



Report on the Derby court case involving a TUSC local election agent

On Tuesday December 19th Chris Fernandez, the local agent for eight Trade Unionist and Socialist Coalition (TUSC) candidates at the 2016 council elections in Derby, was convicted of electoral fraud.

After nearly seven hours of deliberation the jury returned guilty verdicts on 12 out of 14 counts on a charge of knowingly misleading voters into signing the TUSC candidates' nomination papers.

The case made by the Crown Prosecution Service (CPS) was that a significant number of electors had signed believing that they were backing a petition against the closure of a local swimming pool and not a local election nomination form.

Another charge related to the nomination paper in Derby's Mackworth ward, to which Chris Fernandez had pleaded guilty at an earlier hearing in April.

In this instance, under pressure of meeting the official deadlines, he had copied out a completed nomination paper for Mackworth ward to correct the minor errors made by the electors who signed the original form. Whatever the mitigating circumstances may have been, that made it a fraudulent nomination, which Chris admitted to as soon as it was pointed out to him.

But he strongly contested the charge of deliberately misleading voters, and this was the substance of the two-and-a-half week trial that began on December 4th and concluded on December 19th when the jury returned their verdicts.

The trial, at Derby Crown Court, was presided over by judge **Peter Cooke**. The CPS was represented by the barrister **Gareth Roberts**, of the Linenhall Chambers, Chester. His CV mentions that he worked as a House of Commons researcher and speech writer (for which party is unspecified) until the 1997 general election, after which he left to take up law. Chris Fernandez was defended by barrister **Katrina Wilson**, from the High Pavement Chambers in Nottingham.

Opening statement

After swearing in the jury and introductory comments from the trial judge, **Gareth Roberts** presented the outline of the prosecution case – namely that Chris Fernandez, “by conning people into signing nomination papers”, had “interfered with the democratic process” in the local elections for Derby city council in May 2016.

“As an election agent Mr Fernandez had the job of getting candidates nominated but he went to houses with a petition against the closure of a local swimming pool”.

“What he did is a crime. Derby council spends millions of pounds on our public services and elections are the chance to decide who should take those spending decisions and what decisions they should take. The presence of the candidates nominated as a result of Mr Fernandez’s actions was significant because they interfered in the true expression of peoples’ choices and therefore may have skewed the results of the elections”.

“Mr Fernandez faces 16 counts of electoral fraud but the charges are not all the same”, he went on. The wording on counts 1-14 is that “Mr Fernandez delivered to a Returning Officer the signature of an elector on a nomination paper which purported to assent to the candidate’s nomination but which he knew was not written for that purpose”.

“To decide that he is guilty on counts 1-14”, **Gareth Roberts** told the jury, “you need to be sure of three things: that Mr Fernandez delivered the nomination papers to the council, which he does not in fact dispute; secondly, that the persons named in the 14 counts who signed the nomination papers did not know that it was a nomination form; and lastly that Mr Fernandez, when he handed in the nomination papers, knew that they had signed under false pretences”.

“Counts 15-16 are different, relating to the nomination paper for the Mackworth ward. Mr Fernandez has pleaded guilty to these counts, which are worded differently; that the signatures ‘purported to assent to the candidate’s nomination but which he knew were not written’ by the persons named”.

“Mr Fernandez claimed that he had collected signatures for this ward but, because of errors that were made on the form, he then filled in another form, copying over – forging – the signatures from the original. He admits however that he had collected the signatures for this ward in exactly the same way as he had done for the others; in the prosecution’s view by conning people into thinking they were signing a petition. That, members of the jury, is electoral fraud”.

The council briefing for agents

The prosecution then called **Janie Berry**, the Derby council Monitoring Officer and acting Returning Officer for the May 2016 elections.

She firstly reported how concerns were initially raised about the TUSC nomination papers when it was discovered that two of the signatories on the Mackworth form had also signed nomination forms for other candidates in that ward, the Liberal Democrat and UKIP candidates, which is not allowed under electoral law. It occasionally happens that there is one signature that is duplicated on another nomination form but two was unusual so she reported the matter to the police, who subsequently decided to check all the nomination papers submitted by Chris Fernandez.

Janie Berry also told the court that Chris Fernandez had attended the one briefing session, on March 19th, which had been organised for candidates and agents prior to the close of nominations. This meeting, she said under questioning from the CPS barrister, had discussed with agents “the proper way to get nominations”.

But what this meant was left unexplored, as the defence barrister Katrina Wilson chose not to cross-examine this witness. All that Janie Berry actually said about the nomination process was that the proposer, seconder and the eight other assenters required for each ward’s nomination form – “subscribers” as she said they are generically termed – “had to be on the register that came into force on March 1st”.

The implied argument from her appearance in the witness box was that Chris Fernandez had been comprehensively briefed on the conduct expected of canvassers collecting nominations – whether it was permissible or not for him to take examples of campaign material with him on the doorstep,

for example. But in fact such issues were not even addressed by Janie Berry's evidence – and nor do they feature in any official guidance for election agents.

The Electoral Commission, the governmental agency regulating elections in the UK, produces guidance documents for candidates and agents (136 pages long) and Returning Officers (285 pages). But neither include any mention of what 'subscribers' are meant to be told by the canvasser or, indeed, are meant to understand.

The only references to subscribers in both sets of guidelines is that they must be on the electoral register in force at the election; that they should only be asked to sign nomination forms that have the candidate's name, address and description fields filled in; and that they should not subscribe more candidates' nomination papers than there are vacant seats to be filled in the electoral area (the situation in Mackworth ward).

On the model PowerPoint presentation prepared by the Electoral Commission for Returning Officers to use at candidates' and agents' briefings, this particular guidance – and this alone regarding subscribers – occupies one slide out of 34, less than 3% of recommended 'briefing time'.

There is nothing – not a single sentence – on how canvassers should or should not conduct themselves on the doorstep or what the test would be to ensure that the subscriber has 'sufficiently understood' what it is that they have signed. But none of this – central to the 'false pretences' charge that Chris Fernandez faced – was raised in court.

Theoretical impact assessments

The prosecution then filed in the court exhibits a read statement by **David Walsh**, Derby council Head of Democracy, which the defence barrister had agreed beforehand and therefore did not require his attendance as a witness. This statement dealt with "the theoretical impact on the composition of the council's political leadership" and the council's functioning "if UKIP had gained seats at the expense of Labour" in May 2016.

Going in to the 2016 elections Labour had led Derby council with 26 seats out of 51, giving them a majority of one over a combined opposition of 17 Conservatives, five Liberal Democrats and three UKIP councillors. Why David Walsh's statement dealt only with the prospect of UKIP making gains from Labour, however, was not explained.

As it has transpired, including taking into account two by-elections held after May 2016, Labour has retained a one-seat majority throughout, with the only change being that the Conservatives now hold 18 seats and UKIP two. But nevertheless a minority administration was a possibility in early 2016 which, **David Walsh** argued, could have made "the council leadership subject to more call-ins and scrutiny", and hampered "its ability to efficiently administer" the council.

But the question of whether the election of an anti-cuts councillor might have saved Moorways swimming pool was not included in his 'theoretical impact' assessment. Or even the possible consequences if just significant votes had been won by anti-cuts candidates in the elections.

David Walsh was not called to court and therefore was not able to be cross-examined. But given the centrality of the Moorways issue in the case it was unfortunate that the role the election could have played in saving the pool, which might have affected what the witnesses remembered from that time, was not explored at all in court.

The 'live witnesses'

The prosecution summonsed to appear in court – 'live witnesses' – a total of 39 of the 80 electors who had signed the TUSC candidates' nomination papers for the eight wards in Derby contested by TUSC in the 2016 council elections: Boulton; Sinfin; Alvaston; Abbey; Normanton; Arboretum; Darley; and Mackworth. There were 17 wards electing councillors in Derby that year but in the

other nine there were no TUSC candidates. The police attempted to contact all 80 subscribers and succeeded in speaking to 77 of them (one was deceased, one was ill, and another 'did not respond to police contact').

The witnesses subsequently called by the prosecution included all the individuals named in counts 1-14 for the non-Mackworth wards and the two Mackworth counts. The other 23 were called as 'bad character' witnesses to bolster the prosecution case that Chris Fernandez had set out to systematically mislead people into signing the nomination forms. Katrina Wilson for the defence called Charlie Taylor as a live witness, the Derby TUSC agent and Avalston ward candidate in 2015. Chris Fernandez gave evidence in his own defence.

Each of the prosecution witnesses were asked by **Gareth Roberts** for the CPS whether they recalled a visit to their home by Chris Fernandez in early 2016; whether they knew or had heard of Chris Fernandez; and whether it was their signature on the nomination form (which had been shown to them when they had been visited by the police and was presented to them again in the witness box).

They were then further asked what did they think they were signing; whether Chris Fernandez had said he was seeking nominations for the council elections when he gave them the form; whether they had heard of "the Trade Unionists and Socialists Against Cuts Political Party"; whether they had heard of the candidate on the nomination form for their ward; and would they have signed the form if they "had known it was for a candidate for the Trade Unionists and Socialists Against Cuts Political Party".

If they were not sure about what they thought they had signed on their doorstep – for what was now an event from over 20 months ago – the CPS barrister helped them along by asking, "but you would remember, wouldn't you, if you had nominated somebody for such a position as a local councillor? It's not the type of thing you would forget, is it?"

And so the bulk of the witnesses – except for the few who "went bandit" as **Gareth Roberts** was overheard to describe them at one point (see p9) – with varying degrees of certainty and much confusion on the way, agreed with the prosecution barrister that they had signed the nomination form 'thinking that it was a petition to save a swimming pool'. Whether they had conveyed that confusion to Chris Fernandez at the time – and whether he knew and deliberately sustained that confusion – was a different question.

Cross-examining, **Katrina Wilson** asked every witness questions based on Chris's account of what he said on the doorstep, namely that he had introduced himself as being from TUSC, and that he had said he was collecting the signatures of ten people on the electoral register so that a candidate against the cuts could stand in the ward.

Further that he had showed them a TUSC petition against the closure of Moorways Leisure Centre and Swimming Pool as an example of TUSC's campaigning record and as an illustration of the square, black and white 'TUSC Against Cuts' emblem that would appear on the ballot paper; and that the nomination form, which he had pointed to at the beginning of his 'patter' (as it became known in the trial), was on the top of the clipboard throughout and was presented to the elector for their signature only after they had agreed to be "one of the ten". ■

What the witnesses said

Both barristers adapted their examination of the witnesses according to how they responded in the box. Nevertheless, every witness was asked questions that covered the broad approach of the prosecution and defence as outlined. Consequently only the evidence of those who gave any extra information in their answers, or raised unexplored issues, is commented on below.

The witnesses' evidence has been grouped together around different themes, trying to avoid repetitious overlaps where possible. As a result, although the narrative thread broadly follows how the case progressed, the accounts are not necessarily presented in the order that each individual appeared in the witness box.

The witnesses' words when in quote marks, as indeed the words of Gareth Roberts, Katrina Wilson and the judge Peter Cooke, are recorded as faithfully as contemporaneous note-taking during a two-and-a-half week trial allows.

The personal responsibility question

The first prosecution witness, and the elector named in the indictment as Count No.1, was **Julie Bridges**, one of the ten subscribers in Boulton ward.

Mrs Bridges agreed that it was her signature on the nomination form and, under cross-examination from Katrina Wilson, agreed that she had seen the form before, "although there's something missing. There was something about Moorways I'm sure".

She was asked if she had seen the heading on the form, 'Local government election – Nomination paper', or the declaration, 'We, the undersigned, being local government electors for the said electoral ward, do hereby nominate the under-mentioned person as a candidate at the said election', just below where it says, 'Date of election'. She admitted "I didn't really scrutinise it", finishing with "I've learnt my lesson".

This, in fact, was an important point that unfortunately was never further explored in the trial – what responsibilities do individuals have when they put their signature on a form? Below the initial declaration on the nomination paper, there are six boxes headed 'Candidate's Details' (there's a clue there) and later another declaration for the eight assenters: 'We, the undersigned, being local government electors for the said electoral ward, do hereby assent to the foregoing nomination'. What there isn't, however, is any mention of a local swimming pool.

Julie Bridges was far from the only prosecution witness who said they signed the nomination form without studying it. But if somebody signs an application form, a claim form, payment slip, contract, direct debit form, a marriage certificate etc what protection do they have if they subsequently say, 'I didn't really scrutinise what I signed?'

Such examples, of course, are completely different to a nomination form for a municipal election. Unlike a nomination form they could lead to a material loss to the signee, or the other contractor, or the public purse, so the signee would be likely to take such a form more seriously. But isn't that relevant here?

What exactly was the injury suffered by Julie Bridges, and the many other witnesses who admitted that they had taken a similarly nonchalant approach to the form which Chris Fernandez asked them to sign? What loss did they incur from signing a nomination form to enable an anti-cuts candidate to stand in a local council election?

There was no financial loss that they could have sustained from signing the nomination forms. Or, indeed, any financial gain to be made by Chris Fernandez or TUSC. It was not even that the

subscribers had had their votes 'stolen' – they could still have voted for whomever they wished when, or if, they went into the polling booth in May 2016.

This was purely about the process by which candidates appeared on the ballot paper in a local election. Wasn't this question of proportion important enough to be raised in court? Unfortunately, however, it wasn't discussed at all.

Previous contact with TUSC

Another 'live witness' called early on in the trial was **Catherine Morgan**, Count No.4 on the indictment and a subscriber in Sinfin ward. She agreed that she had signed a petition at a TUSC stall in the Allenton area of Derby against the closure of Moorways before she was visited by Chris Fernandez at her address. She further stated that she had received a note through her door before the visit – "in terrible, scruffy handwriting" – saying, she could recall, that someone would be round the next morning.

This fitted with the statement that Chris Fernandez had made in his police interview on 11th May 2016 when he maintained that he had put a handwritten letter through her door (and similarly for 15 or so others) saying that he would be round to ask her to sign a nomination form for a TUSC candidate against the cuts.

The list of names that he had delivered similar notes to, handed to the police in his second interview, was included as a court exhibit. Another reference to these notes was made later by **Keith and Diane Usher**, subscribers in Alvaston ward, when Diane Usher accepted that she had received a note – "with TUSC at the top" – but she had thrown it away as "the writing was illegible".

Catherine Morgan admitted that she had signed a Moorways petition at the Allenton TUSC stall; that she had received a note prior to being visited at her home; and that it was her signature on the nomination form. But nevertheless she agreed with the prosecution barrister when it was put to her that she signed the nomination form 'believing it to be a petition'.

The next witness to introduce new elements into the case was **Zoe Chapman**, Count No.6 on the indictment and a subscriber in Alvaston ward. She stated to the court that she did remember signing a petition at the stall in Allenton that had the TUSC Against Cuts emblem on it – her name and address in her handwriting on the petition was shown to the court. But she insisted, firstly, the petition was the only thing she had signed and, secondly, that she had not received a visit at her home.

She also agreed however, when shown the nomination form, that the signature and printed name next to it was her writing. But she was at a complete loss to explain to the court how she had come to sign it. The only document she had signed was a petition at the Allenton stall, she said.

One reason why Chris Fernandez had visited Zoe Chapman and Catherine Morgan to be subscribers in the May 2016 elections was because they had signed the Moorways petition at the Allenton stall. There were other witnesses in this category too. But there was an additional reason for asking Zoe Chapman. The year before, in 2015, she had nominated the then TUSC candidate for the Alvaston ward, Charlie Taylor.

Unfortunately nomination papers are only retained by council Returning Officers for one year except by court order so the 2015 paper could not be examined. But later in the trial **Charlie Taylor** was called as a defence witness, giving sworn evidence to the fact that Zoe Chapman had nominated him in 2015 and that he had personally collected the nomination signatures for that election, including hers.

Zoe Chapman was clearly upset by the whole experience and confused in what she was able to recall. In her police witness statement she had apparently said 'TUSC means nothing to me. I

have never heard of them'. But she contradicted this even in her own witness box evidence about the petition at the Allenton TUSC stall.

But that raised another issue, unfortunately also not addressed in court. What did the police say and do on the doorstep when they visited the TUSC nomination form subscribers? How did the questions the police asked help shape what people remembered from their earlier encounter with Chris Fernandez?

What did the police say on the doorstep?

The police certainly devoted substantial resources to their investigation, led by DC Richard Foster of the Derbyshire Police Economic Crime Unit, who was present as the case officer throughout the trial.

Police officers visited all 80 TUSC subscribers at their homes between April and June 2016, making contact with 77 of them. Many were visited a second time in either December 2016, January 2017 or February 2017 and some a third time before charges were formally made against Chris Fernandez in March 2017.

Deployed in this task was not just DC Foster but officers from the Safer Neighbourhood Teams for the various wards. The pre-briefings they must have had on what to say on the doorstep, and what they understood they were doing, were never explained to the court.

But the police officers were furnished with a pro-forma Witness Statement which they went through with each of the subscribers. This contained a list of questions including 'I have/have not signed a petition about the closure of Moorways Swimming Pool', 'I have/have never heard of the TUSC – Trade Unionists and Socialists Against Cuts Political Party', and 'I did/did not sign any nomination paper supporting this candidate for the local elections'.

During the trial most witnesses said that their doorstep discussions with Chris Fernandez lasted no more than three or four minutes. It is clear that the police spent considerably more time with the 80 electors who nominated the TUSC candidates than TUSC supporters have! What did they say?

The role of the police in their pre-trial contact with the witnesses should have been explored. One witness, **Diane Hanson**, recalled how "I thought I was in trouble" when the police first appeared on her doorstep. She had signed the form, she said, because "a chap came round talking about cuts, like Moorways but also the libraries and other things, and he said we should stand up against that, and that he wanted to represent the people of Derby". But after the police visit "explaining things" to her, she told the court that she was now angry with Chris Fernandez: "was he going to use my signature for other things like my bank account?" What did the police say that could make her think this?

Another witness worked as a cashier. Any suggestion that she had been involved however innocently in a 'fraud' would have been especially alarming. How did the police reassure her, if they did at all?

A young Asian woman spoke of "two police officers arriving on the doorstep" of her family home asking about elections. One witness was so nervous that he gave his evidence behind a screen. He actually "couldn't really remember" anything, he told the court, including giving that as his answer to Katrina Wilson's cross-examination question, "didn't you originally tell the police that you had in fact seen that it was a nomination form?".

Interestingly one Polish family, the Bureks, three of whom subscribed the Boulton ward form, were recorded by the police as 'not speaking English' and, while they were not called as witnesses, were listed in the case summary by DC Foster among the 'forged, misled and questionable signatures' who 'did not understand what they were signing'. The total number of subscribers in this category was used in the press to show the alleged scale of the 'fraud'.

Yet, just to take the Bureks as one example, they were family friends of the Polish-origin wife of the Boulton ward TUSC candidate, Shaun Stuart, who all understand English (two of them are fluent speakers). Not only did they willingly nominate the TUSC candidate in 2016 they also subscribed his nomination paper in 2015, when he stood in the same ward. Why they did not want to engage with police officers turning up on their doorstep and questioning them about their political affiliations can only be guessed at.

On the other hand, another Polish woman who was called as a witness, **Monica Touche**, said she knew now that the form was “not to support keeping the Moorways pool open” but was “political” because “yes, the police told me that”. But what exactly did they tell her? It would have been illuminating to have heard how they tried to explain that keeping Moorways open – or deciding to close it for that matter – was not “political”.

What the witnesses thought about ‘politics’

But that was another issue that was left totally unexplored in the trial. Numerous witnesses agreed with the prosecution barrister that the closure of the Moorways Leisure Centre and Swimming Pool was very important to them but then, when he concluded by asking whether they would have signed an election nomination form for a TUSC against cuts candidate, they said no. But why not? Did they want to keep Moorways open or not? And wouldn't having an election candidate committed to fighting the cuts have helped?

Some answered the prosecution barrister by agreeing with him that they ‘weren't interested in politics’. What they really meant by this was also never explored. The rigid, schematic dichotomy that the prosecution wanted to establish – between real politics in defence of working class interests as it is discussed on the doorstep and the ‘high politics’ of the ‘professional politicians’ of the rich – was left unchallenged.

But closing swimming pools, and other vital local facilities for working class people – and saving them – is ‘political’. The Socialist Party, part of the TUSC coalition, had councillors in the south London borough of Lewisham from 1995 to 2010 and one of their greatest victories was the Save Ladywell Pool campaign which in 2006 inflicted the first defeat of the Labour Party in Lewisham council chamber for 35 years. The Southampton rebel councillors, including the TUSC national steering committee member Keith Morrell, saved the Oaklands swimming pool there from New Labour cuts.

Derby's Moorways Leisure Centre and Swimming Pool, on the other hand, has closed under an alleged ‘Labour’ council. It could have been saved by ‘politics’ – but not ‘politics’ as defined in the establishment media or by the CPS barrister.

The witnesses provided plenty of opportunities for a picture of real politics to have been drawn out for the jury – and that ‘false pretences’ were involved only if the matter was approached from the viewpoint of the ‘professional politicians’.

The comments of Diane Hanson above were one such example, welcoming ‘a chap talking about standing up against the cuts’, before she had her visit from the police to ‘explain things’. Then there was **Elaine Middleton**, who told the court that she had signed the form because “a chap knocked on my door and was talking about fighting the cuts. We've lost a lot, including youth clubs, which affected my family. So I signed because I thought, we're all against cuts, aren't we?” Isn't that a ‘sufficient enough understanding’ of what she was signing? Wouldn't the greatest ‘false pretence’ here have been maintaining the lie that the establishment parties on Derby council were anything other than being ‘all against cuts’?

And then there was **David Spencer**, a subscriber in Darley ward and Count No.14 on the indictment. He agreed that it was his signature on the nomination form and that he had

“exchanged a few words with Chris Fernandez” on the doorstep about the closure of the Citizens Advice Bureau and the swimming pool. “As I understood it”, he said, he thought Chris “was forming a new political party and he needed signatures to be recognised” – “that’s the gist of it” – but he wasn’t absolutely sure because “I don’t know how it all works”.

The David Spencer count was one of the two not guilty verdicts returned by the jury. But that raises more questions in itself. Was there a suggestion that Chris Fernandez’s doorstep ‘patter’ was sufficient to explain himself to Mr Spencer but not to the others? And if so, how is that determined? How could Chris have known if one person had ‘sufficiently understood’ him but another hadn’t? And if he didn’t know, how could he be guilty of delivering a Nomination Paper with a signature ‘which purported to assent to the candidate’s nomination but which he knew’ – knew, not might have thought but knew – ‘was not written for that purpose’?

Isn’t ‘the gist’ of the whole case that working class people on the doorstep can understand each other sufficiently for one to give backing to the other in his fight against the cuts – even if they ‘don’t know how it all works’ and therefore don’t quite meet the pure definition of ‘politics’ of a barrister and former Commons speechwriter or a learned judge?

The ‘bandit witnesses’

The other not guilty verdict was on Count No.7, involving **Denis Bergin**, a subscriber in Abbey ward. He had told the police that he had never signed anything to do with the 2016 elections and the prosecution therefore called him as a witness to corroborate their case. But in the witness box this retired man, with a quiet but resolute voice, refused to affirm anything other than it was his signature and printed name on the nomination form. “I can’t recall anything”, he said.

But Denis Bergin wasn’t the only witness called by the prosecution who “went bandit”, as the CPS barrister described it. **Mohammed Arshid**, a subscriber in Normanton ward, was “pretty sure” that Chris Fernandez had said he needed ten signatures on a form “to do with something about votes”. “Did he say it was for a local candidate?”, asked Katrina Wilson in her cross-examination. “Yes, it rings a bell, it was for the local elections”. **Mohammed Ali**, also from Normanton ward, thought Chris Fernandez was trying “to get people to vote against the closure of Moorways”.

Most memorable was **Mandy Mosley**, again a subscriber in Normanton ward. In her police witness statement she was recorded as saying she had never heard of TUSC. Yet in the witness box she boldly opened up with “Yes, he did mention he was from the Trade Unionists and Socialists Against Cuts”. “I remember reading the words Nomination Paper at the top”, she went on, “and I thought it was for the election. I might have thought he was from Labour or something like that” – which was a significant comment in itself – “I can’t really remember, but I agreed with what he said and was happy to sign it knowing it was for the local elections”.

And then there was **Anthony Brailsford**, a subscriber in Sinfin ward and Count No.3 on the indictment, for which the jury only agreed a guilty verdict on a majority vote. Mr Brailsford, having agreed it was his signature on the nomination form, replied to the prosecutor’s next question about what Chris Fernandez had said on the doorstep with, “he said it was for the election”. So the CPS barrister tried again, but got the same reply. “Yes, he said it was to help with the election”, said Mr Brailsford.

Perturbed, Gareth Roberts asked for Anthony Brailsford’s police witness statement to be handed to him in the witness box “to perhaps help you refresh your memory”. At this point the judge **Peter Cooke** intervened.

Clearing the jury for an unscheduled break, he suggested in their absence that Mr Brailsford, who had struggled with the oath, may have difficulty reading – which he admitted – and that therefore,

rather than be embarrassed in front of the jury, should be allowed to have his police statement read to him in the witness waiting room.

And so, when the court sitting resumed, Anthony Brailsford said that now he “remembered that the form was about Moorways”. Did Chris Fernandez tell him about the elections? “No”. Was he interested in politics? “I only vote Labour”.

Unfortunately the court never discovered which ‘Labour’ he supported, the ones who make cuts to important services like Moorways – or those who, like TUSC, want to implement Jeremy Corbyn’s anti-austerity message and not make cuts.

Labour, TUSC, UKIP? It’s not black or white

Anthony Brailsford’s support for Labour, albeit undefined, was highlighted by the judge **Peter Cooke** in his summation of the evidence. “You may decide that lends weight to Mr Brailsford’s answer to the question about whether he would have signed the form if he had known it was for a TUSC candidate”, he advised the jury. The idea that someone could normally vote for or otherwise support one party but would be prepared to sign a nomination form for another party in a local election was clearly a novel one for him.

It also didn’t fit with the abstract, schematic conception of ‘politics’ of the former Commons speechwriter, **Gareth Roberts**. “It’s inconceivable they would have knowingly signed” the TUSC nomination form, he said, referring to the two Mackworth subscribers, **Emma Bailey** and **Sandra Peer**, who had also nominated, respectively, the Mackworth UKIP and Liberal Democrat candidates. “Inconceivable. They could only have been tricked into signing”, he said in his summing up of the prosecution case.

Yet ‘politics’ in the real world is not binary and particularly so in the age of austerity, which is also the age of political fluidity with old patterns overturned. After the results of the 2017 local elections on May 4th the consensus opinion of the media commentators in the Westminster bubble was that Theresa May was assured of a landslide majority in the general election which was to follow five weeks later. One or two more serious psephologists, as *The Economist* reported, warned against “reading across from local to general elections. When both are held on the same day, as in 2015 and 2010, fully a quarter of voters split tickets between parties”. (13 May 2017) So not so “inconceivable” after all...

Also of recent memory was the furore over the Hillsborough Justice campaigner Shelia Coleman, who introduced Jeremy Corbyn’s leader’s speech at the 2016 Labour Party conference in Liverpool. A hostile media trying to prove Jeremy Corbyn’s ‘extremist links’, had dug up the fact that she had signed the nomination papers for the TUSC candidate in her local Princes’ Park ward in the 2016 Liverpool city council elections. They were scandalised that, four months later, here she was ‘at the heart of the Labour Party conference’.

The TUSC candidate who Shelia had nominated was the RMT transport workers’ union regional organiser Daren Ireland who, as Shelia told the *Liverpool Echo*, “had supported the Hillsborough Justice Campaign over many years” as had his trade union. She had no problem nominating him to stand for the council while also enthusiastically supporting Jeremy Corbyn as Labour leader.

But there was other evidence in the trial itself, Mandy Mosley’s comments above for example. On a different level was the evidence of **Mohammed Aslam**, a subscriber in Arboretum ward and Count No.12 in the indictment, who when asked by the prosecution barrister “have you been a member of a political party?” replied, “Yes, Labour and Conservative”!

And then there was **Allan Rawson**, a subscriber in Alvaston ward. He had signed the petition against the closure of Moorways at the Allenton TUSC stall and, ten days or so later, he told the court, “a man called Chris came to my house and told me he wanted to take it further”.

Giving one word negative answers to the CPS barrister's stock questions about whether "Mr Fernandez told you he was an agent for a political party called the Trade Unionists and Socialists Against Cuts Party" etc etc Mr Rawson came alive when Katrina Wilson asked him, "didn't you say to Mr Fernandez as you signed the form, 'you know I'm UKIP don't you?'".

"Yes, I think I did", he replied. "Yes, it all comes back to me now. I did. We discussed what a mess this lot on the council are making of Derby. I remember that the cuts were close to his heart, we had a similar view on that and Moorways, and he told me he wanted ten signatures so he could take things further. So I signed and took it in for my wife to sign it too".

Again, these were not answers that fitted with the prosecution barrister's rigid definition of 'politics'. But what was involved was not an abstract test of 'political agreement', but about having sufficient agreement with someone to sign a form to allow an anti-cuts candidate to appear on the ballot paper in a local council election – and that is all. ■

A political prosecution

In his cross-examination of Chris Fernandez **Gareth Roberts** spoke about the importance of the nomination process to democracy, saying that if subscribers on nomination papers were secured by conning people, “everything else falls down”.

In his summing up he returned to the theme. “The law says that nominations are a vital part of the election process”, he said, “and briefings are organised for candidates and agents to ensure they are carried out correctly”. In fact, as explained earlier in this report, there is nothing in the official briefings on the essence of this case, namely, how canvassers should conduct themselves on the doorstep or what the test would be to ensure that the subscriber has ‘sufficiently understood’ what it is that they have signed (see The Council Briefing for Agents, p2).

What is the importance of the nomination process?

The nomination process involves, above all, determining whether putative candidates are qualified to stand. For local elections this means whether a candidate resides, works or has property or a business interest in the council area; is not employed by the local authority or an agency on which the authority is represented; and whether they have a bankruptcy order against them or have received a prison sentence of more than three months during the previous five years.

Returning officers must accept nominations at face value except where an application is obviously false, a so-called ‘sham nomination’, where someone stands under a fake name impersonating a real candidate or as a fictitious person. In the past collecting subscribers from electors in the electoral area the candidate wished to stand in might well have helped in determining whether someone was using a fake name or impersonating a real candidate.

But, especially in the age of social media, is the collecting of subscribers for candidates’ nomination forms really such a ‘vital part’ of modern democracy? Surely Gareth Roberts knew, as a former Commons speechwriter never mind as a lawyer representing the CPS, that candidates for the Scottish parliament, the Welsh assembly, the Greater London authority and the European parliament regional list seats – all relatively new electoral entities – can all self-nominate. Does that make those elections any less democratic? Is ‘everything falling down’?

The other role of the nomination process, since the registration of political parties legislation was introduced in 1998, is to protect ‘party brands’ from misrepresentation. This legislation – the Registration of Political Parties Act 1998 and the subsequent Political Parties, Elections and Referendums Act 2000 – specified for the first time that “no nomination may be made” at an election unless it is by someone standing on behalf of a party registered with the Electoral Commission or, alternatively, “if the description of the candidate given in their nomination paper” is ‘independent’ or no description (just the candidate’s name on the ballot paper).

This legislation was introduced to stop the deliberate misrepresentation of parties on the ballot paper itself. The most notorious case was an incident in 1994 when a candidate deliberately appeared on the ballot paper as a ‘Literal Democrat’ in a Liberal Democrat-held European parliament constituency, winning enough support – 10,000 votes – to allow the Tories to take the seat with a 700 majority. But it was not introduced to ensure, as **Gareth Roberts** intimated, when he said “that subscribers to a nomination paper must understand that they are signing to nominate a candidate from a political party which they have heard of and which they support”.

This is not semantics. The nomination paper itself does not even refer to the candidate’s political party. There is no box to fill which is headed ‘party’. There is a box headed ‘description’, which can be the party’s name but can also be a ‘registered description’. Each party is allowed to register up to 12 descriptions with the Electoral Commission and many of the 300-plus list of UK

political parties on the Commission's register have permitted descriptions that can appear on ballot papers – and therefore nomination forms – that have no reference to the party name in them. Surely Gareth Roberts must have known this?

Hundreds of Liberal Democrat candidates, for example, have used the registered description 'Focus Team' on the ballot paper. In these cases then, the words 'Liberal Democrat' would not have appeared anywhere on the candidate's nomination paper! Is Gareth Roberts suggesting that they must have been fraudulently nominated? The UKIP candidate in the 2012 London mayoral election appeared on the ballot paper as 'A Fresh Choice for London', with no reference in the description to the name of the party.

This cannot politically justify concealing which party a candidate stands for but it does show the reality of electoral law. Chris Fernandez clearly introduced himself as being from TUSC and showed people the TUSC emblem. But without properly explaining the law regarding party descriptions, **Gareth Roberts** was trying to make an argument that Chris Fernandez had misled people into signing the nomination papers because "he knew people would not support TUSC" and he couldn't get them filled in by any other means. Leaving aside the actual legal position on 'descriptions' on nomination papers, it is a fact that over a third of a million people have voted for TUSC candidates since it was formed in 2010. In reality the CPS barrister was making not a legal point but a political attack to win his case and, unfortunately, he was allowed to go unanswered.

More misinformation

Gareth Roberts made two other comments on the possible motives Chris Fernandez may have had for "conning" people into signing the nomination forms. "Mr Fernandez wanted to get as many candidates nominated as possible", he argued, "because he wanted to get publicity for TUSC". It is true that more candidates means more chance of publicity, although TUSC might be unique in being a party whose share of the votes it wins, while still very modest, is greater than the share of mainstream media coverage it receives – except when a local agent appears in court on fraud charges!

But **Gareth Roberts'** second alleged motive was more invidious – that "the increased spending allowance that political parties get by having more candidates nominated" meant that he "didn't care how the nominations were obtained". This first reference to 'spending allowances' was ambiguous. But his second reference was more explicit: "you wanted to get the funding for having more candidates". This could only mean public sources of funding.

This was either a clumsy formulation by a former political speechwriter or a deliberate slur. 'Public money', 'fraud', 'politicians' – what better buzz words to use before a jury to tarnish Chris Fernandez's motives for the hours of voluntary work he put in for the TUSC candidates. There is not a single penny of public money made available to local council candidates and Gareth Roberts must know that. The only upside was that he didn't accuse Chris Fernandez of fraudulently receiving public money to pay for a duck house...

Every local government candidate in 2016 was allowed to spend £740 on their campaign plus 6p per local government elector in the ward. From £1,300 to £1,400 for each ward, with eight candidates TUSC would have been able to spend from £10,000 to £11,000 on the election in Derby – if it had raised anywhere near that amount of money to spend! But none of this was explained to the jury and the idea that there was some material gain to be made by Chris Fernandez's 'fraudulent activity' was left hanging in the air.

Gareth Roberts concluded his summation, saying that "Mr Fernandez had stolen peoples' right not to participate in the election" by "tricking them into nominating a candidate that they didn't support for a party they had never heard of". He didn't say that Chris had 'stolen their right to vote', because not even the CPS could pretend that was true.

Peter Cooke the judge, not the satirist

Following the acquittal in June 1979 of the ex-Liberal Party leader Jeremy Thorpe of charges of conspiracy to murder his former lover, Norman Scott – in a trial notorious for the one-sided summing-up by the judge Sir Joseph Cantley – the great satirist Peter Cook delivered a scathing parody of Cantley at a benefit performance for Amnesty International. A recording is available on YouTube at <https://www.youtube.com/watch?v=Kyos-M48B8U> and it is still worth watching as a searing indictment of legal cant and establishment hypocrisy. The summing-up by the judge **Peter Cooke** of the Chris Fernandez trial cannot remotely be compared, of course, to that of his near namesake. It certainly wasn't funny.

The judge's legal directions to the jury were clearly presented, including how the charge for counts 1-14 was not the same as the charge for counts 15-16 relating to the Mackworth ward paper. **Peter Cooke** read the directions for the court record and informed the jury that they would receive a copy before they began their deliberations (they were handed out while he continued with the rest of his summation).

When it came to the trial evidence, however, he dwelt on the most secondary – and sometimes extraneous – points in the prosecution's case. He got bogged down, for example, over when exactly Moorways swimming pool had closed to the general public (March 31st 2016, following a final council vote on February 3rd), in order to argue that it was still a live issue on the doorstep – which no one disputed – and that the TUSC petition which Chris Fernandez showed to subscribers was not, therefore, “an example of old campaign material” but a current petition.

He didn't mention that the petition text referred to the Moorways Leisure Centre and Swimming Pool – two separate buildings – and that the former had closed earlier. Most significantly, of course, he missed out the detail that both buildings were being demolished as the court was sitting but that, if an anti-cuts candidate had been elected, it might have been a different story.

But that may have been because he didn't seem to rate the calibre of the TUSC candidates. In his cross-examination of Chris Fernandez the CPS barrister had asked in passing why the TUSC candidates had not collected subscribers for their own nomination papers and had “left it all to him”. Chris Fernandez had explained the circumstances that had prevented the more experienced candidates from doing so and, while the newer candidates had been involved in leafletting and other campaigning, he had taken on the task of getting nominations in because of the need to get all the details right on the forms. But there was never any suggestion that these were ‘fraudulent candidacies’.

But **Peter Cooke** returned to this extrinsic issue in his summing up. “As you know”, he told the jury, “the other seven candidates didn't canvass for nominations so you may ask whether they were genuinely committed to being councillors, or was this just a fringe party trying to get publicity?”. The fact that one of the experienced candidates, Chris Fernandez had explained, was a skilled manual worker working permanent night shifts obviously wasn't a consideration. If he had been elected he would have had a statutory right to time off to attend to his council duties – but not to collect nomination signatures. Another is a diabetic, in his mid-60s, who was briefly hospitalised during the campaign, but that too was forgotten by the judge. This ‘fringe candidate’ actually has an MBE, awarded for his contribution to community relations.

When is a petition not a petition?

Peter Cooke was also preoccupied with another tangential detail raised by the prosecution – was the TUSC petition to save the Moorways Leisure Centre and Swimming Pool really a petition, given that it had not been handed in to the council? Derby TUSC had organised a public meeting on Moorways which had been attended by one of the initiators of a petition that was debated in the

council chamber. But the TUSC petition that Chris Fernandez had taken with him on the doorstep as an example of campaign material wasn't handed in but had been used instead on street stalls as a means to raise consciousness on the issue, including the possibility of the council using its reserves and borrowing powers to avoid closing the centre.

Chris Fernandez had responded to Gareth Roberts' question on this by asking, "is there a legal definition of what a petition is?". **Peter Cooke** interrupted: "It's actually a verb, to petition, to ask the relevant authority to do something". He was still ruminating on the subject in his summation. "Mr Fernandez said in his evidence that he was proud of the TUSC campaign to save Moorways but it wasn't really a campaign", he told the jury. "The 'petition' which he referred to was never even submitted to the council, which you should think about". Why? And think what about it?

Change.org, the online petition platform, has 50 million registered users. How many of them are eventually submitted to 'the relevant authority to do something'? (Who would that be, for example, to stop climate change or the war in Syria?) How many Change.org petitioners who don't submit them 'to the relevant authority' have the integrity of their campaigns imputed? And anyway, wasn't the charge against Chris Fernandez that people signed a nomination paper 'thinking it was a petition' – not that they signed 'thinking that it was something that purported to be a petition but wasn't'?

Peter Cooke's summary of the prosecution witnesses' evidence was similarly marred. He recounted to the court how **Zoe Chapman**, even though she insisted she had only signed one document (see p6), identified her handwriting both on the Alvaston ward nomination paper and "on the Moorways petition... well... umm... at least on what was a list of names and addresses" (!). But possibly losing his thread at this point, he then tailed off. On the fluidity or otherwise of 'political affiliations' he shared the rigid, schematic conception held by the CPS barrister, mentioning **Anthony Brailsford's** support for Labour as a probable reason for why he wouldn't have nominated a TUSC candidate (see p10), and referred to **Mohammed Aslam's** Labour membership – but not his former Tory party membership!

On **David Spencer's** evidence (see p9) he did say that it was not "completely in accord with the rest of the prosecution case". But even then he highlighted one aspect, the point at which David Spencer in answer to the CPS barrister's question about whether he would have "backed a TUSC candidate" (what does 'back' mean? To vote for, or to sign a nomination paper?), said "I would probably have needed more evidence".

'Some misunderstanding here'

The final irony came after **Peter Cooke** finished his summation and the jury had retired. After deliberating for two hours or so they sent up a note to the judge, asking when they would receive a written copy of his summation of the evidence "as you promised". They were recalled to hear his answer.

"There's been some misunderstanding here", he began. "I said that you would have the written legal directions on the points of law in this case distributed to you, which you have had. I did not say that you would have a written version of my summation of the witnesses' evidence" which is not "evidence to the court".

And so twelve men and women, good and true, having listened just hours earlier to an eminent judge paid over £130,000 a year to help establish truth and falsehood – in this case, on what was said on doorsteps 20 months ago – had misinterpreted what he said. But unlike Chris Fernandez, Peter Cooke wouldn't face the prospect of going to jail. ■

A solid defence?

The prosecution had concluded the presentation of its evidence by reading to the court edited transcripts, with the edit agreed with the defence barrister, of the three police interviews conducted with Chris Fernandez. These took place on April 18th 2016, a fortnight or so after the police were first notified of the problems with the Mackworth ward nomination form; May 11th 2016; and September 1st 2016.

Chris Fernandez was working at a care home on a shift pattern of two 12-hour 'waking nights' followed by two days off, the third day in this four-day cycle effectively a recovery day in which he could not do much more than sleep. His requests for the interviews to be arranged to fit in with his shifts were ignored, with the police insisting that he attend at the times they specified, always, as it transpired, after a 12-hour night shift.

Despite this, and the pain suffered in his second police interview from what was later diagnosed as a kidney stone, Chris maintained in the almost six hours of interviews what he has maintained ever since. He did not 'set out to con electors' into signing the TUSC nomination papers by 'deliberately deceiving' them into thinking the nomination forms were a petition to save the Moorways Leisure Centre and Swimming Pool.

He had always introduced himself as being from TUSC and had told people he was collecting the signatures of ten people on the electoral register so that a candidate against the cuts could stand in the ward. He volunteered straightaway to the police that he had showed the people on the doorstep a TUSC petition against the closure of Moorways as an example of TUSC's campaigning record and, because it had the square, black and white 'TUSC Against Cuts' emblem on it, as an illustration of "what we will be standing under" on the ballot paper. He did so because there was nothing to hide – there is no prohibition on canvassers taking campaign material with them as they collect nomination form subscribers.

Chris Fernandez started his doorstep presentation, he said, as he finished it, by pointing to the nomination form which had been on the top of the clipboard throughout, and then giving the clipboard to the elector only after they had agreed to be "one of the ten signatures".

Sometimes the elector filled in the printed name box on the form themselves. Other times – again perfectly permissibly – Chris Fernandez would fill it in himself, to make sure the name was exactly as it appeared on the electoral register for fear, common amongst all election agents, that the form would be rejected by the Returning Officer and a completely new one would have to be filled out from scratch in a new canvass for subscribers.

The Mackworth paper

But one of the papers, the last ward out of the eight that Chris Fernandez had canvassed, was messed up. Tired out – this was a Herculean effort – he wrongly filled in the printed name box for the second assenter, Scott Furniss (who was not called by the prosecution as a witness), crossed it out and wrote it in correctly.

Then, assenter number four, Diane Hanson, signed the form, and took it in to her husband. He, unfortunately, signed on the same line as his wife and then signed again on line number five. Chris got the last three subscribers on the form and returned home but, looking at the form, disconsolately concluded that it would not be accepted.

He was further disorientated and upset by his discussion with one of the last three subscribers, **Robert Killackey**, who Chris Fernandez had not known before but who, he discovered on the doorstep, was a relative of an old school friend of his, Hughie Killackey. But Hughie, Robert

Killackey told Chris, had died of alcohol poisoning – particularly poignant for Chris as his half-brother had recently died of an alcohol-related illness. Mr Killackey was called by the prosecution as a witness but, starting out by saying he was 82 and “I can’t remember anything, even what happened yesterday”, he couldn’t illuminate much.

This was the frame of mind which Chris Fernandez was in when, in his words, he acted “completely out of character” and committed the electoral offence of filling in a new nomination form for Mackworth ward with the signatures he had collected on the spoilt paper. An offence he admitted to immediately on his first contact with the police. But what he did not accept – and still doesn’t – was that he had deliberately misled anyone into signing the nomination papers, in Mackworth or the other seven wards.

When Chris Fernandez attended a plea hearing in April the Crown Prosecution Service indicated that they would accept six or seven guilty pleas rather than proceed to trial but not the Mackworth counts alone. They wanted a prosecution on the extremely unusual Section 65A(1)(b)(ii) charge under the Representation of the People Act 1983 come what may (why that might be so is discussed later, in the section on The Wider Picture, p20). And they had the chance because, as the judge **Peter Cooke** said in his summing up, while the jury could not convict Chris Fernandez on counts 1-14 on the basis that he had pleaded guilty to the Mackworth charges, they could look at Mackworth and decide if it showed he had “propensities or tendencies to misled” and these could “shape your views” on the other counts.

A bold defender

In that context, taken as a ‘normal’ fraud trial, it was always going to be a difficult case for the barrister **Katrina Wilson** to defend. But she fought tenaciously and imaginatively for her client.

One example was the issue of the ‘folded papers’. At least six prosecution witnesses, agreeing that it was their signature on the nomination forms but uncomfortable when asked why they thought a form headed ‘Nomination Paper’ was a petition, said that it was ‘folded’ or the top obscured in some other way when they signed it. And the original Mackworth spoiled form, **Gareth Roberts** pointed out, had a fold mark down the middle – which Chris Fernandez under cross-examination could only guess was the result of him folding it and putting it away after he had copied out the signatures onto a new form. Not exactly a smoking gun for the CPS, but something for Gareth Roberts to return to repeatedly.

So Katrina Wilson made a discovery application for the original TUSC nomination forms for the other seven wards and, in a moment of court drama, produced them as exhibits, passed for examination to the jury and judge. The later accepted for the court record that there were no folds whatsoever in any of the forms, “just a bit of wrinkling”, rain damage, at the bottom of the Normanton ward paper.

Katrina Wilson also fought hard for her client’s interests when, in an incident that alarmed all the court staff who witnessed it, Chris Fernandez suffered a near-faint episode moments after the court had adjourned for lunch on Monday 11th December. On medication for high blood pressure, and on his feet in the witness box for over an hour, Chris had slumped into his seat, his arms in involuntary motion, not able to fully comprehend what was being said to him. An ambulance was called and the hearing was adjourned for the day while he attended at A&E that afternoon and his medical records were collected.

Chris Fernandez turned 60 on December 21st. Earlier in 2017, well before the trial, he had been referred to a memory clinic for assessment of his neurological capacities, which had uncovered some issues about his ability to process information. When the court re-convened, while Chris wanted to carry on with the trial, Katrina Williams strongly argued that the hearing should be deferred until he had been seen by a specialist. **Gareth Roberts** objected, arguing that the

memory clinic had felt it safe to book in Chris for further monitoring and re-assessment tests in 2018 because, while they had found “suggestions of vascular abnormalities on his MRI scans”, he was not at “imminent risk”. **Peter Cooke** accepted that there had been a significant health incident but ruled that Chris Fernandez was fit to continue, although he should sit and not stand in the witness box and ask for breaks if he needed them.

But was ‘no politics’ a mistake?

Katrina Wilson also made an application to dismiss Count No.14 on the indictment on the grounds that the person named, **David Spencer** (see p9), had agreed that he had signed a nomination paper and that Chris Fernandez had no basis for not thinking he had his agreement to the nomination. **Gareth Roberts** objected, “is that enough to show sufficient knowledge?” **Peter Cooke** agreed, arguing that “this is a proper question for the jury to decide”, and dismissed the application.

But this incident showed that ‘politics’ – not least what constitutes ‘sufficient agreement’ to accept that a candidate should appear on the ballot paper (not vote for them remember) – was at the heart of the trial. Unfortunately Katrina Wilson did not want to pursue this in court, or the other issues raised in this report, because she did not want to engage in ‘political arguments’ as she put it, even on points of electoral law and practice.

In the 2017 general election, for example, Theresa May was challenged in her Maidenhead constituency by, amongst others, Bobby Smith, standing for the Give Me Back My Elmo party, registered as a political party with the Electoral Commission. He polled three votes (3) on June 8th – but ten electors had signed his nomination paper in order for him to get on the ballot paper.

Did they ‘sufficiently understand’ what they were signing when they did so? Did they know what the Give Me Back My Elmo party stood for? If two police officers were to visit them subsequently and, telling them they were investigating a possible fraud, give them a pre-prepared ‘witness statement’ questionnaire asking if they had/had not heard of Bobby Smith, if they had/had not signed nomination papers to ‘support the Give Me Back My Elmo party’ etc what would they have said?

If, summonsed to a court witness box 20 months later, a barrister had chided them “but you would remember, wouldn’t you, if you had nominated somebody for such a position as an MP? It’s not the type of thing you would forget, is it?” how would they have responded? Wouldn’t it have been worthwhile introducing examples like this into the court to puncture the narrative framing the prosecution were putting the case in?

In her summing-up speech, referring to the contradictions in the prosecution witnesses’ evidence, **Katrina Wilson** quoted from Lewis Carroll’s *Alice in Wonderland*, that everything is not always as it seems. She reminded the jury of Anthony Brailsford’s evidence, that he initially said that Chris Fernandez had asked him to sign a form about the elections until he was asked to “refresh his memory” by reading his police statement (see p9). She also pointed out that **Sandra Peer**, one of the Mackworth counts who had also signed the Liberal Democrat candidate’s nomination paper, when asked in the witness box to identify her signature on the Lib Dem paper initially said that it wasn’t her handwriting!

Referring to the notes that Chris Fernandez had delivered to many of the witnesses before he visited them she asked why had he voluntarily told the police about them when, at the time of his police interview, he had no knowledge that they had been ‘torn up’ or ‘thrown away’, as the witnesses who referred to them had revealed in court. What if some of the notes, or even one, had been saved and had then been produced in court? If they hadn’t said what Chris Fernandez claimed they said, the notes would have destroyed his defence. If he was the master fraudster the prosecution made him out to be, why did he volunteer information about the existence of the notes

to the police? All powerful points in a 'normal' fraud trial but, in this 'abnormal trial', not challenging the framework that the prosecution had set for the case.

Katrina Wilson might have done well to also quote from Alice's clash with Humpty Dumpty in *Through the Looking Glass*, who tells Alice that "when I use a word it means just what I choose it to mean, neither more nor less... The question is which is to be master [of the word's meaning], that's all". The CPS was trying 'to be master', to determine what constitutes 'sufficient agreement' to nominate an anti-cuts candidate 'neither more nor less'. In Wonderland the pompous giant egg eventually topples over on its own volition, of course. But to bring the prosecution's arguments crashing down in Derby Crown Court their political essence had to be challenged.

The reality is that any similar selection of local government election subscribers almost anywhere would find broadly the same variegated understanding of 'politics' and disparate motives for signing the nomination papers as were uncovered in the trial. That would be particularly so for the smaller parties – there are over 300 parties currently registered with the Electoral Commission – without the advantage of a national media profile. But not even this basic point was made in court.

The 'fourth option'

The theme of **Katrina Wilson's** defence summing-up speech was "the three options" that she felt the jury had to consider. Either Chris Fernandez had set out to deliberately mislead people into signing the nomination papers, as the prosecution argued. Or the witnesses "were all lying" when they said they thought they were signing a petition to save Moorways – which, she said, Chris Fernandez himself had never claimed and which was too improbable to even be considered.

Or there was a third option, she argued, that "Mr Fernandez was just rubbish at explaining himself, a bit of a bumbler, not good at listening to what people were saying to him, bad at his job". He did not have to explain why the witnesses said what they did, she went on, because if he thought that they understood him when they signed the nomination form he was not guilty. He was either "a massive manipulator or a bit of a fool", she concluded, and if the jury thought it was the later, they must find him not guilty.

But in fact there was a fourth option, or at least additional elements to Katrina Wilson's 'option three'. These were the issues and questions that have been referred to throughout this report and the political framework set by the prosecution. But presenting that to the jury would have meant questioning why the prosecution on the Section 65A(1)(b)(ii) 'false pretences' charge was even taking place; the political discussions by the police and the CPS that had led to the decision to proceed; and what political goals were being served, including the chilling warning it might send to independent working class candidates standing for election outside the contours of establishment 'politics'.

Whether it would have made a difference to the jury's verdicts is a moot point but the prosecution of Chris Fernandez was political from start to finish and this wasn't challenged in court. ■

The wider picture

In 2008 the Association of Chief Police Officers (now the National Police Chiefs Council) and the Electoral Commission established a joint reporting and analysis project to monitor electoral fraud in UK elections.

Since its establishment there have been over 2,000 cases of alleged electoral fraud collated by the project, with the proportion relating to nomination offences ranging from 6% to 15% of the total number of allegations each year.

The majority of the nomination cases involved claims that the signature of a proposer, seconder or assenter on a nomination paper was not made by that person – the charge under Section 65A(1)(b)(i) that Chris Fernandez pleaded guilty to for Mackworth ward (although he had collected the signatures on another form). All other nomination cases, bar one, concerned allegations that the candidate was ineligible or disqualified from standing in an election – they did not live at the address specified, for example – and yet had submitted a nomination paper to stand.

There was just one reference to a possible Section 65A(1)(b)(ii) charge, the charge for counts 1-14 on Chris Fernandez's indictment. This appears in the Electoral Commission's annual report on allegations of electoral fraud for 2014, referring to "a voter [being] tricked into signing a nomination form for a candidate under false pretences". But there is no record of an attempted prosecution in this case. In fact, all the publicly available records of convictions for nomination offences since 2008 have been for cases of false signatures or candidate ineligibility.

Until now. Just weeks before the Chris Fernandez trial the ex-Tory MP for Castle Point in Essex, Bob Spink, who defected from the Tories in 2008 to become UKIP's first MP (he lost his seat in 2010), was found guilty of 'tricking voters into signing nomination forms believing they were petitions' in the 2016 local elections. He told the court that he had been involved in politics for 30 years and had "probably collected more than 1,000 signatures on nomination forms. There's never been any suggestion of impropriety until now". Indeed – no 65A(1)(b)(ii) convictions, or attempted prosecutions at least since the public records begin in 2008, and then two come along at once. Is there something going on?

What were the CPS thinking?

Bob Spink was formally charged in March 2017, the same month as Chris Fernandez was charged in Derby. In both cases, while local police officers collected the evidence, it was the decision of the Crown Prosecution Service (CPS) whether or not to proceed to court.

Of the 2,000 or so cases of alleged electoral fraud brought to the police's attention since 2008 only a very small proportion have resulted in court action. In the police commentaries that are available in the published data there are many instances of *prima facie* breaches of electoral law which were "locally resolved" or "suitable advice given". In 2014, for example, a clear breach of electoral law in the Royal Borough of Kensington and Chelsea did not go to prosecution on the grounds that it was "not in the public interest as he [the candidate] was not elected". In 2016 a Tory election agent in Preston forged signatures on eight candidate nomination forms and "accepted a police caution".

And then, of course, there is the case of the Conservative Party's 'Battle Bus' election expenses. Having received files from 15 different police forces showing that the 'Battle Bus' costs were not recorded in constituency election returns in over 20 marginal seats in the 2015 general election, the CPS decided not to proceed to prosecution (an ongoing case in South Thanet constituency involves other wrongly declared items of expenditure).

Nick Vamos, the deputy head of the CPS Special Crime Division, was quoted in a CPS statement justifying the decision. He grudgingly acknowledged that “by omitting any ‘Battle Bus’ costs the returns may have been inaccurate” (CPS Statement on Election Expenses, 10th May 2017). In fact the Electoral Commission, in an extensive investigation which required the threat of court action to compel the Conservatives to release requested information, was completely satisfied that some campaign expenditure was not recorded in candidates’ returns, contrary to election law.

The Electoral Commission has produced clear guidance on recording ‘spilt expenditure’ in election returns between national and local campaign costs, the issue at the heart of the Tory ‘Battle Bus’ cases, including a 24-page ‘Expert Paper’. The agents concerned should have had no reason not to have been aware of their responsibilities. This is in complete contrast to the lack of official guidance on the issues at the core of Chris Fernandez’s case, as previously explained (see p2) – on how canvassers should or should not conduct themselves on the doorstep, or what the test would be to ensure that the subscriber has ‘sufficiently understood’ what it is that they have signed.

With regard to the Conservative constituency agents in the ‘Battle Bus’ case, however, the CPS statement argued that “it would not be possible to prove any agent acted knowingly or dishonestly”. But why not? Action committed ‘knowingly or dishonestly’ had to be proved in the Chris Fernandez trial. Didn’t the Tory agents attend the candidates’ and agents’ briefings, presumably as ‘comprehensive’ as that attended by Chris Fernandez?

Did the agents not read the Electoral Commission guidance? Or seek independent advice from that they received from Tory party HQ before they submitted their returns? Why couldn’t this at least have been tested out in front of a jury? After all, the 20 or so marginal seats involved were the difference between the Tories’ 2015 general election victory and another hung parliament.

But no. “We have concluded it is not in the public interest to charge anyone referred to us with this offence”, the CPS went on. But what ‘public interest’ test did they conduct to decide that a case about a TUSC agent in a municipal election in Derbyshire was of greater national import?

Clamping down on dissent

But perhaps the most important ‘interest test’ for the CPS tops – in Derby as in the ‘Battle Bus’ case – wasn’t actually a ‘public’ one but how best to look out for their own careers by appeasing their government masters. This is not to say that the decision to prosecute Chris Fernandez was a ‘Tory conspiracy’ against TUSC (or, for that matter, against their UKIP enemies in the Bob Spink case). But the Tories, as part of battering down the hatches against the accumulating rage at never-ending austerity, are clamping down on democratic rights.

This includes attacks on electoral rights, many of them emanating from the recommendations that came out of the 2016 Pickles review of electoral fraud. Set up by David Cameron after the removal from office of the independent mayor of Tower Hamlets in 2015 – itself a judicial strike against a non-establishment electoral force – the review, led by the former Conservative Party chairperson Sir Eric Pickles, included a call for action to prevent “sham nominations and ensure that nominations are validly made”.

The government response to Pickles on this issue is that it will consider giving council Returning Officers greater powers to reject nominations (A Democracy that Works for Everyone, December 2016, p21). It notes, however, that “any changes to the procedures around candidate nominations are likely to require primary legislation”.

But in the meantime there’s no harm in sending a message to council officers (and ambitious Police Economic Crime Unit officers and Crown Prosecutors) to make life as difficult as possible for protest candidates and others outside the establishment circles.

The nomination process in local elections is already a potential obstacle course for inexperienced campaigners and smaller parties. Even getting hold of the electoral register to collect the necessary ten subscribers, for example, is not a straightforward task.

Once someone has officially become a candidate they are entitled to a copy of the register of electors for the ward. But the earliest someone officially becomes a candidate is when the official notice of election is published, just six working days before nominations have to be submitted.

Many council electoral services departments will release a copy of the electoral register to someone declaring themselves as a candidate or election agent before the official notice of election, once they have signed a legal assent form stating that the register will only be used for electoral purposes. But some Returning Officers do not give the same leeway to local TUSC candidates and agents as they do the establishment parties. Now they might feel further encouraged to be obstructive.

But events are moving against them

The CPS announced that they would not proceed with the Conservative 'Battle Bus' case on May 10th, when the 2017 general election was under way and just days after the Tories' triumph in the local elections. Predictions of a 100-plus seat Tory majority in the forthcoming June poll were widespread. It was obvious to anyone why the CPS tops took the decision that they did at the time that they did.

But, like almost all the establishment, they were to be completely confounded by events. Just five weeks later the rage that has been simmering away since the 2008 crash, found an electoral outlet in the surge of support for Jeremy Corbyn's anti-austerity message.

That process is not over. Not least because the Blairites – the capitalist establishment's representatives within the Labour Party – are clinging on tenaciously to their positions, in parliament and in town halls. The struggle for working class political representation independent of supporters of capitalism will flow through more varied channels than it did before Jeremy Corbyn's welcome victory as Labour leader in September 2015. Sometimes it will mean supporting Labour Party candidates if they are 'Corbynistas', but in other instances it will mean standing under an independent banner like TUSC against the Labour right-wing cutters. But the process of finding a vehicle for working class politics is working its way out in a period of raised expectations, including growing awareness that a systemic alternative to capitalism – socialism – is possible. It won't be stopped by bureaucratic obstacles.

The vindictive and disproportionate political prosecution of Chris Fernandez should not cower trade unionists, socialists and working class community activists or stop them from taking their battle against austerity and for a new society into the ballot box. This was one case, with specific circumstances, tried in one court. It does not establish 'case law', applicable to any other possible instance in the future.

Chris Fernandez himself, when asked by the prosecution barrister whether he would say he supported democracy, replied that yes, the working class has always fought for the right for political representation, from the Levellers in the English revolution to the 19th century Chartists, and is still fighting today. That should be the main message from this trial. ■

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