

IN THE MATTER OF THE POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000

AND THE EUROPEAN UNION REFERENDUM ACT 2015

AND IN THE MATTER OF REFERENDUM EXPENSES

OPINION

A. INTRODUCTION

1. During the campaign before the EU referendum held on 23 June 2016 (“**the EU referendum**”), Vote Leave Limited (“**Vote Leave**”) was designated by the Electoral Commission as the lead campaign group in support of a vote to leave the EU. This gave it a permitted expenditure limit of £7,000,000. Vote Leave declared expenditure incurred during the EU referendum campaign of £6,773,063.047, which included expenditure of £2,697,020.91 on services from Aggregate IQ Data Services Ltd (“**AIQ**”). AIQ is a Canadian company which provides advertising and marketing services to clients based on data and web analytics, especially in the context of political campaigns, in order to target particular messages at particular voters.
2. We are asked to advise on legal questions arising in relation to certain payments made by Vote Leave during the course of the EU referendum campaign, totalling just over £625,000, to AIQ (“**the AIQ payments**”), which were not declared by Vote Leave as expenses incurred by or in concert with it during the campaign, and which are in addition to the £2,697,020.91 which Vote Leave did declare as payment on AIQ services. Vote Leave says the AIQ payments did not count as its own expenditure, because they were donations to another participant in the referendum campaign, called Darren Grimes, and that it was not required to declare these donation to the Electoral Commission (“**the Commission**”) because they were not expenses incurred by it in promoting or procuring a particular result in the EU referendum campaign.
3. We are asked to advise on whether, based in particular on a significant body of new ‘whistleblower’ evidence which we have seen, from three insiders at AIQ and Vote Leave:
 - a. there are reasonable grounds to suspect that any election offences have been committed, and if so by whom, in relation to the AIQ payments;

- b. there are reasonable grounds to suspect that any offences have been committed in relation to the inquiries by the Commission into the AIQ payments, and if so by whom, and
 - c. whether there is a realistic prospect of conviction in respect of any such offences.
4. We summarise our views on these issues below. We then set out the legal framework and the evidence, as well as certain relevant facts that have been drawn to our attention, to be considered within the relevant framework, before providing our analysis.

B. EXECUTIVE SUMMARY

5. The Political Parties, Elections and Referendums Act 2000 (“**PPERA**”) imposes limits on the “*referendum expenses*” which individuals and bodies involved in campaigning at a referendum are entitled to incur in relation to their campaign. Under the European Union Referendum Act 2015 (“**EURA**”), referendum expenses incurred as part of a plan or other arrangement between a designated organisation and another campaign group, as defined in paragraph 22 of Sch 1 (“**common plan expenses**”), are treated as having been incurred by the designated organisation and must be reported by *that* organisation.
6. Every individual or group which campaigned in the EU referendum and which incurred expenses of more than £10,000 during the referendum period was required to provide the Commission with a return setting out (among other things) the expenses it had incurred, including any common plan expenses. PPERA provides for criminal offences where such individuals or groups exceed their spending limits or fail to provide a statement of all of their referendum expenses in their spending return to the Commission.
7. We have been provided with three witness statements made by individuals who were involved with, or had close knowledge of, the campaign conducted by Vote Leave and an associated group called BeLeave, as well as supporting documents and certified copies of screen grabs from a Google Drive. These witness statements and the documents they exhibit are annexed to this Opinion. They set out the extremely close relationship between Vote Leave and BeLeave for the entirety of the relevant period, and contain evidence which strongly suggests that the AIQ payments, although purportedly made on the initiative of and in order to support Darren Grimes in his work for BeLeave, were in fact made for the benefit of, and/or in concert with, Vote Leave.
8. This evidence is highly significant because it substantially changes the evidential picture compared to the information which we understand is currently available to the Commission.

On the basis of this evidence, we consider that there are strong grounds to infer that Vote Leave was involved in the decision by which the AIQ payments were made (by it, to AIQ, ostensibly on behalf of Darren Grimes), that it was aware of the scope of the work which would be conducted pursuant to those payments, and that the payments were incurred by Vote Leave to promote the outcome for which Vote Leave campaigned, and/or in concert with BeLeave.

9. As a result, Vote Leave should have (but did not) report the AIQ payments in its spending return. If Vote Leave had reported those expenses, it would have exceeded its spending limit at the EU referendum.
10. We consider that there is a prima facie case that the following electoral offences were committed by Vote Leave in the EU referendum campaign and that these require urgent investigation so that consideration can be given to whether to refer the case to the Crown Prosecution Service for a decision on whether to prosecute:
 - a. that Vote Leave's "*responsible person*", David Alan Halsall, authorised expenses to be incurred by Vote Leave where he knew or reasonably ought to have known that expenses would be incurred in excess of that limit, contrary to s 118(2) of PPERA;
 - b. that Vote Leave committed the same offence;
 - c. that Mr Halsall delivered an expenses return which did not comply with the statutory requirements under s 120(2)-(3) of PPERA, contrary to s 122(4)(b) PPERA; and
 - d. that Mr Halsall knowingly or recklessly made a false declaration in the declaration submitted with the Vote Leave return, and/or that the requirements as to a lawful return were contravened during the period in which he was the responsible person, contrary to s 123(4)(a) and/or (b) PPERA.
11. We do not know how Mr Halsall or Vote Leave would put their case in response to such allegations. However, in the absence of cogent evidence in defence of the allegations, we consider that there would be realistic prospects of conviction of those offences.
12. The evidence also suggests that among the prominent people at Vote Leave who were engaged in discussions between Vote Leave and BeLeave were Dominic Cummings, employed at relevant times as Vote Leave's Campaign Director; Stephen Parkinson, at relevant times Vote Leave's National Organiser (and now Special Adviser to the Prime Minister); and Cleo

Watson, at relevant times Head of Outreach at Vote Leave (and now Political Adviser at 10 Downing Street). For the reasons given in this Opinion, we consider that on the current information there are reasonable grounds to suspect that the offences under ss 118(2) and 122(4)(b) were committed with the knowledge, assistance and agreement of Mr Cummings. Given the very close working relationships at all material times between Vote Leave and BeLeave, the way in which Mr Parkinson and Ms Watson supervised the work of the young BeLeave volunteers, and that Vote Leave and BeLeave staff worked closely together on a daily basis, in the same office, throughout the referendum campaign, it can be properly inferred that Mr Parkinson and Ms Watson must have known about BeLeave's campaign activity, of which the AIQ targeted messaging was a significant part. In those circumstances, there are certainly reasonable grounds for the Commission to use its powers under Schedule 19B PPERA to investigate whether any election offences committed by Vote Leave and Mr Halsall were committed with the knowledge, assistance and agreement of other senior figures/officers in Vote Leave, including Mr Parkinson and Ms Watson. If so, by virtue of section 1 of the Criminal Law Act 1977, they would be guilty of conspiring to commit those offences. They may also be guilty of the substantive offences as aiders and abettors. In the case of the s 118(2) offence, they may also be guilty if they were directors or officers of Vote Leave, under section 152 of PPERA.

13. The Commission has extensive investigative powers under Schedule 19B PPERA: in particular the power to require a person to produce documents for inspection by the Commission, under paragraph 3(2)(a). These can be used to establish whether there are realistic prospects of conviction in relation to these offences. (As we explain in paragraphs 190-192 below, this is the relevant standard which the Commission should apply in considering whether to refer a matter to the prosecuting authorities). In our opinion, the extensive grounds for suspicion of the commission of offences under PPERA are sufficiently strong, and the potential offences sufficiently serious, that there is a good case for the exercise by the Commission of its Schedule 19B investigative powers.
14. For completeness, we add that there is also a reasonable suspicion that Mr Grimes delivered an expenses return which did not comply with s 120(2) and (3) of PPERA, contrary to s 122(4)(b) of PPERA; and knowingly or recklessly made a false declaration in the declaration submitted with his return, contrary to s 123(4)(a) of PPERA. Any such offences would, however, be based not on the omission of relevant expenses from the return but on the inappropriate inclusion of the AIQ payments on his spending return, where he knew or

reasonably ought to have known that these were expenses incurred by or in concert with Vote Leave, and which ought to have been declared by Vote Leave.

15. We have also considered possible offences of perverting the course of justice in respect of certain steps taken following the start of the Commission's inquiries into the AIQ payments. For the reasons set out in the Opinion, we consider that the evidence before us raises significant questions as to the circumstances in which Victoria Woodcock, Vote Leave's Chief Operating Officer and former Company Secretary, appeared to change the permissions on a BeLeave shared drive in March 2017 while an EC investigation into Vote Leave was underway, and to remove herself and others from the record of certain discussions. In our view, as set out more fully below, this justifies further investigation with a view to establishing whether there is a reasonable suspicion that the offence of perverting the course of justice has been committed.
16. On the current information, there is insufficient evidence to create a reasonable suspicion of the commission of the offence of perverting the course of justice in respect of the information provided by Mr Grimes to the Commission between August 2016 and March 2017. However it would also be appropriate for there to be an investigation into the information which was provided by Mr Grimes. In particular, the evidence gives grounds for some suspicion that he was coached into the answers he should give by senior officers at Vote Leave, and there are enough leads to justify further investigation into the possibility that others at Vote Leave were involved in assisting or procuring Mr Grimes to provide that information.

C. LEGAL FRAMEWORK

(i) Limits on expenses

Permitted participants and designated (lead) organisations

17. PPERA imposes limits on the "*referendum expenses*" which individuals and bodies involved in campaigning at a referendum are entitled to incur in relation to their campaign. The phrase "*referendum expenses*" is defined as "*expenses incurred by or on behalf of any individual or body which are expenses falling within Part I of Schedule 13 [of PPERA] and incurred for referendum purposes*": PPERA, s 111(2).
18. Part I of Schedule 13 sets out various types of "*qualifying expenses*" which fall within s 111(2). These include "*[a]dvertising of any nature (whatever the medium used)*" including "*agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and*

intended to be distributed for the purpose of disseminating it". Qualifying expenses also include *"market research or canvassing for the purpose of ascertaining polling intentions"*.

19. An expense is incurred *"for referendum purposes"* where it is 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"*: PPERA, s 111(3).
20. The spending limits which apply to referendum campaigners are governed in part by whether the campaigner is a *"permitted participant"* and if it is a *"designated organisation"* in the campaign.
21. Any British natural or legal person can participate in referendum campaigning on their own account, provided they do not spend more than £10,000 in doing so. Only *"permitted participants"* can spend more than £10,000. At the EU Referendum, a person or body who registered with the Commission as a permitted participant was permitted to spend up to £700,000. Registered parties and British natural or legal persons (of specified descriptions) may attain the status of permitted participant by making the specified declaration or notification to the Commission set out in PPERA, s 106. The principal advantage of such status is that permitted participants are entitled to incur higher referendum expenses in the course of a campaign than campaigners who do not have such status.
22. A designated organisation is a permitted participant which has been designated by the Commission as, in effect, the lead campaigner for one or other of the two outcomes in a referendum: PPERA, ss 108-110. The level of referendum expenses which a designated organisation may lawfully incur is greater than that of other permitted participants. At the EU referendum, the designated organisation was permitted to spend £7 million, and to have free distribution of information to every registered voter.
23. The spending limits applicable during the EU referendum were set out in PPERA, Sch 14, as amended by EURA, Sch 25. In accordance with these provisions, as noted above, Vote Leave was permitted to incur referendum expenses of £7million and Mr Grimes (in his work with BeLeave) was permitted to incur referendum expenses of £700,000.

Joint campaigning and 'common plan' expenses in the EU referendum

24. For the purpose of the EU referendum, the regime on spending limits provided for in PPERA was supplemented by EURA. In particular paragraph 22 of Sch 1 to EURA contains provisions relating to *"common plan expenses"*. These are defined as referendum expenses which are

“incurred by or on behalf of an individual or body during the referendum period for the referendum” and are “incurred in pursuance of a plan or other arrangement by which referendum expenses are to be incurred by or on behalf of (i) that individual or body, and (ii) one or more other individuals or bodies, with a view to, or otherwise in connection with, promoting or procuring a particular outcome in relation to the question asked in the referendum”: EURA, Sch 1, paragraph 22(1)-(2).

25. Where common plan expenses are incurred in pursuance of a plan or other arrangement which involves a designated organisation, certain referendum expenses are to be treated as having been incurred during the referendum period by or on behalf of that designated organisation only. Such referendum expenses include *“where any of the other persons involved [in the plan or other arrangement] is a permitted participant, any common plan expenses of that permitted participant”*: EURA, Sch 1, paragraph 22(5)(b).
26. The Commission issued a guidance document entitled *“Working together for EU referendum campaigners”* intended to explain the law on common plan expenses and when the provisions on declaring these arose. It includes the following relevant passages:

“In our view, you are highly likely to be working together if, for example:

- you spend money on joint advertising campaigns, leaflets or events*
- you coordinate your spending with another campaigner – for example, if you agree that you should each cover particular areas, arguments or voters*
- another campaigner can approve or has significant influence over your spending including leaflets, websites, telephone scripts or other campaign materials*

In our view, you are not working together if, for example:

- you have discussions with other campaigners that do not involve decision making or coordinating your plans*
- you speak at an event organised by another campaigner, but do not participate in any other way*
- you do not consult other campaigners about what you should say in your campaign or how you should organise it.”...*

“Establishing a new organisation to run a campaign

If you work with a number of other referendum campaigners, you may decide to establish a new body or organisation to conduct a campaign. The new body could be, for example, a company or an unincorporated association. Provided that the new body is separate and distinct from the organisations that created it, then the body is likely to be treated as a different organisation from the campaigners that created the new body. This may be the case even if members of organisations that created the new body are part of its managing structure. Campaign activity undertaken by the new body will not be part of a joint campaign unless the new

organisation works together with other referendum campaigners. Making a donation to the new body is not working together.”

(ii) Returns

27. PPERA provides for various requirements relating to the submission of a referendum expenses return by a permitted participant. The return must be made by “*the responsible person*”: PPERA, s 120(1). Based on the records available from the Commission’s website, David Alan Halsall was the responsible person for Vote Leave.
28. The return must contain 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: PPERA, s 120(2)(a). The referendum period for the EU referendum began on 15 April 2016 and ended on the date of the referendum (23 June 2016): European Union Referendum (Date of Referendum etc) Regulations 2016, reg 4.
29. The return must be accompanied by a declaration, signed by the responsible person, which states that he has examined the return and that “*to the best of his knowledge and belief – (i) it is a complete and correct return as required by law, and (ii) all expenses shown in it as paid have been paid by him or a person authorised by him*”: s 123(1)-(2). The responsible person must deliver the return to the Commission within six months of the end of the relevant referendum period.

(iii) Offences

Offences under PPERA

30. The following offences prescribed by PPERA are relevant for present purposes.
31. Under PPERA, s 118(2), where referendum expenses are incurred by or on behalf of a permitted participant during a referendum period in excess of any limit prescribed by PPERA (as amended by EURA, in relation to the EU referendum):
 - a. If the permitted participant is an individual, that individual is guilty of an offence if he knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.
 - b. If the permitted participant is a body which is a company (like Vote Leave), the responsible person is guilty of an offence if he authorised the expenses to be incurred by or on behalf of the body and he knew or ought reasonably to have known that the

expenses would be incurred in excess of that limit; and the body itself is also guilty of an offence.

32. Under PPERA, s 118(3) it is a defence to such an offence for a permitted participant or other person charged with any such offence to show (a) that any code of practice for the time being issued under paragraph 3 of Schedule 13 was complied with in determining the items and amounts of referendum expenses to be entered in the relevant return under section 120, and (b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return. However, no relevant statutory code of practice was issued by the Commission before the referendum.
33. Under s 122(4)(b), the responsible person for a permitted participant commits an offence if, without reasonable excuse, he delivers a return which does not comply with the requirements of s 120(2) and (3) of PPERA (which include that the return must contain a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period: see paragraph 28 above).
34. Under PPERA, s 123(4)(a), a person commits an offence if, in the declaration required to be submitted with the referendum expenses return (see paragraph 29 above), he knowingly or recklessly makes a false declaration.
35. Where an offence under PPERA committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate (or any person purporting to act in any such capacity) he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly. Where the affairs of a body corporate are managed by its members, the same position applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. See PPERA, s 152.
36. Under PPERA, s 150 and PPERA, Sch 20, the offences under ss 118(2), 122(4)(b) and 123(4)(a) can be the subject of proceedings in the Magistrates' Court or in the Crown Court (by indictment), and are therefore known as "*indictable offences*".
37. PPERA, s 151(2) provides:

Despite anything in section 127(1) of the Magistrates' Courts Act 1980, any information relating to an offence under [PPERA] which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three

years after the commission of the offence and within six months after the relevant date.¹

38. Since the offences under ss 118(2), 122(4)(b) and 123(4)(a) are indictable offences, this time-limit does not apply to them: see the Magistrates Court Act 1980, s 127(2)(b) and *Thames Metropolitan Stipendiary Magistrate, ex p Horgan* [1998] QB 719.
39. Separately, section 146 of, and paragraph 13 of Schedule 19B to, PPERA provide for various offences relating to a failure to comply with, or knowingly or recklessly providing false information in purported compliance with, requirements imposed by the Commission in the course of an investigation of a potential offence under PPERA. It is a pre-requisite to liability for those offences that a formal investigation has been instituted by the Commission.
40. Under s 1 of the Criminal Law Act 1977 a person who agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, is guilty of conspiracy to commit that offence.
41. A person may also incur secondary liability under the common law as an aider or abettor even without the existence of an agreement. A person will be liable if he assisted or encouraged the commission of the crime and intended to encourage or assist another to commit the crime, acting with whatever mental element the offence requires.
42. In common law, it is an offence to perform an act which tends to, and is intended to, pervert the course of justice. It is not necessary for any relevant investigation to have reached a particular stage in order for this offence to be committed. It is possible for the offence to be made out even before an investigation is progress, where, for instance, steps are taken to prevent a crime from being discovered: see *R v Sinha* [1995] Crim LR 68, *R v T* [2011] EWCA Crim 729.

D. FACTUAL BACKGROUND

(i) Vote Leave / BeLeave

43. Vote Leave was, from 13 April 2016, the designated lead campaign organisation among the permitted participants campaigning for a leave vote in the EU referendum.

¹ The “relevant date” is defined as “the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to his knowledge”: PPERA, s 151(5).

44. An organisation named “BeLeave” was referred to in Vote Leave’s application to the Commission for designated status, submitted on 31 March 2016. In Appendix C3 to that application, Vote Leave identified 11 “community groups” which had provided letters in support of their application. BeLeave was one of them. It was described as “the group representing young people in the campaign for a ‘leave’ vote in the EU referendum”. It was said that BeLeave “launched in December 2015 and has engaged heavily with the issues young people face through EU membership via social media, creating unique graphics and images”. There was reference to a BeLeave Facebook address and Twitter handle. Included within the Appendix was a letter dated 22 March 2016, with a BeLeave header, expressing support for Vote Leave’s application for designation. It was signed by Darren Grimes.
45. It appears from the materials placed online by the Commission relating to the EU referendum campaign that BeLeave was never registered as a permitted participant during that campaign, but that Mr Grimes was so registered. The records on the Commission website indicate that Mr Grimes provided notification as a permitted participant on 15 March 2016, a little under two months before the referendum date.

(ii) Events from launch of Vote Leave to the holding of the EU referendum

46. The chronology of events up to the date of the EU referendum set out at paragraphs 47-103 below is based mainly on our assessment of the contents of three witness statements, the documents exhibited to those statements, and certain further documents, with which we have been provided. The witness statements are made by Christopher Wylie, Shahmir Sanni and a third individual who wishes to remain anonymous, and to whom we refer as “J”. As set out below, each of these individuals was involved in the Vote Leave / BeLeave campaigns (or in Mr Wylie’s case was aware of relevant events relating to those campaigns). Our assessment of those documents also form the basis for much of the post-referendum chronology at paragraphs 104-129 below.
47. Mr Wylie is a data scientist and microtargeting consultant with significant subject matter expertise in voter behaviour. Between July 2013 and early 2015, he was Director of Research at SCL Group Ltd (“SCL”), a UK-based military contractor that specialises in “Information Operations”, which can be loosely defined as military-related operations concerning information and information systems. In the summer of 2013 Mr Wylie was involved in introducing Jeff Silvester, his former colleague, to SCL. SCL was interested in using Mr Silvester’s skills in order to assist with data and analytics work in the field of targeted advertising and political campaigns. Mr Silvester, together with his colleague Zach

Massingham, subsequently incorporated AIQ in Canada for that purpose. For the entirety of Mr Wylie's period of employment at SCL, AIQ's sole major client was SCL.

48. Mr Wylie has known J, who is a strategic communications expert, since 2008. In 2015 Mr Wylie and J worked together on Norman Lamb's campaign to be elected as leader of the Liberal Democrat party. It was during that campaign that Mr Wylie met Mr Grimes, who was a volunteer on the campaign, working on graphics and social media content.
49. Following the campaign, Mr Grimes became disillusioned with the Liberal Democrat party and, later in 2015, joined the Conservative Party. Afterwards, Mr Grimes changed from being a proponent of the EU to being a Eurosceptic.
50. Vote Leave was launched in October 2015. Its Campaign Director was Dominic Cummings, a former Special Adviser to Michael Gove in his role as Secretary of State for Education. In November 2015 Stephen Parkinson was appointed as National Organiser of Vote Leave, having previously acted as Special Advisor to the then-Secretary of State for the Home Department, Theresa May. Following the EU referendum Mr Parkinson was appointed Political Secretary to the Prime Minister.
51. Mr Parkinson asked J to work for Vote Leave. J agreed to do so and in January 2016 he started work as a consultant providing strategic and communications support to Vote Leave through his PR company.
52. By this stage, Mr Grimes had also been offered work at Vote Leave by Mr Parkinson. Mr Grimes had been introduced to Mr Parkinson by Mr Wylie and J in December 2015. He was offered, and accepted, the role of volunteer in the outreach team in that month.
53. Prior to the recruitment of J and Mr Grimes, the Vote Leave outreach team comprised Cleo Watson as Head of Outreach and Gurjit Bains and Chloe Westley, who were more junior members of staff. In his statement, J says that he understood that the role of the outreach team was (a) to identify campaigners who could start organisations in support of Vote Leave's work and (b) to support the work of campaigners who operated separate campaigns and would support Vote Leave's application for designation by the Commission.
54. At the time that J started work at Vote Leave, its youth wing did not have its own name and was seen by J as more of a concept than an actual campaign. In February 2016 J conceived the name "*BeLeave*". J states that BeLeave was intended to be an entity which would "*sit within Vote Leave and not be an independent organisation*". We have seen photographs which

indicate that BeLeave was physically located in Vote Leave's head office, and we have been informed that this was the case throughout the EU Referendum campaign period.

55. J says that, in February and March 2016, Vote Leave's focus was on obtaining the grant of the "lead campaigner" designation by the Commission for the EU Referendum. In order to do this, it needed to demonstrate that it represented a broad range of individuals across society in favour of a leave vote at the referendum. J's understanding is that various groups were therefore created by Vote Leave, specifically to improve its prospects of designation.
56. J's evidence is that the description of BeLeave, in Appendix C3 to Vote Leave's designation application, as a separate independent organisation, does not correspond to his experience. J states that, while he was working at Vote Leave, BeLeave had no money, and BeLeave's campaigning consisted of content produced by Mr Grimes, a 22-year-old volunteer, and disseminated on Facebook and Twitter. J says that, as a consultant for Vote Leave, it was Mr Grimes' role to provide support for BeLeave's overarching message. He says that Mr Grimes worked within Vote Leave and reported to Mr Parkinson and Ms Watson (both of whom also worked for Vote Leave). J says that Vote Leave gave him the task of creating the BeLeave website, for which he was paid by Vote Leave. Vote Leave also paid for BeLeave placards which were kept in the office, and provided access to Vote Leave designers and videographers to create BeLeave material.
57. J has provided copies of various documents which support his view that BeLeave formed part of Vote Leave and was not an independent organisation. For example:
 - a. We have seen screenshots relating to BeLeave's shared drive within Vote Leave's Google Drive space, which, according to J, was administered by Victoria Woodcock, Vote Leave's Chief Operating Officer. On 10 March J was invited by Mr Grimes to join the BeLeave shared drive. Many of those with access to the shared drive had Vote Leave email addresses.
 - b. It appears from screenshots of the BeLeave shared drive that anyone at Vote Leave with a particular link could view documents in the BeLeave shared drive.
 - c. It also appears that various BeLeave folders and files were shared with J, including a file containing draft website text for the BeLeave campaign and which had Ms Woodcock listed as the "Owner".
 - d. On 18 March Mr Grimes, using the email address info@beleave.uk, sent various emails to J and Ms Watson concerning BeLeave. These included an email in which

Mr Grimes asked J and Ms Watson for their comments on a proposed post to the BeLeave Facebook / Twitter pages. They also included an email in which Mr Grimes informed Ms Watson that he and J had discussed arranging for a group to conduct some canvassing, which could be photographed and filmed for use on the website and on social media. Mr Grimes ran various suggestions about this proposal past Ms Watson. He asked *“how difficult would it be get a donor”* and notes that he *“did email an application to the Electoral Commission”*.

58. It was during this period, around March 2016, that Mr Sanni says he first became involved in Vote Leave. Like Mr Grimes, Mr Sanni was put in touch with Mr Parkinson by Mr Wylie, whom he knew socially and with whom Mr Sanni had discussed a potential career in politics.
59. On 10 March 2016, Mr Sanni emailed Mr Parkinson about becoming involved in Vote Leave. Mr Parkinson responded on the same date, suggesting that Mr Sanni come to *“campaign HQ”* on 14 March.
60. On 14 March 2016, Mr Sanni met Mr Parkinson. The following day he sent Mr Parkinson an email in which he expressed his gratitude for the meeting and set out the tasks which he would *“love to do... at Vote Leave”*. By his email in response on 18 March 2016, which was copied to Ms Watson and Ms Bains, Mr Parkinson stated, *“We’d be delighted to have your help on the things you mention”*.
61. During the week of 21 March 2016, Mr Sanni began working at Vote Leave as a volunteer. On 23 March 2016 he first met Mr Grimes at the *“Out and Proud”* event organised by Vote Leave to encourage gay people to vote leave in the forthcoming referendum.
62. Mr Sanni also met J during the same week. When they first met, J was working on the BeLeave website, from within the Vote Leave office. That was the first time that Mr Sanni had heard of BeLeave. Mr Sanni describes BeLeave as *“one of a number of Vote Leave outreach groups”* and his evidence is that its name had been created by J. Mr Sanni’s role as a volunteer was to work with the various *“outreach groups across Vote Leave”*.
63. Mr Sanni describes the Vote Leave office as *“one large area split into two sections with the lift in between them”*. He says that the front part of the office was occupied by Mr Cummings, Matthew Elliott (Vote Leave’s CEO), Ms Woodcock, Mr Parkinson, Ms Watson, Ms Bains and other Vote Leave staff-members. In addition, some individuals whom Mr Sanni later discovered worked for AIQ worked in this area. In the opposite section of the office, at the back of the building, were the Vote Leave media team, outreach team, events team and

volunteers. Mr Sanni's desk was with the outreach team in the back part of the office, near to Mr Grimes' desk. Both sections of the office were fully open plan, apart from the meeting rooms and Mr Cummings' office.

64. From March 2016, Mr Sanni worked with the Vote Leave outreach team as a volunteer. He says he typically came in to the office about two days a week. We have seen various contemporaneous emails to and from Mr Sanni during that time which indicate the kind of work he did and support the fact that it was conducted for Vote Leave. These include the following:

- a. An email sent by Mr Sanni to Ms Bains² on 23 March 2016 with the subject "*5 reasons to vote for Leave (edited)*".
- b. An email sent by Mr Sanni to Ms Bains on 24 March 2016 in which Mr Sanni proposed to draft a press release in which members of the "*fashion community*" express support for the leave campaign.
- c. An email sent by Mr Sanni to Ms Bains on 24 March 2016 with the subject "*Opinion regarding Afro-Caribbean [sic] voters*" which contained a link to an article on *The Guardian* website.
- d. Various emails exchanged between Mr Sanni, Ms Watson³, Ms Bains and others within Vote Leave on 30 and 31 March 2016 concerning the recruitment of healthcare professionals to the leave campaign.
- e. A series of emails sent by Mr Sanni to various external email addresses on 31 March 2016 in which healthcare professionals are asked to support Vote Leave's campaign. These emails are related to the internal emails referred to at sub-paragraph (d) above. The sign-off used by Mr Sanni in these email is his name, followed by a mobile telephone number and the internet address www.voteleavetakecontrol.org, which is and was at all material times the internet address of the official Vote Leave website.
- f. An email sent by Mr Sanni to Mark Hamilton,⁴ at Vote Leave, on 31 March 2016, relating to the recruitment of an officer to help manage Vote Leave's "*post designation day events in Plymouth*".

² Each of the emails referred to in this paragraph which were sent to Ms Bains were sent to the address gurjit.bains@voteleave.uk.

³ This email was sent to the address cleo.watson@voteleave.uk.

- g. An email sent by Mr Sanni to Ms Watson and Ms Bains on 31 March 2016 in which Mr Sanni asks them to let him know when they are free *“so we can get a voteleave [sic] email sorted for me”*.
- 65. Mr Sanni continued to work with Vote Leave in April 2016. He assisted with Vote Leave events, drafted articles in support of a leave vote at the EU referendum and conducted outreach with other groups campaigning for a leave vote. He continued to run his ideas past Ms Watson and Ms Bains, who responded to and commented on the messaging. Mr Sanni has provided emails which evidence this activity. For instance:
 - a. On 3 April 2016, Mr Sanni emailed Ms Watson asking about the process for getting reimbursed for his travel and lunch expenses. On the same date Ms Watson told him that he should speak to *“Stephen / Vicky”* about this. (We assume that these are references to Mr Parkinson and Ms Woodcock).
 - b. On 4 April 2016, Mr Sanni sent several emails to Ms Bains, seeking her approval for his proposals that various healthcare professionals might be recruited to the leave campaign.
 - c. On the same date, Mr Parkinson asked Mr Sanni to liaise with the Midlands Campaign Co-ordinator for Vote Leave to assist with a campaign event in Solihull, to which Mr Sanni agreed.
 - d. On 7 April 2016, Ms Watson asked Mr Sanni to attend an *“Africans for Britain”* event *“as the VL point person”* and to chaperone Kwasi Kwarteng MP, to which Mr Sanni agreed.
- 66. Mr Sanni states that during this period Mr Grimes was mainly working on matters relating to BeLeave *“which was entirely an internal Vote Leave outreach group aimed at young people. There was nothing independent about it at all”*. Although BeLeave’s content was produced by Mr Grimes, who was given some autonomy over the imagery used, *“he had no independent authority to do anything other than create content”*. Mr Sanni says that Mr Grimes *“received constant direction and input from Stephen Parkinson, Dominic Cummings and Cleo Watson”*. (It is also notable that the BeLeave imagery is strikingly similar to the Vote Leave imagery, albeit in a different colour palette).

⁴ This email was sent to the address mark.hamilton@voteleave.uk.

67. Mr Wylie also states that, in his communications with Mr Grimes, Mr Sanni and Mr Parkinson during the campaign period, each of them discussed their work as if they were part of Vote Leave. For example, he was invited to join the “BeLeave Contributors” Facebook group which had both Vote Leave and BeLeave members.

68. J’s work with Vote Leave came to an end in early April 2016. On 8 April he sent an email to Ms Watson and Mr Parkinson in which he summarised the tasks which would need to be finished after his departure. The email included the following passage:

“In terms of key things I’m working on that I [*sic*] need to do urgently, this is where I am and what I feel I need to do by Monday.

BeLeave (contact: Darren)

- Draft site with still photos by the end of the day today (Friday)
- Review the videos Julie sent over and suggest edits (will call her once I’ve reviewed all the footage)”

69. In a later email to Mr Parkinson, J stated that his “[*s*]pecific activity delivered for Vote Leave, as requested and directed by Stephen Parkinson, amongst others, included: - BeLeave campaign concept and website...” After he left, J remained a member of a WhatsApp group which included Ms Watson, Mr Parkinson, Mr Grimes, Tom Harwood and Ms Bains. The group discussed issues relating to the campaign. J states that, for example, on 13 May 2016 Mr Grimes asked Ms Watson if it was worth her being in their new BeLeave WhatsApp group, to which Ms Watson replied that “*she would be honoured*”; and on 5 June 2016, Mr Grimes asked Mr Parkinson if they could discuss Mr Grimes’ pending appearance on television.

70. Mr Sanni says that at the end of April or beginning of May 2016, Mr Parkinson asked him to help Mr Grimes with BeLeave, and Mr Sanni agreed. Although Mr Sanni thereafter worked more closely with Mr Grimes, the structure of his work continued largely as it had been. He sat at the same desk and liaised with other Vote Leave staff-members according to the same reporting structure, and his work continued to be overseen by Ms Watson, Mr Parkinson and Ms Bains. We have been provided with various emails during this period which support Mr Sanni’s account of his working relationship with Vote Leave and instructions/requests he received from Vote Leave staff. These include the following:

- a. An email dated 17 May 2016 in which Ms Watson asked Mr Sanni whether he was going to “*the debate in Leicester tonight*” and said that “[*t*]hey are desperate for ‘leave’ BME people to be in the audience and will reimburse travel...”.

- b. An email dated 26 May 2016 in which Mr Sanni asked Mr Parkinson to review a draft script for a Brexit debate before Mr Sanni attended the debate.
 - c. An email dated 31 May 2016 in which Kate Bateson, at Eden PR, asked Mr Sanni to do some PR work for Vote Leave, Mr Sanni's contact details having been provided by "*the central team at Vote Leave*".
 - d. An email dated 20 June 2016 in which Ms Bains asked Mr Sanni to write an article for publication in the *Daily Mail* or *The Sun* on his reasons for voting leave.
71. During this period, there were also discussions involving Mr Grimes, Mr Sanni and others at Vote Leave about potential donations relating to BeLeave's work.
 72. On 10 April 2016, Mr Grimes forwarded to Mr Wylie an email he had received from Ms Watson in which she had asked for a "*firm figure to ask people for*". She said that she had "*interested donors but I need to know how much to ask for. So what you've spent so far and what you're planning to spend (ID [sic] go a bit more than you think)*".
 73. On 13 May 2016, Mr Grimes sent Mr Sanni a Facebook message in which he stated, "*BeLeave (me) are talking to a big donor on Wednesday and may need research skills*". There followed a Facebook discussion between the two in which Mr Grimes told Mr Sanni that "*Cleo*" (by which he meant Ms Watson) had met the prospective donor and that she wanted to go over "*the plan*" in relation to the meeting with Mr Grimes "*on Monday*".
 74. Mr Sanni says that Ms Watson also emailed Mr Grimes and Mr Sanni about the prospective donor, who was due to come to the office and was interested in BeLeave. Ms Watson asked Mr Grimes and Mr Sanni to attend a meeting with this individual.
 75. In a further Facebook discussion between Mr Grimes and Mr Sanni, Mr Grimes said that the prospective donor had been in touch with Ms Watson and Mr Elliott, rather than with Mr Grimes, but that he had followed BeLeave's social media accounts. Mr Grimes was nervous about having to handle money alone and worried about complying with regulatory requirements. Mr Sanni reassured him that the people around him, namely Mr Parkinson, Ms Watson and potentially the prospective donor, were "*very good*". Mr Sanni said that Mr Grimes should be proud that the donor was considering a donation to BeLeave instead of to Vote Leave. By this, Mr Sanni states that he meant that he should be proud that the message and branding of BeLeave, for which Mr Grimes was responsible, was attracting attention. Mr Sanni states that he did not see BeLeave and Vote Leave as separate organisations; rather that BeLeave was a campaigning arm with separate branding but no real independence.

76. During this Facebook exchange Mr Grimes and Mr Sanni also discussed the preparation of a proposal which could be sent to the prospective donor, as well as to other potential donors. Mr Sanni states that the intention was to send this proposal to Vote Leave and for it then to be sent out to potential donors.
77. Alongside these discussions, Mr Grimes was also, on Ms Watson's suggestion, liaising with William Norton, Vote Leave's legal advisor, about setting up BeLeave as a separate unincorporated association. Mr Grimes also forwarded to Mr Sanni an email from Ms Watson in which she had said, *"I suppose the issue here hangs on the [potential donor] – it will be his money and Darren and the rest of the group (all between 18 and 22) don't feel comfortable handling the money side of things, having no experience beyond their student loans... Perhaps this is one of the things we bring up on Wednesday?"*.
78. In their ongoing Facebook discussion on 16 May 2016 about the potential plan for the donor, Mr Sanni proposed to Mr Grimes that *"[w]e could just say that you and I will be handling the money and using our social media data (alongside VL data) to decide where best to spend our money?"*. In a further message on that date, Mr Sanni suggested that Mr Grimes ask Ms Watson to ask what a proposed provision governing the future dissolution of BeLeave *"means for BeLeave if it wants to carry on post-brexit/ if it's possible"*.
79. On 18 May 2016, Mr Sanni forwarded a draft constitution for BeLeave to Mr Parkinson for him to consider. Paragraph (g) of the draft constitution specified six Board members, including Mr Grimes as *"Campaign Director"* and Mr Sanni as *"Secretary & Research Director"*. Paragraph (l) provided that BeLeave *"shall register with the Electoral Commission as a permitted participant in the referendum to be held on 23 June 2016"*. (In fact, as noted above, it appears that this never happened).
80. Mr Sanni believes that the meeting with the prospective donor took place on 18 May 2016. His evidence is that it was attended by Ms Watson from Vote Leave as well as Mr Grimes, Mr Sanni and Liam Vernon, another volunteer who worked with BeLeave. He says that BeLeave was treated as being an outreach group of Vote Leave. No decision was made about the potential donation at the meeting, and Ms Watson later told Mr Sanni that the potential donor had pulled out. This communication therefore appears to have been made by the potential donor to a controlling mind of Vote Leave, who conveyed this information to Mr Sanni and others working on the BeLeave campaign.

81. On 19 May 2016, Mr Sanni and Mr Norton exchanged emails concerning financial issues relating to BeLeave. Mr Sanni signed off his email with his name followed by the abbreviation "VL".
82. Mr Sanni also discussed with Mr Grimes a potential budget for BeLeave. On 19 May 2016, Mr Sanni sent an email to which he attached an estimated budget for the period of 23 May to 23 June 2016, based on an initial capital sum of £100,000. Appended to the budget was a note which stated: *"We understand that the real costs may differ. Hence, we will be closely working with the Vote Leave accountant and online promotions team to make sure this is accurate – guiding us throughout the next month as we make decisions."*
83. Mr Sanni recalls that, towards the end of May 2016, there was discussion in the Vote Leave office that Vote Leave was approaching its *"spending limits"*. He says that there was talk that Vote Leave could not take certain actions because it did not have sufficient funds. At this stage, Mr Grimes and Mr Sanni were still hoping that something would come of the BeLeave donor or BeLeave donation proposal.
84. In the first or second week of June 2016, Mr Sanni, who was seated next to Mr Grimes in the Vote Leave office, heard Ms Woodcock say to Mr Grimes, *"I think we've found a way of getting you money"*. Mr Sanni did not know when he heard this how much money would be involved. He expected a sum of up to £20,000. However, his evidence is that Mr Grimes subsequently told him, *"I think Vote Leave is going to give us almost 700k"*. Mr Sanni says he was ecstatic at the size of the donation which had been secured. When he asked Mr Grimes whether he (Mr Sanni) might now be reimbursed for his travel expenses, Mr Grimes said that he was not sure because the money *"had to be given to an organisation named AIQ who would provide services in kind to that value"*. Mr Sanni had not heard of AIQ so he searched for them online but found no information.
85. It was during this period that the AIQ payments were made by Vote Leave, direct to AIQ, but (according to Mr Grimes' referendum return) ostensibly on his own behalf, in order to promote BeLeave.
86. As noted above, Mr Grimes was individually registered as a permitted participant in the EU Referendum campaign from 15 March 2016. According to the return submitted by Mr Grimes to the Commission after the referendum, Mr Grimes received the following donations during this period:
 - a. 13 June 2016: £400,000 (from Vote Leave).

- b. 16 June 2016: £50,000 (from Anthony Clarke).
 - c. 20 June 2016: £40,000 (from Vote Leave).
 - d. 21 June 2016: £185,315.18 (from Vote Leave).
87. According to the same return, Mr Grimes made the following payments to AIQ:
- a. 13 June 2016: £400,000.
 - b. 17 June 2016: £40,000.
 - c. 20 June 2016: £50,000.
 - d. 21 June 2016: £185,315.18.
88. On the basis of those figures, and the additional spending of £700.69 reported by Mr Grimes, his total expenditure was £676,015.87, which was within his spending limit of £700,000 (see paragraph 21 above). However, as also noted above, the AIQ expenditure never went through any bank account except the Vote Leave account, from which it was paid directly to AIQ for “*services in kind*”, ostensibly to BeLeave.
89. Appended to Mr Grimes’ spending return were documents entitled “*Advertiser Agreement and Insertion Orders*” headed with AIQ’s branding, in which the “*PROJECT OVERVIEW*” was said to be “*TARGETED SOCIAL, VIDEO, AND DISPLAY MEDIA CAMPAIGN – BELEAVE UK*”, the “*MERCHANT*” was recorded as “*BeLeave*”, the primary contact for AIQ was “*Zack Massingham*” and the secondary contact was “*Jeff Silvester*”. The four documents were dated 14, 17, 20 and 21 June 2016 respectively, In each case, the “*END DATE*” for the “*program*” was 23 June 2016.
90. For its part, Vote Leave, in its post-referendum expenditure return to the Commission, reported total expenses of £6,773,063.47, which fell within its limit of £7million. Vote Leave reported having spent £2,697,020.91 on services provided by AIQ by way of payments dated 12 April 2016, 1 May 2016, 1 June 2016 and 20 June 2016. The names of Ms Woodcock and Mr de Zoete appeared on certain of the AIQ Advertiser Agreement and Insertion Orders supplied to the Commission in relation to these payments. *The AIQ payments supposedly made as a donation to BeLeave did not form part of Vote Leave’s spending return.*
91. In this context, it is also relevant to note that another permitted participant organisation called Veterans for Britain (“*VFB*”) submitted a return in which it recorded a donation of £100,000 from Vote Leave on 20 May 2016 and expenditure of the same sum to AIQ on 22

May 2016. This was in the context of total campaign expenditure by VFB of £146,945.06. *Again that 'donation in kind' of services from AIQ paid for Vote Leave did not appear on the Vote Leave spending return.*

92. Mr Sanni says that Mr Grimes took the lead in managing the donations from Vote Leave to BeLeave. Mr Sanni says that, on one occasion, he saw Mr Grimes meet privately with Mr Cummings and assumed that this related to the donation because Mr Grimes did not discuss the meeting with Mr Sanni.
93. Mr Sanni's evidence is that on 15 June 2016 AIQ set up a "*slack channel*", a form of instant messaging for offices, in which Mr Grimes, Mr Sanni and others working on BeLeave could discuss the campaign internally and with AIQ. Mr Massingham was a member of this channel. At this stage Mr Sanni had not met Mr Massingham in person but knew his face because Mr Massingham had been present in the office. Mr Sanni was introduced to Mr Massingham a couple of days before the EU referendum, in the Vote Leave office, although they had discussed BeLeave adverts on the slack channel for about a week beforehand.
94. In his statement Mr Sanni describes some of the messages on the slack channel. He says that Mr Massingham uploaded a number of images to the channel which were discussed by the members of the channel. He refers to a message on 15 June 2016 (2.20pm) in which Mr Grimes stated that Facebook advertising would be "*an effective way of pushing our more liberal and progressive message to an audience which is perhaps not as receptive to Vote Leave's messaging*". At 3.49pm on the same day Mr Grimes referred in a message to a particular image and commented, "*I know Vote Leave have used this but I do like it*".
95. Mr Sanni also reports a message from Mr Massingham dated 17 June 2016 in which he stated that they would be "*avoiding the hard stuff and favouring softer over the weekend which favours well for your stuff*". Mr Sanni believes that the reference to "*hard stuff*" means Vote Leave messaging, which was harder in tone and style than BeLeave's. Mr Sanni also refers to a message from Mr Massingham on 19 June 2016 stating that exclamation marks had worked well in other campaigns AIQ had done in the UK. Mr Sanni believes that this is also a reference to Vote Leave.
96. Separately, in an email dated 17 June 2016, Mr Grimes gave instructions to Mr Sanni and Robert Winterton, another campaigner working with BeLeave, as to the content which should be disseminated by advertising. He specifically instructed, "*Copy and paste lines from Vote Leave's briefing room in a BeLeave voice*". Mr Sanni believes that the "*Vote Leave briefing*

room” was a daily briefing bulleting sent out by Vote Leave to supporters, and that the advertising content referred to in Mr Grimes’ email related to AIQ’s work.

97. Mr Sanni’s evidence is that during the last few days before the EU referendum the AIQ employees in the office were having constant meetings with Mr Cummings and Mr de Zoete. He says that Mr Grimes was also having meetings with Mr Cummings and Mr Massingham.
98. Mr Sanni notes that the value of online and targeted advertising can be measured by the number of “*sign ups*” from those targeted by the advertising. Mr Sanni says that Mr Grimes later claimed to him that the work apparently conducted by AIQ for BeLeave was said to have resulted in only 1,000 email sign-ups, although Mr Sanni never saw the list of apparent sign-ups. He finds it impossible to believe that on any realistic market rate-per-sign-up, expenditure of £625,000 to AIQ could have resulted in such a small number of sign-ups (the cost per sign-up would have been £625). Mr Grimes had anticipated that a spend of about £10,000 would achieve that scale of sign-ups.
99. In his evidence, Mr Wylie also comments on the rate of sign-ups apparently obtained by BeLeave via its work with AIQ. He refers to a letter dated 12 May 2017 sent by Mr Grimes to the Information Commissioner’s Office (“**ICO**”) which was shown to Mr Wylie by Mr Grimes. In the letter Mr Grimes claimed that AIQ had assisted BeLeave in the creation and placement of online ads which resulted in the collection of 1,164 supporter e-mail addresses.
100. Like Mr Sanni, Mr Wylie is sceptical of the rate of sign-ups given the total payment to AIQ supposedly on behalf of BeLeave. By contrast, Mr Cummings had stated in a blog post of January 2017 that the AIQ programme for Vote Leave brought in about 350,000 email addresses, which would have generated a rate of about £10 per email sign-up (based on a total spend on AIQ services of £3.2million). Mr Wylie considers that it is highly unlikely that the response to the services provided by AIQ to BeLeave would have been so inefficient in comparison with the response to the services those same company provided to Vote Leave, particularly given the success of BeLeave’s unpaid content in achieving sign-ups.
101. Mr Sanni says that he did not know at the time that there was anything wrong with the way that Vote Leave and BeLeave worked together, or that the donation might be suspicious in any way. At the time, Mr Sanni asked Mr Norton (the Vote Leave lawyer) about issues relating to regulation and he thought that Mr Norton would tell him if there was anything he needed to know on that topic. Further, his work and that of the other young people working on the BeLeave campaign generally was overseen by Vote Leave staff members. Mr Sanni himself

was just a part-time volunteer and did not have a real position of responsibility, despite his apparently formal role within BeLeave. He points out that Mr Grimes was also unpaid.

102. On the day before the EU referendum, Vote Leave arranged a campaign day in Dover. Mr Sanni, who was still a Vote Leave volunteer, was asked to go with Mr Grimes to Dover with the Vote Leave team. At the event, Mr Sanni and Mr Grimes were given Vote Leave t-shirts to wear, and they were supervised by Vote Leave staff members. The whole Vote Leave team ate lunch together, which Mr Parkinson asked Mr Grimes to pay for. Mr Sanni considered this request odd.
103. On 23 June 2016, the day of the referendum, Mr Sanni went to the Vote Leave office with Mr Grimes. Vote Leave staff members congratulated Mr Grimes on the work he had done. This was consistent with Mr Sanni's understanding that the donation received by BeLeave was a *"way for Vote Leave to fund itself"*. Mr Sanni did not think *"there was anything wrong with that because we were all working together in the office"*.

(iii) Events following the EU referendum: inquiries by the Commission and others

104. Mr Sanni remained in contact with Mr Grimes in the period after the EU referendum, during which time inquiries were made by journalists and the Commission about the funding of BeLeave's work. Mr Sanni says that he was aware that Mr Grimes was being advised on how to respond to these inquiries by Mr Cummings and Antonia Flockton, Finance Director of Vote Leave (on financial issues), and by Mr Parkinson and Paul Stephenson, Vote Leave's Communications Director (on media-related issues).
105. Mr Sanni says that, subsequently, Mr Grimes instructed Mr Sanni to delete his emails relating to the referendum campaign. Mr Sanni did not consider this suspicious at the time. He deleted relevant emails in his Inbox but by oversight did not delete emails in his Sent Mail box. There therefore remain messages which show how closely Vote Leave and BeLeave were working together on the campaign, and how the young BeLeave volunteers effectively regarded themselves as working to the instructions of the older and more experienced Vote Leave campaign team.
106. On 27 July 2016, Mr Grimes informed Mr Sanni on Facebook Messenger that he had been contacted by several journalists. Their inquiries related to issues concerning donations to Mr Grimes during the referendum campaign. Mr Sanni asked Mr Grimes what *"Antonia"* had said (this was a reference to Antonia Flockton). In response Mr Grimes forwarded an email from *"Vicky"* (Mr Sanni thinks that this may have been Victoria Woodcock). *"Vicky"* had advised Mr

Grimes not to speak to journalists but to send a general response about donations received and then to refer them to Paul Stephenson, Vote Leave's Communications Director.

107. On 2 August 2016, BuzzFeed published an article entitled *"Why Did Vote Leave Donate £625,000 To A 23-Year-Old Fashion Student During The Referendum?"*. This article was about the ostensible donation declared by Mr Grimes from Vote Leave. It referred to the disclosure in *"Electoral Commission figures"* [presumably those on Mr Grimes' own return, since they were not contained in the Vote Leave return] of a *"highly unusual transfer of funds"* made by Vote Leave to Mr Grimes in the days before the referendum, which included a sum of £625,000. The article reported that Mr Grimes' *"BeLeave project"* was *"listed as an official Vote Leave outreach group"* and that a Vote Leave campaigner had said that *"Grimes was often seen at the Vote Leave office during the referendum"*.
108. At some point on or before 8 August 2016 the Commission sent an email to Mr Grimes concerning payments which were recorded as donations made to BeLeave by Vote Leave. We have not seen that email.
109. We have, however, seen Mr Grimes' email in response dated 8 August 2016, in which Mr Grimes told the Commission that BeLeave's expenditure of these donations *"was done in isolation of Vote Leave so we do not consider it as 'working together' and we will therefore declare the full amount on our expense form"*. He stated that *"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"*. He said that *"[t]he BeLeave Association decided how the money was spent"* and *"Vote Leave had no say or input in our strategy or our campaign spending"*. However, he did acknowledge that Vote Leave had paid the supplier of the *"digital campaign"* services (ie AIQ) directly and that no money had passed through the BeLeave account in respect of those services.
110. The Commission replied by email sent at 3.12pm on 9 August 2016, referring to three payments recorded on BeLeave's spending return as cash donations from Vote Leave (£400,000 received on 13 June 2016; £40,000 received on 20 June 2016; and £185,315 received on 21 June 2016). The Commission expressed the view that since Mr Grimes had stated that Vote Leave paid the supplier directly, these payments should have been recorded as donations in kind. It was said that, on the basis of the information available to the Commission, the Commission did not intend to assess the matter under its Enforcement Policy

to establish whether any offences had taken place but it requested an explanation for why the donations were reported as cash donations.

111. By an email sent at 3.33pm the same day Mr Grimes informed the Commission that he *“asked AIQ directly to provide services in relation to growing BeLeave’s digital platform and social media reach”*. It was *“BeLeave’s obligation to pay AIQ as there was an agreement between AIQ and BeLeave direct with no reference to Vote Leave”*. Mr Grimes’ understanding was that *“Vote Leave did not buy advertising services to gift to BeLeave but discharged BeLeave’s debt to AIQ by transfer of cash at our request. It was not a condition of the donation either that the donation be spent on advertising – but that is what we wanted to do given the limited time left in the campaign period and the nature of our campaign”*.
112. In its response to Mr Grimes on or around 9 September 2016, the Commission stated its view that the relevant payments were *“non-cash donations of digital marketing”*.
113. On 4 October 2016, the Commission informed Mr Grimes that it had determined 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.
114. On 15 November 2016, a journalist emailed the Commission with various questions concerning the AIQ payments and whether they had been properly reported by Vote Leave and BeLeave. We have seen emails between staff-members at the Commission in response to this email. One of these stated that the Commission had *“already made enquiries as part of a through [sic] assessment of this matter”* and was *“satisfied that in the absence of any further evidence to the contrary, that the two organisations were not working together but were working towards achieving the same goal – for the UK to vote to leave the EU”*.
115. A further internal email stated that the Commission was *“aware from the original allegation in Buzzfeed that Mr Grimes had been spotted visiting Vote Leave during the campaign – his organisation, BeLeave was a VoteLeave outreach group”*. This email continued that the assessment previously made by the Commission had concerned *“a technicality re the accuracy of Mr Grimes’ spending return, which reported the donation but stated that the donation was cash when it was actually notional – which is a separate issue to what the reporter has raised below”*.
116. By a further letter dated 8 February 2017, Bob Posner, Director of Political Finance and Regulation & Legal Counsel at the Commission, apparently in response to an inquiry from another journalist, stated that Vote Leave’s donations to Mr Grimes *“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 letter continued: "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".

117. On 1 March 2017, the Commission informed Mr Grimes, by letter, that it was conducting an assessment in respect of his role as a registered campaigner during the EU referendum. The purpose of the assessment was to ascertain whether there were reasonable grounds to suspect that Mr Grimes may have committed an offence under PPERA in respect of his spending return. The Commission referred to a joint campaign event between Vote Leave and Mr Grimes to which reference was made on Vote Leave's spending return. It stated that although Mr Grimes was not required to declare this contribution, it was possible that "*you failed to declare further spending*" and it may "*also be possible that you declared payments related to working together with Vote Leave Ltd, which you were not required to*". Among the questions asked by the Commission of Mr Grimes were (a) whether he "*undertook any further working together with Vote Leave Ltd*", in particular in relation to AIQ and (b) why he chose to commission AIQ rather than another company.
118. By an email dated 3 March 2017, Mr Grimes stated that, apart from a campaigning event on 22 June 2016, BeLeave did not work together with Vote Leave. He went on to state:

"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. Additionally I have a background in social media campaigning and had been interested in who and how Vote Leave Ltd was managing its digital media campaign. BeLeave as a campaign was not comfortable with much of the Vote Leave Ltd messaging which is in part why we had established and were running our own campaign, but I was impressed by the execution during the campaign proper. 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."

119. The evidence of Mr Sanni and J directly contradicts the assertions in the second paragraph above. However, on 22 March 2017, the Commission responded to Mr Grimes' email of 3 March 2017. It stated that, having undertaken further enquiries as part of its assessment, the Commission had concluded that there were no reasonable grounds to suspect that any breaches of PPERA occurred in respect of the reporting of potential working together with Vote Leave.
120. Mr Wylie has given evidence that in April 2017, he visited the AIQ office in British Columbia, Canada. He states that in a meeting with Mr Silvester which took place in April, Mr Wylie was told by him that the BeLeave campaign, as well as other campaigns on which AIQ had worked, for VFB and the Democratic Unionist Party ("**DUP**"), were "*totally illegal*", but that AIQ were "*based in another country where UK laws don't apply*".
121. Mr Wylie states that he asked Mr Silvester whether AIQ had "*siloed*" its programmes for Vote Leave, BeLeave, VFB and DUP during the EU referendum campaign, by which he meant had AIQ maintained separate programmes for each campaign with technical barriers to prevent data sharing and separate staff working independently of each other. In response, Mr Silvester laughed and said, "*of course not*" and continued that AIQ had briefed Vote Leave staff about the strategy and results of each of these programmes and the other associated campaigns.
122. According to Mr Wylie's evidence, Mr Silvester said that before arranging its donation, Vote Leave had consulted with AIQ on how it should be spent. Mr Silvester said that since AIQ had access to ad programmes for Vote Leave and BeLeave, they optimised both to make sure there were not redundancies. He stated that the campaign had sent out "*billions*" of advertisements at the last minute in the campaign which were targeted at a narrow group of voters who would have been most open to changing their minds.
123. In his evidence, Mr Wylie refers to a YouTube video of Mr Cummings speaking at Nudgestock 2017, a conference held by Ogilvy Change, a "*behavioural interventions*" agency, in which Mr Cummings summarised Vote Leave's approach to the dissemination of targeted messaging during the EU referendum campaign. In the video Mr Cummings says that Vote Leave "*held back almost all of our budget and then we basically dumped the entire budget in the last ten days and really in the last three or four days and we aimed it at.. roughly at about 7 million people [who] saw something like 1 and a half billion digital ads in a very short period of time*". Mr Cummings gave a similar account in a blog he produced in January 2017, entitled "*On the referendum #22: Some basic numbers for the Vote Leave campaign*".

124. In May 2017, Mr Silvester sent Mr Wylie the draft of an email he was proposing to send to the Commission. It stated that AIQ provided political consulting online advertising, and website and software development services to Vote Leave, BeLeave, VFB and the DUP and that “[t]he exact nature of the services can be obtained from these organizations or with their consent”. We are not aware of whether the Commission has asked Vote Leave and/or BeLeave to consent to AIQ providing information as to the “exact nature of the services” AIQ supplied to each of these organisations.
125. During the period after the EU referendum, Mr Wylie was also in contact with Mr Grimes, J and Mr Sanni. Mr Wylie’s evidence is that Mr Grimes told him that he was being given advice by Mr Cummings and Mr Parkinson on how he should deal with the Commission and the ICO.
126. For their part, J and Mr Sanni had, like Mr Wylie, developed suspicions about the way in which Vote Leave’s payments to AIQ had been dealt with. In the summer of 2017, Mr Sanni realised that he could still access the BeLeave Google Drive and reviewed it with Mr Wylie. Mr Wylie and Mr Sanni came to believe that the contents of this Drive could be important, because it demonstrated the extent of joint working between Vote Leave and BeLeave during the period of the EU Referendum campaign, and therefore on 22 November 2017, they accessed it again at the offices of Mr Wylie’s lawyers, Bindmans LLP, in the presence of an officer of the court, in order that screenshots of documents on this Drive could be printed and certified by a solicitor.
127. We have been provided with copies of those certified documents. They appear to show that:
- a. The “Owner” of the BeLeave Google Drive was Ms Woodcock, the Chief Operating Officer at Vote Leave.
 - b. A number of Vote Leave staff-members had permission to edit documents on the BeLeave Google Drive, including Mr Cummings, Mr de Zoete, Ms Woodcock, Ms Flockton, as well as Mr Massingham of AIQ.
 - c. Various BeLeave related documents were stored on the Drive.
 - d. The BeLeave Google Drive logged certain drive administrator activity which had taken place within the Drive on 17 March 2017. The activity was that Ms Woodcock had “restricted access to” numerous “items” within the Drive which had previously been accessible to three individuals: Mr Cummings, Mr de Zoete and herself. In other words, it appears that those three senior Vote Leave staff members had previously had access to documents on the BeLeave drive, but on 17 March 2017,

Ms Woodcock removed the permissions which they had previously been granted to the BeLeave Google Drive. She had not removed the log of this action.

128. As a separate point, we have been provided with correspondence between Carole Cadwalladr, a Guardian journalist, and the Commission in relation to a Freedom of Information Act request made by Ms Cadwalladr. In that correspondence, Ms Cadwalladr referred to public comments made on Twitter by Mr Cummings, apparently in relation to the AIQ payments. In those comments, made to Jolyon Maugham QC, director of the Good Law Project (“GLP”) Mr Cummings stated: *“FYI u seem unaware (not blaming u no reason u wd know) of a crucial fact: the EC gave us written permission in advance for what we did...”* and *“When they suddenly told us we cd make donations we were so shocked we asked for written confirmation & got it. Extremely surprising...”*.
129. Ms Cadwalladr asked for information from the Commission in relation to the alleged communications between the Commission and Vote Leave. On 27 October 2017 the Commission informed Ms Cadwalladr that it *“did not provide Vote Leave with written permission to make donations to Mr Grimes or any other campaigner in the EU Referendum”*. It went on: *“We have reviewed all communications between the Commission and Vote Leave/Dominic Cumming [sic] from during the referendum campaign period. We can’t find any record of any exchange with us on the subject of donations between them from that period.”* We deal with this issue further at paragraphs 148 and 182-183 below.

(iv) The GLP judicial review proceedings

130. Certain details of proceedings for judicial review of the Commission in relation to the AIQ payments, including pre-action correspondence, pleadings and evidence, have been placed in the public domain. We are therefore able to make the following observations on them.
131. On 29 September 2017, Deighton Pierce Glynn (“DPG”), solicitors acting for the GLP, sent a pre-action letter to the Commission, in which it intimated a claim for judicial review concerning the Commission’s failure to take any action in respect of alleged unlawful expenditure by Vote Leave in the EU referendum. The letter alleged (among other things) that the Commission had erred in law in concluding (a) that the AIQ payments were not referendum expenses incurred by Vote Leave and (b) that the AIQ payments had not fallen within the definition of *“common plan expenses”* under EURA so as to fall to be treated as having been incurred by Vote Leave.

132. On 12 October 2017, the Commission wrote a response to the pre-action letter. It denied GLP's claim. It stated that, following initial contact with Mr Grimes in August and September 2016 about donations made by Vote Leave to Mr Grimes, the Commission made further inquiries in February and March 2017 in the course of an "assessment" under paragraph 6 of its Enforcement Policy. The Commission stated that "[t]he evidence, including documentary evidence, obtained during our assessment was consistent with [the payments by Vote Leave to AIQ] being donations and not joint spending".
133. The Commission said that it considered "information from a complainant and other sources, as well as documentary material and explanations from Vote Leave, Mr Grimes and Aggregate IQ". The Commission concluded that "this information was consistent with the money paid by Vote Leave to Aggregate IQ for services provided to Mr Grimes being donations, and with the services provided by Aggregate IQ to Mr Grimes not being in pursuance of a common plan with Vote Leave. We therefore did not have reasonable grounds to suspect an offence under PPERA or the EURA... Accordingly, we took a decision on 21 March 2017 that no further action was necessary. In accordance with our Enforcement Policy (see paragraph 6.8), we did not consider there were sufficient grounds to open an "investigation"."
134. The Commission denied that the AIQ payments constituted expenses incurred by Vote Leave. It stated that although the relevant sum had been "paid" by Vote Leave, the expenditure was "incurred" by BeLeave. It stated: "It is clearly possible for person A to incur expenditure that is paid for by person B... 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".
135. The Commission also rejected the proposition that the AIQ payments fell within the definition of common plan expenses. It stated that any agreement between Vote Leave and Mr Grimes that he would procure the services of AIQ and Vote Leave would pay for it "cannot on its own be said to amount to a 'plan or other arrangement'", but was "simply a payment made by one campaigner for the use of services by another campaigner. If such a practice was to be forbidden under the legislation, then Parliament would have prohibited campaigners from making donations to others, by excluding them from the list of 'permissible donors' under Schedule 13 of PPERA". The Commission continued: "There will only be a 'plan or other arrangement' if there is some agreement reached as to how expenses incurred will be used".

136. The Commission went on to say that it had seen “*no evidence*” that there had been a plan between Vote Leave and BeLeave that “*Vote Leave would incur other expenses up to the £7m limit with the intention of avoiding having to account for the payment to Aggregate IQ*”.
137. In November 2017 the GLP issued a claim for judicial review. It challenged the Commission’s conclusions that the AIQ payments did not constitute referendum expenses incurred by Vote Leave (ground 1) and that the payment did not meet the definition of common plan expenses (ground 2). It also alleged that (a) insofar as the Commission knew that Vote Leave was paying for other referendum campaigns and/or informed Vote Leave that it was permitted to proceed in that way, it misdirected itself as to the law and therefore necessarily failed in its supervisory duties (ground 3); and (b) it was unreasonable for the Commission to conclude that there was no reason even to suspect any breach of the spending rules and not to open an investigation (ground 4).
138. On 20 November 2017, the Commission filed an Acknowledgement of Service (“**AoS**”), in which it indicated it would contest the claim. In its summary grounds for contesting the claim, the Commission stated that it had “*undertaken a review of the decision not to proceed to the investigation stage*” as a result of “*further information that has come to light*” since the decision which was the subject of the judicial review. Annexed to the summary grounds was a document entitled “*Assessment Review*”. This set out various details from the Commission’s “*original assessment files*”, including the following:
- a. Vote Leave received a £1m donation on 13 June 2016. It told the Commission that the donation was unexpected although it was aware it was on its way on 9 June 2016 when it calculated its financial position and determined that this donation would leave it £500,000 over and above its £7m spending limit for the referendum campaign.
 - b. At some point between 7 and 12 June 2016 Vote Leave indicated to Mr Grimes that it might donate funds to him. On 13 June 2016 Mr Grimes responded to the offer of a donation by telling Vote Leave he would like to work with AIQ, and asked for the donation to be paid directly to AIQ.
 - c. On 14 June 2016 Vote Leave formally decided to donate the surplus funds to Mr Grimes. On the same day Vote Leave advised Mr Grimes, via email, that it had decided to donate £400,000 and asked where the funds should go. Mr Grimes provided details of his AIQ reference and account number.

- d. Vote Leave offered Mr Grimes a further donation on 17 June 2016, and he asked for this to be paid to AIQ. The amount was paid to AIQ on 20 June 2016.
 - e. On 21 June 2016 Vote Leave offered a third donation, of £181,000, to Mr Grimes. He responded – 22 minutes later – confirming that he would be able to use the funds and asking for £180,000 to be transferred to AIQ and £1,000 to his account for travel expenses.
 - f. As appears from paragraph 89 above, the “*Advertiser Agreement and Insertion Orders*” relating to AIQ and Mr Grimes were dated 14, 17, 20 and 21 June 2016.
 - g. During the original assessments, Vote Leave told the Commission that the request for a donation and the decision to give one were made “*without conditionality, collaboration or coordination*”.
 - h. Vote Leave and AIQ told the Commission that details of the work AIQ conducted for one campaigner was not discussed with any other.
139. The Assessment Review went on to state that it was satisfied that “*there was sufficient evidence gathered during the original assessments to indicate that the services from AIQ were being procured by Mr Grimes for use in respect of his campaign*”. The Commission was satisfied that, on the available evidence, the payments constituted donations by Vote Leave in respect of referendum expenses incurred by Mr Grimes.
140. As to whether the AIQ payments were “*common plan expenses*”, the Assessment Review stated that there “*are no direct indications of the campaigners working together, and... the explanation given by Mr Grimes of how he came to hear of AIQ is plausible*”. However, the Commission said that it was now aware of the payment of £100,000 made to AIQ, purportedly as a donation to Veterans for Britain (see paragraph 91 above). The Assessment Review stated that “*[i]t may on investigation be possible to infer from this that these similar payments were more than a coincidence, and that the common denominator in both instances, Vote Leave, may have had some influence or control over how the amounts were used*”.
141. The Commission also referred to the sequence of events reported to it by Vote Leave and Mr Grimes which indicated that there were more communications between Vote Leave and Mr Grimes about the AIQ payments than had so far been disclosed. In particular:

- a. Mr Grimes was in a position to make arrangements with AIQ to provide services to him on 13 June 2016 (which was the same day on which he asked for the donation to be paid to AIQ) before receiving confirmation of the amount to be donated.
 - b. On 17 June 2016 Mr Grimes asked Vote Leave to transfer funds to AIQ without, according to the papers, knowing what amount was due to be transferred. On the same day he received from AIQ an insertion order for services, which corresponded to the amount of the transfer to AIQ made by Vote Leave.
 - c. The amount apparently offered by Vote Leave on 21 June 2016 appeared to be the exact sum that Mr Grimes needed to pay AIQ for services he had apparently already agreed with them, despite there being a gap of only 22 minutes between the offer and his asking for it to be paid to AIQ.
142. As a result, the Commission now concluded that there was a reasonable suspicion that a common plan or arrangement may have been in place between Vote Leave and one or both of Mr Grimes and VFB, in which case Vote Leave should have reported the donations as its own spending. Alternatively, it was possible that some or all of the payments may in fact have amounted to referendum expenses incurred by Vote Leave, and were reportable as such.
143. In its summary grounds, the Commission argued that GLP's claim should be dismissed. It submitted that the claim was now academic since the Commission had instigated an investigation (which was the principal relief sought in the claim). The Commission contended that the GLP's construction of the relevant provisions in PPERA was wrong because it overlooked the fact that a permitted participant was entitled to make a donation to another permitted participant in respect of the referendum expenses incurred by the latter permitted participant. Its case was that there was nothing in the statutory scheme to prevent one permitted participant making an unlimited donation to another permitted participant (subject to the common plan rules).
144. We understand that on 29 November 2017 the GLP served a Reply to the AoS and that on 5 December 2017 the Commission served a further response. We have not seen those documents.
145. On 18 January 2018 Lang J issued her decision on the GLP's application for permission to claim judicial review. The Judge stated that, since the Commission had decided to undertake an investigation into improper referendum spending by Vote Leave, the original decision which formed the basis for the judicial review claim would be superseded. The claim was therefore

academic and permission to claim judicial review would be refused. However the Judge noted that the GLP's analysis of the statutory scheme was "*arguable*".

146. On 15 March 2018 the GLP made a renewed oral application for permission to claim judicial review, challenging Lang J's view that the proceedings had become academic. Before that hearing, the GLP and the Commission filed skeleton arguments in support of their respective positions.
147. In addition, Vote Leave filed a document dated 13 March 2018 and entitled "*Observations by an Interested Party: Vote Leave Ltd*", in which it set out its arguments in opposition to the grant of permission.
148. Vote Leave also served a witness statement made by Matthew Elliott, the former CEO of Vote Leave. In that document Mr Elliott stated that Vote Leave had received guidance from the Commission on spending in the EU referendum on the following occasions:
 - a. On 21 September 2015 at a meeting attended by Mr Norton, the Vote Leave lawyer, among others, employees of the Commission had given guidance on the "concert party rule" in what was then the European Union Referendum Bill. This included that the rule "*appeared to be an anti-avoidance measure to prevent the formation of spurious groups in order to manufacture a higher spending limit*".
 - b. On 12 May 2016 Ms Flockton sent an email to Kevin Molloy, Guidance Advisor at the Commission, in which she sought clarification on (among other things) "*events which Vote Leave has not organised, is not involved in anyway [sic] in co-ordinating but for which it is requested to provide branded materials such as banners and flags*". Ms Flockton stated that Vote Leave considers such events to be independent and not part of the campaign. She stated that "*[t]he cost of any materials provided would be treated as campaign expenditure in any event, but the mere provision of such materials to a third party does not of itself constitute "working together"*". By his email in response, Mr Molloy stated: "*If you are supplying materials to other campaigners without having a co-ordinated plan or agreement then the material is likely to be a donation from you to the other campaigner. If the donation is over £500 it will be reportable by the other campaigner. You would not need to report the cost of the material in your spending return unless you use the material yourself.*"

- c. On 2 June 2016 Mr Molloy sent an email to Ms Woodcock in which he provided general guidance as to the need for a “*coordinated plan or arrangement*” in order for there to be working together under the EURA.
149. In his statement, Mr Elliott referred to questions raised by the GLP “*as to whether Vote Leave, BeLeave, and Veterans for Britain truly ran distinct campaigns during the EU Referendum*”. In response, he exhibited to his statement “*examples of the campaign materials used by the different campaigns*”. These were print-outs of Tweets posted on the Vote Leave, BeLeave and VFB Twitter pages. The BeLeave Tweet included a photograph of five campaigners. Mr Elliott continued: “*I can confirm distinct campaigns were run.*”
150. J has seen this witness statement and Mr Elliott’s comment on the BeLeave Tweet and the photograph in it. He has commented on the BeLeave Tweet which was exhibited to Mr Elliott’s witness statement. He states that the photograph used for the Tweet was taken using the Vote Leave design team, including Dewyne Lindsay, a Vote Leave photographer. Various staff-members at Vote Leave were aware of and had oversight over the production and selection of the photograph, including Ms Woodcock and Mr Parkinson.
151. We understand that the GLP’s renewed application for permission to claim judicial review was heard before a Divisional Court on 15th March 2018 Judgment was reserved and has not been handed down as of the date of this Opinion.

E. ANALYSIS

(i) “Expenses incurred by or on behalf of any individual or body...”

152. As set out at paragraphs 17-29 above, in accordance with the legislative scheme under Part VII of PPERA, a permitted participant in a referendum must include in its spending return all payments made in respect of referendum expenses incurred by or on behalf of that permitted participant during the referendum period. Referendum expenses are any expenses which:
 - a. are incurred by or behalf of any individual or body;
 - b. are qualifying expenses falling with Part I of Schedule 13 to PPERA; and
 - c. are incurred for referendum purposes.
153. We consider it plain that the AIQ payments related to “*qualifying expenses*” in that they related to “*advertising*” and/or “*market research or canvassing for the purpose of ascertaining polling intention*” within the meaning of Part I of Schedule 13 to PPERA. Further since Vote

Leave paid AIQ directly (whose services it used extensively during the campaign), it must have known that the services of AIQ which it purchased fell within Schedule 13.

154. It is also clear that the AIQ payments were incurred for “*referendum purposes*”. The definition of referendum purposes in s 111(3) is formulated in notably broad language. It requires that the expenses be incurred either (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) “*or otherwise in connection with promoting or procuring any such outcome*” (emphasis added).
155. In other words, what is regulated is the incurring of expenditure on qualifying expenses in connection with promoting or procuring a particular outcome in relation to the referendum question, whether through one’s own campaign or otherwise. We therefore disagree with the suggestion in the Commission’s letter in response to the GLP pre-action letter that it is “*campaigners*” rather than “*the paying for campaigning*” which are regulated by PPERA at a referendum – to the contrary, both the language and the purpose of PPERA indicate that it is *expenditure* incurred for referendum purposes which is regulated, and the legislation therefore specifies who may participate in a referendum campaign at all, and what they may spend on promoting or procuring a particular outcome, directly or indirectly.
156. There is no requirement in s 111(3) that any goods or services purchased by the relevant payment be used by or provided to the permitted participant which made the payment. So even on the assumption that the services provided by AIQ in consideration for the AIQ payments were supplied to BeLeave, and not to Vote Leave, this would not provide a basis for concluding that Vote Leave did not incur the relevant expenses. We consider that even on this assumption as to the facts, a court would conclude that the expenses incurred by Vote Leave to pay for AIQ services actually used by BeLeave were incurred by Vote Leave for “*referendum purposes*”.
157. The key issue is whether the “*expenses*” were “*incurred by*” Vote Leave, if Mr Grimes’ account is accepted, and if, alternatively, it is rejected. The words “*expenses*” and “*incurred by*” within this regime are to be interpreted in accordance with their ordinary English meaning, having regard to the context in which they appear. In the *New Oxford English Dictionary*, an “*expense*” is defined as “*the cost incurred in or required for something; the money spent on something*” and “*to incur*” is defined as “*to become subject to (something unwelcome or unpleasant) through one’s own action*”.

158. It is also an established tool of statutory construction to consider the statutory purposes of the expenses regime in PPERA. These are to establish who may participate in a referendum campaign, and to set limits as to what any particular individual or organisation may spend. The purpose of establishing particular limits, including limits for more than one person or body acting in concert, and of requiring declarations as to what has been spent, is to enforce spending limits on referendum campaign expenditure and to promote the transparency of such expenditure during campaigns. This would be defeated if any rich individual or organisation could simply “*donate*” money or services which it both intended and knew would be used for one of the purposes in Sch 13 and to promote a particular outcome in response to a referendum question to another permitted participant who happened to be under his her or its expenditure limit, without declaring this as a expense incurred in the referendum campaign. Such an interpretation would render the expenditure limits in PPERA a dead letter.
159. We consider this issue, first, on the basis solely of the facts set out in Mr Grimes’ account, and in the documents submitted by him, to the Commission; and, second, on the basis of the additional evidence which we have summarised in this Opinion.
160. Even on the basis of Mr Grimes’ account, on the correct analysis it is our firm view that the AIQ payments would be likely to be held to be expenses incurred by Vote Leave.
161. It was that organisation which, having notified BeLeave that it would pay the relevant costs, became subject to them. On Mr Grimes’ account, the transaction did not involve a mere transfer of funds to BeLeave for undetermined purposes which may or may not have fallen within Sch 13 to PPERA. Instead, Vote Leave was responsible for meeting AIQ’s costs which (as Vote Leave knew) constituted “*qualifying expenses*” for referendum purposes. In those circumstances, we believe that Vote Leave incurred the AIQ expenses within the meaning of PPERA, s 111.
162. This conclusion is reinforced by a purposive reading of the statute. An interpretation of s 111 by which the AIQ payments were held not to have related to expenses incurred by Vote Leave and so to exempt such payments from disclosure by the paying party, would render the legislative regime ripe for abuse. A “*parent*” permitted participant could set up and/or support multiple other organisations, through which campaign expenditure could be funnelled without counting towards the spending limit of the parent permitted participant, even where such expenses were “*qualifying expenses*” and were spent with a view to promoting the same outcome in the referendum as that supported by the parent permitted participant. Such a system would risk defeating the object of the PPERA spending rules.

163. Further, a permitted participant or designated organisation could make numerous payments of less than £10,000 to other individuals or groups (including to groups established by the paying party) for the purpose of supporting the permitted participant's campaign, without those payments having to be reported by anyone. If such payments were held not to be expenses incurred by the permitted participant, then there would be no obligation to include them on the permitted participant's spending return. If each recipient spent less than £10,000 in the campaign, it would not be required to submit any spending return during the campaign. Such payments would therefore be unrecorded, and would afford an additional means for circumventing the spending limits under PPERA and for frustrating the statutory purpose of transparency.
164. We do not believe that, even if it is a factually accurate account of what occurred, the explanation set out in Mr Grimes' email of 9 September 2016 (at 3.33pm – and apparently written after advice from others at Vote Leave) provides a persuasive answer to this view. The position adopted by Mr Grimes was that the expenses were not incurred by Vote Leave because it was *“BeLeave's obligation to pay AIQ”* and Vote Leave *“discharged BeLeave's debt to AIQ by transfer of cash at our request. It was not a condition of the donation either that the donation be spent on advertising”*. Even on the assumption that this account of the contractual situation is correct (and, as set out below, there is some reason to doubt it), we consider that by discharging BeLeave's debt to AIQ for the provision of advertising intended to promote a particular outcome in the referendum, Vote Leave incurred relevant expenditure in connection with promoting that outcome. Section 111(2) refers to the party which incurs the expense and not to the person which enters into a contractual obligation with the relevant provider of goods or services. On Mr Grimes' account, Vote Leave was the party which had assumed responsibility for meeting the cost of AIQ's services. In any event, we agree with the observation in the GLP's skeleton argument for the judicial review proceedings that the requirement in PPERA that a permitted participant must report services provided to it for free indicates that *“expenses incurred by... any individual or body”* does not correspond to *“a liability entered into by an individual or body”*.
165. We do not consider that this construction of PPERA is undermined by the provisions on donations in Sch 15 to PPERA, as is submitted by the Commission in the judicial review proceedings. Although Sch 15 does not bar a permitted participant from donating to another permitted participant, it does not provide that such donations may not also constitute expenses. If, as here, a permitted participant donates to another permitted participant to

enable it to procure services which will promote a particular outcome at the referendum, the donation – whether in cash or in kind - is an expense connected with procuring that outcome.

166. We are conscious that, since we are considering a penal statute, it is necessary to construe strictly the scope of the offences provided for: *R v Harvey* [2016] 2 WLR 37 (SC) at [12]. However, as is also set out in *Harvey*, it is still necessary, when adopting the strict approach to construction of a penal statute, for the court to seek to identify and give effect to the statutory purpose. We do not consider that the rule on strict construction of a penal statute affords a sufficient basis for holding that the AIQ payments were not referendum expenses incurred by Vote Leave.
167. In any event, the additional evidence set out in this Opinion indicates that there is good reason to consider that, contrary to the account given in writing by Mr Grimes to the Commission, the AIQ payments were not, in fact, donations to BeLeave, but were instead made (at least in large part) to support Vote Leave's own campaign:
- a. There is powerful evidence, including contemporaneous correspondence, set out in and exhibited to the statements of Mr Wylie, Mr Sanni and J, and in the supporting documents, that Vote Leave and BeLeave were intimately linked for the entirety of the relevant period, as set out above. In brief summary:
 - i. At the outset, BeLeave provided written support for Vote Leave's nomination as the designated organisation for the leave campaign.
 - ii. The key individuals working on BeLeave projects were recruited as Vote Leave staff-members or volunteers, and continued to work on Vote Leave content and events while engaged in tasks relating to BeLeave.
 - iii. Those working on Vote Leave and BeLeave projects worked together in a single office.
 - iv. Those working on BeLeave activities reported to, were supervised by, and took advice from, members of staff at Vote Leave, including Mr Cummings, Mr Parkinson and Ms Watson.
 - v. Vote Leave staff-members, including Mr Cummings, Mr Parkinson and Ms Watson, had access to the BeLeave Google Drive and Facebook pages, and were copied in to emails concerning BeLeave.

- vi. Mr Wylie, Mr Sanni and J express the common understanding that BeLeave was not independent of Vote Leave, and Mr Sanni and J say that they were supervised by and took advice from Mr Parkinson and Ms Watson. Numerous contemporaneous documents support this.
 - vii. There appears to have been close collaboration between Vote Leave staff-members on the one hand and Mr Grimes and Mr Sanni regarding the establishment of BeLeave as an unincorporated association.
 - viii. Some marketing materials (eg t-shirts) worn during the campaign which contained Vote Leave branding were exhibited in campaign photographs which contained BeLeave branding.
 - ix. The evidence advanced by Mr Elliott in the judicial review proceedings, in rebuttal to the GLP's claim of links between Vote Leave and BeLeave and VFB, is slender. Moreover, J's evidence indicates that the Tweet relied on in Mr Elliott's statement in fact shows the close relationship between Vote Leave and BeLeave because it was overseen by Vote Leave and it was taken by a Vote Leave photographer, using the Vote Leave design team.
- b. There are good grounds for inferring that Vote Leave was involved in the decision by which the AIQ payments were made, that it was aware of the scope of the work which would be conducted pursuant to those payments and that the payments supported Vote Leave's campaign. This is based on the evidence discussed above and (in brief summary) the following:
- i. Vote Leave's expenditure of approximately £2.7m (or almost 40% of its total reported expenses) on work with AIQ, leaving aside the AIQ payments with which this Opinion is concerned, much of which was spent before it was decided that AIQ would work for BeLeave also.
 - ii. The fact that AIQ employees were based in the Vote Leave offices during the referendum campaign and (on Mr Sanni's evidence) met with Mr Cummings and others during the latter stages of that campaign.
 - iii. Mr Sanni's accounts of meetings attended by Mr Grimes and Mr Cummings during May / June 2016.

- iv. Mr Sanni's evidence as to the discussions within Vote Leave in May / June 2016 that the organisation was nearing its spending limit.
- v. The evidence that Ms Watson was closely involved in discussions with Mr Grimes and Mr Sanni about a potential donor during this same period.
- vi. The references by Mr Grimes and Mr Sanni, in their discussions at the time, and in the draft documents Mr Sanni produced, to the involvement of Vote Leave in the securing and management of any donations towards BeLeave's work.
- vii. The evidence that Mr Sanni was told by Mr Grimes that the donation to be given towards BeLeave's work had to be spent on services provided by AIQ.
- viii. The fact that no money ever passed into BeLeave's account or Mr Grimes' account in respect of AIQ services, since the AIQ payments were made direct from Vote Leave to AIQ.
- ix. The evidence from Mr Wylie as to his conversations with Mr Silvester in Canada in April 2017 as to AIQ's understanding of the work it was undertaking for Vote Leave and its associated organisations.
- x. It is implausible that Mr Grimes, a 22-year-old volunteer with limited political and campaigning experience, would be given sole responsibility for managing and deciding on the expenditure of approximately £625,000, to the exclusion of the several highly experienced campaigners heading Vote Leave such as Mr Cummings, Ms Watson (who has since been appointed a political adviser at 10 Downing Street) and Mr Parkinson (who has since been appointed a special adviser to the Prime Minister).
- xi. It is also implausible that Vote Leave would have "*donated*" services of such a large value to Mr Grimes / BeLeave only a few days before the date of the EU referendum without any indication or conditions as to how the sum would be spent, unless this was the best way of avoiding breaching its own expenditure limit and/or it assessed that this was the best way of spending its advertising budget to promote the outcome for which it was campaigning during the EU referendum.

- xii. It is unlikely that an outlay as large as £625,000 to AIQ would have generated only 1,000 email sign-ups for BeLeave (as Mr Sanni and Mr Wylie were told). On any view that represents an extremely low rate of return, especially by contrast to the much higher sign-up rate generated by the same provider for Vote Leave proportionate to the declared Vote Leave spend on AIQ services. This gives rise to a suspicion that the ostensible provision of services to BeLeave was in fact a means of funnelling Vote Leave expenditure via another permitted participant.
 - xiii. There is the potential similar fact evidence on this issue relating to the spending return of Veterans for Britain (see paragraph 91 above). That return discloses a similar pattern by which a large sum was paid by Vote Leave to AIQ shortly before the date of the EU referendum and then reported by a far smaller group campaigning for a leave vote (and not reported by Vote Leave).
 - xiv. The sequence of events disclosed in the Commission's Assessment Review, and in particular the coincidences as to the sums which Vote Leave indicated they were willing to "*donate*" to BeLeave and the scope and costs of the work which Mr Grimes appears to claim he agreed with AIQ. The timing during this sequence is also suspicious, for example the very short periods of time (a matter of minutes) between the "*offer*" of donations by Vote Leave and the conclusion of "*Advertiser Agreement and Insert Orders*" between Mr Grimes and AIQ, and the surprising similarity between the sums donated and the contractual obligations ostensibly already undertaken by BeLeave to AIQ.
- c. There is good reason to doubt the account given by Mr Grimes of the AIQ payments, because:
- i. Mr Grimes' statement to the Commission that "*BeLeave ran its own independent campaign from the outset*" (and other similar statements) are undermined by the contemporaneous documents which we have seen, and other strong evidence of the BeLeave's dependence on and close links to Vote Leave: see the factual summary set out above and the points made in paragraph 167(a) above.

ii. Mr Grimes' statements that BeLeave contracted with AIQ wholly independently of Vote Leave, and that Vote Leave had no input on the intended object of the expenditure, is difficult to square with the email exchange between Mr Cummings and Mr Grimes when the 'donation' was offered, and other surrounding circumstances and evidence, including the nature of the Vote Leave senior management and structure, and its relationship with both AIQ and BeLeave: see the factual summary set out above and the points made in paragraph 167(b) above.

168. If, as seems probable in the light of the analysis above, the AIQ payments were incurred to purchase targeted advertising for Vote Leave's own referendum purposes, those payments were incurred, and should have been declared, by Vote Leave as its own expenses. In those circumstances, the Commission's arguments as to whether Sch 15 of PPERA means that one permitted campaigner could donate to another simply do not arise.

169. For the reasons set out above, our view is that both on a literal and a purposive reading of the relevant provisions, and taking into account the principle of the strict interpretation of penal statutes, it is well arguable that the AIQ payments were made in respect of qualifying expenses incurred by Vote Leave for referendum purposes, and should therefore have been reported by Vote Leave.

(ii) Common plan expenses

170. The AIQ payments are to be treated as having been incurred by Vote Leave if they were referendum expenses which were incurred:

- a. by or on behalf of an individual or body during the referendum period for the referendum; and
- b. in pursuance of a plan or other arrangement by which referendum expenses are to be incurred by or on behalf of (i) that individual or body, and (ii) one or more other individuals or bodies, with a view to, or otherwise in connection with, promoting or procuring a particular outcome in relation to the question asked in the referendum.

171. Sub-paragraph (a) above is plainly satisfied. The AIQ payments were payments in respect of expenses which were incurred either by Vote Leave (on the analysis at paragraphs 152-169 above) or, alternatively, in accordance with the position of Vote Leave and Mr Grimes, by BeLeave / Mr Grimes.

172. As to the question of whether, under (b), the expenses were incurred pursuant to a “*plan or other arrangement*” of the type prescribed by paragraph 22(1)(b) of Schedule 22 to EURA, there is clear evidence of such a plan or other arrangement on the basis of Mr Grimes’ own account to the Commission. In his email of 8 August 2016 he said that he told Vote Leave that the AIQ payments were money “*for our digital campaign*” and “*that is why we asked for the money to be paid directly to the company we were working with*”. In his further email of 9 August 2016 (3.33pm) he asserted that “*Vote Leave discharged BeLeave’s debt to AIQ by transfer of cash at our request*”. In his email of 3 March 2017 he made clear that Vote Leave “*made me aware that they were in a position to make a donation and asked if BeLeave was able to make use of it*”. He continued: “*I asked and was told that AIQ was running Vote Leave’s digital campaign*”. All of these are at the very least suggestive of a plan or other arrangement by which referendum expenses would be incurred by Vote Leave and BeLeave for with a view to, or otherwise in connection, with promoting or procuring a particular outcome in the EU referendum.
173. As set out at paragraph 167 above, a large number of features of the evidence discussed in this Opinion provide good reasons for considering that the AIQ payments were made to support Vote Leave’s campaign. Such evidence strongly suggests coordination between Vote Leave and BeLeave as to the making and use of those payments and therefore supports the conclusion of a relevant plan or other arrangement between the two organisations (insofar as the groups were distinct).
174. There is therefore a strong case that there was a plan or arrangement for Vote Leave to make AIQ payments in respect of referendum expenses, within the meaning of paragraph 22(1)(b) of Sch 1 of PPERA on behalf of BeLeave. There is a strong case to establish the existence of a scheme by which BeLeave would (for the purpose of its spending return) “*incur*” the expenses relating to the AIQ payments, so as to enable Vote Leave to incur other referendum expenses, while enabling Vote Leave artificially to stay within its spending limit.
175. We therefore consider it is strongly arguable that the AIQ payments fell within the definition of “*common plan expenses*” and should on that basis have been reported by Vote Leave.

(iii) Offences in connection with the AIQ payments

176. In summary, there is strong evidence to indicate that Mr Halsall and/or Vote Leave have committed offences under PPERA in connection with Vote Leave spending over the spending limits because:

- a. Vote Leave's spending return should have recorded the AIQ payments.
- b. In omitting those payments, Vote Leave's spending return was not a complete and correct return as required by law (and in particular by s 120(2) of PPERA).
- c. Since the AIQ payments, if incorporated into the return, would have taken Vote Leave above a total expenditure of £7m, it breached its spending limits under PPERA.

177. We consider that there is prima facie evidence that the following electoral offences were committed in the EU referendum campaign, which require urgent investigation so that consideration can be given to whether to refer the case to the Crown Prosecution Service for a decision on whether to prosecute:

- a. that Mr Halsall authorised expenses to be incurred by Vote Leave where he knew or reasonably ought to have known that expenses would be incurred in excess of that limit, contrary to s 118(2) of PPERA;
- b. that Vote Leave committed the same offence;
- c. that Mr Halsall delivered an expenses return which did not comply with the statutory requirements under s 120(2)-(3) of PPERA; and
- d. that Mr Halsall knowingly or recklessly made a false declaration in the declaration submitted with the Vote Leave return, and/or that the requirements as to a lawful return were contravened during the period in which he was the responsible person, contrary to s 123(4)(a) and/or (b) PPERA.

178. We do not know how Mr Halsall or Vote Leave would put their case in response to such allegations. However, in the absence of cogent evidence in defence of the allegations, there would be realistic prospects of conviction of those offences.

179. As to other individuals working on the Vote Leave campaign, we consider that on the current information there are reasonable grounds to suspect that the offences under ss 118(2) and 122(4)(b) were committed with the knowledge, assistance and agreement of Mr Cummings; and that there are reasonable grounds to investigate whether they were committed with the knowledge, assistance and agreement of other senior figures/officers in Vote Leave, including Mr Parkinson and Ms Watson, given the inferences which can properly be drawn from their very close day to day involvement in the running and direction of the BeLeave campaign, and

their access to document drives and electronic channels concerning the day to day activities of the BeLeave campaign.

180. The grounds for suspicion of the commission of offences under PPERA are sufficiently strong, and the potential offences sufficiently serious, that there is a good case for the exercise by the Commission of its investigative powers under Schedule 19B PPERA (in particular the power to require a person to produce documents for inspection by the Commission, under paragraph 3(2)(a)) in order to assist consideration of whether there are realistic prospects of conviction in relation to these offences.
181. For completeness, we add that there are also reasonable grounds to suspect that Mr Grimes delivered an expenses return which did not comply with s 120(2) and (3) PPERA, contrary to s 122(4)(b) of PPERA; and knowingly or recklessly made a false declaration in the declaration submitted with his return, contrary to s 123(4)(a) PPERA. Any such offences would, however, be based not on the omission of relevant expenses from the return but on the inappropriate inclusion of the AIQ payments on his spending return.
182. Based on public comments issued by Mr Cummings and the evidence of Mr Elliott in the judicial review proceedings, it is possible that Vote Leave would, in defending any charge, place reliance on communications between Vote Leave and the Commission before or during the EU referendum campaign. It may be said, for instance, that those communications afforded a “*reasonable excuse*” under s 122(4)(b) PPERA.
183. However, the only communication of which we are aware that appears even potentially capable of being relied on for this purpose is the email from Mr Molloy to Ms Flockton of 20 May 2016 (see paragraph 148(b) above). The statements in that email apply only to the supply of materials “*without having a co-ordinated plan or agreement*”. Were such a plan or agreement to be established, Mr Molloy’s comments could not reasonably be relied on in defence of the offences set out above. Even if there were no such plan or agreement, it does not appear tenable that comments made by Mr Molloy about the supply of campaign materials such as banners and flags for a third party’s campaign event could reasonably be taken to be general advice which could be read across to payments of £625,000 in respect of digital advertising services. Further, Mr Molloy stated that the costs of the campaign materials would not be reportable “*unless you use the material yourself*”.

(iv) Offences in connection with the Commission’s inquiries

Offences of failing to co-operate with Commission inquiries

184. We do not know precisely what inquiries the Commission has yet made under its investigative powers in relation to the AIQ payments, so there is no information before us which points to the commission of offences under Sch 13 to PPERA in connection with the Commission's inquiries into the AIQ payments. Such offences may arise only in the event of non-compliance with, or knowing or reckless provision of false information in purported compliance with, requirements made by the Commission under such powers.

Perverting the course of justice

185. The offence of perverting the course of justice can be committed even where no formal investigation is in progress. In the present case, it is relevant to consider whether this offence might be established in relation to (a) the apparent actions of Ms Woodcock, the Vote Leave Chief Operating Officer, in respect of the BeLeave drive on 17 March 2017 or (b) the communications between senior Vote Leave officers and Mr Grimes as to how Mr Grimes ought to respond during the Commission's inquiries after the EU referendum campaign ended.

- Ms Woodcock's actions in changing the permissions on the BeLeave drive on 17 March 2017

186. As to (a), Ms Woodcock's reasons for apparently changing the permission settings on the BeLeave shared drive are currently unexplained. The date on which this seems to have taken place, 17 March 2017, is potentially significant. This was nine months after the end of the EU referendum campaign; very shortly after the Commission's letter to Mr Grimes' letter of 1 March 2017 and Mr Grimes' response of 3 March 2017; and before the Commission had informed Mr Grimes of its view that there was no reasonable suspicion of an offence. It may also be significant that the changes to the permissions on the drive relate only to Ms Woodcock herself and two other high-ranking members of the Vote Leave team, Mr Cummings and Mr de Zoete.

187. While there is currently insufficient information as to these events to conclude that an offence is arguably established, the questions raised by these allegations provide grounds for further investigation.

- Advice to Mr Grimes in relation to responding to Commission inquiries

188. As to (b), we have summarised at paragraph 167 above the features of Mr Grimes' account to the Commission which are, at the very least, questionable in the light of other evidence we have seen. We have also referred to the evidence that Mr Grimes was extensively advised as to what to say in response to enquiries from the Commission by others within Vote Leave,

such as Mr Cummings, Ms Flockton, Mr Parkinson and Mr Stephenson. If such individuals procured or assisted in Mr Grimes to provide responses to the Commission which were intended to conceal wrongdoing in connection with the AIQ payments, that would amount to perverting the course of justice by them as well as Mr Grimes. It may also amount to a conspiracy to commit offences under Sch 13 PPERA. These are matters which warrant further investigation.

(v) Relevant powers of the Commission / CPS

189. The Commission's powers to investigate an offence under PPERA are set out in Schedule 19B to the Act, supplemented by the Commission's Enforcement Policy in force since April 2016. Any offences of perverting the course of justice would properly be a matter for the police.
190. In its Enforcement Policy, the Commission states that it will open an investigation where it is satisfied that there are reasonable grounds to suspect an offence has occurred and an investigation is in the public interest and is a justified use of the Commission's resources. The Commission has various powers to gather evidence by seeking documents, information or explanations by voluntary or compulsory means.
191. However, the Commission does not have its own prosecutorial powers. The Commission's Policy states, at paragraph 6.18, that (only) if satisfied beyond reasonable doubt that an offence has occurred, the Commission may decide to refer the matter to the police or relevant prosecuting authority. We consider that that test sets too high a threshold for referral to the prosecuting authorities to consider whether there is a basis for prosecution. By reserving the exercise of that power to cases in which the Commission itself is sure that an offence has been committed, the Policy fetters the Commission's discretion in a way which is likely to frustrate the purposes of PPERA by unduly limiting the cases which could be assessed by the prosecuting authorities and considered by a criminal court. By contrast, the evidential stage of the CPS Prosecutor's Code states (at paragraph 4.4) that in order for the evidential test for sending a case to trial that prosecutors must be satisfied that there is a reasonable prospect of securing a conviction on the evidence which is or may become available.
192. If the Commission indeed refrains from even exercising a discretion as to whether to refer a matter to the police or prosecuting authorities until it is satisfied beyond reasonable doubt that an offence has been committed, this in our view would constitute an unlawful fetter on its regulatory discretion.

193. Agreements exist between the Commission and police and prosecutors in relation to potential offences relating to elections or referenda. In particular the CPS and Commission have agreed a Protocol to facilitate effective working between the organisations in such investigations. In its Enforcement Policy, the Commission states that it will liaise with police and prosecutors at the earliest possible stage in order to minimise duplication of investigative work. The Policy also provides that the Commission will liaise with other regulatory bodies and organisations and share information with them where it is able to and it is appropriate to do so. In that context we note that, although the compatibility with the Data Protection Act 1998 of AIQ's work in the EU referendum falls outwith the scope of this Opinion, it may continue to be appropriate for the Commission to liaise with the ICO insofar as issues of data protection also arise in connection with the conduct of the EU referendum campaign.

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20 March 2018