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Letter summary Read our letter in full First published: 2 August 2018 Last updated:

16 July 2019 Summary of the letter Date: 2 August 2018 To: The Rt Hon Priti Patel MP

Address: House of Commons, London, SW1A 0AA Email address: withammp@parliament.uk

From: Louise Edwards, Head of Regulation Format: Sent by email Full letter Dear Ms

Patel, Complaint regarding EU Referendum campaigners We have now completed our

assessment of the allegations you made in your letters dated 27 May 2018 and 3 June 2018. We aim to respond to complainants within 21 days of receiving their complaint.

I apologise that on this occasion it has taken longer. To complete the assessment we needed information from your office and from DDB UK Ltd (otherwise known as Adam and Eve). This additional stage extended the assessment. On this note, thank you for the

additional information you supplied in a letter dated 25 June 2018, which we received by email on 17 July 2018. As our Enforcement Policy explains, we may open an

investigation where we have reasonable grounds to suspect an offence within our remit has been committed. This threshold is applied to every case we assess, and has been

applied in this case. I set out below the conclusions of our assessment. Joint

spending rules The 'working together' or 'joint spending' rules for the EU Referendum

were set out in the European Union Referendum Act 2015. They were known as the

'common plan' rules in that Act. Under these rules, campaign groups can work together to achieve a particular outcome, but their spending – when combined – must not exceed

their individual spending limit. Where a lead campaigner is working together with other campaign groups, all the spending will count towards the lead campaigner's

total. Under the rules, set out by parliament, the following does not count as joint working, as they are permitted and do not dictate how money is spent: Donations from

an individual or group to multiple campaigners. A single supplier working for multiple campaigners. s registering late in the campaign. When looking at joint

spending we are not necessarily looking for a written plan, although we advise campaigners to have something in writing if they are working together. But we are

looking for evidence of: joint or coordinated spending; control or influence over spending by another campaigner; or discussions or consultation about campaign

activity that affects spending decisions. You may be interested to read a recent blog we posted on this subject: When does working together break the rules? Thank you for

sharing details of the two instances where you believe joint working took place but the spending was not declared: 5 seconds to mark an X/Don't fuck my future/Project

Ruby videos Various campaigners that registered late in the campaign 5 Seconds to Mark an X/Don't Fuck My Future/Project Ruby We have looked at the links you provided

to items of spending reported by DDB and apparently connected to these videos. These show that DDB incurred and reported spending on the videos. The issue is whether that

spending should have been reported in accordance with the common plan rules. We looked at the media reports you shared with us from 2016 which indicate that these

videos were the work of other campaigners. The evidential weight we can reasonably put on these accounts is limited, as they do not offer reasons for their claims and

are contradictory. We then looked at the following, to see whether it – individually or together – was evidence of joint working: The fact that donors to Britain Stronger

In Europe (BSIE) also donated to Wake Up and Vote (WUAV) and BSIE. The law allows donors to give to as many campaigns as they want, and donations are not the same as

spending. So we looked at whether there was evidence that donations from the same donor were being used by different campaigners for a common purpose. We didn't find

any evidence to suggest this. The fact that DDB provided services to more than one campaigner. The joint spending rules aren't engaged if, for example, campaign A commissions its own services from a supplier and campaign B commissions separate services from the same supplier. For joint spending to happen campaigns A and B must commission services that are part of a common plan. There was one instance where we suspect this may have happened. I explain this below. The fact that BSIE hosted a campaign video from another campaigner on its website. Deciding to host a campaign video or share a link to another campaigner's work could be part of a common plan, if there was some evidence that this common plan existed. But it isn't evidence of a common plan in and of itself. DDB advises us that the videos were its initiative, funded by its donations. These included donations from WUAV and We Are Europe (both reported in its return although we note the WUAV donation is reported as from Ms Emma Duncan). However, WUAV reported spending £24,000 on services from DDB. The invoice references the '5 seconds' campaign. This indicates that spending on the same campaign activity was incurred by DDB and WUAV. It raises a reasonable suspicion that DDB and WUAV incurred joint spending that has not been declared as such. We have opened an investigation to establish what happened and whether or not any offences were committed. As I am sure you will understand, it would not be appropriate for me to discuss the investigation with you while it is ongoing. However, as with all our investigations, we will publish the outcome in due course. As you are the complainant in this matter, we will also tell you what we conclude. BSIE and other campaigners We reviewed the EU referendum campaigner registration dates you provided, and the donor and staffing connections between them. We note your belief, based on these dates and connections, that these five campaigners were set up by BSIE and acted under a common plan with it. The dates and connections are not in and of themselves evidence of joint spending. There wasn't a cut-off date for registering as a campaigner in the EU Referendum. Individuals and organisations registered throughout the campaign, with some on both sides of the debate choosing to register late on as their campaign activity was concentrated in the final few days before the poll. Again, campaigners could use the same suppliers, and the same volunteers, and donors were allowed to give to more than one campaigner. While we are not necessarily looking for a documented plan in order to show joint working, there must be something we can point to that explains why we think it happened. We looked at whether we could locate sources of evidence that BSIE set up these campaigners, or whether even in the absence of such evidence we could infer a reasonable suspicion of undeclared common plan expenses. After a thorough assessment, our conclusion is that we can find nothing beyond conjecture to support the argument that there must be undeclared joint spending between these various campaigners. There is nothing we can point to that reasonably indicates some kind of common campaign activity. As such, this does not meet the threshold for an investigation to be opened. Should evidence of any breaches of the rules for the EU Referendum come to light, we would of course look again. The Commission's independence and impartiality Finally, I must express my disappointment at your continued suggestion that the Commission's impartiality has been compromised in respect of how we regulate EU referendum campaigners. Our statutory duty, our published Enforcement Policy and our internal enforcement processes all provide clear and meaningful assurance that we regulate based on evidence. We also publish the outcome of all investigations so that voters can see the conclusions we make. Our investigations cover parties from across the political spectrum, and campaigners from both sides of the EU referendum. You will, I am sure, have seen our detailed report on the investigation into Vote Leave, Mr Grimes and Veterans for Britain. The report

explains why we opened the investigation, and summarises the significant evidence on which our conclusions were based. I appreciate your support for the Commission's role and independence and believe the best way for us to maintain our independence is to continue our evidence-led approach. It would be wrong for us to take decisions on the basis that we must balance action in respect of 'leave' campaigners with action in respect of 'remain' campaigners. That would undermine our neutrality, rather than ensure it. I repeat my offer, made in my letter of 15 January, to meet if you would find that helpful. Though we cannot discuss live investigations we remain happy to provide a thorough explanation of our enforcement approach and processes. To arrange a meeting please contact our Public Affairs Manager Laura McLeod. Thank you for your letters. We will contact you again once our investigation into DDB and WUAV is concluded. Related content Letter: Coronavirus and its impact on the May polls Read our letter to Chloe Smith MP (Minister for the Constitution and Devolution) from March 2020 Letter: Spending by Britain Stronger in Europe at the 2016 EU referendum Read our letter to the Rt Hon Priti Patel MP from January 2018 Letter: To Google about digital campaigning at the EU referendum Read our letter to Google from November 2017 Letter: To Twitter about digital campaigning at the EU referendum Read our letter to Twitter from November 2017