

The
Electoral
Commission

2012 Police and Crime Commissioner
elections spending report

September 2013

Contents

1	Introduction	1
	About the Electoral Commission	1
	About this report	1
	Background	2
2	Candidate spending and donations	4
	Spending limits and the scope of the rules	9
	Online publication of candidate returns	10
	Other issues	12
	Pre-poll donation reporting	12
	Third party campaigning	12
	Campaign monitoring	13
	Enforcement of the rules	14
	Appendix A – List of recommendations	15
	Appendix B – Constituencies and spending limits	16
	Appendix C – Local non-party spending limits	17
	Appendix D – Campaign monitoring areas	18

1 Introduction

About the Electoral Commission

1.1 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate political party and election finance and set standards for well-run elections. We put voters first by working to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

About this report

1.2 This report covers issues relating to the rules on campaigning at the 2012 Police and Crime Commissioner (PCC) elections, following on from our March 2013 report¹ on the development of the legislation and administration of these polls. It provides an overview of campaign spending at these elections, identifies issues for the regulatory regime and suggests possible solutions. A summary of our recommendations can be found in Appendix A.

1.3 We have also published headline spending and donation data from candidates contesting these elections, which can be found on our website².

1.4 Our regulatory work on campaigning at these polls included:

- Publishing new written election guidance for candidates and agents³ - this outlined the rules on campaign spending and donations at these elections, and what candidates and agents needed to do in order to comply with them
- Providing election training sessions for candidates and agents

¹ The Electoral Commission, *Police and Crime Commissioner elections in England and Wales: Report on the administration of the elections held on 15 November 2012*, (March, 2013)
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/154353/PCC-Elections-Report.pdf

² Candidate spending data: <http://www.electoralcommission.org.uk/party-finance/PEF-online-registers/candidate-spending-and-donations/Police-and-Crime-Commissioner-elections>

³ The Electoral Commission, *Guidance for candidates and agents: Spending and donations*,
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/148740/PCC-Guidance-for-candidates-and-agents-Part-3-of-6-Spending-and-donations.pdf

- In the seven month period between the start of August 2012 and end of February 2013, answering 104 requests from candidates and agents for advice on election issues
- A programme of campaign monitoring. More details on this are contained later in the report on page 13

Background

1.5 The 2012 Police and Crime Commissioner (PCC) elections held across England and Wales were the first of their kind. The rules on campaigning at these elections were defined in the Police and Crime Commissioner (Elections) Order 2012. In our March 2013 report on the administration of these polls, we commented on the timing of the legislation and how it posed a challenging timeline for us to produce guidance for candidates and agents in time for the start of the campaign⁴.

1.6 These rules controlled candidate campaign spending, and donations towards that expenditure, during the “regulated period”. The regulated period started on 8 October⁵ and finished on 15 November 2012 – polling day.

1.7 As with most elections, there were limits on how much candidates could spend on specified items of campaign material during the regulated period, such as leaflets, posters, newspaper adverts and public meetings. Each individual police force area had a separate candidate spending limit. A list of these limits can be found in Appendix B.

1.8 There were also rules on what donations candidates could accept towards their campaign spending. Donations over £50 in value to candidates must have come from a permissible source⁶.

1.9 After the poll, agents for all candidates contesting the election had to submit a spending return, a declaration as to its contents and any

⁴ The Electoral Commission, *Police and Crime Commissioner elections in England and Wales*, pp.26-27

⁵ Candidates are regulated from the point at which they officially become a candidate. Prospective candidates officially became candidates on 8 October 2012 if they had announced their intention to stand by then. Alternatively, they would become a candidate either on the day they announced their intention to stand, or the date when they submitted their nomination papers, whichever was the earliest.

⁶ Permissible sources were political parties registered in Great Britain, most UK-registered companies, UK-registered trade unions, UK-registered building societies, UK-registered limited liability partnerships (LLP) that carried on business in the UK, UK-registered friendly societies or UK-based unincorporated associations that carried on business or other activities in the UK.

accompanying documents (for example, invoices and receipts⁷) to the local Police Area Returning Officer (PARO) within 70 days of the declaration of the result. This would have been 24 January 2013 for most candidates, as the majority of results were announced on 16 November 2012. The return had to detail all of the candidate's campaign spending and donations towards the campaign that were over £50 in value. Candidates also had to submit a declaration confirming that the return was accurate.

1.10 PAROs are responsible for making these returns available for public inspection as soon as reasonably practicable after their receipt, and must provide copies of these documents on request for a small fee. When making copies available to members of the public, PAROs must remove the addresses of individuals who have made donations to candidates, and any other personal information on the documents in line with data protection requirements. PAROs must retain these documents for inspection for two years. We discuss the issue of making the returns available for inspection at paragraph 2.13.

1.11 There were also limits on the amount local non-party campaigners could spend campaigning in support of, or against, individual candidates in a specific police force area. A list of these spending limits can be found in Appendix C. We do not regulate these rules, but we may refer a suspected breach to the police or prosecuting authorities for criminal investigation in the same way that any other interested organisation or individual may do.

1.12 As mentioned in our March report on the administration of these polls, we understand that Government had considered including controls on national party and non-party campaigning at this election⁸. However, they decided not to include these controls in the final Order.

⁷ Invoices and receipts only have to be provided for items over £20 in value

⁸ The Electoral Commission, *Police and Crime Commissioner elections in England and Wales*, pp.26-27

2 Candidate spending and donations

2.1 191⁹ candidates stood for election across 41 police force areas in England and Wales. On average, there were five candidates standing for election for each position of Commissioner, although the number varied from area to area. In three areas there were only two candidates¹⁰, while the highest number of candidates standing in an area was 10¹¹.

2.2 As of August 2013 we had received 191 out of 194¹² candidate spending returns from PAROs. The three outstanding returns are for independent candidates who were not elected. We aim to take a proportionate approach to regulation and we took no further action in relation to these candidates. Further information on the submission of returns can be found in the enforcement section on page 14.

2.3 In total, candidates reported a total of £2.1million in regulated spending, an average of £11,220 each. Over 70% (137) of candidates spent under 10% of the spending limit for their police force area, with no candidate spending over half the maximum allowed (Chart 1). The highest amount a candidate spent was £98,751, which was 43% of the spending limit in that police force area¹³. We discuss the level of the candidate spending limits further at paragraph 2.7

2.4 As with most elections, the highest proportion of candidates' spend was on unsolicited materials to voters, such as leaflets, followed by advertising (Chart 2).

2.5 Just under 80% (£1.7million) of all regulated spending at the election was by candidates nominated by a registered political party (Chart 3). These candidates accounted for 73% (139) of those standing for election. Although there was quite a wide range in the amount that individual candidates spent,

⁹ At the close of nominations, 194 people were validly nominated to stand as candidates for the PCC elections. Two candidates withdrew their candidature before the deadline for withdrawal passed and one candidate later declared himself disqualified.

¹⁰ Dyfed-Powys, North Yorkshire and Staffordshire

¹¹ Devon and Cornwall

¹² This accounts for 191 candidates that stood and those that were required to submit a spending return under the rules but either withdrew or were disqualified

¹³ Craig MacKinlay, Conservative Party candidate for Kent

on average party candidates spent just over £2,500 (25%) more than independents.

2.6 Candidates reported a total of £1.7million in donations over £50 toward their campaign spending. This suggests that just over a fifth of all campaign spending was either funded by donations under £50, candidates' own money or loans.

Chart 1 - Candidate spending as a proportion of the limit

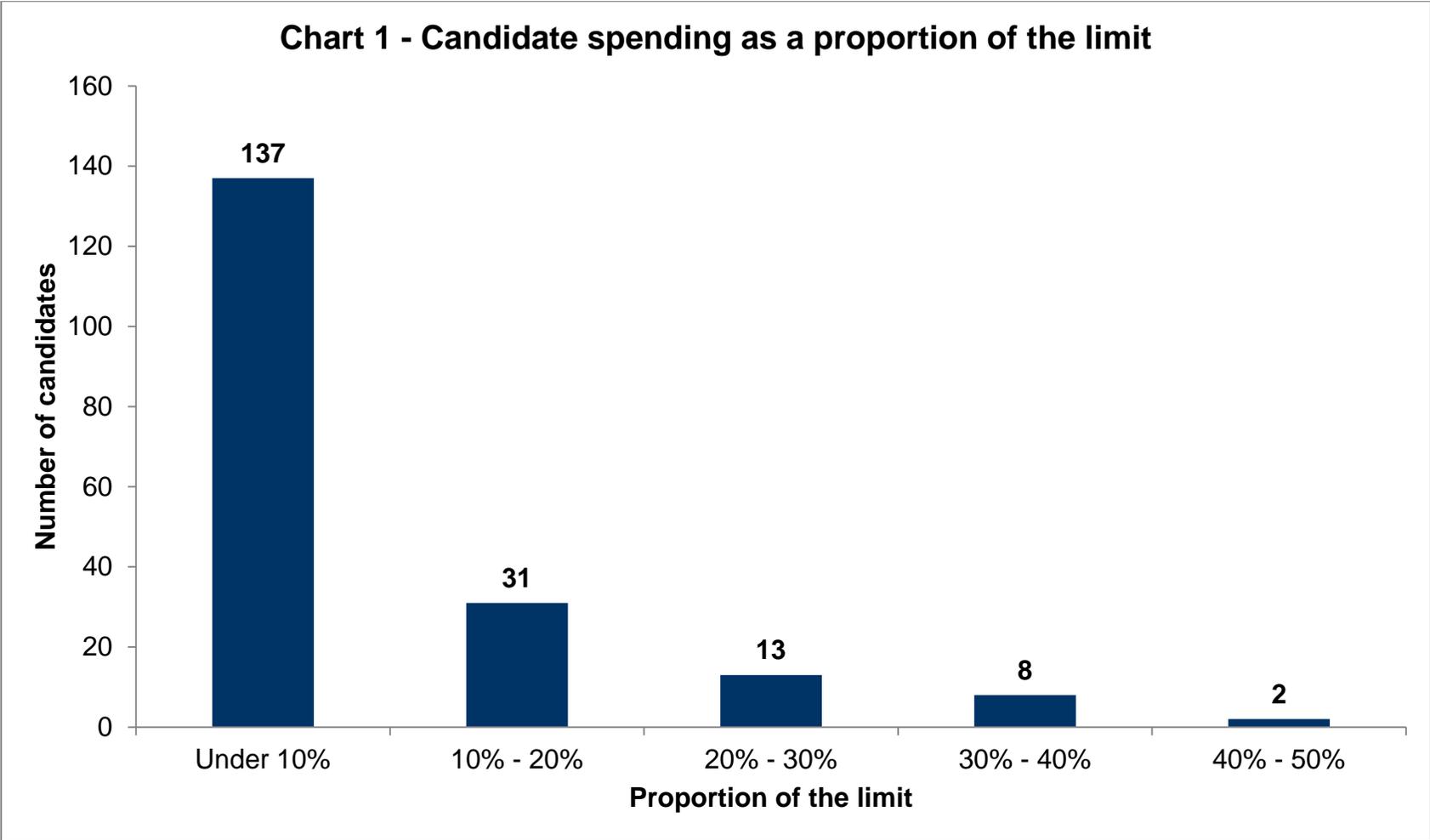
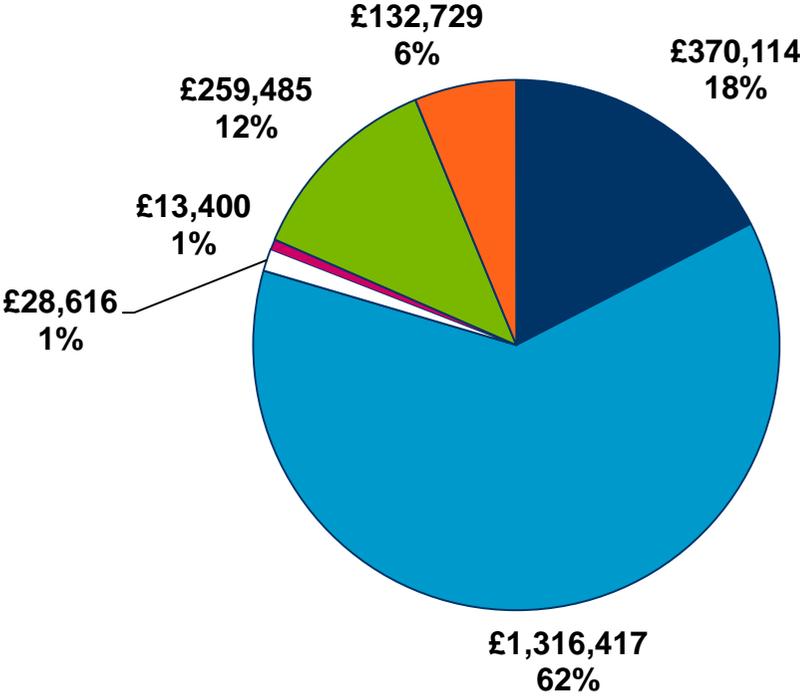
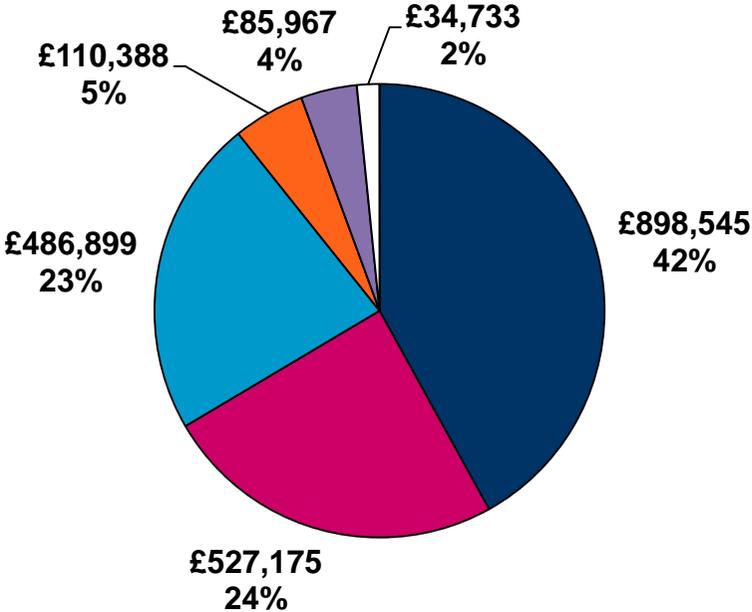


Chart 2 - Candidate spending by category



■ Advertising ■ Unsolicited materials □ Transport ■ Public Meetings ■ Agent and Staff ■ Accommodation

Chart 3 - Candidate spending by political party



■ Conservative and Unionist Party ■ Labour Party ■ Independent
■ Liberal Democrats ■ UK Independence Party (UK I P) □ Other

Spending limits and the scope of the rules

2.7 The Secretary of State has the power to define by Order the rules for the campaigning at PCC elections under the Police Reform and Social Responsibility Act 2011¹⁴. They also have the power to amend the spending limits at these polls under the current elections Order¹⁵. In both instances, they can only change the spending limits for candidates either to take into account inflation or to give effect to a recommendation from the Commission.

2.8 In October 2011 the Home Secretary invited views from the Commission and political parties on the rules on campaigning by candidates, political parties and other campaigners at the 2012 PCC elections¹⁶. This included a range of levels at which to set the spending limit for candidates.

2.9 In our response on 10 November 2011 we recommended that the candidate spending limits for this first set of PCC elections should be at the higher rather than lower end of the range of options being considered. We did this because Government indicated it was not planning to provide candidates with free mailings, which meant candidates would have greater reason to use paid-for mail delivery in order to get their message across to voters. In addition, these were the first set of PCC elections, so there was uncertainty as to the actual level of campaigning that was going to be taking place. In the final Order the UK Government imposed spending limits at the higher end of the range of options under consideration.

2.10 Analysis of the spending returns shows that candidate campaign spending in all police force areas was far lower than the maximum allowed under the current limits. As mentioned in paragraph 2.3, no candidate spent over 50% of the statutory limit in their police force area, with over 70% of candidates spending less than 10% of the statutory maximum. On average candidates only spent £11,220, with three spending over £50,000.

2.11 The evidence from these elections clearly shows that the current limits were much higher than candidates were willing, or able, to spend on campaigning; however, it is too soon for us to recommend a change to the spending limits for the PCC polls in 2016. The next set of PCC elections will take place on the same day as local government and National Assembly for Wales contests. This means there may be higher levels of awareness about the poll, and greater amounts of election campaigning, which could encourage PCC candidates to spend more on getting their message out to voters. In addition, there may be other developments, such as the introduction of printed

¹⁴ Section 58, Police Reform and Social Responsibility Act 2011

¹⁵ Article 36, Police and Crime Commissioner (Elections) Order 2012

¹⁶ The Electoral Commission, *Police and Crime Commissioner elections in England and Wales: Report on the administration of the elections held on 15 November*, p.27

booklets for every household containing election addresses from each candidate, which can have an impact on the likely level of campaign spending.

2.12 To help inform whether we should undertake a review of the spending limits for the 2016 PCC elections, we recommend that the UK Government clearly sets out its assumptions about the scale of campaigning at those elections and its policy intentions in terms of controlling that campaigning by November 2014. This should include details as to whether it intends to introduce printed information for voters about candidates standing for election in their police force area. This would provide us with sufficient time to undertake a review of the current limits and make a recommendation to Government, which can then be brought in for the 2016 polls.

Recommendation 1

We recommend that the UK Government clearly sets out the assumptions and policy intentions that underpin the spending limits for the next PCC elections by November 2014. This will help us assess whether there needs to be a review of the current spending limits, and allow for any recommended changes to be brought into effect for the 2016 polls.

Online publication of candidate returns

2.13 As mentioned in paragraph 1.10, PAROs must make spending returns, declarations and accompanying documents available for inspection as soon as reasonably practicable after their receipt. We noted in our report on the administration of these elections that we had advised PAROs to publish spending returns online. However, after the poll we received representations on behalf of some political parties and candidates raising concerns about this approach¹⁷. We concluded that candidates and administrators had not received sufficient notice of the proposal, and contacted PAROs withdrawing the recommendation.

2.14 As part of our recent review of the UK's party funding laws, we have recommended that the law should be changed to confirm that Returning Officers at elections can publish candidate returns online¹⁸. Due to the size of

¹⁷ The Electoral Commission, *Police and Crime Commissioner elections in England and Wales: Report on the administration of the elections held on 15 November*, p.27

¹⁸ The Electoral Commission, *A regulatory review of the UK's party and election finance laws: Recommendations for change*, Recommendation 35, (June, 2013) pp.62-64
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/155874/P/EF-Regulatory-Review-2013.pdf

police force areas, and the amount of time it could potentially take for someone to go and physically inspect the returns, making the returns available online is particularly important at PCC elections.

2.15 We recognise that as part of any move to online publication we will need to provide guidance and support for Returning Officers, including on data protection issues. We will also have to review the current range of forms used for candidate spending and encourage the use of simpler forms which readers can readily understand. Currently, it can be difficult for readers to understand which information on a spending return is legally required or optional.

Recommendation 2

The rules for the next PCC election should be changed to make it clear that PAROs are able to publish candidate spending returns online.

Other issues

Pre-poll donation reporting

2.16 As mentioned in paragraph 1.9, candidates must account for donations towards their campaign after the election. During the PCC election campaign, a number of candidates – predominantly independents – were the subject of media attention about the sources of their campaign funding. Some of these candidates voluntarily published information prior to the poll about the funding of their campaign. However, the information provided (sometimes indirectly through a third party such as a local newspaper) often contained less detail than in the final return submitted after the election.

2.17 Although we provide advice and guidance on how donations must be reported after the election in order to comply with the law, we do not have an oversight role regarding information released voluntarily. Currently, we do not think it would be proportionate to introduce pre-poll donation reporting for candidates. Doing so would be a significant departure from all other UK elections and place a disproportionate burden on candidates and their agents.

Third party campaigning

2.18 The PCC Order imposed limits on what local non-party campaigners could spend in support of, or against, candidates at these elections. The spending limits cover spending on most campaign activities, including leaflets, meetings and websites. There is no requirement for local campaigners to report on their spending, and the Electoral Commission's statutory remit does not include securing compliance with the rules on local campaigning. The UK government considered imposing controls on national third party spending at these elections but decided not to include such controls in the Order.

2.19 A number of non-party campaigners actively engaged in the PCC elections – nationally and locally. From our monitoring, however, we did not identify any significant expenditure on a national level. As such, we do not see the need to introduce additional controls for future PCC elections that take place outside a period when national controls already apply.

Campaign monitoring

2.20 Our campaign monitoring work during elections and referendums has three purposes:

- Raising awareness of the rules and the need for compliance amongst campaigners
- Obtaining information that we may use when reviewing spending returns; and
- Identifying emerging issues and opportunities for us to offer proactive advice to those we regulate.

2.21 In 2012 we undertook a programme of campaign monitoring for the Police and Crime Commissioner elections. In September 2012 we published a briefing note on our website that outlined our plans for these polls¹⁹. The police force areas we selected for this programme of monitoring were selected in accordance with our risk-based approach to regulation. This is set out in our policy *Prioritising our regulatory activity*²⁰.

2.22 During the campaign, one candidate appeared to be offering members of the public the ability to provide anonymous donations to their campaign. We contacted them to make sure they knew the rules on donation reporting and provided them with a copy of our guidance for candidate and agents.

2.23 The information we collated was compared with a selection of candidate spending returns. This allowed us to assess whether candidates had reported expenditure on campaigning activity that we had recorded during our monitoring work, and any donations that had been reported in the media or by candidates themselves. The checks indicated that monitored activity was recorded in their spending returns.

¹⁹ Campaign monitoring briefing note, www.electoralcommission.org.uk/_data/assets/pdf_file/0013/150502/Briefing-note-campaign-monitoring-Nov-2012.pdf

²⁰ The Electoral Commission, *Prioritising our regulatory activity*, (Updated May 2012) http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/107097/Prioritising-Our-Regulatory-Activity-updated-May-2012.pdf p.14

Enforcement of the rules

2.24 We have the role of monitoring and taking steps we deem appropriate for securing compliance with the rules at these elections. In carrying out this role we have access to supervisory powers, but we do not have investigatory or sanctioning powers in respect of breaches of the rules on candidate spending and donations. We may refer a suspected breach for criminal investigation in the same way that any other interested organisation or individual may do.

2.25 As of August 2013 four regulatory issues had been raised with us that related to potential breaches of the campaigning rules for the PCC elections. Of these, three were closed without further action after an initial assessment either because it was not considered in the public interest to commence a case review or, alternatively or additionally, because we did not consider that the allegation or information disclosed a breach of the rules.

2.26 The final regulatory issue to date related to an alleged unreported donation to a prospective candidate at this election. Following a case review we were satisfied that no reportable donation had been received and we closed the case with a finding of no breach. Information about this case is published on our website²¹, in accordance with our disclosure policy.

2.27 In addition to the four issues noted above, we were aware of three candidates who failed to deliver a spending return following the election. In all three cases the candidates were unsuccessful and there was no evidence of significant spending. On that basis we did not consider it in the public interest to take any further action or to refer the candidates to the police.

2.28 If we carry out any further enforcement work in connection with potential breaches of the rules at these elections, we will publish information about these in due course in accordance with our disclosure policy²².

²¹ The Electoral Commission website, *Enforcement*, <http://www.electoralcommission.org.uk/party-finance/enforcement>

²² The Electoral Commission, *Disclosure Policy – Enforcement Casework*, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/150268/Our-Enforcement-casework-disclosure-policy.pdf

Appendix A – List of recommendations

Recommendation 1

We recommend that the UK Government clearly sets out the assumptions and policy intentions that underpin the spending limits for the next PCC elections by November 2014. This will help us assess whether there needs to be a review of the current spending limits, and allow for any recommended changes to be brought into effect for the 2016 polls.

Recommendation 2

The rules for the next PCC election should be changed to make it clear that PAROs are able to publish candidate spending returns online.

Appendix B – Constituencies and spending limits

Police force area	Maximum amount
Avon and Somerset	£222,851
Bedfordshire	£83,681
Cambridgeshire	£108,754
Cheshire	£142,720
Cleveland	£76,889
Cumbria	£72,231
Derbyshire	£141,933
Devon and Cornwall	£233,281
Dorset	£106,888
Durham	£89,055
Dyfed-Powys	£72,622
Essex	£234,412
Gloucestershire	£86,344
Greater Manchester	£356,204
Gwent	£78,422
Hampshire	£260,591
Hertfordshire	£151,378
Humberside	£126,520
Kent	£228,338
Lancashire	£201,729
Leicestershire	£140,496
Lincolnshire	£99,900
Merseyside	£182,529
Norfolk	£120,662
North Wales	£95,241
North Yorkshire	£111,814
Northamptonshire	£95,663
Northumbria	£195,548
Nottinghamshire	£146,305
South Wales	£174,179
South Yorkshire	£178,637
Staffordshire	£153,313
Suffolk	£100,698
Surrey	£154,401
Sussex	£219,983
Thames Valley	£303,303
Warwickshire	£76,476
West Mercia	£168,735
West Midlands	£357,435
West Yorkshire	£287,255
Wiltshire	£93,682

Appendix C – Local non-party spending limits

Police force area	Maximum amount
Avon and Somerset	£6,278
Bedfordshire	£2,347
Cambridgeshire	£3,055
Cheshire	£4,015
Cleveland	£2,155
Cumbria	£2,024
Derbyshire	£3,993
Devon and Cornwall	£6,573
Dorset	£3,003
Durham	£2,499
Dyfed-Powys	£2,035
Essex	£6,605
Gloucestershire	£2,422
Greater Manchester	£10,046
Gwent	£2,199
Hampshire	£7,345
Hertfordshire	£4,260
Humberside	£3,557
Kent	£6,433
Lancashire	£5,682
Leicestershire	£3,952
Lincolnshire	£2,805
Merseyside	£5,139
Norfolk	£3,392
North Wales	£2,674
North Yorkshire	£3,142
Northamptonshire	£2,686
Northumbria	£5,507
Nottinghamshire	£4,116
South Wales	£4,904
South Yorkshire	£5,030
Staffordshire	£4,314
Suffolk	£2,828
Surrey	£4,345
Sussex	£6,197
Thames Valley	£8,551
Warwickshire	£2,144
West Mercia	£4,750
West Midlands	£10,080
West Yorkshire	£8,098
Wiltshire	£2,630

Appendix D – Campaign monitoring areas

Police force area
Avon and Somerset
Greater Manchester
Gwent
Humberside
Kent
Norfolk
Northamptonshire
South Wales
South Yorkshire
Sussex
Thames Valley
West Midlands
West Yorkshire