The Electoral Commission

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[redacted]

16 November 2022

Dear [redacted],

Our Ref: FOI 087-22

Thank you for your request under the Freedom of Information Act dated 3 November 2022 and received by the Commission on 8 November 2022.

The Commission aims to respond to requests for information promptly and has done so within the statutory timeframe of twenty working days.

Your request is shown below followed by our response.

Reviewing the returns made by the Conservative Party to the Commission dealing with donations made to its Esher & Walton branch, I noted corporate donations from BrandIN limited and Blue Square, which are linked by a common director, totalling £14,697.32, and from Karkin & Vuksel Legal Services Limited for £10,789.28.

The BrandIN/Blue Square donations have matching entries in the relevant MP's Commons Register; there is no reference to the Karkin & Yuksel legal Services Limited donation.

My understanding is that there is a requirement that when there is an underlying donor, that donor's identity be disclosed and the donation be registered as coming from the underlying donor, not any intermediary or agent.

I would be grateful if you would tell me what steps (if any) have been taken by the Electoral Commission to satisfy itself as to whether the Conservative Party/its Esher & Walton Branch are in compliance with this requirement in respect of the donations which I have identified. The Conservative Party and its registered Treasurer have, as they say, form in failing comply with the requirements of the regulatory regime governing party donations.

I would also be grateful if you could provide me with any information that would help me understand how the requirement for transparency of underlying donors is in general enforced.

Our response is as follows:

We hold some of the information you have requested.

We are interpreting your request as having three elements. We have sought to respond to these individually below.

1. Whether your understanding is correct that there is a requirement that when there is an underlying donor, that donor's identity be disclosed and the donation be registered as coming from the underlying donor, not any intermediary or agent.

This is broadly correct. Your terminology of 'underlying donor' is not the way the law is worded, but there is a requirement under section 54 of the Political Parties Elections and Referendums Act 2000 (PPERA), where any person makes a donation to a party on behalf another person or persons, it is the person on whose behalf the donation is made that should be reported to the party as the donor. There are potential offences associated with failing to report this type of donation correctly, but these relate to the donor and the person making the donation on their behalf, rather than the party. Whether a donation is made 'on behalf of' another person will depend on the specific facts, but in general it would require there to be an agreement of some sort between those involved by which the person making the donation is obliged to do so. Where the person who makes the donation received the funds from another but was not under an agreed obligation to make the donation, they are unlikely to be making the donation on behalf of the person who provided the funds.

2. What steps (if any) have been taken by the Electoral Commission to satisfy itself as to whether the Conservative Party/its Esher & Walton Branch are in compliance with this requirement in respect of specific donations – namely donations from BrandIN limited and Blue Square, which are linked by a common director, totalling £14,697.32, and from Karkin & Vuksel Legal Services Limited for £10,789.28.

Registered political parties have a duty to establish the identity of donors, and that the donor is permissible. However, PPERA does not prescribe the way in which that duty should be fulfilled and does not make it an offence to fail to fulfil that duty. It is a potential offence to accept a donation from an impermissible donor. The Commission conducts checks on the permissibility of donors on the basis of the reports received from registered political parties and others. As part of those checks we have recently conducted checks on the permissibility of BrandIN Limited and Karkin & Yuksel Legal Services Limited which indicated both are permissible donors.

In general we otherwise accept the reports provided by parties at face value unless we are aware of evidence to suggest they are not. Where we do become aware of evidence to indicate that a report is inaccurate, whether in relation to the circumstances you refer to or any other circumstances, we will consider the matter in line with our published Enforcement Policy.

3. Any information the Commission holds as to how the requirement for transparency of underlying donors is in general enforced.

As noted above, the Enforcement Policy sets out how we approach enforcement of the regime, including the requirements you refer to. The relevant offences can also be

investigated by the police and potentially prosecuted in the courts, but we do not hold information on the approach taken by the police or Crown Prosecution Service.

The Commission strives to be an open, transparent authority and I trust that this information satisfies your request.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at: https://www.electoralcommission.org.uk/freedom-information/make-a-freedom-information-request.

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website: https://ico.org.uk/.

Yours sincerely

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