

Judicial Review

Application for urgent consideration

This form must be completed by the claimant or the claimant's advocate if exceptional urgency is being claimed and the application needs to be determined within a certain time scale.

The claimant, or the claimant's solicitors, must serve this form on the defendant(s) and any interested parties with the N461 Judicial review claim form.

To the Defendant(s) and Interested Party(ies) Representations as to the urgency of the claim may be made by defendants or interested parties to the relevant Administrative Court Office by fax or email:-

For cases proceeding in

In the High Court of Justice Administrative Court	
Claim No.	
Claimant(s) <i>(including ref.)</i>	THE GOOD LAW PROJECT (REF PG/3553)
Defendant(s)	THE ELECTORAL COMMISSION
Interested Party(ies)	Vote Leave Darren Grimes

London Fax: 020 7947 6802
email: administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk

Birmingham Fax: 0121 250 6730
email: administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk

Cardiff Fax: 02920 376461
email: administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk

Leeds Fax: 0113 306 2581
email: administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk

Manchester Fax: 0161 240 5315
email: administrativecourtoffice.manchester@hmcts.x.gsi.gov.uk

SECTION 1 Reasons for urgency

We are seeking only a modest degree of expedition which is due to the nature of the issues raised in this case which are of grave public importance, and given the ongoing political debate around these issues require speedy resolution.

Because of the time that has already passed since the Referendum before information about the facts of Vote Leave Ltd's spending and the Electoral Commission's treatment of it came to light - in particular, the revelation that Vote Leave Ltd made the relevant payments itself - it is important that this dispute be determined quickly.

See the grounds for additional arguments on this issue.

SECTION 2 Proposed timetable (tick the boxes and complete the following statements that apply)

- a) Urgency (including abridgement of time for AOS) is sought and should be considered within _____ hours/days
If consideration is sought within 48 hours of issue, **you must complete Section 3 below.**
- b) Interim relief is sought and the application for such relief should be considered within _____ hours/days
If consideration is sought within 48 hours of issue, **you must complete Section 3 below.**
- c) The N461 application for permission should be considered within _____ hours/days
If consideration is sought within 48 hours of issue, **you must complete Section 3 below.**
- d) If permission for judicial review is granted, a substantive hearing is sought by 21ST DECEMBER 2017 (date)

SECTION 3 Justification for request for immediate consideration

Date and time when it was first appreciated that an immediate application might be necessary.

Date _____	Time _____
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Please provide reasons for any delay in making the application.

What efforts have been made to put the defendant and any interested party on notice of the application?

SECTION 4 Interim relief (state what interim relief is sought and why in the box below)

A draft order must be attached.

SECTION 5 Service

A copy of this form of application was served on the defendant(s) and interested parties as follows:

Defendant

by fax machine to time sent
Fax no. time

by handing it to or leaving it with
name

by e-mail to
e-mail address
Rupert Grist
<RGrist@electoralcommission.org.uk>

Date served
Date
23/10/2017

Interested party

by fax machine to time sent
Fax no. time

by handing it to or leaving it with
name

by e-mail to
e-mail address
info@voteleave.uk;
darrent@brexitcentral.com

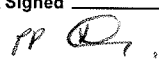
Date served
Date

I confirm that all relevant facts have been disclosed in this application

Name of claimant's advocate

name
Jessica Simor QC / Tom Cleaver

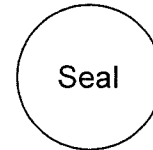
Claimant (claimant's advocate)

Signed


Judicial Review Claim Form

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

In the High Court of Justice Administrative Court	
Help with Fees - Ref no. (if applicable)	H W F - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>



<i>For Court use only</i>	
Administrative Court Reference No.	
Date filed	

Is your claim in respect of refusal of an application for fee remission? Yes No

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
THE GOOD LAW PROJECT

address
3 East Point High Street
Sevenoaks
Kent
TN15 0EG

Telephone no. **Fax no.**

E-mail address
Maugham@devchambers.co.uk

Claimant's or claimant's legal representatives' address to which documents should be sent.

name
Deighton Pierce Glynn Solicitors

address
8 UNION STREET
LONDON SE1 1SZ

Telephone no. **Fax no.**

E-mail address
PGLYNN@dpglaw.co.uk; MAIL@DPGLAW.CO.UK

Claimant's Counsel's details

name
JESSICA SIMOR QC / TOM CLEAVER

address
MATRIX CHAMBERS
Griffin Building, Gray's Inn
London WC1R 5LN
BLACKSTONE CHAMBERS, Blackstone House,
Temple, London, EC4Y 9BW

Telephone no. **Fax no.**

E-mail address
JESSICASIMOR@MATRIX.CO.UK;

1st Defendant

name
ELECTORAL COMMISSION

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name
Rupert Grist

address
The Electoral Commission,
3 Bunhill Row
London EC1Y 8YZ

Telephone no. **Fax no.**

E-mail address
Rgrist@electoralcommission.org.uk

2nd Defendant

name

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name

address

Telephone no. **Fax no.**

E-mail address

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name Vote Leave	
address Westminster Tower, 3 Albert Embankment, London, SE1 7SP	
Telephone no.	Fax no.
E-mail address info@voteleave.uk	

name Darren Grimes	
address c/o BrexitCentral, 1st Floor, Millbank Tower, 21 - 24 Millbank, London SW1P 4QP	
Telephone no.	Fax no.
E-mail address darren@brexitcentral.com	

SECTION 3 Details of the decision to be judicially reviewed

Decision: Failure to investigate and take action in respect of the spending of Vote Leave Ltd and / or other campaigners in the period leading up to the 2016 Referendum
Date of decision: 22nd March 2017 and unknown date(s) thereafter.

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name Electoral Commission

address The Electoral Commission, 3 Bunhill Row London E1Y 8YZ

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice
Direction 54 (Challenging removal)?

Yes No

Are you making any other applications? If Yes, complete Section 8.

Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate?

Yes No

Are you claiming exceptional urgency, or do you need this application
determined within a certain time scale? If Yes, complete Form N463 and
file this with your application.

Yes No

Have you complied with the pre-action protocol? If No, give reasons for
non-compliance in the box below.

Yes No

--

Have you issued this claim in the region with which you have the closest
connection? (Give any additional reasons for wanting it to be dealt with in
this region in the box below). If No, give reasons in the box below.

Yes No

--

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below. Yes No

SECTION 5 Detailed statement of grounds

set out below attached

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim Yes No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

SECTION 7 Details of remedy (including any interim remedy) being sought

SECTION 8 Other applications

I wish to make an application for:-
1. A Cost Capping Order

SECTION 9 Statement of facts relied on

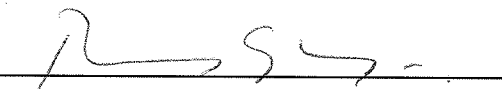
Please see statements and documents attached.

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name POLLY GLYNN

Name of claimant's solicitor's firm Deighton Pierce Glynn Solicitors

Signed 
Claimant('s solicitor)

Position or office held _____
(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

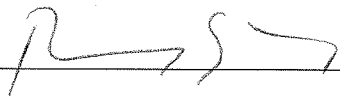
- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate (<i>if legally represented</i>) | | |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court (<i>with page references to the passages relied upon</i>) | | |
| <input type="checkbox"/> Where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources | <input type="checkbox"/> included | <input type="checkbox"/> attached |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|---|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contain the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed



Claimant('s solicitor)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No:

BETWEEN:

R (THE GOOD LAW PROJECT)

Claimant

and

ELECTORAL COMMISSION

Defendant

VOTE LEAVE LIMITED

MR DARREN GRIMES

Interested Parties

STATEMENT OF FACTS AND GROUNDS

Introduction and Summary¹

1. This is a challenge to the Electoral Commission's conduct in failing properly to supervise, investigate and take action in respect of the spending of Vote Leave Ltd (the body designated as the official 'Leave' campaign) and/or other campaigners in the period leading up to the 2016 EU Referendum ("the Referendum").
2. There are four grounds of challenge:
 - 2.1 **First**, the Electoral Commission erred in law by wrongly proceeding on the basis that a participant does not 'incur referendum expenses' if it pays for the costs of other referendum campaigns (in this case advertising services) with a view to promoting or procuring a particular outcome of the referendum. In that regard, the Electoral Commission appears wrongly to have understood that the concept of 'referendum expenses' and 'donations' in the Political Parties Elections and

¹ Numbers in square brackets [] refer to the page numbers of documents in the permission bundle

Referendum Act 2000 (“PPERA 2000”) are mutually exclusive. However, the respective provisions are intended to meet different regulatory objectives; those relating to ‘referendum expenses’ are concerned with ensuring that campaigns do not exceed a statutory spending limit, whilst those related to donations are concerned to ensure that donations are only accepted from permitted donors. Here, the relevant expenditure incurred by Vote Leave of between £625,000 and £725,000 paid to Aggregate IQ (“AIQ”) (on top of the £2.7m that it declared as itself having spent on AIQ) constituted ‘referendum expenses’ that Vote Leave should have declared.² Having incurred those expenses, Vote Leave exceeded its statutory spending limit by more than 10%. The fact that it paid the money in return for services that were actually or allegedly provided to other campaigners rather than directly to Vote Leave does not take that expenditure out of the statutory spending limit.

2.2 **Secondly**, the Electoral Commission in any event erred in law in concluding that on the basis of the facts it had regarding the arrangement between Vote Leave and Darren Grimes, there was no ‘common plan expenditure’ within paragraph 22 of Sch. 1 European Union Referendum Act 2015 (“EURA 2015”). Those facts disclosed a relevant plan or arrangement between Vote Leave and Mr Grimes in relation to the sum of around £625,000 paid by Vote Leave to AIQ for services provided by AIQ to Mr Grimes. The effect of paragraph 22 of Sch. 1 in those circumstances is that Vote Leave, as a designated participant, was obliged to declare the expenditure as part of its own expenditure, which it did not do, and moreover, exceeded its statutory spending limit.

2.3 **Thirdly**, in so far as the Electoral Commission knew that Vote Leave was paying for other referendum campaigns and/or informed Vote Leave that it was permitted to proceed in this way, the Electoral Commission misdirected itself as to the law and therefore necessarily failed in its supervisory duties. In so far as it did not provide the same information to all campaigns (which is currently unclear

² Additional issues arise as to the £20,000 paid by Vote Leave as a cash donation to Muslims for GB and £50,000 paid by Mr. Clake to Darren Grimes as a ‘non-cash’ donation, which may have been paid directly to AIQ, and which may be related to Vote Leave. The Claimant reserves his position on this pending full disclosure by the Electoral Commission.

as the Electoral Commission has refused to give disclosure) its error was exacerbated.

- 2.4 **Fourthly**, in any event, in all the circumstances of the case it was unreasonable for the Electoral Commission to conclude that there was no reason even to suspect any breach of the spending rules, and not to open an investigation into whether Vote Leave had been required to declare the £725,000 that it spent on Darren Grimes and Veterans for Britain (and possibly the further £20,000 paid by Vote Leave to Muslims for GB, another Leave campaign) as 'referendum expenses'. That is so, even assuming that the Electoral Commission's interpretation of the law was correct.
3. On 29 September 2017, the Claimant sent the Electoral Commission a Pre-Action Letter [3.243]. In its response of 12 October 2017 [3.252], the Electoral Commission accepted that the Claimant has standing and was within time to bring the challenge. However, it rejected the arguments made and declined to answer the questions posed or to provide the information requested by way of disclosure.
4. Accordingly, the Claimant brings this challenge and seeks:
- 4.1 An order quashing the decision(s) of the Electoral Commission not to take any further action in respect of campaign spending by Vote Leave Ltd, Mr Grimes, and (if appropriate in view of the facts as they appear after the Electoral Commission has discharged its duty of candour) Veterans for Britain (and any other campaigns in so far as relevant); and,
- 4.2 An order requiring the Electoral Commission to reconsider whether to open an investigation into, or bring a prosecution against, Vote Leave UK and any other participant on the basis of a correct understanding of the law, or otherwise to take appropriate action;
- 4.3 Any further Order that the Court may consider appropriate.
5. Further, in light of the very great significance of the case, the delay that has already passed without any proper investigation since the referendum, and the relevance of the information to the public over the next 18 months, expedition is sought. Should the Court decide to grant permission on the papers, the Claimant invites the Court to give

directions leading up to a substantive hearing lasting 1.5 days before the end of the Michaelmas Term 2017.

The facts

6. On 18 September 2017, the news website The Ferret published a number of documents apparently disclosed by the Electoral Commission pursuant to a Freedom of Information Act request concerning its enquiries into spending by Vote Leave and Mr Grimes during the Referendum.³
7. Those documents include emails from Mr Grimes to the Electoral Commission dated 8 August 2016, 9 September 2016, 15 September 2016, and 3 March 2017 in which he provided information about expenses of approximately £675,000 that he had declared as having been incurred by him in relation to services provided by AIQ. In fact, £625,000 of those expenses had been paid to AIQ directly by Vote Leave.⁴ [3.10, 3.15,3.25,3.71]
8. From those documents, together with records of expenditure and donations on the Electoral Commission web-site, the factual position as currently known, is as follows:
 - 8.1 Vote Leave and Mr Grimes each initially reported that cash donations had been made from Vote Leave to Mr Grimes in the last weeks before the referendum: £400,000 on 13 June 2016, £40,000 on 20 June 2016, and £185,315.18 on 21 June 2016. [3.164]
 - 8.2 Mr Grimes also reported that he had incurred referendum expenses in respect of services from AIQ consisting of identical amounts on near-identical dates: £400,000 on 13 June 2016, £40,000 on 17 June 2016, and £185,315.18 on 21 June 2016. [3.165]
 - 8.3 Vote Leave reported that it had incurred referendum expenses of almost £2.7m in respect of services from AIQ across the period, beginning on 12 April 2016.[3.173 - 3.184]

³ <https://theferret.scot/brexit-campaigners-spending/>

⁴ The other £50,000 were likely paid directly by Mr. Clake, who is declared by Darren Grimes as having provided a non-cash donation of that amount. It is unclear the extent to which Mr. Clake and Vote Leave were working together, although the Electoral Commission shows Mr. Clake as having 'donated' to Vote Leave.

- 8.4 In August/September 2016, the Electoral Commission asked Mr Grimes about the donations from Vote Leave and his spending on services from AIQ. In response, Mr Grimes said *"we didn't discuss with Vote Leave how we would spend the money apart from telling them that it was for our digital campaign and that is why we asked for the money to be paid directly to the company we were working with Aggregate IQ."* [3.10] He also explained that he considered Vote Leave's payments to amount to a cash donation to him (or to his campaign, BeLeave – although in fact he himself was the registered participant): *"Vote Leave did not buy advertising services to gift to BeLeave but discharged BeLeave's debt to AIQ by a transfer of cash at our request."* [3.15]
- 8.5 On 9 September 2016, the Electoral Commission notified Mr Grimes that it considered the transactions between him and Vote Leave to constitute donations of services by Vote Leave, rather than donations of cash: *"In respect of the donations received from Vote Leave, you were not in receipt of money, whether by cash, cheque or bank transfer. Rather, regardless of when and who made the agreement with AIQ, you did receive a service provided by AIQ and paid for by Vote Leave. The Commission therefore considers the donations to have been non-cash donations of digital marketing and will be amending the registers accordingly."* [3.17]
- 8.6 On or around 4 October 2016, the Electoral Commission notified Mr Grimes that it had concluded that it would not be appropriate to take further action against him in respect of the misreporting of a non-cash donation as a cash donation. [3.28]
- 8.7 On 8 February 2017, apparently in response to a request from an unidentified journalist, the Electoral Commission wrote:

"With regards to your concerns about Vote Leave's donations to Mr Darren Grimes, the donations were made by way of a direct payment from Vote Leave to AggregateIQ for services provided to Mr Grimes, which is an acceptable method of donating under the rules. [...]"

The rules on 'working together' are only engaged where there is spending in accordance with a common plan or arrangement. The Commission has prior to your letter looked into the donations in question, including with Vote Leave and Mr Grimes. Our enquiries did not find evidence that Vote Leave and Mr Grimes worked together in a way that engaged the 'working together' rules on campaign

spending. Should further information suggest a breach of the campaign spending rules has taken place, the Commission will take this forward for consideration in line with our Enforcement Policy.” [3.36]

- 8.8 At some point in February 2017, however, the Electoral Commission noticed that Vote Leave had reported in its return that it had in fact worked together with Mr Grimes in relation to part of the campaign. It wrote to Mr Grimes asking him about (i) his involvement in work performed by AIQ for Vote Leave, and (ii) the reasons why he chosen to spend the donated funds on AIQ rather than any other company. Mr Grimes responded on 3 March 2017 saying, among other things:

“Until Vote Leave Ltd made me aware that they were in a position to make a donation and asked if BeLeave was able to make use of it we had not been able to put any funds behind pushing our messaging despite previous requests for donations. [...] I attended some Vote Leave Ltd events during the campaign as a volunteer activist and socialised with some members of staff I asked and was told that AIQ was running Vote Leave's digital campaign and I also became aware that AIQ had worked on Ted Cruz's presidential campaign, that I was greatly impressed by. I was therefore confident that they could assist us in putting the proposed donation to effect in the time available.

BeLeave ran its own independent campaign from the outset and throughout, we did not take any instruction, collaborate with, or indeed discuss any aspect of our digital campaign, or our relationship with AIQ with anyone from Vote Leave Ltd, apart from the fact of the donation itself.” [3.71]

- 8.9 On 22 March 2017, the Electoral Commission wrote again to Mr Grimes, saying:

“Having already undertaken enquiries in August 2016 in respect of the donations Vote Leave provided to you, the Commission opened an assessment following the receipt and analysis of the Vote Leave EU Referendum spending return. The spending return indicated that some working together did occur between you and Vote Leave and also that, like you, Vote Leave incurred spending with the Canadian company, AggregateIQ Data Services Ltd.

Having undertaken further enquiries as part of this assessment, the Commission is satisfied that it has reached a conclusion in respect of these matters based upon the information available.

We have concluded that, based upon the information available, there are no reasonable grounds to suspect that any breaches of PPERA occurred in respect of the reporting of potential working together with Vote Leave.

The Commission therefore considers the matter closed. If we become aware of further information which causes us to revisit this matter, we will contact you.” (emphasis added) [3.92]

9. In addition to the facts disclosed by those documents, the following other matters are material.
 - 9.1 In August 2016, when the ‘donation’ to Mr Grimes was first reported, the Times reported that “*a Vote Leave source*” had acknowledged that the purpose of the ‘donation’ was to ensure that Vote Leave Ltd could put more than £7m of its money towards the ‘Leave’ campaign, notwithstanding the £7m spending limit. The source was reported as saying that Vote Leave Ltd “*had given Mr Grimes the cash because it was close to breaching its £7 million spending limit and wanted to ensure all the money it had been given would be used.*”⁵ [3.194]
 - 9.2 At that time, Paul Stephenson (the Communications Director of Vote Leave) told iNews: “*We are very happy with the campaigning that he did. The campaigning was completely up to him. We were entitled to give the money to him, which is what we did. And we won – so it couldn’t have been all bad, could it.*”⁶[3.192]
 - 9.3 The spending returns relating to the Referendum also record that Vote Leave made a similar donation of £100,000 to Veterans for Britain. [3.164]. The Electoral Commission web-site records this as a ‘non-cash’ donation and that Veterans for Britain spent £100,000 on AIQ. [3.170] It is assumed therefore that the same practice occurred, namely Vote Leave paid AIQ £100,000 and that expenditure

⁵ <https://www.thetimes.co.uk/edition/news/fashion-student-given-625-000-to-spend-by-vote-leave-x5r75ws6t>

⁶ <https://iNews.co.uk/essentials/news/politics/vote-leave-defends-600000-donation-young-design-student/>

was then declared by Veterans for Britain as having been its own referendum expense. The Claimant does not know whether the Electoral Commission carried out any similar enquiries in relation to these transactions (documents relating to such enquiries have not been published or disclosed) and the Electoral Commission has failed to provide any information on this issue in response to the pre-action correspondence.

9.4 Mr. Grimes' spending returns also record that he spent a further £50,000 on services from AIQ, apparently funded by a £50,000 donation from an individual named Anthony Clake. There is no publicly-available information as to how and why Mr Clake came to donate that money, and in particular whether the donation was arranged by Vote Leave Ltd. Again, if the Electoral Commission has investigated that issue, it has not disclosed any documents relating to that investigation. The Electoral Commission's public database of donations shows Mr. Clake having donated £40,000 to Vote Leave on 17 June 2016, £50,000 to Darren Grimes on 16 June 2016.⁷ Again, these payments are recorded as 'non-cash donations' and it is assumed therefore, that Mr. Clake paid the money directly to AIQ. [3.165]

9.5 That same search engine shows that Vote Leave also made two donations of £10,000 each to Muslims for GB Ltd. These are recorded as 'cash' donations both made on 20 June 2016. [3.164]

The legal framework in outline

The Political Parties, Elections and Referendums Act 2000 ("PPERA 2000") and the European Union Referendum Act 2015 ("EURA 2015")

10. PERPA 2000 lays down rules in relation to the conduct of referendums, including limits on expenditure of participants and non-participants, requirements as to who may

7

<http://search.electoralcommission.org.uk/?currentPage=1&rows=10&query=Clake&sort=AcceptedDate&order=desc&tab=1&closed=common&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true&optCols=CampaigningName&optCols=AccountingUnitsAsCentralParty&optCols=IsSponsorship&optCols=RegulatedDoneeType&optCols=CompanyRegistrationNumber&optCols=Postcode&optCols=NatureOfDonation&optCols=PurposeOfVisit&optCols=DonationAction&optCols=ReportedDate&optCols=IsReportedPrePoll&optCols=ReportingPeriodName&optCols=IsBequest&optCols=IsAggregation>

authorise payments and obligations to provide detailed information in expenditure returns to the Electoral Commission. EURA 2015 provided for the holding of the referendum, and also made provision in Schedule 1 (partly modifying Part 7 of PPERA 2000, and partly freestanding) concerning expenditure limits for the Referendum and rules concerning the treatment of expenditure incurred pursuant to a common plan or arrangement between more than one participant.

11. Section 117 PPERA 2000 provides that save where an individual or body has registered as a 'permitted participant', it is prohibited from incurring expenses (including notional expenses) in excess of £10,000 during the referendum period, breach of which constitutes a criminal offence.⁸ Section 105 provides for individuals and bodies to become permitted participants by making a declaration to the Electoral Commission to that effect, in accordance with s. 106.
12. Vote Leave, Darren Grimes, Veterans for Britain and Muslims for GB were all 'permitted participants'. Mr. Clake was not. Vote Leave was also the designated as the official 'Leave' organisation pursuant to s. 108 2000 Act, as modified by paragraph 9 of Sch. 1 to EURA 2015, which provides that the Electoral Commission may designate only one permitted participant in respect of each of the two possible referendum outcomes.
13. Section 118 and Schedule 14 PPERA 2000 impose limits on "*referendum expenses*" that may be incurred by permitted participants during the referendum period (and, in some cases, prior to the referendum period, as provided in s. 118(4) and (5)). The spending limit for a permitted participant was £700,000: Sch 1, para. 25(2)(c) EURA 2015. The limit on expenditure for a permitted participant who was a body or person designated under s. 108 was £7million: Sch 14 para. 1(2)(a) 2000 Act, as amended by Sch. 1, para. 25(2)(a) Sch 1 EURA 2015.
14. The term "*referendum expenses*" is defined in s.111(2) PPERA 2000 as:

"expenses incurred by or on behalf of any individual or body which are expenses falling within Part I of Schedule 13 and incurred for referendum purposes."

⁸ The referendum period started on 15 April 2016 and ended on 23 June 2016: 10 week period prior to referendum date as provided in paragraph 1 Sch. 1 EURA 2015.

15. 'Expenses' within Part 1 of Schedule 13 are extremely broad (for example, "*advertising of any nature*" and "*market research*") and notably include "*any material to which s. 125 applies.*" That section applies to material which -
- "(a) provides general information about a referendum to which this Part applies;
 - (b) deals with any of the issues raised by any question on which such a referendum is being held;
 - (c) puts any arguments for or against any particular answer to any such question; or
 - (d) is designed to encourage voting at such a referendum."⁹
16. "*Referendum purposes*" is defined in s.111(3) PPERA 2000 as expenses incurred:
- (a) in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to any question asked in the referendum, or
 - (b) otherwise in connection with promoting or procuring any such outcome.
17. Section 112 further provides for 'notional referendum expenses', that is, expenses that must be treated as having been 'incurred' by the participant for the purposes of calculating its expenditure. This is to ensure that the provision of goods, facilities or services provided at a discount or zero cost are accounted for as 'referendum expenses'. The market value of such goods, facilities or services must be accounted for and declared as referendum expenses and count towards the expenditure limits of non-participants, permitted participants and designated permitted participants. There is no need for any contractual liability to arise in respect of the service, facility or goods 'donated', for the market value of the relevant services to count towards the relevant spending limit. Indeed, the purpose of the provision is to prevent expenditure limits being exceeded by

⁹ Sch 1, para. 19 PPERA provides that, for the referendum, the following are not "referendum expenses" for the purposes of the Act or the 2000 Act:

- expenses incurred in the publication of non-advertising material in a newspaper or periodical, in a broadcast by the BBC, S4C, the Gibraltar Broadcasting Corporation or in a programme included in a service from another licensed broadcaster;
- expenses in respect of, or in consequence of, translating materials from English to Welsh or Welsh to English;
- reasonable expenses incurred that are reasonably attributable to an individual's disability ("disability" has the same meaning as in the Equality Act 2010);
- expenses incurred in providing for the protection of persons or property at rallies or other public events.

way of the provision of donated assistance, which, had it been paid for, would have resulted in the permitted spending limits being breached.

18. S.120(2) PPERA 2000 requires permitted participants to submit a return after the end of a referendum period which contains, among other things, "*a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period in question*". As explained above, that includes the market value of any services, facilities or goods donated to the campaign, as provided for in s. 112.
19. Paragraph 23 of Sch.1 EURA 2015 modifies section 120 of PPERA 2000 for the purposes of the referendum. It requires permitted participants to include in their referendum expenses returns declarations as to a) whether any expenses of another individual or body are to be treated as having been incurred by or on behalf of the permitted participant (and if so, the details of any such expenses); and b) whether any expenses of the permitted participant are to be treated as having been incurred by or on behalf of another individual or body (and if so, the details of any such expenses).
20. It is an offence under s.118(2) PPERA 2000 for:
 - 20.1 a permitted participant which is a "*body*" (such as Vote Leave Ltd) to incur expenses above the statutory limit; and,
 - 20.2 the designated "*responsible person*" of such a body to authorise such expenses to be incurred, if he knew or ought reasonably to have known that the expenses would be incurred in excess of the limit.
21. It is also an offence under s.122(4) PPERA 2000 for a person without reasonable excuse to deliver a return which does not comply with the requirements of s.120(2) PPERA 2000.
22. Paragraph 22 of Sch. 1 EURA 2015 makes provision about the aggregation of expenses by persons "acting in concert" at the proposed referendum. Sub-paragraph (1) sets out the circumstances in which persons will be regarded as having acted in concert, i.e. where they have both incurred referendum expenses pursuant to a plan or other arrangement with a view to, or otherwise in connection with, promoting or procuring a particular outcome of the referendum. Sub-paragraphs (2) to (6) provide that where

expenses are incurred by persons pursuant to such a plan or arrangement the aggregate value of those expenses is to be regarded as having been incurred:

22.1 where one of the parties to the plan or arrangement is a designated body under s.118, by that body alone; and,

22.2 in all other cases, by each party to the plan or arrangement each accounting for the entirety of the value.

The Electoral Commission's powers and duties

23. Section 145 PPERA 2000 provides that the Electoral "*Commission must monitor and take all reasonable steps to secure, compliance with the restrictions and other requirements imposed by or by virtue of*" (emphasis added), among other things, Part 7 of PPERA 2000 (concerning referendums and in which all the above-cited provisions of PPERA 2000 appear). Schedule 1 para. 2 PPERA 2000 provides that: "*[t]he Commission may do anything (except borrow money) which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of their functions.*" Accordingly, the Commission's powers and duties involve both supervisory and enforcement functions.

24. Specific investigatory powers, backed by criminal sanctions,¹⁰ are provided in section 146 and Schedule 19B to PPERA 2000, including power to:

24.1 Require disclosure from any permitted participant: para. 1 Sch. 19B;

24.2 Carry out inspections pursuant to a warrant: para. 2 Sch. 19B;

24.3 Issue a notice to any person requiring them to produce information or documentation where the Commission has reasonable grounds to suspect that a person has committed a criminal offence or contravention: para. 3 Sch 19B;

24.4 Obtain an order from the High Court/Court of Session for document disclosure or the provision of information following non-compliance with the aforesaid notice: para. 4 Sch. 19B;

¹⁰ Para. 13 Sch 19B PPERA

- 24.5 Retain and make copies of documents and records obtained pursuant to the abovementioned order: paras. 6 and 7 Sch. 19B.
25. It is an offence under Schedule 19B paragraph 13 for a person to fail to comply with such a requirement without reasonable excuse.
26. Section 147 PPERA 2000 by reference to Schedule 19C provides for civil sanctions in relation to the commission of offences under the Act and the contravention of restrictions or requirements imposed by or the Act. This includes the power to issue 'stop notices', breach of which constitutes a criminal offence and to accept enforcement undertakings: Sch 19C, Part 3, para. 10 and Part 4, para. 15 PPERA 2000 respectively.
27. Section 148 also establishes offences concerning the withholding or concealment of information or documents that are disclosable pursuant to the other provisions of the Act.

Electoral Commission enforcement policy

28. Pursuant to PPERA 2000, the Electoral Commission is required to prepare and publish guidance as to the use of our powers to investigate and sanction potential offences and contraventions of PPERA 2000. The relevant latest Guidance on Enforcement was published in April 2016. [5.59] As stated in paragraph 1.2 of that Guidance, the Electoral Commission is required to have regard to it when exercising its enforcement functions. The Guidance relates both to the Electoral Commission's supervisory and investigatory functions, both of which are at issue in this challenge.
29. It provides:

The aim of our enforcement activity is to ensure that the PPERA rules on party and election finance are complied with, and that people throughout the UK are confident in the integrity and transparency of party and election finance.

2.2. In order to meet that aim, we have the following enforcement objectives:

- ensure that there is transparency about party and election finance
- ensure that the rules on party and election finance are followed
- eliminate any benefit those we regulate may obtain from failing to comply with the law
- bring any organisation or individuals failing to adhere with the law into compliance
- deter non-compliance

2.3. Our approach to our enforcement activity is that we will:

- Regulate in a way that is effective, proportionate and fair.
- Use advice and guidance proactively in order secure compliance and to give those we regulate a clear understanding of their regulatory requirements.
- Undertake supervisory work to ensure that regulated organisations and individuals meet their legal requirements.
- Take enforcement action, including using investigatory powers and sanctions, where it is necessary and proportionate to do so in order to meet our enforcement aim and objectives.
- Take the facts of each situation into account.

30. The Guidance provides that an investigation may lead to the following outcomes:

6.17. There are three possible investigation outcomes:

- we determine that there is no or insufficient evidence of an offence or contravention to take action
- we are satisfied beyond reasonable doubt that an offence or contravention has been committed
- we decide, having revisited the factors in paragraph 4.8 above, that it is no longer in the public interest to investigate a suspected offence or contravention

6.18. Where we are satisfied beyond reasonable doubt that an offence or contravention has been committed, we will consider what further action to take. In most cases this will involve deciding whether to impose a sanction. If appropriate we may decide to refer the matter to the police or relevant prosecuting authority at this stage.

31. The Electoral Commission may give advice to permitted participants: s. 10(3) PRERA.

Electoral Commission Guidance on expenses, 'working together' and designated lead campaign groups.

32. Pursuant to its power under paragraph 3 of Schedule 13 to PPERA 2000, on 28 April 2016 the Electoral Commission published updated Guidance in relation to referendum expenses for campaigners in the Referendum.¹¹ That Guidance provides:

"The Commission regulates political funding and spending. We are committed to providing those we regulate with a clear understanding of their regulatory obligations through our guidance documents and advice service. If you are unsure of how any of the rules apply to you, please call us for advice.

¹¹ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/194586/Spending-for-EU-referendum-campaigners.pdf - [5.88]

We are happy to help, so please get in touch. We use advice and guidance proactively in order to secure compliance. And we take enforcement action, using our investigatory powers and sanctions, where it is necessary and proportionate to do so in order to meet our enforcement aims and objectives”

33. Further, the Electoral Commission published guidance on ‘working together’ (undated)¹² and on the designation process for lead campaigner.¹³ The latter provides:

Lead campaign groups, must follow the same rules as all registered campaigners. In addition, any spending incurred while working with a non-lead campaigner will count towards the spending limit of the lead campaigner only.

34. By contrast, where two permitted participants work together, the sum of their spending counts towards each one of the permitted participants spending limit.

LEGAL SUBMISSIONS

Ground 1: error of law – referendum spending

35. The Claimant submits that on a proper construction of the legislation, the payment of money (expenditure) by a permitted participant, whether directly or indirectly, in respect of a matter within the wide definitions set out in Part 1 Schedule 13 PPERA 2000 and in connection with promoting or procuring a particular outcome of the referendum, constitutes a ‘referendum expense’ within the meaning of s. 111 PRERA.
36. That provision cannot be circumvented by a permitted participant paying money for services provided to another participant whose objective is to achieve the same outcome in the referendum as the ‘donor’ campaign. Such an expense still satisfies the statutory criteria in respect of ‘referendum expenses’ applicable to permitted participants.
37. The Electoral Commission fell into error in so far as it either:
- 37.1 failed to ask itself whether the expenditure incurred by Vote Leave in relation to Darren Grimes and Veterans for Britain and likely, Muslims for GB, (whether or not classified as a ‘donation’ for the purposes of those recipient campaigns), constituted ‘referendum expenses’ on the part of Vote Leave; or

¹² http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/194621/Working-together-for-EU-referendum-campaigners.pdf [5.22]

¹³ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/194594/Designation-process-for-the-EU-referendum.pdf [5.45]

37.2 considered that since Vote Leave's expenditure could be classified as a 'donation' for the purposes of the recipient campaigns, it necessarily could not at the same time constitute a 'referendum expense' on the part of Vote Leave, irrespective of the purpose of the payment or the use to which it was put, unless the Electoral Commission was satisfied that Vote Leave and the recipients had been 'working together'.

38. In either case, the Electoral Commission erred in law. In short, there is nothing to preclude a donation by one participant to another from constituting both a referendum expense and a donation. To interpret the legislation as if the two concepts were mutually exclusive (absent proof of working together) in the way that the Electoral Commission appears to have done, undermines the clear statutory objective of imposing spending limits on permitted participants and indeed, the intention behind the working together provisions themselves. Put simply, if the Electoral Commission were correct, it would be possible for a participant to set up or arrange for the setting up of numerous other individuals/bodies, whether or not permitted participants, and simply purchase campaigning services on behalf of each of them up to an unlimited amount or give them money to do so with the purpose of winning the referendum.
39. Furthermore, in this case, as a matter of fact, Vote Leave in fact paid AIQ directly for services provided both to Darren Grimes and Veterans for Britain. In both cases, the expenditure incurred by Vote Leave was to achieve the same particular outcome in the referendum. As such, these payments were referendum expenses incurred by Vote Leave. This follows both from a normal reading of the words of the legislation and from the object and purpose of the legislation.
40. "*Referendum expenses*" in s.111 PPERA 2000 incorporates three criteria:
- 40.1 the expense must be "*incurred by or on behalf of any individual or body*";
- 40.2 it must be an expense "*falling within Part 1 of Schedule 13*"; and,
- 40.3 it must be "*incurred for referendum purposes*".

41. Each of these criteria is met in relation to the payments made by Vote Leave to AIQ and/or Darren Grimes and Veterans for Britain. It may also be met in relation to a payment of £20,000 made by Vote Leave to Muslims for GB.¹⁴

41.1 As to the first criterion, Vote Leave made payments to AIQ - in addition to the £2.7m which it spent on AIQ for its own benefit and declared as such - of at least £625,000, and likely £725,000 if the £100,000 declared as a non-cash donation to Veterans for Britain was paid by Vote Leave to AIQ, which appears likely to have been the case from the information available. As a result of making those payments, (i) Vote Leave had £745,000 less than had before it incurred those costs and (ii) services falling within Schedule 13 up to a value of at least £725,000 were provided in connection with the promotion of a 'Leave' outcome. Depending on the arrangements relating to the £20,000 paid to Muslims for GB, it may be that expenditure of £745,000 was incurred by or on behalf of Vote Leave, whether by way of direct payment to AIQ, or by way of purported 'donations' to other Leave campaigns.

41.2 As to the second criterion, the money paid by Vote Leave covered matters falling within Part 1 of Schedule 13 PPERA. As set out in paragraph 15 above that provision is extremely broad, covering any material that: provides general information about the referendum, deals with any of the issues raised by any question on which the referendum is being held, puts any arguments for or against any particular answer to any such question, or is designed to encourage voting at such a referendum. It includes "*advertising of any nature (whatever the medium used)*" and "*market research*".

41.3 The Electoral Commission does not deny that Vote Leave paid money to be used for such matters. Nor could it do so. As regards the money said to have been donated to Mr. Grimes, Vote Leave in fact paid that money directly to AIQ (and as regards Veterans for Britain the same appears to have happened):

¹⁴ The Claimant has no knowledge as to what Muslims for GB spent the money on. It may be that the money was not spent on matters falling with Schedule 13 of PPERA. However, that is a matter for further disclosure. Accordingly, the Claimant reserves its position in relation to this expenditure, which is a matter that the Electoral Commission may or may not have enquired into.

41.3.1 Whatever the precise nature of the services provided by AIQ, they clearly fall within one or both of those categories. (Vote Leave Ltd and Veterans for Britain declared their 'spending' on AIQ as 'Advertising', and Mr Grimes declared his spending as 'Media'.)

41.3.2 Moreover, since Vote Leave Ltd paid the money to AIQ directly, it is clear that it must have known that the money was being spent on AIQ's services.

41.3.3 Therefore, if Vote Leave Ltd incurred an expense, it did so "*in respect of*" a relevant "*matter*"; its payment was directly referable to AIQ's services.

41.4 As to the third criterion:

41.4.1 Section 111(3) PPERA 2000 is also expressed in broad terms. It provides that expenses are incurred for referendum purposes if they are incurred "*in connection with promoting or procuring*" a particular outcome of a referendum.

41.4.2 On the basis of the undisputed facts, it is clear that Vote Leave Ltd knew that it was paying for services which were being provided by AIQ to a 'Leave' campaigner. The purpose of paying for those services can only have been to promote or procure a 'Leave' outcome.

41.4.3 Indeed, from the facts set out at paragraph 8 above, it is clear that Vote Leave asked Darren Grimes whether he could make use of funds for the purposes of pushing its messaging, and clearly intended that the funds should be used for the purposes of achieving a 'leave' result in the referendum. Accordingly, its expenditure was incurred for referendum purposes.

42. The definition and explanation provided by the Electoral Commission in its Guidance on spending for EU referendum campaigners accords with the above. It provides that referendum expenses are:

"Referendum spending is expenditure on certain campaigning activities (listed on page 6) that are intended to, or are otherwise in connection with, promoting or bringing about a particular outcome in the referendum.

It includes spending on:

- items or services used during the referendum period including those bought before the period begins
- items or services used during the referendum but paid for after it
- items or services given to you free of charge or at a non-commercial discount of more than 10% (see 'Notional spending' on page 11 and 12)"

43. The Electoral Commission's position, as expressed in its Pre-Action Response, is that a distinction must be drawn between "*paid*" and *incurred*". It is clearly possible for person A to incur expenditure that is paid for by person B. If the legislation had intended to regulate payments it would have done so." It goes on:

38. The legislation uses the word 'incurred' rather than 'paid' because the purpose of these provisions is to regulate those who are campaigning, rather than those who are paying for campaigning.

39. You appear to accept, in fact, that it was Mr Grimes who 'incurred' the expenses, by commissioning the services of Aggregate IQ for his own campaign [...]" [3.252]

44. The Claimant does not understand this. One of the principal regulatory controls over "*those who are campaigning*" relates to their spending and in particular, the limits on the amount they can spend on 'campaigning' for a particular result in the referendum. Vote Leave, in purchasing services falling within Schedule 13 with a view to promoting a 'Leave' outcome, was one of "*those who are campaigning*". The spending rules therefore applied to those purchases or expenditure.
45. It would be highly artificial to consider payment by one campaign for services provided to another campaign, aimed at achieving the same outcome, as anything other than the incurring of a referendum expense. Indeed, it would negate the purpose of imposing spending limits.
46. The Electoral Commission has not explained its reason for giving a restricted meaning to the word 'incurred', or indeed precisely what it requires. Nor has it explained why Vote Leave's payments or expenditure does not meet the statutory test.
47. The treatment of Vote Leave's payments as the incurring of referendum expenses is the only interpretation which is consistent with the Electoral Commission's decisions to date.

- 47.1 As noted above, the Electoral Commission determined in September 2016 that the reported cash donations from Vote Leave to Mr Grimes were in fact donations of services by Vote Leave.
- 47.2 Vote Leave can only have donated services performed by a third party if it purchased those services itself.
- 47.3 If Vote Leave purchased services from a digital consultancy firm with a view to donating them to a 'Leave' campaigner for use in the referendum campaign, all the requirements of the statutory definition of "referendum expenses" are met.
48. Further, it is the only interpretation that is consistent with the reality of the situation, which is that Vote Leave was making arrangements for money in its possession to be spent on campaign activities within Schedule 13 aimed at promoting or procuring a 'Leave' vote. On any reasonable analysis, that is referendum spending.
49. It is notable in that regard that Dominic Cummings, the Campaign Director of Vote Leave, has himself described the sums paid to AIQ in relation to services provided to Mr Grimes as part of Vote Leave's 'spending'. In an article published on 30 January 2017¹⁵ he wrote:

"VL raised and spent about £13.6m between Summer 2015 and closing of VL in July 2016, with nearly £7m of 'controlled' expenditure (the legal limit for the 10 week campaign) plus £6.6m of non-controlled expenditure. [...]"

Of the £13.5 million we spent: [...]"

5% was given to other campaigns (this was suddenly allowed in the last few weeks of the campaign by the Electoral Commission)". (emphasis added. N.b 5% of £13.5 m is £675k)

50. The above analysis supports the conclusion that, by paying AIQ for its services, Vote Leave Ltd incurred a relevant expense. It did not 'give' £625,000 to Darren Grimes for him to spend on whatever he chose.

¹⁵ <https://dominicummings.files.wordpress.com/2017/01/20170130-referendum-22-numbers.pdf> - [3.200]

Ground 2: error of law – common plan

51. Schedule 1 paragraph 22 of EURA 2015, applied to the situation of Vote Leave and Mr Grimes, has the effect that referendum expenses incurred by Mr Grimes are to be treated as having been incurred by Vote Leave if they are incurred by Mr Grimes pursuant to a plan or other arrangement under which Mr Grimes and Vote Leave were both to incur referendum expenses in promoting or procuring a 'Leave' outcome. The same applies in relation to the payment to Veterans for Britain.
52. From the material which has been disclosed, it appears that – according to Mr Grimes's own responses to the Electoral Commission's enquiries, (which it should be noted, the Claimant does not accept are necessarily correct) – the sequence of events was as follows:
 - 52.1 Vote Leave apparently told Mr Grimes that it was prepared to provide him with funds for campaigning activity (email of 3 March 2017: *"Vote Leave Ltd made me aware that they were in a position to make a donation and asked if BeLeave was able to make use of it"* [3.71]);
 - 52.2 Mr Grimes apparently told Vote Leave that he would be able to make use of that money for a digital campaign (email of 8 August 2016: *"we didn't discuss with Vote Leave how we would spend the money apart from telling them that it was for our digital campaign"* [3.10]);
 - 52.3 Mr Grimes allegedly went on to commission services from AIQ and incur a liability (email of 9 September 2017: *"It was BeLeave's obligation to pay AIQ as there was an agreement between AIQ and BeLeave direct"* [3.15]);
 - 52.4 Mr Grimes allegedly then notified Vote Leave of the liability and asked Vote Leave to pay it (email of 8 August 2017: *"we asked for the money to be paid directly to the company we were working with Aggregate IQ"* [3.10]); and,
 - 52.5 Vote Leave paid the money directly to AIQ (email of 9 September 2017: *"Vote Leave [...] discharged BeLeave's debt to AIQ by a transfer of cash at our request"* [3.15]).
53. On the basis of those circumstances, Mr Grimes's expenditure falls to be treated as having been incurred by Vote Leave pursuant not only to s. 111 PPERA for the reasons

set out above, but also pursuant to para. 22 Sch 1 EURA. All the components of the statutory definition are satisfied.

53.1 Mr Grimes allegedly incurred expenditure (having apparently commissioned services from AIQ and incurred a liability to AIQ).

53.2 That expenditure was incurred pursuant to a plan or arrangement, in that (i) Mr Grimes only incurred it after he had been told that Vote Leave would reimburse it, and (ii) it is clear that he would not have incurred it without such an arrangement being in place. As his email of 3 March 2017 says, "*we had not been able to put any funds behind pushing our messaging*" before Vote Leave Ltd approached him. [3.71]

53.3 The plan or arrangement was one under which both Mr Grimes and Vote Leave Ltd were to incur referendum expenses in connection with promoting or procuring a 'Leave' result. Mr Grimes was to incur such expenses by commissioning services from AIQ. Vote Leave Ltd was to incur such expenses by (i) paying AIQ from its own funds, and (ii) incurring other referendum expenses up to its full £7m spending limit without having to account for the £625,000 as it would have to do if it had spent that money on AIQ's services directly.

54. The Electoral Commission disputes that analysis on two grounds.

55. First, it argues that an arrangement under which "*Mr Grimes would procure the services of Aggregate IQ and Vote Leave would pay for it*" cannot constitute a "*plan or other arrangement*": "*There will only be a 'plan or other arrangement' if there is some agreement reached as to how expenses incurred will be used.*"

56. Second, in response to the suggestion that it was part of the plan or arrangement that Vote Leave Ltd would incur referendum expenses up to its full £7m spending limit, it says: "*the Commission has seen no evidence of that, and you have supplied none.*"

57. The first point is simply inconsistent with the statutory language.

57.1 It is not necessary to point to an "*agreement reached*". The words "*plan or other arrangement*" are obviously broader in scope than "*agreement*".

- 57.2 Nor is it necessary to show an agreement (or indeed a plan or arrangement) as to what the money will be spent on. The only requirement imposed by the statutory as to *“how expenses incurred will be used”* is that they must be incurred *“with a view to, or otherwise in connection with, promoting or procuring a particular outcome in relation to the question asked in the referendum”*. That requirement was met; the arrangement was between two ‘Leave’ campaigners and concerned payments for campaign services.
58. The second point is not an essential element of proving that there was a plan. But in any event, the Electoral Commission’s response cannot be reconciled with either the evidence available or the logic of the situation.
- 58.1 The whole purpose of the arrangement was to enable Vote Leave Ltd to ensure that its money in excess of £7m did not go to waste and could be put towards the Leave campaign. That is clear from the matters set out at paragraph 9 above.
- 58.2 It is inherent in that arrangement that, as well as Mr Grimes ‘spending’ the £625,000, Vote Leave Ltd would itself incur expenditure up to £7m on the basis that the £625,000 did not count towards that limit. Otherwise the arrangement would have served no purpose. Having itself spent £2.7m on AIQ, it is impossible to see why Vote Leave would then donate a further £625,000 to Darren Grimes and £100,000 to Veterans for Britain, by way of payments directly to AIQ if it could itself have spent that money directly on AIQ’s services. It could not do so in its own capacity because that would have resulted in it exceeding its spending limit.
59. Again, therefore, the Electoral Commission erred in law. If it had applied the law properly, it would have reached the conclusion that (i) the expenses incurred by Vote Leave in relation to AIQ over and above the £2.7m declared by Vote Leave should have been declared by Vote Leave as ‘referendum expenses’, and (ii) Vote Leave had therefore breached its statutory spending limit. That conclusion would have justified prosecution or at the very least further investigation.

Ground 3: failure to supervise

60. As set out above the Electoral Commission has a statutory duty to supervise referendum expenditure during the course of the referendum. It is unclear whether the Electoral

Commission directly advised Vote Leave that it could 'donate' to other 'Leave' campaigns sums in excess of Vote Leave's statutory spending limit of £7million, without committing an offence. It has been claimed, however, by Dominic Cummings of Vote Leave (see above), that the Electoral Commission permitted Vote Leave to do this. The Electoral Commission has refused to give any disclosure in this regard in response to the Claimant's pre-action letter. In so far as such advice was given by the Electoral Commission in the course of the referendum period, it was erroneous, for the reasons set out above. Accordingly, the Electoral Commission failed to carry out its statutory supervision responsibilities in a manner that was lawful.

Ground 4: the Electoral Commission acted unreasonably in failing to investigate further.

61. Further and in any event, on the material available to it, it was unreasonable for the Commission to conclude that it did not have sufficient information to warrant it opening an investigation into whether there had been joint spending (or indeed, whether or not Vote Leave had 'incurred' the relevant expenditure in relation to AIQ). In its response to the pre-action letter it states that on the basis of its "Enforcement Policy (see paragraph 6.8), we did not consider there were sufficient grounds to open an "investigation".¹⁶ That paragraph provides:

"6.8. If we are satisfied that there are reasonable grounds to suspect an offence or contravention has occurred, we will consider whether to investigate. We will only open an investigation where we consider that investigating the suspected offence or contravention is in the public interest and justifies the use of our resources in this way."

62. Far from providing an explanation as to why it did not consider that it had reasonable grounds for investigating, or why the public interest did not justify such an investigation, the Electoral Commission simply asserts that the evidence did not establish a breach: "Speculation is insufficient. The Commission could only reach the view that a breach had occurred on the basis of evidence." This however, fails to address the point that there was more than sufficient evidence to provide reasonable grounds for investigating both whether Vote Leave had 'incurred' expenditure in relation to AIQ and whether there had been joint expenditure with Darren Grimes and Veterans for Britain.

¹⁶ Letter 12 October 2017 para. 32.

63. As to the latter, the Electoral Commission had ample evidence to suggest that the expenditure by Mr Grimes and Vote Leave was coordinated (and indeed, that it had been incurred by Vote Leave). For example:

63.1 AIQ was not a widely-known agency at the time of the referendum period. It is inherently unlikely that Vote Leave and Mr Grimes would each have decided independently to commit all or a substantial proportion of their funds to AIQ's services rather than to anybody else (even any other digital consultancy firm, as opposed to other types of campaign-related service). Vote Leave openly spent £2.7m, 38% of its maximum permitted spending on AIQ. The additional sums over and above its permitted expenditure, which it paid to AIQ amounted to more than 10% of its spending limit; £725,000.

63.2 Other than the services purchased from AIQ with Vote Leave's funds, Mr Grimes/BeLeave's own campaigning activity was very limited. His spending return records that, prior to the first 'donation' from Vote Leave - just over a week before the referendum - he had incurred no more than around £107 of referendum expenses in the entire campaign.

63.3 Under the arrangement, Vote Leave did not release any funds to or on behalf of Mr Grimes until after it had been told how Mr Grimes had 'spent' the money (i.e. by commissioning services from AIQ). It retained full control over the money until it could be satisfied that it had been spent on services from AIQ, and when it did release the money it paid it directly to AIQ rather than to Mr Grimes. That is not consistent with a simple donation, under which one would expect the money simply to have been paid to Mr Grimes for him to decide how to use it.

63.4 Even in advance of making any arrangement to pay, Vote Leave knew that Mr Grimes would spend the money specifically on digital campaigning targeted at young people. That is clear from (i) Mr Grimes's email of 3 March 2017, in which he said that Vote Leave "*asked if BeLeave was able to make use of*" any money, i.e. that the proposal was made expressly by reference to the BeLeave campaign which was targeted at a young demographic [3.71], and (ii) the Times's report on 3 August 2016 that a Vote Leave source had said of the 'donation' to Mr Grimes:

“He may be young but there was no point giving money to old people to run a campaign persuading young people to vote for Brexit”.¹⁷ [3.193]

63.5 A similar pattern of activity is visible in relation to Veterans for Britain. Veterans for Britain also spent very large amounts of money on services provided by AIQ (£100,000, over two thirds of its total expenditure in the entire campaign), and received an identical amount from Vote Leave Ltd, declared as a non-cash donation. The idea that that was purely coincidental is unrealistic.

63.6 In February 2016,¹⁸ Steve Baker MP was revealed in The Times¹⁹ to have suggested in an email to fellow campaigners connected with Vote Leave Ltd that precisely such coordination could be used to circumvent the campaign spending rules: *“It is open to the Vote Leave family to create separate legal entities each of which could spend £700k: Vote Leave will be able to spend as much money as is necessary to win the referendum.”* [3.185]

64. Any reasonable regulator in those circumstances would have concluded that some further action was necessary. At the very least, such a regulator would have concluded that there were reasonable grounds to suspect that the spending rules had been contravened, and that it should therefore exercise its supervisory and investigatory powers.

65. The Electoral Commission’s decision instead not to take supervisory action and then subsequently, to treat the matter as closed on the grounds that there were no grounds even for suspecting a contravention of the Rules was wholly unreasonable.

Disclosure

66. In its Pre-Action Letter, the Claimant made a number of requests for information and documentation in the possession of the Electoral Commission, about the extent of its enquiries and the material revealed by those enquiries. In its response, the Electoral

¹⁷ <https://www.thetimes.co.uk/edition/news/fashion-student-given-625-000-to-spend-by-vote-leave-x5r75ws6t>

¹⁸ Two months before the official referendum campaign commenced.

¹⁹ <https://www.thetimes.co.uk/article/brexit-groups-plot-to-break-campaign-spending-limit-k86qwrc7w>

Commission indicated that it does not routinely publish details of assessments, and that it "*will respond separately to your request under the provisions of the Freedom of Information Act 2000*".

67. That is inappropriate. The Electoral Commission is a public authority and its obligation to give disclosure in relation to judicial review proceedings is governed by the duty of candour. The Treasury Solicitor's Guidance on Discharging the Duty of Candour (January 2010) makes clear that the duty "*applies to every stage of the proceedings including letters of response under the pre-action protocol*".
68. The Claimant expects the Electoral Commission to give full disclosure of relevant materials pursuant to the duty of candour at the permission stage, and reserves the right to apply for an order if such disclosure is not given.

Expedition

69. The outcome of the Referendum has been relied upon and continues to be relied upon as justifying extremely significant constitutional and political change. If, as appears to be the case, the Electoral Commission has approached the relevant questions on an incorrect legal basis, and the official Leave Campaign in fact incurred referendum expenses far in excess of the permitted levels, then that is a matter of grave public importance, which has a significant bearing on the weight to be given to the Referendum result. That is particularly so if incorrect advice was given to the Vote Leave campaign, which was not mirrored by advice given to the Remain campaign.
70. Because of the time that has already passed since the Referendum before information about the facts of Vote Leave Ltd's spending and the Electoral Commission's treatment of it came to light - in particular, the revelation that Vote Leave Ltd made the relevant payments itself - it is important that this dispute be determined quickly.
71. Indeed, the Claimant raised in the pre-action letter and repeats here, his concern regarding delays by the Electoral Commission in carrying out its statutory duties. The Electoral Commission has not announced any progress in the investigation into the spending of Leave.EU, the alternative 'Leave' campaign, since 21 April 2017, when that investigation was first announced. From a limited review of the publicly available material on the Electoral Commission web-site, it is evident that serious issues arise. For

example, a company entitled Better for the Country Ltd is shown as having donated a vast sum of money to various different 'Leave' campaigns, including nearly £2million to 'Grassroots out', £100,000 to Veterans for Britain, £100,000 to WAGTV and £108,000 to Trade Unionists against the European Union.²⁰ Better for the Country Limited is not a registered permitted participant. Its address however, is identical to that of Leave.EU, which was a permitted participant: Lysander House Catbrain Lane, Cribbs Causeway, Bristol, BS10 7TQ. Both Leave.EU and Better for the Country Ltd are apparently owned by Arron Banks. By decision dated 11 May 2016, the Information Commissioner's Office fined Better for the Country Limited £50,000 for sending "more than 500,000 (unsolicited) texts urging people to support its campaign to leave the EU".²¹ The ICO decision states that "*the company campaigns for the UK to leave the European Union, formerly under the name The Know and now as Leave.EU.*"²² The Claimant submits that the delays by the Electoral Commission are contrary to its statutory duties and undermine the purpose of the legislation. It reserves its position in relation to the Electoral Commission's conduct in respect of its investigation into Leave.EU.

72. The Claimant has acted quickly since the new material came to light in September 2017. It sent a Pre-Action Letter within two weeks of that material's publication; it has issued these proceedings within just over a week of receiving the Electoral Commission's response.
73. It seeks an order for an expedited determination of the case, with a hearing of 1 day taking place before the end of the Michaelmas term.

Relief

74. The Claimant seeks:

- 74.1 An order quashing the decision(s) of the Electoral Commission not to take any further action in respect of campaign spending by Vote Leave Ltd, Mr Grimes,

²⁰

<http://search.electoralcommission.org.uk/api/pdf/Donations?start={start}&rows={pageSize}&query=Better%20for%20the%20Country%20Ltd&sort=AcceptedDate&order=desc&et=pp&et=ppm&et=tp&et=perpar&et=rd&date=&from=&to=&rptPd=&prePoll=false&postPoll=true>

²¹ <https://ico.org.uk/action-weve-taken/enforcement/better-for-the-country-ltd/>

²² Para. 10.

and (if appropriate in view of the facts as they appear after the Electoral Commission has discharged its duty of candour) Veterans for Britain (and any other campaigns in so far as relevant); and,

74.2 An order requiring the Electoral Commission to reconsider whether to open an investigation into, or bring a prosecution against, Vote Leave Ltd and any other participant on the basis of a correct understanding of the law or otherwise to take appropriate action;

74.3 Costs

74.4 Any further Order that the Court may consider appropriate.

