

Case Summary: Case review concerning campaign expenditure return in respect of Zac Goldsmith MP

1. Background

- 1.1. The Electoral Commission has concluded its review in respect of Zac Goldsmith MP's election expenses return for his campaign for the 2010 UK Parliamentary General Election (UKPGE). Mr Goldsmith's agent was Mr David Newman.
- 1.2. The Commission commenced a case review on 20 July 2010, following receipt of an allegation that Mr Goldsmith's return may have omitted or under reported certain costs and that he may have exceeded the spending limit.

2. The requirements in relation to candidate expenditure returns

- 2.1 The Representation of the People Act 1983 (RPA) sets out limits on candidate campaign expenditure for the "short campaign period" and the "long campaign period" respectively¹. It is an offence for a candidate or election agent to incur or authorise expenses in excess of the limits if they knew or ought reasonably to have known that the limit would be exceeded.
- 2.2 Under the RPA candidates and agents are required to submit a return detailing the expenses incurred during each campaign period, as well as a statement confirming that the return is complete and accurate, to the best of their knowledge and belief. It is an offence for a candidate or election agent to knowingly make a false declaration as to election expenses.

3. Key issues in this case and our findings in relation to those issues

- 3.1 The review concerned Mr Goldsmith's campaign for election as MP for the Richmond Park parliamentary constituency in South West London. Mr Goldsmith's election agent was Mr David Newman. Mr Newman stated that he

¹ The long campaign period began on 1 January 2010 and ended on the date parliament was dissolved, 12 April 2010. The short campaign period began on 13 April 2010 and ended on the date of the poll, 6 May 2010.

was responsible for the management of the election campaign and that Mr Goldsmith relied upon him for guidance. Mr Newman stated that he in turn sought guidance as appropriate.

- 3.2 Mr Goldsmith reported total expenditure for the long campaign of £22,740.32 which was £6,112.68 below the spending limit for that period. The total expenditure declared for the short campaign was £10,783.28, which was £219.72 below the limit for that period.
- 3.3 Our review considered whether the costs of Mr Goldsmith's campaign were reported in accordance with the requirements of the RPA, whether spending was within the limit for each campaign period, and whether the matter should be referred to the police for investigation.

Were the costs of Mr Goldsmith's campaign reported in accordance with the requirements of the RPA?

3.4 The areas of campaign spending reviewed were as follows:

- Campaign boards
- Unsolicited material including leaflets and cards
- Promotional jackets and stickers
- Hire cost for electric trikes

Costs of campaign boards including apportionment

- 3.5 Mr Goldsmith's declaration of expenses for the campaign included £523.87 in respect of double sided campaign boards featuring an image of Mr Goldsmith, his name, and "Vote Conservative" and "Vote for Change" slogans. However the total cost of the boards according to the invoices which accompanied the declaration was £2,792.97.
- 3.6 Mr Newman explained that the costs were apportioned twice. First, the costs were divided by two on the basis that there was an intention to re-use the material in a future election campaign. The costs associated with the 2010 UKPGE were then allocated equally between Mr Goldsmith's parliamentary campaign and the campaign for the local council elections taking place concurrently. Mr Newman explained that the campaign boards were intended to promote the candidates standing in those elections as well as Mr Goldsmith.
- 3.7 Both of these practices are commonly employed by candidates and in principle, both practices are acceptable, as long as the way in which costs are apportioned between different campaigns is reasonable.
- 3.8 The guidance issued by the Electoral Commission in December 2009 to candidates and agents in respect of the 2010 UKPGE provides guidelines to

candidates and agents on apportioning costs.² The guidance advises candidates and agents that they should make an honest assessment on the facts of the situation and that they should consider how much of the respective material is about the parliamentary candidate's campaign and how much relates to other issues.

- 3.9 Applying the guidance to the campaign boards in this case, we note that the posters included Mr Goldsmith's image and the slogan 'Vote for Change', either of which may or may not have been appropriate at a future election depending on a number of variables such as whether Mr Goldsmith intended to stand for re-election and whether the Conservative party was successful in being elected. We also note that it would be relatively easy to cover the slogan 'Vote for Change' with a sticker containing a new message pertinent to a future election and it was of course possible that Mr Goldsmith envisaged standing in a future parliamentary election whether or not he was elected at this one. The posters included no explicit reference to the local government elections or the party candidates in those elections.
- 3.10 We acknowledge that assessments in cases such as this are, within reason, a matter of judgment for the candidate and agent and that different individuals may reach different conclusions whilst still making an honest assessment.
- 3.11 In this case, we accept the apportionment for unspecified future elections on the basis that this is common practice and the 50% figure is reasonable given that it implies use at only one further election.
- 3.12 However, taking the Commission's guidance into account and the content of the posters used in Mr Goldsmith's campaign, we consider the amount apportioned to Mr Goldsmith's campaign for these boards appears to be low given that the poster is dominated by Mr Goldsmith's image and contains no specific reference to the council election candidates. We took into account that the 'Vote Conservative' and 'Vote for Change' slogans might have some promotional benefit to the local government election campaign, though not to any specific candidates.
- 3.13 In our view, given the content and imagery of the campaign boards we consider that the more appropriate allocation would have been to attribute at least 75% of the 2010 election costs to Mr Goldsmith's campaign rather than the 50% declared.
- 3.14 The cost of the campaign boards was also split equally in Mr Goldsmith's return between the long and the short campaign periods. However, we note that the

² http://www.electoralcommission.org.uk/data/assets/pdf_file/0006/83337/UKPGE-C-and-A-Final-web.pdf

order dates on the invoices indicate that a greater proportion of the costs should have been apportioned to the short campaign period. Mr Newman has confirmed that the costs of those boards should have been apportioned wholly to the short campaign.

- 3.15 If the costs declared are adjusted in line with points made in paragraphs 3.13 and 3.14 above, the costs for the campaign boards that should have been included in Mr Goldsmith's short campaign expenses return would have been at least £395 greater than that actually reported.

Unsolicited material including leaflets and 'Zac Goldsmith polling cards'

- 3.16 Mr Goldsmith's expenses return included an invoice for leaflets which cost £11,150.39. His return declared expenditure of £8,629.76, on the basis that not all of the leaflets had been used. The allegation suggested that in fact all material purchased should have been declared. However, the RPA² defines election expenses as expenses incurred on materials used for the purposes of the candidate's election after the date when he becomes a candidate at the election. The guidance issued by the Commission states that candidates and agents must include the value of everything **used** in the regulated period, not what is purchased. We consider that Mr Goldsmith's reporting of the cost in relation to this item was consistent with the requirements of the RPA and the Commission's guidance in this area.
- 3.17 We also considered in our review the way in which the cost of A5 cards, described in the relevant invoice as 'Zac Goldsmith polling cards' used in the short campaign period was apportioned. As with the campaign boards, the cards were declared as having been apportioned equally between the parliamentary and local government elections.
- 3.18 We considered the cost of the cards, including how much space was devoted to information about the council election candidates. A relatively small area of the card included three similar smaller boxes showing the names of the three council election candidates for the relevant ward with crosses next to their names. Other parts of the card related to the national party's policy in relation to important local issues. However the majority of the card was taken up by messages relating to Mr Goldsmith's campaign.
- 3.19 Taking the Commission's guidance into account and the content of the cards, we consider the amount apportioned to Mr Goldsmith's campaign appears to be low given that the majority of the content appears to relate to Mr Goldsmith's campaign and the area of the card relating to the council election candidates or local issues is relatively small.

² Section 90ZA

3.20 We consider that the leaflets were at least 80% directed towards Mr Goldsmith's campaign. Applying this apportionment would increase Mr Goldsmith's short campaign expenditure by at least £790.

Promotional jackets and electric trikes

3.21 An invoice for promotional jackets and stickers was included with Mr Goldsmith's return, but only the cost of the stickers was declared. Mr Newman explained that the jackets were purchased by the local party association before the campaign began for use in campaigns and other general party activities and were not obtained solely for Mr Goldsmith's campaign. He stated that, of the stickers that were used, only about 35 were affixed to jackets which in any case were the property of the volunteers who had purchased them from the association. As such he stated that the cost of the jackets did not constitute an election expense. We do not have information that would cause us to question this explanation and we consider the way in which these costs were reported was acceptable.

3.22 We also considered expenditure on electric trikes apparently used to deliver leaflets. Mr Newman explained that the trikes were hired by Mr Goldsmith's campaign from the local party association on a daily rental basis and that the costs declared were calculated on that basis. We have examined the basis on which the costs were calculated and we consider it was reasonable and in accordance with standard accounting practice.

Was Mr Goldsmith's spending within the spending limits for the campaigns?

3.23 The declared costs relating to the long campaign were under the expenditure limit and we have no evidence that this was the result of under-reporting costs for that campaign.

3.24 For the reasons outlined above, we consider that Mr Goldsmith's total expenditure on the short campaign may have been under-reported by at least £1,185. This would result in a potential overspend of £966.00, which is 8.8% above the limit for the short campaign.

3.25 Taking into account the total of the short and long campaign limits combined, even when the potential under reporting is included, the revised total expenditure remains below £35,000 and within the aggregate limit of £39,856.

4. Conclusion

4.1 The return submitted by Mr Newman on behalf of Mr Goldsmith was unclear in places and the basis of the various apportionments would have been easier to understand if more information had been given.

- 4.2 Also, we consider that the way in which some election costs were apportioned between Mr Goldsmith's parliamentary campaign and the concurrent local government election campaign was not consistent with the Commission's guidance or good practice. Had the costs been apportioned in a way more consistent with our guidance, Mr Goldsmith would have exceeded the spending limit for the short campaign, though not the aggregate limit for both campaigns.
- 4.3 In determining whether to refer the case to the police for criminal investigation, we considered not just whether an overspend may have occurred, but also the relative amount involved and whether the aggregate expenditure for both the whole campaign period exceeded the overall spending limit. We also considered whether there was any evidence of excessive spending which was so unreasonable as to indicate a deliberate avoidance of the rules.
- 4.4 Taking all of the circumstances of this case into account including the relative amount of the potential overspend, the fact that the aggregate spending limit was not exceeded and the absence of any evidence of intentional circumvention of the rules, we do not consider that a referral to the police is appropriate.
- 4.5 We have however written to Mr Goldsmith and Mr Newman to inform them of our concerns about the way some costs were apportioned and have suggested a meeting with Mr Newman to discuss our concerns.