

Case summary: Electoral Commission investigation into donations reported by the Conservative Party from Bearwood Corporate Services Limited

1. Background

- 1.1. The Electoral Commission has investigated donations reported by the Conservative Party (“the party”) from Bearwood Corporate Services Limited (“BCS”) to determine whether those donations were within the rules set out in the Political Parties, Elections and Referendums Act (“PPERA”).
- 1.2. Enquiries concerning the donations began in October 2008, as an initial inquiry (now known as a case under review)¹ following concerns that BCS might no longer be carrying on the business described on the company website. In January 2009, following receipt of information from a former director of BCS, the party and BCS, and an assessment of information in the public domain, the Commission decided to open an investigation. The investigation encompassed the following areas:
 - whether BCS was a permissible donor
 - whether the donations were correctly reported as coming from BCS, rather than from BCS as an agent for someone else (including its parent company Stargate Holdings or Lord Ashcroft)
 - whether the Conservative Party fulfilled its compliance duties, in particular its duty to be certain who the donor was before accepting the donations

The Investigation

- 1.3. The limited powers available to the Commission meant we were only able to require the provision of documents from regulated entities and officers of regulated entities - in other words, from the party and its officers - but not from reported donors or others. The Commission currently has no power to require potential witnesses to attend for interview.

Within the limits of its current powers, the Commission conducted a thorough investigation. It conducted a number of enquiries and obtained and considered a large volume of documents, including a substantial quantity of

¹ The Commission has a 3 stage process for dealing with potential breaches of PERA.
Initial assessment - at this stage, we assess matters to establish if there is a potential breach of legislation and, if so, whether this warrants referral for a **case review** or **investigation**.
Case under review - where the initial assessment suggests there may be a breach of legislation, we seek to determine whether this is indeed the case. We will not at this stage use our formal powers of investigation and will not conduct interviews.
Investigation - we will commence an investigation where we need to use our statutory powers to obtain information and/or where we wish to interview individuals in order to obtain information necessary to determine where there has been a breach of legislation.

internal documents provided by the party. The Commission also obtained information from a number of constituency associations of the party, and a series of written answers provided voluntarily by the party's registered treasurer, via solicitors, to questions put by the Commission.

- 1.4. BCS, which is not a regulated entity, did provide information on a voluntary basis. The information provided included internal documents and information. The Commission is not in a position to be certain that all potentially relevant information was provided, but is satisfied that sufficient information was received to reach a robust conclusion as to BCS' permissibility. We received an undertaking of cooperation from the liquidators of BCS' then parent companies, Bearwood Holdings Limited and Astraporta UK. We requested and received information from them.
- 1.5. Lord Ashcroft also provided some information on a voluntary basis, although in response to requests for documents regarding BCS and its parent companies (including ownership, control, beneficial interests or provision of funding to those companies), his solicitors indicated that Lord Ashcroft did not have in his possession any such documents, and that his policy was to destroy documents unless retaining them was a requirement for an auditing, tax, or regulatory reason and any documents not within this category were not retained once their purpose had been served.
- 1.6. The Commission engaged forensic accountants to assist in the investigation, and also sought legal advice on a number of issues during the course of the investigation.
- 1.7. At a meeting on 24 February 2010, having carefully considered the evidence available and the relevant law, the Commission:
 - concluded that BCS met the permissibility requirements for making political donations
 - considered that, on the evidence before it, there is no basis to conclude that the donor was anyone other than BCS
 - considered that there is insufficient evidence to conclude, on the balance of probabilities, that the party was uncertain as to the identity of the donor when accepting the donations
 - concluded that no breach of PPERA has been established and that accordingly no legal action in relation to the Conservative Party should be taken
 - considered that a meeting was needed with party officials to ensure that they are clear about their responsibilities for complying with the law

- decided to announce its decision on the 4 March 2010.

The donations

- 1.8. The first reported donation by BCS to the party was on 28 February 2003. Between then and 31 December 2009 the party reported £5,137,785 of donations from BCS.

Requirements in relation to political donations

- 1.9. PPERA sets out a number of rules in relation to what donations can be accepted by political parties.
- 1.10. Before accepting a donation, a party must make sure it takes all reasonable steps to verify or ascertain the identity of the donor, and that the donor is 'permissible'. A permissible donor is, in the case of an individual, someone who is registered on the electoral register. In the case of a company a permissible donor must be, among other things, carrying on business in the United Kingdom at the time of the donation.
- 1.11. Where an individual gives a donation to a party but is passing on that donation on behalf of someone else – in other words acting as an agent – the agent must notify the party that they are an agent and the party must ensure that the donor, rather than the agent, is a permissible donor.
- 1.12. The party has 30 days from receipt of a donation to ascertain the identity of the donor and check that the donor is permissible. Where the party is unable to do so within 30 days, it cannot accept the donation.
- 1.13. Where a party has accepted a donation which it was prohibited from accepting, the Commission may seek a court order that an amount equal to the impermissible donation be forfeited.

2. Key issues in this case

The investigation considered three key issues.

a) Was BCS a permissible donor?

- 2.1. BCS was registered under the Companies Act 1985 and was incorporated within the UK, as required by PPERA, which are two of the three requirements for a company to be a permissible donor under PPERA. The third requirement is that a company must be carrying on business in the UK at the time of the donation.

- 2.2. There is no definition in PPERA of “carrying on business”. However, in other areas of the law, the term has been interpreted broadly. It is not necessary for a company to generate profit. A company need not be actively trading, provided that the company continues to engage in business transactions, such as employing staff or paying for business facilities. Additionally, even if a company has not yet traded, provided that it is preparing to do so, it is likely to be within the scope of “carrying on business”.
- 2.3. The evidence which the Commission considered in this case indicated, among other things, that:
- throughout the period under consideration BCS conducted a management consultancy business
 - up to July 2006 it also conducted a merger broking business
 - from December 2007 it carried on business as a holding company
 - it had employees and business premises
 - it had cash reserves
- 2.4. BCS’ accounts indicate that the funds used for BCS’ donations were not generated wholly from BCS’ own trading activities. Funds passed on three occasions to BCS by way of share purchases. On two occasions, funds passed from a Belizean based company, Stargate Holdings Limited (Stargate), to a UK based company known as Astraporta UK (AUK). Funds then passed through share purchase from Astraporta UK to Bearwood Holdings Limited, another UK based company. The final step was for the funds to be passed through share purchase from Bearwood Holdings Limited (BHL) to BCS. There was subsequently a third purchase of shares in BCS - this time directly by Stargate. Stargate is registered in Belize and the Commission was unable to obtain any meaningful information about the sources of its funding.
- 2.5. There is, however, no requirement in PPERA that the funds a company donates to a political party must be generated from its own trading. The possibility of overseas parent companies donating through British registered subsidiaries was raised during PPERA’s passage through Parliament and accepted - so long as the British subsidiary was itself carrying on business and was not acting as an agent for the overseas company.
- 2.6. The Commission concluded that BCS met the permissibility requirements for making political donations.
- b) Were the donations correctly reported as coming from BCS, rather than from BCS as an agent for someone else (including its parent company Stargate Holdings or Lord Ashcroft)?**
- 2.7. The Commission considered whether BCS acted as an agent for someone else when making the donations.

- 2.8. In order for an agency arrangement to exist for the purposes of PPERA, it is necessary to establish that the funds used for the donation passed from the donor to an agent, and that an agreement existed between donor and agent, to the effect that the funds would be used to make a donation.
- 2.9. In the case of a subsidiary acting as an agent for a parent company, establishing that funds had been transferred would not be sufficient to establish an agency arrangement, as the capitalisation of a subsidiary by a parent company is a common business practice. There would therefore also need to be evidence of some or all of the following:
- a benefit to, or impact on, the parent company, as distinct from the subsidiary
 - an express or implied agreement that the subsidiary would act as agent for the parent company
 - a consequential intention to conceal the true source of the donation or to evade the relevant UK law
- 2.10. There was no evidence before the Commission to indicate any agreement between BCS and Stargate that the former would act as agent for the latter in making donations, or that Stargate exercised control over BCS in the making of the donations. The Commission also had no evidence that Stargate was the actual donor and had sought to conceal that fact by providing funds indirectly in order to evade the rules of PPERA.
- 2.11. In relation to Lord Ashcroft, the Commission considered a number of facts:
- references to donations contained in Lord Ashcroft's book *'Dirty Politics Dirty Times'*;
 - the fact that Lord Ashcroft authorised the making of donations by BCS, and the fact that solicitors for BCS stated that this authorisation was given by Lord Ashcroft in his capacity as a representative of a corporate director of BCS;
 - the fact that, prior to the 2005 general election, Lord Ashcroft was involved in the process by which donations were requested by, and funds allocated to, local candidates and Conservative associations;
 - the fact that after the 2005 general election Lord Ashcroft continued a similar role, with the party as Deputy Chairman, formally heading the target seats campaign;
 - the fact that donations from BCS were often referred to in internal party communications as 'Ashcroft' donations, either directly or 'via' BCS, with Lord Ashcroft regularly being referred to as the donor

2.12. There was however no direct, or cogent circumstantial evidence before the Commission of any channelling of funds for donation by Lord Ashcroft, either directly to BCS or via anyone else. Nor was there evidence of an agreement between Lord Ashcroft and BCS that BCS would make donations on his behalf.

2.13. The Commission therefore considered that, on the evidence before it, there is no basis to conclude that the donor was anyone other than BCS.

c) Did the Conservative Party fulfil its compliance duties, in particular its duty to be certain who the donor was before accepting the donations?

2.14. Under PPERA a party is required at the time of acceptance of any donation to ensure that it has ascertained the identity of the donor. Failure to take all reasonable steps to ascertain - in other words, make certain - the identity of the donor by the time of acceptance is a breach of PPERA, and can lead to the relevant donations being forfeited.

2.15. The Commission considered the evidence obtained from the party for the period during which the donations were accepted. The Commission took into account internal e-mails and documents from the party, including from constituency associations which had received funding from BCS. It also took into account comments made by Lord Ashcroft in his book *'Dirty Politics, Dirty Times'*.

2.16. Based on this evidence, the Commission formed the view that there was evidence to suggest that, at least since 2006, the party would have had reason to question whether the donor was Lord Ashcroft rather than BCS. The Commission, again having regard to legal advice, noted that in order to prove that the party was in fact uncertain on this point, it would be necessary to consider the party's 'state of mind' on this question, and that a key individual, although not the only one, for ascertaining the party's 'state of mind' would be the registered treasurer of the party.

2.17. The registered treasurer was clear in his written answers to the Commission's questions that he was in no doubt as to the identity of the donor, and that references to Lord Ashcroft as the donor were 'loose language' rather than to be interpreted literally.

2.18. The Commission's current powers do not allow it to require anyone to attend an interview. The Commission asked various officers and staff within the party to attend interviews on a voluntary basis, but these requests were not agreed to.

2.19. Based on the evidence before it, the Commission considered that there is insufficient evidence to conclude, on the balance of probabilities, that the

party was uncertain as to the identity of the donor when accepting the donations.

Conclusion

2.20. In light of the foregoing, the Commission concluded that no breach of PPERA has been established and that no legal action in relation to the Conservative Party should be taken. The Commission has, however, asked to meet party officials to ensure that they are clear about their responsibilities for complying with the law.

Dated: 4 March 2010