

ELECTORAL COMMISSION FOUND TO HAVE GOT THE LAW WRONG IN EU REFERENDUM

The Divisional Court has found that the Electoral Commission – the body charged with overseeing elections and referendums in the UK – got the law wrong when it regulated the EU Referendum. The Court’s judgment was handed down today.

The [Good Law Project](#) issued proceedings in October 2017 challenging the failure of the Electoral Commission properly to regulate the EU Referendum. Vote Leave spent £2.7 million on the services of AggregateIQ and then, having reached its spending limit, paid additional money to AggregateIQ which was said to be on behalf of Darren Grimes and Veterans for Britain. This additional money was paid following advice given by the Electoral Commission that this was permitted under election law. Our client’s claim arose out of concern that the Electoral Commission’s understanding of the law defeated its purpose: preventing any one voice or campaign from having an outsized influence on voters. As Jolyon Maugham, the director of the Good Law Project, said in his initial [witness statement](#): “This challenge relates to the spending limits imposed by parliament to protect our democracy from capture by those with endless money to spend”.

Polly Glynn who represented the client, stated: “It is vital for our democracy that there are limits on the influence that those with money can buy. For elections to work the Electoral Commission must be clear, robust and fair in its regulation of elections. This judgment points out how far they fell short of this standard in the EU Referendum.”

As well as this challenge to the Electoral Commission’s interpretation of the law, the claim also challenged the Commission’s decision not to investigate whether there had been “working together” between Vote Leave and other Leave campaigns. There are specific rules around Working Together which are designed to prevent an organisation exceeding its spending limits through channelling spending through another organisation with which it shares a ‘common plan’. Again, these rules are targeted at defeating outsized influence in elections. It was never in dispute that if there was “working together” in the making of the AggregateIQ payments then under the clear rules and guidance any money spent should be declared by Vote Leave as a referendum expense. But it was the Electoral Commission’s position at the outset of the case that there was not enough evidence about this to open an investigation. The Good Law Project argued that from the facts before it the Electoral Commission should certainly investigate this issue, and the decision not to was unlawful.

Following the issue of proceedings – in fact the day the Electoral Commission’s defence to the claim was due – the Electoral Commission effectively conceded this second issue by announcing an investigation would take place into Working Together. This investigation resulted in Vote Leave and Darren Grimes being found to have [breached the Electoral rules](#), fined, and referred to the police to consider criminal prosecution. So far as we are aware Vote Leave have not appealed against this finding and the time limit for doing so has now expired.

The separate issue of whether the Electoral Commission had got the law wrong continued to a full hearing. The Good Law Project argued that a party in an election or referendum should not be allowed to get around the spending limit by paying for referendum expenses which were donated to another participant campaigning for the same outcome without declaring this payment. The Electoral Commission and Vote Leave disagreed.

The court found that the Claimant was right, and the Electoral Commission had got the law wrong. The Divisional Court found that it was not permitted under election rules for Vote Leave to have donated services (or cash with conditions), without declaring it as a “referendum expense” in their return.

Our client's legal challenge was crowdfunded and the Good Law Project would like to thank everyone who donated for their generosity and commitment to democracy.

The barristers instructed were [Jessica Simor QC](#) of Matrix Chambers, [Tom Cleaver](#) of Blackstone Chambers and [Eleanor Mitchell](#) of Matrix Chambers.

Notes to editors

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About the Good Law Project

The Good Law Project is a non-profit, membership organisation that uses strategic litigation to deliver a progressive society. It brings strategic legal cases to change how the law works and to drive demand for further law change. It was founded by Jolyon Maugham in 2017. www.goodlawproject.org

About Deighton Pierce Glynn

Deighton Pierce Glynn is one of the leading civil rights and judicial review law firms in the UK. Operating from offices in the City of London, London Bridge and Bristol, the firm has acted in numerous leading cases up to and including the Supreme Court as well as the European Court of Human Rights. www.dpglaw.co.uk

