Your ref: Z1815600/OKG/B6
Our ref: 267666/2./JHAL.SBUD
Date: 24 September 2018

[names of Government lawyers]
Government Legal Department

By email only: [Government lawyers' e mail addresses]

Dear Madam and Sirs,

Proposed application for judicial review by the Fair Vote Project, registered as Let's Take Back Control Limited

1. We are instructed by the above named company ('**Fair Vote**') of 51 Clarkegrove Road, Sheffield S10 2NH, as you know. This is a letter before claim written in line with the Pre-Action Protocol for Judicial Review. The proposed claim is concerned with a single issue that arises from the correspondence exchanged between Fair Vote and its former solicitors, Deighton Pierce Glynn ('**DPG**'), the Prime Minister and yourselves: namely, the Prime Minister's refusal to instigate a prompt and independent public inquiry into both irregular (i.e. undemocratic, unethical or potentially unlawful) and unlawful conduct that sought to, and/or potentially did, influence the outcome of the EU Referendum.

2. On 5 July 2018, Fair Vote wrote to the Prime Minister asking for these matters to be investigated bearing in mind the *"need to maintain the people's faith in our democracy"*. Fair Vote's request was made for three reasons.

3. First, the scale of the evidence of irregular and unlawful conduct. As discussed below, the evidence indicates interference by a foreign state in the EU Referendum, the involvement of foreign and multinational companies, unprecedented use of social media to target and influence voters (using, in many cases unlawfully processed data), use of untruthful campaign materials, a single individual making the largest ever donations to political campaigns, unlawful overspending on an unprecedented scale by several campaigning organisations (some of which involved common plans between them) and wilful non-cooperation with regulators, investigators and a Parliamentary Select Committee including by giving untruthful evidence to them.

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4. Secondly, the EU Referendum itself concerned a question of profound constitutional importance and the consequences of irregular or unlawful conduct are grave and far-reaching but, to date, have not been assessed.

5. Thirdly, it had become apparent to Fair Vote that conventional regulatory, investigatory and oversight mechanisms would be unable to comprehensively assess the evidence, gather additional evidence as necessary, and reach conclusions about it in a way that would address and allay public concern. Fair Vote is not alone in that view. It is shared, for example, by Tom Watson MP, the Deputy Leader of the Labour Party, and Damian Collins MP, the Conservative Chair of the Chair of the Digital, Culture, Media and Sport Committee ('**the DCMS Committee**') (see paras. 133 to 149 below).

6. There was no response to Fair Vote's letter. In their letter of 20 July 2018, DPG repeated Fair Vote's request, emphasising the need for an: "*investigation or inquiry into the irregularities and illegal practices that took place during the European Union referendum campaign of 2016*". In the same letter, DPG identified "*[t]he Prime Minister's decision to refuse to accede"* to that request as a *"matter being challenged*".

7. You responded on 3 August 2018, stating expressly "*[i]n the circumstances, the Prime Minister will not be taking any of the steps demanded in [the DPG] letter*." Those circumstances were listed at paras. 26 to 28 of the same letter:

> "Ground 3 – refusal to order a "speedy" investigation or inquiry into the Referendum
>
> 26. This proposed ground appears to be a collateral, and poorly concealed, attack on the giving of Art. 50 notification and/or the Referendum outcome. The objective appears to be to undermine/disrupt the Government's on-going Treaty negotiation with the EU27. In the circumstances, this claim is also non-justiciable.
>
> 27. In any event, the relevant matters have been (and in some instances still are) being dealt with by the relevant authorities, namely the Electoral Commission and/or the Police. This is what the law, as enacted by Parliament, provides for in the circumstances of the present case.
>
> 28. Further, and alternatively, any such challenge could only be brought on Wednesbury grounds. The nature and context of such a decision means that the bar for any such challenge would be very high indeed. A contention that it is Wednesbury irrational for the Prime Minister not to accede to the Proposed Claimant's demand that she "speedily" instigate a public inquiry or "investigation" into the Referendum is unarguable."

8. The 3 August 2018 letter reported a decision ('**the Decision**') not to commission the requested investigation or inquiry for the reasons above. It was the first response to such a request.

9. Fair Vote's proposed claim will challenge the Decision on the basis that it was unlawful to refuse an independent public inquiry. In summary, that is because:

   (1) the Electoral Commission ('**the EC**') and/or the Police cannot respond comprehensively to, and seek to allay, public concern about the irregular and unlawful conduct during the EU Referendum campaign because:

      (a) they do not have adequate powers to comprehensively investigate and address the matters that have promoted that concern, less still to do so publicly as an inquiry would, and it was an error of law to conclude otherwise; and

      (b) it was irrational and a fundamental error of fact to conclude that those matters *"have been (and in some instances still are) being dealt with"* by the EC and/or the Police, as is clear from the limited scope of their past and current investigations (in fact, it appears that although three people have been referred to the Police, a decision to investigate has yet to be made);

   (2) the Prime Minister failed to consider a number of relevant factors which weigh in favour of an inquiry and, as the law demands, and then to properly weigh them against factors that might militate against establishing one;

   (3) the reasons given for the decision are legally inadequate, given what is at stake; and

   (4) the characterisation of Fair Vote's request as a "*collateral, and poorly concealed, attack on the giving of Art. 50 notification and/or the Referendum outcome*" was irrational and a fundamental error of fact, given that neither the proposed claim nor an inquiry would challenge the notification or that outcome.

10. Each of these points is developed below (**Part 5**). It is first necessary to deal with some preliminary matters under the Judicial Review Pre-Action Protocol (**Part 1**). As foreshadowed in our letter of 21 August 2018, we will then elaborate on what was said in DPG's 20 July 2018 letter about the context in which Fair Vote's request was made, beginning with the statutory framework for the EU Referendum (**Part 2**) and the relevant investigatory and inquiry powers (**Part 3**), then we will discuss how public concern has developed and the limited scope of the investigations that have

occurred to date (**Part 4**). The final part of the letter seeks certain information and documents and a response within the normal pre action timetable (**Part 6**).

PART 1: PRELIMINARY MATTERS

Details of the matter being challenged

11. The Decision (the Prime Minister's 3 August 2018 refusal to order an independent public inquiry into irregular and illegal conduct that sought to improperly and/or potentially did, influence the EU Referendum's outcome).

The issue

12. Please see the summary above.

Action the Prime Minister as Proposed Defendant is asked to take

13. The Prime Minister is asked to withdraw the Decision and accede to Fair Vote's request.

Contact details and references, address for reply and service of court document

14. The Proposed Claimant's and Defendant's details are above. As regards legal advisors, this matter is being dealt with by John Halford and Tamsin Allen, Partners. Our address is above, as is the case reference. We assume your contact details and reference are also as given above.

The details of any interested parties

15. The EC (3 Bunhill Row, London EC1Y 8YZ) and the Commissioner of Police of the Metropolis (Victoria Embankment, Westminster, London SW1A 2JL) are interested parties because the Prime Minister contends they are the appropriate, and statutorily empowered, bodies to investigate the public concern which prompts Fair Vote's request. This letter has also been sent to the Information Commissioner's Office ('**the ICO**'), along with Mr Watson and Mr Collins, for their information.

Standing

16. At para. 21 of the 3 August 2018 letter you reserve your position as to whether Fair Vote has standing to bring these proceedings. It is clear that Fair Vote has standing, however. It is a properly interested, responsible campaigning organisation which is motivated by public interest and whose aims include raising awareness about

transparency in democracy.[1] If you consider that Fair Vote's standing remains in question, or is to be disputed, please explain why in your response to this letter.

Costs

17. Fair Vote is a small NGO with limited funds. The proposed claim is one which it will not benefit from in any tangible way, but it does raise issues of exceptional public interest. The cost risk associated with this litigation will be prohibitive, unless sensible arrangements to manage it can be agreed between the parties or a formal a cost capping order is granted by the Court. Our proposal would be a cap on recovery of Fair Vote's costs at Treasury rates and an overall cap on your client's costs with any other active parties to bear their own costs. Please indicate in your response whether you would be prepared to agree to this proposal and, if so, what you estimate your overall costs would be in the event the claim proceeds to trial.

Alternative Dispute Resolution

18. Fair Vote is willing to engage in ADR provided it happens expeditiously. We suggest a round table or facilitated meeting in the first instance with a Minister, yourselves and representatives of Fair Vote and this firm. Representatives of the Interested Parties, the ICO, Mr Watson and Mr Collins may also wish to attend. Please indicate whether your client is amenable to this course bearing in mind the Government's Dispute Resolution Commitment and *PGF II SA V OMFS Company 1 Limited* [2013] EWCA Civ 1288.

PART 2: THE STATUTORY FRAMEWORK FOR THE EU REFERENDUM

The Political Parties, Elections and Referendums Act 2000

19. Part VII of the Political Parties, Elections and Referendums Act 2000 ('**PPERA**') sets out the basic framework for national and regional referendums held throughout the UK and covers: the determination of the question to be posed, the designation of 'lead' campaign organisations to whom financial assistance is available, financial controls on 'permitted participants' in the referendum, including limits on campaign spending, permissible donations towards that spending and requirements to submit 'returns' to the EC. PPERA also sets out rules concerning the control of publications and the conduct of referendums. Primary legislation to complement this framework must be enacted in respect of particular referendums, making provision for matters including the date of the referendum, the question to be posed, entitlement to vote and detailed specific rules governing the conduct of the referendum.

[1] See for example: https://www.fairvote.uk/home/electoral-reform/

20. The PPERA Part VII regime has two main components which the EC regulates through a combination of monitoring, targeted enforcement and reporting. The significance of this is that the EC has no general responsibility to ensure referendums are democratic, ethical or to expose potentially unlawful conduct; it is charged with policing the current PPERA regime and even then, its powers are strictly circumscribed as explained below.

21. The first component of PPERA Part VII concerns the administration of referendums such as the provision for polling stations and the counting of votes, which is not relevant to the proposed claim.

22. The second component defines and delimits permissible spending on campaigning to influence the outcome of referendums as well as the permissible sources of donations and loans. These controls are based on election spending limits that were first introduced in the UK in the 19th century through the Secret Ballot Act 1872 and the Corrupt Practices Act 1883, though in relation to referendums are a much more recent feature of the legislation as the Divisional Court noted in *R (Good Law Project Ltd) v Electoral Commission* [2018] EWHC 2414 (Admin) at paras. 9 and 10 ('*Good Law Projec*t'). The policy aim of such provisions is to ensure that the result of elections (and, referendums) turn on the issues, not on the financial resources of those seeking election, or of their supporters, and to create a level playing field. This is discussed in Lord Bingham's speech in *R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] 1 AC 1312 at para. 28, *The Funding of Political Parties in the United Kingdom*, published in July 1999 at para 1.14 and the comments of then Home Secretary, Jack Straw, when introducing the second reading of the Bill that became PPERA, in particular the warning that "*unhealthy reliance on a handful of wealthy donors*" would "*plainly not be good for democracy*" (Hansard HC Deb, 10 January 2000, vol. 342, col. 34).

The European Union Referendum Act 2015

23. The European Union Referendum Act 2015 ('**EURA**') applied PPERA to the question of whether the UK should remain a member of the EU. When promoting the Bill that became EURA, Philip Hammond MP, the then Secretary of State for Foreign and Commonwealth Affairs, said it would bring about "*a vibrant, robust debate in the best traditions of British democracy*" on EU membership which would be "*in all our interests*" (Hansard, 9 June 2015, Vol 596 Column 1055).

24. Section 3 EURA applied Part VII PPERA to the EU Referendum, subject to the additions and modifications made in Schedule 1 EURA (which governs campaigning and financial controls), Schedule 2 (which governs the control of loans to permitted participants) and Schedule 3 (which governs the conduct of the EU Referendum). Section 4 EURA empowered the Minister to make regulations about

voting and the conduct of the EU Referendum. That power was used to make the EU Referendum (Conduct) Regulations 2016 and the European Union (Voter Registration) Regulations 2016.

Campaign spending

Expenses incurred for referendum purposes

25. 'Referendum expenses' are defined at s.111(2) PPERA as:

> "expenses incurred by or on behalf of any individual or body which are expenses falling within Part I of Schedule 13 [of PPERA] and incurred for referendum purposes"

26. Part 1 of Schedule 13 and s.19 EURA list the specific types of expenses included within the limit on referendum expenses. Expenses 'for referendum purposes' are defined under s.111(3). As discussed in *Good Law Project*, in certain circumstances such expenses include a donation to a permitted participant made by an individual or body. Section 117(1) provides that the total referendum expenses incurred by or on behalf of any individual or body during the referendum period must not exceed £10,000 unless the individual or body is a 'permitted participant'. Any individual or body spending more than £10,000 in referendum expenses is required to either make a declaration (in the case of a registered party) or give notification (in the case of individuals or other bodies) to the EC (s.106 PPERA). Anyone knowingly or recklessly authorising expenditure over £10,000 without having made the relevant declaration or notification is guilty of an offence (s.117(3)), as is the body itself (s.117(4)).

27. After a party, individual or body has made a declaration or notification to the EC, the entity becomes a 'permitted participant'. The effect is that, by operation of s.118 PPERA, higher spending limits set out in para. 1 of Schedule 14 PPERA apply. In the case of a registered party, this limit ranges from £700,000 to £7 million (with the limit increasing in proportion to the percentage of votes cast for that party's candidates at the last general election). In the case of a person or body falling within s.105(1)(b) PPERA (including individuals, charities and businesses), the spending limit is £700,000. There are a number of criminal offences within PPERA related to authorising and incurring expenses in excess of spending limits.[2]

[2] Those offences include: authorising expenses to be incurred by or on behalf of a permitted participant where an individual knew or ought to have known that expenses would be incurred in excess of the statutory limit. These apply to: responsible persons/treasurers of parties (s.118 (2)(a)(i)); parties (s.118 (2)(a)(ii)); permitted participants who are individuals (s.118(2)(b)); responsible persons of permitted participants who are bodies (s.118(2)(c)(i)); and permitted participants who are bodies (s.118(2)(c)(ii)). All are subject to defences set out in s.118(3) PPERA.

28. ‘Permitted participants’ must appoint a ‘responsible person’ to discharge responsibilities in respect of their financial affairs under PPERA, including by authorising all referendum expenditure, providing pre-poll reports of relevant donations (s.39 EURA) and submitting a return to the EC within six months of the end of the referendum period. (s.120(1) PPERA). The spending return must contain a statement of all payments made in respect of referendum expenses (s.120(2) PPERA) and be accompanied by all invoices and receipts relating to these referendum payments (s.120(3)). Where the permitted participant is not a registered political party, it must also include a statement of relevant donations (s.120(2)(d) PPERA, read with Schedule 15). ‘Regulated transactions’ as defined in Schedule 15A with ‘qualifying persons’ (which captures certain loans or credit received by permitted participants), must also be declared in the return if they exceed a prescribed threshold (see para. 37below).

29. There are a number of criminal offences within PPERA relating to the submission of spending returns. These include, so far as is relevant, knowingly or recklessly making false declarations that: the spending return is complete and correct (s.123(4)(a)); referendum expenses incurred by or on behalf of a permitted participant were less than £10,000 (s.120A(3)); or that no referendum expenses were incurred by or on behalf of a permitted participant during the referendum period (s.124A(5)). They also include failing without reasonable excuse to deliver a return which complies with the requirements of s.120(2) or (3) (including one that includes an accurate and complete declaration of any relevant donations and donations in kind) (s.122(4)(b)), or delivering a return which does not include statements of all payments in respect of referendum expenses incurred by the permitted participant during the referendum, all disputed claims, and unpaid claims (s.122(4)(c)).

Designated organisations

30. Sections 108-110 PPERA make provision for the EC to designate a permitted participant as a ‘designated organisation’ (effectively, a ‘lead campaigner’) representing those campaigning for a particular outcome. The effect of designation is that the organisation becomes entitled to ‘assistance’ under s.110 PPERA. That assistance includes a grant of up to £600,000 from the EC, assistance with mailshots, free use of rooms for holding public meetings and the right to make referendum campaign broadcasts (s.110). ‘Designated organisations’ are also entitled to incur referendum expenses of up to £7 million (para. 1 of Schedule 14). As noted above, intentional or reckless breaches of these spending limits are offences pursuant to 118(2)(c).

Common plan expenses

31. Pursuant to para. 22 of Schedule 1 EURA, ‘common plan expenses’ are those incurred by or on behalf of an individual or body during

the referendum period "*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*" to seek a particular outcome. Certain common plan expenses are treated as having been incurred during the referendum period by or on behalf of designated organisations (para. 22(5) of Schedule 1). Permitted participants must declare in their spending returns details of any common plan expenses incurred on behalf of another body, or that have been incurred on their behalf (s.120 (4A) PPERA).

Donations

32. 'Donations' are defined in para. 2 of Schedule 15 PPERA as including gifts, sponsorship, money spent, certain benefits in kind and certain subscriptions and fees paid. 'Relevant donations' are donations to permitted participants for the purpose of meeting referendum expenses incurred by or on behalf of the permitted participant (para. 1 of Schedule 15). Any donation with a value of less than £500 is disregarded for the purpose of PPERA (para. 4(2) of Schedule 15).

33. Permitted participants may only accept donations from 'permissible donors' as defined in s.54 PPERA and s.26 EURA (para. 6(1)(a) of Schedule 15). For the purpose of the EU Referendum, donors from outside the UK and Gibraltar were not permissible donors. The underlying purpose being to prevent individuals, companies and organisations that are not UK-based from using their financial resources to influence the outcome of referendums held here.

34. For every donation of £500 or more, the responsible person is required to keep a record of the name and address of the donor, registered company number (if relevant), the amount or nature and the value of the donation and the date on which the donation was accepted. Permitted participants (other than political parties) are required to report to the EC in pre-poll reports and in their spending returns after the referendum, the total value of any donations of over £500, and detailed information about all donations of more than £7,500 (including the names, addresses and/or company numbers of the donors) (para. 39 EURA and paras. 10 and 11 of Schedule 15). Failure by a responsible person, without reasonable excuse, to comply with the requirement to file complete and accurate pre-poll reports of donations is a criminal offence by virtue of para. 39 of Schedule 1 EURA.[3]

35. A person may make a donation on their own behalf and on behalf of another person (as 'principal donor'), or they may make a donation as an 'agent' for another person (paras. 6(5) and 6(7) of Schedule

[3] It is also an offence for a responsible person to knowingly or recklessly give a false declaration accompanying a pre-poll report of donations under s.39 that the report is complete and correct as required by law (s.40 EURA).

15). In both cases, they must provide all relevant details of the donor as are required for the purposes of complying with para. 10 of Schedule 15 PPERA.

36. There are various offences in PPERA and EURA relating to donations. Para. 6 of Schedule 15 PPERA (modified by paragraph 31 of Schedule 1 to EURA) prohibits permitted participants in the EU Referendum from accepting donations from impermissible donors. A responsible person commits an offence by failing to return an impermissible donation within 30 days of its receipt (para. 7 of Schedule 15 and section 56 PPERA). Failure to report gifts received by unincorporated associations making political contributions is also an offence (Para. 6 of Schedule 19A PPERA), as is entering into, or acting in furtherance of, any arrangement which, either by concealment or disguise, facilitates the making of donations by an impermissible donor (Para. 8 of Schedule 15 read with s.61(1) PPERA). It is also an offence, without reasonable excuse, to knowingly give a responsible person any materially false information concerning the amount of any donation; or the person or body making such a donation; or to withhold such information from the responsible person with intent to deceive (Para. 8 of Schedule 15 read with s.61(2) PPERA). Paras. 8, 9, 10, 11 and 12 of Schedule 15A, and 71L of PPERA (as applied and amended by paragraph 1 Schedule 2 of EURA), set out further offences that apply to permitted participants that are not individuals.

Regulated transactions

37. 'Regulated transactions' are defined in Schedule 15A and include certain loans and the provision of credit by 'qualifying persons' to permitted participants. Non-UK or Gibraltar based individuals and bodies cannot be qualifying persons. Where a permitted participant enters into a regulated transaction with a non-qualifying person, that transaction is void and must be repaid (para. 5(2) and (3) of Schedule 15A). Regulated transactions must be declared in pre-poll reports and post-referendum spending returns if they exceed a prescribed threshold (in the case of the EU referendum, £7,500) (para. 15 of Schedule 15A and para. 5(3) of Schedule 2 EURA). There are numerous criminal offences in PPERA relating to regulated transactions, which include so far as is relevant, a responsible person failing without reasonable excuse to submit a pre-poll regulated transaction report which is complete and accurate (para. 5(9) of Schedule 2 EURA) and knowingly or recklessly making a false declaration that to the best of the responsible person's knowledge and belief, the report is complete and correct (para. 6(3) of Schedule 2 EURA).

Controls on publications and their content

38. Sections 125 and 126 restrict what may be published about the referendum by public and publicly funded bodies in a 'purdah

period' before polling day. Section 127 PPERA provides that broadcasters may only include a referendum campaign broadcast in their broadcast services if it is made on behalf of a 'designated organisation'. PPERA does not seek to control other means by which voters may be influenced, such as social media, save indirectly through the spending controls discussed above, nor are there any sanctions for the making of false statements in publications or otherwise, with the aim of influencing which way people will vote, even if such statements are knowingly false, or recklessly made. In this second respect, PPERA Part VII can be contrasted with s.106 of the representation of the People Act 1983 which makes it a criminal offence for a person or any director of any body or association corporate to make or publish a false statement of fact about the personal character or conduct of an election candidate when the purpose of making or publishing that false statement is to affect how many votes the candidate will get.

Specific rules relating to Northern Ireland

39. Part IV PPERA provides for the regulation of political donations and loans throughout the UK. All political parties and regulated donees are required to report donations and loans received over the relevant thresholds. The EC is under a duty to publish those reports in relation to donations and loans. However, by s.71E, the EC is prohibited from disclosing any information which relates to a donation received by a Northern Ireland recipient (except in the limited circumstances set out in PPERA).

PART 3: RELEVANT INVESTIGATORY AND INQUIRY POWERS

40. This part of the letter addresses the scope of the powers of the two bodies that the 3 August 2018 letter asserts are responsible for addressing public concern about irregular and illegal practices during the EU Referendum campaign i.e. the EC and the Police. It then addresses the scope of the powers of other bodies that have looked at these practices: i.e. the Public Administration and Constitutional Affairs Committee ('**the PACA Committee**'), the ICO and the DCMS Committee. Last, it sets out the legal framework that applies to statutory public inquiries.

The EC

41. The EC was established by s.1 PPERA. As mentioned above, it has three statutory functions: monitoring, targeted enforcement and reporting. All are limited by the terms of the statute.

Monitoring and enforcement of PPERA

42. Section 145 PPERA is headed *"[d]uties of Commission with respect to compliance with controls imposed by the Act"* and provides that

the EC *"must monitor, and take all reasonable steps to secure compliance with"* listed provisions including Part VII (as modified by EURA). This is not a general monitoring or law enforcement power.

43. The powers underpinning these duties derive from s.146 and Schedule 19B PPERA. The EC has published an Enforcement Policy which it has said it will follow, absent good reason, when deciding how to use them. It explains at para. 2.4 that the EC has *"supervisory powers" which "apply to those who are regulated under PPERA"* and that *"[t]hese powers support routine work monitoring compliance by regulated organisations and individuals with the requirements set down in law."*

44. As regards the EC's *"investigatory powers"*, its Enforcement Policy explains that these:

> "…extend to any person – including individuals and organisations. We may use these powers when we have reasonable grounds to suspect that a person has failed to comply with the law on party and election finance, and we are investigating the matter."

45. Para. 6.8 elaborates:

> "If we are satisfied that there are reasonable grounds to suspect an offence or contravention has occurred, we will consider whether to investigate. We will only open an investigation where we consider that investigating the suspected offence or contravention is in the public interest and justifies the use of our resources in this way."

46. The Enforcement Policy reflects both the fact that regulators' resources are finite, and the legal position which is that the powers have been fashioned by Parliament for use in a targeted manner to supervise those the EC regulates under PPERA and enforce the law in respect of offences and contraventions.

47. To that end, the EC may issue a 'disclosure notice' under para. 1 of Schedule 19B requiring provision of specific documents and/or information. In the context of a referendum, such a notice may only be issued to a permitted participant (within the meaning of Part VII), i.e. the target of such an enquiry is a person or body who or which is supervised by the EC and potentially capable of committing a PPERA offence. A disclosure notice may not be used for the purposes of an investigation.

48. If it is unreasonably refused access to documents following a request including during a voluntary inspection of premises, the EC may apply for an 'inspection warrant' under para. 2 provided there are reasonable grounds for believing that on those premises there are documents relating to the income and expenditure of the organisation or individual that the Commission needs to inspect for

reasons other than pursuing an investigation. Again, in the context of a referendum, an inspection warrant must be targeted at a supervised permitted participant (within the meaning of Part VII).

49. The EC may also issue an 'investigation notice' under para. 3(2) of Schedule 19B requiring production of documents or provision of information or any explanation. Under para. 3(4) of Schedule 19B, the EC can also require an individual (either the subject of the investigation, or a person holding relevant information) to attend an interview at a specified time and place and to answer any question that it reasonably considers to be relevant to the investigation. However, the targets of such notices and interviews are limited to those the EC has reasonable grounds to believe have breached PPERA or contravened its provisions.

50. Pursuant to paras. 4 and 5 of Schedule 19B, the High Court (or Court of Session) may make an information or document disclosure order on application by the EC on the grounds that the EC has reasonable grounds to suspect a person (whether or not the recipient of the investigation notice) has committed an offence or contravention under PPERA, there are documents, information or explanations that have not been produced in compliance with an investigation notice, the documents, information or explanations are reasonably required by the EC for the purpose of investigating and are in the custody or under the control of the respondent.

51. Para. 13 of Schedule 19B provides that it is a criminal offence if a person, without reasonable excuse, fails to comply with any of the requirements set out in Schedule 19B, or intentionally obstructs the Electoral Commission in carrying out its functions under Schedule 19B or knowingly or recklessly provides false information in purported compliance with any of the above measures.

52. In summary, the EC's investigatory powers, which are the only relevant powers it has to seek information from those who may be unwilling to provide it voluntarily, depend on there being a regulatory intervention in respect of a permitted participant or a decision to investigate persons who may have committed what are currently a very narrowly circumscribed group of offences concerning administration of a referendum or referendum spending, and the more coercive the investigatory power, the closer the link must be between the information sought and the gathering of evidence for and prosecution of such an offence. The EC has no relevant general investigatory powers and it is not able to investigate offences that are not listed in PPERA or EURA, including inchoate offences connected with PPERA or EURA offences (for example, conspiracy offences).

53. There are further implicit limitations. As the EC noted in its report Digital campaigning - Increasing transparency for voters ('**the Digital Campaigning Report**') at para. 107:

> "…our powers outside an investigation only cover material related to income and expenditure. Our powers do not extend to third parties such as suppliers of digital platforms."

and in its Report on the 23 June 2016 referendum on the UK's membership of the European Union ('**the Referendum Administration Report**'), the EC observes at para. 5.59 that it has (our emphasis):

> "no regulatory powers that could be utilised directly against [EU] institutions if they did undertake such activity [to influence the outcome of the EU Referendum] because of their immunity as an international body."

Reporting

54. Pursuant to s.5(1)(b) PPERA, the EC is obliged to prepare and publish a report on the administration of any referendum to which Part VII applies (and has done so in respect of the EU Referendum – see para. 77). By s.6(1)(b), the EC must keep under review, and from time to time submit reports to the Secretary of State on such matters relating to referendums to which that section applies as the EC may so determine.

55. There are no investigatory powers linked to either of these reporting duties, nor are there powers to hear evidence in public. In short, the EC is not empowered to conduct a public inquiry.

The Police and the National Crime Agency

56. The Police have broad investigatory and law enforcement powers that are, for the most part, codified in the Police and Criminal Evidence Act 1984, the Police Act 1996 and the Serious Organised Crime and Police Act 2005. There are some residual common law powers, primarily associated with maintaining public order.

57. The National Crime Agency ('**the NCA**') is a national law enforcement agency established as a non-ministerial government department, but its officers can be designated the powers of a normal Police constable. It has a special remit to combat organised crime, human, weapon and drug trafficking, cyber-crime and economic crime that goes across regional and international borders, but it can be tasked to investigate any serious crime. As noted at para. 118 below, it has been suggested by MPs that it should investigate unlawful conduct during the EU Referendum.

58. However, like the EC, the focus of these bodies' activities is enforcement of the law (and similar principles apply to bodies such as the Serious Fraud Office and Crown Prosecution Service). They do not have the power to inquire into broader matters of public concern, whether publicly or otherwise.

The Information Commissioner

59. The ICO has powers to take enforcement action under the (now largely repealed) Data Protection Act 1998 (**'DPA 1998'**), the Data Protection Act 2018 (**'DPA 2018'**) and the Freedom of Information Act 2000. Like the EC, the ICO has a series of powers crafted to enable investigations of specific offences under this legislation.

60. The ICO's functions in relation to the processing of personal data to which the General Data Protection Regulation applies also include advising Parliament, the government and other institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms as regards the processing of personal data. It also has a power to issue, on the ICO's own initiative or on request, opinions to Parliament, the government or other institutions and bodies as well as to the public on any issue related to the protection of personal data: see s.115(3) DPA 2018. However, the ICO has no investigatory powers linked to this advisory function, nor powers to hear evidence in public or require it to be provided to discharge its advisory function. As with the EC, the ICO has no power to conduct a public inquiry.

The Digital, Culture, Media and Sport and Public Administration and Constitutional Affairs Committees

61. The DCMS Committee is a House of Commons Select Committee that monitors the policy, administration and expenditure of the Department for DCMS and its associated bodies and conducts inquiries into areas of current interest within its remit. The PACA Committee's role is to examine constitutional issues and the quality and standards of administration within the Civil Service.

62. Standing Order 152 empowers these committees to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report to the House. They may also appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity. Importantly though, neither committee has powers to compel witnesses, nor to impose any sanctions for non-compliance with information requests. Unwillingness to cooperate may be reported to the House on the basis that it is contemptuous (as has happened in relation to an inquiry examining 'fake news' during the EU Referendum: see paras. 141) and the matter can be investigated by the Privileges Committee, but it too has no sanctions.

Public inquiries

63. Public inquiries can be instigated using statutory or common law powers. Statutory inquiries are now commissioned almost exclusively under the Inquiries Act 2005 (**'Inquiries Act'**). The powers that exist

to establish them in particular contexts (heath and safety, for instance) are not relevant here.

64. Although there may be some overlap in the subject matter that is considered, the purpose of a public inquiry is distinct from that of a regulatory or criminal investigation. This is clear from s. 1(1), Inquiries Act which created the discretion to establish such an inquiry:

> "A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that:-
>
> (a) particular events have caused, or are capable of causing, public concern, or
>
> (b) there is public concern that particular events may have occurred…"

and from s.2 which explains:

> "(1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability.
>
> (2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes."

65. Parliament's intention is also clear from what sponsoring Ministers said to Parliament in 2004, in support of the Inquiries Bill. For instance, speaking at the start of the second Lords reading on 9 December that year (Hansard, HL 9 Dec 2004, Col 983), the Under-Secretary of State, Baroness Ashton said this:

> "Over many years, successive governments have sometimes responded to a particular event of serious public concern by setting up an independent inquiry. The aim is for the inquiry to establish the facts, to decide what, if anything, went wrong, and, if necessary, to make recommendations aimed at preventing recurrence…."

and concluded:

> "The purpose of this legislation is to address the kind of inquiries in which noble Lords have been involved. We heard, among others, the noble and learned Lord, Lord Howe of Aberavon, describe the conduct of the Aberfan inquiry, and the experience of the noble Lord, Lord Laming, with the Climbié inquiry. Above all else, the aim of all such inquiries is to seek and establish the truth. They are held in order to find out what happened and do what can be done to change it. Quite often, that means systemic change. It is all about examining carefully whether the matters Ministers are responsible for are working

> effectively and if not, why not. To my mind, nowhere was that more evident than when I read the evidence and conclusions of the inquiry of the noble Lord, Lord Laming, into the Victoria Climbié tragedy….
>
> Inquiries are not courts. If there is a train crash, we want to find out what happened and how it happened. At the end of an inquiry, blame may indeed be fairly and squarely placed on a process or an individual, and it is then for the due process of law to take its course. The Bill is clear that these are not courts of law but inquiries into fact and seekers after truth, which is very important…" (Hansard, HL (9 Dec 2004), Vol 667 Col 983)

66. The factors that must be considered when the s.1(1) discretion is exercised are discussed at paras. 178 to 193 below.

67. Once established, an inquiry is empowered to hold its proceedings in public, save where there is good reason to deal with particular evidence differently. Pursuant to s.21, an inquiry can compel witnesses to attend or documents to be produced. There are serious criminal sanctions for non-compliance under s.35. The offender may be imprisoned, fined or both.

68. The Inquiries Rules 2006 provide further detail on the designation of core participants to the inquiry, appointment of legal representatives, taking of evidence in public and, exceptionally, in closed proceedings, and procedure for oral proceedings, the disclosure of potentially restricted evidence in certain limited circumstances, the issuing of warning letters (to witnesses where the chairman believes that they will be subjected to criticism during inquiry proceedings), arrangements for publishing reports and records management and the determination, assessment and payment of awards.

PART 4: PUBLIC CONCERN AND INVESTIGATIONS TO DATE

Overview

69. The EU Referendum took place on 23 June 2016. Subsequently, and for the most part recently, a number of matters of serious public concern have come to light which indicate that irregular and illegal activity was carried out by individuals and organisations seeking to influence the outcome. All of this has engendered exceptional public concern, as has the suspicion that similar activities, or worse, have occurred which, so far, have been successfully concealed.

70. A number of investigations have been opened and there has have been Parliamentary inquiries by two Select Committees. Those investigations and inquiries have identified a number of principal actors, whose conduct has been criticised, not only because of the

activity under investigation, but also for refusing to give evidence and/or providing incomplete or untruthful information or acting evasively in response to requests.

71. Those singled out for criticism include organisations that actively campaigned in the EU Referendum, such as Vote Leave (the designated 'Leave' campaign group, which included a number of MPs, some of whom are current and former Ministers, on its boards) and Leave.EU, a registered campaigner. Also criticised is the businessman Arron Banks, who is reportedly the largest individual donor in UK political history. Powerful social media 'tech' companies such as Facebook and Twitter are implicated as they were used for campaigning on a scale that was unprecedented in the UK, but have not satisfactorily explained how their platforms were used, by whom and how this was funded.

72. The activity includes irregular and unlawful expenditure and coordination between campaigns, spending by foreign organisations, unlawful accessing and use of personal data and legally and ethically questionable targeting of voters for political messaging, often by playing on fears and prejudices. It includes activity involving companies based abroad such as Goddard Gunster, a public relations firm in Washington, D.C, the political data analytics companies Cambridge Analytica, SCL Group and Aggregate IQ ('**AIQ**') and their senior staff and board members, and a foreign state, Russia.

73. Serious questions have also been raised about the nature and truthfulness of campaign materials, whether disseminated by social media or other means.

74. The detail and scale of the irregular and unlawful activity is expansive and unprecedented. Some aspects are presently under investigation. A great deal of it is not. In the absence of coercive powers, a number of investigations have been impeded or stalled by refusals to cooperate or other obfuscation. Some of the activity is capable of being caught by existing legislation setting out criminal offences, although some activities are not. As the detail set out below demonstrates, it cannot credibly be maintained that the EC and the Police are capable of comprehensively assuaging the public concern about these matters in the work that they have undertaken so far, or in any contemplated work. Nor can this be said of any of the other bodies that have investigated, or are investigating, even when their work is considered with that of the EC and the Police as a whole.

EC investigations and reports

75. To our knowledge, from information in the public domain, the EC has instigated 46 investigations, relating to campaigning during the EU Referendum, of which 44 have been completed (see the appendix to this letter, which is based on the EC website, for details). Each of

the investigations is concerned with spending and reporting breaches. There have also been assessments which have not resulted in investigations. The EC has also issued five reports about or related to the EU Referendum (two of which relate to investigations), which are discussed below.

76. This work is important, but the focus of both the investigations and reports has been extremely narrow, which was inevitable given the statutory limits on the EC's powers set out at paras. 41 to 55 above.

The Referendum Administration Report

77. In September 2016, the EC published the Referendum Administration Report required by s.5(1)(b) PPERA. This predated the deadline for financial returns, so unsurprisingly those are not the focus of the Report. The influence of non-UK bodies on the EU Referendum is discussed very briefly at paras. 5.58 and 5.59 and, as noted above at para. 53, there were concerns that EU institutions which have immunity from PPERA and EURA might seek to influence the outcome, but the EC sought and been given assurances that they would not. No such assurances were sought from foreign states.

78. The Referendum Administration Report made a number of recommendations for changes to the legislation governing referendums, including some very limited recommendations for the regulation of campaigners at future referendums. It noted a number of concerns that had been aired, including about the way public money might have been used to influence voters, given the Government's support for the Remain position.

79. The EC also noted that, following the announcement of the result, public concern had been voiced about the *"truthfulness"* of certain campaign arguments, including from politicians, which in some cases undermined public confidence in the result (para. 3.94). The EC was clear, however, that it was not its role to assess this issue (paras. 3.103 and 3.106).

The Referendum Campaigners Report

80. Then, in March 2017, the EC published its 'Report on the regulation of campaigners at the referendum on the UK's membership of the European Union held on 23 June 2016' (**'the Referendum Campaigners Report'**). In the six months since the Referendum Administration Report, certain concerns had arisen. The report observed (our emphasis):

> "We are confident that our regulatory activity during the campaign prevented major breaches of the rules. <u>We are, however, considering a number of issues under our Enforcement Policy following an initial inspection of the spending and donation returns submitted by campaigners</u>."

81. It went on to note that the absence of loan controls in PPERA was "*a significant gap in the regulation of referendums*" and legislative reform was recommended.

82. Recommendations were made for a review of campaign spending limits, but the Referendum Campaigners Report points out that:

> "[t]he Commission does not have a specific statutory role in advising on spending limits at UK-wide referendums held under PPERA, reporting and enforcement arrangements."

83. Parliament was also asked to revisit the issue of the permissibility controls on companies to ensure that they meet the underlying policy intention of preventing donations and loans from foreign companies (Recommendation 3), but the role foreign companies played in the EU Referendum was not dealt with in detail and there was no discussion at all regarding the influence of foreign states.

84. Another issue of concern noted in the Referendum Campaigners Report was that donation and loan reports relating to Northern Ireland-based political parties remain confidential under s.71E PPERA which was put in place due to previous concerns about possible intimidation of voters during the Troubles. Further, in contrast to elections where parties in Northern Ireland are barred from making donations to parties and other regulated entities in Great Britain, there is no such restriction in relation to referendums. Therefore, a Northern Ireland-based political party registered to campaign may use donations to campaign in any part of the UK. It was noted that the DUP spent £282,000 on a full-page advert in the Metro (which does not circulate in Northern Ireland) advocating Leave.[4]

85. Concerns were also expressed about "*public confidence*" in the EC's enforcement powers and in particular the maximum fine at its disposal:

> "a £20,000 fine could seem inadequate and affect public confidence, especially if imposed on a high spending campaigner following a closely contested poll."

86. The EC therefore recommended:

> "our sanction limit of £20,000 should be reviewed and increased to a level that would act as a suitable deterrent

[4] On 28 July 2018, the DCMS Committee, as part of the inquiry discussed at paragraphs 133 to 148, published a number of adverts supplied by Facebook which it had run for the Vote Leave and '50 Million', BrexitCentral/BeLeave and DUP Vote to Leave campaigns ahead of the EU Referendum. In respect of the DUP, it was revealed that the adverts were mainly targeted at Facebook users in England, Scotland and Wales, rather than Northern Ireland-based Facebook users.

> reflecting the level of fines available to other commensurate statutory regulators and financial regulation regimes…"

Constitutional Research Council investigation

87. On 16 August 2017, it was reported in the press that the EC had on the previous day issued a £6,000 fine connected to an unnamed political donation made in Northern Ireland. It has subsequently emerged that the fine was in respect of a breach of the requirement to report gifts received by unincorporated associations making political contributions, and had been imposed on the Constitutional Research Council ('**the CRC**') which had made a donation of £435,000 towards the DUP's referendum campaign. Most of these funds were spent in England, Wales and Scotland rather than Northern Ireland. It is not clear whether there was any concurrent investigation of the DUP for accepting an impermissible donation.[5]

The Government's response to the Referendum Administration Report and the Referendum Campaigners Report

88. On 20 December 2017, the Government responded in writing to both EC reports. In his foreword, Chris Skidmore, Minister for the Constitution, welcomed "*the Commission's overall conclusion that the referendum was delivered without any major issues*". The Government committed to considering some amendments to PPERA and to the framework for delivering referendums in Northern Ireland, subject to the availability of Parliamentary time. It was noted that there is limited Parliamentary time for legislation other than that which is related to exiting the EU, however. The Government also queried whether other proposed amendments to PPERA would run the risk of becoming out of date. It agreed that loan controls should apply at future referendums and that it would consider whether, and how, these should be added to PPERA. As regards a review of spending limits, it indicated that evidence from the EU Referendum would be considered when setting them in future legislation. On enforcement powers, the response observed "*the Government will keep this matter under review*". On permissibility controls on foreign companies, it simply stated:

[5] In October 2017, former Northern Ireland Secretary, Chris Bryant MP, wrote to James Brokenshire MP the Northern Ireland Secretary seeking clarity on the donation and the fine, and asking for a full and proper investigation to be launched. We have not seen any response. Further, on 27 June 2018, the BBC reported in a programme entitled Brexit, Dark Money and the DUP that the £282,000 advertisement in the Metro was personally booked by Richard Cook, the Constitutional Research Council's chairman. By way of a press release dated 3 August 2018 the EC announced that having made enquiries with the BBC it did not have sufficient evidence to open an investigation in respect of whether the DUP incurred joint spending with other EU Referendum campaigners without declaring it as a common plan. In its press release the EC also said: "*We continue to urge the UK Government to bring forward legislation that will enable us to publish information on donations from January 2014.*"

> "[t]his is a complex issue which is relevant to donations to political parties and campaigners at both referendums and elections. The Government will discuss this issue with the Electoral Commission."

89. No specific time frame is given for action of any kind. The response says nothing about the irregular and unlawful conduct that had been identified at that point.

The Leave.EU Report

90. On 11 May 2018, the EC published its 'Report on an investigation in respect of the Leave.EU Group Limited' concerning pre-poll transaction reports and the campaign spending return ('**the Leave.EU Report**'). This investigation had been opened in April 2017 following reports suggesting that services had been provided to Leave.EU by Cambridge Analytica and the US strategist firm Goddard Gunster, which involved undisclosed expenditure. The scope of the investigation is set out at para. 2.6 of the report and it is exclusively concerned with suspected PPERA offences by Leave.EU. Details of the investigative process adopted are set out at section 3. The lack of cooperation from Arron Banks, Andy Wigmore (Leave.EU's director of communications) and Goddard Gunster are noted.

91. In summary, the EC found that Leave.EU failed to include a minimum of £77,380 in its spending return (and the EC was satisfied that the actual figure was greater). The responsible person for Leave.EU (Elizabeth Bilney) had authorised those expenses to be incurred by or behalf of Leave.EU and the EC was satisfied beyond reasonable doubt that she knew or ought reasonably to have known that they were in excess of the spending limit. Leave.EU had also incorrectly reported the receipt of three regulated transactions from Arron Banks totalling £6m and had failed to provide the required invoice or receipt for 97 payments of over £200, totalling £80,224. As regards Cambridge Analytica, the EC found, that contrary to public statements made in 2016-17, Cambridge Analytica had not donated or otherwise provided services to Leave.EU. The EC noted, however, that information regarding Cambridge Analytica continued to be disclosed and the relationship with Leave.EU had to be kept under scrutiny.

92. As the responsible person for Leave.EU, Elizabeth Bilney was found to have committed offences under Schedule 2 para. 5(9)(b) EURA (failure without reasonable excuse, to submit a regulated transaction report that was complete and accurate), s.122(4)(b) PPERA (failure to deliver a referendum campaign spending return that was complete and accurate), s.122(4)(b) PPERA (failure to deliver a referendum campaign spending return that was complete in respect of the required invoices or receipts for all payments over £200) and s.118(2)(c)(i) PPERA (spending on referendum activity that exceeded the statutory limit). In addition, the EC found that

Leave.EU committed an offence under s. 118(2)(c)(ii) in respect of the same spending that exceeded the statutory limit.

93. Leave.EU was subject to three fines of £20,000 and one of £10,000. The EC observed that "*[t]he level of the penalties has been constrained by the cap on the Commission's fines*". Elizabeth Bilney was referred to the Metropolitan Police in respect of the offence of knowingly or recklessly signing a false declaration accompanying the Leave.EU spending return (see further para. 110 below).

94. There has been no Government response to the Leave.EU Report. Leave.EU's published response was to say that:

> "The Electoral Commission is a 'Blairite Swamp Creation' packed full of establishment 'Remoaners' that couldn't quite make it to the House of Lords, but managed to get their noses in the trough via appointment to public bodies like the Electoral Commission."

95. Leave.EU also indicated it was taking legal action against the EC.

The Better for the Country Ltd and Arron Banks investigation

96. The EC opened a separate investigation on 1 November 2017 to establish whether Better for the Country Ltd (of which Arron Banks is a director), Arron Banks and recipients of funds from them breached campaign finance rules in relation to donations and/or loans made to campaigners including in relation to mandatory declarations naming Mr Banks as the source of funds. Better for the Country, which was not registered as a permitted participant, made donations of £2,359,842.76 between March and June 2016, to five registered campaigners (Grassroots Out Limited, Trade Unionists Against the EU, Veterans for Britain, WAGTV Limited and UKIP). Ten months on, no report has been published.

The Digital Campaigning Report

97. On 26 June 2018 the EC published its Digital Campaigning Report. This is a high-level document based on discussion with academics, campaigners, the Government and others rather than investigations, but it touches on the EU Referendum at various points. It begins (foreword, page 1):

> "The use of social media was first heralded as a positive revolution in the mass engagement of voters. More recently we have seen serious allegations of misinformation, misuse of personal data, and overseas interference. Concerns that our democracy may be under threat have emerged…
>
> New ways of reaching voters are good for everyone, and we must be careful not to undermine free speech in our search to protect voters. But we also fully recognise the worries of

> many, the atmosphere of mistrust which is being created, and the urgent need for action to tackle this…"

adding (foreword, page 2):

> "We certainly do not claim to have all the answers. We also recognise that no single body is responsible for all the concerns raised by digital campaigning."

98. The EC notes that digital campaigning had become prevalent in particular on Facebook, Google, YouTube, Snapchat, Twitter and Instagram (all US-based companies), and that there were potential problems associated with it. In the EC's view, these were mainly around transparency. For instance, on Twitter there had been active networks of both 'bots' and fake accounts during and after these campaigns, but it was "*not clear how or if they affected the outcome*" (para. 25). The report recommends that digital material have an imprint detailing who is behind the campaign and who created the advert (Recommendation 1) and also that staffing time to create digital campaigns becomes declarable as an expense (Recommendation 5). In addition, the EC recommended that social media companies introduce new controls so that political adverts regarding elections and referendums are only placed by those based in the UK or registered to vote here (Recommendation 8). We note that this suggestion of voluntary self-regulation has not been acted upon by these companies.

99. Another "*main concern*" highlighted by those the EC had spoken with was the truthfulness of digital material, as were "*targeted messages that spread false or misleading information*" (para. 44). However, on these points, the report notes that the EC is "*not in a position to monitor the truthfulness of campaign claims, online or otherwise*" (para. 34) echoing what had been said in the Referendum Administration Report (see para. 78 above).

100. The Digital Campaigning Report flags a further concern (at para. 6):

> "it could be easier for foreign individuals or regimes to try to influence voters online without any physical presence in the country. UK-based campaigners may also try to get round limits on spending through hidden digital activity."

101. This is because (para. 85):

> "anyone outside the UK can also pay for adverts on digital and social media platforms to target voters in the UK. This means that people who are not allowed to register as campaigners can still spend money to influence voters in the UK. This could be from foreign nation states or from private organisations and individuals."

102. The Digital Campaigning Report goes on to say this (para. 88 to 89):

> "The UK Government and security services have recently set out their view on foreign interference. They said that foreign sources are likely to have tried to disrupt and interfere with UK election and referendum campaigns using digital and social media tools. Academic research has also started to show that foreign sources appear to have carried out some social media activity in the UK…
>
> The current evidence available to us does not suggest that this has taken place in the UK on the scale alleged at the 2016 US Presidential election. We will continue talking to the UK Government and security services about any more evidence if it comes out. In any case such activity is unacceptable."

103. These and other similar passages contain no concluded view of what "*foreign sources*" have done, the nature of their "*likely*" attempts to "*disrupt and interfere*", or the actual scale or degree of success. That is because these matters were not investigated by the EC. It was simply reporting on discussions and concerns. However, the report does recommend that an outright ban on the financing of campaigning "*by foreign organisations or individuals*" be considered (Recommendation 9) along with a ban on money from companies based abroad that have not made enough money here to cover their donations (Recommendation 10).

104. The Digital Campaigning Report states that the EC would like new powers to enable it to act proactively during a campaign "*to compel the provision of documents, information and explanation*" and to share information with other bodies (Recommendation 13). It also repeated the recommendation for an increase in the maximum fine of £20,000 per offence (Recommendation 14) which might be considered "*a cost of doing business*" by some campaigners (para. 115). Other recommendations included changes in the law to require all digital political campaign material to state who has paid for it, bringing online adverts in line with physical leaflets and adverts , enhanced requirements for political campaigns to declare their spending soon after or during a campaign and on declarations of online content spending.

105. There has been no Government response to the Digital Campaigning Report.

The Vote Leave Report

106. Prompted by the *Good Law Project* litigation, the EC undertook an investigation into Vote Leave (whose responsible person was David Halsall) and Darren Grimes. On 17 July 2018 it published its Report of an investigation in respect of Vote Leave Limited, Mr Darren Grimes, BeLeave and Veterans for Britain concerning campaign funding and spending ('**the Vote Leave Report**'). As with the Leave.EU report, the focus was expenditure and reporting. The EC was largely concerned with five payments made to AIQ, a Canadian

data analytics firm, in June 2016. Four of the payments, which totalled £675,315.18, were reported by Darren Grimes as his spending on AIQ, using the funds which had been donated by Vote Leave (£625,315.18) and Anthony Clake (£50,000). The final payment under investigation, of £100,000, was reported by Veterans for Britain as a donation from Vote Leave which it had spent on AIQ.

107. The EC referred to evidence provided by Facebook which showed that AIQ used identical target lists for Vote Leave and BeLeave adverts, although it was noted that, in the event, the BeLeave adverts were not run.

108. The EC found Darren Grimes' and BeLeave's reported spending (a total of £675,315.18) on AIQ was incurred under a common plan with Vote Leave and should have been reported as incurred by Vote Leave, and consequently Vote Leave exceeded its statutory limit of £7m (para. 4.25). Vote Leave also returned an incomplete and inaccurate spending report, with nearly £236,501.44 reported incorrectly, and invoices missing for £12,849.99 of spending. BeLeave was not registered with the EC as a campaigner and therefore it should have limited its spending to £10,000. The registered campaigner in relation to BeLeave was Darren Grimes who, following correspondence with the EC, reported spending of £675,315 which was not in fact his spending as it was incurred under a common plan with Vote Leave. Veterans for Britain reported a donation of £100,000 from Vote Leave which it used on services from AIQ when in fact that was a payment by Vote Leave to AIQ for services to Veterans for Britain.

109. The EC report noted that Vote Leave had refused to comply with requests for information and consequently it had issued an investigation notice which was also not complied with.

110. The responsible person for Vote Leave (David Halsall) was found to have committed offences under: s.122(4)(b) PPERA for failing without reasonable excuse, to deliver a referendum spending return that included an accurate report of relevant donations; and s.122(4)(b) PPERA for failing without reasonable excuse to include required invoices and receipts for eight payments. Vote Leave was fined £20,000 and £1,000 respectively for these offences. David Halsall and Vote Leave were also found to have committed offences under: s.118(2)(c) PPERA for incurring 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. Vote Leave was fined £20,000 for this offence. Vote Leave was also found to have committed an offence under Schedule 19B para. 13(1) PPERA for failing, without reasonable excuse, to comply with an investigation notice issued by the EC under Schedule 19B para. 3. Vote Leave was fined £20,000 for this offence. Darren Grimes and BeLeave were found to have committed offences under: s.117(3) and s.117(4) respectively, in that 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, in respect of which Darren Grimes was fined £20,000. Darren Grimes was also found to have committed an offence under s.122(4)(b) PPERA in that he failed, without reasonable excuse, to deliver a spending return as an individual registered campaigner that was a complete statement of all his spending in the EU Referendum. There was no additional fine for this offence. The responsible person for Veterans for Britain (David Banks) was found to have committed an offence under s. 122(4)(b) PPERA for failing, without reasonable excuse, to deliver a spending return that included an accurate report of relevant donations, in respect of which he was fined £250.

111. David Halsall and Darren Grimes were referred to the Metropolitan Police, in respect of the false declarations of campaign spending.

112. Vote Leave's response was to say in a press release that:

> "The Electoral Commission's report contains a number of false accusations and incorrect assertions that are wholly inaccurate and do not stand up to scrutiny."

113. The Government has not responded to the Vote Leave Report.

The Public Administration and Constitutional Affairs Committee's inquiry

114. On 14 July 2016, the PACA Committee launched its inquiry into the lessons that could be learned from the EU Referendum which led to a report entitled Lessons Learned from the EU Referendum report ('**the PACA Committee Report**') dated 12 April 2017.

115. The primary focus of the PACA Committee Report was administrative matters. It concluded that, on the whole, the referendum was well run and competently administered by the EC. It discussed the overall regulatory framework including s.125 PPERA, the EC's role, voter registration, cyber security, the designation process, the machinery of government during the EU Referendum and contingency planning. The PACA Committee did not examine issues of irregular and illegal conduct in any depth, though it observed that a crash in the online voter registration system had indications of being a DDOS (distributed denial of service) "*attack*" involving foreign interference, though it had not had an impact on the outcome of the EU Referendum. This is described as matter of "*deep concern*" and lessons had to be learned for the protection and resilience of IT systems. Other potential forms of foreign interference were not investigated or discussed.

116. The Government's short response to the PACA Committee Report was published in December 2017. On the single foreign interference issue the report had highlighted, the Government stated that was

fully committed to continually assessing the threat to UK democratic process and implementing further measures to mitigate these risks working closely and collaboratively with the EC and the Association of Electoral Administrators. No details were given.

Police and NCA action to date

117. As set out above at paras. 93 and 111, the has EC referred three people to the Metropolitan Police: Elizabeth Bilney (the responsible person for Leave.EU), David Halsall (the responsible person for Vote Leave), and BeLeave's Darren Grimes (as an individually registered campaigner).

118. On 5 August 2018, 61 MPs and Peers wrote to the Metropolitan Police Commissioner and the Director General of the NCA as follows:

> "We are writing to you as Parliamentarians representing a range of political parties to express our concern about the recent findings of law-breaking during the EU Referendum campaign, as well as numerous outstanding allegations still under investigation…"

119. The letter then summarised some of the investigations discussed above before stating:

> "This work is all extremely important, but so is your role and responsibility in investigating wrong-doing, enforcing our laws and protecting our democracy. This is why we are urging you to investigate these matters thoroughly and with urgency."

120. On 17 August 2018, Commander Stuart Cundy responded on behalf of the Metropolitan Police Commissioner about the referrals stating:

> "… the evidence is being assessed by the [Metropolitan Police Service] in order to make an informed decision as to whether a criminal investigation is required. As with previous referrals from the Electoral Commission the [Metropolitan Police Service] will ensure the outcome of our assessments and any potential subsequent criminal investigations are made public.
>
> The [Metropolitan Police Service] is not investigating the alleged impermissible foreign donations and the co-ordination of funding regards Leave.EU and Vote Leave, as the Electoral Commission are the relevant investigation authority and investigating such matters. Similarly, the [Metropolitan Police Service] is not investigating the allegations of potential data protection breaches, for which the Information Commissioner's Office is the relevant investigation authority. Should you be aware of any material that you consider to be evidence, I am sure the Electoral Commission or Information Commissioner would be grateful if it could be passed to them for review.

> The [Metropolitan Police Service] recognises that where it is the appropriate investigative body, it has a role in proportionately assessing or investigating criminal allegations. Please be assured we will continue to work alongside the Electoral Commission and other statutory bodies as part of our enquiries."

121. It appears the Metropolitan Police has still not made any decision, four months on from the 11 May 2018 referral of Elizabeth Bilney, as to whether a criminal investigation is necessary. Similarly, no decision to investigate has been made with regard to the 11 July 2018 referrals of David Halsall and Darren Grimes. Commander Cundy makes it clear that no other matters are being considered for investigation.

122. On 21 August 2018, the Director of Intelligence responded as follows on behalf of the NCA Director General:

> "Following a review of all the information we hold as the national agency responsible for serious and organised crime, and a recent briefing from officials at the Electoral Commission, we do not consider there to be sufficient grounds for launching a criminal investigation at this time beyond matters that have already been investigated and prosecuted by the [Electoral Commission] or have been rightly referred to the [Metropolitan Police Service]…"

123. The NCA took this position despite having been supplied with emails and attachments by this firm in May and June 2018 which suggest that Arron Banks had been in communication with the Russian Ambassador from the Autumn of 2015 throughout the Referendum campaign period, that they had met regularly contrary to Mr Banks' assertions, that the Russian Ambassador had proposed to Mr Banks and his associates potentially lucrative investments in Russian gold and diamond mining interests and that Mr Banks had provided information to the Russian Ambassador.

The work of the ICO

Investigation into the use of data analytics for political purposes

124. Following reports in the Observer, in May 2017 the ICO launched a formal investigation into the use and misuse of personal data, especially data obtained by Facebook, for political purposes. The investigation is ongoing, but an interim report ('**the Data Analytics Report**') was published on 10 July 2018. The key areas being explored and analysed are the nature of the relationship between social media platforms, political parties and campaigns and data brokers in respect of the use of personal data for political purposes, the legal basis that political parties and campaigns, social media platforms and data brokers are using to process personal data for political purposes, the extent to which profiling of individuals is used

to target messages/political adverts at voters, the type and sources of the data sets being used in the profiling and analysis of voters for political purposes, supporting technology, how political parties and campaigns, social media platforms and data brokers are informing individuals about how their information is being used and voters' understanding of how their personal data is being used to target them with political messaging and adverts.

125. Although these are wide-ranging topics, the ICO's statutory powers mean that her investigation is necessarily focussed on failures to comply with the Data Protection Principles and the Privacy and Electronic Communications Regulations 2003, offences under s.55 of the DPA 1998 and the commission of criminal offences related to the failure to comply with Information Notices or Enforcement Notices and perverting the course of justice. The ICO also observes at page 12 of her Data Analytics Report:

> "Our investigation also has a considerable international and inter-agency dimension. Several disclosures to us have suggested offences beyond the scope of the ICO, and we have made appropriate referrals to law enforcement in the UK and overseas. Several of the key subjects of our investigation are also subject to investigation by other data protection authorities and we are in contact with our counterparts in Canada and the United States (US) to co-ordinate elements of our investigation. Through our links to the Global Privacy Enforcement Network (GPEN), we have legal gateways to share and receive information that assists with our investigation and that of other data protection authorities."

126. It is reasonable to infer that the "*referrals to law enforcement in the UK*" have come to nothing, however, given the response of the Police and NCA which post dates the Data Analytics Report (see paras. 120 to 122 above).

127. The ICO has looked into some allegations which are relevant to potential irregular or illegal activity in the EU Referendum, such as that Eldon Insurance Services Limited (a company owned by Arron Banks) shared customer data obtained for insurance purposes with Leave.EU and that the data was then used in a targeted way for political campaign purposes during the EU Referendum. It has also examined whether Vote Leave transferred personal data outside the UK to AIQ in Canada (though AIQ's position is that it is "*not subject to the jurisdiction of the ICO*"). The investigation is also considering the collection and sharing of personal data by the official Remain campaign, the In Campaign Limited, trading as Britain Stronger in Europe (BSiE), and a linked data broker, specifically in relation to inadequate third party consents and the fair processing statements used to collect personal data.

128. The ICO's next report arising from this work is anticipated at the end of October 2018.

The Democracy Disrupted Report

129. On 10 July 2018 the ICO published its report 'Democracy disrupted? Personal information and political influence' (**'the Democracy Disrupted Report'**) which is a general report on how personal information is used in modern political campaigns. In it she called for an "*ethical pause*" to allow Government, Parliament, regulators, political parties, online platforms and the public to reflect on their responsibilities in the era of big data before there is a greater expansion in the use of new technologies (Recommendation 9). She comments:

> "We are a now at a crucial juncture where trust and confidence in the integrity of our democratic process risks being undermined if an ethical pause is not taken. The recommendations made in this report – if effectively implemented – will change the behaviour and compliance of all the actors in the political campaigning space" (para. 4.4).

130. The ICO made ten broad policy recommendations which included work between the ICO, the Cabinet Office and the EC to identify and implement a cross-party solution to improve transparency around the use of commonly held data and that:

> "The Government should conduct a review of the regulatory gaps in relation to content and provenance and jurisdictional scope of political advertising online. This should include consideration of requirements for digital political advertising to be archived in an open data repository to enable scrutiny and analysis of the data" (recommendation 10).

131. The report touches briefly on the use of personal data in the EU Referendum, but simply refers back to the specific investigation on this discussed immediately above (see para. 127).

132. The Government has not responded to the Interim Data Analytics Report, nor to the Democracy Disrupted Report.

The Digital, Culture, Media and Sport Committee inquiry

133. On 30 January 2017, the DCMS Committee launched a broad inquiry to examine the "*growing phenomenon of fake news*" which was described by the Committee Chair Damian Collins MP in a press release of that date as "*a threat to democracy and undermines confidence in the media in general*". The DCMS Committee set itself ambitious goals and worked hard to fulfil them: it has so far taken oral evidence from 61 witnesses and received more than 150 written submissions in addition to other background evidence. It published its interim report, Disinformation and 'fake news' (**'the DCMS Committee's Interim Report'**) on 29 July 2018.

134. On publication, Mr Collins commented as follows:

> "We are facing nothing less than a crisis in our democracy – based on the systematic manipulation of data to support the relentless targeting of citizens, without their consent, by campaigns of disinformation and messages of hate...
>
> We heard evidence of coordinated campaigns by Russian agencies to influence how people vote in elections around the world. This includes running adverts through Facebook during elections in other countries and in breach of their laws. Facebook failed to spot this at the time, and it was only discovered after repeated requests were made for them to look for evidence of this activity. Users were unaware that they were being targeted by political adverts from Russia, because they were made to look like they came from their own country, and there was no information available at all about the true identity of the advertiser.
>
> I believe what we have discovered so far is the tip of the iceberg. There needs to be far greater analysis done to expose the way advertising and fake accounts are being used on social media to target people with disinformation during election periods. The ever-increasing sophistication of these campaigns, which will soon be helped by developments in augmented reality technology, make this an urgent necessity" (DCMS press release, 29 July 2018).

135. As to political targeting the Committee stated:

> "Arguably more invasive than obviously false information is the relentless targeting of hyper-partisan views, which play to the fears and the prejudices of people, in order to alter their voting plans. This targeting formed the basis of the revelations of March 2018, which brought to the general public's attention the facts about how much of their own personal data is in the public domain, unprotected, and available for use by different players…" (para. 92).

136. Issues of data misuse arising from the Facebook, Global Science Research (the company started by Cambridge University psychology researcher, Dr Aleksandr Kogan) and Cambridge Analytica allegations relating to unlawful data harvesting are discussed in Chapters 3 and 4 of the DCMS Committee's Interim Report. In Chapter 5 evidence of "*a co-ordinated, long-standing campaign by the Russian Government to influence UK elections and referenda*" was discussed, which involved the use Facebook and Twitter, including by paid adverts and with bots, to run a campaign of disinformation which was described as "*an unconventional warfare, using technology to disrupt, to magnify, and to distort*" as well as possible funding of leave supporting groups.

137. Regrettably, the DCMS Committee encountered many difficulties when gathering evidence for the purposes of its inquiry. For

instance, in spite of its key role, the DCMS Committee found Facebook to be extremely uncooperative, noting in the Interim Report (para. 168):

> "[t]hroughout this inquiry, from October 2017 to June 2018, we attempted to gain information from Facebook about the extent of Russian interference in UK political campaigns. Time and again, Facebook chose to avoid answering our written and oral questions, to the point of obfuscation."

138. Mark Zuckerberg, Facebook's CEO, was also criticised for his refusal to give evidence to the committee, leaving "*many outstanding questions to which Facebook has not responded adequately, to date*" (para. 64).

139. The DCMS Committee also said that it had spent much effort trying to untangle the complex web of relationships as between the various SCL group companies (some of which were UK-based and others US-based, and which includes AIQ which is Canadian and Cambridge Analytica which had both US and UK branches) and it was noted that Mr Nix had given evasive evidence on that point (para. 124). The work of the SCL companies in manipulating foreign elections including by the use of social media was noted with concern (paras. 206 to 231). Further, it was noted that AIQ had links with Vote Leave and other Brexit campaigns, including Be Leave, Veterans for Britain and the DUP which had all utilised their services in the run up to the EU Referendum. The Committee suggested that the precise nature of the co-ordination between the different organisations and campaigns should be investigated further to establish if the law concerning spending limits and data protection had been observed (para. 150).

140. The DCMS Committee also noted the EC's investigation of Arron Banks. In respect of its own inquiry it observed (para. 191):

> "Arron Banks is believed to have donated £8.4 million to the Leave campaign, the largest political donation in British politics, but it is unclear from where he obtained that amount of money. He failed to satisfy us that his own donations had, in fact, come from sources within the UK. At the same time, we have evidence of Mr. Banks' discussions with Russian Embassy contacts, including the Russian Ambassador, over potential gold and diamond deals, and the passing of confidential information by Mr Banks. The Electoral Commission should pursue investigations into donations that Arron Banks made to the Leave campaign, to verify that the money was not sourced from abroad. Should there be any doubt, the matter should be referred to the NCA."

141. It was also noted that Arron Banks and Andy Wigmore (a *"self-confessed liar"* see para. 186) had misled the Committee as to the number of meetings that took place with the Russian Embassy and

had walked out of the Committee's evidence session before its conclusion. On Arron Banks, the Committee added:

> "It is unclear whether Mr. Banks profited from business deals arising from meetings arranged by Russian officials. We understand that the National Crime Agency (NCA) is investigating these matters."

142. That understanding may well be wrong. Arron Banks' actions and the source of his money were amongst the matters MPs raised with the NCA, only to be told there was no basis for an investigation: see para. 122 above.

143. The conduct of two other witnesses had been summoned to attend Alexander Nix, former CEO of Cambridge Analytica, and Dominic Cummings, Campaign Director of Vote Leave also presented problems. Alexander Nix gave evidence twice. On both occasions the DCMS Committee considered he was *"evasive in his answers"* and that they "*fell well below those expected from a CEO of an organisation. His initial evidence concerning GSR was not the whole truth."* He was described as someone who admits he *"tells lies"*. There remained, noted the Committee, *"a public interest in getting to the heart of what happened, and Alexander Nix must take responsibility for failing to provide the full picture of events, for whatever reason"* (para. 136). Dominic Cummings refused outright to comply with the summons so the Committee had been compelled to ask the House to support a motion ordering him to appear (with which he has also refused to comply) (para. 7). Dominic Cummings' contemptuous behaviour was considered unprecedented in the history of the Committee's inquiries and underpinned *"concerns about the difficulties of enforcing co-operation with Parliamentary scrutiny in the modern age*" (para. 7).

144. The DCMS Committee's Interim Report contains 10 pages of conclusions and recommendations running to 53 paragraphs. The DCMS Committee recommended a comprehensive review of the legal framework surrounding political work during elections and referendums, including increasing the length of the regulated period, definitions of what constitutes political campaigning, absolute transparency of online political campaigning, reporting requirements on digital spending, changing spending limits generally, reducing the time for spending returns to be sent to the EC (the current time for large political organisations is six months), increasing the fine for not complying with the electoral law (para. 48); and giving the EC the power to compel organisations that it does not regulate (including tech companies and individuals) to provide information (para. 49).

145. Significantly, amongst the recommendations was this (Para. 204):

> "We note that the Mueller Inquiry into Russian interference in the United States is ongoing. It would be wrong for Robert

> Mueller's investigation to take the lead about related issues in the UK. We recommend that the Government makes a statement about how many investigations are currently being carried out into Russian interference in UK politics and ensures that a co-ordinated structure exists, involving the Electoral Commission and the Information Commissioner, as well as other relevant authorities."

146. The fact that the DCMS Committee's discoveries were just the "*tip of the iceberg*" (to adopt Damian Collins' term) is unsurprising given the remit and resources of the DCMS Committee's inquiry, and its limited coercive powers. The DCMS Committee made strenuous efforts to pursue the lines of inquiry discussed above, but despite them was unable get to the bottom of several matters of huge significance, including matters relating to the EU Referendum, such as the nature and extent of Russian interference by means of digital and financial influence, the targeting of UK voters with political messaging, covert and otherwise, by and on behalf of campaigners and including by foreign companies and the unlawful use of personal data of UK citizens in campaigning, as well as the source of the data.

147. Dominic Cummings' response to the report was to publish a piece on his blog stating:

> "the report knowingly/incompetently makes false claims regarding Vote Leave, AIQ and BeLeave …
>
> Further, these MPs have littered their report with errors and misunderstandings about the legal framework for elections, thus spreading further confusion.
>
> … Collins et al have shown no interest in the truth. Now MPs publish a document after months of supposed work that makes basic errors about electoral law which will debase public debate even further".

148. The Government has not responded to the DCMS Committee's Interim Report.

149. The DCMS Committee will recommence its inquiry imminently and its final report is expected later this year.

Tom Watson's requests

150. Notwithstanding the identification of serious and systemic concerns about Russian interference with the EU Referendum, these have only been touched upon by the EC and ICO and examined to a very limited extent as part of the broader PACA Committee and DCMS Committee's inquiries. This prompted Tom Watson to raise the question of whether an inquiry with coercive evidence-gathering powers was now needed, at the Byline Festival on 25 August 2018.

Damian Collins' reported response to this was to welcome the proposal. He said:

> "There are places where the committee could not go because we did not have the powers, with the consequence that there are lots of grey areas," he said. "A special investigator would have the power to compel evidence and witnesses in a way that we were not able to.
>
> There's no legal mechanism to do this to challenge the result of the referendum. The Electoral Commission and Police can only take action against individuals. A fuller investigation can only be actioned by parliament or more likely the government."

151. This accurately summarises the legal position: in theory, Parliament could enact new legislation to create new investigatory machinery (UK law does not currently have the equivalent of the United States Department of Justice Office of Special Counsel). Alternatively, as Fair Vote has requested, the Government could establish an inquiry under the Inquiries Act 2005 which would have powers compel production of evidence and witnesses (see paragraph 67 above).

152. This exchange was followed with a question put by Mr Watson to Margot James MP, the Digital Minister, on 6 September 2018: (Hansard, HC Deb Vol 646, 6 September 2018, Col 305):

> "Isn't it now the time, in the public interest and in the national interest, to have a Mueller-style inquiry into the conduct of the EU referendum, that also examines the role played by the Russian state?"

to which Ms James replied:

> "There's no doubt that the law as it stands has been updated; the Information Commissioner's Office has much increased powers and will be encouraged to use them. There's no doubt these serious matters concerning the European referendum will be investigated but it's really not a matter for my department."

153. This statement is incorrect. The ICO has not received any increased powers to allow her to fully and effectively investigate the circumstances surrounding the EU Referendum (the changes to the ICO's powers arise from the GDPR and are concerned with the protection of personal data). Ms James is also wrong to say that there is "*no doubt that these serious matters*" will be investigated. No investigation is underway into the role played by the Russian state. The investigations into the conduct of the EU Referendum are limited, as discussed above.

154. The same day a spokesman for the Prime Minister was asked about the exchange between Mr Watson Ms James and is reported to have

responded: *"[t]he Electoral Commission and other bodies have been looking at this. It's not a question for me*".

155. We now turn to explain why it is very much a question for the Prime Minister, and why the answer given in your 3 August 2018 letter was legally inadequate.

PART 5: ANALYSIS

Issue 1: errors of law, fact and irrationality regarding the EC and/or the Police's ability to comprehensively respond to public concern about the EU Referendum

156. The first step for a minister asked to establish a statutory public inquiry is to reach a view as to whether particular events *"appear to have caused, or are capable of causing, public concern"*, or if there *"is public concern that particular events may have occurred"*: see s.2 of the 2005 Act, *R (Litvinenko) v Secretary of State for the Home Department* [2014] EWHC 194 (Admin) (***'Litvinenko'***) at paras. 26, 40 and 42, and *Finucane v The Secretary of State for Northern Ireland* [2017] NICA 7 at para. 98 (***'Finucane'***).

157. The Decision does not dispute that there is ongoing public concern about irregular and illegal conduct during the EU Referendum. Nor could it. Parliament's intention for the EU Referendum was "*a vibrant, robust debate in the best traditions of British democracy*" (see para. 23 above). There is now compelling evidence that this did not occur prompting: the EC to state that "*[c]oncerns that our democracy may be under threat have emerged*" (see para. 97 above); the ICO to warn of a "*crucial juncture where trust and confidence in the integrity of our democratic process risks being undermined*" (see para. 129 above); the Deputy Leader of the Labour Party to call for an inquiry into some of these issues (see para. 150 above); and the Chair of the DCMS Committee that examined some of them to warn of "*a crisis in our democracy*" (see para. 134 above) and then endorse Mr Watson's proposal because of the difficulties his committee encountered (see para. 150 above).

158. Having identified a matter of public concern, the next question is how to respond. In the Decision, the Prime Minister (or her delegate) concluded that the legal framework provides for a response to these matters by the EC and/or the Police and that this is what has happened already, or is in train. Neither of these assertions is correct.

Scope of legal powers

159. The Decision states that "*that the law, as enacted by Parliament, provides… in the circumstances of the present case*" for the concerns to be "*dealt with*" by the EC and the Police. In so

concluding, the Prime Minister misdirected herself about both bodies' powers.

160. As discussed at paras. 49 to 52 above, the EC's powers to investigate anyone (whether an individual or body) are limited by the primary focus of any investigation being the possible commission of an offence under the PPERA or EURA. The EC has acknowledged this itself (see para. 44 above). This is part of the reason why the EC has asked for its investigatory powers to be extended (see para. 104 above), a request that has not been addressed by the Government (see para. 105 above). The EC has also acknowledged its inability to investigate the actions of international bodies (which would include states), given neither can commit PPERA or EURA offences (see paras. 53 and 77 above).

161. The EC cannot investigate, for example, the actions of Russia or those of any foreign organisation or individual, save to the limited extent that a UK-based permitted participant or designated organisation may have received money from them that ought not to have been donated by an overseas source directly or through an agent (see paras. 33 and 35 above), or that a donation exceeded the permitted thresholds, and then only if there is evidence that is available or can be gathered that meets the reasonable suspicion threshold. The EC's decision not to investigate whether the DUP incurred joint spending with other EU Referendum campaigners without declaring it as a common plan vividly illustrates the limited remit of its investigatory powers and the problems this causes (see fn. 5 above).

162. Nor can the EC effectively investigate actions that appear to be irregular in the sense of being unethical or undemocratic, but which are not unlawful. This follows from the statute and is explicitly acknowledged by the EC (see paras. 43 to 46 above). The EC is also incapable of effectively investigating what it considers to be "*unacceptable*" attempts "*to disrupt and interfere with UK election and referendum campaigns using digital and social media tools*" (see para. 102 above) because "*anyone outside the UK can… pay for adverts on digital and social media platforms to target voters in the UK. This means that people who are not allowed to register as campaigners can still spend money to influence voters in the UK*" (see para. 101 above). No doubt if the EC could have investigated these matters, it would have done so in connection with its Digital Campaigning Report or otherwise. The inconclusive comments in that report (see paras. 97 to 103 above) show that it could not. The EC also has no power to investigate any dissemination of untruthful information during the EU Referendum, whether by social media or other means, which it acknowledges gave rise to public concern (see paras. 78 and 99 above).

163. Even in respect of the tightly circumscribed set of issues that the EC does have the power to investigate, its investigatory powers are limited to issuing investigation notices and applying to the Court for

inspection warrants and information or document disclosure orders. Those powers may only be exercised against a narrowly defined group of identifiable individuals or bodies and only where there are reasonable grounds to suspect the commission of a small number of PPERA or EURA offences. Unlike an inquiry, the EC has no general power to compel witnesses to cooperate with its investigations.

164. Moreover, even when the EC can investigate, there is no public participation or public dimension to what it does, save when its investigations are announced and reports are ultimately published. That is entirely proper in the context of the investigation of criminal offences, but such a process does not address public concern in the way a public inquiry does, with recognised participants who can test others' evidence at hearings that are openly reported, fulfilling an important transparency function: see *R v Secretary of State for Health ex p. Wagstaff* [2001] 1 W.L.R. 292 at pages 319-321. As already explained, the EC has no power to conduct a public inquiry.

165. As regards the Police, their powers are even more constrained because their sole focus is enforcement of the criminal law. Further, Commander Cundy's letter (para. 120 above) emphasises the Police's disinterest in "*alleged impermissible foreign donations and the co-ordination of funding regards Leave.EU and Vote Leave"* and "*data protection breaches*".

166. For all these reasons, the Decision was wrong to identify the EC's and Police powers as the Parliament's complete answer to the public concern that has arisen. A misdirection of this kind about the ability of particular statutory bodies to adequately inquire was what fatally flawed the decision not to instigate an inquiry that was challenged in *Kennedy and Black v Lord Advocate* [2008] ScotCS CSOH 21.

Matters that have been, or are being, investigated

167. The legal error identified immediately above is compounded by a fundamental error of fact and irrationality in the characterisation of the past and current EC and Police investigations as addressing all concerns about irregular and illegal practices surrounding the EU Referendum. The scope of the past EC investigations is discussed above (see paras. 87, 90 to 96 and 106 to 111). The EC has undertaken a number of investigations as set out in the appendix to this letter each of which necessarily relates breaches of PPERA or EURA. There are extant EC investigations into compliance with PPERA by Better for the Country and Arron Banks (see para. 96). The Police are still considering whether to investigate Elizabeth Bilney, David Halsall and Darren Grimes (see para. 121). Evidently, there are no other ongoing Police or NCA investigations (see paras. 120 and 122). Self evidently, public concern is not confined to the focus of these investigations.

Matters that are not being investigated

168. There are at least eight issues which are not, and have not been, the subject of a detailed and effective inquiry by the EC, the Police or the NCA. All give rise to serious public concern and require investigation by a body that can compel the production of documents and the giving of evidence. There are also no other bodies that are capable of taking on that role in the way an inquiry would.

169. First, Russian interference in the EU Referendum is a matter of enormous public concern. The fact of *"foreign"* interference was noted by the EC in its Digital Campaigning report based on discussions with the Government and the Security Services, but it was not investigated (see paras. 100 to 103 above). The Chair of the DCMS Committee described Russia's use of disinformation as "*an unconventional warfare, using technology to disrupt, to magnify, and to distort*" (see para. 136 above), but the DCMS Committee's work on this issue was hampered by non-cooperation and its inability to compel attendance or impose sanctions for non-compliance with information requests. The NCA declined to investigate altogether (see para. 122 above). The DCMS Committee expressed an understandable concern at the US-based Mueller investigation taking the lead role on UK concerns by default and it pressed for co-ordinated and structured examination of *"Russian interference in UK politics"* (see para. 145 above). No doubt the DCMS Committee's final report will elaborate, but it has reached the limit of what it can do in investigating this issue, as Mr Collins has confirmed (see para. 150 above). There is currently no investigation by any UK body into Russian interference in the EU Referendum campaign and its effects.

170. Secondly, there is public concern about the involvement in the EU Referendum campaign of foreign-based companies, especially political strategy and data analytics companies. This includes those supplying services to the designated 'Leave' campaign and others, such as AIQ, a Canadian data analytics company and its parent company, SCL, which worked closely on election campaigns around the world involving serious unlawful and deeply unethical practices (see para. 139 above) and Cambridge Analytica, about which questions remain regarding provision of services or data to Leave.EU (see para. 91 above). Similarly, the role of Goddard Gunster, a public relations firm in Washington, D.C has been questioned, but it withheld information from the EC (see para. 90 above). These issues were mentioned in the EC's Digital Campaigning Report, as were related issues of foreign payment for adverts to circumvent spending controls, apparently lawfully (see paras. 97 to 103 above), but the EC made no *"claim to have all the answers"* (see para. 97 above). The focus of the ICO's ongoing investigation is personal data use (see paras. 124 and 125 above). The broader ethical and regulatory issues regarding foreign companies' role in the EU Referendum and the consequences are not being investigated at all.

171. Thirdly, the issues of truthfulness during the campaign have prompted serious public concern. This has been acknowledged by the EC, but it disavowed responsibility for investigating (see paras. 79 and 99 above). The Police and ICO are not examining this issue either. The DCMS Committee's examination of these issues is limited as discussed above. There is no ongoing investigation of truthfulness issues in the EU Referendum by a body with coercive evidence gathering powers.

172. Fourthly, there is public concern about the lack of effective sanctions and accountability for overspending in the context of the EU Referendum. The EC asked for its sanctioning powers to be reviewed, implying that those currently available had not acted as a *"suitable deterrent"* to unlawful conduct during the EU Referendum (see para. 86 above) and risked being considered *"a cost of doing business"* by some campaigners (see para. 104 above). The extent to which current sanctions were an ineffective deterrent to overspending or other unlawful conduct in the EU Referendum and, importantly, the consequences, have not been investigated.

173. Fifthly, there is public concern about the scale of campaign donations in the EU Referendum. For instance, as the DCMS Committee noted, Arron Banks is believed to have given £8.4 million to leave campaigns (see para. 140 above), including £6 million of loans to Leave.EU, as noted in the Leave.EU Report at para. 1.8. This level of donations being made by a limited number of people is contrary to Parliament's intentions when enacting PPERA (see para. 22 above). The EC's role is confined to investigating breaches of PPERA and EURA, so did not comment upon the size of Arron Banks' donation in the Leave.EU Report (see para. 91 above). The scale of campaign donations and their consequences is not being investigated by any other body.

174. Sixthly, there is public concern regarding the source of funds used by certain campaigners in the EU Referendum. They include concerns about Arron Banks' and his associates' dealings with Russia which the DCMS Committee was unable to address satisfactorily (see paras. 140 and 141 above). The DCMS Committee understood the NCA was investigating these issues, but this is apparently not the case (see para. 142 above). Issues of secondary financing can be examined by the EC, but not publicly and only in relation to compliance with PPERA as the opaque outcome of the EC's investigation of the CRC donation to the DUP illustrates (see para. 87 above). There is no general investigation into secondary financing, nor is any public scrutiny of these matters backed with coercive powers occurring.

175. Seventhly, there is public concern that anomalous rules relating to Northern Ireland have created lacunae which may have been exploited (see paras. 84 and 87 above). The EC has called for retrospective transparency, but cannot enforce that (see fn. 5 above). There was no EC investigation of joint spending between the DUP and other 'Leave' campaigners under a common plan because of

a perceived lack of evidence of unlawful conduct at assessment stage. We note the EC has recently been asked to reconsider its position on the CRC's role by the Good Law Project. However, these issues have not been investigated to date.

176. Eighthly, there is public concern about psychographic targeting in political campaigns and the lack of oversight of these new methods of political campaigning. This concern is noted by the EC (see para. 97 above), the ICO (see paras. 129 to 131 above) and the DCMS Committee (see paras. 135 to 139 above). The ICO is examining aspects of it in her investigation into the use of data analytics for political purposes (see paras 124 to 128 above) and in the Democracy Disrupted Report she recommended that the Government "*should conduct a review into the regulatory gaps in relation to content and provenance and jurisdictional scope of political advertising online*" (see para. 128 above). The inquiry would be able to undertake that task and build on her work by publicly examining the relationship between data analytics use and the other forms of irregular conduct that occurred during the EU Referendum listed above and making recommendations in the light of its wider remit.

177. The Decision was therefore wrong to state that matters of public concern had already been, or were being, investigated. This was precisely the error that flawed the Secretary of State for the Home Department's decision in *Litvinenko*. She had reached the view that the public concern about Russian state responsibility and preventability could be dealt with by an extant Coroner's inquest into Mr Litvinenko's death, but the Coroner indicated such matters would be out of scope. At para. 42 of its judgment, the Divisional Court held:

> "Any suggestion that the inquest will go a substantial way to addressing or allaying public concern in relation to [those issues] is therefore plainly unsustainable and again cannot provide a rational basis for a "wait and see" approach in relation to the setting up of a statutory inquiry or other form of independent review."

Issue 2: unlawful failure to identify and weigh relevant factors

178. It is settled law that a decision as to whether to establish an inquiry when there is public concern involves a weighing of factors as occurred in *Litvinenko* (see paras. 24 and 36), albeit erroneously. In *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs and another* [2012] EWHC 2445 (Admin) the Divisional Court identified some of the factors to be weighed by drawing on evidence given by Lord Howe to the Select Committee Report on Government by Inquiry First Report of Session 2004–05 HC 51-1.

179. The factors identified by the Divisional Court included (at paras. 157 to 175):

(1) *"[t]he first matter in relation to the purpose of inquiry is to consider whether it can establish the facts…."*

(2) a "*second purpose of an inquiry would be to learn from events and prevent a reoccurrence*";

(3) the potential for "*[c]atharsis and improving an understanding of what happened*";

(4) as will "*[p]roviding reassurance and rebuilding public confidence*";

(5) "*[a]ccountability*";

(6) "*[p]romoting good race relations*" (nationality and ethnic origins being the protected characteristics in play in that case);

(7) addressing the "*[c]ontinuing nature of the wrong*"; and

(8) last, "*[c]ost*" will be a material factor:

> "The amount which will be spent will ultimately depend upon the type of inquiry chosen – whether it is an inquiry of the kind conducted by Lord Saville into Bloody Sunday or the more modest and streamlined model of inquiry conducted by Mr Nicholas Blake QC, as he then was, entitled The Deepcut Review, a review of the circumstances surrounding the deaths of soldiers in Deepcut between 1995 and 2002."

180. The relevance of these factors was affirmed in *Ali Zaki Mousa* [2013] EWHC 1412 (Admin) at para. 143 and in the speeches of the Supreme Court Justices who considered *Keyu* some years later ([2015] UKSC 69), particularly in Lady Hale's dissent. After identifying the unusual background to the case (a 1948 massacre by the British Army repeatedly covered up by the authorities in the decades that followed), she commented:

> "306. Bearing all that in mind, a rational decision-maker would then consider the advantages of some sort of inquiry, in summary:
>
> (1) The very real possibility that, despite the difficulties, conclusions could be drawn about what is most likely to have happened.
>
> (2) The importance of the British authorities, at long last, seeking to make good the deficiencies of the past inquiries and the very real benefits this could bring in terms of catharsis, accountability and

> public confidence, whether or not firm conclusions could be reached.
>
> (3) If firm conclusions could be drawn, the huge importance of acknowledging what had gone wrong and setting the record straight.
>
> 307. Against those advantages, a rational decision-maker would set the following disadvantages:
>
> (1) The passage of time, the death of so many of the participants and witnesses, and the conflict of evidence, which would make finding the facts more difficult.
>
> (2) The changes which have taken place in the organisation and training of the army, the climate of law and public opinion, such that it is unlikely that practical lessons could be learned about how better to handle such situations today.
>
> (3) The cost of even a "stream-lined" inquiry, which would be not inconsiderable, involving as it would have to do inquiries to be made in Malaysia, which would depend upon the co-operation of the Malaysian authorities."

181. The remaining Supreme Court Justices disagreed with Lady Hale's application of these principles in *Keyu*, but not with the principles themselves.

182. Once public concern had been identified and gauged (see paras. 156 to 157 and 169 to 176 above), and the Prime Minister had correctly directed herself on the extent to which these concerns would be addressed by the investigations there have been to date and those that remain to be completed (see paras. 167 to 176 above), she should then have weighed up the factors identified above in so far as they are relevant to the inquiry sought. In doing so, she would have given weight to the following considerations.

183. First, an inquiry could reach conclusions about what is most likely to have happened in the EU Referendum as regards the matters of public concern, and the consequences of what happened, to ensure the truth is known, lessons are learned for the future, and public confidence is restored.

184. Secondly, an inquiry would be in a position to make factual findings on evidence other bodies have been unable to secure because of the limits on their powers, and inability to require attendance, cross-examination and the production of documents. The unwillingness of individuals and organisations to co-operate with investigations to date (see, for example, paras. 90, 127, 136, 141 and 157 above) could be addressed by way of the inquiry panel's coercive

investigatory powers (see para. 67 above). No other body with such powers has an adequate investigatory remit.

185. Thirdly, an inquiry would be able to draw on the work of the DCMS Committee along that of the EC and ICO. The EC and ICO could be empowered to ask questions through the inquiry if they are appointed as core participants. An inquiry could, therefore, make more progress than the EC has on issues of foreign interference, for example (see paras. 100 to 103 above) and more than any other body has on issues of conduct that was undemocratic and unethical but not unlawful.

186. Fourthly, an inquiry would allow the UK to take the lead on investigating issues of Russian interference in the EU Referendum (avoiding the lead investigation by default being Robert Mueller's examination of the role of Russian influence in the US elections, which is peripherally touching upon the EU Referendum – see paras. 145 and 152 above).

187. Fifthly, an inquiry would be able to draw lessons from events and prevent events from re-occurring by making recommendations, including for law reform. The recommendations already made by the DCMS Committee, EC and ICO could be considered and endorsed if appropriate, although the main purpose of the inquiry would be to make evidence-based recommendations based on its own investigation, not to duplicate the work of others.

188. Sixthly, an inquiry would facilitate catharsis and assist in improving and rebuilding public confidence in the integrity of democratic processes and healing divisions (including those arising from one country having interfered in the domestic affairs and democratic processes of another country). An inquiry would allow an acknowledgement of what went wrong and ensure that the record is set straight. An inquiry would also allow for a form of accountability for wrongs that are not crimes (or which may be, but cannot practically be prosecuted). If information about the commission of crimes came to light as a result of an inquiry, this could be separately dealt with by the EC, Police, NCA or ICO as appropriate.

189. Seventhly, there would be clear transparency benefits to all this happening in public (see para. 164 above). Any EC investigation will inevitably be conducted in private and, given that the offences are regulatory offences, there is no trial. By contrast, an inquiry allows core participants to engage in the Inquiry and, where permitted by the Chair, to cross-examine witnesses in public and to examine documents, and for the media to report fully on the steps taken in the investigation. The process of the inquiry and action on its recommendations could help address the threat to democracy and restore trust and confidence in the machinery needed to guard against it (see for example paras. 78, 79, 85, 97, 99, 118, 129 and 133), especially because of its functional independence.

190. Eighthly, that functional independence could address concerns about the role of senior public figures. For instance, a number of senior politicians, including Liam Fox MP, Michael Gove MP, Chris Grayling MP, Boris Johnson MP and Dominic Raab MP sat on the Vote Leave Board and/or the Vote Leave Campaign Committee and those meeting on a daily basis included Mr Gove and Mr Johnson. Dominic Cummings, Vote Leave's Campaign Director who has formerly worked as an advisor to senior politicians, also has questions to answer. To date, only Mr Cummings has been asked about his role (by the DCMS Committee) and he has refused outright to cooperate, leading to unprecedented, yet ineffective, action being taken in the form of a summons and a motion ordering him to appear.

191. Ninthly, in contrast to the inquiry sought in *Keyu*, the passage of time is not a significant factor weighing against an inquiry (though pressing on as soon as possible is important to preserve evidence and assuage public concern as soon).

192. Tenthly, cost is, of course, relevant, but will be reduced by the work already done by the EC, ICO and DCMS Committee. As in *Keyu*, the foundations have been laid, reducing future costs.

193. None of this was grappled with in the Decision. That failure to have regard to these factors, and to undertake a balancing exercise, was unlawful.

Issue 3: legally inadequate reasons

194. The Government has previously stated "*[t]he Government believes that it is right that Ministers should explain publicly any decision to establish, or not to establish, an inquiry.*"[6] There is no principled or lawful basis for deviating from this established practice in respect of Fair Vote's request. Given what is at stake, this is a paradigm case for giving such reasons.

195. Where reasons are given, they must be legally adequate. In *South Bucks District Council v Porter (No.2)* [2004] UKHL 33 ('***Porter***') at para. 36 Lord Brown explained that the:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for

[6] Effective inquiries: response to consultation CP (R) 12/04, ODPM, 28 September 2004, page 9.

> example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds."

196. *Porter* was a planning case, but Lord Brown's formulation has been adopted by the Courts as a statement of general principle: see *De Smith's Judicial Review* 8th Ed., pages 451-453 and the *Judicial Review Handbook*, 6th Ed., page 666. The Courts have also made it clear that the degree of particularity required in the context of decision making on the establishment of inquiries is a high one: see for example *Litvinenko* at paras. 75 and 76.

197. The reasons given for the Decision, quoted in full at para. 7 above, fall considerably short of the requisite standard. They do not confirm that the Prime Minister accepts that there is public concern about the matters raised by Fair Vote, or if only a subset of those matters are thought capable of raising public concern, or in either case its scale. They do not state whether elements of that public concern are believed to have been addressed by completed EC investigations (there are no completed Police investigations, as discussed above at paras. 120 to 123) and, if so, how. They do not state how the two ongoing EC investigations into Better for the Country and Arron Banks are capable of assuaging public concern, either in themselves or in conjunction with the potential Police investigations of Elizabeth Bilney, David Halsall and Darren Grimes. No explanation is given for why the statutory powers of the EC and Police are believed to be adequate to address the public concern to the extent and in the way a public inquiry would.

198. In short, the reasons for the Decision are unintelligible and inadequate. They do not address the principal controversial issues about whether there ought to be an inquiry and are therefore unlawful.

Issue 4: unlawful mischaracterisation of Fair Vote's request

199. The Decision characterises Fair Vote's request for an inquiry as a "*collateral, and poorly concealed, attack on the giving of Art. 50 notification and/or the Referendum outcome*". This is incorrect, as is clear from the position the EC, ICO and DCMS Committee have taken on the matters of public concern on which Fair Vote's request is based. It is also a fundamental error of fact and irrational.

200. The giving of the notification was, as is well known, an executive act of the Prime Minister using powers under the EU (Notification of Withdrawal) Act 2017. The proposed claim does not challenge that act. Its sole target is the Decision. If the Decision is quashed or reversed, there will be no legal consequences for the notification.

201. As for the EU Referendum outcome, this manifested itself in the declaration of the number of ballot papers counted and votes cast in

the referendum as certified by the Chief Counting Officer and Regional Counting Officers (see para. 19(1) of Schedule 3 to EURA). The request and proposed claim do not challenge those declarations directly or collaterally.

PART 6: INFORMATION, DOCUMENT AND RESPONSE REQUESTS

202. We ask that you address the following requests using the enumeration below. If you are unable or unwilling to do so, please state why, giving full reasons.

203. Please:

(1) confirm you accept the factual background as set out above at paras. 69 to 155 (reasons: to eliminate or at least narrow factual disputes; allow the grounds of claim to be pleaded in a focussed and efficient manner);

(2) identify who made the Decision (reason: to confirm the decision was made at an appropriate level within the Government if it was delegated);

(3) provide the Ministerial Submissions that were made in connection with the Decision and the material that accompanied them (reason: to allow the Court and the parties to understand what was, and what was not, taken into account when the Decision was made);

(4) if this is not comprehensively dealt with in the Ministerial Submissions (or if there were none), please:

(a) indicate if there are any investigations or inquires in train or contemplated which the Prime Minister believes may or will address elements of the matters of public concern identified above (including but not limited to those listed at paras. 169 to 176);

and, if so:

(b) identify each of them;

(c) state how she believes each will achieve that end; and

(d) list the powers they can use to gather and test evidence;

(reason: to allow the Court and the parties to understand what was, and was not, taken into account when the Decision was made and the basis for the belief that Parliament has adequately equipped statutory bodies with the powers to

investigate the public concern arising from the EU Referendum);

(5) provide any correspondence exchanged with the EC, the Police and the NCA that was taken into account in making the Decision (reason: to allow the Court and the parties to understand what was, and was not, taken into account when the Decision was made, including what other bodies said about their powers and scope of their investigations);

(6) provide any correspondence exchanged with the EC, the Police, the NCA and the ICO seeking information for the purposes of preparing a response to this letter (reason: to allow the Court and the parties to understand the basis for any defence of the proposed claim, including what other bodies said about their powers and scope of their investigations);

(7) set out the Government's understanding of what the EC meant when stating in the Digital Campaigning Report (our emphasis):

> "The UK Government and security services have recently set out their view on foreign interference. They said that foreign sources are likely to have tried to disrupt and interfere with UK election and referendum campaigns using digital and social media tools…"

and provide any relevant documents (reason: to enable the Court to understand your client's position on the known extent of foreign interference, which is a relevant factor both to public concern and the value of an inquiry).

204. Please note, if the Decision is to be withdrawn and retaken in the light of this letter, we would still maintain the requests for the information and documents above as Fair Vote may wish to make further representations in the light the responses.

205. Last, please confirm receipt of this letter by return and let us have your substantive response by 8 October 2018 in line with the Pre-Action Protocol.

Yours faithfully,

Bindmans LLP

Bindmans LLP