

In the matter of:

**IMRAN KHAN'S CANDIDATURE FOR  
CHANCELLOR OF THE UNIVERSITY OF OXFORD**

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**OPINION**

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**Introduction**

1. The media has reported that Imran Khan is a candidate for Chancellor of the University of Oxford ('Oxford').
2. I have been asked to express an opinion as to the following matters:
  - a. Whether Mr Khan's political activities in Pakistan mean he is a 'declared candidate' within the terms of Oxford's Council Regulations 8 of 2002 ('regulations 8').
  - b. Whether Mr Khan's criminal convictions come within the scope of regulation 7(d) of regulations 8 (a regulation that potentially disqualifies a person from being a candidate for Chancellor of Oxford).
  - c. Whether in fact Mr Khan is disqualified from being a candidate for Chancellor of Oxford.

**Summary**

3. **In my opinion, Mr Khan is unlikely to be eligible to be a candidate in light of one of his criminal convictions.**

## **Factual background**

4. Mr Khan is a well-known former cricketer who has subsequently become involved in Pakistani politics. He formed his own political party and subsequently became Prime Minister. For the purposes of this opinion, it is necessary to focus on 2 aspects of his background. They are: (a) whether Mr Khan intends to stand for Parliament in future; and (b) details of 2 recent convictions of him.
5. In terms of Mr Khan's future plans to stand for Parliament, it is relevant that it is clear that he continues to be involved in politics. Although, as far as I am aware, he holds no office. Mr Khan has apparently claimed that elections held in February 2024 mean that he should be Prime Minister (although he is serving a prison sentence (see below)). He has claimed that the election of independent candidates associated with his party means that he has a mandate. That suggests he wishes to be Prime Minister. I am instructed that to be Prime Minister, Mr Khan would need to be elected as a Member of the Pakistani Parliament. That implies it is reasonable to assume he wants to be elected as a Member of Parliament.
6. As far as I am aware, there are no forthcoming elections scheduled in Pakistan. Pakistani law requires an election by 29 April 2029. By-elections are likely to occur earlier and a general election could also be declared earlier before 2029.
7. I have been provided by those who instruct me with a number of documents that are said to relate to 2 convictions of Mr Khan.
8. Most importantly I have been provided with a judgment dated 31 January 2024 issued by what is described as the 'Judge Accountability Court' ('the 31 January judgment'). In summary, this records that:

- a. It was alleged that Mr Khan (as well as his wife) had received a jewellery set from the Crown Prince of Saudi Arabia. It was said that there had been an unlawful failure to deposit the gift in accordance with The Procedure for the Acceptance and Disposal of Gifts, 2018. Instead a valuation had been obtained from a private appraiser who had undervalued the gift. That had caused a loss to the national exchequer and a benefit for Mr Khan.
  - b. 16 witnesses had given evidence at the trial. Only 5 were cross-examined. It is said that others were not cross-examined 'due to one or other reasons'. The witness evidence is summarised.
  - c. Mr Khan had declined to come to court to give evidence. The Court also held that he had sought to delay the trial. In light of failure to give evidence and also to produce the jewellery to the Court, it was concluded that adverse inferences could be drawn.
  - d. The Court found that the jewellery set had not been deposited as required by Pakistani law.
  - e. The Court found that a private appraiser had been pressurised to under value the jewellery set so that the valuation was not fair and transparent. That pressure was found to have come from Mr Khan (as well as his wife).
  - f. The Court found that the actual price of the jewellery was much higher than the valuation placed on it.
  - g. The Court found that Mr Khan (as well as his wife) had misused the office of Prime Minister to obtain substantial financial gain. It was also found that they had misappropriated public property for gain. This led to a conviction and sentence of 14 years imprisonment.
9. I have also been provided with a judgment dated 5 August 2023 issued by the Court of Sessions Judge in Islamabad-West ('the 5 August 2023 judgment'). This records that Mr Khan was obliged to file a declaration of assets in his capacity as being a Member of Parliament. The

Court found that there had been a failure to disclose gifts given to Mr Khan in that declaration. Mr Khan's explanation (which was that he did not have to disclose gifts that he disposed of before a cut-off date) was not a valid one. It was said that the terms of the form completed by Mr Khan demonstrate that he should have disclosed all assets transferred to him no matter whether he continued to hold them. The conclusions regarding Mr Khan's explanation led to a finding that Mr Khan was guilty of an offence of corrupt practices. He was sentenced to 3 years imprisonment.

10. From the papers I have seen, it appears that the conviction resulting from the judgment dated 5 August 2023 led to Mr Khan being disqualified from standing in the most recent Pakistani Parliamentary elections.

#### **Mr Khan's political activities and regulation 8**

11. Regulation 7(c) of regulations 8 provides that a person is excluded from standing for Chancellor of Oxford if they are

*... a serving member of, or a declared candidate for election to, an elected legislature* [Emphasis added].

There appears to be no suggestion that Mr Khan is a 'serving member' of the Pakistani Parliament. The question that I need to consider is whether he is currently a 'declared candidate'. That language in the regulation is in the present tense. That implies that being a past candidate is not enough (and, indeed, there have been a number of politicians who have been Chancellor in the past).

12. I am not aware of any case law considering the meaning of the words 'declared candidate' (either in the context of regulations 8 or more generally). However, it is clear that English electoral law has long recognised that there is a distinction between being nominated as a candidate and

having declared candidature (e.g. section 77 of the Municipal Corporations Act, 1882 considered in *Fordham v Webber* [1925] 2 KB 740). That is potentially important for 2 reasons:

- a. It appears that declaring candidature involves making a statement of intention to stand for public office. It is difficult to see what else it could mean if there is no requirement for a nomination.
  - b. As already noted, it does not appear that any election has formally been called. As a consequence, Mr Khan cannot be a nominated candidate. However, that does not necessarily mean he has not declared himself as a candidate for some forthcoming election.
13. I have reviewed the media reports that have been provided carefully. It appears that there is every reason to believe that Mr Khan continues to be an active politician. However, it appears to me that it is unlikely that he is a declared candidate for the legislature. His statements appear to be focused on the last election rather than on forthcoming elections. There is every reason to believe that Mr Khan seeks to be Prime Minister. That implies that he will wish to be elected as a Member of Parliament when elections are next called (assuming he is not disqualified). However, from the reports I have seen Mr Khan has not stated he intends to seek election for a particular Parliamentary seat when an election next takes place. Given that the issue is whether Mr Khan has declared himself as a candidate to be elected to the legislature in the future, it appears to me that it is very difficult to argue that he is a declared candidate. It may also be difficult to argue that Mr Khan is a declared candidate when he appears to be currently ineligible to stand for the Pakistani Parliament.
14. My opinion in the paragraph above needs to be qualified by 2 matters that mean that I cannot be certain that Mr Khan's political activities disqualify him:

- a. The legal definition of the phrase ‘declared candidate’ is unclear. It might be argued that the purpose of preventing ‘declared candidates’ standing for Chancellor is to prevent active politicians being elected. Mr Khan is plainly an active politician.
  - b. It is not possible to know everything that Mr Khan is said. It is possible in some context he has stated that he intends to run for a particular Parliamentary seat when it is contested.
15. In light of the matters above, although I cannot be certain that Mr Khan is not a ‘declared candidate’, it appears to me that he is unlikely to be a ‘declared candidate’.

#### Mr Khan’s conviction and regulation 8

16. Regulation 7(d) of regulations 8 states that:

*... the Chancellor must not be disqualified from being a charity trustee by virtue of section 178 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision) or subject to a disqualification order made by the Charity Commission and must be a “fit and proper person” as determined by guidance published from time to time by His Majesty’s Revenue & Customs.*

17. Section 178 of the Charities Act 2011 (‘the 2011 Act’) provides that:

*A person (“P”) is disqualified from being a charity trustee or trustee for a charity in the following cases—*

*Case A*

*P has been convicted of—*

*(a) an offence specified in section 178A;*

*(b) an offence, not specified in section 178A, that involves dishonesty or deception. [Emphasis added]*

None of the offences in section 178A apply as they are all United Kingdom offences. However, they do give some idea of what is meant by dishonesty and deception. They include an offence of 'misconduct in public office'. The Crown Prosecution Service guidance states that the elements of the offence are that:

- *a public officer acting as such*
- *he/she wilfully neglects to perform their duty and/or wilfully misconducts themselves*
- *to such a degree as to amount to an abuse of the public's trust in the office holder*
- *without reasonable excuse or justification*

18. In *Ivey v Genting Casinos* [2018] AC 391 the Supreme Court considered what is meant by dishonesty as a matter of English law. The Supreme Court held that:

*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest. [74]*

19. There has been limited judicial consideration of the meaning of deception. It was held in *Adedoyin v Secretary of State for the Home Department* [2011] 1 WLR 564 (in a very different context) that:

*for deception to arise ... false representations must have been made knowingly [51]*

20. There is no case law that I am aware of considering whether a foreign conviction for dishonesty results in disqualification. However, it appears to me that it would be surprising if it does not. The obvious objective of section 178 of the 2011 Act is to ensure dishonest persons are not appointed as charity trustees. A conviction in any jurisdiction is likely to suggest dishonesty. It would be surprising, to use an extreme example, if a conviction for fraud in the administration of a French charity were not to disqualify a trustee. It might be argued that the fit and proper person test could be used to protect a charity from a French charity. However, nothing in the scheme of the 2011 Act suggests that is the case. Further, relying on the fit and proper person would potentially cause problems as it would require each conviction to be assessed.
21. In light of the matters above, it appears to me that the 31 January 2024 judgment implies dishonesty and deception. I accept that there is no express finding of dishonesty and deception. However, I have found such a finding is implied in light of the following matters:
- a. The valuation in issue was found by the court to have been an undervalue as a consequence of pressure from Mr Khan. It is reasonable to assume that Mr Khan knew that the valuation that he sought from the appraiser was not accurate as otherwise there would be no point putting pressure on the appraiser. Applying the standards of ordinary people, that was dishonest as the findings of the court mean that the conduct of Mr Khan was intended to generate a financial benefit that he was not entitled to. That conclusion is consistent with the finding of the court that the valuation was unfair. In light of these matters, it appears to me that the findings of the court imply dishonesty.
  - b. The court essentially found that Mr Khan knew that the valuation was not a proper objective one and yet he relied on it. That appears to imply deception.
  - c. It should be noted that the reference in section 178A of the 2011 Act to 'misconduct in public office' suggests that such an offence can be dishonest. The conviction in issue appears to be similar to the English offence of misconduct in public office.



22. It appears to me that it is far less clear that the 5 August 2023 judgment implies dishonesty and deception. Although the court found that Mr Khan should have disclosed his assets despite his claim to have disposed of them, I do not read the judgment as including any finding that Mr Khan was aware of that obligation. It appears that the court appears to find that it was sufficient that there was an objective obligation to disclose the assets received. That obligation does not necessarily mean that it was dishonest to fail to disclose the assets in light of Mr Khan's (apparently mistaken) knowledge of the law. It also does not necessarily mean that he knowingly made false representations. Both dishonesty and deception would need to be assessed on the basis of Mr Khan's belief about the facts (no matter whether that belief was reasonable).
23. The guidance published by His Majesty's Revenue and Customs in relation to whether a trustee is a fit and proper person ("the guidance") contains a non-exhaustive list of matters that may mean that a person is not a fit and proper person. These include that a person has been involved:
- ... other fraudulent behaviour including misrepresentation ...*
24. *Stroud's Judicial Dictionary*, 11th Edition, Daniel Greenberg, states that:
- To "misrepresent", "misrepresentation", do not, by themselves, import wilful falsehood or malice; "misrepresentation of facts may be, and often is, innocent" (per Crampton J, Dowdall v Kelly, 4 Ir. Com. Law Rep. 556).*
25. The definition of misrepresentation in *Stroud's Judicial Dictionary* suggests that the guidance covers a wider range of conduct than that covered by section 178 of the 2011 Act. That is because there is no requirement for dishonesty or knowing false representations. That is not surprising for 2 reasons:

- a. The guidance would appear to be intended to identify people who are unsuitable to be trustees despite not being disqualified by section 178. That objective would be undermined if the guidance did not go beyond section 178.
  - b. Innocent misrepresentations may suggest that someone is not a fit and proper person because they lack the skills/knowledge necessary to serve as a reliable trustee.
26. It appears to me that the 31 January 2024 judgment suggests misrepresentation. That is because it suggests a deliberate attempt to present an unreliable valuation. The 5 August 2023 judgment may also imply misrepresentation. Although this may have been accidental, the judgment is clear that there had been a failure to disclose gifts as part of a declaration of assets. The filing of the declaration wrongly implied that the list of assets disclosed was comprehensive.
27. In light of the matters above, it appears to me that it is more likely than not that 31 January 2024 resulted in a conviction for a crime that comes within the scope of section 178 of the 2011 Act and the guidance. It is also arguable that the 5 August 2023 judgment demonstrates that Mr Khan has been convicted of an offence that comes within the scope of the guidance. As a consequence, Mr Khan appears to have been convicted of offences that come within the scope of regulation 7(d) of regulations 8.

#### **Whether Mr Khan is in fact excluded from standing**

28. I understand that Mr Khan has challenged his convictions arguing that he has done nothing wrong. I have not seen any reports in which he has alleged the convictions were obtained by an unfair process. However, the most recent US State Department report on human rights practices in Pakistan states that:

*The law provided for an independent judiciary, but according to NGOs and legal experts, the judiciary often was subject to external influences, such as fear of reprisal from extremist elements in terrorism or blasphemy cases and public politicization of high-profile cases.*

Consistent with this, Amnesty International has called for Mr Khan's release on the basis of concerns about the fairness of his conviction<sup>1</sup>. It should be noted that the 31 January 2024 judgment gives rise to concerns about the fairness of the resulting conviction. For example, it is surprising that few witnesses were called.

29. I have not sought to assess whether the convictions are unsafe as I plainly lack the material to undertake that exercise. Instead I have considered whether in principle concerns about the fairness and/or reliability of Mr Khan's conviction provide any basis for him not being found to be ineligible to be elected Chancellor despite a conviction that apparently falls within the terms of regulation 7(d) of regulations 8.
  
30. On the face of the 2011 Act there is nothing that suggests that it matters whether a conviction of fair or reliable when deciding whether section 178 applies. That may seem potentially harsh or unfair but there are a number of matters that suggest that is no need to consider the safety of a conviction. In light of the matters above I have concluded that it is probable that there is no need to consider the safety of a conviction:
  - a. There is no right to be a charity trustee. As a consequence, it is not open to a potential trustee to argue that they are being unfairly denied their rights. In those circumstances, it is easier to understand why Parliament would have sought to prevent people convicted of dishonesty being about as trustees even if they have been unfairly convicted. Parliament may have decided to prioritise the integrity of charities.
  - b. The argument that Parliament decided to prioritise the integrity of charities by excluding any consideration of the safety of convictions is supported by the fact that the Charity Commission may lack the skills to assess the safety of a foreign conviction.
  - c. In a different context it has been recognised that:

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<sup>1</sup> <https://www.amnesty.org/en/documents/asa33/8507/2024/en/>

*A general measure has been found to be a more feasible means of achieving the legitimate aim than a provision allowing a case-by-case examination, when the latter would give rise to a risk of significant uncertainty, of litigation, expense and delay as well as of discrimination and arbitrariness. (Animal Defenders International v United Kingdom (2013) 57 EHRR 21 at [108])*

There would appear to be a significant risk of uncertainty if a person could argue that a conviction should be ignored because it is unsafe. The 1998 Act establishes no clear mechanism that allows a person to establish that their conviction is unsafe.

- d. The language of section 178 focuses on the fact of a conviction. Parliament could have used language making it clear that conduct disqualifies a person if it wanted consideration to be given to the reliability of a conviction.
- e. The language of section 178 does not distinguish between domestic and foreign convictions. It would be surprising if the safety of a domestic conviction could be effectively challenged in the context of section 178.
- f. There is a route by which any unfairness can be addressed. Section 181 of the 2011 Act provides for disqualification to be waived by the Charity Commission. It might be open to a person to argue that the circumstances surrounding their conviction mean that disqualification should be waived.

31. In light of the matters above, it appears to me that the conviction resulting from the 31 January 2024 judgment is likely to mean that Mr Khan is disqualified from being a candidate for Chancellor. Regulation 7(d) of regulations 8 appears to give Oxford no discretion where section 178 of the 2011 Act applies. Arguments about the unfairness of the conviction are unlikely to undermine my earlier conclusion that the 31 January 2024 judgment appears to have resulted in a conviction that of a crime that comes within the scope of section 178. The fact that disqualification under section 181 might be waived does not change that.

32. It appears to me that different considerations apply to the guidance. Common sense suggests that whether someone is a fit and proper person depends upon the underlying conduct. Although a conviction may give rise to a presumption of conduct that disqualifies that person, it may be possible to displace that presumption. The only argument against this may be that Oxford is not well-equipped to assess the reliability of a conviction. However, the reference to the fit and proper person test in regulation 7(d) of regulations 8 suggests that Oxford is able to assess a person's conduct. The argument that there can be consideration of whether a candidate's conduct mean that they are not a fit and proper person (so that there is a need to consider the safety of a conviction) is supported by regulation 8 of regulations 8. This provides that:

*After the closing date for applications, the committee shall consider all those it has received, and, having due regard to the exclusion criteria only, shall put forward those candidates not excluded under the terms of (7) to the next stage of the election process.*

The 'committee' is the 'Chancellor's Election Committee'. The key point about this provision is that means that there is a clear process for determining whether a candidate is ineligible where that is unclear.

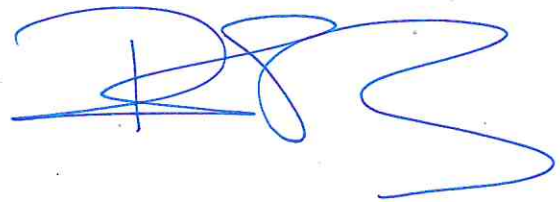
33. In light of the matters above, it appears to me that it is probable that Mr Khan is ineligible to stand for Chancellor because section 178 of the 2011 Act applies to the conviction resulting from the judgment dated 31 January 2024. There is greater uncertainty about whether Mr Khan is ineligible because of the application of the fit and proper person test in light of possible arguments about the fairness of the conviction.

### **Concluding remarks**

34. The conclusion that I have reached that Mr Khan is excluded from being a candidate for Chancellor by reason of the conviction resulting from the judgment dated 31 January 2024 despite any arguments that the conviction may be unsafe is not as surprising as it may seem. Ultimately,

there may be good reason for Oxford not to have a Chancellor where there is a risk of dishonesty. It will be difficult for Oxford to assess the reliability of a conviction.

35. I hope that this opinion is clear. However, my Instructing Solicitors should contact me if I can provide further assistance.



HUGH SOUTHEY KC

MATRIX

11 September 2024