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Offences committed First published: 11 May 2018 Last updated: 13 June 2021 Overview

In February 2017 the Commission became aware of reports suggesting that services had been provided to Leave.EU by the US data analytics firm Cambridge Analytica and the US campaign strategist firm Goddard Gunster. Leave.EU did not report spending on either. Any services provided at no cost would have constituted a donation from an impermissible source. An investigation was opened in April 2017. The scope of that investigation was extended as further evidence came to light. It examined: whether Leave.EU exceeded its statutory spending limit for referendum campaigning. As a registered campaigner that was not a political party and was not the designated lead for one of the referendum outcomes, it had a limit of £700,000 the accuracy of pre-poll transaction reporting of regulated transactions (loans) totalling £6m given to Leave.EU in relation to the referendum the completeness of Leave.EU's referendum campaign spending return, looking at the same transactions, the spending, and the inclusion of supporting invoices and receipts for payments over £200

Update – 11 October 2019 Leave.EU appealed against the sanctions set out in the following report. Judgments were given on the appeal by the Central London County Court: firstly on liability for the offences, on 21 March 2019, and secondly on the size of the penalties, on 8 April 2019. The Court substantively refused the appeal and confirmed all offences, but allowed parts of the appeal. It upheld three of the penalties imposed, totalling £50,000, but reduced one of the penalties from £20,000 to £16,000. Leave.EU was therefore fined £66,000 in total. It has subsequently paid these fines.

Summary of findings We made the following findings: as a non-designated campaigner, the referendum spending limit imposed by section 118(1) and Schedule 14(1)(2)(c) PPERA on Leave.EU was £700,000. Leave.EU reported spending of £693,094, which is £6,906 under the spending limit. Leave.EU failed to include a minimum of £77,380 in its spending return, which meant that it exceeded its spending limit more than 10%. We are satisfied that the actual figure was in fact greater, given the failure to report an appropriate proportion of the cost of services provided by Goddard Gunster. The responsible person for Leave.EU authorised those expenses to be incurred by or behalf of Leave.EU. We are satisfied beyond reasonable doubt that she knew or ought reasonably to have known that the expenses would be incurred in excess of the spending limit on 28 April 2016 in its pre-poll transaction reports, Leave.EU reported the receipt of three regulated transactions from Mr Arron Banks totalling £6m. These were the only reported sources of funding for Leave.EU's referendum campaign. Leave.EU did not report these transactions correctly. The dates the transactions were entered into, the repayment date, the interest rate and the provider of the transactions were all incorrectly reported. These transactions were also incorrectly reported in Leave.EU's referendum spending return. While the repayment date and interest rates were correct in that return, the date the transactions were entered into and the provider were not. Variations to the transactions were also not correctly reported. Leave.EU paid for services from the US campaign strategy firm Goddard Gunster that should have been reported in its spending return but were not. Those services from Goddard Gunster were paid for before the regulated period started on 15 April 2016, but Leave.EU made use of them during the regulated period. Accordingly, a proportion of the cost of services from Goddard Gunster should have been included in Leave.EU's spending return. The Commission cannot, on the available evidence, quantify the exact proportion of this spending

which should have been declared Leave.EU failed to include spending of £77,380 in its referendum spending return, being fees paid to the company Better for the Country Limited as its campaign organiser Leave.EU failed to provide the required invoice or receipt for 97 payments of over £200, totalling £80,224 Based on the evidence we have seen, we are satisfied that Leave.EU did not receive donations or paid-for services from Cambridge Analytica that should have been reported in its spending return. Public statements from both Cambridge Analytica and Leave.EU (including its directors Mr Arron Banks and Mr Andy Wigmore) from 2016-17 implied services were being provided; however, the evidence shows that the relationship did not develop beyond initial scoping work and no contract was agreed between them. Finally, we found that it was more probable than not that Leave.EU's spending return under-stated the apportioned value of 15 payments totalling £129,720. However, the lack of clear records held by Leave.EU on how these activities were used over time meant that we could not determine beyond reasonable doubt whether the reported value was right or wrong. No offence was found in respect of these payments. The decision to investigate In February 2017 we saw media reports suggesting that services had been provided to Leave.EU by the US data analytics firm Cambridge Analytica and the US campaign strategist firm Goddard Gunster. We also received a complaint from Mr Stephen Kinnock MP on the same subject. Leave.EU's spending return did not include spending on either. Any services provided at no cost would have constituted a donation from an impermissible source. The reports and complaint drew attention to various public statements made by Leave.EU's director Mr Arron Banks, and its communications director Mr Andrew Wigmore. These included the following: A Leave.EU press release of November 2015 stating that it had hired Cambridge Analytica and Goddard Gunster A 23 December 2015 Politico.com article and a series of tweets in which Mr Banks spoke positively of the capabilities of Cambridge Analytica and stated that it had been providing services to Leave.EU A statement in February 2016 by the SCL Group, the Cambridge Analytica parent company, which said that Cambridge Analytica teamed with Leave.EU to "supercharge" Leave.EU's social media campaign leading up to the EU referendum A tweet by Mr Banks on 7 February 2016 which said "...Our campaign is being run by Gerry Gunster..." A Leave.EU press release issued on 28 June 2016 regarding Mr Banks' book The Bad Boys of Brexit which said Leave.EU was intending to "...do a big drumroll for Goddard Gunster, highlighting the accuracy of the polling, their messaging, understanding the voters..." and which went on to say: "The Leave.EU team thanks Goddard Gunster Public Affairs for its crucial strategic role of the Leave.EU campaign." According to Arron Banks, Leave.EU co-chairman, Goddard Gunster contributed significantly on a number of fronts: "They made our social media effort a massive success; providing a platform far bigger than the ones built up by either the Remain campaign or the official Vote Leave group... The end result," according to Banks, "was not just a fantastic tool for direct outreach, bypassing the broadcast and print media entirely, but an extremely useful database that Goddard Gunster was able to mine, allowing it to conduct in-depth demographic polling and recommend precision target-messaging An interview of Mr Gunster in the Washingtonian , reported on 29 June 2016, in which he stated Goddard Gunster embedded staff in the Leave.EU office in London: "My role with Leave.EU was to provide strategic advice on the mechanics of running a referendum campaign. I brought them the methodology and the science behind how best to win, based on my experience of running many ballot measure campaigns here in the U.S." A report in the Financial Times on 5 March 2017 in which Mr Wigmore stated that Leave.EU used artificial intelligence analysis, which was "...then executed by... Goddard Gunster." Various tweets by Mr Banks and Mr Wigmore both

before and after the EU referendum referencing Cambridge Analytica, including Mr Banks stating that “We have made no secret of working with Cambridge” on 3 March 2017, and Mr Wigmore telling the Guardian that Cambridge Analytica taught Leave.EU to gather data from social media. We asked Leave.EU about these statements. It told us that it had been in a tendering process with Cambridge Analytica and did not engage its services when the Go Movement Limited was not designated as lead Leave campaigner. Leave.EU said it received no services or advice from Cambridge Analytica either paid or unpaid. It went on to say that Goddard Gunster did provide services, including giving advice to Mr Banks, but that advice was given and paid for prior to the referendum regulated period starting on 15 April 2016. We also raised these matters with Cambridge Analytica, which said that its relationship with Leave.EU was limited to a business development relationship for the purpose of securing a potential contract with Leave.EU in the event Go Movement Limited was designated as a lead campaigner in the referendum. Cambridge Analytica stated that it met with Leave.EU on several occasions to discuss the services it could provide, but that no work was done and no value provided to Leave.EU either paid or unpaid. Having assessed the matter in line with its Enforcement Policy, we concluded that we had reasonable grounds to suspect that Leave.EU’s referendum spending return was incorrect. In April 2017 we opened an investigation. Further information

What we investigated

The scope of the investigation extended as evidence came to light. The following matters were examined: whether the Leave.EU pre-poll regulated transaction reports and post poll campaign EU referendum spending return correctly reported regulated transactions it entered into prior to the EU referendum (the transactions issues) whether the Leave.EU referendum spending return was incomplete in respect of donations from or spending on services provided by Cambridge Analytica (the Cambridge Analytica issues) and Goddard Gunster (the Goddard Gunster issues) whether the same return was incomplete in respect of spending on services provided by Better for the Country Limited (the Better for the Country issues) whether the same return was otherwise incomplete in respect of all campaign payments and associated invoices or receipts (the further omitted invoices and payments issues) whether Leave.EU exceeded the spending limit of £700,000 for a non-designated, non-party registered campaigner set out in Schedule 14, paragraph 1, of PPERA (the spending limit issue) The potential offences under investigation were: failure, without reasonable excuse, to accurately declare regulated transactions in the pre-poll reports, which is an offence under paragraph 5(9)(b) of Schedule 2 of EURA failure, without reasonable excuse, to include a statement of relevant donations received in respect of the referendum, which is an offence under section 122(4)(b) of PPERA failure, without reasonable excuse, to declare spending or notional spending incurred, which is an offence under section 122(4)(b) of PPERA failure, without reasonable excuse, to provide the required supporting documentation for payments in excess of £200, which is an offence under section 122(4)(c) of PPERA incurring spending in excess of the spending limit set out in Schedule 14 of PPERA where the responsible person knew or ought to have known that the spending would exceed that limit, which is an offence under section 118(2)(c)(i) and (ii) of PPERA The relevant legal framework is set out at the end of this report. The investigation in detail

Leave.EU and associated individuals

In April 2017 we asked Leave.EU, Mr Banks and Mr Wigmore for information about the matters under investigation, and invited Mr Banks and Mr Wigmore to interview. Mr Banks provided some high level responses but declined an interview. Mr Wigmore did not respond. We issued statutory Investigation Notices under Schedule 19B paragraph 3 of PPERA to Leave.EU and Mr Banks, requiring them to disclose relevant

material. Both Leave.EU and Mr Banks provided a significant amount of material in response. When analysing the material, we saw that Leave.EU and Mr Banks had only partially responded. Complete disclosure was made via a joint response in December 2017. In November 2017 we opened a separate investigation into the company Better for the Country Limited (company number 09609018), Mr Banks and associated entities. This investigation is ongoing. The material provided by Leave.EU and Mr Banks in that investigation raised further concerns about the completeness and accuracy of Leave.EU's referendum spending return, and its regulated transaction pre-poll reports. We told Leave.EU that the scope of the investigation had been expanded, and asked for relevant information. Leave.EU responded in February 2018. Engagement with other organisations During the investigation we contacted Cambridge Analytica and Goddard Gunster. Cambridge Analytica gave us substantial material in response to its questions. Goddard Gunster provided us with some of the information it asked for but said that it thought our request for documents was unreasonable. It also said that a confidentiality agreement was in place between it and Leave.EU so it couldn't provide anything further. We did not agree with these points, but continued the investigation using evidence it got from other sources. Engagement with other individuals We reviewed material put into the public domain by others including those who gave evidence to the Digital Culture, Media and Sport Select Committee inquiry into fake news. During the investigation we were approached by Dr Emma Briant of Essex University, who had interviewed Mr Wigmore (Leave.EU), Brittany Kaiser (Cambridge Analytica), Mr Gunster (Goddard Gunster) and Mr Nigel Oaks (SCL Group), as part of her academic research into data analytics. We reviewed details from these interviews, but did not consider that they provided evidence of the offences under investigation. Determinations on offences In April 2018 we were satisfied that we had sufficient evidence to make initial determinations on the offences under investigation. In line with the requirements of Schedule 19C of PPERA, we issued a statutory notice to Leave.EU setting out its initial determinations and proposing penalties. The notice invited Leave.EU to make representations within the statutory 28 day period. On 1 May 2018, Leave.EU delivered its representations in respect of the proposed penalties to us. These were considered carefully before a final determination on offences and penalties was taken. We issued our final determinations to Leave.EU on 8 May 2018. What our investigation found The transactions issues On 28 April 2016, as part of its required pre-poll transaction reporting, Leave.EU reported receiving three regulated transactions (loans) from Mr Banks, totalling £6m. These were the only reported sources of funding for Leave.EU's referendum campaign. We found that Leave.EU failed without reasonable excuse to report these transactions correctly. The dates the transactions were entered into, the repayment date, the interest rate and the provider of the transactions were all incorrectly reported. We also found that without reasonable excuse these transactions were also incorrectly reported in Leave.EU's referendum spending return. While the repayment date and interest rates were correct in that return, the date the transactions were entered into and the provider were not. Variations to the transactions were also not correctly reported. We therefore determined that the responsible person for Leave.EU committed an offence under paragraph 5(9)(b) of Schedule 2 of EURA in respect of the pre-poll transaction report. Further, these facts form part of an offence under section 122(4)(b) in respect of the referendum campaign spending return for Leave.EU. Evidence Evidence and analysis On 28 April 2016, Leave.EU reported entering into three regulated transactions in its pre-poll regulated transaction return. Regulated transactions reported

Start date	Value	Nature	Lender	Interest	Date repayable
15 March 2016					

£1,000,000 Loan Mr Arron Banks 0% 31/12/2017 31 March 2016 £3,000,000 Loan Mr Arron Banks 0% 31/12/2017 21 April 2016 £2,000,000 Loan Mr Arron Banks 0% 31/12/2017 As part of our investigation in respect of BFTCL and others, we obtained the loan documentation. This made it clear the reported information was inaccurate. The transaction of £3,000,000 was according to the written agreement actually entered into on 4 September 2015. The transaction of £2,000,000 was according to its written agreement entered into on 10 March 2016. The interest rate for all three transactions was, according to the agreements, 4% above bank base rate and not 0%, and the repayment dates for all three transactions was 31 December 2016 and not 2017. The evidence also included variation agreements of the terms of the transactions, in that on 17 May 2016 the repayment dates were all amended to 31 December 2017, and the interest rate for all was amended to zero. Leave.EU stated that the discrepancy in terms of the variations arose because the changes to the terms of the transactions had been agreed in principle orally before the time the pre-poll report was prepared and delivered. It provided evidence of written instructions to its solicitor to prepare variation agreements that it said constituted the formal documentation even though agreements had not been signed at the time of reporting. The legal requirement is, however, to report them accurately at the time of reporting. The transaction agreements included a clause requiring any variations to be in writing and signed. The variations in fact took place almost three weeks after the pre-poll regulated transaction report was delivered. Further, the Commission found that the funds were not provided in lump sums but appeared to be a credit facility Leave.EU could draw down as and when required. Leave.EU states that it reported the dates the transactions were entered into as the dates on which it first drew down funds. Consequently, we were satisfied beyond reasonable doubt that the transactions were not reported correctly. Further, we were satisfied that the funds reported were transferred from Rock Services Limited (company number 05960676 - a company controlled by Mr Arron Banks) to BFTCL (also controlled by Mr Banks) for use on expenditure by Leave.EU. Mr Banks was the controller of both companies, but according to Leave.EU, Rock Services Limited provided the funds on behalf of Mr Banks, acting as a proxy or third party. The reporting requirement was for both the company and Mr Banks to be identified as the provider. We were therefore satisfied beyond reasonable doubt that it was incorrect to report Mr Banks as the sole provider. The Cambridge Analytica issues The Cambridge Analytica issue We investigated whether Leave.EU had received services from Cambridge Analytica that: fell within the definition of referendum campaign activity should have been reported either as a donation in kind (if provided free or at less than commercial rate) or referendum spending Based on analysis of the evidence obtained during the investigation, we are satisfied that Leave.EU did not receive donations or paid-for services from Cambridge Analytica that should have been reported in its spending return. Public statements from both Cambridge Analytica and Leave.EU (including its directors Mr Banks and Mr Wigmore) from 2016-17 implied services were being provided. However, the evidence shows that the relationship did not develop beyond initial scoping work and no contract was agreed between them. Information about the activities of Cambridge Analytica continues to be disclosed. We will keep under review whether that provides evidence of involvement by Cambridge Analytica in Leave.EU's EU referendum campaign. Evidence and analysis We examined explanations and evidence provided by Cambridge Analytica, Leave.EU and Mr Banks of their working relationship in late 2015/early 2016. This included copies of correspondence, proposals for services, proposed contracts, draft speeches, presentations and other documents. We were evidence of the

following interactions between Leave.EU and Cambridge Analytica: 23 October 2015 – a meeting to introduce Mr Banks to Cambridge Analytica and give an overview of its services 18 November 2015 – a press launch for Leave.EU at which a Cambridge Analytica representative agreed to sit on a panel 20 November 2015 – a meeting between Cambridge Analytica and Leave.EU’s social media team 4 December 2015 – a meeting between Cambridge Analytica and Ms Bilney, the responsible person for Leave.EU 6 January 2016 – Cambridge Analytica provided Leave.EU with a proposal document setting out at a high level the nature of the work it could do for the Leave.EU campaign 8 January 2016 – a meeting between Cambridge Analytica and Leave.EU at which Cambridge Analytica presented an overview of example data analysis, a proposed plan and costings. This data was drawn from a separate entity and the analysed dataset and resulting report was not provided to Leave.EU or Mr Banks 26 February 2016 – an internal SCL Group email confirmed that no contract will be agreed with Leave.EU We saw no evidence that Cambridge Analytica had any input into Leave.EU’s referendum campaign. Instead, we saw evidence that the relationship between Cambridge Analytica and Leave.EU amounted to no more than preliminary engagement of a series of meetings and presentations. These were done as a pitching exercise by Cambridge Analytica prior to April 2016 with the expectation that services would be provided to the Go Movement Limited, supported by Leave.EU, should it be designated as the lead ‘leave’ campaigner. Meetings were held between Cambridge Analytica and Leave.EU to discuss Cambridge Analytica’s capabilities and the signing of a potential contract. However, there is no evidence a contract was entered into. Cambridge Analytica told us that the meetings and presentations it undertook were typical of non-chargeable initial work in order to assess available data and scope an analysis proposal. It explained its media statements, such as the claim by its CEO Alexander Nix on 11 February 2016 that it had helped to ‘supercharge’ the Leave.EU social media campaign, by saying that at this point there had still been an intention to work with Leave.EU. It said that it received repeated verbal assurances by Mr Banks and Mr Wigmore that Cambridge Analytica would be contracted, and that the statement quoted as from Mr Nix was written by “an over-zealous PR/marketing consultant”. The evidence we saw showed that Cambridge Analytica attempted several times to secure a contract with no apparent confirmation provided by Mr Banks or Leave.EU. Internal correspondence from Cambridge Analytica indicates that it was concerned that Leave.EU was using the reputation of Cambridge Analytica to bolster its own credibility and was exaggerating its relationship with Cambridge Analytica. It suggested to Leave.EU further public statements toning down the extent of the working relationship in light of the lack of any contract. The Goddard Gunster issues We investigated whether Leave.EU had received services from Goddard Gunster that: fell within the definition of referendum campaign activity should have been reported either as a donation in kind (if provided free or at less than commercial rate), notional spending or referendum spending We are satisfied beyond reasonable doubt that Leave.EU did pay for services from Goddard Gunster that should have been reported in its spending return. Further, we are satisfied that the responsible person for Leave.EU failed, without reasonable excuse, to include these payments in Leave.EU’s referendum spending return. Further, these facts form part of an offence under section 122(4)(b) in respect of the referendum campaign spending return for Leave.EU. Those services from Goddard Gunster were paid for in advance of the regulated period commencing on 15 April 2016, but a proportion of the benefit from them was made use of by Leave.EU during the regulated period. Accordingly, a proportion of the cost of services from Goddard Gunster should have been included in

Leave.EU's spending return. We cannot, on the available evidence, quantify the exact proportion of spending in relation to the services provided by Goddard Gunster which should have been declared, but have found that it was incorrect not to declare any of this spending as referendum expenses. Evidence and analysis On 22 September 2015 Goddard Gunster signed a contract to work for Leave.EU (under the name it was formally known as at the time, TheKnow.EU). Under this contract, Leave.EU agreed to pay £20,000 at the signing of the agreement and then £20,000 at the first of each month for the duration of the agreement. Leave.EU also agreed to reimburse any expenses incurred by Goddard Gunster. We reviewed invoices, provided by Leave.EU, that showed the company BFTCL paid Goddard Gunster, on behalf of Leave.EU and Go Movement Limited, a total of £190,000 in monthly retainer fees alone between 21 September 2015 and 1 April 2016 for 'Strategic referendum advice and counsel' and input into an application for designation as lead campaigner for the 'leave' outcome. Over and above this, and also on behalf of Leave.EU, BFTCL paid Goddard Gunster approximately £56,000 in expenses prior to the regulated period. During the investigation Leave.EU provided a number of explanations as to why it did not report any of this spending on Goddard Gunster: Leave.EU said that the advice from Goddard Gunster was largely or completely provided to Leave.EU and Mr Banks in relation to the campaign strategy of the Go Movement Ltd, and on the assumption it would be designated a lead campaigner. Therefore, the advice was largely redundant once the Go Movement Ltd was not designated and it was not used by Leave.EU during the referendum period. Leave.EU and Mr Banks described the services provided by Goddard Gunster as being high level advice which was all provided prior to the referendum period. Mr Banks, for example, said that Goddard Gunster provided: "...high level ad hoc consultancy advice from around September 2015, paid for on a retainer basis. The retainer was brought to an end once the designation decision was made and before the restricted period came into effect. The advice received was not campaign related advice, so could in no way be counted as such in the spending return." Leave.EU stated that much of the advice was provided directly to Mr Banks in a variety of capacities, and so was not necessarily all related to his capacity as a senior figure in Leave.EU and BFTCL. We accept that, on the basis of the evidence it has seen, the advice from Goddard Gunster was paid for and largely provided prior to the referendum period. However, section 117(5) of PPERA states: Where— (a) at any time before the beginning of any referendum period, any expenses within section 111(2) are incurred by or on behalf of an individual or body in respect of any property, services or facilities, but (b) the property, services or facilities is or are made use of by or on behalf of the individual or body during the referendum period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of section 111(2) have constituted referendum expenses incurred by or on behalf of the individual or body during that period, the appropriate proportion of the expenses mentioned in paragraph (a) shall be treated for the purposes of this section as referendum expenses incurred by or on behalf of the individual or body during that period. In other words, if campaigners incur expenditure prior to the regulated period and benefits obtained from that spending are made use of during the regulated period, the spending must be treated as if it was incurred during the regulated period and must therefore be reported. We considered a significant volume of material obtained from Leave.EU relating to the support provided by Goddard Gunster to Leave.EU. The evidence included emails from Mr Gunster to various Leave.EU senior officers and showed a close working relationship between Goddard Gunster, Leave.EU and Arron Banks prior to the designation decision.

with regular contact between the parties. Leave.EU said that Goddard Gunster's advice was relevant to a 'ground' campaign (i.e. door to door persuasion) and not to a social media campaign, which is what Leave.EU undertook following the unsuccessful Go Movement designation application. Leave.EU suggested, therefore, that any advice provided would have been rendered irrelevant following the decision to focus on a social media campaign following the designation. The advice provided by Goddard Gunster was at times general, but at other times detailed and specific. It included advice on planning a campaign, targeting of messages, identification of the most persuadable voter demographics, and comment and analysis of material provided to Goddard Gunster (including polling data). The documents included campaign plans tailored to a Go Movement Ltd/Leave.EU campaign, presumably to be conducted in the event that the Go Movement Limited was designated as a lead campaigner. Leave.EU described these documents as "...irrelevant for the purposes of the referendum." However, we noted that they included phases marked 'complete'. We saw evidence that Goddard Gunster analysed polling data, which Leave.EU provided to him, and used it to identify key target demographics and key messages which would resonate with voters. For example, Goddard Gunster provided 'initial thoughts' for a 'systematic and phased campaign based on the research findings.' These include key 'strategic imperatives', a phased campaign plan, including 'voter identification and recruitment of likely 'leave' voters, 'Phase II: Persuasion' to 'Feed persuasion messaging' to 'soft leave and soft remain.' And 'Phase III: Final Push/GOTV'. It included messaging advice about tactics to ensure messages had the best chance of resonating with voters, provided detailed analysis of target demographics in terms of age, political views, employment and geographical location. We noted evidence demonstrating that Goddard Gunster's advice was under active consideration within Leave.EU days before the start of the regulated period. For example, internal correspondence from Leave.EU showed that on 12 April 2016 (three days before the regulated period started on 15 April 2016) senior Leave.EU individuals, including Mr Banks, Mr Wigmore and the responsible person Ms Bilney, discussed a potential campaign messaging strategy. A different senior Leave.EU official concluded that it was what Leave.EU "...should be doing under the phase coined by Gerry [Gunster] of 'persuading the persuadable'". Leave.EU then asked for Mr Gunster's advice on the proposed social media strategy. On 13 April 2016 Goddard Gunster was continuing to advise Leave.EU on campaign messaging and targeting, with specific reference to social media. On 15 April 2016, when the regulated period started, Goddard Gunster provided Leave.EU with some critique on a Vote Leave campaign advert and noting why he did not feel it was effective. Leave.EU stated that Goddard Gunster's advice "...was not new and did not change our strategy which was already in place and underway. We had developed our own capability and methodology by then and did not need or benefit from this information." However, even advice confirming that the messages being used were the most effective ones was of benefit to Leave.EU during the referendum campaign. Additionally, Leave.EU stated that Mr Gunster's advice had not been discussed or shared within Leave.EU and that the email of 13 April 2016 was the first time the social media team would have received it. This was despite the fact that it was clear from email evidence that these individuals were already familiar with at least part of Mr Gunster's advice from earlier emails. Further, we were satisfied that the advice resulted in practical steps being taken by Leave.EU. In a letter to us, Mr Banks explained how a call centre was established on the basis of advice from Goddard Gunster, which then continued to advise the project, when he stated: "In various discussions prior to the [regulated] period we discussed the use of polling and the effectiveness and accuracy



of polling. GG encouraged/advised me in general terms to make use of polling, which we then did. A call centre was established to call people and ask questions, GG would have periodically input their thoughts at a high level into the type of polling we were doing and questions that could be asked." Leave.EU's final point was that advice from Goddard Gunster was provided to Mr Banks personally and not to Leave.EU. The evidence, however, does not support this. Goddard Gunster was being paid by BTFC on behalf of Leave.EU, and was under contract to Leave.EU. Mr Banks was the Chair of Leave.EU. Much of the advice provided is directly relevant to a referendum campaigner. We asked Leave.EU and Mr Banks about the various public statements made by them indicating that Goddard Gunster worked on Leave.EU's referendum campaign. Leave.EU told us that the statements made prior to designation related to intended services which Goddard Gunster would have provided to the Go Movement Limited in the event of it being designated as lead campaigner. Further, it said that some of the more specific public statements concerning services from Goddard Gunster, including those in its own press releases, were inaccurate. It stated that, contrary to its press releases after the referendum, Goddard Gunster had no influence on its strategy, did not 'mine' any database or influence social media and did not assist in polling. Leave.EU explained that its public statements after the referendum were to: "vouch for their expertise generally since we were grateful for the experience they brought to bear on the pre-designation decision activities and were keen to work with them further. However the release was prepared by our London team who had no real knowledge of what GG had in fact done for us and [the responsible person for Leave.EU] had no involvement in or input into it. In [her] opinion, the release went too far in terms of GG's actual input." Mr Banks explained his previous public statements concerning Goddard Gunster as either concerning services he expected to be provided in the event of the Go Movement Limited being designated, or as simply being incorrect. Mr Banks and Leave.EU sought to distance themselves from the public statements made after the referendum and explained that the press release thanking Goddard Gunster was drafted by a team without knowledge of Mr Gunster's involvement. We noted, however, that on 27 June 2016 it was Mr Banks who emailed the relevant member of staff to explain to him what he would like the Leave.EU post referendum press release to contain: "We need a press release today thanking Goddard Gunster for their role in winning the referendum, the accuracy of their polling – calling the result exactly right 52/48. & explaining the social media strategy, understanding the voter profile and the massive social media campaign..." We are satisfied beyond reasonable doubt that the services provided by Goddard Gunster were relevant to Leave.EU's referendum campaign, and were made use of during it. This advice was provided to the Leave.EU director, Mr Banks, directly and to senior Leave.EU staff. When the Go Movement Limited designation application failed, it was Leave.EU which undertook the active campaign, and that campaign benefited from the advice from Goddard Gunster. Leave.EU paid a total of approximately £246,000 for this strategic advice. The legal obligation to quantify and report the value of spending with Goddard Gunster which benefitted Leave.EU's referendum campaign rested with the responsible person. This however did not happen. It is not possible on the basis of the evidence we have seen for us to make this assessment. The Better for the Country issues The Better for the Country issues We are satisfied beyond reasonable doubt that Leave.EU, without reasonable excuse, failed to include spending of £77,380 in its referendum spending return, comprising fees paid to BFTCL as its campaign organiser. These facts form part of an offence under section 122(4)(b) in respect of the referendum campaign spending return for Leave.EU. Evidence Evidence and analysis

Leave.EU effectively outsourced its referendum campaign to BFTCL, which incurred and paid for all staff and non-staff campaign expenditure in the name of Leave.EU, and then recharged Leave.EU. There were a number of personnel in common between Leave.EU and BFTCL. Mr Banks was a director of both, and the responsible person for Leave.EU was also a director of BFTCL. We obtained from Leave.EU the contract between Leave.EU and BFTCL. Under 'Terms of engagement', BFTCL's role was described as 'Campaign Management Services Provider'. The contract set out the services provided to Leave.EU by BFTCL on a contractor capacity, which included campaign advisory services, regulatory advisory services, media advisory services (such as public relations, branding and positioning and market research), administration and finance. More generally, the contracted services included the provision of campaign management services, including the payment of campaign spending incurred on Leave.EU's behalf. Under 'commission' within the contract, BFTCL charged Leave.EU a 'cost per seat' (which we calculated at 59% of salary) fee for each member of staff working on behalf of Leave.EU, in addition to the staff salaries. BFTCL also charged Leave.EU a management fee equal to 5% of the net campaign expenses incurred on its behalf. Under this arrangement, BFTCL would contract third party supply for campaign-related services and pay the supplier's invoice, but Leave.EU would be charged by BFTCL (and therefore incur) an amount equal to the invoice value plus an additional 5% of the invoice value to BFTCL. Leave.EU did not report the cost/value of those fees paid to BFTCL. During the investigation Leave.EU did not provide an explanation for why the 5% management fee on non-staff spending by BFTCL was not reported, other than to indicate that it did not believe it fell within the definition of campaign expenses. In respect of the management fee on staff spending, Leave.EU's responsible person told us that Leave.EU believed that the management fees were exempt from reporting under paragraph 2 of Schedule 13 of PPERA. In its representations on our initial determinations, Leave.EU called the payments to BFTCL "internal" costs as the two were "connected companies". It said that the management fees were based on items where a mark-up was included and thus the spend would be double reported. It also argued that VAT on these costs was not reportable as it was reclaimed. Paragraph 1 of Schedule 13 sets out the types of expenditure which are reportable. Paragraph 2 sets out exclusions to the spending detailed in paragraph 1, and states that: Nothing in paragraph 1 shall be taken as extending to (a) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds (b) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the campaign organiser; or (c) any expenses incurred in respect of an individual by way of travelling expenses (by any means of transport) or in providing for his accommodation or other personal needs to the extent that the expenses are paid by the individual from his own resources and are not reimbursed to him. "Campaign organiser" is defined at section 111(4) PPERA as the individual or body by whom or on whose behalf [referendum] expenses are incurred. 4.50 By virtue of sub-paragraph (b) staffing costs of the campaign organiser are not reportable. However, by virtue of the structure created in which 24 Leave.EU was the campaign organiser, but did not directly employ the staff of BFTCL, the staffing costs of BFTCL, and the associated management fees, were not exempt. On VAT elements of management fees, we are satisfied that the campaign spending requirements of PPERA require such to be included, irrespective of any ability to recover repayment of VAT under tax law provisions. The mark-up element of management fees reflected spending by Leave.EU on a separate organisation providing campaign organisation services and should be

included as reported campaign spending. Getting the reporting requirements wrong is not a reasonable excuse, nor does honest but wrong assessment comprise a reasonable excuse. As a result of failing to include the management fees paid to BFCTL, Leave.EU's spending was under-reported. We have calculated the under-report as follows: Leave.EU reported total spending of £693,094. This included staffing costs of £79,121. The non-staff spending was therefore £613,973. The 5% management fee for this spending is £30,699. The correct figure for non-staff spending was therefore £644,672. The staffing costs of £79,121 were subject to a 59% management fee. The fee was therefore £46,681. The correct figure for staff spending was therefore £125,802. We are therefore satisfied beyond reasonable doubt that Leave.EU should have reported non-staff spending of £644,672 and staff spending of £125,802. The further omitted invoices

The further omitted invoices and payments issues

The law requires a referendum spending return to be a complete statement of all payments made and for each payment of over £200 to be accompanied by an invoice or receipt. Further, where a payment is made before the referendum period started but the benefit of it is made use of during the referendum period then it too must be included in the return. We found beyond reasonable doubt that the responsible person of Leave.EU failed, without reasonable excuse, to provide the required invoice or receipt for 97 payments of over £200, cumulatively totalling £80,224. The responsible person of Leave.EU therefore committed an offence under section 122(4)(c) of PPERA. We also found that it was more probable than not that Leave.EU's spending return under-stated the apportioned value of 15 payments totalling £129,720. However, the lack of clear records held by Leave.EU in respect of the apportioned value meant that we could not determine beyond reasonable doubt whether the reported value was right or wrong.

Evidence

Evidence and analysis

Missing invoices and receipts

From our inspection of Leave.EU's referendum spending return, we identified 94 payments totalling £78,804 where invoices or receipts were required but not provided. The payments related to staff costs charged by BFTCL. There is no exemption from the invoice or receipt requirement for reportable staff costs. The remaining three payments that were not supported by invoices were paid to Facebook. Leave.EU told us that Facebook does not provide invoices for the services it provided, and that it included a PayPal transaction report instead. We are aware, however, of other campaigners and parties who have obtained services from Facebook and delivered invoices or receipts to support the payments. We are therefore satisfied that it is possible to obtain an invoice or receipt from Facebook (or any other company), particularly where it is clear that providing such an invoice or receipt with a spending return is a legal requirement under section 120(3)(a) PPERA.

Apportionment of invoices

We obtained, as part of this investigation, invoices for payments made by BFTCL on behalf of Leave.EU which were in addition to the invoices and receipts which Leave.EU included in its referendum spending return. We noted that Leave.EU had incurred debts to BFTCL of over £8m before the referendum period began on 15 April 2016. Leave.EU told us that it had included all reportable spending in its return, and that the majority of the spending covered by these invoices occurred before the referendum period. We identified 54 invoices, with a value of £176,793, which appeared to relate to reportable campaign spending. In some cases spending was apportioned partly into the regulated period according to a formula. The formula involved dividing the value of the spending by the number of days between the day the invoice was raised and the date of the referendum. The value was then apportioned according to the number of those days which fell without and within the regulated period. For example an invoice for £1,000 raised on 15 March 2016, 100 days before the referendum and 34 days before the

referendum period began would be apportioned as £10 per day and therefore £340 before the regulated period and £660 during the regulated period. This approach takes no account of when material was actually used. In a number of cases we noted that Leave.EU did not have adequate records to establish this and therefore to support the apportionment. The apportionment was therefore effectively an estimate, and not a particularly reliable one. For example, it may be reasonable to assume that leaflets were not distributed continuously before and during the regulated period but were in fact mainly distributed closer to the date of the referendum. As a result, 15 invoices in particular, with a value of £129,720, were apportioned with £49,329 reported. Due to the lack of records neither Leave.EU or the Commission is able to verify that the apportionment was accurate. We have not therefore been able to find to the required standard that an offence under section 122(4)(b) has been committed in respect of this spending but consider it more probable than not that there was further under-reporting. The spending limit issue As a non-designated campaigner, the referendum spending limit imposed by section 118(1) and Schedule 14(1)(2)(c) of PPERA on Leave.EU was £700,000. Leave.EU reported spending of £693,094, which is £6,906 under the spending limit. We found beyond reasonable doubt that Leave.EU failed to include a minimum of £77,380 in its spending return, which meant that Leave.EU exceeded its spending limit by more than 10%. We are satisfied that the actual figure was in fact greater, given the failure to report an appropriate proportion of the cost of services provided by Goddard Gunster. The responsible person for Leave.EU authorised those expenses to be incurred by or on behalf of Leave.EU. We are satisfied beyond reasonable doubt that she knew, or ought reasonably to have known, that the expenses would be incurred in excess of the spending limit. We therefore determined that both Leave.EU and the responsible person committed offences under section 118(2)(c) of PPERA. Evidence Evidence and analysis The responsible person for Leave.EU failed without reasonable excuse to report spending on referendum campaign activity in the following areas: Services provided by Goddard Gunster Management fees charged by BFTCL During the investigation, Leave.EU explained that spending totalling £14,816 was, in retrospect, included in error. We have accepted this and decided that it is not proportionate to take enforcement action in respect of it. Leave.EU defended its governance compliance structure and processes and highlighted the experience of its responsible person. It stated that it took an honest and reasonable approach to the assessment, apportionment and declaration of expenditure, and complied with the guidance issued by us. Leave.EU also said that it had included further non-reportable spending in its return, demonstrating a prudent approach. If correct, it would be a serious issue and potentially an offence that the spending return in fact contained a number of payments that should not have been reported. PPERA requires a complete and accurate return of the regulated spending, no more or less. The inclusion of additional spending results in a loss of both transparency and the ability to properly scrutinise complete and accurate spending, in compliance or not with the rules. However, on the evidence before us it was not evident that there are additional elements of non-reportable spending in the Leave.EU campaign spending return. We are satisfied beyond reasonable doubt that Leave.EU made payments of campaign spending that it failed to report, and that this had the consequence of spending in excess of its permitted spending limit. The responsible person of Leave.EU was also a director of both Leave.EU and BFTCL. In addition, she was responsible for authorising payments for both companies. She was therefore aware, or should reasonably have been aware, of all spending incurred on behalf of Leave.EU by BFTCL. We are satisfied that she was

aware of the contractual arrangement between the two companies, as well as the contract between Leave.EU and Goddard Gunster. Further, she was one of those included in many of the emails received from Goddard Gunster. The spending return declaration

The spending return declaration Under section 123(2)(a) and (b)(i) of PPERA, referendum campaign spending returns must be accompanied by a declaration to us made by the responsible person of the campaigner. The responsible person is required to state that they have examined the return and, to the best of his or her knowledge and belief, it is complete and correct as required by law. It is an offence for the treasurer to knowingly or recklessly make a false declaration. Civil sanctions do not attach to this offence; it can only be pursued via a criminal prosecution. We are satisfied that we have reasonable grounds to suspect that the responsible person for Leave.EU either knowingly or recklessly signed a false declaration accompanying the Leave.EU referendum spending return. In line with its Enforcement Policy, we have referred this matter to the Metropolitan Police Service. Offences committed We have determined that the following offences were committed by Ms Elizabeth Bilney, the responsible person of Leave.EU: An offence under Schedule 2 paragraph 5(9)(b) of the Electoral Administration Act 2011 (EURA) in that she failed, without reasonable excuse, to submit a pre-poll regulated transaction report that was complete and accurate An offence under section 122(4)(b) of the Political Parties, Elections and Referendums Act 2000 (PPERA) in that she failed, without reasonable excuse, to deliver a referendum campaign spending return that was complete and accurate in respect of the transactions and payments reported A further offence under section 122(4)(b) of PERA in that she failed, without reasonable excuse, to deliver a referendum campaign spending return that was complete in respect of the required invoices or receipts for all payments over £200 An offence under section 118(2)(c)(i) of PERA in that she incurred spending on referendum activity that exceeded the statutory limit, and that she knew or ought to have known that the spending when incurred was in excess of that limit. 5.2 In addition, Leave.EU committed an offence under section 118(2)(c)(ii) in respect of the same spending that exceeded the statutory limit We have imposed the following penalties on Leave.EU: In respect of the offence under Schedule 2 paragraph 5(9)(b) of EURA – a penalty of £10,000 In respect of the offence under section 122(4)(b) of PERA relating to the completeness of the spending return – a penalty of £20,000 In respect of the offence under section 122(4)(b) of PERA relating to the failure to include invoices or receipts – a penalty of £20,000 In respect of the offence under section 118(2)(c)(i) and (ii) of PERA – a penalty of £20,000 The total value of the penalties imposed on Leave.EU is £70,000. The level of the penalties has been constrained by the cap on our fines.

**Legal framework**

**Legal framework**

**Relevant extracts from the Political Parties, Elections and Referendums Act 2000 (PPERA)**

**Requirement to prepare and submit a complete and accurate referendum campaign expenditure return**

Section 120 of PERA requires that where any referendum expenses are incurred by or on behalf of the permitted participant during any referendum period, and that period ends, the responsible person shall make a return under this section in respect of referendum expenses incurred on or behalf of the permitted participant during that period. Section 120(2) of PERA specifies that the return must contain: (a) a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period in question; [...] (d) in a case where the permitted participant either is not a registered party or is a minor party, a statement of relevant donations received in respect of the referendum which complies with the requirements of paragraphs 10 and 11 of Schedule 15 Section 120(3) of PERA states that a return must be accompanied by: all invoices or receipts relating to the payments mentioned in subsection (2)(a);

and (b) in the case of any referendum expenses treated as incurred by virtue of Section 112 of PPERA, any declaration falling to be made with respect to those expenses in accordance with Section 112(6) [...] (d) ...a statement of regulated transactions entered into in respect of the referendum which complies with the requirements of paragraphs 16 to 20 of Schedule 15A of PPERA Section 122(1) of PPERA states that where any return falls to be prepared under Section 120 in respect of referendum expenses incurred by or on behalf of a permitted participant, and an auditor's report on it falls to be prepared under section 121(1), the responsible person shall deliver the return to the Commission, together with a copy of the auditor's report, within six months of the end of the relevant referendum period. Section 122(4) of PPERA states that the responsible person commits an offence, if without reasonable excuse, they: (a) fail to comply with the requirements of sub-paragraph (1) or (2) in relation to a return under Section 120; (b) deliver a return which does not comply with the requirements of Section 120(2) or (3); or (c) fail to comply with the requirements of sub-paragraph (3) in relation to a return under that subsection

Special restrictions on referendum expenses Section 118 of PPERA states that Schedule 14 of PPERA has effect for imposing, in connection with a referendum, limits on referendum expenses incurred by or on behalf of permitted participants. Under Paragraph 1(2)(c) of Schedule 14 of PPERA, the limit on referendum expenses incurred by or on behalf of a non-party undesignated regulated campaigner was £700,000. Section 118(2)(c) of PPERA states that the responsible person is guilty of an offence if they authorised expenses to be incurred in excess of that limit by, or on behalf of, the registered campaigner and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.

Pre-poll regulated transaction returns Paragraph 5 of Schedule 2 of EURA states that the report for a pre-poll period must record, in relation to each regulated transaction having a value exceeding £7,500 which is entered into by the permitted participant during the period: (a) the nature of the transaction (that is to say whether it is a loan, a credit facility or an arrangement by which any form of security is given) (b) the value of the transaction (determined in accordance with paragraph 3 of the Schedule treated as inserted by paragraph 1 above ("Schedule 15A of PPERA")) or, in the case of a credit facility or security to which no limit is specified, a statement to that effect (c) the date when the transaction was entered into by the permitted participant (d) the same information about the transaction as would be required by paragraph 18(3) and (4) of Schedule 15A to be recorded in the statement referred to in paragraph 15 of that Schedule, (i.e. paragraph 6 of Schedule 6A) (e) the information about each qualifying person who is a party to the transaction which is, in connection with recordable transactions entered into by registered parties, required to be recorded in weekly transaction reports by paragraph 3 of Schedule 6A to PPERA (reading references in that paragraph to an authorised participant as references to a qualifying person who is a party to the transaction), and (f) in relation to a transaction to which a person who is not a qualifying person is a party, the information referred to in paragraph 17 of Schedule 15A of PPERA. Under paragraph 5(9)(b) of Schedule 2 of EURA the responsible person commits an offence if, without reasonable excuse, that person delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraph (3).

Leave.EU background Leave.EU Group Ltd ("Leave.EU" – company number 09763501) was a registered campaigner in the 2016 referendum on the United Kingdom's membership of the European Union ("the EU referendum"). Leave.EU registered as a campaigner on 15 February 2016. Leave.EU was listed as an affiliate in the application of the Go

Movement Limited, also a registered campaigner, for designation as lead campaigner for the 'leave' outcome in the EU referendum. Lead campaigners had a spending limit of £7m for campaign activity. On 13 April 2016 the Commission designated Vote Leave Limited as the lead for the leave outcome. The EU referendum took place on 23 June 2016. Under PPERA the responsible person for Leave.EU, Ms Elizabeth Bilney, had to deliver to us pre-poll transaction and donation returns in the weeks running up to the referendum poll, and a return of all campaign spending incurred by or on behalf of Leave.EU during the EU referendum regulated campaign period of 15 April to 23 June 2016. As Leave.EU incurred campaign spending in excess of £250,000, the deadline for the return's delivery was 23 December 2016. Ms Bilney delivered the return in advance of this deadline. 1.7 Leave.EU reported spending of £693,094. Its spending limit was £700,000. Related content about our enforcement work Electoral law is out of date. Find out where we want to see improvements Political parties, campaigners and other groups have to report their finances to us. Find out about campaign spending, donations and loans and annual accounts.