

Neutral Citation: [2023] EWHC 502 (Ch)

Case No: PT-2020-000680

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURT OF ENGLAND & WALES

Remote Hearing Microsoft Teams  
Date: 13/03/2023

Before :

I.C.C. JUDGE JONES SITTING AS A HIGH COURT JUDGE  
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B E T W E E N:

SYED AMINUL HAQUE

(representative/ member of Muttahida Quami Movement Pakistan  
unincorporated association)

Claimant

-and-

(1) ALTAF HUSSAIN

(2) IQBAL HUSAIN

(3) TARIQ MIR

(4) MUHAMMAD ANWAR

(5) IFTIKHAR HUSSAIN

(6) QASIM ALI RAZA

(7) EURO PROPERTY DEVELOPMENTS LIMITED

Defendants

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Mr Nazar Mohammad (instructed by Direct Access) for the Claimant  
Mr Richard Slade K.C. (instructed by CM Atif & Co) for the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants  
The other Defendants did not attend and were not represented

Hearing dates: 28 November – 2 December 2022 and 25-26 January 2023  
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**Judgment Approved**

I.C.C. Judge Jones:

A) Introduction to the Claim and the Defence

1. It is not in dispute that six properties (“**the Properties**”) within this jurisdiction together with the net proceeds of sale of a seventh (to the extent they can be identified or traced) are held on trust (“**the Trusts**”) for “The Muttahida Quami Movement” (“**MQM**”), an unincorporated association formed in the 1990s out of a student association to become a political party in the Islamic Republic of Pakistan (“**Pakistan**”).
2. By a claim form issued on 3 September 2020, Mr Syed Aminul Haque on behalf of the membership of “The Muttahida Quami Movement Pakistan” (“**MQMP**”), which he claims is the current name of MQM, (in summary) asks the court: to remove or substitute the current trustees; for relief to prevent misappropriation; and for orders to recover trust assets including rental income. The 1<sup>st</sup> to 6<sup>th</sup> Defendants are identified as the trustees and the 7<sup>th</sup> Defendant as a vehicle used to receive and as a constructive trustee of the proceeds of misappropriated assets. The 5<sup>th</sup> and 6<sup>th</sup> Defendants are also identified as “dishonest assisters” and/or constructive trustees. Only the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants (“**the active Defendants**”) oppose the application.
3. The bases for those claims may be summarised as follows: The Defendants have failed to keep the books and records required of them as trustees and have failed to account for their use of the Properties including the income received from them and the above-mentioned net proceeds of sale. There has been a misuse of trust assets for personal use and/or for the use of third parties. The breaches of fiduciary duty, the Defendants’ loss of independence, and the existence of mistrust between the Defendants and the beneficiaries should cause the court to order the removal of the Defendants as trustees, to restrain misfeasance, to order accounts, and to provide for the recovery of misappropriations.
4. Notwithstanding that this claim relates, therefore, to the actions and omissions of the Defendants as trustees, the Particulars of Claim address a variety of matters concerning the operation of MQM and its constitutional history. It is apparent from this statement of case that the roots of the claim date back to what occurred after a speech on 22 August 2016 by MQM’s founder and ideologue, Mr Altaf Hussain. The speech, which was broadcasted from London to the membership of MQM in Pakistan, resulted in unrest, principally in Karachi. There was intervention by the authorities amidst scenes of violence. The next day Mr Altaf Hussain publicly apologised, and stated he would step away from any active involvement with MQM. It is in dispute between MQMP and the active Defendants whether his expressed decision was temporary or permanent. In addition whether the decision permitted or enabled amendments to MQM’s constitution on 31 August and 1 September 2016 (“**the September 2016 Constitution**”) without having first sought his guidance, assent and/or ratification. The amendments included the removal of any role Mr Altaf Hussain had within MQM. It is also in dispute whether MQM became known as MQMP or whether, as the active Defendants assert, MQMP is a new political party formed by Dr Sattar and others who (or some of whom) have caused this claim to be made by falsely claiming to be MQM.
5. The Particulars of Claim assert that late in August 2016, following Mr Altaf Hussain’s speech and apology, MQM “*splintered into two elements*”, MQMP and “MQMA”. The latter being described as the association which the 1<sup>st</sup> Defendant, Mr Altaf Hussain, the 2<sup>nd</sup> Defendant, Mr Iqbal Husain, the Fifth Defendant, Mr Iftikhar Hussain, and the 6<sup>th</sup> Defendant, Mr Qasim Ali Raza represent.

6. There is no dispute that MQMP engaged in elections after August 2016 at all levels of government. It is registered as a political party in Pakistan in accordance with the requirements of the Elections Act 2017. Its constitution (as amended from time to time) is lodged with Pakistan's Electoral Commission. It is accepted that MQM is no longer registered as a political party, unless its name was changed to and it now is MQMP. Mr Haque relies upon those facts to evidence the fact that there has only been a change of name.
7. The contrary, fundamental premise of the Amended Defence is that MQM and MQMP are separate unincorporated associations. The active Defendants' case is that MQM was registered as a political party from 1987 but from August 2016 its registration was prohibited by the "*military establishment*". MQMP was hurriedly created after the speech in August 2016 as a result of a "*military crackdown*" on MQM "*to enjoy the patronage and protection of the military authorities whilst masquerading as the same organisation as MQM to the outside world*". The active Defendants' case is that MQMP for the purpose of its registration as a political party wrongly notified the Electoral Commission that MQM had changed its name to MQMP. It wrongly registered the September 2016 Constitution in place of MQM's constitution as adopted in October 2015 ("**the 2015 Constitution**") which had replaced/amended the Constitution MQM had adopted by amendment in 2012 ("**the 2012 Constitution**").
8. It is also asserted by the active Defendants that the September 2016 constitution cannot be MQM's constitution because its adoption would have failed to comply with the 2015 Constitution or the 2012 Constitution. Mr Altaf Hussain could not be removed as founder and leader of MQM as the September 2016 Constitution purported to do. In particular because: (i) there was no 2/3 majority vote by MQM's Electoral College; and (ii) there had been no prior request for guidance or actual guidance received from Mr Altaf Hussain as required by article 9(b) of the 2015 Constitution and the 2012 Constitution.
9. Whether because MQMP is a separate association or because of unconstitutional actions within MQM, the active Defendants assert that Mr Altaf Hussain remains "*the ultimate leader of MQM ... obliged to fulfil this role from London because he has for many years been persona non grata in Pakistan*". It continues to be an unincorporated association with membership not only in Pakistan but also in London and the United States of America and other places.
10. MQMP (through Mr Haque) does not dispute that until 23 August 2016 Mr Altaf Hussein had the constitutional power to influence the important decisions of MQM's principal administrative and decision making body, its "Central Co-Ordination Committee" ("**the CCC**"). The extent of Mr Altaf Hussain's previous role turns upon whether the 2012 Constitution applied or whether, as the active Defendants contend, the 2015 Constitution was adopted. If so, it gave Mr Altaf Hussain more extensive powers and required the CCC to be replaced by the Central Executive Council ("**the 2015 CEC**"). It is Mr Haque's case, however, that whichever Constitution applied, Mr Altaf Hussain relinquished any power and decision making role in MQM on 23 August 2016. The CCC administered MQM and continues to make its decisions without the need for consultation with or advice and guidance from Mr Altaf Hussain. This is given effect by the 2016 Constitution and its subsequent amendment in 2017 ("**the 2017 Constitution**").

11. Mr Haque asserts that the name MQMP, a name MQM frequently used in the past, reflects its change in direction away from the previous influence of Mr Altaf Hussain in London and towards concentration of administration and decision making in Pakistan. Decisions made between the end of August and October 2016 included the expulsion from MQM/MQMP of former members in London, including Mr Altaf Hussain. They no longer have an interest in MQM, which is now called MQMP. In any event, however, they remain trustees of the Properties and have committed breaches of trust (as summarised above). The Defendants should be removed as trustees and should account for any breaches of trust.
12. It may be noted that it does not appear to follow from the nature of the claim that the Particulars of Claim needed to address the history summarised above when the claim is for personal breach of trust as summarised except to the extent necessary to establish that Mr Haque represents the Trusts' beneficiaries. In any event, on 7 October 2021 it was directed that the claim should be split into two stages. First, this trial at which the issues pleaded within paragraphs 1-23 of the Particulars of Claim and paragraphs 1-50 of the Defence are to be determined. They were summarised as the constitutional issues. The second stage (if required) will address whether the Defendants should be replaced as trustee and/or whether they have acted in breach of trust and, if so, the appropriate relief.

## **B) The Statements of Case Summarised and Issues at Trial**

13. Paragraphs 1-23 of the Particulars of Claim plead the history of MQM and its constitutional development. They set out facts which address which Constitution is binding, including whether MQM adopted the 2015 Constitution. In doing so they refer to the speech of 22 August 2016 and its consequences. It averred there was lawful amendment of the 2012 Constitution in February and April 2016 (“**the April 2016 Constitution**”). There was further amendment on 31 August 2016 and 1 September 2016 including removal of the reference in Article 9(b) to the role of Mr Altaf Hussain. The conclusion of this statement of case is that MQMP is MQM and its members are the beneficiary of the Trusts.
14. Paragraphs 1-50 of the Amended Defence also address the history of MQM and assert that MQMP is a distinct and separate unincorporated association which has in effect copied MQM and its Constitutions. Each has their own Constitution.
15. It is pleaded that MQM's constitution is the 2015 Constitution and that the 2016 Constitution is void as a Constitution of MQM. Alternatively that it would be null and void under the 2012 Constitution. It is disputed that Mr Altaf Hussain had previously handed over power or otherwise stepped down from his role following the speech he made on 22 August 2016. Mr Altaf Hussain was not and could not be removed by the meetings on 31 August and 1 September 2016. MQM remained in existence under his leadership. The statement of case concludes that MQMP has no interest in the Properties and no right to bring these proceedings or make any claim against the Defendants.
16. From the statements of case to final submissions, both sides have concentrated in detail upon the following issues, as developed at this trial:

- (i) Whether MQM is now known as MQMP or is a separate unincorporated association (“**the MQM Identity Issue**”); and
  - (ii) If MQM is now known as MQMP, whether those now in control are acting unconstitutionally (including by the appointment of Mr Haque as a representative to bring these proceedings) because they should be bound by the 2015 Constitution and their purported authority stems from the unconstitutional actions of those who seized control and instigated the purported adoption of the 2016 Constitution after the 23 August 2016 apology (“**the MQM Constitutional Issue**”).
17. Mr Slade K.C. on behalf of the active Defendants within his skeleton argument drilled those constitutional issues down into more specific questions:
  - a) *Was an electoral college 2/3 majority vote and D1’s assent required under the applicable constitution for any constitutional change made by CCC in August 2016?*
  - b) *Was CCC obliged to seek D1’s guidance under the applicable constitution for any constitutional change made in August 2016?*
  - c) *What difference (if any) did D1’s announcement on 23.8.16 make to the answers to (A) and/or (B)?*
  - d) *Was the constitutional change in August 2016 approved by the requisite majority of CCC?*
18. Those issues (whether in umbrella canopy form as in paragraph 16 above or in spoke form in paragraph 17 above) have caused the Court’s concerns having regard to the fact that the Defendants are sued in their capacities as trustees, the nature of the claims made against them as trustees, and their fiduciary duties (including the duty to avoid conflicts of interest). It is of potential concern that the active Defendants may be raising matters concerning the interests of members and, maybe, former members under the contract of the Constitutions rather than addressing their positions as trustees of land. It is of concern that they may be doing so in their capacity as trustees to advance their personal interests/claims. Those concerns arise without any view needing or being taken of the merits of the claim. They arise when the active Defendants have not sought directions from the Court concerning their role as trustees and whether there is any other interested party who ought to have the opportunity to be represented in respect of constitutional matters.
19. It is recognised that the concerns are raised in the context of the Particulars of Claim, not the Defence, having first raised the facts and matters resulting in the MQM Identity Issue and particularly the MQM Constitutional Issue. In addition that the concerns have not been raised by Mr Haque on behalf of MQMP. It is also appreciated and account will be taken of the fact that the concerns could not be fully raised by the Court until final submissions due to the manner in which the trial proceeded including the tight timetable. Nevertheless, they are matters that need to be addressed, albeit in that context.

### **C) Trustees/Representation/Jurisdiction**

20. Addressing those concerns: MQM was and is (whether as MQMP or as MQM) an unincorporated association. It is not a legal entity or partnership. It is a collection of people with a membership that can and will change from time to time. People who have bound themselves as an association to the extent of their contractual agreement. In this case the agreement is contained within the terms of the Constitution in force from time to time. The Properties are held on trust for those members.
21. With regard to this claim, Mr Haque's appointment as a representative of the members of MQMP pursuant to its Constitution has been proved to the satisfaction of the court both before and at this trial. No issue is taken by the active Defendants except, of course, to the extent that they do not accept MQMP is MQM or in the alternative contend that any such appointment would itself be unconstitutional because of the discarding of the 2015 Constitution.
22. The facts that the Defendants have been sued as trustees not members and that the relief sought includes their removal and questions of breach of trust present two different issues: the approach trustees should take to litigation generally; and the approach that should be taken to applications to remove them. They are not the same. I have not been addressed upon the latter, no doubt because it is treated as being relevant to the second stage of the trial. However, it should not be ignored that the jurisdiction to remove trustees is different from ordinary litigation where it is necessary to prove the facts of the cause of action relied upon against the other party.
23. Applications to remove trustees are concerned with the trust and what is best in the interests of the beneficiaries. Obviously there needs to be cause to remove but once the court identifies real concerns about the interests of the beneficiaries, it may and often is sufficient for the court to exercise its powers without making findings of fact. The approach is identified and explained in the judgment of Judge Marsh, then the Chief Master, in *Schumacher v Clarke* [2019] EWHC 1031. That decision concerns an application under *s50 of the Administration of Justice Act 1975* but the Judge makes plain that the same considerations apply to the jurisdiction to remove trustees, and does so in the context of recognising that often an application to remove is a precursor to a claim for breach of trust.
24. This first stage of the trial has been treated as fully litigious requiring findings of fact, no doubt because of the formulation of the statements of case. The Defendants have not adopted a neutral stance. It is obviously correct that having been sued in their capacity as trustees, the Defendants should promote and uphold the Trusts but in doing so they owe fiduciary duties. They have a duty to avoid conflicts of interest. They cannot act in their capacity as trustees to promote their own interests as members of MQM or otherwise. Insofar as a trustee has a personal interest, they may need to step down or ensure someone who can be neutral is appointed for the time needed because of the conflict. Whilst that will not necessarily be the case, as trustees they should raise this with and seek directions from the court. This can be illustrated by the fact that trustees seeking to defend proceedings usually make a *Re Beddoe* application and in so doing seek a right to indemnity for costs from the trust assets. They do not have to but the point to be made here is that this enables them to raise the issue whether they should defend a claim or whether doing so might be a breach of duty. It is a point which for this case emphasises the distinction between being sued as a trustee and being sued personally.

25. The active Defendants by raising the MQM Identity Issue do so in part with a personal interest. They are not neutral but want to preserve their claimed rights by ensuring they are the beneficiaries of the trust as members of MQM. In addition, they have personal interests in maintaining the Properties (or some of them) for their continued use. Insofar as the MQM Identity Issue is concerned, they could argue they are the best people to advance this necessary defence to protect the members of MQM. On the other hand, the members of MQM have not been identified. The active Defendants as trustees are deciding how the defence should be pursued without any consultation with the membership they seek to protect. There may be answers to these matters but the problem is that the active Defendants have not sought directions to enable such matters to be addressed.
26. The position is more obviously serious in respect of the MQM Constitutional Issue. If MQMP is a separate association and not a beneficiary the issue will not arise. Therefore, the active Defendants' case for this issue proceeds on the basis that MQMP is MQM and Mr Haque represents the membership of MQMP. That being so, the active Defendants are raising the MQM Constitutional Issue not as members or former members with extant rights but as trustees defending claims which allege breach of trust and misappropriation against them including a failure to account. Those claims (assuming they have merit, which is not yet to be determined) will be on this scenario for the benefit of the MQMP membership and brought by a duly authorised representative of MQMP.
27. As a matter of principle, at least therefore, there appears to be much to be said for the proposition that the active Defendants should have recognised that the defences they are raising within stage one of the trial are defences attributable to their interests as members/former members not as trustees. That they should have asked the Court for directions including as to whether they should be joined as members to enable them to bring a cross-claim. If they had done so, the Court would also have had the opportunity to consider the issue of jurisdiction in the context of the MQM Constitutional Issue being raised for an unincorporated association which is a political party in Pakistan (including participation in national and local elections), organised in Pakistan and with a membership in Pakistan.
28. Mr Slade K.C. in closing submissions adopted a pragmatic approach to the concerns. The key players are before the court, directions were given for a two stage trial, and the parties have presented their evidence and argument. In addition, Mr Haque has acceded to this approach. The issues raised for stage one should be determined. Insofar as a problem will arise in the future from the fact that the Defendants have acted as trustees not members, and they are not representatives, it can be addressed as and when it arises, if it does.
29. He also relied upon the decision of Sir William Blackburne in *Fielden v Christie-Millar* [2015] EWHC 2940 (Ch). A point was taken in that case that trustees of a settlement of land should have remained neutral and not adopted a hostile stance to the claims. It can be summarised without reference to the details as follows:
  - a) The claimant sought a declaration that the terms of a deed of appointment had the effect of creating a life interest in a trust fund's income for Stephen with a residuary interest in the fund for the claimant, Sam, or sought rectification of the deed accordingly.

- b) Sam counterclaimed on an alternative construction or for rectification to that effect. He also asserted an interest in the farm house in which he lived based upon proprietary estoppel. The original pleading of this part of the claim was struck out because it was not alleged that the underlying representations were made by or on behalf of all of the settlement trustees.
  - c) It was then necessary to decide whether to give permission to amend by way of a re-drafted pleading, including permission to seek rectification pursuant to *section 20 of the Administration of Justice Act 1982*, and to add a claim for the removal of the current settlement trustees taking into consideration the trustees' hostility to the claim by their defence of it on the merits and by seeking to have it struck out.
  - d) The Judge found it opportunistic to rely upon the original defence to the counterclaim and upon the strike out application by the trustees when no objection to their stance had been taken at the time the strike out application was determined by the court.
  - e) However, he also decided that neutrality did not apply when the counterclaim challenged the conduct of the trustees saying: "*I do not consider the trustee's duty of neutrality as between the beneficiaries for whose benefit he holds the trust fund requires him to take no position when his own conduct is called into question*".
  - f) The Judge also made the point that the estoppel raised related to an asset held by the trustees for which there had been no appointment. They could have been open to criticism if they had done nothing when they believed the claim to be without merit. Their defence, which was conducted with the benefit of an indemnity from Sam (thereby establishing his consent so far as it was required), did not compromise any duty of neutrality or impartiality towards the beneficiaries of the settlement.
30. Mr Slade K.C.'s submission that the same conclusion should be reached for this case, therefore relies upon the nature of the claim and whether the Defendant trustees are right to adopt an active defence bearing in mind the overall circumstances of the claim including whether their conduct is being called into question and the approach taken by Mr Haque. The problem for this case, however, is that the MQM Constitutional Issue (at least) is not on the face of it a defence relevant to the alleged misconduct of the active Defendants as trustees. If they have, for example, misappropriated assets of the Trust, they should account for them.
31. If the role of the Defendants as trustees had been raised before trial, it would probably have been addressed with reference to the statements of case alone. However, this matter cannot now be viewed as though the trial had not taken place. Therefore, I will return to these issues and reach such decision as may be necessary concerning the correct approach to be taken having addressed the evidence and determined the facts.

## **D) The Trial**



## **D1) Context**

32. There is considerable tension between the two sides with accusations within the evidence of serious misbehaviour and betrayal within a setting of deep political commitment. The views of each side are seriously misaligned within the context of what has plainly been a difficult political climate for MQM in Pakistan. It is right to record, therefore, that despite their entrenched differences all who attended respected the Court and they, including the witnesses, recognised that this was a case to be decided in accordance with law.
33. Nevertheless, it is important to observe that the findings of this judgment are based on the evidence of relevant fact before this court not upon matters of argument, political or otherwise. In addition, that this judgment is concerned with a claim in respect of trusts of land within this jurisdiction. It is not concerned to resolve historical or current disputes concerning politics in Pakistan, and it is not concerned in any way to interfere in the conduct of politics in Pakistan. This judgment is not to be used for such purposes.
34. Often in a judgment the evidence will be rolled up within the findings of fact having previously summarised the Court's assessment of the witnesses. In this case, however, the scene is best set by a section summarising the relevant evidence of each witness to form the landscape for the findings of fact which will also draw on the documentary evidence. I should make clear, however, that whilst I have referred to the evidence in some detail from time to time, this section is always intended to provide a pragmatic summary. It is inevitable that large amounts of evidence will not be specifically mentioned but I have obviously taken into consideration all of the matters before me.
35. To avoid the bloating of the main body of this judgment, for convenience and in case there is any cause to redact bearing in mind the potential for personal risk created by the political scene and by this dispute, I will set out my summaries of the evidence of each witness within Appendices (one for each side). They will include individual witness assessments but the following general approaches to the evidence apply to all witnesses.

## **D2) Witness Evidence Generally**

36. It is necessary when considering the evidence from all the witnesses to take into consideration the fact that their evidence is given some 6-7 years after the main events in 2015 and 2016. The potential effect of the effluxion of time upon memory is obvious, and the potential for unintentional false memory attributable to the workings of the subconscious is particularly apparent when the subject matter of those events is politics. Inevitably there will have been numerous intense discussions over time that will potentially have moulded the recreations of contemporaneous memory. Everyone's evidence needs to be addressed with those factors in mind and the evidence carefully considered within the context of recorded, contemporaneous evidence and of the relevant evidence as a whole. As to records, it is to be borne in mind that records may be missing or inaccessible because of the sanctions placed upon MQM following the 23 August 2016 speech of Mr Altaf Hussain.

37. The documentary evidence includes exhibited media reports. I should mention, therefore, that they are to be viewed as hearsay documents for which the authors have not been called. Whilst they provide evidence of what certain people wrote at the time, their accuracy will not be presumed.
38. I should also make the following general observations concerning witness assessment: The fact of a favourable assessment does not necessarily mean that what was said is true or that an unfavourable assessment means what was said is necessarily false. Those who have sought to do their best to assist the court can still get facts and matters of recollection wrong. Those with apparent bad character can still get facts and matters of recollection right, and may be reliable witnesses in respect of specific matters even if their overall assessment is considered unreliable. The assessments within the Appendices describe a general approach to be taken to the evidence but do not avert the need for careful scrutiny bearing in mind the documents and the evidence received from others.

### **D3) Disclosure Issues**

39. There are two elements of disclosure that have been challenged. The first concerns the absence of recordings for the telephone meetings that purportedly approved the 2015 Constitution on 21 and 22 October 2015. The second concerns the absence of disclosure by Mr Haque of emails for the 2015 and 2016 years using the CCC's email address.
40. The former was the subject of an application made by Mr Mohammad following his opening to the effect that the active Defendants should be debarred from defending or adducing evidence concerning matters relevant to those meetings because they had not retained the BT telephone automatic recordings which should exist and either establish the meetings occurred or, as he submitted, that they did not. It was found to be inappropriate to pursue that application bearing in mind the recognised timetable difficulties, and that much might turn upon whether the relevant evidence of witnesses for the active Defendants would be believed. The application was abandoned at the beginning of the second day of the trial and witnesses were called. Nevertheless the issue remained for consideration in the context of the MQM Constitutional Issue.
41. The relevance of the non-disclosure will be addressed (to the extent necessary) within the findings of fact. However, it is convenient at this stage to note the following relevant facts: (i) A BT telephone system which automatically recorded calls may have been operating at the London offices of MQM during October 2015; (ii) It was in any event normal practice to use a tape recorder to record meetings on TDK tapes. (iii) On or about 20 June 2019 the police seized the BT system and its recordings together with TDK cassettes; (iv) A transcript of certain TDK recordings from August 2016 was provided for the resulting criminal trial at which Mr Altaf Hussain was acquitted; (v) The transcript makes no reference to any telephone meeting concerning the 2015 Constitution; (vi) On 7 April 2022 the BT system and TDK tapes were returned with the transcripts; (vii) On 4 November 2022 Mr Justice Leech made a consent order requiring the active Defendants (upon debarring terms with regard to the assertion that the 2015 Constitution had been adopted) to produce a witness statement explaining their searches for recording tapes and to explain the position if none were found. (viii) Mr Mustafa Ali's witness statement explained what he understood happened to the

recordings, and in essence concluded that the BT recording machine must have been thrown out by mistake when 18 CPUs were disposed of by himself and Mr Sufyan Yusuf; (ix) He also stated it was the practice of the MQM in London to record meetings on a tape recorder with TDK tapes but none had been found which refer to the 2015 Constitution.

42. Mr Mustafa Ali was the only witness whose statement addressed the “loss” of the BT telephone system recordings. However, Mr Qasim Ali during cross-examination stated that he too was involved in discarding the CPUs with which the BT system and its recordings must have become mixed up. It is to be noted that he had not been mentioned by Mr Ali either in chief or under cross-examination when dealing with the process of collection disposal. His evidence was that the only people involved were himself and Mr Yusuf. Mr Yusuf gave evidence that he was involved in identifying the CPUs that could be discarded but had no knowledge of the BT recording machines.
43. I find it extremely unlikely that Mr Mustafa Ali would not have mentioned Mr Qasim Ali had he been there. That places both their recollections in issue but in any event the reality is that their evidence as to what happened to the BT system and its recordings is supposition. Neither knows the system and its recordings were confused or mixed up with the CPUs. Neither knows the system was thrown out with the CPUs. Mr Qasim Ali accepted that no steps were taken to preserve the BT telephone system after its return from the police and the only factual conclusion to be drawn is that it was not preserved. Obviously it should have been but it is not entirely clear from the evidence that the recording system was even in place in October 2015.
44. It will be borne in mind that the evidential burden of proof of establishing that the 2015 Constitution was discussed and approved on 21 and 22 October 2015 falls upon the active Defendants as the persons who assert this occurred. It would be very surprising if such important conversations had not in any event been recorded on the TDK cassettes normally used in London to record meetings. That would be especially so if the BT system was not in place or the relevant witnesses for the active Defendants, including themselves, were unaware there was automatic recording. That was certainly the tenor of their evidence and by the end of the trial the existence of the automatic recording system at the time was in dispute.
45. The transcripts from the TDK recordings do not include reference to any discussions of the 2015 Constitution. On the face of the transcripts, and with reference to the numbering on the left hand sides, they are complete. No satisfactory reason was identified for why TDK tape recordings do not exist for the meetings on 21 and 22 October 2015.
46. In closing submissions Mr Mohammad asked for the active Defendants to be prevented from asserting there were meetings on 21 and 22 October 2015 because of the failure to preserve the BT telephone system. I will accept his submission that this showed unacceptable disregard for these proceedings. Although Mr Mustafa Ali raised issue with this during his cross-examination, there can have been no doubt of the system’s potential relevance, and no doubt from previous directions and dealings between solicitors that it had to be preserved. However, it is difficult to see the basis for the sanction sought. First because it is unclear that the system was in place at the time, and second because Mr Haque can rely upon the absence of any TDK tape recordings for

the meetings and of any mention of the 2015 Constitution in the transcripts of the TDK recordings.

47. The second element of non-disclosure concerns the failure of Mr Haque to provide disclosure of emails derived from an address used for communications between CCC members. This too needs to be considered having addressed the relevant evidence. Nevertheless it is also convenient at this stage to note that: (i) There is no dispute that the email address [mqmrcpk@gmail.com](mailto:mqmrcpk@gmail.com) is one which required searching because the communications between CCC members would probably make some form of reference to the 2015 Constitution whether in draft or final adopted (as alleged) form; (ii) Mr Justice Leech on 4 November 2022 ordered the Claimant's solicitors to explain the searches carried out for the email documents; (iii) The answer given by letter dated 9 November 2022 was that access was being denied by the server; (iv) It was explained in evidence that this resulted from a "hack" in April or May 2022 but that the account had been accessible certainly at the beginning of the year and before; (v) Mr Haque also stated that he and his solicitor had previously found that the email account contained thousands of documents and that, as a result, they had not searched it.
48. Following Mr Mohammad's line of attack in respect of the BT system, there would be much to be said for similar sanction. However, realistically this was not sought by Mr Slade K.C., who instead asked the Court to take into consideration this default when weighing the evidence. I agree with his submitted approach.

#### **D4) Expert Evidence**

49. Before the trial, neither side had considered it appropriate to refer to expert evidence of the law of Pakistan. The parties chose to ask the court to assume it was the same as the law of this jurisdiction. Reference was made, however, to Pakistan's Political Order, 2002 and to (what appears to be) secondary legislation passed under delegated powers. The reason being that this appeared to Mr Haque to be relevant to the MQM Constitution Issue and reliance was also placed upon the fact that the 2015 Constitution relied upon by the active Defendants had never been lodged with the Electoral Commission as required by that Order.
50. During opening I raised the question whether the statutory requirements for registration of political parties might assist with the MQM Identity Issue. It was known that MQM and its 2012 Constitution had been registered, and that MQMP became registered with its 2016 and 2017 Constitutions. I suggested it was possible that either the provisions themselves and/or the documents registered or process of registration might provide the answer to whether MQM became MQMP.
51. This caused Mr Haque hurriedly to obtain expert evidence and to ask for permission to rely upon it. It was plainly unsatisfactory. Permission was refused but on the basis that both sides could provide proposed reports and ask for permission after the close of the evidence of fact should they choose to do so. Mr Haque did but the new expert evidence was far from conclusive and clearly the active Defendants would be entitled to an adjournment to serve evidence in response even if the objections of Mr Slade K.C. to

the admission of that proposed evidence were not accepted. At close of submissions the position was left for me to decide whether to grant permission. I have decided not to do so based upon the outcome of this judgment.

#### **D5) Submissions**

52. Both counsel provided very helpful speaking notes to add to their detailed skeleton arguments and assist their carefully constructed submissions. There are also the documents provided after close of submissions to be referred to below. The submissions are far too detailed to allow a summary to do justice to them but the following is an indication of the key matters of emphasis, excluding matters already referred to or specifically addressed below.
53. Mr Mohammad maintained that whether the 2012 or the April 2016 or the September 2016 Constitutions were applied, there was no evidence that MQMP was a new party formed separately from MQM. To the contrary, he submitted that the contemporaneous documentation established that Dr Sattar and the other CCC members had taken positive steps to amend MQM's Constitution and to act under MQM's Constitution. MQMP was a change of name.
54. Mr Mohammad adopted the proposition that the active Defendants could not challenge the actions of the CCC in reliance upon constitutional grounds, emphasising there was no issue over Mr Haque's right of representation of MQMP. In any event, as subsequently detailed, he submitted that the 2012 Constitution was amended lawfully and the role of Mr Altaf Hussain removed accordingly and consistently with his apology on 23 August 2016. An apology which involved his effective resignation and not a temporary respite. He also emphasised the absence of objection at the time or subsequently (in the sense of any active challenge under the article 17 or through the courts). He relied upon the registration of the 2016 and 2017 Constitutions with the Electoral Commission.
55. Mr Slade K.C. drew attention to the strength of feeling and anger of the active Defendants resulting from the true MQM being replaced by MQMP, a body that had collaborated with, as his clients would describe, "dark forces". He submitted that trustees should not be prevented from running a full defence to an attack by "an illegitimate outfit". Mr Altaf Hussain was always the founder, ideologue and dominant figure of MQM.
56. Mr Slade K.C. submitted with detailed reference to the oral and documentary evidence that there are sound indications that MQMP was a new party including the change of name. If not, not only was the 2015 Constitution passed, as the evidence established, but it and the 2012 Constitution have been ignored by those who have excluded Mr Altaf Hussain whether in terms of not seeking his required guidance or otherwise. He submitted that the claim proceeds from an unlawful hijacking. Mr Slade K.C. in support of these matters returned to the complaint concerning the absence of email disclosure.
57. As to Mr Altaf Hussain's apology, Mr Slade K.C. submitted it was plainly a temporary solution to a difficult political scenario that had developed following the 22 August 2016 speech. It could not justify the changes to the 2015 Constitution or to the April

2016 Constitution if that in fact applied which denuded Mr Altaf Hussain, the father of MQM, of his role permanently. He also addressed the circumstances of and voting at the meetings held on 31 August and 1 September 2016 in considerable detail, as will be referred to below. This included his submission that all major decisions were void absent Mr Altaf Hussain's guidance and ratification.

**E) Findings of Fact**

58. MQM was formed in 1984. Mr Mohammad challenged Mr Altaf Hussain's evidence that he was the founder and put that he "*muscled his way in to say he was the founder leader*". He was also challenged concerning his role in the MQM with the suggestion that he did not consider himself bound by the Constitution. It was put that in reality Mr Altaf Hussain was not an executive member of MQM, indeed strictly not even a member. That his role was limited to the terms of the Constitution and that the CCC was the executive with the power to decide how MQM should be run.
59. It is unnecessary, however, to delve into the origins of MQM because it is quite clear from the evidence before me that at least until 23 August 2016 the membership considered Mr Altaf Hussain to be their "father", the ideologue and a founder who received genuine and intense respect. It is also unnecessary to decide whether that reverence was from time to time taken too far, so that his words were followed by the CCC irrespective of the terms of the Constitution in force from time to time. It is unnecessary to decide whether oaths of allegiance to him were or should have been required for members. That is for two reasons. First, because there can be no dispute that the governing rules for and principles concerning the operation of MQM are to be found within its Constitution. Whilst Mr Altaf Hussain's evidence emphasised the importance of the manifesto and its potential supremacy for members over the relevance to them of the Constitution, he plainly and correctly recognised the Constitution was the rule book for this unincorporated association.
60. The second reason is that the actions of Mr Altaf Hussain evidence that he recognised that MQM could operate without him. He emphasised the importance of his role as ideologue, and it is plain that he provided the ideas and philosophy of MQM, and was responsible for teaching. Nevertheless, he resigned on two occasions. In doing so, he acknowledged that he could leave his position and role, and that MQM could operate under the terms of the Constitution, and generally, without him. True he returned, as he said, at the request of the members but there was no suggestion from him that MQM would not have continued without him had that request not been made or had it been refused.
61. Therefore, the position is factually clear. At least until 23 August 2016, Mr Altaf Hussain's role was of great importance to MQM. He was valued and many considered him invaluable. However, his role was subject to the terms of the Constitution, as amended from time to time, and to his decision whether to continue that role.
62. By 2002 MQM was a well-established political party within Pakistan. That year this unincorporated association adopted a new constitution. It was amended in 2012 and it is sufficient to address the 2012 Constitution without pointing out the specific amendments.

63. The 2012 Constitution's preamble and articles 1-2 and 11 proclaim that the intention of its signatories was to create a Pakistan political party known as "*Muttahida Quami Movement*", with a central office in Karachi. It would have the aims and objects set out in article 4, and the principles of policy in article 12. It would be administered by its "Central Co-Ordination Committee" (i.e. the CCC) in accordance with its article 9 functions, subject to the delegation of roles and powers to sub-committees. Those were to be: District/Zonal/Divisional committees for the Province of Sindh and Provincial Committees for Punjab, NWFP and Balochistan; local level sub-committees; a divisional organising committee for Karachi; and any other sub-committee formed by the CCC. The CCC would supervise and monitor the working of sub-committees and assist them (article 9).
64. It was envisaged that MQM would operate at Pakistan Federal, Provincial and local levels (article 6). The CCC may authorise "overseas units" with a similar administration (article 4g). The CCC would have a convenor, a minimum of 2 deputy convenors (with no maximum), and a minimum of 15 members (with no maximum) (article 6). The CCC's decisions would bind all party organs and members.
65. Its decisions should be by simple majority of the members present in a scheduled meeting but by a 2/3 majority for important and major policy decisions (article 9a). The CCC "*shall seek guidance from Mr Altaf Hussain being the founder and ideologue, on the major issues, if it deem fit for ratification*" (article 9b). The CCC shall frame rules, regulations, and necessary guidelines to implement policies and decisions (article 9h). The 2/3 majority requirement applied to the rescission or amendment of any rules and regulations or any part of the constitution (articles 9a and 10).
66. Membership of MQM was available to every citizen of Pakistan approved by the CCC (not being in the service of Pakistan or a member of another political or religio-political party), and members shall pay a membership fee determined by the CCC from time to time (article 8).
67. All party offices should be filled by membership elections every 4 years with the CCC having power to fill vacancies by a 2/3 majority decision pending the next regular election (article 13). There were specific qualifying criteria for the "*party leader and office bearer*" (article 16), and election procedures for all offices with distinctions being drawn with regard to the CCC chairman and deputies (article 18). There were also procedures for the election of party candidates (article 19) and provision for a party ticket.
68. It is readily apparent, therefore, that the 2012 Constitution required the CCC to run MQM, and for it to be formed of elected representatives chosen by the membership. Equally apparent is the fact that Mr Altaf Hussain had a special role as the founder and ideologue of MQM. That role was to provide guidance to the CCC upon major issues, and the CCC was bound to seek such guidance on the major issues "*if it deem fit for ratification*". Whilst on the face of it this did not give Mr Altaf Hussain any power of veto or require his guidance to be accepted, it is plain from the evidence before me that his special position and the respect in which he was held meant he was listened to.
69. Although the name of this unincorporated association as identified from the 2012 Constitution is MQM, it is not right to state that it would be referred to without reference

to Pakistan within its name before the events following Mr Altaf Hussain's speech and apology on 22 and 23 August 2016.

70. This is established by MQM's 2013 Manifesto entitled "*Empowering People*" containing an introduction from Mr Altaf Hussain signed as "*Founder and Leader Muttahida Quami Movement (Pakistan)*". The front page names MQM as "*Muttahida Quami Movement [Pakistan]*". True Pakistan is in parenthesis but that cannot be seen as an important distinction for the purpose of answering the question whether MQM was referred to as MQM Pakistan before the speech and apology. The fact that MQMP includes the word Pakistan cannot, as argued, be evidence establishing that it is a new party.
71. It is asserted by the active Defendants that the 2015 Constitution they rely upon was adopted in October 2015 to significantly change MQM's administration, and to increase the powers of Mr Altaf Hussain. This is relied upon for the MQM Constitutional Issue and also as evidence to support the case that MQMP is not MQM. I accept that the need for a new constitution was identified by Mr Altaf Hussain during the first quarter of 2015. Mr Waseem Akhtar in his capacity as Chairman of the Central Executive Committee was instructed by Mr Altaf Hussain in March or April to organise the drafting. There was evidence before me that this Central Executive Committee had been originally formed on 20 November 2011 but to align its creation to the 2012 Constitution and to distinguish it from the 2015 CEC (required to be formed under the 2015 Constitution), I will call it "**the 2012 CEC**".
72. There are factual issues or complications concerning the evidence for the drafting of the 2015 Constitution. For example, there are two versions of a letter dated 1 May 2015 purportedly from Mr "Wasim Akhter" on behalf of the 2012 CEC to Mr Altaf Hussain and Mr Waseem Akhter denied they were his letters and signatures pointing out the misspelling of his name. Nevertheless it is clear drafts were produced, and that the drafting was principally the responsibility of Mr Syed Sardar Ahmad. He was working with the Central Advisory Council ("**the CAC**") which was another sub-committee below the CCC. The evidential issues are probably attributable to the lapse of time but in any event are not important. The key point is that there was a 2015 draft Constitution which the active Defendants contend was the one approved on 21 and 22 October 2015.
73. In many ways it also does not matter whether the CCC had any preceding part to play in the process if there is evidence to establish that a resolution was passed to adopt the 2015 Constitution at a CCC meeting on 21 October 2015. However, the evidence that such a meeting occurred is oral, and from the witnesses for the active Defendants alone. It is relevant, therefore, to consider whether there is previous documentary evidence to support that testimony.
74. I refer in particular to the following documents:
  - a) An email of 16 August 2015 addressed to Mr Nusrat suggests he received a version of the 2015 Draft Constitution. His evidence is that the attached file did not open but the heading for the email evidences the fact that there was a draft in existence at this stage. He was a senior CCC member and Senior Deputy Convenor at the time.



- b) There is a CCC email of the same date attaching a minute of a 16 August meeting referring to Mr Altaf Hussain having given instructions that MQM needed a new constitution and that its drafting would be led by Mr Syed Sardar Ahmed with the assistance of constitutional experts, lawyers and experienced translators. Whilst this does not fit easily, chronologically with the contents of the 1 May 2015 letter, it is probably a matter only of language with the intention having been to record what had occurred. In any event the reality is that nothing turns on that. The process of drafting a new constitution was in place before and after 16 August 2015.
  - c) The 16 August minute does not suggest the CCC was actively engaged in the process of drafting. However, it records: *“The Constitution should include President and Chairman Positions, who will be strong on base of ideology who are not saleable nor who are fearful”*. Assuming its authenticity, it takes this case to the stage of awareness of the need for a revised constitution but not to its acceptance in final form by the CCC and by Mr Altaf Hussain as yet.
  - d) The same conclusion applies to the document that purports to summarise important points from meetings of the CCC from 23 March 2015 to 30 August 2015. Some witnesses have recognised it, others have not. On the face of the documents it appears to have been sent from the CCC to London by email on 30 August 2015. It is a strange document, and it is unclear on the evidence before me whether it was common practice for a document of its type and format to be produced or whether it is bespoke, assuming it is genuine. Nevertheless the issue concerning its authenticity need not be decided. The point is that it does not evidence a meeting having been called for the CCC to approve the 2015 constitution.
  - e) Its reference for meeting number 60, 16 August 2015, reads: *“Proposals for MQM New Constitution will be Tabled”* and *“Proposal for Making President and Chairman in the Constitution”*. There is no reference to the constitution having been tabled or to it being adopted or to the appointment of a President and Chairman. At best it demonstrates that at this stage the CCC was aware of what was occurring and would be considering a draft constitution to be produced in due course without any indication as to date.
75. Therefore in summary conclusion, it is apparent from the documentary evidence that at least some members of the CCC were aware of the drafting. It is also apparent that the drafting was anticipated to lead to a CCC decision whether to adopt the final draft. However, there are no minutes from previous meetings of the CCC which establish that a meeting to approve the 2015 Constitution would be called on 21 October 2015. There is also no written evidence of the resolution, no minutes of the meeting and no written record of the passing of the resolution. This is not conclusive but it certainly raises doubt as to whether a CCC meeting was held under the 2012 Constitution on 21 October 2015 to approve the final draft. There is also the feature that the draft if approved was incomplete.
76. At trial the parties proceeded on the basis that the version in the bundle which will be the 2015 Constitution if adopted appears at page 46 of “core bundle 1”. It includes the following significant changes, and under Article 1(2) would come into force with *“immediate effect”* once adopted:

- a) The prologue portrays the background history with rhetoric and together with the preamble refers to Mr Altaf Hussain as the “*ideologue-Founder*” and as MQM’s “*leader*”. It emphasises the importance of Mr Altaf Hussain, and refers to the signatories.
  - b) The CCC and its subsidiaries are replaced by the 2015 CEC. There will be new horizontal and vertical tiers to include the Central Advisory Council, Provincial Coordination Committees, Divisional (Regional) Coordination Committees, the Metropolitan (City) Coordination Committee, the District Administrative Committee, field committees at Taluka, Union Committee and Union Council level and horizontal attached wings (article 4) with specified management structures (article 7). The composition of committee membership is not always completed leaving open on occasions the number of people to be appointed.
  - c) The 2015 CEC will be the highest policy and decision-making body with majority voting except for the same 2/3 voting requirement for important and major policy decisions (article 9a) and the requirement that the 2015 CEC “*shall seek guidance from the Founder Leader [Quaid-e-Tehrik, Altaf Hussain] on all major policy decisions before implementation*” (article 9b).
  - d) A 2/3 majority vote of the Electoral College and the assent of the Founder Leader is required to rescind, insert, omit and amend the Constitution and Rules, Regulations and bye-laws (article 10).
  - e) The Electoral College will elect the 2015 CEC members every 4 years with the Founder Leader having power to appoint office bearers and members on an ad hoc basis pending the next election. A simple majority vote will apply to elections at all lower levels (article 12).
  - f) Membership forms are required (article 6c). There is an obligation to audit annual accounts of receipts and expenditure (article 6e).
  - g) There will be an annual general meeting (article 13).
77. This all leads to the oral evidence concerning whether the CCC resolved to adopt the Constitution on 21 October 2016 and whether Mr Altaf Hussain assented to it the following day. The active Defendants rely upon the evidence of recollection from Mr Altaf Hussain, Mr Mustafa Ali and Mr Qasim Ali. The witnesses also assert that the intention was that the 2015 Constitution was to be implemented in stages. Mr Sufyan Yusuf was not present at the 21 or 22 October meetings but had a recollection of the pre-meeting drafting and contends that the process of staged implementation of the 2015 Constitution began soon after 22 October 2015.
78. Parts of the oral recollections are detailed, and Mr Slade K.C. made the forceful submission that it was hardly likely that the draft Constitution would have been left in limbo without a CCC meeting to address its approval. One such detail was Mr Altaf Hussain’s recollection that the assent came at the time of celebration of the success of events in Washington D.C. involving a protest at the time the Prime Minister of Pakistan met with the President. This was recollected to have occurred on 22 October, although I note an exhibited news article of “india.com” of 24 October records that the Prime

Minister had to face protests at rallies outside the White House two days later, on 24 October 2015. However, nothing was made of this at the hearing.

79. Mr Slade K.C. properly accepted that the absence of any recording of the meetings, whether in the TDK tapes provided or otherwise, was against the active Defendants' case but submitted that this could not be conclusive. As to the absence of notices, resolutions and minutes, the witnesses attributed this to the difficulties incurred in Pakistan as a result of the enforced closure of MQM's offices after 23 August 2016. There are also references in their evidence to unidentified documents being removed from storage in London. In addition, Mr Slade K.C. submitted that the absence of disclosure of the CCC emails weighed heavily in the balance.
80. Mr Slade K.C. also pointed to the potentially highly significant fact that Mr Haque had originally exhibited the 2015 Constitution as MQM's constitution and submitted that his explanation for this being an error was no explanation at all. As to the fact that the 2015 Constitution was not lodged with the Election Commission, as it should have been, the active Defendants blame Dr Sattar for the omission.
81. On the other hand, witnesses for Mr Haque had no recollection of either the CCC meeting or Mr Altaf Hussain's assent. They disputed that notice of such a CCC meeting was given. Dr Sattar made the point that he was a CCC member and Party Leader at the time, yet he was clear that he had no knowledge of the meetings alleged. His evidence was supported by the evidence of Mr Waseem Akhtar but in the context of accepting that drafts had been prepared. Mr Haque also stated that there had been no CCC meeting. Mr Nusrat's evidence was sure the 2015 Constitution was not adopted. They rely to support their recollections not only upon the absence of notices, resolution and minutes but also upon the absence of recordings.
82. There are the following additional evidential features to weigh against the recollections of the active Defendants: The concerns I have identified within Appendix 2 with regard to the reliability of recollection of those who have obvious complete belief in and dedication to Mr Altaf Hussain. The 2015 Constitution contained errors and gaps which potentially make it surprising if it was adopted in that form. The evidence on behalf of the active Defendants concerning how this would have occurred was unconvincing whether taking into account the evidence that it had been carefully checked or not. In addition, it was not lodged with the Election Commission of Pakistan, and it would have been had it been adopted. It would have been applied when the December 2015 internal elections took place, and for all later elections. It was not. Had it been approved, it would have been referred to and amended in February and April 2016 when the CCC adopted the April 2016 Constitution.
83. Mr Haque's case also relies upon the absence of implementation of the changes which the 2015 Constitution would have required to the operation of MQM. Therefore, both sides rely upon what occurred after 22 October 2015 to support their cases. There is obviously sufficient conflicting evidence to produce the conclusion that a finding of fact should not be made without considering whether there is later evidence which supports or undermines the case that the 2015 Constitution was adopted.
84. As to that but not forgetting the problems relied upon with regard to records being unavailable previously mentioned: There is no evidence that a minute of a 21 October 2015 meeting or a record of the 22 October 2015 assent were drawn up. There is no

evidence of any notice being given by the CCC, Mr Altaf Hussain or anyone else of the fact that there was now a 2015 Constitution. It was not lodged with the Election Commission of Pakistan as required by the law of Pakistan. Whilst the active Defendants blame Dr Sattar for this, the only basis for that in the evidence is the fact that he would have owed a duty to ensure registration if the 2015 Constitution was in force. There is no suggestion he attended the 21 October meeting or was present when assent was given, and no oral or paper trial by which the 2015 Constitution as approved was sent to him as the new MQM Constitution whether with or without a request for its registration. There is no suggestion that at this stage he had cause not to register an approved, new Constitution.

85. There is also the factor to bear in mind that if the 2015 Constitution had been adopted, it would have required significant changes to MQM's operations. In particular replacement of the CCC by the 2015 CEC, the introduction of new horizontal and vertical tiers of governance, the creation of an Electoral College, and annual general meetings in accordance with its provisions. It is obviously right that all this could not be done in a day. However, it would not be unreasonable to expect a meeting of the CCC which would either instruct the production of a plan or consider a timetable for implementation. Based upon the evidence considered below, I have to find there was none.
86. Mr Sufyan Yusuf exhibited a minute of a meeting on 26 October 2015 addressed to Mr Altaf Hussain as the founder and leader of MQM. And *entitled "For the Attention of the Coordination Committee (London)"*. Seventeen members of the "(CEC)" are listed as participants with six named absentees. This minute was relied upon by the active Defendants as evidence of implementation of the 2015 Constitution. Attention was also drawn to the fact that it lists people who *"have been included in CEC"* and each is referred to (apparently) by role. For example, *"Election cell"* and *"STC Punjab as in-charge"*. It referred to the number of wings (departments) of MQM being reduced to 19 and those *"slashed"* being merged with the remaining departments. In one paragraph it also reads: *"CEC for all sectors in Karachi, residence committee, martyrs and imprisoned committees, abducted activist committee, relief committee, FCC, engineering, local bodies committee, social forum"*.
87. What is not stated expressly, however, is whether this was a meeting of the 2012 CEC or of the 2015 CEC. There is precedent for the 2012 CEC sending minutes to Mr Altaf Hussain (see for example one for their 31 July 2015 meeting). It is notable that the 26 October 2015 minute makes no reference to the 21 October meeting or to the 22 October assent. Nor does it contain any express reference to the CEC sitting as the highest policy and decision-making body. There is no suggestion that the CEC is now meeting in succession to the CCC. In addition, under the heading *"Agenda and Discussion On"* it describes the steps taken to reduce and merge wings (departments) not as being required by the 2015 Constitution but as resulting from (*"in the light of"*) *"directions of [Mr Altaf Hussain]"*. That would be a surprising description if the 2015 Constitution has been approved and the specific purpose was to implement its provisions.
88. Furthermore, the meeting did not appear to address new horizontal and vertical tiers as required by the 2015 Constitution. There is no apparent reference, as the 2015 Constitution would have required in the context of those new tiers, to the Central Advisory Council, Provincial Coordination Committees, Divisional (Regional) Coordination Committees, the Metropolitan (City) Coordination Committee, the

District Administrative Committee, field committees at Taluka, Union Committee and Union Council. There is also no reference to the need to discuss (then or later) the formation of an Electoral College, to membership forms, annual accounts or annual meetings under the 2015 Constitution.

89. In addition, it is to be noted (although not with criticism of him) that Mr Sufyan Yusuf did not refer to the earlier minute of a CCC meeting held on 5 September 2015 marked for the attention of the CCC (London). This too did not refer to the 2015 Constitution. However, it referred to a proposal to “*unite the wings*”, and this well may be an explanation for the subsequent reduction in number and merger of wings referred to in the 26 October 2015 meeting’s minute. This was not investigated during the trial, however.
90. Looking at later events and documents relied upon for the purpose of finding any evidence of adoption and implementation or lack of it: In December 2015 MQM participated in local government elections in Sindh. These were conducted by the MQM under the terms of the 2012 Constitution. That would not have been the case had the 2015 Constitution applied. A speculative answer to this is that the 2012 Constitution had to be relied upon because the 2015 Constitution had not been lodged with the Election Commission of Pakistan. However, that is not a position advanced by the active Defendants. It would be an unlikely one in any event because it is far more probable that the error would have been appreciated and inevitably would have been corrected before or after the elections. In addition there is the fact that the 2015 Constitution was never lodged with the Election Commission for those elections or at all.
91. Mr Sufyan Yusuf also referred to CCC minutes for meetings held on 13 and 14 January as evidence of implementation. Mr Mohammad in his submissions observed that it was significant that the CCC was still meeting. The 2015 CEC was not yet formed. There is reference in the minute to the “CEC” but it could readily refer to the 2012 CEC. There is no express reference to the 2015 Constitution and its existence and adoption could not be identified from these minutes.
92. Mr Sufyan Yusuf additionally exhibited a CCC meeting minute for 12 February 2016. Dr Sattar is named as a participant. Included at point 9 is the following: “*It has been long since the enquiries of certain activists with regard to restructuring of the party were dispatched to CEC. CEC has once again been reminded of that, that the enquiries should be returned to labour division at the earliest*”. Again, however, this could be the 2012 CEC, and there is no express reference here or elsewhere in the minute to the 2015 Constitution or to its CEC having been formed to supersede the CCC. The same points can be made for another minute in which Dr Sattar is named as a participant, a meeting of 15 February. It includes at point 3: “*Coordination committee, CEC, Parliamentarians, elected local bodies representatives ... union councils will participate per the given schedule ...*” It strongly suggests that the CCC continued and the CEC is the 2012 CEC.
93. There is evidence that on 14 February 2016 the CCC, not the 2015 CEC, adopted amendments to the 2012 Constitution. There is no minute in the bundle for this meeting but a document dated 23 April 2016, signed by Dr Sattar, gave notice to the Electoral Commission of Pakistan of those amendments. There is no apparent reason for Dr Sattar

to be committing the very serious act of giving false notice. Indeed this allegation was not made.

94. There is a document entitled “*Resolution passed by joint session of [CCC]*”. It identified the amendments and is signed by Dr Sattar as Party Leader, CCC. It is dated 12 April 2016. The amendments themselves are set out in a document (which may be attached to the document signed by Dr Sattar) signed by Ms Zahid Mansoori. There is no reference in the notification to the 2015 Constitution in the record of the amendments or in the notice. The April 2016 Constitution is not based upon the 2015 Constitution as it would have had to have been, and there is no evidence of any objection at the time or later. It is improbable that the serious error of forgetting the 2015 Constitution would have been made. The rift with Dr Sattar and others did not occur before the 22 August 2016 apology.
95. Issue was raised during the cross-examination of Dr Sattar concerning the date of 12 April 2016, and the evidence relied upon by the active Defendants included evidence from witnesses stating they had no knowledge of the amendments. However, there is very little evidence to raise doubt that the 14 February 2016 meeting was held and the amendments passed. No-one has suggested that there is anything contentious within the amendments except (of course) for them having been passed without reference to the 2015 Constitution. There is no forensic evidence challenging the authenticity of the documents, and there is no dispute that notice was given to the Election Commission of Pakistan.
96. In summary conclusion: It is of note, therefore, that the April 2016 Constitution was approved as MQM’s Constitution to amend the 2012 Constitution and without any apparent objection based on the existence of the 2015 Constitution. It is of further note that the CCC was still the body running MQM. In addition, the Election Commission has produced certified copies of the Constitutions lodged. One is dated in handwriting at the top “23-4-2016”, which may well indicate it is the one lodged with the 23 April 2016 notice. However, whether that is reliable or not it includes at least one of the amendments identified within the document signed by Mr Zahid Mansoori. I have had to write “at least” because of the poor quality of the copying of that document but certainly Article 13’s amendments are incorporated and no-one has made the case that any of the others were omitted.
97. There remains, however, another puzzling issue. The amendments identified make no reference to any alteration of article 9(b) of the 2012 Constitution. The amendments to article 9 are limited to its sub-paragraphs (a) and (e). Yet the version of the amended Constitution dated in handwriting at the top “23-4-2016” has amended article 9(b). It reads (as the parties accept, although the version in the bundle is highlighted to redaction level): The CCC “*shall seek guidance from Mr Altaf Hussain being the founder and ideologue, on the major issues, for his ratification*” not “[*as drafted*], on the major issues, if it [*the CCC*] deem fit for ratification”.
98. No evidence has been produced to justify that amendment except for the important fact that it was the Constitution registered with the Election Commission whether on 23 April 2016 or at some other date. It appears as though there has been mistaken typing (whether intentional or not) but that has not been an issue in this case and no finding to that effect is made.

99. It is also significant for deciding whether the 2015 Constitution was adopted that intra party elections followed. A minute for signature by “*Party Leader, Muttahida Qaumi Movement (Pakistan)*” dated 14 April 2016 recorded a “*Resolution for Conducting Intra Party Election-2016*”. This was required because the last elections on 26 June 2012 were for four year appointments. These elections were needed for the CCC “*and its relevant departments (Wings)*”. It refers to a joint CCC meeting being convened in Karachi and London to approve the appointment of the Election Commissioner and of two members of the Election Commission. For the avoidance of doubt, there is still no reference to the 2015 Constitution or to the 2015 CEC or Electoral College.
100. By a document dated 16 April 2016 “MQM (Pakistan)” gave notice to the Election Commission of its intra-party elections pursuant to article 11 of the Political Order, 2002. The purpose of the election was stated to be to elect members and officers of the CCC, not the 2015 CEC, as well as other committees. The notice made express reference to “Article 13” of MQM’s constitution. This must by reference to content refer to the April 2016 Constitution. It also made reference to “Article 18” in the context of polling, which must also refer to that April 2016 Constitution not to a 2015 Constitution (see also the “Notification Appointment of Returning Officers, A.R.Os., P.Os. A.P.Os” dated 18 April 2016, to be signed by the “Party Leader, CCC, Muttahida Qaumi Movement (Pakistan)”). The same point applies to its reference to Article 6 (amended in February 2016) concerning administration of management and organisation at Federal, Provincial and Local Levels.
101. Mr Nusrat filed with the Election Commission a certificate of compliance with the constitution in the holding of those elections on 8 May 2016. The elected posts included Party Leader, CCC Convener, Deputy CCC Conveners, and CEC office bearers. The notification of returned candidates by the Election Commission dated 1 May 2016 also recorded the application of the same Article 13. It is also to be noted that the notification identified 22 returned candidates for the CCC and 20 for the 2012 CEC. For the avoidance of doubt, it is plain this is the 2012 CEC not the 2015 CEC that would have superseded the CCC had the 2015 Constitution been adopted.
102. In summary conclusion: In all the documents MQM was referred to as “Muttahida Qaumi Movement (Pakistan)”. All of these documents lead to the conclusion that MQM was acting upon the April 2016 Constitution and without any reference to a 2015 Constitution. There is nothing to suggest a rift with Mr Altaf Hussain at this stage. Nothing to suggest any objections having been made to the elections under the April 2016 Constitution or suggestion that the 2015 Constitution was in force.
103. Mr Sufyan Yusuf also exhibited CCC minutes of meetings held on 15 February, 5 and 10 April and 28 and 31 May 2016 suggesting they evidence adoption of the 2015 Constitution. Very little was made of these documents at the trial. There are the same points against that suggestion: there is no express reference to the 2015 Constitution, the CCC continued to be in overall control, and references to the CEC must be to the 2012 CEC. In particular, the 5 April 2016 minute refers to bye-elections without reference to the need or lack of need for an Electoral College. The minute for 10 April 2016 includes at point 1, the record of Dr Sattar with Dr Khanzada, Ms Zareen Majeed and Mr Aminul Haque being assigned to induct 50 to 60 new members of senior age groups who are “*on same length and line to the philosophy of [Mr] Altaf Hussain*” to the CCC (called Mohajir Rabita Council as it was otherwise known) for its restructuring. The minute for the 28 May 2016 records that the CCC had approved the

restructuring of the Mohajir Rabita Council. None of this is consistent with the 2015 Constitution having been adopted and requiring the 2015 CEC to supersede the CCC. In contrast, it is consistent with the April 2016 Constitution.

104. The suggestion by those giving evidence for the active Defendants that the continuing references to the CCC can be attributed to habit is weak in the light of all the evidence referred to above. It also does not address the question whether and how the 2015 CEC was formed. It is inconsistent with the continuation of business and elections in reliance upon the April 2016 Constitution. As a matter of fact, it is difficult to understand how it can be asserted that the 2015 Constitution was adopted when there is no evidence to establish that any of its important changes were implemented, and no evidence of any objections or protest being raised to the effect that the CCC (or indeed anyone) was failing to implement the alleged decision of the CCC on 21 October 2015 as approved by Mr Altaf Hussain the next day. This absence includes an absence of any statement or documentation from Mr Altaf Hussain himself or as authorised by him.
105. Therefore it is clear at this stage, and I find as facts, that: the April 2016 Constitution was adopted and applied; the CCC continued to operate as the controlling body of MQM; and that remained the position at the time of Mr Altaf Hussain's 22 August 2016 speech. Those facts and all of the facts and matters considered above lead to the finding that the active Defendants have not established that the 2015 Constitution was adopted by the CCC and have not established it became MQM's Constitution.
106. That is a finding which has to be made notwithstanding the oral evidence relied upon by the active Defendants (as summarised in Appendix 2) and, most importantly in addition, the evidence of Mr Haque at the beginning of this claim for the purpose of obtaining interim relief that the 2015 Constitution applied. The problem for the active Defendants is that the evidence in favour of their case is outweighed (in the sense that it does not establish their case on the balance of probability) not only by the facts addressed in the paragraphs above but also because of the absence of any TDK tape recordings (even assuming the BT automatic system had not been installed) of a meeting of the CCC to approve the 2015 Constitution or of the telephone assent of Mr Altaf Hussain the next day. The meeting of the CCC in particular, if it had taken place, was obviously an extremely important meeting and it is highly unlikely that it would not have been recorded by tape whether or not the BT system was in operation. To the weight of that evidence is to be added the previously mentioned absence of documentary evidence whether in the form of notice, resolution or contemporaneous note or contemporaneous or subsequent record or minute of the meetings on 21 and 22 October 2015.
107. It is of concern that this decision is reached in circumstances of the failure of Mr Haque to disclose emails. That should not have occurred for the reasons previously given. However, even that breach needs to be viewed within the context of there being no evidence of the 2015 Constitution having been implemented (even in stages) and in the context of overwhelming evidence that MQM through the CCC continued to act in reliance upon the 2012 Constitution and then the April 2016 which had amended it. In addition, that this occurred without protest from Mr Altaf Hussain or anyone else who recollects the draft being approved. On this evidence the Court cannot be satisfied (notwithstanding the non-disclosure) that the recollection of the witnesses for the active Defendants (including themselves) is reliable. It cannot be concluded on the balance of probability that the 2002/2012 Constitution was replaced by the 2015 Constitution as



they propose. Indeed it can be concluded on the balance of probability that it was not. MQM's Constitution was the April 2016 Constitution at this time.

108. There was no dispute at this trial that Mr Hussain's 22 August 2016 speech, transmitted from London, caused serious problems in Pakistan. There was military intervention and MQM's head-quarters were sealed off on or shortly after 22 August 2016. It is unnecessary to attribute cause for the riots and tragic deaths that occurred because the relevant fact for this case is that an apology followed the next day. Its content forms a background to the actions which the active Defendants contend saw either the formation of MQMP as a new party or the unconstitutional hijacking of MQM by Dr Sattar and others.
109. There is still an issue over translation of the apology, although neither side sought to prove their translation by calling an expert witness. The version relied upon by Mr Haque is that the apology included the statement: "*I hand over complete authority, organization, decision making and policy making to the CCC*". Nothing could be clearer than that: Mr Altaf Hussain will take no further role in the administration or decision/policy making of MQM. In a context where the April 2016 Constitution provided that his role was to give guidance on major issues in the circumstances specified, this must mean that he would no longer be doing that having handed over complete authority.
110. That construction is effectively reiterated in the letter from Mr Ghaffar, advocate at law, written to the Commissioner of New Scotland Yard on 24 August 2016. My understanding is that this letter was written on Mr Altaf Hussain's instructions. It follows, therefore, that its wording reflected his understanding of the content and consequences of his apology.
111. The version relied upon by the active Defendants, however, is: "*I as founder leader fully authorise Coordination Committee for organisational matters, decision making and policy making*". This is far less clear as to meaning and to that extent does not fit in with the letter from Mr Ghaffar. However, on its own or even taken with that letter, in the context of the provisions of the April 2016 Constitution it must have been intended to mean and in any event is to be construed objectively to mean that he would stand back and take no further role unless and until that position legitimately altered. These findings are consistent with the terms of the translations for the whole apology whichever translation is used.
112. Therefore, applying the terms of the apology to the April 2016 Constitution, the CCC would no longer need to seek guidance or any decision from Mr Altaf Hussain, as the founder and ideologue, whether "*on the major issues for his ratification*" or "*on the major issues, if it deem fit for ratification*" (whichever version of Article 9(b) applied). This is consistent with Mr Altaf Hussain's evidence at trial that he was content at the time to no longer take any active part in the operations of MQM. It is also consistent with the record of a preceding telephone conversation the same day between Mr Altaf Hussain and Mr Haqani, a former ambassador of Pakistan in Washington.
113. It was tentatively suggested that this conclusion would offend Article 9(a) because it would amount to a change in the constitution without a 2/3s majority vote of the CCC. That is an unsound suggestion when Mr Altaf Hussain had declared he would no longer be involved and, therefore, his guidance could not be sought. The CCC had to operate

without him and apply the Constitution on the basis of that decision not to play any part in the operation of MQM for as long as that withdrawal was in place. The position was no different from when he had previously resigned, subject only to the issue of whether the withdrawal was temporary or permanent.

114. That was not an issue that was of concern until events in September 2016 when treason was alleged against him in the Sindh Assembly and the National Assembly. Mr Altaf Hussain's recollection was that he had been content to take no active part until that occurred. Mr Altaf Hussain also accepted that he was content until then with the fact that Dr Sattar and his associates had taken full control of MQM through the CCC. The events that followed his apology need to be viewed in that light. Namely in the context of Mr Altaf Hussain no longer participating in any role he previously had with MQM until about 21 September 2016
115. In addition, Mr Altaf Hussain's evidence at trial was not that MQMP was established as a new political party after the apology but that Dr Sattar and his associates took advantage of his apology to exclude him from MQMP and hijack the association. His evidence was that they took the steps they did whilst assuring him that all would be resolved if he kept in the background and allowed the dust to settle.
116. There is a dispute of recollection concerning what was said between Dr Sattar and Mr Nusrat following the apology. In particular, whether there was only one telephone conversation, precisely when the conversation(s) took place, and whether MQM being run from Pakistan and not London was discussed. The difference in recollection is hardly surprising. Undoubtedly the turmoil of that time will in itself have affected memory and added to that are the consequences of lapse of time, and the potential for subconscious false memory.
117. The evidence is that Dr Sattar wanted to hold a press conference on 23 August 2016 but was unable to do so until later because of his arrest. The arrest is an event which leads to assertions by Mr Altaf Hussain and his supporters that Dr Sattar as a result of what must have happened during his arrest acceded to requirements by the authorities that Mr Altaf Hussain should be removed from MQM (called by them "the Minus Altaf Hussain formula"). This is supposition. There is no evidence of what occurred during the arrest and, it follows, no evidence of any agreement or understanding reached. Nevertheless it will be borne in mind as an assertion when addressing what subsequently occurred.
118. The press conference was held the next day, 24 August, with a meeting before at the Karachi Press Club. Dr Sattar said this meeting was attended by the CCC and by members of the National and Provincial Assemblies. Dr Sattar's evidence was that "*All the members of the Rabita Committee and the lawmakers of MQM decided unanimously to remove Altaf Hussain as an ideologue leader, for he never held any official office within the Party. As the decision-maker in the Party per paragraph 9a of the Party's 2002/12 Constitution (as amended in April 2016), the Central Coordination Committee was binding on all members, including me*". Whilst this raises the issue whether this was constitutional, it is not evidence of an intention to form a new party. It is evidence of an intention to continue MQM without Mr Altaf Hussain.
119. What appears to be a contemporaneous note of the 24 August press conference was issued the following day. Its content too identifies an intention to continue operating

MQM. Far from separating from MQM, it included the observation that those who did not agree with *“the views and policies ... adopted and in all likelihood [to be] continued ... with the overall consensus of the Party ... are free to distance [themselves from MQM]”*.

120. The measures recorded in the note as *“suggested”* at the meeting are also entirely consistent with MQM continuing and inconsistent with a new association being formed. They were: (i) to run MQM from Pakistan with the headquarters in Karachi; (ii) to form a committee of members of *“CEC/Rabita Committee present in Pakistan and some old [Party] veterans”* to undertake the *“emergent measures”* of amending the Constitution under the *“accepted doctrine of necessity as early as possible”*; (iii) to forward the amended Constitution to the Election Commission *“on the heels of the Constitution ... forwarded ... on 23 April 2016”*; (iv) to hold intra-party elections under the amended Constitution; (v) to induct *“a few veterans of the Party into the CEC/Rabita Committee”* to hold office until the fresh elections; (vi) to ratify the amendments in the Constitution after the elections; and (vi) Dr Sattar will continue *“to hold the fort”* until after the elections.
121. The references to “CEC” are noted in the context of the 2015 Constitution issue but *“CEC/Rabita Committee”* appears to refer to the 2012 CEC and the CCC not to the 2015 CEC also being called the Rabita Committee. Furthermore, there is clear reference to the April 2016 Constitution which did not amend the 2015 Constitution. Whilst there are issues over the status of this unsigned document, it does not in any event alter the conclusion that the active Defendants have not established their case that the 2015 Constitution was adopted and adds to the weight of the established case that they did not.
122. A media report of the press conference on 24 August 2016 also provided no evidence of an intention to form a new party. Insofar as it is reliable, its content leads to the opposite conclusion. MQM was to be run from Karachi, its Constitution would be amended and its intra-party elections would follow. For example, there is reference to the events on 22 August being *“not the end of the story rather a beginning of a long tortuous journey to salvage the situation in the larger interest of the Party and more so to save millions of its members and supporters from stray ... those who subscribe to the views and policies ... the overall consensus of the Party are most welcome to stay with us ... [others] are free to distant themselves”*. The evidence is clear at this stage, MQM was continuing.
123. Mr Nusrat during cross-examination concerning what occurred on 22 and 23 August 2016 was taken to a report of his press conference on 17 November 2016 when he was MQM’s Convener. This is only a few months later and, therefore, events fresher in the memory. However, care must still be taken with this document. The background was one of discord. It is the likely nature of a press conference that it would be self-serving. In addition that recollection is still some months after the event in the context of the turmoil of events that occurred on and after 22 August 2016. These included the Sindh Assembly unanimously passing the resolution on 21 September 2016 to the effect that Mr Altaf Hussain should be prosecuted for treason and the exclusion of Mr Altaf Hussain by MQMP. These were highly emotive matters and Mr Nusrat’s press conference was (at least in part) intended to denigrate those actions.

124. Nevertheless bearing in mind that Mr Nusrat was on side with Mr Altaf Hussain, it is notable that despite its content being critical of Dr Sattar and his associates concerning their actions and exclusion of Mr Altaf Hussain, there is no suggestion that a new political party was formed during the events following the 23 August apology. Indeed, the criticism related to Dr Sattar's actions in respect of MQM. In particular, the decision to run MQM from Pakistan and to remove Mr Altaf Hussain's name from MQM's Constitution. This is entirely consistent with Mr Altaf Hussain's above-mentioned recollections during cross-examination. His conclusion was not that a new party was formed but that MQM was being hijacked and, as a matter of fact, there could not be a MQM without Mr Altaf Hussain.
125. Some witnesses relied upon contemporaneous news report purporting to quote Dr Sattar as evidence of the creation of a new unincorporated association. However even assuming their reliability for accuracy, they do not provide such evidence:
- a) There is a 27 August 2016 internet report of the press conference by Dr Sattar which referred to his announcement that MQM's Pakistan chapter had disassociated itself with the London wing and to a quote: *"As we announced our disassociation from MQM London, then we considered a new MQM. Then there is already another faction of MQM which I would not like to name. MQM-Haqiqi, is in archives and sometimes raises noise to make its presence felt but I feel that till this operation lasts, there may emerge another MQM"*.
  - b) That content cannot be construed as evidence that Dr Sattar had formed or would form a new association whether called MQM or not. Indeed, the general tenor is the opposite. Dr Sattar identified the decision to disassociate MQM with the London wing. In other words taking the London wing outside of MQM. He mentioned consideration of a new MQM but did not state that a new MQM was to be formed. Instead, he identified concern that existing factions, he named *MQM-Haqiqi*, might split away from MQM to form a new association as MQM. Not that he would. This construction is sustained by the remainder of the article (assuming its accuracy for these purposes because it is relied upon by the active Defendants) which made plain that what had occurred was that MQM had disassociated itself from Mr Altaf Hussain's statement on 22 August 2016.
  - c) A 28 August 2016 internet report of Dr Sattar's press report is relied upon in particular for two quotes from Dr Sattar: (i) the announcement of the *"party's Pakistan chapter's disassociation from its London Wing"*; and (ii) the statement *"Now we have no connection with MQM founder Altaf Hussain and MQM London"*.
  - d) This too does not provide evidence of an intention to form a new party. The tenor is disassociation by MQM from Mr Altaf Hussain not the formation of a new party.
126. The suggestion that a new party was being formed is also inconsistent with the fact that meetings were held on 31 August and 1 September 2016 to amend MQM's April 2016 Constitution. A minute entitled *"Amendment to the Constitution of [MQMP]"* recorded that at a meeting of MQM's CCC on 31 August 2016 (amongst other matters) that: (i) new members were inducted to the CCC (Mr Khalid Siddiqui; Mr Khawaja Mansoor; Mr Syed Ahmed; Mr Rauf Siddique) pursuant to article 13(b)); (ii) MQM's April 2016

Constitution was amended; (iii) it was resolved that the resulting September 2016 Constitution should be lodged with the Election Commission of Pakistan; and (iv) *“the stand taken by MQM Pakistan on 23<sup>rd</sup> August 2016, under the stewardship of Dr Farooq Sattar and other colleagues of the Rabta Committee also including MQM Pakistan’s Parliamentarians and members of Provincial Assembly at Karachi Press Club”*.

127. These are the amendments challenged as void. However, that does not alter the fact that the intention of those voting was to amend MQM’s April 2016 Constitution. For the avoidance of doubt, there was no reference to a 2015 Constitution.
128. The amendments included articles 7(a) and (b) (to end an anomaly between the current 7(a) and 7(b) which permitted both the Convenor and Senior Deputy to preside over CCC meetings). Most importantly article 9(b), quoted as *“The [CCC] shall seek guidance from Mr Altaf Hussain being the founder and ideologue, on the major issues, for his ratification”* was removed.
129. This was a minute recording the resolutions of MQM to amend its April 2016 Constitution. It was not a minute recording the formation or actions of a new party. Indeed this was acknowledged during Dr Sattar’s cross-examination (as it had to be based upon the content of the minute and bearing in mind the above-mentioned, subsequent evidence of Mr Altaf Hussain that he did not consider Dr Sattar was creating a new party following his apology). For example, it was put to him that he was changing the CCC committee to favour his plans by taking out people in the committee who would oppose them and replacing them with people who supported those plans. In other words, that he was trying to take over MQM not that he was forming a new party.
130. The minute on its face recorded those who attended (20 identified as CCC members) and those unable to attend because they were in custody (3 identified as CCC members). It also recorded a further meeting on 1 September attended by the same CCC members, who confirmed the minutes, and most of the CEC members. It was suggested in evidence that the same CCC members included those who had been in gaol. The evidence did not establish that any attempt was made to hold the meeting by telephone to include any CCC members in London.
131. Following the meetings, all the media reports of the time within the bundle reported that MQM was being run from Pakistan with changes to its Constitution that included the removal of Mr Altaf Hussain’s role. It was not being announced that a new party was being formed.
132. The meetings on 31 August and 1 September 2016 appear to have been emergent meetings as permitted by Article 13A of the April 2016 Constitution. It provided for 3 days’ notice of ordinary meetings and 6 hours’ notice of emergent meetings. Presumably the ability of CCC members to attend would be affected by the extent of notice given, although there is no reference to the consequences of notice not having been given and no reference to quorum. Article 7 prescribed the duties and functions of the Office Bearers at the CCC’s meetings. Article 10 provided for Constitutional amendments to be passed by a “2/3 vote of the Committee”. There has been no reference to any Rules, Regulations or Guidelines adopted under Article 9(h).

133. Issues of construction make it appropriate to set out Article 9(a): “*The [CCC] shall be the highest policy and decision making organ of the Movement. Its decisions shall be binding on all party organs and members Ordinary decisions shall be made by a simple majority of members present in a scheduled meeting. While in the important and major policy decisions 2/3 majority of the Committee shall be required*”.
134. Article 9(a) therefore expressly provided that ordinary decisions should be by a simple majority of those present in a scheduled meeting. The following sentence (starting with “while”) is concerned with the different majority (2/3s not simple) required of members present in a scheduled meeting (as provided for in the first sentence) for important and major policy decisions. It is not to be construed as though it required a 2/3s majority of the CCC whether members attended the meeting or not.
135. As to membership of the CCC: Article 6(a) provided there would be at least one but as many as required Senior Deputy Convenor(s), at least two but as many as required Deputy Conveners, and at least 15 but as many as required members of the CCC. Article 13 provided that all party offices should be filled by elections of the members every four years. The CCC was given the power to fill existing vacant offices pending the regular elections. A 2/3 majority decision was required but there is nothing to suggest that this needed to take place at an ordinary, emergent or any other type of meeting. There is provision within Article 17 for intra-party disputes to be dealt with by the CCC with the involvement of a sub-committee formed to investigate. The recommendations of the sub-committee may be appealed by the aggrieved member to the CCC whose decision with a 2/3 majority will be final (also Article 17). There was an election procedure (Article 18) but nothing further concerning co-opting.
136. There is nothing else before me as factual evidence concerning ordinary or emergent meetings addressing how notice should be given, quorum, how votes may be cast (including whether by hand or poll at a meeting and whether there can be proxies), challenges to votes or the consequences of any vote that failed to comply with the Constitution. The only additional evidence is that it appears to have been accepted conduct for meetings to be held by telephone as well as in person and, therefore, to be able to include CCC members who could not otherwise attend including those in London.
137. Mr Slade K.C. in his skeleton argument identified the following points for the active Defendants’ case concerning the validity of the resolution to remove article 9(b): 8 CCC members “*affiliated with London*” and 3 CCC members imprisoned did not attend or otherwise vote. Even if 20 voted in favour, that was not 2/3s of the CCC. There will be another two CCC members did not attend and that two voted against (although they did not attend for cross-examination).
138. Mr Slade K.C. in closing submissions presented a written, factual analysis to establish from the evidence that the amendments to the Constitution on 31 August 2016 were not passed by the required 2/3 majority. This was on the basis that the 2/3 majority required 2/3s of the membership of the CCC, not just those present. His analysis (which was far more detailed than his skeleton argument had foreshadowed) compared the names in the minute with the election results recorded in the “*Election Commission of [MQM] (Pakistan) Notification of Returned Candidates*” dated 1 May 2016. Mr Slade K.C. identified 9 of those described in the CCC minute as members who were not recorded as having been elected. He referred to oral evidence on behalf of the active Defendants

that 10 members of the CCC were in London at the time (8 London-based, and 2 from Pakistan). He concluded that there cannot have been a valid amendment to the Constitution if only 11 out of 22 elected CCC members voted.

139. The analysis also compared the attendees listed in the minute with the names of those recorded in the CCC minute for the 31 May 2015 meeting. It was observed there were 6 members named in both and 12 who only appear in the 31 May 2015 minute. Mr Slade K.C. concluded there were only 18 votes in favour of the resolutions out of a total CCC membership of 40. The analysis also referred to oral evidence to the effect that two further members should be added. It is to be observed that none of this had been pleaded as the active Defendants' particulars of their case contesting validity of the amendments.
140. The analysis had not previously been raised at the trial or disclosed to Mr Mohammad except to the extent that matters are raised within Mr Slade's skeleton argument. Whilst I do not criticise that because it is a submission based upon the perceived evidence, plainly it was right to allow Mr Mohammad time to respond and identify whether he agreed or not with the factual analysis of the position. He did so after the trial in writing. Without prejudice to the case that the requirement was for a 2/3 majority of those present, he contended that the required 2/3s majority was obtained. His factual analysis can be summarised as follows:
- a) The "Election Commission of [MQM] (Pakistan) Notification of Returned Candidates" dated 1 May 2016 recorded that 22 members were elected from 40 candidates.
  - b) 24 people attended the 31 August meeting including 9 previously co-opted CCC members and the 4 co-opted on 31 August 2016 as recorded.
  - c) 11 members of the CCC elected on 30 April 2016 did not attend the meeting.
  - d) Although Mr Slade K.C.'s analysis identified 12 people as CCC members who did not attend, only 5 of those "missing" were elected on 30 April 2016. The others were not members. It was not asserted at the trial and other than mere oral assertion of one witness, there was no evidence advanced to assert that the other 7 were elected CCC members. Mere attendance at a CCC meeting was not evidence of membership. However, there was one other co-opted member, Mr Qasim Ali Raza, bringing the co-opted total to 14.
  - e) Therefore as of 31 August 2016, there were 36 CCC members comprised of the 22 elected and 14 co-opted members.
  - f) A 2/3 vote of the "24" CCC members present at the 31 August 2016 meeting required the support of 16 out of 35 CCC members. Alternatively, the support of 24 out of 36 CCC members should a 2/3 vote of the entire CCC membership of 36 people be required.
  - g) In either case, the resolution on 31 August 2016 was passed with 24 unanimous members.

141. That analysis led to a “Defendants’ Note After Closing” in response from Mr Slade K.C. arguing that the co-option of 4 members on 31 August 2016 was invalid for the lack of a 2/3s majority of CCC members. Second, that there was no evidence that they attended the meeting.
142. Mr Mohammad responded with a further Note in reply objecting to the “Defendants’ Note After Closing” both for the absence of a permissive direction and because it presented a case not previously alleged and, therefore, not addressed at the trial. Mr Mohammad stressed the need for finality and, as a matter of detail also referred to a name spelling issue.
143. Plainly it is a problem that Mr Mohammad considers the issues raised by the analysis were not identified before or at the trial. There is support for that as mentioned with reference to the Amended Defence and skeleton argument. It will be necessary to decide whether it is right and appropriate to try and work out the issues of fact raised by Mr Slade K.C.’s analysis and Mr Mohammad’s response without further oral submission. That will be for discussion below.
144. Returning to the events from 1 September 2016: There were “tweets” that day from Wasay Jalil and Mustafa Azizabadi to the effect that the removal of Mr Altaf Hussain would not be accepted. Some of the media reported that there had been amendment to MQM’s constitution to remove Mr Altaf Hussain There was a web report that “*MQM London leaders ... would not accept “the ‘minus-one’ formula”*”.
145. Whilst the active Defendants asserted that the meetings contravened MQM’s Constitution (whichever applied), there was no challenge raised under Article 17 whether under the 2012 Constitution, the 2015 Constitution, the April or September 2016 Constitutions. It is clear the CCC continued to govern MQM on the basis that binding decisions had been made at the 31 August 2016 and 1 September 2016 meetings, and the September 2016 Constitution had been adopted as an amendment to the April 2016 Constitution.
146. As previously mentioned, Mr Altaf Hussain’s evidence was that he had decided to remain quiet having removed himself from the scene (whether temporarily as he contended or permanently) through his 23 August 2016 apology. The catalyst for Mr Altaf Hussain raising his head and returning to the fray were the resolutions before the Sindh Assembly and the National Assembly calling for him to be prosecuted under Pakistan’s treason laws. The Sindh Assembly unanimously accepted the resolution on 21 September 2016 on the ground that anti-Pakistan statements had been on 22 August 2016.
147. That day, Mr Nusrat purported as convenor to dissolve the CCC and all Central Departments. This was ratified by Mr Altaf Hussain, who purported to empower Mr Nusrat to form a new CCC based in London. There is no constitutional provision for these actions within the 2012 or the April 2016 Constitutions, or indeed the September 2016 Constitution. It was not submitted by Mr Slade K.C. that they were legitimate actions having effective force under a Constitution (rightly so, if I may observe, in the light of the statements of case including the absence of a cross-claim). In addition, nothing has turned on the 2 October 2016 email attaching a statement of MQM London (although the process is unclear) to the effect that Dr Sattar was expelled as a member of MQM on the ground of betrayal.



148. In any event, those actions were based upon the premise that MQM had continued after 23 August 2016 under the leadership of Dr Sattar, not on the basis of Dr Sattar had formed a new party. In other words, that MQMP was MQM. If the opposite had been the position (MQM was independent from MQMP), there would have been no expulsion of Mr Altaf Hussain as occurred because he was never a member of MQMP (unless it was MQM). Whilst it might be argued by the active Defendants that the expulsion was part of the plot to misrepresent MQMP as MQM, the same could not be said for purported dissolution by Mr Nusrat of the CCC and formation of a new CCC. He would simply have distinguished the MQM CCC from the MQMP CCC if MQMP had been a new, distinct unincorporated association. In addition, it would not have been difficult to assert that distinction at the time and that did not occur.
149. MQMP continued its operations as an unincorporated association and political party as though such actions had not been taken but expelled those involved including Mr Altaf Hussain. A report on 21 September 2016 in “The Express Tribune” recorded that *“MQMP ... divorced itself from all those members, who are living in London and said to be opposing the exclusion of [Mr] Altaf Hussain from the party and has removed them from the [CCC]”*. Dr Nusrat and others, including Mr Mohammad Ali, were subsequently expelled by a meeting of the CCC.
150. Issue was taken during cross-examination on behalf of the active Defendants as to the legitimacy of those expulsions. However, nothing was made of this (or of the expulsion Mr Farooq Sattar as a member on 2 October 2016) for the purpose of submissions. A position confirmed by Mr Slade K.C. on enquiry during those submissions (again rightly so, if I may observe, in the light of the statements of case).
151. In summary therefore: Whilst those events from 1 September 2016 were wrapped within the MQM Constitutional Issue, the evidence which emerged is the fact that it was not at the time disputed that MQMP was MQM. The subsequent objection was to the hijacking or takeover of MQM. Those objections would not have been required if MQMP had been a new unincorporated association.
152. MQM, now MQMP, held internal elections. A document dated 7 October 2016 from the Election Commission of MQMP announced the results for elections to the CCC, the 2012 CEC and to other committees held on 5 October 2016. There was no dispute that these were held under the September 2016 Constitution as lodged with the Election Commission in accordance with the law of Pakistan (including the Political Parties Order 2002). The political party, MQM, was named as *“Muttahida Qaumi Movement (Pakistan)”*. Notification of returned candidates was given on 9 October 2016 by the Election Commission.
153. It appeared from an announcement made by email on 12 October 2016 that the CCC expelled four other members: Amir Khan; Kh. Izhar; Faisal Subzwari; and Kishwar Zohra. Nothing turned on that.
154. A document entitled *“Resolution for Conducting Intra Party Elections – 2016”* signed by the MQMP Party Leader recorded names of the election commissioner and members of the election committee appointed at a CCC meeting on 13 October 2016.
155. On 14 October 2016 it was announced by the new association in London within an internet post from [www.mqm.org](http://www.mqm.org) that MQM had formed a “12-member Interim

Coordination Committee” after detailed consultation meetings with senior leaders (including Professor Dr. Hasan Zarif Arif) chaired by Mr Nusrat. The report recorded that MQM’s “*Founder and Leader*”, Mr Altaf Hussain, “*assented*” to the decisions.

156. On 15 October 2016 there was a [www.mqm.org](http://www.mqm.org) web-site post which included the message: “*There is nothing like [MQMP] or MQM London, MQM is only one and that is the MQM whose leader is [Mr] Altaf Hussain*”. There was a report of press conference the same day, in Karachi, with supporters outside, said to have been attended by Professor Hasan Arif and other members of the CCC at which that message was said to have been given. There is no doubt it expressed the view that Mr Altaf Hussain must be the leader of MQM but there was no suggestion within the report (assuming its accuracy) that MQMP was a separate political party/unincorporated association. In fact the opposite appears because the concern was that MQM would be “*split ... into factions*”.
157. It is apparent, therefore, that Mr Altaf Hussain and his supporters were operating their own association following his expulsion from MQMP with the belief and message that there could be no MQM without the leadership of Mr Altaf Hussain. This new association was to be known as MQM but was not the association whose members were the beneficiary of the Trusts.
158. Posted on 16 October 2016 was the message from London by “*the spokesperson of [MQM]*” that the media and all other people should not call “MQM”, which was led by Mr Altaf Hussain, “*MQM London*”. The same day there was or had been a report from “*nation.com*” referring to the 15 October 2016 press club meeting with the subject heading: “*MQM London rejects minus-Altaf formula*”. It reported that “*members of Interim Coordination Committee of the party said ... there was no difference between Pakistan and London chapters of the party*”. It was also reported that “*They blamed Dr Farooq Sattar and Khalid Maqbool Siddiqui for ‘hijacking’ the party founded by [Mr] Altaf Hussain*”.
159. It also reported Mr Siddiqui, “MQM-Pakistan leader”, having responded to the press conference saying that everyone had the right to express their stance and time would tell whose stance was correct. The report recorded him as having said: “*The party is same: MQM. But the ideologies are different and the time will tell as to whose action was in favour of the nation*”.
160. In summary, therefore: At this stage MQMP was MQM with only a change of name both as the same unincorporated association and as the political party. MQMP was proceeding to operate under the September 2016 Constitution through the CCC and other bodies below it. There was a rift between those in Pakistan and those in London apparently with supporters in Pakistan. The key rift being the expulsion of Mr Altaf Hussain from MQMP. He was seeking to recover his position whilst being outside MQMP and had formed a new association operating from London. In terms of the contractual position for members of MQMP, they would have to decide whether to continue their membership and, if so, whether to seek to effect change to reinstate Mr Altaf Hussain with or without re-amending the September 2016 Constitution to return Article 9(b). Their alternatives were to join his new association or step away from both associations. These were all issues for the members and not issues for the Defendants as trustees of the Trusts.

161. It would have been very sensible for those involved to have considered arbitration, although it may be (and I make no decision upon this) that there would have been considerable difficulty achieving settlement in the light of the problems Mr Altaf Hussain had with the authorities in Pakistan.
162. On 23 October 2016 Dr Sattar requested from the Chief Election Commissioner of Pakistan a Party Recognition Certificate in answer to a letter from the Election Commission requesting submission of the certificate for the intra-party elections.
163. By a document dated 25 October 2016, the Election Commission of MQMP gave notice under Article 11 of the Political Parties Order 2002 and Articles 13 and 18 of the MQM Constitution of the events that would lead to the polling day for intra-party elections on 31 October 2016. By a document dated 27 October 2016 MQMP notified the Election Commission of the names of the returning officers.
164. By letter dated 1 November 2016 Dr Sattar (as Party Leader MQMP and Parliamentary Group Leader of MQM in the National Assembly and as Convener of MQM) certified that the intra-party elections for Party Leader/Convener of the CCC, Senior Deputy Convener and Deputy Conveners of the CCC (stated as last held on 26 June 2012 in accordance with the Constitution), CCC membership, and CEC membership had been completed on 31 October 2016. There was also an unexplained document from MQMP election commissioners informing CCC members that the election for “Convener/Sr. Deputy Convener/Deputy Conveners” of MQMP would be held on 3 November 2016.
165. In any event, the Election Commission of Pakistan by notice dated 3 November 2016 accepted MQMP’s documentation and published publicly, expressly as a certificate, the “*Name, Designation and Addresses of office bearers elected during Intra-Party Elections*” of MQMP. The National Assembly was also notified by letter dated 7 November 2016 from MQMP’s Chief Whip of the elections of Dr Sattar as Convener and Party Leader, Mr Khalid Siddiqui’s as Deputy Parliamentary Leader and a Deputy Convener, and Mr Kunwar Jameel’s as a Deputy Convener. On 9 November he also gave notice of MQMP’s temporary change of address.
166. There has been no challenge to those intra party elections and MQMP was then governed by the new membership of the CCC, CEC and other committees (subject to any later elections). There was no evidence that in doing so the CCC acted other than on the basis of having adopted the September 2016 Constitution. There was no challenge to this by MQMP’s membership whether under Article 17 or through the Courts.
167. Mr Nusrat’s above-mentioned press conference as “*the Convener MQM*” took place on 17 November 2016. It was made in support of Mr Altaf Hussain and set out his recollection and understanding of events from the 22 August 2016 speech. I have borne its contents in mind when reaching the findings of fact above.
168. By letter dated 30 November 2017, MQMP notified the Electoral Commission of Pakistan that the CCC had amended the September 2016 Constitution at a meeting held on 29 November 2017. A copy of the 2017 Constitution was enclosed. Issue was raised concerning the amendments during the cross-examination of Dr Sattar and Mr Slade Q.C. submitted for the active Defendants that the amendments showed MQMP was a new political party starting afresh. However, it follows from the fact that amendments

were adopted by the CCC that it also approved the unamended parts of the September 2016 Constitution. The 2017 Constitution became MQMP's binding Constitution (unless and until further amendment) and MQMP is MQM.

169. Dated 20 March 2020, a document signed by Dr Khalid Siddiqui as "*Convener/Party Leader [MQMP]*" purported to set out a history of events to explain what occurred after the 22 August 2016 speech. It is obviously not contemporaneous evidence and I have not accepted it as evidence for this decision. However, it is written in the capacity of Convener/Party Leader and on its face sets out the position of MQMP including: its acceptance of the constitutional change omitting article 9b from the September 2016 Constitution (as amended); the disassociation with Mr Altaf Hussain and MQM London; the expulsion of 8 members of "*London*"; the holding of fresh intra party elections in October/November 2016; and the fact that the present CCC runs MQMP without any "*involvement of MQM London and [Mr] Altaf Hussain*".
170. Mr Altaf Hussain and his supporters continued to operate from London after the October/November 2016 elections. He continued to advance the policies and philosophy that he had advocated when guiding MQM. However, they have not been allowed to return to the fold of MQMP or otherwise to be involved with MQMP. There are many exhibited articles reporting the work they have been doing. One of the most recent referred to Mr Altaf Hussain having called for a boycott of Karachi local government elections in June 2022. He still has many supporters world-wide but has been cut off from MQM, now known as MQMP. This is viewed as betrayal, and the action of MQMP proceeding without its founder and father is condemned by Mr Altaf Hussain and those supporting him. Nevertheless, as a fact MQMP is MQM and the unincorporated association acting through those elected to the CCC has disavowed any association with their former founder and guide. Its contractual constitution is the 2017 Constitution (subject to any later amendment).

## **F) Discussion**

171. The findings of fact resolve the MQM Identity Issue without needing to trouble further with the distinction between the active Defendants' position as trustees and their personal interests. The finding of fact being that MQMP is MQM. The use of MQMP was only a change of name. MQMP's members through the CCC have adopted the 2017 Constitution (subject to any later amendments, if any). Mr Haque as representative of the members of MQMP (a matter not in dispute) is entitled to bring this claim on their behalf.
172. The MQM Constitutional Issue still presents a number of problems in the context of a defence to a claim seeking (in summary) the removal of trustees, restraint of misfeasance, accounts, the recovery of misappropriations, and compensation (as summarised at paragraph 3 above). There is a disconnect between the MQM Constitutional Issue and the claim brought by the appointed representative of the members of MQMP, the beneficiaries of the trust. In particular (emphasising that the merits of the claim, which are for stage 2 of the trial, are not being addressed)
  - a) The active Defendants in their capacity as trustees are defending the claim in reliance upon the MQM Constitutional Issue irrespective of the wishes of the

current membership of MQMP. It is difficult not to find a conflict of interest, whether they are doing so to protect their own interests, to try to prevent investigations into their conduct as trustees, to defend their personal use of the Properties or their income and/or to try to return Mr Altaf Hussain to the unincorporated association of which he was the “father” and which is now called MQMP.

- b) Second and following, it is difficult to see how it can be argued that the trustees’ duty of neutrality does not apply to the MQM Constitutional Issue. The active Defendants may actively defend allegations of breach of trust because their conduct is under attack but the matters advanced concerning the MQM Constitutional Issue are matters for the membership of MQMP. They are not matters which touch on what the Defendants did or did not do as trustees of the Properties pursuant to their fiduciary duties. The causes of action and relief prayed relating to removal and breach of trust do not depend upon the validity of resolutions passed (or not) by the CCC on 31 August and 1 September 2016.
- c) Put simply but emphasising this is a hypothetical illustration: a trustee who has stolen money from a trust cannot defend that theft by drawing attention to constitutional disputes affecting the membership of the unincorporated association whose members are the beneficiaries. Such disputes might affect what happens to the money recovered as between the members but that is an issue for the members, and possibly for any litigation brought with justification by a former member in that capacity. It is not a defence for the trustee enabling the trustee to keep the money misappropriated.
- d) Third, this also draws attention to the fact that a defence relying upon constitutional events in 2016 would have to take into consideration what has happened subsequently. The MQM Constitutional Issue cannot stand on its own without considering the current position of the membership of MQMP, and that has not happened either in the Amended Defence or by the obtaining of directions. The reason being because the active Defendants are in fact pursuing their personal litigation rather than fulfilling their position as trustees.
- e) The importance and consequence of this can be illustrated by assuming the active Defendants establish that the amendment by deletion of article 9(b) was in breach of the April 2016 Constitution. That outcome would not provide a defence to a breach of trust. Instead it would leave two issues. First, whether any breaches of the April 2016 Constitution have been cured or ratified. Second, what the remedy for any breach should now be. Those issues concern the current membership and possibly former members with subsisting rights or claims. They require consideration of the following facts and matters (amongst others, none of which could be raised by the Amended Defence of the active Defendants as trustees of property): (i) a new CCC was elected by members in early October 2016; (ii) Mr Altaf Hussain’s expulsion from MQMP (whether he stood down permanently or not on 23 August 2016) and the resulting formation by him and others of a new unincorporated association; (iii) the new CCC adopted the 2017 Constitution; and (iv) no member or former member (assuming standing) challenged the election of the CCC members, the expulsion of Mr Altaf Hussain or the adoption the 2017 Constitution whether under Article 17 or through the

courts. These are matters to be addressed between members not by trustees of property facing the claim brought by Mr Haque.

- f) Fourth, even if a claim was before this court seeking relief relevant to the MQM Constitutional Issue, it is at best very questionable whether relief could be granted. For example, the Court would need to consider relief requiring a meeting of the current members of the MQMP in Pakistan to decide their contractual future or some form of order to restore Mr Altaf Hussain to his previous position within an unincorporated association in Pakistan. It is obvious that the ability of the Court to make effective orders concerning the members in Pakistan will be (at best) an issue.
- g) Fifth, this draws attention to the issue of jurisdiction. If the MQM Constitutional Issue was to be raised by members or former members of MQMP entitled to do so, it is not difficult to see that this Court might very well not accept jurisdiction to decide constitutional matters for an unincorporated association in Pakistan, which is also a registered political party with a large membership in Pakistan. The issue of jurisdiction has not been raised with the Court because this claim concerns breaches of trust in regard to trust property within the jurisdiction held by trustees living in this jurisdiction. The MQM Constitutional Issue which requires jurisdiction to be addressed is not relevant to a claim of breach of trust in dealings with the assets of the Trusts.

- 173. The best points in the light of all those problems that can be made by the active Defendants are that Mr Haque's Particulars of Claim raised the MQM Constitutional Issue, it is the subject of a direction which requires its determination, and that this resulted from the agreement of the parties. The reality, however, is that the two stage process of trial ordered in those circumstances has masked the problems and they should not be ignored.
- 174. The conclusion to be drawn from the problems identified must be that it would be wrong to decide the MQM Constitutional Issue as a defence to this claim.
- 175. However, even if that is not so, the MQM Constitutional Issue presented to the Court is in an unsatisfactory state. This is evidenced by the post-trial scramble by which Counsel answered, replied and surrejoined by Note. The Court's request at the end of final submission for Mr Mohammad to provide a note to identify whether Mr Haque agreed with the factual analysis of Mr Slade K.C. resulted from the fact that Mr Mohammad had not had the opportunity to consider the document. The request led (and for the avoidance of doubt I should make clear that I do not criticise Mr Mohammad for this) to serious issues being raised between the parties without oral submissions. I do not consider it would be just to reach a decision on the facts without hearing further from the parties to address the disputes raised in those Notes.
- 176. I reach that conclusion not only because it is clear both sides should have that opportunity but also because the court has not had the opportunity to ask questions and test the submissions. The current but uncertain position reached at this stage is as follows:
  - a) The article 9(b) deletion was unanimous as recorded.

- b) The names of those attending as members of the CCC do not correlate with the 1 May 2016 election return. Mr Slade K.C.'s list of 9 who were not within the return appears correct. I have only identified 7 possibly 8 of the attendees on 31 August 2016 who were on the 1 May 2016 return. However, I am aware from the evidence that different names have been used by at least one individual.
  - c) Even if the matters at sub-paragraph (b) are correct, the real issue does not appear to be whether 2/3 present voted in favour, it was unanimous even if limited to 7. The real issue is what the effect was of only 7 (if that is correct) of the 22 elected as at 1 May 2016 attending the meeting and the causes for that. This needs argument and with reference to authority (assuming it is right to apply the law of this jurisdiction for such matters).
  - d) Mr Slade K.C.'s list of 10 people who did not attend because they were London based also does not appear (though without being able to ask him about this) to correlate with the 1 May 2016 election return. I have question marks against 5 names and against the 2 said to be in London from Pakistan. It may be this would be subsumed within sub-paragraph (c) above but the position is currently unclear.
  - e) To the extent that it will make a practical difference, there is also the issue of discrepancy with the 31 May 2016 minute which was not forensically investigated at trial or addressed in submissions.
  - f) On the other hand, Mr Mohammad appears to identify 24 CCC members having voted unanimously on 31 August 2016. This too needs to be clarified to the extent it is relevant.
  - g) Insofar as it is necessary to consider the application of article 13 because Mr Mohammad submits there were members of the CCC who filled vacant offices (co-opted as he described it), evidence of their appointment has not been identified except for the 4 named in the 31 August 2016 minute, and clarification is needed as to why it is submitted that they were present and voted for deletion of article 9(b).
  - h) Finally there is also the need to analyse the names of the signatories who attended the 1 September 2016 meeting bearing in mind they appear to have ratified the 31 August 2016 decisions.
177. If those matters are to be addressed (to be considered further below), the following points are also likely to be raised for submission. In making that observation it is appreciated that it is for the court to decide the facts (whether related to construction of the April 2016 Constitution based upon an objective approach and/or what happened concerning the 31 August and 1 September 2016 meetings) in accordance with the evidence presented. This is adversarial litigation and it is for each side to decide upon the evidence they wish to rely. However, the matters are likely to be raised because the decisions sought are clearly intended to address a far wider dispute than whether the Defendants have acted in breach of trust. Namely, whether Mr Altaf Hussain should or should not be involved with MQMP. Whilst that is not a decision for this Court in this claim, the Court is concerned that there is a danger that a decision upon matters relevant

to that dispute if based upon incomplete evidence or information might be misused (intentionally or not). Those points are:

- a) There is a lack of relevant information. One would expect evidence of the adoption of practice and procedure to address matters such as how notice of a CCC meeting should be given, quorum, how votes may be cast (including whether by hand or poll at a meeting and/or with proxies), challenges to votes or the consequences of any vote that fails to comply with the Constitution. In addition, no-one has addressed whether any Rules, Regulations or Guidelines were ever adopted by the CCC.
- b) The fact that the Court is being asked to apply the law of England and Wales for the purpose of construing the Constitution of an unincorporated association which is a political party in Pakistan and, as such, subject to the electoral laws of Pakistan. The basic proposition that because the parties have not asserted that the law of Pakistan applies, they are taken to have agreed that English law applies. However, that is in the context a claim against trustees not in a case concerning a dispute between members/former members for which one would expect the law of Pakistan to be at the fore.

178. Nevertheless, although I have considered it right to draw attention to those matters for consideration if there is to be a further hearing, there is one overshadowing point. Namely, that whatever occurred on 31 August and 1 September 2016, the September 2016 Constitution was adopted and subsequently applied for MQMP following the election of a new CCC as announced on 3 November 2016. That this occurred is evidenced by the fact that the CCC adopted the 2017 Constitution by amending the September 2016 Constitution. The 2017 Constitution is now in force (subject to any later amendments, if any). It is the Constitution of MQMP and there is nothing that occurred before 3 November 2016 that affects the issues of breach of trust.

179. The MQM Constitutional Issue cannot affect the right of Mr Haque to bring this claim for the removal of the Defendants as trustees because of alleged misconduct, to prevent alleged misappropriation of trust assets, and to recover any misappropriated assets. Even if the members or former members could challenge the 2017 Constitution and cause Article 9b of the April 2016 Constitution to be inserted, which the active Defendants as trustees cannot, it would not alter the position. The decision to bring that claim would not be a major issue that would have required his guidance or ratification under the April 2016 Constitution.

180. In those circumstances the specific questions identified by Mr Slade K.C. can be answered as follows:

- a) There was no requirement for an electoral college vote. The 2015 Constitution did not apply. As at 30 August 2016 the CCC was to act under the April 2016 Constitution. The procedural lawfulness of the decisions on 30 August and 1 September 2016 remains an issue requiring a further hearing (if appropriate). However, Mr Altaf Hussain was no longer involving himself in the decision making or any other process of MQM. The CCC amended the Constitution in that circumstance by removing article 9(b). Whether lawful or not, the resolution was not challenged whether under article 17 or through the courts by Mr Hussain



in his personal capacity or by any other member or former member (assuming standing to do so). The CCC continued to run MQMP accordingly.

- b) Mr Altaf Hussain was then expelled from MQMP. That too has not been challenged under article 17 or through the courts by himself in a personal capacity or by any other MQM/MQMP member or former member with standing to do so.
  - c) By 3 November 2016 there was a newly appointed CCC. It adopted the September 2016 Constitution and amended it in 2017. This was not challenged by any member or former member of MQMP whether under article 17 or through the courts.
  - d) Subject to further amendment having taken place, if any, the 2017 Constitution is the Constitution of MQMP under which Mr Haque has been appointed the representative of the MQMP membership to bring this claim.
  - e) Even had there been or should there be a binding decision to restore Article 9(b), whether under Article 17 or through the courts in proceedings brought by members or former members if entitled, the decision to proceed with this claim based upon its allegations of breach of trust would not be a major issue requiring his guidance and/or ratification whichever form of Article 9(b) applied.
181. In all those circumstances the parties were given the opportunity before the hand-down of this judgment to identify any extant reason(s) for a further hearing. They have agreed that it is unnecessary as a result of the decision that MQMP is MQM but subject on the part of the active Defendants to the reservation of their position should there be an appeal of that decision, and it is successful.

## **G) Decisions**

182. Based upon the findings of fact and for the reasons set out above my decisions are:
- a) MQMP is MQM and its members are the beneficiaries of the Trusts.
  - b) It has not been established that the 2015 Constitution was adopted and on the balance of probability it was not.
  - c) The April 2016 Constitution was adopted.
  - d) As at 23 August 2016 Mr Altaf Hussain stood down from any role in or involvement with MQMP. Whether temporarily or permanently that did not alter before his expulsion from MQMP when he formed a new association operating from London.
  - e) A further hearing would be required to decide whether the resolutions passed on 31 August and/or 1 September 2016 breached the April 2016 Constitution.
  - f) A further hearing is unnecessary. The MQM Constitutional Issue is not a defence to the claim against the Defendants as trustees.

- g) Even if it was a defence, the decisions on 31 August and/or 1 September 2016 have been superseded by events. The September 2016 Constitution was adopted by the CCC elected on 3 November 2016. The new CCC amended the September 2016 Constitution and have adopted by resolution the 2017 Constitution. It remains in force (subject to any later amendment).
- h) Even if Article 9(b) could be and is treated as restored and Mr Hussain's expulsion set aside, which is not relief the active Defendants seek or which they could seek as trustees, the decision to bring a claim was not a major issue requiring Mr Altaf Hussain's guidance or ratification.
- i) Under the 2017 Constitution, Mr Haque as representative of the members of MQMP (a matter not in dispute) is entitled to bring this claim on their behalf. The second stage of the trial should proceed to decide whether the relief prayed for in the Claim Form should be granted.

Order Accordingly

## APPENDIX 1

### The Claimant's Witnesses

- 183. Although Mr Haque is the claimant, it was fitting that **Dr Sattar** was the first to give evidence. He is the person who effectively led "MQMP" after the 23 August 2016 speech of Mr Altaf Hussain and was responsible for the actions which cause the active Defendants to assert that a new party has been formed or that MQM has been unconstitutionally hijacked.
- 184. Dr Sattar's evidence is that he joined MQM in 1979 at the beginning of its formation as a student movement (then called "APMSO"). In 1987 he was elected in the local government election of Sindh as MQM's candidate in Karachi. He served as the Mayor of Karachi from 1987-1992. As a candidate of MQM, he was a member of the National Assembly of Pakistan in 1988 and 1990. In 1993 he won the Provincial Assembly of Sindh and served as the Leader of Opposition in the Provincial Assembly from late 1996. He was elected as a member of the National Assembly of Pakistan in 2002, 2008 and 2013. He served as the Parliamentary Leader in the National Assembly in 2013 and as the Federal Minister for Overseas Pakistanis from 2009 – 2013.
- 185. His evidence was that he was a member of the CCC at various times including during 2015 and 2016. He held several different positions within MQM and was a Deputy Convener from 1996 until he became Senior Deputy Convener in 2016. He was the MQM Party Leader including during 2015 and 2016. It was under his leadership that MQM entered the local government elections in December 2015 and won in Sindh including Karachi.
- 186. Dr Sattar gave his evidence by video link from Pakistan. I found that he did so clearly and carefully. There was nothing to be concluded from the manner in which he answered the questions that he was doing other than his best to assist the Court. On the

face of it, his evidence appeared reliable but (as with all witnesses, as explained in the main body of the judgment) its relevance and reliability of recollection will need to be judged against the evidence as a whole including the documents.

187. Dr Sattar was adamant that the 2015 Constitution relied upon by the Defendants had not been presented to or approved by the CCC at any meeting at which he was involved. He was a member of the CCC during 2015 and 2016, as well as before, and to his knowledge there were no CCC telephone meetings between its members in Pakistan and London on 21 and 22 October 2015. In addition (although this is surprising in the light of other evidence and appears to me to be a memory issue), he said he was unaware that there had been any proposal to change the constitution or that Mr Altaf Hussain had been seeking to increase his power. Insofar as there were genuine contemporaneous documents concerning amendments, he had not been shown them at the time. The first time he had seen the 2015 Constitution relied upon was on 28 September 2022.
188. His evidence was that there was/is no notice for or minute of those meetings, no contemporary media news and no mention of them on the MQM website. No such 2015 constitution has ever been lodged with the “Election Commission of Pakistan” as required by election laws. The subsequent December 2015 elections were conducted by MQM under its April 2016 Constitution as lodged with the Election Commission. There was no new CEC or MQM Electoral Commission formed as required by the alleged 2015 Constitution. The CCC continued to hold office and MQM continued to act under the April 2016 Constitution after the alleged 21 and 22 October 2015 meetings and purported passing of the 2015 Constitution.
189. Dr Sattar also maintained his evidence that the 22 August 2016 speech from Mr Altaf Hussain, subsequent 23 August 2016 apology and his withdrawal from involvement in MQM resulted in changes to MQM and not the formation of a new party. It became known as MQMP and was administered from Pakistan without the input of Mr Altaf Hussain and those who supported him in London. The word “Pakistan” had always existed in the name of the MQM, in particular as “MQM,P”. The comma was removed to emphasise that MQM was a Pakistani political party. He said in his witness statement: *“It did not suddenly become a different organisation. Rather, it was Mr Altaf Hussain who became different after 23 August 2016 following his own actions of voluntarily relinquishing his power to the Central Coordination Committee of MQM and resigning.”*
190. His evidence was that the oral apology and letter of 23 August 2016 expressly *“unequivocally, absolutely, and permanently surrendered [Mr Altaf Hussain’s] complete power and authority, which he thought he had, for and on behalf of the party to the [CCC] ... and was fully and unanimously accepted by the [CCC] in Pakistan and exercised accordingly”*. At a meeting that day at Avari Towers Hotel, Karachi: *“All the members of the [CCC] and the lawmakers ... affronted and appalled by [Mr] Altaf Hussain’s speech ... decided unanimously to remove [Mr] Altaf Hussain as an ideologue leader, for he never held any official office within the Party ... The power and authority that Mr Altaf Hussain has surrendered since 23 August 2016 were never given back or vested in him again and it could not be given to him without the two-third majority vote and ratification of the highest decision-maker of the Party, the [CCC]”*. The parting of the ways with Mr Altaf Hussain was announced by him afterwards at the Karachi Press Club.

191. Subsequently (31 August 2016) the CCC at an extraordinary, emergency meeting amended the April 2016 Constitution. His evidence was that the meeting was of 22 members and 4 co-opted members of the CCC producing a 2/3s majority for each resolution passed even if those members who did not vote or were absent were included.
192. **Mr Waseem Akhtar** described MQM as a political party in Pakistan in the form of an unincorporated association. His evidence was that he has been a member of MQM since 1987, actively involved in its internal working and electioneering. He is the current Deputy Convener of MQM Pakistan, which he says is MQM. He was in charge of the Central Executive Council (i.e. as established under the 2002/2012 Constitution) (which is to be defined as the 2012 CEC to distinguish it from the CEC referred to in the 2015 Constitution which is in issue CEC”) during 2015 and 2016 and a member of the CCC during the period 2015 to 2016. He stated that his role on the 2012 CEC and the CCC gave him a strategic and detailed view of MQM’s affairs.
193. He represented MQM in local and national elections. elected to the Sindh Provincial Assembly, Pakistan in 1993 and 1997. As an elected member of the Provincial Assembly, he was appointed as the Minister for Housing and Town Planning of Pakistan in 1997. In 2003 he was appointed as an Advisor to the Chief Minister for Local Government Development and in 2004 became an Advisor to the Chief Minister for the Home Department, Sindh. He started taking a role at the national level in 2008. He was elected to the National Assembly of Pakistan and served as a Member of the National Assembly from 2008 to 2013. He stood successfully as a MQM candidate in Karachi in the 2015 Local Government elections in Sindh, Pakistan and he stated that Mr Altaf Hussain was heavily involved in his campaign for the election. This he describes as an election handled on behalf of MQM by the CCC.
194. He served as a Mayor of Karachi from 2016 to 2020 in circumstances of MQM having the right as the majority party in Sindh to nominate its elected member of the Local Government as the Mayor. He also stated that Mr Hussain had a large role in his election as Mayor having selected, approved and endorsed him as a candidate.
195. Mr Akhtar’s evidence concerning the purported 2015 Constitution was that in March or April 2015 Mr Altaf Hussain, not the CCC, instructed him in his capacity as chairman of the 2012 CEC to draft a new constitution. His understanding was that Mr Altaf Hussain wanted to strengthen his *“procedural grip ... ensure that his role was all prevailing and [that he] possessed veto power in the Party”*. He explained he convened a sub-group in the administration below the CCC to carry out the drafting, the Central Advisory Council (“the CAC”). He accepted that members of the CCC would have been aware of this work but stated that *“nothing connected with the 2015 Constitution was ever officially debated by the [CCC]”*. He was a member of the CCC at the time and he challenged the authenticity of minutes of meetings relied upon the active Defendants and also the authenticity of a 15 August 2015 letter purportedly from himself.
196. Mr Akhtar’s recollection was that Mr Syed Sardar Ahmad produced working drafts and presented the first for consideration by the 2012 CEC on 30 April 2015. He did not recollect reviewing the draft but accepted during cross-examination, as recorded in the letter, that a majority of the 2012 CEC would have discussed the proposed amendments clause by clause at a meeting on 30 April 2015. Mr Akhtar forwarded the resulting draft as an enclosure to a letter dated 1 May 2015 to the members of MQM in London for

Mr Altaf Hussain's consideration. There was no response. Confusingly there is a second, similar letter dated 2 May 2015 but that is not his and must be from Mr Syed Ahmad, although he did not know why it was drafted.

197. His evidence was that Mr Syed Ahmad produced a second draft on 14 or 15 August 2015, which was circulated to the 2012 CEC. Mr Akhtar had no recollection of having seen it. He disputed the authenticity of an unsigned letter that bears his typed name as the sender of the revised draft to London for Mr Altaf Hussain. It is to be noted in support of his denial that he said his name is misspelt. There is another letter with his signature but he disputed it is his. He observed that he would not have signed it when his name was misspelt.
198. In any event he noted that this draft contains numerous errors, and his recollection was that it was revised as a result by Mr Syed Ahmad. He said that a third draft of the 2015 Draft Constitution was produced on 16 August 2015 and satisfied the 2012 CEC. He did not recollect if it was sent to Mr Altaf Hussain but in any event there was no response. If there had been, and stated the draft was satisfactory, the next step would have been to pass it to the CCC. That did not occur. Whilst he accepted in cross-examination that members of the CCC would probably have been aware from general conversations that a proposed constitution was being drafted, the CCC never met to consider it. It was never adopted, which explains why it was never lodged with the Election Commission whether for the 5 December 2015 local government election or at all.
199. The document purporting to be a minute of a CCC meeting in London of 16 August 2015 was put to him as evidence that the instructions of Mr Altaf Hussain that "*MQM needs a new constitution, which will be led by Syed Sardar Ahmed Bhai, with him inducted, constitutional experts, lawyers and experienced translators shall be inducted*" were discussed in detail at that meeting. He disputed its validity.
200. Mr Akhtar's evidence concerning the 22 August 2016 speech, the apology the next day, and control being handed over to the CCC was in line with the evidence of Dr Sattar. So too his evidence concerning Mr Altaf Hussain's expulsion. He addressed the role of Mr Altaf Hussain before those events, in effect identifying the CCC's general willingness to carry out his wishes. This approach took into account Mr Altaf Hussain's strong connections with senior members of MQM, and the political support he had from the people living in Karachi. He described Mr Altaf Hussain as having had, as a result, "*an unequal influence over the MQM Party and power of patronage within the Party*".
201. Whilst the evidence referred to above is clear from his witness statement, I gained the impression when listening to Mr Akhtar's cross-examination that he had not prepared for the hearing. He did not appear to be familiar with his witness statement. However, on the positive side he made clear on a number of occasions when he did not recollect what had occurred. Of course, it can be argued that this was because he wanted to avoid difficult questions, and it is always very difficult to assess whether that is so. However, my impression was that his lack of recollection was genuine, and it is to be noted that it is far from surprising that anyone should now have difficulty accurately recollecting events during 2015 and 2016 in any detail. In any event if the points underlying the questions which could not be answered for want of memory are good, they will stand on their own and Mr Akhtar, to his credit, will not have potentially averted that result by giving evidence when his memory is unclear.

202. **Mr Haque** described himself as a representative and member of MQM Pakistan. He lives in Karachi and is an elected member of the National Assembly of Pakistan for the National Assembly-251, (Karachi West IV). He was elected as an MQMP candidate (or on the MQMP ticket as it's commonly called) in the Pakistani General Election of 2018. He also served as Federal Minister for IT & Telecom of Pakistan from 6 April 2020 to 10 April 2022.
203. He said he was a member of the CCC in "2013, 2014, 2015 – present", and the party leader of MQM in 2014. He was a member of the 2012 CEC in 2015 and added to the CCC on 6 August 2015. He has remained as a member of the CCC.
204. Mr Haque's position and evidence concerning the formation of MQM was that it was derived from a student organisation formed in 1978. Mr Altaf Hussain was a founder and ideologue leader of MQM from 1984 until stepping down on 23 August 2016. Until then the CCC would consider his guidance, suggestions and opinions but was not bound to adopt them and was not servient to him. He also said that "*Mr Altaf Hussain never held the official position as a party leader of MQM nor was he admitted as a member of the Central Coordination Committee of MQM. The MQM official party leader was Dr Farooq Sattar from 1984 until Dr Khalid Maqbool; the current leader was elected in February 2018 ... His British Citizenship precludes him from participating in Pakistani elections. It is my understanding that Mr Altaf Hussain cannot be a member or leader in any legal capacity because it would be against the law of Pakistan... the [CCC] expelled Mr Altaf Hussain from MQM's membership on 23 August 2016*".
205. Mr Haque stated that when Mr Altaf Hussain had to leave Pakistan and move to London, he established a UK branch of MQM. He was in effect the public figure of MQM through his involvement in the activities of MQM UK. MQM's 2002 Constitution was amended on 23 May 2012 by the addition of clauses 14-A and 19-A.
206. The 2012 Constitution was further amended during the first quarter of 2016. Those amendments, the April 2016 Constitution, were approved by Mr Altaf Hussain as ideologue party leader. There was no reference to a 2015 Constitution or to its provisions. The April 2016 Constitution, amending the 2012 Constitution, was adopted by a 2/3 majority of the CCC pursuant to a resolution dated 12 April 2016. The amendments were signed by the Party Leader and there is an additional copy showing the list of CCC members who approved the amendments. There has been further amendment in 2016 and 2017.
207. There was never a 2015 Constitution adopted or implemented by the CCC. "*The Central Executive Council was formed on the 20th of November 2011 and although it was tasked with the amongst other things the revision of the Party's Constitution in March 2015, [he] was personally not aware that the exercise of revision of the Constitution actually occurred as alleged by Mr Altaf Hussain despite being a member of the [2012] CEC in 2015*". The drafts of the 2012 CEC remained drafts. It was not approved on 21 October 2015 by a joint telephone meeting off the CCC in Pakistan and London. There was no such telephone call. The document purporting to be a summarised minute of CCC meetings from 23 March to 30 August 2015 is false and his signature is forged.
208. He also said: "*Had the second draft of the proposed 2015 constitution been passed by the Central Coordination Committee, the [active] Defendants would have been able to*

*at least provide a list of the members who voted positively for the amendment. Further, the names and signatures of such alleged members would have been added to the approved Constitution. Most importantly, had the second draft of the proposed 2015 constitution been passed, it would have been duly and promptly submitted to the Election Commission of Pakistan. MQM is a registered political party, subject to the governance of the Political Parties Order 2002 under which it is required to provide an updated record of its constitution. It has a record of diligent compliance and there was no reason why to not submit the second draft of the proposed 2015 Constitution to the Election Commission, other than the alleged Constitution was never adopted by the Central Coordination Committee”.*

209. In contrast, he said, the April and the September 2016 Constitutions were registered. He too drew attention to the fact that the 2015 local body election was conducted in reliance upon the April 2016 Constitution. MQMP’s party leader, who superseded Dr Sattar, was Dr Khalid Maqbool. He was elected under the 2017 Constitution in February 2018.
210. Mr Haque had in cross-examination to reconcile his dispute as to the existence of the 2015 Constitution with the fact that his evidence in support of the claim filed and served for the purposes of an application for an interim injunction had identified the 2015 Constitution relied upon by the active Defendants as MQM’s constitution. He said this with reference to the exhibited 2015 Constitution:
- “15. The First Defendant became the unchallenged, de facto leader and effectively the sole decision-maker of MQM, a position cemented by section 9 (b) of the previous constitution [SAH/1, page E69]. This remained so until a resolution of the MQM executive removed him in 2016 [SAH/1, pages E90-91]. The reverence and esteem in which the Party held the First Defendant are demonstrated in the constitutional references to his role in the MQM and stationery [SAH/1, pages E69, E53, E318-322 and E323-324].”*
211. Mr Haque emphasised that this was a mistake, and one subsequently corrected by a further affidavit once the error came to light. However, he struggled to explain how the fault occurred.
212. Mr Haque’s evidence was in line with Dr Sattar’s concerning: Mr Altaf Hussain’s 22 August 2016 broadcast from London, which led to the military authorities closing and sealing off MQM’s central offices in Karachi, and the following day’s apology both oral and by letter released through a Twitter account, printed in a newspaper and posted on MQM’s web-site. He understood from the apology that Mr Altaf Hussain had stepped down from any decision making role and handed over “complete power” to the CCC. He relied upon a letter of similar effect dated 24 August 2016 from Mr A. Ghaffar, an advocate-at-law acting for Mr Altaf Hussain, for the same conclusion. He also referred to two attachments to emails from “MQM Secretariat” to Mr Mohammad Anwar sent on 25 August 2016 which he said support his understanding of Mr Hussain’s relinquishment of power.
213. Mr Haque’s evidence was that after the expulsion that day, Mr Altaf Hussain’s role and activity was limited to his involvement with Muttahida Quami Movement UK. He described this as a distinct association, a “splinter group” from MQM/MQMP.

214. I found Mr Haque to have been a witness seeking to assist the Court. The problems of memory addressed in the main body of the judgment obviously apply and I need to take into consideration the problem of him having relied originally upon the 2015 Constitution. In addition, there is the failure to address disclosure properly to consider. I have borne all these matters in mind when considering his evidence and they add to the need to check his evidence very carefully against the contemporaneous evidence and the evidence of all other witnesses. I have taken that approach.
215. Another witness for Mr Haque was **Mr Nadeem Nusrat**. I considered him to be a helpful witness but obviously subject to the general observations concerning the problems for recollection addressed in the main body of the judgment. I certainly did not conclude that he sought to mislead the court and, instead, that concluded that he sought to assist. He came across as someone who thought very carefully about the political principles and issues with which the political party was concerned. He was clearly committed and I am sure that he has striven to do his best for the party, including during 2015 and 2016.
216. The fact that others do not agree with him, as is apparent from attacks upon him, does not mean he should be castigated. A divergence of views in politics is inevitable and dialogue is the answer not inflammatory social media remarks and certainly not violence. The messages I was shown by Mr Mohammad, which Mr Nusrat had received shortly before he gave evidence, should not have been sent and my condemnatory remarks accordingly in court stand irrespective of the fact that Mr Nusrat apparently gave an interview to the press the day before. Mr Nusrat pursuant to pre-trial review directions gave his evidence from a different court room to avoid intimidation concerns. It is highly regrettable that this was required but I am satisfied that the measures taken enabled him to give his evidence freely and fairly.
217. In his witness statement he described how he was born in Pakistan and became a citizen of the United Kingdom and the United States of America. He arrived in this country in January 1992 at the age of 21, on the same plane as Mr Altaf Hussain. Whilst based in the UK, he was a member and officeholder of MQM. He held the positions of Deputy Convenor, Senior Deputy Convenor and Convenor, respectively, from May 2013 to 31 December 2017. He was head of the CCC during 2015 and 2016. He was also the convener of “MQM London”. He now lives in the USA.
218. His evidence concerning events of 22 and 23 August 2016 set out his understanding of the position in the circumstance of him being in London and in the company of Mr Altaf Hussain, including whilst he dictated the apology letter. His evidence recollected a clear intention on the part of Mr Altaf Hussain to resign and not to return to his previous role: *“He resigned. I knew and felt he was not coming back”*. He recollected Mr Altaf Hussain having said to him: *“you and I will be writing books from now on”*.
219. Mr Nusrat was also in telephone contact with Dr Sattar at that time. He said they spoke on 22 August after the speech, and that he suggested Dr Sattar should hold a press conference and try to calm the atmosphere by stating that *“the MQM as an organisation was not anti-state or violent”*. He said that Dr Sattar did not ask him to ask Mr Altaf Hussain to hand over his power or resign from MQM.
220. During cross-examination he agreed that he had only learnt of Mr Altaf Hussain’s removal from the MQM Constitution on 31 August 2016 after it was announced at a



press conference. He was taken to a record of a press conference he had given on 17 November 2016, in different circumstances. He was recorded as having said that the decision to run MQM from Pakistan had not been discussed with him or Mr Altaf Hussain. He also said that Mr Altaf Hussain's name could not be removed from the constitution without his approval: "... hence the decision will be considered null and void and will be illegal and unconstitutional ... Brother Altaf didn't want it to become controversial, accepted this decision. It was a great sacrifice on his part". In any event, Mr Nusrat's recollection was that Mr Altaf Hussain's withdrawal had led to MQM being run from Pakistan.

221. Mr Nusrat's evidence was clear as to the fact that the 2015 Constitution was not adopted by the CCC. He was then the Senior Deputy Convenor, the most senior post in MQM, including in its office in London and was not involved with any meetings on 21 and 22 October 2015 concerning that Constitution. He did not recall receiving any drafts. He drew attention to the absence of any recordings of those meetings, explaining that tape recorders would have been used and TDK tapes stored had there been such meetings. In addition, such meetings would have been recorded by the BT system, although his witness statement was unclear as to the date of its installation, referring to 2015 or 2016.
222. It was his perception that MQM became MQMP. That supporters of Mr Altaf Hussain split from MQMP and started their own group in London following Mr Altaf Hussain's expulsion from MQM. He described the formation of "*MQM London*" as a reactionary event triggered by motions asserting treason made against Mr Altaf Hussain in the National Assembly of Pakistan and in the Provincial Assembly of Sindh on 21 September 2016. He identified the "*core instigators*" as Mr Kanwar Khalid Yunus, Mr Sathi Ishaque, Professor Dr Zafar Arif, Momin Khan Momin and Mr Amajdullah Khan. He said he was still a member of MQM and, by extension, the Convenor of MQMP, at the time of the split but was later removed from his position by MQMP.
223. Mr Nusrat's evidence was challenged under cross-examination on the basis that he had changed his story from the stance he had held in September 2016 and during 2017. Certainly there is media evidence to the effect that he condemned the motions asserting treason, and when doing so challenged MQMP's removal of Mr Altaf Hussain after he had relinquished his powers in August 2016 and objected to the subsequent changes in the constitution.
224. Reference can be made, for example, to the report concerning what he said on Mr Altaf Hussain's 63<sup>rd</sup> birthday, and to the reports addressing what he said after Mr Altaf Hussain is reported to have empowered him to form a new CCC in September 2016. This evidence includes reference to views he is said to have expressed at a meeting in London in June 2017 after he had returned from a visit to the USA to raise awareness of the problems the Mohajir Community faced in Pakistan.
225. Whilst these are hearsay reports and the authors cannot be cross-examined, those relied upon by the active Defendants for the purpose of cross-examination do not assert or suggest that Mr Nusrat was maintaining that MQMP is a separate association to MQM. Indeed, the opposite is true because his position, as recorded, was that Dr Sattar had taken over MQM after Mr Altaf Hussain had allowed him to lead MQM for a limited time. It was reported that Mr Nusrat was condemning Dr Sattar as a traitor because he had changed MQM's constitution and become its sole chief, not that MQMP was a new unincorporated association and political party.

## APPENDIX 2

### The Defendants' Witnesses

226. Mr Mohammad on behalf of Mr Haque raised issue with **Mr Altaf Hussain's** witness statement before he was called on the basis that there was cause to doubt it was his bearing in mind (in summary) it was in English not Urdu, his principal language, and its reference to assistance. My conclusion was that this was an issue for cross-examination and that, as with all other witnesses, evidence should be given in English unless it was apparent that the assistance of an interpreter was required. In fact Mr Mohammad did not pursue the issue during cross-examination.
227. I was satisfied that Mr Altaf Hussain had a sufficient grasp of English to admit his evidence in chief and he did not require an interpreter. His evidence was criticised by Mr Mohammad in submissions but a number of points need to be borne in mind. First, he is now in his seventies and obviously not in the best of health. The cross-examination was long for him (no criticism of Mr Mohammad intended) and he clearly found the afternoon session tiring. Second, whilst there were inconsistencies and sometimes words said that may be described as being towards the hyperbolised end of the scale, that must be in part attributed to character, in part to the pressure of the trial in the context of the emotive topic of politics and in part due to the early challenge in cross-examination to his position as "*father*" of MQM. Third, questions challenging him as lying particularly offended him. Fourth, as with all witnesses, the time that has elapsed and the nature of the issues concerned give rise to the potential for false memory. I am satisfied he gave his evidence with the intention of assisting the court but the observations above need to be borne in mind.
228. I should also add that it was clear that Mr Altaf Hussain holds the suffering his supporters have sustained at the forefront of his mind. He sees himself as a protector of his children (extending the father analogy) and no doubt this is the reason for a large number of the pages of the exhibits addressing such matters (in particular with photographs). I do so to make clear that I have not ignored this in the context of his mind set. However, it is not otherwise relevant to the issues before me. It is not for me to make any finding concerning the facts of and causes for a long history of dispute with the or some of the authorities in Pakistan. I do not do so.
229. Mr Altaf Hussain gave his evidence in chief as the founder, ideologue and leader of MQM, which he described as a Pakistan political party. The challenge to his evidence as founder, leader or even an executive officer was met with a forthright response. His evidence was that he is the father of the party, that members are required to swear an oath of allegiance to him and that he has been elected for life to lead MQM in its philosophy and policies by the application of his vision and ideas. That is why his assent is required for major decisions. It is why the constitution and any other rules must be read subject to the umbrella of his role as father. His duties include formulating the ideas and ideals of the party (its ideology), teaching and answering questions that need to be addressed to take MQM forward.
230. Mr Altaf Hussain had no doubt that the 2015 Constitution was approved by the CCC because that is what he was told before he assented to its adoption the next day. His

understanding, not being present, was that the draft was considered in detail by the CCC between 16 August and 21 October 2015 when it was approved during a joint meeting of members in London and Karachi. He gave his assent the next day by telephone. During cross-examination it was pressed upon him that he was lying, not least because the 2015 Constitution relied upon contained errors and gaps yet to be filled. Mr Altaf Hussain was clear in his recollection that he had read the draft 3-4 times, had made corrections and returned it to the CCC expecting it to be finalised. He understood that it had been finalised and, therefore, did not contain any errors or gaps when he was told by the CCC that they had approved the draft on 21 October 2015. He gave his assent accordingly believing the corrections had been made. He did not accept that its changes had not been implemented and explained that implementation would be phased not least because “nothing can be done at once”.

231. It was clear to me that he was not intending to lie. Those facts appear embedded in his memory. He described the circumstance of large and very successful protests being held in Washington, USA, on 22 August 2015. He remembered the celebrations in the London offices, to him being asked to make it a double celebration because he had given assent to the 2015 Constitution (which I read as meaning that he should give not that he had given his consent). He recalled contacting central office in Pakistan and in a joint London/Pakistan session of the CCC told them he gave assent to the constitution they had passed unanimously the day before. He recalled them all celebrating in London afterwards with sweet meats and nihari. The question, as with all witnesses, however, is whether his recollection is reliable as time has passed and the scope for false memory has increased. His evidence (as with all the witnesses) needs to be tested against contemporaneous material. As with all witnesses I will take account of his evidence throughout but not necessarily repeat it within the main body of the judgment.
232. Mr Altaf Hussain drew a distinction between MQM’s Constitution and the manifesto. He undoubtedly recognised the importance of the Constitution because it sets out the rules and procedures to be followed by the third largest political party in Pakistan. However, he stressed that for MQM’s membership, the manifesto was key. Members would not receive a copy of the constitution but they would receive a copy of the manifesto.
233. Insofar as the December 2015 elections did not refer to the 2015 Constitution, he surmised that this would be attributable to the fact that preparations had been ongoing before its approval. He also stated that it had been Dr Sattar’s responsibility to submit the 2015 Constitution, which he must have failed to do.
234. Before turning to the relevance of the apology on 23 August 2016, it is to be noted that Mr Altaf Hussain referred to the fact that he resigned twice in 2015 “*to warn the [CCC] to perform their duties with responsibility*”. On each occasion he reversed his decision after the CCC apologised, requested him to return and offered their commitment. This certainly suggests that he had the unilateral power to decide to remove himself from any role within MQM and that he would not return without agreement, although it cannot be concluded from this alone that he could not otherwise return.
235. His recollection of 23 August 2016, following his speech, is that he gave the CCC “*authority to run the organisation for a while until matters ... settled and the situation improves*”. His statement did not say anything “*about leaving the leadership*”. He did not resign, distance himself from the movement, authorise any change in the

constitution or abolish his role as founder and leader. An ideologue can never withdraw. His aim was to recuperate and monitor and guide the CCC through the party convenor in London. He now believes that he was deceived by Dr Sattar and others who conspired to remove him and take over. That, he contended, was why on 23 August 2016 they announced their disassociation with him. He did not appreciate this at the time.

236. In his witness statement he stated that his apology led to the announcement by Dr Sattar of the formation of a separate party, “MQMP”, on 31 August 2016. A completely different party with a separate identity and altered constitution. Dr Sattar and others: *“unlawfully amended the constitution of the MQM, removed me as leader and announced zero connections with me”*. This, he asserted, again as surmise, was required by the Pakistan army and the Pakistan intelligence services if MQM was to be allowed to continue its political activities. As a result, he said: *“They announced [on 31 August 2016] a separate party ‘MQMP’ which, although it used the flag and electoral symbol of the MQM, but with an altered constitution. It was a completely different and new party ... not a continuation of MQM ... created by the military establishment ... They unlawfully amended the constitution of the MQM, removed me as leader and announced zero connections with me ... all the amendments ... were made at the behest of the Pakistan army and ISI...”*. He then referred to an exhibited newspaper report of an announcement by the Prime Minister’s spokesperson to support his allegation.
237. It is to be noted that there is an inherent factual inconsistency between the allegation that a new party was formed and the allegation that Dr Sattar changed MQM’s constitution and excluded Mr Altaf Hussain from MQM at the request of the army, ISI and/or government.
238. During cross-examination Mr Altaf Hussain explained the position differently. He accepted that it was the motions asserting treason against himself in the National Assembly of Pakistan and in the Provincial Assembly of Sindh on 21 September 2016 which gave rise to the new party. He accepted that prior to that Dr Sattar had acted for and in relation to MQM. He accepted he had not objected to Dr Sattar’s actions before those motions because he was being assured by Dr Sattar that all would return to normal as long as he remained quiet. That he thought would allow the events of 22/23 August 2016 to blow over. He now stated that MQMP was formed as a new party after the Assembly of Pakistan’s resolution to prosecute him for treason.
239. This is a good example of the problems of memory. I do not attribute this change of evidence to Mr Altaf Hussain lying. Since October 2016 he has had many years to think about, discuss and re-think about the events of August and September. He had come to believe that Dr Sattar had intended from 23 August 2016 to take advantage of the situation and to form a new party. It is not difficult to understand that this belief then led him to remember the events differently. Nevertheless, his evidence at trial was clear. It arose in the context of him having heard the previous evidence and (it appeared to me) appreciating the inconsistency of challenging Dr Sattar’s actions concerning amendment to MQM’s constitution and his exclusion from MQM, whilst asserting that Dr Sattar had formed a new party. He accepted that until the 21 September 2016 motions, Dr Sattar and his supporters were taking control, changing the constitution of, and excluding him from MQM.
240. Following those motions, Mr Altaf Hussain’s evidence showed that he sought to take the initiative. On 21 September 2016 Mr Nusrat, as the Convenor, announced that the

CCC and all wings of MQM were dissolved by. Dr Sattar and others were expelled from their membership on 2 October 2016. A new, interim CCC of MQM was announced by Mr Nusrat, as Convenor, on 14 October 2016. It was stated that MQMP has created a “fake MQM” by the actions summarised above and by seizing MQM’s welfare centres and its welfare organisation’s assets.

241. Mr Altaf Hussain’s conclusion was that: “*I continue to lead MQM and intend to lead MQM for the rest of my life*”. He has 52,000 followers of his Twitter account and MQM has 168,000 for its. He remains active in Pakistan politics recently having successfully called for a boycott of elections.
242. The credibility of Mr Mustafa Ali’s evidence was challenged because of his reliance upon financial and housing support received from Mr Altaf Hussain. I do not accept that as such but it was clear that Mr Mustafa Ali is an entrenched supporter of and believer in Mr Altaf Hussain and this will need to be borne in mind as mentioned below.
243. Before his cross-examination Mr Mustafa Ali raised the point that he might need an interpreter. As matters turned out, he did not but I will bear in mind when considering his evidence that he would from time to time find it more difficult to follow questions especially when directed to numerous documents. I am satisfied, however, that he was able to answer the questions and to do so as he wished. He came across as an intelligent gentleman who could be precise and clear when responding to questions. However, I have also concluded that he was from time to time nimble enough in mind to avoid answering questions he found difficult and his answers became far less clear when put on the spot.
244. The fact that his cross-examination from time to time became far more based on argument than evidence at least had the advantage of showing that he was more than capable of arguing the case he wished to advocate in response. In addition, he demonstrated that he was absolutely committed to Mr Altaf Hussain and whilst that certainly does not mean his evidence should not be accepted, it means that caution must be exercised when assessing it in case of inherent bias. Plainly there is a strong potential for that to have potentially influenced his recollection in evidence (conscious or subconscious). His dedication to his leader, Mr Altaf Hussain, was obvious and I remained concerned that this has prejudiced his recollection. His testimony must be viewed carefully against the documentation for that reason too.
245. Mr Mustafa Ali’s involvement with MQM dates back to its formation and to the previous student organisation. It is plain from his evidence that he has been involved with a variety of events of political turmoil but they are unnecessary and it would be inappropriate to refer to them in the context of this case. Those events and his membership of MQM and the CCC caused him to claim asylum in the UK in 1998. He stated he has been a member of the CCC since that time and described himself as a current member of MQM’s CCC. This referred to a CCC operated in London not to MQMP’s CCC.
246. Mr Mustafa Ali’s stated understanding was that the CCC has always been constitutionally bound to obtain Mr Altaf Hussain’s endorsement for its decisions and actions. His evidence was that Mr Altaf Hussain had and has the power of veto to reject

CCC decisions which he believes are not in MQM's interests. His evidence was that all MQM's public statements or letters are and always were subject to Mr Altaf Hussain's suggestions and approval.

247. Mr Mustafa Ali addressed the 2015 Constitution within the context of political events in 2013/14 having caused the CCC to "*re-vamp the party structure*" and to introduce the CEC proposed in the draft 2015 Constitution. He said that during 2015 the CCC and 2012 CEC decided to make a new constitution in 2015. This would include an electoral college. He attended a CCC meeting by telephone between Pakistan and London on 16 August 2015 concerning the constitution and was present at the further telephone meeting on 21 October when the 2015 Constitution was approved. He believed this was approved by Mr Altaf Hussain the next day.
248. During cross-examination Mr Mustafa Ali could not explain why the draft 2015 Constitution he said had been approved contained errors and blanks to be filled. He was sure it had been carefully checked. In any event, he said those errors and blanks did not mean it was not adopted by the CCC and approved by Mr Altaf Hussain. He suggested that Mr Altaf Hussain gave his consent in circumstances of not having read the document but having relied upon the CCC to ensure it accorded with the principles and guidance he had prescribed when asking for the constitution to be drafted.
249. Mr Mustafa Ali accepted that the 2015 Constitution should have been submitted to the Election Commission of Pakistan. He could not explain how MQM proceeded with the 2016 elections without reference to the new 2015 Constitution and with documentation which on its face referred to the provisions of the 2012 Constitution (amended by the April 2016 Constitution). This absence of reference included the document entitled "*Notification of Returned Candidates*" issued by the Election Commissioner which named (amongst others) Mr Mustafa Ali as a returned CCC candidate for the inter-party 2016 elections held on 30 April 2016. Mr Mustafa Ali could not explain why the document clearly relied upon the 2012 Constitution (amended by the April 2016 Constitution) when referring to Article 13 of the constitution of "MQM (Pakistan)"
250. Mr Mustafa Ali stated that he had no knowledge, despite being a CCC member, of the amendments to the constitution asserted by Mr Haque made on 14 February 2016 which gave rise to the April 2016 Constitution.
251. He recalled the 22 August 2016 speech and the next day's apology letter. His perception was that Mr Altaf Hussain "*would be looking after his health for the time being and that the CCC would run the affairs of MQM*". He had no knowledge of and was not invited to the meetings on 23/24 August 2016 relied upon by Dr Sattar. He only discovered the constitutional changes made on 31 August 2016 through the media, despite still being a member of the CCC. He found them "*shocking and unbelievable*" and stated that when "*the CCC members based in London saw [the] detail, [they] immediately reacted and rejected these changes*", as he stated in a Twitter account on 1 September 2016. He referred to himself and the CCC members Mr Qasim Ali Raza and Mr Wasay Jalil rejecting the removal of Mr Altaf Hussain by measures they described as "*the Minus Altaf Formula*", as published on news sites on 1 September 2016. His evidence was that all CCC members based in London, a total of 10 at the time, had not been able to take part in the 31 August and 1 September 2016 meetings. He also recollected the names of another 2 CCC members who were not there, although there was no documentation identified to support that recollection.

252. Mr Mustafa Ali referred to his discovery of his expulsion by Dr Sattar and his colleagues and that of Mr Nusrat and three other CCC members. He also described how shocked he was by the resolutions against Mr Altaf Hussain in the National Assembly and the Sindh Assembly, one of which required action to be taken under Article 6 of the Constitution of Pakistan which permits capital punishment for treason.
253. Mr Mustafa Ali stated his belief that MQMP has nothing to do with “*Mr Altaf Hussain and his organisation*”, MQM. His evidence included reference to a press conference on 27 August 2016 for which a news report recorded that Dr Sattar, “*who recently announced party’s Pakistan chapter’s dissociation from its London wing, claimed that conspiracies are afoot to make at least four to five MQMs. [and that he felt] that till this operation lasts, there may emerge another MQM*”.
254. The evidence from Mr Mustafa Ali was that MQM as still headed by Mr Altaf Hussain and “*is regularly in contact with its supporters, followers and well-wishers. It is engaged in political meetings, issuing regular statements and organising political party functions. MQM has support among millions of Pakistanis and abroad, including the UK, USA, Australia, Germany, South Africa, Portugal and Middle East*”.
255. **Mr Qasim Ali’s** involvement with MQM dates back to 1988. He worked for the party for many years and was in charge of its media and administration committees in Pakistan. He worked in London from 2003 and became a member of the CCC in 2008. He described there being an established practice that all of the CCC’s policy making and organisational decisions required the assent of Mr Altaf Hussain. Any senior appointment would also need his prior approval.
256. Mr Qasim Ali gave his evidence calmly and resolutely. He maintained his position in cross-examination, and when answering questions set out the facts and matters as he understood them from his perspective. It was apparent, however, that his mind-set was centred upon supporting and defending Mr Altaf Hussein. That affected his reliability meaning, as with Mr Mustafa Ali, that this provided an additional reason for needing to check his evidence carefully against the contemporaneous documentation. This was borne in mind when assessing his evidence and deciding facts.
257. Mr Qasim Ali’s evidence was that throughout his membership of MQM there was “*as established practice that all policy and organisational decisions taken by the CCC had to receive [Mr Altaf Hussain’s] assent*”. He recalled that the CCC wanted to give Mr Altaf Hussain stronger powers, which is why the 2015 Constitution was produced. He understood that the CCC in Pakistan and London were dissolved in February 2015 and reconstituted in August 2015. No-one else had that recollection.
258. He stated that in 2015 he “*as a member of the CCC ... participated in many sessions on the formation of the 2015 Committee [and that during] the sessions, both Pakistan and London would read through every clause*”. In cross-examination he recollected participating in many CCC sessions, as a member, considering the draft, clause by clause. This was not consistent with the recollection of those who attributed the drafting to the 2012 CEC and the CAC. He recalled the 21 October 2015 telephone meeting between CCC members in London and Pakistan headed by the convener, Mr Nusrat, that approved the 2015 Constitution. He could not remember the members present. He was only “*pretty certain*” Mr Altaf Hussain gave his assent during a further telephone meeting the next day. He did not know if the meeting and approval were recorded. His

answer to the observation during cross-examination that there was no TDK tape recording of the meetings was that a failure to record did not mean it did not occur. He was not troubled by the errors and blanks in the drafts. They would have to be addressed and the Constitution finalised in due course.

259. Mr Qasim Ali stated in cross-examination that the changes required by the 2015 Constitution were started but he had no knowledge of any electoral college. He appreciated that the 2015 Constitution required the replacement of the CCC by the 2015 CEC as the highest policy and decision-making body. He said: *“the organisation continued to use CCC/Rabita Committee as a habit since we had been using the CCC since 1993”*. He could not explain his December 2015 election under articles identified from the April 2016 Constitution.
260. Mr Qasim Ali’s evidence was that he had no knowledge of the resolutions of 14 February and 12 April 2016 concerning MQM’s Constitution. Although he was not a CCC member at the time, he was a member of the MQM International Secretariat. He always understood that the 2015 Constitution continued to apply. Mr Qasim Ali accepted he was made a member of the CCC in April 2016, this time by induction.
261. He said he was well aware of Mr Altaf Hussain’s 22 August 2016 speech. His recollection was that there was no backlash. He was the only witness with that recollection and the influence of his dedication to Mr Altaf Hussain must be borne in mind. He nevertheless remembered an Apology drafted overnight and published the next day. His understanding was that Mr Altaf Hussain gave all his powers to the CCC not to Dr Sattar. He recollected Dr Sattar speaking from Pakistan to Mr Nusrat in London on 23 August 2016 (confirming in a second witness statement that this was the day, despite Dr Sattar only referring to one on the day before). He said that he could hear the conversation via speaker phone. He recollected Dr Sattar suggesting to Mr Altaf Hussain that he should issue a statement to calm down the military establishment. His perception was that *“Dr ... Sattar would put things back on track”* once that was achieved. His evidence was that Mr Altaf Hussain’s later apology was misinterpreted and taken out of context. As a result it was removed from MQM’s website.
262. He had no notice or knowledge of any meeting in Pakistan on 24 August 2016 or of the constitutional changes of 31 August/1 September 2016 until after the event. He asserted that this would have been because Dr Sattar knew the London members would oppose the *“minus Altaf formula”*. The reason being to avoid any further problems in Pakistan. He only learnt of the Constitution’s amendment on 31 August 2016 from the media. He expressed his opposition to the change to the constitution the next day by Twitter. There was no right to amend the constitution without those members based in London having had the opportunity to attend and vote. For him, Mr Altaf Hussain is the *“only founder leader of MQM”*. He remained a member of MQM whilst Dr Sattar formed a new party.
263. Mr Qasim Ali’s evidence was that after 23 August 2016 the London International Secretariat was not in regular contact with the CCC in Pakistan. As a consequence of the Sindh Assembly resolution passed on 21 September 2016, Mr Nusrat as Convenor of MQM dissolved the CCC and all MQM wings. MQM activists boycotted the 2018 elections. Mr Qasim Ali stated that his subsequent expulsion from MQM resulted from his speech asserting that Mr Altaf Hussain is the only founder leader. His expulsion was *“illegal and unconstitutional”*. However, he could do nothing about it. He could not appeal from London.



264. Mr Qasim Ali also challenged Mr Nusrat's evidence on the basis that he had changed his earlier approach. He referred to a press conference held on 30 June 2017 in which Mr Nusrat was recorded as saying that: Although Dr Sattar had been allowed by Mr Altaf Hussain on 22 August 2016 to lead the party "*on his behalf for a limited time*", Dr Sattar "*later turned traitor and occupied MQM, changed the MQM constitution and inserted his own name as sole chief and the parliamentarians, who joined him for their petty and vested personal gains tabled a resolution in the assembly demanding trial of father of Mohajir nation Mr Hussain for treason under article 6 of the constitution – what a sham*".
265. **Mr Sufyan Yusuf** gave evidence on the basis that he was a member of MQM's CCC in London. He had first been a member of MQM's student wing in 1994, and between 2005-2007 was a member of the Central Organising Committee of MQMs overseas unit (which he explained was not the CCC) whilst in London. He became a member of the National Assembly serving for two terms, 2008-2013 and 2013-2018 but left Pakistan in 2016. His credibility was challenged during cross-examination on the basis that he had chosen to give false evidence because Mr Altaf Hussain was providing support for his asylum application. He vehemently disputed that allegation. I did not consider he lied, although the question of reliability of memory obviously equally applied to him.
266. Mr Yusuf's recollection was that during 2015 Mr Altaf Hussain asked the CCC and the 2012 CEC to draft a new constitution. He remembered discussions over draft clauses during July and August 2015 at Khursheed Memorial Hall in Karachi between parliamentarians and MQM members including members from the London CCC present by phone. Amendments were mainly proposed by the 2012 CEC. He recollected "*unanimous support for the 2015 Constitution amongst the members and parliamentarians of MQM for the simple reason that [Mr Altaf Hussain] was the founder, leader and ideologue of MQM and he had devoted himself to the movement*".
267. He was not present "*during the finalisation of the 2015 Constitution*" but recalled that the parliamentarians were informed at the end of October 2015 by the CCC that the 2015 Constitution was approved and to be implemented but without any cut-off date for its consequential organisational changes and requirements. He said he was told this at a meeting at the Khursheed Memorial Hall. He recollected subsequent CCC minutes showing changes such as the merger of departments with committees and a list of names for proposal into the Central Executive Council. He exhibited minutes dated 26 October 2015 and minutes from 2016 showing, as he construed them, the gradual implementation of the 2015 Constitution. That construction was challenged and matters were put to him to establish that the 2015 Constitution could not have been passed because it was not implemented. He disagreed and explained that it was being implemented over time or in stages as would inevitably have to occur in practice.
268. Mr Yusuf had no recollection of the 14 February and 12 April 2016 Constitution amendments. He made reference to the speech on 22 August and to Dr Sattar's arrest and release the next day but his evidence did not take matters further. As to the events following 22 August 2016, Mr Yusuf stated that he was not summoned to the meeting at the Avari Tower Hotel and had no knowledge of the calling of the meeting on 31 August 2016. He said he learnt of the amendments through the media. This was despite him being an MQM Member of the National Assembly. He stated he was cut off from MQMP afterwards and received no further contact from them. He believed this to be because of his support for Mr Altaf Hussain as a Member of the National Assembly.

269. He explained that communications between Karachi and London were usually by facsimile transmission or email. All important documents in London would be held by Mr Tariq Mir and Mr Mohammad Anwar in a locked room, although this was found to be empty in late 2017.
270. He was challenged over the fact that he remained a parliamentarian after the changes to the constitution voted on 31 August 2016. It was put to him in effect that he must have done so on the basis that MQM continued to be a political party but then known as MQMP. It was not until 22 September 2016 that he resigned upon the advice of the “CCC London”, as he described it. His response was that the National Assembly did not recognise MQMP. He was and remained a member for MQM having been elected for a second time in 2013 when MQM’s 2012 constitution applied. He exhibited a news report of his resignation which included reference to Mr Nusrat asking for resignations, whilst Dr Sattar rejected that request on the basis that there had been disengagement with MQM London.
271. Mr Yusuf left Pakistan in mid-September 2016 fearing his life was in danger as a supporter of Mr Altaf Hussain. In the last paragraph of his statement Mr Yusuf asserted that “*over time*” splinter groups were created in the MQM to weaken the party. He referred to: “*MQMP, PIB led by Dr Farooq Sattar, PSP (Pakistan Zameen Party) – led by Mustafa Kamal, MQM Haqiqi, Voice of Karachi – led by Nadeem Nusrat*”. He said: “*All of these groups were at one time part of MQM*”.

End