



Electoral Commission  
3 Bunhill Row  
London  
EC1Y 8YZ

Dear Sir/Madam

We refer to the judgment handed down by the High Court today, which confirms (among other things) that a person is to be regarded as incurring a qualifying expense under PPERA 2000 if he pays a sum of money to a supplier to discharge another person's liability for a qualifying expense.

As you are aware, there is strong evidence that significant sums were spent during the referendum period by the Constitutional Research Council in relation to qualifying expenses declared as having been incurred by the DUP. In particular:

1. The BBC reported on 24 February 2017 (<https://www.bbc.co.uk/news/uk-northern-ireland-39075502>) that:
  - a. *"the DUP has confirmed it received a Brexit donation of about £435,000 from [...] the Constitutional Research Council"*,
  - b. Sir Jeffrey Donaldson MP (of the DUP) had said that *"about £425,000 was spent on the Brexit campaign"*; and,
  - c. £282,000 of it had been spent on advertising in The Metro newspaper.
2. In the documentary *"Spotlight: Brexit, Dark Money and the DUP"* (broadcast in June 2018), the BBC further reported that the advertising in The Metro newspaper was in fact arranged directly by Mr Richard Cook of the CRC, rather than by Mr Donaldson MP or anybody else at the DUP.
3. CRC therefore had a significant degree of control over the particular qualifying expenses on which its 'donation' (or at least the £282,000 spent on advertising in The Metro) was spent.
4. That degree of control means that (in the language used by the Court at paragraph 81 of today's judgment) the £282,000 clearly falls to be treated as a "specific" rather than "general" donation, such that it constitutes a qualifying expense under PPERA 2000. Indeed, if the CRC paid for the advertising directly, then the payment falls squarely within the first scenario set out in paragraph 81 of the judgment.

The money was spent during the referendum period and was self-evidently spent in connection with promoting a 'leave' outcome.

You previously announced on 2 August 2018 that you would not investigate the DUP's transactions, your reason being that there was insufficient evidence to support any conclusion that 'common plan' expenditure may have been wrongly declared: <https://www.theguardian.com/politics/2018/aug/02/electoral-commission-drops-investigation-into-dup-over-brex-it-spending>.

However, the effect of today's judgment would appear to be – irrespective of any issue of 'common plan' expenditure – that the CRC itself incurred referendum expenses during the referendum period of very substantially above a level which required it to register as a permitted participant under s.117 PPERA 2000, and therefore to file a return as required by s.120 PPERA 2000. That return would have had to record full details of all referendum expenses incurred, and (by virtue of s.120(2)(d) PPERA 2000) all relevant donations received by the CRC.

The CRC did not register as a permitted participant, and did not submit a return as required.

Irrespective of whether that constitutes a criminal offence under s.117(2) PPERA 2000, it would certainly constitute a contravention of the legislation. It is therefore a matter which the Electoral Commission is empowered to investigate (under Schedule 19B paragraph 3) and in relation to which the Electoral Commission may order steps to be taken "*to secure that the position is, so far as possible, restored to what it would have been if the offence or contravention had not happened*" (Schedule 19C paragraph 5(c)).

That would include ordering the CRC to file the return it would have had to file under s.120 PPERA 2000 if it had registered a permitted participant as it was required to do. Please confirm that you will be taking action to ensure that the Constitutional Research Council now submits a return which complies with ss.120 PPERA 2000, and which in particular contains details of all referendum expenses incurred and all relevant donations received, so that spending and donations relating to the 2016 Referendum are properly recorded and reported.

If you do not give that confirmation by 4pm on 28 September 2018 (14 days from now), we will take the first formal step in further judicial review proceedings by sending you a pre-action protocol letter.

Yours faithfully

**DEIGHTON PIERCE GLYNN**

cc Government Legal Department