Digital campaigning

Increasing transparency for voters

June 2018
The Electoral Commission

Contents

Foreword

The last decade has seen an explosion in the use of digital tools in political campaigning. Perceptions have also changed in that time. The use of social media was first heralded as a positive revolution in the mass engagement of voters. More recently we have seen serious allegations of misinformation, misuse of personal data, and overseas interference. Concerns that our democracy may be under threat have emerged.

The Electoral Commission oversees the delivery of elections and is the regulator of political finance in the UK. We work to ensure that parties and campaigners understand and comply with the laws about elections. We investigate where offences may have been committed. We also make recommendations about how to improve the fairness and transparency of our democracy.

On digital campaigning, our starting point is that elections depend on participation, which is why we welcome the positive value of online communications. New ways of reaching voters are good for everyone, and we must be careful not to undermine free speech in our search to protect voters. But we also fully recognise the worries of many, the atmosphere of mistrust which is being created, and the urgent need for action to tackle this.
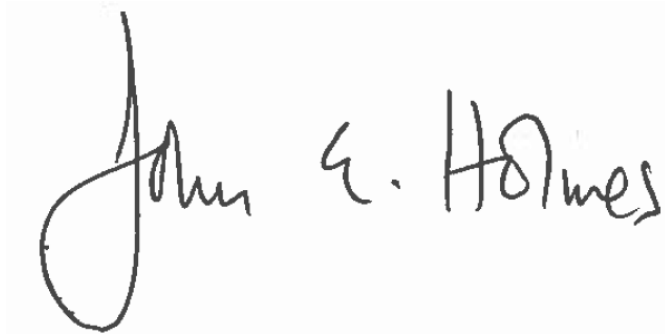
That is why, over the past year, we have looked in detail at how digital campaigning was used in the EU Referendum and the 2017 general election. We have researched public opinion, to understand voters' views on these issues. And we have thought hard about how best the Commission can help to increase transparency and trust in the areas where we have responsibility.

This report is the result of that work to date. We set out a series of recommendations for immediate action to improve election rules and strengthen financial regulations. Funding of online campaigning is already covered by the laws on election spending and donations. But the laws need to ensure more clarity about who is spending what, and where and how, and bigger sanctions for those who break the rules.

This report is therefore a call to action for the UK's governments and parliaments to change the rules to make it easier for voters to know who is targeting them online, and to make unacceptable behaviour harder. The public opinion research we publish alongside this report demonstrates the level of concern and confusion amongst voters and the will for new action.

We also call on social media companies to play their part in transforming the transparency of digital political advertising and removing messages which do not meet the right standards. If this turns out to be insufficient, the UK's governments and parliaments should be ready to consider direct regulation.

Digital technology will continue to transform political campaigning and will continue to evolve. This report will not be the Commission's final view on these issues. We certainly do not claim to have all the answers. We also recognise that no single body is responsible for all the concerns raised by digital campaigning. Continuing co-operation with others such as the Information Commissioner is vital. For our part, we will continue to monitor the trends, and put forward our views when we think we can help promote public confidence in the democratic process.

Sir John Holmes
Chair

Key recommendations

We have set out our key recommendations here, a full list can be found at the end. These recommendations are important because they will help to ensure that UK voters are confident that digital campaigns are following the UK's electoral rules.

They will increase the transparency of digital campaigns. They will help prevent foreign funding of elections and referendum campaigns. And they will give us the power to impose higher fines on campaigners who break the rules. This will be a greater deterrent to those who may be tempted to break them.

- Each of the UK's governments and legislatures should change the law so that digital material must have an imprint saying who is behind the campaign and who created it.

- Each of the UK's governments and legislatures should amend the rules for reporting spending. They should make campaigners sub-divide their spending returns into different types of spending. These categories should give more information about the money spent on digital campaigns.

- Campaigners should be required to provide more detailed and meaningful invoices from their digital suppliers to improve transparency.

- Social media companies should work with us to improve their policies on campaign material and advertising for elections and referendums in the UK.

- UK election and referendum adverts on social media platforms should be labelled to make the source clear. Their online databases of political adverts should follow the UK's rules for elections and referendums.

- Each of the UK's governments and legislatures should clarify that spending on election or referendum campaigns by foreign organisations or individuals is not allowed. They would need to consider how it could be enforced and the impact on free speech.

- We will make proposals to campaigners and each of the UK's governments about how to improve the rules and deadlines for reporting spending. We want information to be available to voters and us more quickly after a campaign, or during.

- Each of the UK's governments and legislatures should increase the maximum fine we can sanction campaigners for breaking the rules, and strengthen our powers to obtain information outside of an investigation.

The rise of digital campaigning

1.   Good campaigns that communicate with voters are central to well-run elections and referendums. When campaigners clearly explain their policies and political views, voters are better able to exercise their right to vote in a meaningful and informed way.

2.   In the UK, the evidence shows campaigners are increasingly using new ways of communicating to reach voters. In particular, they often use advertising services bought from digital and social media companies like Facebook, Google, YouTube, Snapchat, Twitter or Instagram. The chart below shows that the proportion of money campaigners have reported spending on digital advertising has continued to increase during this decade.

Chart 1: Reported spending by campaigners on digital advertising as a percentage of total advertising spend
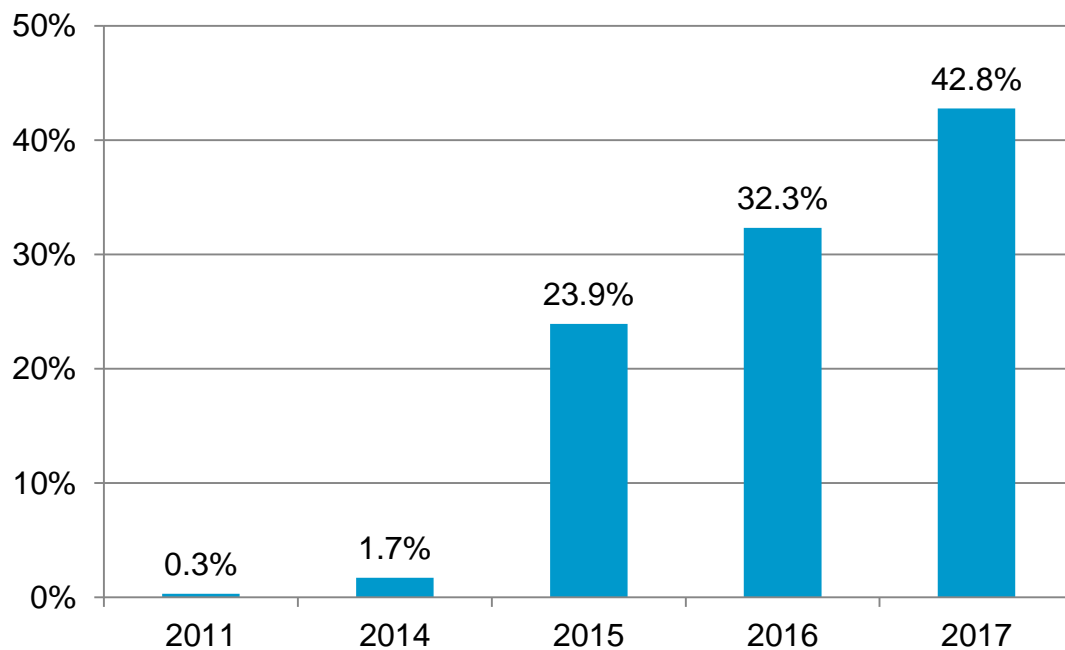
This chart shows spending that campaigners reported in their statutory spending returns for UK Parliament elections in 2015 and 2017; Scottish Parliament and National Assembly for Wales elections in 2011 and 2016; Northern Ireland Assembly elections in 2011, 2016 and 2017; and the referendums on EU membership in 2016, Scottish Independence in 2014 and changing the UK's voting system in 2011.

3.   But this chart does not show the full picture of digital advertising at elections and referendums. It only contains spending data for the most well-known digital platforms, which registered campaigners have reported to us.

4. Advertising is not the only way campaigners communicate with voters on social and digital media. Campaigners can also 'like', 'share' and 'post' messages for free and potentially reach wide audiences.

5. Digital campaign tools can make it easier and cheaper for legitimate campaigners to communicate with voters. It is a sign of a healthy democracy when campaigners tell voters about their policies and political views. However, we recognise that new techniques for reaching voters could reduce confidence in the integrity of elections and referendums.

6. People may think the law doesn't cover new techniques. These techniques can also be misused. For example, it could be easier for foreign individuals or regimes to try to influence voters online without any physical presence in the country. UK-based campaigners may also try to get round limits on spending through hidden digital activity.

7. The rise of digital campaigning raises important issues for a number of regulators and organisations, as well as us. The Information Commissioner is investigating the use of personal data and analytics by political campaigns, parties, social media companies and other commercial organisations. Within the UK Parliament, the Digital, Culture, Media and Sport Select Committee is continuing its inquiry into the impact of 'fake news' on modern democracy.

8. Governments and legislators have expressed concerns about the wider misuse of digital communications in many countries. In the UK, the Prime Minister, Head of the Security Service and the Attorney General have all highlighted the risks of foreign governments mounting cyber espionage and disruption campaigns in the UK. This is not limited to interference in elections and is part of wider attempts to cause disruption.

9. Voters, campaigners and law enforcement agencies have raised concerns about disruption, interference and misuse of digital campaigns at recent elections and referendums in the United States, France, Germany and Ireland. Legislators in the United States, France and the UK have set out proposals for statutory regulation of digital campaigns, and social media companies have begun to publish their own proposals for reform.

10. These concerns have fed into a wider debate about reform of the rules for social media and digital communications, both here in the UK and in other countries around the world. Following its Internet Safety green paper, the UK Government has set out its Digital Charter, a programme of work to agree and put into practice norms and rules for the online world. It aims to ensure that the rights people have offline are protected online. This includes "limiting the spread and impact of disinformation intended to mislead for political, personal and/or financial gain".

Our role in regulating digital campaigns

11. We have been looking at the risks and the challenges that digital campaigns bring to the UK's election and referendum rules. As the regulator, our main role in this area is to monitor and enforce the rules about where the

money behind campaigns comes from and how campaigners spend money. This includes money spent on digital campaigns intended to influence UK voters.

12.   We talked to political parties after the 2017 UK Parliament general election and looked at spending returns from campaigners at other recent elections and referendums. We have talked to the main social media companies that work in the UK. We have also carried out research with the public to find out what they think about digital campaigns.[1]

> "There was acknowledgement from some that although people may approach online messages with scepticism, there was a risk that unverified information could still have an influence to some degree. There was an acceptance that the nature of digital campaigns made it difficult to discern the source of all the materials that they receive."

GfK, *Political finance regulation and digital campaigning: a public perspective*

13.   We support campaigners to follow the rules and we take action if they are broken. However, we also want to make sure that voters have confidence in the political finance rules in a digital age.

14.   Our early work in this area has focused on identifying the most important challenges facing funding and spending rules for digital campaigns at elections and referendums in the UK. The rest of this report sets out our current thinking and our first suggestions about how the UK should begin to respond to the challenges of digital campaigning.

15.   The UK Parliament has given us a role to report on elections and referendums, to keep electoral law under review and to recommend changes where we think they're needed. The Scottish Parliament and Government are responsible for Scotland-only elections. The Welsh Government and National Assembly for Wales are responsible for Wales-only elections. We work with all relevant governments on the changes to electoral law they are responsible for. This is why some of our recommendations are for each of the UK's governments and legislatures, not just the UK Government and Parliament.

---

[1] GfK, *Political finance regulation and digital campaigning: a public perspective* (April 2018)

Responding to the challenges

16.   We look at the challenges of digital campaigning by focusing on four aspects of electoral law and campaigning in the UK. We draw on our expertise about the UK's election and referendum rules to make or repeat recommendations for change. We also highlight matters that we and others should continue to think about and solve together.

1. Who runs digital campaigns?

17.   Campaigners use digital platforms to campaign during an election or referendum. These campaigners range from registered political parties to individual campaigners. Political parties must register with us to stand candidates in elections. Non-party campaigners and referendum campaigners that want to spend over a certain amount must also register with us.[2] Only people who live in the UK or are registered to vote here, or organisations based here, are able to register.

Who is behind online campaigns?

18.   Printed campaign material must contain information about who is behind the campaign and who created the materials. Voters can see who is distributing this material by looking at the imprint on it. We have a role in ensuring that these rules on including an 'imprint' on campaign material are followed. But we don't regulate the other content or arguments used in campaign material.

19.   It may not be clear who is behind an online campaign because the law doesn't require campaigners to include an imprint on digital material. It may not be clear that something on social media is from a campaigner as social media posts can appear to come from individuals expressing their personal opinions.

20.   Campaigners can purchase 'bots' and pay people to spread their campaign messages, and this is misleading if voters cannot see that this has happened.

21.   A bot is an automated software program that mimics human behaviour on social media by posting, liking and talking to real people. A 'troll' is a real person who spends time on websites and social media posting divisive or irrelevant messages and comments to annoy or anger other people.

---

[2] Non-party campaigners must register if they intend to spend more than £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland at a UK parliamentary general election. Campaigners at the 2016 EU referendum had to register if they wanted to spend more than £10,000.

22.   Organisations or individuals can set up 'fake' social media accounts. They pretend these accounts are held by real people and attempt to sway opinion by posting messages or liking and sharing the messages of others.

23.   Sometimes campaigners in other countries pay trolls to spread their messages and attack their opponents.

24.   The press has reported on instances of governing parties in other countries using bots, fake accounts and paid trolls to 'amplify' campaign messages when they are standing for re-election. This creates the appearance of grassroots support – a phenomenon known as astroturfing. The aim is to make a campaign appear popular with the public. But the support isn't genuine because it hasn't come from real people. The party has manufactured it and paid money for it.

25.   Several academic research projects have looked at the use of bots and fake accounts to amplify campaign messages on Twitter during the EU referendum and US election campaigns in 2016. Although they have identified that there were active networks of both bots and fake accounts during and after these campaigns, it's not clear how or if they affected the outcome.

26.   We do not think that there is anything wrong with campaigners using bots to post messages telling voters about their policies and political views. But it should be clear who is doing it. Similarly we do not think there is anything wrong with campaigners telling their staff to post campaign messages. But these forms of campaigning are a problem when they are used to deceive voters about a campaigner's identity or their true level of support, or used to abuse people.

Imprints on digital material

27.   We have been recommending since 2003 that online campaign material should include an imprint. Campaigners would then have to identify who they are so that it is clear who is campaigning. We currently advise campaigners to include an imprint, even though it is not required under law.

28.   This could include posts made by bots and paid trolls. Although posting on social media is free, it costs money to employ people and acquire bots. These costs count towards a campaigner's spending limit for an election or referendum. A campaigner who doesn't include an imprint would run the risk of a fine.

29.   Imprints on digital campaign messages would also help us enforce the spending rules. This is because we would have a better idea who may need to register and submit a spending return after an election or referendum.

30.   It was a legal requirement at the Scottish independence referendum for digital material to have an imprint. Overall it worked fairly well. There were some questions about what kinds of digital material the law applied to, including personal opinions. We can learn from this experience when considering any new requirement.

31.   The UK Government has said it will consult on whether to change the law so that digital material has to have an imprint. This consultation will be a good opportunity to hear from campaigners and others about how the new rules could work.

> **Recommendation 1: Each of the UK's governments and legislatures should change the law so that digital material must have an imprint saying who is behind the campaign and who created it.**

Truthfulness of digital campaign material and news

32.   One of the main concerns about online information is whether it's true. During election and referendum campaigns, this concern applies to both the content of digital campaign material and the news that appears in voters' social media feeds. Fake news was a cause of considerable concern during and after the US presidential election.

33.   Our research with the public showed that they were less trusting of online materials. They were concerned about both the content and source. They considered that the internet gave less credible sources a greater ability to mislead people and spread false information. They viewed fake news as a spectrum from entirely false stories to real news that was distorted to fit a political agenda.

34.   We are not in a position to monitor the truthfulness of campaign claims, online or otherwise. However, changing the law so that digital material has to have an imprint will help voters to assess the credibility of campaign messages. Voters will know who the source is and be more able to decide how credible it is.

The roles of others

35.   The law does not require claims in campaign material to be truthful or factually accurate. But it is a crime to make or publish a false statement of fact about the personal character or conduct of a candidate. Campaign material must not incite others to commit crimes. The police investigate such allegations.

36.   The UK Statistics Authority can complain to campaigners if it thinks they have misused official statistics in their campaign material. The Advertising Standards Authority oversees campaign adverts about some political subjects, but does not have a role in election or referendum campaigns.

37.   The Committee on Standards in Public Life recently held an inquiry into intimidation in public life.[3] It recommended that political parties should develop codes of conduct about intimidatory behaviour. We think that campaigners should also take more responsibility for the tone of their arguments and the claims they make in their campaign material.

38.   The Information Commissioner is responsible for the rules about how organisations in the UK use personal data. They are looking at how campaigners, social media companies and others use personal data for political purposes.

39.   We expect that the Information Commissioner will report later this year on whether campaigners need to change how they use voters' personal data. We will work with the Commissioner to give campaigners guidance to help them make any changes.

2. Spending on digital campaign activity

40.   UK electoral law sets limits on the amount of money that campaigners can spend on campaign activity during the 'regulated period' before elections and referendums. The regulated period is the period in which the spending rules apply. Money spent on digital campaigning carried out during that period counts towards campaigners' spending limits. For example, the regulated period lasts 12 months before a UK Parliament election and 4 months before a Scottish Parliament election. The regulated period before the EU referendum was 10 weeks.

41.   Registered political parties, non-party campaigners and referendum campaigners must send details of their spending to us after the election or referendum. Candidates have to submit a spending return to the local election Returning Officer. We publish details about the spending on our website.

Transparency of digital political advertising

42.   Campaigners can use digital and social media tools to direct their messages to the people they most want to reach. Campaigners use the personal data they and social media platforms have to target voters. They target voters based on demographic factors like age and gender, on their interests and on their physical location. This is often called 'micro-targeting' because campaigners are able to send messages tailored to specific groups of voters based on this information. They can also adjust the messages they send very rapidly, to take account of what seems to work best with particular groups or individuals.

---

[3] Committee on Standards in Public Life, *Intimidation in Public Life: A Review by the Committee on Standards in Public Life* (March 2018)

43. Only the voter, the campaigner and the platform know who has been targeted with which messages. Only the company and campaigner know why a voter was targeted and how much was spent on a particular campaign. This is why the term 'dark ads' has been used to describe micro-targeting, although it is perfectly legal.

44. People in our recent research said that targeted messages from campaigners could be helpful if it meant they got information that was more relevant and interesting to them. But they were worried about how their personal data had been gathered and used. They also said that they would be worried about targeted messages that spread false or misleading information.

45. Other concerns have been raised about the transparency of spending on and targeting of digital political advertising as well. The UK's election rules set spending limits to stop campaigners being able to spend so much more money than their opponents that they would gain an unfair advantage. As part of this, campaigners must report how much they have spent to produce and send targeted messages to voters using digital channels. This includes messages targeted at specific groups of people in a particular constituency.

46. Political parties should report the costs of many kinds of messages at elections. But if messages promote a particular candidate, the rules may require the candidate to report the cost of those messages instead. These rules do not work properly if candidates and political parties do not report the money they spend on targeted messages against the right limit.

47. We want to check that campaigners have properly reported the money they spend against the right limit. It would be help us if the law said campaigners have to include an imprint on all their digital campaign material.

More detailed invoices

48. It would help us if campaigners' invoices showed the detail of which groups of people they targeted with digital adverts. Although spending over £200 needs to be supported by an invoice, the law is not clear on the level of detail that should be included in the invoice.

49. Some invoices contain very little detail, making it difficult or impossible to know what the money was spent on and where. For example, campaigners have given us invoices from Facebook which say only "campaign 1, campaign 2". However, other campaigners have given us more meaningful detail. Their invoices show the text of the campaign messages sent to voters or information about the area of the country they were targeted at.

50. Campaigners should be required to provide invoices from their suppliers which contain more meaningful information about the details of their campaigns. This should include the messages used in those campaigns, which parts of the country they were targeted at, and how much was spent on each campaign.

> **Recommendation 2: Campaigners should be required to provide more detailed and meaningful invoices from their digital suppliers to improve transparency.**

Revising the spending categories

51.   Spending on campaign activity is declared to us under broad categories such as 'advertising'. There is no specific legal category for digital campaigning. We can see from our records that different campaigners have declared it under different spending categories, but mostly as advertising.

52.   We recommended after the 2015 UK Parliament general election that the spending categories should be revised to provide more useful information about what campaigners have spent money on. This has not been acted on so far, but would be a valuable additional tool to track and check the spending on digital campaigning.

53.   We think it could be too simplistic to add a new 'digital' category alongside the existing ones. The existing categories focus on types of communication with voters, including 'unsolicited material to electors' or 'advertising' or 'events'. If a category was introduced for 'digital spending', it might displace all of that spending into one large category based on how it was done. The information would not be easy to use and it would not increase transparency.

54.   Instead, it would be better to create sub-categories to record what medium or format was used for the activity. The solution needs to be practical for campaigners to report their spending. It also needs to provide meaningful information for everyone who uses it.

> **Recommendation 3: Each of the UK's governments and legislatures should amend the rules for reporting spending. They should make campaigners sub-divide their spending returns into different types of spending. These categories should give more information about the money spent on digital campaigns.**

Databases of political adverts

55.   Social media companies have started to set out how they could make political adverts more transparent. Facebook, Google and Twitter have said that they will make sure that campaigners who pay to place political adverts with them will have to include labels showing who has paid for them.

56.   They also say that they plan to publish their own online databases of the political adverts that they have been paid to run. These will include

information such as the targeting, actual reach and amount spent on those adverts.

57.   These companies are aiming to publish their databases in time for the November 2018 mid-term elections in the United States. Some of them also published data ahead of the May 2018 referendum in Ireland. Facebook has said it aims to publish similar data ahead of the local elections in England and Northern Ireland in May 2019.

58.   The *Who targets me?* project is a citizen-led project which Sam Jeffers and Louis Knight-Webb set up shortly before the 2017 UK Parliament general election. They created software that voters could install on their web browsers. It tracked the political adverts they saw on Facebook. The project recommended that social media companies publish all the adverts they run on a central website.

59.   Some organisations like the Institute of Practitioners in Advertising also support creating a central public register of online political adverts, rather than leaving it to the social media companies themselves.

60.   We welcome the intention of each of these proposals. Databases like these would bring greater transparency for voters. They would also make it easier for us to enforce the spending rules. We would be able to see what adverts a campaigner has taken out and how much they paid. For example, if we could see that certain campaigners are targeting adverts to the same voters, it could indicate that they are working together.

61.   We expect the social media companies to make sure that their new databases of political adverts reflect the UK's election and referendum rules, and provide meaningful information for us and for voters. We want all the major social media companies that run election adverts in the UK to make sure they create such databases. We expect them to discuss with us whether they can publish their data in the same format.

> **Recommendation 4: UK election and referendum adverts on social media platforms should be labelled to make the source clear. Their online databases of political adverts should follow the UK's rules for elections and referendums.**

Paid-for adverts and organic reach

62.   Digital campaigning costs campaigners money if they pay companies like Facebook to target their messages at voters. However, campaigners can also spread their messages for free by encouraging their supporters to share them with their friends and family. This is called 'organic' reach. Media reports claim that the Labour Party and Momentum did this effectively during the 2017 general election campaign.

63.   The current rules for election and referendum campaigns focus on the money campaigners spend. They don't cover the organic reach campaigners can harness. For example, the rules would cover the costs of targeting an advert or message at a campaigner's online supporters. But there would be no additional costs if the supporters share the message further with their online contacts. This can be particularly effective if messages have humorous or otherwise striking content.

64.   Some people might think that it is unfair if some campaigners have greater organic reach than others. But it could also give campaigners an incentive to attract more supporters to broaden their organic reach.

65.   In this respect digital campaigning is not different from more traditional forms of campaigning, where some campaigners are more effective than others. We consider that getting more voters to participate in election and referendum campaigns is good for those campaigns and for democracy itself.

66.   The current rules were developed in 2000. At that time, it was more difficult to spread messages widely and cheaply through organic reach. Campaigners now depend less on spending money for paid adverts to reach some voters directly. But money is still needed to make and manage databases of supporters and target the messages which can build organic reach.

Unregulated spending on staffing

67.   The money that political parties and referendum campaigners spend on staff they directly employ to work on their election and referendum campaigns doesn't count towards their spending limits. But it does count towards non-party campaigners' and candidates' spending limits.

68.   We held meetings with several political parties and a registered non-party campaigner after the 2017 UK Parliament general election to discuss how they used digital campaigning and social media as part of their campaigns. All of them told us that they had their own permanent staff working on their digital campaigns, and all took on additional staff or consultants for the election. All of the parties told us that digital was an increasingly important aspect of their campaigns.

69.   We have recommended since 2013 that the costs of directly employed staff working on election and referendum campaigns should count towards political parties' and referendum campaigners' spending limits. This would close an obvious gap and inconsistency in the rules that allows political parties and referendum campaigners to spend potentially large sums of money on campaigning without having to declare them. It would also make it more transparent how much campaigners spend on digital campaigning.

> **Recommendation 5: Each of the UK's governments and legislatures should change the law so that campaign-related staff costs are included in the spending limits on political party election and referendum campaign spending.**

Improving understanding about regulated spending

70.   The UK's election rules cover the most important costs of campaigning, but some journalists and commentators seem unsure about which costs are covered.

71.   The rules do cover the costs of placing adverts on digital platforms or websites. They include the costs of distributing and targeting digital campaign materials or developing and using databases for digital campaigning. This applies even if the original purchase of hardware or software materials falls outside the regulated period for reporting spending.

72.   Spending limits and rules to report spending apply to campaign spending on advertising. The same rules apply whether campaigners use long-standing techniques, such as printed mailshots or billboards, or newer ones, such as emails and online adverts.

Statutory codes about election spending

73.   We are currently drafting statutory codes of practice for political parties and candidates. The codes are intended to add clarity and give examples about how the law applies to different kinds of spending. The draft codes outline how campaigners should report digital campaigning and use of data.

74.   We are preparing these codes for the UK Parliament to approve, so that there will be statutory guidance for campaigners about how the law on election spending. The Scottish and Welsh Governments are also interested in introducing codes for elections in Scotland and Wales. We aim to have them approved in time for the next major elections in 2021 and 2022.

75.   We are planning to consult on the statutory codes on election spending in the latter part of 2018. We encourage a wide range of responses to improve the draft Codes before they are presented to legislators.

When and how we receive spending information

76.   Campaigners that spend under £250,000 have three months after an election or referendum to submit their spending returns to us. Campaigners that spend £250,000 or more have six months.

77.   This is a long time after the campaigns have finished. During this time, voters have no information about how much money campaigners spent, or what they spent it on, to influence the result.

78.   Members of the public who took part in our research thought that submitting spending returns after a campaign was too late. Some thought that campaigners should have to report their spending during a campaign.

79.   Currently, campaigners can choose to submit their returns to us electronically or on paper. If we receive paper records, we have to use resources on data entry and that delays publication. It takes more time to check information in the paper spending returns and cross-check it with other information we hold before we can publish it.

80.   Voters should be able to see how campaigners have spent their money as soon as possible after an election or referendum while it is still a live issue. Earlier deadlines for campaigners to submit their spending returns would make it easier for voters to understand this. If campaigners had to submit electronic records to us, it would also mean that we could identify any possible problems more quickly after the election or referendum.

> **Recommendation 6: We will make proposals to campaigners and each of the UK's governments about how to improve the rules and deadlines for reporting spending. We want information to be available to voters and us more quickly after a campaign, or during it.**

When the spending and funding rules apply to campaigners

81.   UK electoral law sets limits on the amount of money that campaigners can spend on campaign activity during the regulated period before elections and referendums.

82.   The period of time when spending rules apply has been different for several referendums. For the Scottish independence referendum, the spending controls applied for 16 weeks. For the EU referendum it was 10 weeks.

83.   There were also different lengths of time between the legislation for the referendum being passed and the spending rules coming into effect. Campaigners may use this gap to spend large sums of money that don't count towards their spending limits. There are similar issues about when the funding rules start to apply and whether campaigners can use this gap to raise money that is not covered by the rules.

> **Recommendation 7: We and the UK's governments and legislatures should look again at when the spending and funding controls should start to apply before a referendum.**

3. Who pays for digital campaigns?

84.   The UK Parliament made rules so that only those with a real interest in the UK's politics can use their money to influence voters. The only groups that can give money to parties or campaigners, or register as non-party campaigners are people who live in the UK or are registered to vote here, or organisations based here. But global digital communication tools are challenging these rules.

Preventing spending from outside the UK

85.   Registered campaigners in the UK have been open about their use of digital campaigns to reach voters. However, anyone outside the UK can also pay for adverts on digital and social media platforms to target voters in the UK. This means that people who are not allowed to register as campaigners can still spend money to influence voters in the UK. This could be from foreign nation states or from private organisations and individuals.

86.   Although there is a general principle that funding from abroad is not allowed, the rules do not explicitly ban overseas spending. The UK's rules set minimum amounts for campaign spending before people or organisations have to register as a non-party campaigner. This means that a foreign individual or organisation that spends under these amounts would not have broken any specific electoral laws in the UK.

87.   These rules were meant to reduce the risk of too much spending by non-party campaigners and bring more transparency, while not limiting free speech. At the time when the rules were made in 2000, the UK Government and Parliament were worried about foreign donations to political parties. They had not seen the potential for foreign sources to directly purchase campaign advertising in the UK.

88.   The UK Government and security services have recently set out their view on foreign interference. They said that foreign sources are likely to have tried to disrupt and interfere with UK election and referendum campaigns using digital and social media tools. Academic research has also started to show that foreign sources appear to have carried out some social media activity in the UK.

89.   The current evidence available to us does not suggest that this has taken place in the UK on the scale alleged at the 2016 US Presidential election. We will continue talking to the UK Government and security services about any more evidence if it comes out. In any case such activity is unacceptable. The Government has informed us that it "is alert to the threat of subversion and other means of seeking to manipulate the electoral process or undermine democratic institutions".

90.   Facebook, Google and Twitter have said that they will put in place new controls to check that people or organisations who want to pay to place political adverts about elections in the United States are actually based there.

We would like to see similar controls introduced for elections and referendums in the UK.

> **Recommendation 8: Social media companies should put in place new controls to check that people or organisations who want to pay to place political adverts about elections and referendums in the UK are actually based in the UK or registered to vote here.**

91. A specific ban on any campaign spending from abroad would further strengthen the UK's election and referendum rules. Digital and social media companies' own controls would be one set of tools to stop foreign spending on digital advertising or promotion.

92. The UK would need to look carefully at the practical and legal implications of a ban on any campaign spending from abroad. This includes how a ban could be enforced and the impact on free speech. It should also look at the impact on UK citizens who live abroad who are registered to vote at UK elections and referendums. This includes changes that have been proposed in a Bill to the UK Parliament to allow any UK citizen living abroad to register to vote in the UK.

> **Recommendation 9: Each of the UK's governments and legislatures should clarify that spending on election or referendum campaigns by foreign organisations or individuals is not allowed. They would need to consider how it could be enforced and the impact on free speech.**

Preventing company funding from outside the UK

93. Companies that are registered in the UK or a European Union member state and that are carrying on business in the UK can give or lend money to campaigners in the UK. These companies can also register as campaigners.

94. Companies do not have to show that they have made enough money in the UK to give or lend to campaigners. This means that campaigners could receive money which originally came from outside the UK. This could include goods or services that companies give to campaigners as a gift or at a discount, including digital campaign services.

95. In 1998 and 2011, the Committee on Standards in Public Life said foreign companies should not be able to use subsidiaries in the UK just for the purpose of giving money to campaigners. Companies should show that they had made enough money in the UK to give or lend to campaigners.

96. In 2013, we recommended that the UK Government and Parliament should look at whether the rules were strong enough to stop campaigners

using money that comes from outside the UK. We said the rules should reflect more closely the Committee on Standards in Public Life's recommendation.

97.   We repeated this recommendation in our report on the 2016 EU referendum. The UK Parliament has not changed these rules yet, but the UK Government has said it will discuss it with us.

> **Recommendation 10: The UK Government and Parliament should make clear in law that campaigners cannot accept money from companies that have not made enough money in the UK to fund the amount of their donation or loan.**

Improving controls on donations and loans

98.   It would also help to look at other ways to improve the controls on the money that campaigners accept. The UK's money laundering rules require businesses to take steps to make sure that money does not have any obvious link with criminal activity. The UK Government updated these rules in 2017.

99.   We think that some of the tools that businesses use for risk assessment and due diligence on customers could also be considered as part of the rules for campaigners at elections and referendums in the UK. These kinds of changes could help to make sure that foreign money is not used in UK election and referendum campaigns, including in digital campaigns.

> **Recommendation 11: The UK Government and Parliament should consider with us how to improve the controls on donations and loans to prevent foreign money being used in UK politics. Approaches for enhanced due diligence and risk assessment could be adapted from recent money laundering regulations.**

New campaigners' assets and data

100. The rules on donations and loans only apply to campaigners after they have registered with us. The rules do not require transparency about money or assets that campaigners have before they register.

101. Even after a party has registered, the deadline for submitting the first statement of accounts may be 18 months away. These accounts provide information about a new party's finances. But the rules mean that voters and other campaigners will not have information about a campaigner's early financial position. It also means we have less information to plan and focus our monitoring and other regulatory work.

102. We therefore recommended in 2013 that all new parties should submit a declaration of assets and liabilities over £500 upon registration. We also think that this requirement should apply to all referendum campaigners who have to register with us.

103. Datasets and databases are an increasingly valuable asset for running targeted election campaigns. The declaration should include an estimate of the costs the campaigner has invested in buying or developing the data they hold when they register.

> **Recommendation 12: The UK Government and Parliament should amend the law so that all new parties and referendum campaigners with assets or liabilities over £500 have to submit a declaration of assets and liabilities upon registration. The declaration should include an estimate of the costs the campaigner has invested in buying or developing the data they hold when they register.**

4. Enforcing the rules

104. UK electoral law sets requirements relating to funding and spending for election and referendum campaigns. There are criminal offences for not complying with the rules. As the regulator of political finance, we have powers to investigate breaches of the rules. We can impose a monetary penalty known as a civil sanction. The police can also investigate suspected breaches of the rules and refer cases for criminal prosecution in a court.

Increasing our powers to obtain information

105. Digital campaigning materials can be distributed instantaneously to large target audiences. It can have an immediate effect on an election or referendum campaign. It is therefore important that we are able to look into concerns about a campaign. We want to do this in 'real-time', as well as after a vote.

106. We have wide powers to get evidence when we are investigating whether an offence has already been committed. Most of the offences we can investigate are about reporting to us. This can reveal issues about a campaigner's spending or funding during a campaign. By the time we receive the reports, the campaign has been over for months. Our preferred approach is to prevent the rules being broken, or to put a matter right as quickly as possible. Our powers are more limited where we need to make enquiries outside of an investigation.

107. We may need to request information from suppliers of digital campaigning tools about the identity of the originating account. Or we may request that parties and campaigners provide rapid answers to our questions

about the digital activity. Our statutory powers to compel the provision of evidence cover all organisations and individuals that are regulated under the law – including registered campaigners. However, our powers outside an investigation only cover material related to income and expenditure. Our powers do not extend to third parties such as suppliers of digital platforms.

108. We recommend that our powers to compel the provision of documents, information and explanation outside of an investigation should be extended. We should have the power to request information from any person who may hold relevant material. The Information Commissioner recently asked for similar powers and the UK Parliament gave them to her organisation.

109. If we had this power, we could make suppliers of digital services or platforms provide relevant information that they hold. This change would make things faster when we assess concerns that we identify or when allegations are made to us. It would also help us when gathering information about a campaign that involves a number of different campaigners and suppliers.

> **Recommendation 13: Each of the UK's governments and legislatures should increase our powers to obtain information outside of an investigation.**

Improving our powers to help enforce other laws

110. Our main role is to ensure campaigners comply with the political finance rules. Sometimes we have information that relates to compliance with other legal frameworks, such as data protection law. However, it is not always clear whether we are able to share that information with the relevant regulator or law enforcement body.

111. We have a clear power to share information that relates to electoral law matters with relevant bodies. But we are reliant on others' powers to allow us to share information that does not relate to our legal functions. This gap in our powers to share information applies both within and outside UK.

112. Fortunately, for matters of data protection, the Information Commissioner's Office (ICO) has a power that enables us to provide and receive information relating to its functions. Without that we would not have the power to pass information relating to breaches of data protection to the ICO. However, the power relies on us having to determine that the information is necessary for the ICO's functions. This could slow down our ability to refer relevant information in future.

113. We would prefer a general power enabling us to share information with other regulators or law enforcement bodies where we think it is in the public interest to do so. This would enable us to refer information more proactively where needed and streamline our processes.

> **Recommendation 14: Each of the UK's governments and legislatures should increase our powers for information sharing with other agencies when it is in the public interest.**

Strengthening our powers to enforce the rules

114. The maximum fine we can impose for breaking the UK's political finance rules is £20,000 for each offence. We have previously said that this is too low. Campaigners spend millions of pounds at UK elections and referendums, including on digital campaign activities.

115. We are worried that a maximum fine of £20,000 risks becoming a cost of doing business for some campaigners. This penalty does not provide an effective deterrent to stop campaigners committing offences.

116. Where offences have already taken place, this penalty is not proportionate to the impact that many of the offences could have. This is particularly the case when campaigners are not established political parties, for example in the context of a referendum. These campaigners may be less concerned about damaging their image or reputation in the future.

117. We want the UK's governments and legislatures to change the law which limits our maximum fine. There should be a consultation about the level of fine. We think it should be similar to other regulators' fines.

> **Recommendation 15: Each of the UK's governments and legislatures should increase the maximum fine we can sanction campaigners for breaking the rules.**

118. Currently, only the police and prosecutors can investigate if they suspect the candidate rules have been broken. We have previously recommended that we should be given powers to investigate breaches of the candidate spending and donation rules at major elections. This would be the same as our responsibility for party and other campaigner spending and donations. This change, and the others we've recommended, would help us find out if candidates and parties are correctly reporting digital spending against their own limits.

> **Recommendation 16: Each of the UK's governments and legislatures should give us powers to investigate and sanction candidates for breaking the candidate rules.**

What digital and social media companies can do

119. We want digital and social media companies themselves to do more to help improve confidence in digital campaigns. They have already shown that they can help to uphold specific laws in different counties. For example, they have developed tools to help make sure their users do not break copyright laws.

120. They have also shown that it is possible to take action on political adverts. For American elections coming up in autumn 2018, Facebook, Google and Twitter have said they will check whether campaigners are based in the USA. Campaigners won't be allowed to if they aren't. We want them to make similar changes to their advertising policies in the UK. This would help improve compliance with the UK's rules before voters even see campaign adverts.

121. Both Facebook and Google made changes to their policies on political adverts before the May 2018 referendum in Ireland. Facebook stopped campaigners outside Ireland from buying referendum adverts, and Google banned all paid adverts about the referendum.

122. Campaigners and commentators criticised both companies for making these changes very close to referendum polling day. They did not consult publicly on their plans beforehand.

123. We want digital and social media companies to make sure their policies on political adverts better reflect our election and referendum campaign rules. This could include removing campaign adverts or material that does not show clearly who is responsible for promoting it. It could include social media companies giving us information about campaigners we think have broken the rules. They could also look for campaigners they think have broken the rules and report them to us.

124. We also want to make sure that people in the UK can expect a consistent approach to political adverts from all the companies that operate here, rather than different individual policies from different companies. This means that they need to consult and work closely with us and also with campaigners in the UK. It also means we will need to check whether new companies are developing popular platforms or sites which campaigners are starting to use in the UK in future.

125. We will monitor how well the digital and social media companies' voluntary proposals work at upcoming elections. If the proposals don't work well, the UK's governments and legislators should consider direct regulation.

> **Recommendation 17: Social media companies should work with us to improve their policies on campaign material and advertising for elections and referendums in the UK.**

Summary of recommendations

		Main responsibility
Who runs digital campaigns?		
	Each of the UK's governments and legislatures should change the law so that digital material must have an imprint saying who is behind the campaign and who created it.	Each of the UK's governments and legislatures
Spending on digital campaign activity		
	Campaigners should be required to provide more detailed and meaningful invoices from their digital suppliers to improve transparency.	Each of the UK's governments and legislatures if needed
	Each of the UK's governments and legislatures should amend the rules for reporting spending. They should make campaigners sub-divide their spending returns into different types of spending. These categories should give more information about the money spent on digital campaigns.	Each of the UK's governments and legislatures
	UK election and referendum adverts on social media platforms should be labelled to make the source clear. Their online databases of political adverts should follow the UK's rules for elections and referendums.	Social media companies
	Each of the UK's governments and legislatures should change the law so that campaign-related staff costs are included in the spending limits on political party election and referendum campaign spending.	Each of the UK's governments and legislatures

💬	We will make proposals to campaigners and each of the UK's governments about how to improve the rules and deadlines for reporting spending. We want information to be available to voters and us more quickly after a campaign, or during it.	Electoral Commission, Campaigners and other stakeholders Each of the UK's governments and legislatures
💬	We and the UK's governments and legislatures should look again at when the spending and funding controls should start to apply before a referendum.	Each of the UK's governments and legislatures

Who pays for digital campaigns?

💬	Social media companies should put in place new controls to check that people or organisations who want to pay to place political adverts about elections and referendums in the UK are actually based in the UK or registered to vote here.	Social media companies
💬	Each of the UK's governments and legislatures should clarify that spending on election or referendum campaigns by foreign organisations or individuals is not allowed. They would need to consider how it could be enforced and the impact on free speech.	Each of the UK's governments and legislatures
💬	The UK Government and Parliament should make clear in law that campaigners cannot accept money from companies that have not made enough money in the UK to fund the amount of their donation or loan.	The UK Government and Parliament
💬	The UK Government and Parliament should consider with us how to improve the controls on donations and loans to prevent foreign money being used in UK politics. Approaches for enhanced due diligence and risk assessment could be adapted from recent money laundering regulations.	The UK Government and Parliament

	The UK Government and Parliament should amend the law so that all new parties and referendum campaigners with assets or liabilities over £500 have to submit a declaration of assets and liabilities upon registration. The declaration should include an estimate of the costs the campaigner has invested in buying or developing the data they hold when they register.	The UK Government and Parliament

Enforcing the rules

	Each of the UK's governments and legislatures should increase our powers to obtain information outside of an investigation.	Each of the UK's governments and legislatures
	Each of the UK's governments and legislatures should increase our powers for information sharing with other agencies when it is in the public interest.	Each of the UK's governments and legislatures
	Each of the UK's governments and legislatures should increase the maximum fine we can sanction campaigners for breaking the rules.	Each of the UK's governments and legislatures
	Each of the UK's governments and legislatures should give us powers to investigate and sanction candidates for breaking the candidate rules.	Each of the UK's governments and legislatures
	Social media companies should work with us to improve their policies on campaign material and advertising for elections and referendums in the UK.	Electoral Commission and social media companies