

R v MACKINLAY, GRAY AND LITTLE

MR JUSTICE EDIS

SOUTHWARK CROWN COURT

9th January 2019

Marion Little is a senior and respected employee of the Conservative Party at its Central Headquarters and has been so for many years. She was able to say that she has been a friend to Prime Ministers and other very senior political figures. She has now been convicted, on overwhelming evidence, of two very serious offences of deliberately exceeding the spending limit on the short campaign in South Thanet in 2015, and then creating dishonest documents to hide what she had done. That was the election when Craig Mackinlay defeated Nigel Farage. No-one can know whether her misconduct had any effect on the outcome of that election, but she plainly intended that it would.

Her offence is made worse by the fact that she created her dishonest documents and presented them to the candidate, Craig Mackinlay, and his Agent, Nathan Gray for signing. They did so in good faith, not knowing what she had done. This placed them at grave risk of conviction, and is a significant aggravating feature in her case.

The overspend was very substantial.

The law governing the maximum permitted amount which a candidate can spend, or which can be spent on behalf of a candidate, in a General Election exists to ensure a level playing field and also to limit the extent to which the electorate can be manipulated by costly and sophisticated systems designed to spread a message on behalf of a candidate in a Parliamentary election. Our laws relating to elections are important and must be respected. The law was passed by Parliament in the Representation of the People Act 1983 to protect democracy itself. The law is enforced by criminal offences which have been created in order to discourage people from breaking the law to try to win elections. This was done because Parliament decided that it was a necessary part of a system of free and fair elections. An election in a constituency selects a member of Parliament who becomes a member of the House of Commons which is the prime body responsible for making new laws in this country. The means by which our lawmakers are selected is part of the rule of law itself.

Marion Little acted dishonestly by preparing returns which she knew were neither complete nor accurate and which falsely showed that the sum spent on the 2015 General Election short campaign in South Thanet was less than the permitted amount when it was not. I am quite satisfied that of those who worked on Mr. Mackinlay's campaign, she was the author and origin of this falsehood. In short, she created false documents designed to show that Mr. Mackinlay had been elected according to law, when he had not. Neither he nor Mr. Gray, the agent, knew what she had done and both trusted her to prepare honest returns and intended to provide truthful and complete returns of the expenses.

I am satisfied that Mrs Little deliberately set about concealing the true nature of the Mackinlay campaign very soon after she arrived in South Thanet. She became the agent in all but name, but could not take over formally because that would have meant that a proportion of her salary had to be declared as an expense and she is paid more than twice what Mr. Gray was paid. Her own expenses on their own would have meant that the campaign exceeded its permitted cost. She never had any intention of declaring her own costs.

The deployment of Mrs. Little's team to South Thanet on 23rd March 2015

I am quite satisfied that between 23rd March 2015 and the 7th May 2015 Marion Little worked at least 50% of her time as campaign manager and agent (in all but name) for Craig Mackinlay. The evidence for this proposition was quite overwhelming. Not one minute of her salaried time was ever declared on the return for the short campaign. This was obviously dishonest.

It is relevant to sentencing in her case that part of her criminality resulted from an inadequate level of supervision of her work. I am satisfied that she was able to act as she did because of a culture of convenient self-deception and lack of clarity about what was permissible in law and what was not at Conservative Central Headquarters in this campaign. There appears to have been a belief that Central Headquarters staff salaries and accommodation of staff employed by Central Headquarters were a central party expense, even if those staff were living temporarily in a constituency for the duration of the election campaign. If they were spending a significant amount of time working on behalf of the candidate to try to secure his election as member of Parliament for South Thanet, this

simply is not right. No evidence emerged during this trial to suggest that senior management ever made any effort to ensure that such staff did not work on the campaign for the local candidate or to regulate what they did with the election expenses regime in mind. The evidence that centrally employed staff could not be a candidate expense was either deliberately untrue or given because these witnesses have chosen to hold this view without any proper basis at all, and because it is convenient. Mr. Mabbutt gave evidence of this subject which was more careful and more accurate than that given by Victoria Goff and Lord Gilbert. It is necessary to mention this factual conclusion I have firmly reached because it places Mrs. Little's offending in context. She was not alone in that she worked in a culture which tolerated some of what she did.

It is disappointing that when it was appreciated that South Thanet in 2015 was a unique election campaign because Nigel Farage was fighting the seat on behalf of UKIP no proper legal advice or guidance appears to have been sought by anyone about the legal consequences of deploying a Central Headquarters team to conduct the campaign on behalf of the candidate there. No proper clear instructions were given to Mrs. Little as to how she should deal with this problem.

What actually happened was that a campaign team was sent down to South Thanet on 23rd March 2015, they were accommodated in hotels in the constituency and the salaries of those who were salaried were paid, and those responsible for this decision knew that none of these costs would appear on the candidate's return, even though they were working for his election campaign. They could not appear on the short campaign return because that only allowed £15,016.38 to be spent in all, and most of that sum was required for other things which had already been incurred.

This Central Headquarters campaign team which was led by Marion Little immediately set about a revamp of the local candidate's campaign message. All the new Craig Mackinlay campaign literature required signing off at Conservative Central Headquarters before it could be used. All that expensive work was a direct replacement of the work which had been done by Nathan Gray, Mr. Mackinlay and others in the local association to produce the original set of campaign literature. Nathan Gray's time, everyone agreed, was an election expense which should be on the return, but not, it would seem, anyone's else's when replicating what he did. A degree of sophistry was deployed in defending this untenable position during this trial.

The Battle Bus was a candidate expense in South Thanet

In this campaign a campaigning method called “the Battle Bus”, or “Road Trip 2015”, or “Team2015” was employed. This involved busing in significant numbers of volunteers to a constituency to campaign there. Substantial costs for transport and accommodation would be incurred and these would not appear on the candidate’s expenses return either, whatever they did when they got there.

On 26th April 2015 the “Battle Bus” or “Team2015” arrived for one of these visits to South Thanet, and the evidence is clear what these volunteers did when they got there.

By an email dated 25th April 2015 Marion Little told Deborah Feldman, at Conservative Party Headquarters, exactly what they were going to do, namely deliver a Ramsgate Regeneration Leaflet.

This instruction was given to the volunteers themselves by Mrs. Little in a document she created which said that there were three objectives for them

- Deliver 6k leaflets in Ramsgate to publicise Craig’s Ramsgate Regeneration plan
- Hand address envelopes to different groups of target voters in the constituency
- Get posters up on main roads.

If the posters were generic or national posters, that part of the work would be a national party expense, but no informed person thinking honestly about the question could possibly conclude that that the first two items were anything other than a Craig Mackinlay campaign expense.

By an email on 26th April 2015 Mrs. Little reported back to Paul Abbott and Chrissie Boyle exactly what the volunteers had done:-

“Thank you to Team 2015

We managed to deliver just under 7k leaflets and hand address two wards of pledge envelopes and get some posters up”

This leaflet was one of the new items of campaign literature created by her team. It has a photograph of Craig Mackinlay on the front, and another on the back. It says, among other things, “Craig Mackinlay, getting things done for Ramsgate”, and “Promoted by Nathan Gray on behalf of Craig Mackinlay”. It is campaign literature and its costs including the cost of its distribution were obviously a declarable election expense by the candidate. Some astutely drafted material was distributed to constituencies which might perhaps suggest otherwise, but any fully informed person standing back and thinking properly and honestly about this would know the true position. Some leaflets were distributed by paid delivery contractors

and at least part of that cost was declared. How could anyone honestly think that the costs of the accommodation and transport of people who would do the same work for nothing could somehow be a national expense?

I wish to make it clear that the only other evidence which the jury heard about the Battle Bus in any other constituency in 2015 came from Anna Soubry MP. She made it quite clear that when the volunteers came to her constituency all they did was a survey required by the national party to better target its national direct mail campaign. This was rightly regarded in her case as national expenditure and properly not included in her own return. She had none of her campaign literature left to be distributed by them in support of her candidacy, so she was able to say categorically that this did not happen.

Whether the associated cost of this activity is local or national expenditure depends on what they do. This should have been obvious to any informed person thinking properly and honestly about the question.

The accommodation costs of a volunteer were the subject of an email exchange between Mrs Little and Lady Feldman and Paul Abbott in April 2015, when it was agreed that he should not stay in the constituency because he was going to be on the national return, and not on the candidate spend, even though he was going to be working for weeks on the Mackinlay Campaign.

Some examples of individual acts of deceit in preparing the returns

Two invoices for the Regenerate Ramsgate leaflet, totalling £238, were simply and dishonestly left off the return by Mrs. Little. This act, on its own, was enough to commit the offences of which she was convicted in relation to the short campaign return which falsely showed expenses as having been under the limit but only by £178.23.

The treatment of the Nathan Gray's remuneration and accommodation as agent in the short campaign was also dishonest. This was said to have amounted to £916.66. It should have been about 60% of the total sum earned by him during the short campaign which was the proportion he himself used to separate out his time for his work on behalf of the candidates in the Town and District Council elections in the long campaign. This would have been £1,040, or an additional £123 or so for the return. His hotel accommodation was dishonestly buried and omitted from the return. This also was all in the short return and amounted to at least £550.

The sum actually used for the cost of campaign posters (called "Correx Boards") for Mr. Mackinlay in the short return appears to have been simply invented. The jury heard about

some guidance issued by the Conservative Party which suggests that generic “Vote Conservative” posters can be discounted by 25% to allow for their re-use in at least two subsequent elections. These were not generic posters, but posters for Mr. Mackinlay by name. The sum on the return was not 25% of the cost of the boards and no-one was able to explain where it came from. That in the short campaign was £854, which is a significant under declaration when the “headroom” before the legal limit was reached was small.

In addition, therefore, to the shameless use of a more or less full time professional campaign team at no cost to the candidate which I have discussed above, there were also what might be called small time financial frauds. Documents which were inconvenient were buried and convenient numbers made up.

I have said above that the treatment of the costs of the Central Headquarters campaign team and the Battle Bus was possible because of a culture of convenient self-deception by others and a lack of proper authoritative guidance about what could, and could not, be done for a candidate without incurring a declarable expense. I should make it clear that there is no evidence that anyone other than Marion Little was aware of the dishonest calculations and concealment of invoices.

The defendant

The defendant has never acted dishonestly before. This kind of offence will, for obvious reasons, often be committed by such people. It is because she is a gifted, hard-working and decent person that she was in a position to commit such an offence. Good character therefore counts for less in sentencing terms in this kind of offence than it might for others. It is possible that it is because Parliament contemplated this factor that the maximum sentence is as short as it is, at 12 months. Nevertheless, her character evidence was very impressive and I do discount the sentence to some extent because of it.

The offences are a breach of the trust which the public places in its great political parties and in those who work for them to ensure that the candidates they select and offer for election conduct their campaigns in accordance with the law.

Sentencing

I have no doubt that the conduct of which Marion Little has been convicted passes the custody threshold and requires a sentence of imprisonment. It is called “corrupt practice” in the Act and that is a good description of it. Perverting the course of an election is in

some ways similar to perverting the course of justice. In each case it is a crime committed against the public which undermines a vital public institution.

I have decided in this case that I can suspend the sentences of imprisonment which I must pass. Those who are responsible for election expenses in the future should appreciate that the decision to suspend these sentences is taken for one specific reason and that, but for this, Marion Little would be serving a prison sentence starting today.

That reason is that her husband is gravely ill. He has cancer and is receiving treatment for it. She and her husband both hope that this treatment will succeed, but his life is plainly at risk. They have been married for many years and I do not consider that it is necessary to remove what may perhaps, despite those hopes, turn out to be their last few months together.

This case should operate as a warning to those involved in future elections that prison is the usual consequence of deliberately corrupt practice on a significant scale. Mrs. Little is not going to prison today for one reason only. It would have a disproportionate effect on her husband, who is an innocent man. She is caring devotedly for him through what may perhaps prove to be a terminal illness.

It is also true that she has given decades of devoted and impeccable service to the Conservative Party and works tirelessly for good causes, including those promoted by her local church. She is a good person who has committed a serious crime because of misguided loyalty to her Party and her political principles. She was carried away by her conviction that the defeat of Nigel Farage was an overwhelmingly important political objective. She was entitled to that view as a political judgment, but that did not entitle her to commit crime.

As I have said above, her good character on its own could not greatly affect the sentence, but it is of some relevance to the question of whether it can be suspended or not when taken with other more substantial factors.

The maximum penalty for these offences is 12 months imprisonment. Consecutive terms could be imposed, but this was a single course of conduct and I should not use consecutive sentences simply to avoid being bound by a maximum sentence selected by Parliament.

It appears to me that this is an offence of the utmost gravity in the statutory context and that therefore it is open to me to pass a sentence which is the maximum allowed by Parliament, namely 12 months. Were it otherwise consideration would have to be given to consecutive terms to ensure that the criminality is properly recognised. This was a

sustained and deliberate course of conduct and the overspend on the short campaign was very substantial indeed.

The sentence on each count will therefore be 9 months imprisonment, suspended for two years.

I have decided not to impose a fine because the sentences of imprisonment I have passed adequately reflect the criminality involved.

Costs

These offences have caused very substantial costs to be incurred by the prosecution. Mrs. Little does not have the means to pay the whole of the very substantial costs which have been incurred in this case, but I do order her to pay a contribution to the prosecution costs of £5,000 payable on or before the 31st December 2019.