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Case No: M359/18

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Derby Registry Office
Royal Oak House
Market Place
Derby
DE1 3AR

Friday, 23 November 2018

BEFORE:

HIS HONOUR JUDGE ANDREW SAFFMAN
(Sitting as a Judge of the High Court)

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983

**AND IN THE MATTER OF THE LOCAL GOVERNMENT ELECTION IN
THE BOULTON WARD CITY OF DERBY HELD ON 3 MAY 2018**

BETWEEN:

RANJIT RYAN BANWAIT

Petitioner

-and-

PAUL DENE BETTANY

Respondent

AILEEN McCOLGAN (Instructed by Steel & Shamash, 12 Bayliss Road, Waterloo, London SE1 7AA) appeared on behalf of the Petitioner

SIMON CLARKE (of Cartwright King Solicitors, Peat House, 5 Stuart Street, Derby DE1 2EQ) appeared on behalf of the Respondent

JUDGMENT

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Friday, 23 November 2018

1. JUDGE SAFFMAN: This is a petition brought by Mr Ranjit Banwait. Mr Banwait was the unsuccessful Labour candidate in the local elections in the Boulton ward of the city of Derby, which was held on 3rd May 2018. Mr Banwait is represented Miss McColgan of counsel. Mr Banwait polled 1,128 votes in the election, some 474 votes fewer than the successful candidate representing UKIP, Mr Paul Bettany. He is the respondent to the petition and is represented by Mr Clarke of counsel.
2. By his petition Mr Banwait challenges the election and seeks an order that Mr Banwait was not duly elected and that the election was void. If he is successful in his assertion that the election was void, then it is agreed by both counsel that there would have to be a re-run of the election.
3. The challenge is based, firstly, on the assertion that, contrary to section 106 of the Representation of the People Act 1983, Mr Bettany, or at least those for whom he was responsible, were guilty of an illegal practice in that before the election and, for the purpose of affecting the return of Mr Banwait at the election, he or they published false statements of fact in relation to Mr Banwait's personal character or conduct.
4. The false statement of fact about which Mr Banwait complains was the assertion made in various pieces of election material generated and circulated by or on behalf of Mr Bettany prior to the election that, in describing himself as a resident of that area of Derby called Alvaston (which Mr Banwait concedes that he did) Mr Banwait was a liar because, in fact, he was not a resident of Alvaston but rather a resident of the neighbouring district of Wilmorton which, it is asserted by Mr Bettany, is a separate and distinct area of Derby, that is; separate and distinct from Alvaston.
5. Mr Banwait asserts that he does indeed live in Alvaston. He does not dispute that he resides in Wilmorton, but he asserts that Wilmorton is simply a part of Alvaston. In any event, and this is not disputed, his address falls within the Alvaston ward and so, on that basis alone, he argues that he is perfectly entitled

to describe himself as a residence of Alvaston. He argues that the contention by Mr Bettany to the effect that he, that is Mr Banwait, lied about his address was an attack on his personal character because it was an attack on his personal honesty and trustworthiness.

6. Section 106 of the 1983 Act provides a defence to one accused of breach of it. I will deal with that in more detail when I set out the law, but suffice it to say at this point that, even if a person makes or publishes a false statement, he is not in breach of section 106 and, therefore, has not committed an illegal practice if he can show that he had reasonable grounds for believing, and did believe, that the statement was true. Mr Banwait argues that Mr Bettany has failed to show that he believed that Mr Banwait was lying when he asserted that he was a resident of Alvaston and that, even if Mr Bettany did believe that, he has failed to show that he had reasonable grounds for so believing.
7. In addition to his assertion that Mr Bettany has been guilty of illegal practice under section 106 of the 1983 Act Mr Banwait also asserts that Mr Bettany is guilty of corrupt practice contrary to section 115 of the Act. Once again, I shall deal with this in more detail below. The allegation relates to a leaflet entitled "Labour News". Mr Banwait asserts that this document was, to use the phraseology employed in section 115, a fraudulent device which he argues was circulated prior to the election for the purpose of impeding or preventing the free exercise of the franchise by those members of the electorate for the Boulton ward who were exposed to it. Essentially, he argues that it was designed to appear as if it had emanated from the Labour Party and that it contained assertions about Labour policy which were untrue and would be wholly unattractive to the average voter in the Boulton ward and would, essentially, cause any voter thinking of voting Labour to think again.
8. Although it is right to say that Mr Bettany does not deal with the leaflet, Labour News in his witness statement, he was of course taken to it during the course of his cross-examination. I will come to that in more detail in due course. Suffice it to say at this stage that his position is that he did not circulate this document, indeed he did not even know that it existed. It transpires that it was created for

a 2016 election campaign which did not involve Mr Bettany, the 2018 campaign being the first in which he was involved. Mr Bettany's evidence is that he was ignorant about its existence and neither he nor anybody else that he knew circulated it in the course of the 2018 election campaign.

9. Before I move on to consider issues in a little more detail, for completeness I should add that one of the pieces of campaign material about which Mr Banwait took issue in his petition and which he argues suggests that he is not a resident of Alvaston also bears a photograph of the UKIP team and the Labour Cabinet. Mr Banwait takes issue with this photograph. He argues that it misrepresents the Labour Cabinet in a way which suggests that his Cabinet, (I say "his Cabinet because he was the leader of the Derby City Council prior to this election) did not reflect the demographic of the local area. It does this, he argues, by giving the impression that his Cabinet consisted simply of people of black, Asian, or minority ethnic descent or who were gay. He suggests that there are racist undertones as to how this leaflet has been put together.
10. Ms McColgan made it clear in the course of her opening that it was not suggested that the use of that photograph offended section 106 or indeed section 115. In other words, she did not assert that using the photograph per se was either an illegal practice or a corrupt practice. She contended that complaints relating to the photograph figured in these proceedings merely for the purpose of providing background. The issue with regard to section 115 revolved exclusively around the leaflet entitled Labour News. She agreed that the issue as to whether this document was a fraudulent device was not really informed at all by other documents and that, in the circumstances, it was unnecessary to devote any evidence or time to issues surrounding the photograph, its meaning, what it insinuated or implied and the motivation behind it.
11. So I now turn to the allegations in more detail and the evidence. First, in the context of what as a shorthand may be described as the section 106 address allegations and which relate to the assertion that, in describing himself as a resident of Alvaston, Mr Banwait was lying.

12. The allegations are set out in paragraph 3 and 7 of the petition, which it is worthwhile reciting almost but not entirely verbatim. I omit the references to the issues surrounding the photograph in light of the fact that its irrelevance to the issues that I have to determine has essentially now been agreed.
13. Paragraph 3 of the petition takes issue with campaign material entitled "Local Election Special" circulated in March 2018 by or on behalf of Mr Bettany. Within that document is the following text:
- "Paul (Mr Bettany) thinks he (Mr Banwait) has had his chance and it is time for someone who lives in the area to take over. Why does Ranjit (Mr Banwait) claim he lives in Alvaston yet actually lives in Wilmorton? Why lie about this?"*
14. Paragraph 7 of the petition states:
- (a) In January 2018 UKIP's candidate for the Mickleover ward, Mr Barry Appleby, had circulated a leaflet entitled *'Derby in the dump'* which contained the statement that the petitioner *"pretends to live in Alvaston, real address Wilmorton."* I pause there just to mention that Mr Appleby is Mr Bettany's election agent.
 - (b) In April 2018 Mr Appleby circulated campaign material stating that the petitioner was from Wilmorton and that the respondent was *"the voters' only true local candidate"*.
 - (c) Between January and May 2018 Mr Bettany circulated election material containing the words *'My name is Paul Bettany from Alvaston, born and bred, as they say. I am your local choice'*
 - (d) On 24th April UKIP's Alan Graves, who was the petitioner's own councillor within the Alvaston ward, tweeted that the petitioner *"does not live in Alvaston, he lives in Wilmorton."*
15. I should point out that it became clear during the course of Ms McColgan's final submissions that she does not pursue, in the context of this petition, any complaint in respect of Mr Graves' tweet. She acknowledges there is no basis upon which it could be concluded that Mr Bettany was sufficiently responsible for that. I need consider that, therefore, no further.

16. As for Mr Bettany, he accepts that he accuses Mr Banwait of lying and that, thus, he has asserted that Mr Banwait is a liar. In his evidence Mr Bettany was adamant (and in this respect he was supported by Mr Graves, who gave evidence on behalf of Mr Bettany) that, in saying that he lives in Alvaston, Mr Banwait was indeed lying because Wilmorton is not Alvaston. In fact, in the course of final submissions Mr Clarke conceded that in reality Mr Banwait was not lying when he said that he lived in Alvaston. That is essentially a concession that the accusation made by Mr Bettany to the effect that Mr Banwait is a liar is a false accusation.
17. Be that as it may, it is Mr Bettany's position that the allegation that Mr Banwait was a liar was an attack on Mr Bettany's political character or conduct and not his personal character. He asserts that on the basis that there is some electoral advantage in Mr Banwait asserting that he is a resident of Alvaston rather than Wilmorton because Alvaston, as a geographical location, is closer to the Boulton ward than Wilmorton and it is likely to play much better with the Boulton ward electorate if they think that the candidate's residence is as proximate as possible to their ward. In other words, suggesting that he lives in Alvaston makes Mr Banwait less remote from the Boulton ward electorate than they would know him to be if they knew that he actually lived in Wilmorton. The contention being that the more physically remote a politician is from his electorate the less attractive he is likely to be to that electorate.
18. I heard much evidence on the relationship between Wilmorton and Alvaston. Mrs Kathleen Brear gave evidence on behalf of Mr Banwait. It has to be said that her oral evidence was a little confusing, but her written evidence is clear; namely, that, so far as she is concerned, where Mr Banwait lives is regarded as being Alvaston and that Wilmorton is in Alvaston and that is how she believes it would be seen by other Derby residents who applied their minds to that question.
19. In addition, I heard from a Mr David Walsh, who is Head of Democracy at Derby City Council. His involvement in this issue of whether Wilmorton can

be seen to be part of Alvaston and whether Mr Banwait lives in Alvaston whilst also living in Wilmorton seems to have arisen as a result of a complaint made in September 2016 by Mr Brendan Connelly. The complaint is in a supplemental bundle served in support of an application made by Mr Banwait's legal representatives.

20. Mr Connelly raised a complaint to the effect that Mr Banwait's business cards were misleading because they referred to an Alvaston address when he lived in Wilmorton. There is an email from Mr Walsh dated 16th September to somebody whose name is redacted from the copy in the supplemental bundle, but who was described by Mr Walsh as an "independent person" to whom apparently reference is made when matters such as complaints about councillors arise. Mr Walsh states in his email as follows:

"My initial view is that the matter ought to be dismissed. My rationale is that the basis of the complaint seems spurious, to say the least. Not only is the actual issue of where Councillor Banwait lives subject to a degree of subjectivity in any case, but moreover whether he lives in the suburb of Alvaston or the suburb of Wilmorton is irrelevant. He lives in the city council ward of Alvaston, so to use that description is acceptable."

21. The independent person agreed with that analysis and Mr Connelly, and indeed Mr Banwait, subsequently received a letter from Mr Walsh in which Mr Walsh reports that he finds the complaint to be fundamentally flawed because it shows clearly that Mr Banwait does live within the city ward of Alvaston. The letter goes on to say *"I agree that his home is within the suburb of Wilmorton, but this is contained within the council ward of Alvaston. Either description is perfectly acceptable."*
22. Mr Banwait prays this letter in aid of his contention that he is not a liar by asserting that he lives in Alvaston and that therefore the representation that he is is a false one. Of course, that is now accepted. In fact, Mr Bettany also relies on these documents in support of his contention that his view that Wilmorton does not include Alvaston is a reasonable one because even Mr Walsh accepts

that there is a degree of subjectivity about it. In an exchange with Mr Clarke Mr Walsh is asked whether it is legitimate for people to say of Mr Banwait that he lives in Wilmorton. Mr Clarke accepted that on the basis that, so far as he was concerned, Mr Banwait lived in both Wilmorton and Alvaston with the caveat that his geographical location may be subject to interpretation, but his political location, namely within the ward of Alvaston, was not subject to interpretation, that was an indisputable fact.

23. Before moving on fully from the evidence relating to Mr Connelly, I should point out that it was Mr Bettany's evidence that he did not know Mr Connelly and had no idea that he had made this complaint, much less what the outcome was. It has to be said that I was not directed to any evidence to suggest that Mr Bettany did know Mr Connelly or that, if he did, Mr Connelly told him that he had made this complaint to the council and the outcome of it.
24. The complaints about Mr Banwait's incorporation of Alvaston into his address was raised once again with the council apparently informally by Mr Graves in 2017, but once again it got nowhere despite, as I understand it, being escalated by Mr Graves to quite a senior level.
25. However, in 2018 this complaint was made again, this time by Mr Appleby, Mr Bettany's election agent, it will be remembered. It was essentially the same complaint as that raised by Mr Connelly in 2016 and Mr Graves in 2017. The complaint emanated from an email from Mr Appleby dated 19th April 2018. The email, which appears at page 58 of the bundle, appears to have been written following a meeting with Mr Graves who, in his evidence, did not dispute that he was aware that this complaint about Mr Banwait's use of Alvaston in his address was being made again. This time the complaint was dealt with by Christine Durrant, the Acting Chief Executive of the Council. On 23 April 2018, Mrs Durrant wrote to Mr Appleby, and once again the complaint was dismissed. Mrs Durrant had this to say:

"I believe the issue is one of interpretation and here we have two parties setting out different interpretations of what they consider to be Alvaston, both of which

would appear to me to have a level of legitimacy since within the context of the local elections it would seem to me that using Alvaston to mean the Alvaston ward is legitimate as well as using Alvaston to cover the district centre and surrounding residential areas. Whilst I appreciate that you may not agree with this interpretation, as has been confirmed by the police, there is no specific offence that has been breached".

Once again, both Mr Bettany and Mr Banwait rely on this document, Mr Banwait in support of his assertion that Mr Bettany cannot have believed that Mr Banwait was lying when he said he was a resident of Alvaston, and that in any event, whether he believed it or not, it was not reasonable to believe that Mr Banwait was lying simply because he adopted an interpretation about his address which was different to the interpretation adopted by Mr Bettany. On the other hand, Mr Bettany prays in aid this document on the basis that if the council accept that there is a level of legitimacy in the assertion that in reality Mr Banwait does not live in Alvaston, then Mr Bettany's assertion that he believed that Mr Banwait did not live in Alvaston cannot be said to be an unreasonable one.

26. The timing of Mrs Durrant's response was explored in the evidence. It will be remembered that one of the complaints that Mr Banwait makes is that on the following date, 24 April, Mr Graves tweets to his followers that Mr Banwait *"does not live in Alvaston, he lives in Wilmorton. Look at his notice of poll. Who is telling the truth?"* In fact, in the light of Ms McColgan's concession that issues surrounding this tweet are no longer pursued, all that becomes irrelevant save to say that Mr Bettany's evidence is that he may have known that Mr Appleby and Mr Graves had made a complaint about Mr Banwait's use of the word "Alvaston" but if he did, he certainly did not know that the complaint was rejected on 23 April. This issue has some relevance to the question of Mr Bettany's belief and/or reasonable believe in his assertion that Mr Banwait was lying when he said he lived in Alvaston, but I will come to that shortly.
27. Finally, I record that the notice of poll, prepared by the local authority on the basis of documents submitted to them by the candidates, records Mr Banwait's

address as Wilmorton rather than Alvaston. Mr Bettany argues that once again this supports his contention as to where Mr Banwait lives, as well as supporting his contention that that was where he believed Mr Banwait to live, and that such a belief was a reasonable one. The notice of poll is actually dated 9 April 2018 and so post-dates some of the election material relied on by Mr Banwait in his petition. It will be recalled that it is asserted, and indeed not denied by Mr Bettany, that the allegation that Mr Banwait is a liar was contained in material circulated before that date. I should add that Mr Banwait contends that the only reason that the council returning officer records his address as being in Wilmorton is because the council amended his candidature forms to that effect. That was not, he says, his idea.

28. Mr Bettany argues that his belief that Mr Banwait resided in Wilmorton came not only from his personal knowledge of the geography of Derby and, in particular, the fact that in his youth he went to Wilmorton College which is actually on the site now occupied by the estate on which Mr Banwait now lives, but from the fact that Mr Banwait cited Wilmorton as his address in the open electoral roll. In fact, it transpires, as a fact, that that cannot be gleaned from the open electoral roll but can be gleaned from a more detailed electoral roll which is available to councillors. That was available throughout 2018, as I understand it, and does indeed indicate that Mr Banwait's address is recorded as being in Wilmorton. Mr Bettany does not suggest that he checked that roll but rather that somebody else did and the fact that Mr Banwait's address was recorded as being in Wilmorton was confirmed to him.
29. In the context of the section 115 allegation relating to the leaflet, "Labour News", it is argued that this leaflet was designed to give the impression that it emanated from the Labour Party and stated that the Labour Party policy was, and I broadly quote here from paragraph nine of the petition:

"(a) giving council houses to new migrants and refugees in priority over Derby folk, (b) shutting libraries to save money, (c) that Labour will lie about UKIP to stop you voting for them, (d) that Labour supports Jeremy Corbyn and making friends with terrorists (IRA, Hamas, et cetera), (e) that although

elected for four years we (that is the Labour Party) will only bother you three months before an election, unlike other parties, (f) that Labour started and support the open door immigration policy, (g) that Labour intends to sack all lollipop men and women because 'our children need to learn the dangers of the road'."

30. It is not suggested on behalf of Mr Bettany that all these are true. When Mr Bettany was asked, he said he had not really given the matter that much thought, not least because he had no knowledge of this leaflet when he conducted his 2018 election campaign. Mr Graves, who is, after all, a witness called by Mr Bettany, has something to say about the veracity of this leaflet. He readily accepted that certainly in terms of the 2018 campaign, a significant proportion of what was contained in this leaflet was untrue. In that respect his evidence accords with that of Mr Banwait, except that Mr Banwait says that it is all untrue. The significance of Mr Graves's evidence so far as Mr Bettany is concerned was that, in common with Mr Bettany, he did not believe that any of those leaflets had been distributed in 2018. His evidence was that they were distributed in 2016 in those wards which were perhaps considered to be marginal and that all the print run was distributed then. The leaflets had been kept in Mr Graves's garage and there were simply none left available for distribution in the 2018 campaign, even if there had been a desire to distribute them in that campaign.
31. What does Mr Banwait say about distribution of Labour News? Surprisingly, perhaps, he does not touch upon that at all in his witness statement. His evidence concerning circulation actually comes about as a result of questions from me. It transpired that it amounts to no more than this, and here I summarise his evidence recorded at page 95 of the contemporaneous transcript produced in respect of Wednesday's evidence:
- (a), he did not see this document being circulated in 2018 and he did not speak to anybody who said that they had received it;
 - (b) his evidence of circulation is based upon him having been told by his election agent, Mr James Shires, that a resident of Boulton ward had informed Mr Shires that she had "seen" the leaflet;

(c) Mr Shires had emailed a number of party activists resident in Boulton asking them whether they had seen this leaflet. One lady replied to the effect that she had. Mr Banwait had no idea how many people had been emailed but seemed to be clear that only one person had replied to the effect that they had seen a copy of the leaflet.

(d) Mr Banwait was not in a position to say what the circumstances were in which this person had "seen" this leaflet. In other words, I have no evidence about whether it was posted to her or put through her letterbox or given to her by a campaigner on behalf of UKIP or, indeed, whether she just found it in the street.

32. The upshot of all this is that in reality, I had no evidence at all that anybody representing UKIP, much less Mr Bettany, played any part in this document coming to the attention of this lady. All Mr Banwait could say was that this lady had indicated that she had "seen" this leaflet prior to the 2018 election campaign.
33. As I have said, Mr Banwait's evidence was that his knowledge about the circulation of this leaflet came from his election agent, Mr Shires. Mr Shires gave evidence. His witness statement makes no reference to any knowledge that he had gleaned concerning the circulation of this leaflet, nor did he cast any light on this in his oral evidence. He was asked by Mr Clarke what activists had told him about what they had heard on the campaign trail. His evidence in relation to this starts at page 117 of the transcript. He mentioned that there was some feedback about Mr Banwait being thought to be a liar because of the address issue but he made no reference to any feedback specifically concerning Labour News. The transcript recorded at page 118 reveals that there was a following specific exchange about feedback (other than feedback concerning the address issue between Mr Clarke and Mr Shires).

Mr Clarke: *"There was no ... feedback about any other issues of importance was there?"*

Mr Shires: "*No, there would be – there would always be. Issues would be raised such as, you know, 'There's a pothole there', or there's a – 'That needs sorting'.*"

At no point does Mr Shires make any reference to any feedback concerning receipt by anybody, even one person, of the Labour News leaflet. It cannot be said, therefore, that Mr Shires' evidence supported that of Mr Banwait even to the extent that one elector in Boulton ward had even seen this leaflet, much less that Mr Bettany or his agent had distributed it.

34. There is a further issue in relation to the leaflet, which in fact was raised by Mr Graves rather than by Mr Bettany. It is essentially that it must have been blindingly obvious to anybody who may have received this leaflet that it was not the work of the Labour Party. Not only was the Labour Party rose shown as a bent over and obviously wilting plant, but in fact at the bottom of the document admittedly in very small type it says that it is printed and published by UKIP and the address given is that of a Mr Pandey, who in 2016 was indeed a member of UKIP but who actually in 2018 was the Conservative Party candidate.
35. In addition, Mr Clarke contends that the very content of the leaflet would have made it clear that this is not the work of the Labour Party but rather was some sort of satirical send up. Essentially, if this had been a genuine Labour leaflet, it would have been clear to any reader that it was more of a suicide note than a campaign leaflet and that any reader would have realised that it could not possibly have genuinely emanated from the Labour Party. Finally, Mr Clarke argues that it quite obviously refers to matters that were not topical in 2018 and would have only been of real interest to voters in the 2016 election. This, he argues, militates against it having been distributed in 2018 or if it was, anybody being deceived by it.
36. I now turn to the law. Section 106 of the Act states at subsection (1):

"A person who, or any director of any body or association corporate which—

(a) before or during an election,

(b) for the purpose of affecting the return of any candidate at the election, makes or publishes any false statement of fact in relation to the candidate's personal character or conduct shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, that statement to be true.

(2) A candidate shall not be liable nor shall his election be avoided for any illegal practice under subsection (1) above committed by his agent other than his election agent unless—

(a) it can be shown that the candidate or his election agent has authorised or consented to the committing of the illegal act by the other agent or has paid for the circulation of the false statement constituting the illegal practice; or

(b) an election court find and report that the election of the candidate was procured or materially assisted in consequence of the making or publishing of such false statements."

37. The elements of the offence which have to be established beyond reasonable doubt by the petitioner are that (a) the statements of fact complained of were indeed false, (b) that where the allegation is that the false statements were made or published by a candidate or by somebody for whom the candidate was responsible, which of course is the allegation here, the petitioner must establish that the candidate or his election agent authorised the making or publishing of the false statement or at least gave consent to the person who made the false statement to disseminate that false information or alternatively that the candidate or his election agent paid for the circulation of the false statement, and (c) the petitioner must establish that the false statements relate to the candidate's personal character or conduct rather than merely a false statement of fact which deals, as Mr Justice Darling put it, in the *Cumberland Cockermouth Division* case, [2001] 5 OM, H, 155, "... with the political position, reputation or action of the candidate".

38. Even if the petitioner establishes those elements, then nonetheless there is no breach of section 106 if a respondent establishes, on the balance of probabilities, that he had reasonable grounds for believing and did believe that the false statements were in fact true.
39. As I have said, it is now accepted that the assertion that Mr Banwait was a liar was a false statement of fact. I can therefore swiftly move on to the next issue.
40. It is accepted that the offending statements which are still the subject matter of dispute, were issued by Mr Bettany or his election agent. The real issue here relates to the nature of the attack: was it personal or political? It seems to me that most of the jurisprudence in relation to section 106 has revolved around just this issue, namely whether the false statement is in relation to a candidate's personal character or conduct or his political position or reputation.
41. I have already referred to the *Cockermouth* case. In *Ellis v National Union of Conservatives*, Mr Justice Buckley insisted that:

"the statement must be in relation to the personal character or conduct of the candidate. It must therefore be a false statement of fact bearing on the candidate's character or conduct".

42. Perhaps the most recent authoritative case in which this issue has been discussed is *R on the application of Woolas v Parliamentary Court* [2011] 2 WLR, 1362. At paragraphs 110 and 111, Thomas, LJ had this to say:

"In our view, the starting point for the construction of section 106 must be the distinction which it is plain from the statutory language that Parliament intended to draw between statements as to the political conduct or character or position of a candidate and statements as to his personal character or conduct. It was as self-evident in 1895 as it is today given the practical experience of politics in a democracy that unfounded allegations will be made about the political position of candidates in an election. The statutory language makes it clear that Parliament plainly did not intend the 1895 Act to apply to such statements. In our judgment, as Parliament clearly intended that such a distinction be made, a court has to

make that distinction and decide whether the statement is one as to personal character or conduct or a statement as to the political position or character of the candidate. It cannot be both."

43. I pause here merely to record that the judge has referred to an earlier Act of Parliament, *the Corrupt and Illegal Practices Prevention Act 1895*, which contained the same provision as is now contained in section 106.

44. At paragraph 114 of *Woolas*, the court observed that:

"A statement about a candidate's political position may well imply that he is a hypocrite or untrustworthy" –

I emphasise that –

"because of the political position he is taking. This is not a statement in relation to his personal character or conduct. It is a statement about his political position, though it might cast an imputation on his personal character".

Once again, I emphasise those last few words.

"We do not consider that Parliament intended that such statement falls within section 106. Particularly bearing in mind the fact that criminal liability attaches to statements made negligently, it would be difficult to see how the ordinary cut and thrust of political debate could properly be carried on if such were the width of the prohibition."

This extract seems to clearly suggest that a statement of fact does not become a personal statement of fact simply because its effect is to suggest that the candidate is untrustworthy.

45. In fact, in *Woolas*, consideration is specifically given to the issue of a candidate's address. At paragraph 117, Thomas LJ stated:

"We turn first in the light of the distinction we consider must be drawn to Mr Watkins reneging on his promise to live in the constituency. It was accepted that this was a statement about

Mr Watkins' political position. Whether a candidate lives or does not live in the constituency is a matter relating not to his personal character or conduct but to his political position"

Once again my emphasis:

"A statement that a candidate has reneged on his promise to live there does, we accept, cast an imputation on the candidate's trustworthiness but it is in respect of his trustworthiness in relation to a political position."

46. Ms McColgan argues that *Woolas* must be considered in its context and the observations at paragraph 117 must be critically analysed, and with some circumspection. First, she points out that the facts in *Woolas* were different. In that case the court was considering whether an allegation that a candidate had reneged on a promise to live in the constituency was an attack on the candidate's personal character or conduct, or merely a political attack. That, she argues, is qualitatively different from an allegation of the nature made in this case, namely that the candidate is a liar. She draws my attention to the fact that the court was clear that an allegation of untrustworthiness will only be a political allegation if it relates to the political position that the candidate is taking. In this case she argues that the issue of the claimant's address is not a political position, it is a personal position. In her skeleton argument at paragraph 27 she draws my attention to an observation in *Schofield's Election Law* to the effect that, "*Any false statement, whether charging dishonesty or bringing the candidate into contempt, comes within the Act,*" although I have to say I was not taken to the exact source of this extract and it is not referred to in her skeleton.
47. She argues that the extract from paragraph 117 upon which Mr Clarke places such great reliance means only that whether a candidate chooses to live in a constituency is a matter of political position and does not inform on whether an allegation that the candidate is a liar is a political or a personal attack. She points out that lying about one's address in election documentation receivable by the returning officer is actually a criminal offence under section 65(a) of the 1983 Act. She argues that that is powerful evidence that issues relating to

addresses per se are personal in this case rather than political because the allegation is essentially that the candidate is not only a liar but also a criminal.

48. She draws my attention to paragraph 121 of *Woolas* where the court held that an attack was personal when it suggested that the candidate condoned criminal conduct, in that case threats of violence. She argues that if an allegation of condoning criminal conduct is a personal attack then an allegation which amounts to an assertion of an actual commission of a criminal act cannot really be anything other than a personal attack.
49. In fact the accusation by Mr Bettany was not that Mr Banwait had lied about his address in documentation furnished to a returning officer, the accusation was simply that he had lied to the electorate. As far as I can see, and I will be corrected on this, that is not actually a criminal offence. If it were to become one a cynic might say that we had better build a lot more prisons. The whole thrust of Mr Bettany's position is that Mr Banwait is a liar because what he is telling the electorate is different to the *accurate* information that he has given to the returning officer. In my view that must inevitably strip Ms McColgan's submission in this respect of some of its power.
50. Finally, on the question of belief and the reasonableness of that belief, I remind myself that the burden is on the defendant to establish, first, that he had that belief and, secondly, that separately he had reasonable grounds for believing it. It is acknowledged by both parties that the defendant discharges the burden on him if he establishes those on the balance of probabilities. I do not have to be sure that he had that belief nor do I have to be sure that belief was reasonably held, I simply have to conclude that on balance I am satisfied that he held that belief and on balance that there were reasonable grounds for him holding that belief.
51. Mr Clarke asserted the question of reasonableness had some sort of subjective element to it and that reasonableness had to be considered in the context of what Mr Bettany, an inexperienced politician at that time, believed to be reasonable. I do not accept that there is any subjective element to this. I see no basis for

departing from the general proposition that when legislation refers to reasonableness it is generally reasonableness in the objective sense. In this case it is what the man or woman on the Boulton Ward omnibus would consider to be reasonable.

52. I now turn to section 115 which states:

"(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.

(2) A person shall be guilty of undue influence –

[(a) is irrelevant for our purposes]

if by abduction, duress or any fraudulent device or contrivance he impedes, prevents [or intends to impede or prevent] the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon [or intends so to compel, induce or prevail upon] an elector or proxy for an elector either to vote or to refrain from voting."

53. It is right to record that the words relating to intent were only included in the section as a result of the effect of the *Electoral Administration Act 2006*. It seems to me that their effect is to vitiate some of the conclusions reached in the case of *R v Rowe ex parte Mainwaring* [1992] 1 WLR 1059 to which Mr Clarke refers in paragraphs 14 and 15 of his skeleton argument because that case was heard before that amendment.

54. *Rowe*, however, remains good law in so far as it considered the standard of proof, namely that a person accused of corrupt practice should only be held to have committed it if the allegation is proved beyond reasonable doubt. In addition, *Rowe* continues to be germane to the issue of the determination of whether a document can be seen to be a fraudulent device or contrivance. In this respect it is relevant to consider *Rowe* in the context of the consideration of the Labour News leaflet. Before, however, I turn to how *Rowe* may affect, it is right to record that both counsel recognise that corrupt practice in relation to a fraudulent device or contrivance cannot be established unless the fraudulent device has been disseminated in some way to the relevant electorate or at least

that some attempt has been made to disseminate it. This is important in this case in the context of Mr Banwait's allegation surrounding distribution of the Labour News leaflet.

55. Ms McColgan accepts that the court has to be satisfied beyond reasonable doubt that at least one person had received that document in the 2018 election campaign from Mr Bettany or a person for whom in law he is responsible. She pointed out that that was the evidence of Mr Banwait but, as I have said, that aspect of Mr Banwait's evidence was not supported by Mr Shires and was specifically disputed by Mr Graves and Mr Bettany. I must decide whether as a fact I am satisfied beyond reasonable doubt that this leaflet was distributed by or on behalf of Mr Bettany to at least one member of the electorate. Before I do, however, and in recognition of the fact that I am still considering the law in broadly general terms, I now revert back to *Rowe*.
56. In *Rowe* shortly before polling day in a local government election Liberal Democrat supporters printed and distributed in key wards a leaflet that made assertions about Labour policy. It was distributed in such a way as not to alert voters as to its true source, namely the Liberal Democrats. The losing Labour candidate issued a petition challenging the election in which the Liberal Democrat candidate was elected. The petition was defended not least on the basis that the statements of fact in the leaflet were not false and so did not constitute a fraudulent device under section 115. The court held that, since the leaflet had been designed to give the appearance of being a Labour Party publication with the intention of deceiving those persons to whom it was directed and had lied about its genesis, it was a fraudulent device notwithstanding that its contents were true.
57. It is clear from the judgment, and particularly page 3, that this leaflet was actually endorsed with the name and address of the agent of the party publishing it in what the judgment refers to as "*minuscule print*" but nonetheless the document was still held to be a fraudulent device because, amongst other things, it was, "*made up to give the appearance of a Labour publication, which it is not*".

58. I now turn briefly to section 159 of the Act. In so far as it is relevant it states that,:

(1) If a candidate who has been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void".

59. The consequence is that the election is void, despite the absence of any evidence that the corrupt or illegal practice affected or may have affected the result of the election. The authority that Ms McColgan offers for that proposition is *Mohammad Ali v Mohammed Bashir* [2013] EWHC 2572 QB and in particular the observations of Commissioner Mawrey QC at paragraph 68 to the effect that:

“an important feature of this ground for avoiding an election is that the petitioner does not have to prove that the corrupt or illegal practice were likely to have affected the result of the election. Mere proof of the practices by the candidate or his agent is sufficient to avoid the election”.

As it happens, the ground that Commissioner Mawrey QC was referring to, as I understand it, was that created by section 173 of the Act which relates to incapacity on conviction for corrupt or illegal practices. Nevertheless, Mr Clarke accepted that a finding by me of corrupt or illegal practice by Mr Bettany would automatically result in his election being avoided.

60. I should just add for completeness that, in response to an invitation from me, Ms McColgan explained how this position can be reconciled with section 164 which empowers a court to void an election on a finding of corrupt or illegal practice provided that the corrupt or illegal practice have so extensively prevailed that they may reasonably be supposed to have affected the result. I was concerned that the implication to be drawn from section 164 was that the court does not have the power to declare the candidate's election void unless it is reasonably supposed by the court to have affected the result.

61. I pause here to observe that in any event I appreciate that it is in fact Mr Banwait's contention that that occurred because he gave evidence to the effect that when he was on the campaign trail some voters expressed their distrust of him because of what they had read in the UKIP leaflets about him being a liar. In fact, and this appears to be the position accepted by Mr Clarke, section 164 is designed to cover those situations where the corrupt and illegal practice are not capable of being, as Ms McColgan put it, "*pinned on*" the candidate but, rather, those practices have been committed by somebody other than the candidate or his election agent for whom of course, as a matter of law, the candidate is responsible.
62. So what are my conclusions? As regards the section 106 address issue, first I remind myself that Mr Clarke no longer puts his case on the basis that Mr Banwait was lying when he said that he resided in Alvaston. I have to say it seems to me that that is a very sensible position to take. I have to say that I would have reached that conclusion even in the absence of such a concession and notwithstanding the assertions to the contrary made by both Mr Bettany and Mr Graves. It is important, I think, to say loud and clear that I am wholly satisfied that, in saying that he resided in Alvaston, Mr Banwait was not lying. Since it is readily conceded by Mr Bettany that the message that the electorate were intended to take from the leaflets was that Mr Banwait was a liar, it is inevitable therefore that that was a false statement of fact. I think I need dwell on this no further.
63. Secondly, I am satisfied that the leaflet referred to in paragraphs 3 and 7 of the petition, not of course including the tweet, were distributed by Mr Bettany or his election agent. That has been acknowledged by Mr Bettany in his evidence and accordingly Mr Bettany would be unable to claim the protection of section 106(2).
64. The more substantive issue, it seems to me, is whether this false statement was a personal attack or a political attack or, to use the phraseology of the Act,

whether it was a false statement of fact in relation to the candidate's personal character or conduct.

65. I have considered very carefully the submissions made by Ms McColgan but I am satisfied that this was a political attack and not a personal attack. Indeed in so far as it is necessary I am satisfied about that beyond reasonable doubt.
66. I am assisted in that conclusion by the fact that one can well see an electoral advantage in a candidate being able to assert that he is local to the area that he seeks to represent. In my view that proposition need only be articulated for it to be clear that it is an obvious one. Inevitably the electorate may well think that a councillor who lives locally is more likely to act in their interests than one whose residence is distant if only on the basis that he or she is more likely in those circumstances to be adversely affected by policies which adversely affect the ward. In addition, of course it stands to reason that a local candidate may be more accessible and therefore more attractive than one who resides further away.
67. An attack along the lines that the candidate is lying about his address and that he actually lives further away from the ward than he would have his electorate believe is clearly a line of attack designed to frustrate that political advantage. In the circumstances it is almost inevitably, in my view, a political attack.
68. I am fortified in my view by an analysis of *Woolas*. I leave aside for the time being the specific reference to the issue about addresses set out in paragraph 117. First, it is important to recall that just because Mr Bettany's allegation that Mr Banwait is a liar is one that gives rise to questions about Mr Banwait's honesty does not mean that the attack becomes a personal attack, that is clear from paragraph 114 of *Woolas*.
69. Going back to paragraph 117, it seems to me that it is critical. What is said by Thomas LJ in that paragraph is really unequivocal and I quote:

"Whether a candidate lives or does not live in the constituency is a matter relating not to his personal character or conduct but to his political position".

Despite Ms McColgan's sterling efforts to try to paint that as meaning something else, I am afraid that she did not convince me.

70. I fully understand her arguments that *Woolas* related to a question about whether reneging on a promise was a personal or political attack and that an accusation of lying is a more serious allegation. One is an unprincipled change of position, the other is a downright lie, but I do not think that the distinction is sufficient for me to ignore the guidance clearly given by *Woolas*. The fact is that both allegations cast doubt on the trustworthiness and indeed ethics of the person about whom the allegations are made.
71. I do not overlook paragraph 121 of *Woolas*. I accept that the line on which a political attack becomes a personal one may not be well defined but I am satisfied, taking into account the observations in *Woolas* and the evidence in this case, that wherever that line is, this allegation falls on the political rather than the personal side of it.
72. As regards Ms McColgan's assertion that this attack is personal because it accuses Mr Banwait of a criminal offence and that even *Woolas* supports the contention that such an attack is personal, I merely repeat what I have said above. In reality, the leaflets disseminated by and on behalf of Mr Bettany do not accuse Mr Banwait of lying in any criminal sense because there is no allegation that there was any falsity in his election declarations to the returning officer.
73. This finding inevitably means that the section 106 address allegation is not made out and therefore I need not address issues relating to belief because, on the basis of my conclusions, they are not engaged. However, I shall briefly do so in the event that I am wrong and this was in fact in law a personal attack.
74. First, I am satisfied that Mr Bettany believed that Mr Banwait was lying when he said he was a resident of Alvaston. If I can put it another way, I am satisfied that Mr Bettany does not believe that Wilmorton is in Alvaston; that was his clear evidence and he explained why he believed it. Insofar as he was concerned, it

was by reference to the remains of the line of the canal which he said separated Wilmorton from Alvaston, and the fact that Mr Banwait's address is on the site of the old Wilmorton College.

75. I do not overlook the complaints that were made to the council about Mr Banwait's use of Alvaston in his address, but there is really no suggestion that Mr Bettany made these complaints. There is no evidence that he became aware of the outcome of Mr Connolly's complaint because indeed there is no evidence that he knew Mr Connolly, and the only evidence I heard in relation to that was that of Mr Bettany, who was clear that he did not know Mr Connolly.
76. As to the complaint made by Mr Graves, Mr Bettany was candid enough to admit that Mr Graves may have told him that he had made a complaint to the council about Mr. Banwait's use of the word "Alvaston", but it cannot be said that his evidence was anything other than vague about that conversation with Mr Graves and, particularly, the outcome of the complaint. Miss McColgan referred me to the contemporaneous transcript of his evidence on p.146, but that transcript clearly reveals that Mr Bettany does not recall being told by Mr Graves that his complaint had been rejected. He cannot even recall when he had the conversation with Mr Graves, save that he makes a stab that it may have been in early 2018. The fact that Mr Bettany was prepared to unhesitatingly admit that he thought he had had a discussion with Mr Graves about Mr Graves' complaint, "perhaps over a pint", did not strike me as being the evidence of somebody who was deliberately intending to mislead. I observe that Mr Graves did not suggest that he advised Mr Bettany of the outcome of his complaint. I have perused the transcript of Mr Graves' evidence and, unless I have missed it, in which case, no doubt I will be told, it does not appear that Mr Graves was even asked whether he had told Mr Bettany that his (Mr Graves') complaint had been rejected.
77. Additionally, it seems likely that Mr Appleby, who was not only Mr Bettany's election agent but also Mr Graves' election agent, was not aware of the outcome of Mr Graves' complaint. I say that merely on the basis that it is perhaps reasonable to assume that, if he had known, he would not have bothered to make the same complaint again to the same council the following year. If Mr Graves

did not communicate to his election agent the outcome of his complaint, then it strikes me that it may be less likely that in fact Mr Graves communicated that to Mr Bettany.

78. As to the 2018 complaint by Mr Appleby, I believe that all the material about which complaint is made pre-dates the dismissal of that complaint, when one excludes, of course, the tweet.
79. Finally, there is the fact that, as a general proposition, the literature about which Mr Banwait complains does not say only that Mr Banwait is lying when he says he lives in Alvaston, it says he is lying because he actually lives in Wilmorton. It is argued that it is clear that Mr Bettany is bringing to the attention of the electorate the fact that Mr Bettany makes a distinction between Alvaston and Wilmorton. Mr Clarke argues that, accordingly, all Mr Bettany is doing is putting issues surrounding the address into the public domain so people can make up their own mind as to whether Mr Banwait is lying. It is an interesting argument, but it has to be said that it is not actually the evidence of his client. The evidence of Mr Bettany is that he was actually telling the electorate that Mr Banwait was a liar. Nevertheless, the fact that he mentions in his literature that Mr Banwait actually lives in Wilmorton does provide some support for the contention that he honestly believed that Alvaston and Wilmorton were different areas and that a resident of Wilmorton was not a resident of Alvaston. I am accordingly satisfied that Mr Bettany has established that he genuinely believed that Mr Banwait was a liar as regards his address.
80. I do not accept, however, that he had reasonable grounds for so believing. I fully accept that he had reasonable grounds for believing that Mr Banwait lived in Wilmorton and not Alvaston, but it was not reasonable to conclude that, merely because Mr Banwait professed a different view, Mr Banwait was a liar.
81. The evidence of Mr Walsh and, indeed, Mr Durrant suggest that the views held by Mr Banwait and Mr Bettany were both legitimate. If in fact Mr Bettany knew of those views - and, of course, he says he did not - then those can only have brought home to a reasonable person that there was scope for a difference of

views and that the person holding an opposing view, in those circumstances, could not be said to be a liar.

82. If Mr Bettany did not know of the complaints that had been lodged in 2016, 2017 and 2018 or any of them, then the fact is that it is beyond doubt that Mr Banwait resided in the Alvaston ward. It is not reasonable, in my view, to take the view that somebody who resides in the Alvaston ward is lying when they say they live in Alvaston. One can say that they disagree with the assertion, that, just because an address is in the Alvaston ward, that it is in Alvaston. But it is an entirely different thing to say that Mr Banwait is lying when he asserts that his address is in Alvaston, when it is in the Alvaston ward.
83. Essentially, it is not reasonable, in my judgment, to assert that somebody is lying simply because they take a different view to you. To use the hackneyed expression, "at the end of the day", whilst it is reasonable for Mr Bettany to believe that Mr Banwait does not reside in Alvaston, it is not reasonable to believe that Mr Banwait is lying when he says that he does live in Alvaston.
84. Accordingly, had I concluded that this was a personal attack, the defence provided by section 106(1) would not have been established because the defence is only available to a person who genuinely held the belief (in this case) that Mr Banwait was a liar and had reasonable grounds for that belief. It is not a question of whether Mr Bettany had reasonable grounds for believing that Mr Banwait did not live in Alvaston. It is a question of whether he had reasonable grounds for believing that Mr Banwait was a liar in asserting that he lived in Alvaston.
85. Let me, finally, turn to the section 115 issue relating to the Labour news leaflet. I do not really think that I need to spend a great deal of time on this. Miss McColgan concedes that there must be evidence of dissemination of this leaflet in the 2018 campaign.
86. The evidence in support of that contention is woefully inadequate. It would not be sufficient, in my view, to make a finding on balance that there has been

dissemination of this leaflet; much less does it justify a finding beyond reasonable doubt.

87. I have already summarised the evidence of Mr Banwait in this connection. By way of reminder, he did not see this leaflet being circulated in 2018; he did not speak to anybody who said they had received it. His evidence was that it was seen by one person, and his evidence was limited to the assertion that he had been told that Mr Shires. Mr Shires did not confirm that. Even if it was seen by one person, that is not enough. There has to be evidence that Mr Bettany disseminated it or, at the very least, it was disseminated by somebody for whom he was responsible. The inadequacy of the evidence is compounded by the fact that it is, I think, third-hand hearsay evidence, but, if not third-hand hearsay evidence, it is certainly second-hand hearsay evidence: a lady tells Mr Shires that she has "seen" this leaflet and he tells Mr Banwait. I did not hear from the lady who apparently told Mr Shires that she had seen the leaflet. I did not hear from Mr Shires that he had been told this by the lady. This evidence would be inadequate to establish circulation if it stood alone, even though I accept that hearsay evidence is admissible in a civil court. But, in any event, it is countered by the evidence of Mr Bettany that he never instructed anybody to send out this literature and, indeed, he knew nothing about it because it related to a campaign two years earlier. In addition, there was Mr Graves' evidence that, in 2018, these leaflets no longer existed; they were all distributed in 2016. At that time, they had been kept in his garage, so he had all the supplies.
88. The section 115 issue relating to Labour News, therefore, inevitably, in my judgment, falls for dismissal on this ground.
89. Had there been evidence of dissemination, I have to say that I would have concluded that this was a fraudulent device. It is clearly a disingenuous document. It is headed "Labour News", it is printed in Labour Party colours, it even has the Labour Party rose on it. True it is that the rose looks somewhat unhealthier than that usually seen on Labour Party material, but the difference, in my view, is too subtle. It is essentially a hijacking of the Labour Party logo, which has then simply been tinkered around with.

90. The fact that, at the back of p.2, there is, in miniscule print, a reference to UKIP is, in my view, neither here nor there. I do not see any logical basis for distinguishing this leaflet from the situation which pertained in *Rowe*. I do not overlook that, in *Rowe*, there were issues regarding the manner in which this leaflet had been distributed, but equally important in *Rowe* was the fact that the court took the view that the leaflet was "*made up to give the appearance of a Labour publication*". In my view, this leaflet gives that appearance, if only by virtue of the heading and the colour.
91. With the greatest of respect to Mr Clarke, I was not convinced by his argument that, if it had been produced by the Labour Party, it was essentially a suicide note and that some of the issues it talks about were not even topical as at 2018 and that both these facts would lead anybody receiving it to put its provenance firmly at a source divorced from the Labour Party. I do not intend to disparage the good voters of Boulton ward, who, I am sure, are as astute as the voters of every other ward in the country, but, in my view, those points are overly subtle. The issue must be judged on the overall appearance. The overall appearance is that the Labour Party generated this document.
92. I feel constrained to say that, if this conclusion goes any way at all towards discouraging any practice of issuing leaflets in the get-up of a rival party, it seems to me that it will have assisted in cleaning up the election process. Although I have to say, in this case, Mr Bettany's evidence was that he was unaware even of the existence of this leaflet until this litigation. I have no reason to doubt that that is the case and so these observations are not a criticism of him personally.
93. Finally, had I reached this far, I would have held that the leaflet would have been circulated with the intention of unduly influencing those to whom it was sent: in my view, its nature, appearance and content make that obvious.
94. Nevertheless, for the reasons that I have given, despite that, this petition falls to be dismissed.

I am very grateful to counsel for their able assistance in this matter and the very sensible concessions that have been made by both.