

From: FOI
Sent: 06 February 2017 17:01
To: [REDACTED]
Subject: FOI 04/17 - Status of 'Deception'

Dear [REDACTED],

Our Ref: FOI 04/17

Thank you for your request under the Freedom of Information Act 2000 dated **08 January 2017** received by the Commission on **09 January 2017**.

The Commission aims to respond to requests for information promptly and **has done so within the statutory timeframe of twenty working days**.

Your request is in bold below followed by our response.

You have requested:

Over the past several months I have had an email conversation with James Douglas, your Financial Reporting Officer. It was explained that the Electoral Commission regularly gains experience and receives feedback from stakeholders which leads to Dos & Don'ts guidance notes for campaigners to evolve.

Two references:

- **Campaign Dos and Don'ts, Scottish Independence Referendum (Sep 2014)**
- **Campaign Dos and Don'ts, EU Referendum (2015)**

One particular change between the two references is that until 2014, "deception to persuade electors to vote for an outcome" was considered an electoral offence, while since 2015, it no longer is an electoral offence. I have attached the correspondence with James.

I would like to understand which specific experience or feedback has led to this change. As per the Freedom of Information Act, I am requesting you the following information:

In case of experience gained

- **which events have been considered relevant?**
- **what was their relevance to justify the change?**

In case of feedback received

- **whom was the feedback received from and when?**
- **what reasons were given to justify the change?**

Our response is as follows:

The two 'Campaign Dos and Don'ts' guidance documents you refer to were separate guidance documents which were drafted based on the specific legislation for each poll. The version used for the referendum on the UK's membership of the European Union was not based on that used at the Scottish Independence referendum - it was a

new document based on the legislation that specifically governed the conduct of the EU referendum.

Please note that the Commission does not decide what is or isn't an electoral offence. The rules for the Scottish Independence referendum and for the referendum on the UK's membership of the European Union, including what constitutes an electoral offence, were set by the Scottish Parliament and UK Parliament respectively.

The police, in conjunction with the Crown Prosecution Service (the Crown Office and Procurator Fiscal in Scotland), are the bodies responsible for carrying out investigations of allegations of electoral fraud. The determination of whether an electoral offence has been committed rests with the courts.



Our role is to provide guidance on the rules put in place for electoral events. Our guidance, including the Campaign Dos and Don'ts, is based on the relevant legislation. Given that 'deception' wasn't an explicit offence set out in the European Union Referendum (Conduct) Regulations 2016, we did not list it as an offence in our guidance. There was no deliberate move away or evolution in the wording used at the Scottish Independence referendum, compared to the one used at the EU referendum. As such, we do not hold any records explaining the particular choice of wording. It simply reflects our attempt to convey the wording of the legislation in an accessible way. However, it is important to stress that nothing in our guidance supersedes the legislation, and any determination of whether an electoral offence has been committed rests with the courts.

I trust that this information satisfies your request.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at:
www.electoralcommission.org.uk

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website:
<http://www.ico.gov.uk>

Yours sincerely


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