

A Date to Remember – Withdrawing Election Petitions

Imogen Sadler

4-5 Gray's Inn Square

A Date to Remember – Withdrawing Election Petitions

The prospect of an election being challenged by an election petition is something that will no doubt form the stuff of nightmares for many of the readers of this magazine. However, it may happen and the recent case of *Afzal v Khan & Ors* [2023] EWHC 376 (KB)¹ has given the High Court the opportunity to set out the law on some of the powers an Election Court has in deciding an Election Petition, in particular as to what it should do when the Petitioner decides they no longer wish to pursue it.

This case has made headlines across the UK² (mostly because of the allegations that voters were bribed with dates) but it is worthwhile reading for all those involved in the election process as it helpfully sets out various options that the Court, the DPP and CPS might have when such allegations are made.

Background

In the May 2022 local elections, the sitting Labour candidates in Aston Ward (a two member ward) lost to two Liberal Democrat candidates. A few weeks later, on 25 May 2022, the two Labour candidates brought an election petition³.

In this they stated that in the last months of the campaign, their opponents published false statements about them. In particular they alleged that the Respondents had untruly alleged that they had been giving out packets of free dates during Ramadan with Labour Party stickers on them, which they had alleged was an inducement to vote for the Labour candidates and was “bribing or treating”, offences under the Representation of the People Act 1983 (‘the RPA’) sections 113 and 114 respectively.

² [Afzal v Khan & Ors \[2023\] EWHC 376 \(KB\) \(24 February 2023\) \(bailii.org\)](https://www.bailii.org/uk/ew/cas/2023/00376.html)

² [Ousted mayor in High Court bid to void Aston election result after 'dried fruit bribery' claim - Birmingham Live \(birminghammail.co.uk\)](https://www.birminghammail.co.uk/news/midlands-news/ousted-mayor-high-court-bid-void-aston-election-result-after-dried-fruit-bribery-claim-18123113)

² [Aston Petition 5 May 2022 Elections.pdf](#)

The Court set deadlines as follows:

"Petitioner to serve his evidence by 5th January, 2023

Respondents to serve their evidence by 27th January, 2023

Trial of Petition in Birmingham commencing 6th February, 2023 (time estimate 10 days)"

On 27 January 2023, the Respondents filed their evidence, which included doorbell video footage of the Petitioner and his supporters giving packets of dates to electors with Labour Party stickers on them. Other evidence was also served, proving that this was a widespread practice throughout the ward during the election campaign. Faced with this overwhelming evidence, and no doubt feeling that they could no longer realistically allege that the allegations made were untrue, the Petitioners sought to withdraw their petition.

Unfortunately for them, that was not as straightforward as it sounds.

The Law

Section 147 of the RPA provides:

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

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

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

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

The Withdrawal of a Petition

The need for a Court's permission to withdraw a petition may surprise readers. The Petitioner was seeking a certain remedy, namely the granting of his Election Petition. Given that Petition was no longer seeking that remedy, surely the case could simply be dropped?

However, this is not the case as it is considered to be in the interest of the public in a democratic system that if electoral malpractice occurred it should be investigated, even if the original Petitioner for whatever reason no longer wishes to pursue it.

This was recently confirmed in *Greene v Forbes* [2020] EWHC 676 (QB) where the following was stated:

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

The obvious issue arising from this is that it might be very difficult, should a Petitioner no longer wish to continue with a petition, for it to procedurally go ahead.

This was the issue in *Glanholm and Store v Elliot* (1874), in which Grove J set out the following:

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

Nevertheless, in *Glanholm* the judge was forced to allow to the petition to be withdrawn, as it was felt because of the nature of the adversarial system it would be impossible for the case to continue as the Petitioner would no longer be presenting the Court with evidence and submissions as part of a legal process

However, as pointed out rightly by the judge in paragraph 14 of *Afzal*, an Election Court because of the changes in the law subsequent to *Glanholm*, can now be inquisitorial and can, for example, summon its own witnesses.

As the judge summarises at paragraph 15 of the judgment *"it is not a purely private law action but rather an inquiry into the conduct of an election in the public interest"*.

The Result

The Petitioners sought to withdraw the Petition on the basis that the Petition should be dismissed simply on the grounds that, having proven there was no collusion as per *Greene v Forbes* and having demonstrated that they only wished to withdraw as pursuing the case in the light of the evidence was “impractical”, there was no need to continue (paragraph 10). This was not accepted by the judge, as there were of course other factors to consider before deciding whether the petition should be allowed to be withdrawn.

The First Respondent agreed that the Petition should be allowed to be withdrawn, but the Second Respondent argued that the Court should use its inquisitorial powers outlined above to full investigate the behaviour of the Petitioner (paragraphs 11 and 12).

The judge noted that the approach favoured by the Second Respondent would, whilst possible would use up considerable court time and resources, as well as incur substantial legal costs.

Since the judge decided that the Court was “*satisfied that the reason for the Petitioner seeking permission to withdraw the petition [was] the overwhelming evidence served on behalf of the Respondents of illegal election practices in which he participated*”, the Respondents had been vindicated and no full trial would be needed (paragraphs 27 to 29).

In addition, the judge was able to use their powers under section 181 of the RPA to refer the matter to the Director of Public Prosecutions, who could then make a decision as whether to prosecute the Petitioner for the bribery and treating offences, offering the Respondents an alternative remedy.

Imogen Sadler

1st June 2023

This Q&A is provided free of charge for information purposes only. Every reasonable effort is made to ensure the information is accurate and up to date, but no responsibility for its accuracy, or for any consequences of relying on it, is assumed by the writer or by Chambers as a whole. The information and commentary do not, and are not intended to, amount to legal advice to any person. You are strongly advised to obtain case specific advice from a lawyer; please contact the clerking team at 4-5 Gray's Inn Square (clerks@4-5.co.uk) who will be glad to assist.