

The  
Electoral  
Commission

# The 2016 EU referendum



Report on the regulation of  
campaigners at the referendum on the  
UK's membership of the European  
Union held on 23 June 2016

March 2017

Translations and other formats

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We are an independent body set up by the UK Parliament. We regulate party and election finance and set standards for well-run elections. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

# Contents

Foreword	2
Summary and recommendations	4
1. Funding the campaigns and campaign spending	11
Legislation	11
Regulatory framework	11
Key facts and figures	13
• Total donations to all campaigners (excluding political parties)	15
• Total loans to all campaigners (excluding political parties)	15
• Donations by donor type (excluding political parties)	16
• Total spending by campaigners against the combined limits	17
• Spending by designated lead campaigners and political parties	18
2. Regulation and enforcement	19
Advice	20
Regulatory interventions during the campaign	20
3. Lessons for future referendums	25
Campaign funding	25
Regulating loans	25
Permissible donors and lenders	26
Grant available to lead campaigners	30
Campaign spending	32
Spending limits	32
Staff costs	34
Regulating campaigners that incur joint spending	36
Imprints on electronic material	40
Social media	41
Regulating the accuracy and truthfulness of campaign material	42
Government spending	43
Process for late claims and payments	44
Reporting	45
Pre-poll reporting of donations and loans	45
Reporting low level spending	47
Reporting pre-registration regulated expenditure	49
Return declarations	50
Length of time to submit post-referendum returns	50
Enforcing the rules	51
Electoral Commission's maximum fines	51

# Foreword

A defining characteristic of the referendum on the UK's membership of the European Union was the plurality of voices in the debate, as evidenced by the record number of campaigners who registered with the Electoral Commission.

Healthy political debate must be underpinned by a robust regulatory regime. Such a regime should secure compliance with a common set of rules for all campaigners, allow diverse and sufficient funding of participants, without undue dominance of money, and secure transparency for voters. The Commission took a proactive approach to its regulatory role for the referendum; both before and during the period in which controls applied, Commission staff worked with registered campaigners and other interested people and organisations to ensure they understood the rules and to monitor campaign activity. This report provides an overview of this process, and of the Commission's recommendations for future improvements to the system governing referendums.

Overall, the financial controls that were in place for the referendum worked well, including important changes recommended by the Commission which were incorporated into the final legislation by the UK Government and Parliament. While the inclusion in this specific legislation of lessons learnt from previous referendums was an important step, these reforms should also be incorporated into the Political Parties, Elections and Referendums Act (PPERA) 2000, which provides the fundamental framework for future UK wide referendums. This point was raised in the Commission's first report on the referendum, published in September 2016. The analysis detailed in this report supports that conclusion.

Funding is of course integral to any campaign, as participants must have sufficient resources to be able to present their arguments to voters; however, it is equally important that all funding is in compliance with the principles which underpin the PERA regime. That is why the Commission has made several recommendations in this report about ensuring fairness and consistency in the controls on permissible funds. For example, the absence of loan controls in PERA referendums is a significant gap which should be remedied by the UK Government.

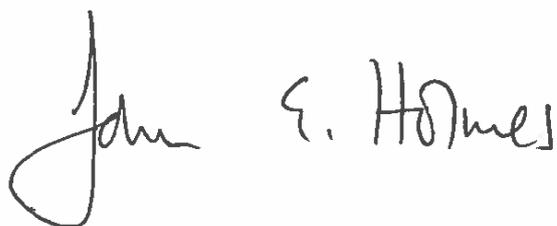
Campaign spending – including spending limits – is the focus of significant scrutiny by many. It is for Parliament to consider the most appropriate level at which spending thresholds should be set; however, given the changes in modern campaigning and the experiences of the lead campaigners at this referendum, it is our view that it would be valuable for policy-makers to undertake such a review in the context of future referendums. At the same time, Parliament should consider the joint spending controls which were incorporated into the legislation for this referendum; we are of the view that these additional controls, although welcome, must be clarified before being incorporated into PERA. We would further welcome legislative change to close the gap in a large strand of election and referendum campaign

spending, whereby campaign-related staff costs do not have to be included in the limits on referendum campaign spending.

We also recommend that provisions for campaign reporting in operation at the EU Referendum should be integrated into PPERA. Pre-poll reporting of donations and loans by campaigners was successfully applied in the periods before both the EU and Scottish independence referendums. On both occasions, voters could see the sources of funds to campaigners during the regulated period and before they cast their vote, thus reinforcing the practical value of transparency. Another contributor to transparency is the registration of campaigners, which bestows a number of responsibilities on campaigners. To remove an incentive for campaigners to register later to avoid full transparency, this report recommends that campaigners should be required to submit an itemisation of their spending incurred before registering with the Commission, in their final spending return.

A robust regulatory regime should aim to promote fairness and transparency, and reduce opportunities for circumventing these fundamental principles; part of this relies on the effective deterrent of proportionate sanctions. Currently, the Commission is only able to levy a maximum fine of £20,000. This limit should be reviewed and increased to ensure proportionality with the sums that are being raised and spent in UK-wide referendums.

As the regulator in this area, the Commission is uniquely placed to provide direction on how the regulatory framework can stay effective, relevant and proportionate. The incorporation of the recommendations made in this report, along with those made in September 2016, would serve to reinforce our system of regulation and to ensure it is fit for the delivery of future referendums.

A handwritten signature in black ink that reads "John S. Holmes". The signature is written in a cursive style with a large, looped initial 'J'.

**Sir John Holmes, Chair of the Electoral Commission**

# Summary and recommendations

## About the referendum

Our first report on the EU referendum, published in September 2016<sup>1</sup>, focused on the administration of the referendum, including the experience of voters and campaigners, the management and delivery of the poll, the regulation of campaigners at the referendum and the provision of information for voters.

This second report includes information on the use of our investigatory and sanctioning powers and analyses the funding and spending of those people and organisations that registered to campaign. Where appropriate, we make recommendations to inform the regulation of future referendums based on the information campaigners were required to submit in their spending and donation returns.<sup>2</sup>

## Funding the campaigns and campaign spending

After the EU referendum, registered campaigners were required to submit a campaign spending and donation return to the Commission. The returns included details of the spending that the campaigners incurred campaigning at the referendum and all donations and loans they accepted over £7,500. Campaigners were also required to provide a total figure of any donations and loans of £7,500 or below, but over £500. Anything with a value of £500 or less was not counted as a donation or loan for the purpose of the referendum rules.

Campaigners that are registered political parties were required to submit details of the spending they incurred campaigning at the referendum. They were not, however, required to report donations or loans towards that spending during or after the referendum (unless they are minor parties). The regulatory rules on political parties ensure there are controls on the sources of their funding and transparency of where that funding has come from.<sup>3</sup>

The data in this report is taken from the statutory returns submitted by campaigners on the 23 September 2016 and 23 December 2016. Any changes in the campaign finance data resulting from our on-going compliance work will be available on our website.

In summary:

- 123 campaigners registered with the Commission from 1 February 2016 - 63 indicating they supported 'Remain' and 60 supporting the 'Leave'

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<sup>1</sup> [The Electoral Commission, \*The 2016 EU referendum - Report on the 23 June 2016 referendum on the UK's membership of the European Union \(September 2016\)\*](#).

<sup>2</sup> Further background information on the EU referendum is contained in our first report.

<sup>3</sup> [Information on the donations and loans made to political parties](#) is available on our website.

side. Appendix 1 provides a list of the campaigners that registered for each outcome.

- Registered campaigners reported spending a total of £32,642,158 campaigning at the EU referendum and reported having accepted donations totalling £30,714,106 and loans of £6,071,940.
- Campaigners that registered to campaign for the UK to remain in the EU reported spending £19,309,588.
- Campaigners that registered to campaign for the UK to leave the EU reported spending £13,332,569.
- The two designated lead campaigners reported total spending of £13,510,049 - The In Campaign Ltd reported spending £6,767,584; and Vote Leave Ltd reported spending £6,742,466.
- Political parties that registered to campaign at the EU referendum reported spending of £9,030,300.
- 58 other registered campaigners reported spending of £10,101,809.<sup>4</sup>
- Out of total reported donations of £30,714,106, the reported donations to those that registered to campaign for the 'Leave' outcome amount to £15,854,432 and for the 'Remain' outcome to £14,859,674; 52% and 48% of total reported donations respectively.

More information on campaign funding and spending of the registered campaigners at the EU referendum can be found on our website.<sup>5</sup> Our website also contains charts that allow users to analyse the data.<sup>6</sup>

## Regulation and enforcement

Our regulatory activity during the referendum campaign was aimed at preventing breaches of the campaign spending rules before they occurred. To do this we used a range of regulatory tools, including the provision of an advice service for campaigners and the public as well as monitoring the campaigns to identify and engage with activity that risked breaking the rules.

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<sup>4</sup> A further 48 campaigners submitted either 'nil' or declarations of spending below the registration threshold, including 10 other political parties. 7 campaigners failed to submit returns and are the subject of enforcement activity.

<sup>5</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

<sup>6</sup> The data in this report is accurate at the time of publication. However, depending on the specific filters users apply, the results produced following analysis of the data on our website may not always match the figures in this report. Additional or substituted data may also be included on our website following the outcome of our compliance activity.

Where appropriate, proportionate and necessary, we took regulatory or enforcement action including investigations leading to sanctions. Further details are given in Chapter 2. We are confident that our regulatory activity during the campaign prevented major breaches of the rules. We are, however, considering a number of issues under our Enforcement Policy<sup>7</sup> following an initial inspection of the spending and donation returns submitted by campaigners.

## Lessons for future referendums

As had been the case at previous referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA), a number of changes and improvements were made to the regulatory controls specifically for the EU referendum. These changes were made by Parliament through the specific EU Referendum Act 2016 and associated secondary legislation, rather than updating the standard referendum rules set out in PERA. This means that those changes will not apply for future referendums, unless they are again included in the specific referendum legislation.

Overall, the financial controls that applied at the EU referendum worked well and improved on the rules that applied at previous referendums. We did, however, make a number of recommendations intended to improve the regulation and reduce the burdens on campaigners at future referendums in our first report published in September 2016.

We have identified further lessons that can be learnt from the information campaigners were required to submit in their spending and donation returns to further refine the legal framework in relation to campaign funding, spending and reporting. These include important recommendations to increase transparency during the months before the referendum by providing that pre-poll reporting should apply at all future referendums in the UK, and to help ensure the integrity and effectiveness of the referendum spending rules by clarifying the controls that apply when campaigners incur joint spending. Our ongoing compliance activity may also result in lessons for future financial regulation.

We have also restated a number of our previous recommendations. These include that the statutory restrictions on the publication of promotional material by Governments and other publicly funded bodies should be significantly redrafted before any future referendum, and that campaign-related staff costs should be included in the limits on political party election and referendum campaign spending.

We have provided below an overview of all the recommendations made in this report, which build on the 15 recommendations made in our first report (these are also repeated here, in appendix 2). Where appropriate, we recommend that certain changes should be incorporated into PERA so that they apply for all future referendums.

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<sup>7</sup> [The Electoral Commission, \*Enforcement Policy\* \(Effective 5 April 2016\).](#)

# Recommendations for future referendums

## Campaign funding

### **Recommendation 1: Loan controls should be incorporated into PPERA.**

The absence of loan controls in the PPERA referendum rules is a significant gap in the regulation of referendums. The UK Government should bring forward the relevant secondary legislation to introduce loan controls at all future referendums held under the PPERA framework.

### **Recommendation 2: The individuals and bodies eligible to register to campaign at referendums should be the same as the eligible non-party campaigners at elections. The ability of the additional eligible campaigners to donate and lend to other referendum campaigners should also be considered.**

The list of individuals and bodies eligible to register as a referendum campaigner should be realigned with the list of eligible registered non-party campaigners under PPERA.

The ability of the additional eligible campaigners to donate and lend to other referendum campaigners should also be considered. It will be important that any changes to the categories of permissible donors and lenders are clearly defined, particularly in relation to political parties that register to campaign at a referendum.

### **Recommendation 3: The Government and Parliament should re-visit the permissibility controls on companies.**

In light of the fact that the PPERA permissibility controls on companies do not fully reflect the recommendations from the Committee on Standards in Public Life, and the implications of the current company permissibility test highlighted by our investigations, the Government and, in due course, Parliament should re-visit the issue of the permissibility controls on companies to ensure that they meet the underlying policy intention of preventing donations and loans from foreign companies.

### **Recommendation 4: The Commission's ability to pay the lead campaigner grant in instalments should be incorporated into PPERA.**

In order to safeguard public money and to ensure efficient administration of the grant, the Commission's ability to pay the grant available to lead campaigners in instalments should be incorporated into PPERA so that it applies for all future referendums.

## Campaign spending

**Recommendation 5: The Government and Parliament should take into account the evidence from the EU referendum when considering whether the PPERA referendum spending limits remain appropriate.**

The Commission does not have a specific statutory role in advising on spending limits at UK-wide referendums held under PPERA. It is nevertheless important that the Government and Parliament take into account the evidence from the EU referendum when considering whether the PPERA referendum spending limits, including the registration threshold, remain appropriate in the context of any future UK-wide referendum.

**Recommendation 6: Campaign-related staff costs should be included in the limits on political party election and referendum campaign spending.**

To provide consistency between the controls on referendum campaigners, party campaign staff, candidates and non-party campaigners, as well as close a gap in a large strand of election and referendum campaign spending, campaign-related staff costs should be included in the limits on political party election and referendum campaign spending.

**Recommendation 7: Joint spending controls should be incorporated into PPERA.**

To help ensure the integrity and effectiveness of the referendum spending rules, appropriate controls should be incorporated into PPERA to regulate campaigners that engage in joint spending so that they apply for all future referendums. To improve transparency and enforceability, the controls should include a requirement that campaigners must include the names of those they worked with and how much they each spent in their post-referendum spending return.

To reduce complexity and allow the Commission to provide clearer advice and guidance to campaigners, the Government and Parliament should clarify what constitutes joint spending for the purposes of regulating referendum campaign expenditure. This should specifically include:

- Making clear the scope of the legal term ‘a plan or other arrangement’
- Defining what is meant by the fact that referendum expenses must be incurred ‘by or on behalf of’ those involved in the joint spending, and
- Exploring whether or not the joint spending rules should explicitly say that regulated expenses should be incurred by every party involved, in order for those rules to apply.

In addition to the above clarifications, when the joint spending controls are incorporated into PPERA, the Commission should be given a Statutory Code-making power to enable us to clarify any further matters should they arise in the future.

**Recommendation 8: An appropriate level of imprint information should be required on online and electronic referendum campaign material.**

To ensure that campaigners' identity is clear to voters, an appropriate level of imprint information should be required on online and electronic referendum campaign material. However, before applying such requirements, the Government and Parliament should give careful consideration to the lessons learnt from the drafting and practical application of the imprint rules in the Scottish Independence Referendum Act 2013. We would welcome the opportunity to work with the Government on this.

## Reporting

**Recommendation 9: Pre-poll reporting requirements should be incorporated into PPERA so they apply for all future referendums.**

To increase transparency during the months before the referendum poll and help encourage campaigners to ensure that they only accept donations from permissible sources, pre-poll reporting requirements should be incorporated into PPERA so they apply for all future referendums.

If the referendum legislation is passed but does not immediately come into force, the legislation should provide for the pre-poll reporting requirement to commence as early as possible.

**Recommendation 10: Campaigners that incur low levels of spending should only be required to submit a 'nil return' or declare the amount of spending incurred if below the registration threshold.**

To provide an appropriate balance between reducing the administrative burdens on campaigners that registered but only incurred low levels of spending, and providing transparency to campaign spending:

- The requirements for registered campaigners to submit a 'nil return' or a declaration that they have spent less than the relevant registration threshold, rather than complete a full spending return, should be incorporated into PPERA so they apply for all future referendums.
- Where a campaigner submits a declaration that they have spent less than the relevant registration threshold, they should be required to provide a figure of the total regulated spending incurred.

**Recommendation 11: Campaigners should be required to include itemised information for pre-registration spending in their return.**

To improve transparency and reduce a potential incentive to delay registration, registered campaigners that submit a full spending return should be required to include itemised information for all regulated expenditure, including spending incurred before a campaigner registers with the Commission.

**Recommendation 12: The return declaration requirements in the EU Referendum Act 2015 should be incorporated into PPERA.**

To enable campaigners to sign truthfully the return declaration when they have accepted an impermissible donation, the return declaration requirements in the EU Referendum Act 2015 should be incorporated into PPERA so they apply for all future referendums.

## Enforcing the rules

**Recommendation 13: The Commission's current fine limit should be reviewed and increased.**

To ensure that our sanctioning regime provides a strong deterrent to non-compliance, our sanction limit of £20,000 should be reviewed and increased to a level that would act as a suitable deterrent reflecting the level of fines available to other commensurate statutory regulators and financial regulation regimes.

# 1 Campaign funding and spending

## Legislation

1.1 The legal framework for referendums held under legislation enacted by the UK Parliament is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). That legislation gives the Electoral Commission specific roles in referendums and creates a framework for how referendums are run and regulated. However, before any referendum can take place, specific additional legislation is needed, covering not only important points such as the date of the referendum and the referendum question, but also all the detailed rules for running the referendum and the regulatory rules that apply.

1.2 The European Union Referendum Bill was introduced to Parliament on 28 May 2015 and received Royal Assent on 17 December 2015. However, the Act's substantive provisions were not commenced at Royal Assent. At that time, it was unclear when the legislation would be commenced as several pieces of secondary legislation were required to be laid, debated and approved by Parliament before the referendum could take place. We highlighted the planning uncertainty of not knowing the date of the referendum and the significance of regulations that were still to be made, including the date of poll and the start of the designation period in our first report.<sup>8</sup>

## Regulatory framework

### Campaign funding

1.3 From 1 February 2016 until the date of the poll registered campaigners were required to record donations they received and loans they entered into that were over £500 that they intended to put towards referendum campaign spending. Anything with a value of £500 or less was not counted as a donation or loan for the purpose of the referendum rules.

1.4 Donations are money, goods or services which are given towards a campaigner's spending without charge or on non-commercial terms. Loans include loans of money, credit facilities, such as credit cards and overdrafts, and securities or guarantees for a campaigner's obligations.

1.5 Referendum spending is regulated if it is incurred on certain activities that are intended to, or otherwise in connection with, promoting or procuring a particular outcome in the referendum. That spending then counts towards the £10,000 registration threshold and a campaigner's spending limit. It includes items or services given to campaigners free of charge or at a non-commercial discount of more than 10%. However, volunteer time, certain staff costs,

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<sup>8</sup> [The Electoral Commission, \*The 2016 EU referendum - Report on the 23 June 2016 referendum on the UK's membership of the European Union\* \(September 2016\).](#)

people's travel, food and accommodation costs which are not reimbursed while they campaign, expenses met out of public funds, and expenses in respect of publication in a newspaper, periodical, and certain broadcasts do not count as referendum spending.

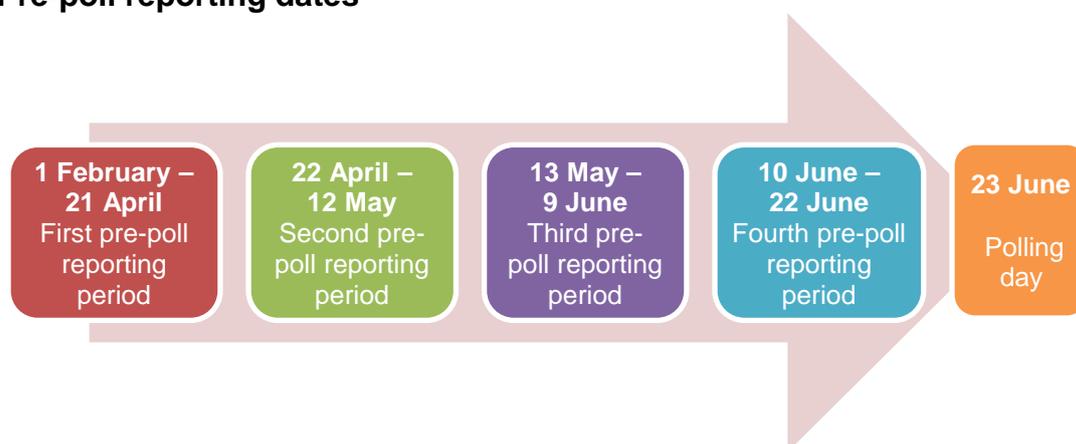
1.6 The spending limits for UK-wide referendums are set out in PPERA. For registered campaigners that are also registered political parties, varying levels are set according to the percentage share of the vote that the party received at the last Parliamentary general election. The legislation for the EU referendum increased the PPERA spending limits (which were set in 2000) to take account of inflation.

### Reporting funding and spending

1.7 During the referendum period (15 April to 23 June 2016), registered campaigners had to submit 'pre-poll reports' detailing the donations they had received and loans they had entered into that were over £7,500.<sup>9</sup>

1.8 Registered campaigners had to submit their first pre-poll report at the end of the reporting period during which they registered. The first report was required to contain all the donations received and loans taken out over £7,500 back to commencement of the EU Referendum Act on 1 February 2016. This included donations received and loans entered into both before and after the campaigner registered, and both before and after the referendum period began, provided they were given for the purposes of referendum campaigning. We published the pre-poll returns submitted for each reporting period on 11 May, 26 May, 21 June and 6 July respectively.<sup>10</sup>

### Pre-poll reporting dates



1.9 After the referendum, registered campaigners were required to submit a spending return which included details of all accepted donations and loans over £7,500 together with details of impermissible donations and loans. They

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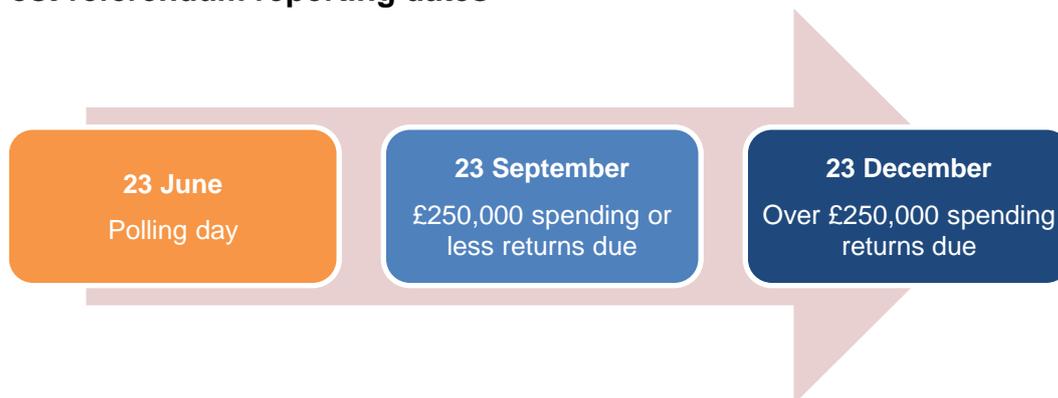
<sup>9</sup> Campaigners are required to report all donations and loans over £7,500 received in their pre-poll reports, irrespective of whether those funds are accepted as being from a permissible donor / lender. Accepted donations over £7,500 are reported after the referendum. This did not apply to registered campaigners which were also political parties.

<sup>10</sup> [Details of campaigners' pre-poll reporting](#) are available on our website.

were also required to report the total value of all accepted donations and loans that were worth more than £500 and less than or equal to £7,500.

1.10 The post-referendum returns were submitted by 23 September 2016 for campaigners that spent £250,000 or less and 23 December 2016 for those that spent over £250,000. We published the returns on 29 November 2017 and 24 February 2017 respectively.<sup>11</sup>

### Post-referendum reporting dates



1.11 Campaigners that are registered political parties were required to submit details of the spending they incurred campaigning during the referendum period (15 April to 23 June 2016); they were not, however, required to report donations or loans towards that spending during or after the referendum (unless they are minor parties). This is because registered political parties are already required under PPERA to submit quarterly reports setting out the sources of their funding. Whilst the parties' quarterly reports do not contain specific details about which donations or loans were used for the EU referendum campaign, the general regulatory rules on political parties ensure that there are controls on the sources of their funding and transparency of where that funding has come from.<sup>12</sup>

## Key facts and figures

1.12 The remainder of this chapter sets out some of the key facts and figures about the money campaigners accepted to fund their campaigners and the spending they incurred campaigning.<sup>13</sup>

1.13 More information about campaigners' funding and spending is available on our website. Our website also contains charts that allow users to analyse the data campaigners reported to the Commission.

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<sup>11</sup> [Details of campaigners' post-poll returns are available on our website.](#)

<sup>12</sup> [Information on the donations and loans made to political parties](#) is available on our website.

<sup>13</sup> The data in this report is taken from the statutory returns submitted by campaigners on the 23 September 2016 and 23 December 2016. [Any changes in the campaign finance data resulting from our compliance work will be available on our website.](#)

## Summary

1.14 In total, registered campaigners reported spending £32,642,158 campaigning at the EU referendum, and registered campaigners, excluding political parties, accepted donations totalling £30,714,106 towards their referendum campaigns.

**Table 1: Summary of registered campaigner spending and donations**

<b>Campaigner<sup>14</sup></b>	<b>Limit</b>	<b>Spending</b>	<b>Donations<sup>15</sup></b>
The In Campaign Ltd	£7,000,000	£6,767,584	£12,119,050
Vote Leave Ltd	£7,000,000	£6,742,466	£9,858,149
Labour Party	£5,500,000	£4,859,243	-
UK Independence Party	£4,000,000	£1,354,393	-
Liberal Democrats	£3,000,000	£2,223,901	-
Democratic Unionist Party	£700,000	£425,622	-
Green Party	£700,000	£48,815	-
Plaid Cymru	£700,000	£27,495	-
Scottish National Party	£700,000	£90,830	-
Combined totals of 58 other registered campaigners <sup>16</sup>	£40,600,000	£10,101,809	£8,736,907
<b>Total</b>	<b>£69,900,000</b>	<b>£32,642,158</b>	<b>£30,714,106</b>

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<sup>14</sup> The Conservative and Unionist Party did not register as a referendum campaigner. Unregistered campaigners could only spend up to the registration threshold of £10,000.

<sup>15</sup> Registered political parties were not required to report donations and loans towards their referendum campaign spending. Totals excluding donations between £500-£7,500.

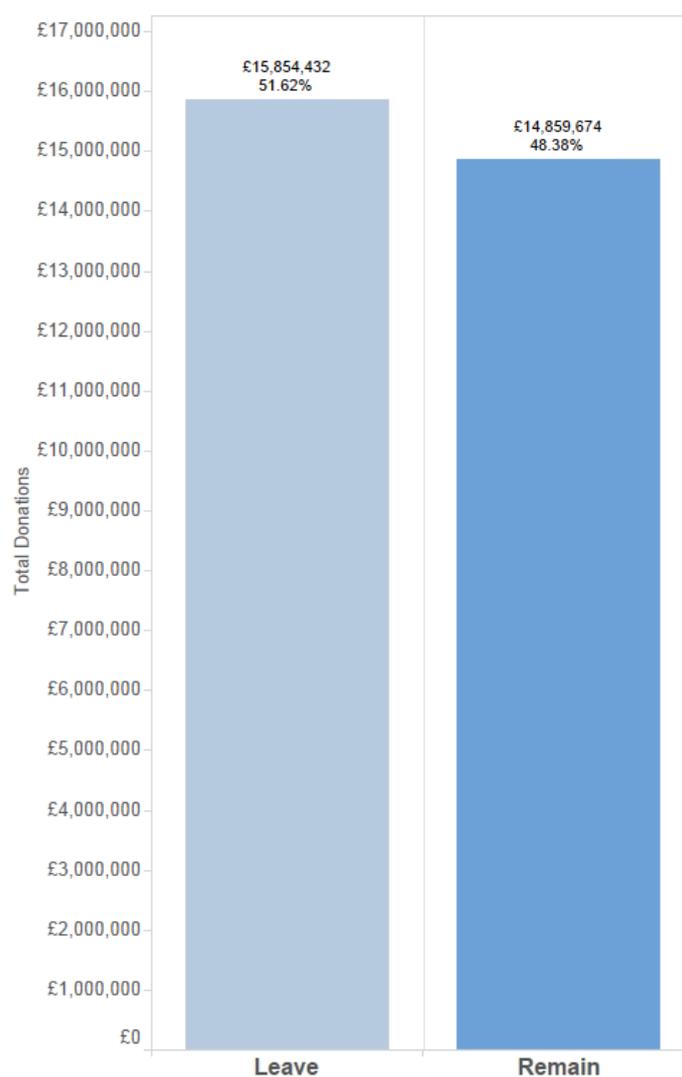
<sup>16</sup> A further 48 campaigners submitted either 'nil' or declarations of spending below the registration threshold, including 10 other political parties. 7 campaigners failed to submit returns and are the subject of enforcement activity.

## Campaign funding

### Chart 1: Total donations to all campaigners (excluding political parties)

1.15 The chart below sets out the total donations accepted by 'Remain' and 'Leave' campaigners after they registered with the Commission.

1.16 Out of total reported donations of £30,714,106, the reported donations to those that registered to campaign for the 'Leave' outcome amount to £15,854,432 and for the 'Remain' outcome to £14,859,674; 52% and 48% of total reported donations respectively.



### Total loans to all campaigners (excluding political parties)

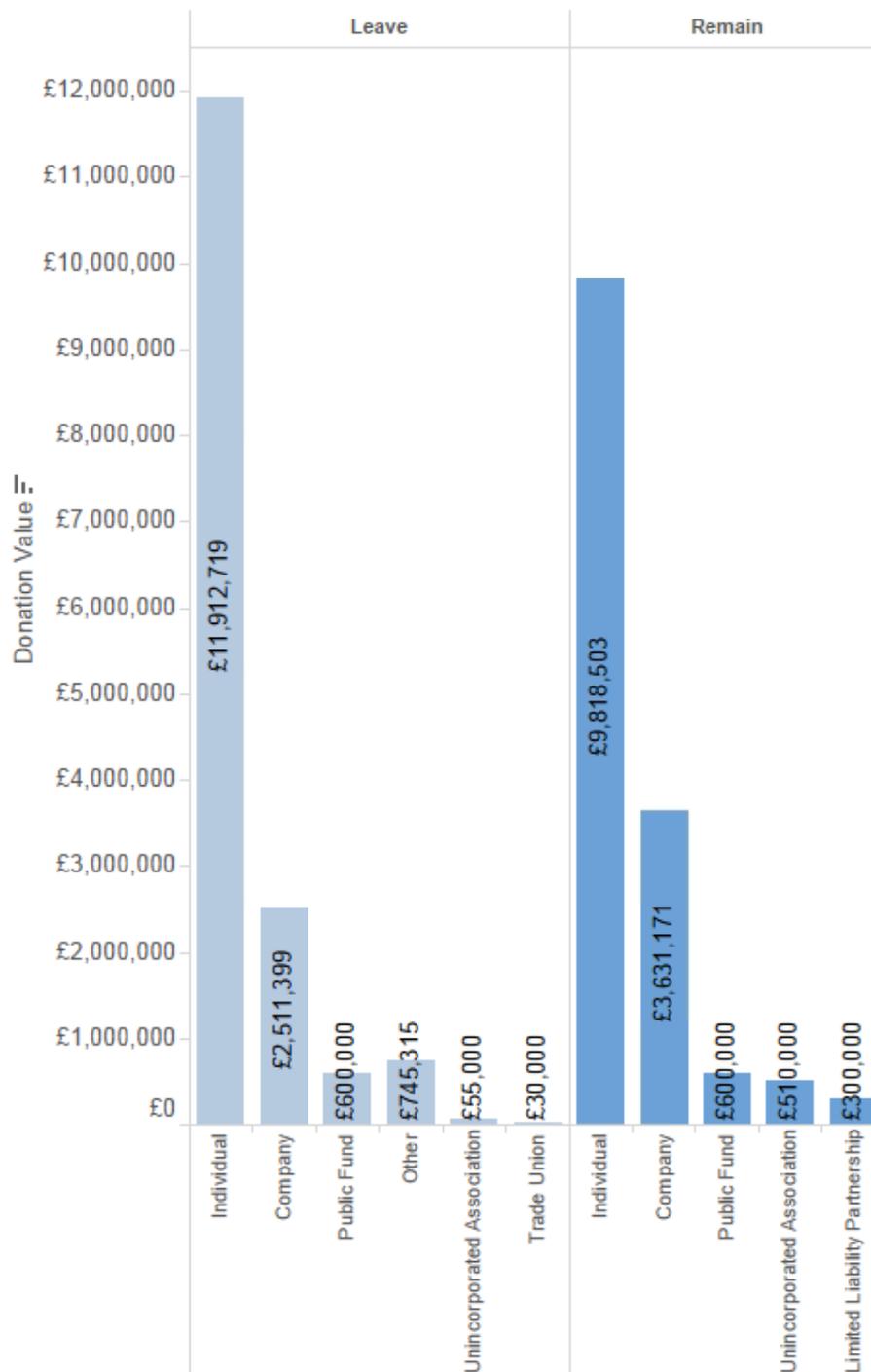
1.17 The total amount of loans reported by campaigners at the EU referendum was £6,071,940; £43,940 to 'Remain' campaigners and £6,028,000 to 'Leave'. Loans represented 20% of total campaigner income.

1.18 The substantive difference between the loans reported by 'Remain' and 'Leave' campaigners is made up from four loans from Mr Arron Banks to Leave.EU Group Ltd, totalling £6m.

## Chart 2: Donations by donor type (excluding political parties)

1.19 The chart below provides an illustration of the types of donor and the amounts and number of reported donations that were accepted by those campaigning for each outcome.

1.20 The majority of reported donations for those campaigning on both sides of the debate came from donations from individuals. The majority of the other reported donations for both sides came from companies.



## Campaign spending

This section includes information on the spending incurred by political parties that registered to campaign at the EU referendum. These political parties were not, however, required to report donations or loans towards that spending during or after the referendum (unless they are minor parties).

### Chart 3: Total spending by campaigners against the combined limits

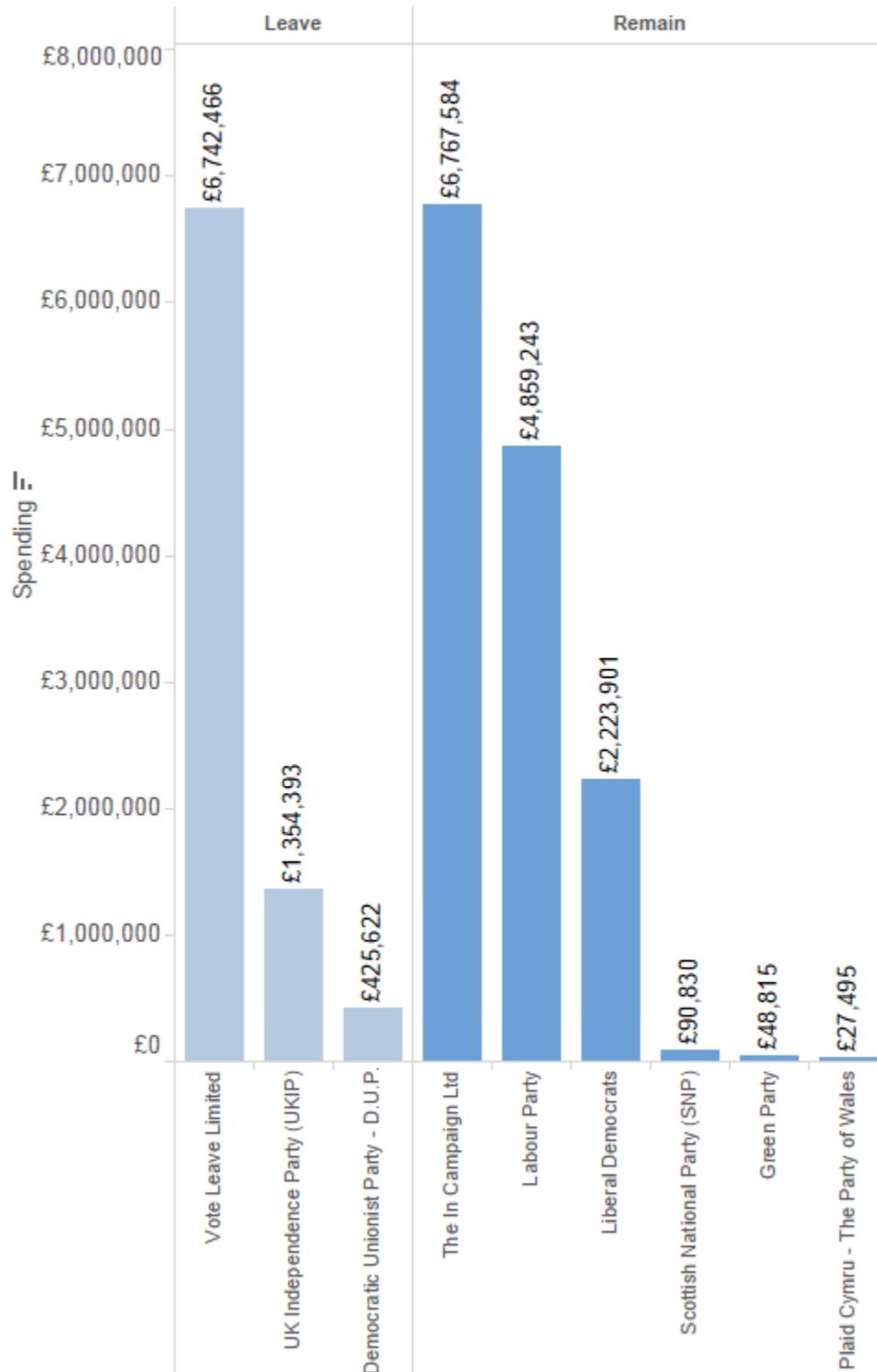
1.21 The chart below sets out the total reported spending by all 'Remain' and 'Leave' campaigners incurred during the referendum period which ran from 15 April to 23 June 2016 (this is the period during which the spending limits apply) against the total of the combined individual spending limits of all those that registered to campaign for each outcome (indicated by the red line).

1.22 Out of total reported spending of £32,642,158, there was a difference of £5,977,019 in the spending incurred by those campaigning for each outcome. In total, all those that submitted details of their spending for each side of the debate reported spending 47% of their total combined individual limits.



#### Chart 4: Spending by designated lead campaigners and political parties

1.23 The chart below details the reported spending by the two designated lead campaigners and the political parties that registered in support of each outcome.



## 2 Regulation and enforcement

2.1 The Commission's regulatory activity during the referendum campaign was aimed at preventing breaches of the campaign spending rules before they occurred. To do this we used a range of regulatory tools, including the provision of an advice service for campaigners and the public and monitoring the campaigns to identify and engage with activity that risked breaking the rules. Where necessary, we also took enforcement action during the campaign to establish if the rules had been broken.

2.2 As we noted in our first report on the EU referendum,<sup>17</sup> where organisations outside the UK spent money in the UK on campaigning, their spending was covered by the rules. However, these organisations were not eligible to register as a campaigner and therefore their spending was limited to £10,000, the threshold for registration. We worked with several non-UK organisations to ensure their campaign spending stayed under this threshold, or to be satisfied that past spending had not breached it.

2.3 The PPERA rules apply only to persons or conduct that takes place within the UK – and Gibraltar for this referendum. Consequently we could not use our civil sanctioning powers on persons or conduct that occurred outside the UK – and Gibraltar. However, on the small number of occasions where it came to our attention, we found the non-UK organisations we engaged with to be generally cooperative and willing to take steps to stay within the rules. Even where they did not apply to them, organisations were prepared to adhere to the spirit of the rules.

2.4 Our regulatory activity is ongoing. The final set of referendum spending returns, for those campaigners who spent over £250,000, were submitted on 23 December 2016. We continue to analyse these and will, if issues are identified, pursue them in line with our Enforcement Policy.<sup>18</sup> We also continue to deal with a number of enforcement cases arising from the spending returns by campaigners. This report only refers to regulatory activity that has been completed. For ongoing matters, the outcome of all our investigations are published on our website.<sup>19</sup>

2.5 We are confident that our regulatory activity during the campaign prevented breaches of the rules, although we did find, and sanction, offences that occurred and our investigatory work remains ongoing. We did this by working with campaigners and other interested people and organisations to ensure they understood the spending rules and how they applied to their planned activities. The sections below give details of this regulatory activity during and, where completed, after the campaign.

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<sup>17</sup> [The Electoral Commission, \*The 2016 EU referendum - Report on the 23 June 2016 referendum on the UK's membership of the European Union\* \(September 2016\).](#)

<sup>18</sup> [The Electoral Commission, \*Enforcement Policy\* \(Effective 5 April 2016\).](#)

<sup>19</sup> [Information on the outcome of all our investigations](#) is published on our website.

## Advice

2.6 During the referendum campaign we offered an advice service taking queries via phone, email or letter. Queries were received from the public and from campaigners covering a variety of issues.

2.7 We received 454 complaints from the public about campaign material issued by the two designated lead campaigners. Of those, 413 related to Vote Leave Ltd material and 41 to material issued by The In Campaign Ltd. A significant number of these raised concerns about the accuracy of the information in this campaign material. To answer these we explained that we do not regulate the content or design of referendum campaign material. In the UK, subject to the limits of the laws on defamation, public order and the like, the content of referendum material is not restricted. It is a matter for voters to decide what weight to give to the material presented. However, given the questions raised about campaigning during the referendum period and the accuracy and truthfulness of campaign material, we felt that there would be benefit in exploring the issues further. We discuss this in chapter 3.

2.8 The majority of the novel or complex queries related to the definition of 'referendum spending' and looked at whether particular costs were covered by the rules. This included advice given to campaigners about how to determine whether a particular cost was reportable as referendum spending, and how to report costs incurred on administration and overheads. It also included advice to non-campaigners about activities which, while related to the referendum, did not constitute referendum campaigning.

## Regulatory intervention during the campaign

2.9 During and immediately following the referendum campaign we instigated a range of regulatory interventions, each one aimed at bringing campaigners into compliance with the rules as quickly as possible.

2.10 The majority of the use of our statutory powers related to campaigners who failed to deliver donation reports due during the campaign – putting at risk the ability of voters to see where their funds had come from – and referendum material that lacked the necessary contact details of its promoter (known as an 'imprint').

2.11 The table below provides examples of the key types of regulatory interventions we undertook during the campaign.

**Table 2: Summary of key regulatory interventions**

Issue	Outcome
Parliamentary Select Committee reports published during the campaign and commenting on the consequences of the referendum outcome.	After discussions with the Clerk to the House of Commons we were content that the reports were covered by parliamentary privilege.

<b>Issue</b>	<b>Outcome</b>
Discussions with the newspapers regarding the spending threshold for registering as a campaigner.	<p>The Sun Newspaper contacted the Commission for advice on what constituted referendum material and the threshold for registering as a campaigner. It initially concluded it did not need to register. However, after we explained the rules in more detail and discussed the nature of the Sun Newspaper's planned activity, the Sun registered as a campaigner.</p> <p>Another newspaper contacted the Commission on the same subject. After discussions it became clear that its spending on referendum campaigning would not exceed £10,000 and registration was not necessary.</p>
The Commission received concerns that Vote Leave was distributing a leaflet that did not carry its imprint.	We established that the leaflets were in fact distributed, via Royal Mail, prior to the referendum period starting, when an imprint was not required. It appeared that some may have been redistributed by volunteers at a later date. However, after a further instance was discovered, we revisited the issue. It was then established that Vote Leave Ltd had stored left-over leaflets rather than destroying them. A small number of leaflets had been taken from storage and distributed during the referendum period. We were satisfied that the error was inadvertent and took no further action once Vote Leave Ltd confirmed it had destroyed the remaining leaflets.
The Hungarian Embassy took out a newspaper advert urging a vote for 'Remain'.	The Hungarian Embassy is not subject to the rules in PPERA. However, we wrote to the Embassy to ask it to respect the spirit of those rules. The Embassy responded explaining that it did not intend to engage any further in the referendum campaign.
The Commission became aware of a planned concert, called 'Bpop', which appeared to constitute referendum campaigning. It was unclear which campaigner was funding the event and whether that campaigner was registered with the Commission.	We contacted Leave.EU, who were promoting the concert, to establish if they were also funding it. Leave.EU stated that they were not. We then contacted the commercial company managing the concert. That company explained it had entered into a contract with Rock Service Limited to manage the concert. The company also explained that more than £10,000 had been spent so far. Rock Services Ltd did not respond to our approach, to establish whether it was the campaigner and if so to discuss registration. However, Arron Banks then registered as an individual campaigner in his

Issue	Outcome
	<p>personal capacity. We understood this was because he was funding the concert. We wrote to Mr Banks to ask what he had already spent on the concert and whether he was working together with any other campaigner. As no reply was forthcoming and the concert was planned for a few days hence, we explained to Mr Banks that we would compel him to respond by way of a disclosure notice issued under Schedule 19B of PPERA. Mr Banks and Leave.EU then issued a press release cancelling the concert. Our response is available on our website.<sup>20</sup></p>
<p>JD Wetherspoon PLC distributed pro-leave campaign material using beer mats in its pubs and a JD Wetherspoon PLC periodical. The beer mats did not contain an imprint and JD Wetherspoon PLC was not registered as a campaigner.</p>	<p>We contacted JD Wetherspoon PLC and its CEO Tim Martin who agreed to remove the beer mats as they did not contain an imprint. We also asked about the spending on the campaign material and whether JD Wetherspoon PLC intended to register as a campaigner. It established that the spending at that point had not exceeded £10,000 and JD Wetherspoon PLC did register as a campaigner.</p>
<p>The LSE ran a series of events based around the referendum.</p>	<p>After discussions with the LSE, we took the view that specific events did count as campaigning activity. However, the cost of the events (provided in detail to the Commission) were below the £10,000 registration threshold.</p>
<p>Removal of a number of registered campaigners.</p>	<p>Early in the campaign, we registered a number of unincorporated associations as campaigners, many linked to the 'GO' movement. Following the unsuccessful application by GO Movement Ltd to be designated as lead campaigner, some of these associations ceased to exist. As they no longer met the definition of an unincorporated association for the purposes of being a referendum campaigner, we removed them from the register of campaigners.</p>
<p>The World Economic Forum ran an event at which Mr Cameron was due to speak.</p>	<p>As a non-UK entity the World Economic Forum (WEF) was ineligible to register as a campaigner. The WEF cooperated with the Commission in ensuring that its spending on the event did not exceed the threshold for registration.</p>

<sup>20</sup> [Electoral Commission response to Bpop live cancellation \(14 June 2016\).](#)

Issue	Outcome
The International Monetary Fund (IMF)	We contacted the IMF to ensure that they understood the rules around campaigning at the referendum. In response, they confirmed that their activity was ‘business as usual’ and in pursuance of international obligations.
The Organisation for Economic Co-operation and Development. (OECD)	We contacted the OECD to ensure that they understood the rules around campaigning at the referendum. In response, they confirmed that their activity was ‘business as usual’ and in pursuance of international obligations.
Liaison with the Bank of England regarding their activities in the lead up to the referendum	We contacted the Bank of England to ensure that they understood the rules, in particular the operation and application of section 125 to the Bank. The Bank confirmed their understanding of the rules and agreed that, whilst section 125 did not specifically apply to the Bank, the Bank would voluntarily observe pre-referendum purdah in the spirit of guidelines issued by the Cabinet Office on 26 May 2016. <sup>21</sup>
Ryanair held a press conference attended by George Osborne MP, Vince Cable and Ed Balls to promote the ‘Remain’ campaign	We obtained costings for the event from Ryanair and were satisfied that it was under the threshold for registration. In addition, a Ryanair company registered as a campaigner for the purpose of any further campaigning. In any event, the campaigner did not carry out any further campaign spending. <sup>22</sup>
Missing, late or inaccurate donation reports during the campaign	We investigated 13 campaigners for missing, late or inaccurate donation reports that were due during the referendum campaign. <sup>23</sup>
Missing imprints from referendum material	We investigated four campaigners for causing referendum material to be published without the necessary imprint. <sup>24</sup>
Investigations into whether entities needed to register	We investigated two entities to determine whether they had spent in excess of the

<sup>21</sup> [A record of correspondence between the Bank of England and the Commission](#) can be found on our website.

<sup>22</sup> [Electoral Commission statement on assessment of Ryanair spending on EU Referendum campaigning \(10 June 2016\)](#).

<sup>23</sup> [Information on the outcome of our investigations on missing, late or inaccurate donation reports](#) is or will be on our website.

<sup>24</sup> [Information on the outcome of our investigations on imprints](#) is or will be on our website.

Issue	Outcome
as campaigners	threshold for registration without being registered. <sup>25</sup>
Investigations into Vote Leave Ltd	We conducted two investigations into Vote Leave Ltd. One related to the late return of an impermissible donation and one into the payment of a campaign expense after the statutory deadline for such payments. <sup>26</sup>

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<sup>25</sup> [Information on the outcome of our investigations on spending in excess of the registration threshold](#) is or will be on our website.

<sup>26</sup> [Information on the outcome of our investigations into Vote Leave Ltd](#) is or will be on our website.

## 3 Lessons for future referendums

3.1 Our post-referendum research with campaigners<sup>27</sup> indicated that, generally, they found the expenditure rules to be straightforward in terms of compliance and that there is widespread support for transparency.

3.2 This chapter explores the experience of those who campaigned at the EU referendum and deals with regulatory issues arising from the information campaigners submitted in their spending and donation referendum returns. Where appropriate, we recommend that certain changes should be incorporated into PPERA so that they apply for all future referendums

3.3 The recommendations in this report build on those we made following the referendums in 2011 and the 2014 referendum on independence for Scotland,<sup>28</sup> as well our 2013 regulatory review of the UK's party and election finance laws.<sup>29</sup> In a number of areas, we restate our previously published views about the regulatory framework as a whole and relate them to the experience of the EU referendum.

## Campaign funding

### Regulating loans

3.4 As for the 2011 parliamentary voting systems referendum, the legislation for the EU referendum included specific controls on loans that applied only for that referendum.

3.5 The total amount of loans reported by campaigners at the EU referendum was £6,071,940; £43,940 to 'Remain' campaigners and £6,028,000 to 'Leave'. Out of total reported income of £36,786,046, loans therefore represented 20%. .

3.6 While these amounts could seem low when taken in the context of the total referendum donations or campaign spending, without loan controls there would be no transparency of this source of campaign funding. In addition, it is possible that the absence of loan controls could result in a shift in funding from regulated donations to unregulated and unreportable loans.

3.7 PPERA does not provide any controls or reporting requirements on loans taken out to campaign at referendums. The absence of such controls results in a significant gap in the regulation of campaign funding at PPERA referendums and is inconsistent with regulation of other types of campaigner.

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<sup>27</sup> [Research among permitted participants at the EU referendum - Justin Fisher \(Brunel University London\) & Bettina Rottweiler \(Brunel University London\) \(August 25th 2016\).](#)

<sup>28</sup> [The Electoral Commission's previous referendum reports](#) are available on our website.

<sup>29</sup> [The Electoral Commission, A regulatory review of the UK's party and election finance laws - Recommendations for change \(June 2013\).](#)

3.8 The UK Government has the power to apply loan controls for all PPERA referendums via secondary legislation, but, to date, has not done so.

**Recommendation 1: Loan controls should be incorporated into PPERA.**

The absence of loan controls in the PPERA referendum rules is a significant gap in the regulation of referendums. The UK Government should bring forward the relevant secondary legislation to introduce loan controls at all future referendums held under the PPERA framework.

## Permissible donors and lenders

### Categories of individuals and bodies eligible to register

3.9 The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 added new types of organisation that are eligible to register as a non-party campaigner at an election. Until this change, the list of individuals and bodies eligible to register as a referendum campaigner and to donate to other campaigners mirrored the list of eligible registered non-party election campaigners under PPERA.<sup>30</sup> Following this change, we recommended that the legislation for future referendums should realign the non-party campaigner and referendum campaigner rules.

3.10 The legislation for the EU referendum addressed this recommendation by extending the categories of individuals and bodies eligible to register and donate. For the EU referendum, one Royal Charter body and four charitable incorporated organisations registered to campaign under the newly available categories.<sup>31</sup> The spending and donations of these campaigners is available on our website.<sup>32</sup>

3.11 As Charitable Incorporated Organisations (CIOs), Scottish CIOs, bodies incorporated by Royal Charter and Scottish Partnerships are allowed to register as non-party campaigners at elections, and given their incorporation into the regulatory regime for the EU referendum, we recommend that the registration controls for non-party campaigners and referendum campaigners should be aligned for future referendums.

### Limiting donations to political parties from additional donors permitted under EU referendum Act

3.12 There is, however, an implication of changing the referendum campaigner rules, without there being a similar change to the categories of donors that are able to donate to all political parties. It means that a wider

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<sup>30</sup> The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 included Charitable Incorporated Organisations (CIOs), Scottish CIOs, bodies incorporated by Royal Charter and Scottish Partnerships carrying on business in the UK.

<sup>31</sup> Royal Charter bodies: City of London Corporation. Charitable incorporated organisations: Clientearth, Universities UK, Social Market Foundation, Federal Trust for Education and Research.

<sup>32</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

group of donors would be able to donate and lend money to the political parties that registered to campaign at a referendum than are able to fund parties campaigning at elections. Under PPERA, these donors are impermissible sources of election funding.

3.13 The EU Referendum Act limited this risk by not allowing political parties to accept, in total, donations from these sources over and above that which they could spend campaigning at the referendum, or increase the value of a referendum loan.

3.14 We have received no feedback from the political parties that registered to campaign at the EU referendum that this technical provision caused them significant administrative difficulties. In practice, there were no donations from the new categories of eligible donors reported by political parties that registered to campaign at the EU referendum.

**Recommendation 2: The individuals and bodies eligible to register to campaign at referendums should be the same as the eligible non-party campaigners at elections. The ability of the additional eligible campaigners to donate and lend to other referendum campaigners should also be considered.**

The list of individuals and bodies eligible to register as a referendum campaigner should be realigned with the list of eligible registered non-party campaigners under PPERA.

The ability of the additional eligible campaigners to donate and lend to other referendum campaigners should also be considered. It will be important that any changes to the categories of permissible donors and lenders are clearly defined, particularly in relation to political parties that register to campaign at a referendum.

### **Permissibility of companies to donate and lend**

3.15 In the lead up to the referendum, our campaign monitoring noted media speculation about campaigners receiving significant sums of campaign funding from corporate donors. In total, campaigners reported accepting £6,142,569 in donations from companies; £3,631,171 to 'Remain' campaigners and £2,511,399 to those campaigning for 'Leave'. Donations from companies equated to 20% of all reportable campaign donations.<sup>33</sup>

3.16 In our 2013 regulatory review of the UK's party and election finance laws,<sup>34</sup> we noted that the current PPERA permissibility controls on company donations does not fully reflect the approach recommended in the Committee on Standards in Public Life (CSPL) recommendations in its fifth report, 'The

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<sup>33</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

<sup>34</sup> [The Electoral Commission, A regulatory review of the UK's party and election finance laws - Recommendations for change \(June 2013\).](#)

Funding of Political Parties in the United Kingdom'.<sup>35</sup> CSPL proposed that to prevent foreign donors channelling donations through subsidiary UK companies, it should be necessary for a subsidiary to show that it was carrying on a genuine business within the UK and was generating income here sufficient to fund any donation.

3.17 We have also previously reported that our investigations into potential breaches of the law involving company donors, Bearwood Corporate Services Ltd<sup>36</sup> and Fifth Avenue Partners Ltd,<sup>37</sup> have highlighted some implications of the current permissibility test. We set these out in our 2010 submission to the CSPL inquiry into political party funding.<sup>38</sup> These included that:

- A company that has not begun to trade, but is preparing to do so, is likely to be within the scope of the 'carrying on business' test.
- There is no requirement in PPERA that the funds a company donates must be generated from its own trading, and
- PPERA does not define the concepts of 'agency' (where somebody makes a donation via an intermediary) and 'carrying on business'.

3.18 In 2011, CSPL's Thirteenth Report further recommended that companies making donations "*should have to be able to demonstrate that they are trading in the UK and earning sufficient income here to fund any donations.*"<sup>39</sup>

### **Recommendation 3: The Government and Parliament should re-visit the permissibility controls on companies.**

In light of the fact that the PPERA permissibility controls on companies do not fully reflect the recommendations from the Committee on Standards in Public Life, and the implications of the current company permissibility test highlighted by our investigations, the Government and, in due course, Parliament should re-visit the issue of the permissibility controls on companies to ensure that they meet the underlying policy intention of preventing donations and loans from foreign companies.

### **Checking the permissibility of donations and loans**

3.19 Our post-referendum campaigner research<sup>40</sup> indicates that a proportion of campaigners (22%) experienced difficulties with checking the permissibility

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<sup>35</sup> [Committee on Standards in Public Life, Fifth Report: \*The Funding of Political Parties in the United Kingdom\* \(1998\)](#), paragraph 5.29.

<sup>36</sup> [The Electoral Commission case summary: \*Bearwood Corporate Services Limited\* \(2010\)](#).

<sup>37</sup> [The Electoral Commission case summary: \*5th Avenue Partners Limited\*, \(2009\)](#).

<sup>38</sup> [Electoral Commission submission to the Committee on Standards in Public Life \(2010\)](#).

<sup>39</sup> [Committee on Standards in Public Life, Thirteenth Report: \*Political party finance Ending the big donor culture\* \(2011\)](#), Page 65.

<sup>40</sup> [Research among permitted participants at the EU referendum - Justin Fisher \(Brunel University London\) & Bettina Rottweiler \(Brunel University London\) \(August 25th 2016\)](#).

of donors or lenders. Both large and small campaigners raised concerns about their ability to acquire the appropriate data from local authorities to verify the permissibility of donations.

3.20 Campaigners reported that local authorities store the data in a variety of formats and are not always equally helpful. Campaigners also noted that, whereas political parties will have large data sets built up over time to deal partly with these issues, referendum campaigners do not. Campaigners suggested that, for permissibility purposes, consideration should be given to enabling registered referendum campaigners to gain easier access to electoral registers, including from a single source, rather than nearly 400 separate sources.

3.21 We would like to thank campaigners for their feedback on these matters. We will take their views into account as part of our work on considering how the collation and use of electoral registers could be modernised and improved, but a specific recommendation is not appropriate at this stage.

### **Northern Ireland political parties**

3.22 Since 2007, PPERA has controlled donations to Northern Ireland political parties; loans have been controlled since 2008. Unlike in Great Britain, donation and loan reports in Northern Ireland currently remain confidential. These rules were put in place because of concerns about the security situation in Northern Ireland and the possible intimidation of donors. PPERA also recognises the special position of Ireland in Northern Ireland's political culture by allowing donations from Irish citizens and organisations to Northern Ireland political parties.

3.23 There are separate registers for political parties wishing to contest elections in Northern Ireland and Great Britain. Parties in Northern Ireland are barred from making donations to parties and other regulated entities in Great Britain. This is to ensure that the funding from Irish citizens and organisations, which is only permissible for Northern Ireland political parties, is not transferred to political parties or other regulated organisations in Great Britain (as funding from those sources would be impermissible in Great Britain).

3.24 In contrast, there is a single UK register for campaigners at a UK-wide referendum held under PPERA. A Northern Ireland political party that registers to campaign at this type of referendum may use any donations they receive to campaign in any part of the UK, irrespective of where they are based. For example, our campaign monitoring noted that on 22 June 2016, The Metro (which does not circulate in Northern Ireland) published a full-page advert from the Democratic Unionist Party (DUP) advocating a 'Leave' vote in the EU referendum. Following publication of the post-referendum returns, it was noted that the DUP spent £282,000 on the Metro advert and there was media commentary about the source of that funding. Although others can publish information, the Commission is subject to a statutory restriction barring publication of information about or commenting on the sources of donations to Northern Ireland political parties.

3.25 Northern Ireland parties that register as referendum campaigners continue to be subject to the confidentiality rules in respect of any donations or loans they receive. However if they make a donation to a designated lead campaigner, details of that donation will be published.

3.26 The Government and Parliament may wish to consider this matter in the context of any future referendum. We are also aware that, at the time of writing, the UK Government is consulting the Northern Ireland political parties on the future transparency of political funding in Northern Ireland.

## Grant available to lead campaigners

3.27 PPERA provides that designated lead campaigners are entitled to a higher spending limit, postage costs for one campaign mailing, referendum campaign broadcasts and a publicly funded grant of up to £600,000 each.

3.28 PPERA does not, however, set out the amount of grant that should be available for each referendum, what it should be used for or how it should be made available to any lead campaigners. The legislation provides for the Commission to have the statutory role of setting the amount and the terms of use for any grant in the context of each referendum.

### Approach to grants at the EU referendum

3.29 For the EU referendum, we made the maximum £600,000 available to each designated lead campaigner.

3.30 In reaching our decision, we considered CSPL's recommendations from 1998 which formed the basis of the regulatory framework for referendums and which specifically proposed that designated lead campaigners should receive public grants,<sup>41</sup> the lessons learned from the 2011 referendums,<sup>42</sup> and the specific circumstances of the EU referendum.

3.31 Our view was that the amount and the scope of the grant made available to the designated lead campaigners at the EU referendum should be increased, compared to the approach that we had taken at previous referendums. We decided that the grant should be allowed to be used towards the costs associated with the other benefits available to designated lead campaigners; sending a free mailing and the referendum campaign broadcasts. This approach was taken to reflect feedback from designated lead campaigners at previous referendums about how the grant could be better utilised and to address the Commission Board's view that we should not be overly prescriptive about what the grant could be used for.

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<sup>41</sup> [Committee on Standards in Public Life, Fifth Report: \*The Funding of Political Parties in the United Kingdom \(1998\)\*](#), paragraph 5.29.

<sup>42</sup> [The Electoral Commission reports on the 2011 referendums](#) are available on our website.

3.32 The EU referendum was the first time that we had allowed designated lead campaigners to use the grant to cover items related to campaign spending as well as administrative costs. As the grant does not fall under the exclusion from the definition of referendum expenses in PPERA for certain expenses which fall to be met out of public funds,<sup>43</sup> use of the grant on items of regulated expenditure counted towards the designated lead campaigners' spending limits. This ensured that there was a level playing field between campaigners and that spending against the grant was reportable in the lead campaigners' spending returns.

3.33 In order to safeguard public money and to ensure efficient administration of the grant, the EU referendum Act confirmed the Commission's ability to pay the grant in instalments. An initial payment of the grant was made of £200,000 and then further payments on receipt of evidence of incurred eligible spending or contracts to incur such spending, up to the full amount of £600,000.

#### **Use of the grant at the EU referendum**

3.34 The designated lead campaigners were informed of the availability of the grant and its terms and conditions at the point they were designated. Both designated lead campaigners, Vote Leave Ltd and The In Campaign Ltd, accepted the grant.

3.35 Neither designated lead campaigner raised issue with the amount of the grant or what it could be used for. Both designated lead campaigners claimed the full amount of the grant and used it in accordance with the terms and conditions. The final audited amounts paid under the grant are available on our website.<sup>44</sup>

#### **Lessons for future referendums**

3.36 Extending the scope of the grant to allow it to be used towards the costs of sending the free mailing and the referendum campaign broadcasts, as well as other administration costs, worked well. It balanced providing designated lead campaigners with some public funding to create an equal base to meet core costs with limited support for campaigning, to the extent that PPERA provides for specific campaign activities to be made available to lead campaigners. For future referendums, we will consider whether this approach is appropriate in the context of each event.

3.37 We did, however, receive criticism from one designated lead campaigner about the payment process for the grant which required evidence of spending the full initial payment before further grant funds would be released. The designated lead campaigner felt that the process was overly prescriptive in circumstances where they could evidence incurring eligible spending over and above the initial payment. They suggested that the full grant should be payable on evidence that eligible spending had already been incurred.

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<sup>43</sup> Paragraph 2(a) schedule 13 PPERA (exclusion from the definition of Referendum expenses for certain expenses which fall to be met out of public funds).

<sup>44</sup> [The grant claims and supporting invoices and receipts are available on our website.](#)

3.38 We acknowledge the feedback from the designated lead campaigner. We will consider, in the context of any future referendum, whether the grant payment process should include the option for payment of the full grant in one instalment on evidence that eligible spending has already been incurred.

**Recommendation 4: The Commission’s ability to pay the lead campaigner grant in instalments should be incorporated into PPERA.**

In order to safeguard public money and to ensure efficient administration of the grant, the Commission’s ability to pay the grant available to lead campaigners in instalments should be incorporated into PPERA so that it applies for all future referendums.

## Campaign spending

### Spending limits

3.39 The spending limits that apply at referendums are a central element of the regulation of campaigners. The limits should be set at a level that is sufficient to enable campaigners to get their messages to voters but deter excessive spending. It is important that the limits do not raise questions of fairness which may damage voters’ trust in the rules or potentially undermine the referendum result.

3.40 All campaigners, including registered political parties, who intended to spend more than £10,000 campaigning at the EU referendum, were required to register with the Commission. Once registered, amongst other benefits, campaigners were entitled to a spending limit above £10,000.

3.41 The expenditure limits for UK-wide referendums are set out in PPERA and apply during the referendum period – for the EU referendum this ran from 15 April to 23 June 2016. For registered campaigners that are also registered political parties, varying levels are set according to the percentage share of the vote that the party received at the last Parliamentary general election. The legislation for the EU referendum increased the PPERA spending limits (which were set in 2000) to take account of inflation.

3.42 The table below provides a summary of reported campaigner spending against their respective limits. Full details of reported spending by registered campaigners at the EU referendum can be found on our website.<sup>45</sup>

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<sup>45</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

**Table 5: Reported spending against the EU referendum spending limits**

<b>Campaigner<sup>46</sup></b>	<b>Limit</b>	<b>Amount spent</b>	<b>% of limit</b>
The In Campaign Ltd	£7,000,000	£6,767,584	97%
Vote Leave Ltd	£7,000,000	£6,747,466	96%
Labour Party	£5,500,000	£4,859,243	88%
UK Independence Party	£4,000,000	£1,354,393	34%
Liberal Democrats	£3,000,000	£2,223,901	74%
Democratic Unionist Party	£700,000	£425,622	61%
Green Party	£700,000	£48,815	7%
Plaid Cymru	£700,000	£27,495	4%
Scottish National Party	£700,000	£90,830	13%
Combined totals of 58 other registered campaigners <sup>47</sup>	£40,600,000	£10,101,809	25%

### **Campaigners' views**

3.43 The interviews that formed part of our post-referendum campaigner research<sup>48</sup> indicated that, while some campaigners deemed the spending limits to be appropriate, the largest campaign groups (both designated and non-designated) saw the limits for designated groups as being far too low and unrealistic given the demands of modern campaigning. They felt that the limits were low relative to the Scottish referendum on independence and political parties' national campaign spending limits at elections.<sup>49</sup> They also argued that political parties have considerable sunken resources, such as databases, whereas referendum campaigns must develop these from scratch, costing a great deal of money, which counted against their spending limit.

3.44 A further criticism was made in respect of the registration threshold for non-registered campaigners. Respondents' claimed that digital campaigning had lowered costs considerably and so "*the £10,000 registration threshold could quite easily hide significant levels of online, but non-transparent, campaigning activity*".

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<sup>46</sup> The Conservative and Unionist Party did not register as a referendum campaigner. Unregistered campaigners can only spend up to the registration threshold of £10,000.

<sup>47</sup> A further 48 campaigners submitted either 'nil' or declarations of spending below the registration threshold, including 10 other political parties. 7 campaigners failed to submit returns and are the subject of enforcement activity.

<sup>48</sup> [Research among permitted participants at the EU referendum - Justin Fisher \(Brunel University London\) & Bettina Rottweiler \(Brunel University London\) \(August 25th 2016\).](#)

<sup>49</sup> Political parties' spending limits at UK parliamentary general elections are based on the number of candidates the party is standing. The maximum possible spending limit is £19.5m.

## Voters' views

3.45 As noted above, spending limits should be set at a level that is sufficient to enable campaigners to get their messages to voters but deter excessive spending. Our post-referendum public opinion research<sup>50</sup> showed that:

- 84% said they knew a great deal or a fair amount about what the referendum was about.
- 63% said they had enough information on the 'Remain' and 'Leave' campaigns to be able to make an informed decision on how to vote.
- 65% agreed strongly or tended to agree that they had enough information about what would happen in the event of a 'Remain' vote.
- 45% agreed strongly or tended to agree that they had enough information about what would happen in the event of a 'Leave' vote.

3.46 In light of the evidence of campaign spending and voter awareness at the EU referendum, there may well be justification for adjusting PPERA referendum spending limits to reflect changes in inflation for future referendums; we do not, however, have a statutory role in advising on spending limits at UK-wide referendums held under PPERA.

**Recommendation 5: The Government and Parliament should take into account the evidence from the EU referendum when considering whether the PPERA referendum spending limits remain appropriate.**

The Commission does not have a specific statutory role in advising on spending limits at UK-wide referendums held under PPERA. It is nevertheless important that the Government and Parliament take into account the evidence from the EU referendum when considering whether the PPERA referendum spending limits, including the registration threshold, remain appropriate in the context of any future UK-wide referendum.

## Staff costs

3.47 In our 2013 regulatory review of the UK's party and election finance laws,<sup>51</sup> we highlighted that directly employed staff costs are explicitly excluded from the definition of campaign spending by political parties at elections and campaigners at referendums held under PPERA. The costs of directly employed staff brought in for a campaign do not therefore count against political parties' or campaigners' spending limits at elections and referendums.

3.48 The exclusion of directly employed staff costs from the above spending controls is an inconsistency in the rules, given the staffing costs of candidates

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<sup>50</sup> [Electoral Commission post EU Referendum research 2016.](#)

<sup>51</sup> [The Electoral Commission, A regulatory review of the UK's party and election finance laws - Recommendations for change \(June 2013\).](#)

and non-party campaigners are covered by the controls at elections. The exclusion means that the party election and referendum spending controls do not cover a potentially large strand of election and referendum campaign spending.

3.49 For example, our campaign monitoring for the EU referendum noted media commentary that by the end of 2015 Vote Leave Ltd already employed 30 permanent staff; Leave.EU 84 staff and The In Campaign Ltd 20 staff. There was also media comment that Vote Leave Ltd employed 46 professional staff working on their 'ground campaign', that The In Campaign Ltd had recruited at least five members of the Conservative Party election team to take up posts in the company, and that Leave.EU employed 60 people in a call centre.

3.50 The designated lead campaigners also noted a number of their key staff as part of their designation applications.<sup>52</sup> For example, the In Campaign Ltd's application noted that its structure included Board members, Regional Field Directors, Head of Field Operations and Research Teams. Vote Leave Ltd highlighted its' Board, campaign committee's and senior management team.

3.51 To the extent that the staff of campaigners at the EU referendum were directly employed, the costs incurred during the referendum period did not count as campaign spending, did not count against spending limits, and were not reportable in the post-referendum returns. Donations towards the costs of directly employed staff were also not regulated or reportable.<sup>53</sup>

3.52 As we set out in our 2013 regulatory review,<sup>54</sup> bringing directly employed staff costs within the scope of the spending controls would have significant implications which would need to be considered before the change could be implemented. It would impose new administrative burdens on parties and referendum campaigners, there would be challenges in estimating staff time (especially for pre-existing organisations), and election and referendum spending limits would need to be re-visited.

3.53 However, despite the challenges, in 2013, we put forward two possible options for regulating directly employed campaign staff costs. These provided for either including the costs of all staff – including permanent employees – whose job is wholly or mainly focused on campaigning during the regulated / referendum period, or including only the costs of temporary or fixed-term staff whose job is wholly or mainly focused on campaigning during the regulated / referendum period. To date, neither of these options (nor any other option for regulating directly employed campaign staff costs) has been taken forward by the Government.

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<sup>52</sup> [The designation applications and our decision papers](#) are available on our website.

<sup>53</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

<sup>54</sup> [The Electoral Commission, A regulatory review of the UK's party and election finance laws - Recommendations for change \(June 2013\).](#)

**Recommendation 6: Campaign-related staff costs should be included in the limits on political party election and referendum campaign spending.**

To provide consistency between the controls on referendum campaigners, party campaign staff, candidates and non-party campaigners, as well as close a gap in a large strand of election and referendum campaign spending, campaign-related staff costs should be included in the limits on political party election and referendum campaign spending.

## Regulating campaigners that incur joint spending

3.54 Since 2011, the referendum legislation for each referendum in the UK has contained apportionment and reporting provisions to address circumstances where campaigners engage in joint spending. The intent of the controls is to prevent campaigners setting up multiple campaign groups in order to circumvent spending controls, while giving campaigners the freedom to work together to get a unified message to voters.

3.55 For the EU referendum, the joint spending provisions provided that:

- Each campaigner involved in the joint spending must account for the total spending incurred by all those involved against their own spending limit.
- An exemption applied if the joint spending involved a designated lead campaigner. In those circumstances, the total spending incurred by other registered campaigners only counted against the spending limit of the designated lead campaigner.

3.56 Campaigners were also required to include the names of those they worked with and how much they each spent in their post-referendum return. This was the first time this important additional reporting requirement had applied and it improved transparency and the overall effectiveness of the controls. It should be included in PPERA for future referendums.

3.57 The designated lead campaigners at the EU referendum did not report any joint spending. Other registered campaigners reported joint spending of £127,627.<sup>55</sup> Full details of reported campaign funding and spending at the EU referendum can be found on our website.<sup>56</sup> We are considering a number of issues under our Enforcement Policy following an initial inspection of the spending and donation returns submitted by campaigners.

### Campaigner views

3.58 In our post-referendum campaigner research,<sup>57</sup> 56% of respondents said

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<sup>55</sup> Total reported spending by each individual campaigner towards joint spending.

<sup>56</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

<sup>57</sup> [Research among permitted participants at the EU referendum - Justin Fisher \(Brunel University London\) & Bettina Rottweiler \(Brunel University London\) \(August 25th 2016\).](#)

that they found the joint spending rules difficult to understand. Only 16% found the rules to be easy. The interviews with campaigners also highlighted difficulties with the rules, with respondents arguing that the rules effectively blocked official coordination as they presented too much of a risk in respect of compliance.

3.59 In practice, campaigners suggested that the complexity of the rules and the uncertainty about compliance meant that formal coordination was minimised and actively discouraged. As part of our post-referendum campaigner research, relatively few campaigners reported working together formally with others and significant proportions decided not to work together after initially considering the option. Overall, 79% of respondents did not work with the lead campaigner and 72% did not work with other campaigners. The research indicated that 'Leave' campaigners, medium / large groups and political parties were less likely to work with other non-designated campaigners.

### **Assessment of the controls regulating joint spending**

3.60 It is important that the rules regulating referendums include provisions to prevent campaigners circumventing the spending limits by setting up multiple campaign groups. Without such controls, the spending limits would not be effective. It is, however, equally important that campaigners have the freedom to work together to get a unified message to voters.

3.61 While the joint spending rules that applied at the EU referendum may have achieved the goal of strengthening the spending controls, we acknowledge the feedback from campaigners about the complexity and lack of certainty around the rules. We also recognise the unintended consequence that, in practice, the rules may have the potential to deter campaigners from entering into legitimate joint spending. Concerns about the effectiveness of the joint spending rules were also raised in the media and directly with the Commission. This has the potential to undermine public confidence in the regulatory controls.

3.62 From our contact with campaigners during and after the referendum, in many cases, campaigners were inclined to take an overly restrictive interpretation of the joint spending rules. Campaigners were particularly cautious about holding rallies and other events with other groups or that referenced the designated lead campaigners. Whether activities count as joint spending will depend on the specific circumstances, but generally, campaigners' cautious approach to this area of regulation is understandable; especially when breaching the spending limits is a criminal offence.

3.63 Feedback from campaigners is, however, that larger campaigners who had access to their own compliance and legal teams were less concerned about the joint spending rules, as were campaigners that had approached the Commission for advice. While we encourage campaigners to take proactive steps to seek bespoke advice from the Commission on complex matters, Government and Parliament could assist further by providing clarification of the scope of what constitutes joint spending. Although we make

recommendations for change that does not mean that the rules that applied at the EU referendum were not sufficiently clear to enable campaigners to be able to comply, and they should have.

3.64 Further Government and Parliament clarification will improve our ability to provide specific advice and guidance to campaigners on the joint spending rules and help to allay campaigners' concerns. This should specifically include:

- Making clear the scope of the legal term 'a plan or other arrangement'  
The legal term 'a plan or other arrangement' is very broad and would benefit from greater clarity; particularly the type of activities that need to be regulated should be more explicit. For example, further clarity on whether activities such as coordinating campaigns (e.g. in relation to geography or timing), providing advice to other campaigners, discussing general approaches, sharing information, etc. are regulated as joint spending would be helpful for campaigners.
- Defining what is meant by the fact that referendum expenses must be incurred 'by or on behalf of' those involved in joint spending  
In order to be covered by the joint spending rules, referendum expenses must be incurred 'by or on behalf of' both the campaigner and 'one or more other individuals or bodies'. However, 'on behalf of' is not defined in PPERA<sup>58</sup> and, as such, leaves scope for a number of interpretations. The possible interpretations range from the expenses having to be authorised by each campaigner's responsible person to expenses being considered to be "on behalf of" a campaigner simply if they benefit from the spending. Similar issues arise elsewhere in PPERA where this phrase is used.
- Exploring whether or not the joint spending rules should explicitly say that regulated expenses should be incurred by every party involved, in order for those rules to apply.  
There would be benefit in exploring whether or not the joint spending rules should explicitly say that regulated expenses should be incurred by every party involved, in order for those rules to apply. This would help provide greater certainty about whether the joint spending provisions have been triggered. It would, however, potentially raise questions about the extent to which acting as a 'controlling mind' between separate parts of a campaign run by independent campaigners (rather than a jointly funded campaign) is covered by the joint spending rules.

3.65 When considering how the joint spending rules should be clarified, it will be important for the Government and Parliament to consider the range of ways that campaigners collaborate with each other that are not limited or

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<sup>58</sup> We note the same phrase is defined in relation to candidate spending in the RPA - s.90ZA(4), spending is authorised "by or on behalf of" a candidate if incurred by the candidate, their election agent, or someone authorised to incur spending by one of those two.

prohibited by the rules. This will ensure that the amended joint spending rules apply proportionate restrictions on the activities intended to circumvent the regulatory controls while giving campaigners the appropriate level of freedom to interact to get their campaign messages to voters.

3.66 For example, we are aware that there was confusion among campaigners about whether donating to other campaigners triggers the joint spending rules. Campaigners also said to us that they were surprised that they were allowed to donate to other registered campaigners, particularly when the rules explicitly bar political parties from donating to registered campaigners other than the designated lead campaigners. In practice, campaigners at the EU referendum reported a total of £800,998 as being donations between registered campaigners<sup>59</sup> and £17,360 was reported as notional spending incurred by registered campaigners on behalf of other registered campaigners.

3.67 In addition to the above clarifications from the Government and Parliament, when the joint spending controls are incorporated into PPERA, there would be benefit in also providing the Commission with a Statutory Code making power to enable us to clarify any further matters should they arise in the future.

3.68 We are also aware that Lord Hodgson's Report of *Third Party Election Campaigning – Getting the Balance Right – Review of the operation of the third party campaigning rules at the 2015 General Election*<sup>60</sup> made a recommendation that the joint spending controls on third parties at elections should be reviewed.

3.69 In our response to Lord Hodgson's Report,<sup>61</sup> we supported the principle that the legislation in this area should focus on preventing avoidance of the spending limits with as much clarity and simplicity as possible. While there are clear differences between third parties at elections and referendum campaigners, the underlying policy intention of the controls is the same. As such, Lord Hodgson's principle is equally relevant to the joint spending controls that apply to referendum campaigners.

**Recommendation 7: Joint spending controls should be incorporated into PPERA.**

To help ensure the integrity and effectiveness of the referendum spending rules, appropriate controls should be incorporated into PPERA to regulate campaigners that engage in joint spending so that they apply for all future referendums. To improve transparency and enforceability, the controls should

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<sup>59</sup> Including £750,315 in donations from Vote leave Ltd to other registered campaigners.

<sup>60</sup> [Lord Hodgson - Third Party Election Campaigning – Getting the Balance Right – Review of the operation of the third party campaigning rules at the 2015 General Election \(March 2016\).](#)

<sup>61</sup> [The Electoral Commission response to Lord Hodgson's Report on Third Party Election Campaigning.](#)

include a requirement that campaigners must include the names of those they worked with and how much they each spent in their post-referendum spending return.

To reduce complexity and allow the Commission to provide clearer advice and guidance to campaigners, the Government and Parliament should clarify what constitutes joint spending for the purposes of regulating referendum campaign expenditure. This should specifically include:

- Making clear the scope of the legal term ‘a plan or other arrangement’
- Defining what is meant by the fact that referendum expenses must be incurred ‘by or on behalf of’ those involved in the joint spending, and
- Exploring whether or not the joint spending rules should explicitly say that regulated expenses should be incurred by every party involved, in order for those rules to apply.

In addition to the above clarifications, when the joint spending controls are incorporated into PPERA, the Commission should be given a Statutory Code-making power to enable us to clarify any further matters should they arise in the future.

## Imprints on electronic material

3.70 To take into account modern forms of campaigning, the legislation for the 2014 Scottish independence referendum was the first in the UK to apply imprint requirements to non-printed campaign material, such as websites, electronic communications and social media. These extended imprint controls did not apply at the EU referendum meaning that campaigners were only legally required to include an imprint on printed material. We advised, however, that imprints should be included on all types of campaign materials, as a matter of good practice.

3.71 The use of social media at the EU referendum as a campaigning tool was extensive. It therefore remains important that all campaign material should be required to include an imprint so that the campaigner’s identity is clear to voters, regardless of whether it is paper-based or non-printed material. However, it is also important that the rules strike the right balance between ensuring there is transparency about who is campaigning and having proportionate and modern regulatory requirements. Imprint controls should be appropriate to the different media; it should not be overly complex to find somewhere to make the relevant information available.<sup>62</sup>

3.72 As we highlighted in our post-referendum report on the Scottish independence referendum,<sup>63</sup> there were practical issues with regulating the requirements for imprints on electronic material at the Scottish referendum. In

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<sup>62</sup> For example, if using social media platforms such as Twitter or Facebook, imprint information could be included on an account homepage rather than individual posts.

<sup>63</sup> [The Electoral Commission, \*Scottish Independence Referendum - Report on the referendum held on 18 September 2014\* \(December 2014\).](#)

general, despite the intention that the rules should be proportionate, the scope of the rules meant that a potentially wide amount of campaign material had to include an imprint. This caused some confusion amongst campaigners and the public about what did and did not require an imprint.

3.73 The experience of the Scottish referendum indicates that further consideration should be given to how to make the imprint requirements more proportionate and relevant to modern forms of campaigning. In particular, the rules should only cover material produced by campaigners to influence the outcome of the poll, not individuals expressing their personal views.

**Recommendation 8: An appropriate level of imprint information should be required on online and electronic referendum campaign material.**

To ensure that campaigners' identity is clear to voters, an appropriate level of imprint information should be required on online and electronic referendum campaign material. However, before applying such requirements, the Government and Parliament should give careful consideration to the lessons learnt from the drafting and practical application of the imprint rules in the Scottish Independence Referendum Act 2013. We would welcome the opportunity to work with the Government on this.

## Social media

3.74 In our report on campaign spending at the 2015 UK Parliamentary General Election,<sup>64</sup> we highlighted that there is increasing interest in the use of social media and its overall cost as a campaign activity. The same is true about the use of social media as a campaign tool at referendums.

3.75 As with the election rules, there are no specific referendum controls in PPERA on the use of social media or digital campaign methods. Any such spending will, generally, be subject to existing spending limits and reportable after the poll as advertising or unsolicited campaign material – this applies whether it is conducted online, via social media or in another format. However, a main cost of media or digital campaign methods is the associated staff costs. Early in this chapter we note that directly employed staff do not count as campaign spending at either elections or referendums. We recommend that campaign-related staff costs should be included in the limits on political party election and referendum campaign spending.

3.76 As a result of the growing trend in campaigning online, people are becoming increasingly interested in analysing spending specifically on social media. However, it is not currently easy to analyse spending in this area as social media is not a separate reporting category; although, as noted above, it may be reported as advertising or unsolicited campaign material. While it is possible to search by supplier name to find examples of invoices for services

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<sup>64</sup> [The Electoral Commission, UK Parliamentary General Election 2015: Campaign spending report \(February 2016\).](#)

from a social media platform like Facebook, it will not be as straightforward to find invoices for services that were incurred through an intermediary, such as a media agency.

3.77 We are aware of the desire for more meaningful transparency about what campaigners spend on social media, both by way of direct campaigning and by undertaking research via social media, but this must be balanced with proportionate and workable regulation. However, it is important going forward that social media spending is clearly identifiable and we are actively considering with others the implications of using these platforms for campaigning; including how the regulatory framework should adapt to this in the interests of voters.

## Regulating the accuracy and truthfulness of campaign material

3.78 In our first report on the EU referendum,<sup>65</sup> we highlighted that, during the referendum campaign, a number of organisations received complaints from the public about the content of campaign material. We also noted that following the announcement of the referendum result, there continued to be significant public commentary about the ‘truthfulness’ of certain campaign arguments, including from politicians on both sides of the referendum debate.

3.79 While we acknowledged that this is not unexpected during a high profile and hard fought campaign, and following a referendum that divided the country, we noted that issues around the alleged ‘truthfulness’ of campaign arguments had raised questions about voters’ trust in the integrity of referendum controls, and, in some cases, undermined their confidence in the result.

3.80 We concluded that, because of our independent role in running and regulating UK referendums, it would be inappropriate for the Commission to be drawn into political debate by regulating the accuracy and truthfulness of referendum campaign arguments. We said, however, that we would be happy to contribute to any future debate in this area.

3.81 Given the questions raised about campaigning during the referendum period, we felt that there would be benefit in exploring the issues further. On 1 November 2016, we hosted a meeting with representatives from CSPL, the Advertising Standards Authority and the UK Statistics Authority. A second meeting with the additional attendee of the Equalities and Human Rights Commission, and representatives from the broadcasting sector, was held on 14 March 2017. The group recognised the challenges of seeking to address concerns about the content of campaign claims but agreed to consider further whether realistic and workable proposals could be developed.

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<sup>65</sup> [The Electoral Commission, \*The 2016 EU referendum - Report on the 23 June 2016 referendum on the UK's membership of the European Union\* \(September 2016\).](#)

3.82 In addition, on 22 November 2016, CSPL, together with University College London's Constitution Unit, held a seminar which we attended along with a number of other organisations to consider "the impact of referendums in the UK". CSPL has published a working paper which explores the themes arising from the day's discussion and the next steps that are planned following that seminar. The paper also notes that CSPL, the Commission and other public bodies will continue to explore issues around the conduct of referendums in the UK.<sup>66</sup>

## Government spending

3.83 Section 125 of PPERA places statutory restrictions on the publication of promotional material about referendums by Ministers, government departments, local authorities and certain other persons or public bodies that are funded from public funds during the period of 28 days immediately before polling day. The restrictions relate to publishing general information about the referendum as well as about the issues and arguments for or against the referendum question.

3.84 Other than the section 125 restrictions, the other regulatory controls that applied for the EU referendum, did not apply to the Government. This is because, in respect of Crown Immunity, if an Act is not expressly applied to the Crown, then the Crown is not bound, unless it is bound by necessary implication. In practice, this means that, outside the last 28 days, there are no restrictions on the Government publishing information on a referendum and no limit on the amount that the Government can spend. In addition, PPERA does not place any requirements for transparency around Government spending.

3.85 In our first report on the EU referendum, we considered in detail the effectiveness of the controls on governments and other publicly funded bodies.<sup>67</sup> We also considered the implications of the referendum regulatory controls for other organisations such the European Commission, the Bank of England and Parliamentary Selection Committees.

3.86 We discussed two specific activities undertaken by the Government in the lead up to the referendum: the booklet sent to households and the Government's referendum website. The booklet was estimated to have cost approximately £9.3 million and was supported by information published on the Government's own referendum website.<sup>68</sup> In respect of the website, the Government removed links to its referendum website from other gov.uk

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<sup>66</sup> [Joint Committee on Standards in Public Life – Constitution Unit seminar on the conduct of referendums in the UK: 22 November 2016. Working Paper – Referendum seminar: Balance, Information and Engagement.](#)

<sup>67</sup> [The Electoral Commission, \*The 2016 EU referendum - Report on the 23 June 2016 referendum on the UK's membership of the European Union\* \(September 2016\).](#)

<sup>68</sup> [Archived version of HMG referendum website pages \(including a link to HMG booklet\)](#)

websites in advance of the start of the last 28 days before the poll in order to comply with the section 125 restrictions.

3.87 While we recognised that a referendum presents a unique set of circumstances for any Government, it is important to ensure confidence among voters and campaigners that a referendum campaign has been conducted fairly. In particular, voters and campaigners should be confident that the Government's access to public funds has not resulted in an imbalance in the overall campaign.

3.88 We concluded that the lack of clear and meaningful controls on the activities of governments and other publicly funded bodies (not least the lack of any sanctions for breaches) has the potential to undermine voters' trust in the integrity of referendum controls, and, in the most serious cases, undermine confidence in referendum results. We recommend that section 125 of PPERA should be significantly redrafted before any future referendum to clarify the nature and scope of the restriction on activities by Governments and other publicly funded bodies during the referendum period. It should be clear which activities are restricted, and whether there are any specific exemptions; it should be clear when the restrictions apply; and it should be clear who is responsible for enforcing the restrictions, and what the penalties would be for any breach of the restrictions. Our recommendation is included in appendix 2 (recommendation 15).

3.89 We said that the UK Government should consult on options for redrafting section 125 of PPERA, with a view to introducing amending legislation as soon as practicable, sufficiently ahead of any specific legislation for a future referendum. We will also develop our own clear views for consideration by Government and Parliament.

## Process for late claims and payments

3.90 Under PPERA, campaigners at the EU referendum were required to receive all their invoices within 30 days of polling day and pay them within 60 days of the poll. The aim of the controls is to prevent campaigners and their suppliers colluding to evade the financial controls on campaigning. Providing a deadline for the receipt of claims, and having sanctions to deter non-compliance with these deadlines, helps ensure that evidence of regulated spending is submitted along with campaigners' spending returns.

3.91 If campaigners received a claim for payment after that date, they had to seek leave from a court in order to be able to pay the provider. If they failed to obtain leave from a court before they paid the claim, they could be subject to a civil sanction or criminal prosecution. The same rules apply to parties and other campaigners regulated by PPERA.

3.92 In contrast, the legislation for the 2014 Scottish independence referendum gave the Commission the role of granting permission to pay invoices in breach of the statutory deadlines. This approach was intended to

reduce burdens on campaigners and the cost of dealing with late claim and payment applications.

3.93 In practice, the Commission-based late claims and payments process used at the Scottish independence referendum achieved its aims of reducing burdens and costs for campaigners. We also concluded that it is likely to have achieved significant savings of public funds compared to each application requiring a court hearing. Following the 2014 referendum, we made a number of recommendations intended to improve compliance with the late claim and payment controls, reduce burdens on campaigners and the cost of dealing with these applications.<sup>69</sup> To date, these have not been taken forward by the Government.

3.94 To improve compliance with the late claim and payment controls, reduce burdens on campaigners and the cost of dealing with applications, consideration should be given to whether an Electoral Commission-based late claim and payment process would be the most appropriate approach in the context of any future referendum.

## Reporting

### Pre-poll reporting of donations and loans

3.95 Under PPERA, the referendum donation and loan reporting requirements mean that voters are not guaranteed access to information about who has funded the campaigners until after the referendum has taken place. To improve transparency, the legislation for the EU referendum required registered campaigners to report in the lead up to the poll about donations and loans over £7,500 that they received to meet referendum expenses.<sup>70</sup>

3.96 Registered campaigners submitted their first pre-poll report at the end of the reporting period during which they registered. This first report contained donations received and loans taken out over £7,500 back to commencement of the EU Referendum Act on 1 February 2016. This included donations received and loans entered into both before and after the campaigner registered. This was an important addition to the pre-poll reporting rules which ensured transparency of significant sources of campaign funding received before the start of the referendum period and after the date of the poll was confirmed.

3.97 The legislation for the EU referendum also provided for a final pre-poll reporting period up to polling day with a submission date shortly after the poll.

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<sup>69</sup> [The Electoral Commission, \*Scottish Independence Referendum - Report on the regulation of campaigners at the independence referendum held on 18 September 2014\* \(June 2015\).](#)

<sup>70</sup> The rules are substantially based on the weekly reporting requirements that apply to political parties contesting UK parliamentary general elections.

This provided transparency of donations and loans received close to the poll date, albeit after the referendum had taken place.

3.98 During the statutory pre-poll reporting periods, a total of:

- £33,093,484 in donations was reported; £14,943,376 from 'Remain' campaigners and £18,150,109 from 'Leave' campaigners.
- £6,103,940 in loans was reported; £93,940 from 'Remain' campaigners and £6,010,000 from 'Leave' campaigners.<sup>71</sup>

3.99 The pre-poll reporting requirements worked well. Our post-referendum campaigner research<sup>72</sup> showed that 61% of respondents found meeting the pre-poll reporting deadlines to be straightforward. However, two large campaign groups (one of which was designated) argued that pre-poll reporting was a significant distraction from campaigning and that in temporary organisations, like campaign groups, it was difficult to accomplish.

3.100 While we acknowledge the feedback from campaigners, without these controls there would have been no statutory transparency of referendum campaign funding for voters until after the poll had taken place. The pre-poll reporting requirements are important additional controls which increase transparency during the months before the referendum poll and help encourage campaigners to ensure that they only accept donations from permissible sources.

3.101 We do note however, that the implications of the different reporting rules, pre- and post-poll, result in a discrepancy in the published campaign funding. This is because registered campaigners are required to report all donations and loans they *receive* in their pre-poll reports, irrespective of whether those funds are ultimately *accepted* as being from a permissible donor or lender.<sup>73</sup> Differences can occur if, for example, the donor is reported as impermissible. For example, Vote Leave Ltd reported receiving a donation from an individual, Jon Moulton, for £10,000 in a pre-poll return, but reported it as an impermissible donation in its post-referendum return.

3.102 Despite this difference, we are content that the approach taken to pre-poll reporting at the EU referendum strikes an appropriate balance between the reporting burdens placed on campaigners during a high-campaigning period and timely transparency before voters cast their vote. Taking a different approach and aligning the reporting rules to require *accepted* donations to be reported before the poll would result in a transparency gap during the 30 days

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<sup>71</sup> [Information on reported pre-poll donations and loans](#) is available on our website.

<sup>72</sup> [Research among permitted participants at the EU referendum - Justin Fisher \(Brunel University London\) & Bettina Rottweiler \(Brunel University London\) \(August 25th 2016\).](#)

<sup>73</sup> Campaigners have 30 days after *receiving* a donation to check the permissibility of the donor. Campaigners must then either *accept* the donation or deal with it as impermissible. Any rejected donations must be dealt with in accordance with the process set out in PPERA.

prior to the referendum while donations and loans received in that period are permissibility checked. It is also important to note that the full and final details of campaign funding and spending are reportable after the poll.

**Recommendation 9: Pre-poll reporting requirements should be incorporated into PPERA so they apply for all future referendums.**

To increase transparency during the months before the referendum poll and help encourage campaigners to ensure that they only accept donations from permissible sources, pre-poll reporting requirements should be incorporated into PPERA so they apply for all future referendums.

If the referendum legislation is passed but does not immediately come into force, legislation should provide for the pre-poll reporting requirement to commence as early as possible.

3.103 Pre-poll reporting is also required at UK parliamentary general elections, for parties since 2000 and for non-party campaigners since 2014. While we have recommended that pre-election weekly reporting should be streamlined to require fewer pre-election reports<sup>74 75</sup>, we are not currently of the view that a similar approach should apply to pre-referendum reporting. We have concluded that the current model of multiple pre-election reports would continue to be appropriate if most registered parties stood candidates and received at least some reportable donations in the weeks before the election. This closely resembles the situation at referendums where the pre-poll referendum reporting only applies to campaigners that have actively registered to incur over £10,000 of regulated spending.

## Reporting low-level spending

3.104 Under PPERA, registered campaigners are required to submit a full statutory return containing information about their spending and donations, irrespective of how much regulated spending they have incurred. However, building on the experience of the 2014 Scottish independence referendum, the legislation for the EU referendum included provisions to reduce the reporting burdens on registered campaigners that only incurred low levels of campaign spending.

3.105 For the EU referendum, campaigners that registered that did not spend more than the registration threshold of £10,000 were only required to submit either a 'nil return' or a declaration confirming that they had not spent more than the registration threshold. Following the EU referendum:

- 26 registered campaigners submitted 'nil returns'

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<sup>74</sup> [The Electoral Commission, \*A regulatory review of the UK's party and election finance laws - Recommendations for change\* \(June 2013\).](#)

<sup>75</sup> [The Electoral Commission, \*UK Parliamentary General Election 2015: Campaign spending report\* \(February 2016\).](#)

- 22 registered campaigners submitted a declaration of sub-registration threshold spending.

3.106 In practice, these provisions worked well to reduce administrative burdens. They did, however, result in a minor gap in the transparency of the total regulated campaign spending incurred at the referendum compared to the PPERA controls which require full reporting from all registered campaigners. This was because there was no statutory requirement for campaigners that incurred some regulated spending below the £10,000 registration threshold, to report any information on the amount of spending they incurred.

3.107 To provide some transparency to this low level spending, we gave campaigners the option of voluntarily reporting the amount of spending they incurred as part of their declaration of sub-registration threshold spending – in practice, 22 campaigners voluntarily reported a total of £55,878 spending.

3.108 We recognise there is no requirement for campaigners that do not intend to spend more than the registration threshold to register and become subject to any reporting requirement at all. However, now that the declaration of sub-registration threshold spending has been used at two referendums<sup>76</sup>, the experience of these events indicates that there would be transparency and regulatory benefit in requiring at least some spending information from campaigners that register and incur some, but less than the registration threshold, regulated spending. Requiring information on the spending incurred by these campaigners would result in more transparency of regulated spending incurred at the poll and provide the Commission with some evidence in the event of allegations about the spending.

3.109 Registered campaigners already have to record details of their regulated spending and be aware of the total spending they have incurred to be able to sign the appropriate declaration or submit the necessary return. As such, it would not be overly burdensome to require a figure of the total amount of regulated spending they incurred as part of the declaration. This would provide an appropriate balance between reducing the administrative burdens on campaigners that registered but only incurred low levels of spending, and providing transparency to campaign spending.

**Recommendation 10: Campaigners that incur low levels of spending should only be required to submit a ‘nil return’ or declare the amount of spending incurred if below the registration threshold.**

To provide an appropriate balance between reducing the administrative burdens on campaigners that registered but only incurred low levels of spending, and providing transparency to campaign spending:

- The requirements for registered campaigners to submit a ‘nil return’ or a

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<sup>76</sup> The 2014 referendum on independence for Scotland and the 2016 EU referendum.

declaration that they have spent less than the relevant registration threshold, rather than complete a full spending return, should be incorporated into PPERA so they apply for all future referendums.

- Where a campaigner submits a declaration that they have spent less than the relevant registration threshold, they should be required to provide a figure of the total regulated spending incurred.

## Reporting pre-registration regulated expenditure

3.110 Under PPERA, campaigners are only required to itemise and provide evidence of regulated expenditure incurred after the date when they registered with the Commission. Only a global figure of total regulated expenditure is required for spending before that date.

3.111 There is therefore a lack of transparency around pre-registration spending and a potential incentive to delay registration to avoid detailed disclosure of that spending. Following the 2014 Scottish independence referendum, we recommended that the spending return should include itemised information for all regulated expenditure, including spending that is incurred before a campaigner registers with the Commission.<sup>77</sup> However, this recommendation was not adopted for the EU referendum.

3.112 In practice, £142,719 was reported by campaigners at the EU referendum as pre-registration regulated expenditure. Save for the total figure, neither PPERA as amended nor the provisions of the 2015 EU Referendum Act provide for any further transparency around this spending.

3.113 The PPERA referendum rules already require campaigners to report the total amount of regulated expenditure incurred during the pre-registration period. Requiring campaigners to report the details of that how that spending was incurred would therefore not be a disproportionate increase in the regulatory burdens on them.

### **Recommendation 11: Campaigners should be required to include itemised information for pre-registration spending in their return.**

To improve transparency and reduce a potential incentive to delay registration, registered campaigners that submit a full spending return should be required to include itemised information for all regulated expenditure, including spending incurred before a campaigner registers with the Commission.

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<sup>77</sup> [The Electoral Commission, \*Scottish Independence Referendum - Report on the regulation of campaigners at the independence referendum held on 18 September 2014\* \(June 2015\).](#)

## Return declarations

3.114 Prior to the 2014 Scottish independence referendum we noted a technical issue with the declaration contained in PPERA that campaigners are required to sign when submitting their returns. As drafted, the PPERA declaration only provides for the situation where all donations a campaigner accepted were from permissible sources. This causes issues for campaigners in truthfully signing the declaration in circumstances when they have accepted an impermissible donation.

3.115 The legislation for both the 2014 Scottish independence referendum and the EU referendum successfully corrected the issue with the PPERA declaration. The declaration requirements for both these referendums provided for campaigners to declare that they had dealt with any impermissible donations in accordance with the legislation.

### **Recommendation 12: The return declaration requirements in the EU Referendum Act 2015 should be incorporated into PPERA.**

To enable campaigners to sign truthfully the return declaration when they have accepted an impermissible donation, the return declaration requirements in the EU Referendum Act 2015 should be incorporated into PPERA so they apply for all future referendums.

## Length of time to submit post-referendum returns

3.116 Following the 2014 Scottish independence referendum we said that we would keep under review whether the submission timetable for post-referendum spending and donation returns remains appropriate. At that time, we were not convinced that there would be significant benefits to transparency or the workability of the reporting requirements from changing them.

3.117 The PPERA timetable for submitting post-poll referendum returns is within three months of the poll if a campaigner has spent £250,000 or less or audited returns within six months for those that spent over £250,000. These periods are the same across all electoral events, irrespective of the length of the regulated period or the level of the maximum spending limits.

3.118 As part of the referendum regulatory controls, it is important that campaigners have sufficient time to submit complete and accurate returns. For example, campaigners have up to 60 days following the poll to pay their campaign spending invoices; campaigners may then need to deal with any late claims and payments. Campaigners must collate and include details of the spending they incurred campaigning, which in the case of the EU referendum was up to £7m, along with details of all donations and loans they accepted over £7,500. Campaigners that spend over £250,000 must also have their return independently audited before it is submitted.

3.119 We are aware of the view that the submission timetable for post-referendum returns is too long, effectively delaying transparency and public scrutiny until a significant period after the poll has taken place. It is, however, important that the rules balance the need for timely public scrutiny with proportionate and workable rules. We are currently considering wider issues concerning the content of campaign returns in general and will feed the experience of the content and timeliness of the EU referendum returns into that work to consider if there is any basis for change.

## Enforcing the rules

### Electoral Commission's maximum fines

3.120 Since 2010 we have had sanctioning powers relating to most of the requirements set out in PPERA for political parties, referendum campaigners and other individuals and organisations regulated by PPERA. Our sanctions include compliance notices, fixed monetary penalties of £200 and variable monetary penalties up to a maximum value of £20,000.

3.121 In our campaign spending report on the 2015 UK Parliamentary General Election<sup>78</sup> we called for an increase to our PPERA maximum penalty for a single offence to an amount more in proportion with the spending and donations handled by large campaigners. We raised concerns that a £20,000 fine could seem inadequate and affect public confidence, especially if imposed on a high spending campaigner following a closely contested poll. Since publication of that report, we have issued four fines of the maximum amount related to breaches of election rules.<sup>79</sup>

3.122 As a point of principle, we have the same concern about our ability to sanction adequately and proportionately in relation to referendum campaigners. For example, the designated lead campaigners at the EU referendum were each entitled to spend up to £7m campaigning at the referendum, political parties that registered to campaign had spending limits ranging from £700,000 to £5.5m, and any other individual or body that registered to campaign could incur spending up to £700,000. The single largest campaign donation accepted for the EU referendum was £3.2m<sup>80</sup> and there were 54 campaign donations over £100,000.<sup>81</sup>

3.123 In that context, as with elections, limiting our ability to fine to £20,000 for a single offence does not provide a strong deterrent to ensure compliance.

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<sup>78</sup> [The Electoral Commission, UK Parliamentary General Election 2015: Campaign spending report \(February 2016\).](#)

<sup>79</sup> [The Electoral Commission case summaries](#) are available on our website.

<sup>80</sup> Mr Peter Hargreaves to Leave.EU Group Ltd.

<sup>81</sup> [Information on reported campaign funding and spending at the EU referendum is available on our website.](#)

It also has the potential to affect public confidence in the regulatory regime if we are unable to sanction breaches appropriately .

**Recommendation 13: The Commission's current fine limit should be reviewed and increased.**

To ensure that our sanctioning regime provides a strong deterrent to non-compliance, our sanction limit of £20,000 should be reviewed and increased to a level that would act as a suitable deterrent reflecting the level of fines available to other commensurate statutory regulators and financial regulation regimes.

# Appendix 1: Registered campaigners

## Campaigners that registered for the 'Remain' outcome

Adecco (UK) Limited	Friends of the Earth Trust	National Farmers' Union	<b>The In Campaign Ltd<sup>82</sup></b>
Another Europe Is Possible	Global Justice Now	New Europeans Association Ltd	The Republican Socialist Party
Avaaz Campaigns UK	GMB	Patrick Evershed	The ResPublica Trust
Best For Our Future Ltd	Green Party	Plaid Cymru - The Party of Wales	The Scottish Council of the European Movement
Cambridge for Europe	Labour Movement for Europe	Priscilla Nwikpo	Third Generation Environmentalism Ltd
City of London Corporation	Labour Party	Progress Limited	Trades Union Congress (TUC)
Clientearth	Lawyers - In For Britain	Proud Robinson Ltd	UCATT
Communication Workers Union	Lebara Ltd	Referendum Facts Ltd	UK Indians for Remaining in Europe Ltd
Community	Liberal Democrats	Scientists for EU Limited	Union of Shop, Distributive and Allied Workers (USDAW)
Conservative Group for Europe	London First	SCOR UK Company Limited	Unison - The Public Service Union
Conservatives IN Ltd	Michelle Ovens Ltd	Scottish Green Party	Unite the Union
DDB UK Limited	Mr Edward Izzard	Scottish National Party (SNP)	Universities UK
East Midlands Training Limited	Mr Matthew Jones	SDLP (Social Democratic & Labour Party)	Virgin Management Limited
Economists For Remain	Mr Robert Laurence Taylor	Social Market Foundation	Wake Up And Vote
European Movement of the UK Ltd	Mr Wolfgang Tillmans	Stronger United Ltd	We Are Europe
Federal Trust for Education and Research	Mrs Katie Pruszyński	The Fire Brigades Union	-

<sup>82</sup> The In Campaign Ltd was the designated lead campaigner for the 'Remain' outcome.

## Campaigners that registered for the 'Leave' outcome

Brexit Express	Global Britain Limited	Mr Martin Banbury	The Freedom Association Limited
Campaign Against Euro-Federalism	Global Markets Free Nations	Mr Michael Pye	The Leave Alliance Ltd
Campaign for an Independent England Ltd	GO Movement Ltd	Mr Peter Harris	Trade Unionist and Socialist Coalition
Children of the Atom	Grassroots Out Ltd	Mr Philip Lenton	Trade Unionists Against The European Union
Connolly Association	Green-Leaves	Mr Zaccheus Gilpin	Traditional Unionist Voice – TUV
Conservative Grassroots	Imaginexit Limited	Mrs Emmie Sweet	UK Independence Party (UKIP)
Democracy Movement	JD Wetherspoon PLC	Muslims for GB Limited	Vapers for Britain
Democrat Publications	Labour Leave Limited	National Union of Rail, Maritime and Transport Workers	Veterans for Britain
Democratic Unionist Party - D.U.P.	Leave.EU Group Ltd	Newcastle upon Tyne Community First Party	<b>Vote Leave Limited</b> <sup>83</sup>
Dr Richard North	Left Leave	News Group Newspapers Ltd	WAGTV Limited
Economists for Brexit	Midwest Group	Scientists for Britain Limited	Women for Britain
English Democrats	Mr Arron Banks	Social Democratic Party	Workers of England Union
English Lobby	Mr Darren Grimes	The Bow Group	-
English National Party	Mr John Poynton	The Bruges Group	-
FAB says Leave	Mr John Stanyer	The Campaign For An Independent Britain Limited	-
Fishing For Leave	Mr John Sweeney	The EU Referendum Campaign Limited	-

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<sup>83</sup> Vote Leave Ltd was the designated lead campaigner for the 'Leave' outcome.

## Appendix 2: Previous campaign regulation recommendations made following the EU referendum

### **Recommendation 10: Those eligible to register as a referendum campaigner should be the same as those eligible to register as non-party campaigners at elections**

We recommend that the list of individuals and bodies eligible to register as a referendum campaigner is extended to mirror the list of eligible non-party campaigners under PPERA.

### **Recommendation 11: The responsible person should be required to sign the application to register as a referendum campaigner, and be barred from being the responsible person for any other registered referendum campaigner at the same time**

We recommend that the person named as the responsible person should be required to sign the application for registration as a referendum campaigner and that the same person should not be able to be the responsible person for more than one registered referendum campaigner.

### **Recommendation 12: The Commission should be able to reject applications to register certain referendum campaign group names from unincorporated associations**

We recommend that the Commission should be able to reject an application for registration as a referendum campaigner from an unincorporated association whose name, in the Commission's view, is:

- obscene or offensive or which, if published, would be likely to amount to the commission of an offence; or
- the same or similar to that of an already registered referendum campaigner, registered political party or recognised third party.

### **Recommendation 13: Unincorporated associations should be required to provide details of their membership as part of their application to register as a referendum campaigner**

We recommend that the registration requirements for unincorporated associations that register as a referendum campaigner should mirror the registration requirements for unincorporated associations that register as a recognised third party at elections.

**Recommendation 14: Designation of lead campaigners should take place before the start of the referendum period; alternatively the referendum period should be extended**

We recommend that, where the legislative timetable allows, the designation of lead campaigners should take place shortly before, rather than during the first six weeks of, the referendum period and that the deadline for applications should be set at 12pm (noon) on the closing day of the application period.

However, if circumstances mean that the legislative timetable is such that pre-designation is not possible, then our 2011 recommendation to extend the length of the referendum period to at least 16 weeks should be adopted. This would go some way to giving designated lead campaign groups more time to plan and use the benefits available.

**Recommendation 15: The UK Government should consult on options for redrafting section 125 PPERA to clarify the nature, scope and enforcement of the restrictions**

Section 125 of PPERA should be significantly redrafted to clarify the nature and scope of the restriction on activities by Governments and other publicly funded bodies during the referendum period. It should be clear which activities are restricted, and whether there are any specific exemptions; it should be clear when the restrictions apply; and it should be clear who is responsible for enforcing the restrictions, and what the penalties would be for any breach of the restrictions.

The UK Government should consult on options for redrafting section 125 of PPERA, with a view to introducing amending legislation as soon as practicable, sufficiently ahead of any specific legislation for a future referendum.