

Report: Regulation of campaigners at the independence referendum held on 18 September 2014 | Electoral Commission Search Report: Regulation of campaigners at the independence referendum held on 18 September 2014 You are in the Scottish Independence referendum section Home Scottish Independence referendum On this page About this report Funding the campaigns and campaign spending Casework and investigations Lessons for future referendums Recommendations Download our full report First published: 20 June 2019 Last updated: 6 August 2019 About this report On 18 September 2014, the people of Scotland voted in a referendum on whether Scotland should be an independent country (the independence referendum). In the months leading up to the day of poll, Scotland was energised by the debate and the voters engaged in the discussion around the referendum question. The question asked, to which voters were required to vote either yes or no, was: 'Should Scotland be an independent country?' This is the Electoral Commission's second report to the Scottish Parliament and fulfils our statutory duty to report to the Parliament, under the provisions of the Scottish Independence Referendum Act 2013 (SIRA), on the use of our investigatory powers and civil sanctions. This report also analyses the funding and spending of those people and organisations that registered to campaign at the independence referendum. Where appropriate, we make recommendations for the future based on the information campaigners were required to submit in their post-referendum returns. The recommendations are intended to inform the regulation of future referendums, not only in Scotland, but elsewhere in the UK. For further background and information on the wider context of the referendum on independence for Scotland, this report should be read in conjunction with our report published in December 2014 on the conduct of the referendum.

2 Funding the campaigns and campaign spending After the independence referendum, registered campaigners were required to submit a campaign spending return to us. 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. 3 s were also required to provide a total figure of the donations and loans they received over £500 but below £7,500. Anything with a value of £500 or less was not counted as a donation or loan for the purposes of the referendum rules. In summary: 42 campaigners registered during that period, 21 indicating they supported the yes outcome to the question asked, 21 supporting the no side. Registered campaigners reported spending a total of £6,664,980 campaigning at the independence referendum and reported having received donations and loans totalling £7,318,545. Out of total reported spending of nearly £7 million, there was a difference of just over £400,000 in total campaign spending by registered campaigners on each of the two sides of the debate. In total, all those registered to campaign on each side of the debate reported spending over 70% of their total combined individual limits. Both designated lead campaigners reported spending almost exactly the same amounts campaigning at the independence referendum: Better Together reported spending £1,422,602; and Yes Scotland reported spending £1,420,800. Overall, political parties also reported spending relatively similar combined amounts in support of the two outcomes (around £1.3m), despite their different individual spending limits. Out of total reported donations of over £7 million, the donations to those that registered to campaign for the 'No' outcome amount to £4,327,677 and for the 'Yes' outcome to £2,990,868; 59% and 41% of total reported donations respectively. Both the UK and Scottish Governments also published information, including distributing public awareness booklets to all households in Scotland, in the lead up to the referendum. We commented on the activities of the governments and made recommendations for future referendums in our report published in December 2014

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aim to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. Wherever possible, we use advice and guidance proactively for campaigners in order to secure compliance. We will however take enforcement action where it is necessary and proportionate to do so. SIRA gave the Electoral Commission the role of monitoring and taking steps to ensure compliance with the referendum campaign rules. To enable us to undertake that role, we had access to investigatory and sanctioning powers. We applied our usual, established casework procedures for casework in Scotland at the independence referendum - where there was evidence or information substantiating a potential breach of SIRA, we considered whether it was in the public interest to investigate, taking into account the potential impact of the breach on confidence in the referendum rules, the cost of investigating relative to the impact of the breach, and any other relevant considerations. We consulted with the Crown Office and Procurator Fiscal Service (COPFS) in each case to establish whether they would take responsibility for investigating possible criminal offences or if they declined jurisdiction preferring for the Commission to investigate and impose sanctions in connection with referendum offences. Our powers under SIRA enabled us to effectively investigate matters. We have been able to obtain voluntary cooperation in obtaining information. We imposed one discretionary requirement, a variable monetary penalty of £500, on the Communication Workers Union for spending more than the registration threshold of £10,000 before registering with us as a campaigner. No fixed monetary penalties, or stop notices were issued, and no enforcement undertakings were offered or accepted. The existence of our stop notice power however, and our ability to indicate it would be used if voluntary compliance could not be achieved, was an important tool for us. Lessons for future referendums SIRA contained a number of rules drawn from those that applied at the 2011 referendums on increased powers for the National Assembly for Wales and the UK-wide referendum on UK Parliamentary Voting Systems (UKPVS). These rules clarified aspects of the regulatory controls, reduced burdens on those that wished to campaign, and ensured that voters had access to information to enable them to make an informed decision when they vote. Overall, the regulatory controls that applied at the independence referendum worked well and improved on the rules from previous referendums. We made a number of recommendations intended to improve the regulation and reduce the burdens on those that wish to campaign at future referendums in our first report published in December 2014. There are, however, further lessons that can be learnt from the information campaigners were required to submit in their post-referendum returns to further refine the legal framework in relation to: regulating campaigners that work together regulating loans reporting low-level spending reporting pre-registration spending late claims and payments, and the ability of campaigners to check the permissibility of donations and loans. Recommendations The recommendation list continues from those we made in our previous report published in December 2014. All the recommendations in this report are intended to apply at future referendums, not only in Scotland but also those held across or in other parts of the UK. Recommendation 24: Regulating campaigners that work together The legislation for future referendums should include 'working together' provisions that enable campaigners to work together to promote a coordinated message to voters, but ensure there are appropriate and proportionate regulatory requirements to prevent evasion of the spending controls. The provisions should: be based on the working together rules that applied at the Scottish independence referendum in 2014, and require campaigners to set out information in their post-referendum return about the other campaigners they worked with and the

total amounts they each spent. This is information that campaigners should each already be compiling to ensure compliance with the rules and for inclusion in their own return. If the legislation for a future referendum includes a framework which allows for designating a lead body on one side only, it will be important that relevant governments consider the implications for the rules on how campaigners can work together alongside the overall package of benefits available to a sole designated lead campaigner.

Recommendation 25: Regulating loans For future referendums not held under the PPERA framework, relevant governments should ensure that appropriate controls on loans to referendum campaigners, including credit facilities and guarantees, apply. We also recommend that the UK Government should bring forward the relevant secondary legislation to introduce loan controls for referendum campaigners at all future referendums held under the PPERA framework, as soon as practicable.

Recommendation 26: Reporting low-level spending The legislation for future referendums should ensure that registered campaigners that spend less than the relevant registration threshold should only be required to submit a declaration that they have not exceeded that threshold, rather than complete a full spending return.

Recommendation 27: Reporting pre-registration spending The legislation for future referendums should ensure that those registered campaigners that are required to submit a full spending return should include itemised information for all regulated expenditure, including spending that is incurred before a campaigner registers with us.

Recommendation 28: Late claims and payments The legislation for future referendums should include improved controls for when campaigner invoices must be received and paid. It should provide that: the requirement to receive all invoices within 30 days and pay them within 60 days of polling day should only apply to amounts over £200 the responsibility for granting permission to pay invoices outside these deadlines should rest with the Commission where leave to pay is granted, the Commission should also have the ability to sanction the late receipt or payment of the claim in order to encourage compliance, but the Commission-based process should not apply to disputed claims as it would not be appropriate for the Commission to become involved in disputes over commercial transactions.

Recommendation 29: Checking the permissibility of donations and loans The legislation for future referendums should ensure that campaigners are easily able to comply with the requirement to only accept donations and loans from permissible sources.

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 Scottish Independence Referendum report on the regulation of campaigners
 2. Scottish Independence Referendum Report on the referendum held on 18 September 2014
 December 2014 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottishindependence-referendum-report.pdf ■ Back to content at footnote 2
 3. s that are registered political parties are not required to report donations or loans during or after the independence referendum. Political parties report any donations or loans made to their campaign in their usual quarterly reports. ■ Back to content at footnote 3
 4. Report on the referendum held on 18 September 2014
 December 2014, paragraphs 5.146- 5.161, recommendation 15 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottishindependence-referendum-report.pdf ■ Back to content at footnote 4

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