

Investigation in respect of the Liberal Democrats 2015 UK Parliamentary General Election campaign spending return

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Contents

1. Introduction	2
2. Issues under investigation	3
3. Pre-investigation enquiries	5
4. The investigation and the Commission's findings.....	6
5. Conclusions.....	10

1. Introduction

The Electoral Commission

1. The Electoral Commission (“the Commission”) is the statutory regulator with power to set and enforce standards in relation to elections, including the regulation of political party finances and campaign spending.
2. The Commission has an important role in the regulation of political party finances and has a number of investigatory and enforcement powers in this regard. It has the general function, under section 145 of the Political Parties, Elections and Referendums Act 2000 (PPERA), of monitoring and taking all reasonable steps to secure compliance with the restrictions and other requirements relating to campaign spending.
3. The Commission’s aim is to ensure integrity and public confidence in the UK’s democratic process by working to support a healthy democracy, where elections and referendums are based on its principles of trust, participation and no undue influence. In furtherance of this aim, the Commission publishes information to provide transparency about election spending and donations, and works to ensure high levels of compliance by campaigners.

The Liberal Democrats

4. The Liberal Democrats (“the Party”) is a registered political party in Great Britain.
5. The 2015 United Kingdom Parliamentary General Election (“the 2015 UKPGE”) took place on 7 May 2015. Under PERA and given that the Party’s campaign spending exceeded £250,000, the registered campaigns officer of the Party¹, Mr Tim Gordon, was required to deliver to the Commission a financial return including all campaign spending incurred by the Party during the 2015 UKPGE campaign period, by 7 November 2015. Mr Gordon delivered this return in advance of the statutory deadline. The Commission published this return on 20 January 2016.
6. The Commission later identified various items of expenditure in Liberal Democrat candidate spending returns for the 2015 UKPGE which were stated as split between the Party and the candidate and thus reportable in both returns. However, the Party element did not appear in the Party’s original UKPGE return. Following enquiries with the Party, the Commission opened an investigation on 27 June 2016.
7. This is a report of that investigation. It is being published alongside the publication of the outcome of the investigation and the sanction imposed. In summary, the Commission found that the Party’s 2015 UKPGE campaign spending return was not a complete return as required by PERA. Accordingly, Mr Gordon committed one offence under PERA and the Party has been fined

¹ In accordance with section 25 of PERA, where a party has a registered campaigns officer, they are responsible for ensuring compliance with Parts V to VII of that Act, as opposed to the party treasurer. This includes the submission of campaign expenditure returns in respect of a UKPGE

£20,000, this being the maximum fine the Commission may impose.

8. In addition, the Commission identified information raising the suspicion that Mr Gordon may have knowingly or recklessly signed a false declaration that the spending return was complete. This is an offence under section 83(3) of PPERA. The Commission does not have the powers to sanction this offence, and the matter was therefore referred to the Metropolitan Police Service on 24 November 2016.

2. Issues under investigation

The scope of the investigation

9. On 20 January 2016 the Commission published the Party's 2015 UKPGE spending return on the Commission's online registers database. The return listed 1,335 items of spending incurred in Great Britain, totalling £3,539,106.
10. As part of the Commission's monitoring function, set out in section 145 of PPERA, a review of candidate expenditure returns from the 2015 UKPGE was conducted. Candidate returns from a number of parties, including four from the Liberal Democrats, were selected for the review.
11. The review identified discrepancies on a Liberal Democrat candidate return² between the values of three items reported as incurred by the candidate and the total of the three supporting invoices. These discrepancies were the result of the invoice value being apportioned between the Party and the candidate. The Commission reviewed the Party's spending return to verify that the apportioned items had been reported by the Party, but concluded that the apportionments had not been included in the Party return. Subsequent enquiries identified that various other items of expenditure, apportioned to the Party in other candidate returns, also did not appear on the Party's national expenditure return.³
12. Enquiries were undertaken with the Party to identify missing items or to explain discrepancies between amounts apportioned to the Party within candidate returns and the amount reported by the Party. Following these enquiries an investigation was launched on 27 June 2016.
13. The investigation focussed on the following two matters:
 - Whether the Party's campaign spending return for the 2015 UKPGE was a complete statement of all campaign payments made. Failures, without

² Sir Bob Russell (Colchester). There is no suggestion that the data reported by the candidate and agent within the candidate return was wrong.

³ It is the legal responsibility of the Party's registered campaigns officer to ensure a party's spending return is a complete statement of all payments made by, or on behalf of, the Party. The Commission does not proactively review on a line by line basis whether a party's spending return is complete and accurate prior to publication as it is important to publish the information proactively as soon as possible after we receive it to ensure the greatest transparency around spend and to inform the media's reporting of the issue. The Commission will take appropriate action where it has credible evidence that a failure to comply has occurred and where it is proportionate to do so.

reasonable excuse, in relation to this constitute an offence under section 82(4) of PPERA.

- Whether the Party's campaign spending return for the 2015 UKPGE contained all invoices and receipts related to the statement of payments of over £200 made. Failures, without reasonable excuse, in relation to this may constitute a separate offence under section 82(4) of PPERA.

The legal framework

14. In accordance with section 24 of PPERA the registered treasurer of a party is responsible for compliance on the part of the Party with all parts of PPERA, unless the Party has a registered campaigns officer. In accordance with section 25 of PPERA, where a party has a registered campaigns officer, such as the Liberal Democrats, they are responsible for ensuring compliance with parts V to VII of PPERA. This includes the preparation and submission of reports prepared under section 80 of PPERA.
15. Section 80(2) of PPERA requires the registered campaigns officer of a party to prepare a campaign spending return at the conclusion of a UKPGE campaign period. Section 80(3) requires that the return contains:
 - a statement of all payments made in respect of campaign spending incurred during the campaign period;
 - a statement of all disputed claims (where the campaigns officer refuses to pay the claim) of which the campaigns officer is aware; and
 - a statement of all the unpaid claims (if any) of which the campaigns officer is aware
16. Section 80(4) requires that the return contains:
 - all invoices or receipts related to the payments (of value greater than £200); and
 - a declaration of all notional spending.
17. Section 82(1) of PPERA requires the registered campaigns officer of a party which incurred more than £250,000 of campaign spending to deliver the campaign spending return within six months of the end of the relevant campaign period. For the 2015 UKPGE, which took place on 7 May 2015, the deadline for delivering the return was 7 November 2015.
18. Under section 82(4)(b) of PPERA, the registered campaigns officer commits an offence if, without reasonable excuse, he or she delivers a return which does not comply with the requirements of section 80(3) or (4) of PPERA.

3. Pre-investigation enquiries

19. Under its monitoring functions set out in section 145 of PPERA, the Commission reviewed a sample of candidate returns from the 2015 UKPGE. These candidate returns were required by the Representation of the People Act 1983 (“the RPA”) to include all election expenses incurred by those candidates. The review included Liberal Democrat Party candidates, as well as candidates from other parties.
20. As set out above in paragraphs 10 and 11, the Commission identified apparent discrepancies between the Party’s spending return and certain candidate returns, so made enquiries. On 19 April 2016 the Commission wrote to one candidate and their agent to seek clarification on the way three items had been reported in the candidate return.⁴
21. A response to the Commission’s enquiry was received from the Liberal Democrat Compliance Unit on 3 May 2016. The response explained that the discrepancy between the value of each of the three items, reported as incurred by the candidate, and the value of their invoices, was because some of the value had been apportioned to the Party.⁵
22. The Commission was unable to locate any items on the Party’s return which matched the value apportioned to the Party in the candidate return. Consequently, it asked the Party to identify the three items of national expenditure, totalling £6,317, on its UKPGE spending return, and to explain how such apportionments were managed.
23. The Party replied on 3 June 2016 setting out the system it used at the 2015 UKPGE to identify and collate party campaign expenditure. This includes spending incurred on behalf of the Party by Party branches, known as accounting units. Liberal Democrat accounting units are given authority by the central Party to incur campaign spending on its behalf, which must be recorded and reported to the Party. The Party also confirmed that the three items identified by the Commission had not been included on the Party’s original return and offered to report them.
24. Upon receipt of this information, the Commission conducted further analysis of other Liberal Democrat candidate returns.⁶ The analysis identified 27 items of expenditure, totalling £20,691, that could not be located on the Party’s return but appeared to have been apportioned to the Party by three candidates.

⁴ Sir Bob Russell (Colchester). There is no suggestion that the data reported by the Candidate and agent within the candidate return was wrong.

⁵ Where spending applies to both a party and a candidate’s campaign, the spending must be split accordingly between campaigns. In such circumstances an honest assessment, based on the facts, must be made to determine the proportion of spending that can be fairly attributed to the Party and candidate. Spending apportioned to the Party must be included in the Party’s spending return.

⁶ Ed Davey (Kingston and Surbiton), Tim Farron (Westmorland and Lonsdale) and Mark Williams (Ceredigion). There is no suggestion that the data reported by the Candidate and agent within each candidate return was wrong.

25. On 10 June 2016, the Commission told the Party to report the three items of expenditure missing from its spending return. The Commission also detailed the further 27 items of Party expenditure that appeared to be missing from the Party's return, and advised the Party that it was concerned that the Party's 2015 UKPGE return was not complete. The Commission asked the Party to review all Liberal Democrat candidate expenditure returns to ensure that all items of expenditure apportioned to the Party had been reported. The Party were advised to report any items they identified as missing and confirm that all items of expenditure had been reported to the Commission.
26. The Party responded on 17 June 2016 clarifying that three of the apparently missing items of apportioned expenditure were in the Party return, but the amounts had been incorrectly reported. These errors were put down to accounting unit treasurers recalculating the percentage of Party spend incorrectly which had resulted in a net under declaration of £2.82. The Party also agreed to conduct a review of its spending at the 2015 UKPGE.
27. Given the Commission's concern that the Party's return was incomplete and that an offence under PPERA may have been committed, an investigation was commenced on 27 June 2016. The Commission then awaited the outcome of the Party's review.

4. The investigation and the Commission's findings

28. The Party cooperated with the Commission's enquiries throughout the investigation.

Missing campaign spending

29. The Party concluded its review on 25 August 2016. It resulted in an additional 307 payments being reported to the Commission.
30. The 307 additional items included 27 payments totalling £26,714 that had been identified by the Commission as missing from the Party's original return. The items also included a further 280 payments totalling £157,962 identified by the Party during its review. In total the 307 payments were made up of 258 individual payments totalling £144,063 and 49 notional payments totalling £40,614.
31. Each additional item of spending was incurred by or on behalf of one of the Party's accounting units.
32. The total value of the additional payments is £184,676, which when added to the Party's original return (and £2.82 under-declaration), increases the total expenditure incurred by approximately 5% from £3,529,106 to £3,713,785.

Outstanding invoices

33. The Party supplied 128 invoices in support of the 307 additional items of expenditure reported. Of the additional invoices, 122 were in support of payments exceeding £200, totalling £134,612. None of the additional invoices supplied by the Party related to items of expenditure which had previously been

included within the Party's original return.

Explanation provided by the Party

34. The Party explained its system for compiling the 2015 UKPGE spending return broadly worked as follows:-
- Guidance was issued to agents and registered accounting unit treasurers, and treasurers were given delegated authority to incur Party campaign spending. All Party material was created and approved centrally and given a code to be quoted back to the Party on accounting unit returns where it was used.
 - All template material was created centrally and was given a code to be quoted back to the Party on accounting unit returns where it was used.
 - After the 2015 UKPGE, all accounting units were required to complete a form, either reporting all Party spending incurred or reporting nil spending if appropriate. Forms that were not supplied by a deadline given by the Party were chased by the Party's Compliance Unit right up until the Party's auditors began auditing the Party's return.
35. The Party employed a risk assessment process when chasing outstanding returns. This was based on factors such as the Party's own experience of dealing with treasurers and accounting units on spending returns, donations and accounts returns, turnover declared within their accounts and the volume and value of donations previously declared.
36. During the investigation and when making representations on the Commission's proposal to penalise the Party, it explained that the missing spending in its return had resulted from:
- One particular accounting unit having significant organisational problems after the election, in part caused by the serious illness of a key accounting unit official. These led to difficulties across the board for the particular accounting unit in terms of producing accounts and donation reports, as well as their Party spending report.
 - Inaccurate reports from seven accounting units.
 - Reports from five accounting units that were received after external auditors had begun the audit of the return, but prior to the submission of the return. The Party stated that its external auditors told it that these payments could not be added to its return at this point.
 - The unexpected absence of the Party's Head of Compliance and Constitutional Support for serious health reasons.
 - Redundancies amongst staff employed by accounting units, which were not within the control or responsibilities of the central Party.

- The loss of experienced internal resource as a result of major organisational changes within the Party following the result of the 2015 UKPGE, the loss of 49 out of 57 parliamentary seats and further the diversion of resources to conduct a leadership election for the Party.

Our findings on the Party's explanation

37. None of these factors constituted a reasonable excuse for the Party's incomplete spending return. The Party's internal system for collating information from accounting units was within its control, as was the ability to dedicate resources to appropriately manage such a system.
38. Large and complex political parties require appropriate financial procedures to manage and account for all of their transactions, including payments incurred by or on behalf of the Party and its accounting units. There is always a risk of human error. However, this risk can be mitigated through the creation and review of adequate financial procedures, through training and through oversight and supervision of professional and voluntary staff.
39. Further, the 2015 UKPGE was a major electoral event. A party with the campaigning experience of the Liberal Democrats should have adequate and robust internal financial procedures in place to meet the reporting obligations arising from the election. The Party's campaigns officer was responsible for ensuring that robust financial procedures were in place to deal with any unexpected issues that could arise, such as the unforeseen illness of a key member of staff. It appears that there was a significant reliance on the Head of Compliance and Constitutional Support's personal knowledge inherent in the system, and this was a contributing factor. The Commission does not consider it appropriate for a compliance system of a larger party spending significant sums of money to rely overly on one individual's personal knowledge.
40. The Party's reliance on accounting units to return forms to the central party reporting Party spending (or confirming a nil return) cannot be relied upon, unless the Party can also dedicate resources to appropriately manage such a system. Such events warrant high levels of compliance to ensure voters can have confidence in the transparency and integrity of political finance.

Representations made by the Party on the Commission's proposed sanction

41. On 10 November 2016, the Commission issued a notice to the Party setting out its conclusion that Mr Gordon had committed an offence under section 82(4) in delivering an incomplete spending return, and proposing a sanction of £20,000. As required under PPERA, the Commission gave the Party 28 days to make representations on its conclusions and proposed sanction. Those representations were then considered before final decisions on the offence and sanction were taken.
42. The Party were asked to supply evidence of the instructions it purportedly received from its external auditors not to add further spending to the return once the audit had begun, in order that this could be considered as part of its representations, but did not do so. The Commission therefore has no clear

evidence to support whether the instructions were given or properly understood by the Party. If given, such instructions would be wrong, as it is not for the auditor to determine whether a spending return is complete. The Commission is not aware of any other party receiving such instructions from an auditor. The Commission noted that the Party could have contacted it for advice upon receipt of any such instructions, or at any point afterwards. In any event, PPERA places an obligation on a registered campaigns officer to submit a complete and accurate return. This obligation is not changed by instructions from an auditor or any other person not to include campaign spending payments.

43. The Party raised the potential that treasurers in its accounting units may have committed offences under section 76 of PPERA, by not notifying it of Party campaign spending as soon as possible after paying it. To date, the Party has not supplied evidence of any offences under section 76 occurring. If it does so, the Commission will consider the matter in line with its Enforcement Policy. Irrespective of any offences, however, the Party had a compliance process in train to obtain these returns and in many cases was notified of relevant payments before submitting its return. The matter was therefore within the control of the compliance systems for which Mr Gordon had responsibility.
44. Of particular concern to the Commission was the fact that the explanation provided by the Party made it clear that it was aware of some of the missing payments before the spending return was submitted. The Party stated that it found itself in a position where it faced either submitting a return that included the vast majority of its spending on time, or being penalised for submitting a complete return after the deadline.
45. At no point prior to the submission of the return in November 2015, or between then and when the Commission approached it on this matter in June 2016, did the Party tell the Commission that the return was incomplete. No advice was requested on the instructions purportedly received from the Party's auditors, or on how to take forward any issues with the accuracy or content of the return.
46. PPERA is clear that spending returns must be complete and accurate, and on time, when they are submitted. As a well-established Party with a long history of corresponding with the Commission, the Party should have known to approach the Commission on this matter as early as possible. It was a significant failing by the Party that it did not report this matter.

Assurances sought from the Party post-investigation

47. During the investigation, the Party's campaigns officer confirmed that, as a result of the issues highlighted by this matter, the Party had reviewed its systems for compiling party returns at elections and referendums. The Commission advised the Party to ensure this review took into account the various factors that led to an incomplete return for the 2015 UKPGE. In response, the Party explained that it had amended its process for compiling party spending by accounting units, and had developed a new training package for accounting unit treasurers. In addition, the Party has confirmed it is conducting a wider review of its financial compliance processes.
48. The Commission will continue to seek assurances from the Party concerning the

findings of its wider review of its processes, specifically on the changes it will make and how and when these will be implemented.

5. Conclusions

Offence under section 82(4) of PPERA

49. Mr Tim Gordon, the registered campaigns officer for the Party, failed to deliver to the Commission a campaign spending return which was a statement of all payments made by the Party in respect of its campaign for the 2015 UKPGE. In total 307 payments totalling £184,676 were missing from the Party's 2015 UKPGE campaign spending return without a reasonable excuse. The return therefore failed to comply with section 80(3) of PPERA.
50. In total the missed 307 payments also resulted in 122 invoices in support of such payments being missing. As these were in support of items omitted from the original return only, the failure to include them was part of the same offence under section 84(2).
51. The Commission concluded that Mr Gordon committed one offence under section 82(4)(b) of PPERA in respect of the Party's 2015 UKPGE spending return.

Penalty imposed

52. The Commission has imposed a financial penalty on the Liberal Democrats of £20,000.
53. In determining this penalty the Commission took into account a number of mitigating and aggravating factors. It took into account the Party's cooperation during the investigation. It also considered the extent and value of the missing payments and the overall detriment to transparency in political caused by this offence. It considered the fact that the Party is an established organisation with significant campaign spending.
54. Based on those factors, and recognising the potential damage to public confidence in the controls the Commission regulates and the importance of ensuring future compliance by both the Liberal Democrats and others, the Commission considered that a variable monetary penalty of £20,000 was appropriate. However, the Commission noted that the failure by the Party to notify it that the return was incomplete prior to submission or at any point afterwards was a significant aggravating factor. This would have made a penalty in excess of £20,000 appropriate, were this not the maximum the Commission may impose for a single offence.

Potential criminal offence under section 83(3) of PPERA

55. PPERA required the Party's campaigns officer to declare that he had examined the return and that, to the best of his knowledge and belief, the return was complete and correct as required by law. A declaration by the campaigns officer to that effect was delivered alongside the Party's 2015 UKPGE.

56. Knowingly or recklessly making a false declaration under this section is a criminal offence under section 83(3) of PPERA. Such offences fall outside the remit of the Commission's civil sanctioning powers.
57. This investigation established that the Party's 2015 UKPGE spending return was neither complete nor correct. Further, the evidence provided by the Party indicates that some persons within the Party were aware of some of the missing payments before the spending return was submitted. Consequently some persons within the Party were aware that the return was not complete nor correct prior to the campaigns officer signing the accompanying declaration, raising the potential that it was a false declaration.
58. The Commission has referred this issue to the Metropolitan Police Service. It will be a matter for the police as to what steps they take following the Commission's referral.