

Made on behalf of Vote Leave Limited
Witness, Name and initials:
Elliott, M. J.
First witness statement of this witness
Dated : 13th day of March 2018
Exhibits : MJE1

CO/4908/2017

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

B E T W E E N :-

**THE QUEEN on the application of
GOOD LAW PROJECT**

Claimant

-and-

THE ELECTORAL COMMISSION

Defendant

-and-

VOTE LEAVE LIMITED

-and-

DARREN GRIMES

Interested Parties

WITNESS STATEMENT OF MATTHEW JIM ELLIOTT

I, Matthew Jim Elliot, company secretary of Vote Leave Limited, will say as follows:

Background

1. I was the founder of Vote Leave Limited ('Vote Leave'), and during the EU Referendum campaign, I was its Chief Executive. I am now company secretary of Vote Leave, company no. 09785255. I make this witness statement to provide some information which I hope is useful to the Court in understanding the background to Vote Leave's approach to reporting spending and donations to the Electoral Commission, and providing examples of donations between other registered campaigns.
2. Vote Leave is now a skeleton organisation. The company exists only to deal with regulatory inquiries and hopes and intends to shut down as soon as possible, given

its purpose ceased with the Referendum in June 2016, and I am advised that under company law a company should not continue on the register when its purpose has ceased. Other than myself as company secretary, there are just three directors of the company, all of whom are volunteers working without any remuneration. The other remaining directors are: Alan Halsall, the Responsible Person; Jon Moynihan; and Daniel Hodson. Very brief biographies of Vote Leave's current directors are at page 1 of my exhibit MJE1 attached to this statement.

Guidance from the Electoral Commission on reporting of spending and donations

3. On September 21st 2015, William Norton of Vote Leave, together with representatives of Labour for Britain and Conservatives for Britain, met with the Electoral Commission to seek guidance on how spending and donations were to be approached and reported to the Electoral Commission. In attendance at that meeting for the Electoral Commission were Vicky Fox (Head of Guidance), Adrian Fryer (Senior Advisor Policy), and Kevin Molloy (Guidance Advisor. Attached at pages 2 – 3 is a copy of the meeting note taken by Mr. Norton from that meeting.
4. Vote Leave also sought guidance from the Electoral Commission, both before and after the date of the EU Referendum, on the reporting of referendum spending and donations, in particular with regard to campaigns 'working together.' In that regard, attached at pages 4 – 6 is a transcript of emails exchanged between Vote Leave's finance director, Antonia Flockton, and Kevin Molloy of the Electoral Commission between May 12th 2016 and May 20th 2016. Also attached, at pages 7 – 8 is a copy of an email from Kevin Molloy of the Electoral Commission to Victoria Woodcock of Vote Leave dated June 2nd 2016.
5. For completeness, I attach at pages 9 – 31, a copy of the Electoral Commission's guidance document entitled 'Working together for EU referendum campaigners.'

Separate campaigns run by Vote Leave, BeLeave, and Veterans for Britain

6. I understand that GLP raise questions as to whether Vote Leave, BeLeave, and Veterans for Britain truly ran distinct campaigns during the EU Referendum. In that regard, I thought it may assist the Court in having examples of the campaign materials used by the different campaigns, and I attach those at pages 32 – 34. I can confirm distinct campaigns were run.

Approach of other campaigns and donors during the EU Referendum

7. A research assistant has helped me by sourcing and compiling information, in order to illustrate the approach to spending and donations during the EU Referendum by other campaigns and donors, in particular the advertising agency DDB UK Limited and its related agency 'adam&eveDDB.' Those materials are attached at pages 35 – 43 of my exhibit.
8. The footnotes on the relevant pages in the exhibit identify the source of the information cited, including where search terms were used on the Electoral Commission website at: <http://search.electoralcommission.org.uk/Search/>.

9. In summary, the materials show that the advertising firm adam&eveDDB played a role in the EU Referendum campaign, on the 'remain' side, having:
- a. Helped name and launch the 'remain' campaign group Britain Stronger in Europe, in October 2015;
 - b. Supplied advertising services to multiple independent campaigns;
 - c. Registered as an independent campaign by way of the company DDB UK Limited, less than a month before the EU Referendum vote, declaring nearly £250,000 in campaign spending;
 - d. As a registered campaign, received the entirety of its donations from other campaign groups or donors to other campaign groups.
10. Pages 35 – 36 provide an overview of the materials enclosed thereafter, with reference to the 'Figures' which are reproduced at pages 38 – 43.

STATEMENT OF TRUTH

I believe that the facts set out in this Statement are true.


Signature

Matthew Jim Elliott

March 13th 2018

Date

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EXHIBIT MJE1

Vote Leave Limited - Director Biographies

Matthew Elliott – Founder of and has served as chief executive of the TaxPayers' Alliance, Big Brother Watch and Business for Britain. Mr. Elliott was the campaign director for the successful NOtoAV campaign in the 2011 Alternative Vote referendum. In 2015, Mr. Elliot became the chief executive of Vote Leave, the official designated organisation advocating for a 'leave' vote in the United Kingdom European Union membership referendum, held in June 2016.

Alan Halsall – A lawyer by training Mr. Halsall became a businessman running a family consumer products business from 1979 until 2007. He also rescued the famous Silver Cross brand which makes prams, selling that business after 13 years in 2015. Mr. Halsall was Joint Chairman of Business for Britain, and then served on the Board of Vote Leave. He is also Chairman of Craven Education Trust, a multi academy Trust based in Skipton, Yorkshire.

Jonathan Moynihan - Chair and co-Principal of Ipex Capital, the demerged high-technology venture capital arm of PA Consulting Group of which he was formerly Executive Chairman. Mr. Moynihan is a Foundation Fellow of and, from 1995 to 2007, Chairman of the Campaign Board at Balliol College. He was a founder member of the Dean's Council, MIT Sloan School of Management. He was a member of the Dean's Business Advisory Group at the Said Business School from 1999-2006. Mr. Moynihan also helped found, and was first Chairman of, The Helen Bamber Foundation, a charity headed by Helen Bamber that works with refugee victims of human rights violations. In 2010 Moynihan was created a 'Distinguished Friend of Oxford', from 2011-2016 he was a Fellow of Gray's Inn, and has been a Member of Council at the Royal Albert Hall since 2012 and was elected as its President in 2015. He is also a member of the Court of Imperial College London.

Daniel Hodson – Is a businessman, and was the former Chief Executive of Liffe, he is now Chairman of Berry Palmer and Lyle Holdings. He is a former Master of the Worshipful Company of Mercers, and Deputy CEO of Nationwide Building Society. He led the City for Britain Group and then served on the Vote Leave Board.

Meeting with the Electoral Commission.

Monday 21st September 2015, 3.30pm-4.30pm, Electoral Commission, 3 Bunhill Row, London, EC1Y 8YZ.

Present: William Norton, Brendan Chilton (Labour for Britain), Michael Dowsett (Conservatives for Britain), Vicky Fox (Head of Guidance), Adrian Fryer (Senior Advisor Policy), Kevin Molloy (Guidance Adviser)

The purpose of the meeting was to explore the Electoral Commission's interpretation of some of the provisions in the European Union Referendum Bill which would have a significant impact on the way in which the three campaign groups structured their activities before and during the referendum period.

VF and AF stressed that the opinions expressed were made on the basis of the Bill as it stood at the time, and were therefore subject to the possibility that future amendments could change the position.

Spending limits and the 'concert party rule'

The Bill contains a provision governing 'concert parties', i.e. groups co-operating to a common plan or arrangement (currently Schedule 1 para 18). This has the effect of counting all expenditure against the limit of the designated lead campaigner where they are one of the co-operating groups, and double-counting expenditure where the designated campaigner is not one of the groups involved. This appeared to be an anti-avoidance measure to prevent the formation of spurious groups in order to manufacture a higher spending limit.

WN explained that Conservatives for Britain and Labour for Britain intended to support the application for designation by WN's organisation and all three groups intended to co-operate during the referendum. It was conceded that it would be difficult to deny that there would be some common plan or arrangement involved and that the three groups would form a concert party. Since they would be caught by the rule from the outset, would it be simpler for them to treat themselves as effectively one group for reporting purposes? This would allow transfers of resources between the groups to be ignored.

VF replied that as a point of principle, the Electoral Commission are encouraging groups to work with the designated campaigner, as this is likely to lead to a better-conducted referendum for voters. The concert party rule would be interpreted in this spirit. The legislation and practice which was adopted for the AV Referendum should not be taken as a precedent.

Each non-designated participant in the referendum should maintain records which distinguish:

- Expenditure authorised by the designated campaign: the group acts as an agent for the main campaign, and the cost counts towards the main campaign's £7 million spending limit
- Non-authorised expenditure: the designated campaign has no involvement with this and the spending counts towards the group's own limit of £700,000

Thus, if the designated campaign commissions a partner to deliver part of the campaign or to undertake specific campaign activities, those costs count against the designated campaign's overall limit. The partner group does not see its own spending limit diminish as a result of co-operating with the designated campaign.

WN asked whether there was any guidance as to what constituted a plan or arrangement. VF replied that groups should make an honest assessment of their discussions and provide an audit trail to support their conclusion. It was in the interests of all groups to document what activities were not being authorised by the designated campaign, as much as which activities were authorised. Branding was an important factor in making an assessment. If Group X delivered material which carried only the designated campaign's logo and slogans then it should be assumed that this was authorised by the designated campaign as part of a plan or arrangement.

WN asked about shared resources and personnel. VF and AF replied that if such services were recharged between groups at cost then it would not by itself mean that the groups were working as a concert party. These would be commercial transactions. Notional expenditure/donation issues would however arise if the costs were not recharged, because the concert party rule was not being interpreted to mean that campaign groups were treated as a single amalgamated entity.

Early reporting of donations

The Bill contains a provision for the reporting of donations before polling day (currently Schedule 1 para 32). The detail of how this would work is left to regulations to be made by the Secretary of State. WN asked if the Commission could shed light on how they expected this to operate.

VF and AF confirmed that they had no information from the Government on this aspect of the Bill. A similar provision had applied in the Scottish Referendum:

- It was limited to major donations, i.e. exceeding £7,500
- There were four reporting periods during the referendum period (30 May – 18 September 2014)
- The first reporting deadline covered donations from the day after Royal Assent (18 December 2013) to the end of the 4th week of the referendum period
- All other donations would be reported after polling day

It could be assumed that something similar would apply to the EU Referendum. The major distinction is that the timetable and reporting deadlines for the Scottish Referendum were known in advance and written into the governing legislation. Most of the key details of the EU Referendum will be unknown until the Government presents regulations to Parliament.

Referendum Guidance

The Electoral Commission will prepare a full set of guidance notes for the EU Referendum in due course, once Royal Assent has been received to the Bill. In the meantime, VF and AF recommended examining the guidance issued for the Scottish referendum to gauge the likely Electoral Commission approach.

However, the Commission will institute its series of occasional updates for campaigners to highlight matters of interest. At the suggestion of VF, WN, MD and BC provided contact details to register for the service.

Unlike the AV Referendum, the Commission do not intend to appoint one of their staff as a Single Point Of Contact for each campaign group. Instead there will be a general advice helpdesk which will be staffed by a rota:

WN suggested that the Commission prepare an 'EU Referendum' version of PPERA after Royal Assent, to incorporate the changes effected by the new legislation.

From: Antonia Flockton [<mailto:antonia.flockton@voteleave.uk>]
Sent: 12 May 2016 12:33
To: Kevin Molloy
Cc: Victoria Woodcock; Louise Edwards; Victoria Fox
Subject: Re: Some questions in relation to campaign expenditure

Dear Kevin,

We were hoping for a response to our questions of two weeks ago. The law and guidance in this area are far from unambiguous. As a result and in the interests of transparency, we note below the ways in which we are treating certain items. If you do not agree our approach, please advise us as soon as possible since it affects the calculation of our reportable spending and hence our ability to remain within our expenditure limit.

1. Capital assets by which I mean fit out costs for our premises at Westminster Tower and computer hardware. We are applying a straight-line depreciation cost to set against campaign expenses on the basis that if it is acceptable for tax and accounting purposes it should be considered fair and reasonable by the Commission. This is a question we raised 2 weeks ago now. We consider the reportable cost to be the fraction of the useful life of the asset falling between 15 April and 23 June inclusive in line with recognised accounting standards.

2. A question which has been raised repeatedly now is that in relation to events which Vote Leave has not organised, is not involved in anyway in co-ordinating but for which it is requested to provide branded materials such as banners and flags. We provided an example previously in relation to the flotilla. Other examples are events organised by University groups for which we are asked to provide speakers or branded materials. Where this is the case and we do so, we are treating these events as independent events and not campaign events on the basis that we have not co-ordinated, organised or collaborated in relation to the event. Your guidance already accepts that the mere provision of a speaker does not convert something to a Vote Leave event. The 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".

3. Any costs associated with the governance of Vote Leave Ltd we are not treating as campaign expenditure. Cost relating to legal, accounting, payroll, HR or advice in relation to compliance with governing law or regulation is not to be treated as campaign expenditure. Similarly, the post campaign audit. None of these costs are spent in trying to persuade the electorate in how to vote and so cannot constitute "referendum expenses" as defined in PPERA s.11.

4. Although to date we have done so in relation to events in the control period, we do not consider that costs associated exclusively with fundraising activities such as dinners and briefings for our high value donors should be treated as campaign expenditure. These are decided individuals and such events are not designed to persuade people how to vote. However, where costs are associated with crowd funding emails which also have campaigning content, they should be treated as campaign expenditure.

5. To reiterate the question of two weeks ago, please confirm the types of documents which may be uploaded to PEF online.

We would appreciate your prompt confirmation.

Kind regards, Antonia

Antonia Flockton

Finance Director, Vote Leave

Vote Leave – Molloy emails May 20th 2016

From: Kevin Molloy <KMolloy@electoralcommission.org.uk>
Date: Fri, May 20, 2016 at 3:40 PM
Subject: RE: Some questions in relation to campaign expenditure
To: Antonia Flockton <antonia.flockton@voteleave.uk>
Cc: Victoria Woodcock <victoria.woodcock@voteleave.uk>

Dear Antonia,

Thanks for your email and apologies for the delay in our response.

Before addressing your specific queries, I thought it would be helpful to set out the Commission's general position on apportioning overheads in relation to referendum spending.

Campaigners are only required to report a relevant proportion of overheads that are incurred in respect of the list of referendum campaign activities set out in in our [guidance](#) (p. 6) and which are summarised from the list of regulated matters in schedule 13 of PPERA. With regards to general overheads and running costs, we consider that only an appropriate proportion of the rental costs of an office (to the extent that the space is being used to plan, coordinate or carry out referendum activities), electricity and telephone/internet costs are sufficiently connected with spending on these listed referendum activities to count against the spending limit and require reporting.

When considering your overheads and running costs, you should make a reasonable assessment based on the facts in each particular case as to whether they have been incurred in respect of these referendum activities. It is appropriate for campaigners to split the costs of overheads where they have been used both before and during the regulated period, or where the overhead covers both referendum and non-referendum specific activities. You are not required to report the costs of overheads that are incidental to referendum activities.

Turning to your specific questions:

1. As described above, the costs of premises and equipment - where they have been incurred in respect of regulated referendum campaign activities - will constitute referendum spending. You should make an honest assessment of the amount you have spent based on the facts. Your assessment should consider the extent to which the premises and equipment have been used in respect of referendum campaign activities during the regulated period. For audit purposes, we recommend that you keep a record of how you made your assessment.

2. If you are supplying material 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.

3. Only costs that are incurred in respect of referendum activities will count against your spending limit and require reporting after the referendum. We agree that in most cases the costs you refer to as being related to 'governance' (such as HR support for your staff, accountancy fees and legal advice in respect of compliance with PPERA) will not constitute referendum expenditure as they are not being incurred in respect of regulated referendum activities. -

4. If the events are intended to, or are otherwise in connection with, promoting or bringing about a particular outcome in the referendum then the full cost of the event would be reportable.

5. When you are uploading invoices and receipts to PEF Online you can only upload PDFs.

I hope the above is helpful to you. If you do have any further questions, please let me know.

Kind regards,

Kevin Molloy

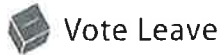
Guidance Adviser

Party and Election Finance

The Electoral Commission

3 Bunhill Row

London EC1Y 8YZ



Victoria Woodcock <victoria.woodcock@voteleave.uk>

Material from other campaigners

1 message

Kevin Molloy <KMolloy@electoralcommission.org.uk>
To: Victoria Woodcock <victoria.woodcock@voteleave.uk>

Thu, Jun 2, 2016 at 10:35 AM

Dear Vicky,

As discussed yesterday, you wish to send an email to your coordinators and volunteers referring them to where they can request material from UKIP. You wanted to know whether this would constitute working together and if so would the cost of the material be reportable as spending by Vote Leave.

As you will know, working together means spending money as a result of a coordinated plan or arrangement between two or more campaigners during the referendum period that is intended to, or is otherwise in connection with, promoting or bringing about a particular outcome in the referendum.

If you have a coordinated plan or arrangement with UKIP on the distribution of referendum material then this would constitute working together and any spending would count against Vote Leave's spending limit.

However, if you have no agreed plan or arrangements with UKIP it is possible that this would not be working together. You will need to make an honest assessment, based on the facts, whether you or UKIP are spending money as part of a coordinated plan or arrangement.

It is important that when you engage in any joint campaigning with other campaigners that you have discussed and planned the work in detail and that you should ensure that you have a written record of the common plan or arrangement and a clear audit trail of decision making and any spending.

Kind regards,

Kevin

Kevin Molloy**Guidance Adviser**

Party and Election Finance

26/02/2018

Vote Leave Mail - Material from other campaigners

The Electoral Commission

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London EC1Y 8YZ

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