



Ms Louise Footner
Head of Legal
The Electoral Commission
3 Bunhill Row
LONDON
EC1Y 8YZ

Dear Madam

**Good Law Project Ltd & Ben Bradshaw MP v Electoral Commission
2016 EU Referendum – Spending by the CRC / Mr Richard Cook
Proposed judicial review proceedings**

We write further to our letter dated 5 October 2018, sent pursuant to the pre-action protocol for Judicial Review, and to your response dated 19 October 2018.

We note that, as part of your pre-action protocol response, you provided us with certain information (“**the Information**”) which you considered to fall within the ambit of s71E of the Political Parties Elections and Referendums Act 200 (“**PPERA**”). You made reference to s71E(5) PPERA, and indicated that the Information was provided in the expectation that any onward disclosure would be for the purposes of the proposed Judicial Review proceedings only.

We have carefully considered this indication, and are of the view that we are under no obligation to limit our use or disclosure of the Information in the manner suggested.

In particular:

- Not all of the Information falls within the scope of s71E. For example, the fact that the CRC was found to have committed an offence under para 6(1)(b) of Sch 19A PPERA (for failing to report gifts it received from the beginning of 2015) is not information which in substance “relates to” a donation made to a Northern Ireland recipient (as defined in s71A(2)(a)).

- In addition, much of the Information is already in the public domain (either explicitly or implicitly). For example, the Commission has confirmed that it declined to investigate the DUP's handling of the CRC donation following "a thorough review of the [BBC Spotlight] programme, information that was provided to [the Commission] and other sources" – and hence (necessarily) that it was satisfied the DUP had taken reasonable steps to verify the CRC's permissibility as a donor. Public reports have also connected the fine announced by the Commission in September 2017 with the CRC. Accordingly, publication of the Information would not run contrary to the purpose of s71E, which is to prevent the wider disclosure of information held only by the Commission.
- To the limited extent that the Information is not already public, it is liable to become so at any point were the proposed application for judicial review to be issued. Again, any objection based on s71E is therefore one of form rather than substance.
- Finally, the prohibition on disclosure applies only to "a person who is or has been a member or employee of the Commission": see s71E(1) with s71E(5). PPERA contains no express restriction on the use or publication of information which meets the description in s71E, but has been lawfully disclosed to third parties (for example, under s71E(3)).

More generally, we note that:

- We were not asked for, and did not provide, any express commitment or undertaking as to the use or disclosure of the Information before it was provided to us.
- The collateral undertaking in CPR 31.22(1) regarding the use of disclosed documents applies only in the context of existing proceedings. There is no equivalent provision in the relevant pre-action protocol; nor does any implied undertaking at common law (to the extent that this remains relevant) arise where, as here, disclosure is voluntary rather than compulsory.

As a result, we are presently minded to make such onward disclosures of the Information as we see fit – including by publishing it to a wider audience.

We do, however, wish to give the Commission the opportunity to make further representations in respect of – or to provide additional information bearing on – this issue. We will therefore take no steps in relation to the Information (save for the purposes of the proposed Judicial Review proceedings) until 7 days after issue of the proposed Judicial Review application. Should we receive further correspondence from the Commission before this date, we will consider its contents before taking any action.

For the avoidance of doubt, and for the reasons summarised above, we do not currently consider that there would be any realistic prospect of the Commission obtaining injunctive relief against publication of the Information, or of a decision to publish attracting any form of criminal sanction.

We are now proceeding to draft grounds in the proposed Judicial Review application which will be issued in court and served upon you shortly.

Yours faithfully

DEIGHTON PIERCE GLYNN