

**Witness Statement**

**Criminal Procedure Rules, r27.2; Criminal Justice Act 1967, s.9; Magistrates Court Act 1980, s.5B**

**Statement of: LOUISE KATE EDWARDS**

**Age: Over 18**

**Occupation:**

*Head of Regulatory Compliance and Casework, Electoral Commission*

**Declaration**

This statement (consisting of ...11....pages signed by me) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I will be liable to prosecution if I wilfully state in it anything which I know to be false or do not believe to be true.

**Signature**

*[Signature]*

**Date**

*17 May 2016*

I, **LOUISE KATE EDWARDS**, of 3 Bunhill Row, London EC1Y 8YZ hereby **STATE** as follows:

1. I am an employee of, and the Head of Regulatory Compliance and Casework at, the Electoral Commission ("the Commission").
2. I am duly authorised to make this Witness Statement for and on behalf of the Commission.
3. My responsibilities at the Commission include the Commission's approach and strategy for compliance, investigations and sanctions.
4. I make this Witness Statement in support of an application by the Police under section 176 of the Representation of the People Act 1983 ("the RPA"), for an extension of time for the investigation of offences under that Act which relate to spending by Conservative Party candidates at the 2015 UK Parliamentary General Election ("2015 UKPGE") held on 7<sup>th</sup> May 2015.
5. In doing so, I provide the following:
  - a. an overview of the Commission's relevant functions
  - b. a general summary of the regulation of campaign spending under the RPA
  - c. the relevant criminal offences under that Act
  - d. an overview of the Commission's ongoing investigation in respect of Party's campaign spending returns for the 2014 European Parliamentary Election and the 2015 UKPGE
  - e. a summary of relevant information only recently received by the Commission which is likely to reveal potential criminal offences which should be investigated by the Police in the public interest
  - f. RPA time limits and why, in the Commission's view, exceptional circumstances apply

6. In this Statement where I refer to "the Party" I mean the political party currently registered with the Commission as the Conservative and Unionist Party, but whose registered name at the time of the 2015 UKPGE was the Conservative Party.
7. I am willing to attend Court and to give evidence if necessary.

#### **The Commission's relevant functions**

8. Established by section 1 of the Political Parties Elections and Referendums Act 2000 (as amended) ("PPERA"), the Commission is independent of Government and political parties, and is directly accountable to the UK Parliament through a Committee chaired by the Speaker of the House of Commons. The Commission also reports to the Scottish Parliament in respect of its functions relating to local government elections in Scotland.
9. The Commission sets standards for well-run elections; offers support and guidance to those responsible for the conduct of elections; provides information for voters and runs voter awareness campaigns; and is responsible for the conduct and regulation of referendums held under PERA.
10. The Commission's aim is to ensure integrity and public confidence in the UK's democratic process by working to support a healthy democracy, where elections and referendums are based on its principles of trust, participation and no undue influence. In furtherance of this aim, the Commission publishes information to provide transparency about election spending and donations, and works to ensure high levels of compliance by campaigners. The Commission also undertakes a wide range of research and policy work in relation to: elections and referendums; electoral registration; and party and election finance.
11. The Commission also has an important role in the regulation of political party finances; and has a number of investigatory and enforcement powers in this regard.
12. Under section 145 of PERA, the Commission also has the general function of monitoring compliance with the restrictions and other requirements imposed by PERA, including those in Part V relating to campaign expenditure. Section 145 also provides the Commission with the function of monitoring compliance with the restrictions and other requirements imposed by other Acts in relation to the election expenses incurred by or on behalf of candidates at elections, and donations to such candidates or their election agents.

#### **The regulation of campaign spending under the RPA**

13. The RPA defines election expenses by reference to prescribed categories of costs. In broad terms, the effect of section 90ZA of the RPA is that spending will be considered to be "election expenses", if that spending:

- a. falls within one of the prescribed categories
  - b. is not in the list of exclusions set out in Part 2 of Schedule 4A
  - c. is incurred by the candidate, the candidate's election agent, or any person authorised by the candidate or agent to incur expenses and
  - d. is "for the purpose of a candidate's election"
14. "For the purpose of a candidate's election" is defined as being "...with a view to, or otherwise in connection with promoting or procuring the candidate's election...", and includes "by prejudicing the electoral prospects of another candidate".
15. The prescribed categories are set out in Schedule 4A to the RPA, and are summarised below:
- a. advertising (including agency fees, design costs and costs associated with preparing and distributing etc.)
  - b. unsolicited mail to electors (including design costs and costs associated with preparing and distributing etc.)
  - c. transport by any means) of persons to any place (including the costs of hiring transport for a particular period)
  - d. public meetings of any kind (including costs in connection with attendance at meetings, hire of premises, and provision of goods and services at the meetings)
  - e. services of an election agent or any other person whose services are engaged in connection with the candidate's election and
  - f. accommodation and administrative costs
16. Where candidates receive property, goods or services which would count as "election expenses", but which are provided free of charge or at a discount of more than 10%, then section 90C of the RPA requires the election agent to declare these expenses (unless they are less than £50).
17. The effect of Section 75 of the RPA, is that the only persons who may incur expenses for the purpose of promoting or procuring the election of a candidate are:
- a. the candidate
  - b. the candidate's election agent and
  - c. persons authorised in writing by the election agent
18. The election agent may authorise persons to incur expenses in relation to public meetings and displays, issuing advertisements/circulars/publications, and otherwise presenting the candidate or the candidate's views to the electorate.
19. By section 75(2) of the RPA, persons who incur expenses authorised by the election agent, are required to deliver a return to the returning officer. The return must state the election and the candidate on whose behalf the expenses were incurred, and must be delivered to the returning officer within 21 days after the day on which the result of the election is declared.

20. The return must also be accompanied by a declaration made by the authorised person, verifying the return and giving particulars of the expenses incurred.
21. Section 76(1) of the RPA prescribes a limit on the amount of expenses that may be incurred by a candidate at a UK General Election. The spending limit for candidates is calculated with a formula set out in the legislation.
22. By Section 81(1) of the RPA, the agent for every candidate at an election is required to deliver a **true** return of election expenses to the returning officer, within 35 days of the result of the election. The return must include:
- a. a statement of all election expenses incurred by or on behalf of the candidate and
  - b. a statement of all payments made by the candidate's election agent together with all bills or receipts relating to those payments
23. By Section 82 of the RPA, the return of election expenses must be accompanied by declarations made by the candidate and the candidate's election agent (where a candidate is not his own election agent)

#### **Relevant criminal offences under the RPA**

24. By section 75(5)(a) of the RPA, a person who incurs expenses without the authorisation of the election agent; or who aids, abets, counsels or procures any other person to incur expenses without the authorisation of the election agent, is guilty of a "**corrupt practice**".
25. By section 75(5)(b) of the RPA, a person who knowingly makes a false declaration, in relation to the return of expenses required by section 72(2) is guilty of a "**corrupt practice**". Section 82(6) RPA prescribes a similar offence for knowingly making a false declaration in relation to the return required by section 81(1). Honest belief in the truth of the declaration and thus in the completeness and accuracy of the figures disclosed, is a complete defence. It is for the prosecution to prove lack of honest belief and not for the defendant to prove his honesty.
26. By section 75(5) (b) of the RPA, a person who fails to deliver the return of expenses authorised by the election agent, is guilty of an "**illegal practice**".
27. By Section 75(5) (b) (II) of the RPA, a candidate shall not be liable for a corrupt or illegal practice committed by an agent without his consent or connivance.
28. By section 76(1B) of the RPA, any candidate or election agent who incurred or authorised spending above the prescribed limit; and who knew or ought reasonably to have known that the expenses would be incurred in excess of the prescribed amount is guilty of an "**illegal practice**".

29. By Section 84 of the RPA, a candidate or election agent who fails to comply with the requirements of section 81 (including the requirement that the return should be a true return) is guilty of an "illegal practice".

30. Section 168 of the RPA provides, in terms, that a person, who is guilty of a corrupt practice under section 75, shall be liable:

- a. (on conviction on indictment) to imprisonment for a term not exceeding one year, or to a fine, or to both
- b. (on summary conviction) to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both

31. Section 169 of the RPA provides:

*169. A person guilty of an illegal practice shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale and on a prosecution for an illegal practice it shall be sufficient to allege that the person charged was guilty of an illegal practice.*

32. The effect of section 173 of the RPA is that:

- a. a person convicted of a corrupt practice is unable to be elected to the House of Commons or to hold elective office for a period of 5 years after the date of conviction and
- b. a person convicted of an illegal practice is unable to be elected to the House of Commons or to hold elective office for a period of 3 years after the date of conviction

33. Where a person had already been elected or held elective office prior to conviction, that person would be required to vacate his or her seat or office. This would, in turn, trigger a by-election.

#### **Overview of the Commission's investigation**

34. The following paragraphs provide an overview of the Commission's investigation. It does not reference all contact and correspondence between the Commission, the Party and others, but sets out the relevant events to date in the investigation.

35. Following a series of allegations made by Channel 4 News between January and April 2016, the Commission is currently investigating potential offences under PPERA, relating to reporting on campaign spending and statutory declarations. However, the Commission is concerned that offences may have been committed under both PPERA (in relation to which it has enforcement powers) and the RPA (in relation to which it has supervisory and monitoring, but not enforcement or prosecution, powers).

36. The offences which the Commission is investigating are in connection with:

- a. Campaign expenditure by or on behalf of the Party and/or its candidates in three by-elections in Clacton, Newark and Rochester and

Strood in 2014, which was not declared on candidates' RPA declarations and may not be reported in the Party's national campaign spending returns for either the 2014 European Parliament Election ("2014 EPE") or the 2015 UKPGE ("the by-election matters").

- b. Campaign expenditure by or on behalf of the Party and/or its candidates in the South Thanet constituency during the 2015 UKPGE campaign ("the South Thanet matters").
- c. Campaign expenditure by or on behalf of the Party and/or its candidates on the 'Battlebus' campaign activity, including costs incurred on transport and accommodation, during the 2015 UKPGE campaign ("the Battlebus matters").

37. The by-election matters relate to spending during 2014, and the investigation of any offences under the RPA are now out of time. These matters are included only to show the breadth and complexity of the Commission's investigation.

38. The South Thanet matters came to the Commission's attention following broadcast reports by Channel 4 News in January 2016. These reports alleged that the Party had attributed spending which was properly local candidate spending in the South Thanet constituency to its national 2015 UKPGE campaign spending return. The reports further alleged that had the spending been properly attributed, then the spending by or on behalf of the Party's local candidate Mr Craig Mackinley would have exceeded the statutory limit. The reports looked in particular at a number of hotel bills at the Royal Harbour Hotel in Ramsgate and the Premier Inn Hotel in Margate, and at the cost of advertising in a local Thanet Newspaper (£16,483.20) which had only been distributed in the South Thanet and North Thanet constituencies. This latter allegation was also made in respect of the return of the local Party candidate in North Thanet, Mr Roger Gale.

39. After contact with the Party and in line with its Enforcement Policy, the Commission assessed whether it should open an investigation in respect of the Party's 2015 UKPGE spending return. The Commission's policy is to open investigations where it has reasonable grounds to suspect that an offence under PPERA has been committed, and where the Commission considers that the use of public funds to investigate can be justified in the public interest.

40. The conclusion of the assessment was that the evidence disclosed potential criminal offences under section 82(4)(b) and section 83(3)(a) of PPERA and that a formal investigation should be opened.

41. In February 2016, Channel 4 News broadcast reports about the by-election matters. The Commission assessed these further allegations and concluded that the evidence available disclosed a number of potential criminal offences under the same sections of PPERA. The Commission decided these should be investigated. The investigation now encompasses both potential offences

in respect of the Party's campaign spending returns for the 2014 EPE and the 2015 UKPGE.

42. On 18 February 2016, the Commission wrote to the Party to advise them of the investigation, and issued a Notice under Schedule 19B paragraph 3 of PEPRA. This Notice required the Party to produce material relating to the South Thanet matters. At the Party's request the Commission extended the deadline for the provision of this material from 10 March 2016 to 17 March 2016. When the Party formally responded to the Notice, the Commission considered that the Party had failed to comply fully with it.
43. On 23 March 2016 the Commission issued the Party with a second Notice under Schedule 19B paragraph 3 of PPERA, this time in respect of the by-election matters. The Notice gave the Party a deadline of 28 April 2016. The Party did not comply with this Notice.
44. On 18 April 2016, the Treasurer of the Party wrote to the Commission. In that letter the Party notified the Commission of potential omissions in relation to the Party's 2015 UKPGE campaign spending return. We assume that the Party was aware of further allegations (yet to be broadcast) from Channel 4 News relating to the Party's Battlebus campaign. The Treasurer stated that this had prompted him to review disclosure of these expenses in the Party's national return. As a result of this review, the Treasurer had "discovered some potential omissions" The Commission was informed that the Party's review was ongoing and the Treasurer promised to give an update to the Commission by 20 April 2016.
45. In the 18 April letter, the Treasurer also stated that:

*The Battlebus campaign, the Party's national bus tour, was authorised and paid for by CCHQ and was intended to promote the Party's success in the General Election by transporting activists by bus to target seats.*
46. By letter dated 20 April 2016, the Party informed the Commission, in terms, that the total omissions which should have been included in the Party's national campaign spending return for the 2015 UKPGE amounted to £39,511.90.
47. On 21 April 2016, Channel 4 News broadcast a report alleging that the Party had paid for an operation to bus activities to some 20 key marginal seats in the South-West, Midlands and the North of England during the 2015 UKPGE campaign. Channel 4 News alleged that photographs, social media posts and documents obtained by it undermined the Party's claim that the Battlebus was a national campaign designed to promote the Party, and referred to undeclared hotel expenses related to the Battlebus campaign.
48. On 22 April 2016, the Commission wrote to the Party. It gave the Party a further deadline for the provision of the material that the Party had failed to provide under two statutory Notices. It also set out additional requests for

material from the Party, relating to the Battlebus matters. On 28 April 2016 the Party's legal representatives wrote to the Commission setting out its rationale for being unable to comply with the Commission's request by the deadline given.

49. By letter dated 29 April 2016, the Commission wrote to the Party's legal representatives and gave a final extended deadline to provide all outstanding material by 1pm on 9 May 2016. The Party did not provide any further material by that extended deadline. On the afternoon of that date, the Commission issued the Party with a third Notice under schedule 19B paragraph 3 of PPERA, this time relating to the Battlebus matters. That Notice gave the Party a deadline of 10am on 16 May 2016.

50. On 12 May 2016, the Commission made an application to the High Court for a document and information disclosure order under paragraphs 4 and 5 of Schedule 19B of PPERA. This was in respect of the Party's continued failure to comply with its first and second statutory notices. On the afternoon of 12 May 2016, the Party provided the Commission with several boxes of material that it said responded fully to all outstanding requests for material, including the South Thanet, by-election and Battlebus matters. The Commission is currently reviewing this material.

#### **Summary of relevant recently received information**

51. During the investigation, the Commission has obtained material from the Party and Channel 4 News, and drawn on the material it holds in respect of the Party's national campaign spending return for the 2015 UKPGE, and local candidate returns for that election.

52. On 12 May 2016, the Party provided us with a list of the constituencies visited by the Battlebus. Those constituencies are:

- a. Amber Valley
- b. Broxtowe
- c. Bury North
- d. Cannock Chase
- e. Carlisle
- f. Cheadle
- g. Cheltenham
- h. City of Chester
- i. Dudley South
- j. Erewash
- k. Halifax
- l. Lincoln
- m. Morecambe and Lunesdale
- n. Northampton North
- o. North Cornwall
- p. Nuneaton
- q. Plymouth, Sutton and Devonport
- r. Pudsey



material from the Party, relating to the Battlebus matters. On 28 April 2016 the Party's legal representatives wrote to the Commission setting out its rationale for being unable to comply with the Commission's request by the deadline given.

49. By letter dated 29 April 2016, the Commission wrote to the Party's legal representatives and gave a final extended deadline to provide all outstanding material by 1pm on 9 May 2016. The Party did not provide any further material by that extended deadline. On the afternoon of that date, the Commission issued the Party with a third Notice under schedule 19B paragraph 3 of PPERA, this time relating to the Battlebus matters. That Notice gave the Party a deadline of 10am on 16 May 2016.
50. On 12 May 2016, the Commission made an application to the High Court for a document and information disclosure order under paragraphs 4 and 5 of Schedule 19B of PPERA. This was in respect of the Party's continued failure to comply with its first and second statutory notices. On the afternoon of 12 May 2016, the Party provided the Commission with several boxes of material that it said responded fully to all outstanding requests for material, including the South Thanet, by-election and Battlebus matters. The Commission is currently reviewing this material.

#### **Summary of relevant recently received information**

51. During the investigation, the Commission has obtained material from the Party and Channel 4 News, and drawn on the material it holds in respect of the Party's national campaign spending return for the 2015 UKPGE, and local candidate returns for that election.
52. On 12 May 2016, the Party provided us with a list of the constituencies visited by the Battlebus. Those constituencies are:
- a. Amber Valley
  - b. Broxtowe
  - c. Bury North
  - d. Cannock Chase
  - e. Carlisle
  - f. Cheadle
  - g. Cheltenham
  - h. City of Chester
  - i. Dudley South
  - j. Erewash
  - k. Halifax
  - l. Lincoln
  - m. Morecambe and Lunesdale
  - n. Northampton North
  - o. North Cornwall
  - p. Nuneaton
  - q. Plymouth, Sutton and Devonport
  - r. Pudsey

- s. Rossendale and Darwin
- t. Sherwood
- u. St Ives
- v. Stroud
- w. Thornberry and Yate
- x. Torbay
- y. Weaver Vale
- z. Wells
- aa. Wolverhampton South West
- bb. Yeovil

53. In addition to the above list provided by the Party, we understand that the Battlebus may have visited other constituencies, specifically Camborne and Redruth and Hazel Grove.

54. Amongst the material received by the Commission are documents which, in its view, raise concerns about whether the Party's national campaign spending return included spending that should not have been included on the basis that it was for campaigning for the purpose of electing the Party's local candidates in a number of constituencies:

- a. Communications between the Battlebus organisers and local agents and candidates seeking their agreement to the Battlebus visiting particular constituencies. This is described as being for the purposes of assisting the candidate, who was also instructed to be in attendance. An email from the Battlebus2015 'Founder and Director' describes the purpose as being to *'bring large numbers of activists to seats that need them in the final few weeks'*.
- b. Detailed briefing notes that appear to have been produced for Battlebus volunteers about each constituency visited, including local issues and the local candidate's position on them. These include statistics for employment and unemployment for the particular locality, back ground on the Conservative candidate, a 'local issues' section covering matters that would not be relevant to national campaigning, and a 'Good news' section on positive local events under the Conservative government.
- c. Evidence that the Battlebus volunteers presented themselves as representing the specific candidate by having conversations with voters, handing out candidate literature, and identifying themselves as speaking on behalf of the candidate. An excerpt from a script produced for this purpose says: *'My name's (insert name) and I'm calling on behalf of [NAME OF CANDIDATE], your conservative candidate.'*

55. The Channel 4 website includes a summary of the allegations made in the broadcasts: <http://www.channel4.com/news/election-expenses-exposed>.

56. We consider it likely that, as further material is obtained during our investigation, that material will be relevant to whether offences under the RPA have been committed.

**Time limits for the prosecution of offences under the RPA and the Commission's view on exceptional circumstances**

57. The Commission's investigation will not be completed before the one year period in section 176(1) of the RPA expires. The Commission's investigation in respect of potential offences under PPERA is ongoing. This is due both to its complexity and to the fact that the investigation has been delayed and hindered by the failure of the Party to provide complete and timely disclosure of relevant material. This has led to the unprecedented step of making an application to the High Court for a document and information disclosure order. As a result the Commission has not been in a position to make any evidence relevant to potential RPA offences available to police forces sooner.

58. In line with our Enforcement Policy we will bring to the attention of the relevant police force any evidence of potential RPA offences as soon as possible. We anticipate that the Commission's investigation will continue into the autumn.

59. Under section 176(1) of the RPA, the time limit for the commencement of proceedings for an offence under that Act is "one year after the offence was committed." However, by section 176(2B) of the Act, a Magistrate's Court has the power (on application by the police or a Crown: Prosecutor) to extend the time in which proceedings may be commenced to "not more than 24 Months after the offence was committed."

60. By sections 176(2A) of the 1983 Act, the Magistrate's Court may extend the time limit if it is satisfied that:

- a. there are exceptional circumstances which justify the granting of the application and
- b. there has been no undue delay in the investigation of the offence to which the application relates

61. By Section 176(2F) of the 1983 Act, an application to extend the time limit must be made "not more than one year after the offence was committed."

62. The Commission humbly submits that exceptional circumstances apply in this matter. It's reasons for this are as follows:

- a. The Battlebus campaign activity initiated by the Party during the 2015 UKPGE was a new type of campaign. 'Battlebuses' have transported party leaders and senior colleagues around the country to campaign in many previous elections, and it is also common for activists to campaign in constituencies other than their own. However, the organised transportation of groups of activists, with overnight accommodation, subsistence and travel expenses met by the party, is new.

- b. The allegations made by Channel 4 News, and the material so far reviewed by the Commission, indicate the potential for offences committed in a significant number of constituencies. The scale of these matters is unprecedented and has led to liaison between the Electoral Commission and a large number of police forces. This has necessarily been a complex matter to organise.
- c. The relationship between the Party's national return and multiple local candidate returns is fundamental to ascertaining how the Party attributed its spending across them. The Party's national return was submitted to the Commission on 6 November 2015 (one day before the statutory deadline for submission) and published on 20 January 2016. The Channel 4 News allegations were made very shortly after but that was already some seven months after the 2015 UKPGE took place.
- d. There is very significant public interest in this matter. The implications of the allegations made by Channel 4 News are that individuals and/or the Conservative and Unionist Party may have committed deliberate acts intended to circumvent the party and election finance rules as set out in the RPA and PPERA. That in turn may have led to candidates spending more than the legal limit (and more than their opponents).

63. These allegations go to very heart of our democracy. The party and election spending rules are intended to ensure that financial resources do not determine the outcomes of elections. Similarly, transparency and accountability in relation to campaign spending by local candidates and political parties is essential, in order to ensure confidence in the electoral process.

64. The Electoral Commission humbly submits that these circumstances are truly exceptional; and that there is a very strong public interest in ensuring that the police are able to investigate these allegations properly, justifying an extension of the time limit for investigation of offences under section 176(1) of the RPA.