



The Rt Hon. Theresa May PM
Prime Minister
10 Downing Street
London SW1A 2AG

By post and email: mayt@parliament.uk

Dear Prime Minister,

This is a formal pre-action letter sent pursuant to the Pre-Action Protocol for Judicial Review.

The Claimant

1. The Fair Vote Project, registered as Let's Take Back Control Limited, 51 Clarkegrove Road, Sheffield S10 2NH.
2. The Claimant is bringing this claim to ensure that the law is properly applied in the public interest. The claim will be funded through a public crowd-funding campaign. It is anticipated that the claimant shall be seeking a cost-capping order.

The Defendant's reference details

3. The Prime Minister, 10 Downing Street, London SW1A 2AG.

The details of the Claimants' legal advisers, if any, dealing with this claim

4. Deighton Pierce Glynn, 8 Union Street, London SE1 1SZ, DX144360 Southwark 4. Ref PG/3752/1

The details of the matter being challenged

5. The Prime Minister's decision to refuse to accede to the Claimant's request set out in its letter of 05 July that in the light of recent revelations as to the corruption and illegality in the conduct of the referendum, the Prime Minister:
 - a. order an independent and speedy investigation or inquiry into the irregularities and illegal practices that took place during the European Union referendum campaign of 2016, or to consider how best to conduct another referendum; and/or
 - b. consider holding another people's vote on withdrawal from the European Union, possibly under more strictly controlled conditions;
 - c. seek an extension of time from the EU 27 in order to effect one or both of the above.
6. The Claimant stated in his letter of request that should the Prime Minister not reply within seven days, namely on 12 July, the Claimant would take her silence to constitute a refusal. Accordingly, having had no response to date, the Claimant proceeds on the basis that the Prime Minister is not willing to take any of the above steps. For the reasons set out below, the Claimant submits that that refusal is unlawful.
7. In addition the Claimant seeks a declaration that the referendum result was procured by fraud. That claim could be brought by way of proceedings pursuant to Part 8 of the CPR. However, to avoid a multiplicity of actions, the Claimant will seek that relief in the context of this proposed action.

Recent developments that show that the referendum result was procured by fraud and/or corrupt practices or other illegality

8. The conduct of the EU referendum was governed by the Political Parties Elections and Referendum Act 2000 ("PPERA") 2000, the EU Referendums Act 2015 ("the 2015 Act") and the common law. Its outcome was advisory as a matter of law. Put another way, its result had no automatic consequences but required further decisions to be taken. Accordingly, it was distinct from a vote for the election of a candidate for some office, where the automatic consequence of the candidate achieving the majority of the votes is that that the candidate is elected, subject only to the election having been lawful.
9. The advisory nature of the referendum vote did not diminish the need for participants to act lawfully. Parliament enacted detailed rules to ensure that the advice given by the referendum result amounted to a real and fair reflection of the view of the electorate. Further, the rules were put in place by Parliament to ensure transparency and public confidence in the democratic processes. Thus it set out rules to control and limit expenditure, to require participants spending more than £10k to register and declare expenses and donations received, to control co-ordination between campaigns and to

prohibit certain donors, including foreign donors so as to avoid foreign interference. Compliance with these laws was the means by which Parliament sought to ensure that legitimate and fair advice was given by way of the referendum.

10. It is now clear that the referendum outcome, namely the advice by the British public that the UK should leave the EU, was based on a process in which participants, including the designated lead campaign for 'Leave', committed significant breaches of the law. The full offences are set out in two Reports by the Electoral Commission. They are summarised in this letter below.

11. **As regards Vote Leave Limited ('Vote Leave'), the official designated campaign,** the Commission in its Report¹ imposed maximum fines in respect of the following:

- a. An offence under section 122(4)(b) PPERA in that Mr David Allan Halsall, Vote Leave's registered 'responsible person' before the Electoral Commission failed, without reasonable excuse to deliver a referendum spending return for Vote Leave that was a complete statement of all payments made. The Commission has fined Vote Leave £20,000 for this offence.
- b. An offence under section 118(2)(c)(i) PPERA in that Mr Halsall incurred spending which he knew or ought reasonably to have known was in excess of the statutory spending limit for Vote Leave. Vote Leave also committed an offence under section 118(2)(c)(ii). The Commission has fined Vote Leave £20,000 for this.
- c. An offence under Schedule 19B paragraph 13(1) PPERA in that it failed, without reasonable excuse, to comply with a requirement imposed by the Commission to produce documents by a specified date. The Commission has fined Vote Leave £20,000 for this offence.

12. In summary, Vote Leave, the official designated campaign, has been found on a standard of beyond reasonable doubt to have committed serious offences, including joint working between the lead campaigner, Vote Leave and another campaign group BeLeave. BeLeave was found to have spent more than £675,000 with Aggregate IQ under a common plan with Vote Leave. This spending should have been declared by Vote Leave. It means Vote Leave exceeded its legal spending limit of £7 million by almost £500,000. Not only did the Electoral Commission issued Vote Leave the maximum fines available to it in respect of that conduct, it also made references to the police as set out below.

13. **As regards Mr Darren Grimes**, he was found to have committed two offences and has also been fined the maximum fine, of £20,000. Mr Grimes spent more than £675,000 on

¹ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/244900/Report-of-an-investigation-in-respect-of-Vote-Leave-Limited-Mr-Darren-Grimes-BeLeave-and-Veterans-for-Britain.pdf

behalf of BeLeave, a non-registered campaigner that had a spending limit of £10,000. Further, he wrongly reported that same spending as his own.

14. The Commission determined, again on a beyond reasonable doubt standard, that Mr Darren Grimes committed:
 - a. An offence under section 117(3) PPERA in that Mr Grimes incurred spending on behalf of BeLeave that exceeded the statutory limit for a nonregistered campaigner. BeLeave also committed an offence under section 117(4). The Commission has fined Mr Grimes £20,000 for this.
 - b. An offence under section 122(4)(b) PPERA in that Mr Grimes failed, without reasonable excuse, to deliver a referendum spending return as an individual registered campaigner that was a complete statement of all his referendum spending. In light of its decision to impose a fine on Mr Grimes for his offence under section 117(3) PPERA.
15. **As regards Veterans for Britain** the Commission determined that its responsible person had committed an offence under section 122(4)(b) PPERA in that it failed, without reasonable excuse, to deliver a referendum spending return that included an accurate report of relevant donations received. The Electoral Commission was unable to establish beyond reasonable doubt that the £100k that Vote Leave had paid to Aggregate IQ on 20 June 2016 (declared as a donation to Veterans for Britain on 20 May 2016) took the same form as the donation to Darren Grimes, that is, was in fact expenditure by Vote Leave. It is possible that the metropolitan police investigation into Vote Leave as well as the ICO investigation may shed further light on this.
16. The Commission has referred both Mr David Halsall the responsible person for Vote Leave, and Mr Grimes to the Metropolitan Police in relation to false declarations of campaign spending.
17. The Commission has also shared its investigation files with the Metropolitan Police in relation to whether any other persons have committed related offences which lie outside the Commission's regulatory remit; these may include members of the Vote Leave Board who include Ministers, former Ministers and MPs.
18. **Leave.EU** has also been found by the Electoral Commission to have committed offences including failing to include a minimum of £77,380 in its spending return, thereby exceeding its spending limit by more than 10%. The Commission stated that it was 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. Further, the Commission found that Leave.EU did not correctly report the receipt of three regulated transactions from Mr Arron Banks, totalling £6million. The dates the transactions were entered into, the repayment date, the interest rate and the provider of the transactions were all incorrectly reported. Further, 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. Leave.EU failed to include in its referendum spending return, spending of £77,380 in 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, cumulatively totalling £80,224.

19. The Report² summarises the offences as follows:

- a. An offence under Schedule 2 paragraph 5(9)(b) EURA in failing, without reasonable excuse, to submit a pre-poll regulated transaction report that was complete and accurate.
- b. An offence under section 122(4)(b) PPERA in failing, without reasonable excuse, to deliver a referendum campaign spending return that was complete and accurate in respect of the transactions and payments reported.
- c. A further offence under section 122(4)(b) PPERA in failing, 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.
- d. An offence under section 118(2)(c)(i) PPERA for incurring spending on referendum activity that exceeded the statutory limit, and that the responsible person knew or ought to have known when incurred was in excess of that limit.
- e. In addition, Leave.EU committed an offence under section 118(2)(c)(ii) in respect of the same spending that exceeded the statutory limit.

20. The Commission imposed the following penalties on Leave.EU:

- a. In respect of the offence under Schedule 2 paragraph 5(9)(b) of EURA – a penalty of £10,000.
- b. In respect of the offence under section 122(4)(b) of PPERA relating to the completeness of the spending return – a penalty of £20,000.
- c. In respect of the offence under section 122(4)(b) of PPERA relating to the failure to include invoices or receipts – a penalty of £20,000.
- d. In respect of the offence under section 118(2)(c)(i) and (ii) of PPERA – a penalty of £20,000.

21. The Commission explicitly stated that the total value of the penalties imposed on Leave.EU is £70,000, which was constrained by the cap on the Commission's fines.

² https://www.electoralcommission.org.uk/_data/assets/pdf_file/0018/243009/Report-on-Investigation-Leave.EU.pdf

22. In addition to the findings set out above, the Claimant notes that there is good evidence of illegal working together between Vote Leave and the DUP, involving further over-spending by Vote Leave: see the BBC spotlight programme aired on 26 June 2018 which raised real issues as to the legality of Vote Leave/DUP spending; [Annex C]

23. **In addition, the ICO fined Facebook the maximum fine available to it: £500,000** and issued an interim update report on 10 July 2018 concerning data usage during the campaign.³ In the course of this initial phase of its investigation it noted that it had taken the following regulatory action:

- a. 11 warning letters requiring action by the main political parties backed by Assessment Notices for audits later this year.
- b. An Enforcement Notice for SCL Elections Ltd to deal properly with Professor Carroll's subject access request.
- c. A criminal prosecution for SCL Elections Ltd for failing to properly deal with the ICO's Enforcement Notice.
- d. An Enforcement Notice for AiQ to stop processing retained UK Citizen data.
- e. 40 Notices of Intent to take regulatory action for a data broker Emma's Diary (Lifecycle Marketing (Mother and Baby) Ltd), and Facebook Group of companies.
- f. Audits of the main credit reference companies and Cambridge University Psychometric centre.

24. The ICO Interim Report notes that:

"A key strand of our investigation is the link between CA, its parent company SCL Elections Ltd, Aggregate IQ and allegations that data that may have been misused by both sides in the UK referendum on membership of the EU..... In addition to the potential links between CA and Leave.EU, which initiated our investigation, we found a number of lines of enquiry, including their relationship with a Canadian firm, Aggregate IQ and its work with Vote Leave, BeLeave, Veterans for Britain and the Democratic and Unionist Party's Vote to Leave campaign. We have identified information during our investigation that confirmed a relationship between Aggregate IQ (AIQ) and CA / SCL. To the extent this relationship involved the acquisition and use of personal data, we have also considered their interactions during our investigation...."

³ <https://ico.org.uk/media/action-weve-taken/2259371/investigation-into-data-analytics-for-political-purposes-update.pdf>

Our investigation also considered the use of personal data by the Remain campaign group, Britain Stronger in Europe, in particular their use of services provided by the Messina Group, amongst others.”⁴

25. The Information Commissioner, Elizabeth Denham, stated:

'We are at a crossroads. Trust and confidence in the integrity of our democratic processes risk being disrupted because the average voter has little idea of what is going on behind the scenes,' ... 'New technologies that use data analytics to micro-target people give campaign groups the ability to connect with individual voters. But this cannot be at the expense of transparency, fairness and compliance with the law. Fines and prosecutions punish the bad actors, but my real goal is to effect change and restore trust and confidence in our democratic system.'

26. In its 'policy report' of 10 July 2018 entitled 'Democracy Disrupted: Personal Information and Political Influence' the Information Commissioner asked if democracy had been disrupted by the use of data analytics and new technologies.⁵ The Report concluded expressing concern as to the possibility that the current use of personal information by data companies may have already undermined the democratic process:

4.4 So has democracy been disrupted?

This is a complex and rapidly evolving area of activity, and the level of awareness amongst the public about how data analytics works and how their personal information is collected, shared and used through such tools is low. What is clear is that these tools have a significant impact on individuals' privacy. It is important that there is a greater and genuine transparency about the use of such techniques to ensure that people have control over their own data and the law is upheld.

We opened this report by asking whether democracy has been disrupted by the use of data analytics and new technologies. Throughout this investigation, we have seen evidence that it is beginning to have a profound effect whereby information asymmetry between different groups of voters is beginning to emerge. We are now at a crucial juncture where trust and confidence in the integrity of our democratic process risks being undermined if an ethical pause is not taken. The recommendations made in this report – if effectively implemented – will change the behaviour and compliance of all the actors in the political campaigning space.

⁴ P. 8

⁵ <https://ico.org.uk/media/action-weve-taken/2259369/democracy-disrupted-110718.pdf>

27. Ms Denham called for an 'ethical pause' to allow Government, Parliament, regulators, political parties, online platforms and the public to reflect on their responsibilities in the era of big data before there is a greater expansion in the use of new technologies.
28. The Commissioner published second 'update report' on its investigation on the activities of Cambridge Analytica, a company related to Aggregate IQ, and Facebook.
29. The Report, titled: 'Investigation into the use of data analytics in political campaigns' refers to the ICO's intention to fine Facebook a maximum £500,000 for two breaches of the Data Protection Act 1998. The ICO's investigation concluded that Facebook contravened the law by failing to safeguard people's information. It found that the company failed to be transparent about how people's data was harvested by others.
30. The Report noted that Cambridge Analytica had 'harvested' the data of at least 50 million (estimated by Facebook themselves to be up to 87 million) global Facebook users, including 1 million Facebook users in the UK. The Report notes that the Commissioner has 'seized significant volumes of evidence and several servers, including servers that had been disconnected' from Cambridge Analytica systems and 'continue to analyse that evidence'.
31. The Report had this to say by way of interim conclusion about the relationship between Aggregate IQ, VoteLeave and other leave campaigns:

4.9 The relationship between Aggregate IQ, Vote Leave and other Leave campaigns

In response to information requested by the ICO from Facebook they confirmed on 18th May 2018 that AIQ created and, in some cases, placed advertisements ('ads') on behalf of the DUP Vote to Leave campaign, Vote Leave, BeLeave and Veterans for Britain. The majority of the ads – 2,529 out of a total of 2,823, were created on behalf of Vote Leave. In the run-up to the referendum vote on 23rd June 2016, AIQ ran 218 ads solely on behalf of Vote Leave and directed at email addresses on Facebook. Facebook believe the email addresses originated from a different source than the data collected through the GSR app. Facebook confirmed that Vote Leave and BeLeave used the same data set to identify audiences and select targeting criteria for ads.

However, BeLeave did not then go on to run any ads, albeit their electoral return indicates that they committed expenditure to this. Vote Leave ran 1,034 ads between 19th April 2016 and 20th June 2016. Payment for all of these Facebook ads was made by AIQ, and amounted to around \$2 million (approximately £1.5 million) between 15th April 2016 and 23rd June 2016. Our regulatory concern is therefore whether, and on what basis, the two groups have shared data between themselves and others.

...

We have established that AIQ had access to UK voter personal data provided from the Vote Leave campaign. We are currently working to establish where they accessed that personal data, and whether they still hold personal data made available to them by Vote Leave. We are engaging with our regulatory colleagues in Canada, including the federal Office of the Privacy Commissioner and the Office of the Information and Privacy Commissioner, British Columbia.” (emphasis added)

32. The investigation remains ongoing and is reported as ‘pursuing active lines of enquiry and reviewing a considerable amount of material retrieved from servers and equipment’. The next phase of the ICO’s work is expected to be concluded by the end of October 2018.
33. The Information Commissioner commissioned research from the Centre for the Analysis of Social Media at the independent think tank DEMOS. Its report, also published on 10 July, examined current and emerging trends in how data is used in political campaigns, how use of technology is changing and how it may evolve in the next two to five years.
34. Finally, evidence of Russian government interference in the EU referendum is being considered and may emerge in the course of the ongoing investigations by the DCMS committee, the ICO and possibly the investigation by Robert S. Mueller III, who has been appointed to serve as Special Counsel for the United States Department of Justice, on possible Russian government interference in the US election of 2016. Such foreign interference may give rise to further criminal prosecutions.

The Prime Minister’s exercise of her powers to decide to withdraw the UK from the EU and notify the EU to that effect.

35. On 23 June 2016 51.89% of those voting in the referendum, voted in favour of the United Kingdom leaving the EU. The referendum was advisory but the Government had stated that it would abide by the result. Following the result the Government stated that it intended to notify the EU Council of its decision to abide by the result, that is, that the UK should leave EU and to do so using its prerogative power to make international treaties. That decision was subject to legal challenge, which was upheld. In *R (on the applicant of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5 the Supreme Court (upholding a three judge Divisional Court) held that the executive had no prerogative power to notify the EU Council of the United Kingdom's intention to leave the EU.
36. Accordingly, the Government laid legislation before Parliament which gave the Prime Minister a statutory power to notify the EU under Article 50 of the TEU of the UK’s intention to withdraw from the EU: s. 1 the European Union (Notification of Withdrawal) Act 2017 ('the 2017 Act'). On 31 January 2017, at the bill’s second reading in the House

of Commons the then Secretary of State for Exiting the European Union, Mr David Davis MP, introduced it as follows:

I beg to move, that the Bill be now read a Second time. ... The Bill responds directly to the Supreme Court judgment of 24 January, and seeks to honour the commitment the Government gave to respect the outcome of the referendum held on 23 June 2016. It is not a Bill about whether the UK should leave the European Union or, indeed, about how it should do so; it is simply about Parliament empowering the Government to implement a decision already made—a point of no return already passed. We asked the people of the UK whether they wanted to leave the European Union, and they decided they did. At the core of this Bill lies a very simple question: do we trust the people or not? The democratic mandate is clear: the electorate voted for a Government to give them a referendum. Parliament voted to hold the referendum, the people voted in that referendum, and we are now honouring the result of that referendum, as we said we would...

This Bill provides the power for the Prime Minister to begin that process and honour the decision made by the people of the United Kingdom on 23 June last year, and I commend it to the House. Trust the people."

37. Royal Assent was given on 16 March 2017. The Explanatory Notes state that The Act gives the Prime Minister the power to notify the European Council of the United Kingdom's intention to withdraw from the European Union. The discretionary power provides:

1 Power to notify withdrawal from the EU

(1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.

38. The Divisional Court held in *R (on the application of Webster) v Secretary of State for Exiting the EU* [2018] EWHC 1543 (Admin) that:

"13.... Its authorisation to the Prime Minister to notify under Art.50(2), plainly contemplated and encompassed the power to take a decision to withdraw and conferred that power expressly on the Prime Minister; there would indeed be no point in notifying under Art.50(2), absent a decision to withdraw under Art.50(1)." (emphasis added)

39. In exercise of that power, on 29 March 2017 the Prime Minister took a decision to withdraw the UK from the EU and Euratom and to notify the EU of that decision by way of a letter to that effect sent to the President of the European Council.

40. The Prime Minister expressly stated that the reason for her decision to withdraw the UK from the EU and to notify the EU of that decision was the voting result of the referendum of 23 June 2016. The letter set out her reasons in the following way:

On 23 June last year, the people of the United Kingdom voted to leave the European Union....Today, therefore, I am writing to give effect to the democratic decision of the people of the United Kingdom. I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom's intention to withdraw from the European Union.

41. The Divisional Court in *Webster* held that:

“Even putting the Referendum to one side, this is the language of decision not of notification alone, in vacuo, so to speak. The Prime Minister's letter itself contains a decision; backed by the authority of the 2017 Act, that decision complies with the requirements of Miller.”

42. This finding accorded with the submission of the Secretary of State in the *Webster* case that it was the Prime Minister who had taken the decision to withdraw the UK from the EU because “[u]nquestionably the notification is a decision to withdraw”.⁶
43. The Prime Minister and the Secretary of State have repeatedly stated the basis for the Prime Minister’s decision to withdraw the UK from the EU was that the a majority of those who voted in the referendum voted in favour of leaving the EU and the Government had promised to honour the result of the referendum.
44. It follows that the basis for the Prime Minister’s decision to withdraw and notify was her understanding that there had been a free and fair vote which had produced a result of 51.89% of those voting, voting in favour of the UK leaving the EU (or 34.73% of the voting public, turnout according to the Electoral Commission). At the time of the decision the Prime Minister had no reason to believe that the referendum had been conducted anything other than lawfully and fairly and indeed, it was only on that basis that she could reasonably have concluded that the result was a democratic (lawful) decision, which as such validly reflected ‘the will of the people’.
45. On July 12 2018 Her Majesty’s Government reiterated this in its white paper ‘The Future Relationship Between the United Kingdom and the European Union’. The Prime Minister introduced the paper as follows:

‘In the referendum on 23 June 2016 – the largest ever democratic exercise in the United Kingdom – the British people voted to leave the European Union. And that is what we will do – leaving the Single Market and the Customs Union, ending free movement and the jurisdiction of the European Court of Justice in this country, leaving the Common Agricultural Policy and the Common Fisheries Policy, and

⁶ Transcript of hearing on 12 June 2018 p. 33B

ending the days of sending vast sums of money to the EU every year. We will take back control of our money, laws, and borders, and begin a new exciting chapter in our nation's history'.

46. For the reasons set out below, it is now open to significant doubt whether the factual basis for the Prime Minister's decision was correct; had she known what is known now, namely that the referendum result was procured by criminal conduct, she could not confidently have proceeded on the basis that 51.89% of those who voted and 34.73% of the electorate were in favour of the UK leaving the EU. Indeed, the significance of the matters set out in paragraphs 8-35 above are such that it cannot be said that the vote was democratic (in the sense of lawful).

Post notification matters

47. The UK Government is currently involved in negotiations with the European Commission (acting on behalf of the European Union) regarding the terms of withdrawal. The process of withdrawal is subject to Article 50 of the Treaty on European Union (TEU) ('Article 50').
48. Under Article 50, the Withdrawal Agreement must be passed by a special majority of the member states within two years of notification of the intention to withdraw, i.e. by 29 March 2019, unless the period of negotiation is extended by unanimous vote, absent which the UK exits without any agreement.
49. It is generally accepted that the Withdrawal Agreement can only include matters that relate to a member state's withdrawal. This can include a set of transitional arrangements, but not the future trade agreement, albeit that it will 'tak[e] account of the framework for [the UK's'] future relationship with the Union'. A future trade agreement(s) may be concluded between the EU and the UK after the UK becomes a third country.

GROUND OF CHALLENGE

50. The Claimant submits that the referendum result was procured on the basis of corrupt and illegal practices. The Prime Minister's decision not to take any steps having regard to the new information that has come to light regarding how the referendum was conducted and in particular her decision to refuse to (a) order an independent and speedy investigation or inquiry into the irregularities and/or (b) consider holding another people's vote on withdrawal from the European Union, possibly under more strictly controlled conditions; and (c) to seek an extension of time from the EU 27 in order to effect one or both of the above is unlawful as amounting to an unreasonable exercise of her discretion.

Ground 1: The referendum result was procured by illegal and corrupt practices

51. The Electoral Commission has found on a beyond reasonable doubt standard that both Vote Leave, the designated leave campaign and Leave.EU (as well as Darren Grimes)

committed offences involving not just significant over-spend but in addition an intent to do so in the case of Vote Leave by funnelling expenditure through other organisations in order to hide that over-spend. These findings resulted in the Commission imposing the maximum level of fines available to it on both Vote Leave, Darren Grimes and Leave.EU and referring the matters to the police for further investigation and possible criminal prosecution. In addition, Facebook has been fined £500,000 for data breaches by the ICO.

52. The Claimant submits that this evidence alone is sufficient for the High Court to declare that the referendum result was procured by way of corrupt and illegal practices and/or fraud.⁷ The fact that Parliament has not provided a specific procedure for doing so, nor for a consequence of it doing so, does not oust its jurisdiction under the common law. Indeed, its role in that regard is of crucial constitutional significance, the legitimacy of the democratic process being fundamental to the rule of law. In that regard, it is a fundamental principle of the common law that ‘fraud unravels everything’: *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 at 712 approved in *Prest v Petrodel Ltd* [2013] UKSC [18] and [83].
53. Further, under the common law, it is submitted that the High Court must have an equivalent power in relation to referendums to the common law power it had in relation to elections undermined by way of fraud or corruption, as explained in *Erlam v Rahman* [2015] EWHC 1215 (QB), cited below, even in circumstances where the result of the referendum is merely advisory. The lack of codification of the rules relating to the voiding of elections in the context of referendums does not of itself mean that the common law power of control by the courts has been removed.
54. Moreover, it would be surprising if the common law was not able to provide a remedy as set out by Venice Commission Code of Good Practice for the Conduct of Referendums, which provides that:

“3.3.e. The appeal body must have authority to annul the referendum where irregularities may have affected the outcome. It must be possible to annul the entire referendum or merely the results for one polling station or constituency. In the event of annulment of the global result, a new referendum must be called.”

55. As Lord Reed stated in *R (on the application of) Unison v the Lord Chancellor* [2017] UKSC 51:

68. At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who

⁷ In an election, for example, false declarations as to election expenses that are made knowingly constitute ‘corrupt practices’: s. 82 Representation of the Peoples Act 1983 (“1983 Act”).

are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other.

Ground 2: the refusal of the Prime Minister to initiate an inquiry; and/or arrange for the holding of a further vote and/or seek an extension of Article 50 are unreasonable in the circumstances.

The legality of the Prime Minister's original decision

56. The Prime Minister's decision that the UK should leave the EU was taken on the basis of three facts:

- a. First, that a democratic referendum had taken place, that is, a referendum in which there had been no corrupt or illegal practices by the participants, let alone by the designated participants and for all significant purposes the process had been conducted lawfully;
- b. Secondly, that as a consequence the result of that referendum could fairly be said properly to reflect the 'will of the people'; and
- c. Thirdly, the prior commitment of the Government to implement the 'will of the people' as expressed in the outcome of that democratic referendum.

57. In light of the information now available, it is clear that her decision was vitiated by illegality. The first fact on which she based her decision was wrong; it is now clear that the referendum was replete with corruption and illegal practices. Having regard to the nature and extent of those illegal practices, the second fact is now open to serious doubt. On the evidence available, it can fairly be said that had the relevant corrupt practices and illegal conduct not taken place the result would likely have been different. It follows that the third fact does not apply to the result of the referendum; the Government did not and could not have committed to give effect to a referendum result that was procured through illegal and corrupt practices, in particular, where the consequence of those practices were such as to throw doubt on the result itself.

58. For those reasons, the Prime Minister's original decision to withdraw the UK from the EU and notify the EU of that intention was vitiated by illegality.

Response to discovery of that error of fact and the illegal and corrupt basis for the referendum result

59. It is for the Prime Minister to exercise her discretion lawfully in considering the implications of the result having been procured by corrupt practices and illegality. For the reasons set out below, the Claimant submits that for the Prime Minister to ignore such illegality and simply to continue with her decision to withdraw the UK from the EU, where at the very least the illegality and corrupt practices throw significant doubt on the legitimacy and veracity of the result, would be unreasonable and unlawful.
60. The Prime Minister has failed to respond to the Claimant's letter of 05 July and thus, is taken to have declined to take any of the steps requested there. Further, the Government has declined requests made on 17 July 2018 in Parliament by numerous MPs including Sarah Woollaston, Anna Soubry, David Lammy, Caroline Lucas, Chris Giles, Amber Rudd, Sir Nicolas Soames and Chuka Ummuna for the Prime Minister to take steps to respond to the discovery that the referendum was corrupt and in particular, the serious offences committed by Vote Leave. Some MPs demanded the referendum be 'invalidated' and re-run, others that an inquiry be set up. Those requests have so far been declined.
61. Accordingly, the current position of the Prime Minister appears to be to ignore the new facts that have come to light, which show that (a) her original decision to withdraw the UK from the EU was legally erroneous and (b) that her current decision to continue with the withdrawal of the UK from the EU on the basis that it is the democratic will of the British people is without factual or legal basis. Further, in light of the serious consequences of her decision, namely the departure of the UK from the EU and the loss of rights for citizens, the Claimant submits that her decision not to take any of the steps requested by the Claimant is arbitrary and unlawful.
62. The Claimant relies on the following:
- a. First, in the context of either an election or a local referendum the result would be void if the same conduct found to have taken place in the EU referendum had taken place. In those circumstances it is unreasonable for the Prime Minister to proceed on the basis that the result must nonetheless be respected. In further detail:
 - (a) In an election false declarations as to election expenses that are made knowingly constitute 'corrupt practices': s. 82 Representation of the Peoples Act 1983 ("1983 Act"). Further, under s. 159 where a candidate is personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void. Section 164 further provides for the avoidance of an election result for general corruption where it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in reference to the election for the purpose of promoting or procuring the election of any person at that

election have so extensively prevailed that they may be reasonably supposed to have affected the result. Section 164 replaces "*what was once the common law rule relating to general corruption. In the past, particularly in the nineteenth century, it would happen that an election had been tainted with corruption or other illegal conduct but those seeking to set it aside could not prove any actual involvement in the wrongdoing by the candidate or his agents. Thus a body of law evolved to the effect that an election could be avoided on this ground but only if it could be shown that it was likely to have affected the result of the election*": Erlam v Rahman [2015] EWHC 1215 (QB), see also Morgan v Simpson [1975] QB 151.

- (b) In the context of local referendums, the results of which are binding as a matter of law⁸, procedures for the questioning of the referendum result were laid down by way of the Local Authorities (Conduct of Referendums)(England) Regulations 2012/323, paragraph 15. These allowed for the questioning of referendum by way of petition..."(b) on the ground that the referendum was avoided by such corrupt or illegal practices, within the meaning of the 1983 Act, as are relevant to referendums by virtue of regulation 8 , 11 or 13 or paragraph (8); (c) on the grounds provided by section 164 (avoidance of election for general corruption etc) of the 1983 Act, as applied for the purposes of these Regulations by paragraph (8); or (d) subject to paragraph (3), on the ground that a payment of money or other reward has been made or promised since the referendum in pursuance of a corrupt or illegal practice relevant to the referendum by virtue of regulation 8 , 11 or 13 or paragraph (8).
- b. Parliament did not provide for an equivalent mechanism in the EU Referendum Act nor in secondary legislation (the EU (Conduct) Regulations 2016 SI 2016/219) ("the Regulations"). That is unsurprising because in contrast to election results and local referendums that have binding consequences, the result of the EU referendum was advisory; it was for the Government to consider the implications of the result and the action to be taken.
- c. The Prime Minister decided that on the basis of a promise made by the Government prior to the referendum she should treat as binding the outcome of the referendum result and it was on that basis that she made the notification pursuant to her power under s. 1 of the 2017 Act. Now that she is aware that

⁸ There are two types of local referendums, both of which are binding: First, neighbourhood planning referendums. Section 116 of the Localism Act 2011 made provision for the conduct of referendums under s.4B of the Town and Country Planning Act 1990. A neighbourhood plan, development order or a community right to build order is to be approved by the referendum. Special regulations are in force for such referendums. Second, under the Local Government Act 2000, as amended by the Localism Act 2011.

the result was procured by corrupt and illegal conduct, it is unreasonable for her to continue to treat the result as somehow 'binding' on her.

- d. Secondly, the Prime Minister stated as recently as 12 July 2018 when she published the White Paper on the Future Relationship between the UK and the EU that she was proceeding on the basis that the result of the referendum was democratic. This is incorrect; a result in a referendum or election procured by illegal or corrupt practice is the antithesis of democratic. As Richard Mawrey QC stated in In the same case, *Erlam v Rahman*, (cited above) (at para. 20):

"...If a candidate is elected in breach of the rules for elections laid down in the legislation, then he cannot be said to have been 'democratically elected'. In elections, as in sport, those who win by cheating have not properly won and are disqualified. Nor is it of any avail for the candidate to say 'I would have won anyway' because cheating leads to disqualification whether it was necessary for the victory or not. In recent election cases, for example, it has been proved that candidates were elected by the use of hundreds (in Birmingham, thousands) of forged votes: would anyone seriously claim that those candidates had been 'democratically elected'?"

- e. Thirdly, to proceed in this way, is contrary to the explicit guidance set out in the Venice Commission's Code of Good Practice for Referendums of 19 March 2007⁹, which states that:

24. National rules on both public and private funding of political parties and election campaigns must be applicable to referendum campaigns (point II.3.4.a). As in the case of elections, funding must be transparent, particularly when it comes to campaign accounts. In the event of a failure to abide by the statutory requirements, for instance if the cap on spending is exceeded by a significant margin, the vote must be annulled" (emphasis added) ¹⁰

- f. Fourthly, as Lord Bridge of Harwich observed in *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1, 48: *"The maintenance of the rule of law is in every way as important in a free society as the democratic franchise,"* cited by Lord Reed in *Imperial Tobacco Ltd Petitioner And Reclaimer v. The Lord Advocate* [2012] CSIH 9 para. 58. For the Prime Minister to ignore a matter that would void a local referendum or an election, undermines the rule of law and respect for the legitimacy of the democratic system.

⁹ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)008-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008-e)

¹⁰ In this regard, the Venice Commission cross referred to the analogous rule set out in its Code of Good Practice for the Conduct of Elections Strasbourg, 23 May 2003 Opinion no. 190/2002; [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

- g. Fifthly, the principle of the rule of law requires that a referendum result corrupted by illegal practices and or fraud cannot found a decision of major constitutional significance for the United Kingdom. Accordingly, in addition to the reasons state above, it would be unlawful for the Prime Minister to proceed on the basis that she is giving effect to the 'will of the people' in such circumstances.

Summary conclusion

63. For the Prime Minister to exercise her powers under the 2017 Act and to continue conducting Brexit negotiations on the basis that the 'will of the people' is in favour of Brexit on the basis of the 2016 referendum, without regard to the corrupt and illegal practices now established beyond reasonable doubt to have taken place, is unlawful, unreasonable and contrary to constitutional principle.

64. The referendum was so tainted by illegality and corrupt practices as to have been incapable of expressing 'the will of the people'; the process was itself not 'democratic' as having involved corruption, illegality and fraud. It follows that the Prime Minister is wrong to state in the White Paper published on 12 July 2018 that:

'In the referendum on 23 June 2016 - the largest ever democratic exercise in the United Kingdom - the British people voted to leave the European Union.'

65. In the course of the referendum the designated campaign for leave, VoteLeave, committed the same offence (as it applies to Referendums under PPERA) of exceeding the limit of spending by entering into joint actions arrangements with two smaller groups and then knowingly making a false declaration about it as would have rendered an election or local referendum void. According to the Electoral Commission, Vote Leave's responsible agents

'knew or ought reasonably to have known that this spending would exceed the spending limit. The Commission is therefore satisfied beyond reasonable doubt that Vote Leave exceeded the spending limit for a designated lead campaigner and Mr Halsall committed an offence under section 118(2)(c)(i). Vote Leave also committed an offence under section 118(2)(c)(ii) [of the Political Parties, Elections and Referendums Act 2000].'

66. Vote Leave was fined £61,000 and was reported to the Metropolitan Police for suspected criminal offences. In addition, another leading campaigner, Leave.EU has also been found to have breached electoral law by failing to report spending and exceeded the statutory limit. It was fined £70,000 and was reported to the Metropolitan Police for suspected criminal offences.

67. The Electoral Commission and the Information Commissioner's investigations have established beyond doubt that the Leave campaign broke the laws intended to protect

the integrity and fairness of the referendum. Irrespective of the Prime Minister's personal views of those conclusions, as a matter of law, she is obliged to consider them in reaching a decision as to how to proceed. It is submitted that she has either failed to do so, or has failed to give them adequate weight in deciding that no consequences should follow. The Claimant submits that that conclusion is arbitrary and unreasonable and should not be allowed to stand.

68. Accordingly, the Claimant will seek a declaration that:

- a. the referendum result was procured by way of illegal and corrupt practices and/or fraud; and/or the Prime Minister's decision to continue to proceed with the withdrawal of the UK from EU on the basis of the erroneous facts set out above in the face of the illegal and corrupt practices established by the Electoral Commission and the Information Commissioner to have taken place during the referendum is unlawful; and
- b. the Prime Minister's refusal to order an independent and speedy investigation or inquiry into the irregularities and illegal practices that took place during the European Union referendum campaign 2016 is unlawful; and
- c. the Prime Minister's refusal to consider how best to conduct another people's vote on withdrawal from the European Union, possibly under more strictly controlled conditions is unlawful; and
- d. the Prime Minister's refusal to seek an extension of time from the EU 27 in order to effect one or both of the actions described in (b) and (c) is unlawful.

The details of the action that the defendant is expected to take

69. The Prime Minister is requested to take one or more of the steps set out above.

ADR proposals

70. We do not consider that this matter of general public interest is suitable for ADR.

The details of any information sought/ documents that are considered relevant and necessary

71. The Prime Minister is requested to disclose all documents, notes, minutes and information regarding her consideration of illegal and corrupt practices established by the Electoral Commission and the ICO in relation to her current decision to proceed as if those illegalities had not taken place.
72. Further, the Prime Minister is requested to disclose any further information, for example regarding consideration of Russian government interference in the referendum currently being considered by the DCMS and any impact this has on her relevant decision making in relation to the UK leaving the EU and/or the holding of a further referendum.

The address for reply and service of court document

73. Deighton Pierce Glynn, 8 Union Street, London SE1 1SZ, DX144360 Southwark 4, Ref 3752/001

Proposed reply date

74. 4 pm on Friday 3 August 2018.

Yours faithfully,

DEIGHTON PIERCE GLYNN