

A man with short brown hair and a slight stubble, wearing a dark jacket over a grey shirt, is looking directly at the camera with a serious expression. In the background, the Big Ben clock tower in London is visible under a clear blue sky.

BREXIT JUSTICE CASE OVERVIEW

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'Democracy can only survive when ordinary men and women have faith in the integrity of those whose responsibility is the preservation of integrity of Parliament in all its workings'

-R v Jackson (1988)

1. What is the purpose of this document?

This document exists to provide current financial backers, potential new backers, the press and the general public with an overview of the Brexit Justice private prosecution case. It is a general overview, not the legal argument we intend to use in court.

Our prosecution may have an impact upon the conduct of elected representatives within democratic systems in the UK and abroad. There is a very significant public interest in these systems of democracy which is why we felt that our work should be open to the public to read through if they so choose. It is also now available, as requested, for academic research purposes.

The following information is the result of a two year research and investigative case building process involving various different paralegals, solicitors, barristers and Queen's Counsel. Brexit Justice was founded by myself, Marcus J Ball, in June 2016. I am a private prosecutor from the UK and the author of this case overview document.

2. What is Brexit Justice and why are we doing this?

Brexit Justice is a not for profit company which was founded in order to bring a crowdfunded, private prosecution against elected representatives who misconducted themselves during the Brexit referendum campaigns.

Our objective is to prosecute elected public office holders who broke public trust by making repeated, knowingly dishonest statements to the public concerning public spending. If our case is successful we could set a precedent in the UK's common law, and other common law jurisdictions, making it illegal for elected representatives to lie to the electorate about how their money is spent. We believe that this could significantly restore public trust in the democratic process and achieve a beginning to the end of lying in politics.

Our case will not result in Brexit being 'cancelled'. The courts do not have the power to do this and this would not be the right thing to do even if they could. Only a public vote by way of a second referendum could impact Brexit in this fashion. As far as we understand it, the courts do not have the power to order a second referendum. Our case is not a challenge to Brexit itself, it is a challenge of the conduct of elected representatives who lied to the public during the Brexit referendum. We believe that campaigners misconducted themselves to a criminal level. Only the courts can decide if this was the case.

Brexit is of course very important, but we feel that to focus upon this issue is to focus upon the symptom of the real problem. Focussing on arguments for leave or remain is divisive and misses the point. The foundation problem is that elected representatives believe that they can get away with lying to the public, nor do they fear the consequences of doing so. The damage that can be caused by such behaviour is not limited to Brexit, it is a bigger problem than that. We have to act now to prevent such conduct from occurring again in the future.

3. What has happened so far and what happens next? (website content)

The following information has been taken from our website at <http://www.brexitjustice.com/>. It serves to provide a basic, step by step summary of the events so far as well as what is expected to happen next. This website was accessed on August 10th 2018, its contents are liable to change.



The Brexit Justice story so far:

3.1 The problem

During the EU Referendum elected representatives and campaigners repeatedly claimed that the UK 'sends' or 'spends' £350 million a week or £20 billion a year on EU Membership. This is not an accurate claim according to the Treasury, Office for National Statistics and UK Statistics Authority.



I felt that many of the people involved were intentionally lying to the public about how their money was being spent. I considered this a betrayal of public trust and an abuse of the duties of an elected representative. When politicians lie democracy dies; I knew that something had to be done.

3.2 The solution

I instinctively felt that what had occurred was so wrong that there must be a legal solution to it. I read an article written by a barrister exploring the idea of a prosecution and it encouraged my thinking. I decided that I wanted to try and prosecute elected representatives who had intentionally lied to the public. I knew I'd need a huge amount of money, a team of lawyers, evidence, a

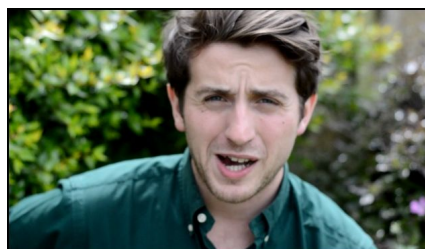


strong legal argument and thousands of people at my back. I started with none of this, I eventually got all of it.

The mission was to set a legal precedent in the UK common law that prevents political leaders from lying to the public in future. This precedent could influence the law in Canada, Australia, New Zealand and elsewhere through international common law case precedent. I wanted to achieve a beginning to the end of lying in politics internationally.

3.3 Start to crowdfund

The beginning was hard because we were working with a budget of near £0.00. I started with nothing but a video I filmed in a neighbour's garden and some hastily drawn up designs. However, we gradually made progress and improved our page based upon user feedback. Volunteers joined me and together we hit £20,000 very quickly via [Crowdfunder.co.uk](https://www.crowdfunder.co.uk).



3.4 Get the press on it

I knew that this would never work unless we got some big press coverage. Luckily I had some experience in this area and the volunteers helped enormously. We were covered by British, French, German, Iberian, Greek, Romanian, Russian and US media among others. This took our funding through the roof. As planned.



3.5 Raise £100,000 minimum

We met our £100,000 target and eventually received £145,000 of pledges from just under 5000 people. This was more than enough to get us started.



3.6 Move to London and recruit a legal team

I set off to London to recruit a team of solicitors, barristers and Queen's Counsel. We needed a team of lawyers to help us explore the existing law, review the evidence and build our prosecution argument. It was my job to find the people we needed and persuade them to work with me.



3.7 Publish my finances

I had been trusted with a lot of money. I wanted the people who backed me to see what I'm spending the money on. Which is why I publish finance reports as I go.

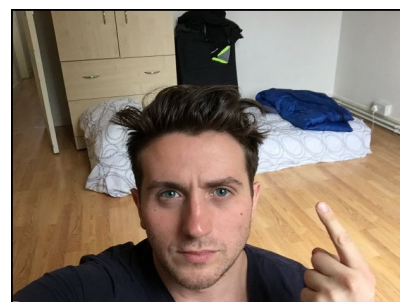
Public Finance Report 1&2: [DOWNLOAD PDF](#)Public Finance Report 3: [DOWNLOAD PDF](#)

Public Finance Report 4&5: Soon to be published
(access these reports via www.BrexitJustice.com)

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3.8 Crowdfund a salary for myself

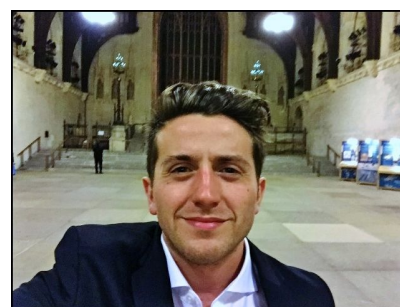
After about 3 months of working unpaid I had run out of personal money, bank overdraft and card credit. An incredible backer had let me stay in his empty London flat (he was trying to sell it) for free but I didn't have money for food, transport, a bed and everything else. I had no choice but to ask my backers for help.



I was worried that my backers wouldn't want to raise a salary for me but after 24 hours of crowdfunding I'd raised over £10,000. And we hit the full target in about 10 days. I am incredibly fortunate to have such brilliant backers. I will work hard to make sure I am worthy of them.

3.9 The investigation and case building process

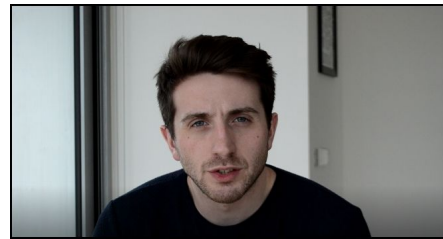
The investigation of both leave and remain camps in order to build our case was very complex and time consuming. Who were we prosecuting? Under what terms? What is our case strategy? What evidence are we making use of? This was the longest and hardest part of the process so far. I gathered evidence, carried out interviews with interesting people in interesting places, researched, wrote case arguments, debated with lawyers and in general worked to find out what was possible. Over this year and a half period the case got a lot smaller, more focussed and stronger.



The process of investigating and building the case was difficult and demoralising for many reasons. There were very high highs and very low lows. I felt a huge weight of responsibility. What would it say about our country if nobody did anything about what had happened? What would it say about me if I gave up? There was no way I was giving up, I knew there was a strong case and all I had to do was persist.

3.10 Raise £25,000 to keep us going

It had been well over a year since I had last raised money. I had run out of all serious funding about 6 months before and I needed more for legal fees, evidence acquisition, rent and general living costs. But, progress had become very hard and for a long time I didn't feel justified asking for more money from my backers.



Eventually though, I did finally feel justified in raising more because I knew that we had broken the back of the case and I had instructed a new QC who was in agreement with my work. I closed the crowdfund after hitting the target in just 9 days because, yet again, my backers are amazing.

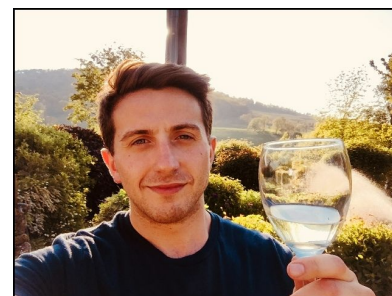
3.11 Celebrate! We have a case!

Newly instructed Lewis Power QC and I met in Brighton to discuss Lewis's reading of my previous case research and legal arguments. He told me that he was conclusively in agreement with my work that our case had merit and that we could go to court. I had worked so hard to achieve this, it was a relief to have finally done it.



3.12 Prepare to go public and get some rest

I understood that my life was about to change in many ways that I wouldn't enjoy. I had to prepare myself. I had to make 100% certain that all of the evidence was secure and in our possession. Digital security, physical security, web presence, social media, websites (like this one), communications and funding strategy; all of it had to be done. But perhaps most importantly, I also needed to rest and prepare myself psychologically. The legal research and case building was done, this was the time for everything else.



3.13 Go press public for the first time in 2 years

We will shortly go public with our prosecution case. We are choosing who we publish the story with and under what terms. Several national and international press platforms are asking for the story.



3.14 Open the big crowdfunder

Once the prosecution case is public the big crowdfund will open. In total we estimate that we need to raise £2 million.



3.15 Lay an information at the magistrate's court

Once the funding is secured we will finalise the papers and lay an information at the magistrate's court to get the court case started. It is vital to raise the funding first, so that everything past that point goes as smoothly as possible. We have to be able to prove that we have realistic prospects of financing the action.



4. Use of language that needs to be understood before we continue.

Use of language is of vital importance to our case, especially given the nature of the offence we believe has occurred. For this reason, it is important that we cover some key word definitions before we continue.

4.1 Net and gross

It will be understood by many, but not all of us, that there is a difference between gross and net payments. It is required that the reader understands this before reading through the evidence and other material later on.

'Gross

(In) total: A person's gross income is the money they earn before tax is deducted from it.

Once wrapped, the gross weight of the package is 2.1 kg.

She earns £30,000 a year gross'

-Definition of gross, Cambridge dictionary

<https://dictionary.cambridge.org/dictionary/english/gross>

'Net

left when there is nothing else to be taken away:

I earn \$50,000 gross, but my net income (= income that is left after tax has been paid) is about \$36,000.

The net weight of something excludes the weight of the material that it is packed in'

-Definition of net, Cambridge dictionary

https://dictionary.cambridge.org/dictionary/english/net?q=net_1

In the context of our case, it is important to know that the UK's gross contribution to the EU's budget is not sent to the EU. A large amount is deducted first; there is a big difference between the gross and net amounts. The net cost of the UK's membership is much lower than the gross allocation.

4.2 Rebate and abatement

It is also vital that the reader fully comprehends the meaning of the words 'rebate' and 'abatement', which mean different things.

'Rebate'

*an amount of money that is returned to you, especially by the government, for example when you have paid too much tax:
a tax rebate'*

-Definition of rebate, Cambridge dictionary

<https://dictionary.cambridge.org/dictionary/english/rebate>

'Abatement'

*a reduction in the amount or degree of something:
The tax abatement will save the business thousands of pounds.
We need some noise abatement.
We went to the landlord and worked out an abatement of rent'*

-Definition of abatement, Cambridge Dictionary

<https://dictionary.cambridge.org/dictionary/english/abatement>

In the context of our case it is important to know that the Fontainebleau summit of 1984 resulted in the UK negotiating a reduction in the fee that it contributes to the EU budget each year. According to the Office for National Statistics(ONS), the United Kingdom Statistics Authority(UKSA) and HM Treasury the money that is reduced from the total fee is not sent to the EU. This money is reduced from the total before the rest is sent. It is therefore an abatement or a discount. It is not a rebate or a refund. The abated money is not sent and then returned, it is never sent at all. This point is covered in greater detail later. For now, it must simply be noted that the abatement is often incorrectly named as a rebate by journalists, politicians, civil servants and the public within public discourse.

4.3 Political/subjective arguments and statements of action

Further, there is a difference between political or subjective arguments and statements of action that are not open to interpretation. For example, it would not be possible to base a prosecution upon claims concerning 'taking back control' of the UK's financial contributions. This is because the phrase 'take back control' is open to interpretation and discussion. However, it is possible to bring a prosecution based upon statements of action that 'we send £350 million a week to the EU', because the word 'send' is not open to interpretation. To send is to cause something to go from one place to another. If the United Kingdom does not send £350 million a week to the EU(and the person making this claim is demonstrably aware of this) then there is potentially an attempt to deceive.

4.4 Claims regarding extra money for the NHS

It also important to make clear that our prosecution has little interest in claims that the £350 million figure could be given to the National Health Service. This is firstly because the £350 million figure is not accurate, meaning that this amount of money does not exist in the relevant context and so could not be given to the NHS instead of the European Union(EU).

Secondly, the NHS claim concerns something that may or may not happen in the future, it does not involve a knowingly false claim regarding something which has already happened in the past. It is arguably a prediction or an aspiration for a future action, not a deception of a past event. However, it does seem that the NHS logo has been used without the permission of the NHS. This is of interest.

4.5 Parliament was not closed, dissolution did not occur

During a general election parliament goes through a period of dissolution. Parliament is closed down and Members of Parliament cease to be Members of Parliament. They may then campaign for re-election as private persons and not as incumbent elected representatives. The rules are very strict regarding the use of public funds for private campaigning purposes during this time.

However, during the Brexit referendum purdah period the situation was very different. Chris Veck, Policy & FOI Advisor at the Independent Parliamentary Standards Authority(IPSA), told me that *'During the pre-referendum 'purdah' period, Parliament continued with its normal business and there were no restrictions MPs (and their staff) from continuing with their usual work'*. In short, Members of Parliament were still Members of Parliament during the EU Referendum, they were still in receipt of their normal salaries. Dissolution of Parliament did not occur and so MPs were still required to and capable of carrying out all of their duties. This is an important point to keep in mind.

4.6 Innocent until proven guilty

It must always be remembered that a central tenet of the rule of law is that of assumed innocence before being proven guilty. A point which is well defined by the Universal Declaration of Human Rights:

'(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.'

It must always be remembered that the target of our prosecution may be found to be completely innocent of all charges. They should be considered to be so unless and until proven otherwise in court. All journalists, commentators and members of the public should remind themselves of this before making public statements on this case. This will ensure the protection of the court process. Restraint and respect for the rule of law and the court process is thoroughly encouraged.

5. Why has this work taken so long? An apology to my backers.

I would like to apologise for the time it has taken me to advance Brexit Justice to this point. It has been over two years now and we are yet to get to court. It has taken far longer than I thought it would and I fully understand

why at least three of my backers have informed me that they have lost patience with me and no longer wish to back me. I am very sorry.

I understand that a great many people desire a solution to the problem of lying in UK politics and I really do feel the pressure of my responsibility to deliver it. I have done my best to complete this work as fast as I can, but with such a complex undertaking the values of *less haste more speed* certainly do apply. The only way to do this work is do it carefully and thoroughly. It requires a lot of time. Hopefully, this document serves to illustrate just how challenging an undertaking this has been.

Thank you to my brilliant backers who have continued sending me emails of encouragement during this long period. On one occasion I received 1400 such emails within about 3 days. It was greatly uplifting. I believe in this work and I'm proud to have committed myself to it. Despite it often being challenging, it has been an honour to found this company and lead this private prosecution.

6. What is a private prosecution?

'A private prosecution is a prosecution started by a private individual, or entity who/which is not acting on behalf of the police or other prosecuting authority. A 'prosecuting authority' includes, but is not limited to, an entity which has a statutory power to prosecute.

There are a number of organisations that regularly prosecute cases before the courts of England and Wales but they do so as private individuals, using the right of any individual to bring a private prosecution. One example is the RSPCA.

The right to bring private prosecutions is preserved by section 6(1) of the Prosecution of Offences Act (POA) 1985.'

-Crown Prosecution Service, Private Prosecutions Legal Guidance

<https://www.cps.gov.uk/legal-guidance/private-prosecutions>

Simply put, a private prosecution involves taking someone to court for criminal wrongdoing. It is not a civil action, which often involves some form of financial reward when successful. If we win our case there are criminal penalties that come into play instead. For this reason, it is not correct to use the word 'sue' or 'suing' which apply to civil actions. Instead, it is correct to say 'prosecute' or 'prosecuting' which are used to refer to criminal proceedings.

This is a criminal prosecution case being brought by a private limited company, Brexit Justice Ltd. Which was founded and is owned by Marcus J Ball, the author of this document. The financial backers of Brexit Justice are not a part of the prosecution in an official or legal sense. Their involvement is limited to financial backing. This keeps the action more manageable, protects backers and is an accurate reflection of the situation at hand.

7. What is misconduct in public office?

'Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.'

'The elements of the offence are summarised in Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868.

The offence is committed when:

*a public officer acting as such;
wilfully neglects to perform his duty and/or wilfully misconducts himself;
to such a degree as to amount to an abuse of the public's trust in the office holder;
without reasonable excuse or justification.'*

*'Misconduct in public office should be considered only where:
there is no suitable statutory offence for serious misconduct (such as a serious breach of or neglect of a public duty that is not in itself a criminal offence);
there was serious misconduct or a deliberate failure to perform a duty owed to the public, with serious potential or actual consequences for the public;
the facts are so serious that the court's sentencing powers would otherwise be inadequate.'*

-Crown Prosecution Service, Misconduct in Public Office Legal Guidance

<https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

'...the kernel of the offence is that an officer, having been entrusted with powers and duties for the public benefit, has in some way abused them, or has abused his official position'

-PD Finn, 'Public Officers: Some Personal Liabilities' (1977)

8. What misconduct do we believe has occurred?

In order for the offence of misconduct in public office to be met there must be a clear abuse of public trust. The evidence supports our case that the target of our prosecution repeatedly lied to the public concerning how much money the UK spends on the European Union membership fee.

Elected representatives are trusted by the public to allocate and report on the use of public funds. It is a vital part of the democratic process to correctly manage the collection and administration of public resources. In fact, the political scientist Harold Lasswell stated that politics is 'who gets what, when and how'. If leading elected politicians are lying to the public about who is getting 'what, when and how' then how can the public be expected to trust them? It is not possible for the electorate to have confidence in the management of the public purse when the very people they have elected to take responsibility for it are seen to do the opposite.

9. How much did the UK spend on its membership of the European Union per year, 1973-2016?

The focus of our action is upon the claims regarding UK payments for EU Membership per week and per year. In order to establish the falsity of the claims in question we must first identify the correct figures. 'A Guide to the EU Budget' by Matthew Keep is of assistance in understanding this; as is HM Treasury's European Union Finances publication.

Firstly, it is vital to again make completely clear that the 'rebate' is not a rebate, it is an 'abatement'. This is similar to a discount. According to the UKSA and the Treasury the abatement funds are not sent to the EU and then returned, they are never sent at all. We never 'pay' or 'send' those funds. So, they must be deducted from any claims regarding what is 'sent', 'spent' or 'paid' for membership.

This point was made clear by Andrew Tyrie MP within the Treasury Committee's interview of Dominic Cummings.

Tyrie MP: *'It's not in fact debited from the consolidated fund, 6 billion of it never leaves the consolidated fund'*

Cummings: *'It is in fact debited, that's exactly what the ONS says. If you don't like that then you should argue with the ONS, not with me'*

Tyrie MP: *'I'm just telling you, that it never leaves the UK, the money stays in the UK...'*

Cummings: *'It's debited from, it's debited from'*

Tyrie MP: *'...for the whole of this period. It never leaves the UK, it never crosses the exchanges'*

Cummings: (Discusses ONS figures in the context of an analogy involving a bank statement, Mr Tyrie's slippers and his wife)

Tyrie MP: *'As I just explained to you, and I used to work in the Treasury, and I was in the Treasury shortly after the Fontainebleau agreement was negotiated. This money never leaves the Treasury and I think it's quite significant, therefore, that uh, we should work off figures, uh, that have some plausibility. £19 billion is not the figure that we pay across the exchanges. We pay £13 billion across the exchanges.'*

Cummings: *'We are debited £19.1 billion according to the Office for National Statistics'*

Tyrie MP: *'That is an accounting procedure, but the money never leaves the UK, Mr Cummings'*

-Andrew Tyrie speaking to Dominic Cummings at the Wednesday 20 April 2016 Treasury Committee meeting
The economic and financial costs and benefits of the UK's EU membership

<https://www.parliamentlive.tv/Event/Index/fe18cb0b-fae5-4778-b00f-b05fde360ed6>

'The effect of the rebate is to reduce the amount of the UK's monthly GNI-based payments to the EU Budget. It does not involve any transfer of money from the Commission or other member states to the Exchequer'

-HM Treasury: European Union Finances 2015

<https://www.gov.uk/government/statistics/european-union-finances-2015>

'The UK's official gross contribution for 2014 before the application of the rebate was £19.1 billion. As I have made clear previously, this is not an amount of money that the UK pays to the EU each year'

-Letter from Sir Andrew Dilnot CBE (UKSA) to Dominic Cummings, 27th May 2016

<https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/05/Letter-from-Sir-Andrew-Dilnot-to-Dominic-Cummings.pdf>

'In 2014 the UK's official gross payments to the EU amounted to £19.1 billion. However, this amount of money was never actually transferred to the EU ...Before the UK government transfers any money to the EU a rebate is applied. In 2014 the UK received a rebate of £4.4 billion. This means £14.7 billion was transferred from the UK government to the EU in official payments. But this only accounts for the money that the UK pays to the EU – some of this £14.7 billion came back to the UK public sector...Given these figures, the ONS reports that the UK government's net contribution to the EU - that is the difference between the money it paid to the EU and the money it received - was £9.9 billion in 2014. Using EC data which includes credits from the EU to UK public and private sectors, the UK's average annual net contribution on this wider basis for the years 2010 to 2014 was £7.1 billion'

-ONS webpage

UK Perspectives 2016: The UK contribution to the EU budget, 25th May 2016

<https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/ukperspectives2016theukcontributiontotheebudget/2016-05-25>

'...In addition, the UK has received an 'abatement', or 'correction', to its budget contribution since 1984 which means it pays less than it otherwise would...The abatement is applied before the UK pays its budget contribution (i.e. no money is paid out or rebated)...The rebate is calculated according to a formula that can only be altered with the agreement of all Member States, including the UK.'

-The economic and financial costs and benefits of the UK's EU membership

<https://publications.parliament.uk/pa/cm201617/cmselect/cmtreasy/122/122.pdf>

'The next step in the calculation is to account for the UK's rebate, formally known as the Fontainebleau abatement. This gives the second main concept, the gross contributions after the rebate. The rebate is shown as a separate credit in the ONS's Pink Book, but this does not follow how payments are made: HM Treasury pays over the UK's contributions after deducting the value of the rebate'

-Letter to Andrew Dilnot, 21 April 2016 . Jonathan Athow Deputy National Statistician and Director General, Economic Statistics | Office for National Statistics

<https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/04/Letter-from-Sir-Andrew-Dilnot-to-Norman-Lamb-MP-210416.pdf>

I trust that it is now completely clear that the UK does not send the 'rebate' money to the EU. Also, as is demonstrated within the data included below, the eventual net cost is considerably lower than the amount we send or pay. These figures are presented to Parliament every year by the Chief Secretary to the Treasury by Command of the Queen. The data is presented to Members of Parliament of the House of Commons.

The amount we contribute each year varies greatly, but we have never, in any year, 'paid' or 'sent' £20 billion. Any claim that we give £20 billion a year, or every year is false, even if we don't acknowledge the discount applied by the abatement. At the very simplest level, £350 million a week multiplied by 52 (number of weeks in a year) is eighteen billion two hundred million (£18.2 billion). According to the data published by HM Treasury we have never paid or sent the EU this much for membership within a year. We certainly do not pay it 'a week' or 'every week'. From this point on, any such claims made should be considered by the reader to be innocent mistakes, demonstrations of recklessness or knowingly incorrect attempts to deceive.

UK net contributions to the EU/EC Budget 1973-2022/23. Forecasts after 2017.						
<u>£ million, real (2017) prices</u>						
	Gross contribution	Negotiated refunds	Rebate	Total contribution (after rebate and refunds)	Public sector receipts	Net Contribution
						(Gross contribution - rebate & refunds - public sector receipts)
1973	1,842			1,842	804	1,038

1974	1,586			1,586	1,315	272
1975	2,381			2,381	2,771	-390
1976	2,789			2,789	1,783	1,006
1977	3,899			3,899	1,947	1,952
1978	6,391			6,391	2,494	3,897
1979	6,646			6,646	2,727	3,919
1980	6,079	337		5,742	3,313	2,429
1981	6,660	2,123		4,537	3,321	1,216
1982	8,125	2,892		5,233	3,513	1,720
1983	7,998	2,169		5,829	4,090	1,739
1984	8,193	1,350		6,843	5,165	1,677
1985	9,542	148	402	8,992	4,613	4,379
1986	10,409		3,941	6,468	5,143	1,325
1987	11,440		2,536	8,904	5,120	3,785
1988	10,673		3,311	7,362	4,533	2,829
1989	10,769		2,225	8,544	4,080	4,464
1990	11,345		3,029	8,315	3,897	4,418
1991	9,728		4,184	5,544	4,632	912
1992	10,953		3,058	7,895	4,596	3,299
1993	12,649		4,022	8,627	5,214	3,413
1994	11,251		2,701	8,550	5,090	3,460
1995	13,585		1,844	11,741	5,601	6,140
1996	13,416		3,543	9,873	6,423	3,449
1997	11,624		2,521	9,102	6,780	2,323
1998	14,509		1,981	12,528	5,917	6,611
1999	14,672		4,522	10,150	4,962	5,188
2000	14,702		2,914	11,788	5,928	5,860
2001	12,997		6,319	6,678	4,754	1,924
2002	12,791		4,199	8,592	4,338	4,254
2003	14,515		4,711	9,804	4,935	4,869
2004	14,068		4,639	9,429	5,545	3,884
2005	15,806		4,598	11,207	6,702	4,505
2006	15,174		4,358	10,816	6,042	4,774
2007	14,832		4,195	10,637	5,159	5,479
2008	14,652		5,630	9,022	5,208	3,814
2009	16,110		6,148	9,962	5,018	4,944
2010	17,061		3,421	13,641	5,353	8,288

2011	16,903		3,460	13,443	4,548	8,896
2012	17,065		3,371	13,694	4,518	9,177
2013	19,289		3,908	15,381	4,250	11,131
2014	19,632		4,617	15,015	4,791	10,224
2015	20,357		5,114	15,243	4,041	11,202
<u>2016</u>	<u>17,346</u>		<u>3,958</u>	<u>13,388</u>	<u>3,564</u>	<u>9,824</u>
2017	18,624		5,633	12,991	4,084	8,909
2018/ 19f	19,940		4,328	15,612	5,011	10,602
2019/ 20f	21,694		4,476	17,218	5,413	11,805
2020/ 21f	20,650		4,526	16,125	5,820	10,305
2021/ 21f	20,199		4,443	15,756	5,609	10,147
2022/ 23f	19,733		4,370	15,363	5,552	9,811

Note:

f figures for 2018/19 - 2022/23 are forecast

The numbers presented here are the

figures may not sum due to rounding

-A Guide to the EU Budget, Matthew Keep, page 10

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7886>

10. Why does the £350 million a week claim matter?

It is clear that the systems of democracy and government cannot correctly function when the electorate are unable to trust the people who they have elected. The process of public debate, campaigning, voting and the subsequent results all become meaningless if there is no trust. Lying to the public about how public funds are spent is a complete reversal of the function of an elected representative. Elected representatives, such as Members of Parliament, are entrusted to watch over and scrutinise public spending and decision making. To be responsible for the public purse is a great public trust, lying about the value of its transactions is a great abuse of that trust.

Further to this is the possibility that the referendum result may have been significantly influenced by the £350 million a week claim. Dominic Cummings, Campaign Director at Vote Leave, discussed the claim within his personal blog:

'It was clearly the most effective argument not only with the crucial swing fifth but with almost every demographic. Even with UKIP voters it was level-pegging with immigration. Would we have won without immigration? No. Would we have won without £350m/NHS? All our research and the close result strongly suggests No.'

'But until the last 4-5 weeks we had a big problem getting those going on TV to give the same message. The office could only do so much. If Boris, Gove, and Gisela had not supported us and picked up the

baseball bat marked 'Turkey/NHS/£350 million' with five weeks to go, then 650,000 votes might have been lost.

-Dominic Cummings: how the Brexit referendum was won

<https://blogs.spectator.co.uk/2017/01/dominic-cummings-brexit-referendum-won/>

'At Vote Leave we were challenged for telling voters that the UK is billed £350 million each week for our membership of the EU. We emblazoned this figure on our bus and on our literature, and our spokespeople repeated it again and again. I make no apologies for this, we had our facts, we had our messages and they worked'

-Matthew Elliott, CEO at Vote Leave, BBC interview discussing how Vote Leave won

<https://www.bbc.co.uk/news/av/uk-politics-36857307/vote-leave-on-how-leave-side-won-uk-s-eu-referendum>

11. Who is the target of our prosecution and why?

Throughout the course of our case building process we considered bringing cases against several different elected representatives and campaigners. We looked into various different issues including public spending on campaigning activities, claims concerning public spending, claims concerning mortgage rates and house prices, Turkey joining the EU and controversial poster campaign materials. Upon reviewing the information we had available to us we have made the decision that Mr Boris Johnson MP should be the only target of our prosecution.

Initially, the aim was to bring a prosecution against 10 remain side campaigners and 10 leave side campaigners. The intention being to bring a large scale prosecution against both campaigning sides equally. After reviewing the evidence, the legal team have advised against this for several reasons including case strength, financial cost, time restrictions, complexity and the expected receptiveness of the courts to such a large action. For these reasons it made practical sense to bring a prosecution against just one person. We concluded that a prosecution against Mr Boris Johnson MP had the greatest prospects of success for several reasons.

Firstly, there appears to be significantly more evidence against Mr Johnson than other subjects. He was particularly popular with journalists, camera men and the media in general so there is a plentiful evidence against him stored within media archives. On top of this, he wrote and spoke in public on the issues of interest a great deal. In terms of evidentiary sufficiency, Mr Boris Johnson MP is the most appropriate target for prosecution.

Secondly, Mr Boris Johnson MP was in the unique position of holding two distinct public office positions at once. He was not only a Member of Parliament, but also the Mayor of London throughout much of the period of interest to our case. Meaning, that he was required to follow both the Code of Conduct for Members of Parliament as well as the GLA Code of Conduct at the same time until May 8th 2016 when he formally ceased to be Mayor. It has been said that 'a public office is a public trust', it is arguable then that two public offices invite and require twice as much public trust. Put differently, if the public cannot trust a man who has been entrusted to become both a Member of Parliament and the Mayor of London at the same time, who can they trust? In holding two distinctly different positions of public trust at once it follows that the public have a greater trust invested in Mr Boris Johnson MP than in other potential targets who held just one. Regarding public office and public trust, Mr Boris Johnson MP is the most appropriate target for prosecution.

Thirdly, it is a matter of public record that Mr Boris Johnson MP reportedly has a reputation for deceitful behaviour¹. He was apparently fired by The Times for making up a quote, criticised by fellow journalists in Brussels for fabricating news stories² and accused of being 'ineffably duplicitous' by Conrad Black, owner of The Spectator³. This followed a decision by Mr Johnson to work as an MP and the Editor of the Spectator at the same time, when it was alleged that he had promised both his constituents and Mr Black that he would not do so. Again, according to public record, he was later relieved of his duties as Shadow Arts Minister by the Conservative Party in response to lying about an extramarital affair⁴. The party's spokesman said the decision was made because he lied about the claims, not because of the allegations themselves. The spokesman said: "It was nothing to do with personal morality but rather with his personal integrity and honesty". However, it must be said that such allegations against Mr Johnson MP have not been proven in any court so far as we are aware. We should remain somewhat sceptical of them. For reasons of reported past character, Boris Johnson MP appears to be the most appropriate target for prosecution.

Fourthly, Mr Boris Johnson MP is most commonly associated with the £350 million a week and £20 billion a year claims. He appears to have been the dominant figure behind the big red 'battle bus' used to advertise the claims across the country and in the media. To the extent that said bus was occasionally referred to as being the 'Boris Bus'. The £350 million a week claim appears to have been the most repeated, controversial, deceitful and effective of both campaigns. Mr Boris Johnson MP is the most appropriate target for prosecution because he is the public office holder most commonly associated with this claim.

12. What evidence do we have against this individual?

After reviewing evidence found online, acquired via freedom of information requests and located within privately owned media archives we have identified dozens of instances of offence. Each individual instance of offence consists of Mr Boris Johnson MP making knowingly false claims concerning how much money the UK spends on EU Membership, as well as the manner in which it is spent. The following 50 example events serve to demonstrate that Mr Johnson did advance several incorrect claims, which he knew were incorrect. It is a limited selection presented here for illustrative purposes only and does not represent the full evidence we intend to bring in court. Web links to content may time out. Media archives are more reliable but often harder to access.

12.1 Telegraph article discussing Britain's "EC Rebate"

Context: A young Mr Boris Johnson writes an article for the Telegraph discussing the 'rebate' and proposed cuts to it.

Mr Boris Johnson: *"Without the budget rebate, Britain's contributions to EC coffers would be approximately three times bigger"*

Date: January 26th 1994

Link: <https://goo.gl/BFYMKc>

(The Telegraph Historical Archive accessed via The British Library)

**Britain's EC
rebate under
fire as Bonn
seeks cuts**

¹ Boris Johnson: The Irresistible Rise. <https://www.bbc.co.uk/programmes/b01rlx9l>

² Boris v Dave: The Battle for Europe. <http://www.channel4.com/programmes/boris-v-dave-the-battle-for-europe/on-demand/64575-001>

³ Boris Johnson: The Irresistible Rise. <https://www.bbc.co.uk/programmes/b01rlx9l>

⁴ Boris Johnson's regret at sacking http://news.bbc.co.uk/1/hi/uk_politics/4010293.stm

Point: Demonstrates long term knowledge that the 'budget rebate' very significantly decreases the size of the UK's financial 'contributions'. Yet often chooses to ignore its existence in future when making comments on the UK's 'contributions'.

12.2 Telegraph interview with Dr Alan Sked, founder of UKIP

Context: A young Mr Boris Johnson writes an interview for The Telegraph asking why it is that Dr Alan Sked wanted the UK to leave the European Union.

Dr Alan Sked: *"We'd save £10-15 billion a year by the year 1999, and then even more when our rebate runs out"*

Mr Boris Johnson: *'This strikes me as dubious accounting, since much of the gross contribution comes back to Britain'*

Date: December 16th 1996

Link: <https://goo.gl/9WpdSu> (The Telegraph Historical Archive accessed via The British Library)



Point: Mr Boris Johnson describes Dr Sked's claim as being 'dubious accounting', despite using a very similar claim on many occasions during the referendum campaign. Also, this article arguably demonstrates limited long term knowledge of the difference between the UK's gross allocation and net payment.

12.3 Signing of declaration of acceptance of office as Mayor

Context: Mr Boris Johnson signed a declaration, otherwise known as a 'Mayoral oath', upon officially becoming the Mayor of London. I have acquired the signed copy of this document, which was enforced by the Local Government Act 2000.

When Mr Boris Johnson was elected as Mayor of London he signed the Mayor of London's declaration of acceptance of office. He was legally unable to take on the office of Mayor until he had signed it. Within this declaration he declared he would 'faithfully' carry out the duties of Mayor, as presented here:

'I [(1)] having assumed the office of..... [(2)] I declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.'

'(Under section 28(3) of the Greater London Authority Act 1999, the declaration shall be made before two members of a) the London Assembly, the proper officer of the Greater London Authority, a justice of the peace or magistrate in the United Kingdom, the Channel Isles or the Isle of Man, or a commissioner appointed to administer oaths in the Supreme Court.'

-The Greater London Authority (Declaration of Acceptance of Office) Order

Date: 3rd May 2008

Link: NA

Point: Mayor Boris Johnson signed a declaration that he would ‘faithfully’ carry out his duties and abide by the GLA Code of Conduct which includes rules concerning ‘honesty’ and not bringing his office into ‘disrepute’.

12.4 University students Telegraph article

Context: Writing about European students in UK universities

Mr Boris Johnson: *‘There is only one answer. We need a rebate. With Britain's net contribution to the EU budget rising to an amazing £6.4 billion...’*

Date: March 22nd 2010

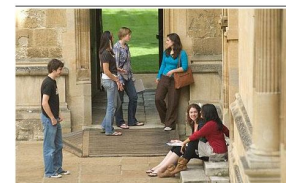
Link:

<https://www.telegraph.co.uk/comment/columnists/borisjohnson/7494243/Why-are-we-paying-to-educate-EU-students-in-our-universities.html>

Point: Aware of more accurate figure and arguably demonstrates knowledge of the importance of differentiating between net and gross contributions.

Why are we paying to educate EU students in universities?

Boris Johnson says the next PM should take a leaf out of M book and demand a rebate.



Students enjoying the weather at Oxford, where perverse legislation means that EU students receive a subsidy from the British taxpayer. Photo: ALAMY



By Boris Johnson
5:41PM GMT 21 Mar 2010
Follow 3.2M followers

12.5 Hansard finance bill voting record

Context: Mr Boris Johnson was the MP for Henley between June 2001 to June 2008 and the MP for Uxbridge and South Ruislip between May 2015 to the present.

Date: June 2001-June 2008 and May 2015 to present

Link: <https://goo.gl/nHWjnX> (Hansard)

Point: Mr Boris Johnson has significant experience as an MP and has voted on issues of national expenditure on multiple occasions throughout his career. This has included votes on Finance Bills related to the national budget and the EU budget. Mr Boris Johnson has not only been in a privileged position in terms of knowledge of national expenditure, he has been a part of the decision making and voting process regarding such expenditure.



12.6 Parliament presented with correct EU spending figures on multiple occasions

Context: The European Union Finances publication from HM Treasury

‘Presented to Parliament by the Chief Secretary to the Treasury by Command of Her Majesty’



Published 9 December 2015
From: [HM Treasury](#) and [The Rt Hon David Gauke MP](#)

'In 1980, following a recommendation by the Public Accounts Committee (PAC), the government agreed to present an annual statement (statement) to Parliament giving details of the Budget of the European Union (EU Budget).'

Date: Throughout time as an MP

Link: <https://goo.gl/d3TktD> (Finances 2015 page)

Point: As an MP, Mr Boris Johnson had information made available to him every year to ensure he was fully aware of the correct figures. Once published, these documents were available for his review.

12.7 European Union (Finance) Bill vote

Context: Within the House of Commons, Mr Boris Johnson MP takes part in a vote on the European Union (Finance) Bill.

'The Bill will give UK approval to the unanimous agreement on the new ORD—an agreement that maintains the existing system of financing the EU budget. That means no new types of member state contributions; no new EU-wide taxes to finance EU spending; and, crucially, no change to our rebate.'



'In addition to forcing restraint on EU expenditure on the revenue side, it was a specific UK objective that there would be no new types of member state contribution; no new EU-wide taxes to finance EU spending; and no change to the UK rebate.'

Date: 23rd June 2015

Link:

[https://hansard.parliament.uk/Commons/2015-06-23/debates/15062354000001/EuropeanUnion\(Finance\)Bill#divison-1545](https://hansard.parliament.uk/Commons/2015-06-23/debates/15062354000001/EuropeanUnion(Finance)Bill#divison-1545) (Hansard discussion)

<https://www.publicwhip.org.uk/mp.php?id=uk.org.publicwhip/member/41594&showall=yes#divisions> (Voting record, confirms presence)

Point: Boris Johnson participated in House of Commons voting regarding European Union Finances. He was in a position to know the correct figures because he was one of the nation's elected representatives who voted to decide if they should continue to be paid in the same fashion or not. The bill reading mentioned on two separate occasions that there would be 'no change to our rebate'.

12.8 'Pro remain' Sunday Times article

Context: Mr Boris Johnson apparently wrote a Sunday Times article, this one arguing for a remain vote. He is on video record acknowledging having written the article.

'This is a market on our doorstep, ready for further exploitation by British firms: the membership fee seems rather small for all that access.'

Date: Early February 2016



Link: <https://goo.gl/1HfJBu>

Point: Boris Johnson wrote that the fee was 'rather small', in contrast to his later claims that it was excessive. Useful for context.

12.9 Telegraph Op-ed 1: Don't be taken in by Project Fear – staying in the EU is the risky choice

Context: Writing announcement article in the Daily Telegraph, shortly after announcing his decision to campaign for leave

Mayor Boris Johnson: *'It is a once in a lifetime chance to energise our democracy, cut bureaucracy, save £8 bn a year, control our borders and...'*

Date: 28th February 2016

Link:

<http://www.telegraph.co.uk/opinion/2016/03/16/dont-be-taken-in-by-project-fear--staying-in-the-eu-is-the-risky/>

Point:

Makes use of £8 billion a year claim which appears to be accurate according to HM Treasury data. Demonstrates knowledge of more accurate figure.

Don't be taken in by Project Fear
– staying in the EU is the risky
choice

Follow BORIS JOHNSON



12.10 Northern Ireland Trip

Context: Holding a press conference and speaking during a trip to Northern Ireland

Mayor Boris Johnson MP: *'Don't forget that the United Kingdom as whole puts much more money into the EU than we get out. We're basically spending about £350 million a week on the EU, uh, imagine what you could do with that money here in Northern Ireland if you had that back. You could build about a hospital every week. '...and so as I say we save £350 million a week which can be spent in places like Northern Ireland...'*

Date: 29th February 2016

Link: https://www.youtube.com/watch?v=A4Fv_4YVx7o (Full footage available via archive)

Point: Demonstrates use of 'spending' and 'save' £350 million a week claims, which are inaccurate. The previous day he stated very different spending figures.



12.11 ITV's The Late Debate Interview with Simon Harris



Context: On a debate show as Mr Johnson begins his leave campaigning work

Mayor Boris Johnson MP: *'...we spend, as you know, net, about £10 billion, 8, between £8 and £10 billion pounds, goes, which we never, we never see again...'*

Date: 1st March 2016

Link: <https://www.facebook.com/simonharrisitv/videos/81240353222178/?fallback=1>

Point: Demonstrates knowledge of more accurate numbers and uses the word 'spend'.

12.12 Peoples' Question Time Mayor of London

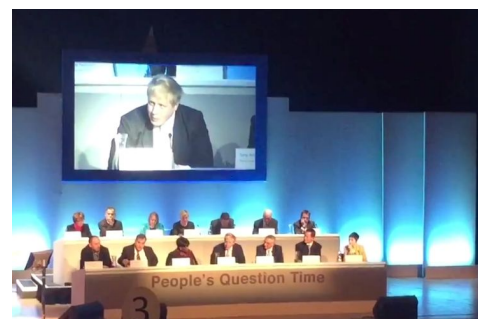
Context: Speaks to the crowd during public event

Mayor Boris Johnson MP: *"We send net to, every year, we send net, we're the second biggest contributors, we send about, between £8 and £10 billion which we never see again"*

Date: 3rd March 2016

Link: Available via archive

Point: Demonstrates knowledge of more accurate numbers and uses the word 'send'.



12.13 The Sun: David Cameron is 'clutching the skirts of Brussels'

Context: An article written by Mr Johnson within The Sun

Mayor Boris Johnson MP: *'It is time to take back control of our money — the £8.5billion a year we send to Brussels and never see again, enough to build a new UK hospital every week'*

Date: 3rd March 2016

Link:

<https://www.thesun.co.uk/archives/politics/280319/boris-johnson-david-cameron-is-clutching-the-skirts-of-brussels/>

Point: Demonstrates knowledge of more accurate numbers and uses the word 'send'



12.14 London Mayoral campaign: Zac Goldsmith and Boris Johnson campaigning

Context: Carries out press conference during Zac Goldsmith campaign work

Mayor Boris Johnson MP: *'We are net contributors, we contribute gross about £19 billions, and we get back uh, you know, about half of that. And, so, we, we send away, anything between £8 and £10 billion which we never see again and that's enough to build a huge hospital every week, that we're just, we're sending away...'*



Date: 3rd March 2016

Link:

<http://www.gettyimages.co.uk/detail/video/london-mayoral-campaign-zac-goldsmith-and-boris-johnson-news- footage/657630318>

Point:

Demonstrates knowledge of more accurate numbers and uses the word 'send'. Clearly differentiates between the gross figure and the net figure which is sent. Note use of word 'contribute'.

12.15 Leaving Number 10 Cabinet Meeting

Context: Agrees to speak to the press after leaving a Cabinet Meeting

Mayor Boris Johnson MP: *'...June the 24th will be an Independence day for the UK because...we'll stop sending about £10 billion to Brussels, that's enough to save, you know, £370 fuvm, £350 million a week on a new hospital...'*



Date: 8th March 2016

Link: <http://www.gettyimages.co.uk/license/657569698>

Point: Uses £10 billion a year and £350 million a week claim, which do not equate. Note 'sending about £10 billion to Brussels'.

12.16 Cycle Superhighway Interview

Context: Speaking during press conference to advertise new cycle lane

Mayor Boris Johnson MP: *'...getting back control of our borders and getting back, by the way, about £15 billion..'* *'...our money going to Brussels in huge quantities, £15, £20 billion, some of which we see back,*



but of course, that's... '...we'd get back about £350 million a week if we left, and you could build a huge new hospital every week with that money'

Date: 8th March 2016

Link: <http://www.gettyimages.co.uk/license/666746916>

Point: Uses 3 figures that contradict each other. Uses £350 million a week claim.

12.17 Dartford Campaign Speech

Context: Giving speech at Vote Leave Dartford event

Mayor Boris Johnson MP: *'No no no, no. Mei non. We don't pay you, you pay us. And you give us £20 billion a year, half of which we spend in your own country, Brussels bureaucrats deciding how to spend UK tax payers' money in the UK on various projects of one kind or another. The rest, between 8 and a half and ten billion pounds, goes from the UK every year to Brussels...'*



Date: 11th March 2016

Link: <https://www.youtube.com/watch?v=RWhwzCuHfAo&t=69s> (Also available via archive)

Point: Make uses of the £20 billion a year claim and the word 'give'. This section seems to ignore the existence of the rebate as 'half' is apparently spent in the UK and 'the rest' goes 'every year' to Brussels. Some artistic licence may be applied due to nature of the speech but this does not extend to comments regarding national spending figures.

12.18 HereEast Interview

Context: Press conference at HereEast

Mayor Boris Johnson MP: *'...the EU is not only taking about £10 billion a year net...'*

Date: 14th March 2016

Link: <http://www.gettyimages.co.uk/license/658123780>

Point: Demonstrates knowledge of more accurate figure, uses 'taking'.



12.19 Telegraph Op-ed 2

Context: Writing an opinion piece for the Daily Telegraph

Mayor Boris Johnson MP: *'£12.9 billion: Amount the UK paid to the EU in 2015 after rebate taken into account'*

Date: 16th March 2016

Link:

<http://www.telegraph.co.uk/opinion/2016/03/16/there-is-no-conspiracy-the-eu-is-completely-open-about-its-superstate-plan/>

Point: Demonstrates awareness of more accurate figures, use of 'paid'



12.20 The Agenda with Tom Bradby

Context: Appearing on ITV talk show

Mayor Boris Johnson MP: ...what would it be like out? I think, well first all, we'd get about, we'd stop spending £20 billion, we'd get £10 billion back'

Comedian: 'We don't send £20 billion anyway'

Mayor: 'Net' 'We'd get £10 billion back net, yes?' 'Yes we would'

Comedian: 'No, you'd get half'

Mayor: 'Half of 20 is 10 yes? We'd get half of that back'

Date: 21st March 2016

Link: <http://www.itv.com/presscentre/ep1week7/agenda> (+ archive)

Point: Makes use of the £20 billion claim, uses the word 'spend'. Says that we would get £10 billion back.



12.21 Parliament Votes for UK's 2016 Budget

Context: Voting record as reported by 'They Work for You'

'Boris Johnson voted to approve the March 2016 budget which contained plans to spend £56bn more than was expected to be taken in, introduced a policy of requiring all schools to become academies and introduced a new soft drinks levy. A majority of MPs voted the same.'

Date: 22nd March 2016

Link:

<https://www.theyworkforyou.com/divisions/pw-2016-03-22-221-commons/mp/10999>



Point: Reminder of the wider context of Mr Boris Johnson MP's role in decision making, scrutiny and ratifying the UK's national spending. Mr Johnson MP voted to confirm the UK's annual budget which includes EU finances.

12.22 BBC interview on government leaflets

Context: Press conference in Islington

Mayor Boris Johnson MP: *"The fact is that if we stay in this system which is completely, in my view, politically bankrupt, you will be locked into a system where we continue to send ?about? £20 billion a year to Brussels, only £10 billion of which comes back, much of which is spent..."*



Date: 7th April 2016

Link: <https://www.youtube.com/watch?v=tm-kG5HbuGI> (also available via archive)

Point: Uses £20 billion a year claim and 'send'

12.23 Manchester arrival interview

Context: Arriving in Manchester for Vote Leave campaign event

Mayor Boris Johnson MP: *'...all we're saying is that if you, if we get out, which we should, what we'd be able to do is spend that lost £10 billion, totally lost £10 billion, on any kind, any number of things, the NHS might be one thing...'*



Date: 15th April 2016

Link: <http://www.gettyimages.co.uk/license/644343178>

Point: Uses more correct number here of about £10 billion a year, makes use of 'lost'. Vote Leave's £350 million a week sign also present in Manchester for their event.

12.24 BBC Laura Kuenssberg interview

Context: Speaking to BBC political editor Laura Kuenssberg

Mayor Boris Johnson MP: *'...of the huge sums of money, well, we have to repatriate £20 billion pounds a year, uh, be able to spend it ourselves on our priorities, £20 billion pounds, not an insignificant sum...'*



Date: 15th April 2016

Link: Archive

Point: Makes use of the £20 billion claim, twice. The idea that we could spend £20 billion ourselves would require the non existence of the abatement. Makes use of the word ‘repatriate’ which according to the Cambridge dictionary means ‘to send or bring someone, or sometimes money or other property, back to the country that he, she, or it came from’⁵. The definition is important because the money didn’t leave the UK.

12.25 Manchester campaign speech

Context: Speech at Vote Leave event in Manchester

Mayor Boris Johnson MP: *‘We do have an alternative and it’s a glorious alternative...’ ‘Take back control of £350 million a week, take back control of our borders, and as for the people who...’*

Date: 15th April 2016

Link: <http://videosever.bl.uk/record/79684> (British Library archive)

Point: Uses £350 million a week claim, ‘take back control’ used



12.26 Manchester post speech Q&A

Context: Q&A following speech at Vote Leave event in Manchester

Mayor Boris Johnson MP: *‘...the gross, the gross figure is 350 million a week, that’s about 20 billion pounds a year...and those my friends are the facts’* (Potentially edited footage)

Date: 15th April 2016

Link: <http://www.gettyimages.co.uk/license/644338490>

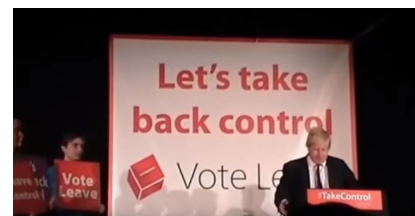
Point: £20 billion a year is not about £350 million a week, it’s £1.8 billion off that figure. Demonstrates continued knowledge of gross figure.



12.27 Leeds Campaign Speech

Context: Speech at Vote Leave event in Leeds

Mayor Boris Johnson MP: *‘Mei non, we don’t pay you, you pay us, you pay us £20 billion a year, and half of it we give you back to spend in your own country, or rather we in Brussels, unelected EU Bureaucrats, decide how that money will be spent in your own country, and the rest of that*



⁵ Repatriate(Cambridge dictionary) <https://dictionary.cambridge.org/dictionary/english/repatriate>

money, well it just disappears, out into the wide blue yonder' '...The rest of the cash, the rest of the cash, is of course going off to, heaven knows what, Potemkin olive groves...'

Date: 16th April 2016

Link: Archive

Point: £20 billion a year claim, use of 'pay'

12.28 Leeds Campaign Speech. Q&A

Context: Q&A after speech at Vote Leave Leeds

Mayor Boris Johnson MP: *'Don't forget, don't forget that we will get back not only the £10 billion pounds that they are currently spending on our behalf in this country we'll get back a, net, an extra £10 billion, which can be used on great projects such as the NHS or whatever it happens to be'*



Date: 16th April 2016

Link: Archive

Point: This claims would amount to a total of £20 billion. Makes use of word 'spending'. Chooses to withhold existence of abatement.

12.29 Newcastle campaign speech

Context: Speech at Newcastle Vote Leave event

Mayor Boris Johnson MP: *"And imagine if somebody came to us now and said would you like to join this club a club that costs us £20 billion a year that takes away our right to control our borders and our right to control our democracy and where the real economic benefits to this country are about the same as membership of the Desperate Dan pie eater's club."*



Date: 16th April 2016

Link: Archive

Point: £20 billion a year, uses 'costs' word.

12.30 Newcastle Campaign Speech Q&A

Context: Q&A following speech at Vote Leave Newcastle event



Mayor Boris Johnson MP: *'...we don't pay you, you pay us, you pay us £20 billion a year. And half of it of course spent in your own country, by EU officials, in Brussels, deciding how UK taxpayers money is going to be spent. And the rest of it, what happens to the rest of it? The rest of it vanishes, literally in smoke, on Greek tobacco subsidies...' "The cash I'm talking about, this £10 billion that goes away from the UK, and that we never see again, it's, it's not only wasted, I think sometimes it's borderline corrupt what happens to that money"*

Date: 16th April 2016

Link: Archive

Point: Makes use of 'pay' and £20 billion a year.

12.31 BBC interview on Treasury estimates

Context: BBC press conference on the street at Mill Hill Broadway, making use of police escort.

Mayor Boris Johnson MP: *'...the reality is, uh, that this country, is giving, at the moment, £20 billion pounds every year to the EU, £350 million a week, which we would get back, and we would be able to spend that solid hard cash, we could spend...'*



Date: 18th April 2016

Link:

<https://www.bbc.co.uk/news/av/uk-politics-eu-referendum-36075374/treasury-eu-exit-estimate-is-wrong-boris-johnson> (Archive for full footage)

Point: Makes use of 'giving' and £20 billion a year, £350 million a week, 'we would get back' and 'spend that solid hard cash, we could spend'.

12.32 Trafalgar Palmyra Arch Interview

Context: Attending official unveiling of Palmyra Arch event

Mayor Boris Johnson MP: *'I think the crucial thing is, that the EU, costs us every year about £20 billion in cold hard cash which is going from this country to, to Brussels. Some of it comes back, obviously, and is spent, uh, by the EU in this country, but that's the big distinction between...'*



Date: 19th April 2016

Link: <http://www.gettyimages.co.uk/license/668395380>

Point: 'Costs' and "£20 billion" 'every year', 'which is going from this country to, to Brussels'.

12.33 Downing street departure

Context: Leaving a meeting in Westminster

Mayor Boris Johnson MP: *'...we think, and the whole leave campaign thinks that we'd be much better off, much richer off, out of the European Union, and that's actually something that the Treasury Report itself confirms. And I also think we'd take back control of £20 billion, that we send every year to Brussels...'*

Date: 19th April 2016

Link:

<http://www.gettyimages.co.uk/detail/video/referendum-campaign-boris-johnson-interview-england-news-footage/668837834>



Point: Makes use of £20 billion claim 'that we send every year to Brussels'. The Treasury Report does not, as far as I can see, 'confirm' that the UK would be 'richer off' outside of the European Union.

12.34 UKSA warning from Andrew Dilnot

Context: Sir Andrew Dilnot of the UKSA makes a public statement against the use of the £350 million a week claim via a letter to Norman Lamb MP

' "Without further explanation I consider these statements to be potentially misleading. Given the high level of public interest in this debate it is important that official statistics are used accurately, with important limitations or caveats clearly explained,"

Date: 21st April 2016

Link:

<https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/04/Letter-from-Sir-Andrew-Dilnot-to-Norman-Lamb-MP-210416.pdf>



Point: Andrew Dilnot of the UKSA issues a public notice that the £350 million a week figure is not fully accurate.

12.35 The Sun Op-ed 2

Context: Writing an opinion piece for The Sun

Mayor Boris Johnson MP: *'We are giving £20bn a year, or £350m a week, to Brussels-about half of which is spent by EU Bureaucrats in this country, and half we never see again'*



Date: 22nd April 2016

Link:

<https://www.thesun.co.uk/archives/politics/1139354/boris-johnson-uk-and-america-can-be-better-friends-than-e-ver-mr-obama-if-we-leave-the-eu/>

Point: Makes use of 'giving', '£20 billion a year' and '£350 million a week'. Ignores existence of abatement despite demonstrably knowing it exists.

12.36 Press conference interview in Islington

Context: Press conference on street

Mayor Boris Johnson MP: *'...it is paradoxical, inconsistent, incoherent that we are being urged every week to send £350m of our taxpayers' money to Brussels'*

Date: 22nd April 2016

Link: <https://www.youtube.com/watch?v=NurL2VpJ0H4> (+ archive)

Point: Claims that we're being urged to 'send' £350 million a week to Brussels



12.37 Coke Machine Daily Mail video

Context: Press conference following Obama comments

Mayor Boris Johnson MP: *"American Diplomats here in London owe this city £9 million in unpaid congestion charge and for them to tell us that uh, you know, we've got to send £350 million per week to Brussels"*

Date: 23rd April 2016

Link: Archive

Point: Makes use of '£350 million per week' and 'send'



12.38 Economists for Brexit publication

Context: Economists for Brexit publish their report on economics of Brexit

'The Fontainebleau Rebate'

The UK's contribution would be much greater, if it was not partially mitigated by the Fontainebleau Rebate, which was negotiated by Mrs Thatcher in 1984. It is calculated



according to a formula which used to mean that the UK's net contribution was reduced by 66 percent, relative to what it would be without the abatement'

Date: 26th April 2016

Link: https://issuu.com/efbkl/docs/economists_for_brexit_-_the_economy

Point: Gergard Lyons, Mayor Boris Johnson's economic advisor, was demonstrably aware of the nature of the 'abatement' as he co-authored this document which discusses it.

(Mr Johnson formally ceases to be Mayor of London)

Date: 8th May 2016

12.39 Sir Andrew Dilnot intervention

Context: Sir Andrew Dilnot writes a letter to Dominic Cummings in regards to the use of the £350 million a week figure. It is very widely publicised and Mr Boris Johnson MP is alerted to its use of language.

Sir Andrew Dilnot: *'As I said in my reply to Mr Lamb, when considering the UK's financial contributions to the EU, a range of concepts are important to note. First, the UK's gross contributions to the EU; second, gross contributions after the rebate; and third, gross contributions after the rebate and payments received by the UK public sector from the EU. These combined provide the method for calculating the net contribution after allowing for EU payments to the UK public Sector'*

'Without further explanation I consider these statements to be potentially misleading and it is disappointing that this figure has been used without such explanation. Given the high level of public interest in this debate it is important that official statistics are used accurately, with important limitations or caveats clearly explained.' (note, he has used this paragraph before in a previous letter)

Date: 10th May 2016

Link:

<https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/05/Letter-from-Sir-Andrew-Dilnot-to-Mr-Cummings-10-May-2016-.pdf>

Point: Dilnot goes somewhere toward explaining the difference between net and gross payments here. A well publicised intervention. Inadvisable use of language.



12.40 Good Morning Britain Truro

Context: Boris Johnson On Why He Thinks Britain Should Leave The EU | Good Morning Britain

Boris Johnson MP (no longer Mayor): *"This is a lifetime, once in a lifetime chance, for us to, take back control of our country and our democracy, a lot of money, £350 million a week, overall, goes to, to Brussels"*

Date: 11th May 2016

Link: <https://www.youtube.com/watch?v=ko-TtUY1rEM>

Point: Claims that the full amount of £350 million a week goes to Brussels



12.41 'Totally right' comment

Context: Campaigning in Truro

Boris Johnson MP: *"Totally right! Totally right!"*

Date: 1th May 2016

Link: <https://www.gettyimages.co.uk/license/643813230>

Point: Fully endorses the 'We send the EU £350 million a week' claim on the battle bus by saying it is 'totally right'. Alerted by journalist to Andrew Dilnot's statement that it is 'misleading'.



12.42 ITV Coach interview, differentiates between figures

Context: Interview within the battle bus itself

Boris Johnson MP: *"leaving aside the rebate and the stuff we get back, we send over £10 billion a year, we never see again"*

Date: 11th May 2016

Link: <https://www.gettyimages.co.uk/license/643813230>

Point: Differentiates between 'rebate' and the 'stuff we get back', demonstrating that he is aware we don't get the 'rebate' 'back'. Demonstrates retained ability to use somewhat more accurate figure.



12.43 5 positive reasons to vote leave and take back control: Europe yes, EU no

Context: Within the leaflets that Mr Johnson MP was handing out in Truro

"We send over £350 million a week to the EU every week- enough to build a modern hospital every week of the year. If we vote to remain in the EU, we will keep sending this money to Brussels each week"

Date: 11th May 2016

Link: <https://digital.library.lse.ac.uk/objects/lse:sav235yoh> (Leaflets)
<https://www.gettyimages.co.uk/license/643813230> (handing out leaflets)



Point: Leaflets contained £350 million a week claim and make use of the word 'send' and 'sending'

12.44 Bradby battle bus admission

Context: Press conference on red battle bus with Ben Bradby of ITV news

Boris Johnson MP: *'Yes we do get some of it back' 'which is not in itself to be sneezed at' 'it represents accurately the gross sum' 'If you take out the abatement and the money that comes back via Brussels, the figure is obviously lower'. 'If you take out the abatement and the money that comes back via Brussels, the figure is obviously lower.'*



Date: 11th May 2016

Link: <https://www.youtube.com/watch?v=oryCG3Mplks&t=239s> (+ archives)

Point: Accepts that the figure is 'obviously lower', demonstrates continued knowledge of abatement, differentiates between the 'abatement' and 'the money that comes back via Brussels'.

12.45 Reid Steel angle grinder press stunt, speech and Facebook post

Context: Uses an angle grinder on a metal '£350' million sign in a press stunt

Boris Johnson MP: *'A couple of pics from my recent visit to REIDsteel in Christchurch, Dorset, where I tried my hand at grinding a steel £350m sign to highlight the whopping figure which we send to Brussels every week. I then spoke to staff about why I believe we should leave the EU and take back control of our own money'* (Facebook post)



Bus: *"We send the EU £350 million a week"*

Date: 12th May 2016

Link: Archive & Facebook page

Point: Makes use of £350 million claim and uses the words 'send' and 'every week'. Use a metal angle grinder to highlight his point.

12.46 David Nieper Derbyshire clothes manufacturer press conference

Context: Speaking during event visiting clothes factory.

'When questioned on his claims that a Brexit would save the UK around £350 million a week he told us: "That comprises all the contributions, some obviously are spent by the EU in the UK, some come back in the budget abatement, but net, you're talking about £10 billion a year which is completely lost and goes on Spanish bullfighting... heaven knows what."

Date: 16th May 2016

Link: <https://www.chad.co.uk/news/video-eu-is-like-a-badly-designed-undergarment-says-boris-1-7914821>
(footage available in archive)

Point: Uses £350 million claim and the word 'save' but also makes use of more accurate claims to some extent



12.47 Burns £350 million every week cheque

Context: Speaking at an industrial facility with a furnace, press stunt

Boris Johnson MP: *"The European Union, three hundred and fifty million pounds every week" "....we are going to show you what happens to our cash every week"*

Date: 17th May 2016

Link:

<https://www.gettyimages.co.uk/detail/video/referendum-campaign-boris-johnson-burns-cheque-various-news-footage/668388006>

Point: Makes no account of the abatement which would arguably need to be deducted from the cheque amount before it was burned. Makes use of the £350 million figure and 'every week'



12.48 First News Children's Debate

Context: Standing in front of Parliament, speaking for First News (a news media company for children).



Boris Johnson MP: *"Hi folks I'm Boris Johnson, I'm a member of Parliament; which is what you can see behind me. I'm very pleased to be taking part in this first news Children's EU debate, and the reason I think that we should be voting to leave on June the 23rd is partly because it costs us a huge amount of money, £350 million a week...."*

Date: Possibly late May 2016 but may have been filmed earlier

Link: <https://www.youtube.com/watch?v=y5cMUX1gS4o> (archive)

Point: Uses £350 million a week claim and uses the word 'costs'. Speaking exclusively to the nation's children. Demonstrates ability to lie to children.

12.49 Gisela Stuart and Andrew Neil on The Daily Politics Show

Context: Television interview between Gisela Stuart and Andrew Neil



Andrew Neil: *'Let me ask you this. Why does your side of the argument continue to use this figure that we, the country, send £350 million a week as our membership fee to the European Union when you know that's not true?'*

Gisela Stuart: *'The ONS pink book says our annual contribution to the EU institutions is £19.1 billion. Why are you shaking your head? Is that what it says in the book?'*

Andrew Neil: *'Because the ONS themselves said that was misleading. Today, the IFS said that it's absurd. Do you agree with the IFS or not?'*

Gisela Stuart: *'If the ONS wishes to change the way it has its column....'*

Andrew Neil: *'You know it's a gross contribution and that's how it appears in the accounts. You're quite right, that's an accountancy matter. You know, as well as I do, we don't send that £350m a week. That amount of money physically does not leave London and go to Brussels. You know that don't you?'*

Gisela Stuart: *'What I also know...'*

Andrew Neil: *'...The proper name is not the rebate anyway. It is the fontainebleau abatement. It's an abatement. So, out of the £18 billion a year we send, I speak roughly in these figures, we take the £5 billion abatement off and send £13 billion which is not £350 million a week. Can we agree on these facts?'*

Gisela Stuart: *'Can we also agree...'*

Date: May 25th 2016

Link: <https://www.bbc.co.uk/programmes/b07d43qg>

Point: Full interview of great value as Andrew Neil understands the nature of the abatement, calling it by its correct name. He then uses this knowledge to put pressure on Stuart and highlight the extent of the deception.

12.50 Facebook Preston post

Context: Posted via Mr Boris Johnson MP's facebook page

Battle bus "We send the EU £50 million a day"

Date: 2nd June 2016



Link:

<https://www.facebook.com/borisjohnson/photos/a.238842266316.137127.7972991316/10153731229991317/?type=3&theater>

Point: Fully endorses £50 million a day claim by posting it via Facebook and promoting it during a speech in Preston.

12.51 What can we learn from these 50 example events?

After reviewing this information it is important to consider what can be learnt from the 50 example events.

Firstly, it is clear that Mr Johnson is aware of the more accurate figures as he has made use of them on multiple occasions. Also, he has been presented with and alerted to the accurate figures several times. Secondly, he demonstrates a long term knowledge of the difference between net and gross payments. Thirdly, he demonstrates a knowledge of the difference between an abatement and a rebate. Yet, majorly favours the use of the word rebate. Fourthly, Mr Johnson demonstrates knowledge that the abated funds are not sent to Brussels and then returned to the UK. Fifth, he has signed an agreement to faithfully carry out his duties and to observe the GLA Code of Conduct regarding honesty, integrity and not bringing his office into disrepute. Sixth, despite these points Mr Johnson is shown to advance incorrect claims on multiple occasions as well as endorse incorrect claims from fellow campaigners. He advances figures which include £350 million a week being sent to the EU, which equates to £18.2 billion a year. As well as £8 billion a year, £10 billion a year, £15 billion a year and £20 billion a year. An argument that he believed all of these claims at the same time is simply not tenable given they are so strikingly different.

Finally, it must again be highlighted that the 50 events noted above do not represent the full range of evidence that we may choose to call upon in court. We estimate that there are more than double this number of events that may be relied upon within our final legal argument.

13. What is our case argument?

Each element of the offence will now be discussed in turn. As previously mentioned, the offence of misconduct in public office is considered by the CPS guidance to consist of the following requirements:

'The circumstances in which the offence may be committed are broad and the conduct which may give rise to it is diverse....The elements of the offence of misconduct in a public office are:

- a. A public officer acting as such*
- b. Wilfully neglects to perform his duty and/or wilfully misconducts himself*
- c. To such a degree as to amount to an abuse of the public's trust in the office holder*
- d. Without reasonable excuse or justification'*

-Attorney General's Reference 3 of 2003

<http://www.bailii.org/ew/cases/EWCA/Crim/2004/868.html>

The following information acts as a broad, yet not fully complete, summary of the case research carried out on Brexit Justice so far. Not all of this information will be used in court, some of it has been included for purposes of academic and general interest.

a. A public officer

The prosecution must have evidence to show that the suspect is a 'public officer'. There is no simple definition and each case must be assessed individually, taking into account the nature of the role, the duties carried out and the level of public trust involved.

The courts have been reluctant to provide a detailed definition of a public officer. The case law contains an element of circularity, in that the cases tend to define a public officer as a person who carries out a public duty or has an office of trust. What may constitute a public duty or an office of trust must therefore be inferred from the facts of particular cases.

The judgment of Lord Mansfield in R v Bembridge (1783) 3 Doug KB 32 refers to a public officer having:

'... an office of trust concerning the public, especially if attended with profit ... by whomever and in whatever way the officer is appointed'.

-CPS Guidance: Misconduct in public office

<https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

For the interests of our case it is required that we can successfully argue that both Members of Parliament and Mayors of London should be considered to be public office holders. It was originally argued by a team of lawyers that Members of Parliament hadn't been conclusively established as public office holders.

I then highlighted the Supreme Court of New South Wales cases of R v Macdonald [2015] and R v Obeid [2016] which were brought against elected Members of Parliament for misconduct in public office. There were also several older cases against elected members of national legislature referenced within those two cases, they will be covered later.

Also of interest was the UK's Code of Conduct for Members of Parliament, which was produced by MPs for MPs and confirmed by a vote of MPs in the House of Commons. This code names MPs as 'holders of public office' on eight occasions⁶.

⁶ House of Commons Code of Conduct <https://publications.parliament.uk/pa/cm201719/cmcode/1474/1474.pdf>

I also referenced R v Speechley [2004] and the attempted CPS prosecutions of two members of the European Parliament, all three of which were based upon misconduct in a public office against elected representatives. It seems clear then that elected representatives, such as Members of Parliament, are conclusively defined as holders of public office.

Mayors eventually became a major focus of our case, which is why I advanced R V Kenet [1781], Henly v Mayor of Lyme [1828], R V Pinney [1832] and Livingstone V Adjudication Panel for England [2006]. All of which consider Mayors to be appropriate targets for Misconduct in Public Office. It has also been valuable to consult the Greater London Authority's code of conduct, which names the Mayor of London as a being a holder of public office 6 times. This code is signed by the Mayor of London when he first makes his declaration of acceptance of office. The Mayor is required to read and sign his agreement to abide by this code according to statutory law⁷. It has been established then that both Members of Parliament and Mayors of London are holders of public office.

b. Acting as such

'Acting as such' proved to be an issue of much debate within our team. It was decided early on that 'a public officer' and 'acting as such' should be approached separately, despite appearing together. When is an elected Member of Parliament acting as such? When is a Mayor acting as such?

In order for a public officer to be considered to be 'acting as such' it is argued by some authorities that they must be carrying out one of their legally defined duties or failing to do so when they are required to. However, Members of Parliament are often considered not to have any legally defined duties. For instance, it is popular to point out that MPs have no job description. This issue, and many others, presented considerable challenges when researching our case. It became clear that I needed to scour the common law in an effort to discover what duties and powers a Member of Parliament had and when they should be considered to be employing them. I also questioned civil servants, made use of FOIs, searched through archives, read written works on the topic and consulted the research of more experienced and knowledgeable people than myself.

Following this, we were required to identify whether an abuse in the form of nonfeasance or misfeasance had occurred. An offence can be committed by failing to carry out a duty that one is required to: nonfeasance. Or, by carrying out a duty in an abusive fashion: misfeasance.

Please note, misconduct in public office is a criminal offence. Despite using similar language it is not the same as the civil tort of misfeasance in public office.

i. Attorney General's Reference No 3 of 2003

The phrase 'acting as such' has not been defined or sufficiently explained within Attorney General's Reference No 3 of 2003, despite it being included within their definition of the offence. In fact, it is barely discussed at all. This omission has attracted some criticism as a result, which is discussed below. The court acknowledged potential problems of definition but chose not to address this issue:

'Roderick Evans J rightly acknowledged the "great variety of circumstances" in which the offence of misconduct in a public office may be charged. It is clear from the authorities that the defendant must be

⁷ GLA Code of Conduct

https://www.london.gov.uk/sites/default/files/code_of_conduct_with_new_group_roi_form.pdf

a public officer acting as such. In the absence of submissions on those ingredients, which may in some circumstances present problems of definition, we do not propose to elaborate on them.'

-Attorney General's Reference 3 of 2003

<http://www.bailii.org/ew/cases/EWCA/Crim/2004/868.html>

It's also important to note that subsequent UK cases have essentially ignored 'acting as such' or not deemed it be a necessary part of the offence. Not a single reported UK case that I can find has attempted to fully discuss or examine the issue of 'acting as such'. This case occurred 15 years ago in 2003; in recent years there have been more carefully worded rulings and definitions advanced in other jurisdictions.

It's also interesting to note that the Crown Prosecution Service's guidance on misconduct in public office no longer, as of last accessed 21/08/2018, treats 'acting as such' separately to 'a public officer'. Whereas previously the CPS had dedicated a section to this requirement they no longer mention 'acting as such' more than once. It has clearly degraded in importance from their perspective also.

Further to this, as will be discussed later during the Quach case discussion, the courts do not seem to differentiate between 'acting as such' and 'who in the course of or in relation to his public office':

'The Court of Appeal referred with apparent approval to Shum Kwok Sher, at least in respect of that particular element, and expressly adverted to the fact that the element was not in issue before them. It did not appear to recognise any difference between its conception of the element and that articulated in Shum Kwok Sher. Significantly, the later decision of Wah & IP [sic] which restated the elements in Shum Kwok Sher, referred with apparent approval to the decision of the Court of Appeal in AG No 3, which suggests that neither Court perceived any inconsistency between their differing descriptions of the element.'

-R v Quach

https://jade.io/article/147354?url.hash=_ftn38

This decision from the Quach case was also approved within R v Obeid.

'Mr Obeid then submitted that R v Quach was plainly wrong in relation to this element of the offence. Mr Obeid acknowledged that the precedential question was that stated in Farah Constructions Pty Ltd v Say-Dee Pty Ltd [2007] HCA 22; 230 CLR 89 at [135]. Three points were relied on in order to surmount this hurdle. The first was that more recent Hong Kong authority, HKSAR v Wong Lin Kay [2011] HKCFA 28; 15 HKCFAR 185, had held that in order for the conduct to be "in relation to" a public office, it must be conduct "in relation to powers and duties exercisable by him for the public benefit" (at [17]). The second was that United Kingdom authorities required as an essential element that the misconduct be of a public officer acting as such: see eg Attorney General's Reference (No 3 of 2003) [2004] EWCA Crim 868; [2005] QB 73 at [6], [54] and [61] and R v Chapman [2015] EWCA Crim 539; 2 Cr App R 10 at [17]. The third was that "to frame the elements of the offence by reference to the need for a 'sufficient connection' with the office, without proving guidance on the nature of the connection required, is to leave the boundaries of the offence entirely at large".

All these submissions should be rejected. The Victorian Court of Appeal conducted a review of Australian, Canadian, English and Hong Kong decisions on precisely this question, and rejected an arguably narrower formulation proposed by the accused, namely, that the misconduct be by the public officer acting as such. (For completeness, it may be that there is no difference between a formulation using the words "acting as such" and one using the words "in relation to": they are regarded as identical in Nicholls' work at p 87'

-R v Obeid

<https://jade.io/article/420592>

It seems then that there is no ‘inconsistency’ or ‘difference’ between the ‘acting as such’ requirement and the ‘in relation to’ requirement.

ii. Law Commission’s comments on ‘acting as such’

It should also be noted that the the Law Commission, who have carried out a thorough and expansive review of the offence, have dismissed the significance of ‘acting as such’:

‘In conclusion we therefore consider that the requirement that the individual be a public office holder “acting as such” is unlikely to have any practical significance within the current offence of misconduct in public office, other than to exclude the cases where an officer is acting in a wholly private capacity.’

-Misconduct in Public Office Issues Paper 1: The Current Law

https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage11jsxou24uy7q/uploads/2016/01/misconduct_in_public_office_issues-1.pdf

iii. The Queen V Huy Vinh Quach (2010)

Further to this, it appears that the only case to have fully examined the requirement of ‘acting as such’ is the Quach case which decided to replace it with a different wording. The court ruled that AVG 3 of 2003 did not intend to restrict the offence when it chose to use the wording of ‘acting as such’:

‘As was properly conceded by the Crown, the offence of misconduct in public office requires not only that the misconduct be by a person holding public office but that as a consequence of the office he was under a duty or responsibility which existed and which was breached at the time of the offending conduct. It was submitted that this did not necessitate that the conduct occur in the performance of his office. This was challenged by the accused who submitted that the officer must be acting ‘as such’ at the time of the misconduct. This contention rests upon the assumption that the Court of Appeal in Attorney General’s Reference (No 3) deliberately intended to restrict the broader description of the element by Mason NPJ in the earlier decision of Shum Kwok Sher. I do not consider that the reasons of the Court of Appeal should be so understood. The Court of Appeal referred with apparent approval to Shum Kwok Sher, at least in respect of that particular element, and expressly adverted to the fact that the element was not in issue before them. It did not appear to recognise any difference between its conception of the element and that articulated in Shum Kwok Sher. Significantly, the later decision of Wah & IP which restated the elements in Shum Kwok Sher, referred with apparent approval to the decision of the Court of Appeal in AG No 3, which suggests that neither Court perceived any inconsistency between their differing descriptions of the element.’

‘In any event, as was pointed out by Hansen AJA on the hearing of this referral, the words used in the various cases are not to be read as if they are a statute. The content of the disputed element is to be discerned by reference to the history of the offence and the various circumstances in which it has been applied. One indicia of the breadth of the offence is the nature of the harm which the offence is designed to address. The view of Finn is I think correct that:

'the kernel of the offence is that an officer, having been entrusted with powers and duties for the public benefit, has in some way abused them, or has abused his official position.'

PD Finn, 'Public Officers: Some Personal Liabilities' (1977) 51 ALJ 313, 315.

'In my opinion the relevant misconduct need not occur while the officer is in the course of performing a duty or function of the office. Certain responsibilities of the office will attach to the officer whether or not the officer is acting in the course of that office. Where the misconduct does not occur during the performance of a function or duty of the office, the offence may be made out where the misconduct is inconsistent with those responsibilities. It may be connected to a duty already performed or to one yet to be performed or it may relate to the responsibilities of the office in some other way. The misconduct must be incompatible with the proper discharge of the responsibilities of the office so as to amount to a breach of the confidence which the public has placed in the office, thus giving it its public and criminal character.[46] Accordingly, use of knowledge or information acquired by the office holder in the course of his or her duties for a private or other impermissible purpose may be inconsistent with the responsibilities of the office and calculated to injure the public interest. If the misuse of the information is of a serious nature and is likely to be viewed as a breach of the trust reposed in the office so as to bring the office into disrepute, the conduct will fall within the ambit of the offence whether or not it occurs in the course of public office. It will in such circumstance have the necessary connection to that office. I consider that the proper formulation of the offence requires the element to be expressed so that it encompasses the circumstance in which the offender's misconduct, though not occurring while the offender was discharging a function or duty, had a sufficient connection to their public office. Whether the misconduct was so connected will turn upon the facts of the case.'

'The Queen V Huy Vinh Quach (2010) definition of the offence, Supreme Court of Victoria, Court of Appeal:

- '(1) a public official;*
- (2) in the course of or connected to his public office;*
- (3) wilfully misconduct himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;*
- (4) without reasonable excuse or justification; and*
- (5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.'*

-The Queen V Huy Vinh Quach

<https://jade.io/article/147354?url.hash= fn38>

Based upon this ruling it seems very clear that a case against Mr Johnson would be more than appropriate. Mr Johnson's duties, which are soon to be discussed, are more than adequately connected to the nature of his knowingly false representations made during the referendum campaigns. In fact, they are central to said duties. Mr Johnson's use of information, in the form of public spending figures, is also clearly of relevance according to the Quach ruling.

It must be remembered that the Quach case is not a UK ruling, it is a New South Wales ruling. Meaning that it is not a binding precedent, but is certainly a persuasive precedent. Especially given its consideration of English cases and the lack of any contradictory ruling within UK courts.

iv. Mitchell and the importance of a duty that fulfils one of the responsibilities of government

The nature of a public officer's duty must also be understood. It cannot simply be a general task carried out at work, it must be a duty that constitutes the fulfilment of a responsibility of government. A responsibility that the public at large have an interest in. The case of most value to us in this regard is that of Mitchell:

'In our judgment, the proper approach is to analyse the position of a particular employee or officer by asking three questions.

1) First, what is the position held?

2) Second, what is the nature of the duties undertaken by the employee or officer in that position?

3) Third, does the fulfilment of those duties represent the fulfilment of one of the responsibilities of government such that the public have a significant interest in the discharge of that duty which is additional to or beyond an interest in anyone who might be directly affected by a serious failure in the performance of that duty?

If the answer to this last question is 'yes', the relevant employee or officer is acting as a public officer; if 'no', he or she is not acting as a public officer'

-R v Mitchell 2014

<http://www.bailii.org/ew/cases/EWCA/Crim/2014/318.html>

Note that 'acting as such' was not treated as being separate to 'a public officer' within this ruling. In fact, as with many other cases, the phrase 'acting as such' is not included within the bailii ruling at all. Also, the requirement that the public officer be carrying out a responsibility of government at the time of the offence is not present, only that they had a duty to do so. Which is in keeping with the fact that both misfeasance and nonfeasance based offences have been successfully prosecuted. The phrase 'acting as such' should not be taken too literally in this sense. An officer can be 'acting as a public officer' whenever they have a duty they are meant to perform, not only when they are actually performing one.

Mitchell's three stage test, as the above will be referred to henceforth, will now be applied to our own case. First, the positions held are Member of Parliament and Mayor of London. Second, the nature of the duties undertaken in those positions include a general duty to act in the best interests of London and the country at large. A duty to scrutinise executive spending of state funds and decision making; and, a duty to abide by two codes of conduct which both include rules regulating the conduct of elected state representatives. Among several other duties discussed later on within this document.

Third, the law commission refers to responsibilities of government as being 'state functions'⁸. 'State functions' include the defence of the nation, improving the health of the public, the reporting of government spending and many other actions. Essentially, they cover functions that are required for the correct administration and regulation of a modern state. Although, the law commission concludes that the 'case law does not provide any clear definition of what type of function can amount to a "governmental responsibility" or "state function" for the purposes of misconduct in public office'. Yet they also argue the following earlier in the document.

'It will be obvious that the types of activity that can constitute a state function is extremely wide. Unfortunately, there is little indication in either Cosford or Mitchell as to what types of governmental responsibility or state function are sufficient for the purposes of the offence... The most that we can discern from the authorities is that a relatively wide interpretation is adopted.'

-Misconduct in public office issues paper 1

http://www.lawcom.gov.uk/app/uploads/2016/01/misconduct_in_public_office_issues-1.pdf

⁸Misconduct in Public Office Issues Paper 1: The Current Law

http://www.lawcom.gov.uk/app/uploads/2016/01/misconduct_in_public_office_issues-1.pdf

Regardless, there is clearly a very significant public interest in the discharging of duties and the conduct of elected representatives during the referendum campaigns. It seems that our case fully fulfills the requirements of Mitchell's three stage test. Meaning that, Mr Johnson was 'acting as a public officer' with regards to duties he was carrying out as well as duties he was required to carry out but chose not to.

The key point to take away from this ruling is that in order to be able to prosecute Mr Boris Johnson we are required to be able to prove that he abused a duty which constitutes the fulfilment of a responsibility of government. By way of nonfeasance, or misfeasance.

v. The 'public watchdog' duty of fair and honest criticism and scrutiny

*'A member [of parliament] is the watch-dog of the public; and Cerberus must not be seduced from vigilance by a sop.'*⁹

*'The real damage is not be measured by material loss to the State or gain to the offender; the real harm is the damage to the institutions of government and public confidence in them'*¹⁰

One core duty of a Member of Parliament, which undoubtedly fulfils one of the responsibilities of government, is that of the duty of scrutiny. A core duty of an MP according to parliamentary convention, leading written works on the role of an MP and the common law, is to scrutinise public spending and decision making carried out by the government.

'When a man becomes a member of Parliament, he undertakes high public duties... One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticizing it, and, if necessary, of calling it to account in the constitutional way by censure from his place in Parliament'

-Horne v Barber (1920), High Court of Australia, Link:
<http://www.austlii.edu.au/au/cases/cth/HCA/1920/33.html>

Note the conditional clause of 'and, if necessary'. The 'watching on behalf of the general community' and 'criticizing it', are not restricted to 'his place in Parliament'. Lord Lyndhurst alluded to this issue even earlier in Egerton V Brownlow (1853):

'..., the duty of a member of the Legislature is unquestionable... [A] duty in watching on behalf of the public all the acts of the Executive. Without that, responsible government would be but a name'

-Egerton v. Brownlow [1853] EngR 885
<http://www.worldlii.org/int/cases/EngR/1853/885.pdf>

'To apply some words in Wilkinson v. Osborne ... in the judgment of Isaacs J, he who had been appointed to be a sentinel of the public welfare becomes a "sapper and miner" of the Constitution. The power, the influence, the opportunity, the distinction with which his position invests him for the advantage of the public, are turned against those for whose protection and welfare they come into existence. He can never afterwards properly discharge in relation to that matter his duties of public service—the parliamentary duty of honest, unbiased and impartial examination and inquiry and criticism which must arise; and he has therefore essentially violated his legal duty to the State...'

⁹ R v Boston (1923) 33 CLR 386 at 410 (Higgins J).

¹⁰ R V Macdonald (2017) <https://jade.io/article/532518>

'Every transaction entered into by the Executive Government is open to criticism and, if need be, to censure by appropriate action in Parliament, even if the Government has power to carry through the transaction without express parliamentary authority. Especially is this the case where the transaction involves a payment out of the public funds.'

-R V Boston (1923), High Court of Australia, 59; 33 CLR 386 (as identified within R V Obeid)
<https://goo.gl/Q8RQnz>

That MPs have a duty to scrutinise government actions is clearly stated within R V Obeid (2015). This very recent case, which examines those I have already covered, also makes it clear that said duties extend beyond parliament itself:

'In my view these cases establish that the scope of a parliamentarian's functions and responsibilities extend beyond attending and participating in Parliament and its proceedings. They include the function or responsibility of watching or scrutinising the executive. Further the scope of their functions extends to proffering advice and assistance to the executive and its employees outside of Parliament as those activities are a "recognized adjunct" or "incidental" to a parliamentarian's position'

- R v Obeid. Supreme Court New South Wales.
<https://goo.gl/Q8RQnz>

It is well established then that Members of Parliament have a duty to criticise the spending and decision making of the executive. Executive spending and decision making would include financial contributions to the European Union. Meaning, that Mr Johnson's speeches, criticisms, claims and comments on national spending during the referendum campaigns should be considered to be part of his duties as a Member of Parliament.

During our discussion on this matter we questioned whether Members of Parliament were capable of criticising public spending in a purely private and personal capacity. It was considered that this may be possible during a private family dinner within the confines of a member's home. However, criticising public spending decisions on national television, named as Mayor of London or Member of parliament, would certainly not be something conducted in a purely private and personal capacity. This is partly because Members of Parliament are not legally capable of divesting themselves of their duties when it suits them to do so. They cannot temporarily sever their responsibility to carry out their duties, as has been discussed within the case law.

"When a man becomes a Member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself of the duties..."

-Horne v Barber (1920), High Court of Australia
<http://www.austlii.edu.au/au/cases/cth/HCA/1920/33.html>

'A public officer is generally not entirely divested of official status, or relieved of all official obligations, when on leave, off duty or under suspension and can be liable for misconduct engaged in at such times that has a relevant relationship to his or her official position'

-David Lusty:Revival of the common law offence of misconduct in public office
<https://goo.gl/fWdSfW>

More simply put, one of the primary reasons we elect representatives to Parliament is to ensure the responsible management and spending of the public purse. The Treasury undertake these responsibilities largely but the budget itself can only be approved by a vote of Members of Parliament within the House of Commons. One of the key jobs of a Member of Parliament is to ensure that public money is looked after and spent correctly, and to

alert the rest of parliament and the public if something is amiss. This is the essence of the ‘sentinel’ or ‘watchdog’ duty that Members of Parliament are entrusted with.

Due to this, when a Member of Parliament speaks to the public on matters concerning public spending it is expected that the public should be able to trust what they have to say. The member’s inside knowledge, expertise and responsibilities concerning the public purse are well known. It is reasonable then to argue that the public will have associated Mr Johnson’s status as a Member of Parliament with such insider knowledge and experience on the matter of public spending.

‘It is impossible to sever the voluntarily assumed intervention departmentally from the legislative position to which by custom it is recognized as incidental. A member so intervening speaks as member and is dealt with as member, and not as a private individual. His ulterior power of action, though not intruded into observation, is always existent and is always known to exist. It is scarcely even camouflaged’

-R V Boston (1923), High Court of Australia, 59; 33 CLR 386

‘This applies with greater force to public affairs and the obligations and the responsibility of the trust towards the public implied by the position of the representative of the people...’

-Horne v Barber [1920]

<http://www.austlii.edu.au/au/cases/cth/HCA/1920/33.html>

MPs can’t divest themselves of their duties, they cannot shed their duties when it suits them. Much as in the same way as if a police officer witnesses a crime being committed, or someone being harmed, and chooses not to act to prevent it, as in R v Dytham (1979). A police officer is always ‘on duty’, in the sense that they have a responsibility to protect the public even if they are ‘off shift’. As does a Member of Parliament it seems. If a Member of Parliament witnesses, or is the cause of, a breach of public trust and chooses not to act in an attempt to prevent it from occurring then they are abusing their duties by way of nonfeasance. By not acting to protect the public interest and the public trust, they are abusing their duty to the public.

vi. The role of the Member of Parliament according to Michael Rush and Parliament’s website

Michel Rush is the author of one of the leading works on the role of the Member of Public through the ages. He also considers scrutiny to be a key duty of members.

“Parliamentary government imposes three major roles on MPs; a partisan role-supporting the party under whose label he or she was elected, particularly as a supporter of the government or the official opposition; a constituency role-looking after the collective and individual interests of the those they represent, and a scrutiny role-acting as a parliamentary watchdog not on behalf of their constituents in particular but of the people in general, the ultimate Burkean role of acting in ‘one interest, that of the whole’

‘The role of the Member of Parliament can be divided into three interlinked roles-that of partisan, the scrutinizer of the executive, and the constituency representative. Each would have been recognised by a nineteenth as much as by a twenty-first century MP.’

'...whatever positional and preferential roles MPs may fulfill, all MPs fulfill the partisan, scrutiny, and constituency roles. Though analytically separate, they are not mutually exclusive and in carrying out one role a Member may be implicitly or explicitly fulfilling another'

-Michael Rush, The Role of the Members of Parliament Since 1868: From Gentlemen to Players: Parliamentary Government and the Role of the Member of Parliament:

The scrutiny role of the Member of Parliament is also described via Parliament's website, with reference to statements from Gladstone, Burke and Churchill.

'Your business is not to govern the country, but it is, if you think fit, to call to account those who do govern it'

-W E Gladstone

'Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion ... Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament.'

-Edmund Burke's Speech to the Electors of Bristol, 3 Nov. 1774.

'The first duty of a member of Parliament is to do what he thinks in his faithful and disinterested judgement is right and necessary for the honour and safety of Great Britain. His second duty is to his constituents, of whom he is the representative but not the delegate. Burke's famous declaration on this subject is well known. It is only in the third place that his duty to party organization or programme takes rank. All these three loyalties should be observed, but there is no doubt of the order in which they stand under any healthy manifestation of democracy.'

-Sir Winston Churchill on the Duties of a Member of Parliament

The Role of the Member, Parliament website

<https://publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/33706.htm>

vii. David Lusty's work on the duties of Members of Parliament

The duties of Members of Parliament according to David Lusty's research:

'Given the vital public duties MPs are entrusted to perform, there is a compelling public interest in bringing prosecutions when they culpably abuse their privileged positions and betray their public trust. MPs have been described as "sentinels of the public welfare". The high standards expected of them has been recognised since at least the time of Blackstone: "[I]t is a matter most essential to the liberties of this Kingdom, that such members be delegated to this important trust, as are most eminent for their probity, their fortitude, and their knowledge." The public duties of MPs extend well beyond their core legislative responsibilities. They also play a crucial "ombudsman role" in assisting constituents and "superintendence role" in scrutinising the executive branch of government (including Ministers, departments and other public authorities).

The latter role has been described as follows: When a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the

honour and divest himself of the duties. One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticizing it, and, if necessary, of calling it to account in the constitutional way by censure from his place in Parliament – censure which, if sufficiently supported, means removal from office. That is the whole essence of responsible government, which is the keystone of our political system, and is the main constitutional safeguard the community possesses. Important non-legislative public duties (including authorised functions) of MPs include:

- ‘ • assisting and representing constituents, especially in dealings with the executive;*
- investigating, scrutinising and criticising executive decisions and actions;*
- vigilantly controlling and faithfully guarding public finances and revenue; and*
- seeking to influence actions and decisions of the executive, including Ministers.’*

‘When MPs engage in such activities, especially when seeking to influence the executive, they cannot divest themselves of their official position or character; they act in an official capacity, or at least in connection to their public office, for the purpose of the second element of offence of misconduct in public office.’

‘The public duties of MPs extend well beyond their core legislative responsibilities. They also play a crucial “ombudsman role” in assisting constituents and “superintendence role”’

- David Lusty, Revival of the common law offence of misconduct in public office

<https://www.accountabilityrt.org/wp-content/uploads/2015/02/Lusty-Revival-of-the-Common-LawOffence-of-Misconduct-in-Public-Office-2014-38-Crim-LJ-337.pdf>

‘The most fundamental function of elected representatives is to represent their constituency. They function in two roles -- legislative and what has sometimes been termed the "ombudsman role".

Relative electoral parity is similarly essential to the elected representative's "ombudsman" function which requires the representative and his or her staff to deal with individual problems and complaints of constituents’

-Dixon v. British Columbia (Attorney General), 1989

<https://www.canlii.org/en/bc/bcsc/doc/1989/1989canlii248/1989canlii248.html?searchUrlHash=AAAAQAEMTk4NAAAAAAB&offset=2152>

‘The problems of representing vast, sparsely populated territories, for example, may dictate somewhat lower voter populations in these districts; to insist on voter parity might deprive citizens with distinct interests of an effective voice in the legislative process as well as of effective assistance from their representatives in their 'ombudsman' role.’

-James Andrew McGinty and others v The State of Western Australia (1996)

<https://jade.io/article/188386>

viii. R v Obeid’s ‘fundamental duty’

The New South Wales case of R v Obeid (2017) against an elected member of the legislature is of particular interest to our case for several reasons. Firstly, it reached the Supreme Court of Criminal Appeal, this appeal was unsuccessful and so it has become persuasive precedent. Secondly, it is against the New South Wales

equivalent of a Member of Parliament for the offence of misconduct in public office. Members of Parliament and their duties are discussed in detail within the case.

'a) The duty

(i) Members of Parliament are appointed to serve the people of the State, including their constituents. The conduct of the applicant, as alleged in the indictment and amounting to a breach of the duty of trust owed by a public officer, is capable of amounting to the offence of misconduct in public office, provided the elements of wilfulness and seriousness are made out...'

'The general duty of a member of the Legislative Assembly has been described as being 'to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community': per Isaacs and Rich JJ in The King v Boston [1923] HCA 59; 33 CLR 386 at 400. That service involves a duty to attend and vote and includes participation in the constitutional and parliamentary functions described above. From the member's perspective those functions were described by Isaacs and Rich JJ in The King v Boston (at 401) as 'moulding the laws to meet the necessities of the people, and the function of vigilantly controlling and faithfully guarding the public finances...'

'Members of Parliament are appointed to serve the people of the State, including their constituents and it would seem that a serious breach of the trust imposed on them by using their power and authority to advance their own position or family interests rather than the interests of the constituents who they are elected to serve, could constitute an offence of the nature of that alleged.'

'The fundamental obligation of a member in relation to the Parliament of which he is a constituent unit still subsists as essentially as at any period of our history. That fundamental obligation, which is the key to this case, is the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community.'

"Isaacs J agreed, stating the duties of a Member of Parliament as follows (at 500): When a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself of the duties. One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticizing it, and, if necessary, of calling it to account in the constitutional way by censure from his place in Parliament—censure which, if sufficiently supported, means removal from office. That is the whole essence of responsible government, which is the keystone of our political system, and is the main constitutional safeguard the community possesses. The effective discharge of that duty is necessarily left to the member's conscience and the judgment of his electors, but the law will not sanction or support the creation of any position of a member of Parliament where his own personal interest may lead him to act prejudicially to the public interest by weakening (to say the least of it) his sense of obligation of due watchfulness, criticism, and censure of the Administration.'

-R V Obeid 2017

<https://jade.io/article/547491>

It seems more than tenable that the *'fundamental obligation,....the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community'* was sufficiently abused by Mr Johnson. He took it upon himself to repeatedly lie to the community on matters of public spending. This was certainly not an act of fidelity and was in fact an abuse of his fundamental obligation as an elected member.

ix. PD Finn's fiduciary duty of trust

A fiduciary is a person who holds a legal or ethical relationship of trust with another person, persons or group of persons. Usually, a fiduciary takes looks after money or other assets for another person. It has been argued that Members of Parliament have a fiduciary duty of trust to the public. David Lusty's research on misconduct in public office best explains this topic:

'It is a living tenet of our society and not mere rhetoric that a public office is a public trust.

The central thesis of the doctrine of representative government is that all powers of government are derived from, ultimately belong to, and may only be exercised for and on behalf of, the people.' 'It follows that persons entrusted with such power owe a fiduciary "duty of loyalty" to the public. Indeed, it is widely accepted that public office is a "public trust" and public officials are "trustees". This legal and political theory dates back to the writings of Aristotle, Plato and Cicero. It gained renewed currency in the 17th century through the works of John Locke, whose views have been summarised as follows:

[T]he power of both an executive and the legislature represents a fiduciary trust. The public delegates power to their representatives so that they may act for society's benefit; neither the executive nor legislators can use that power arbitrarily or exceed the limits imposed by the fiduciary obligations of the public trust.

Professor Finn has described the public trust principle in the following terms:

Public officials occupy positions of public trust. Lawful remuneration and entitlements apart, they hold their positions and the authority these confer not for their own benefit but for the benefit of the public whom, ultimately, they serve.

Though their conduct in office can be regulated, variously, by employment obligation, constitutional/ political convention, the standards set by professional bodies and by the general law, they are, as trustees (or fiduciaries), to be expected to serve the public honestly, impartially and disinterestedly. This is their fiduciary duty of loyalty.

As public office commonly provides (though in varying degree) the opportunity to use official power and position to serve interests other than the public's interests – and particularly those of the official himself or herself – the object of the fiduciary duty imposed on officialdom is to foreclose the exploitation of that opportunity. The duty exacts loyalty in the public's service by proscribing conduct either which is deemed to be disloyal or, in some instances, which can have the appearance of, or tendency to, disloyalty.

More recently, a former Chief Justice of Australia has remarked that "the fiduciary nature of political office" is "a fundamental conception which underpins a free democracy" and the current Chief Justice of Australia has observed that:

The application of the concept of trusteeship to the exercise of public power is longstanding and persistent ... [T]he trusteeship analogy is consistent with a characterisation of public power as fiduciary in nature. The public trust principle embodies a trust "in the higher sense", rather than one necessarily enforceable in equity, and encapsulates the common law's insistence that public officials adhere to fiduciary standards of behaviour. The offence of misconduct in public office enforces these standards.'

-David Lusty, Revival of the common law offence of misconduct in public office

<https://www.accountabilityrt.org/wp-content/uploads/2015/02/Lusty-Revival-of-the-Common-Law-Offence-of-Misconduct-in-Public-Office-2014-38-Crim-LJ-337.pdf>

For these reasons, it may be possible to prosecute Mr Boris Johnson for abusing his fiduciary duty of trust. PD Finn's work on this matter is of most interest, yet it does not seem to be freely available online. I secured our copies from the University of Cambridge's law department who were most helpful.

x. Duty to abide by GLA Code of Conduct and Code of Conduct for Members of Parliament

There is also an argument that Mayor Boris Johnson MP had a duty to abide by both the Greater London Authority's Code of Conduct as well as the Code of Conduct for Members of Parliament. Mr Johnson was Mayor until May 8th 2016, as well as being an MP throughout the course of the referendum. In lying to the public repeatedly it may be argued that he brought his public office into disrepute. According to the Law Commission this would be a sufficient basis for prosecution.

'To perform a function properly a public office holder may be required to comply with professional standards of honesty and competence in doing so. Certain public office holders may also be subject to a duty not to act in a way that brings his or her position into disrepute. For example:

Example 3 A Member of Parliament, D, is under a duty to carry out functions in respect of the representation of D's constituents and the business of Parliament. In performing this function D must abide by the requirements of the code of conduct for MPs, to act with honesty and integrity and to not bring the House of Commons into disrepute.

We conclude that breaches of determinative duties, including a failure to perform such a duty properly, can be sufficient to constitute misconduct for the purposes of the offence. '

-Misconduct in Public Office Issues Paper 1

http://www.lawcom.gov.uk/app/uploads/2016/01/misconduct_in_public_office_issues-1.pdf

Such a view is supported within the Hong Kong case of *Sin Kam Wah Lam Chuen Ip And Another v. HKSAR* (2005):

'As it was argued in the courts below that the conduct complained of was not in the course of or in relation to the 1st appellant's public office and was neither culpable nor serious, it is appropriate to say something about these matters. To constitute the offence of misconduct in public office, wilful misconduct which has a relevant relationship with the defendant's public office is enough. Thus, misconduct otherwise than in the performance of the defendant's public duties may nevertheless have such a relationship with his public office as to bring that office into disrepute, in circumstances where the misconduct is both culpable and serious and not trivial.'

-*Sin Kam Wah Lam Chuen Ip And Another v. HKSAR* (2005)

<http://archive.is/QHMUC#selection-1919.2-1919.668>

Colin Nicholls QC comments upon this case ruling within his work on the offence:

'There may be circumstances where, for instance, public office holders, particularly those holding a high or prominent position, misconduct themselves not directly in the course of their public office, but in a manner that has such a relevance to that office that it may truly be said to be in "relation to" that office.'

-Colin Nicholls QC: Corruption and Misuse of Public Office, Second Edition, Oxford University Press

<https://goo.gl/hgZkaN>

In support of such an argument the following information should be highlighted. Mayor Johnson was statutorily required to sign his agreement to comply with the GLA Code of Conduct according to the Local Government Act 2000:

'Duty to comply with code of conduct.

(1) A person who is a member or co-opted member of a relevant authority at a time when the authority adopt a code of conduct under section 51 for the first time—

(a) must, before the end of the period of two months beginning with the date on which the code of conduct is adopted, give to the authority a written undertaking that in performing his functions he will observe the authority's code of conduct for the time being under section 51, and

(b) if he fails to do so, is to cease to be a member or co-opted member at the end of that period.'

-Local Government Act 2000

https://www.legislation.gov.uk/ukpga/2000/22/pdfs/ukpga_20000022_en.pdf

He was also required to sign his agreement to abide by his 'Mayoral Oath' of faithfulness, which he declared he would abide by when he signed the declaration of acceptance of office.

When Mr Boris Johnson was elected as Mayor of London he signed the Mayor of London's declaration of acceptance of office. Within this declaration he swore to faithfully carry out the duties of Mayor, as presented here:

'I [(1)] having assumed the office of..... [(2)] I declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.'

'(Under section 28(3) of the Greater London Authority Act 1999, the declaration shall be made before two members of a) the London Assembly, the proper officer of the Greater London Authority, a justice of the peace or magistrate in the United Kingdom, the Channel Isles or the Isle of Man, or a commissioner appointed to administer oaths in the Supreme Court.'

-The Greater London Authority (Declaration of Acceptance of Office) Order

I acquired a copy of this declaration, signed by Mayor Johnson and released by freedom of information request:

DECLARATION OF ACCEPTANCE OF OFFICE
MAYOR OF LONDON

1. I, ALEXANDER BORIS DE PFEFFEL JOHNSON of 13 FURLONG ROAD, ISLINGTON, LONDON, N7 8LS having assumed the office of Mayor of London declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.

2. I undertake that in performing the functions of that office, I will observe the Greater London Authority's code of conduct for the time being under section 51 of the Local Government Act 2000.¹

Signed: 
Date: 22 May 2008

This declaration was made and signed before me,
Signed: 
Date: 3 May 2008

Anthony Mayer
Chief Executive and proper officer of the Greater London Authority²

-The Mayor's declaration of acceptance of office as signed by Alexander Boris De Pfeffel Johnson. Stating his agreement to abide by the GLA's code of conduct and his declaration to carry out his duties 'faithfully'. (Copy secured via Freedom of Information Act).

The GLA Code of Conduct states the following:

'(4) It is your responsibility to comply with the provisions of this Code...

(1) You must comply with this Code whenever you act in your capacity as a member of the Authority.

(2) Where you act as a representative of the Authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject...

'General obligations 3. — (1) You must treat others with respect....

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.'

-GLA Code of Conduct

2015 copy secured via FOI

By lying to the public on such a grand scale the Mayor was making a mockery of the trust invested into his office and the authority by the public. The 'chameleon nature' of disrepute is discussed within the Mallaney case: <http://www.bailii.org/ew/cases/EWHC/Admin/2009/72.html>

'Honesty: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.'

As Mayor, Mr Johnson placed himself under an obligation to advocate the campaigning organisation called Vote Leave. He repeated their £350 million a week and £20 billion a year claims, which formed a major focus of their marketing campaign. Thus, he was placing himself under the influence of an outside organisation that encouraged him to ignore his code of conduct, by lying to the public on a repeated basis. He did this to such an extent that he seemingly took ownership of the claim himself.

'Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.'

The Mayor's £350 million and £20 billion claims were not based upon merit, as they were knowingly false. He failed to abide by his code regarding objectivity whilst he was carrying out his public business, which was the official mayoral policy to advocate Vote Leave.

'Openness Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.'

Intentionally deceiving the public on a repeated basis is not in keeping with the duty to be open with the public about the decisions and actions that are taken. Restricting information in order to assist with a deception is also a failure to abide by this duty. The public interest does not demand deception, it demands the opposite.

'Holders of public office should promote and support these principles by leadership and example.'

Mayor Johnson abused the principles of the code in as public a form as he possibly could, setting an awful example to other local authority members throughout the country.

'3. — (1) You must treat others with respect.'

By lying to millions of members of the public the Mayor cannot be considered to have been treating them with the respect that he was required to. The 'chameleon nature' of respect is also discussed within the Mallaney case: <http://www.bailii.org/ew/cases/EWHC/Admin/2009/72.html>

There is a clear public interest in local authorities, such as the Greater London Authority, abiding by codes of conduct. This is because to do so encourages public confidence in the systems of local government. The following case discusses the intention of the Localism Act 2011 which enshrined the Nolan Principles:

'The intention of the legislation is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy as was recognised by Beatson J, as he then was, in R (Calver) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in local government whilst at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.'

-R v London Borough of Ealing.

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/4102.html>

It seems clear then that Mayor Boris Johnson had a duty to observe the GLA Code of Conduct, as he signed his agreement to. However, he also had a duty to abide by the Code of Conduct for Members of Parliament which will now be discussed.

'1. The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large by:

(a) establishing the standards and principles of conduct expected of all Members in undertaking their duties;

(b) setting the rules of conduct which underpin these standards and principles and to which all Members must adhere; and in so doing

(c) ensuring public confidence in the standards expected of all Members and in the commitment of the House to upholding these rules.'

'The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.'

'6. Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.'

'7. Members should act on all occasions in accordance with the public trust placed in them. They should always behave with probity and integrity, including in their use of public resources.'

IV. General Principles of Conduct

8. In carrying out their parliamentary and public duties, Members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office. These principles will be taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct in Part V of the Code.

"Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example."

'V. Rules of Conduct 9. Members are expected to observe the following rules and associated Resolutions of the House.'

'10. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.'

'16. Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally'

'23. The following matters, which fall outside of the Commissioner's remit, may be referred by the complainant to the relevant body or individual:'

'c) allegations of criminal misconduct, which are normally a matter for the police;'

-House of Commons: The Code of Conduct

<https://publications.parliament.uk/pa/cm201516/cmcode/1076/1076.pdf>

Given that MPs are required to receive the code and sign a declaration to confirm that they have read it, it seems that the duty to abide by it is taken seriously by the house. It must also be remembered that the code was 'Approved by the House of Commons on 12 March 2012 and 17 March 2015' by way of a resolution of the house. It is in that sense a part of parliamentary law.

xi. Mayor Boris Johnson's campaign to leave the EU was an 'official mayoral policy'

I have also gathered various evidence which establishes that Mayor Johnson had an official Mayoral policy to advocate Vote Leave. This is important for building an understanding of the case as well as the circumstances of the situation at hand.

- The Mayor's press conference announcing his stance on the referendum:

The Mayor's Communications Chief, Will Walden, organised a press conference to announce the Mayor's official position to advocate leave:

'...I will be advocating vote leave...'

-21st February 2016

<https://www.youtube.com/watch?v=aRjl4biSmZ4>

This was a statement made in the official capacity of Mayor of London, because he was stating it at a press conference organised by the Mayor's Communications Chief, who was also present. He was also named as the Mayor. According to Nicholas Watt from the Guardian:

'His communications team set in motion the conditions for a media scrum shortly before 5pm after deciding that a traditional television interview, in which he would explain the thinking in his Daily Telegraph column on Monday, would not suffice.'

- Mayor Boris Johnson answers questions at City Hall from GLA

Mr Johnson was asked questions by the GLA regarding his EU Referendum stance. This also supports the argument that said stance was Mayoral, not personal. If not, the GLA would not be discussing it at Mayor's question time in City Hall. He is asked, as the Mayor, in depth about his position on the EU referendum. Footage from the 22nd February 2016 is stored via BBC archive.

- The Mayor's chief of staff referred to it as the Mayor's position

The following email was sent out to all of the Mayor's staff:

"Dear all

Please find attached a formal advice note, from Jeff, Martin and Ed Williams, that sets out what can and cannot be done by the GLA in relation to the forthcoming EU referendum.

You will note that the advice is explicit in stating that Boris is entitled, as Mayor, to adopt a public position on this issue and then, as with all other mayoral policies, to receive support from GLA officers

in relation to that policy position.

The advice also makes clear that GLA officers can, when not at work, express personal opinions (which be contrary to the Mayor's views). Whilst this is the formal position for you also, I would expect, given your roles, you either to advocate the Mayor's position or otherwise not openly to contradict it.

Finally, you will see that there is a fundamental difference between an election and a referendum; elections involve political parties, and our political restrictions therefore have a particular effect – but this is not the case for the referendum, where there are no parties and candidates, and so you are all able to be involved in the campaign as you may wish (but without using the Authority's resources for your personal activities).

Please do let me know if there is anything here that isn't clear.

Yours"

-4th March 2016

<http://www.bbc.com/news/uk-politics-eu-referendum-35749084>

- The Mayor's Spokesman referred to it as official Mayoral Policy

'The Mayor is relaxed about any of his team of advisors in a personal capacity campaigning for or supporting either side in the EU referendum. He wants to see an open and inclusive debate, and recognises that some of his advisors have differing views to those he holds'

In his role as Chief of Staff Ed Lister advised the team that as official Mayoral policy is now to support the case for leaving the EU they are requested to support that position when undertaking official city hall business. The advice is in line with that issued by the GLA's statutory officers'

-8th March 2016

<https://goo.gl/MUZsAa>

- The Mayor was invited to attend the Treasury Committee in his capacity as Mayor

'Two City Hall staff accompanied the Mayor of London to his oral evidence session before the House of Commons Treasury Select Committee on 23 March 2016. The Mayor was not invited in a personal capacity or as the Member of Parliament for Uxbridge and South Ruislip, but as the Mayor of London. The Committee meeting lasted for 3 hours and the Mayor's Chief Economic Adviser and a Senior Government Relations Officer accompanied him to the meeting. The staff costs equate to approximately £325 but noting this would be considered as part of their normal duties'

-FOI dated 11th April 2016

<https://www.london.gov.uk/sites/default/files/8123.pdf>

- The Mayor said he considered himself to be acting on a Burkean duty

Within Boris Johnson's interview with Andrew Tyrie of the Treasury Committee the following exchange took place within the first ten minutes:

Tyrie MP: *'What are London's views on Brexit?'*

Mayor Johnson: *'I can't give you any particular polling detail work from Londoners but I've heard, I think that, Londoners tend to more supportive of remaining in the EU than other parts of the country. I*

don't consider that necessarily to be an impediment to my position which is to favour a change in Britain's relations with the European Union, in favour of Brexit.'

Tyrie MP: *'You're not keeping an eye on the opinion polls?'*

Mayor Johnson: *'No, no, I believe in a, a Burkean duty Mr Tyrie'*

The Mayor and Mr Tyrie are fully aware of what 'Burkean' means, as would all experienced MPs.

That is why this comment is not questioned or clarified. Mr Johnson believed it was a part of his Burkean duty to London to campaign for leave. A Burkean duty simply means that the elected representative has a duty to do what they think is best for their people according to their own judgment. As opposed to what their people think is best for themselves. The key point here is that Mayor Johnson, appearing in that capacity, believed his campaigning work to be a duty of the Mayor.

- The Mayor's staff attended him at campaigning events, the Mayor's staff are employed to assist the Mayor with his duties

Communications advisor Will Walden, as well as other Mayoral staff, attended the Mayor to Vote Leave campaigning events.

- The Mayor made use of public funds on his official policy to advocate Vote Leave

There was expense on the Mayor's time, his staff's time, metropolitan police time and potentially expenses for transport, food and travel costs associated with campaigning. All of these funds came from the public purse.

'The GLA is a public authority funded by the taxpayer so all GLA staff make use of public resources when carrying out all elements of their work. This would include any work for the GLA that GLA carried out relating to the EU referendum, as in your example of the Treasury Committee meeting.'

https://www.london.gov.uk/sites/default/files/8462_-_response_redacted.pdf

- Use of the Mayoral email address

The Mayor used his official Mayoral email address to send emails in which he associated himself with Vote Leave. Within correspondence released by FOI the Mayor invites the reader to contact Vote Leave and he says that he is campaigning to leave. The emails and letters have the 'Mayor of London' letterhead, the Mayor's email address and full City Hall address. As well as Mayor Boris Johnson's signature. He writes that *"If you would like to arrange for a speaker from Vote Leave to attend your event please follow the attached link..."* This link then directs the user to the Vote Leave website, which contains the £350 million a week claim and others.

<https://www.london.gov.uk/foi-disclosure-log/correspondence-about-eu-and-eu-referendum>

- The Mayor's official diary included Leave campaigning appointments

Manchester, Leeds, Newcastle, Dartford and other key Vote Leave events were all mentioned in the Mayoral calendar and were not redacted (as they would have been according to the law for purely private and personal events). "Vote Leave event Manchester 15/04/2016 ". Essentially, if it's listed within the diary then it shouldn't be a private or personal event, as these are not permitted to be included under section 40(2)-Third-party personal

Section 40(2) - Third-party personal information

Some of the information in the Mayor's diary constitutes personal data as defined in the Data Protection Act because it relates purely to the Mayor's personal life. In order to balance the Mayor's public engagements with his private life, the diary includes details of engagements relating to his personal life to ensure there are no scheduling conflicts.

The Mayor has no reasonable expectation that this information might be disclosed in response to FOI requests.

information.

-Diary covers 1st January 2016 to May 9th 2016

https://www.london.gov.uk/sites/default/files/8462_-_response_redacted.pdf

<https://www.london.gov.uk/sites/default/files/3041-2.pdf> (diary itself)

This information can assist us in identifying when the Mayor was acting in an official capacity. Acting in an official capacity is not the same as ‘acting as such’, but is helpful regardless. This information will be especially useful later on within this document. For now, all that needs to be understood is that the Mayor campaigned in an official capacity and used public resources to do so.

To confirm, Boris Johnson was Mayor of London until he ‘formally relinquishes office on 8th May 2016’. He announced his decision to support Vote leave on 21 February 2016 at a press conference organised by Will Walden. His leave stance was written down as being a ‘Mayoral Policy’ on 4 March 2016. He attended the Tyrie Committee meeting on 22nd March 2016. Meaning that, at any point Boris Johnson carried out any EU Referendum campaigning activities between 21 February 2016 and 8th May 2016 he should be considered to be have been carrying out a Mayoral policy.

The Mayor’s chief of staff named the campaign as a ‘Mayoral policy’ and Mayor Boris Johnson didn’t deny this, despite denying other things. His Spokesman then used even stronger language, after Mr Johnson had declared the original ‘edict’ to no be have been withdrawn. He made use of public office staff at expense to the public purse and he used official public office correspondence to campaign and state that he was doing so. Mr Johnson stated that was carrying out what he believed to be a Burkean duty. It seems to me that Mayor Boris Johnson was campaigning as a matter of official mayoral policy. When carrying out official Mayoral policy the requirement to abide by the GLA Code of Conduct is undoubtedly activated.

xii. Abuse of status and authority

The Law Commission has considered the possibility that abuse of public office status and authority could be prosecutable under the offence.

‘(b) Under misconduct in public office

In contrast, we may consider the correctness of an assumption made in the Home Office impact assessment. It was assumed that the requirement of misconduct in public office that the officer was “acting as such” meant that an

officer who uses his authority to request a discount on a car could not be Prosecuted.

As Chapter 2 demonstrated, misconduct in public office applies to any conduct: whether by act or omission. Likewise, abuse of authority or status has regularly been successfully prosecuted under the common law offence. We also discuss in Chapter 2 that all that is apparently excluded by the “acting as such” requirement is an act performed by the officer in a private capacity to which his or her position is simply irrelevant.

In W a police officer used a credit card, issued to cover his official expenses, for private expenditure. In that case he was accepted to be acting as a public office holder. Following this, it would seem entirely possible for an officer misusing his authority to obtain a discount on a car to be deemed to be “acting as such” for misconduct in public office, whether the misconduct occurred in or out of working hours.

Of course, whether an individual officer seeking a discount on a car is considered to be acting as a public office holder in any particular case will depend on the factual circumstances.

In each of the following scenarios the officer in question (P) informs the car salesperson that he or she is a police officer when requesting a discount.

Scenario 1: P attends the car showroom during working hours and makes the request in respect of a vehicle that P will be able to use in his or her role as a police officer.

Scenario 2: P attends the car showroom outside of working hours and makes the request in respect of a vehicle that P will be able to use in his or her role as a police officer.

Scenario 3: P attends the car showroom during working hours and makes the request in respect of a vehicle for P’s personal use.

Scenario 4: P attends the car showroom outside of working hours and makes the request in respect of a vehicle for personal use

In each of these cases we see no difficulty in P being held to be “acting as such” under the misconduct offence. In Scenarios 1 to 3, the connection to P’s public office is clear. In Scenario 4 the decision of W could be applied.

The main difficulty in prosecuting P for seeking a discount under the common law offence may in fact lie in establishing that P’s conduct was serious enough to amount to criminal misconduct.

If P simply suggests that a car dealer gives him or her a discount because P is a police officer, rather than threatening or pressurising the dealer into doing so, there is potentially a real question as to whether that behaviour should and could be viewed as criminal.³²⁸ Much will depend again on the circumstances of the transaction, and a number of factors may make the case more or less serious. For example:

(1) More Serious:

- (a) P acts dishonestly;*
- (b) the benefit is solely for P;*
- (c) the discount is significant;*
- (d) P hides his or her conduct; and/or*
- (e) the obtaining of a discount creates a conflict of interest with P's duties. If, for example, P turns a "blind eye" to potentially criminal activities at the car dealership in the future.*

(2) Less Serious:

- (a) there is no dishonesty;*
- (b) the benefit is also for the public, for example the car is an operational one and the police force will, therefore, save money;*
- (c) the discount is insignificant; (d) P has discussed obtaining the discount with the police force and/or they have authorised his or her actions; and/or (e) the obtaining of a discount is purely a commercial transaction. If, for example, the car showroom owner decides that having a car from his or her stock being driven by a police officer would be a good advertisement for the business.*

It can be seen from the factors above that the case where an officer obtains a discount for a car through the use of his or her status or authority will never be a clear case of misconduct in public office, unless complicated by further factors such as dishonesty or threats. This is not because of the "acting as such" requirement, but because the conduct is not serious enough to justify criminalisation.'

https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/01/misconduct_in_public_office_issues-1.pdf

It seems arguable that a prosecution could be brought based upon an argument that Mr Johnson was 'acting as such' by virtue of his decision to make use of his status and authority as a Mayor of London and a Member of Parliament. He was not requesting a discount for a car, but he was using his platform as a senior and powerful public office holder to mislead the public regarding the 'discount' applied to the UK's spending on EU budgetary contributions. This scenario is certainly different, but it appears to fulfill the test for seriousness. Mr Johnson acted dishonestly; for his own benefit at the expense of the public; the disparity between accurate and false financial figures advanced was very significant; he attempted to hide his deception and in doing all of this he created a conflict of interest in his duties to act in the public interest.

Within the Law Commission's scenario the problem is not 'acting as such' but instead the severity of the abuse of public trust. Within the present case that same problem does not appear to be present.

xiii. IPSA Funding for MPs to campaign

In deciding what duties Members of Parliament had during the EU Referendum it seemed appropriate for me to research financial information. Discerning what Members of Parliament are able to charge expenses for may help us to establish what their duties are. I attended meetings with staff of the Independent Parliamentary Standards Authority, I also sent them FOI requests and asked them for general information. The team at The

IPSA were most polite and helpful. The IPSA was set up in the wake of the expenses scandal in order to reassure the public that such actions could not take place in future. They manage the expenses of Members of Parliament, and have little to do with standards in the wider sense.

In speaking with The IPSA I aimed to discover whether or not Members of Parliament had been able to charge expenses for their referendum campaigning actions. This is because The IPSA have very strict rules regarding what it is they will agree to fund.

'MPs have the right to be reimbursed for unavoidable costs where they are incurred wholly, exclusively, and necessarily in the performance of their parliamentary functions, but not otherwise.'

-The Scheme of MPs' Business Costs and Expenses:

<https://goo.gl/4XqnvV>

After downloading The IPSA's data into excel format to enable me to search through it faster I discovered that The IPSA did fund several of the referendum campaigning activities of Members of Parliament. The following data was taken from IPSA's 'individual claims' expense log 2015-2016, The IPSA paid out approximately £6,621.27 for EU Referendum related expenses:

'Photography for MP's EU referendum campaign'

'Return rail travel to East Grinstead to take part in BBC Surrey live radio debate on EU Referendum by invitation'

'Purchase of tripod to record public meeting called by MP on EU referendum. Necessary to record to ensure constituents who were unable to attend the meeting were able to watch online'

'Hire of Ewyas Harold Memorial Hall for EU Referendum Public Meeting 11/06/16'

'Leaflets for EU referendum public meetings travel to EU referendum debate'

-The IPSA's website, individual claims

The IPSA had sent our EU Referendum guidance to all MPs in the UK, within this guidance The IPSA stated the following:

'We recognise that the referendum question is not party political in nature. Furthermore, the potential outcome for the United Kingdom is clearly a matter of interest to Parliament.'

'Our approach to MPs' claims for costs and expenses relating to the EU referendum will be, in essence, no different to claims relating to MPs expressing their views or attending events relating to, for example, the environment. It is a cross-party matter of great importance to the future of the United Kingdom, and, therefore MPs will be expected by their constituents to have a view on the matter and to be making arguments either for remaining or for leaving'

'We will not, therefore, be disallowing claims relating to costs and expenses in relation to the EU referendum, unless they clearly fail to comply with the principles and rules outlined in paragraphs 6-9 above.'

-The IPSA's letter sent to all UK MPs:

<http://www.theipsa.org.uk/media/184562/eu-referendum-guidance-tomps-19-04-16.pdf>

As previously stated, The IPSA is only permitted to fund ‘*unavoidable costs where they are incurred wholly, exclusively, and necessarily in the performance of their parliamentary functions, but not otherwise*’. The IPSA’s decision to fund MP’s referendum campaigning related expenses would therefore bring EU referendum campaigning under the remit of what The IPSA believed to be ‘parliamentary functions’.

At my request, The IPSA wrote a letter for me in which they confirmed that they considered EU Referendum debating to be a ‘parliamentary function’ of an MP.



-Independent Parliamentary Standards Authority, letter from Policy & FOI Adviser Chris Veck. Chris Veck discussed my queries with John Sill, the Director of Regulation at The IPSA. He cleared the below letter before it was sent. He was also the person who wrote the original referendum guidance for MPs.

'Dear Mr Ball,

We recently met on 26 June to discuss claimable expenditure under the Scheme of MPs' Business Costs and Expenses ('the Scheme') in relating to the 2016 EU referendum. The Scheme is intended to ensure that MPs' use of taxpayers' money is well-regulated and that MPs are resourced appropriately to carry out their parliamentary functions. It applies equally to all MPs.

We discussed our guidance, issued to all MPs before the referendum, which sought to clarify the existing rules and their relation to the referendum. The guidance notes the following.

Our approach to MPs' claims for costs and expenses relating to the EU referendum will be, in essence, no different to claims relating to MPs expressing their views or attending events relating to, for example, the environment. It is a cross-party matter of great importance to the future of the United Kingdom, and, therefore MPs will be expected by their constituents to have a view on the matter and to be making arguments either for remaining or for leaving.

In line with the Scheme (and this guidance), we permitted claims for expenditure incurred travelling to crossparty debates on the EU referendum. We considered debates on topics such as the UK's membership of the EU to be a parliamentary function, in the same way attendance at debates on the environment would be.

In contrast, and by way of explanation, we would not permit claims for expenditure related to general election debates, as this would fall foul of our rule prohibiting work conducted for or at the behest of a political party. A general election is overtly party-political; the EU referendum was not.

I hope this provides clarification.

Yours sincerely

Chris Veck Policy & FOI Adviser

I A copy of the guidance can be found on our website at:

<http://www.theipsa.org.uk/ipsa-for-mps/guidance/>

It is important to remember at this point that a general election is considered to be very different to a referendum: different rules apply. Campaigning during the EU Referendum was a parliamentary function of an MP according to The IPSA, just as campaigning on environmental issues would be. The MP's first duty is to that of the 'whole', the good of the nation, just as Edmund Burke and the uncodified constitution makes clear. By campaigning during the EU Referendum MPs were carrying out a duty to the nation, not a duty to a political party. Vote Leave and Stronger In were publicly funded campaigning organisations, they were not political parties.

The IPSA made it very clear to me that all MPs who wished to debate the EU Referendum on television would have been welcome to successfully claim expenses for transport to do so. Meaning that any MP who appeared on television to debate the EU Referendum was carrying out a parliamentary function according to the body that manages the pay and expenses of elected Parliamentarians.

In short, if Members of Parliament were offered public funds to assist them with their referendum campaigning activities then such activities must be considered to have been a part of their duties as Members of Parliament. The IPSA's argument that it was a matter of '*great importance to the future of the United Kingdom, and, therefore MPs will be expected by their constituents to have a view on the matter and to be making arguments*' appears to be agreeable. It coincides with the general duty that Members of Parliament have to do what they believe is in the best interests of the nation. It is also arguably linked to the status and authority that the public place in Members of Parliament as elected 'experts' in matters of the public purse and government.

The public expected their MPs to give them their professional opinion on the matter of the EU Referendum, and so they were offered public funds in order to do so. The decision that some MPs took to lie to the public whilst giving them this guidance is what is of interest to our prosecution. It should be pointed out that we have not found evidence that Mr Boris Johnson called upon IPSA to cover his referendum activities. Although, he did make use of GLA staff time during that period.

To conclude this section, The IPSA informed all MPs that EU Referendum campaigning was to be treated as a normal part of an MP's job, just as campaigning on environmental issues would be. This was not party political campaigning, it was the normal campaigning carried out by MPs as par for the course. They made it very clear that MPs could charge expenses and several of them did. It seems clear to me that all MPs were aware that they would be acting in a parliamentary capacity, otherwise they wouldn't have been able to charge expenses.

xiv. Bembridge and the general duty of communication with the public

Within *Public Officers: Some Personal Liabilities*, PD Finn, a respected and much referencing authority on misconduct in public office, quotes one of the earliest and most popular of cases against Charles Bembridge. Within *R V Bembridge*(1783) an accountant in the office of the Paymaster General was prosecuted for abuse of his duties. However, as with Members of Parliament the accountant's duties weren't written down or perfectly defined:

While it requires that the officer be fixed with the discharge of a 'duty' this does not imply that the relevant duty must be written down in some instrument defining the officers responsibilities. A person

can be a public officer even though one can only determine what his duties are "...from what he has always done, and been considered to be entitled to do..."

-Public Officers: Some Personal Liabilities, PD Finn. Kindly provided by the faculty of Law at Cambridge University. Finn quotes *R v Bembridge* (1783)

In keeping with this idea, it is arguable that Members of Parliament have a general duty of communication with the public at large because this is what they have always done. From Burke's famous speech to the electors of Bristol, to modern day fully fledged Members of Parliament appearing in televised debates broadcast to millions of people. It is clear that Members of Parliament have always been required and entitled to communicate with their constituents and the public at large by way of public speaking. Rhetoric is a required skill of the political class for good reason.

The public are so familiar with elected politicians appearing on television that, with the ruling of *Bembridge* in mind, it may be considered to be part of the duties of a Member of Parliament to communicate with the public. If they were unable to do this then the maintenance of the systems of democracy and the state would be quite impossible. If the public are uninformed by their representatives, then the democratic process cannot hope to be successfully carried out. In this sense, within democracies old and new, it is a required function of a Member of Parliament that they communicate with the public. To the extent that it is a duty. With regards to Mitchell, how can the fulfilment of the responsibilities of government be completed if the elected cannot communicate with the electorate? The system simply would not work.

This argument is supported by the actions of parliament itself. Parliament has used public money to fund Crisis and Communications media training for MPs. I sent an FOI to the House of Commons to find out if MPs were given training to appear on television. It was my intention to make an argument that MPs' parliamentary functions do include appearing on television to communicate with the public. The response to my FOI is as follows:

- 1) Has the House of Commons provided Members of Parliament with communications training to assist them with their work communicating with the public? This may consist of speaking in public, speaking on television and communicating online or in writing.*
- and*
- 2) If there was such training provided, I would like to know about its content, how it was funded and who provided it.*

This information is held by the House of Commons.

The House of Commons has provided Members of Parliament with two sessions of training entitled "Media and Crisis Communications". The training was procured via the House of Commons learning and development supplier framework, and funded from a budget allocated to Members' Professional Development, managed within the House of Commons Corporate Services Team. The supplier of this training was Dods Training (Westminster Explained). Details of the course overview, content and learning objectives are below:

Please find below further information about the course overview, content, and learning objectives:

Course overview and content

This course will discuss how to effectively prepare for interviews, what to think about and how to make sure the message comes across and looking at best practice where they have not gone to plan. It also covers different types of interview: live, pre-recorded, studio discussion, on location or doorstep. The tutor will talk the group through the use of command, control and coordination. There will be a chance

for individuals to talk about challenges they have faced previously and tips on performing under pressure and how to improve.

Learning objectives

By the end of this workshop participants will be able to:

apply a range of techniques and tactics for setting questions and handling responses identify the personal qualities that are necessary to successfully apply the knowledge acquired in practice apply methodology for the chairing of successful and convincing interviews apply methodology for negotiation and public speaking understand how to rehearse and improve preparation for and performance discuss and develop a model for establishing immediate responses during interviews understand enquiries and respond clearly, briefly and succinctly to protect organisational priorities and positions develop their public speaking skills by practicing feedback techniques

In addition the digital skills charity, Doteveryone, worked with four Members on project entitled "Making MPs more digital: mentoring, technology and democracy". This was jointly funded by Doteveryone, the Member involved and the Parliamentary Digital Service. A full report is available on Doteveryone's website here: <https://projects.doteveryone.org.uk/digitalmps/>.

It may be helpful to know that training is also available to select committees and their chairs, such as training in questioning witnesses for committees, and media training for Committee chairs. However, this type of training is tailored to individual requirements, and therefore we do not hold records of course content.'

Parliament would not have funded the training of MPs to communicate with the public on television if this was not considered to be an important role of a Member of Parliament.

Parliament has been spending public money on training services for Members of Parliament to help them improve their communication skills on television. In short, this is evidence that Parliament considers communicating with the public on television to be a part of the functions of a Member of Parliament.

Further to this point, The IPSA has been paying for MPs' travel to television and radio studios since it was first created. I searched every expenses database that IPSA has published since the year of its foundation in 2009 to 2017. Throughout this period MPs have been successfully claiming transport expenses to appear on television news programmes. Here are some examples from 2010:

'Parking charge incurred on official duty (BBC interview)

'Travel back to Westminster after BBC'

'rtn to leeds for bbc studio'

'taxi from bbc studios to leeds station'

'Taxi Gateshead/Newcastle - BBC Politics Show. 7/11/10'

'Taxi from BBC studios'

-Individual claims, 2010-2011

<http://www.theipsa.org.uk/mp-costs/other-published-data/>

Every year that The IPSA has been in operation they have funded MPs' travel expenses to appear on television to communicate with the public. Appearing on television to communicate with the public again seems to be a part of the role of an MP.

MPs are provided with training to speak on television, which is funded by parliament. They are provided with funding for transport to speak on television, they have done so for at least 7 years. They have 'always done'

communication with the public and according to R V Bembridge a public officer's duties can be learned from what they have 'always done'. Moreover, MPs such as Mr Boris Johnson were named as 'Member of Parliament' when they appeared on television.

Parliament also voted to approve a communications allowance for MPs.

'On 1 November 2006 the House approved by 290 votes to 199 the principle of a Communications Allowance: Resolved, That this House welcomes the principle of establishing, from 1st April 2007, a separate Allowance for Members of Parliament to assist in the work of communicating with the public on parliamentary business and instructs the Members Estimate Committee to prepare a detailed proposal for such an allowance'

-House of Commons Members Estimate Committee Communications Allowance, first report of session, 2007
<https://www.publications.parliament.uk/pa/cm200607/cmselect/cmmemest/319/319.pdf>

The House of Commons considers communicating with the public to be an important part of an MP's job which is why they allocated funds to it. This was a decision made by MPs, for MPs, as a part of their duty to the public interest. It includes financial support for websites and etc. There was some debate following this that MPs were abusing communications allowance. I think that its existence alone is supportive of our argument that MP's have a duty to communicate with the public.

The King V Rule, MPs have a duty to correspond with their constituents:

'But a person desiring to petition Parliament must approach it through an individual Member, and there is sufficient common interest or duty in a Member dealing with a communication from a constituent to render the occasion privileged. [He referred to Harrison v. Bush (1); Davies v. Sneed(2); Jenoure v. Delmege.]'

-The King v Rule (1937)

This argument was ruled against eventually, meaning that the activity discussed couldn't be seen as protected by privilege. However, the claim that the Member had a 'sufficient common interest or duty' in dealing with the communications mentioned was not questioned as far as I can see.

xv. Abuse of the power of official status and influence as a representative

The following argument is linked, and somewhat overlaps, with our previous arguments concerning 'abuse of status and authority' as well as the general duty to communicate with the public. It concerns the argument that making use of a power of public office can fulfill the requirement of 'acting as such'.

'The offence is, in essence, one of abuse of the power or responsibilities of the office held.'

-CPS Guidance: Misconduct in public office

<https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

'There is in reality only one question: did the conduct with which the accused is charged consist of an abuse of a power, duty or responsibility entrusted to him or her and exercisable for the public good?'

'...the misconduct with which the accused is charged must consist of an abuse of the powers, duties and responsibilities involved in the performance of those functions.'

-Court of final appeal, Hong Kong Special Administrative Region, Wong Lin Kay

[http://basiclaw.szu.edu.cn/bitstream/510500.239/29970/1/FACC000003_2011\(02_04_2012\).docx](http://basiclaw.szu.edu.cn/bitstream/510500.239/29970/1/FACC000003_2011(02_04_2012).docx)

One could argue that the title of 'MP' is itself a power of being an MP. Only an MP can make use of this title, which by its very nature is suggestive of government, representation, democracy and authority. Throughout the referendum campaigning period the people we have an interest in are continually referred to as being MPs, ministers and peers. To this extent then, there is an argument that making use of the power of influence of public office is enough to fulfill the requirements of the offence. This argument is not merely theoretical, it is in accordance with case precedent.

'When the office is such that the holder wields influence or is in a position to wield influence in matters of a particular kind, the wielding of influence in a matter of that kind is a discharge of the duties of the office. Such a wielding of influence is something done in an official capacity'

Herscu v R [1991]

<https://jade.io/article/67643?at.hl=Herscu+v+R+%255B1991%255D>



-Note the titles made use of here within these two examples; including 'Boris Johnson MP Mayor of London' and 'George Osborne MP Chancellor of the Exchequer'

With regard to this power of influence, whenever an MP refers to themselves as being an MP, or fails to correct someone who names them as such, they are by default making use of this power of influence. Especially in the case of national television appearances such as those featured above.

Named as 'Boris Johnson MP Mayor of London' and 'George Osborne MP Chancellor of the Exchequer' appearing on BBC television. Public officers, named as such, appearing on taxpayer funded television to be asked questions concerning government and the public purse in the context of the referendum. The audience is certainly invited to treat them as public office holders, acting in an official capacity. This would fulfil the Quach cases requirement of 'in the course of or connected to his public office' at the very least.

For the sake of balance, the defence could argue that they requested that their MP title not be referred to and instead that they specifically asked to be named differently. For example as 'Boris Johnson, leave campaigner, working in a private capacity'. They could claim that they have no control over what the BBC uses as titles. I asked the BBC's chief political advisor, Ric Bailey, the following questions in order to find out:

'3. Between the dates of 27 May 2016 and June 23rd 2016 is there any evidence to suggest that MPs/Ministers/Peers specifically asked to be named as being MPs/Ministers/Peers when appearing within BBC television/radio interviews?'

4. Is there any evidence to suggest that MPS/Ministers/Peers specifically asked that their public office title not be used?'

Ric Bailey: *In relation to your third and fourth questions, I have no such evidence.*

It seems then that MPs were appearing as MPs, whilst making no effort to make it appear otherwise. We can use the graphical overlays, conversations and the introductions given to each subject as evidence of their willingness to be named as public officers. As far as the public were concerned the defence must have been acting as MPs when they made use of the dishonest claims, such as that of the £350 million figure. They did so on a repeated basis, whilst speaking to potentially millions of viewers.

One further thing to note: All of the people who appeared on the BBC and ITV national referendum debates were MPs. I'm trying to establish if this was because the BBC and ITV had policies which declared that only MPs could appear. If so, they would by definition have been appearing as MPs because these networks wouldn't have accepted them if they weren't. The BBC refused to answer my FOIs related to this issue.

Members of Parliament and Ministers are influential public officers whose appearances, communications and references carry significant weight. An MP's endorsement can be persuasive in itself, given they each represent the interests of around 90,000 people. This would be supported by the following case:

'In the case of a high official the power of his office carries, by its nature, influence over others. This is particularly so in the case of a Minister who may exercise not merely legal but political power. In the exercise of such power and influence, a Minister may be subject to little or no formal scrutiny: he is trusted to exercise the power properly. The misuse of public power in breach of such trust may be regarded as of particular seriousness'

-Greiner v ICAC (1992) 28 NSWLR 125 at 175

R v Boston (1923) also makes mention of 'influence'.

'To apply some words in Wilkinson v. Osborne ... in the judgment of Isaacs J, he who had been appointed to be a sentinel of the public welfare becomes a "sapper and miner" of the Constitution. The power, the influence, the opportunity, the distinction with which his position invests him for the advantage of the public, are turned against those for whose protection and welfare they come into existence'

-R V Boston (1923) as discussed within R V Obeid

The case of R v Speechley (2005) involved an English local counsellor in Crowland who broke public trust in relation to a conflict between his ownership of property and the positioning of a new road which could have impacted its value. Within this case it was stated that he used the full weight of his office to influence the route.

'...he sought to influence the route to be taken by the A1073 road improvement scheme in the area of Crowland...' '...chose to conceal his interest and to press for the off-line route using the full weight of his office and his personality to further the case. This was not a case of oversight. His conduct, as the jury found, involved dishonesty. Indeed, it was dishonesty that was the driving force. Advice was ignored. Any official who attempted to withstand the appellant had also to consider his own position. As the judge said, the public must have confidence in our public institutions.'

-R v Speechley [2005]

<http://www.austlii.edu.au/au/cases/cth/HCA/1991/40.html>

The Speechley case is also of interest to our own given the nature of the offence it covered; mainly being a crime of dishonesty by an elected representative which potentially damaged trust in public institutions.

There has been discussion of the difference between elected representatives making use of personal and official capacities within case law. In the case of *Livingstone v The Adjudication Panel for England* then Mayor of London, Ken Livingstone, made reference to Nazi concentration camp guards when he was 'door stepped' by a journalist as he left an event. The debate within court focussed for some time on whether or not the defendant was acting in his 'capacity' as Mayor during the incident. The case found the defendant not guilty but its judgements are still of great interest and value.

'The ESO's opinion was that 'when responding to the questions of Mr Finegold' the appellant was, albeit he was leaving the building after the reception, acting in his official capacity. The Tribunal did not agree since in its view official capacity meant that a member was conducting the business of the authority or the office to which he had been elected or acting as a representative of the authority. It is highly doubtful that the observations made by the appellant could properly be regarded as responses to the questions of Mr Finegold, but, even if they could, they did not and could not reasonably have been regarded as being uttered in his official capacity. This was what is popularly known as doorstepping and any observations made in such circumstances are made outside official capacity. It would have been different if, for example, the appellant had been holding a press conference.'

-*Livingstone v The Adjudication Panel for England* [2006] EWHC 2533:

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2006/2533.html&query=\(Ken\)+AND+\(Livingstone\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2006/2533.html&query=(Ken)+AND+(Livingstone))

Given that Mr Boris Johnson held a great many press conferences, in which he appears fully willing to speak with journalists, it may be that the *Livingstone* ruling is of value to our case.

MPs have powerful influence as representatives of 90,000 people, weight with the media and power in government. They made use of this considerable influence to garner media attention, influence the public and persuade voters into choosing their side during the EU Referendum. It is clearly arguable that this influence is a power of a public office holding MP.

xvi. Acting as such as a question for the jury

Within *Cosford*, public officer status and whether they misconducted themselves in the performance of their public duties was decided to be a question of fact for the jury:

'The issues for the jury were whether the appellants or any of them held a public office; whether each, in turn, wilfully misconducted herself in the performance of her public duties; and whether the conduct of each, in turn was such as to be deserving of criminal condemnation and sanction. The latter two questions were issues of fact for the jury; they were determined adversely to the appellants: no issue arises as to these. The issue on this appeal, in each case, is whether the appellant in question held a public office and, furthermore, whether this was an issue of fact for the jury or, given that the facts which formed the basis for any finding were not in issue, a question of law for the judge.'

-*R v Cosford and others*

<http://www.bailii.org/ew/cases/EWCA/Crim/2013/466.html>

This should mean that our case cannot be dismissed based upon ‘acting as such’ by anyone other than a jury, as it is a question that must be answered by them. This point was kindly highlighted to me by Mr Adrian Keeling QC, who was representing within the Cosford case. I think it is an important and valuable point.

xvii. Conclusions regarding ‘acting as such’

Upon considering the above points the requirement of ‘acting as such’ is now far better understood with regards to our case.

Attorney General’s reference 3 of 2003, which is where ‘acting as such’ originates for our purposes, declined to make attempt to define what it actually meant. The Law Commission dismissed it as being ‘*unlikely to have any practical significance within the current offence of misconduct in public office*’. The vast majority of subsequent cases have completely ignored it or only briefly mentioned it in passing. The Crown Prosecution Service’s official guidance no longer advises upon it as a separate section within the offence. Furthermore, the only case to fully examine it was the Quach case and it decided to use the wording of ‘*in the course of or connected to his public office*’ instead. Yet, it must be said that this case and others identifies no conflict between this phrasing and what is used within attorney general’s reference. As previously mentioned, both courts have seemingly approved of each other’s definitions meaning that their rulings don’t conflict with one another. In short, ‘acting as such’ is essentially meaningless and the Quach definition appears to be far more accurate a reflection of the existing case law.

Although the wording of ‘acting as such’ is not helpful the Mitchell case is of more use. In the sense that it can help us to understand when an individual can be considered to have been ‘acting as a public officer’. Mitchell makes clear that a duty which fulfills a responsibility of a function of government is the key indicator. The Law Commission has explained that the phrase ‘state function’ can also be used, yet argues that no exact definition of this currently exists. Instead, it is said that there is a wide interpretation. It must also be remembered that the duty need not be in the course of being carried out at the time, as both misfeasance and nonfeasance cases have been successfully prosecuted.

This brings us to the public office duties that Mr Boris Johnson was carrying out, required to carry out or was ‘in the course of or connected to’ carrying out. We have covered the ‘watchdog’ MP duty of honest scrutiny and criticism, watching the executive on the behalf of the public. Which is connected to the core duty of an MP which is to watch over and ensure the correct administration of the public purse. As well as R v Obeid’s fundamental duty of an MP which is a general duty to act in the best interests of the nation at all times. We have also covered Finn’s fiduciary duty of trust as well as the GLA and Member of Parliament codes of conduct. As well as the Mayor of London’s signed oath to carry out his duties ‘faithfully’, which is required by act of statute.

It was then established that the Mayor of London campaigned for a leave vote in an official capacity and made use of public resources in doing so, including staff time. Abuse of public office status and authority was also considered, as was the IPSA’s decision to offer public funding to all MPs who wished to carry out campaigning activities. I then argued that as MP’s were able to charge expenses to the public purse for their referendum campaigning activities then such activities must have been a part of their parliamentary functions. In keeping with Mitchell, this would be a state function to make use of their insider knowledge and expertise on the systems of government and the public purse to educate and inform the public of the best decision to make during the referendum. Which is also linked to Bembridge and the general duty to communicate with the public as well as an argument focussed upon abuse of the power of official status and influence. It was then pointed out that ‘acting as such’ is a question of fact for the jury, not a question of law for the judge.

In short, the commonly held belief that Members of Parliament do not have any legally defined duties is simply not accurate. They have a great many duties which extend far beyond their actions within the Palace of

Westminster. These duties are wide ranging, extensive and often overlapping. My argument is that Mr Boris Johnson was carrying out, had a requirement to carry out or was 'in the course of or connected to' carrying out many different duties at once on several occasions. In my view, an argument that Mr Johnson's referendum activities were carried out in a purely private and personal capacity; and that they had no connection to his public office or its duties would be impossible to argue persuasively.

c. Wilfully neglects to perform his duty and/or wilfully misconducts himself

Attorney General's Reference 3 of 2003 describes wilful neglect or misconduct as follows:

"deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not" (para. 28) and recklessness to mean "an awareness of the duty to act or a subjective recklessness as to the existence of the duty"

-Attorney General's Reference 3 of 2003

<http://www.bailii.org/ew/cases/EWCA/Crim/2004/868.html>

Within this part of our case argument we would refer to our evidence in full, a portion of which is included for illustrative purposes earlier within this document. For the time being, the evidence strongly demonstrates that Mr Boris Johnson did something which was knowingly wrong. The minimum requirement, that he conducted himself with 'reckless indifference as to whether it was wrong or not' is undoubtedly met.

The Mayor of London was required to read and sign his agreement to the GLA Code of Conduct, as pictured previously. He was certainly aware of the need to abide by the GLA Code of Conduct as well as his declaration to faithfully carry out his duties. Meaning that, any action that was an abuse of the GLA code must be considered to have been wilful and knowingly conducted, as opposed to reckless.

To confirm, Boris Johnson was Mayor of London until he 'formally relinquishes office on 8th May 2016'. He announced his decision to support Vote leave on 21 February 2016 and it was written down as being a 'Mayoral Policy' on 4 March 2016. He attended the Tyrie Committee meeting on 22nd March 2016. Meaning that, at any point Boris Johnson carried out any EU Referendum campaigning activities between 21st February 2016 and 8th May 2016 he should be considered to have been carrying out a Mayoral policy. During this time and at all other times of interest, Mr Boris Johnson was a Member of Parliament and so can be prosecuted under that office instead, or as well.

d. To such a degree as to amount to an abuse of the public's trust in the office holder

i. The threshold test for abuse of public trust, a decision for the jury

Attorney General's Reference 3 of 2003, Chapman and others have often quoted similar language regarding the test for abuse of public trust. However, ultimately it has been ruled that it is a question of fact for the jury. Not a question of law for the judge. This is a matter that was brought to my attention by Mr Adrian Keeling QC. I think it is an important and valuable point.

'Whether such a situation is revealed by the evidence is a matter that a jury has to decide. It puts no heavier burden upon them than when in more familiar contexts they are called upon to decide whether driving is dangerous or a publication is obscene or a place of public resort is a disorderly house.'

'For the reasons we give it is for the jury to decide whether, on the information known to the office holder, the conduct crossed the threshold. It is not necessary to establish that the officeholder intended to cross the threshold.'

-R v Chapman (2015)

<http://www.bailii.org/ew/cases/EWCA/Crim/2015/539.html>

R v France also came to similar conclusions, agreeing that the jury had to decide the level of misconduct.

'The concept of the public interest, and in particular whether the conduct of the public official is so serious as to amount to an abuse of the public trust placed in him or her, is an unusual, and not always straightforward, one for a jury to determine.'

'In relation to mens rea, the court concluded that for the holder of a public office to be convicted of the offence, it is sufficient to prove that he had the means of knowledge available to him to make the necessary assessment of the seriousness of his misconduct albeit the actual assessment is for the jury.'

'The principal focus in Chapman and others was on the third element, the threshold test for the misconduct to be sufficiently serious to amount to an abuse of the public's trust. This is an issue for the jury to decide but the court emphasised the importance of providing the jury with proper assistance on how to approach their task and determine the level of seriousness. The judge must direct the jury that only conduct worthy of condemnation and punishment and that harms the public interest is criminal conduct. Any direction must take into account the context in which the misconduct has occurred.'

-France V R 2016

[http://www.bailii.org/cgibin/format.cgi?doc=/ew/cases/EWCA/Crim/2016/1588.html&query=\(France\)+AND+\(V\)+AND+\(R\)](http://www.bailii.org/cgibin/format.cgi?doc=/ew/cases/EWCA/Crim/2016/1588.html&query=(France)+AND+(V)+AND+(R))

Also, according to R v Greenway:

'Few are in a higher position of trust or have a duty to discharge in which the public have a greater interest, than Members of Parliament'.

-Buckley J in R v Greenway (London Central Criminal Court, 1992):

It follows that a deliberate abuse of such a public interest would be an abuse of trust. The Hussain case may also be of interest to our own.

'There is an important public interest in openness and transparency both of which go hand in glove with accountability. These "Nolan Principles" are expressly enshrined in the LA 2011.'

-Hussain V Sandwell Metropolitan Borough Council

<http://www.bailii.org/ew/cases/EWHC/Admin/2017/1641.html>

As well as the Ealing case.

'The intention of the legislation is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy as was recognised by Beatson J, as he then was, in R (Calver) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in

local government whilst at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.'

-R v London Borough of Ealing

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/4102.html>

Further to this, R v Speechley discusses the importance of 'confidence in our public institutions':

'...he sought to influence the route to be taken by the A1073 road improvement scheme in the area of Crowland...' '...chose to conceal his interest and to press for the off-line route using the full weight of his office and his personality to further the case. This was not a case of oversight. His conduct, as the jury found, involved dishonesty. Indeed, it was dishonesty that was the driving force. Advice was ignored. Any official who attempted to withstand the appellant had also to consider his own position. As the judge said, the public must have confidence in our public institutions.'

-R v Speechley [2005]

<http://www.austlii.edu.au/au/cases/cth/HCA/1991/40.html>

ii. A successful attempt to deceive the public breaks public trust

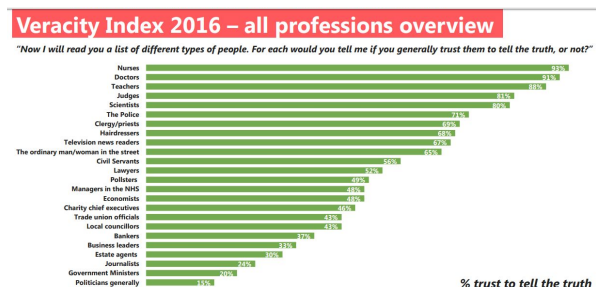
Ipsos Mori conducted research to discover how many voters believed the £350 million a week claim:

...just under half (47%) think it is true that Britain sends £350 million a week to the European Union compared to 39% who think it is false (78% say they have heard of this statement).

-Ipsos Mori research

<https://www.ipsos.com/ipsos-mori/en-uk/immigration-now-top-issue-voters-eu-referendum>

The Ipsos Mori 2016 Veracity Index was created to measure public trust in key professions. In terms of a measurable outcome, this research may go some way toward helping us to argue there was 'great damage to the public trust in the office holder'. It fell significantly, despite being very low in the first place. In 2015 public trust in politicians generally was at 21%, by 2016 it was 15%, meaning that trust had dropped by 6% at a time when there is already a trust crisis.



-Ipsos Mori Veracity Index 2016:

<https://www.ipsos.com/sites/default/files/migrations/en-uk/files/Assets/Docs/Polls/ipsos-mori-veracity-index-2016-charts.pdf>

'Ipsos Mori found that 'Politicians generally' were the least trusted profession of those listed' Also, that public trust in politicians had 'dropped notably' between the 2015-2016 period. The Ipsos Mori 2016 Veracity Index was created to measure public trust in key professions.

The increase in the use of the word 'post-truth' may also be a measure of increased perception of dishonesty in politics.

'The concept of post-truth has been in existence for the past decade, but Oxford Dictionaries has seen a spike in frequency this year in the context of the EU referendum in the United Kingdom and the

presidential election in the United States. It has also become associated with a particular noun, in the phrase post-truth politics.'

-Oxford English Dictionary

<https://en.oxforddictionaries.com/word-of-the-year/word-of-the-year-2016>

This could again be used as a measure of the damage to public trust. These events are not just shaping our nation, they are changing our vocabulary. Said events were covered in depth by national and international press.

Anger, confusion as EU vote divides Britain

<https://www.euractiv.com/section/uk-europe/news/angerconfusion-as-eu-vote-divides-britain/>

Trust in Government Is Collapsing Around the World

<https://www.theatlantic.com/international/archive/2016/07/trust-institutions-trump-brexit/489554/>

Truth, lies and trust in the age of Brexit and Trump: Voters in the US and Europe are jaded by years of broken political promises, revelations of cover-ups, and relentless political and media spin

<https://www.theguardian.com/business/2016/sep/16/truth-lies-and-trust-in-the-age-of-brexit-and-trump>

How the Brexit campaign lied to us – and got away with it. The Leave camp promised us all a unicorn and now claim they merely hinted at the possibility of a pony.

<http://www.newstatesman.com/politics/uk/2016/06/how-brexit-campaign-lied-us-and-got-away-it>

Donald Trump and Brexit made 'post-truth' the word of the year:

<http://www.newsweek.com/donald-trumpand-brexit-make-post-truth-word-year-521731>

Speaking the truth in the post-truth era: Post-truth is the new reality we need all to deal with if we want to save the soul of democracy and its noble mission.

<http://www.aljazeera.com/indepth/opinion/2016/12/speaking-truth-post-truth-era-161218111206262.html>

Peter Osborne argues in his book *The Rise of Political Lying* that lying to people in exchange for their votes is 'dehumanising':

'In a modern democracy.... The right to vote implies a liberty that extends far beyond the entitlement to mark a piece of paper in a voting booth once every four or five years. Citizens have a right to form a fair and balanced judgment, and are therefore entitled to be informed about their political choices. This includes a right not to be deceived. Lying in a democracy has long been regarded as an especially disreputable act: Members of Parliament are still forbidden to call their political opponents liars in the Commons Chamber. Deception, even when practised for the best of motives, is the worst kind of bad faith. Lying disempowers, and therefore dehumanises, those who are lied to. Politicians who lie to voters deprive them of the ability to come to a reasonable and well-informed decision how to cast their vote. In so doing, they convert them into dupes'

e. Without reasonable excuse or justification

i. The excuse/justification that the defendant was acting in a purely private and personal capacity and was not 'acting as such'

Such an argument would not be successful given the evidence we have acquired and the duties of Mayors and MPs that we have identified as previously discussed within this document.

ii. The excuse/justification that the claims weren't actually false

Such an argument is untenable as has already been established with reference to data and statements from the ONS, UKSA, HM Treasury and Parliament's Library. The UK does not send, spend or pay £350 million a week or £20 billion a year on EU membership and never has in a single week or year.

iii. The excuse/justification that Mr Johnson was unaware that the statements were false

Mr Johnson was demonstrably aware of the correct statements to make with regards to national spending figures as he advanced accurate ones of multiple occasions. Despite this, he then advanced highly inaccurate figures on many other occasions. He was aware of the difference between gross and net payments, and differentiated between abated funds and rebated funds that 'come back' via Brussels. He also described similar claims as 'dubious accounting' within his 1996 Telegraph article. He also had the falsity of the claims brought to his attention on multiple occasions.

iv. The excuse/justification that Mr Johnson's statements are protected by parliamentary privilege or exclusive cognisance

The expenses scandal resulted in criminal prosecutions against MPs and a peer in 2011. The issues of parliamentary privilege and exclusive cognisance were discussed within this case. As discussed within *R v Chaytor and others* (2011), Parliamentary Privilege does not extend to the ordinary crime of the criminal law.

"I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice. One of the leading authorities on the privilege of Parliament contains matter on the point and shows how careful Parliament has been to avoid even the appearance of countenancing such a doctrine". That authority was Eliot's Case.'

'In his ruling on the jurisdiction question, Buckley J observed that it was common ground that in general, members of Parliament are subject to the criminal law and that it would be "unacceptable" for a member of Parliament to be immune from prosecution in the courts of law when there was prima facie evidence of corruption. Without it being suggested that he was questioning or impeaching words spoken in Parliament, he adopted the observations of Lord Salmon that: 'To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against ...any member of Parliament who accepts the bribe, stems from the Bill of Rights is possibly a serious mistake...(the Bill of Rights) is a charter for freedom of speech in the House. It is not a charter for corruption....the crime of corruption is complete when the bribe is offered or given or solicited and taken.'"

'The principle of equality before the law, and the application of the criminal law to all citizens identically remains fundamental to the rule of law itself. In Sharma v Browne-Antoine [2007] 1 WLR 780 at paragraph 14, Lord Bingham, for the Privy Council, said:

"The rule of law required that, subject to any immunity or exemption provided by law, the criminal law of the land should apply to all alike. A person is not to be singled out for adverse treatment because he or she holds a high and dignified office of State, but nor can the holding of such an office excuse conduct which would lead to the prosecution of one not holding such an office. The maintenance of public confidence in the administration of justice required that it be, and be seen to be, even-handed".'

-R v Chaytor and others 2011

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2010/1910.html&query=\(R\)+AND+\(v\)+AND+\(chaytor\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2010/1910.html&query=(R)+AND+(v)+AND+(chaytor))

In general, Parliamentary Privilege only applies to that which takes place within the grounds of the palace of westminster and even then, it is often of little or no defence within criminal cases. Given that the vast majority of evidence we plan to make use of comes from outside of the Palace of Westminster we do not consider parliamentary privilege to be a problem within the context of our own case.

The issue of exclusive cognisance refers to Parliament's exclusive right to manage its own legal matters internally, when said matters come under the umbrella of parliamentary privilege. The Joint Committee on Parliamentary Privilege is helpful for explaining this matter.

"Exclusive cognisance" and the rule of law

15. The corollary of Parliament's immunity from outside interference is that those matters subject to parliamentary privilege fall to be regulated by Parliament alone. Parliament enjoys sole jurisdiction—normally described by the archaic term "exclusive cognisance"—over all matters subject to parliamentary privilege. As Sir William Blackstone famously noted in his Commentaries on the Laws of England, the maxim underlying the law and custom of Parliament is that "whatever matter arises concerning either house of parliament, ought to be examined, discussed, and adjudged in that house to which it relates, and not elsewhere".[26]

16. The principle of exclusive cognisance underpins all privilege, including those aspects of privilege which are now based in statute. Thus Article 9 of the Bill of Rights, the most important statutory expression of parliamentary privilege, states that "the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of Parliament". This encapsulated a pre-existing claim to exclusive cognisance over things said or done in Parliament—the preamble to the Bill of Rights notes that King James II had sought to subvert the liberties of the realm "by Prosecutions in the Court of King's Bench for Matters and Causes cognizable only in Parliament".'

-Parliamentary Privilege - Joint Committee on Parliamentary Privilege, 2 General principles, The need for parliamentary privilege

<https://publications.parliament.uk/pa/jt201314/jtselect/jtprivi/30/3004.htm>

However, as the vast majority of the evidence of interest to our case does not come from within the walls of the Palace of Westminster, exclusive cognisance does seem likely to cause us difficulty. Regardless, parliament's exclusive jurisdiction over internal legal affairs does not extend to ordinary criminal matters. This issue was helpfully discussed within R v Obeid:

'b) Exclusive cognisance

(iv) In Obeid v R (2015) 91 NSWLR 226; [2015] NSWCCA 309 the Court determined that the Supreme Court of New South Wales had jurisdiction to hear the charge the subject of the indictment. The reasons given there are equally applicable to the argument reframed as the Court being required to exercise a "self-denying" ordinance. Firstly, the fact that Parliament has its own law unknown to Courts has no bearing on the Court's jurisdiction to determine a common law charge. Secondly, Parliament does not have an exclusive jurisdiction to deal with criminal conduct, subject to certain exceptions. Outside those exceptions there is no reason for a Court to decline to exercise jurisdiction, and in many cases to do so would constitute an affront to the administration of justice. Thirdly, nothing in the NSW Constitution supports the proposition. Fourthly, the case law supports the Court exercising

jurisdiction. Fifthly, the indictment does not in terms make allegations of any conduct within the walls of Parliament relating only to the internal practices of the chamber, nor does it impeach speech within Parliament, or any parliamentary proceedings:’

Arguments concerning the UK parliament’s right to have exclusive jurisdiction over accused breaches of the Code of Code of Conduct for Members of Parliament would also be unsuccessful. This is because the Parliamentary Standards Commissioner does not claim exclusive jurisdiction over criminal level abuses of the code of conduct.

‘The following matters, which fall outside of the Commissioner’s remit, may be referred by the complainant to the relevant body or individual:...allegations of criminal misconduct, which are normally a matter for the police;’

-The Guide to the Rules relating to the Conduct of Members

<https://publications.parliament.uk/pa/cm201516/cmcode/1076/1076.pdf>

vi. The excuse/justification that Mr Johnson’s statements are protected by the right to freedom of expression

We have explored the possibility that the defendant could call upon the right to freedom of expression in defence of their knowingly false statements. It seems that such an action is highly unlikely to be successful.

It is already an offence contrary to section 106 of the Representation of the People Act 1983 to make false statements about a candidate in an election (the offence of making a false statement in relation to a candidate’s personal character or conduct for the purposes of affecting the return of that candidate). Meaning that knowingly false statements in this context are not considered a breach of the right to freedom of expression.

Also, R v Woolas (2010) covered free speech, as distinguished from dishonest speech:

‘Dishonest statements are aimed at the destruction of the rights of the public to free elections ... and the right of each candidate to his reputation ... Article 10 does not protect a right to publish statements which the publisher knows to be false ...’

‘The right of freedom of expression does not extend to the publishing, before or during an election for the purpose of affecting the return of any candidate at an election, of a statement that is made dishonestly, that is to say when the publisher knows that statement to be false or does not believe it to be true. It matters not whether such a statement relates to the political position of a candidate or to the personal character or conduct of a candidate when the publisher or maker makes that statement dishonestly. The right to freedom of expression under Article 10 does not extend to a right to be dishonest and tell lies...’

-R v Woolas 2015

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2010/3169.html&query=\(R\)+AND+\(v\)+AND+\(Woolas\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2010/3169.html&query=(R)+AND+(v)+AND+(Woolas))

The defendant’s knowingly false statements are not protected by the right to freedom of expression. Given that we have established that Mr Johnson’s statements were knowingly false, I don’t believe that we will face too significant a problem here.

14. What is the legal opinion of our case from Lewis Power QC?

Lewis Power QC is leading the legal team, he will be accompanied by two junior barristers, one of whom is already selected. Mr Power QC's work covers criminal fraud litigation, fraud, money laundering, bribery & corruption, offshore & international, murder & manslaughter, terrorism, and war crimes. He was recently acknowledged as being in the top ten list of barristers in the UK by Legal 500. He was described as being 'A strong trial tactician, he is devilishly effective in front of a jury'.

Mr Lewis Power QC has reviewed all of the case discussion, he is the only QC to have reviewed all arguments and information. Upon raising our funds, Lewis Power QC will lead preparation of the documents required for the laying of an information at the magistrate's court.

Mr Power QC's legal advice as of May 11th 2018 is that there are reasonable prospects for convicting Mr Boris Johnson MP for the offence of misconduct in public office. He advises that the prosecution can go ahead, beginning with the laying of an information at the magistrate's court. Please note, Mr Power QC's full legal opinion will not be published at this time as it is intended to be used within court. Journalists are welcome to contact Church Court Chambers to confirm with the clerks there that Mr Power QC is instructed on our case and is in approval of the prosecution.

Lewis Power QC: <http://churchcourtchambers.co.uk/barrister-profiles/lewis-power-qc>

Church Court Chambers: <http://churchcourtchambers.co.uk/>

15. What is the legal opinion of our case from David Perry QC?

David Perry QC was the first Queen's Counsel we instructed on Brexit Justice. We instructed him via Edmonds Marshall McMahon solicitors to consider prosecution cases based upon undue influence, fraud, conspiracy to defraud, incitement of racial hatred and misconduct in public office. All offences were considered within the context of the conduct of elected representatives and campaigners during the EU Referendum campaigns.

Within his 'Draft Preliminary Advice' Mr Perry QC informed us it was unlikely that any of the offences could be met. After considering his work I agreed with his arguments with regards to all of the offences, apart from misconduct in public office. His arguments regarding the other offences were well written, they referenced acts of statute and common law case precedents which made it clear to me that cases based upon those offences were very unlikely to succeed. However, after analysing his arguments concerning misconduct in public office it became clear to me that there were some misunderstandings present. This was mostly due to significant holes which were revealed to have taken place in the evidence gathering process. This was not a fault of his.

In response to Mr Perry QC's work I gathered evidence, conducted research and identified several arguments covering the points on which I did not agree. What followed was a very prolonged process of research and debate, of which the following legal opinion from Mr Perry QC was the result. These sections of his opinion are taken from various different advices, which together act as a summary of the progress of our exchanges. They are not presented by order of date and the full advices will not be published. The remainder remain privileged and confidential.

'There are good arguments to be deployed that Members of Parliament are to be considered 'public officers' for the purposes of the common law offence of misconduct in a public office. '

'From the materials which we have reviewed it appears that Boris Johnson, acting in his capacity as Mayor of London, campaigned for a 'leave' vote in the EU referendum and that he received support from officials within the Greater London Assembly ('GLA') in relation to that position. The materials indicate that Mr Johnson adopted this position in his capacity as Mayor and not in any personal capacity.'

'We note that Mayor Johnson had adopted an official policy of advocating Vote Leave in relation to the referendum; that members of staff of the GLA expended time in support of this official policy; that Mr Johnson was invited to speak 'as Mayor' at a number of Vote Leave events; that he spoke to a Parliamentary Committee about the referendum in this capacity; that he answered questions at City Hall in relation to his referendum campaigning activities; and that Mr Johnson likely incurred public expense in his activities in support of Vote Leave, as well as being accompanied by GLA staff and (in all likelihood) police officers'

'These points now accord with our view that there is a good arguable case that the claims are a lie and amount to wilful misconduct...' 'We are further grateful for the materials dealing with the question of whether Mr Johnson was aware that the £350 million statement was untrue. In our view these materials support a case that Mr Johnson was well aware of the falsity of the statement and knew that the statement was misleading on its face.'

'...there is a good arguable case that the claim that the EU cost the UK £350 million every week, was a lie, and that this could amount to wilful misconduct for the purposes of the offence of misconduct in a public office...'

'There is, further, a strong and wide -ranging public interest in ensuring that elected representatives observe the highest standards of honesty and integrity (as discussed in R v Greenway)'

'The making of false statements of fact for the purposes of influencing voters may be considered a matter in which the public has a profound interest, concerning as it does (i) the quality and integrity of political debate, and (ii) conduct (namely deception) generally accepted to be wrong at least in a moral sense. These are matters which, it may be thought, are sufficiently serious to warrant the protection of the criminal law, and which would justify its stigma and sanction'

In our view there is a tenable argument that Mr Johnson was campaigning in his capacity as Mayor of London and, although the point is not without difficulty, that his conduct (knowingly repeating a statement which was untrue) is arguably capable of amounting to misconduct in a public office.

David Perry QC

-Sections from a variety of legal opinions presented to Marcus J Ball.

After debating with Mr Perry QC for a considerable amount of time the above legal opinions encouraged me to continue. However, throughout our written debate and during our meetings in conference the remaining problem came to be that of 'acting as such'. This appeared to be the final significant hurdle to being able to bring a strong case to court.

I had felt encouraged when, during our second conference taking place at 6KBW College Hill on February 27th 2017, Mr Perry QC had said: *'if we can solve the problem of acting as such then the case will be short and we will win'*. This reflected my own view that the other more significant challenges to the case had been effectively dealt with. 'Acting as such' must then become the primary focus of my research.

Mr Perry QC followed up the February 27th 2017 meeting with a written advice which stated the following:

'There is a good arguable case that the claim that the EU cost the UK £350 million every week was a lie, and that this could amount to willful misconduct for the purposes of the offence of misconduct in a public office.'

'(iii) However, there remain difficulties in establishing that Members of Parliament were acting as 'public officers' in the sense required...'

'This approach would follow from a distinction between a Member of Parliament acting, on the one hand, in his or her capacity as an elected representative of a constituency and participating in the business of government in debates in the Houses of Parliament; and, on the other, participating in campaigning for a particular outcome in a referendum.'

'The Court held that the offence required a defendant not just to misconduct himself whilst also holding a particular status (viz. as a government employee) but to misconduct him or her self 'in relation to powers and duties exercisable by him for the public benefit' (at [§17]) – that is to say in relation to his or her functions as a public officer. Ribeiro PJ (giving the judgment of the Court) stated: 'the essential feature of the offence is an abuse by the defendant of the powers, discretions or duties exercisable by virtue of his official position, conferred on him for the public benefit' (at [§18]).'

'Millet NPJ stated the relevant test in straightforward terms: 'did the conduct with which the accused is charged consist of an abuse of a power, duty or responsibility entrusted to him or her and exercisable for the public good?'

'It follows that, in the present case, it would be necessary to establish a sufficiently clear overlap between the role and responsibilities of a Member of Parliament and his or her misconduct in that capacity, by reference to the referendum.

'...the starting point would be to identify the proper constitutional roles, obligations and responsibilities of a Member of Parliament. It would then be necessary to identify an abuse of these powers or duties, connected to the referendum, of sufficient seriousness, to amount to an offence of misconduct in a public office.'

-David Perry QC

Brexit Note advice March 2017

In response to this advice I set about conducting research to identify the roles, obligations, responsibilities, powers and duties of Mayors and Members of Parliament. Several of which have been covered earlier within this document. My research efforts were well rewarded, as I managed to identify several duties and powers which were highly relevant to our own case. I then sent arguments based upon my research to Mr Perry QC for his consideration.

It was during this stage of debate, focussing upon the duties of Members of Parliament and Mayors, that I began to become concerned about working with Mr Perry QC. Every duty of an MP or a Mayor that I advanced was presented with rulings from the case law. I also made use of parliamentary documents, acts of statute and relevant evidentiary materials. In response however, Mr Perry QC dismissed the validity of each argument. Dismissed being the key word. Mr Perry did not counter my arguments with a well written exploration of the relevant acts of statute, case law or evidence as he had within his original advice. After his first written advice, he rarely put forward legal materials in support of his own argument or in criticism of my own. I have made my concerns on this matter known to Mr Perry QC during a conference.

Another concern I had was that Mr Perry QC continually brought up ‘acting as such’ as the main reason why he was wasn’t in full agreement with the case. This is despite the Law Commission’s statement that *‘the requirement that the individual be a public office holder “acting as such” is unlikely to have any practical significance within the current offence of misconduct in public office, other than to exclude the cases where an officer is acting in a wholly private capacity’*.

I came to find it confusing that Mr Perry QC place so much importance on the phrase ‘acting as such’ when he had previously agreed with the Law Commission’s findings. Mr Perry QC continually referred to ‘acting as such’ in his opinions against our case. It was a phrase that I feel shouldn’t have been relied upon because it had very little meaning. Mr Perry was aware of this as he was present within Attorney General’s reference 3 of 2003. As already discussed at length, the rulings from that case did not attempt to define the meaning of ‘acting as such’. Mr Perry QC was correct to highlight the value of R v Mitchell and its three stage test. But again, he was dismissive of the ‘state function’ arguments I put forward to him.

At this point, I think it fair to provide some further context regarding our case’s working relationship with Mr Perry QC. David Perry QC is apparently one of the most well known and highly demanded barristers in the United Kingdom and Hong Kong. He doubtless had far larger, far better resourced clients than myself to work with. We were unable, given our comparatively small budget, to provide Mr Perry QC with the kind of financial remuneration that other clients would have been able to. This resulted in a restrictive limit being placed upon the amount of time that Mr Perry QC would have been able to commit to our action. This is something to keep in mind as it may help to explain the lack of research and referencing within his later written opinions.

However, after almost a year and a half of research and occasional debates with Mr Perry QC the ‘acting as such’ disagreement remained. This was frustrating and Mr Perry’s arguments had, to my mind, become increasingly dismissive and less persuasive. I began to ask myself what else might be wrong. During one meeting, I asked Mr Perry QC if there was any other reason why he did not want to bring a prosecution case with me. He assured me, most politely, that there was not and that he did believe in the merits of the case. He told me that he did believe an offence had been committed, but that he didn’t believe a case based upon misconduct in public office would be likely to be successful.

Despite his assurances, I still felt uneasy and so I decided to look into Mr Perry’s previous cases. After searching through Mr Perry’s reported court cases via BAILII I discovered the following.

- R v Docherty (Appellant)
Intervener (Secretary of State for Justice, Michael Gove MP): David Perry QC, Melanie Cumberland (Instructed by The Government Legal Department)
<http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2016/62.html&query=%22David+Perry+QC%22>
Judgement given on: 14 December 2016. Heard on: 3 and 4 May 2016

Potential cause for concern: We originally instructed Mr David Perry QC to help us investigate prosecutions against several public office holders. This included The Minister for Justice Michael Gove MP, for his actions during the referendum debate period in 2016. However, Mr Perry QC was representing The Minister for Justice Michael Gove MP during the referendum debate period in 2016. He never disclosed this information to me and EMM did not disclose it either. I found this to be concerning and unsettling for reasons of potential conflicts of interest. I asked myself what kind of relationship Mr Perry QC had with Mr Gove MP and why he had not informed me of this.

- R (on the application of Gibson) (Appellant) v Secretary of State for Justice (Elizabeth Truss MP) (Respondent)

Respondent: David Perry QC, Will Hays, (Instructed by The Government Legal Department)

<http://www.bailii.org/cgi-bin/markup.cgi?doc=uk/cases/UKSC/2018/2.html&query=%22David%20Perry%20QC%22>

Judgement given on: 24 January 2018. Heard on: 5 December 2017

Cause for concern: Mr Perry QC took on the Secretary of State for Justice (Elizabeth Truss) as a client whilst at the same time acting as my lead barrister. The Secretary of State for Justice was a part of the Cabinet, she worked with the top government team of ministers alongside Foreign Secretary Boris Johnson MP during this time. Again, David Perry QC and EMM did not disclose this to me at any time. I found this to be concerning and unsettling for reasons of potential conflicts of interest.

- R (on the application of Ismail) (Respondent) v Secretary of State for the Home Department (Theresa May MP) (Appellant):

Appellant, David Perry QC, Clair Dobbin (Instructed by The Government Legal Department)

<http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2016/37.html&query=%22David+Perry+QC%22>

Judgement given on: 6 July 2016 (Heard on 26 and 27 January 2016)

Cause for concern: Mr Perry QC has previously represented the Secretary of State for the Home Department Theresa May MP. I had asked him about this issue when I gave him the opportunity during a conference to tell me if there was any other reason why he did not want the case to go ahead. I stated that 'you've worked with Theresa May before' and his reply was 'have I?' He then briefly laughed. Mr Perry QC did not confirm or deny the statement but instead politely explained that he had worked with lots of people in government. EMM did inform me that Mr David Perry QC was instructed by Theresa May on the Abu Hamza case in 2006. I was concerned by this because Mr Perry QC was not completely open with me concerning his relationship with the Prime Minister. I found this to be concerning and unsettling for reasons of potential conflicts of interest.

I consulted the Bar Standards Board Handbook for guidance on this matter:

'You must not accept instructions to act in a particular matter if:

.1 due to any existing or previous instructions you are not able to fulfil your obligation to act in the best interests of the prospective client; or

.2 there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the prospective client in respect of the particular matter; or

.3 there is a conflict of interest, or real risk of conflict of interest, between the prospective client and one or more of your former or existing clients in respect of the particular matter unless all of the clients who have an interest in the particular matter give their informed consent to your acting in such circumstances...'

'You are prohibited from acting where there is a conflict of interest between your own personal interests and the interests of a prospective client. However, where there is a conflict of interest between an existing client or clients and a prospective client or clients or two or more prospective clients, you may be entitled to accept instructions or to continue to act on a particular matter where you have fully disclosed to the relevant clients and prospective clients (as appropriate) the extent and nature of the conflict; they have each provided their informed consent to you acting; and you are able to act in the best interests of each client and independently as required.'

-Bar Standards Board Handbook

https://www.barstandardsboard.org.uk/media/1933294/bsb_handbook_version_3.3.pdf

Again, to be completely clear, I was never asked for permission to continue with this work and no such potential conflicts were revealed to me at any point. Aside from the matter that EMM informed me of very briefly.

By way of better example, I have been in contact with two other QCs regarding being instructed on our case. One of them immediately informed me that he had a personal and professional relationship with Mr Boris Johnson's wife, who also happens to be a QC. He informed me of this immediately after I mentioned Mr Johnson's name. This was the correct procedure to follow.

The second QC's assistant replied to me and informed me that the firm she worked within had registered a conflict and so was unable to work on such a case with me. I did some quick research online and it seemed that said firm had worked with Mr Johnson in the past. This is, as far as my understanding goes, the correct procedure to follow. If there is a conflict, or a perceived conflict, the QC in question must inform the client and request their permission to continue.

I confronted EMM with the above concerns, which they immediately dismissed as not having any merit. I did not take confidence from the defensive and inconsiderate nature of their dismissal. I found it to be reactive and unsettling. I asked myself why it was that EMM had apparently not carried out a conflict check before instructing Mr Perry. Or, if they had, why it hadn't been brought to my attention. EMM's advice to instruct Mr Perry seems to have failed to take into consideration his many connections, direct and indirect, with people of interest to our case. In my view, which may of course be incorrect, this is something that should have been given far more thought and consideration given the nature of this case. It has certainly left me feeling unhappy and suspicious.

After taking into account all of the above concerns I made the decision to cease the instruction of Edmonds Marshall McMahon and David Perry QC. In summary, despite provide persuasive and well referenced legal advice at the start of our time working together, Mr Perry QC's arguments became increasingly dismissive and seemingly unresearched. It got to the point where Mr Perry's arguments made little or no reference to existing case law and simply ignored the rulings that I advanced. I was also very uncomfortable about the nature of Mr Perry QC's relationships with people of interest to our prosecution. As well as his relationships with professionals who worked closely with those people. But, most of all, I found it incredibly unsettling that Mr Perry QC did not disclose any of this to me before and was not completely open with me about it when I asked him.

I knew that I needed a new QC who I felt more comfortable working with, I promptly found one in Lewis Power QC. Mr Power QC has reviewed our case discussion so far as well as new information and has given me a legal opinion statement in favour of my research and arguments. It is his opinion, as expected, that our case has merit and that we are able to move ahead with a prosecution by laying an information at the magistrate's court. This was very good news.

Despite my concerns regarding Mr Perry QC I do feel that it is only fair to point out that he was a very pleasant, polite and charming man who was most welcoming when I came for meetings at his Chambers. His endless dismissal of my arguments resulted in my efforts to find better, stronger arguments. In this sense, his dismissiveness was a major motivator for my work and was therefore of great assistance to our case building process. I strived to persuade him by finding better evidence, better rulings and better arguments.

It must also be said that Mr Perry QC is very highly regarded by several lawyers that I met and spoken to whilst working on this case. He has a reputation for good judgement and is often named as one of the three 'go to' barristers for complex government legal work. It was said by one lawyer that he may even eventually become a Supreme Court Judge. He was also considered a favourite for the position of DPP, head of the CPS. There is no

doubt that Mr Perry QC has a reputation as a top legal mind, which is one reason why I found his work on our case to be so seemingly out of character.

I must also point out that Mr Perry QC kindly agreed to work pro bono on our case for quite some time after we had run out of funds. He stayed in contact with me via email and continued to provide me with legal advice. He used encouraging language and remained his calm, polite and pleasant self.

I must make it clear at this point that I am making no formal allegations against Mr Perry QC. It is perfectly possible that there has been a big misunderstanding or communication problem. All that I feel that I must say is that I felt uncomfortable working with him for the reasons that I have already stated.

Before I conclude this section, I would like to again make it completely clear that the ‘acting as such’ requirement should not be considered to be a hurdle to our case. Within the very recent case, and subsequent appeal, concerning the New South Wales Member of Parliament Eddie Obeid the issue of ‘acting as such’ was discussed:

Mr Obeid then submitted that R v Quach was plainly wrong in relation to this element of the offence. Mr Obeid acknowledged that the precedential question was that stated in Farah Constructions Pty Ltd v Say-Dee Pty Ltd [2007] HCA 22; 230 CLR 89 at [135]. Three points were relied on in order to surmount this hurdle. The first was that more recent Hong Kong authority, HKSAR v Wong Lin Kay [2011] HKCFA 28; 15 HKCFAR 185, had held that in order for the conduct to be “in relation to” a public office, it must be conduct “in relation to powers and duties exercisable by him for the public benefit” (at [17]). The second was that United Kingdom authorities required as an essential element that the misconduct be of a public officer acting as such: see eg Attorney General’s Reference (No 3 of 2003) [2004] EWCA Crim 868; [2005] QB 73 at [6], [54] and [61] and R v Chapman [2015] EWCA Crim 539; 2 Cr App R 10 at [17]. The third was that “to frame the elements of the offence by reference to the need for a ‘sufficient connection’ with the office, without proving guidance on the nature of the connection required, is to leave the boundaries of the offence entirely at large”.

All these submissions should be rejected. The Victorian Court of Appeal conducted a review of Australian, Canadian, English and Hong Kong decisions on precisely this question, and rejected an arguably narrower formulation proposed by the accused, namely, that the misconduct be by the public officer acting as such. (For completeness, it may be that there is no difference between a formulation using the words “acting as such” and one using the words “in relation to”: they are regarded as identical in Nicholls’ work at p 87’)

-R v Obeid (2017)

<https://jade.io/article/420592>

In short, David Perry QC doesn’t want to bring a prosecution because he doesn’t believe that Members of Parliament or Mayors were ‘acting as such’ whilst they campaigned. Yet, this phrase has been made clear to be almost completely meaningless as has already been established.

However, David Perry QC was in agreement that the mayor was acting in an official capacity; that lying about public spending figures was an abuse of public trust; that there was a public interest in that trust, that the right to freedom of expression did not protect it; that Mr Johnson did advance the £350 million figure; and, that this claim was knowingly dishonest. He came to those conclusions based upon the evidence I had previously presented to him which amounts to a small fraction of what we now have available to us.

15.1 Why has the private prosecutor chosen to discuss these issues openly?

I understand that many people will not approve of my decision to discuss these issues so publicly. However, I feel that I am under a responsibility to do so. It would be unwise of me to request such large amounts of funding for a prosecution case without being open and honest concerning legal advice I have been given by such a well known QC as Mr Perry. He has not given me an advice in approval of a prosecution based upon misconduct in public office. I am not in agreement with his arguments and given the circumstances I am required to explain why. I cannot pretend that the above did not take place. Financial backers have a right to know.

16. What will happen if we win?

If we win our prosecution and any subsequent appeals we may establish a case precedent in the common law. This precedent could make it illegal for elected representatives to lie to the public about how their money is spent. This could act as a powerful deterrent against future misconduct by our nation's elected representatives.

It is also possible that the impact of this precedent may extend to other common law jurisdictions around the world. Many nations' legal systems are based upon the English common law, although the extent to which they abide by rulings in the UK is varied. Influential Precedent is often far reaching and of assistance in cases in multiple jurisdictions, but it is not binding.

The following countries are influenced by the English common law(in greatly varying ways) according to the CIA World Factbook:

Anguila, Antigua and Barbuda, Ashmore and Cartier Islands, Australia, The Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bermuda, Botswana, British Virgin Islands, British Indian Ocean Territory, Brunei, Burma, Cameroon, Cayman Islands, Curacao, Cyprus, Dominica, Falkland Islands, Fiji, The Gambia, Ghana, Gibraltar, Grenada, Guernsey, Guyana, Hong Kong, India, Ireland, Isle of Man, Israel, Jamaica, Jersey, Kenya, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Montserrat, Nauru, Nepal, New Zealand, Nigeria, Niue, Norfolk Island, Papua New Guinea, Saint Helena, Ascension and Tristan Da Cunha, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Sint Maarten, Solomon Islands, South Africa, South Georgia and South Sandwich Islands, Sri Lanka, Sudan, Tanzania, Tonga, Trinidad and Tobago, Turks and Caicos Islands, Tuvalu, Uganda, United States, Vanuatu, Yemen, Zambia and Zimbabwe.

-CIA World Factbook

<https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>

Further to this, misconduct in public office is common law offence with a maximum sentence of life imprisonment attached to it. It is therefore possible that the defendant will face some form of penalty, potentially in the form of a prison sentence. The type of penalty and the length of time served is a decision for a judge. Because a prosecution of this specific kind has never previously occurred it is difficult to predict the severity of the sentence.

17. What key challenges to the case have we identified and what are our responses to them?

17.1 This case has never been done before (psychological barriers)

Our case is a crowdfunded, private, criminal prosecution case against a Member of Parliament and Mayor of London based upon abuse of public trust by way of lying about public spending figures. It is, very basically, an attempt to make lying in politics illegal. Often, if something hasn't been done before and appears too good to be true there is a danger that people fail to take it seriously. I have attempted to mitigate this risk by securing legal advice in our favour from Lewis Power QC. I have also taken the time to write up this document and publish it online for all to read through. It should be clear that the evidence we have identified and our case building efforts more than justify a case being brought.

17.2 This case is being brought against a very powerful and well known individual

Boris Johnson is one of the most recognisable, well known, well connected and powerful people in the country. He has been the editor of the Spectator, a Member of Parliament, the Mayor of London and Foreign Secretary. He has great influence, exceptional public popularity and many powerful friends. For this reason, and for purposes of the public interest, it is vital that our case receives plentiful public awareness and press coverage. We require this in order to counter the resistance that such power and influence may naturally provide against our efforts.

17.3 This case is estimated to cost £2.2 million in total

We have already raised £200,000 of pledges for this case. Securing another £2 million is certainly a challenge and there is no guarantee that it will be possible. Working to acquire plentiful press coverage seems to be the best solution to this problem, in order to assist us with the crowdfunding effort. I have worked very hard for over two years to create a credible proposition to potential financial backers and we have a strong case. I will do my best to generate as much press coverage as possible but I will need help from backers and the public.

17.4 The possibility of interference from the Attorney General or Director for Public Prosecutions

The Crown Prosecution Service and the Attorney General have the ability to end a private prosecution if they so choose.

'The right to bring private prosecutions is preserved by section 6(1) of the Prosecution of Offences Act (POA) 1985. There are, however, some limitations:

the Director of Public Prosecutions (DPP) has power under section 6(2) POA 1985 to take over private prosecutions;'

'The CPS should not take over a private prosecution if the papers clearly show that:

- *the evidential sufficiency stage of the Full Code Test is met; and*
- *the public interest stage of the Full Code Test is met; and*
- *there is no particular need for the CPS to take over the prosecution (either to stop or continue with the prosecution).*

In cases where it is decided that not taking over a private prosecution after receiving a specific request to intervene is the appropriate course of action, then, unless there are exceptional circumstances, the CPS should write to both the private prosecutor and the defendant explaining the reasons for the

decision.

'It should be noted that the Attorney General has the power to enter a nolleprosequi to stay proceedings in the Crown Court at any stage, and may receive such requests to do so in cases where the CPS has decided not to take over a private prosecution. In such circumstances, the Attorney General's Office will require a full briefing setting out the reasons for not taking over the private prosecution in order to stop it.'

-CPS Guidance: Private Prosecutions

<https://www.cps.gov.uk/legal-guidance/private-prosecutions>

It is possible that our prosecution will not be looked upon favourably by some organisations and senior individuals within government. These organisations and individuals may attempt to use their influence to persuade the Crown Prosecution Service or the Attorney General to close down our case for political reasons. In order to mitigate the risk of this happening it is in our interests to ensure that our case generates as much press coverage and public awareness as possible. The intention being to put a spotlight and a magnifying glass upon our case and the legal system itself from start to finish. The public scrutiny and pressure that this generates will potentially help to ensure that all of the correct procedures are followed. We have a strong case that is worth protecting, we need to ensure that it is very difficult for third parties to attempt to sabotage it.

17.5 3rd party disclosure disagreements

There is further evidence of value to our case stored within the news media archives of Sky News and the BBC. Sky was originally willing to sell us the footage we required but senior management intervened at the last minute and they have refused to sell us the footage that we need.

'Hi Marcus,

I have heard back from our senior management team and they have decided that we will not be able to provide you with the footage I'm afraid. Apologies it took a while to reach this decision. As I'm sure you can understand this is something we need to remain impartial on and cannot be seen to be active in assisting either side of such a polarised argument.'

-Sky News and Sport Library Sales

As well as Sky, the BBC's legal team and Ric Bailey have also been somewhat unhelpful. My intention at this time is to make use of Norwich Pharmacal Orders in an attempt to force third party disclosure of evidence on issues such as this.

17.6 The risk of financial costs orders being made against the private prosecutor

I have been exceptionally careful in taking the time to build this case properly, carrying out the required research and evidence gathering as well as I can. However, anything can happen in court and it is possible that if something unforeseen goes wrong I could be facing some kind of financial penalty. Nothing is impossible. This may be in the form of a costs order if our case is unsuccessful. I have made the decision to be the sole private prosecutor, meaning that I alone will face this risk. Financial backers will not be present within the court case. Part of my job on this case is to absorb risk in order to protect financial backers. If nobody was willing to take responsibility for such eventualities then the case would not be able to begin or continue at all. Again, this is exceptionally unlikely to occur as we have worked very hard to prepare this case correctly.

17.7 The risk of physical harm to the private prosecutor

An investment management professional called Gina Miller brought a civil action related to Brexit against the Government in 2016. Apparently, she received death threats and a lot of abuse online, to the extent that she felt it necessary to hire close protection professionals. There was also an incident involving Viscount Rhodri Philipps.

'A viscount who offered money on Facebook for anyone to run over and kill anti-Brexit campaigner Gina Miller is facing jail after being convicted of sending menacing messages.'

Rhodri Philipps, the 4th Viscount St Davids, wrote a message on the social media site just four days after Miller won a landmark high court challenge against the government last year:

"£5,000 for the first person to 'accidentally' run over this bloody troublesome first generation immigrant."

-Aristocrat faces jail after being menacing and racist about Gina Miller

<https://www.theguardian.com/uk-news/2017/jul/11/man-jail-offering-money-run-over-gina-miller-rhodri-philipps-viscount-brexit>

I have myself also been sent abusive messages online, including a request that I kill myself. I have been told that I'm being watched as I pass between the three cities that I've lived in within recent years. Another person found out where I lived and contacted me to let me know. In the circumstances this is nothing unusual and not unexpected. It has not caused me considerable concern as of yet.

I consider it highly unlikely that violence will be used against me as a deterrent to my work, but it is a possibility given the controversial and highly public nature of this prosecution. I feel completely confident that this prosecution is the right thing to do, but I also understand that many people may disagree with me. For this reason, I reserve the right to make use of the funds raised for what is necessary for the success of the prosecution, including my own security and personal safety. I have taken some steps in this regard already.

17.8 Contingency plans if the private prosecutor were to become unable to continue with their work

If I become seriously ill or otherwise incapacitated I will hand over 100% of Brexit Justice Ltd.'s shares (which own all research, evidence, files and funds) to several trusted and capable friends who will take over my responsibilities on my behalf.

Further to this, if the unfortunate and unlikely occurs in that I pass away I have written a will leaving full ownership of Brexit Justice Ltd. to a succession of trusted and capable friends. Brexit Justice Ltd. will be willed to this group of different people in order to ensure that the prosecution work can continue in my absence. If something happens to one of them, the remaining shares will be gifted to the rest of the shareholders. My will is to be stored with my solicitors, with other copies being stored in other locations. My trusted and capable friends are all British citizens who live scattered across different locations.

The need for a will may sound paranoid or ridiculous but I would ask the reader to remember that I will potentially be responsible for tens of thousands of peoples' funds to the amount of up to £2 million. To say nothing of the responsibilities they have entrusted me with in completing this case. In terms of risk management, covering the unexpected is the responsible thing to do. Without a will backers' funds could be locked up and

inaccessible for a considerable amount of time, essentially killing the case. It would be very irresponsible of me not to plan for this.

It's also about protecting myself by creating a credible deterrent. If some form of accident or menace should occur the prosecution will continue regardless. There would be no reward in arranging such an event as was seemingly attempted in the Gina Miller incident.

18. How is Brexit Justice funded?

The case has been funded by approximately 5000 people so far in the form of crowdfunding. Crowdfunding reduces risk by spreading cost amongst large numbers of people who believe in the reasoning behind our prosecution. The intention at this point is to continue funding our working through the crowd, but we may also accept larger scale funding from organisations or individuals.

19. What is Crowdfunder.co.uk?

<https://www.crowdfunder.co.uk/> is the crowdfunding platform I have been working with since I first initiated this venture. They have been polite, professional, supportive and very helpful. Their system and software keeps getting better and better, I intend to work with this company again.

20. How are the funds spent?

www.BrexitJustice.com contains links to pdfs (scroll down) which detail our financial spending and a form of balance sheet. I have detailed each expense and my reasoning for it. As we progress I will be updating these reports. My accountant is David Muggridge of Ackland Webb.

21. What is our legal structure?

Brexit Justice Ltd. is a private limited company founded and owned by Marcus J Ball. It is a social enterprise and doesn't exist to make a profit.

Registered office address: 130 Old Street, London, England, EC1V 9BD

Company status: Active

Company type: Private limited Company

Incorporated on: 12 December 2016

Company number 10520032

22. Who is Marcus J Ball?

Given I'm asking potentially tens of thousands of people to contribute money toward this work it seems fair that I could cover who I am.

Personal background:

I started Brexit Justice aged 26, at the time of writing I am 28.

I have no criminal record, no cautions and have never been arrested.

I am British, born in Norwich in Norfolk. My parents are retired, but worked in nursery, primary and secondary level education as teachers.

Education background:

I went to a state school in Norfolk and I studied History at University in Canterbury.

Political background:

I don't work in Government and never have.

Politically, I have voted for the Liberal Democrats, Conservatives and Labour on one occasion each.

I am not a member of any political party.

I now have little interest in politics or politicians, aside from matters concerning the conduct of elected representatives and public trust.

Character references:

Please view my LinkedIn profile or www.MarcusJBall.com to view character references covering my previous work.

Professional background:

I am a small startup founder, I have created and run an education not for profit, a university education reform startup and some mobile applications. My work is focussed on trying to change how systems within society work. Please search Marcus J Ball on LinkedIn if you wish to know more.

Here are some links covering my previous work:

My Tedx talk on University education and my work with Ambition House:

<https://www.youtube.com/watch?v=zH6t6WZ8Yd4>

I campaigned to make essay writing mills illegal.

Times Higher Education article:

<https://www.timeshighereducation.com/blog/company-wanted-me-write-students-essays-return-cash>

A mobile phone app which turned Politicians into tamagotchi like digital pets which attempted to educate the younger user regarding UK politics:

Grazia:

<https://www.grazia.fr/lifestyle/insolite/lappli-de-la-semaine-polipets-transforme-les-hommes-politiques-en-tamagotch-759312>

Challenges:

https://www.challenges.fr/politique/cette-application-loufoque-qui-veut-faire-voter-les-jeunes-britanniques_90726

My work has appeared in other local, national and international press. A google search of my name (Marcus J Ball) should bring up further information about me. However, I have wiped my social media of almost all personal information because I don't want my family or friends being drawn into the public nature of my work.

My responsibilities working on Brexit Justice:

I have been responsible for all evidence gathering work and the vast majority of legal research and case building activities. Following my efforts Lewis Power QC and other legal professionals have then reviewed this work and provided me with their legal opinion based upon what I have presented to them. This was the most cost effective approach to the case. Instructing a legal team to spend two years carrying out this research full time would not have been affordable or practical.

23. How can the public contact the private prosecutor?

<https://twitter.com/MarcusJBall>

<https://www.instagram.com/marcusjball/>

<https://www.linkedin.com/in/marcus-j-ball-b7110a26/>

<https://www.marcusjball.com/> (please use the email send box here)

www.BrexitJustice.com (Number available upon request for journalists & larger backers)

Please note, I am unable to receive mail by post. I don't live at any of the addresses listed online. They are all out of date and I move house regularly. Also, I'm sorry but it will usually take me a long time to reply to messages online. I don't have a team to help me with that at this stage.

24. Suggested further reading

a. Leading misconduct in public office research

[Misconduct in Public Office Issues Paper 1: The Current Law](#) (A broad, in depth coverage of misconduct in public office cases by the Law Commission, discussing issues such as 'acting as such' and duties as 'state functions' in detail).

[David Lusty: Revival of the common law offence of misconduct in public office](#) (Excellent research on misconduct in public office according to case law in Canada, Australia, New Zealand, the US and the UK)

b. Misconduct in public office case precedents of interest

[Attorney General's Reference No 3 of 2003](#) (Bailii.org) (2003 UK 's understanding of the MIPO offence)

[The Queen V Huy Vinh Quach \(2010\)](#) (Most up to date understanding & only case to fully examine 'acting as such')

[R V Mitchell 2014](#) (Bailii.org) (Discusses duties that represent the fulfilment of one of the responsibilities of government)

[Obeid v R \[2017\]](#) (Jade.IO) (MIPO case member of the Legislative Council of New South Wales. Fundamental duties of a Member of Parliament according to the common law)

[R v Macdonald 2017](#) (Jade.IO) (MIPO case against member of New South Wales elected legislature (like an MP) who was also a Minister)

[R V Kennet \[1781\]](#), [Henly v Mayor of Lyme \[1828\]](#), [R V Pinney \[1832\]](#) and [Livingstone V Adjudication Panel for England \[2006\]](#) (These cases consider Mayors of London and Bristol to be public office holders, they are of value for several reasons, not all are available in full)

[R V Chapman \(2015\)](#) & [R v France \(2016\)](#) (discussion on the threshold for abuse by way of misconduct)

c. UK Spending on EU budget contributions (financial documents)

[European Union Finances 2015: statement on the 2015 EU Budget and measures to counter fraud and financial mismanagement](#) (information from *The Treasury* on how the UK's 'rebate' (abatement) works, including that the abated money is not paid to the EU or sent back from it)

[UK Statistics Authority statement on the use of official statistics on contributions to the European Union](#) (makes several criticisms of the £350 million a week claims. Sir Andrew Dilnot, Chair of the UK Statistics Authority, states that the UK's contribution to the EU is paid after the application of the rebate)

[UK Perspectives 2016: The UK contribution to the eu budget](#) (explains again that before the UK government transfers any money to the EU an abatement is applied)

[House of Commons Library: A guide to the EU budget](#), by Matthew Keep (Explainer of how the UK's payments to the EU works, how they are calculated and etc.)

[United Kingdom Balance of Payments - The Pink Book: 2015](#) (Report on money going out and coming in of the UK's accounts)

END OF CASE OVERVIEW (PART 1)