COMPLAINT SUBMITTED UNDER ARTICLE 77 OF THE GENERAL DATA PROTECTION REGULATION ("GDPR") & SECTION 165 OF THE DATA PROTECTION ACT 2018 ("DPA 2018")

RE: PROCESSING BY THE LABOUR PARTY, THE CONSERVATIVES AND THE LIBERAL DEMOCRATS

A. Introduction & Summary

1. This complaint is submitted on behalf of:

   a. Matthew Rice;
   b. Charles Pascal Crowe;
   c. Jim Killock; and
   d. Alexander Haydock.

2. We refer to them as "**our clients"**. Our clients work for Open Rights Group, save Mr Haydock, who is a member and former employee. However, these complaints are made on their own behalf as their personal data has been directly affected by the matters complained of. Open Rights Group supports their complaints and would welcome the opportunity to engage with the Information Commissioner on their substance.

3. Our clients have raised and continue to raise serious legal issues about how the main political parties in England (Conservatives, Liberal Democrats and Labour) have been processing their personal data in correspondence with each of the main parties. They therefore welcomed the Commissioner's recently published report, "*Audits of data protection compliance by UK political parties Summary report November 2020*" (**"the Audit Report"**).[1]

4. Our clients strongly support the Commissioner's conclusion in the Audit Report that transparency and accountability is critically important in this context. They endorse the Commissioner's comment that: "*All political parties must use personal information in ways that are transparent, understood by people and lawful, if they are to retain the trust and confidence of electorates*" (emphasis added). They also agree that the ability of

[1] https://ico.org.uk/media/action-weve-taken/2618567/audits-of-data-protection-compliance-by-uk-political-parties-summary-report.pdf

technology to allow parties to get to know voters in a much more granular way can be positive, *"engaging people on topics that interest them contributes to greater turnout at elections"*. But they also strongly support the caution which the Commissioner attaches to this point:

> "engagement must be lawful, especially where there are risks of significant privacy intrusion – for instance around invisible profiling activities, use of sensitive categories of data and unwanted and intrusive marketing. The risk to democracy if elections are driven by unfair or opaque digital targeting is too great for us to shift our focus from this area."

5. The concerns raised in this complaint relate to this very issue. As the Commissioner has indicated she will be reviewing these matters, it seemed to our clients to be the right time to submit these complaints, having engaged in extensive efforts to raise these issues with the political parties themselves.

6. In summary, our clients' cases show that the political parties are engaging in highly intrusive profiling, without applying any limits as to what is necessary for their purposes. In fact, the correspondence attached suggests that the parties treat as necessary anything they consider will help them win an election. Such an approach nullifies the requirement of necessity in data protection law. This concern is heightened by the fact that the parties' systems for dealing with subject access requests are clearly deficient. The parties accept this defect, if to differing degrees. But continued non-compliance will prevent accountability for what is potentially unnecessary and unlawful profiling that involves significant intrusion into the electorates' privacy.

7. Our clients therefore seek action from the Commissioner in their own cases, and more generally as appropriate, in respect of:

   a. Ensuring that the claimed improvements to the subject access processes in place for each political party render their systems compliant with the GDPR and DPA. Our clients and members of the public need to be able to access their personal data to understand what data the parties have, and to enable them to raise any concerns they may have.

   b. Ensuring the political parties apply properly the test of necessity. That test requires there to be a limit to what a party can do to secure its own political ends. At present, the parties treat anything that can help them achieve their political goals as

necessary. While this remains the case, improvements secured by the Commissioner for, for example improved transparency under Article 14 GDPR, will be undermined and voters will remain at risk of significantly invasive profiling taking place which is not justifiable. This is a matter on which further, more detailed, guidance from the Commissioner would likely have a significant impact.

8. We note that the correspondence appended to this complaint raises numerous concerns about the main political parties' compliance with their data obligations. While this complaint focuses on the points outlined at paragraph 7 above, if the Commissioner considers it appropriate or of assistance, the correspondence may be relied upon and used in the context of her ongoing review of the main political parties' data processing.

B. The Information Commissioner's ongoing audit process

9. As noted above, our clients read with interest the Commissioner's recently published Audit Report. It chimed with the concerns they already have through their own experience of engaging with the political parties in the exercise of their data protection rights (set out below). For present purposes, the key matters we highlight from the Commissioner's report are as follows:

10. The Labour Party, the Conservatives and the Liberal Democrats obtained commercially available data about individuals, either factual, estimated, or a combination of both, from suppliers under commercial terms, in addition to the standard data sets used by most parties. These three parties also had access to other UK-wide databases through commercial agreements.

11. Labour and the Conservatives gathered particularly extensive data, including estimated data by geodemographic segmentation (Labour and Conservatives). Of particular concern, the Commissioner reports that Conservatives purchased onomastic data, i.e. information derived from the study of people's names which identified a person's county of origin, ethnic origin and religion based on their first and last name. This was appended to the records of 10 million voters. They also had access to the National Deceased Register under commercial agreement, purchased telephone numbers from suppliers and instructed anonymised market research.

12. The Commissioner also recorded that Labour buy data from multiple sources through a single supplier, and the Liberal Democrats sourced commercial data including a selection of 25 voter 'attributes'.

13. It is notable that the SNP, DUP, Plaid Cymru and UKIP were not found to source such data. Yet, the political parties subject to this complaint are engaging in the extensive procurement of highly detailed personal data, giving them the power to engage in extensive and highly invasive profiling.

14. The Commissioner found that the main political parties, or their consultants, used the data for profiling and then subsequently used the predictions generated to: (a) inform the purchase of advertising on social media to target individual social media users (with Labour, the Conservatives and the Liberal Democrats making extensive use of Facebook tools; (b) send out targeted emails or telephone canvassing voters to encourage individuals to vote or change their voting behaviour; and (c) decide who to canvass on the doorstep during a campaign or on the day of voting itself.

15. The Commissioner found that the parties needed to improve their data practices in the following areas:

    a. Privacy information: To comply with Articles 13 and 14 GDPR, the parties had to provide clearer information and be more transparent. As the Commissioner highlighted, individuals will find it harder to exercise their rights when a party does not provide information to individuals, especially where the data is obtained from third parties which are not named in the privacy notices.

    b. Lawful basis: it is necessary to ensure that lawful bases are applied appropriately in the context of political campaigning. Parties are not always relying on an appropriate legal basis for their processing, including mis-applying the 'public task' lawful basis. The Article 9 conditions for the processing of special category data had not been assessed in all instances.

    c. Profiling: the parties needed to, *inter alia*, ensure that where consent was relied upon to legitimate profiling that it was properly obtained, especially when relying on third parties to secure it. The parties also needed to carry out and record appropriate checks on suppliers to ensure personal data is processed and supplied lawfully. They should also conduct a DPIA to decide if the outcome of

automated profiling will have a legal or similarly significant effect on voters, as outlined in Article 22.

d. Relationships with social media companies when it involves targeting activities & transparent use of their services for marketing and campaigning purposes: The parties need to ensure they have adequate contractual and joint control arrangements in place. They also need to be transparent as to how they are using platforms like Facebook and Twitter. The Commissioner highlighted the need for due diligence to ensure that any processing done on the parties' behalf is lawful as well as transparent.

e. Accountability: The parties need to improve their internal accountability structures. The Commissioner recommended carrying out a full audit, data mapping, and review exercise to understand what data the parties hold, how they are using it and why.

16. It is in this context that our clients have decided to submit these complaints following engagement with the political parties about certain unlawful practices. Our clients' concerns dovetail with those raised specifically by the Commissioner.

C. <u>Engagement with the political parties</u>

17. Our clients have: (a) submitted subject access requests; and (b) subsequently engaged in correspondence with the main political parties, Labour, Conservatives and the Liberal Democrats about issues arising in respect of their compliance with data protection law. In this section, the key aspects of that correspondence are identified. Alongside this complaint, we have provided copies of the full set of correspondence. References to the relevant page of the enclosed bundle are in square brackets in the format **[B – page number].**

(1) Labour

Attempts to access data

18. Our clients faced significant difficulty in gaining access to sufficient information enabling them to understand whether and, if so, in what way the Labour Party was processing

their data. In particular, they all faced inordinate and unlawful delays in the Party replying to their subject access requests.

19. In summary, our clients' experience was as follows.

20. Mr Rice submitted a subject access request to the Labour Party on 23 May 2019:

    a. Following protracted correspondence, the Labour Party provided only an incomplete response on 8 November 2019. The response was password protected, but the password for one of the two documents did not work. This data was not accessible for Mr Rice until after the pre-action letter was sent which is referred to below. Mr Rice complained to the ICO about this matter, as set out in the pre-action letter **[B001]**. The ICO found that the Labour Party had not complied with Mr Rice's access request.

    b. The personal data that was accessible confirmed the Labour Party was processing significant data about him. It was, however, difficult to understand due to missing information, as it ran to 108 pages in tabular form. It was neither explained nor indexed. It was impossible to discern what some of the metrics provided meant. By way of example only, individuals were given "Propensity Scores", but the response did not explain what these were for (e.g., "lp_prod.SPV.").

21. Mr Crowe submitted his subject access request on 25 June 2019, but he also did not receive a response until 8 November 2019. He did not however receive the same extent of data as Mr Rice had, despite being a Labour member. Mr Crowe did receive some partially redacted email correspondence concerning him. Only after further correspondence did he receive a further 'Contact Creator' pdf on 3 December 2019.

22. Mr Haydock filed his subject access request on 24 September 2019. Like our other clients, he had to engage in extensive chasing correspondence to elicit a response – which was only provided on 29 November 2019. He was not provided an explanation of the tabular information provided which ran to 147 pages.

23. No proper explanation was provided to our clients of how the data provided was obtained the purposes for which it is processed, or how it was used or otherwise processed (including who it was shared with). Where the Labour Party cited a legal basis for the processing disclosed, reflecting the Commissioner's concerns in her report, it merely

cited the alleged base without any explanation. Even on an initial review of a partial response, it seemed that legal bases were being relied upon incorrectly (see below).

24. Moreover, even taking into account that the responses were incomplete, the extent of the profiling activities implied by the disclosure made was very concerning to our clients. Detailed data was clearly being used to intrusively profile our clients – not only without their knowledge – but also in a manner which seemed to go beyond what could be necessary to run a political campaign when their rights were properly taken into account. Our clients had concerns about the material that was disclosed to them:

    a. Mr Crowe was particularly upset as these activities seemed opposed to the values he had signed up to as a member of the Labour party. Specifically, the sheer volume of data amassed was disturbing and seemed to have little proportionality in its collection. In particular, Mr Crowe was concerned that the Labour Party had been trying to estimate what time of day he would have been at home for them to contact him ("weekend"/ "weekeve"/ "weekday"). He was also concerned by the fact that he had been recorded as "married" and was estimated to be on an income of £125,000. Finally, he was concerned that attempts had been made to guess his gender and thought this could be potentially traumatic for gender dysphoric or recently transitioned persons.

    b. Mr Rice was concerned to see the attempt by the Labour Party to assess so much of his family life. In addition, this data was inaccurate and if relied upon could lead to a decision not to approach, canvas, or appeal to Mr Rice by the party. This information was seemingly then used to derive his political views on topics such as devolution, taxation, housing and the Scottish Parliament, adding to his anxiety about the inaccuracy of the data and its effect on his democratic engagement.

    c. Mr Haydock was concerned to see that the Labour Party had maintained an extensive record of his previous addresses. While current address information is understandably available to the Labour Party via the Electoral Roll, it seemed excessive and invasive to maintain such a long-term record of places Mr Haydock had previously lived. Mr Haydock was also concerned to see the Labour Party's attempt to use third-party commercial data to classify him into a "Family Life Stage", as well as to assess his marital status, number of children,

and whether he fit into the regressive concept of the “Head of Household” or was “likely to make decisions for the whole household”.

Pre-action correspondence and urgent notice

25. As a result of the above, on 5 December 2019 **[B001]**, our clients sent a letter which comprised of: (a) a letter before claim in respect of the unlawful processing; and (b) an urgent notice pursuant to paragraph 22(3) Schedule 1 of the DPA 2018 requiring the Labour Party to cease processing of their personal data by 6pm on 12 December 2019. The letter noted that urgency was required due to the imminence of the election, and accordingly, the likelihood that any processing activities would increase during this period.

26. The letter before claim outlined in detail the deficiencies in the subject access responses provided. It also raised a number of concerns about the processing which the subject access request responses had disclosed. For present purposes, it is important to highlight that each letter before claim raised concerns about the lawfulness of the processing under, *inter alia*, Articles 5(1)(a) and (d), Article 6(1)(e) and (f), and Article 9(2)(g) GDPR. In particular, we raised our clients’ concerns that there was no evidence of the necessity of the processing having been assessed by weighing the interests of the Labour Party against those of our clients’, especially in respect of the Labour Party’s profiling activities. From the information available, the extensive profiling being undertaken was not necessary – as any interest of the party was outweighed by the serious of the intervention in the individuals’ rights. There was no evidence, in particular, that the necessity test had been applied under Article 9(2)(g) and paragraph 22 of Schedule 1 DPA 2018.

27. On 6 December 2019 the Labour Party confirmed that it would comply with the urgent notice by initially flagging our clients as not to contact, and then when their database refreshed, they would be removed **[B017]**.

28. The Labour Party did not respond to the substance of the letter before claim until 14 February 2020 **[B020]**. Of particular relevance are the following aspects of that response:

a. The Labour Party acknowledged that it failed to comply properly with the subject access requests, but considers it appropriate to have prioritised its election activities over compliance with data protection law:

> "15… The Party is, of course, mindful of its obligations pursuant to Article 12(3) GDPR to respond to DSARs within one month of receipt (or within 3 months provided the conditions of Article 12(3) GDPR) are met and it is a matter of regret for the Party that it was not able to meet those deadlines in your clients' cases. However, the Party has finite resources available to it and was essentially on an election footing for all of 2019, including the periods in which your clients sent their DSARs, and much of that finite resource had to be diverted from the normal run of administrative duties like responding to DSARs to election related work. This is even more the case for Mr Haydock who filed his DSAR on 24 September 2019 at the peak of speculation about an imminent snap general election. The ICO is already aware that the Party has had a number of issues complying with the very substantial volume of DSARs it receives and has agreed a remedial action plan with the Party to try to improve the situation here. The ICO is already aware of and has accepted the timeframe on which your clients' DSARs were dealt with in line with this remedial plan."

It is of course helpful that the Commissioner is already aware of these issues, and a remedial plan is in place. But what is essential is that this plan ensures that the Labour Party prioritises appropriately its compliance with the law. The (remote) prospect of an election does not warrant a failure to comply. In fact, given the increasing processing activities associated with elections it is in fact more important that obligations are complied with in this context. Compliance with subject access requests should not be treated as part of the *"normal run of administrative duties."*

b. The Labour Party also stated that the Commissioner was satisfied with the responses given by the Labour Party to our clients' subject access requests. Our clients do not know how this apparent sign off was provided, as we have not been provided with that correspondence from the Commissioner. But as the Commissioner will see from the letter before claim, there were a number of problems with the access requests response. It is hoped that the remedial plan addresses these. In particular, claims that Mosaic data is widely used (paragraph 20 of the Labour Party response letter) does not address the concern that data subjects should be provided with information explaining the basis of the scores disclosed to them. Moreover, the Party acknowledges that some of the information was incorrect (see paragraph 22).

c. Contrary to paragraph 23 of the letter, it is entirely appropriate for data subjects to be told how scores about them have been derived.

d. The Labour Party treats as necessary any processing that they believe will help them win an election (underlined emphasis added):

> "3. The Party pursues a policy platform emphasising greater state intervention, social justice and strengthening workers' rights. These are legitimate social and political aims shared by millions of voters. In order to implement its policy platform, the Party has to win sufficient seats to form a government. Running political campaigns and communicating with the electorate is an integral part of achieving that legitimate aim of being elected to power. The Party pursues these legitimate aims in the public interest and is entitled to undertake the data processing it does, in support of those aims…
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> 31… it will be self-evident from the privacy policy text above that they are all legitimate purposes for a political party, aimed at securing the necessary votes to be elected to government…
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> 41. The Labour Party processes voter data information ("VIDI") for the purposes of promoting voter engagement in the democratic process, and specifically with a view to assisting the Party in reaching out to voters in an effective and efficient manner. Such processing is necessary for the purposes of the Labour Party's political activities: it substantially facilitates and enhances effective and efficient voter engagement, and does not give rise to any disproportionate interference with privacy rights. You will doubtless be aware that all the major political parties engage in similar processing activities precisely because of the considerable value which such processing brings to the process of engaging voters in the democratic process…
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> 43. The collation and profiling of VIDI by the Party in support of their party political activities is necessary in this sense because it supports all of the legitimate party political activities referred to in the Party's privacy notice (e.g. canvassing political support or allowing the Party to estimate how likely it is that a voter would vote for the Party)…
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> 45… In any event, even if you were correct that all data processed by the Party was de facto special category data because processed by the Party, the Party would take the view in those circumstances that any such processing was in the substantial public interest as being necessary because it is proportionate to the aim being pursued, i.e. securing enough parliamentary seats to form a government and to thereby have an opportunity to effect the Party's platform for change.
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> 46. The Party has undertaken a data protection impact assessment ("the DPIA") and satisfied itself that the data processing it undertakes of, both non

and special category data, is 'necessary' in the sense that it is proportionate to the Party's legitimate aim of being elected to government. The Party therefore does consider that all of its data processing is in the substantial public interest because it reasonably believes that this data processing contributes to the prospects of the election of Labour Party MPs who could implement the Party's policy platform. The relevant extracts of the Contact Creator DPIA are set out below:

> "…*The second part of our justification is that these data – both in terms of their use in our profiling, and when they are used directly, are data which we have a legitimate interest in processing (a justification under Article 6 (1) (f)) and the table below sets out the balancing consideration in respect of each of them. It is appropriate for a political party to seek to target its messages in such a way that electors receive relevant messages and in particular (again to quote the ICO summary report on political data analytics): "to engage hard-to-reach groups in the democratic process on issues of particular importance to them."*
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> *…*
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> *Each of these pieces of data are* ***necessary*** *to achieve that purpose because, as set out in explaining how political opinion data processing meets the necessity test for using such data, (as set out in limb (c) of the requirements for it to be therefore lawful by an organization such as ours under section 22 (1) of Schedule 1 to the Data Protection Act 2018), it is necessary that we use these data and techniques so as to defeat our opponents and achieve the necessary marginal advantage in target constituencies.*
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> *There is, again to quote the ICO report on the use of data analytics in campaigning, no getting away from the reality that:*
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> *(…) what is clear is that we are living in an era of closely fought elections, where the outcome is likely to be decided on the votes of a small number of people. There are significant gains to be made by parties and campaigns which are able to engage individual voters in the democratic debate and on areas of public policy that are likely to influence the outcome.*
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> *To win, which is our legitimate interest, it is necessary to realise those gains and to do so in a way that is lawful…*
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> 47. The processing of VIDI undertaken by the Party serves these legitimate aims and is not disproportionate to the achievement of the ultimate relevant aim of the Party of being elected to government."

The Commissioner's guidance does not state that anything that can help a party win is lawful. But that is in practice how the Labour Party are approaching their obligations. This infects the analysis of particular types of data in the DPIA quoted in the letter of 14 February 2020 (see enclosed letter) **[B020]**.

e. The impact of invasive profiling was trivialised. It was suggested it was more comparable to recommendations for new television programmes than having a legal effect (paragraph 34 of the letter). That is not the case. Influencing – through highly sophisticated and often opaque profiling and targeting – in respect of how a person votes or engages with democratic institutions is far more important than whether they watch the new Netflix miniseries. This trivialisation of the impact of its processing is evident from the extracts from the DPIA quoted in Labour's letter. Each individual data class is analysed, but the impact is underestimated by factors such as access controls. What is not engaged with is the overall impact of profiling such a wide range of data classes, and then targeting the individual. What has to be assessed is whether the extent of such activities is actually *necessary* given their highly intrusive nature.

29. Due to our clients' concerns with the above response, a further letter was sent to the Labour Party on 31 March 2020 **[B039]**. That letter outlined, in particular, our client's concerns about the party's approach to complying with subject access requests and the test of necessity. In respect of the latter, the letter further outlined the relevant case-law.

30. The Labour Party responded on 5 June 2020 **[B046]**. Unfortunately, that letter did not engage properly or at all with the concerns raised. While in the letter the party accepts the test of strict necessity applies, it did not engage with the point that, on its approach, the only limit to the profiling that can be undertaken is whether it is useful to win an election or not. While the Party denied this point, it is clear from the content of the DPIA, quoted twice in the correspondence, that this is how, in practice, the party is applying the test. See the quoted extracts above, and the letters in full. The mere fact that special category data is no longer processed is not an answer to this concern, contrary to page 7 of the 5 June 2020 letter. With respect to what the party considers to be non-special category data, we can identify no discernible limit to what is considered necessary that does not turn on its potential contribution to winning an election.

(2) Conservatives

Failure to fully comply with Article 15 GDPR

31. The Conservatives provided a much prompter response to our clients' subject access requests than the Labour Party – although those responses gave rise to serious concerns.

32. Mr Rice submitted a subject access request to the Conservatives on 23 May 2019, and the Conservatives replied on 24 June 2019. They provided a table indicating some of the data held and the profiling activities conducted in respect of him. The cover letter confirmed that Mr Rice was only being provided with his "*Electoral Register Data and profiled data as stored on our Votesource Database*" and "*Information relating to email and campaigns sent to you from our Sitecore database*". It was not entirely clear whether any other information was being withheld.

33. Mr Killock submitted his subject access request to the Conservatives on 20 September 2019. Having received no response, he sent a chaser on 8 November 2019. The Conservatives replied saying that the response had been posted on 11 October 2019 – this was not received – despite Mr Killock requesting a response by email. The Conservatives therefore re-sent the disclosure on 8 November 2019 by email. He received the same cover letter as Mr Rice.

34. Mr Haydock submitted his subject access request on 24 September 2019 and received his response on 11 October 2019. He received the same cover letter.

35. The key issues with the responses provided by the Conservatives were that the data was provided in a format that was unintelligible on its own. For example, Mosaic scores had been attributed to our clients, including political opinions. However, no explanation was given as to how the Conservatives obtained the information, why they had it, how it was generated, or what the Conservatives intended to do with it (including who they might share it with). While reference was made to 'third party brokers' being a source of data, such as Experian, it was not explained what data came from which particular source. It also appeared from the cover letter that the material could be incomplete as other databases had been considered but no disclosure had been provided. The concerns were heightened in this regard by the fact that each of our clients received different types of data – but it was not immediately obvious why such different data would be held for each of them.

36. As with the Labour Party's disclosure, the further, key, concern was that the disclosures made revealed that extensive, invasive, profiling was taking place in a manner which went beyond what seemed necessary for the purposes of a political campaign.

a. Mr Haydock was concerned to note that the Conservatives had attempted to profile him using "Commercially added data" purchased from Experian. Mr Haydock noted that this commercial data sorted him into a number of categories, with regard to his age and household ownership status, and an opaque "Mosaic UK 6 group", which assigned him a code which he was told had been modelled by Experian "from a large number of sources". These sources were not made clear. Mr Haydock was also concerned to note that much of the data provided from the third-party commercial supplier appeared to be incorrect.

b. Mr Rice was concerned to see his Mosaic code list him as "Uptown Elite" and wondered what the implications of that score meant and why it was necessary for the Conservative Party to hold it. Further, the score was generated from a list of sources unavailable to Mr Rice leading him to wonder how the score was generated in the first place.

c. Mr Killock was surprised to be labelled as belonging to "Metro High Flyers" and unaware of what this meant in practice. He was concerned as to whether this combination of data led to certain decisions about canvassing to be made. It was also unclear to Mr Killock whether these assumptions were available to those who knocked on his door. Mr Killock did not feel that the Conservative Party was entitled to guess and record his age or social type and cannot see the justification for recording such inferences. Mr Killock also found the recording of his email following canvassing to be disconcerting. The canvassing amounted to no more than being put in touch with a candidate on local transport issues. He was therefore concerned to see it recorded. In particular, he remains unaware what further use the email address may have been put to, for instance on social media platforms, as he was not given any indication of how it might be used when he was canvassed.

Pre-action correspondence and urgent notice

37. As a result of the above, on 5 December 2019 **[C001]** our clients sent a similar pre-action to the Conservatives that they sent to the Labour Party, comprising: (a) a letter before claim in respect of the unlawful processing; and (b) an urgent notice pursuant to paragraph 22(3) Schedule 1 of the DPA 2018 requiring the Conservatives to cease

processing of their personal data by 6pm on 12 December 2019. The letter made the same points about the fact that urgency was required due to the imminence of the election, and accordingly, the likelihood that any processing activities would increase during this period.

38. Amongst other things, the letter outlined our clients' concerns about: (a) the failure to provide a fully compliant response to the subject access requests; and (b) the apparent failure to apply properly the necessity and proportionality tests given, in particular, the in-depth profiling activities revealed by the disclosure.

39. The Conservatives responded to the urgent notice on 20 December 2019 **[C015]**, confirming that they had marked our clients for no processing, except for the purposes of responding to this letter.

40. The Conservatives did not respond to the substance of our client's letter before claim until 7 February 2020 **[C016]**. They refused to address all of the compliance issues raised in our letter because of the ongoing work with the Commissioner in respect of her audit. This was concerning. The Commissioner may find this correspondence illuminating in respect of her ongoing review.

41. For present purposes, the key aspects of the response from the Conservatives are as follows:

    a. The Conservatives provided some further disclosure using a new search tool (see paragraphs 3.4-3.9). They also provided further information as to: (i) the sources of the data held. It may be of interest to the Commissioner to consider the suggestion that it was lawful to process Mr Killock's email address simply because a local association member inputted it. Mr Killock has confirmed that his consent was not sought or obtained for such processing; and (ii) the purpose of processing. See generally, paragraphs 2.1-2.4 of the letter. Thus, as with the Labour Party and the Liberal Democrats (on the latter, see below, deficiencies in the initial responses were addressed (at least in part) following the involvement of lawyers).

    b. On complying with subject access requests, the Conservatives have apparently decided to have a policy of providing data by post wherever possible (see paragraphs 3.2-3.3). This is inappropriate in the modern world – as it makes the data provided unsearchable and it cannot be saved – which will contribute to it

being unintelligible to the data subject. Moreover, it is inconsistent with Article 12 (3) GDPR which provides: *"… Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject."*

c. The Conservatives do not consider properly the test of necessity. In explaining how they assess whether they can rely on Article 6(1)(f) GDPR, paragraph 2.6 of the letter explains:

> "(a) CUP has finite resources available for campaigning – for example, for a year prior to a General Election, CUP is required to comply with strict legal limits on spending for the purposes of campaigning. Therefore, it is in CUP's legitimate interests to ensure that it is focusing its campaigning on individuals who will vote, or will consider voting, Conservative, rather than seeking to target all voters on the electoral roll. The latter would be wholly impractical – indeed impossible - within the set legal limits on spending.
>
> (b) CUP therefore considers that carrying out a degree of sifting on the electoral roll data which it receives is the only way of knowing which individuals are most likely to vote Conservative, and therefore to make effective use of the finite resources that are available to it.
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> (c) CUP has taken steps to ensure that an individual's interests do not override its legitimate interests, including: by detailing its processing activities in its privacy policy; and by promptly acting on any requests from individuals objecting to certain processing activities, or requesting erasure of, their personal data."

Essentially, the Conservatives argue that they must be able to target their campaigning because they have finite resources. They then trivialise the nature of their activities: they do not simply carry out a *"degree of sifting"* on the electoral data. They purchase data from bodies like Experian, combine data, and profile individuals. The Conservatives also cannot ensure that its interests are not overridden by the interests of individuals simply by complying with its obligations (if indeed it does) under Articles 13 and 14 GDPR and complying with objections. The onus is on the Conservatives to ensure the means used are necessary.

d. The Conservatives simply assert that processing of political opinion data is necessary at paragraph 2.8.

42. Our clients' concerns were outlined in a letter to the Conservatives dated 31 March 2020 **[C022]**. As with the Labour Party, the legal position on necessity was outlined.

43. The Conservatives responded on 17 July 2020 **[C029]**. However, that response did not properly engage with our client's concerns about, in particular, the party's approach to the necessity test.

(3) Liberal Democrats

Failure to fully comply with Article 15 GDPR

44. In summary, our clients' experience of submitting subject access requests to the Liberal Democrats was as follows.

45. On 23 May 2019, Mr Rice submitted his request. The initial response was received on 25 May 2019. Although the response was prompt, it was materially incomplete. In particular, of the 9 of 37 "scores" that were attributed to Mr Rice, only 7 scores were provided. On 23 August 2019, Mr Rice asked for those additional scores. By email of 16 September 2019, the Liberal Democrats provided an explanation of the further scores but did not provide the actual scores attributed to Mr Rice. Further disclosure was made on 3 December 2019 – but that revealed that more scores had been attributed to him than mentioned previously, including the category score "Soft Tory". No information was provided as how these scores had been used or how they were arrived at.

46. Mr Crowe filed his subject access request on 25 June 2019. A response was provided on 25 July 2019. There were immediate concerns however that the response was incomplete. The cover letter stated: "*the fact a document contains a reference to you, whether by name or otherwise, does not necessarily mean that the document constitutes your personal data*." This position does not correspond with the definition of personal data under Article 4(1) GDPR. If our client was referred to, it seemed likely that other data within the document was personal data – or the nature of the processing of his name should be disclosed to him. The response received included a profile similar to Mr Rice's and Mr Haydock's but also contained a number of redacted correspondences.

47. Mr Haydock submitted his subject request to the Liberal Democrats on 24 September 2019. The party provided its initial response on 24 October 2019, along with a covering letter purporting to explain the basis of the processing. Mr Haydock however responded on 28 October 2019 explaining that he could not understand much of the information

provided because of the format used. He asked for a proper response. No reply was received until after a letter before claim was sent.

48. Thus, a number of concerns arose from the deficient responses provided by the Liberal Democrats as they were not readily understandable and seemed incomplete. Further, the sources of the data held were not made clear, and it remained unclear how the data may be used and who it might be shared with.

49. Finally, as with the other main political parties, the response revealed what appeared to be excessive profiling activities.

    a. Mr Crowe was concerned that he had been assigned 2 'scores' without being told what they referred to. The values of these scores, and what they referred to, were unclear to him. In addition, the document said that it was 'edited' on '10/6/19'. Mr Crowe felt it was unclear what this edit meant. He was nonetheless disturbed by the fact that the Liberal Democrats held and edited information about him, without a sufficient explanation of what the 'scores' were or how the profile had been edited.

    b. Mr Rice had concerns as to the meaning of those scores such as pragmatic liberal. He questioned why it was necessary for the Liberal Democrats to create such a score and was concerned about the conclusions which were drawn from it. The correspondence with the Liberal Democrats and subsequent changes to their privacy policy did not provide satisfactory answers to those fundamental questions.

    c. Mr Haydock noted with concern the fact that the Liberal Democrats had also chosen to profile him based on his "Life Stage" and had assigned confusing scores such as "prag_ld" to him. It was only after correspondence with the Open Rights Group that Mr Haydock discovered that some other data subjects had managed to obtain a breakdown of what these scores meant after additional correspondence with the party. Even after obtaining these additional details, Mr Haydock was concerned that the Liberal Democrats did not provide information about the ranges or banding used for the numeric scores, meaning they were still not useful in helping him understand how he had been scored by the party.

Pre-action correspondence and urgent notice

50. Given that similar concerns arose in respect of the disclosures made by the Liberal Democrats in response to the subject access requests, our client sent a letter before claim and an urgent notification on 5 December 2019 to the party which was materially the same as the letter sent to the Conservative Party **[D001]**.

51. The Liberal Democrats responded to the urgent notice on 9 December 2019 **[D014]**, confirming they would comply with it. Our clients responded by letter on 18 December 2019 **[D016]**.

52. The party did not respond to the substance of the letter before claim until 24 January 2020 **[D020]**. Of particular relevance to this complaint are the following aspects of the response:

    a. The Liberal Democrats provided further information in response to the concerns raised in respect of their responses to the subject access requests (for example, a key to the scoring data was provided, and more information was provided about the sources of the data and the purposes for which it was processed). The party also acknowledged that upon review of their own responses, it acknowledged that the *"initial responses were not as full or clear as they would have liked".* Much reliance was placed on the Liberal Democrat's privacy notice, which does not provide the detailed information a subject access request response requires.

    b. The Liberal Democrats also provided more information about their profiling and data matching activities. This includes profiling through data matching to infer political opinions, and the use of the Origins Software to provide a broad estimate of language and age.

    c. As with the other parties, the Liberal Democrats response suggests that, in their view, any activity which helps achieve their political goals is 'necessary':

        i. Paragraph 2.14: "*To avoid misunderstanding, the Lib Dems are an organisation included in the register maintained under section 23 of the Political Parties, Elections and Referendums Act 2000. Our client considers that the processing is necessary for the purposes of their political activities since they are not able to communicate to the electorate effectively without processing personal data on the electoral register and carrying out the*

profiling activity explained. At the time they were processing your clients personal data for political campaigning purposes, our client had not received a notice in writing requiring them not to process the personal data." Relying upon Recital 56 GDPR, which permits the processing of political opinion with sufficient safeguards (including the test of necessity), the Liberal Democrats assert at paragraph 2.26: "*Our clients therefore consider their processing of political opinion data (whether inferred or directly reported by the individual) to be necessary for their campaigning activities.*"

ii. Paragraph 2.24: *"As we are sure you will appreciate, the Lib Dems have limited resources. In order to effectively increase democratic engagement on Lib Dems policies and issues, the Lib Dems need to be able to target communications and resources to areas and individuals most receptive to their messages."*

iii. Paragraphs 2.27-2.33: In essence, the Liberal Democrats suggest that their profiling activities are proportionate because they have limited the data used, limiting access within the party to the scores, and they do not keep the scores after use. Only the first point really goes to the heart of the invasion of the individual's privacy – the profiling itself is indeed highly intrusive (see the information provided in response to the subject access requests, and the annexes to the letter of 24 January 2019). The party's failure to engage with this point is most apparent from paragraph 2.31 (under the heading "*Less intrusive measures*": *"The only potential impact of our client's processing your clients' personal data is that your clients may have been provided with hard copy marketing communications about the Lib Dems. No other impacts were envisaged in connection with the profiling activity. Therefore, it is clear that such processing has had a very low impact on your clients – leaflets are routinely ignored/ discarded without being read."* This is not low impact processing. It is highly invasive activity in respect of an individual's identity, which gives rise to targeted messaging which is not only a concern for democracy more generally, but may also be highly intrusive to the individual. This trivialisation is deeply concerning – raising concerns about trust that the Commissioner flagged in her most recent report. The argument in paragraph 2.32 of the letter that highly invasive profiling is automatically better than knocking on individuals' doors betrays a real failure to understand public concern about profiling – and the concern of our clients.

d. The Liberal Democrats also disputed – incorrectly (see below) that the strict necessity test under European law applies (paragraph 2.15). This is deeply concerning. Indeed, in paragraph 2.19, the Liberal Democrats imply that the balancing act for necessity has been struck down by Parliament introducing s.8 DPA 2018 – which is clearly incorrect, see below. The test of necessity has to be applied on a case-by-case basis. In our view, the Liberal Democrats misinterpret the Commissioner's draft Guidance at paragraphs 2.20-2.22, which we do not read as departing from the case-law on strict necessity.

53. Our clients' concerns were outlined in a letter sent to the Liberal Democrats on 31 March 2020 **[D036]**.

54. To date, no response has been received. On 14 August 2020, it was suggested that the response would be received by 11 September 2020 **[D042]**. Despite this indication, no such response has been received. A chaser was sent by email on 29 September 2020, but at the time of writing no reply had been received to that email **[D043]**. A further letter was sent on 9 December 2020 **[D044]**. This failure to engage underscores the importance of this complaint, and also the Commissioner's ongoing review and audit process.

(4) Reliance on the Commissioner's draft Guidance

55. The Information Commissioner will also see from the correspondence that the main political parties rely routinely on the Draft Political Campaigning Guidance / discussions with the Commissioner to justify their position. However, that Guidance is (1) in draft form and (2) in our view still requires the parties to consider carefully whether, for example, the processing they would *like* to do is *necessary* and therefore lawful. For example, the Liberal Democrats draw upon broad guidance as to what *can* amount to an activity which supports or promotes democratic engagement – and seems to say any activity of that broad type is lawful (letter of 24 January, paragraphs 2.3-2.3 [**D030 - D031**]). This seems to us to be a misapplication of the draft Guidance. It is hoped that in response to this complaint, the Commissioner will be in a position to provide more detailed guidance or separate guidance on the issues raised.

D. <u>The key common concerns giving rise to these complaints</u>

56. In the light of the above, our clients' core concerns, developed below, are:

a. The main political parties did not have in place adequate systems to provide compliant responses to subject access requests. This needs to be rectified. It should not be necessary for individuals to instruct solicitors and engage in sustained correspondence in order to obtain an appropriate response. There is at least some suggestion these failures were driven by a failure to appreciate that Article 15 GDPR compliance is not simply achieved by publishing a privacy notice. Similarly, there is also evidence that these failures arose due to a de-prioritisation of compliance with the GDPR and DPA 2018 due to the prospect of the election/during the election.

b. The test of necessity is being deprived of all meaning as it is being treated as met whenever the proposed activity is expected to help the parties achieve their political goals.

57. For the avoidance of doubt, our clients' position is not that no profiling activity in political campaigning is acceptable or lawful. Nor is that the position of Open Rights Group (although the contrary argument has been made in the correspondence, see, for example, paragraph 2.33 of the Liberal Democrat's letter of 24 January 2020 **[D031]**; and the Labour Party's letter of 5 June 2020 **[B046]**). Instead, what our clients are concerned about is the suggestion that such profiling can be undertaken without limit if it is deemed capable of applied in this context. The submissions below, and this complaint, are intended to help the political parties achieve their own goals. At the moment, the parties are not engaging with the critical question of what is necessary – bearing in mind the rights of individuals. This is a key question. It may be essential for the Commissioner, the parties, and stakeholders to engage on a much-needed debate about how necessity should be understood and facilitate that debate, whilst also raising the real personal concerns of our clients.

E. Key elements of the Legal Framework

58. The legal bases most likely to be relied upon by political parties to justify their political campaign processing (save consent) include a requirement of necessity:

a. Article 6(1)(e): *"processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller"* (emphasis added); and

b. Article 6(1)(f): *"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"* (emphasis added).

59. Section 8 DPA addresses the application of Article 6(1)(e) to processing related to matters of "democratic engagement":

> In Article 6(1) of the GDPR (lawfulness of processing), the reference in point (e) to processing of personal data that is necessary for the performance of a task carried out in the public interest or in the exercise of the controller's official authority includes processing of personal data that is necessary for —
> …
> (e) an activity that supports or promotes democratic engagement.

60. Similarly, in the context of the processing of special category data, Article 9 provides insofar as material that:

> "1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
>
> 2. … (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject".

61. Paragraph 22 of Schedule 1 DPA addresses this condition in the specific context of processing by political parties:

> "(1) This condition is met if the processing—
>
> (a) is of personal data revealing political opinions,
>
> (b) is carried out by a person or organisation included in the register maintained under section 23 of the Political Parties, Elections and Referendums Act 2000, and

(c) is necessary for the purposes of the person's or organisation's political activities,

subject to the exceptions in sub-paragraphs (2) and (3).

(2) Processing does not meet the condition in sub-paragraph (1) if it is likely to cause substantial damage or substantial distress to a person.

(3) Processing does not meet the condition in sub-paragraph (1) if— (a) an individual who is the data subject (or one of the data subjects) has given notice in writing to the controller requiring the controller not to process personal data in respect of which the individual is the data subject (and has not given notice in writing withdrawing that requirement), (b) the notice gave the controller a reasonable period in which to stop processing such data, and (c) that period has ended.

(4) In this paragraph, "political activities" include campaigning, fund-raising, political surveys and case-work.

F. Initial submissions

(1) Unlawful approach to processing subject access requests

62. As will be clear from the above, each of the parties failed to comply with their obligations under Articles 12 and 5 GDPR. Not only did they fail routinely to comply with the time limits prescribed by Article 12 (even extensions of time permitted by that Article), when responses were provided eventually, they were materially incomplete. It is vital, as the Commissioner has stressed, that processing by political parties is transparent. Systemic failures to comply with subject access requests are a significant cause for concern when it is through the exercise of this right that individuals can or should be able to gain real insight into what is happening to their personal data. The right of access is particularly important where the data controllers engage in invisible processing, in order for the data subjects to be able to exercise their rights.

63. As explained above, after much correspondence, some of the issues initially identified with the parties' responses have been addressed. However, the overarching concern that the parties do not have adequate systems in place to ensure proper compliance should be taken forward by the Commissioner. This is for two reasons: (a) the experience of our clients may be representative of many that tried to exercise their rights; and (b) the responses of the parties to this issue suggest that they do not appreciate the central importance of ensuring they can comply with these rights.

64. In particular, the Labour Party essentially views compliance with subject access requests as an administrative obligation that can be side-lined in favour of other priorities, like election campaigns. This is unlawful and it will undermine the very trust and confidence in the democratic system which the Commissioner seeks to ensure through her audit process and her draft Guidance.

65. Our clients seek assurance that if they submitted a subject access request again, especially in the context of an election, they would not face the same difficulties in understanding how the main political parties are processing their data.

(2) Necessity

66. The approach of the main political parties to the test of necessity is deeply concerning. They treat any activity which they believe will help them 'win' as a necessary measure. Of the examples above, perhaps the most obvious is this passage from the Labour party's letter of 14 February 2020 **[B032]**, which is repeated here for ease of refence (emphasis added):

> "The Party has undertaken a data protection impact assessment ("the DPIA") and satisfied itself that the data processing it undertakes of, both non and special category data, is 'necessary' in the sense that it is proportionate to the Party's legitimate aim of being elected to government. The Party therefore does consider that all of its data processing is in the substantial public interest because it reasonably believes that this data processing contributes to the prospects of the election of Labour Party MPs who could implement the Party's policy platform."

67. This approach to the test of necessity deprives it of any substantive content. If every controller adopted this approach, the test would apply no limit to the processing that can be deemed lawful. Such an approach would be unsustainable. Political parties should not be treated any differently. Indeed, it is even more important that they comply with the fundamental concepts underpinning data protection law – otherwise this will result in the harms to democracy the Commissioner clearly has in mind in her recent report.

68. As was outlined to the political parties in correspondence, and as the Commissioner is well aware, the test of necessity in, *inter alia*, Articles 6, 9 and paragraph 22 of Schedule 1 GDPR is one determined by European law. That law makes clear that the test of necessity is a strict one. See, by way of example, para 96 of *Tele2 Sverige AB v Post-Och Telestyrelsen* [2017] 2 CMLR 30:

"Due regard to the principle of proportionality also derives from the Court's settled caselaw to the effect that the protection of the fundamental right to respect for private life at EU level requires that derogations from and limitations on the protection of personal data should apply only in so far as is strictly necessary (judgments of 16 December 2008, *Satakunnan Markkinapörssi and Satamedia*, C-73/07, EU:C:2008:727, paragraph 56; of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 77; the *Digital Rights* judgment, paragraph 52, and of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650, paragraph 92)."

See also: Case C-473/12 *Institut professionnel des agents immobiliers (IPI) v Englebert and others* [2014] 2 C.M.L.R. 9, paragraph 39; Opinion 1/15 of the Court (Grand Chamber), 26 July 2017, ECLI:EU:C:2017:592, paragraphs 140-141;

69. That this test applies in the domestic context has been confirmed by the senior courts in this jurisdiction, see:

a. The Supreme Court's judgment *Elgizouli v Secretary of State for the Home Department* [2020] UKSC 10 in which:

i. Baroness Hale explained that:

"9. Condition 1 is that the transfer is necessary for any of the law enforcement purposes (section 73(2)). In Guriev v Community Safety Development (UK) Ltd [2016] EWHC 643 (QB), Warby J held (in the context of restricting the subject's right of access to his personal data) that: "The test of necessity is a strict one, requiring any interference with the subject's rights to be proportionate to the gravity of the threat to the public interest" (para 45). The parties agree that the same test applies in this context. This obviously requires the data controller to address his mind to the proportionality of the transfer."

ii. To similar effect, in paragraph 210 Lord Carnwath stated:

"210. Condition 1 is that the transfer is "necessary for any of the law enforcement purposes". It is common ground that the test of necessity is a
"strict one" (*Guriev v Community Safety Development* (UK) Ltd [2016] EWHC 643 (QB), para 45)."

b. The Court of Appeal's judgment in *Johnson v Secretary of State for the Home Department* [2020] EWCA Civ 1032, paragraph 40: *2 It was also common ground that any limitation of the fundamental right to the protection of personal data must be strictly necessary, see [Elgizouli] at paragraph 9. Necessity should be justified on the basis of objective evidence. The proportionality of the limitation on the*

fundamental right must also be assessed. If there are less restrictive measures that can be taken, they should be taken" (emphasis added).

70. Our clients have explained their personal concerns about information held about them above. What is perhaps most concerning about the responses received from the political parties to date is that they simply do not grapple with the seriousness of the concerns raised by our clients on the issue of necessity. For instance, the Liberal Democrats asserted that "*processing has had a very low impact on your clients*", the Conservatives stated that the processing amounted to no more than "sifting", while the Labour Party contrasted such processing to recommendations for new television programmes. It is clear that the parties are engaging, routinely, in highly invasive profiling activities. Even if this were to be transparent (which it is not currently), that does not mean that the parties are permitted to simply undertake any processing activity, including profiling, which they believe might help them win. It is essential that alternatives are considered - and the impact is properly weighed.

71. The parties' responses to these concerns have echoes of a concern raised by the Commissioner in her draft Guidance on political campaigning: *"… even if you have the legal right to process the information contained within the full electoral register, it is important to understand that this does not exempt you from complying with data protection law"* (page 50).

72. The development of new or revised guidance in this area would be highly beneficial. We note that the Commissioner has published and consulted upon draft Guidance for political campaigning.[2] We note that:

    a. In respect of the test of necessity under Article 6(1)(e) – the draft Guidance does state:

> "In order to rely on this lawful basis, processing personal data must be necessary for an activity that supports or promotes democratic engagement. This does not mean that processing has to be absolutely essential. However, it must be more than just useful or standard practice. It must be a targeted and proportionate way of achieving your specific purpose. This basis does not apply if you can reasonably achieve your purpose by some other less privacy intrusive means, or by processing less personal data." (page 38).

[2] https://ico.org.uk/media/about-the-ico/consultations/2615563/guidance-on-political-campaigning-draft-framework-code-for-consultation.pdf

And an example is provided in relation to a campaign targeting a specific housing block, involving a choice between using the electoral register or leafleting.

b. In respect of the test of necessity under Article 6(1)(f), the Guidance also refers back to the above statement of when processing is necessary (page 39).

73. In the context of special category data, the Commissioner explains that: *"Article 5(1)(c) of GDPR is clear that the processing of personal information should be "limited to what is necessary in relation to the purposes for which they are processed". With the exception of political opinions, it is difficult to see in what circumstances it would be necessary to process special category data for the purposes of targeting political messaging."*

74. The concerns raised in this complaint relate in significant part to the processing of data on individuals' political opinions. The Commissioner's draft Guidance does provide some initial guidance on this point: "*If relying on this condition, you must be able to demonstrate the necessity to process political opinion data specifically. In other words, if you can achieve the same political campaigning purpose without processing data relating people's political opinion data, then you cannot rely on this condition*." Moreover, the Commissioner proposed helpful guidance in respect of how the concept of fairness should apply to processing (page 66).

75. However, in the light of the concerns raised above, our clients wish to ensure that their data is not processed through profiling in a way that is limited only by reference to what the political parties believe will help their cause. We anticipate that the Commissioner will agree with these concerns. Further, or freestanding, guidance on this issue would be of obvious significant benefit. In any event, for these complaints to be resolved, it is likely to be helpful for stakeholders to engage in a debate as to what is and is not necessary in this context. Absent a full investigation by the Commissioner, our clients are concerned that highly intrusive processing will take place which, when it comes to the public's attention will severely damage trust, as well as cause harm to individuals.

G. <u>Conclusion</u>

76. Essentially, our clients' complaint is that the political parties are not exempt from the data protection requirements. Our clients are realistic: they are experts in the digital arena, and appreciate there are legitimate profiling activities, and that sometimes

organisations do not comply with their obligations in respect of subject access requests for good reasons.

77. Our clients are concerned, however, that their experience shows that there is a more systemic problem in this context: the political parties are treating anything that helps them achieve their political goals – whether invasive profiling or not deploying sufficient resources to comply with subject access requests – as necessary or otherwise lawful. This is why the Commissioner is asked to address these issues in response to this complaint, and, as appropriate, as part of her ongoing audit process. In particular, the issuing of Guidance on what is necessary in this context would likely have a significant impact on compliance.

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11 December 2020