members of the company and, assuming a committee is appointed, by the members of that committee. In neither case, in my judgment, will the persons taking the decisions be bound in law to do so with a view to implementing the arrangements envisaged by Faizal Siddiqui. This is not to say that they will necessarily ignore those arrangements entirely. They may very well have regard to the fact that Faizal Siddiqui made his proposals at the

instigation of Pir Siddiqui, with his undoubted spiritual authority. But it will be a matter for each individual to decide what weight to give to those factors.

Conclusion

62. Given that the company has no properly acting management committee, it is obviously desirable that steps be taken with a view to electing such a committee under the provisions of the 2001 constitution as soon as possible. It is not in my view practicable to leave this to be dealt with by requisition of the members in circumstances where there is no properly constituted management committee and it is therefore appropriate that the court should give directions with a view to holding the necessary elections.

63. I was not addressed in detail about the nature of the directions to be given, although Ms Kyriakides' skeleton argument contained some submissions. One preliminary point is that the power she relies on is contained in section 306 of the Companies Act 2006 which enables the court in the circumstances set out to "order a meeting to be called, held and conducted in any manner the court thinks fit", but the relevant provisions of the 2001 constitution refer in general to the holding of "elections" rather than "meetings". There is no doubt however that the purpose of the provisions contained in section 306 is to enable the court to give directions to overcome practical difficulties so that a company's affairs can be conducted where they might otherwise be stymied, and in my view the provisions can be interpreted broadly for that purpose. The position is I think rescued by a brief reference in clause 3.1 of the 2001 constitution, which provides for the holding of a first election on 19 August 2001, a second election in April or May 2003 "and thereafter, elections will be held after every two years <u>at a meeting</u> convened for the purpose…" (my emphasis). I propose therefore to give directions for the holding of an election, and to treat the occasion on which the election is held as a meeting for the purpose of section 306, notwithstanding that, for instance, it is likely to be a prolonged occasion at which the participating members come to cast their votes and go again, rather than all being in the same place at the same time.

64. The next question is who will be entitled to vote at such meetings. Prior to the adoption of the 2001 constitution, such elections as were held were in effect treated as open to all members of the public, or at least those who attended the mosques. That was not what was provided by the articles of Association, but there was no pretence of following the procedure set down in those articles. Ms Kyriakides addressed part of her submissions to the question whether any meeting ordered should be a meeting of members of the public or members of the company. The power of the court to direct meeting under section 306 is of course a power to direct meetings of the company, rather than of the public, and it should be exercised in a manner that corresponds as closely as practicable in the circumstances to the procedure set down in the company's constitution.

65. In any event, in my view the clear implication of the provisions of the 2001 constitution, approached on the broad and purposive basis that I indicated earlier, is that the right to participate in elections for the appointment of the management committee is exercisable only by members of the company. Clause 3.13 provides as follows:

> " All the people who vote in the 2001 election will automatically become registered members. … The

> management committee to announce publicly to remind the public to register three months prior to an election in the future.
>
> 3.14 Registering as a voter will not give a person an automatic right to stand for the management committee. For this clause 2.1 will apply "

A number of points arise from these provisions. It must be remembered that the first election was to be held just two months after the constitution had been first read to worshippers at the mosques, so there would be very limited time for people interested in becoming members of the company to be registered as such before the election was held. This may well explain why it was provided that anybody who in fact voted at the 2001 election would by virtue of doing so become a member of the company. There is no express provision of a mechanism by which anyone would become a member thereafter, but in my view the reference to a public announcement "to remind the public to register three months prior to an election the future" is to be interpreted as meaning that members of the public will be invited to become registered members of the company, in order that they should be entitled to vote in subsequent elections. This does not of course mean that no one can apply to be registered as a member outside the three-month period, but only that a reminder will be issued so that anybody who wishes to vote can make sure that he has registered as a member in good time to be able to do so. The reference to "registering as a voter" is in my view to be interpreted as referring to registering as a member of the company, by which a person would acquire the right to vote, and not simply to a form of registration which would entitle someone to vote at elections for membership of the management committee, but not to have any other rights of a member of the company.

66. Clause 3.12 provides as follows:

> " All the Muslim people who come to vote in the election in the year 2001 (and every two years thereafter) can only vote if they bring proof of their identity … showing their permanent place of abode. All voters must be over 18 years of age and be permanent residents of High Wycombe. "

This in my judgment should be interpreted to mean that membership of the company (and therefore the right to vote in elections for the management committee) is open to any Muslim who is at least 18 years of age ("over 18 years of age" meaning that they have attained 18 years, and not that they are at least 19) and a permanent resident in the High Wycombe area. It follows from this that membership is open to men and to women Muslims, and that membership of the company, as distinct from the ability to be a member of the management committee, is open to Muslims of any school of thought, and not restricted to Sunni Muslims. A clear and, it seems to me intentional, distinction is drawn in clause 3.14 between registration as a member giving entitlement to vote, and having a right to stand for membership of the management committee for which "clause 2.1 will apply". Clause 2.1 provides that "no person shall be eligible for membership of the management committee unless he is a follower of the religion of Islam according to the true Sunni faith…". That restriction therefore applies to potential members of the management committee but not to those who are only members of the company.

67. Section 306(3) provides that where the court orders the holding of the meeting it may give such ancillary or consequential directions as it thinks expedient. It is clear that a

number of such directions will be necessary in order to ensure that all those who may legitimately wish to take part in the elections, or to stand for membership of the management committee, may do so, whether or not they are already members of the company or have previously been involved in the administration of the mosques, and irrespective of whether they have any connection with the two rival groups that have assumed control of its affairs for so long. It may no doubt be necessary to list a hearing at which submissions may be made as to the precise form of the directions to be given. It may be helpful if I set out below some preliminary indications as to the directions I would be minded to make, which I will of course reconsider in the light of submissions received.

68. The first matter concerns the appointment of election commissioners. The 2001 constitution provides for a maximum of five election commissioners from the Muslim Sunni community, whose task is to receive applications from candidates for election to the management committee. The constitution envisages that the local council will be approached to provide election officials who would supervise the conduct of the election on the day it is held, but I am told that in the past the local council has declined to do so. In these circumstances, it seems to me that those who are appointed as election commissioners should take responsibility for making the arrangements for conducting the ballot, subject to the directions given by the court. There is also a reference to the desirability of having a police presence at the main gate on the day of elections, and the exclusion of observers and agents in the ballot rooms, no doubt with a view to minimising the possibility of disorder or exertion of improper pressure on voters. These seem to me to be sensible precautions, which should be incorporated in the directions given.

69. In the absence of an effective management committee, some arrangements must be made for receiving and determining applications for registration as a member of the company. These arrangements, it seems to me, should also be put in the hands of the election commissioners, subject to a right of application to the court if any person considers that he or she has been wrongly refused to be admitted as a member.

70. To ensure that information about these arrangements is widely available in a reliable form, I propose to include in the directions provision that a summary of them, in a form which I invite the parties to agree for my approval, shall be displayed in suitable locations in all of the mosques, in English and in such other languages as may be appropriate, and that full copies of them must be made available on request. The summary should also be read out in public at all three mosques at the time at which mosque announcements are normally made, on at least two consecutive weekly occasions. It should be clear that both the locations at which the written summary is displayed, and the occasions at which the directions are read out, must be such as to bring them to the attention of both men and women attending the mosques (the evidence was that women assemble and pray in different areas from men). The summary must state that copies are available from named individuals. I would wish there to be a number of such individuals, each of whom will have undertaken in writing to the court to comply with the directions and make copies available to anyone who asks for them. They should in my view include individuals associated with both the two groups and at least one person who is not associated with either of them, and should include women as well as men.

71. As to the mechanism for selection of election commissioners, I am minded to agree in broad terms with the proposals that Ms Kyriakides makes in her skeleton, namely that

the directions that are read out and displayed should invite any person interested in acting as an election commissioner to submit his (or her) application to the first claimant, within 14 days of the second occasion on which the directions are read out at the mosques. I would suggest that each applicant be required to sign a form of declaration, which I invite the parties to agree for my approval, by which they declare themselves to be a Sunni Muslim (as required by clause 3.7 of the 2001 constitution), acknowledge that they have read and understood the relevant provisions of the 2001 constitution and the court's directions, and undertake to do their best if appointed to ensure that the elections are held and conducted in a free and fair manner and in compliance with the provisions of the Constitution and those directions.

72. I would propose that the claimant should provide to the defendant the names of all those who have applied to be appointed as election commissioners. If there are more than five applicants, I agree in principle that it would be appropriate to determine which five of the applicants are appointed by drawing lots. Ms Kyriakides suggested that this should be arranged in the presence of three witnesses from the Sunni community, but it would not in my view be appropriate for the claimant to be able to arrange this on some private occasion witnessed only by individuals selected by him. Instead in my view the directions should provide that this will be done on a specified occasion at one of the mosques, being at a time and place at which it can be witnessed by any person who wishes to do so, male or female.

73. In relation to membership of the company, I propose that firstly the election commissioners should be in charge of compiling a proper register of members of the company, which will include the five original subscribers and each person who registered to vote at the 2001 election. If any record can be located of those who voted at the 2003 election, any additional persons who are named in it should also be registered as members. The directions should provide that any other person wishing to become a member may apply in writing to the election commissioners, in a specified form which again I invite the parties to agree for my approval. The form should contain the person's name and address and date of birth, and a statement that he or she is a Muslim, and is permanently resident at the specified address. I agree with the suggestion that any application should be accompanied by proof of identity in the form of a passport driving licence or medical card, and proof of address in such form as the election commissioners may accept.

74. The directions should also provide that election commissioners must make a decision within a short period (I suggest not more than one week) whether the applicant shall be admitted as a member of the company, and that if the application is refused the election commissioners must state in writing the reasons for the refusal. Any person whose application is refused should have the right to apply in writing to the court for an order that he or she be admitted as a member of the company, providing a copy of this application, the reasons given for refusal and any evidence relied on in support of the application. Any such application should be referred in the first instance to a Master, who may determine it without a hearing or give directions as thought fit. One potentially contentious matter may be whether a specified address is or is not to be regarded as being in High Wycombe, as required by clause 3.12 of the 2001 constitution. I invite submissions as to an objective method of determining this. I anticipate, for instance, that there may be good reason to interpret this provision relatively broadly so as to include Muslims living in smaller towns or villages near to High Wycombe, as well as those who live within the town of High Wycombe itself.

75. The election commissioners will have the responsibility for receiving and dealing with nominations of candidates for election to the management committee. Each potential candidate should be required to sign a statement of his candidacy. Again I invite the parties to agree a suitable form for my approval. It should also be signed by a nominator and seconder (as required by clause 3.3 of the 2001 constitution) and confirm that the candidate and his or her two proposers are each followers of Islam according to the true Sunni faith, as defined in the "Prime Object" set out on the first page of the 2001 constitution.

76. The election commissioners will have the responsibility of settling a form of ballot paper. In my view, whilst they may consider it appropriate that each candidate should have the opportunity to state on the ballot paper whether he or she adheres to any group, the names should be listed in alphabetical order and it would not be appropriate to have them divided into separate lists or blocks of candidates for particular groups, or for the names to be laid out in any way which might imply an order of preference.

77. In the 2001 election, each voter was allowed up to 25 votes, and the 25 candidates with the most votes were considered elected. The Constitution provides that there should be 25 members of the management committee, but does not specify exactly how the ballot will be conducted. Subject to submissions, I am provisionally of the view that the mechanism previously used should be adopted again.

78. The election commissioners would also be responsible for the conduct of the elections on the day. They should in my view request the assistance of the police if they consider it to be necessary, although I am not to be taken as saying that the police must comply with such a request if made. That is entirely a matter for them. The commissioners should make arrangements for persons attending to vote to prove their identity on the day in the manner provided by clause 3.12 of the Constitution, and ensure, in compliance with clause 3.8, that no person is allowed to be present in the ballot room other than voters and the officials appointed by the election commissioners to register voters and hand out ballot papers. They will also have to make arrangements for voters to be able to complete their ballot paper in secret, for the provision of a ballot box in which it can be placed without anyone having the opportunity to read it in advance, and for votes to be counted when the ballot is closed. They may need assistance for any of these purposes, and would have the sole authority to engage people to provide it.

79. The directions should provide that the company will reimburse the proper and reasonable costs incurred by the claimant and the election commissioners in compliance with these directions, and make available its premises and facilities (I have in mind for instance the use of office space, telephones, copying and the like) as reasonably required by the claimant and the commissioners for these purposes. I anticipate that the ballot will be held at one of the mosques, and that it will be necessary for arrangements to be made, as required by the commissioners, for the use of a room or rooms on the day and possibly for other rooms or entrances to be closed so that the ballot cannot be interfered with.

80. There may no doubt be other matters which it would be desirable to include in the directions. I will list a short hearing in Birmingham at which this judgment will be formally handed down. There need be no attendance on that occasion. The parties should agree a time estimate for a hearing to settle the directions and the form of

order, and contact the Chancery listing section in London for that hearing to be arranged, either in London or in Birmingham.