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In the courts: When is a resignation not a resignation?

When is a resignation not a resignation? This question was put to the Administrative Court recently, during judicial review proceedings brought by an Independent Councillor on Wigan Council.



Stephen Jones, elected councillor in 2016, told the chief executive of Wigan Council in an email on 5 January 2018, "as of the 20th February 2018, I will be resigning from my role..."

Three days later, Councillor Jones withdrew his earlier words of planned resignation. The Chief Executive, Donna Hall, who is also the Returning Officer of Wigan Council,

denied that this was possible. In her capacity as Returning Officer, Ms Hall called a by-election to fill the vacancy which Wigan Council claimed arose on 5 January.

Councillor Jones (acting in person) brought judicial review proceedings against Wigan Council. At the permission stage of proceedings, he asked the Court to declare that he remained a councillor, and to restrain the Council from conducting the by-election.

Kerr J granted permission to continue the judicial review, expressing grave concerns about the lawfulness of the by-election. He refused the injunction against Wigan Council, noting that it is not the Council, but the Returning Officer, which is responsible for calling by-elections under the Local Government Act 1972. Kerr J concluded that he could not restrain the by-election due to the statutory distinction between the roles, and the lack of service upon Ms Hall in a proper capacity (even though, as Chief Executive, she was already busy defending the proceedings).

Two days before the by-election, Councillor Jones (who, by this stage, had instructed the Electoral Law Group at K&L Gates) issued an urgent application against the Returning Officer. Martin Spencer J heard the application less than 24 hours before the polls were due to open.

The Claimant submitted that the Returning Officer can only call a by-election when a vacancy arises, and that a vacancy occurs upon the resignation of a councillor. Councillor Jones' email did not constitute a resignation within the statutory definition. Therefore, the Returning Officer had acted ultra vires and had no power to call the by-election.

Counsel for the Returning Officer argued that the application should fail on the procedural grounds that the same application had already been refused. Further, substantively, he submitted that the resignation took effect on the day that Councillor Jones sent his email.

Martin Spencer J held that the email of 5 January did not constitute a valid resignation. The email was merely notice of an intention to resign at some future date. This "would at its highest, result in a vacancy occurring from that date".

The judge concluded, "the finding which I have made sweeps from under her feet the Returning Officer's very jurisdiction to act at all." Despite the court's "enormous reluctance" to interfere with democratic processes, it granted summary judgment to the Claimant and an injunction restraining the by-election from taking place.

Piers Coleman is a partner and Alexander Bradley-Sitch is an associate at K&L Gates. The case was Stephen Jones v Wigan Council [2018] EWHC 528 (Admin)

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