



**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
KING'S BENCH DIVISION**

**In the Matter of the Electoral Law Act (Northern Ireland) 1962  
And in the Matter of a Local Government Election for Waterside District Electoral  
Area, Derry City and Strabane District, held on 18<sup>th</sup> May 2023**

The Petition of:

(1) Philip McKinney

[REDACTED]

("the first petitioner")

and

(2) Herbert Faulkner

[REDACTED]

Margaret Faulkner

[REDACTED]

Hugh Lindsay

[REDACTED]

Sandra Margaret McDermott

[REDACTED]

("the second petitioner"):-

The Petition of the first petitioner and the second petitioner shows:-

1. That the first petitioner was a candidate at the above election and that the second petitioner voted as electors at the above election.
2. That the election was held on 18<sup>th</sup> May when Chelsea Cooke, Caitlin Deeney, Darren Guy, Christopher Jackson, Philip McKinney, Niree McMorris, Janice Montgomery, Sean Dermott Mooney, Davina Pulis and Martin Reilly were candidates, and on the 19<sup>th</sup> of May 2023 Chelsea Cooke, Caitlin Deeney, Darren Guy, Christopher Jackson, Niree McMorris, Sean Dermott Mooney and Martin Reilly were declared to be duly elected.
3. That:
  - 3.1 Regulation 57(12) of the Electoral Law (Local General Election) Regulations (Northern Ireland) 1973 provides:

(12) The deputy returning officer shall proceed to transfer surpluses until no surplus remains to be transferred. However, a surplus shall not be subject to transfer where that surplus, together with any other surpluses at that particular stage of the count not already transferred is –

- (a) Less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or
- (b) Less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

3.2 At the conclusion of stage 6 of the count, two candidates (Chelsea Cooke and Niree McMorris) each had a surplus of votes more than the quota. The value of the two surpluses was 164.11. There were three continuing candidates (Sean Dermott Mooney, Martin Reilly and the first petitioner, Philip McKinney) with two places to fill.

3.3 Mr Mooney had 1355.11 votes. Mr Reilly had 1154.21 votes and the first petitioner Mr McKinney had 1105.05 votes. Therefore, the first petitioner had 49.16 votes fewer than Mr Reilly. The value of the surpluses (164.11) significantly exceeded the difference in votes between the first petitioner and Mr Reilly.

3.4 The deputy returning officer failed to carry out a seventh stage of the count to transfer Chelsea Cooke's surplus, and potentially an eighth stage if Ms McMorris' surplus became material and proceeded erroneously to a formal declaration of those elected, which included Mr Reilly and excluded the first petitioner.

3.5 The value of the surpluses was large enough to potentially affect the outcome of the final results in that the first petitioner and not Martin Reilly may have been duly elected had a 7<sup>th</sup> and (if required) an 8<sup>th</sup> stage of the count been carried out as required by election rules.

4. The interim chief electoral officer has acknowledged that an error occurred in the calculation stages in the Waterside DEA Count in that the transfer of the surplus should have been completed, but the team moved to the exclusion of a candidate instead. The interim chief electoral officer is satisfied that the transfer of the surplus would have been large enough to have potentially impacted the final results.

5. The petitioners pray:

- (1) That it may be ordered that the sealed packet of the counted ballot papers be opened;
- (2) That it may be ordered that stage 7 and, if necessary, stage 8 of the count be carried out;
- (3) That, subject to the outcome of (2), it may be determined: (i) that the said Martin Reilly was not duly elected and ought not to have been returned; (ii) that the election of Martin Reilly is void; (iii) that the first petitioner (Philip McKinney) was duly elected and ought to have been returned; (iv) that the first petitioner be declared elected in room of Martin Reilly;
- (4) That the petitioners may have such further or other relief as may be just.

Dated this 5<sup>th</sup> day of June 2023

Signed:-

  
Philip McKinney

  
Herbert Faulkner

  
Margaret Faulkner

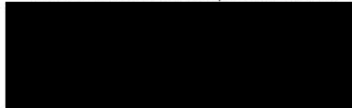
  
Hugh Lindsay

  
Sandra Margaret McDermott

This petition was presented by CMG Cunningham Dickey, whose address for service is 18 May Street, Belfast, Co Antrim, Northern Ireland, BT1 4NL, solicitors for the petitioners.

It is proposed to serve a copy of this petition on:

(1) The First Respondent, Martin Reilly, whose address is:



(2) The Second Respondent, Sarah Ling (Interim Chief Electoral Officer), whose address is

*ELECTORAL* Electoral Office for Northern Ireland,  
St. Anne's House,  
15 Church Street,  
Belfast,  
BT1 1ER.

(3) The Director of Public Prosecutions for Northern Ireland whose address is:

The Public Prosecution Service for Northern Ireland,  
Belfast Chambers,  
93 Chichester Street,  
Belfast,  
BT1 3JR.

PRESENTED ON 5<sup>th</sup> JUNE 2023 PURSUANT TO SECTION 79(1) ELECTORAL LAW ACT  
(NORTHERN IRELAND) 1962 AND RULE 4(3) OF ELECTION PETITION RULES (NI) 1964