

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN on the application of

The Good Law Project

Claimant

and

The Electoral Commission

Defendant

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**WITNESS STATEMENT OF JOLYON MAUGHAM**

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I, Jolyon Maugham QC, director of the Good Law Project, will say as follows:

**Overview**

1. The facts within this witness statement are from matters within my own knowledge except where otherwise stated. The numbers in bold and in square brackets refer to the page numbers of the hearing bundles.

**Reasons behind the challenge:**

2. The Good Law Project is an organisation I set up with the aim of using the law to deliver a progressive society. The three areas the project presently concentrates on are Brexit, tax, and workers' rights. I campaigned, independently, for Remain in the Referendum. And I continue to believe that the country's interests would be better served by us remaining in the EU. It is right that I say this. However, it is also true to say that I have a long running and active interest – predating the Referendum – in the proper functioning of 'institutions' of Government. My focus was initially on HMRC that being the institution most closely connected to the work I do in my professional life. However, I also wrote, prior to the Referendum, about my attempts to put pressure on the Electoral Commission to discharge what I see as its statutory

responsibilities in spheres unconnected with the Referendum. And I have written about the functioning of other public institutions, for example, the Office for Budget Responsibility.

3. During the campaign and subsequently I read widely about the Leave campaign and became increasingly concerned by how the Defendant discharged its role in policing elections. I have also participated in a number of public and high level private discussions with leading lawyers and campaigners in the field. Those discussions may well have been precipitated by the Referendum campaign but they have taken the Referendum result as a given; their concern has very much been around how to secure the better functioning of our democracy going forward. There is obvious public concern about the use of digital marketing, unauthorised data and the like, and whilst this challenge is not centred on this aspect of how election campaigns are run, it is a concern that as political parties and campaigners get more sophisticated about electioneering, the Defendant appears to me to be unwilling to be muscular in the exercise of its important statutory obligations.
4. This challenge relates to the spending limits imposed by parliament to protect our democracy from capture by those with endless money to spend. For the Referendum, the limits were £7,000,000 for the officially designated campaign bodies (of which Vote Leave was one of the two), and £700,000 for other participants.

Whether donating to another organisation to promote / procure a particular outcome is an election expense

5. As the court will know, the EU Referendum took place on 23 June 2016. It is a matter of public record that Vote Leave's campaign made extensive use of digital marketing. The campaign director of Vote Leave, Dominic Cummings, in a blog published in October 2016 wrote: "We were the first campaign in the UK to put almost all our money into digital communication then have it partly controlled by people whose normal work was subjects like quantum information (combined with political input from Paul Stephenson and Henry de Zoete, and digital specialists AIQ)." [3-196]
6. As I understand it, the use of the services of "AIQ" – AggregatIQ – mentioned above, was novel. I believe this was the first time that this company, or this type of marketing, was used in a national vote in the UK. Certainly it appears that

AggregatIQ was not a well-known company; it had a very limited internet presence prior to the Referendum and was based in Canada. It was not an obvious choice for any UK-based campaign to use. So it is striking that three leave campaigns all decided to use its services.

7. The exact way the Vote Leave campaign worked with AggregatIQ is not generally known. However, Dominic Cummings in his blog states that AggregatIQ worked with the data science team that Vote Leave had put together, rather than working in isolation [3-210].
8. BeLeave is apparently a campaigning organisation set up by Darren Grimes. From its publicity, it is part of or holds itself out as associated with the Vote Leave campaign. On Vote Leave's website it is featured as an 'outreach group' [3-226]. The logo used by BeLeave is the same – in a different colour - as the one used by the Vote Leave campaign [3-227]. Darren Grimes and other members of BeLeave are photographed on the BeLeave Twitter account wearing Vote Leave T-shirts, whilst out campaigning, holding Vote Leave leaflets [3-188; 3-189]. The Twitter account retweets messages from Vote Leave [3-190]. To all extents and purposes it appears to be the youth wing of Vote Leave.
9. This view appears to have been shared by the Vote Leave campaign. In Dominic Cummings' blog, he stated that Vote Leave had spent £13.5 million, a sum which included the money that BeLeave had spent [3-204].
10. It also appears to have been accepted by the Defendant. In an email dated 16 November 2016, a person who appears to be a senior manager, states "we were aware from the original allegation in BuzzFeed that Mr Grimes had been spotted visiting Vote Leave during the campaign – his organisation, BeLeave was a Vote Leave outreach group" [3-30].
11. This setup was prefigured in February 2016 when Steve Baker, Conservative MP for Wycombe, lobbying for Vote Leave to be given the designation as the official 'Leave' campaign, wrote to colleagues: "It is open to the Vote Leave family to create separate legal entities each of which could spend £700k: Vote Leave will be able to spend as much money as is necessary to win the referendum." [3-2] At the time I took the view that this approach was contrary to the law.
12. Standing back for a second, there seems to me to be little difference between spending money directly to promote or procure a particular outcome and donating

money to a campaign to promote or procure that same outcome, or indeed as in this case, spending money on a third party company employed to promote or procure that outcome and donating the services purchased to a campaign set up to promote or procure that outcome. The fact that the money has gone through a third party does not alter the purpose of the expenditure – namely the procurement or promotion of the outcome.

13. The Vote Leave campaign raised the £7m that it was allowed to spend by the first half of June 2016. Mr Cummings – again in his blog – states:

“The campaign was only fully funded (in the sense that we had in the bank enough to spend the full £7m) in the first half of June. VL raised £710,000 online: £175k between the launch of our website October 2015 and 13 April and another £535k after 13 April. We could have raised much more on the website at the end but shut down the fundraising because it seemed we would not be able to spend the sudden surge of money coming in, money that would have been so valuable if it had come before the limits began.” [3-204]

14. When the money started to become available, communication took place between Vote Leave and the Electoral Commission about whether the money could be donated to other campaigns which had not reached their limit yet. This resulted in a development that was unexpected to the Vote Leave campaigners. The Defendant – or so Dominic Cummings claimed – advised Vote Leave that they could donate to another campaign – with the intention of procuring or promoting a particular outcome – and that this would not be considered to be a “referendum expense”, such that it would not have to be declared as part of Vote Leave’s expenditure. As Dominic Cummings stated in his blog “the Electoral Commission suddenly allowed us to donate to other campaigns” [3-204]. The Electoral Commission has failed to disclose this alleged permission in response to pre-action requests and Freedom of Information requests.
15. It is also not in dispute that this is in fact what happened. £725,315.18 of the extra funds raised by Vote Leave were paid to AggregatIQ for services which were donated to BeLeave and Veterans for Britain for the purpose of campaigning for the particular outcome that Vote Leave sought in the referendum [3-164; 3-165; 3-170].
16. It seems to me that, if this is right, and continues in future referendums, there will be little point in a nominal figure limiting referendum expenses. If a subsidiary

organisation, using the same logo, and campaigning alongside the larger organisation, can be used as a vehicle to channel money in excess of the permitted limit, for the purposes of achieving the same objective as the principal organisation, the purpose of the spending limits provided by Parliament are necessarily defeated. Having seen how elections work in the United States, this development deeply concerns me. I do not see how the approach taken by the Electoral Commission can be consistent with the overall purpose of the legislation.

17. Obviously the question whether our law permits it is one of the questions raised by this application for judicial review. It is not a question for me to answer and I do not address it. However, it does seem to me that there is a general public interest in having this question of law determined in order to ensure that future national votes – elections and referendums – are fair, and excessive campaign spending is avoided.

A common plan?

18. Over and above this short point of law, I cannot see how any organisation looking at all of the evidence could conclude that the donations made by Vote Leave to BeLeave were made without an understanding as to how they would be spent. I am genuinely amazed that the Electoral Commission can look at all the evidence and conclude that there was not even a reasonable suspicion that Vote Leave and Darren Grimes/BeLeave were working together.
19. It is clear from what Dominic Cummings has written that he and Vote Leave were committed to campaigning using digital technology, in a way that was innovative and unusual.
20. Yet we are invited to conclude that it was Darren Grimes' decision to spend money on the same innovative and unusual campaigning method. And we are also invited to conclude that it was coincidence that this money was all spent with one particular digital marketing company, the same one as was being used by Vote Leave.
21. Mr Cummings described Vote Leave's strategy, "known internally as 'Waterloo'", in his blog [3-211]. It consisted of spending heavily on digital communication, "with spending low in the first few weeks as experiments were tried then ramped up strongly in the last two weeks and especially the last five days". Darren Grimes' spending on Aggregate IQ occurred in the last 10 days of the campaign, consistently with Vote Leave's stated strategy.

22. We don't know how Veterans for Britain and Darren Grimes came to a decision to use the services of AggregatIQ. It is hardly credible however, that there was no discussion between the parties about what services Aggregate IQ was to provide and it is astonishing that the Electoral Commission does not appear to have sought details of all the works streams contracted for and compared them with those contracted for by Vote Leave. At the very least there will have been discussion between the parties about the usefulness of this type of campaigning and the effectiveness of Aggregate IQ. There must also have been a discussion of how the services of that company could be donated and paid for by Vote Leave. In the case of Veterans for Britain, their spokesman is reported in an article in the Observer newspaper as stating: "I didn't find AggregatIQ. They found us. They rang us up and pitched us" [3-228]. There is no explanation as to how AggregatIQ came to believe that Veterans for Britain was in a position to fund the work of Aggregate IQ. Or even why Aggregate IQ should contact Veterans for Britain. But, putting the matter at its absolute lowest, it must be a reasonable inference that Vote Leave suggested that AggregatIQ contact Veterans for Britain.
23. In the emails disclosed, the Defendant has identified the 'Insertion Orders' – which represent an agreement by AggregatIQ to run a campaign on behalf of Darren Grimes (or BeLeave) – representing the following amounts on the following dates:

Date	Description	cost
14 June	Targeted Social, video and display media campaign –BeLeave.UK	\$565,500 USD
17 June -	Targeted Social, video and display media campaign –BeLeave.UK	\$71,000 USD
20 June	Targeted Social, video and display media campaign –BeLeave.UK	\$58,500 USD
21 June	Targeted Social, video and display media campaign –BeLeave.UK	\$264,000 USD

24. It is not clear to me from the disclosed documents or the documents made available publicly on the Defendant's website whether these costs were invoiced directly to Vote Leave. The Defendant had committed to making spending transparent by publishing spending data on its website, including invoices or receipts for payments

over £200 [3-35]. Yet I can find no invoices available on the website for the payments recorded by Darren Grimes to AggregatelQ. There are only the above Insertion Orders which provide no details about the paying party. The £100,000 payment recorded under Veterans for Britain to AggregatelQ has an accompanying invoice attached but the paying party to whom it is addressed is redacted [3-171].

25. No evidence of particular instructions by either group were obtained by the Defendant which may have shed some light on whether the instructions were in fact separate and distinct, without collaboration, and whether there was any sharing of the data obtained. AggregatelQ says that it cannot disclose information due to client confidentiality. I can see no evidence that the Electoral Commission has sought this authority or this information direct from Darren Grimes or Vote Leave.
26. Also unclear from the documents I have seen is the precise nature and scope of work to be undertaken by AggregatelQ. Darren Grimes was spending an enormous amount of money with AggregatelQ yet, from the material disclosed, the Electoral Commission does not seem to have asked how the services to be provided by AggregatelQ were specified by Darren Grimes; or how the price for those services was negotiated or set. Indeed, given the timescales over which (a) the donations are said to have been made by Vote Leave to Darren Grimes and (b) the services were provided by AggregatelQ, it is hard to see how there was time for negotiating or specifying to take place. Of course, if Darren Grimes was only a conduit for Vote Leave's own spending none of this would matter: it would be Vote Leave that was commissioning, specifying, and negotiating the price for AggregatelQ's work.
27. The Electoral Commission also seems to have failed to ask for copies of the graphics 'content' that AIQ displayed on facebook and other social media sites purportedly on behalf of BeLeave. Was that 'content' specifically designed for BeLeave by AIQ, or by BeLeave itself (seemingly for no cost as I can't see anything in its expenses), or did AIQ in fact disseminate Vote Leave created content to the 'BeLeave' audience?
28. The Defendant did make some further limited enquiries in August 2016. Mr Grimes stated that "we did not discuss with Vote Leave how we would spend the money apart from telling them it was for our digital campaign and that is why we asked for the money to be paid directly to the company we were working with Aggregate IQ" [3-10].

29. On the face of the documents now disclosed this does not appear to be correct. In fact, as is clear from the 'start dates' for the work listed in the Insertion Orders and the dates the payments were made according to the Defendant's website, AggregatIQ delivered the services to Darren Grimes/BeLeave only after payment had been made by Vote Leave. In a follow-up email dated 9 September 2016, Mr Grimes states that "my understanding is that Vote Leave did not buy advertising services to gift to BeLeave but discharged BeLeave's debt to AIQ by a transfer of cash at our request. It was not a condition of the donation either that the donation be spent on advertising – but that is what we wanted to do given the limited time left in the campaign period and the nature of our campaign" [3-15]. This email is again misleading. In fact, there was no debt to AggregatIQ, as the payments appear to have been made before the work was undertaken. BeLeave would not have been in a position to incur hundreds of thousands of pounds' worth of costs without the agreement that Vote Leave would pay. Therefore at the very least the money was paid after it was agreed that it would be spent with AggregatIQ. It also appears inherently unlikely that had Darren Grimes suggested he had wanted to spend the money on a large pro-Brexit festival, or a television commercial, the money would have been donated, given Dominic Cummings' stated intention to pursue a strategy of digital communication, and indeed as evidenced by the fact that 40% of Vote Leave's permitted expenditure was spent on AggregatIQ's services. Indeed, it is notable that at least 95% of Vote Leave's so called 'donations' were spent on the services of AggregatIQ.
30. The Defendant made further enquiries in March 2017 to Mr Grimes as follows: "Please confirm whether or not you undertook any further working together with Vote Leave Ltd and, if so, describe the nature of this work and whether you incurred any cost associated with this. In particular, Vote Leave Ltd declared in their EU referendum spending return that they incurred spending associated with work they commissioned AggregatIQ Data Services Limited to undertake (see Annex 2); please explain what, if any, involvement you had with this work and whether you incurred any associated cost;" [3-67]
31. He replied: "I did not undertake any further working together with Vote Leave Ltd, I had no involvement with Vote Lead Ltd's work with AggregatIQ Data Services Limited in relation to the invoices you have referenced at Annex 2 or otherwise". [3-71]

32. The answer is not wholly accurate. It was very public knowledge – displayed on BeLeave’s public twitter account – that Mr Grimes was campaigning for and working with Vote Leave. He publishes photographs of himself at their events, he has films of him canvassing with their leaflets, wearing their logos.
33. The Defendant also asked: “Please explain why you chose to commission AggregatIQ in particular to undertake the work you reported in your spending return, rather than another company”.
34. Mr Grimes replied “Our campaign was conducted over social media from the outset. Until Vote Leave Ltd made me aware that they were in a position to make a donation and asked if BeLeave was able to make use of it we had not been able to put any funds behind pushing our messaging despite previous requests for donations.”
35. To state that his campaign had always only been conducted over social media – implying that the strategy of BeLeave and Vote Leave were coincidentally the same – is not completely accurate. It is clear from the BeLeave Twitter account that not only were they conducting a campaign over social media as Mr Grimes correctly states, but also using traditional media and canvassing<sup>1</sup>. The shift to a concentration of the vast majority of resources into digital marketing appears to have only come after the donation by Vote Leave.
36. Given that Mr Grimes was not being wholly straightforward in his response to their enquiries, I am surprised that the Defendant seems simply to accept what he asserts without further enquiries. Indeed, even if Mr. Grimes was wholly open and accurate in his responses, at the very least one would have expected the Electoral Commission to go on to put further questions to Vote Leave and Mr. Grimes, such as asking for evidence to support Mr. Grimes’ assertions, copies of contracts or orders specifying work, evidence of the content was actually displayed by Aggregate IQ on Facebook and other social media on behalf of BeLeave. It is striking that the Electoral Commission does not appear even to have checked whether the content disseminated by AggregatIQ, purportedly on behalf of BeLeave, had VoteLeave branding or BeLeave branding.
37. If a robust investigation had been undertaken, letters of instructions from Darren Grimes and Vote Leave to AggregatIQ would have been obtained and the work

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<sup>1</sup> See for eg Channel 4 Youth Debate, London Live 11<sup>th</sup> June, Huffington Post 8<sup>th</sup> June 2016.

done and evidence of for whom it was done could have been examined together. Did the data analysis done for Darren Grimes inform the work being done for Vote Leave and vice versa? How did Darren Grimes use the work done by AggregatIQ for VoteLeave? Mr Cummings had employed a team of data analysts who were working with AggregatIQ: how could Mr Grimes have done this independently in the last few days before the Referendum? These were questions that at the very least should have been asked.

38. It is a matter of real concern to me that the Electoral Commission has potentially allowed Vote Leave to exceed its spending limit by around 10% on the basis either that it incorrectly advised Vote Leave as to what Parliament had permitted them to do, or alternatively, if its analysis of the law is correct, has failed properly to look into circumstances that cry out for further investigation. The Electoral Commission has an absolutely critical role in the functioning of our democracy – and in relation to a momentous national event it appears to have failed properly to discharge its responsibilities.

#### Costs capping order application

39. The Good Law Project also seeks a costs capping order under s.88 Criminal Justice and Courts Act 2015 and CPR r.46.17.
40. As to the requirements of s.88(6)(a):
  - a) The issues raised by these proceedings are of general public importance. They concern, among other things, (i) the proper interpretation of spending limits which exist to protect the public from distortion of the democratic process and (ii) the duties of the Electoral Commission in upholding those rules and exercising its investigatory powers in order to do so.
  - b) Those issues are capable of affecting the way in which elections and referendums are conducted, and potentially therefore the outcomes of and/or the democratic legitimacy of, those elections and referendums. Those are matters that affect everyone, given the significance of the issues which may be submitted to the public at a referendum.
  - c) The effect of those issues may be very significant. For example, if the various participants in a referendum have materially different understandings of the

relevant law and of the ability and willingness of the Electoral Commission to take action, there is scope for difference in the way in which they interpret and apply those rules, which can lead to an unequal playing field. Equally, if a participant in a referendum engages in conduct which is arguably unlawful, but the Electoral Commission wrongly considers itself unable to take action, then the result may be that the whole process is undermined. For the reasons I have explained, I am concerned about the conduct of Vote Leave in relation to the Referendum, but it is also an issue of general application.

- d) The public interest requires those issues to be resolved. If they are not, the problems identified by these proceedings with the Electoral Commission's approach are at risk of being repeated in future elections or referendums.
- e) The proceedings are likely to provide an appropriate means of resolving them. They will bring the issues of interpretation and of the extent of the Electoral Commission's duties squarely before the courts, because the facts of Vote Leave's campaign spending directly engages those issues.

41. As to the requirements of s.88(6)(b) and (c) and the matters set out at s.89:

- a) The Good Law Project has no substantial assets of its own, except what it is able to raise by way of crowdfunding in respect of any individual case it proposes to take forward.
- b) I launched a CrowdJustice funding page on 30 September, seeking a total of £80,000 to fund the case (based on estimates of approximately £35,000 to take the case to the permission stage, a further £40,000 to take it to a full hearing, and a 6% surcharge to cover the direct costs to CrowdJustice of fundraising in that way).
- c) As of the date of this statement, I have raised £44,530 of that target, with 9 days to go.
- d) I have negotiated payment arrangements with the lawyers working on my behalf, and asked them to accept a reduced rate (namely the Treasury rate equivalent to their level of seniority). They have agreed this.

- e) However, even with that reduction, the amount I have been able to raise would not allow the Good Law Project to meet an adverse costs order. The result will be that, unless a costs capping order is made, it is likely that it would not be possible financially for the Good Law Project to continue with the proceedings. I could seek to raise further monies but I doubt whether I could raise a sufficient sum to cover adverse costs and the application would have to be withdrawn in order to avoid a risk of insolvency. The Good Law Project does not hold material funds or other assets of its own.
- f) I would add that the Good Law Project does not stand to gain financially, or in any other private respect, from the relief sought in these proceedings. It is pursuing them for public interest reasons as I have explained above. Nor am I aware of any respect in which those who have contributed money by way of crowdfunding could benefit financially from the relief sought.
- g) Finally, I consider that the Good Law Project, as an organisation with the objectives I have described, is an appropriate person to represent the interests of the public in relation to this issue. It has no other interests in this litigation than delivering the public interest.

42. I therefore respectfully ask the court to make the costs capping order as requested in the claim form.

I believe that the facts stated in this witness statement are true.

Signed:



Dated: 20 October 2017

