

Report of an investigation in respect of

- Vote Leave Limited
- Mr Darren Grimes
- BeLeave
- Veterans for Britain

Concerning campaign funding and spending for the
2016 referendum on the UK's membership of the EU

17 July 2018

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The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity.

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1 Introduction

The Electoral Commission

1.1. The Electoral Commission (“the Commission” or “we”) is the statutory regulator that sets and enforces standards in relation to elections and referendums. We were set up by an Act of Parliament, the Political Parties, Elections and Referendums Act 2000 (“PPERA”). We aim to promote public confidence in the UK’s democratic process and ensure its integrity. We publish election and referendum donations and spending. We also work to ensure high compliance with the campaign finance rules by parties and campaigners.

1.2. We have the duty, under section 145 PERA, to monitor and take all reasonable steps to secure compliance with the restrictions and other requirements relating to political campaign finance. We have investigation and enforcement powers to do this.

The campaigners under investigation

1.3. This investigation was about funding and spending in the 2016 referendum on the UK’s membership of the EU (“the EU Referendum”). That referendum took place on 23 June 2016. The referendum was conducted in line with PERA as amended by the EU Referendum Act 2015 (“EURA”).

1.4. Under PERA, individuals or organisations who wanted to spend more than £10,000 campaigning in the EU Referendum had to notify the Commission. Those giving notifications had to meet certain eligibility criteria. They had to tell us the name of a ‘responsible person’ who would be legally responsible for meeting the reporting obligations set out in PERA. They also had to tell us which outcome they were campaigning for. We published a register of these campaigners.

1.5. Registered campaigners, or ‘permitted participants’ in PERA, then had to report their campaign donations and spending. In the run up to the referendum they had to report donations of over £7,500. After the referendum, campaigners had either three or six months to deliver spending returns depending on whether they spent less or more than £250,000. If they were not a political party, the spending return had to include a report on all donations received as well.

Vote Leave Limited

1.6. Vote Leave Limited (“Vote Leave”; company number 09785255) registered as a permitted participant in the EU Referendum on 1 February 2016. Mr David Alan Halsall was registered as Vote Leave’s responsible person on 18 April 2016.

1.7. On 13 April 2016 the Commission designated lead campaigners for each

outcome in the referendum – ‘leave’ and ‘remain’. Vote Leave was the designated lead campaign for the ‘leave’ outcome. It therefore had a spending limit of £7m.

1.8. Mr Halsall delivered a spending return for Vote Leave on 23 December 2016, within the statutory deadline.

Mr Darren Grimes and BeLeave

1.9. Mr Grimes was registered as a permitted participant on 15 March 2016. He delivered a referendum spending return on 30 June 2016, before the statutory deadline, in which he reported spending of £676,015.87.

1.10. In his spending return, Mr Grimes said that it was the return for ‘Darren Grimes/BeLeave’. In August 2016 Mr Grimes told us that BeLeave was an unincorporated association he set up to campaign in the EU Referendum. BeLeave was not registered as a permitted participant in the EU Referendum.

Veterans for Britain

1.11. Veterans for Britain registered as a permitted participant for the EU Referendum on 19 April 2016. Mr David Banks registered as its responsible person. Mr Banks delivered a referendum spending return before the statutory deadline of 23 September 2016. He reported spending of £146,945.06.

Summary of findings

1.12. This investigation mainly concerned five payments made in June 2016 to a Canadian data analytics firm called Aggregate IQ. The payments were for services provided to campaigners in the EU Referendum. Three of the payments, totalling £675,315.18, were reported by Mr Grimes as donations from Vote Leave, and as spending by him on services from Aggregate IQ. Another payment of £50,000 from Mr Anthony Clake was reported by Mr Grimes as a donation from Mr Clake, and as spending by Mr Grimes on services from Aggregate IQ. The final payment of £100,000 was reported by Veterans for Britain as a donation from Vote Leave and as spending on services from Aggregate IQ.

1.13. There were four persons under investigation: Mr Halsall in his capacity as the responsible person of Vote Leave, Vote Leave itself, Mr Grimes and Mr Banks. No other person was under investigation by the Commission.

Joint spending by Vote Leave and BeLeave

1.14. The Commission is satisfied beyond reasonable doubt that all Mr Grimes’ and BeLeave’s spending on referendum campaigning was incurred under a common plan with Vote Leave. This spending, including the £675,315.18 for services from Aggregate IQ reported by Mr Grimes, should have been treated as incurred by Vote Leave. To comply with PPERA, Vote Leave should have made a declaration of the amounts of joint spending in its referendum spending return. As the declarations were not made, Mr Halsall failed, without reasonable excuse,

to deliver a complete campaign spending return, committing an offence under section 122(4)(b) PPERA.

Vote Leave's spending limit

1.15. As referendum spending by Mr Grimes and BeLeave was joint spending with Vote Leave, the 'common plan' provisions in the EURA meant the spending was treated as if incurred by Vote Leave. Vote Leave's referendum spending was therefore in fact £7,449,079. Its statutory spending limit was £7m.

1.16. The Commission is satisfied that Mr Halsall knew or ought reasonably to have known that this spending would exceed the spending limit. The Commission is therefore satisfied beyond reasonable doubt that Vote Leave exceeded the spending limit for a designated lead campaigner and Mr Halsall committed an offence under section 118(2)(c)(i). Vote Leave also committed an offence under section 118(2)(c)(ii).

Other issues with Vote Leave's spending return

1.17. The Commission is satisfied beyond reasonable doubt that Vote Leave's spending return was not a complete statement of all its referendum payments. It was inaccurate in respect of 43 items of spending, totalling £236,501.44. Mr Halsall provided no reasonable excuse for these inaccuracies, which are an offence under section 122(4)(b) PPERA.

1.18. We also found that eight payments of over £200 in Vote Leave's return did not have an invoice or receipt with them, as required by PPERA. These payments came to £12,849.99. Mr Halsall did not have a reasonable excuse for these omissions, and committed a further offence under section 122(4)(b).

BeLeave's spending

1.19. BeLeave was never registered with the Commission as a campaigner in the EU Referendum. Unregistered campaigners could only legally spend up to £10,000 on referendum campaigning. But Mr Grimes, acting on BeLeave's behalf, incurred spending of over £675,000. All this spending took place after BeLeave met the criteria for registering as a campaigner.

1.20. As explained above, this spending was joint spending with Vote Leave. Under the common plan provisions in EURA, it had to be treated as campaign spending incurred by Vote Leave. But it was still spending by BeLeave, and counted against its spending limit, even though only Vote Leave were required to report it.

1.21. The Commission is satisfied that Mr Grimes knew or ought reasonably to have known that BeLeave was not a permitted participant. The Commission is therefore satisfied beyond reasonable doubt that Mr Grimes incurred referendum spending in excess of £10,000 on behalf of a body that was not a permitted participant, and that he knew or ought reasonably to have known he was doing this. Mr Grimes committed an offence under section 117(3) PPERA. BeLeave

also committed an offence under section 117(4).

Mr Grimes' spending return

1.22. After the referendum Mr Grimes delivered a spending return in his capacity as an individual campaigner. Although he put the name 'Darren Grimes/BeLeave' on it, it wasn't a return for two campaigners; it was a return for him as an individual campaigner. He included payments of £675,315.18 that was not his spending. It was BeLeave's spending. This was substantially inaccurate reporting that has resulted in a lack of transparency about whose spending this was. The Commission is satisfied beyond reasonable doubt that Mr Grimes failed to deliver a referendum spending return to us that complied with PPERA. He thereby committed an offence under section 122(4)(b) PPERA.

Veterans for Britain

1.23. Veterans for Britain's spending return included a donation of £100,000, reported as a cash donation received and accepted on 20 May 2016. In fact, this donation was a payment by Vote Leave to Aggregate IQ for services provided to Veterans for Britain in the final days of the EU Referendum campaign. It was paid by Vote Leave on 29 June 2016. The Commission is satisfied that the responsible person for Veterans for Britain, Mr Banks, without reasonable excuse delivered a spending return that contained an inaccurate donation report. He committed an offence under section 122(4)(b) PPERA.

1.24. That donation was for services provided by Aggregate IQ, who were also providing services to Vote Leave at the same time. The evidence we have seen does not support the concern that the services were provided to Veterans for Britain as joint working with Vote Leave.

Vote Leave investigation notice

1.25. Where we are conducting an investigation we can issue an 'investigation notice' requiring any person to give us information, explanation or documents to progress the investigation. We can impose a reasonable deadline. We issued an investigation notice to Vote Leave during this investigation. We set out a discrete list of documents directly related to the investigation. We gave a reasonable deadline. Vote Leave did not respond to the notice until after the deadline had passed and that response did not comply with the notice in any way. Vote Leave did not give any indication that it was unable to comply with the notice.

1.26. We are therefore satisfied beyond reasonable doubt that Vote Leave failed, without reasonable excuse, to comply with an investigation notice issued under Schedule 19B paragraph 3 PPERA on 21 February 2018. Vote Leave thereby committed an offence under Schedule 19B paragraph 13(1).

Summary of offences and penalties

1.27. The Commission has determined that Mr David Alan Halsall, the responsible person for Vote Leave, committed an offence under section

122(4)(b). He delivered a referendum spending return for Vote Leave that failed, without reasonable excuse, to be a complete statement of payments worth £236,501.44. He failed to declare common plan spending of £676,015.87. The Commission has fined Vote Leave £20,000 for this offence.

1.28. Mr Halsall committed a further offence under section 122(4)(b) PPERA by failing, without reasonable excuse, to include required invoices and receipts for eight payments. The Commission has fined Vote Leave £1,000 for this offence.

1.29. Mr Halsall and Vote Leave both committed offences under section 118(2)(c) PPERA. Mr Halsall incurred spending of £449,079.34 which he knew or ought reasonably to have known was in excess of the statutory spending limit for Vote Leave. The Commission has fined Vote Leave £20,000 for this.

1.30. Vote Leave committed a further offence during this investigation, under Schedule 19B paragraph 13(1) PPERA. Vote Leave failed, without reasonable excuse, to comply with an investigation notice issued by the Commission under Schedule 19B paragraph 3. The Commission has fined Vote Leave £20,000 for this offence.

1.31. The Commission has determined that Mr Darren Grimes committed an offence under section 117(3) PPERA, and BeLeave committed an offence under section 117(4). Mr Grimes incurred spending on behalf of BeLeave which he knew or ought reasonably to have known exceeded by £666,015.87 the statutory limit for a non-registered campaigner. The Commission has fined Mr Grimes £20,000 for this.

1.32. Mr Grimes also committed an offence under section 122(4)(b) PPERA in that he failed, without reasonable excuse, to deliver a referendum spending return as an individual registered campaigner that was a complete statement of all his referendum spending. In light of its decision to impose a fine on Mr Grimes for his offence under section 117(3) PPERA, the Commission decided not to impose a further fine on Mr Grimes for this offence.

1.33. The Commission has determined that Mr David Banks, the responsible person for Veterans for Britain, committed an offence under section 122(4)(b) PPERA. He failed, without reasonable excuse, to deliver a referendum spending return that included an accurate report of relevant donations. The Commission has fined Mr Banks £250 for this offence.

2 The decision to investigate

Background to the investigation

2.1. This investigation mainly concerned five payments made to a Canadian data analytics firm called Aggregate IQ in June 2016. The payments were for campaign services for the EU Referendum.

2.2. Three of the payments, totalling £625,315.18, were made by Vote Leave to Aggregate IQ between 13 and 21 June 2016. They were reported by Mr Grimes as donations from Vote Leave. Another payment, of £50,000, was made by Mr Anthony Clake to Aggregate IQ on 17 June 2016. Mr Grimes reported it as a donation from Mr Clake. Mr Grimes reported total spending on services from Aggregate IQ of £675,315.18. This spending was funded by these payments.

2.3. The final payment was of £100,000 and made by Vote Leave to Aggregate IQ on 29 June 2016. Veterans for Britain reported it as a donation from Vote Leave, but with an incorrect date of 20 May 2016. They also reported spending it on services from Aggregate IQ.

2.4. Vote Leave, Mr Grimes and Veterans for Britain were all subject to regulatory action by the Commission during 2017.

- We carried out assessments into Vote Leave and Mr Grimes in February and March 2017. An assessment is a process of getting and examining evidence so the Commission can decide whether to open an investigation. We only investigate if we have reasonable grounds to suspect an offence or contravention of PPERA has happened, and if it is in the public interest for us to act. In these assessments, we looked at whether to investigate allegations that Vote Leave had broken its spending limit for the EU Referendum, by channelling money to Aggregate IQ via BeLeave. Based on the evidence we saw at the time, we decided not to investigate.
- During 2017 we conducted an investigation into Vote Leave because its referendum spending return appeared to be incomplete. We had reached initial conclusions, and then we opened this new investigation. We then combined all the issues into this one investigation.
- We started investigating Veterans for Britain in August 2017. It reported a donation of £100,000 from Vote Leave in its spending return after the referendum. It said the donation was accepted on 20 May 2016. But it was not in the pre-poll donation report, delivered during the campaign, for the period covering 20 May 2016.

2.5. Throughout 2017 we received a number of requests for information under the Freedom of Information Act 2000 that were about Vote Leave and Mr Grimes.

Claims also emerged in the media that Vote Leave and Mr Grimes had been working under a 'common plan'. If true, these claims would mean that Vote Leave had failed to declare joint spending, and Mr Grimes had misreported the spending. We asked the journalist concerned for sight of the evidence to substantiate the claims, in order to assist us in looking at the claims. This evidence was not provided to the Commission.

2.6. Then, during September and October 2017, we found out that Veterans for Britain had told us the wrong details for its donation from Vote Leave. Rather than being given on 20 May 2016, that donation was given on 20 June 2016 and paid on 29 June 2016. This coincided with the dates of the payments Mr Grimes reported as donations from Vote Leave.

2.7. Therefore, by late October 2017 we knew that Vote Leave had made payments to Aggregate IQ in the ten days before the referendum on 23 June 2016, apparently on behalf of two separate campaigners. Given this new information suggested a pattern of action by Vote Leave, we decided to review our assessment decision not to investigate. Having done so, in November 2017 we opened an investigation.

Scope of the investigation

2.8. We investigated the following matters, some of which only arose during the investigation:

- Whether Mr Halsall, Vote Leave's responsible person, without reasonable excuse delivered a referendum spending return that failed to include declarations of common plan spending with Mr Grimes, BeLeave and/or Veterans for Britain (offence under section 122(4)(b) PPERA).
- Whether Vote Leave spent more than its legal spending limit for referendum campaigning, and Mr Halsall knew or ought reasonably to have known this when incurring spending over that limit under the common plan provisions (offences under section 118(3)(c) PPERA).
- Whether Mr Halsall without reasonable excuse delivered a spending return that was not complete in other ways such as missing payments and invoices or receipts (offences under section 122(4)(b) PPERA).
- Whether Mr Grimes authorised spending to be incurred by or on behalf of BeLeave when he knew or ought reasonably to have known that the spending would be more than the £10,000 legal limit for an unregistered campaigner (offences under section 117(3) and 117(4) PPERA).
- Whether Mr Grimes without reasonable excuse delivered an incomplete referendum spending return (offence under section 122(4)(b) PPERA).

- Whether Mr Banks, the responsible person for Veterans for Britain, without reasonable excuse delivered a spending return that failed to report accurately a relevant donation (offence under section 122(4)(b) PPERA).
- Whether Mr Banks without reasonable excuse delivered a spending return that inaccurately reported joint spending with Vote Leave (offence under section 122(4)(b) PPERA).
- Whether Vote Leave failed without reasonable excuse to comply with an investigation notice issued by the Commission under Schedule 19B PPERA (offence under Schedule 19B paragraph 13 PPERA).

2.9. The people under investigation by us were therefore Mr Halsall, Vote Leave, Mr Grimes and Mr Banks.

2.10. The relevant legal and regulatory regime for referendum campaign finance is set out in Annex A to this report.

3 The investigation

Vote Leave

3.1. The Commission contacted Vote Leave on 20 November 2017. We explained that we had opened an investigation and set out its scope. We invited Vote Leave to give us any relevant explanation or documents. We asked Vote Leave to attend an interview and asked for representatives of Vote Leave who would be well placed to discuss the matters under investigation.

3.2. During December and January, Vote Leave expressed an intention to cooperate. It gave some explanation of its position on the suspected offences. It also asked procedural questions about the proposed interview and objected to the investigation being opened. We responded to these questions with further detail on the opening of the investigation and the interview process. We offered interview dates for representatives of Vote Leave, but Vote Leave did not respond to our suggested dates.

3.3. In January 2018 Vote Leave's lawyers sent a Pre-Action Protocol Letter indicating that it intended to judicially review the opening of the investigation. We gave them more detail about our decision to investigate. Vote Leave did not start legal proceedings.

3.4. During February 2018 we made two further offers of interview dates. Vote Leave began to repeat procedural questions we had already answered. It still did not agree an interview date and said it had not decided whether an interview was appropriate. By mid-February we were concerned that Vote Leave had not given us the information we needed about the matters under investigation, nor agreed to put up representatives for interview. We issued Vote Leave with a formal investigation notice requiring it to produce certain documents.

3.5. Vote Leave did not reply by the deadline we gave, or produce the documents. Instead, shortly after the deadline Vote Leave sent a letter objecting to the fact we were investigating them, raising concerns about the scope of the notice, and saying that it had collected the documents it considered relevant at its lawyer's office. It said that we could inspect them there. After explaining that we required complete disclosure, we asked Vote Leave again to produce the documents.

3.6. We then had a number of exchanges with Vote Leave where it repeated its assertion that we had no power to open the investigation. It ignored our repeated clarification on this point. Still no documents were disclosed. After weeks of correspondence Vote Leave then made its offer of inspection of the documents contingent on us meeting it to discuss why the investigation should be closed. We did not consider such appropriate or helpful. We sent authorised

officers to Vote Leave's lawyers to take copies of the documents they held.

3.7. Vote Leave had no reasonable excuse for failing to comply with this investigation notice. As explained below, we have fined them £20,000 for this.

3.8. Upon inspection, we found that Vote Leave had not given us everything we had asked for. Shortly afterwards, it gave us some further documents after making the wrong ones available to our authorised officers.

3.9. In March 2018 Vote Leave told us that it was holding an internal investigation after allegations about its work with Mr Grimes and BeLeave were raised in the media. It said that the internal investigation would look at the media allegations. We explained that would be separate from our investigation but we would expect anything relevant to be told to us. After telling us, in early April, that a forensic IT team was working for them, Vote Leave did not provide any further information about its internal investigation.

Mr Grimes

3.10. We contacted Mr Grimes on 20 November 2017 and told him about the investigation. He gave us some further information about the events under investigation and agreed to be interviewed. The interview took place in January 2018.

3.11. In February 2018 we asked Mr Grimes some follow up questions. During March and April we asked him for more detail about the involvement of Vote Leave in his and BeLeave's activities. We also asked for copies of the adverts Aggregate IQ placed for BeLeave, and for details of the reports he received from Aggregate IQ on their use. Mr Grimes replied to our questions.

Veterans for Britain

3.12. We contacted Mr Banks, the responsible person for Veterans for Britain, on 20 November 2017. We told him about the investigation and asked him for information about the donation from Vote Leave. Mr Banks replied to our letter with the information we asked for. He also agreed to be interviewed. We interviewed Mr Banks in January 2018. He gave us a full and detailed account of the donation and the services Veterans for Britain got from Aggregate IQ. As we had already asked Mr Banks about his reporting of the Vote Leave donation, we didn't need any more information from him about this.

Other individuals

3.13. During the investigation we received information from three individuals, Mr Christopher Wylie, Mr Mark Gettleson and Mr Shahmir Sanni. They provided documentary and other evidence about Vote Leave and BeLeave. We met with

them to discuss what they had given us. In compliance with notices under Schedule 19B paragraph 3 PPERA, they provided further information and explanation about their evidence. These individuals also provided information to the media, which was widely reported.

3.14. We issued Mr Anthony Clake with a notice under Schedule 19B paragraph 3 PPERA requiring him to disclose information and documents about a donation he made to BeLeave. Mr Clake complied with our notice.

3.15. We issued Mr Dominic Cummings with a notice under Schedule 19B paragraph 3 PPERA requiring him to disclose information and documents about Vote Leave and BeLeave. This followed posts Mr Cummings published on his blog referencing the allegations of joint working between the two campaigners. Mr Cummings complied with our notice.

3.16. We were approached by Facebook during the investigation with some information about how Aggregate IQ used its services during the EU Referendum campaign.

3.17. After the media reporting of allegations made by Mr Wylie, Mr Gettleson and Mr Sanni, we were approached by the lawyer for three Vote Leave officials, its Operations Director, Head of Outreach and National Organiser. We were told that the all three individuals willing to speak to us.¹ We responded that in the first instance we would wish any evidence to be sent to us.

Determination of offences

3.18. In June 2018 we were satisfied that we had sufficient evidence to make initial determinations on the offences under investigation. As required by PPERA, we issued formal notices to Vote Leave, Mr Grimes and Veterans for Britain, explaining our initial decisions and proposing penalties. These notices were accompanied by copies of the evidence on which we had relied, so that the recipients had the opportunity to see and respond to it. We invited representations within the statutory 28 day period.

3.19. Vote Leave requested an extension to this period. After carefully considering the request we were satisfied that they had not given a persuasive reason why 28 days was insufficient. We therefore did not extend the deadline.

3.20. During the 28 day period we were contacted again by the legal representatives for Vote Leave's Operations Director, Head of Outreach and National Organisation. We were told that these individuals now had evidence to give us. None was sent, but the legal representatives did send a letter and some

¹ This sentence was revised on 19 July 2018 to clarify that all three individuals were willing to speak to us.

documents commenting on the notices we had issued to Vote Leave.

3.21. We were also contacted by legal representatives for Mr Halsall, acting for him in his personal capacity rather than as the responsible person for Vote Leave. We received a letter from them commenting on the notices we had issued to Vote Leave.

3.22. By 3 July 2018 we had received representations from Vote Leave, Mr Grimes and Veterans for Britain. These were considered carefully before we made final determinations on offences and penalties. We also considered the letters we had received from the legal representatives for the Operations Director, the Head of Outreach, and the National Organiser of Vote Leave, and Mr Halsall.

3.23. We issued our final determinations to Vote Leave, Mr Grimes and Veterans for Britain on 17 July 2018.

4 The investigation findings

Joint spending by Vote Leave and BeLeave

Findings

4.1. The Commission is satisfied beyond reasonable doubt that all Mr Grimes' and BeLeave's spending on referendum campaigning was incurred under a common plan with Vote Leave. This spending, including the £675,315.18 for services from Aggregate IQ reported by Mr Grimes, should have been treated as incurred by Vote Leave. To comply with PPERA, Vote Leave should have made a declaration of the amounts of joint spending in its referendum spending return. As the declarations were not made, the responsible person for Vote Leave Mr Halsall failed, without reasonable excuse, to deliver a complete campaign spending return, committing an offence under section 122(4)(b) PPERA.

4.2. 'BeLeave' was initially a name used by Mr Grimes in his activities in support of the UK leaving the EU. From early 2016, Vote Leave gave Mr Grimes infrastructure and resource support to carry out his BeLeave activity. In May 2016, when Vote Leave was engaged in an unsuccessful attempt to get funding for Mr Grimes's BeLeave activity, Vote Leave drafted a constitution for BeLeave. When the individuals who became the BeLeave Board agreed this constitution, they effectively created an unincorporated association that could have been registered as a referendum campaigner. All of BeLeave's funding came directly from Vote Leave, or was arranged by Vote Leave. Vote Leave had significant influence over how that money was spent by BeLeave, to the extent that Vote Leave made a commitment to a different BeLeave donor to about how his money would be used.

4.3. We are satisfied that spending by Mr Grimes (which only came to £21.51) on campaign activity prior to BeLeave being established was under the significant influence of Vote Leave. We are also satisfied that BeLeave's creation, strategy, funding and activities throughout the time it existed as an unincorporated association in May and June 2016 were all under the significant influence of Vote Leave.

Evidence and Analysis

Mr Grimes' reported donations and spending

4.4. Mr Grimes reported a series of donations and spending that related to Aggregate IQ. In chronological order, these were a donation from Vote Leave and a payment to Aggregate IQ, both of £400,000, on 14 June 2016; a donation from Mr Anthony Clake and a payment to Aggregate IQ, both of £50,000, on 17 June 2016; a donation from Vote Leave and a payment to Aggregate IQ, both of £40,000, on 20 June 2016; and a donation from Vote Leave and a payment to Aggregate IQ, both of £185,315.18, on 21 June 2016.

4.5. Mr Grimes said that he incurred the spending with Aggregate IQ for

services provided to BeLeave. He had sent in invoices from Aggregate IQ with his return that listed activity to be carried out for BeLeave. Mr Grimes said that he incurred this spending after he was offered donations by Vote Leave in June 2016. He asked Vote Leave to pay the donations direct to Aggregate IQ because he did not yet have a working bank account for BeLeave. Mr Grimes gave the same explanation for the donation from Mr Clake being paid to Aggregate IQ.

4.6. Vote Leave told us that it had surplus funds towards the end of the referendum campaign. It took the decision to donate these to BeLeave. It said that Vote Leave had no input into how BeLeave decided to use the funds.

The creation of BeLeave

4.7. While accounts differ, we understand that from some point during January 2016, Mr Grimes started volunteering in Vote Leave's 'Outreach Team'. This team ran a campaign strategy adopted by Vote Leave to support a range of groups appealing to different demographics.

4.8. Prior to May 2016, Mr Grimes was using the name BeLeave to campaign online for the UK to exit the EU. From March 2016, Mr Sanni also did some work in the name of BeLeave, such as helping develop proposals for a prospective donor. There is no evidence that a distinct entity or body called BeLeave existed at that time. For example, it had no constitution that defined its purpose, nothing saying who was involved or what they did, and nothing saying how it worked. It is not clear how much referendum campaigning Mr Grimes did in the name of BeLeave at this point. He reported campaign spending totalling £21.51 between 9 February and 13 June 2016.

4.9. Vote Leave gave infrastructure support and advice to Mr Grimes to build his BeLeave brand. For example, Vote Leave's Head of Outreach directed a Vote Leave contractor to build the BeLeave website. The contractor reported to the Head of Outreach on the completion of the work. Mr Grimes got advice from Vote Leave on website content. He also got practical help with the content, including using Vote Leave staff and facilities to film videos and take photos. He told Vote Leave when he registered with the Commission as an individual campaigner. Vote Leave's Head of Outreach, in response, said that she 'owed' him a donor.

4.10. In May 2016 Vote Leave's Legal Director drew up a constitution for BeLeave. According to Mr Grimes, this was because he asked Vote Leave's Head of Outreach about opening a bank account for BeLeave so that it could receive funds from prospective donors. She advised him to get a constitution, and according to Mr Grimes Vote Leave gave him a blank template he could use. Vote Leave also gave us this explanation. These accounts are not consistent with the email chain between Mr Grimes and Vote Leave, however. This shows Vote Leave providing him with a complete draft, and advising on the purpose and dissolution clauses to allow BeLeave to continue its activities after the referendum. It is clear from the evidence that the catalyst for the creation of the constitution was the fact that Vote Leave had found a potential donor for

BeLeave. Discussions with the donor took place, but in the event no donation was made.

4.11. In order to meet the legal definition of an unincorporated association, BeLeave had to be an association “of two or more persons... which carries on business or other activities wholly or mainly in the UK and whose main office is there” (section 45(2)(h) PPERA). By the act of drafting a constitution, Vote Leave facilitated the creation of BeLeave as an unincorporated association. By agreeing to that constitution, BeLeave’s Board members created an unincorporated association. That association, BeLeave, came into existence on or around 18 May 2016.

Donations to BeLeave

4.12. BeLeave’s only donors were Vote Leave and Mr Anthony Clarke. All its donations, barring £1,000 given to BeLeave for expenses, were paid to Aggregate IQ.

4.13. The Commission got copies of email exchanges between Mr Dominic Cummings, acting on behalf of Vote Leave, and Mr Clarke. These set out how Mr Clarke’s donation to BeLeave came about. A summary is given below.

- On 11 June 2016 Mr Cummings wrote to Mr Clarke saying that Vote Leave had all the money it could spend, and suggesting the following: *“However, there is another organisation that could spend your money. Would you be willing to send the 100k to some social media ninjas who could usefully spend it on behalf of this organisation? I am very confident it would be well spent in the final crucial 5 days. Obviously it would be entirely legal. (sic)”* Mr Cummings explained to us that the ‘ninjas’ were Aggregate IQ.
- Mr Clarke asked about this organisation. Mr Cummings replied as follows: *“the social media ninjas are based in canada – they are extremely good. You would send your money directly to them. the organisation that would legally register the donation is a permitted participant called BeLeave, a “young people’s organisation”. happy to talk it through on the phone though in principle nothing is required from you but to wire money to a bank account if you’re happy to take my word for it. (sic)”*
- On 15 June 2016 Mr Clarke wrote to Mr Cummings saying that he would split a donation between Vote Leave and BeLeave. Mr Cummings replied the same day to say *“we are also giving money to them – you can just send us the full amount and we’ll add yours onto what we are giving them and save you the admin.”* Mr Clarke responded saying that he would like to give £50,000 to each campaigner (Vote Leave and BeLeave).
- Later on 15 June 2016, Mr Cummings asked Vote Leave’s Operations Director to send Mr Clarke the bank details for both Vote Leave and BeLeave. The Operations Director sent Mr Clarke these details. Shortly

afterwards she sent Mr Clake contact details for BeLeave. Mr Clake then emailed Mr Grimes to offer a donation to BeLeave. He specified that this donation would be made “*via the AIQ account.*”

4.14. We have seen no evidence that BeLeave was at all involved in obtaining this donation or had any control over it or what it would be used for. Instead, by 11 June 2016 the Vote Leave officials dealing with donations to other campaigners knew that BeLeave would commission services from Aggregate IQ. They knew that these would be used in the final five days of the campaign. Vote Leave actively encouraged a donor to fund that work and offered to act as an agent for that donation. It was Vote Leave that provided the donor with BeLeave’s account details and afterwards it gave the donor BeLeave’s contact details. By the time the donor approached BeLeave, the recipient of his donation, Vote Leave had told him how the money would be used.

4.15. We also got copies of various internal emails from Vote Leave and emails with Mr Grimes about the donations from Vote Leave. A summary is below.

- On 13 June 2016 Mr Grimes emailed Vote Leave’s Operations Director following a discussion they had about a donation. He thanked Vote Leave for considering a donation, and said: “*We’d be very interested in working with data specialists like those at Aggregate IQ.*” He went on to say that he wanted to work with Aggregate IQ.
- Vote Leave’s Operations Director replied to Mr Grimes later on 13 June 2016 saying that she would need to speak to the Finance Committee and then would ask Mr Grimes to “*confirm that you are happy to transfer the money to Aggregate IQ.*”
- On 14 June 2016 Vote Leave’s Operations Director emailed Mr Grimes to offer a donation of £400,000. Mr Grimes replied asking for the funds to be transferred to Aggregate IQ.
- On 17 June 2016 Vote Leave’s Operations Director emailed Mr Grimes to offer “*a further donation to BeLeave.*” The next day Mr Grimes replied, asking for the funds to be “*sent directly to AIQ.*”
- On 21 June 2016 Vote Leave’s Operations Director emailed Mr Grimes to ask if he could make use of a £181,000 donation. He replied shortly afterwards asking for £180,000 to go to AIQ and £1,000 to BeLeave to cover travel expenses.

4.16. Vote Leave gave us a minute of a Finance Committee meeting held on 14 June 2016. The minute shows that Vote Leave did anticipate a surplus of funds and it decided that these would be given away as donations. The minute agreed the £400,000 donation to BeLeave, and authorised further donations at the discretion of “*the executive with supervision.*” Vote Leave also gave us a minute

of a Responsible Person Meeting on 21 June 2016. These show Mr Halsall, Vote Leave's responsible person, authorising a donation of up to £440,000 to BeLeave, again after talk about surplus funds.

BeLeave's activities

4.17. Before May 2016, when Mr Grimes was using the BeLeave name in campaign material, Vote Leave had a significant influence over his activities. This is clear from Vote Leave's input of advice and resources to the BeLeave website. It is also clear from Vote Leave's role in trying to find donors for BeLeave activity.

4.18. Mr Grimes and Vote Leave told us that BeLeave commissioned its own material from Aggregate IQ. Evidence from June 2016 does show that Mr Grimes and others from BeLeave had significant input into the look and design of the BeLeave adverts produced by Aggregate IQ. However, Vote Leave messaging was still influential in their strategy and design. For example:

- On 15 June 2016 Mr Grimes told other BeLeave Board members and Aggregate IQ that BeLeave's ads needed to 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."*
- On 17 June 2016 Mr Grimes told other BeLeave Board members: *"So as soon as we can go live. Advertising should be back on tomorrow and normal operating as of Sunday. I'd like to make sure we have loads of scheduled tweets and Facebook status. Post all of those blogs including Shahmirs, use favstar to check out and repost our best performing tweets. Copy and paste lines from Vote Leave's briefing room in a BeLeave voice"*

4.19. BeLeave's ability to procure services from Aggregate IQ only resulted from the actions of Vote Leave, in providing those donations and arranging a separate donor for BeLeave. While BeLeave may have contributed its own design style and input, the services provided by Aggregate IQ to BeLeave used Vote Leave messaging, at the behest of BeLeave's campaign director. It also appears to have had the benefit of Vote Leave data and/or data it obtained via online resources set up and provided to it by Vote Leave to target and distribute its campaign material. This is shown by evidence from Facebook that Aggregate IQ used identical target lists for Vote Leave and BeLeave ads, although the BeLeave ads were not run.

Joint spending by Vote Leave and BeLeave

4.20. As explained above, Vote Leave and BeLeave told us that the BeLeave AIQ payments were donations, and Vote Leave had no influence over how BeLeave used them. We are satisfied that many parts of this explanation are not consistent with the evidence.

4.21. Mr Grimes said that BeLeave was his initiative from the outset. The evidence shows that BeLeave as an unincorporated association was created

when Vote Leave advised Mr Grimes on getting a constitution in place, and wrote that constitution for him. This happened because it was a necessary precursor to Vote Leave obtaining funding for the BeLeave campaign. Mr Grimes also said he ran his own campaign using his own facilities. The evidence shows that his BeLeave campaign website was set up by Vote Leave, its content was created by Vote Leave, he consulted Vote Leave on campaigning and Vote Leave actively sought funding for his work.

4.22. Mr Grimes said that he chose to spend the donations from Vote Leave and Mr Clake on Aggregate IQ. But Vote Leave officials channelled funds to Aggregate IQ in the name of BeLeave, without Mr Grimes being involved.

4.23. Vote Leave said that its work with BeLeave was consistent with the duty on it as a lead campaigner to represent and engage with other 'leave' campaigners.² The fact that Vote Leave and BeLeave were incurring spending as part of a common plan is consistent with that duty. However, Vote Leave and BeLeave were also under a legal obligation to report the spending accurately.

4.24. The £675,315.18 reported by Mr Grimes as BeLeave spending with Aggregate IQ was incurred in pursuance of a common plan with Vote Leave. That common plan included spending incurred by Vote Leave on the infrastructure and other support given to Mr Grimes when he was using the BeLeave name, and to BeLeave itself. Further, the remaining amount of campaign spending reported by Mr Grimes (£700.19) was also incurred under the same common plan. The entire amount - £676,015.37 – should have been treated as incurred by Vote Leave and a declaration of the amounts should have been included on Vote Leave's referendum spending return.

Vote Leave's spending limit

Findings

4.25. As referendum spending by Mr Grimes and BeLeave was joint spending with Vote Leave, Vote Leave's referendum spending was in fact £7,449,079. Its statutory spending limit was £7m. The Commission is therefore satisfied beyond reasonable doubt that Vote Leave exceeded the spending limit for a designated lead campaigner of £7m.

4.26. Mr Halsall knew or ought reasonably to have known that this spending would be in excess of the spending limit. He was the responsible person for a designated lead campaigner. His experience and expertise were highlighted by Vote Leave in its application for designation. He was responsible for Vote Leave's financial and compliance processes. He was aware of the donations in question and either personally authorised them or delegated others to do so. Mr Halsall was aware of BeLeave; he was aware of the common plan or joint

² Information about the designation of lead campaigners for the EU Referendum can be found [here](#).

spending provisions in law. He had a legal duty to adhere to the campaign finance rules, including the spending limit.

4.27. The Commission is therefore satisfied beyond reasonable doubt that Mr Halsall committed an offence under section 118(2)(c)(i). Vote Leave also committed an offence under section 118(2)(c)(ii).

Evidence and Analysis

4.28. The evidence of a common plan between Vote Leave and BeLeave, and Vote Leave and Mr Grimes, is set out above.

4.29. In its application for designation as lead campaigner for the 'leave' outcome, Vote Leave described its Board, of which Mr Halsall was a member, as being "*responsible for the overall management and direction of the campaign and Vote Leave's activities.*" It said the Board would meet fortnightly. Mr Halsall was also listed as a member of the Finance Committee, which was "*responsible for internal financial governance, fundraising and budgeting.*" He was also listed as a member of the Compliance Committee, which was "*responsible for supervision of the effective governance of [Vote Leave]; its compliance with the law; effective financial and operational process and control; managing conflicts of interest; and ensuring [Vote Leave] obtains value for money.*" The application noted that the responsible person was responsible for enforcing regulatory compliance.

4.30. Vote Leave's application went on to say – in further evidence it provided at the Commission's request – that the Board was not responsible for the daily running of Vote Leave's campaign. This was the responsibility of the Campaign, Finance and Compliance Committees. Mr Halsall sat on two of these. The further information said: "*At the centre of the Vote Leave governance structure is the Responsible Person... who is a solicitor, a member of the Board of Directors, a member of the Finance Committee, a member of the Compliance Committee, as well as being a respected entrepreneur and business leader.*"

4.31. We saw a minute of the Vote Leave Finance Committee meeting on 14 June 2016, given to us by Vote Leave. Mr Halsall was there, along with other senior Vote Leave figures. They agreed that an initial donation be given to BeLeave of £400,000 and that subsequent donations might be given subject to the discretion of "*the executive with supervision*". According to the minute, those present thought that "*subject to a favourable legal opinion*", Vote Leave could donate to other campaign groups.

4.32. We saw an internal Vote Leave email exchange on 14 June 2016 with the title "Donations to other campaigns". Mr Halsall was amongst the recipients, along with other senior Vote Leave figures. In this chain:

- At 15:02 a Vote Leave Board Member emailed to say the donation to BeLeave was "*ok for me – on the understanding that there is no coordinated plan or arrangement*", and based on the communications we

received earlier from the Electoral Commission, which say that this is what we are allowed to do."

- At 15:07 Mr Halsall emailed: *"Having read the advice from our Lawyer happy to agree to this donation. I assume we will ensure that BeLeave understand they have to register the donation as our Lawyer suggests."*

4.33. We saw a minute of a Responsible Person Meeting on 21 June 2016. Again, Mr Halsall was present along with other senior Vote Leave figures. The majority of the minute, provided by Vote Leave, was redacted but the following paragraph was disclosed.

"It was noted that, as donations are not (by definition) referendum expenses, they did not fall within [the responsible person's] remit as Responsible Person AH took the view that as he was the only individual who was a member of the Board, the Compliance Committee and the Finance Committee, and given the shortness of time, he could authorise transfers on other grounds."

4.34. The minute also said that Vote Leave authorised donations to BeLeave based on a proposal put forward by its Operations Director. Those present agreed that any surplus funds exceeding its cash reserve requirement should be donated to BeLeave and Muslims for Britain, a registered campaigner, until 23 June 2016.

4.35. On 19 August 2016 Mr Halsall signed a letter to the Commission setting out the approach Vote Leave took to donations to BeLeave. He said that Vote Leave had legal advice on this, although he declined to provide it.³ He said that Vote Leave relied on the experience of multiple volunteers who were familiar with the Commission's guidance and PPERA, and that an "honest assessment" took place before each donation was made.

4.36. Mr Halsall wrote to us when he received notice of our intention to fine Vote Leave for exceeding its spending limit. He told us that when he agreed to be the responsible person for Vote Leave, he understood that he would be supported by its Finance Director, Operations Director and Legal Director. He said that *"with their assistance he was confident he was introducing robust and effective systems of compliance control, both in general and specifically in relation to concerted [common plan] expenditure."* Mr Halsall said that he was *"not consciously aware"* of BeLeave or Mr Grimes prior to 14 June 2016. He *"reasonably believed"* that the Operations Director, in whom he had significant confidence, was satisfied that there was no common plan with BeLeave prior to proposing a donation.

4.37. Mr Halsall, as Vote Leave's responsible person, had a number of legal

³ Vote Leave told the Commission that it would give us the advice if we signed a non-disclosure agreement. We refused to do so.

obligations under PPERA and the EURA. This included ensuring that the statutory spending limit of £7 million was not exceeded. He put himself forward as the responsible person for an organisation seeking to be designated as lead campaigner. The organisation told the Commission that it had “*the resources, skills and expertise to run a responsible and professional campaign.*” Its application in support of this claim set out an internal structure of committees and explained that Mr Halsall sat on both the Finance and Compliance committees. The application explicitly placed him at the centre of its regulatory compliance processes, saying that he was “responsible” for these (reflecting the obligations PPERA places on responsible persons).

4.38. Compliance with the regulatory framework was clearly within the remit of the responsible person for Vote Leave. It seems that he did delegate many of his duties to others, which is allowed under PPERA. However, this did not relieve him of overall responsibility. Further, he was copied in on much of the correspondence, and was present at key meetings. He took responsibility for decisions in relation to these donations, either directly or, it appears, by setting the terms of delegation for others. On the facts, therefore, he can be taken to have known about the donations and where they were going.

4.39. Mr Halsall is not personally copied in on any of the emails the Commission has seen between Vote Leave and BeLeave. He may not have known the extent of the control and influence that Vote Leave exercised over BeLeave. But the evidence shows that joint working between them was an issue he considered. Although he said that Vote Leave based its “honest assessment” upon legal advice, and he was supported in his role by others within Vote Leave, it was still his legal responsibility to satisfy himself that he was acting in line with the campaign finance rules.

Other issues with Vote Leave’s spending return

Findings

4.40. The Commission is satisfied beyond reasonable doubt that Vote Leave’s spending return included amounts totalling £234,275.40 that were not referendum spending. Another four payments, of £1,828, were included when they should not have been. They were for an event that took place after 23 June 2016. Another 10 payments were incorrectly aggregated as one. Mr Halsall provided no reasonable excuses for these. They meant that Vote Leave’s return was inaccurate in respect of another 43 items of spending, totalling £236,501.44, which was an offence under section 122(4)(b) PPERA.

4.41. We also found that eight payments of over £200 in Vote Leave’s return did not have an invoice or receipt with them, as required by PPERA. The total value of these payments was £12,849.99. Mr Halsall did not have a reasonable excuse for this omissions, and committed a further offence under section 122(4)(b).

Evidence and Analysis

4.42. The return originally delivered by Vote Leave included two large amounts that didn't have any supporting invoices. The first, for £91,275.43, was described by Vote Leave as "value of unused material on hand at 14 April – stocktake provided in lieu of invoice". Vote Leave described the second, for - £142,999.97, as "value of unused material on hand at 24 June – stocktake provided in lieu of notice". We found out, however, that these were not individual payments of referendum expenses. They were a proportion of 34 individual payments for items that were not fully used during the campaign. They should not have been in the return at all. Vote Leave said that this was an honest error. However, inadvertence is not a reasonable excuse.

4.43. We found out that another four reported payments, totalling £1,828, should not have been in the return. They related to an event that took place after 23 June 2016, outside the regulated period. Another ten payments were aggregated into one, of £393.05. As a result, the return was missing the individual items of spending. Vote Leave disputed the need to include individual payments in its return, although as we explained this is clear in law. It did not put forward any reasonable excuse for its actions.

4.44. Eight items of spending of over £200 were included in the return, but no supporting invoice or receipt was provided. In two instances some alternative documentation was supplied, but these did not meet the requirements of PPERA (in that they were not an invoice or a receipt). In respect of the remaining spending, Vote Leave advised the Commission that "*having made enquires of the supplier [it] believed that [invoices] were not available*". Vote Leave did not, however, evidence this belief or indicate why it could not deliver receipts. Vote Leave said that as the invoices did not exist it was not under an obligation to get them. This, however, ignored the issue of why they were not obtained when the spending was paid, when Vote Leave knew they would need to give them to us. Further, invoices were subsequently provided on 9 and 14 February 2017.

4.45. The Commission therefore does not consider that a reasonable excuse has been put forward for these omissions. Consequently, in total we are satisfied that when Vote Leave's return was delivered on 23 December 2016, eight items totalling £12,849.99 were missing supporting invoices or receipts.

BeLeave's spending

Findings

4.46. BeLeave was never registered with the Commission as a campaigner in the EU Referendum. Unregistered campaigners could only legally spend up to £10,000 on referendum campaigning. But Mr Grimes, acting on its behalf, incurred spending of over £675,000.

4.47. On 15 March 2016 Mr Grimes applied to register a permitted participant for the EU Referendum. He put down the name of the campaigner as 'BeLeave',

but ticked the box to say he was applying as an individual. We treated the application as for an individual and approved it. At the time BeLeave was not eligible to register as a permitted participant. If we had treated Mr Grimes' application as an attempt to register BeLeave, it would have been rejected. It only met the eligibility criteria in May 2016.

4.48. Mr Grimes knew that BeLeave was not a permitted participant. He knew that he was. He also knew or ought reasonably to have known that while he could incur referendum spending of up to £700,000, BeLeave, as an unregistered campaigner, was limited to spending of £10,000. Despite this BeLeave – with Mr Grimes acting on its behalf – incurred spending of £675,315.18.

4.49. As explained above, this spending was joint spending with Vote Leave. Under the common plan provisions in EURA, it had to be treated as campaign spending incurred by Vote Leave. But it was still spending by BeLeave, and counted against its spending limit, even though only Vote Leave were required to report it.

4.50. The Commission is therefore satisfied beyond reasonable doubt that Mr Grimes incurred referendum spending in excess of £10,000 on behalf of a body that was not a permitted participant, and that he knew or ought reasonably to have known he was doing this. Mr Grimes committed an offence under section 117(3) PPERA. BeLeave committed an offence under section 117(4) PPERA.

Evidence and Analysis

4.51. On 15 March 2016 Mr Grimes made a notification to register a permitted participant for the EU Referendum. He wrote on the notification form that the name of the campaigner was 'BeLeave'. He put himself down as the responsible person. However, he ticked the box to say he was registering as an individual. We checked the form on the basis that Mr Grimes was registering as an individual. He met the criteria, and we registered him. When we sent him confirmation of registration, we asked him to check a print out of the register entry. This made clear that he had been registered in an individual capacity, and that BeLeave had not been registered. Mr Grimes did not tell us that there was anything wrong, in his view, with the register entry.

4.52. Mr Grimes has argued that we should have done more to point out to him the error on his registration form, either at that point or since. However, as in March 2016 BeLeave did not meet the definition of an unincorporated association and was not eligible to register, we processed his application correctly and gave him the opportunity to review it. The responsibility to comply with the registration and reporting requirements rested with him.

4.53. As explained above, BeLeave did not become eligible to register until on or around 18 May 2016. On or around 18 May 2016 a group of five people, including Mr Grimes and Mr Sanni, agreed a constitution for an unincorporated association called BeLeave. Those five people were listed as Board members in

the constitution. They carried out campaign activity within the framework of this constitution. From around 18 May 2016, therefore, BeLeave was eligible to register as a campaigner. No attempt was made to register it.

4.54. Between 14 and 21 June 2016 Mr Grimes entered into four separate contracts with Aggregate IQ, each time specifying that he was acting on behalf of BeLeave. Each contract was documented by an 'insertion order'. Each insertion order is clearly shown as being between Aggregate IQ and BeLeave. Further, Mr Grimes has told us that he was acting on behalf of BeLeave. Vote Leave has told us that its donations were to BeLeave, and it paid for services given to BeLeave. We are therefore satisfied that Mr Grimes was acting on behalf of BeLeave when entering into these contracts, and not in an individual capacity.

4.55. The contracts totalled £675,315.18. This is far in excess of the £10,000 limit on BeLeave as an unregistered campaigner. Mr Grimes argued that as the spending was still reported, albeit not by BeLeave, there was no loss to transparency from these events. However, these events contributed to a lack of clarity about BeLeave's status.

Mr Grimes' spending return

Findings

4.56. After the referendum Mr Grimes delivered a spending return in his capacity as an individual campaigner. Although he put the name 'Darren Grimes/BeLeave' on it, it wasn't a return for two campaigners; it was a return for him as an individually registered campaigner. He included payments of £675,315.18 that was not his spending, but BeLeave's. This was a substantial amount of inaccurate reporting that has resulted in a lack of transparency.

4.57. The Commission is satisfied beyond reasonable doubt that Mr Grimes failed to deliver a complete referendum spending return to us. He thereby committed an offence under section 122(4)(b) PPERA.

Evidence and Analysis

4.58. Between 14 and 21 June 2016 Mr Grimes incurred spending of £675,315.19 on behalf of BeLeave with Aggregate IQ. He included this spending on a return delivered against his individual registration as a campaigner. But it was not his spending; it was BeLeave's spending.

4.59. Mr Grimes' spending return demonstrates that he, as an individual campaigner, did not incur more than £10,000 referendum spending. He didn't have to make a spending return at all. He could have made a declaration of spending under £10,000 within three months of the referendum. But if he did decide to make a return, it shouldn't have reported any spending. All his spending was incurred under a common plan with Vote Leave.

4.60. In any scenario, therefore, Mr Grimes delivered an inaccurate spending

return. The fact that he may have been acting under a misapprehension is not a reasonable excuse for this, particularly given the steps we took to publish guidance and a form to notify us for registration, and to request that he checked the details of the register entry.

Veterans for Britain

Findings

4.61. Veterans for Britain's spending return included a donation of £100,000, reported as a cash donation received and accepted on 20 May 2016. In fact, this donation was a payment by Vote Leave directly to Aggregate IQ for services provided to Veterans for Britain in the final days of the EU referendum campaign. It was paid by Vote Leave on 29 June 2016. The Commission is satisfied that the responsible person for Veterans for Britain, Mr Banks, without reasonable excuse delivered a spending return that contained an inaccurate donation report. He committed an offence under section 122(4)(b) PPERA.

4.62. That donation was for services provided by Aggregate IQ. Aggregate IQ was providing services to Vote Leave at the same time. The evidence we have seen does not support the concern that the services were provided to Veterans for Britain as joint working with Vote Leave.

Evidence and Analysis

Donation report

4.63. The responsible person for Veterans for Britain, Mr Banks, has confirmed that he inaccurately reported some of the details of a £100,000 donation. He reported this donation with his spending return. He said it was a donation from Vote Leave, received and accepted on 20 May 2016. However, he put the wrong date, as it was actually paid on 29 June 2016. He also reported it as a cash donation when in fact it was paid by Vote Leave directly to Aggregate IQ for services provided to Veterans for Britain.

4.64. This was, on Mr Banks' own account, a typographical error on his part. Such inadvertent errors do not amount to a reasonable excuse in law. Such errors do impact on transparency and that in turn impacts on public confidence in the campaign finance regime.

Joint working concerns

4.65. The correct date of the donation and its circumstances mean that it took place at the same time that Vote Leave donated to BeLeave. BeLeave and Vote Leave were working under a common plan. We looked at whether there was evidence that Veterans for Britain and Vote Leave were also working under a common plan.

4.66. We saw a number of emails originating from within Vote Leave's Outreach Team in early 2016. Veterans for Britain appeared in a small number of these. We also got a detailed account of events from Mr Banks, and he gave us copies

of email chains from the time.

4.67. From these, we saw that Veterans for Britain had some interaction with the Vote Leave Outreach Team and may have got some help with building its infrastructure (mainly its website). But there is no evidence that it had extensive support or resources from Vote Leave. We saw that in mid-June 2016 Veterans for Britain expected to receive a £50,000 donation. Given the lateness in the campaign, it decided to use the money on digital campaigning. It asked Vote Leave's Head of Outreach for a recommended supplier. The Head of Outreach introduced Veterans for Britain to Aggregate IQ.

4.68. Following that introduction, no one from Vote Leave was involved in the exchanges we have seen between Veterans for Britain and Aggregate IQ. Veterans for Britain started to arrange its campaign with Aggregate IQ. But on 22 June 2016 the campaign stopped because the funds had run out. Veterans for Britain asked Vote Leave if it knew of any possible donors. In response Vote Leave offered to make a donation of £100,000. Veterans for Britain asked for this to be paid direct to Aggregate IQ because it was having trouble making rapid financial transfers to the company. We saw evidence of these difficulties.

4.69. This evidence is consistent with two legally separate campaigners who knew each other and had worked closely prior to the regulated referendum period starting. However, they did not appear to be collaborating on a campaign. While Vote Leave recommended Aggregate IQ as a supplier, Veterans for Britain built a direct relationship with them. Unlike BeLeave, Veterans for Britain asked for more money for its campaign, rather than being offered it by Vote Leave.

Vote Leave investigation notice

Findings

4.70. Under Schedule 19B PPERA, when the Commission is conducting an investigation we can issue an 'investigation notice' requiring any person to disclose information, explanation or documents to us. We can give a reasonable deadline for disclosure. We issued an investigation notice to Vote Leave. Vote Leave failed to comply with the notice by the deadline we gave. It did not reply until after the deadline has passed, and while initially offering the documents for inspection, it then imposed conditions on this happening.

4.71. None of the arguments Vote Leave put forward as to why it did not comply amount to a reasonable excuse. It had told us that the relevant documents were being preserved. It did not indicate any logistical challenge with producing them by the deadline. There is no evidence to suggest that it was unable to produce them. Vote Leave's failure to comply appears to have resulted from misconceived objections, already dealt with by us, to being under investigation.

4.72. We are therefore satisfied beyond reasonable doubt that Vote Leave failed, without reasonable excuse, to comply with an investigation notice we

issued under Schedule 19B paragraph 3 PPERA on 21 February 2018. Vote Leave thereby committed an offence under Schedule 19B paragraph 13(1).

Evidence and Analysis

4.73. As explained earlier in this report, we opened an investigation on 20 November 2017 into suspected offences relating to Vote Leave, Mr Grimes and Veterans for Britain. In its first response to us after we opened that investigation, on 1 December 2017, Vote Leave's lawyers said its clients were "*anxious to be cooperative*".

4.74. They went on to say: "*We wish to assure you that whatever records are held are being maintained and are being reviewed to see what if anything is relevant to your re-opened inquiry*".⁴

4.75. In later letters, Vote Leave objected to the investigation. It sent us a Pre-Action Protocol Letter saying it was going to judicially review the decision to investigate. We responded. Vote Leave did not start judicial review proceedings.

4.76. Having been unsuccessful in a number of attempts to invite Vote Leave to an interview, on 21 February 2018 we issued an investigation notice requiring Vote Leave to disclose a discrete set of documents we needed for our investigation. We sent the investigation notice to Mr Halsall as Vote Leave's responsible person, copied to its lawyers. We gave a formal deadline of 1pm on 6 March 2018. The letter with the notice explained that Vote Leave should contact us as soon as possible if it could not meet that deadline.

4.77. We heard nothing from Vote Leave or Mr Halsall until 3.50pm on 6 March 2018. At that point we got a letter from its lawyers, but none of the required documents were produced. Instead Vote Leave offered to let us inspect the documents it considered relevant at its offices. We asked Vote Leave why it hadn't complied with the notice. In response, Vote Leave said it "*has complied with the Commission's Statutory [investigation] Notice dated February 21 2018 in all key respects. The only failing was not to reply by the arbitrary 1300 hours deadline on March 6th 2018, however a reply was sent to and received by the Commission on the afternoon of March 6th before 1600 hours.*"

4.78. We then had a number of exchanges with Vote Leave during which it raised misconceived objections, which we had already answered, to the investigation being opened. It repeated its assertion that we had no power to open what it called a 'third investigation' into this matter. It ignored our repeated clarification that this was our first investigation. It claimed our Enforcement Policy had no statutory basis and could not be relied upon either when opening investigations or issuing notices. Our Enforcement Policy does have a statutory

⁴ This was in fact the Commission's first investigation into these matters. However, despite our clarification Vote Leave's lawyers misrepresented earlier correspondence in 2016 and the assessment conducted in March 2017 as an investigation.

basis. It is made under Schedule 19B paragraph 14 PPERA.

4.79. Still no documents were disclosed. After weeks of correspondence Vote Leave then made its offer of inspection contingent on us meeting it to discuss why the investigation should be closed. Concerned that this was another delay by Vote Leave, we sent authorised officers to inspect and take copies of the documents that Vote Leave said it had collated in response to our notice. In the event, these documents were incomplete and some were not the correct documents.

4.80. It is a matter of fact that Vote Leave did not comply with our investigation notice. None of the required documents were produced or even made available to us for inspection by the deadline we gave. Vote Leave's response – after the deadline – still didn't produce the documents. The notice was not complied with in any respect.

4.81. We looked at whether Vote Leave had a reasonable excuse for failing to comply with the notice. Vote Leave explained its approach by saying that “the investigation was not justified” and it was “concerned that the width of the notice was over reaching”. It also said that the notice did not follow the wording of PPERA by saying that the documents had to be produced “for inspection”.

4.82. We already knew that Vote Leave objected to our decision to investigate, although it didn't challenge that decision by judicial review. But its opinion did not change the fact that our decision to investigate was properly taken in line with our Enforcement Policy, and an investigation was being conducted.

4.83. PPERA allows us to require documents that we reasonably require to progress our investigation. In this instance, the notice required Vote Leave to give us copies of communications with Aggregate IQ, Mr Grimes and Veterans for Britain from a limited period during June 2016. It also required copies of adverts placed by Aggregate IQ on behalf of Vote Leave during the same timeframe. The defined scope of the request related directly and obviously to the offences under investigation.

4.84. The notice said that we preferred the documents to be emailed to us but it did not require this or any other method of production. There was nothing to prevent Vote Leave making the documents available for us to inspect by 1pm on 6 March 2018 and thus complying with the notice. It did not do this. Further, Vote Leave could have asked us about the method of production in good time before the deadline. It did not do so.

4.85. Vote Leave made further representations on this when sent notice of our intention to fine it for failing to comply with the notice. It said that the time we had allowed for the documents to be produced (13 days) was unreasonable. Its lawyers said that Vote Leave had given them the documents only a few days before the deadline. Neither point was a reasonable excuse for the failure to

comply. In December 2017 Vote Leave had told us that its records were being maintained and reviewed. In the context of a period of time from December 2017 to March 2018, giving Vote Leave an additional 13 days was reasonable. Further, Vote Leave was given the opportunity to ask for the deadline to be extended. It did not do so.

Potential related offences

4.86. Under section 123(2)(a) and (b)(i) of PPERA, referendum spending returns must be accompanied by a declaration to the Commission made by the responsible person of the campaigner. The responsible person is required to state that they have examined the return and, to the best of his or her knowledge and belief, it is complete and correct as required by law. It is an offence for the responsible person to knowingly or recklessly make a false declaration. Civil sanctions do not attach to this offence; it can only be pursued by prosecution.

4.87. The Commission is satisfied that it has reasonable grounds to suspect that Mr Halsall either knowingly or recklessly signed a false declaration accompanying the Vote Leave spending return. We are also satisfied that we have reasonable grounds to suspect that Mr Grimes either knowingly or recklessly signed a false declaration accompanying the spending return he delivered as an individually registered campaigner.

4.88. Vote Leave's spending return was inaccurate. It was incorrect for it to fail to include a declaration that Vote Leave had engaged in joint working with Mr Grimes and BeLeave. It incorrectly stated that Vote Leave had spent under its spending limit. Mr Grimes' spending return was also inaccurate. It incorrectly stated that he had incurred over £675,000 of referendum campaign spending when this was not in fact the case.

4.89. The Commission has shared its evidence in respect of Mr Halsall and Mr Grimes with the Metropolitan Police Service.

4.90. The Commission has also shared its investigation files with the Metropolitan Police in relation to whether any persons have committed related offences which lie outside our remit.

5 Final determination on offences

5.1. The Commission has determined that Mr David Alan Halsall, the responsible person for Vote Leave, committed:

- An offence under section 122(4)(b) PPERA in that Mr Halsall failed, without reasonable excuse to deliver a referendum spending return for Vote Leave that was a complete statement of all payments made. The Commission has fined Vote Leave £20,000 for this offence.
- A further offence under section 122(4)(b) PPERA in that Mr Halsall failed, without reasonable excuse, to deliver a referendum spending return for Vote Leave that was accompanied by all the required invoices and receipts. The Commission has fined Vote Leave £1,000 for this offence.
- An offence under section 118(2)(c)(i) PPERA in that Mr Halsall incurred spending which he knew or ought reasonably to have known was in excess of the statutory spending limit for Vote Leave. Vote Leave also committed an offence under section 118(2)(c)(ii). The Commission has fined Vote Leave £20,000 for this.

5.2. The Commission has determined that Vote Leave Limited committed an offence under Schedule 19B paragraph 13(1) PPERA in that it failed, without reasonable excuse, to comply with a requirement imposed by the Commission to produce documents by a specified date. The Commission has fined Vote Leave £20,000 for this offence.

5.3. The Commission has determined that Mr Darren Grimes committed:

- An offence under section 117(3) PPERA in that Mr Grimes incurred spending on behalf of BeLeave that exceeded the statutory limit for a non-registered campaigner. BeLeave also committed an offence under section 117(4). The Commission has fined Mr Grimes £20,000 for this.
- An offence under section 122(4)(b) in that Mr Grimes failed, without reasonable excuse, to deliver a referendum spending return as an individual registered campaigner that was a complete statement of all his referendum spending. In light of its decision to impose a fine on Mr Grimes for his offence under section 117(3) PPERA, the Commission decided not to impose a further fine on Mr Grimes for this offence.

5.4. The Commission has determined that Mr David Banks, the responsible person for Veterans for Britain, has committed an offence under section 122(4)(b) PPERA. He failed, without reasonable excuse, to deliver a referendum spending return that included an accurate report of relevant donations received.

The Commission has fined Mr Banks £250 for this offence.

Annex A – Legal and Regulatory Framework

Referendum campaign spending returns

Under section 122(2) of the Political Parties, Elections and Referendums Act 2000 (“PPERA”), a permitted participant must deliver to the Commission a return that is a statement of referendum spending.

Section 120 PERA says that a referendum spending return must specify the referendum to which the expenditure relates. Under section 120(2)(a) it must contain a statement of all payments made in respect of referendum spending incurred by or on behalf of the permitted participant during the referendum period in question.

Under section 120(2)(d), where the permitted participant is not a registered political party, the return must also contain a statement of relevant donations received in respect of the referendum which complies with the requirements of paragraphs 10 and 11 of Schedule 15.

Paragraph 10 of Schedule 15 requires that the statement must include the total value of any relevant donation, other than those specified, which are accepted by the permitted participant.

Under section 120(3) the referendum spending return must be accompanied by all invoices and receipts relating to these referendum payments.

Under section 122(4)(b) PERA, the responsible person for a permitted participant commits an offence if, without reasonable excuse, they deliver a return which does not comply with the requirements laid down in sections 120(2) or (3) PERA.

Section 120A PERA provides that a return need not be made if the referendum expenses incurred by a permitted participant do not exceed £10,000, and within three months of the end of the referendum period the responsible person makes and delivers a declaration of the total amount of referendum expenses incurred.

Common plan expenses

Under the European Union Referendum Act 2015 (“EURA”) Schedule 1 paragraph 22, “common plan expenses” are expenses that:

- are referendum expenses incurred by or on behalf of an individual or body during the referendum period, and

- those expenses are incurred in pursuance of a plan or other arrangement by which referendum expenses are to be incurred by or on behalf of that individual or body and one or more other individuals or bodies, and
- with a view to promoting or procuring a particular outcome in the referendum.

Under the same paragraph, if any of the individuals or bodies involved is a designated ('lead') organisation, then those referendum expenses are treated for the purpose of sections 117 and 118 and Schedule 14 PPERA as having been incurred by the designated organisation only.

Schedule 1 paragraph 23(4) EURA requires a return under section 120 PPERA to include a declaration of whether there are any common plan expenses as defined in paragraph 22 incurred by or on behalf of another individual or body, and in the case of each individual or body, its name and the amount of common plan expenses. The same paragraph requires a further declaration of whether there are any common plan expenses incurred by or on behalf of the campaigner concerned that must be treated as having been incurred by another campaigner.

The Commission published guidance on working together in the EU Referendum. That explained that the rules were engaged when "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." It goes on to say that it is highly likely that two campaigners are working together if they spend money on joint advertising campaigns, they coordinate spending or another campaigner can approve or has significant influence over the spending.

Spending limits for the designated lead campaigners

Under section 118(1) PPERA, Schedule 14 imposes limits on referendum expenses incurred by or on behalf of a permitted participant during a referendum period. For the EU Referendum, Schedule 14 PPERA was amended to set the limit on referendum expenses for a designated lead campaigner at £7m.

Under section 118(2)(c)(i) a responsible person for a non-party non-individual campaigner commits an offence if he or she authorises expenses to be incurred by or on behalf of that campaigner and he or she knew or ought to have known that the expenses would be incurred in excess of the statutory limit. Under section 118(2)(c)(ii), the campaigner is also guilty of an offence.

Spending limit for a non-permitted participant

Section 105 PPERA defines "permitted participants" for the purpose of a referendum. It includes any of the following by whom a notification has been made under section 106 relating to the referendum: a registered political party,

an individual resident in the UK or registered in an electoral register, or any body falling within any of the paragraphs (b) and (d) to (h) of section 54(2). Section 106 states that a notification for this purpose is a notification to the Commission which identifies the referendum to which it relates and the outcome for which the giver of the notification intends to campaign.

Section 54 sets out permissible donors. Section 54(h) lists the following body: any unincorporated association which does not fall within any of the preceding paragraphs but which carries on a business or other activities wholly or mainly in the UK and whose main office is there.

Schedule 1 Paragraph 6 of the ERA prohibits any person from being the responsible person for more than one permitted participant, including as an individual permitted participant.

Section 117 PPERA sets out certain financial limits for referendums. Section 117(1) states that the total referendum expenses incurred by or on behalf of an individual or body during a referendum period must not exceed £10,000 unless the individual or body is a permitted participant (ie registered as a campaigner with the Commission). Sections 117(2) and (3) create associated offences. Section 117(3) says that where during the referendum period any referendum expenses are incurred by or on behalf of any body in excess of £10,000, and the body is not a permitted participant, any person who authorised the expenses to be incurred by or on behalf of the body 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.

Where a person commits an offence under section 117(3), the body that was not a permitted participant is also guilty of an offence under section 117(4).

Paragraph 6(3) of Schedule 1 to the European Union Referendum Act 2005 states that a person cannot be the responsible person for more than one permitted participant (including as an individual).

The Commission published guidance for the section 105/106 PPERA notification (hereinafter referred to as 'registration') as a permitted participant in the EU referendum. That guidance explained the rules as above, and included a registration form, EUR1.

Investigation notices

Under Schedule 19B paragraph 3 of the Political Parties, Elections and Referendums Act 2000 ("PPERA"), where the Commission has reasonable grounds to suspect that a person has committed an offence under that Act, the Commission may by notice require any person to produce, for inspection by the Commission or a person authorised by the Commission, any document that it reasonably requires for the purposes of investigating the suspected offence or

contravention.

Under paragraph 3(3), a person to whom such a notice is given shall comply with it within such reasonable time as is specified in the notice.

Under paragraph 13(1) a person who fails, without reasonable excuse, to comply with any requirement imposed under or by virtue of Schedule 19B commits an offence.

In accordance with Schedule 19B paragraph 14 PPERA the Commission has published guidance as to the circumstances in which it is likely to give a notice under paragraph 3. This guidance takes the form of the Commission's published [Enforcement Policy](#).