

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

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.

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Foreword

23 June 2016, the date of the referendum on our membership of the European Union, was a great exercise in democratic participation across the UK and Gibraltar. As Chief Counting Officer for that poll, I am both pleased and proud that when voters cast their ballot in the referendum, overwhelming majority did so with the ease that we expect of our electoral system. However, this was not inevitable.

2016 was already a hugely significant year for our electoral system, with the referendum taking place just seven weeks after the numerous and complex polls scheduled across the UK on 5 May. All of us who work in electoral administration know that a successful poll, regardless of its constitutional importance, is one where the administration receives little comment and subsequent public debate focuses on consequences of the result. This is what we aimed to achieve. The evidence outlined in this report confirms that, through careful management of the potential risks associated with the timing and profile of the poll, we saw a referendum that was delivered without any major issues and the announcement of a clear, timely final result.

This success was thanks to the over 100,000 members of staff who were working in around 41,000 polling stations across the UK and Gibraltar. Voters would not have seen the scale and complexity of the efforts that went into planning the poll from months before the date of the referendum was even announced; the extent of this should not be underestimated. So I first of all must thank all the Counting Officers and their staff, as well as the 11 Regional Counting Officers and the Chief Electoral Officer for Northern Ireland whose support and diligence were critical components of the organisation of the referendum. Electoral Registration Officers must also be praised for processing 2.1 million additional applications to register to vote in the weeks before the referendum, as well as the Counting Officers who were braced to cope with a record high electorate of 46,500,001. Their hard work makes democracy a reality for all of us.

The Electoral Commission had a leading role in the referendum. Under the framework of the Political Parties, Elections and Referendums Act 2000 (PPERA) the Commission had a number of specific responsibilities and functions in relation to the delivery and regulation of the referendum, many of which we do not have at elections. From designating lead campaigners and producing guidance for all campaigners to promoting public awareness of the referendum, its subject matter and how to vote in it, the Commission rose to the challenges posed.

Our approach to reporting on the referendum acknowledges that this direct involvement necessitates some independent assessment of our management of the poll, however. In particular, a separate report written by two academics will look at the discharge of duties by myself as Chief Counting Officer (CCO), as well as the Deputy Chief Counting Officer (DCCO), Andrew Scallan CBE, who I would particularly like to thank for his support and expertise throughout the build up to the referendum. As Chief Counting Officer I was responsible for certifying and declaring the referendum result, issuing directions to Counting Officers about the way they performed their functions and, ultimately, was accountable for the way the polls were conducted. The independent report will look at all these issues.

This is a lengthy report, but it provides a comprehensive account of how the Commission and I, as Chief Counting Officer, delivered the responsibilities given to us by Parliament, and it also reflects the views and opinions of a range of stakeholders. Drawing on the experiences of the Commission, electoral administrators, campaigners, and voters, we have developed, as part of this report, important recommendations to improve the functioning of future referendums.

There have been a number of referendums in recent times and lessons have been learnt from each one to ensure that the next is better planned, even more closely regulated, and effectively delivered. During the passage of the legislation for the EU Referendum, we briefed the UK Parliament to ensure that these lessons were reflected in the final rules for the poll. While we were pleased that the Government incorporated many of our recommendations, it must now establish a clear standard legal framework for the conduct and regulation of future referendums to ensure that legislation is set out in advance, free from any political controversy in the build up to a future poll.

As for previous PPERA referendums, the changes and improvements made to the regulatory controls for the EU Referendum were included in legislation specific to the referendum on 23 June and will not apply for future referendums. We are recommending that important changes which have been applied to the legal framework for recent referendums should be incorporated into PPERA to ensure that they will apply for all future referendums, rather than starting over for each new poll.

A generic Order for the conduct of referendums, which we have called for since 2004, should be introduced by the Government now, rather than waiting until legislation is required for a specific referendum in the future. This would remove ambiguity over the detailed rules for the conduct of referendums each time one of these polls is called. To build on the successful approach taken in both the EU referendum and the 2014 referendum in Scotland, this legislation should also require the designation of lead campaigners shortly before the referendum period, rather than during the first six weeks of this period, as PPERA currently sets out.

Regulation of campaigning is essential to ensuring fairness of the poll. It is the underlying legislative basis for referendums held under PPERA that campaigners will come forward to put the arguments for each side of the debate to voters. We have also made recommendations to improve these regulatory controls and will be commenting further in a subsequent report after the campaigners' statutory returns have been submitted.

One thing we have not recommended, however, is any role for the Commission in regulating the 'truth' or the content of what campaigners say. At every electoral event, there is fierce questioning about the accuracy of campaign arguments, and this poll was no different. It is right that campaigners and the media should scrutinise each other's contentions and that information is widely available for voters to do the same. But we do not believe that a role as a "truth Commission" would be appropriate for us given the breadth of our other functions.

A particular concern about fairness which arose at this referendum more than any other in recent times was the risk that significant amounts of public money could be

used for promotional activity, thus giving an unfair advantage to one side of the argument. We first raised this concern when the European Union Referendum Bill was introduced to Parliament without reference to the restrictions on promotional activity by public bodies, as set out in Section 125 of PPERA. Although Parliament decided to re-apply these restrictions, we have observed that there have been questions about how they should apply in practice. We think the time has come, ahead of any future referendums, for a thorough review and reform of Section 125, in order to strike the right balance between the restrictions placed on governments during the referendum period and those set out for campaigners in PPERA, and to clarify the enforcement of the restrictions.

The EU Referendum raised many questions about referendums, and while this report makes observations about them, not all of them will necessitate action from the Electoral Commission. Many of the issues raised will be for Parliament and Government to consider, while others stray into debates that require wider reflection. I am confident that this report is an important contribution to the thinking about referendums, as well as a blueprint for making any future referendums work even better for voters.

A handwritten signature in black ink that reads "Jenny Watson". The signature is written in a cursive, flowing style.

Jenny Watson
Chair of the Electoral Commission and Chief Counting Officer

Summary and recommendations

About the referendum

On 23 June 2016 a referendum was held across the United Kingdom and Gibraltar about whether the UK should remain a member of the European Union or leave the European Union.

This report looks specifically at 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.

We will publish further reports relating to the referendum, including a report on the analysis of campaigners' spending and donations at the referendum and a report detailing the costs of the administration of the referendum in full, in 2017.

Separate reports evaluating our public awareness campaign at the EU referendum, summarising our public opinion research following the referendum, and analysing feedback on the role of the Chief Counting Officer and the Commission supporting Counting Officers and campaigners at the referendum have also been published on our website at the same time as this report.¹

Our role

The Electoral Commission has specific responsibilities for the administration and regulation of referendums held under the framework of the Political Parties, Elections and Referendums Act 2000 (PPERA).

The June 2016 referendum on the UK's membership of the European Union was conducted under the PERA framework, and the Commission was therefore responsible for:

- commenting on the intelligibility of the referendum question proposed by the UK Government
- registering organisations or individuals who wanted to campaign in the referendum (known as 'permitted participants')
- monitoring spending on referendum campaigning, in line with the referendum spending limits imposed by PERA
- considering appointing organisations as the lead campaigners or 'designated organisations' for each referendum outcome
- ensuring that designated organisations (if appointed) had access to certain assistance

¹ Available at <http://www.electoralcommission.org.uk/our-work/publications/election-and-referendum-reports>

- reporting on referendum campaign spending
- reporting on the administration of the referendum

The Chair of the Commission was the Chief Counting Officer (CCO). She was responsible for the conduct of the referendum and for ensuring the accuracy of the overall result. Her duties included certifying and declaring the total number of ballots counted and the total number of votes cast in favour of each answer to the question in the referendum.

The Electoral Commission's key objectives for referendums are that:

- They should be well run and produce results that are accepted; and
- There should be integrity and transparency of campaign funding and expenditure.

Registration and turnout and the result of the referendum

A total of **46,500,001 people were registered to vote** in the referendum and **33,578,037 votes were cast**, representing a **turnout of 72.2%**. Except for the Scottish Independence Referendum in September 2014, this was the highest turnout since the 1992 UK Parliamentary general election (UKPGE).

The outcome of the referendum was:

- **16,141,241** people (48.1% of all voters) voted to remain a member of the European Union
- **17,410,742** people (51.9% of all voters) voted to leave the European Union
- There were **25,359** rejected ballot papers.

More than 8.5 million postal votes were issued for the referendum. This represents 18.4% of the UK electorate, the highest proportion since the introduction of postal voting on demand in Great Britain in 2001. **Almost 26.3 million votes were cast in-person at polling stations.**

As in previous years, turnout was higher among postal voters than in-person voters: 87.6% compared to 69.2%. Postal votes made up 21.7% of the total votes cast, slightly more than at the 2015 UKPGE when they made up 20.5%.

The experience of voters and campaigners

Evidence from our public opinion research with voters shows that they had a positive view of the EU referendum process, with 77% being very or fairly confident that the referendum was well run.

People were also satisfied with the process of registering to vote (87% said they were generally satisfied). People remain highly satisfied with the procedures for voting in the referendum, whether in person at a polling station (97%) or by post (99%).

People also said that they had enough information to participate in the referendum, with 85% saying that it was very or fairly easy to access information about how to cast their vote, with a similar proportion (82%) saying the same in relation to what the referendum was for. The majority felt that they had enough information to make an informed decision on how to vote in it (62% agreed, compared with 28% who disagreed).

Despite this, we received more than 1,000 complaints from the public about the content of campaign material. Our public opinion research asked whether respondents thought that the conduct of the referendum campaigns was fair and balanced. Just over half of respondents (52%) disagreed with this statement with 34% disagreeing strongly. By comparison 34% agreed with the statement that the conduct of the campaigns was fair and balanced – only 12% agreed strongly.

The main reasons given for thinking that the conduct of the campaign was not fair and balanced were because they believed it was one-sided/unbalanced/biased/partial (31%) and the information was inaccurate and misleading (31%).

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. Because of the Electoral Commission’s independent role in running and regulating UK referendums, it would be inappropriate for the Commission to be drawn into political debate by regulating the truthfulness of referendum campaign arguments. We would, however, be happy to contribute to any future debate in this area.

People were less likely to agree that the spending and funding of political parties, candidates and other campaigning organisations is open and transparent – 44% either disagreed or tended to disagree. On the other hand, people were more likely to agree that the authorities would take appropriate actions if political parties or campaigners are caught breaking the rules (61% agreed, compared with 23% who disagreed).

However, it should be noted that this survey was conducted shortly after the referendum and therefore before reports of referendum campaigners’ spending are due to be submitted and published by the Commission.

Legislation for the referendum

A number of changes and improvements were made to the regulatory controls for the EU referendum. These were included in the specific referendum legislation and associated Regulations rather than an updated version of the standard PPERA rules.

To provide additional clarity the UK Government should establish a clear standard legal framework for the conduct and regulation of future referendums. This should include making necessary amendments to PPERA now, together with a generic Order for the conduct of referendums. These measures would remove ambiguity over the detailed rules for the conduct of referendums each time one of these polls is called.

We reiterate our support for the Law Commissions’ recommendations that primary legislation governing electoral registers, entitlement to absent voting, core polling rules

and electoral offences should be expressed to extend to national referendums where appropriate, and that secondary legislation should set out the detailed conduct rules governing national referendums (mirroring that governing elections, save for necessary modifications).

Management and delivery of the referendum

The European Union Referendum Act 2015 provided that the CCO could appoint a Regional Counting Officer for each of the eleven electoral regions in Great Britain used for European Parliamentary elections, comprising nine regions in England and Scotland and Wales. Gibraltar was included in the South West electoral region. The Act provided that Northern Ireland was a single voting area for which the Chief Electoral Officer for Northern Ireland was the Counting Officer. This regional management structure was used to manage the EU referendum in the 382 counting areas.

In order to provide greater clarity and ensure better alignment with arrangements in the rest of the UK, we recommend that Northern Ireland should be designated as an electoral region for future UK-wide referendums.

It is expected that the outcome of the referendum will mean that the UK will no longer hold elections to the European Parliament, and that this regional structure will therefore no longer have a statutory basis.

Given that the structure in place for this referendum worked so effectively to deliver a significant national poll, there would be a risk introduced to the delivery of any future national referendum, potentially with a shorter time period in which to prepare for it, if this structure or something similar (potentially non-statutory) were not to be retained.

We are satisfied that the Chair of the Electoral Commission was the most appropriate person to act as the Chief Counting Officer for this referendum. This will be reviewed by the Commission before each UK-wide referendum to be held under PPERA in future.

We commissioned two academics to carry out a separate, independent evaluation of the role of the CCO and the Electoral Commission and their approach to the management of the poll, which has been published on our website. Feedback from RCOs and COs was very positive about the role of the CCO and the Electoral Commission in the management and delivery of the referendum.

For referendums which take place only in Scotland or Wales, we recognise that the Chair of the Electoral Commission may not be the most appropriate person to act as the Chief Counting Officer. For example, the Convener of the Electoral Management Board for Scotland was the Chief Counting Officer for the 2014 Scottish independence referendum. For referendums which take place only in Northern Ireland, PPERA specifies that the Chief Electoral Officer for Northern Ireland would be the Chief Counting Officer.

There were a number of administrative issues which affected a proportionately small number of voters at the EU referendum. The technical problems experienced by the

Government's voter registration website from 10.15pm on Tuesday 7 June were not resolved until around the time of the deadline for registering to vote in the referendum at midnight. This led to the decision to extend the deadline for registration until midnight on Thursday 9 June.

The Government should publish the independent assessment of what happened as quickly as possible to ensure that the website is able to cope with stress caused by significantly high traffic in advance of future polls. Additionally, introducing the ability for electors to check online whether they are correctly registered before submitting their application would assist the situation by reducing the number of duplicate applications.

The current electoral timetable, with the voter registration deadline set as it is, continues to present particular challenges in terms of ensuring the timely delivery and return of overseas postal votes, which of course will vary between countries. The UK Government's proposed Votes for Life Bill (which will scrap the current 15 year time limit on the voting rights of British citizens living overseas for UK parliamentary elections) is likely to increase the pressure on the postal voting timetable, which is already more compressed compared to a referendum. It highlights the need for the UK Government to work with the Commission and others to identify changes to improve access to the voting process for overseas electors. Any changes requiring legislation should be included in the Votes for Life Bill to ensure a coordinated approach.

Other issues related to the receipt of poll cards and postal votes by ineligible electors; and concerns about the use of pencils to mark ballot papers.

Regulating campaigners at the referendum

Campaigners at the EU referendum were subject to the PPERA regulatory framework which places limitations on spending by campaigners and provides transparency about sources of funding. Some of the PPERA controls were expanded and updated through the EU Referendum Act. We advised the UK Government and Parliament on developing some of these improvements. As for previous PPERA referendums, these changes were included in the specific referendum legislation and associated Regulations rather than updating the standard PPERA rules. We recommend that the changes should be incorporated into PPERA where appropriate, so that they apply for all future referendums.

This referendum saw the highest number of registered campaigners compared to previous referendums held in the UK, including established organisations and political parties, as well as newly-established campaigners. Before and during the referendum period, we identified and monitored campaigns, and provided outreach, advice and training to ensure campaigners knew how to comply with the rules. We made particular efforts to work closely with campaigners to prevent noncompliance, including proactively regulating potential breaches of the rules in 'real time' during the referendum campaign.

We also published details of campaigners' donations to allow scrutiny by voters and the media right up to the poll, and will be publishing the campaigners' spending returns in due course. In this report, we have considered the immediate regulatory issues arising from the referendum and feedback received from campaigners. We will issue a

further report in spring 2017 focusing on the spending and donation returns that campaigners are required to submit to us before the statutory deadlines in September and December 2016. That report will also include information on the use of our investigatory and sanctioning powers at the referendum.

The Commission has a statutory responsibility to appoint lead campaigners for each side of a UK-wide referendum, if suitable applicants are forthcoming. The designation process for the EU referendum was unprecedented in terms of there being high profile, well-funded, competent applicants competing for the same outcome. It was therefore the first time that the statutory test of 'representing to the great extent' was put to the test with competing applications.

In this report, we particularly note the current 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). These deficiencies have the potential to undermine voters' trust in the integrity of referendum controls and, in the most serious cases, undermine confidence in referendum results. We therefore recommend that the legal restrictions known as section 125 should be re-visited and that the enforcement of the s125 restrictions should be clarified. There should be greater consistency between the expectations placed on public bodies and those set out for campaigners during a referendum period.

Recommendations for future referendums

Recommendations for future referendum legislation

Recommendation 1: The UK Government should establish a clear standard legal framework for the conduct and regulation of future referendums

We recommend that important changes which have been applied to the legal framework for recent referendums (including in particular the role of Regional Counting Officers, the requirement for referendum campaigners to report donations during the pre-poll period and rules for campaigners working together) should be incorporated in PPERA to ensure that they will apply for all future referendums. **The UK Government should introduce legislation to make these amendments to PPERA now, rather than waiting until legislation is required for another future referendum.**

We also recommend that the UK Government should use the powers provided to the Secretary of State in Section 129 of PPERA to make an Order providing the detailed conduct rules for the administration of any future referendum poll. **The UK Government should introduce this legislation now, rather than waiting until legislation is required for another future referendum.**

We reiterate our support for the Law Commissions' recommendations that primary legislation governing electoral registers, entitlement to absent voting, core polling rules and electoral offences should be expressed to extend to national referendums where appropriate, and that secondary legislation should set out the detailed conduct rules governing national referendums (mirroring that governing elections, save for necessary modifications).

Recommendation 2: Referendum legislation should be clear at least six months before it is required to be implemented or complied with

The UK Government should manage the development and approval of legislation for future referendums (including any secondary legislation containing detailed rules for the administration of the referendum poll and regulatory controls) so that it is clear at least six months before it is required to be implemented or complied with by campaigners or electoral administrators.

This means that:

- Legislation for the regulation of referendum campaigners should be clear at least six months before the start of the regulated referendum period.
- Legislation relating to the conduct of a referendum poll should be clear at least six months before polling day.

Recommendation 3: Referendums should not normally be held on the same day as other significant or scheduled polls

We have previously recommended that any proposals to hold a referendum poll on the same day as the poll for other electoral events should be considered on a case-by-case basis.

While this remains our view, we believe that the starting assumption for Governments and legislatures should be that referendums are not normally held on the same day as other significant or scheduled polls. In particular, referendums on significant constitutional questions, where political parties and other campaigners are likely to be working more closely together, should never be held on the same day as other scheduled polls.

UK legislatures scrutinising proposals to hold any future referendum on the same day as other significant or scheduled polls should ensure they are satisfied that voters and campaigners will be able to participate fully in both the referendum and the other polls, and that electoral administrators can deliver both sets of polls.

Recommendations for providing information for voters at future referendums

Recommendation 4: Any Government considering providing funding directly to EROs for public awareness ahead of a future referendum or scheduled polls should consult EROs and the Electoral Commission in sufficient time to ensure that effective plans for local and national activities can be developed and implemented.

Where any Government plans to give grants to EROs for public awareness work to encourage electoral registration ahead of future polls, it should publish its proposals

and consult EROs and the Electoral Commission on its proposals at least six months in advance of polling day.

Not only does this allow reasonable time to plan advertising and to organise the logistics of amending and supplying advertising material to take place, but it means that better value-for-money can be achieved when local authorities book advertising space.

Booking advertising space at short notice not only results in a cost premium, but means that availability – particularly with regards to outdoor advertising – can be extremely limited.

Short or non-existent lead times can result in advertising which is both more expensive and less effective.

Recommendation 5: Governments should make use of all available owned channels to promote voter registration ahead of any major poll.

Ahead of the EU referendum, the UK Government mobilised its departments and associated organisations to make use of each and every available communications channel, platform, media space and real estate to drive voter registration ahead of the deadline.

This provided the campaign with unprecedented visual coverage across the country and reached millions of people for no capital expenditure.

Now that it is clear what can be achieved, this should become standard practice for any Government ahead of each scheduled electoral event.

Recommendations for the management and delivery of future referendums and other polls

Recommendation 6: Northern Ireland should be designated as an electoral region for future UK-wide referendums, with the Chief Electoral Officer appointed as a Regional Counting Officer

For future UK-wide referendums, Northern Ireland should be designated as a referendum region with the Chief Electoral Officer appointed as Regional Counting Officer responsible for coordinating the delivery of the poll in line with the other eleven electoral regions in the UK. Voting areas within Northern Ireland should be specified in referendum legislation, in the same way as for other electoral regions elsewhere in the UK.

The UK Government should ensure that legislation for any future UK-wide referendum (including legislation amending PPERA, as recommended above in Recommendation 1 of this report) designates Northern Ireland as an electoral region with the Chief Electoral Officer appointed as a Regional Counting Officer.

Recommendation 7: The capacity of the UK Government’s online voter registration website should be tested to ensure it can cope with significant volumes of applications close to the deadline ahead of future scheduled polls

The UK Government should publish, as quickly as possible, the results of the independent review and investigation into what caused the online voter registration website to fail close to the registration deadline, and outline what measures have been put in place since to ensure that the website is able to cope with significantly high volumes of traffic.

The review, and the Government’s plans for ensuring that the website does not fail in similar circumstances, should be published no later than 4 November 2016, six months before the next set of scheduled polls in May 2017.

Recommendation 8: Electors should be able to check online whether they are correctly registered to vote

Providing a way for electors to check their registration status at the beginning of the online registration application process would reduce the action required by voters to keep their register entry up to date, and would also reduce the impact on EROs of processing duplicate applications.

The UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they complete a new application to register.

Any such service would need to carefully manage and protect voters’ personal information.

Recommendation 9: Access to the voting process should be improved for overseas electors

We will continue to work with the UK Government and Returning Officers or Counting Officers to identify practical steps which could be taken to improve access to the voting process for overseas electors at the next scheduled poll where they are entitled to vote, including:

- Ensuring that all Returning Officers or Counting Officers include the correct postage on postal ballot packs for overseas electors, so that they can be delivered to voters and returned as quickly as possible before polling day, including increasing the funding provided by the UK Government to Returning Officers or Counting Officers for this purpose to allow them to use the Royal Mail International Business Response Service.
- Explaining the practical implications of different voting methods (such as postal voting or appointing a proxy) for overseas electors, particularly if they are making an application during the last month before polling day, including on the www.gov.uk/register-to-vote website.

We will work with the UK Government and Returning Officers to develop workable and effective proposals, which could be included in the proposed Votes for Life Bill if legislation is required, to make it easier for overseas electors to cast their votes in time to be counted at elections. We will also continue our work with the Electoral Coordination and Advisory Board to consider how technology might be introduced into a wider range of election activity.

Recommendations for the regulation of campaigners at future referendums

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.

1 Introduction

1.1 On 23 June 2016, people across the United Kingdom and Gibraltar voted in a referendum on the UK's membership of the European Union.

1.2 This is a report about the administration of the referendum. It reviews the legislation for the referendum, the provision of information for voters about the referendum, the management and delivery of the referendum poll, campaigning at the referendum and the experience of voters. It also makes recommendations for improving the delivery and regulation of future referendums.

The June 2016 referendum on the UK's membership in the European Union

What the referendum was about

1.3 On 23 June 2016 people were asked whether the United Kingdom should remain a member of the European Union or leave the European Union. The ballot paper for voters in England, Scotland and Northern Ireland is shown in Figure 1 below.

Figure 1: The referendum ballot paper for voters in England, Scotland and Northern Ireland

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

1.4 The ballot paper for voters in Wales is shown in Figure 2 below.

Figure 2: The referendum ballot paper for voters in Wales

Referendum on the United Kingdom's membership of the European Union Refferendwm ar aelodaeth y Deyrnas Unedig o'r Undeb Ewropeaidd	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice Pleidleisiwch unwaith yn unig drwy roi croes <input checked="" type="checkbox"/> yn y blwch wrth ymyl eich dewis	
Should the United Kingdom remain a member of the European Union or leave the European Union? A ddylai'r Deyrnas Unedig aros yn aelod o'r Undeb Ewropeaidd neu adael yr Undeb Ewropeaidd?	
Remain a member of the European Union Aros yn aelod o'r Undeb Ewropeaidd	<input type="checkbox"/>
Leave the European Union Gadael yr Undeb Ewropeaidd	<input type="checkbox"/>

The referendum result

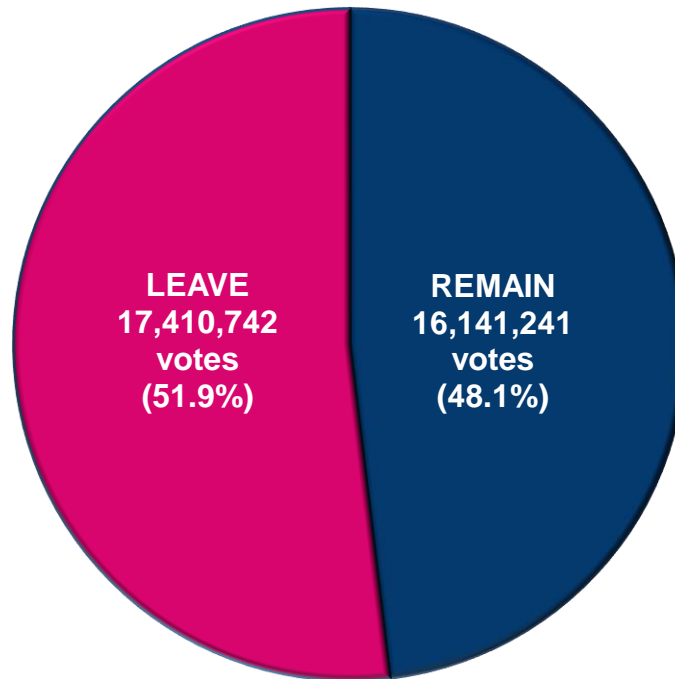
1.5 A total of **33,577,342** votes were cast in the referendum, representing a turnout of 72.2% of the eligible electorate. The outcome of the referendum was:

- **16,141,241** people (48.1% of all voters) voted to remain a member of the European Union
- **17,410,742** people (51.9% of all voters) voted to leave the European Union
- There were **25,359** rejected ballot papers.

1.6 The detailed totals for all voting areas and the overall result have been published on the Electoral Commission's website.²

² <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/electorate-and-count-information>

Figure 3: The result of the June 2016 referendum on the UK's membership of the European Union



The Electoral Commission's role

1.7 The Electoral Commission is an independent body which reports directly to the UK and Scottish Parliaments. We regulate party and election finance and set standards for elections and electoral registration. We are responsible for publishing reports on the administration of referendums and elections.

1.8 The Commission has specific responsibilities for the administration and regulation of referendums held under the framework of the Political Parties, Elections and Referendums Act 2000 (PPERA). The June 2016 referendum on the UK's membership of the European Union was conducted under the PERA framework, and the Commission was therefore responsible for:

- Commenting on the intelligibility of the referendum question proposed by the Government (see Chapter 2 of this report)
- Promoting public awareness of the referendum, its subject matter, and how to vote in it (see Chapter 3 of this report)

1.9 The Commission was also responsible for regulating campaigners at the referendum (see Chapter 5 of this report), including:

- Registering organisations or individuals who want to campaign in the referendum (known as 'permitted participants')
- Monitoring spending on referendum campaigning, in line with the referendum spending limits imposed by PERA

- Considering appointing organisations as the lead campaigners or ‘designated organisations’ for each referendum outcome
- Ensuring that designated organisations (if appointed) have access to certain assistance
- Reporting on the administration of the referendum and referendum campaign spending

The Chief Counting Officer’s role

1.10 Referendums are the only polls where legislation provides for co-ordination and delivery at a UK-wide level. The Chair of the Commission, or someone she appoints, is Chief Counting Officer (CCO) for a referendum conducted under the PPERA framework.

1.11 In 2011, the Chair of the Commission took on the role of Chief Counting Officer in the referendums on the powers of the National Assembly for Wales and the UK Parliamentary voting system. For the 2014 Scottish Independence Referendum, the Scottish Independence Referendum Act 2013 required Scottish Ministers to appoint the Convener of the Electoral Management Board for Scotland (EMB) as CCO for the referendum.

1.12 The Chief Counting Officer was supported by a Deputy Chief Counting Officer (DCCO), eleven Regional Counting Officers across Great Britain and the Chief Electoral Officer for Northern Ireland.

1.13 Chapter 4 of this report provides information and analysis about the approach of the Chief Counting Officer to managing the delivery of the referendum. A separate, independent, evaluation of the work of the Commission and the role of the CCO and DCCO and their approach to the management of the poll has been carried out by academics from Newcastle University and the University of East Anglia, and we have published it on our website at the same time as this report.³

The Electoral Commission’s objectives and principles for referendums

1.14 The Electoral Commission’s focus is on voters and putting their interests first, and this underpins everything we do. Referendums should be administered in a way that engenders confidence, is credible, transparent, and open to scrutiny. Our key objectives for referendums are that:

- they should be well run and produce results that are accepted; and
- there should be integrity and transparency of campaign funding and expenditure

³ Alistair Clark and Toby S James, [An evaluation of electoral administration at the EU Referendum](#) (September 2016).

1.15 Our principles for voters, campaigners and administrators at referendums are set out in more detail below.⁴ This report aims to use objective evidence from voters and non-voters, campaigners, Electoral Registration Officers and Counting Officers, and others who have commented or provided evidence about the referendum to assess the extent to which these objectives and principles have been met.

Principles for voters at referendums

There should be no barriers to voters taking part. This means:

- Those eligible can register to vote
- Voters can easily understand the question (and its implications)
- Voters are informed about the possible outcomes, and can easily understand the campaign arguments
- Voters can have confidence that campaign funding is transparent, that the distribution of any public support and access to media is fair, and that any rule-breaking will be dealt with
- The voting process should be easy to take part in and well-run
- The result and its implications should be clear and understood

Principles for the administration of referendums

In a high-profile referendum where there is likely to be significant campaigning across party lines (such as a referendum on the UK's membership of the EU), the referendum poll should not be held on the same day as the poll for an election. This will help voters and campaigners take part more easily, with less confusion.

The referendum should be administered efficiently and produce results that are accepted. This needs:

- A clear legal framework with clear roles and responsibilities communicated to those who are bound by them
- Governments to ensure that the timetable for developing and introducing legislation provides sufficient opportunity for legislatures to properly scrutinise the proposals, including advice from the Electoral Commission about the referendum question
- Referendum legislation to be clear at least six months before it is required to be implemented or complied with by campaigners, the Chief Counting Officer, Counting Officers or Electoral Registration Officers
- Clear guidance and efficient procedures for voters, campaigners and administrators

⁴ We wrote to political parties represented on the Westminster Parliamentary Parties Panel in March 2015 to set out our principles for referendums ahead of the May 2015 UK Parliamentary general election: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0007/183742/Referendums-Principles-Letter-Parties-Panels-26-03-2015.pdf

- Performance standards against which the performance of Electoral Registration Officers and Counting Officers at referendums is evaluated
- An efficient process for distributing funds to campaigners and administrators
- Rapid and clear reporting on campaign funding and spending
- A timely and persuasive report on how the referendum worked

Principles for campaigners at referendums

There should be no barriers to campaigners putting forward arguments for any of the possible outcomes. This means that:

- It is easy to register as a permitted participant and to take part in campaigning
- The rules that govern campaign spending and fund-raising activity are clear and fair
- The process for designating lead campaign organisations for each outcome (and consequent distribution of public funds and access to the media) is easy to understand, and accepted as fair
- Governments should not pay for advertising about their views during the referendum campaign period

2 Background to the referendum

2.1 The Queen’s Speech on 27 May 2015, which set out the new UK Government’s legislative agenda following the May 2015 UK Parliamentary General Election, included a commitment to legislate for a referendum on the UK’s membership of the European Union:

“My government will renegotiate the United Kingdom’s relationship with the European Union and pursue reform of the European Union for the benefit of all member states.

Alongside this, early legislation will be introduced to provide for an in-out referendum on membership of the European Union before the end of 2017.”⁵

2.2 This Chapter sets out the background to the legislation which enabled the EU referendum to take place on 23 June 2016, including our role in scrutinising and advising Parliament during the passage of the legislation, and identifies lessons learned and recommendations for future referendum legislation. Our detailed assessment of the law on the regulation of campaigning at future referendums is set out in Chapter 5.

The referendum legislation

The Political Parties, Elections and Referendums Act 2000

2.3 The legal framework for referendums held under legislation enacted by the UK Parliament is set out in the Political Parties, Elections and Referendums Act 2000.⁶ That legislation, which also established the Electoral Commission, gives us our particular roles in referendums and creates a framework for how referendums are run and regulated. Section 128 of PPERA (as amended by the European Union Referendum Act 2015) specifies that there will be a Chief Counting Officer (CCO) for the referendum who will be the Chair of the Commission or, someone who is appointed by the Chair of the Commission to act as Chief Counting Officer for the referendum. It also requires the CCO for the referendum to appoint a Counting Officer for each relevant area in Great Britain.

2.4 Part 7 of PPERA and the European Union Referendum Act 2015 also specifies:

- general rules on how referendums should be run

⁵ [Her Majesty’s most gracious speech to both Houses of Parliament at the State Opening of Parliament 2015](#) (May 2015)

⁶ A referendum held under legislation enacted by the Scottish Parliament would not be included within the PPERA framework.

- rules on promotional material and campaigning in referendums
- spending restrictions for registered campaigners

2.5 Under the current legislative framework, 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 rules that apply to registered campaigners.

The European Union Referendum Act 2015

2.6 Following the May 2015 UK Parliamentary general election, the UK Government published its programme for government, which included a commitment to introduce a Bill to hold a referendum on whether the United Kingdom should remain a member of the European Union. The European Union Referendum Bill was introduced to Parliament on 28 May 2015 and passed into law on 17 December 2015.

2.7 The European Union Referendum Bill provided for a referendum to be held across the UK and Gibraltar no later than 31 December 2017.

The Electoral Commission's assessment of the progress of legislation

2.8 Following the 2011 and 2014 referendums, we made a number of recommendations for changes to the legal framework for referendums that should be implemented for any future referendum. We are pleased that the UK Government incorporated many of our recommendations intended to improve the regulatory controls, reduce burdens on campaigners and improve the information available to voters in the Bill as introduced to Parliament on 28 May 2015. In particular, we welcomed changes to:

- Rules on campaigners working together – the Bill contained rules regulating campaigners that work together in a coordinated campaign. This was a significant addition to the PPERA controls to prevent campaigners setting up multiple campaign groups to circumvent spending controls while giving campaigners the freedom to work together to get a unified message to voters. These rules were based on those that applied at the Scottish Independence Referendum.
- Loan controls – the Bill provided for regulatory controls on loans to referendum campaigners. These rules strengthened the controls on the funding of referendum campaigners to ensure that funding came from appropriate sources and provided transparency for voters about those that funded the campaigns.
- Pre-poll reporting – the Bill contained rules which required campaigners to report donations and loans they received over £7,500. These rules were based on those that applied at the Scottish Independence Referendum. This was an important addition to the PPERA controls and ensured that voters had access to information about the sources of significant amounts of funding given to the campaigners before they cast their vote.

2.9 The Bill which was introduced contained the wording for the question which was to be printed on the ballot papers for the referendum (see paragraph 2.16 for more

information about the referendum question) and the franchise for the electorate at the referendum. In addition, it applied rules relating to the regulation of loans to permitted participants. Further Schedules to the Bill specified provisions about the role of the Electoral Commission, specified the Counting Officers (CO) and provided for the appointment of Regional Counting Officers (RCOs) for the referendum, and also contained powers to make the detailed rules for the conduct of the referendum poll, the regulation of campaign activities and for making payments to Counting Officers.

2.10 Throughout the progress of the Bill through Parliament, the Electoral Commission produced a number of briefings for parliamentarians to consider, and made recommendations to improve the Bill. We set out our views on some concerns arising from the Bill as it was introduced ahead of its Second Reading in the House of Commons in June 2015 and we are pleased that the Bill was amended during its passage through Parliament to address those concerns, and recommendations, in particular:

- To ensure the referendum could not be held on the same day as other scheduled polls in May 2016 and May 2017
- To revise the wording of the referendum question in line with our September 2015 recommendations
- To apply the existing PPERA restrictions on the publication of promotional material by governments and other public bodies for the referendum, which the Government had initially proposed to dis-apply in the Bill as it was introduced (we consider the effectiveness of these restrictions in chapter 5)
- To provide for a minimum 10-week referendum period
- To improve the operation of regulatory controls, reduce burdens on campaigners and improve the information available to voters (see chapter 5)

The referendum date

2.11 Although the Bill did not specify the date of the referendum, it did require that the Secretary of State must appoint the day on which the referendum is to be held in secondary legislation. It also stipulated that the referendum should be held no later than 31 December 2017.

2.12 In response to concerns raised during debates in Parliament on the Bill, in particular from elected representatives representing constituencies in Scotland, Wales and Northern Ireland, the Government proposed amendments to prevent the referendum being held on the same day as scheduled polls on either 5 May 2016 or 4 May 2017.

2.13 The Commission supported this change to the Bill. We had also highlighted concerns about the possibility that the referendum could be held on the same day as other scheduled elections, in particular that voters and campaigners should be able to engage fully with the issues which were relevant at those elections. We also highlighted the importance of ensuring that any debate about the UK's membership of the EU could take place at a time that would allow the full participation of voters and campaigners, uncomplicated by competing messages and activity from elections which might be held on the same day.

The referendum question

2.14 The question which will be put to voters is at the heart of any referendum. The Commission has a statutory role in assessing the intelligibility of the proposed question wording for any referendum held under PPERA.⁷

2.15 We have previously published guidelines and our preferred approach to assessing referendum questions to help Governments or legislators to draft intelligible referendum questions and to help us assess the intelligibility of a proposed referendum question.⁸

2.16 Clause 1 of The European Union Referendum Bill as introduced in Parliament set out the following referendum question:

Should the United Kingdom remain a member of the European Union?

2.17 The Welsh language version of the proposed question was:

A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?

2.18 The proposed response options were **Yes/Dylai** or **No/Na Ddylai**.

2.19 In line with our statutory duty, the Commission undertook an assessment of the intelligibility of the question following the introduction of the Bill in to Parliament.⁹ We published details of how we undertook our assessment on our website, including information about our research with voters and our external consultation exercise and how we formed our recommended referendum question.¹⁰

2.20 Having considered the views of members of the public, political parties and would-be campaigners (from both sides) we developed an alternative referendum question for the UK Government to consider which we believed would not cause any concern about neutrality, and be easily understood. This was:

Should the United Kingdom remain a member of the European Union or leave the European Union?

2.21 Our proposed response options were **Remain a member of the European Union** or **Leave the European Union**.

⁷ [Political Parties, Elections and Referendums Act 2000, s.104\(2\)](#): "The Commission shall consider the wording of the referendum question, and shall publish a statement of any views of the Commission as to the intelligibility of that question ... as soon as reasonably practicable after the Bill is introduced"

⁸ The Electoral Commission, [Our approach to assessing the intelligibility of referendum questions](#) (November 2009).

⁹ We had previously recommended potential question wordings using either Yes/No response options or non-Yes/No response statements when we assessed the wording of a referendum question in the *European Union (Referendum) Bill*, a Private Members' Bill introduced in 2013 by James Wharton MP.

¹⁰ <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/eu-referendum-question-assessment>

2.22 The Welsh language version of our recommended question was:

A ddylai'r Deyrnas Unedig aros yn aelod o'r Undeb Ewropeaidd neu adael yr Undeb Ewropeaidd?

2.23 The Welsh language versions of our proposed response options were **Aros yn aelod o'r Undeb Ewropeaidd** or **Gadael yr Undeb Ewropeaidd**.

2.24 We published our assessment of the proposed referendum question on 1 September 2015.¹¹ The Government quickly accepted our recommendations, and we were pleased that the amendments tabled by the Government were accepted at Report stage in the House of Commons to change the question wording to implement our recommendations.

Promotional activity by central and local government

2.25 The Bill as introduced to Parliament provided that section 125 of PPERA (which places restrictions on the publication of promotional material about referendums by Ministers, government departments, local authorities and certain other public bodies during the period of 28 days immediately before polling day) would not apply at the referendum on the United Kingdom's membership of the European Union.

2.26 The Government was concerned at the practicality of the restrictions which applied under section 125 in view of the Government needing to carry on with day to day European Union business through to referendum polling day. By not applying section 125 at the referendum, governments and others would have been free to spend unlimited amounts of public funds promoting an outcome at the referendum right up until polling day.

2.27 We advised that section 125 should remain applicable, because it was important that restrictions on the ability of governments to use public funds to put forward campaign arguments should apply during the 28 days preceding polling day. We had not identified problems with the workability of section 125 of PPERA applying to governments at previous referendums, and therefore considered that it would be workable in relation to the EU referendum.

2.28 As we highlighted in our report following the 2014 Scottish Independence Referendum, the underlying legislative basis for referendums held under PPERA is that campaigners will come forward to put the arguments for each side of the debate to voters. These campaigners are subject to a regulatory regime including limits on the amount that they can spend during the regulated referendum period.

2.29 In our view, there was a risk that the use of significant amounts of public money for promotional activity could give an unfair advantage to one side of the argument. We felt that it would also undermine the principle of having spending limits for registered campaigners if governments were able to spend unlimited funds on paid advertising during the period when campaigners were restricted in the amount they could spend.

¹¹ The Electoral Commission, [Referendum on membership of the European Union – Assessment of the Electoral Commission on the proposed referendum question](#) (September 2015).

This had the potential to be particularly significant in the case of a referendum on the UK's membership of the EU where there would be four governments¹² with views on the issue being debated, as well as local authorities who may have strong interests in promoting a particular outcome.

2.30 We were therefore disappointed and concerned that the Bill as introduced included provision to remove the restrictions on the use of public funds by governments and others to promote an outcome right up until voters cast their votes.

2.31 Ahead of the Report Stage in the House of Commons, the Government tabled amendments that would apply, with modifications, section 125 of PPERA for the purposes of the referendum on the UK's membership of the European Union; and would also provide a power for UK Ministers to further modify the application of section 125 by regulations, following consultation with the Electoral Commission.

2.32 We welcomed the Government's commitment to reinstating the principle of the restrictions set out in section 125, but were concerned that the regulation-making powers which would be provided for by the new clause, to modify the application of section 125, could be used to exclude a wide range of materials from the scope of the restriction in section 125 of PPERA. We continued to state our opinion that it was important that the restrictions on the ability of governments to use public funds to put forward campaign arguments should apply during the 28 days preceding polling day and, consistent with our recommendation made following the Scottish independence referendum, that governments should not undertake paid for advertising (including government referendum material delivered to households) during the whole of the referendum period.

2.33 We therefore welcomed the confirmation provided by Ministers during the third day of the Committee stage debate on the Bill in the House of Lords that the UK Government had no plans to bring forward any regulations to provide exemptions from Section 125.

2.34 More information on section 125 and the restrictions placed on promotional activity by central and local government can be found in Chapter 5.

Regulated referendum period

2.35 The Bill as introduced to Parliament did not address our recommendations on designation of lead campaigners and the length of the referendum period. PPERA provides for a ten week referendum period, the first six weeks of which are to be used to appoint the lead campaigners, leaving potentially only four weeks thereafter for any lead campaigners to use the benefits of designation to get their message across to voters before the poll. The EU Referendum Act, as introduced to Parliament, used this timetable with the date of the referendum and for the referendum period to be set by Regulations.

2.36 Following the referendums in 2011 and 2014, we proposed two alternative timetables to ensure that any designated lead campaigners were able to make the

¹² The UK, Scottish, Welsh and Northern Ireland governments.

most effective use of the benefits available to them. Following the introduction of the Bill, we continued to recommend that the referendum rules should be amended to allow designation of lead campaigners to take place shortly before, rather than during, the first six weeks of the referendum period. This would provide for a 10 week campaign period starting after the designation decision had been made. Alternatively, the referendum period should be extended to 16 weeks, including the designation process. We were therefore pleased that the Government amended the Bill to provide for a minimum 10 week referendum period.

2.37 The referendum timetable was outlined in the subsequent European Union Referendum (Date of Referendum etc.) Regulations 2016. The regulations provided for campaigners that wished to apply to be a lead campaigner for either outcome to have four weeks to compile and submit their applications, from 4 March 2016 to 31 March 2016. Following the end of this application period, the statutory deadline for us to appoint lead campaigners was 14 April 2016, which was the day before the start of the 10 week referendum period.

Electoral Commission's Statement of preparedness, December 2015

2.38 On 17 December 2015, when the European Union Referendum Act received Royal Assent, we published an assessment of the progress of the legislation and steps taken by the Chief Counting Officer to mitigate any foreseeable risks to the successful delivery of the referendum.¹³

2.39 We concluded at that stage that the Act provided a good basis for the delivery of a well-run referendum and the effective regulation of referendum campaigners. We welcomed that the Act had incorporated our recommendations on the referendum question, that many of our recommendations based on lessons learned from the 2011 and 2014 referendums had been addressed and that substantive points raised in our briefings to Parliament had been responded to.

2.40 At the same time, our assessment also highlighted the planning uncertainty by 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 early designation.

2.41 Throughout the passage of the European Union Referendum Bill through Parliament, the Chair of the Electoral Commission (acting as Chief Counting Officer designate) had taken a number of preparatory steps to mitigate the uncertainty of not knowing the date of the referendum including:

- Establishing a management framework with Regional Counting Officers designate
- Consulting on proposed directions on the delivery of the referendum and the timing of the count
- Preparation of guidance and supporting resources for Counting Officers

¹³ The Electoral Commission, [Referendum on the United Kingdom's membership of the European Union – Progress and preparations for the referendum](#) (December 2015). An updated statement was issued in February 2016 when the date of the referendum was announced: [Referendum on the United Kingdom's membership of the European Union – Progress and preparations for the referendum](#)

2.42 The Commission had also begun to liaise with campaigners in relation to our guidance for the reporting of campaign finance for the referendum and issuing guidance prior to the Act receiving Royal Assent and the announcement of the referendum date.

2.43 We concluded that the legislation established a good basis for delivering the referendum and that both the Commission and the CCO were well prepared to deliver the referendum as was then possible without knowing the date of the poll. By having put in place a management framework during the passage of the Bill through Parliament, we reported that the CCO had been able to undertake significant preparatory work to mitigate not knowing the date of referendum and any foreseeable risks to the successful delivery of the referendum if held within a short timeframe after the legislation was in place.

Secondary legislation for the referendum

2.44 At the time the European Union Referendum Bill was given Royal Assent in December 2015, its substantive provisions were not commenced.

2.45 Several pieces of secondary legislation were required to be laid, debated and approved by Parliament before the referendum could take place. Regulations were required to:

- Specify the date of the referendum poll
- Set the length of the referendum period during which spending by campaigners will be regulated, and set the requirements for campaigners to report on the sources of funding before the poll
- Allow campaigners to register with the Commission, apply to the Commission to be designated as the lead campaigner for one side of the referendum debate
- Specify the detailed rules for the administration of the poll, and to provide funding for the Counting Officers and Regional Counting Officers to deliver the referendum poll

The European Union Referendum (Date of Referendum etc.) Regulations 2016

2.46 The European Union Referendum (Date of Referendum etc.) Regulations 2016 were made on 3 March 2016. As well as setting the referendum date as 23 June 2016, these Regulations set the referendum period to commence on 15 April 2016, the application period for designation as a lead campaigner to commence 4 March 2016, and various dates for the submission of pre-poll donation reports.

2.47 Prior to the introduction of the regulations specifying the date of the referendum, the Electoral Commission had highlighted that if it were to be held on any date in June 2016 the referendum campaign period would overlap with the May election campaign periods. We also highlighted that there could be an impact on voter understanding of substantive issues in the campaign, the regulation of campaigners during the overlapping regulated periods, and on people's awareness of what they needed to do to register, apply for a postal or proxy vote if needed, and vote in the referendum.

2.48 Given the strong views that had been expressed regarding the proximity of the referendum to scheduled elections in May 2016 and May 2017, we expected that the

UK Parliament would consider these issues carefully when it debated the secondary legislation which specified the date of the referendum.

2.49 We requested that the Government should not propose holding the referendum on either 2 or 9 June 2016, dates which we specifically highlighted as having the greatest potential overlap with campaigner and administrative activities linked to the May 2016 elections. We were satisfied from an administrative and campaigner regulation perspective, however, that the proposed date of the referendum on 23 June 2016 did not pose a significant risk to a well-run referendum.

The European Union Referendum (Conduct) Regulations 2016

2.50 The European Union Referendum (Conduct) Regulations 2016, which were made on 25 February 2016, specified the detailed rules for the administration of the poll. The Cabinet Office published draft regulations for the conduct of the referendum poll during summer 2015, which were largely modelled on the rules used for the May 2011 referendum on the voting system for UK Parliamentary elections. Following the May 2011 referendum we concluded that overall the rules for the administration of the referendum poll worked well, and we recommended that they should provide a template for the rules for future referendums.

2.51 The draft Regulations reflected relevant changes made to electoral rules since 2011 (including changes to allow voters to be issued with a ballot paper if they are in a queue to vote at a polling station at the close of poll, for example), and also took account of recommendations made by the Commission in our report on the 2014 Scottish referendum. Our response to the Government's consultation on the draft Regulations identified some technical issues to be resolved (such as improvements to regulatory controls including the registration of campaigners and joint campaigning rules), with more substantive points relating to the creation of an electoral register for Gibraltar and the inclusion of Welsh language material without delay. We were pleased that Welsh language forms were published as soon as possible after the English language versions, and therefore were available in good time for Counting Officers in Wales to use to deliver the referendum in Wales.

2.52 Although the Conduct Regulations were clear only four months before polling day, rather than the six months that we recommended, we were broadly satisfied that due to our advanced preparation in relation to the issuing of directions and guidance this was enough time for Counting Officers to sufficiently prepare.

The European Union Referendum (Counting Officers' and Regional Counting Officers' Charges) Regulations 2016

2.53 The European Union Referendum (Counting Officers' and Regional Counting Officers' Charges) Regulations 2016,¹⁴ which were made on 22 March 2016, set out the amounts Counting Officers and Regional Counting Officers could recover for their costs in running the referendum. The Regulations included the maximum amounts that each Counting Officer and Regional Counting Officer could claim personally for their services in delivering those roles.

¹⁴ http://www.legislation.gov.uk/uksi/2016/419/pdfs/ukxi_20160419_en.pdf

The European Union (Voter Registration) Regulations 2016

2.54 Following technical problems on the Government's voter registration website (www.gov.uk/register-to-vote) on Tuesday 7 June, which prevented a significant number of people from registering by the deadline at midnight, the Electoral Commission and the CCO concluded that, in these exceptional circumstances, it would be in the best interests of voters to introduce legislation to extend the deadline for applications.

2.55 The UK Government announced on 8 June that it would introduce legislation to extend the deadline to apply for registration to midnight on Thursday 9 June. As required by the European Union Referendum Act 2015, the Government consulted the Electoral Commission on 8 June, before laying the necessary draft Regulations for approval by the UK Parliament. We were content that the draft Regulations on which we had been consulted would have provided the necessary legislative basis for extending the deadline for registration applications to midnight on 9 June 2016, across the whole of Great Britain and Northern Ireland. We issued a briefing setting out our views ahead of debates in the House of Commons and the House of Lords on 8 June.¹⁵

2.56 However, the draft Regulations which were eventually tabled for approval by Parliament no longer extended to Northern Ireland, and therefore only extended the deadline in Great Britain. The UK Government argued that, because there was not an online registration system in Northern Ireland, voters there had not been affected by the failure of the Government's voter registration website. Our view remains that the change to the deadline for applications should have been extended to Northern Ireland as well, to provide a consistent approach for electors across the UK.

2.57 On 9 June, the European Union Referendum (Voter Registration) Regulations 2016 were made, which extended the deadline for electoral registration applications in Great Britain ahead of the referendum to midnight on 9 June. The Government of Gibraltar also made regulations to extend the deadline for registration applications from electors in Gibraltar until midnight on 9 June.

2.58 The practical impact of the change to the deadline for registration applications in Great Britain and Gibraltar is outlined in paragraphs 4.117 to 4.123 in Chapter 4.

¹⁵ The Electoral Commission, [Briefing on European Union Referendum \(Voter Registration\) Regulations 2016](#) (June 2016).

Issues and lessons learned about the referendum legislation

Changes to primary and secondary legislation for the referendum

2.59 As for previous PPERA referendums, the changes and improvements made to the regulatory controls for the EU referendum were included in legislation specific to the referendum on 23 June. This means that this improved legal framework will not apply for future referendums and new legislation will be required. In Chapter 5 we recommend that certain regulatory controls should now be incorporated into PPERA so that they apply for all future referendums.

2.60 Primary legislation in the UK Parliament is required to provide for any referendum to be held under PPERA, which must specify the referendum question and which can also specify the referendum franchise, the date of the referendum and other key dates including the start of the referendum period. There is, however, no generic legislation setting out the detailed rules for running referendums held under the PPERA framework. Instead, separate legislation containing these rules has to be made in each case.

2.61 Since 2004, we have called on the UK Government to make a generic order for the conduct of referendums and made specific recommendations as to what it should contain, including key dates and deadlines.

2.62 Such an order would provide clarity for those running and those planning to campaign in a referendum, and allow planning and preparation to commence, rather than waiting for enabling legislation to be finalised. A generic order would also reduce the risk of criticism that the rules for specific referendums could be amended for political reasons.

2.63 Legislation specific to any further referendum would then only need to specify the referendum question, the referendum date and the referendum franchise. The legislative process instigating a referendum would be speedier, enabling a referendum to be held more quickly.

2.64 The UK's Law Commissions have recommended in the interim report of their electoral law reform review that:

- Primary legislation governing electoral registers, entitlement to absent voting, core polling rules and electoral offences should be expressed to extend to national referendums where appropriate.

- Secondary legislation should set out the detailed conduct rules governing national referendums, mirroring that governing elections, save for necessary modifications.¹⁶

2.65 The Law Commissions consulted on these recommendations and there was unanimous support from consultees, including from the Electoral Commission, to these proposals. Several consultees emphasised the benefits of such a “pan-electoral” approach to national referendums.

Timing of secondary legislation and the length of the referendum period

2.66 Our report on the 2014 Scottish Independence Referendum highlighted the benefits for voters, campaigners and electoral administrators of early confirmation of the legislative framework for the referendum, which was clear almost 10 months before the referendum date. We continue to recommend that best practice for referendums is that all legislation should be clear (whether by Royal Assent to a Bill or the introduction of regulations to Parliament for approval) at least six months before it is required to be implemented or complied with by campaigners, the Chief Counting Officer, Regional Counting Officers, Counting Officers or Electoral Registration Officers.

2.67 In the case of the EU Referendum legislation, including the regulatory framework, was clear only four months before polling day for the referendum poll, rather than the six months that we recommended. In the context of this specific referendum, the Commission and the CCO were satisfied that the steps that had been taken up to that point (outlined in paragraphs 2.38 to 2.43 above) had minimised as far as possible the risks of allowing less time for Counting Officers and the Electoral Commission to prepare. Despite this relatively late confirmation of the rules for the referendum, and thanks to the tremendously hard work of Counting Offices, their staff and staff at the Commission, the feedback we have collected from Counting Officers, voters and campaigners (summarised in Chapter 4 of this report) shows that they felt the referendum was well-run.

2.68 For those that intended to campaign at the EU referendum, Regulations were also required to set the length of the referendum period during which spending would be regulated, allow campaigners to register with us and apply to us to be designated as a lead campaigner, and set the reporting requirements for the sources of funding before the poll. These specific dates were not clear until the associated Regulations were made on 3 March 2016; only some six weeks before the start of the regulated referendum period.

2.69 We took steps to mitigate the risk that the short time period between the detail of the regulatory controls becoming clear and those controls applying would cause problems for campaigners, through phased publication of guidance and the use of regular campaigner updates. The absence of a polling date and detail about when the

¹⁶ Law Commission of England and Wales, the Scottish Law Commission and the Northern Ireland Law Commission [Electoral Law – An Interim Report](#) (February 2016).

regulatory controls would commence meant that we were unable to publish fully comprehensive guidance until shortly before the rules came into force. This was particularly challenging for prospective campaigners' ability to effectively plan. For example, in January 2016, although the referendum legislation had received Royal Assent and campaigners were active, the detail of when the regulatory controls would apply, including from when campaigners could register with us, was not known. The European Union Referendum Act 2015 enabled the Government to set the polling day and trigger the application of the regulatory controls at any time within a two year window before the end of 2017.

2.70 To date, we do not have evidence that the legislative timetable or the commencement of the regulatory controls caused any significant compliance issues for campaigners at the EU referendum.¹⁷ However, the legislative timetable resulted in periods where there was a lack of regulatory controls, even though the referendum legislation had received Royal Assent. For example, donations towards referendum campaigning received prior to February 2016 are not reportable and campaign spending incurred through to April 2016 was not covered by the spending limits. We will consider these matters further in our spending and donation report due in spring 2017.

2.71 There is however an inherent risk of inadvertent non-compliance by campaigners if there is insufficient time between the detail of the regulatory controls becoming clear and campaigners being required to comply with those controls. Campaigners need sufficient time to fully understand the details of the controls and to put in place suitable compliance processes.

2.72 We therefore continue to recommend that in planning for any future referendums, governments should ensure that legislation (including any secondary legislation containing the detail of the regulatory controls) is clear at least six months before it is required to be complied with by campaigners. This would mean that the legislation for the regulation of referendum campaigners should be clear at least six months before the start of the regulated referendum period (see Recommendation 2 below).

The referendum date

2.73 Since the 2014 Scottish independence referendum we have continued to recommend that any referendums on important constitutional or high-profile issues should be held on a separate day from other scheduled elections in order to give voters space to fully engage with the referendum issues and allow campaigners and electoral administrators to plan their activities effectively. It is also important that any debate should take place at a time that allows the full participation of voters and

¹⁷ Should this change once we have received the campaigner donation and spending returns we will revisit this point in our campaign spending report which is due to be published in spring 2017.

campaigners, uncomplicated by competing messages and activity from elections which might otherwise be held on the same day.¹⁸

2.74 As the nature of referendums also attract cross-party campaigning, we would also be concerned that holding a high-profile referendum on the same day as other significant or scheduled polls, where political parties would be competing against each other, would be unworkable for campaigners and confusing for voters. We were pleased that Parliament agreed to specify that the referendum would not be able to be held on the same day as scheduled polls in 2016 and 2017.

2.75 We were also pleased that the UK Government proposed holding the referendum seven weeks after the May 2016 elections, to enable more time for referendum campaigners to put arguments to voters without overshadowing the elections. Evidence from our assessment of the elections which were held in May 2016¹⁹ suggests that, while voters generally felt they had enough information to take part in the elections, some did however feel that the elections had been overshadowed by coverage of the EU referendum.

2.76 Although the duration of the regulated referendum period for the EU referendum also overlapped with regulatory timeframes for the May 2016 elections, we were able to publish guidance on the impact of overlapping regulatory periods to advise campaigners on how to understand which set of rules apply to their spending. Feedback from campaigners suggests that the overlapping regulatory periods led to significant uncertainty in respect of putting out messages during the election campaigns which might have fallen foul of election rules.

Recommendations for future referendum legislation

Recommendation 1: The UK Government should establish a clear standard legal framework for the conduct and regulation of future referendums

We recommend that important changes which have been applied to the legal framework for recent referendums (including in particular the role of Regional Counting Officers, the requirement for referendum campaigners to report donations during the pre-poll period and rules for campaigners working together) should be incorporated in PPERA to ensure that they will apply for all future referendums. **The UK Government should introduce legislation to make these amendments to PPERA now, rather than waiting until legislation is required for another future referendum.**

¹⁸ Also held on the same day, although not combined with the referendum, there was a Neighbourhood Planning referendum in Basingstoke and Deane; a borough by-election in the Royal Borough of Windsor and Maidenhead; and a town council by-election in Dover.

¹⁹ Our reports have been published on the Commission's website at <http://www.electoralcommission.org.uk/our-work/publications/election-and-referendum-reports>

We also recommend that the UK Government should use the powers provided to the Secretary of State in Section 129 of PPERA to make an Order providing the detailed conduct rules for the administration of any future referendum poll. **The UK Government should introduce this legislation now, rather than waiting until legislation is required for another future referendum.**

We reiterate our support for the Law Commissions' recommendations that primary legislation governing electoral registers, entitlement to absent voting, core polling rules and electoral offences should be expressed to extend to national referendums where appropriate, and that secondary legislation should set out the detailed conduct rules governing national referendums (mirroring that governing elections, save for necessary modifications).

Recommendation 2: Referendum legislation should be clear at least six months before it is required to be implemented or complied with

The UK Government should manage the development and approval of legislation for future referendums (including any secondary legislation containing detailed rules for the administration of the referendum poll and regulatory controls) so that it is clear at least six months before it is required to be implemented or complied with by campaigners or electoral administrators.

This means that:

- Legislation for the regulation of referendum campaigners should be clear at least six months before the start of the regulated referendum period.
- Legislation relating to the conduct of a referendum poll should be clear at least six months before polling day.

Recommendation 3: Referendums should not normally be held on the same day as other significant or scheduled polls

We have previously recommended that any proposals to hold a referendum poll on the same day as the poll for other electoral events should be considered on a case-by-case basis.

While this remains our view, we believe that the starting assumption for Governments and legislatures should be that referendums are not normally held on the same day as other significant or scheduled polls. In particular, referendums on significant constitutional questions, where political parties and other campaigners are likely to be working more closely together, should never be held on the same day as other scheduled polls.

UK legislatures scrutinising proposals to hold any future referendum on the same day as other significant or scheduled polls should ensure they are satisfied that voters and campaigners will be able to participate fully in both the referendum and the other polls, and that electoral administrators can deliver both sets of polls.

3 Information for voters about the referendum

3.1 One of the Electoral Commission's key principles for referendums is that there should be no barriers to voters taking part. Informed voters are fundamental to a well-run referendum, and this means that those eligible to vote must know how to apply to register and how and when to cast their vote, and should be able to understand the referendum question, the possible outcomes and the campaign arguments.

3.2 The Electoral Commission has a duty to provide information for voters ahead of any polls on a national scale, and this chapter explains how we carried out our role ahead of the EU referendum, including working with Electoral Registration Officers (EROs), Counting Officers (COs) and other partner organisations. We have also published detailed information and evaluation of our public awareness campaign activities on our website.²⁰

Our approach to providing information for voters about the EU referendum

3.3 Ahead of the EU referendum, we ran a multimedia public awareness campaign to ensure people had access to the essential information they needed in order to take part, including knowing they needed to be registered to vote by the 7 June deadline.

Activity in the UK

3.4 Our activity aimed at voters in Great Britain and Northern Ireland began on 15 May, a little over a week after the 5 May polls. It included advertising, a voting guide, public relations (PR) and partnership activities.

3.5 We allowed time between the 5 May polls and the launch of our EU referendum campaign to minimise voter confusion and fatigue, and to ensure electoral activity for May had concluded by the time of our launch.

3.6 Because the EU referendum was a unique event, and because it immediately followed our voter registration drive for the May elections, the focus of our UK public awareness campaign was on providing all adults with the information they needed to take part in the referendum rather than prioritising those in under-registered groups.

3.7 This included providing and signposting people to information on the arguments for either outcome of the referendum, as when we tested the referendum question in

²⁰ The Electoral Commission, [May 2016 and EU referendum public awareness evaluation report](#) (September 2016).

research with members of the public, they also told us that those areas of information would help them to make an informed decision.²¹

Activity outside the UK

3.8 Our public awareness campaign aimed at UK citizens living overseas began in December 2015 with early partnership work and PR activity before our advertising started in March 2016. We ran a longer campaign overseas compared to in the UK because we wanted to ensure UK citizens living overseas had sufficient time to both register to vote and put in place absent voting arrangements.

3.9 We also ran a short registration campaign targeting armed forces personnel based overseas, who – unlike UK citizens based overseas – were eligible to vote at the May 2016 polls. This involved targeted Facebook advertising raising awareness of the referendum and the need to register to vote by the deadline, but also had an earlier conclusion than the UK activity to help ensure that service voters based overseas had sufficient time to both register to vote and put in place absent voting arrangements.

Our UK public awareness campaign

Strategy

3.10 The campaign was similar to the successful campaign we ran ahead of the 2014 referendum on Scottish independence, with the focal point being a voting guide delivered to every household (28 million) in the UK.

3.11 To help ensure people looked out for and read the voting guide, we ran advertising promoting the voting guide and our website across TV, radio, outdoor, social and press channels. The tagline for the campaign was ‘you can’t miss it’ – a reference to both the voting guide and information we provided and the referendum itself.

3.12 We boosted our public awareness campaign with PR activities focussed on key milestones including: the launch of our campaign; the start of the delivery of our voting guide; one week to go before the voter registration deadline; the final day to register to vote; the final days before polling day.

3.13 We achieved widespread coverage across print, radio, TV and online media throughout the campaign.

The voting guide: offline and online

3.14 The voting guide contained information about how to register and vote, as well as an image of the ballot paper with instructions on how to complete it.

3.15 Given the referendum was a unique event, we anticipated people may not realise it used the same electoral roll as other elections and may think they needed to register to vote especially for it, even though they were already on the electoral roll. To help mitigate this potential issue, in our voting guide we included a message telling people

²¹ GfK Social Research, [Referendum on membership of the European Union: question testing](#) (September 2015).

that if they were already registered to vote they would receive a poll card and when to expect this.

3.16 The guide also included a page of content provided by each of the lead campaign groups, where they outlined their arguments for why people should vote for the outcome they were campaigning for. We reproduced this content exactly as it was provided to us.

3.17 We designed the guide (and related campaign materials) to stand out from other EU referendum information by using a bright neon sign design in the same vein as our materials ahead of the Scottish independence referendum.

3.18 We carried this design through to our online content, where we developed an EU referendum microsite which provided people with the information in our voting guide in a digital format and was easy for people to access from mobile devices.

Partners and other organisations

3.19 We worked in partnership with organisations that could help us reach people who were unlikely to respond to our advertising, as well as those who needed additional information and support to take part in the referendum.

3.20 We built on partnership work carried out during our campaign for the 5 May polls, working with organisations such as Mencap; Shelter; Enable Scotland; The Northern Ireland Housing Executive; The Scottish Association of Landlords; The Wallich; RNIB Cymru; Care Inspectorate; and the Scottish Council of Jewish Communities.

3.21 We provided a range of resources to facilitate involvement from other organisations, including posters, infographics, factsheets and sample website and social media content, as well as our voting guide in alternative formats and languages.

3.22 We worked with the organisers of Glastonbury and Euro 2016 – two events taking place across polling day – and provided them with content to share across their communications channels to help people attending those events know what they had to do to take part in the referendum.

3.23 We worked with Twitter, who designed two custom emojis for the campaign. These appeared when people used the hashtags #EURefReady (between 6-7 June) and #EURef (between 7-23 June).

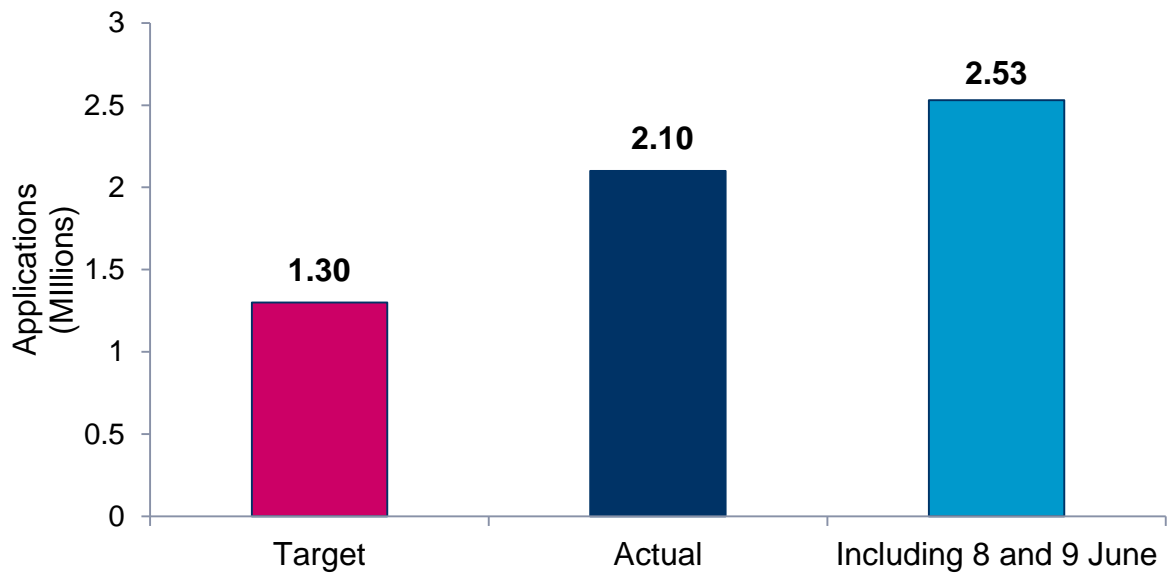
3.24 #EURefReady alone was used in 40,000 tweets with an estimated 185.2 million impressions, becoming the top UK trend on Twitter for more than six hours on 6 June.

Campaign performance

3.25 We set targets for the number of online applications made during the campaign period, as well as the public's recognition of and responses to our campaign.

3.26 Figure 3.1 below shows that we greatly exceeded our online applications target for the referendum, with over two million people applying to register to vote between the campaign launch on 15 May and the registration deadline on 7 June.

Figure 3.1: Online registration applications vs target (millions).



Source: Applications data from gov.uk/performance/register-to-vote

3.27 Over half a million people completed an online application to register to vote on 7 June alone – a record number of applications in any one day since the transition to IER.

3.28 On the evening of 7 June the Cabinet Office’s online registration portal crashed, resulting in the registration deadline being extended to 9 June. This issue is discussed further in Chapter 4.

3.29 It is possible for people to submit an application to register online even if they are already registered to vote, therefore some of the applications could be duplicates and would not result in an addition to the register. We monitor the number of applications people are submitting to help us assess responses to our campaign, but we are unable to distinguish the number of actual additions to the register when our campaign is live.

3.30 However, after the referendum we were able to see that 38% of applications made during the campaign were duplicates, causing a huge strain on resources for local authorities (see 4.124). The relative ease of registering to vote, in comparison to the procedure for checking to see if they were registered, meant that many people simply made another application if they weren’t sure.

3.31 To address this, we again recommend in this report that the UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they submit a new application to register (as discussed and recommended at 4.130).

3.32 There were 1,074,700 additions to the register in the UK during our campaign period. Of these, 135,396 were from UK citizens living overseas.

Table 3.1: Electoral Commission public awareness campaign performance – tracking research results.

Target	UK	England	Scotland	Wales	Northern Ireland
80% of the population report having seen at least one element of the campaign	66%	65%	73%	64%	74%
75% of the population feel that they had enough information to vote with confidence	69%	69%	71%	72%	71%
35% of people report taking action as a result of the campaign, including looking out for and reading the voting guide	23%	24%	17%	22%	22%

3.33 We did not meet our targets for awareness of and responses to our campaign, although these were the highest targets we had set for any of our past public awareness campaigns for elections or referendums.

3.34 There is some evidence from the research we did with members of the public when we assessed the performance of our campaign to suggest some of our advertising struggled to compete for attention alongside the high volume of other advertising and media commentary about the referendum. For example, the TV advert we used during our 2015 general election campaign was recognised by 66% of respondents, compared to 52% for our EU referendum campaign TV advert.

3.35 Awareness was possibly impacted by the huge volume of media coverage and political material put to voters in the months around both the preceding May elections and EU referendum.

3.36 Further analysis of our public awareness campaign is available in our [evaluation report](#).

Activity outside the UK

3.37 To reach UK citizens living overseas we worked in partnership with the Foreign and Commonwealth Office (FCO) from December 2015, to access their research and extensive communications channels and networks of embassies and consulates. This included a focussed day of activities on 4 February 2016 which we nominated as Overseas Voter Registration Day.

3.38 We provided a range of resources to facilitate involvement from other organisations including: a partnership pack; infographics; and sample messages for websites, blogs and social media.

3.39 We began advertising on Facebook, Google and UK news websites on 17 March. Facebook and Google advertising were effective at reaching our audience but we ended our advertising across UK news websites early as it did not perform as well.

3.40 Our adverts invited UK citizens living overseas to register by a 16 May 'encouragement point' which is the date by when we advised them to register to have the best chance of being able to apply for, receive and return a postal vote in the time remaining.

3.41 We began by targeting the top 30 foreign countries by number of UK citizens living there, but later expanded this to include 98 countries, to maximise the reach of our adverts.

3.42 We used a range of different messages in our Facebook adverts based on behavioural insights from our past campaigns and those run by UK Government departments as well as results from a survey we did to find out voters' motivations for taking part in polls when they live overseas.

3.43 The messages that were most effective at prompting a response included one that focussed on showing that registering to vote was the social norm – eg. 'Last month 10,000 UK expats applied to register to vote in the EU referendum'; another more emotive message - 'Care about your friends and family in the UK? Register to vote in the EU referendum now'; and another message that motivated people to avoid feeling a loss by not registering to vote - 'Don't miss your chance to have your say in this historic decision'.

3.44 Our overseas activities extended to armed forces personnel based overseas where we used Google advertising and Facebook adverts with specific images and messages to appeal to that audience.

3.45 We also worked with the Ministry of Defence to ensure a Defence Instruction Notice was issued to Unit Registration Officers giving them the information they needed to take part in the EU referendum.

3.46 Overall, 195,649 applications to register were received from British citizens resident overseas between 17 March and 9 June against a stretching original target of 250,000.

The UK Government's voter registration activities

Use of Government channels

3.47 Ahead of the EU referendum the Government utilised its many existing channels to promote voter registration and support our campaign. This provided the campaign with a significant increase in coverage across the country and contributed to reaching millions of people for no capital expenditure. We therefore recommend that the Government should do this ahead of each and every poll.

3.48 Each department was responsible for delivering voter registration messaging through all possible avenues, with regular inter-departmental coordination of this (to which the Commission was a regular attendee).

3.49 Departments shared content internally, as well as via their social media channels. Public places used included: job centres; Crown post offices; driving test centres; courts, tribunal buildings, prisons and probation sites; Forestry Commission and Natural England visitor sites; rail stations; and airports.

3.50 Regular points of contact between the general public and government departments were also used, including content on call lines for HMRC, the DVLA, DEFRA and DECC.

Support for EROs

3.51 Working with EROs is an essential part of all of our public awareness campaigns. Ahead of the EU referendum we shared information about our campaign to help EROs plan complementary activities to maximise the impact of our joint efforts, and we provided resources including templates for media releases, posters, websites, email and social media channels for EROs to use in local public awareness work. We also encouraged them to order copies of our voting guide to distribute to their stakeholder groups and make available in local venues.

3.52 On 5 May, the Government wrote to 40 EROs in areas with the highest levels of under-registration, telling them they would receive a grant to run activities to promote voter registration ahead of the EU referendum. The funding, which was unexpected, could only be used before the restrictions set out in s.125 began, meaning EROs had 16 working days to run activities.

3.53 We acted quickly to help EROs make decisions about how to use their grants. We provided them with a briefing document which included details of our existing advertising plans to avoid duplication, and we enabled them to use (or tailor for use) our radio, outdoor, press and social advertising across local channels.

3.54 In addition to purchasing advertising space, the funding was used for staffing costs for local targeted canvassing activity and resources. For example, the London Borough of Greenwich funded additional visits by canvassing teams to addresses with no registered electors, and provided registration posters in ten other languages spoken in the borough – with Camden, Enfield, Newham and Brighton all undertaking similar activity.

3.55 EROs also made use of their communications channels. Video screens, poster spaces and noticeboards in libraries, community centres, leisure centres, housing estates, GP surgeries, and other public places all hosted EU referendum campaign materials.

3.56 The Government should make their evaluation of this activity publicly available for both reasons of transparency and also to enhance best practice for future public awareness activity.

Booklet and online advertising

3.57 The Government's paid-for advertising ahead of the EU referendum and distribution of its booklet is discussed at in Chapter 5.

Voters' views about information at the referendum

3.58 Our public opinion research asked people how much they felt they knew about the referendum on 23 June 2016. Eighty four percent said that they knew a great deal (34%) or a fair amount (50%) about what the referendum was for. This compares well with data from other elections and referendums.

3.59 Respondents in Northern Ireland were less likely to feel they knew a great deal/fair amount (76% compared to 84% in England, 81% in Scotland and 83% in Wales).

3.60 Across the UK, respondents who said they voted were more likely to say they knew a great deal/fair amount (87%) than those who said they did not vote (57%). Respondents who reported having no disability were more likely to say they knew about the referendum than those with a disability (85% vs. 76%).

3.61 There was some difference in how much different age groups felt they knew about the referendum with 80% of 18-34 year olds feeling they knew a great deal/fair amount compared to 85% of those aged 35-54 and 55+.

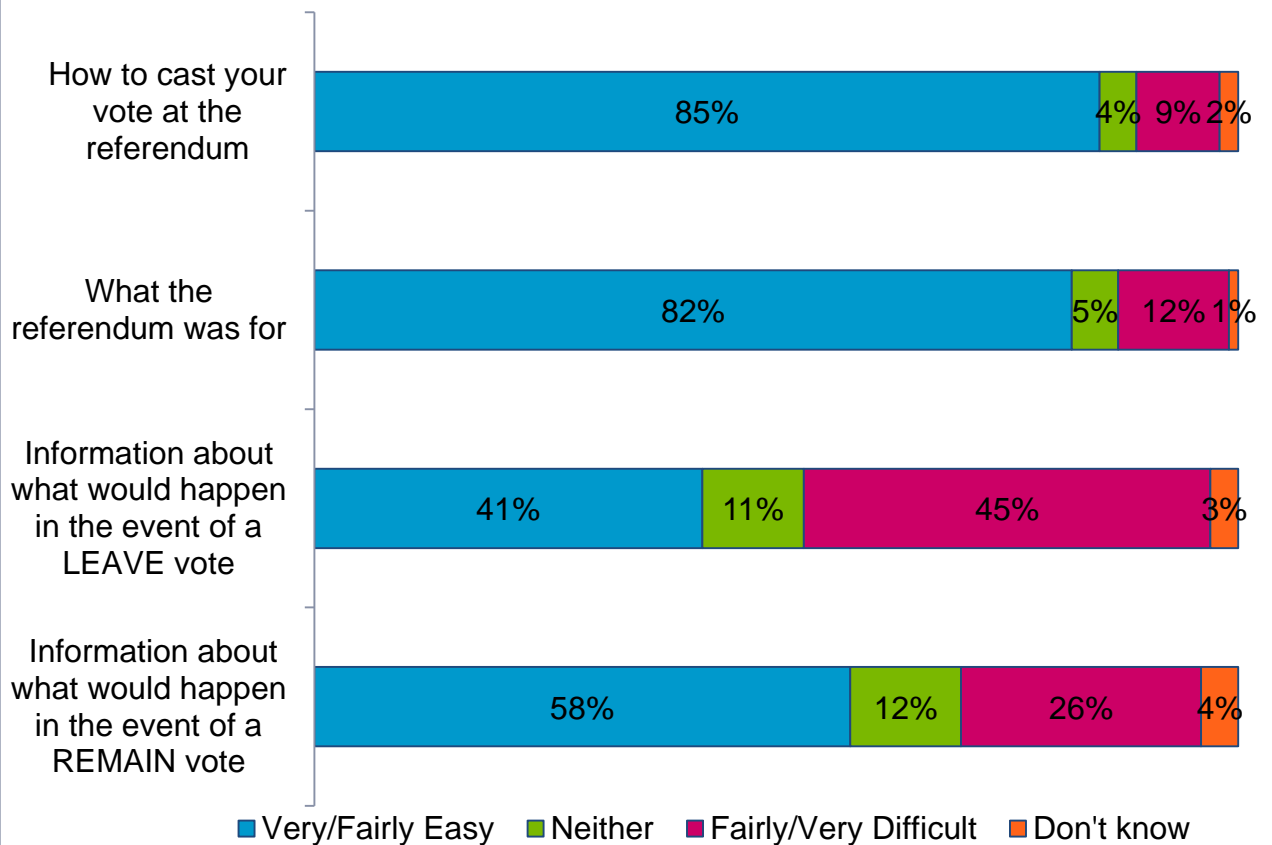
Access to information

3.62 Our public opinion research asked people how easy they had found it to access information on how to cast their vote at the referendum, what the referendum was for and information about what would happen in the event of either outcome. People were most likely to find it difficult to access information about what would happen in the event of a Leave vote (45% difficult; 41% easy) than in the event of a Remain vote (26% difficult; 58% easy).

3.63 For all statements, voters were more likely to say it was easy to access information. Indeed responses to these questions were at least partly determined by the voting preference of the respondent. For example, of those who said they voted to leave, 59% agreed that it was easy to access information on what would happen if there was a vote to leave. This compares to 29%, of those who said they voted to remain, agreeing it was easy to access information on the impact of a leave vote.

3.64 Encouragingly there was little difference between age groups in how easy or difficult they found it to access information on 'what the referendum was for'.

Figure 3.2: How easy or difficult did you find accessing information on...



2016 Post-EU Referendum public opinion survey.

Source: BMG Research/ The Electoral Commission.

Base: 3,533 (unweighted);

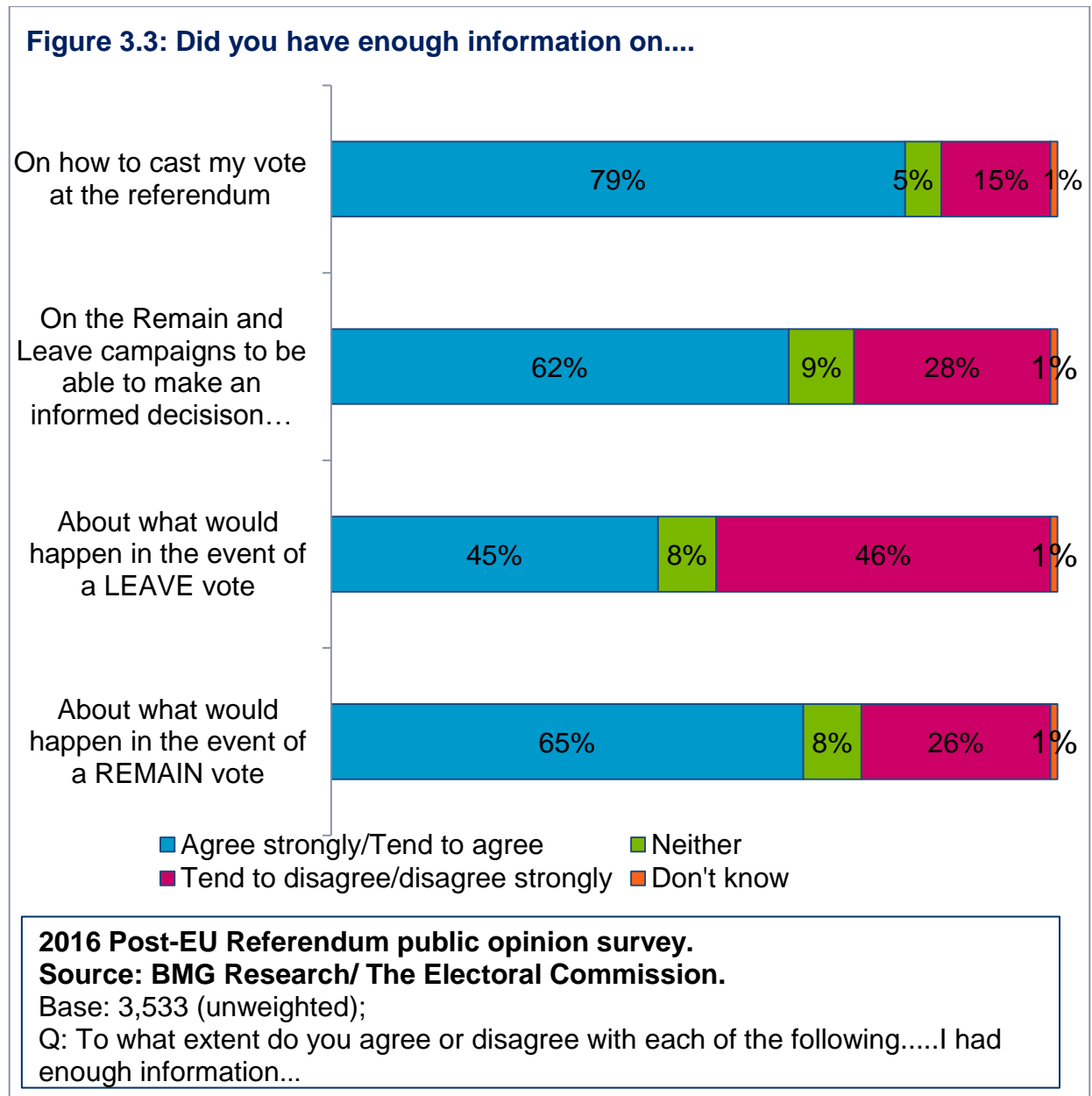
Q: For each of the following statements, would you say it was very easy, fairly easy, neither easy nor difficult, fairly difficult or very difficult to access information on...

Did people feel informed about the referendum?

3.65 Our public opinion survey also explored whether voters had enough information about the 'leave' and 'remain' arguments to be able to make an informed decision how to vote in the referendum. Sixty two percent of respondents agreed that they did compared to 28% who disagreed. There was a clear pattern by age group with those aged 18-34 least likely to agree they had enough information to make an informed decision (52% agreed), 35-54 year olds more likely (63% agreed) and those aged 55+ most likely (70% agreed).

3.66 In response to a similar question asked following the 2011 referendum 73% of respondents agreed they had enough information to make an informed choice. Equivalent questions asked following the elections in Scotland, Wales and Northern Ireland in May 2016 also yielded higher results with 84% of respondents in Northern Ireland saying they knew enough about candidates to make an informed choice (80% in Scotland and 74% in Wales).

3.67 Respondents were also asked, separately, whether they had enough information about what would happen in the event of a Remain vote and a Leave vote. Sixty five percent agreed that they had enough information about what would happen in the event of a Remain vote (26% disagreed) and 45% agreed that they had enough information about what would happen in the event of a Leave vote (46% disagreed).



3.68 Again, for all statements those who voted were more likely to say they had enough information. Perhaps unsurprisingly, because it was the status quo, there was no difference by voting preference among those agreeing they had enough information about what would happen if there was a Remain vote: 68% of respondents who said that they had voted to Remain agreed, compared with 69% of those who said that they had voted to Leave. However, respondents who said that they had voted to Leave were substantially more likely to agree they had enough information about what would happen in the event of a leave vote (64% agreed) than those who said that they had voted to Remain (31% agreed).

3.69 People with a disability were more likely to disagree that they had enough information on how to cast their vote.

3.70 Our public opinion survey also asked where people accessed information on the Remain and /or Leave campaigners. People were most likely to cite the internet (51%), TV (49%), news (28%) and the media (23%). Thirteen percent said they had accessed information from a leaflet or flyer from a campaign/political party. When asked what form of communication they would most prefer leaflets or booklets through the door was the most preferred option (40%) followed by email messages (16%), TV broadcasts or news sources (16%) and TV or radio advertising (12%).

The balance of information by campaigners and in the media and broadcasting

3.71 We asked respondents whether they thought that the conduct of the referendum campaigns was fair and balanced. Just over half of respondents (52%) disagreed with this statement with 34% disagreeing strongly. By comparison 34% agreed with the statement that the conduct of the campaigns was fair and balanced – only 12% agreed strongly.

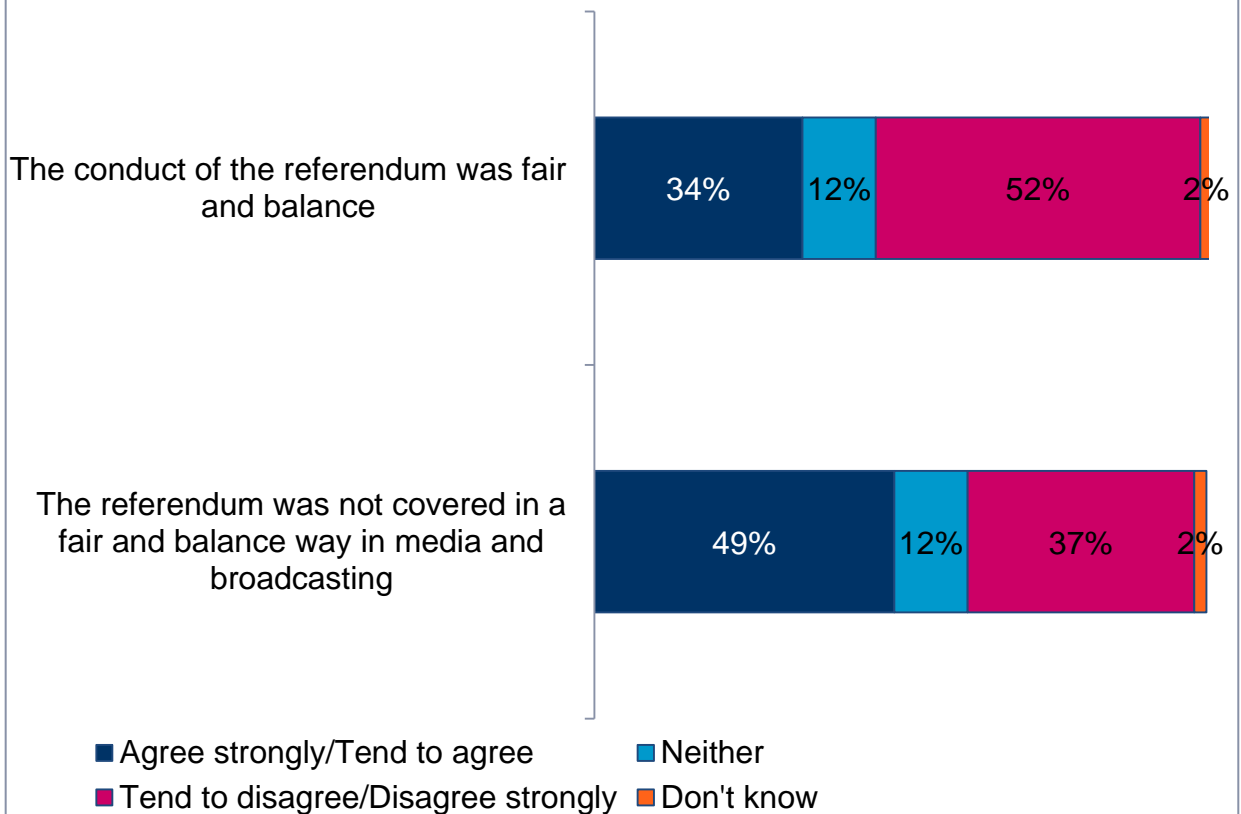
3.72 Remain voters were more likely to disagree that the conduct of the referendum was fair and balanced (63% against 47% of Leave voters).

3.73 The main reasons why people thought that the conduct of the campaigns was not fair and balanced were because they thought it was one-sided/unbalanced/biased/partial (31%) and the information being inaccurate and misleading (31%).

3.74 Remain voters more likely to say this was due to 'inaccurate/misleading information' 38% while Leave voters, thought that the campaign was 'one-sided' (33%).

3.75 Thirty seven percent of respondents also thought that the referendum was not covered in a fair and balanced way in the media and broadcasting. Forty nine percent thought that it was.

Figure 3.4: The balance of information by campaigners and in the media and broadcasting.



2016 Post-EU Referendum public opinion survey.
Source: BMG Research/ The Electoral Commission.
 Base: 3,533 (unweighted);
 Q: To what extent do you agree or disagree with the following statements?

Issues and lessons learned about information for voters at the referendum

Electoral Commission voting guide

3.76 We received some complaints about the content from the lead campaign groups in our voting guide. The offer to include this content was made in response to findings from our assessment of the intelligibility of the proposed referendum question wording. Because it was not appropriate for an impartial organisation such as the Commission to address directly the campaign arguments, it was made clear in our voting guide that the information included was from the lead campaign groups and not the Commission.

3.77 Ahead of future referendums we will review the value in including content from lead campaign groups in any voting guide we may produce and the most appropriate way to do that.

3.78 This has fed into the wider debate following the referendum – in chapter [6] we consider the issue of regulating the accuracy of campaigner content in referendums.

3.79 We heard from people who had not received their guide, or it was posted along with other flyers and circulars (nesting) causing people to miss them. We raised the issue of nesting with Royal Mail before the campaign began, who sought to discourage the practice through training and messages in their delivery offices. Reports of this happening were not widespread, and where we heard about nesting or non-delivery we followed this up with Royal Mail.

3.80 Royal Mail received fewer than 5,000 reports of non-delivery, but the nature of door-drops of this type means it is impossible to trace the cause of each of these. Their investigations also found that there were around 110,000 items affected by nesting.

Use of government channels to drive voter registration

3.81 The Government's voter registration drive via its own departments displayed the volume of opportunities, platforms, channels and public spaces available to disseminate information to voters, and what could be achieved when a centrally-driven directive is issued.

3.82 We strongly recommend and encourage all Governments to direct departments to utilise whatever avenues available to promote voter registration ahead of any and all future polls.

Providing funding to local authorities

3.83 If the Government plans to provide additional funding to local authorities for public awareness activities, they should make EROs and the Commission aware of this as far as possible in advance.

3.84 This will enable EROs to plan the most effective and cost-efficient ways to use the funding and allow the Commission time to provide them with advice and resources, such as advertising files and guidance on how to use these, to meet deadlines for booking advertising space.

3.85 The tight timeframes ahead of the referendum meant that some EROs were only able to receive advertising files after their booked advertising space had been due to start – potentially meaning that some time and money was wasted.

Early start time and 'encouragement point' for overseas campaign

Early start time

3.86 Starting our campaign in December allowed us to build awareness over a longer time and enabled us to test and refine the messages and advertising channels we used, to ensure they were effective. This is particularly valuable with a campaign targeted at UK citizens living overseas as we had limited specific insights at the start of our campaign about what types of messages they would respond to.

‘Encouragement point’

3.87 The ‘encouragement point’ had the effect of driving applications, and encouraging UK citizens living overseas to register early. Previous polls for which overseas voters were included in the franchise saw people registering to vote ahead of the deadline, but timings of the despatch and return of postal votes meant that whilst they may have applied to register to vote in time, they were not able to receive, complete and return their postal vote before the close of poll.

3.88 This is compounded by the fact that they cannot register for a postal vote online at the same time as they register to vote, and must return a signed postal vote application form, either by post or by emailing a scanned version, before they are then sent a ballot pack, which must be returned via post.

3.89 This all therefore means that, in practice, they need to register to vote well in advance of the actual deadline to ensure enough time for the process to be completed – but the nature of postal services means that the amount of time this will take could vary considerably between locations.

3.90 However, any benefit of an early date in advertising needs to be weighed up against the potential for confusing voters (either directly or via media reports of misleading information). In stating that people should register by a date earlier than the legal deadline, they may think they have missed the opportunity to register to vote.

3.91 We can mitigate this risk (as we did with the EU referendum) by continuing advertising with ‘last chance to register’ messaging after the ‘encouragement point’, and advising voters to apply for a proxy vote, rather than a postal vote. The limitations of relying on proxy vote messaging are that UK citizens living overseas, especially those who have been away for a considerable period of time, may not have an eligible person in the UK who they can appoint as their proxy.

3.92 We have considered the impact of improvements to the postal voting process for overseas voters at the referendum in Chapter 4 of this report, where we also reiterate our recommendation that the UK Government should continue to work with the Commission and Returning Officers to improve access to the voting process for overseas voters ahead of the 2020 UK Parliamentary general election.

Complaints about the content of material produced by campaigners

Complaints about campaign arguments at the EU referendum

3.93 During the referendum campaign we received just over 1,000 complaints from the public about the content of campaign material. We also received a number of complaints from companies alleging that their logos had been used on campaign material without their consent. We are also aware of the UK Statistics Authority’s comments on the use of official statistics by campaigners at the referendum. 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.

3.94 This is not unexpected during a high profile and hard fought campaign and following a result which divided the country. However, in the context of the EU referendum, issues around the alleged ‘truthfulness’ of campaign arguments have raised questions about voters’ trust in the integrity of referendum controls, and, in some cases, undermined their confidence in the result.

Regulating campaign arguments

3.95 Until 1999, political advertising was subject to the Committee of Advertising Practice (CAP) Code, although it had always been exempt from certain requirements such as those relating to truthfulness. Following the 1997 general election, the Committee of Advertising Practice excluded political adverts in non-broadcast media from the Advertising Standards Authority’s remit. However, referendum campaign materials, like normal advertising materials, may be subject to defamation laws. Infringement of trademarks and copyrights can also be criminal offences, as well as being actionable in civil law.

3.96 The Committee on Standards in Public Life (CSPL) considered the issue of political advertising and in their 1998 report concluded that the political parties should seek to agree, in association with the advertising industry, a code of best practice for political advertising in the non-broadcast media.²² This has not been taken forward.

3.97 In our 2004 consultation report on political advertising²³ we considered a number of factors that would be relevant to a code of practice; these included the implications for freedom of expression, subjectivity and editorial control. We also looked at practical issues related to regulating campaign arguments such as timeliness, scope, abuse, and sanctions. We concluded that the difficulties of implementing a code of practice would mean that, to all intents and purposes, it would be impractical. Even on a voluntary basis, we concluded it would seem inappropriate to seek to control misleading or untruthful political advertising, given the often complex and subjective nature of political claims.

3.98 During the course of a referendum campaign it is the role of the campaigners to debate the relative merits of the arguments and claims being made by those campaigning for the opposing outcome. This ensures that voters understand the issues and positions on both sides of the referendum question. There is also a role for the media in analysing the claims made on both sides of the campaign and for voters themselves in ensuring that they have the information they feel they need to enable them make an informed decision when casting their vote.

3.99 In a referendum there are at least two sides with competing arguments, both of which are highly likely to be contested to some degree. Even official data can, and will, be presented by campaigners in a way that favours their argument – that is the nature of political campaigns. It will not always be possible to establish the truth about campaign claims in an independent, truly objective sense.

²² Recommendation 96: Fifth Report of the Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, October 1998
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf

²³ Electoral Commission *Political Advertising: Report and recommendations* (June 2004)

3.100 However, should any of the UK's legislatures or any other organisations wish to consider this area further, it is likely that factors similar to those that we considered in 2004 will still be relevant. It will be important that any work in this area is undertaken well in advance of any future referendum because of the need for a wide ranging consultation on the practical and legal implications of this issue. We would be happy to contribute to that debate.

3.101 During the referendum, questions were also raised as to whether the designated lead campaigners should be held to the statements and plans they had submitted as part of their application for designation. In a fast moving and hard fought referendum campaign it would not be practical to require designated lead campaigners to stick to plans described in their designation application as it would also restrict their ability to provide the most appropriate and timely information to voters.

Role of the Electoral Commission

3.102 PPERA provides for us to monitor, and take all reasonable steps to secure, compliance with controls set out in the legislation. Our statutory remit in respect of regulating referendum campaign materials provides for us to issue guidance and regulate the rules relating to campaign materials, such as the need for printed material to carry an imprint showing who has produced it. We do not have a remit to regulate the accuracy of the content of campaign materials, either at referendums or elections.

3.103 In our 2004 consultation report on political advertising, we said that it would not be appropriate for us to undertake the role of an adjudicatory body because of the risk that our independence might be perceived to be compromised. Following the 2011 referendums, we again said that the role of regulating the truthfulness of campaign arguments would draw us into political debate and compromise the perception of our independence and neutrality that is required for our current roles. This would not be in the best interests of voters or improve public confidence in the regulatory system.

3.104 The Government's response in 2012 to the Commission's position following the 2011 referendums was that:

The Government supports and confirms the Electoral Commission's position on this issue. It is not the role of the Electoral Commission to police the accuracy of arguments advanced in the course of a referendum campaign. The merits of options available to the public are matters for political debate.²⁴

3.105 While some electoral management bodies in other countries have been suggested as examples of how campaign arguments could be regulated at future referendums in the UK, they do not necessarily provide appropriate comparators. For example, the New Zealand Electoral Commission had responsibility for the official referendum education campaign for the 2011 referendum on the voting system, given its specific expertise in relation to the operation of electoral systems. As part of that role, the Commission did take steps to correct what it considered factual misinformation about the operation of the different voting systems which were the

²⁴ The UK Government's Response to the Electoral Commission's Report on the 2011 Referendums, December 2012, page 12

subject of the referendum.²⁵ In contrast, their more recent public awareness campaign for the 2016 flag referendum was limited to providing information about when and how to vote in the referendum.

3.106 Because of the Electoral Commission's independent role in running and regulating UK referendums, it would be inappropriate for the Commission to be drawn into political debate by regulating the truthfulness of referendum campaign arguments. We would, however, be happy to contribute to any future debate in this area, which would clearly need a significant period of consultation and consideration prior to any referendum where changes in this area would apply.

Recommendations for providing information for voters at future referendums

Recommendation 4: Any Government considering providing funding directly to EROs for public awareness ahead of a future referendum or scheduled polls should consult EROs and the Electoral Commission in sufficient time to ensure that effective plans for local and national activities can be developed and implemented.

Where any Government plans to give grants to EROs for public awareness work to encourage electoral registration ahead of future polls, it should publish its proposals and consult EROs and the Electoral Commission on its proposals at least six months in advance of polling day.

Not only does this allow reasonable time to plan advertising and to organise the logistics of amending and supplying advertising material to take place, but it means that better value-for-money can be achieved when local authorities book advertising space.

Booking advertising space at short notice not only results in a cost premium, but means that availability – particularly with regards to outdoor advertising – can be extremely limited.

Short or non-existent lead times can result in advertising which is both more expensive and less effective.

²⁵ New Zealand Electoral Commission media release [Accurate information about referendum vital, says Electoral Commission](#) (November 2011)

Recommendation 5: Governments should make use of all available owned channels to promote voter registration ahead of any major poll.

Ahead of the EU referendum, the UK Government mobilised its departments and associated organisations to make use of each and every available communications channel, platform, media space and real estate to drive voter registration ahead of the deadline.

This provided the campaign with unprecedented visual coverage across the country and reached millions of people for no capital expenditure.

Now that it is clear what can be achieved, this should become standard practice for any Government ahead of each scheduled electoral event.

4 Management and delivery of the referendum

4.1 This chapter provides an account of the approach adopted and activities undertaken to prepare for and deliver the EU referendum. It focuses particularly on the management arrangements in place for the referendum, and the approach adopted by the Chief Counting Officer (CCO) and Deputy Chief Counting Officer (DCCO), and it identifies lessons which the Electoral Commission believes should be learned by Chief Counting Officers for any future referendums.

4.2 We commissioned a separate, independent, evaluation of the role of the CCO and DCCO and their approach to the management of the poll, which has been published on our website.²⁶

The approach to managing and delivering the referendum

Roles, responsibilities and the management structure for referendums

4.3 The accountability and management structure for a referendum is very different to the structure in place for most elections, including elections to the UK Parliament. At most elections, each individual Returning Officer (RO) is responsible for the conduct and delivery of the election and declaring the result for a specific constituency or local area. At a referendum held under the Political Parties, Elections and Referendums Act 2000 (PPERA), the Chief Counting Officer (CCO) is responsible for the conduct of the poll and for certifying the result of a referendum.

The Chief Counting Officer

4.4 In accordance with the framework set out under section 128 of PERA, as applied by the EU Referendum Act (2015), the Chair of the Electoral Commission – or someone they appoint – is the CCO for a referendum held under PERA across the UK or in any part of Great Britain. The Commission Board agreed in March 2015 that Jenny Watson, the Chair of the Commission, should be the CCO for any referendum held before the end of 2016, which included the referendum on the UK's membership of the European Union. She had previously been the CCO for the 2011 referendums on the UK Parliamentary Voting System and on the law-making powers of the National Assembly for Wales.

²⁶ Alistair Clark and Toby S James, [An evaluation of electoral administration at the EU Referendum](#) (September 2016).

4.5 The CCO was responsible for the conduct of the referendum and for ensuring the accuracy of the overall result. Her duties included certifying and declaring the total number of ballots counted and the total number of votes cast in favour of each answer to the question in the referendum. As Chair of the Commission, however, the CCO recused herself from certain decisions made by the Commission Board in relation to the referendum, including the designation of lead campaigners and any campaign regulatory issues.

4.6 The CCO was able to appoint a Regional Counting Officer for each electoral region in Great Britain and to provide guidance and directions to local and Regional Counting Officers relating to the discharge of their functions or preparations for the referendum.

4.7 The CCO was supported in the delivery of the referendum by the EU Referendum Management Board (EURMB) and EU Referendum Delivery Group (EURDG), which assisted the CCO in the development of guidance and directions and included key members of the Commission's staff as well as all Regional Counting Officers or their representatives as well as representatives of key external stakeholder groups. These groups are discussed in more detail below.

4.8 The Electoral Commission also agreed that staff of the Commission should be made available to support the Chief Counting Officer in the exercise of her statutory duties and functions.

The Deputy Chief Counting Officer

4.9 The CCO appointed Andrew Scallan CBE, the Commission's Director of Electoral Administration, as Deputy Chief Counting Officer (DCCO) for the referendum.

4.10 The main duty of the DCCO was to support the CCO by ensuring that the referendum was conducted effectively in the manner provided by law. The appointment of the DCCO also ensured suitable contingency arrangements were in place had the CCO been unable to undertake her functions and duties.

4.11 For the EU referendum, the CCO gave specific responsibility to the DCCO for overseeing the management of the referendum count and the result process. This included responsibility for managing the implementation of a referendum count collation process, to enable the transmission of count totals from individual local voting areas to the Regional Counting Officers and Chief Counting Officer.

Regional Counting Officers

4.12 The EU Referendum Act provided that the CCO could appoint a Regional Counting Officer for each of the eleven electoral regions in Great Britain used for European Parliamentary elections, comprising nine regions in England and Scotland and Wales.²⁷ The Act provided that Northern Ireland was a single voting area for which the Chief Electoral Officer for Northern Ireland was the Counting Officer. In this report Recommendation 6 states our position that for future UK-wide referendums, Northern Ireland be designated as a referendum region with the Chief Electoral Officer

²⁷ Gibraltar was included in the South West electoral region.

appointed as a Regional Counting Officer, to be responsible for coordinating the delivery of the poll there in-line with the other eleven electoral regions in the UK.

4.13 Regional Counting Officers (RCOs) were responsible for coordinating the delivery of the referendum in their electoral region, and collating the local totals into a regional total for approval of the CCO. They were given specific statutory responsibilities under the EU Referendum Act for certifying the total number of ballot papers counted in the region for which they were appointed, and the total number of votes cast in favour of each answer to the question asked in the referendum for the region as a whole.

4.14 The role of the RCO was to co-ordinate the planning and administration of the poll at a regional level, which included:

- Co-ordinate the planning and administration of the poll at a regional level
- Exercise the CCO power of direction as agreed with the CCO, including at the referendum count
- Report on the performance of Counting Officers within the RCO's electoral region, in liaison with the Commission's devolved/regional teams
- Report on progress and on risks and issues within the RCO's electoral region, in liaison with the Commission's devolved/regional teams
- Lead regional planning and management, in liaison with the Commission's devolved/regional teams
- Manage the results collation process including the staffing and management of the count event, and collation and preparation of the result at a regional level

4.15 For the EU Referendum, the following Regional Counting Officers were appointed to represent the eleven electoral regions across Great Britain:

Table 4.1: Regional Counting Officers for the EU referendum

Electoral region	Regional Counting Officer
East Midlands	David Cook, Kettering Borough Council
Eastern	Steve Packham, Chelmsford Borough Council
London	Barry Quirk, London Borough of Lewisham Council
North East	Sue Stanhope, Sunderland City Council
North West	Sir Howard Bernstein, Manchester City Council
South East	Mark Heath, Southampton City Council
South West & Gibraltar	Paul Morris, Borough of Poole Council
West Midlands	Mark Rogers, Birmingham City Council
Yorkshire and the Humber	Tom Riordan, Leeds City Council
Scotland	Mary Pitcaithly, Falkirk Council and Convenor of the Electoral Management Board for Scotland
Wales	Colin Everett, Flintshire County Council

4.16 The Chief Electoral Officer for Northern Ireland, Graham Shields, was the Counting Officer for Northern Ireland. Despite not being a Regional Counting Officer in law, he was effectively treated by the CCO as a Regional Counting Officer and sat on the European Union Referendum Management Board along with the eleven RCOs.

4.17 Before the date of the referendum was known, the CCO took steps to designate RCOs in advance of the commencement of her power to appoint RCOs, to enable advance planning to begin. The CCO wrote to all RCOs designate in August 2015 outlining her intention to appoint them formally once the EU Referendum Bill received Royal Assent, and enclosed a copy of the role description that had been developed and agreed with them at the previous EURMB meeting, outlining the duties they were expected to perform on behalf of the CCO.

4.18 As with the 2011 referendum, the CCO appointed the existing Regional Returning Officers (RROs) for European Parliamentary elections as RCOs. In Scotland, the CCO indicated that she would appoint the Convener of the Electoral Management Board for Scotland as the RCO (as was also the case for the 2011 referendum). In Wales, where the former RRO was no longer in post, local Returning Officers were invited to apply for the role of RCO. This was also the case in the North East region when the RCO stepped down from the role in September 2015. Each RCO was also asked to appoint a Deputy RCO.

4.19 The CCO wrote to all RCOs designate to confirm their appointment when the EU Referendum Act was commenced in February.

Counting Officers

4.20 Counting Officers (COs) were responsible for administering the voting process in their local area. Their duties included the production of all necessary electoral stationary for the referendum, management of polling stations, managing the postal vote process and counting the votes cast in that area.

4.21 There were 382 COs for the referendum, one for each local government area in Great Britain, plus one each for Northern Ireland and Gibraltar.

4.22 COs were designated, under the EU Referendum Act, by virtue of their existing appointment as Returning Officers for the following elections:

- In England, Scotland and Wales, Returning Officers for local government elections in each local government area.
- In Northern Ireland, the Chief Electoral Officer was designated as Counting Officer for the single voting area covering the whole of Northern Ireland.
- In Gibraltar, the Clerk to the Parliament was designated as Counting Officer for the single voting area covering the whole of Gibraltar.

4.23 COs were responsible for the voting process in their area, including the declaration of local totals for their voting area. The principal statutory responsibilities of COs were to:

- print ballot papers
- issue and receive postal ballot packs
- conduct the poll, including the provision of polling stations and polling staff
- verify the contents of ballot boxes against ballot paper accounts
- count the votes cast
- certify the number of ballot papers counted, and the number of votes cast in favour of each answer to the referendum question

4.24 Role descriptions for CO were circulated to all local Returning Officers. Their appointment was automatic once the EU Referendum Act was commenced. This was preferable to the requirement which would have applied under PPERA for the Chief Counting Officer to make individual appointments for each Counting Officer.

Royal Mail

4.25 A national poll such as the referendum involves extremely high volumes of postal mail, totalling approximately 200 million individual items that need to be processed and delivered to electors and in the case of postal ballot packs returned to Counting Officers within fairly tight timescales. Taking this into account the Chief Counting Officer worked from an early stage in close collaboration with Royal Mail to ensure that electors received a high level of service in relation to referendum related mail whether they were in the UK or overseas. This included the freepost mailing that each of the two designated lead campaign groups were permitted to send to each elector in the UK.

Groups established to support the delivery of the referendum

EU Referendum Management Board

4.26 The CCO established the EU Referendum Management Board (EURMB) to advise and support her at a strategic level in managing the effective delivery of the EU referendum.²⁸

4.27 The Chief Counting Officer chaired the EURMB and its membership included the Deputy Chief Counting Officer, the Regional Counting Officers for each of the eleven electoral regions in Great Britain and the Chief Electoral Officer for Northern Ireland. Officials from the Cabinet Office and Foreign and Commonwealth Office as well as representatives from the Association of Electoral Administrators were also invited to attend.

4.28 The EURMB was the UK-wide forum for the CCO, DCCO and RCOs to collaborate on managing the referendum and the forum in which the CCO shared proposed approaches and key issues, including proposed directions.

4.29 Meetings of the EURMB were held at regular intervals in the months preceding the referendum and on a weekly basis by teleconference in the immediate lead up to the poll following the conclusion of the May 6 polls.

EU Referendum Delivery Group

4.30 The EU Referendum Delivery Group (EURDG) was established to advise and support the Chief Counting Officer and Deputy Chief Counting Officer in overseeing the delivery at a practical level of the referendum poll.

²⁸ The members of the European Union Referendum Management Board, which included the CCO, her Deputy and the Regional Counting Officers, can be found at http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/194106/EURMB-members.pdf

4.31 The EURDG supported the EURMB as the UK-wide forum on operational matters and was chaired by the DCCO. Members were nominated by, and represented, the 11 RCOs and the Chief Electoral Officer for Northern Ireland. Representatives of the Cabinet Office, the Association of Electoral Administrators and the Scottish Assessors Association were also invited to attend.

4.32 The Group worked alongside the EURMB and focussed on practical planning for delivering the referendum based on the direction set by the CCO and the EURMB.

Communications Network

4.33 The Electoral Commission established a Communications Network with representatives of the Regional Counting Officers to build a stronger working relationship between the CCO, the Commission, RCOs and Counting Officers. The group provided a forum in which staff of the Commission could share and discuss plans with RCOs and provide updates on public awareness activity. This allowed RCOs to see the campaigns, marketing materials and media plans which were being developed by the Commission at a UK-wide level and provided an opportunity for the Commission to share any public awareness templates that would be made available for COs to adapt and use at a local level.

The Chief Counting Officer's approach to managing the referendum

4.34 Unlike in a UK-wide election, in a referendum each vote counts towards a single outcome regardless of where it is cast and though there is a breakdown of local and regional totals available there is only one national result.

4.35 A central aim of the Chief Counting Officer was to achieve a consistent approach across the UK to the delivery of the referendum and the counting of votes to ensure both a high quality of service for voters and public confidence in the outcome of the referendum and produce a result that was accepted.

4.36 In order to achieve this, a variety of measures were put in place through planning, the issue of guidance and directions, and the use of a performance management framework. These measures were designed to help to ensure the integrity of the referendum and confidence in the processes put in place to deliver it.

4.37 The CCO's proposed approach to managing the referendum was similar to that followed by Mary Pitcaithly as CCO for the Scottish independence referendum in September 2014. At the Scottish independence referendum, the CCO sought to deliver by consensus where possible, by guidance where needed and by directions where appropriate and following consultation.

4.38 The CCO's planning assumption was to base the approach to delivering the referendum on lessons learnt from previous referendums and existing policy.

4.39 As the date of the referendum was not known when the planning for the management of the referendum began, the CCO's approach was developed on the assumption that the referendum would be held as a stand-alone poll and not combined with any other scheduled polls. Given the potential for significant levels of interest and

engagement in the EU referendum, the planning assumptions underpinning the CCO's proposed approach also took account of the likelihood of a high turnout, using the Scottish referendum as a basis.

4.40 The CCO held a consultation exercise between August and September 2015 on the [scope of the directions](#) she intended to issue which included a specific consultation about the [timing of the verification and count](#). She received 49 responses to the consultation from a range of organisations and individuals including COs and local authorities, the AEA, regional electoral administrator groups and disability organisations. Her response to this consultation and confirmation of the proposed directions as agreed with the EURMB was published on 13 November and can be found [here](#). The list of final directions is provided below at paragraph 4.43.

4.41 The CCO took the decision to issue directions to Counting Officers only in relation to aspects of the poll where it was important to ensure there was consistency, in order to achieve the overall objective of ensuring confidence in the result, based on an accessible, consistent and efficient electoral process operated to the highest standard of integrity.

4.42 These directions were supplemented by a suite of guidance and resources for Counting Officers. The CCO, DCCO and RCOs also held a series of briefing events across the UK, focussed on the approach to managing the referendum and the delivery of key aspects of the process.

CCO directions

4.43 As soon as the European Union Referendum (Date of Referendum etc.) Regulations 2016 were made on 3 March 2016, the following confirmed directions were issued:

1	Notice of referendum	The notice of referendum must be published on a date to be specified by the CCO
2	Ballot papers	Ballot papers must be white; tendered ballot papers must be pink Ballot paper numbers must contain a prefix made up of three alpha characters which will be specified for each voting area Ballot papers must be produced in the form specified by the CCO Taking into account the size of the electorate in the voting area, as a minimum, 110% of the total number of ballot papers that may be required in the voting area must be printed; 100% of the total number of ballot papers that may be required in a particular polling station must be allocated to that polling station
3	Polling stations	When allocating electors and staff to polling stations, as a minimum , the ratios as set out in the Commission's election guidance must be complied with and in any case where a polling station has more than 2000 electors allocated to it, the CO must seek agreement from their RCO to their approach in that polling station, setting out how they intend to manage it so as to ensure that all electors allocated to it can vote easily and without delay Copies of the Commission's information booklet must not be made available in polling stations

4	Poll card despatch	Ensure that poll cards are delivered to electors within a period of five working days starting with the day after the last date for publication of the notice of referendum
5	Postal ballot despatch	Ensure that postal ballot packs being sent to overseas addresses are despatched within a period of five working days starting with the day which is four working days after the last date for publication of the notice of referendum and must not be issued so as to be received before 28 calendar days before the poll Ensure that postal ballot packs are delivered to electors at UK addresses within a period of five working days starting with the day which is eight working days after the last date for publication of the notice of referendum
6	Timing of count	Ensure that the verification and counting of votes is commenced at 10pm in the UK and 11pm in Gibraltar
7	Method of verification and count	Ensure that your verification and counting arrangements are structured in such a way as to break down the verification and count into a number of self-contained 'areas' smaller than the voting area, with the totals for each of these 'areas' aggregated into a single total for the voting area; the counting of votes for any self-contained 'area' must not be commenced until the verification for that 'area' has been completed
8	Monitoring the performance of Counting Officers	Provide the CCO with specified management information
9	Royal Mail Sweeps	Counting Officers must make arrangements with Royal Mail for a sweep for their voting area, based on the national service level agreement
10	International Business Response Licence	Counting Officers must make arrangements with Royal Mail for an international business response licence and ensure that this is used on all return envelopes included in postal ballot packs to be sent to overseas addresses

Exceptions to the Chief Counting Officer's directions

4.44 Counting Officers were able seek an exception to a direction where they could demonstrate either that it would not be possible to comply with the direction, or that compliance with the direction would introduce an unacceptable level of risk to the delivery of the referendum.

4.45 No exceptions to any directions were formally requested by a CO for the referendum.

Guidance and resources

4.46 To assist COs with delivery of the referendum in their area, the CCO provided Counting Officers with guidance covering each stage of the planning and delivery of the process and a number of supporting resources, which followed the approach taken by the Commission at other recent polls, including those taking place on 5 May 2016.

4.47 The guidance was developed in close consultation with the EU Referendum Management Board (EURMB) and the EU Referendum Delivery Group (EURDG), and was published in January 2016 to enable COs to commence detailed planning for and delivery of the poll. All guidance and resources published for the referendum can be found on the Commission's website [here](#).

Monitoring delivery

4.48 For the referendum the Chief Counting Officer's monitoring strategy to ensure delivery of a consistent and well run poll consisted of the following main strands:

- Monitoring of RCOs and COs
- The collection of management information
- Maintenance and publication of a referendum 'issues log'

Monitoring RCOs and COs

4.49 Recognising the local knowledge, experience and established relationships within the electoral regions of the RCOs, the CCO delegated authority to them to decide the approach to take in monitoring COs within their region. This was set within an agreed framework of how they would need to be satisfied about the arrangements any CO had in place to run the poll. To support RCOs in this, the CCO provided RCOs with updated CO risk profiles and support in reviewing CO plans and providing feedback to them. RCOs were also required to submit a copy of their project planning documentation to the CCO by 24 March 2016 to provide her with assurance that the poll would be delivered within the framework she had laid down. All the plans submitted provided this assurance.

Supporting RCOs to monitor COs

4.50 Monitoring Counting Officers to ensure a well-run poll, consistent with the directions, was delivered across all voting areas was a key part of the role of the RCOs with the close support of the CCO. A key aspect of this was ensuring that COs all had sufficient plans in place to run the referendum in their voting area in such a way. Support for the RCOs and COs in ensuring clear plans were in place for the delivery of the referendum took a variety of forms, including requesting additional documentation to evidence the necessary arrangements were in place, as well as holding telephone conversations or face-to-face meetings exploring in detail the arrangements for delivering a particular part of the process. There were no issues of significant concern arising from the monitoring and any minor issues that were recognised were dealt with in good time ahead of the poll.

The collection of management information

4.51 To provide assurances that arrangements were in place across the UK, the CCO directed that all COs had to provide specified management information. This information helped to build up a clear picture of the arrangements that had been put in place across the UK for the delivery of the referendum. The list of management information which the CCO required COs to provide was:

- Total number of polling stations
- Total number of polling station and verification and count staff
- The scheduled dates of dispatch for poll cards

- The scheduled dates of dispatch for postal votes (including postal votes for overseas voters)
- The venue and estimated timing for concluding the verification and count

4.52 The CCO received returns from all COs for each of the 382 counting areas. The information collected was shared with RCOs through liaison with their local Commission team on behalf of the CCO, and included updates of any outstanding submissions as well as assistance with the analysis of information.

Maintaining and publishing an issues log

4.53 In order to give assurance that all COs were delivering the referendum in line with the directions given by the Chief Counting Officer, as well as to maintain transparency during the referendum period, the CCO developed and published a log providing details of emerging issues that, in her opinion, may have had a widespread or significant impact on the delivery of the referendum, as well as the action taken to resolve them.

4.54 When issues arose, the priority was to provide the appropriate advice and support to COs, working with the relevant RCO(s), with a view to supporting COs in resolving the issue as soon as possible. Where an issue emerged which had (or could have had) significant implications on the delivery of the referendum in line with the CCOs directions, whether in a single counting area or across one or more electoral regions, this was added to the log and published on our [website](#). More detail about the issues that were included in the log is covered below.

Poll card and postal ballot pack despatch management and timings

Postal packs to electors in the UK and overseas

4.55 The intention of the CCO's directions relating to postal ballot packs was to balance the desire for electors to have as much time as possible to receive, complete and return their postal vote while at the same time enabling campaigners the opportunity to put their message across to voters.

4.56 The CCO liaised closely with Royal Mail about the delivery date ranges for the first issue of postal ballot packs, as well as poll cards, to ensure that they would be delivered in sufficient time for COs to comply with the CCO's directions. Assurance was given on this by Royal Mail and regular reports were provided to the CCO throughout the build-up to the referendum that indicated that all COs would be able to meet the directions relating to delivery of poll cards and postal ballot packs.

4.57 One issue relating to UK postal ballot packs was that due to issues of capacity with print suppliers some Counting Officers were required to provide postal vote data up to six weeks before the first postal vote despatch window, as specified in the directions, in order for them to be printed and despatched at this time. This potentially meant that anyone applying to register to vote after this point, which for the EU Referendum would have been in early April, might not have received their postal votes until the COs had despatched their second issue of postal ballot packs.

4.58 The CCO sought further information on this from a relatively small number of authorities and suppliers and found that where this was the case, suppliers did have interim arrangements in place with COs to allow them to provide updated postal vote data closer to the window specified in the CCO's direction. However it was not clear whether this was universal practice and for future referendums the CCO will need to consider whether more engagement would be required with suppliers on this issue and whether greater clarification could be provided in guidance or in the directions as to what should be included within the first issue of postal ballot packs. This could include an expectation or possibly direction that anyone who had registered to vote and successfully applied for a postal vote by a certain date should be included. This would have a significant impact on the relationship which suppliers have with local authorities and work would need to start well in advance of the poll.

4.59 Another issue that came to light was around the point in the referendum timetable where a CO could issue a replacement postal ballot pack if the original had been issued, but had subsequently been lost in the post or by the elector themselves. As at other polls, the earliest that lost postal votes could, by law, be replaced was 4 working days before polling day. For the referendum, this was 17 June. In some cases this was found to be too late for the replacement packs to be issued, delivered to the elector, completed by the elector and returned to the CO in time to be included in the referendum count. This had an adverse impact on overseas electors who had lost their postal vote and those UK postal voters who were going to be away from home by the time the postal vote could be re-issued. For the Scottish Parliamentary elections this year, the earliest date for replacing lost ballot papers was removed from the statutory election timetable and ROs were able to reissue lost postal ballot packs as soon as they were reported. We will consider further with the UK Government whether a similar approach should be followed at future referendums held under PPERA.

Overseas postage for postal vote return

4.60 After the May 2015 UK Parliamentary general election, the Electoral Commission identified concerns about overseas postal voters who did not receive their postal ballot pack in sufficient time to return it to the RO before polling day, and some who did not receive their postal ballot pack at all before polling day. We recommended that the UK Government should ensure that all Returning Officers include the correct postage on postal ballot packs for overseas electors at future elections or referendums where they were entitled to vote, so that they can be delivered to voters and returned as quickly as possible before polling day. We recommended that the funding provided by the UK Government to Returning Officers for this purpose should be increased to support this.

4.61 The CCO made contractual arrangements with Royal Mail for international business response licences to be used by all COs on return envelopes included in overseas postal ballot packs, in order to help to ensure electors had the maximum time possible to receive, complete and return their votes before the close of poll. The Fees and Charges Order, which set the expenditure categories and limits for Counting Officers, also included provision for the costs of the actual number of postal ballot packs returned to each Counting Officer. Though a number of Counting Officers had used this service at previous elections, this was the first time that all had done so at a UK-wide poll.

Postal vote sweeps

4.62 The CCO also agreed a separate contract and service level agreement with Royal Mail requiring them to deliver any postal ballot packs found in a sweep of sorting offices on polling day to Counting Officers at an optimal time determined to maximise the number of postal votes that could be returned for inclusion in the voting area count. The number of postal ballot packs picked up by the sweeps carried out by Royal Mail was 20,669.

4.63 The advantage of having a single UK-wide contract with Royal Mail was that it helped to ensure there was consistency of service across the UK and that the most cost effective processes were in place to collect and deliver as many postal votes as possible to Counting Officers. This approach also secured a more cost-effective service overall than would have been possible with multiple contracts across the country.

The referendum count

4.64 Although the way in which ballot papers are verified and counted are the same as at other polls, the management structure for the referendum count differs from that used at elections. Counting Officers are responsible for the voting process in their area. As part of their responsibility for managing the referendum in their electoral region, Regional Counting Officers were responsible for the collation of local totals submitted to them by Counting Officers into a regional total. This collated regional total was in turn submitted to the Chief Counting Officer for approval. Once all the 11 regional totals and the total for Northern Ireland have been received, approved and declared, the Chief Counting Officer could certify and declare the referendum result.

4.65 Following consultation with electoral administrators, political parties, campaigners and broadcasters on the proposed timing of the counting of votes, the Chief Counting Officer directed that the count processes must be carried out overnight, starting at the close of poll (10pm) for the referendum.²⁹ Whilst there were no formal responses to the consultation from political parties, campaign groups or broadcasters to the CCO's proposal to count the referendum overnight, discussions with broadcasters were supportive.

4.66 Undertaking an overnight count would ensure that voters and campaigners would know the outcome of the referendum as quickly as possible. Whilst the CCO recognised the practical challenges of delivering an overnight count, it was felt that, with advance planning, an overnight count for the EU referendum could be completed, efficiently, transparently and accurately – as was the case for the Scottish independence referendum in September 2014.

4.67 The early confirmation of the timing of the referendum count also helped to enable COs to put arrangements in place to enable overnight counts to be delivered effectively. Although there was a practical limit to how much activity could be carried out in the period immediately following the close of poll, it was still nevertheless

²⁹ 11pm local time in Gibraltar.

possible for all COs to start the verification from 10pm, for example by commencing the verification of postal ballot boxes from earlier opening sessions.

4.68 The referendum poll and count were held successfully on 23 June with no significant administrative issues arising anywhere across the UK. Polls closed at 10pm with no reports of significant queues. Counting took place overnight as planned in all voting areas. Counting Officers (COs) declared local totals as counts were completed and Regional Counting Officers (RCOs) declared regional totals when all the totals within their electoral region had been declared. The CCO certified the result at 7.08am and declared it at 7.20am on 24 June. Full details of the referendum result and local totals and turnout in all 382 counting areas were published on our website and are available [here](#).

Count event and regional count collation centres

4.69 There were 12 count collation centres across the UK responsible for verifying, counting and declaring the totals across the electoral regions in England,³⁰ Scotland and Wales and the Northern Ireland voting area. The totals from each of these regional count centres were returned to the CCO, who oversaw the collation of votes and certification of the result from the national count collation centre in Manchester Town Hall.

4.70 Manchester Town Hall was also the venue for the count collation centre for the North West electoral region. The decision to combine the national count event with one of the regional count collation centres, rather than hosting a separate stand-alone event as the CCO for the referendum on the UK Parliamentary Voting System had done in 2011, ensured better value for money. The venue was also chosen on the basis of its size and communication facilities, given the expected level of interest in the event by campaigners and the media. In choosing the venue, the CCO sought the views of broadcasters before confirming her decision, and those that commented were supportive.

4.71 Staff from the Commission's offices in Scotland, Wales and Northern Ireland and its English regional teams attended each of the regional count centres on behalf of the CCO and DCCO. They provided a key link during the progress of the count between the national count centre and the RCOs, as well as being able to report afterwards on the conduct of the regional counts.

4.72 The first count total from a voting area was submitted by Gibraltar to the Regional Counting Officer for the South West & Gibraltar at 11.23pm (UK time) which was then approved by the RCO and declared by the Clerk to the Gibraltar Parliament at 11.37pm (UK time). The Chief Counting Officer had received regional totals from all Regional Counting Officers and confirmation that all COs and RCOs had declared their totals by 07.00am. The CCO was then able to certify the result of the referendum at 07.08am and declared the referendum result in the Great Hall in Manchester Town Hall at 07.20am on Friday 24 June.

³⁰ The results from Gibraltar were included in the South West region total.

Observers and other attendees at the count

4.73 The Electoral Commission maintains a register of accredited observers who are able to attend and observe proceedings at electoral events (see paragraph 4.84 below). The European Union Referendum (Conduct) Regulations 2016 made provision for these accredited observers to view proceedings at national and regional count hubs. Following a written request from the CCO to all observers for expressions of interest in attending the national or regional hubs nearly 40 registered to attend the national count event in Manchester and were given access to the hub to view the collation of the national result.

4.74 In addition to the accredited observers the CCO invited anyone with an interest in attending the result event on Friday 24 June to do so by registering with the Electoral Commission. Following this, around 400 applications were received, half of which were from the media. More than a dozen news organisations filmed the event, in addition to BBC, ITN and Sky. Radio companies attended from Sweden, Ireland, Italy and Switzerland, along with numerous print and digital news companies from all over the world, including Germany, France, Poland, Australia, Canada, Japan, Israel, Russia, Bulgaria, Croatia, Bosnia and Herzegovina, and the United States. A pool feed from the main declaration stage was accessible to broadcasters worldwide.

4.75 Our media team operated throughout the count event, both supporting media on site and dealing with external media queries.

4.76 As well as accredited observers and other invitees such as the media organisations discussed above, around 50 international visitors came to Manchester Town Hall as part of the Commission's International Visitors' Programme. Delegates included those from Norway, Russia, Bulgaria, Tunisia, Estonia, Sweden, Canada, Malta, Mexico, Moldova and Zambia.

Result collation system

4.77 The Chief Counting Officer also developed and provided a result collation software system to all Counting Officers to support Regional Counting Officers and the Chief Counting Officer with the collation of referendum count totals. The system was developed to be as simple to use as possible and web-based, so that local COs only needed a web-browser to use it. It was also designed to give the CCO, DCCO and RCOs as complete a view as possible of count progress across the UK and Gibraltar.

4.78 The software was built to the Commission's specification with input from the electoral community. Due to the high profile of the event, security and resilience were important concerns. Accordingly, the system was thoroughly tested for vulnerabilities as well as being load tested to ensure it could cope with anticipated demand. The system was available from a range of fixed and mobile devices to give the greatest flexibility and cope with any local issues that might occur.

4.79 The CCO provided guidance and support to the members of the RCOs' teams who would be operating the software, and also ran an initial test of the system in March involving all RCOs and COs from their offices. A UK-wide rehearsal of the count collation system was held in late May, run from the national collation centre in Manchester, with the vast majority of RCOs and COs being in the venues where they planned to be on 23/24 June. The purpose of the full collation rehearsal was to test the collation system in a close to live environment (that is, outside conventional office

hours) as well as the contingency arrangements RCOs and the CCO had in place to continue the collation of the result should the system become unavailable.

4.80 During the count event on the evening of the referendum poll (23-24 June), the RCS worked effectively without any technical problems and enabled the CCO and RCOs to track each stage of the count process across all local voting areas. The software was easy to use for COs, secure and produced the most comprehensive and immediate set of the results data ever available in a UK referendum or election count.

4.81 Though built primarily for the purpose of collating the result of the EU referendum, the RCS was designed with the clear intention in mind that it could be used at other polls where there is collation element to the result. Following its successful use at this poll and the very positive feedback received from many COs and RCOs, the Commission will now actively explore with electoral administrators how it can be used at future relevant polls.

4.82 The result collation software enabled the Chief Counting Officer to maintain an overview of progress of the verification and counting of referendum ballot papers across the UK, including turnout and running totals for the 'Remain' and 'Leave' votes, based on confirmed figures from COs. The main news broadcasters received data feeds directly from the RCS after declarations were made, aiding the accuracy of their reporting. We have received positive feedback from broadcasters about this facility.

4.83 On the night of the referendum, COs thought that the counts went smoothly. 93% of COs, who responded to a survey evaluating the management and administration of the referendum, agreed or strongly agreed that the 'count collation process worked well'.³¹ The count rehearsals were also seen as having been an effective mechanism for identifying and addressing any potential problems before the count itself.

Accredited observers at the referendum

4.84 Under the Political Parties, Elections and Referendums Act 2000 (PPERA) the Electoral Commission has a duty to administer an accreditation scheme for observers at UK elections and referendums.

4.85 Those wishing to register must complete an application form, provide a copy of photographic identification and supply a digital photograph to be displayed on their identification badge. They must also sign a declaration stating that they have read and understood the Commission's Code of Practice for Observers. Although the Commission administers the scheme, those accredited do not observe on our behalf, or receive any payment.

4.86 A total of 662 observers were accredited ahead of the referendum. Of these, 333 were nominated by an organisation to observe on their behalf. Thirty-three observer organisations were accredited, 21 of which were overseas-based organisations.

³¹ Alistair Clark and Toby S James, [An evaluation of electoral administration at the EU Referendum](#) (September 2016).

4.87 Observers do not have to notify the Commission which electoral events they wish to observe and are issued accreditation until 31 December of the year of their application. This means that of the 662 observers accredited ahead of the referendum, it is likely that not all of them would have observed the referendum, but may only have had an interest in other polls, such as the ones held across the UK in May..

The Commission's International Visitors' Programme

4.88 We anticipated high levels of interest from international visitors looking to observe the referendum. To facilitate this, Dods Parliamentary Communications (Dods) were commissioned to plan and deliver a programme for international visitors, who we accredited as observers, to observe the administration of the referendum.

4.89 The Programme, which ran between Tuesday 21 and Friday 24 June, aimed to support transparency of the administration of the referendum and to ensure that an independent perspective on how the referendum was run was captured. The programme included a full day briefing event, visits to observe postal vote opening sessions, a day of observing voters cast their vote at polling stations across the North West and the opportunity to observe the regional count for the North West as well as the overall count that took place at Manchester Town Hall. Feedback from the visitors who took part in the Programme was collected by Dods.

4.90 The feedback from the visitors who took part in the Programme was overwhelmingly positive; 95 per cent of those who provided feedback strongly agreed or agreed that overall the referendum was well run. The count was also rated highly in terms of transparency. When visitors were asked whether they thought the count process was transparent, 76 per cent strongly agreed or agreed.

4.91 95 per cent of the visitors also strongly agreed or agreed that overall the polling stations were well run and that the process of how to vote was clear for voters and 100 per cent of respondents agreed or strongly agreed that there had been little difference across polling stations.

4.92 An overview of the Programme and further analysis of the feedback from the observers who took part can be found in the report produced by Dods on the International Visitors' Programme at the EU Referendum, which is available on [our website](#).

Preventing and detecting electoral fraud

4.93 Ahead of the May 2016 polls and the June referendum, the Electoral Commission worked with the National Police Chiefs' Council, Electoral Registration Officers, Returning Officers and Counting Officers to ensure that those responsible for delivering and policing the 2016 polls had appropriate guidance and support. This included:

- Updated guidance on electoral fraud for police forces – the College of Policing, working with the Commission, published an updated version of the [Authorised Professional Practice guidance on policing elections](#), and all police officers on duty on polling day were issued with a pocket guide on preventing and detecting election offences.

- A national seminar for specialist police officers – every territorial police force in the UK has an identified Single Point of Contact (SPOC) officer for election related crime. The Commission, together with the National Police Chiefs' Council jointly hosted an annual training seminar for these specialist police officers in February 2016.
- Information and materials for police and local authorities – the Commission made these available in a variety of languages for police and local authorities to use to let voters know what electoral fraud is, how to report it, and what would constitute acceptable and unacceptable campaigning.
- [Code of Conduct for Campaigners](#) – the Commission reminded political parties, candidates and their supporters that they must follow this agreed code.
- Targeted work in areas where there is a higher risk of electoral fraud allegations – the Commission focuses its monitoring and support in areas where there have been significant cases or allegations of electoral fraud in previous elections. Police forces and Returning Officers in these areas take additional steps to prevent and detect electoral fraud, and the Commission's role is to provide support and make sure that effective plans are in place to do this.
- Information sharing – the Commission and the Chief Counting Officer agreed a [protocol for sharing information about allegations of electoral fraud at the EU referendum](#) between police forces, Electoral Registration Officers, Counting Officers and the Electoral Commission.

4.94 The Commission also worked in partnership with Crimestoppers, the national anonymous crime reporting charity, to support and promote the option for people to report evidence or concerns about electoral fraud without giving details which could identify them.³² The partnership with Crimestoppers built on the successful joint campaign which was carried out ahead of the 2015 UK Parliamentary general election.

Data on allegations of electoral fraud at the referendum

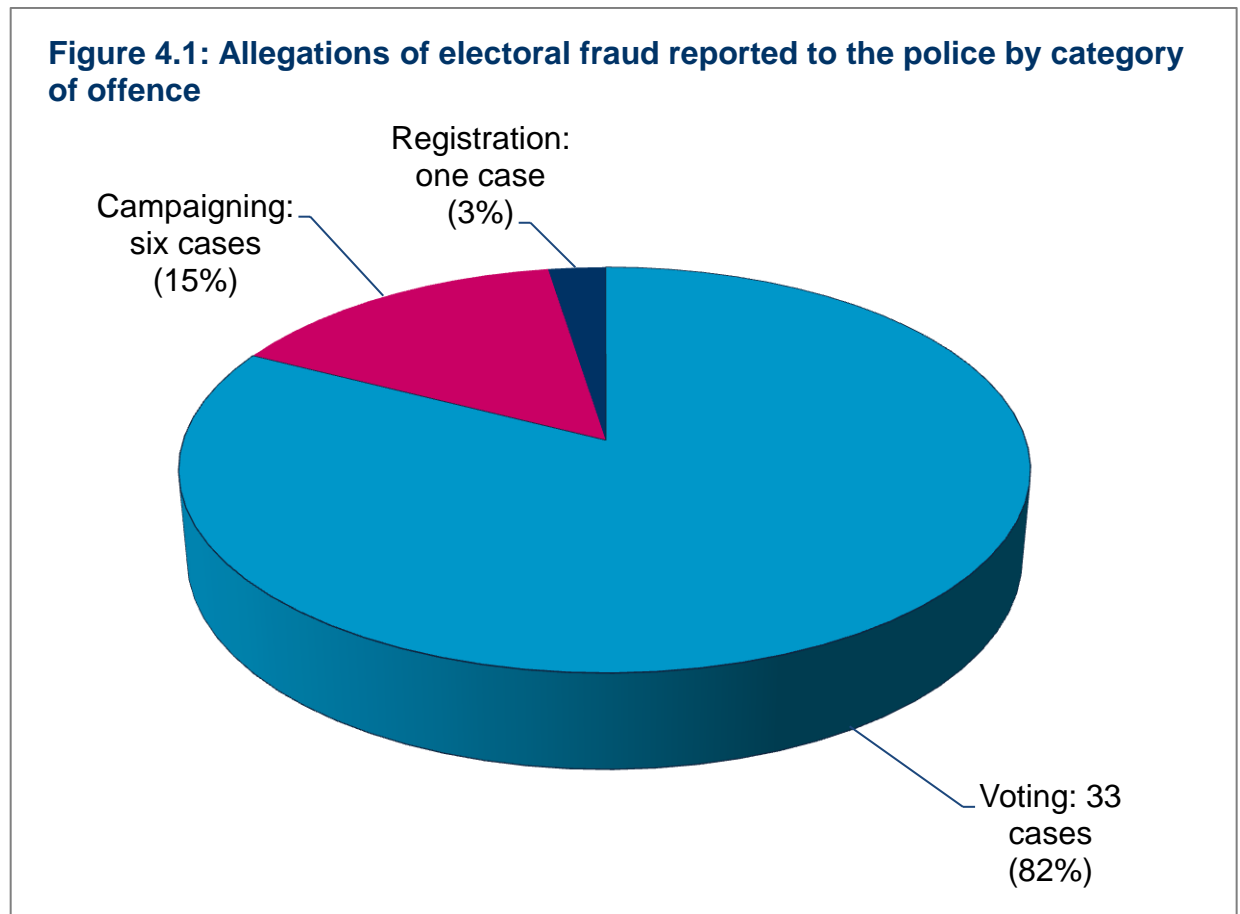
4.95 The Electoral Commission also works with the National Police Chiefs' Council to collect data on allegations of electoral fraud on a monthly basis every year. Between 1 January and 31 July 2016, a total of 40 cases of alleged electoral fraud relating to the EU referendum were recorded as having been reported to the police across the UK.

4.96 The more than three quarters of cases reported (a total of 33, representing 82.5% of the total reported) related to voting offences. Of these, 19 related to allegations of personation at a polling station. Following police inquiries, five of these cases have been resolved as no further action required, one resulted in a caution being accepted, and the remaining 13 are still under investigation.

³² See <https://crimestoppers-uk.org/get-involved/our-campaigns/national-campaigns/electoral-fraud/>

4.97 A further six cases reported related to campaigning offences, and one related to a registration offence. No cases were recorded as relating to nomination offences (because there are no candidates at a referendum) or administration offences.

4.98 Figure 4.1 below shows a breakdown of the types of alleged cases reported at the referendum, based on data recorded by police forces and provided to the Electoral Commission by the end of July 2016.



4.99 We expect to publish full data for cases of alleged electoral fraud reported during 2016 across the UK, including outcomes where available, by March 2017. This data will include any additional cases of alleged electoral fraud which may have been reported after July 2016.

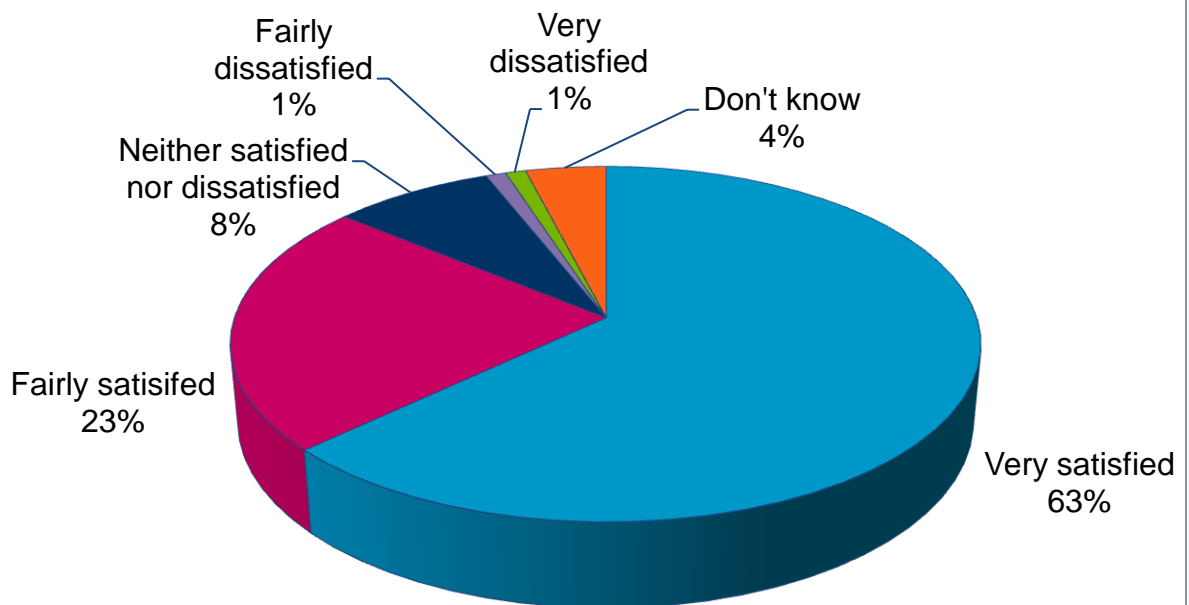
Voters' views about the delivery of the referendum poll

People's experience of registering to vote at the referendum

4.100 Our post-election public opinion survey indicates that people (87%) were generally satisfied with the procedure of registering to vote. Around two-thirds (63%) said that they are very satisfied.

4.101 Those who claimed to have voted were significantly more likely to be satisfied than those who did not vote (90% vs. 65%). Satisfaction was higher among respondents aged 55+ (91% compared to 84% among 35-54s and 18-34s) and among people who reported being from a White ethnic background (87% against 80% for people from Black Minority Ethnic groups).

Figure 4.2: How satisfied or dissatisfied are you with the registration process?



2016 Post-EU Referendum public opinion survey.

Source: BMG/The Electoral Commission.

Base: 3,533 (unweighted).

Q: How satisfied or dissatisfied are you with the procedure for getting your name on the electoral register?

People's experience of voting at the referendum

4.102 Just under 26.3 million votes were cast at the 41,000 polling stations across the UK which represented a turnout of 69% among those who voted in person.

4.103 Over 8.5 million postal votes, or 18.4% of the electorate, were issued for the referendum which is the highest proportion we have seen since its introduction in 2001. This compares to 16.4% for the 2015 UKPGE. As in previous years, turnout was higher among postal voters than in-person voters with 87.6% returned (7.4 million votes).

4.104 People remain highly satisfied (84%) with the procedures for voting in elections and referendums in general. In line with surveys conducted after past polls, voters were very positive about their experience of voting, whether in person at a polling station or by post:

- Nearly all (97%) of those respondents who voted in person at a polling station reported that they were very or fairly satisfied with the voting process with 79% being 'very satisfied'.

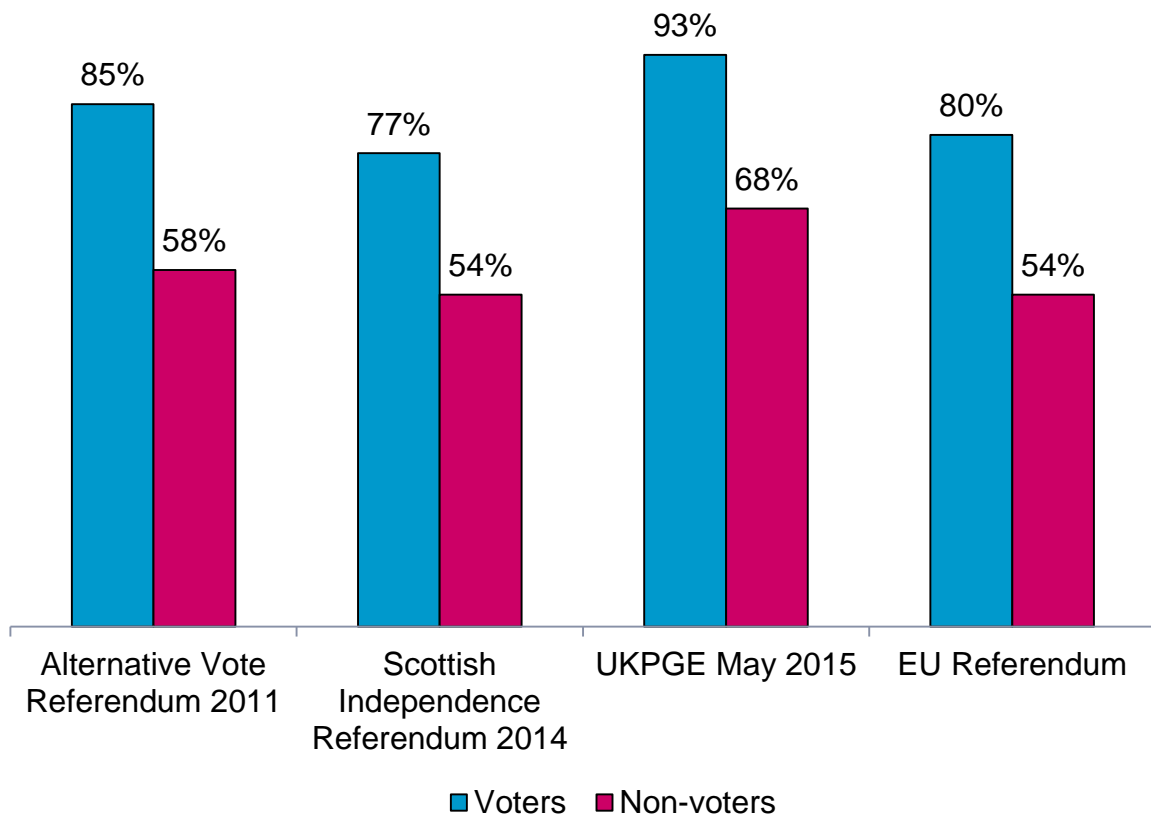
- The majority of polling station voters (64%) found the support provided by polling station staff useful, 2% said it was not useful. Around one third (34%) said they didn't need any help or assistance. Almost two in three (66%) found the written instructions on how to vote (i.e. poster in the polling booth or guidance on the ballot paper) useful, although 3% said they were not useful (30% didn't use/need them).
- Almost all (99%) of those respondents who voted by post, reported that they were satisfied with voting in this way. Nearly all (96%) respondents who voted by post said it was easy to complete and return the postal ballot with 2% saying it was difficult. Slightly less (92%) found the written instructions on how to vote and return the ballot useful and 2% said they were not useful. Six percent did not use them or need them.

People's confidence that the referendum was well-run

4.105 Seventy seven percent of respondents to our public opinion research said that they were very or fairly confident that the referendum was well run, including 36% who said that they were very confident and 42% who were fairly confident. This compares with 12% who said that they were not very confident and 8% not at all confident. People who said that they had voted in the referendum were more confident than reported non-voters (80% compared with 54%), and those who said that they voted to Leave the EU were more likely to say they were confident that the referendum was well run (89%) than those who said that they had voted to Remain (73%).

4.106 Figure 4.3 below compares reported levels of confidence that the EU referendum was well-run against similar survey results following the 2011 referendum on the UK Parliament voting system, the 2014 Scottish Independence referendum and the 2015 UK Parliamentary general election.

Figure 4.3: Confidence the referendum/election was well run



The Electoral Commission, Post-polls public opinion survey.

Q: How confident, if at all, are you that the referendum/election was well run?

Source: <http://www.electoralcommission.org.uk/our-work/our-research/public-opinion-surveys>

4.107 The main reasons given by people who said that they were not confident were not related to the administration and delivery of the poll, but rather a lack of information about the referendum (see paras 3.54 to 3.66 for more information on awareness around the poll).

4.108 This degree of dissatisfaction with the amount of information available is consistent with findings from research with voters at other elections and referendums. Forty percent of those respondents who were not confident the referendum was well run cited a general lack of information. Within that 12% said that the information was confusing and didn't therefore understand what the vote was for; 11% said there was a lack of information about the remain and leave campaigns and 12% a lack of information about what would happen as a result of a remain or leave vote. Other respondents cited campaign issues (16%) such as misinformation; 13% a mistrust of politicians/the political system; and 10% polling station/ballot issues.

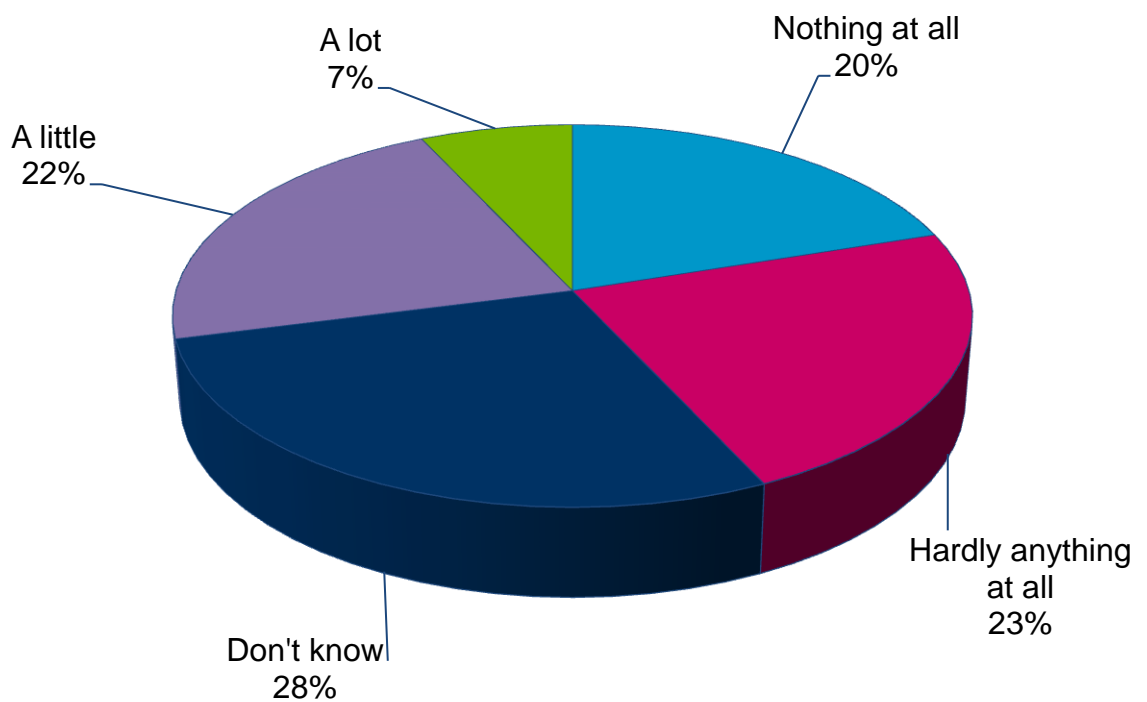
4.109 For the UKPGE in 2015 respondents cited a mistrust of politicians/the political system (16%); corruption/ fixed results (10%); the voting system being out of date (14%); and the ballot being badly run/organised (10%).

4.110 The main reasons cited by people who said that they were confident the referendum was well run was that it was well organised (22%); it was quick and easy to vote (14%); the voting system was fair (12%); they had not heard any negative feedback (11%) and was that the referendum was a clear ballot and easy to vote in (11%).

Perceptions of electoral fraud

4.111 As shown below 43% of respondents to our public opinion research thought that hardly any (23%) or no (20%) electoral fraud took place at the 23 June referendum. Twenty-nine percent of people however, said that they thought electoral fraud took place, with 22% saying it happened ‘a little’ and 7% saying ‘a lot’.

Figure 4.4: How much, if at all, do you think that electoral fraud took place at the referendum?



2016 Post-EU Referendum public opinion survey.

Source: BMG Research/ The Electoral Commission.

Base: 3,533 (unweighted);

Q: How much, if at all, do you think that electoral fraud took place at the 23rd June referendum? Would you say that it happened...?

4.112 Young people were more likely to say fraud had happened a lot/a little with 37% of 18-34s saying that compared to 26% of 35-54s and 27% of the 55+. It is not clear from the survey results why this was the case although attitude to the result may have an effect. Respondents in Northern Ireland were also more likely to think there was a lot/a little fraud (37%) compared to England (29%), Scotland (27%) and Wales (28%). Again, responses to other survey questions do not indicate why this might have been the case.

4.113 Those respondents who said that they thought electoral fraud had taken place on 23 June were asked which out of a list of options best described why they thought this. The main reasons why people thought that fraud had taken place related to:

- A general impression that fraud was a problem
- Because they had seen stories in the media about electoral fraud
- Because voters don't have to provide identification to vote
- Identify fraud is on the increase
- Postal voting is not secure
- People are registering other voters at the same address
- People are registering multiple times

4.114 As set out in paragraphs 4.148 to 4.152 below, the Commission received almost 200 calls from voters about the use of a pencil as opposed to a pen to mark their ballot paper. Although this was not picked up as an issue in our public opinion survey, voters were concerned that their vote could be rubbed out and altered at a later stage.

4.115 More than three in four (77%) respondents said that they see voting in general as being safe, with those who say that they always vote (81%) significantly more likely to see it as safe than those who say they have never voted (57%). Voting at polling stations is perceived as more likely to be safe than postal voting (85% compared with 61% of respondents), but nearly nine in ten (88%) of people who said they had voted by post saw the method they used to cast their vote as safe. These figures are in line with results from previous post-election surveys.

Issues and lessons learned about the delivery of the referendum poll

4.116 Findings from our public opinion survey, presented in Chapter 6, demonstrate that voters were confident that the referendum poll was well run. However, as with all national polls, especially on this scale, there were a number of issues which affected a proportionately small number of voters. The most significant issues are covered in detail below. Further detail of issues which arose can be found in the CCO's [issues log](#) which was updated on a weekly basis in the build up to the referendum.

Failure of the UK Government's online registration service

4.117 The Government's voter registration website (www.gov.uk/register-to-vote) experienced technical problems from 10.15pm on Tuesday 7 June and these were not resolved until around the time of the deadline for registering to vote in the referendum at midnight. A significant number of people (we believe over 50,000) were on the website when it first crashed and many more may have attempted to go onto it between 10.15pm and midnight.

4.118 In these circumstances, the Commission and the CCO concluded that it would be in the best interests of voters to consider options to extend the deadline, and the Commission issued a statement calling on the UK Government to introduce emergency legislation to extend the registration application deadline. A change in legislation was

the only way to extend the deadline for registration. Any application, whether made online or on paper, received after the original deadline would otherwise not be effective for the referendum.

4.119 The European Union Referendum (Voter Registration) Regulations 2016 were made on 9 June, and had the immediate effect that any applications received before the new deadline could be processed and determined by EROs, and that any eligible person who had submitted an application which was successfully determined was subsequently added to the electoral register, and therefore able to vote in the referendum. The extension to the deadline was achieved by changing the timing for the publication of final alterations to the electoral registers to be used for the referendum from five working days before polling day to three working days before polling day.

4.120 As well as issuing a briefing to all MPs and Peers about our support for the change to legislation, the Commission used its Twitter and Facebook profiles to update electors on the extension to the registration deadline. The Commission's external call centre and internal public information team were also provided with the latest information on the extension in order to be able to answer queries from members of the public.

4.121 From midnight on 7 June up to midnight on 9 June a total of 436,347 applications to register to vote were submitted online and on paper applications across Great Britain. Based on provisional data provided by EROs, we have estimated that approximately 46% of these were duplicate registration applications submitted by people who were already correctly registered to vote. This required some unnecessary work by electoral registration teams at a critical period in the referendum timetable.

4.122 The Government reported to Parliament in the debate on the European Union Referendum (Voter Registration) Regulations 2016, that load testing had been undertaken before the registration deadline to ensure that the online registration service could cope with traffic at a heightened rate than was experienced at the peak of its use during the 2015 UK Parliamentary General Election.³³ The Chancellor of the Duchy of Lancaster also stated that since the website experienced issues, the Government Digital Service and Cabinet Office had immediately taken steps to increase its capacity by twice the peak rate of traffic.

4.123 However, the Government should publish the independent assessment of what happened, and what measures have been put in place since this issue arose, as quickly as possible now that the referendum has been delivered, to ensure that the website is able to cope with stress caused by significantly high traffic. This should be published by the beginning of November 2016, six months before the next set of scheduled polls in May 2017.

³³ <https://hansard.parliament.uk/Commons/2016-06-09/debates/16060924000001/EUReferendumVoterRegistration#contribution-16060925000024>

Duplicate registration applications

4.124 The availability of online registration applications across Great Britain – which was introduced at the same time as the transition to IER began – has already demonstrated clear benefits, with 78% of all registration applications since June 2014 being submitted online.³⁴ Evidence suggests that the service has been particularly popular among some of those groups who are typically under-registered, such as overseas voters and young people.

4.125 Feedback from Counting Officers, which has been collated and analysed by two independent academics, has nevertheless highlighted some concerns about whether the increased convenience and accessibility of online registration may have had the unintended effect of increasing the number of applications from people who were already registered to vote, and which therefore required some unnecessary work by elections teams at a critical period in the referendum timetable.

4.126 Data from EROs suggest that on average 30% of the registration applications received between December 2015 and May 2016 were from electors who were already correctly registered, compared with 38% of the applications made between mid-May 2016 and the registration deadline on 9 June 2016. Levels of duplicate applications varied between local authority areas. The data suggests that in 26 local authority areas more than half the registration applications received during the referendum campaign period were from electors who were already correctly registered.

4.127 One electoral administrator who provided feedback after the May 2016 polls suggested that the referendum had increased the number of duplicate registration applications because people wanted to make sure that they had registered for the referendum and thought that they had to re-register to vote in it:

“A Facebook rumour that people must register again for the EU Ref generated a lot of duplicate applications and additional emails/phone calls.”

4.128 Counting Officers said that confusion about electors’ registration status, the significant proportion of duplicate registration applications, and the consequent impact on limited staff resources during the weeks before polling day, were the most significant challenges that they faced during the referendum. This also reflects similar feedback provided by ROs at the May 2016 polls. The decision to extend the registration deadline placed a particular pressure on many local authorities.

4.129 We will continue to work with the UK Government to make sure that the information provided on the online registration service website is as clear and accurate as possible, taking into account feedback from Returning Officers and Counting Officers at this year’s polls, in order to reduce the number of applications made by people who are already correctly registered to vote.

4.130 We again received feedback from ROs, and from electors themselves, that it would be more helpful if it were possible for people to use the online registration

³⁴ As at 9 June 2016.

system to check whether they were already correctly registered to vote before submitting a new application. Similar facilities are already offered to voters in other comparable democracies, including Australia and New Zealand. We continue to recommend that The UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they submit a new application to register.

Registration and postal vote application forms sent out via the Commission's call centre

4.131 Feedback from Electoral Registration Officers, submitted via the Association of Electoral Administrators, as well as from callers to the Commission's call centre highlighted that the Interactive Voice Response messages that callers heard when they called the Commission's helpline was misleading. Some callers were ordering registration forms when they meant to order postal vote application forms. As soon as the Commission was made aware, the messages were changed to be made even clearer which form a caller was selecting to order and be sent to them.

4.132 The Commission was made aware through its public information channels that it had mistakenly supplied its call centre with registration application forms suggesting a pre-paid envelope and information about the open register was included – however, this was not the case.

4.133 In response to this, the Commission supplied its call centre with new registration forms that did not mention the pre-paid envelope and did include information about the open register. These forms were used from Wednesday 1 June.

4.134 Anyone who was sent one of these registration forms were subsequently contacted to inform them that they had the option to 'tick' a box to indicate whether or not they wanted their name and address to be included in the open register, and to contact their ERO for more information.

Despatch of postal ballot packs to overseas voters

4.135 Between 17 March and 9 June there were around 135,400 additional overseas electors added to the electoral registers.

4.136 The CCO was made aware on 7 June by the Counting Officer in Durham that some overseas voters who had successfully applied for postal votes in time to be sent a postal ballot pack as part of the first issue of postal votes had not received them after the first despatch. Upon further investigation it was clear by 8 June that two other local authorities in England (Castle Point and Kingston upon Hull) had experienced the same issue.

4.137 After further investigation the Counting Officer at Durham was able to identify that there was an issue relating to a batch of postal ballots sent out on 23 May which potentially affected 460 overseas voters. On 7 June, the Counting Officer, on the advice of the Chief Counting Officer took the decision to invalidate the batch of postal ballots that were issued on the 23 May and immediately reissued a new batch of postal ballots to the affected overseas voters.

4.138 In the course of investigating the Durham issues it was also found that the same issue had affected 116 overseas voters in Castle Point and 133 overseas voters in Kingston upon Hull where new batches of postal ballots were also reissued. The Chief Counting Officer also advised the Counting Officers in these areas to email affected electors to inform them of the issue and provide further guidance and assistance. All of the affected voters were advised by the relevant Counting Officer that they should only return one ballot paper. Only one ballot paper per voter would be accepted and processes were in place to ensure that no one was able to vote twice. The Electoral Commission outlined this position in a [statement on 10 June](#).

Postage for the return of overseas voters' postal ballot packs

4.139 With the exception of a small number of issues experienced by some overseas electors at a local level (explained in more detail below) this service worked well. A total of 95,882 postal ballot packs were returned in the International Business Reply Service (IBRS) envelopes by overseas electors in time for inclusion in the referendum count, at no direct cost to individual electors.

4.140 In early June the CCO was made aware that some overseas voters in Belgium, France, Germany, Portugal and Spain had been incorrectly informed by local post office staff that the postal service in their respective countries could not accept IBRS items.

4.141 Once the CCO became aware of reports that the IBRS was not being recognised by some postal workers at a local level, she asked Royal Mail to look into the possible solutions to the problem. Royal Mail was able to confirm that IBRS is accepted across all international posts. It was also able to reassure us that it was working closely with postal operators to ensure acceptance and return to the UK of postal votes. To reassure overseas voters, the Commission communicated this information on social media and by issuing a statement to media in the affected countries, advising voters that once a ballot is in the postal system (e.g. if it has been posted into a post box), it would be processed.

4.142 Following the May 2016 Queen's Speech the UK Government reiterated its commitment to extend the franchise for British citizens living abroad to vote in UK parliamentary elections, enabling British citizens who have been resident overseas for more than 15 years to continue to vote in UK elections. The Bill will also consider opportunities to make it easier for overseas electors to cast their votes in time to be counted.

4.143 Together with increasingly successful overseas registration campaigns, this change is likely to lead to an increase in the number of overseas electors in coming years. This is likely to increase the pressure on an already tight timetable (more so for a UKPGE compared to a referendum) for the despatch and return of overseas postal votes and on postal authorities in different countries.

4.144 We have therefore reiterated below our recommendation following the 2015 UK Parliamentary general election for the UK Government to work with the Commission and others to identify changes to improve access to the voting process for overseas

electors. Any changes requiring legislation should be included in the Votes for Life Bill to ensure a coordinated approach.

Receipt of poll cards and postal votes by ineligible electors

4.145 The CCO became aware on 1 June that there had been an issue with elections software provided by Xpress, an electoral management software system used by a number of local authorities in England and Wales that meant that a small number of EU citizens who were not eligible to vote in the referendum had mistakenly received poll cards and, in some instances, postal votes.

4.146 On 1 June, the software provider issued a “patch” to resolve the issue which meant that if any postal votes had been issued to ineligible electors, they would be cancelled and that none of these electors would be shown as eligible on the electoral registers to be used at polling stations on 23 June. Any completed postal votes were cancelled and were not be counted. All of the affected electors were also written to with an explanation of what happened and were told that they would not be able to vote at the referendum. By 9 June Electoral Registration Officers (EROs) who use the software had reported to the Commission that a total of 3,502 electors had been affected by this issue.

4.147 The Commission issued media statements to reassure voters that firstly the software provider had resolved the issue and that the Commission would now work to identify how many electors had been affected; and to then confirm that 3,502 electors had been affected as well as a breakdown of the figures by local authority. Commission spokespeople undertook a number of broadcast interviews to encourage electors to register to vote. Spokespeople were careful to note however that certain EU citizens were not eligible to vote at the EU Referendum. The Commission also issued a briefing to Parliamentarians containing details of a number of issues that had attracted public interest which included the receipt of poll cards and postal votes by ineligible electors and what steps had been taken to rectify those issues.

Using a pen or pencil to mark ballot papers

4.148 The Commission received almost 200 calls from electors who queried whether they were required to mark their ballot paper using either a pen or a pencil. Concerns which were raised ranged from the possibility of votes marked in pen being rejected during the counting of votes, to those who were concerned that their vote could be altered at a later stage if written in pencil. These concerns were also printed in the press both on polling day itself and the day after, and in some it made headline news in their early editions.

4.149 The use of a pen or pencil when completing the ballot paper is not specified in legislation. Pencils have been used to mark ballot papers for practical reasons: for example, with ink pens there is always a risk that they may dry out or spill; ink may cause some transfer of the mark the voter has made on the ballot paper when they fold it, potentially leading to their vote being rejected if, for example, it looks like they have voted for more options than they are entitled to.

4.150 On polling day, both Commission staff and local administrators were able to reassure voters that they could use either to mark their ballot paper. We also used our Twitter profile to reassure electors that they could use either a pencil or a pen to mark their vote on the ballot paper.

4.151 The Commission also sought to reassure members of the public that the use of pencils does not in itself increase the likelihood of electoral fraud. Legislation has built specific safeguards into the process, such as the requirement for seals to be attached to ballot boxes at the close of poll. By law, referendum campaigners were also allowed to be present at that stage and to attach their own seals if they wished to. At the start of the count, referendum campaigners were able to observe those same seals being broken. Electors were told that if they had any evidence that ballot papers may have been tampered with, that this needed to be reported directly to the police.

4.152 Nevertheless, we recognise that there is a significant degree of confusion, and some scepticism, among electors about why pencils are provided in polling stations, and this presents an additional challenge to ensure confidence in the integrity of election procedures.³⁵ We will work with Returning Officers, the AEA and the UK and Scottish governments to consider whether there could be alternatives to providing pencils for voters in polling stations which could improve confidence.

Postal vote instructions

4.153 Over the weekend of 28 and 29 May, the CCO became aware that the COs for Bristol and Swale voting areas had issued postal ballot packs containing pictorial postal voting instructions (an image of hand holding a pencil which appeared to be hovering over one of the response option boxes) that could be interpreted as favouring one particular outcome in the referendum. The issue affected approximately 61,000 postal voters across Bristol and Swale.

4.154 Following advice from the CCO, the affected COs arranged for an amended version of the postal voting instructions to be used for all further postal voting packs to be sent out. The CCO also issued guidance to all COs to ensure that any postal voting instructions which used either the same image, or a similar image, were changed before any further postal votes were distributed.

Industrial action in Northern Ireland

4.155 In Northern Ireland some members of the trade union NIPSA took part in industrial action in the weeks before polling day. An overtime ban was in place from 2 June and there were strike days on 3 June (the absent vote application deadline in Northern Ireland) and 7 June (the registration application deadline). The Chief Electoral Officer oversaw contingency planning to ensure that people were able to register throughout this period and that planning for the administration of the referendum

³⁵ Survey findings published by YouGov in early September 2016 indicated that 18% of respondents thought it is definitely or probably true that "Election officials have been rubbing out and changing votes made using a pencil", although the research questions did not specifically refer to the referendum. See <https://yougov.co.uk/news/2016/09/02/8-more-things-weve-learned-our-labour-leadership-e/>

continued. NIPSA suspended the industrial action on 10 June, so it did not affect polling day or the count.

Feedback from RCOs and COs about the management of the referendum

4.156 We commissioned Dr Alastair Clark and Dr Toby James to undertake an independent evaluation of the management administration of the referendum and the role of the Electoral Commission and the CCO. They conducted an online survey, distributed to all 382 local authorities (254 responded) and qualitative in-depth interviews with 11 RCOs, the CEONI, 12 COs, the CCO and DCCO. Their report has been published on our website: [Alistair Clark and Toby S James, *An evaluation of electoral administration at the EU Referendum \(September 2016\)*](#).

4.157 Feedback from RCOs and COs was very positive about the role of the CCO and the Electoral Commission in the management and delivery of the referendum.

4.158 There were high levels of satisfaction with the management structure for the delivery of the referendum poll with 82% of COs agreeing that it worked well.³⁶ RCOs thought that the management structure worked well and said that it was an improvement on the one used at the 2011 referendum.

4.159 RCOs said that they welcomed the CCOs efforts to engage with COs at local and regional events.

4.160 The majority of COs agreed or strongly agreed that the CCO's and their RCO's planning was effective. Around three quarters agreed that the CCO's planning for the referendum was effective and 86% were satisfied with their experience of working with their RCO. The majority of COs also agreed or strongly agreed that the rehearsals were effective in ironing out any potential problems that could have happened at the count (80%).

4.161 The CCOs directions were thought to be clear, easy to understand and issued in sufficient time to enable RCOs and COs to plan and run the referendum.

- 91% of COs agreed that the directions were clear and easy to understand
- 87% of COs agreed that the CCOs directions were issued in sufficient time to allow them to prepare effectively for the referendum
- 57% of COs agreed that the directions from the CCO made it easier to plan and run the referendum – 36% neither agreed or disagreed

4.162 They were also seen as method of ensuring consistency of practice to deliver a consistent experience for voters and outcome across the UK.

4.163 There were some negative comments made about the directions in relation to increased financial costs (43% agreed that they increased costs); absorbing staff time

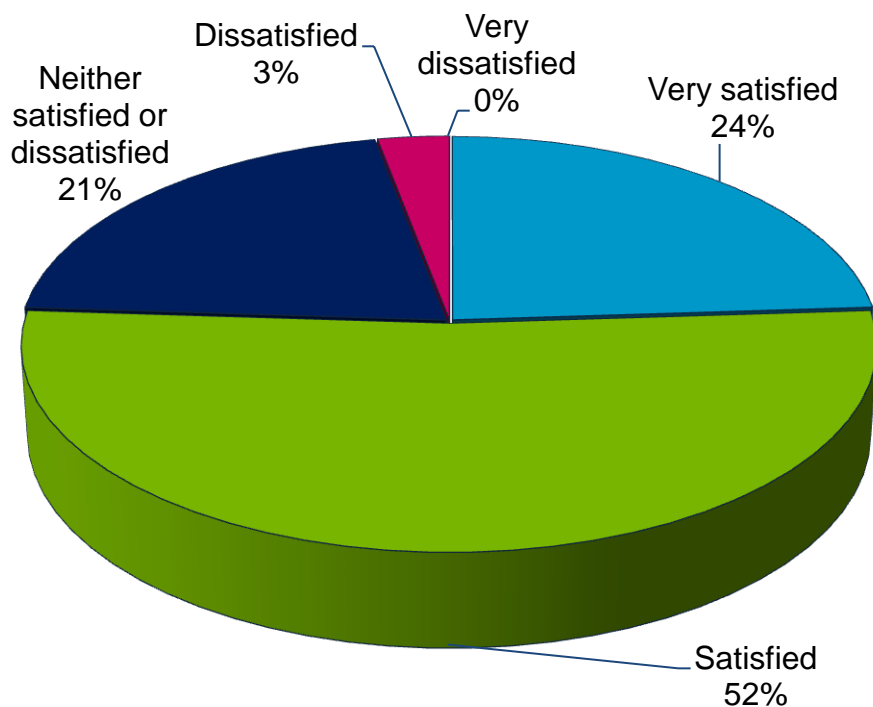
³⁶ In some instances another member of the elections team responded on behalf of the CO.

(39% agreed they absorbed staff time); and that they overrode local experience and time (24% agreed that they did). Challenges relating to resources were expressed in other areas too, however: a small but significant proportion (8%) of Counting Officers said that they faced extensive challenges with staffing levels, and just over one in ten (10%) said that they faced extensive problems with insufficiently experienced staff. One reported cause of staffing problems was the timing of the referendum so soon after the May 2016 elections, and also that it coincided with Ramadan.

4.164 RCOs were pleased that they had the opportunity to feed into the directions. COs on the other hand said that they felt less involved in the development of the standards despite a consultation paper being issued. The directions were seen to be better than those issued for the 2011 referendum, and the CCO issuing directions at referendums now appears to be thought of as general practice.

4.165 As shown in the chart below there were high levels of satisfaction with the support from the Electoral Commission.

Figure 4.5: Satisfaction with the support provided by the Electoral Commission among electoral administrators



Source: Clark and James (September 2016).

Q. Overall how satisfied or dissatisfied are you with the support provided by and contact with, the Electoral Commission?

4.166 COs and RCOs were clear that the CCO and the Electoral Commission provided resources that were widely used and very useful. As one CO said:

'For a first time electoral administrator, I found the resources thorough, logical and very useful. The way they are laid out on the website is also helpful.'

Lessons learned about the management of the referendum

The role of the Chair of the Electoral Commission as Chief Counting Officer

4.167 The UK Parliament has decided and specified in legislation that the Chief Counting Officer for a referendum held under PPERA should be the Chair of the Electoral Commission, or someone the Chair appoints to act as Chief Counting Officer.

4.168 We are satisfied that the Chair of the Electoral Commission was the most appropriate person to act as the Chief Counting Officer for this referendum. This referendum was delivered in a highly pressurised political context and, in effect, alongside a complex set of May polls, showing that the Commission can provide sufficient resource to support the CCO role in any foreseeable circumstances.

4.169 The Commission will review before any future UK-wide referendum to be held under PPERA whether it would be appropriate for the Chair to act as the CCO. This consideration will include the presumption that the Chair may appoint someone from within the organisation to act as CCO if appropriate, and that the Commission will continue to provide sufficient resource to support the CCO role.

4.170 For referendums which take place only in Scotland or Wales, we recognise that the Chair of the Electoral Commission may not be the most appropriate person to act as the Chief Counting Officer. For example, the Convener of the Electoral Management Board for Scotland was the Chief Counting Officer for the 2014 Scottish independence referendum. For referendums which take place only in Northern Ireland, PPERA specifies that the Chief Electoral Officer for Northern Ireland would be the Chief Counting Officer.

Regional management structures

4.171 The delivery of the EU referendum, in common with the previous UK-wide referendum held in 2011, was managed using the regional management structure which had been put in place for elections to the European Parliament. Following the outcome of the referendum, it is expected that the UK will no longer hold elections to the European Parliament, and this regional structure will therefore no longer have a statutory basis.

4.172 Given the structure in place for this referendum worked so effectively to deliver a high profile national poll, there would be a risk introduced to the delivery of any future national referendum, potentially with a shorter time period in which to prepare for it, if

this structure or something similar were not to be retained. A significant reason for the effective delivery of the poll was that the CCO was able to appoint RCOs on a designate basis and, building on existing co-ordinating structures already in place, to form the Management Board and Delivery Groups to commence advanced planning.

4.173 We will continue to work with the Elections Coordination Advisory Board (ECAB) through to 2020 and will consider its membership in light of the loss of the regional roles. This will ensure that a regional management structure is maintained to support and oversee the delivery of future UK-wide referendums and elections and we will work with the Society of Local Authority Chief Executives (SOLACE), the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) and the Association of Electoral Administrators (AEA) to ensure that the structure remains suitable and effective structure ahead of the next scheduled UK Parliamentary general election in 2020.

Northern Ireland as an electoral region

4.174 For future referendums, Northern Ireland should be designated as an electoral region rather than a voting area, with the Chief Electoral Officer appointed as Regional Counting Officer responsible for coordinating the delivery of the poll, consistent with the other eleven electoral regions across the UK. This position can only be created in primary legislation. Designating Northern Ireland as an electoral region with a Regional Counting Officer would provide greater clarity and ensure better alignment with arrangements in the rest of the UK.

Recommendations for the management and delivery of future referendums and other polls

Recommendation 6: Northern Ireland should be designated as an electoral region for future UK-wide referendums, with the Chief Electoral Officer appointed as a Regional Counting Officer

For future UK-wide referendums, Northern Ireland should be designated as a referendum region with the Chief Electoral Officer appointed as Regional Counting Officer responsible for coordinating the delivery of the poll in line with the other eleven electoral regions in the UK. Voting areas within Northern Ireland should be specified in referendum legislation, in the same way as for other electoral regions elsewhere in the UK.

The UK Government should ensure that legislation for any future UK-wide referendum (including legislation amending PPERA, as recommended above in Recommendation 1 of this report) designates Northern Ireland as an electoral region with the Chief Electoral Officer appointed as a Regional Counting Officer.

Recommendation 7: The capacity of the UK Government’s online voter registration website should be tested to ensure it can cope with significant volumes of applications close to the deadline ahead of future scheduled polls.

The UK Government should publish, as quickly as possible, the results of the independent review and investigation into what caused the online voter registration website to fail close to the registration deadline, and outline what measures have been put in place since to ensure that the website is able to cope with significantly high volumes of traffic.

The review, and the Government’s plans for ensuring that the website does not fail in similar circumstances, should be published no later than 4 November 2016, six months before the next set of scheduled polls in May 2017.

Recommendation 8: Electors should be able to check online whether they are correctly registered to vote

Providing a way for electors to check their registration status at the beginning of the online registration application process would reduce the action required by voters to keep their register entry up to date, and would also reduce the impact on EROs of processing duplicate applications.

The UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they complete a new application to register.

Any such service would need to carefully manage and protect voters’ personal information.

Recommendation 9: Access to the voting process should be improved for overseas electors

We will continue to work with the UK Government and Returning Officers or Counting Officers to identify practical steps which could be taken to improve access to the voting process for overseas electors at the next scheduled poll where they are entitled to vote, including:

- Ensuring that all Returning Officers or Counting Officers include the correct postage on postal ballot packs for overseas electors, so that they can be delivered to voters and returned as quickly as possible before polling day, including increasing the funding provided by the UK Government to Returning Officers or Counting Officers for this purpose to allow them to use the Royal Mail International Business Response Service.
- Explaining the practical implications of different voting methods (such as postal voting or appointing a proxy) for overseas electors, particularly if they are making an application during the last month before polling day, including on the www.gov.uk/register-to-vote website.

We will work with the UK Government and Returning Officers to develop workable and effective proposals, which could be included in the proposed Votes for Life Bill if legislation is required, to make it easier for overseas electors to cast their votes in time to be counted at elections. We will also continue our work with the Electoral Coordination and Advisory Board to consider how technology might be introduced into a wider range of election activity.

5 Regulating campaigners at the referendum

5.1 This chapter explores the experience of those who campaigned at the 2016 referendum on the UK's membership of the European Union and deals with the immediate regulatory issues arising from the referendum.

5.2 As for previous PPERA referendums, the changes and improvements made to the regulatory controls for the EU referendum were included in the specific referendum legislation and associated Regulations rather than updating the standard PPERA rules. This means that these changes will not apply for future referendums, unless they are again included in the specific referendum legislation. In this chapter we make recommendations for change drawing on the experience of the referendum, including, where appropriate, recommending that certain changes should be incorporated into PPERA so that they apply for all future referendums.

5.3 We will also issue a further report in spring 2017 focusing on the spending and donation returns that campaigners are required to submit to us before the statutory deadlines in September and December 2016. The report will also include information on the use of our investigatory and sanctioning powers at the referendum.

How campaigners were regulated at the referendum

Spending limits

5.4 PPERA sets the spending limits for UK-wide referendums. The limits for political parties that register to campaign are allocated according to the party's share of the vote at the last UK Parliamentary General Election. We currently have no statutory role in advising on these spending limits.³⁷

5.5 For the EU referendum, the spending limits set out in PPERA were adjusted to reflect changes in inflation. The limits that applied are shown in Table 5.1 overleaf. Once campaigners have submitted details of their campaign spending in September and December 2016 we will be in a position to consider the effectiveness of the limits. We will address this in our spending and donation report due in spring 2017.

³⁷ We have a specific statutory role in providing advice on the spending limits that should apply at referendums held in a part of the UK. We do not have this role for UK-wide referendums.

Table 5.1: Spending limits at the EU referendum.

Limits for designated lead campaigners	£7,000,000	The In Campaign Ltd Vote Leave Ltd
Limits for political parties that registered as a referendum campaigner with:		
>30% share of the vote	£7,000,000	[Conservative and Unionist Party] ³⁸
>20-30% share of the vote	£5,500,000	Labour Party
>10-20% share of the vote	£4,000,000	UK Independence Party
>5-10% share of the vote	£3,000,000	Liberal Democrats
<5% share of the vote	£700,000	Children of the Atom Democratic Unionist Party English Democrats English National Party Green Party Newcastle upon Tyne Community First Party Plaid Cymru Scottish Green Party Scottish National Party Social Democratic & Labour Party Social Democratic Party The Republican Socialist Party Trade Unionist and Socialist Coalition Traditional Unionist Voice
Limits for other registered campaigners	£700,000	Details of other registered campaigns are available on our website ³⁹

Guidance and working with campaigners

5.6 As part of good regulatory practice, we aim to publish guidance three months before the start of a referendum period so that campaigners have time to prepare to comply with the rules. At the beginning of January 2016 we published our first referendum guidance documents; these were followed shortly after by further guidance ahead of the commencement of the Act. We published our final guidance following

³⁸ The Conservative and Unionist Party did not register as a referendum campaigner and so was not entitled to the spending limit based on its share of the vote at the 2015 UK general election (36.8%). Unregistered campaigners are only allowed to spend up to the registration threshold of £10,000.

³⁹ Search our registers of referendum campaigners on our website at <http://search.electoralcommission.org.uk>

confirmation of the referendum date, the referendum period, pre-poll reporting periods and the dates for designating lead campaigners.⁴⁰

5.7 To supplement our guidance we published a series of regular updates covering the progress of the legislation, updates on the publication of guidance and campaigner rules and other issues of interests to prospective campaigners. These continued after polling day to remind campaigners of key dates and their reporting obligations.⁴¹ The duration of the referendum period for the EU referendum also overlapped with regulatory timeframes for the May 2016 elections,⁴² which meant that some campaigners may have needed to comply with more than one set of regulatory rules. We published guidance on the impact of overlapping regulatory periods to advise campaigners on how to understand which set of rules apply to their spending. The guidance explained that if regulated spending was covered by both the election and referendum rules, then campaigners must allocate a proportion of that spending to the particular election or elections or to the referendum.

5.8 We offered advice and guidance to campaigners and members of the public proactively in the run up to the start of, and throughout, the referendum period, answering over two thousand queries of varying complexity. During this period we held face-to-face meetings with over 22 different referendum campaigners, including meeting with the prospective lead campaigner applicants from the outset. We also spoke at public meetings and conducted a question and answer session for campaigners.

5.9 We offered a dedicated advice contact service for both designated lead campaigners to coordinate communication with us.

5.10 Our post-referendum campaigner research showed that there was 'clear satisfaction' with most aspects of our guidance. Some 59% found the guidance to be useful, 63% found the regular campaign updates to be useful and 69% found the direct advice from our staff to be clear and helpful. 80% found the registration and designation guidance materials to be useful and 68% found the spending materials useful. Campaigners praised both the comprehensiveness of our guidance and the quality of the advice provided. Designated lead campaigners were also positive about our single point of contact. Respondents did however raise issue with the Commission's digital reporting system (PEF Online). 38% of respondents did not use

⁴⁰ On 8 January 2016 we published guidance for campaigners which covered an introduction to referendums, how to register to campaign at the referendum and the designation process. We published our campaigner registration form on 29 January 2016, and our second phase of guidance on donations, loans and permissibility on 5 February 2016. On 4 March 2016 we published guidance covering the spending rules, working together rules, pre-poll reporting, restrictions on public bodies under section 125 and the rules for campaigning in Gibraltar. We also published the application form and guidance for organisations that wished to apply to be the designated lead campaigner.

⁴¹ Guidance for campaigners for the referendum on the United Kingdom's membership of the European Union: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

⁴² Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly elections were held on 5 May 2016, there were also Police and Crime Commissioner elections in England and Wales and local government elections in England. The PPERA regulated period applied in Scotland, Wales and Northern Ireland from 5 January 2016 and ended on polling day 5 May 2016.

the system and, of those that did, 36% reported that it was hard to use. We will consider carefully the feedback from campaigners and assess what lessons can be learnt for the future.

Referendum campaigners

5.11 Campaigners who intended to spend more than £10,000 campaigning at the referendum were required to register with us. The requirement to register also applied to registered political parties. Once registered, campaigners were entitled to:

- A spending limit of up to £700,000.
- Access to the electoral register to help them campaign.
- Appoint representatives to attend postal vote opening sessions, polling stations and the counting of the votes.

5.12 Registered campaigners were required to comply with the rules on spending, donations and loans before and after the referendum. Once registered, campaigners were also able to apply to us to be designated as the lead campaigner for the outcome they supported.

5.13 Campaigners were able to register with us from 1 February 2016, a total of 123 campaigners have registered with us - 63 indicating they supported 'Remain' and 60 supporting the 'Leave' side.⁴³

5.14 Our post-referendum campaigner research showed that the registration process was seen as being straightforward with two-thirds of respondents finding it easy, with only 14% seeing the process as being difficult in any way. 71% of respondents indicated that they were aware of the need to register either before or when they decided to campaign; most (92%) were already aware of the rules on campaigning finance or were advised by those who had this knowledge.

Designation of lead campaigners

5.15 Registered campaigners were able to apply to us to be designated as the lead campaigner for the outcome they supported. The EU Referendum Act required us to consider the PPERA statutory test when assessing applications for designation:

- if there is only one applicant for an outcome, the Commission shall designate that applicant unless it is not satisfied that it adequately represents those campaigning for that outcome, or
- if there is more than one applicant for an outcome, the Commission shall designate whichever of the applicants appears to it to represent to the greatest

⁴³ As at the date of this report.

extent those campaigning for that outcome unless it is not satisfied that any of the applicants adequately represents those campaigning for that outcome.

5.16 Designated lead campaigners were each entitled to a spending limit of £7m, one free postal distribution of information to voters, the use of certain public rooms, referendum campaign broadcasts and a grant of up to £600,000. In addition to these statutory benefits, designated lead campaigners were able to have a dedicated page in our public information booklet which was distributed to all households in the UK.

5.17 In response to recommendations we made following the 2011 and 2014 referendums, the legislation for the EU referendum modified the PPERA approach to designation in two ways:

- It gave the Government the power, subject to approval by Parliament, to enable the process to appoint lead campaigners to start before the beginning of the referendum period, and
- Allowed us to designate a lead campaigner on only one side of the referendum debate if there were either no applicants, or if there was no applicant which met the statutory test of adequately representing those campaigning on that side of the debate.

5.18 The amendment to allow for one-sided designation also included modifications to the campaign benefits that would be available to a sole lead campaigner with no opposing lead campaigner.

5.19 The referendum timetable that was outlined in the European Union Referendum (Date of Referendum etc.) Regulations 2016 provided for campaigners that wished to apply to be a lead campaigner for either outcome to have four weeks to compile and submit their applications, from 4 March 2016 to 31 March 2016. Following the end of this application period, the statutory deadline for us to appoint lead campaigners was 14 April 2016, which was the day before the start of the referendum period.

Designation of lead campaigners at the EU referendum

5.20 In the lead up to the referendum, the Commission Board agreed that the same criteria that had been used for the 2011 referendums and the 2014 referendum on independence for Scotland would be used to apply the statutory designation test at the EU referendum:

- how the applicant's objectives fit with the referendum outcome it supports
- the level and type of support for the application
- how the applicant intends to engage with other campaigners
- the applicant's organisational capacity to represent those campaigning for the outcome, and
- the applicant's capacity to deliver their campaign.

5.21 We explained these criteria in the guidance, application form and assessment matrices which we published on our website. We published our campaigner guidance on the designation process on 8 January 2016 subject to the fact that further detail

would need to be set in Regulations. We published the designation application form and assessment matrix on 4 March 2016.

5.22 We received four applications for designation as a lead campaigner for the EU referendum: one for 'Remain' and three for 'Leave'.

5.23 Following an initial assessment of the applications, the Commission decided that further evidence should be sought from Go Movement Ltd and Vote Leave Ltd in order to help it assess which represented to the greatest extent those campaigning for a 'Leave' outcome. The Commission decided that it was not necessary to seek further evidence from The In Campaign Ltd or the Trade Unionist and Socialist Coalition.

5.24 Following careful and full consideration of the statutory test, the Commission Board decided at its meeting on Wednesday 13 April that:

- The In Campaign Ltd met the statutory test of adequately representing those campaigning for the 'Remain' outcome.
- The application from the Trade Unionist and Socialist Coalition did not meet the first part of the statutory test of adequately representing those campaigning for the 'Leave' outcome.
- The applications from Vote Leave Ltd and from Go Movement Ltd each met the first part of the statutory test of adequately representing those campaigning for the 'Leave' outcome.

5.25 Therefore in terms of Vote Leave Ltd and Go Movement Ltd, the Commission considered the second part of the statutory test, which requires us to consider which of these two applicants "appears ... to represent to the greatest extent those campaigning for that outcome".

5.26 The applications from 'Vote Leave Ltd' and 'The Go Movement Ltd' were both of high quality. After careful consideration, the Commission Board decided that 'Vote Leave Ltd' better demonstrated that it had the support and structures in place to ensure the views of other campaigners were represented in the delivery of its campaign. It therefore represented, to a greater extent than 'Go Movement Ltd', those campaigning for the 'Leave' outcome.

5.27 While both applications were of a high standard, the Commission considered in particular that:

- Both campaigns demonstrated support from a wide range of groups representing different interests. However, 'Vote Leave Ltd' better demonstrated the depth of representation in their support from those campaigning, including at a regional and local level.
- Both campaigns also provided well-developed plans and structures for how they would support other campaigning organisations. The approach from 'Go Movement Ltd' was based on other campaigners signing formalised agreements as 'affiliates', whereas Vote Leave Ltd's offer of support and engagement was not

conditional upon organisations agreeing to deliver messages or activity on their behalf.

5.28 The applicant organisations were informed of the Commission's designation decisions on the same day as the Board meeting, shortly before we issued a statement to the media announcing our decisions. The Board Papers relating to our designation decisions, rationale and copies of the applications made by all applicant organisations, together with supporting information, were made available on our website at the same time the designation decision was announced.⁴⁴ The applicants' campaign strategies and all personal data were redacted from these papers.

Donations and reporting

5.29 During the referendum period (15 April to 23 June 2016), registered campaigners were required to submit a number of 'pre-poll reports' detailing the donations they had received and loans they had entered into that were over £7,500.⁴⁵

5.30 Registered campaigners had to submit their first pre-poll report at the end of the reporting period during which they registered; the first report contained 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 they registered, and both before and after the referendum period began, provided they were given for the purposes of referendum campaigning.

5.31 During the statutory pre-poll reporting periods:

- A total of £33,025,885 in donations was reported by campaigners in their pre-poll reports; £14,867,376 from 'Remain' campaigners and £18,158,510 from 'Leave' campaigners.
- A total of £6,083,940 in loans was reported by campaigners in their pre-poll reports; £83,940 from 'Remain' campaigners and £6m from 'Leave' campaigners.

5.32 After the referendum, registered campaigners are required to submit a campaign spending return which includes details of all accepted donations and loans over £7,500 together with details of certain impermissible donations and loans. In addition, they must report the total value of accepted donations and loans that were worth more than £500 and less than or equal to £7,500.

5.33 The post-referendum returns are due to be submitted by 23 September 2016 for campaigners who have spent £250,000 or less and 23 December 2016 for those that

⁴⁴ <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/designation-of-lead-campaigners-for-the-eu-referendum>

⁴⁵ Campaigners are required to report all donations and loans over £7,500 they receive in their pre-poll reports, irrespective of whether those funds are ultimately accepted as being from a permissible donor / lender. Accepted donations over £7,500 are reported after the referendum.

have spent over £250,000. We will publish these returns as soon as reasonably practicable after the deadline.

5.34 We will issue a further report in spring 2017 focusing on campaign spending and donation returns. The report will also include information on the use of our investigatory and sanctioning powers at the referendum.

Enforcing the rules

5.35 Under PPERA, we have investigative and sanctioning powers in respect of breaches of the rules. The ability to use a range of civil sanction, through to criminal prosecution in the most serious case, provides a sanctioning range intended to fit to the specific circumstances of cases. However, it should be noted that our maximum fine is limited to £20,000 which, depending on the circumstances, is unlikely to always be sufficient a sanction for breaches of PPERA. In 2015, we recommended that the cap on our fines for all our civil sanctions should be raised.⁴⁶

5.36 Our approach to compliance at the EU referendum followed our established approach of proportionate regulation as set out in our Enforcement Policy.⁴⁷ We made particular efforts to work closely with campaigners to prevent noncompliance, or bring them into compliance quickly, with the intention of reducing the likelihood of retrospective enforcement action. We used the full spectrum of regulatory tools available to us to achieve this, including issuing advice and guidance, engaging with campaigners on particular issues and, when appropriate, regulatory intervention to bring campaigners into compliance with the rules.

5.37 This included proactively regulating potential breaches of the rules in ‘real time’ during the referendum campaign. Examples of how this worked in practice are given below.

- A national newspaper advised us it was intending to issue a referendum-related advert in its paper the following day, advocating a particular outcome to the referendum. Initially it did not consider itself to be a referendum campaigner and did not intend to register as such. After establishing from the newspaper that the cost of the advert would exceed the registration threshold of £10,000, we spoke to the newspaper’s senior legal advisors to explain that the advert would constitute referendum campaigning. With our assistance, the newspaper registered that evening, before incurring costs on printing the advert.
- An international body planned an event in London during the referendum period where a prominent representative of the Remain campaign was due to speak. We set out how the international body was covered by the referendum campaigning rules despite the fact that body itself was not eligible to register as a campaigner.

⁴⁶ UK Parliamentary General Election 2015: Campaign spending report, February 2016, Recommendation 5 http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/197907/UKPGE-Spending-Report-2015.pdf

⁴⁷ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/199703/April-2016-Enforcement-Policy.pdf

Over the course of the week running up to the event, we worked closely with the body on ensuring the cost of the event did not exceed £10,000.

- Noticing that an ambassador to the UK from another EU country had placed adverts in newspapers advocating a vote to remain in the EU, we obtained a voluntary commitment from the embassy that the cost of any campaign activity they conducted would not exceed £10,000. This brought the embassy into line with unregistered campaigners and thus with the spirit of the rules, albeit the rules did not apply to the embassy.

5.38 Campaign monitoring was the main source of issues, with others arising from complaints or through the media generally. Our campaign monitoring work involves the proactive and regular review of information, primarily from public sources like the press and social media, about the campaign activities of registered and unregistered campaigners.⁴⁸ Drawing on this and on information gathered through our regulatory work, we contacted campaigners whenever we identified a risk of them breaching the rules. This ensured that where there were issues, compliance was quickly achieved either voluntarily or through required remedial action. Consequently there was no loss of public confidence in the campaign from the rules being broken.

5.39 We approached and met with the main emerging campaigners early in the campaign. This made stakeholder relationships easier, facilitating two-way communications throughout and particularly when challenging campaigners on whether their activities adhered to the rules. Early meetings allowed us to ask for campaign plans and spending projections. These were helpful in anticipating events which might raise regulatory issues or simply generate complaints. They were also helpful in assessing whether campaigners were or planned to work together so that general and bespoke advice could be suitably targeted.

5.40 Meetings with campaigners also allowed us to be clear that we would be monitoring campaigns, providing an important deterrence effect. We made it clear that if we saw anything that suggested a campaigner might be breaking the rules, we would take action. Our actions then demonstrated us taking these steps during the campaign.

5.41 Our campaign monitoring was also an important tool in enforcing the rules. Not only could we deal with issues as they arose, but we built trust and confidence amongst campaigners by being able to tell them we were already dealing with an issue before they approached us about it.

5.42 Given a key issue in this referendum was the relationship between the UK and other countries it was not surprising that organisations based outside the UK showed particular interest in it. That interest did not always constitute referendum campaigning. But, where it did, and where our intervention was necessary, we took action to prevent breaches of the rules.

⁴⁸ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0012/201180/EU-Referendum-Briefing-Note.pdf

5.43 Where organisations outside the UK spent money in the UK on campaigning, their spending was covered by the rules. 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 breach it. For example, this included the Republic of Ireland based company Ryanair Limited, where we proactively engaged with them to review their campaign spending levels.

5.44 The PPERA rules apply only to persons or conduct that takes place within the UK – and Gibraltar for this referendum. Consequently we would not be able to use our civil sanctioning powers on persons or conduct from outside the UK – and Gibraltar. However, 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.

5.45 We are required to report on the general use of our investigatory and sanction powers in our annual report.⁴⁹ However, we also intend to report on the use of those powers specifically in relation to the EU referendum in our spending and donation report due in early 2017.

Restrictions on the publication of promotional material by central and local government

5.46 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 (this is referred to below as 's.125'). The restrictions relate to publishing general information about the referendum as well as about the issues and arguments for or against the referendum question. The restrictions also apply to material designed to encourage people to vote. There are certain exemptions including material made available to people in response to specific requests for information or to persons specifically seeking access to it. It also does not restrict any material made available by a designated lead referendum campaigner.

5.47 As introduced, the draft legislation for the EU referendum dis-applied these restrictions. The Government's concern was that the full application of s.125 would be inappropriate in the context of the EU referendum as it could prevent Ministers conducting day-to-day business with the EU and the Government explaining the outcome of its renegotiation to Parliament and the British people.

5.48 We raised concern that the disapplication of s.125 meant that there would be a risk that the use of significant amounts of public money for promotional activity could give an unfair advantage to one side of the argument. It would also undermine the principle of having spending limits for registered campaigners if governments were able to spend unlimited funds on paid advertising during the period when campaigners

⁴⁹ Schedule 19B, paragraph 15 and Schedule 19C, paragraph 27 PPERA

were restricted in the amount they could spend. In our view, this had the potential to be particularly significant in the case of the referendum on the UK's membership of the EU where there would be four governments⁵⁰ with views on the issue being debated, as well as local authorities who may have strong interests in promoting a particular outcome.

5.49 The Government brought forward amendments at the House of Commons' report stage of the referendum Bill, to apply, with modifications, the restriction on publication of promotional material by central and local government for the EU referendum; and to provide a power for UK Ministers to further modify the restrictions by Regulations, following consultation with the Electoral Commission.

5.50 We welcomed the Government's commitment to reinstating the s.125 restrictions, as, in our view, it is important that the restrictions on the ability of governments to use public funds to put forward campaign arguments should apply. Further, consistent with our recommendation made following the Scottish independence referendum, we recommended that governments should not undertake paid for advertising (including government referendum material delivered to households) during the whole of the referendum period.

5.51 The Government did not use its power to further modify the restrictions. This meant that the s.125 provisions at the EU referendum applied in the same way as they did for the referendums in 2004 and 2011. The 28 day pre-poll restriction on the publication of promotional material by central and local government at the EU referendum commenced on 27 May 2016 and ended on polling day, 23 June 2016.

5.52 We consider what lessons can be learnt for future referendums about the restrictions on publication of promotional material by central and local government at the EU referendum later in this chapter.

Responsibility for regulating the restriction on publication of promotional material by central and local government at the EU referendum

5.53 We have a statutory duty to monitor and take all reasonable steps to secure compliance with the restrictions.⁵¹ We do not, however, have powers under PPERA to sanction bodies that do not comply with the s.125 restrictions. In line with our duty, we wrote to the Cabinet Secretary and Head of the UK Civil Service, devolved administrations and Local Authority Chief Executives to remind them of the need to comply with s.125. We also provided advice and guidance in advance of the start of the restrictions and, where appropriate, referred matters to the appropriate body.

5.54 The UK Government has advised that it received very few complaints. We have been informed that the areas which attracted most criticism were around whether the Government's referendum leaflet and website were an appropriate use of official resources and whether the website should be removed from gov.uk during the final 28 day period. The UK Government's view is that it had a responsibility to provide information to the public on matters of national importance. It said that "*given the*

⁵⁰ UK, Scotland, Wales and Northern Ireland

⁵¹ Pursuant to s.145 PPERA

significance of the EU referendum, the Government felt strongly that it had a duty to ensure that the public had access to information that would enable them to make an informed decision". The UK Government also told us that *"it takes seriously its statutory obligations and in each of these circumstances it was confident that it was complying with the legislative requirements of s.125"*. We set out our views on these matters later in this chapter.

5.55 We were advised that no complaints concerning breaches of the s.125 restrictions were received by the National Assembly for Wales or the Scottish Parliament. We also understand that no complaints were received by any governmental department within the Northern Ireland Civil Service.

5.56 During the course of the referendum we received around 150 complaints and queries concerning the s.125 restrictions. In the main, these were enquiries concerning compliance with the rules that could be dealt with through our usual advice and guidance processes (many were from Local Authorities) – topics covered issues such as the use of social media, publication of Council views / meeting minutes, and the application of the rules to universities.

5.57 There were, however, a small number of matters which required specific consideration or prompted a number of enquiries or complaints. These are highlighted below.

European Commission

5.58 The existing PPERA regulatory regime is aimed at ensuring that foreign sources of funding cannot be used by regulated campaigners in the UK during a referendum. However, we were also aware that there were concerns, based on the experience of the campaign activity during the referendum in Ireland on the Lisbon Treaty, that direct campaigning could be undertaken by non-UK bodies such as the European Commission. The Public Administration and Constitutional Affairs Committee were also concerned that institutions of the European Union would seek to influence the referendum outcome by campaigning during the referendum period.⁵²

5.59 We wrote to the Government setting out our view that the institutions of the EU should adhere to the same rules that apply to the Governments across the UK under the PPERA regime. We also advised that, in our view, they should not, for example, undertake any paid for advertising activity during the referendum period. We recognised that we had no regulatory powers that could be utilised directly against these institutions if they did undertake such activity because of their immunity as an international body. We did, however, engage with these institutions to seek, and reinforce, commitments from them that they would act within the spirit of the legislation.

Government websites

5.60 During the Prime Minister's evidence to the Liaison Committee in May 2016, a query was raised as to whether the UK Government intended to remove its EU referendum pages from Gov.uk websites during the last 28 days before the

⁵² As part of the Committee's inquiry into the European Union Referendum Bill.

referendum. The Prime Minister indicated that the Government intended not to publish new information during this period.

5.61 We were also aware that a number of Gov.uk websites contained 'banner' adverts linking to the Government's EU referendum webpages.

5.62 We considered that the Government could retain the information on its main EU referendum website given that it was necessary to click on particular, clearly labelled, sections of the page in order to access the material concerned. In addition, a banner at the top of this page stated that no new material would be added during the 28 day period. The Government also confirmed that it would remove links to the website from other gov.uk websites. In our view, this was then covered by the exemption relating to persons specifically seeking access to material.

The Bank of England

5.63 During the course of the referendum period, including during the restricted last 28 days before the poll, the Bank of England published a number of documents which referenced the EU referendum.

5.64 The s.125 restrictions apply to Ministers of the Crown, government departments or local authorities or any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority. In May 2016, we wrote to the Bank of England to enquire about its funding arrangements to assess whether the s.125 restrictions applied. The Bank of England is partly funded by the Cash Ratio Deposit which requires banks to have a deposit with the Bank which is then invested. The amount is set in statute. Various other elements are funded by investments. The Bank of England also has the power to levy the entities it regulates.

5.65 As such, the s.125 restrictions probably do not apply to the Bank of England. However, they agreed they would proceed consistent with the s.125 restrictions.

Parliamentary Select Committees

5.66 Following the publication of reports by the Treasury and Home Affairs Select Committees in June 2016 and associated public comments, which dealt with matters relating to the EU referendum, we wrote to the Clerk of the House of Commons to seek views on the extent to which Parliamentary privilege covers the publication of reports by the UK Parliament.

5.67 The Clerk confirmed that, in addition to parliamentary proceedings being protected by parliamentary privilege, under the Parliamentary Papers Act 1840, any publication by order of the House of Commons, whether transcripts of debates, select committee reports, or other documents published by order, is similarly protected.

5.68 While no specific issues arose in respect of committees of the National Assembly for Wales or the Scottish Parliament or Northern Ireland Assembly, similar questions would arise concerning publication during the restricted last 28 day period.

The booklet sent to households by the UK Government

5.69 After the 2014 referendum on Scottish independence, the Electoral Commission recommended that governments should not carry out taxpayer-funded advertising

activity during the referendum period. The referendum period for the EU referendum began on 15 April 2016.

5.70 The UK Government issued a 14-page booklet to households in England during April 2016, and in Scotland, Wales and Northern Ireland in May 2016, after the scheduled elections. The booklet, which set out the UK Government's arguments in support of its recommendation that the UK should remain a member of the European Union, was estimated to have cost approximately £9.3 million, and was also supported by information published on the Government's own websites.⁵³ The Government justified sending the booklet on the grounds that "*Independent polling, carried out on behalf of the Cabinet Office, has suggested that 85% of voters want more information and, in particular, want the Government to set out more information on the basis of which electors could take an informed decision.*"⁵⁴

5.71 Although not distributed within the last 28 days before polling day, when the statutory restrictions on the publication of promotional material applied, our public opinion research asked people whether they thought that the UK Government should have sent the booklet setting out its arguments in favour of the UK remaining a member of the European Union vote. We also asked whether they had any concerns about the role of the UK Government in campaigning.

5.72 As illustrated in Figure 5.1 below, the views of the public after the referendum were more evenly balanced. When asked if they agreed or disagreed with statements used in the survey, more than one third of respondents to our public opinion research agreed that the booklet was helpful (36%), and a similar proportion did not agree that it was confusing (35%). Just over a quarter of respondents did not agree that it was helpful (27%) and thought that it was confusing (25%).

5.73 Respondents who said that they had voted in the referendum were more likely to agree that the booklet was helpful than those who did not vote (38% compared with 24%). People who said that they had voted for the UK to Remain a member of the EU were also more likely to agree that the booklet was helpful than those who said that they had voted to Leave (48% compared with 28%) and less likely to agree that it was confusing (21% compared with 33%).

5.74 Respondents who said that they had voted in the referendum were more likely to agree that the UK Government should not have sent the booklet than those who did not vote (37% compared with 29%). Unsurprisingly, people who said that they had voted for the UK to Leave the EU were also significantly more likely to agree that the UK Government should not have sent the booklet than those who said that they had voted for the UK to Remain (55% compared with 23%).

5.75 Our public opinion survey found that there was a small difference in the proportion of people who agreed that they were concerned about the role of the UK Government in campaigning (43%) and those did not agree (39%). Again,

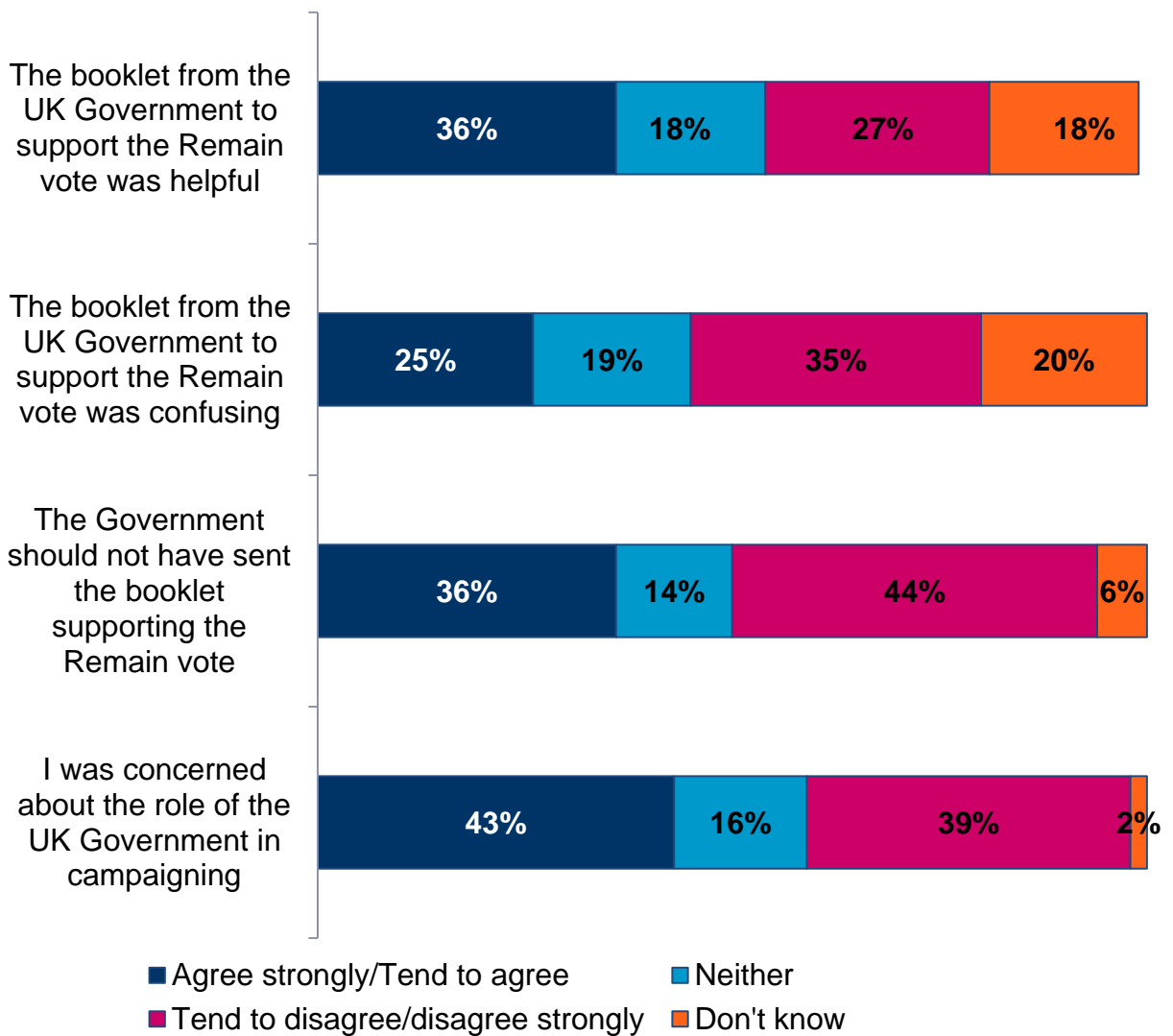
⁵³ <https://www.eureferendum.gov.uk/why-the-government-believes-we-should-remain/eu-referendum-leaflet/>

⁵⁴ David Liddington MP, Minister for Europe [HC Deb 11 April 2016 c72](#)

unsurprisingly, people who said that they had voted for the UK to Leave the EU were also significantly more likely to agree that they were concerned about the role of the UK Government in campaigning than those who said that they had voted for the UK to Remain (55% compared with 36%).

5.76 People who said that they were not confident the referendum was well run were also more likely to agree that they were concerned about the role of the UK Government in campaigning (50%) than those who were confident the referendum was well run (41%).

Figure 5.1: The booklet from the UK government to support the Remain vote.



2016 Post-EU Referendum public opinion survey.

Source: BMG Research/ The Electoral Commission.

Base: 3,533 (unweighted);

Q: To what extent do you agree or disagree with the following statements?

Issues and lessons learned about the regulation of campaigners at the referendum

5.77 We have approached explaining the issues and lessons learned and associated recommendations for change under the themes of:

- Registration of campaigners
- Designation of lead campaigners
- Restrictions on the publication of promotional material by central and local government
- Matters requiring further consideration following analysis of the post-referendum spending and donation returns

Registration of campaigners

Ability to register as a campaigner

5.78 Under PPERA, only certain UK-based individuals and organisations are allowed to register as referendum campaigners. Until 2014, this also mirrored the list of non-party campaigners who could register with us at elections; the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 widened this list of eligible non-party campaigners.

5.79 Following the Scottish independence referendum in 2014, we recommended that the permitted registration categories for non-party campaigners at elections and referendum campaigners should be aligned. Our recommendation was addressed in the legislation for the EU referendum.

5.80 In addition to extending the registration controls to take into account that the franchise of the EU referendum included Gibraltar, the legislation for the EU referendum also allowed Royal Charter bodies, charitable incorporated organisations, Scottish charitable organisations and Scottish partnerships to register as a referendum campaigner.

5.81 In practice, one Royal Charter body and four charitable incorporated organisations registered to campaign at the EU referendum.⁵⁵ Given that these bodies are allowed to register under PPERA as non-party campaigners at elections, there does not appear to be an obvious reason why they should not be able to register as referendum campaigners at all future PPERA referendums.

⁵⁵ Royal Charter bodies - City of London Corporation; Charitable incorporated organisations – Clientearth, Universities UK, Social Market Foundation, Federal Trust for Education and Research.

5.82 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. This should be incorporated into PPERA at the earliest opportunity so that it applies to all future PPERA referendums.

Responsible person – requirement to sign the notification

5.83 The registration controls for the EU referendum were the first at a UK referendum that required the responsible person to sign the registration application form to confirm that they understand the implications of agreeing to take on that role. This addressed a recommendation we made following the Scottish independence referendum in 2014.

5.84 The absence of such a requirement from PPERA means that it is possible for an application to register as a campaigner to be submitted without the knowledge or consent of the person named as the responsible person, even though they are legally responsible for compliance and subject to personal sanctions for any breaches of the rules.

5.85 We recommend that the person named as the responsible person should be required to sign the application for registration as a referendum campaigner. This should be incorporated into PPERA at the earliest opportunity so that it applies to all future PPERA referendums.

Responsible person for multiple registered campaigners

5.86 As we noted in our previous referendum reports, the standard PPERA rules do not place any limit on the number of campaign groups that a given individual or organisation can register to campaign at a referendum. Since the 2011 referendums, the legislation for each referendum in the UK has contained ‘common plan’ rules intended to prevent people circumventing the spending limits on campaigning by setting up multiple campaigns for the same referendum outcome.

5.87 As in 2011 and 2014, the legislation for the EU referendum included a restriction that the same person cannot be the responsible person for more than one registered campaigner. This acted as an additional safeguard against multiple campaigns being established by the same individual or organisation to campaign for the same referendum outcome.

5.88 We recommend that the same person should not be able to be the responsible person for more than one registered referendum campaigner. This should be incorporated into PPERA at the earliest opportunity so that it applies to all future PPERA referendums.

Grounds for rejecting applications to register as a referendum campaigner

5.89 Following the Scottish independence referendum in 2014, we recommended that the legislation for future referendums should include express provision giving us limited discretion over whether or not to register certain campaigner names. We recommended that the legislation should not allow campaigners to campaign using a name which includes obscene or offensive words, and could appear to have been officially approved by virtue of appearing on the statutory register of campaigners.

5.90 During discussions with Government officials on incorporating our recommendation into the legislation for the EU referendum, we accepted the view that

the main risk for obscene or offensive names lay with the registration of unincorporated associations. In the main, the other categories of registrable organisations are already registered under other legislation or regulatory regimes (i.e. companies, political parties, trade unions etc.), which will likely have already vetted their name – we also did not intend to bar individuals registering their own name.

5.91 Under the legislation for the EU referendum, we could have rejected an application from an unincorporated association which, in our view, was obscene or offensive or which, if published, would be likely to amount to the commission of an offence. Although not used at the EU referendum, the ability to reject an application from an unincorporated association whose name is obscene or offensive is an important addition to the referendum rules. The official listing of such names in the statutory register of campaigners would undermine voters' trust in the system.

5.92 We also note that the PPERA referendum registration requirements do not provide a statutory bar against a campaigner registering a name that is the same or similar to an already registered referendum campaigner, registered political party or recognised third party in order to pass themselves off as another organisation and confuse voters. Again, the risk lies with the registration of unincorporated associations which are not regulated or registered elsewhere.

5.93 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.

5.94 This should be incorporated into PPERA at the earliest opportunity so that it applies to all future PPERA referendums.

Registration requirements

5.95 As noted above, registered campaigners are entitled to a number of benefits over other campaigners, including a spending limit above £10,000. In order to be eligible to register as a campaigner, the individual or organisation must fall within one of the categories specified in PPERA;⁵⁶ these include individuals on an electoral register, UK companies, registered political parties, trade unions, and building / friendly societies, and unincorporated associations.

5.96 In accordance with our function of maintaining the register of referendum campaigners, and as part of our general function of seeking to ensure compliance with the referendum rules, we make checks of other records, such as the validity of an address, the electoral register, Companies House, etc, to ensure that applicants to

⁵⁶ S.105 PPERA. These categories were extended by schedule 1, paragraph 2, European Union Referendum Act 2015 to include

register are eligible under PPERA. Unlike for political parties, the registration costs for referendum campaigners are not recovered from applicants.

Registration requirements for unincorporated associations

5.97 Unincorporated associations are bodies of two or more people which carry on business or other activities wholly or mainly in the UK and whose main office is here. However, despite this definition, the PPERA application requirements for unincorporated associations that wish to register as a referendum campaigner only require details of the name of the association and the address of its main office.⁵⁷

5.98 The limited requirements for unincorporated associations to provide information about their status and membership, coupled with their unincorporated nature, make it difficult for us to check their eligibility to register; particularly that they meet the membership requirements. In the context of the EU referendum, we had to undertake further checks on membership in order to confirm eligibility to register. In a few cases, it became apparent after registration that the associations did not in fact (or had since ceased to) meet the eligibility criteria and they were subsequently removed from the register.

5.99 We note the registration requirements for unincorporated associations that wish to register as a recognised third party at elections require them to provide details of their membership. Where the association has more than 15 members and has officers or a governing body, it must provide the names of those officers or the members of the governing body; otherwise it must provide the names of the association's members.⁵⁸

5.100 There would be significant benefit in the registration requirements for unincorporated associations that wish to register as a referendum campaigner to mirror the requirements when those same bodies wish to register as a recognised third party at elections. This would improve the robustness of the referendum registration requirements, make clear the eligibility requirements for applicants at the time of registration, and reduce the administrative burdens on us.

5.101 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. This should be incorporated into PPERA at the earliest opportunity so that it applies to all future PPERA referendums.

Registration requirements for individuals

5.102 Individuals that wish to register as a referendum campaigner must either be resident in the United Kingdom or registered in an electoral register.⁵⁹ As part of the registration process we check the electoral register to confirm eligibility. We note however, that where an applicant is simply resident in the UK, the legislation does not require an individual to provide any evidence of that residency other than providing an address.

⁵⁷ s.106(4)(b) PPERA

⁵⁸ s.88(3)(b)(f) PPERA

⁵⁹ S.105(1)(b)

5.103 We are considering the issue of verification of address details for applications to register political parties and for the registration of referendum campaigners.

Designation of lead campaigners

5.104 The designation process for the EU referendum was unprecedented in terms of there being high profile, well-funded, competent applicants competing for the same outcome. It was therefore the first time that the statutory test of 'representing to the great extent' was put to the test.

5.105 The context for the application period included competing arguments and ideologies for the same outcome. Vote Leave Ltd and GO Movement Ltd both submitted a sizeable volume of material to make their case for designation. While the designation process worked well, assessing these competing applications was an intensive process to identify and analyse differences between the information provided by the competing applicants in relation to the statutory test and in the time available.

Pre-designation

5.106 The designation process and the time available after appointment are important aspects of the referendum. We were therefore pleased that the Government accepted our recommendation, based on our experience of regulating the 2011 referendum on the voting system for UK Parliamentary elections and the Scottish independence referendum in 2014, that either:

- the referendum period should be extended to 16 weeks; or
- the Commission be enabled by the regulations to make the appointment decision shortly before, rather than during the first six weeks of, the referendum period.

5.107 The 2016 Regulations provided for the second of these options; that designation should take place shortly before the referendum period. We refer to this option as pre-designation.

5.108 We consider that designating the lead campaigners before the start of the referendum period was positive for both applicants and voters.

5.109 Pre-designation has now taken place at two high profile referendums, the Scottish independence referendum in 2014 and the UK-wide EU referendum in 2016, without issue. As we reported following the Scottish independence referendum,⁶⁰ this approach has a number of substantial advantages over the PPERA timetable,⁶¹ these include:

⁶⁰ Scottish Independence Referendum, Report on the referendum held on 18 September 2014, December 2014, paragraph 5.81
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

⁶¹ Should we receive any further evidence from campaigners on this issues; we will revisit this point in our campaign spending report which is due to be published in spring 2017.

- Providing clarity to campaigners and voters about who the lead campaigners are in time for the start of the referendum period.
- Providing lead campaigners with the full duration of the referendum period to make the most effective use of the benefits available to them.
- Making it easier for lead campaigners to work with other campaigners to put arguments to voters. There are restrictions on campaigners working together to deter evasion of the spending limits, but there are different rules that apply to the lead campaigners to enable campaigners to work with them effectively. Designating lead campaigners by the start of the referendum period makes it simpler for other campaigners to work with them throughout the referendum period.
- Enabling political parties to donate to a lead campaigner throughout the referendum period. As political parties can only donate to registered campaigners who were designated, designating the lead campaigners before the start of the referendum period reduces complexities and administrative burdens for the lead campaigners. It does not undermine the underlying policy objective, since the purpose of the bar on political parties donating to referendum campaigners was to stop them circumventing the spending limits on parties by donating to multiple non-designated campaigners.

5.110 However, our post-referendum campaigner research indicates that campaigners felt that the competition for designation on the Leave side created significant problems in terms of attracting donors and commencing processes such as printing. Donors were less willing to contribute until they knew which group was officially designated and there was a significant risk in printing leaflets or booking poster sites before designation as if unsuccessful, this would have accounted for a significant proportion of the spending limit for a non-designated campaigner. Campaigner feedback is that designation may need to take place even earlier at any future referendum.

5.111 We therefore 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. This approach should be incorporated into PPERA at the earliest opportunity so that it applies to all future PPERA referendums.

5.112 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.

5.113 The Treasury Select Committee also expressed concern in the UK Parliament, about the level of engagement they received when they were requested that a designated campaigner attend parliament to provide oral evidence. Parliamentary Select Committees already have powers available to them to ensure attendance at their sessions. However, designated campaigners play a particularly important role in referendums, which also tend to be on issues of significant constitutional importance.

Given this, legislatures may want to consider in the future whether they wish to insert any specific requirements on campaigners once they are designated to make their obligations to respond appropriately to requests from that legislature clear. Any such requirements should be for the relevant legislature to enforce, not the Commission.

Designation of a lead campaigner on only one side of the referendum debate

5.114 As noted above, the legislation for the EU referendum provided for us to designate a lead campaigner on only one side of the referendum debate if there were either no applicants, or if there was no applicant which met the statutory test of adequately representing those campaigning on that side of the debate.

5.115 The approach of allowing for one-sided designation was not tested at either the EU referendum or Scottish independence referendum, but there are lessons to be considered for future referendums.

5.116 We welcomed the fact that the provision for one-sided designation included removing some of the publicly funded benefits for lead campaigners, to seek to reduce the potential for a one-sided campaign. However, if a referendum had gone ahead under the amendment that was passed, there is still a concern that the levels of public debate and communication with voters could have appeared very one sided if a sole lead campaigner had been appointed. For example, voters would only have received an official campaign mailing for one side of the argument. The ‘common plan rules’ would also have limited any attempts by campaigners seeking to collaborate on the side that did not have a lead designated campaigner to a spending limit of £700,000. This has the potential to undermine voters’ trust in the integrity of referendum controls, and, in the most serious cases, undermine confidence in referendum results.

5.117 When considering the approach to designating lead campaigners for future referendums, it will be important for Parliament to consider whether the one-sided designation provisions used at the EU referendum would be appropriate in future circumstances. In the particular context of any future referendum, it is important to give fresh consideration to the competing risks of:

- the PPERA legislative model which enables tactical decisions by campaigners not to apply for designation which could lead to there being no designated lead campaigners and a lack of information available to voters, and
- a framework which allows one-sided designation, and the potential risk of a one-sided campaign which could undermine voters’ trust in the process and result.

5.118 We will set out our views on these issues in briefings to Parliament during the passage of the legislation for any future referendum. In the meantime, we would be pleased to work with the Government to find the best solution.

Legal challenge

5.119 The process for legal challenge of our designation decision is by seeking a judicial review. There was no judicial review of our designation decision at the EU referendum (although the possibility of challenge was raised) and we have not been subject to successful legal challenge of our designation decisions at any previous PPERA referendum.

Electoral Commission’s management of the designation process

5.120 We will be reviewing our internal management process and procedures to assess what lessons can be learnt, for consideration and approval by the Commission’s Board ahead of any future referendum which is proposed to be held under PPERA. This will include consideration of whether the Commission’s statutory designation decision making period of 14 days remains appropriate.

5.121 We will also consider observations made by some participants in the campaigner research conducted by Justin Fisher and Bettina Rottweiler that “the Commission’s decision-making – either intentionally or unintentionally – favoured the establishment group on the Leave side”⁶², although we note that the statutory test for designation explicitly requires the Commission to assess the level of support for competing applications among those campaigning for the referendum outcome.

5.122 We have, however, identified one practical issue which should be addressed through legislative change in order to reduce administrative burdens on both us and campaigners. There would be significant administrative benefit for applicants and the Commission if the deadline for applications for designation was set at 12pm (noon) on the last day for applications rather than (via statutory interpretation) midnight.

5.123 This would enable campaigners to have a clear understanding of the deadline and plan for the submission of their applications during normal business hours. From our perspective it would reduce the burden of ensuring out of hours staff cover for receipt and enable preparatory tasks to be undertaken during that afternoon before the detailed assessment can commence.

5.124 We recommend that the deadline for applications for designation should be set at 12pm (noon) on the closing day of the application period.

Restrictions on the publication of promotional material by central and local government

5.125 As noted earlier in this chapter, 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 (this is referred to below as ‘s.125’). The restrictions relate to publishing general information about the referendum as well as about the issues and arguments for or against the referendum question.

5.126 We recognise that a referendum presents a unique set of circumstances for any Government: it is very likely to have a preferred policy outcome, but has concluded that it cannot implement that policy without first putting it directly to the electorate. Acknowledging that the Government’s preferred outcome and rationale should be widely communicated and understood at the outset, the challenge is how to ensure

⁶² Justin Fisher and Bettina Rottweiler, [Research among permitted participants at the EU Referendum](#) (September 2016) page 6

confidence among voters and campaigners that the subsequent 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.

Committee on Standards in Public Life

5.127 The s.125 restrictions in PPERA were introduced to address a recommendation made by the Committee on Standards in Public Life (CSPL) in its 1998 report on the funding of UK political parties. In respect of the role of governments at referendums, the Committee said:

*We believe it is perfectly appropriate for the government of the day to state its views and for members of the Government to campaign vigorously during referendum campaigns, just as they do during general election campaigns. But we also believe that, just as in general election campaigns, neither taxpayers' money nor the permanent government machine – civil servants, official cars, the Government Information Service, and so forth – should be used to promote the interests of the Government side of the argument.*⁶³

*We believe that it is extraordinarily difficult, if not impossible, for the government of the day to offer purely objective and factual information in the course of a referendum campaign, especially when, as will usually be the case, itself [sic] it is a party to the campaign. We believe governments should not participate in referendum campaigns in this manner, just as it would be thought to be wholly inappropriate during a general election campaign for the government to print and distribute, at the taxpayers' expense, literature setting out government policy.*⁶⁴

5.128 The Committee recommended that:

*The government of the day in future referendums should, as a government, remain neutral and should not distribute at public expense literature, even purportedly 'factual' literature, setting out or otherwise promoting its case.*⁶⁵

5.129 The conclusions drawn by the Committee on Standards in Public Life on restricting the role of governments at referendums are still valid. As set out above, the use of significant amounts of public money for promotional activity by governments could give an unfair advantage to one side of the argument. It would also undermine the principle of having spending limits for registered campaigners if governments were able to spend unlimited funds on paid advertising during the period when campaigners were restricted in the amount they could spend, particularly given the lack of regulatory

⁶³ Paragraph 12.14: Fifth Report of the Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, October 1998
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf

⁶⁴ Paragraph 12.44: Fifth Report of the Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, October 1998

⁶⁵ Recommendation 89: Fifth Report of the Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, October 1998
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf

controls on this spend. Finally, if the political party that forms the Government at the time of a referendum decides not register to campaign in its own right, but is able to use public funds available to the Government to set out its case while other political parties need to use their own funds to campaign at the referendum, there is also a risk to the perceived fairness of campaign funding and spending at other electoral events.

5.130 While we agree with the Committee's recommendation and intentions, we have observed a number of practical challenges which have resulted from the way in which the recommendation has been implemented in s.125 of PPERA. Some of those issues are linked to interpreting the statutory provisions, others are linked to the lack of clarity of scope and policy intention.

Scope of s.125

5.131 The s.125 restrictions are drawn unhelpfully wide in the activities they cover, in particular they restrict the publication of any 'general information' and anything that 'deals with any of the issues raised by any question on which such a referendum is being held', unless an exemption applies.⁶⁶ We also note that some of the exemptions to the s.125 restrictions, such as the exemption for press notices, are also particularly wide, while other activities, such as those by Counting Officers and Electoral Registration Officers to promote awareness of the referendum and how to register and vote, are not exempt. This creates difficulties in defining scope.

5.132 In practice we have no evidence that s.125 at the EU referendum, or previous PPERA referendums, unduly restricted governments' ability to carry out their day-to-day business. However, we understand the UK Government's concern about managing what could reasonably be regarded as 'day-to-day' business, as distinct from referendum campaign activity. The Welsh Government raised similar concerns prior to the referendum on the powers of the National Assembly for Wales in 2011.

5.133 Based on our experience of regulating PPERA referendums, most recently the EU referendum, the s.125 restrictions in their current form do not achieve the intention of the CSPL recommendation. 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.

5.134 In addition, the wide scope of s.125 means that a wide range of publicly funded organisations are covered by the publication restrictions in the last 28 days. For example, at the EU referendum we noted that the scope of s.125 meant that disability organisations funded mainly from public funds were not able during the last 28 days before the poll to continue public awareness activities aimed at helping people to register and vote in the referendum. This meant that they were unable to undertake an important role which could fill a gap in public information for specific groups.

⁶⁶ s.125(1)(a) and (b) PPERA

PPERA regulation of ‘campaign activities’ and Governments’ day-to-day activities

5.135 The framework of PPERA controls for referendums is primarily concerned with spending by campaigners with a view to or in connection with ‘promoting or procuring’ a particular referendum outcome.⁶⁷ Campaigners’ spending is regulated when it is incurred in connection with a specific and limited list of qualifying expenses. In contrast, the general nature of the restrictions that apply to governments and publicly funded bodies under s.125 is wider. This appears to be inconsistent with the approach used to regulate specific types of campaigner spending.

5.136 Parliament decided in 2000 what activities should be considered as referendum campaigning, and that spending on these activities should be regulated when it is incurred with a view to or in connection with ‘promoting or procuring’ a particular outcome at a referendum. These activities are set out in schedule 13 of PPERA and include advertising, unsolicited material, press conferences or other dealings with the media and rallies and other events (see appendix 1).

5.137 There would be benefit in linking the restrictions on the activities of governments and other publicly funded bodies at referendums to the defined list of regulated activities of other referendum campaigners that are incurred in connection with promoting or procuring a particular outcome. Such a revised restriction could continue to provide a total ban on these regulated activities by governments and other publicly funded bodies as provided by the current s.125, rather than only when expenditure is incurred.

5.138 Linking the PPERA list of campaigning activities with the restrictions on government activities would meet the intention of CSPL’s recommendation and address concerns raised by the Government about managing the difference between ‘day-to-day’ business and referendum campaigning activity. The day-to-day business of governments and other organisations is unlikely to involve undertaking specific ‘campaign activities’ to promote or procure a referendum outcome, such as advertising, unsolicited material, press conferences or other events, and would therefore not be restricted.

Length of the restrictions

5.139 The current s.125 restrictions only apply during the last 28 days before the poll. The UK Government’s position is that the restrictions “should not be extended to the entire referendum period in all cases”.⁶⁸ As noted in the Government response to the 2010 House of Lords Constitution Committee Report on Referendums, the Government was concerned that putting in place such a requirement could have an impact on the ability of governments and others to carry out their day-to-day duties, depending upon the subject of the referendum and the length of the referendum period.

⁶⁷ S.111 PPERA

⁶⁸ The UK Government’s Response to the Electoral Commission’s Report on the 2011 Referendums, December 2012, page 10

5.140 Referendum campaigners are regulated in respect of their PPERA campaign spending for the entire referendum period – in the case of the EU referendum this was 10 weeks. If the restrictions on governments and other publicly funded bodies were limited to the specific PPERA ‘campaigning activities’ which promote or procure a particular referendum outcome, the concern about carrying out day-to-day duties would no longer be an issue, as such activities would not be covered by the restrictions. The objection to s.125 applying for the whole of the referendum period could, therefore, also fall away.

5.141 Applying a revised restriction to governments and other publicly funded bodies for the duration of the referendum period could also create a balance with other referendum campaigners so that the same activities are regulated for all. From the start of the referendum period, only regulated referendum campaigners that are subject to the PPERA spending limits, donation controls and reporting obligations would be permitted to incur spending to promote a referendum outcome and Governments could be barred from undertaking the same activities. It would also allow other organisations to carry out their functions unimpeded, provided their activities did not constitute campaigning: for example publicly funded disability organisations could publish accessible voting guides as this would not be a regulated activity undertaken with a view to or in connection with ‘promoting or procuring’ a particular outcome.

Role of the Electoral Commission: advice and guidance

5.142 We already provide an advice and guidance service for campaigners explaining how to comply with the rules, particularly in respect of the scope of the PPERA ‘campaigning activities’. We also provide bespoke advice where an issue is particularly complex or novel.

5.143 Currently s.125 provides for a complete ban on the publication of certain information in the last 28 days before the poll (subject to specified exceptions). A move towards allowing certain information to be published would mean that it will be important for governments and other publicly funded bodies to consider carefully whether anything they intend to publish could be caught by any revised test i.e. whether it could be seen as being published with a view to or in connection with ‘promoting or procuring’ a particular outcome. If Parliament decides that changes are necessary, we would be happy to provide an advice and guidance service to governments and other publicly funded bodies on whether their planned activities are covered by the list of campaigning activities. In practice, this would be similar to the role we already undertake with campaign groups in the lead up to a referendum.

Breaches of the s.125 restrictions

5.144 We have no powers under PPERA to sanction bodies that do not comply with the s.125 restrictions. In order for voters to have trust in the system, and to act as a deterrent for governments and other publicly funded bodies, it is important that there is an appropriate statutory response for breaches of the rules.

5.145 We note that there are already common law torts of ‘breach of statutory duty’ and ‘misconduct in public office’, but it is doubtful these could readily be applied in the case of breaches of s.125. For clarity, equivalent offences to these should be included in PPERA specifically for breaches of a revised s.125.

5.146 In practice, responsibility for breaches should rest with a specific senior individual in an organisation. For example, a permanent secretary is the most senior civil servant in a government department, and is the accounting officer for their department, reporting to Parliament. They are responsible for the day-to-day running of the department, including the budget. In the case of actions in accordance with a written ministerial direction,⁶⁹ the Minister is accountable for the actions of their department. The appropriate officer of other publicly funded bodies is accountable for the actions of their organisation.

5.147 Under PPERA we have access to a range of investigatory and sanctioning powers; currently, these do not apply to breaches of s.125. We have experience of regulating spending on campaign activities and assessing potential breaches of the rules. In order to maintain consistency of approach and independent assessment of allegations of breaches by governments and other publicly funded organisations, our investigatory and sanctioning powers should apply to breaches of statutory duty and / or misuse of public funds in respect of a revised s.125 restriction.

5.148 The ability to use a range of civil sanctions, through to criminal prosecution in the most serious case, could provide an appropriate sanctioning range to fit to the specific circumstances of each case.

5.149 A breach of s.125 by a government department or other public body would be a significant and serious breach of the referendum controls and would undoubtedly undermine voters trust in the referendum rules and potentially the result. We anticipate that breaches of s.125 by governments would almost always warrant prosecution rather than a solely financial penalty.

Section 125 restrictions at future referendums

5.150 We recommend below 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.

5.151 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 develop our own clear views for consideration by Government and Parliament, and have suggested below several important areas which should be explored during consultation by the Government:

- Whether the restrictions should be in place for the entire referendum period.

⁶⁹ Where a permanent secretary objects to a proposed course of action of a Minister on grounds of propriety, regularity or value for money relating to proposed expenditure, they are required to seek a written ministerial direction.

- Which business as usual activities should not be restricted, including, explicitly, activities undertaken by the Electoral Commission, Counting Officers and Electoral Registration Officers to promote awareness of the referendum and how to register and vote.
- What the sanction for any proven breach of the restrictions should be. For example, equivalent offences to 'breach of statutory duty' and 'misconduct in public office could be incorporated into PPERA for breaches of a revised section 125.
- Whether and how the Commission's investigatory and sanctioning powers could be applied to enforce a revised section 125.
- Whether the restriction could be applied to activities set out in the list of qualifying expenses in schedule 13 PPERA with a view to or in connection with promoting or procuring a particular referendum outcome.

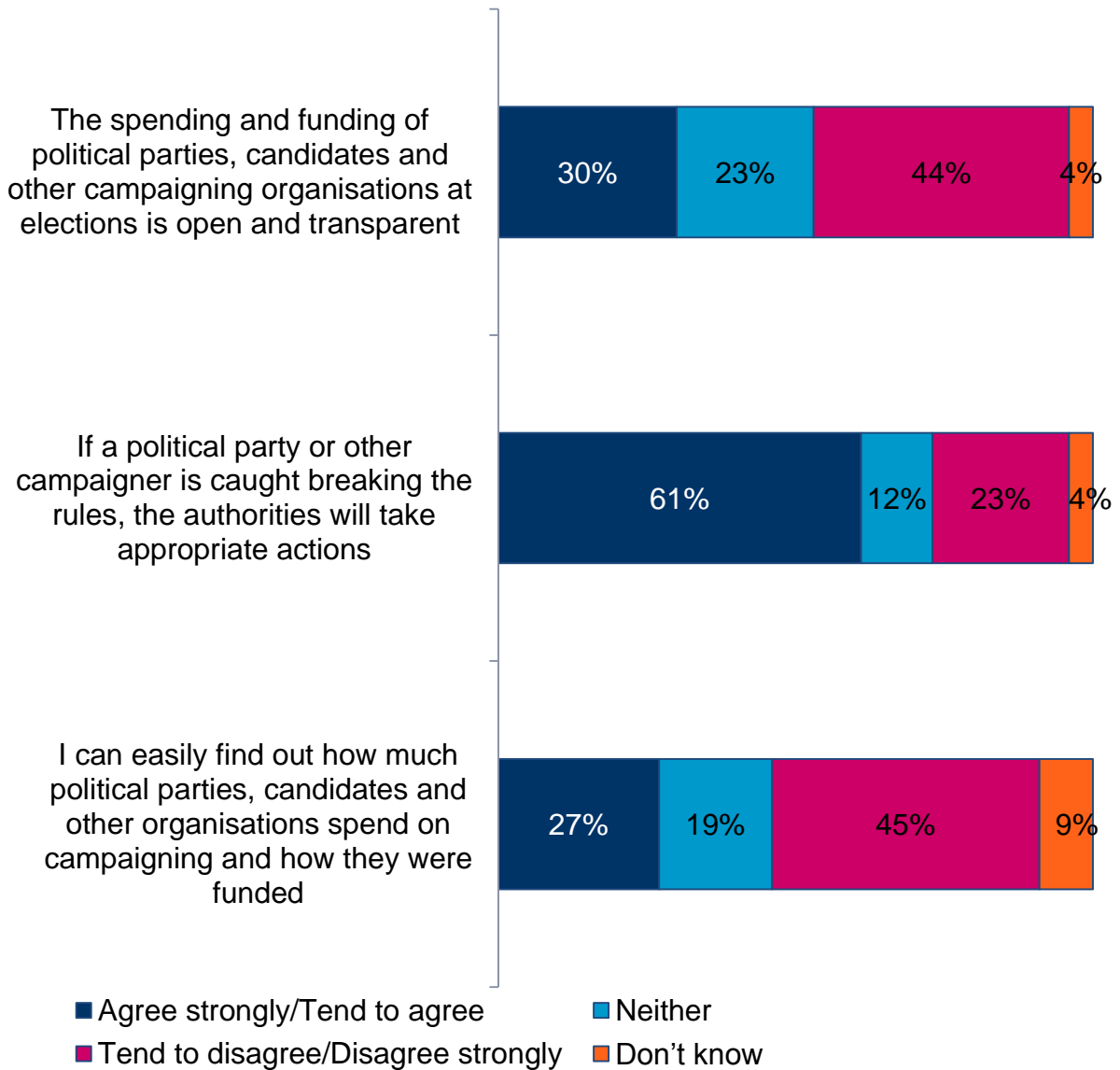
Campaign regulation matters for further consideration

5.152 Our public opinion surveys carried out after elections each year ask whether people thought that the spending and funding of political parties, candidates and other campaigning organisations at elections is open and transparent. We also asked this question following the June 2016 referendum.

5.153 As shown in Figure 5.2 below, people were more likely to disagree that it was, with 19% strongly disagreeing. On the other hand, people were nearly three times more likely to agree that if a political party or other campaigner is caught breaking the rules that the authorities will take appropriate actions (61%) than to disagree (23%).

5.154 Respondents were more likely to disagree that it was easy to find out how much how much political parties, candidates and other organisations spend on campaigning and how they were funded – 45% compared to 27%.

Figure 5.2: Campaigner finance.



2016 Post-EU Referendum public opinion survey. Source: BMG Research/ The Electoral Commission.

Base: 3,533 (unweighted)

Q: I am going to read you some statements relating to the rules on the money that political parties, organisations and other individuals use when campaigning. To what extent do you agree or disagree with the following statements?

5.155 There are a number of matters relating to the referendum donation and spending rules that require further consideration before any recommendations can be made. However, until the final donation and spending returns have been submitted in December 2016 we will not have the evidence on which to base our analysis and any recommendations. We will also include consideration of the responses in our post-referendum campaigner research in our analysis.

5.156 We intend to address these matters in our spending report which is due to be published in spring 2017. These currently include issues such as:

The level of the spending limits

5.157 PPERA sets out the spending limits that apply during the referendum period at UK-wide referendums. The limits for political parties are allocated according to the party's share of the vote at the last UK Parliamentary General Election.⁷⁰ For the EU referendum, the PPERA referendum spending limits were adjusted to reflect changes in inflation.

5.158 Although we currently have no role in advising on spending limits at UK-wide referendums held under PPERA,⁷¹ referendum spending limits are a central element of the regulation of campaigners. In our view, these limits should be set at a level that is sufficient to enable campaigners get their messages to voters but deter excessive spending. Once campaigners have submitted details of their campaign spending we will be in a position to consider the effectiveness of the adjusted limits.

Funding the campaigns

5.159 PPERA places controls on the sources of funding that campaigners can accept to campaign at referendums. There are also rules requiring campaigners to report the sources of their funding after the referendum.

5.160 For the EU referendum, additional controls to those contained in PPERA were set out in the EU Referendum Act 2015. These included requiring campaigners to report the sources of campaign funding from commencement of the referendum legislation (1 February 2016) before the poll. Over £33m was reported by registered campaigners in the lead up to the EU referendum poll.⁷²

5.161 The changes also extended the categories of donors permitted to give donations for referendum purposes, and capped the amount that political parties could receive from these additional types of donors (to maintain the integrity of the wider regulation of political parties).

5.162 We will be in a position to consider the effectiveness of these additional controls, as well as the balance between the regulatory requirements and the burdens placed on campaigners, once campaigners have submitted full details of their donations and loans.

Expenses incurred as part of a common plan

5.163 The EU Referendum Act 2015 contained 'common plan' provisions similar to those that applied at the Scottish independence referendum in 2014. The rules are

⁷⁰ Schedule 14 PPERA

⁷¹ The Commission has a specific statutory role in providing advice on the spending limits that should apply at referendums held in a part of the UK. The Commission does not have this role for UK-wide referendums.

⁷² <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/campaign-spending-and-donations-at-referendums/donations-and-loans-reported-by-campaigners-at-the-eu-referendum>

intended to prevent multiple campaigners being established to circumvent the spending limits.

5.164 Our post-referendum campaigner research indicated that the common plan rules proved to be challenging for participants. 56% of respondents found the rules difficult to understand while only 16% found the rules to be easy. The designated lead campaigners also reported concern that they would not know if a non-designated group had claimed to have worked with them until after the non-designated group had submitted its return.

5.165 The rules required campaigners that engage in a common plan or arrangement to account for certain spending by the others involved in the coordinated campaign for the purposes of the spending limits. There were also provisions to reduce the reporting burdens on small campaigners that coordinate their campaigns with higher spending campaigners. It will be important to consider the effectiveness of these rules in light of the information reported in the returns.

The publicly funded grant available to designated lead campaigners

5.166 Once designated, PPERA provides that a lead campaigner is entitled to a publicly funded grant of up to £600,000.⁷³ The amount (up to the £600,000) and any conditions are determined by us. We also administer the grant.

5.167 For the referendum on independence for Scotland, the availability of a grant was removed by the enabling legislation. In the context of the EU referendum, the UK Parliament considered that it was appropriate for a grant to remain.

5.168 For the EU referendum, each campaigner was entitled to claim up to the maximum £600,000 for certain items to support their campaigns. The eligible items were:

- certain kinds of administration costs associated with setting up and running a referendum campaign and for complying with regulatory reporting requirements
- costs associated with the TV broadcasts and free mailing to voters that they are entitled to as lead campaigners
- costs for translating from English into Welsh or vice versa
- reasonable expenses attributable to an individual's disability, and
- costs for protecting people or property at rallies/public events.

5.169 We will consider the use of the publicly funded grant, the amount, and the scope of the conditions once the lead campaigners have reported details of their campaign spending.

Loan controls and sanctions

5.170 As for the Scottish Independence Referendum in 2014 and the Parliamentary Voting Systems Referendum in 2011, the EU Referendum Act 2015 included controls on loans.

⁷³ s.110 PPERA.

5.171 PPERA includes a power to introduce generic controls on loans to referendum campaigners at PPERA referendums but this has not yet been used. We continue to recommend that loan controls should apply at future referendums held in the UK, and anticipate that reporting on the level of funding campaigners received by way of loans at the EU referendum will provide additional evidence for that position⁷⁴.

Other issues

5.172 There are a number of other issues that we expect to address in our report on spending by campaigners at the referendum, including:

- How the rules to reduce burdens on registered campaigners that did not spend significant funds campaigning worked in practice.
- How campaigners deal with paying invoices after the time limit for settling bills has expired
- The length of time after the poll that the spending and donation returns are due to be submitted.

Recommendations for the regulation of campaigners at future referendums

5.173 As for previous PPERA referendums, the changes and improvements made to the regulatory controls for the EU referendum were included in legislation specific to the referendum on 23 June. This means that this improved legal framework will not apply for future referendums and new legislation will be required. All of the recommendations below should be incorporated into PPERA at the earliest opportunity so that they apply for all future referendums.

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.

⁷⁴ Some information about the loans received from commencement of the referendum legislation on 1 February 2016 is already available in the pre-poll reports submitted by registered campaigners. Final information will be submitted in post-poll reports due in September and December 2016. Information on pre-poll donations and loans is available on the Commission's website:

<http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/campaign-spending-and-donations-at-referendums/donations-and-loans-reported-by-campaigners-at-the-eu-referendum>

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.

6 The cost of the referendum

6.1 This chapter provides a summary of the cost of the June 2016 EU Referendum on the UK's membership of the European Union. The figures include details of all known costs incurred by the Electoral Commission at the time of producing this report, by Regional Counting Officers (RCOs), Counting Officers (COs) and Designated Organisations.

6.2 We will prepare in the summer of 2017 our Annual Report setting out actual expenditure by the Electoral Commission in respect of the EU Referendum. In addition, we will produce a comprehensive report analysing the overall costs of the referendum, including costs directly attributable to the Commission, Regional Counting Officers and Counting Officers, this report will be published by autumn 2017.

Electoral Commission costs

6.3 The Commission is accountable to Parliament for its expenditure. In accordance with the Political Parties, Elections and Referendums Act 2000, the Electoral Commission is required to submit to the Speaker's Committee each financial year an Estimate of the Commission's income and expenditure. After reviewing the Estimate, the Speaker's Committee lays the Estimate before the House of Commons. The Estimates are the means by which the Electoral Commission seeks authority from Parliament for its spending each year.

6.4 The Commission's Corporate Plan 2016-17 to 2020-21 and Estimate 2016-17 were reviewed and approved by the Speaker's Committee at its meeting held on 23 March 2016. We then draw down these voted funds during the year from the Consolidated Funds as required.

6.5 In accordance with the EU Referendum Act 2015 the Commission is also able to draw down non voted funds for RCOs' and COs' expenses and services, the delivery of campaign information by the designated lead organisations and sweeps by the Royal Mail on polling day which are all financed directly from the Consolidated Fund as approved by Parliament.

6.6 The total expenditure for the EU Referendum up until the 31 July 2016 is £33,785,000. In total £1,376,000 was incurred in 2015-16 and £32,409,000 between 1 April and 31 July 2016. A detailed breakdown of these costs is show in the table below.

Table 6.1: Expenditure 2015/2016 & 2016/2017.

Description	Amount £000s	
	Financial year 2015/16	Financial year 2016/17 ⁷⁵
Staff costs	349	246
Grants to Designated Organisations	-	1,200
Designated Organisation mailing and other Royal Mail costs	-	25,188
Royal Mail sweeps	-	202
Public awareness activity:		
Planning and buying advertising space	50	2,549
Production of advertising materials	303	201
Printing and distribution of voting guide	346	1,949
Call centres and public information provision	-	308
Public opinion research	-	98
Creative development testing	103	-
Other*	-	71
Results collation system costs	89	53
Count event costs	-	116
Management of polls	37	114
Other**	99	114
TOTAL	1,376	32,409

* includes structural updates to 'aboutmyvote.co.uk' website and translations

** includes costs relating to campaigner regulation and guidance, reporting, legal services, having the referendum question assessed, travel and subsistence

⁷⁵ Expenditure 2016/17 – these figures have not been audited and are subject to change as some costs are still being finalised. Costs as at 31 July 2016.

6.7 From the non-voted funds allocated for the EU Referendum, the largest actual expenditure incurred by the Commission to date has been for the provision of mailings on behalf of the designated lead campaigners. Both designated lead campaigners are entitled to certain benefits, including the sending of a referendum address to each elector or each household in the referendum area. This is a statutory entitlement under Section 110(4) Political Parties, Elections and Referendums Act 2000. The Commission sought the services of Royal Mail Ltd as the universal service provider to ensure this was facilitated. The Treasury approved and provided funding for both the Leave and Remain designated organisations to exercise their entitlement within the scope of the framework. The total cost amounted to £25,389,291. The table below shows a detailed breakdown of this cost.

Table 6.2: EU Referendum Royal Mail costs

EU Referendum	Cost* £
Campaign mailings	24,680,696
Administration fee	444,000
Final day sweeps	201,600
International Business Response Licence Overseas Votes	62,995
TOTAL	25,389,291

*all costs are inclusive of VAT at 20%

6.8 The cost of campaign mailings can be broken down to reflect the number of deliveries and respective costs for both the Leave and Remain designated campaigners. The table below reflects these costs.

Table 6.3: Cost of mailings for the designated lead campaigners.

Designated lead campaigner	No. of deliveries	Cost £
Vote Leave	44,936,142	12,941,609
Britain Stronger in Europe	40,760,719	11,739,087

Counting Officer and Regional Counting Officer costs

6.9 The funding allocation for the EU Referendum followed the current framework for UK Parliamentary and European Parliamentary elections, whereby the Returning Officer (or Counting Officer for referendums) is allocated a 'maximum recoverable

amount' within which they may allocate resources as they see fit, provided that sums spent are necessary for the efficient and effective conduct of the election. In determining the EU Referendum non-voted costs, the Electoral Commission worked with the UK Government to coordinate and produce the cost estimate for the conduct of the Referendum and to calculate the funding allocations for (Regional) Counting Officers. The UK government first introduced in the 2014 European Parliamentary elections a system of calculating these costs, which are based on the amount actually spent for the last relevant national poll, this is then adjusted for factors such as inflation. For both the 2014 European Parliamentary election and the 2015 UK Parliamentary election, the total claimed by Returning officers was much closer to their allocated 'maximum recoverable amounts'. This suggested the model has avoided large variances between the funding allocation and actual final expenditure as seen in previous elections.

6.10 Overall, the total maximum amount which could be claimed by Regional Counting Officers and Counting Officers is £102.7m

6.11 The Electoral Commission is responsible for administering the claims submitted by Regional Counting Officers and Counting Officers under the Charges Regulations. We have engaged the Cabinet Office's Election Claims Unit to receive and process claims on our behalf, drawing on their experience of administering the framework for processing claims for the recent 2015 UK Parliamentary election. This arrangement will operate under a service level agreement between both parties.

6.12 The Commission has set a deadline of 23 December 2016, for the submission of completed accounts from RCOs and COs, reducing the time for submitting claims from the eight-month period set for the 2011 AV Referendum. A 6 month deadline for the submission of completed accounts has become almost a standard timeframe for most elections, furthermore, this deadline is expected to enable the Commission to prepare and publish accounts by the autumn of 2017.

6.13 To ensure that payment was related to overall satisfactory performance of the duties by Counting Officers and Regional Counting Officers, including timely submission of accounts, the Commission also made clearer the separation between claims for expenses and claims for the fee for services. An advance of 75% of the maximum recoverable amount for expenses was paid to each Counting Officer from April 2016, with the balance to be paid on settlement of their claim. 75% of the Counting Officer's specified fee for their services was paid immediately following the poll. The remaining portion of each Counting Officer's fee will be paid after submission and clearance of their claim, and subject also to their satisfactory performance.⁷⁶

⁷⁶ Paragraph 16 of Schedule 3 of the European Union (Referendum Act) 2015 provides that, if the Commission considers that the service provided by a Counting Officer was inadequately performed, the fee payable may be reduced or withheld altogether.

Feedback from Counting Officers on funding for the referendum

6.14 Feedback from the survey of Counting Officers and their staff suggests that the system for distributing funding was generally thought to be efficient: nearly two thirds (64%) of COs who responded to our survey agreed that there was an efficient process for distributing referendum funds. However feedback was less positive about whether sufficient funds were provided through the fees and charges process to run the referendum. Fewer than half of COs who responded (43%) agreed that sufficient funds were provided, although 38% neither agreed or disagreed.⁷⁷

6.15 Some concerns were raised about the fact that costs related to electoral registration and absent vote applications cannot be claimed as part of the COs fees and charges as these are functions of the Electoral Registration Officer. Many electoral administrators had spent a significant amount of time and resources on processing registration and absent vote applications which had been received in the weeks before the referendum. Nearly half of the respondents to the survey of COs (46%) did not agree that their teams had sufficient funding available to support the work required to compile the electoral register. COs also highlighted the impact of wider cuts to local authority budgets as a significant factor.

6.16 Counting Officers also expressed concerns about a lack of transparency and understanding about the calculations and mechanisms for distributing funding, with several querying their maximum recoverable amount allocations with Cabinet Office. Prior to determining the final allocations for the EU Referendum, Cabinet Office had conducted a brief consultation with Counting Officers, as result there was only a limited opportunity to review and make comments on their respective maximum recoverable amounts allocations.

6.17 We will consider in more detail the issues raised by Counting Officers in our report on the costs of the referendum where we will provide full information about what the referendum cost and how we managed the process of reimbursing the costs incurred by Counting Officers. We will also set out any recommendations we consider necessary to improve the way in which national polls are funded and how the reimbursement of costs is managed.

⁷⁷ Alistair Clark and Toby S James, [An evaluation of electoral administration at the EU Referendum](#) (September 2016).

Appendix 1 – Research methodology

Public opinion survey

Between 24 June and 14 July 2016, BMG Research interviewed a sample of 3,533 adults aged 18+ across the United Kingdom, incorporating 1,526 adults in England, 753 in Scotland, 751 in Wales and 503 in Northern Ireland.

Interviews were conducted by landline and mobile telephone. Data are weighted to match the profile of the UK population.

Where results do not sum to 100%, this may be due to the question allowing multiple responses, or in the case of single response questions, summing proportions which have been rounded to zero decimal places.

Comparisons made between these polls and previous post-elections surveys are indicative and should be treated with some caution.

[More information can be found on our website.](#)

Electoral Data

Electoral data, including on postal votes, was provided by administrators from each counting area and collected through the Results Collation System (RCS).

Data fields for Postal Votes are prescribed in the legislation (Form K).

Survey of electoral administrators

Alistair Clark and Toby S James, [An evaluation of electoral administration at the EU Referendum](#) (September 2016).

Survey of permitted participants

Justin Fisher and Bettina Rottweiler, [Research among permitted participants at the EU Referendum](#) (September 2016)

Appendix 2 – Referendums in the UK since 1975

Referendum	Date	Result (% of vote)	Turnout
The UK's membership of the EU	23 June 2016	Leave (51.9%)	72.2%
Scottish Independence	18 September 2014	No (55.3%)	84.6%
UK Voting system	5 May 2011	No (67.5%)	42.2%
NAW law making	3 March 2011	Yes (63.5%)	36.5%
North East regional assembly	4 November 2004	No (77.9%)	47.1%
Northern Ireland Good Friday Agreement	22 May 1998	Yes (71%)	81.1%
Greater London Authority	7 May 1998	Yes (72%)	33.6%
Devolution in Wales	18 September 1997	Yes (50.3%)	50.1%
Devolution in Scotland	11 September 1997	Yes (74.3%)	60.4%
Welsh Devolution ⁷⁸	1 March 1979	No (79.7%)	58.3%
Scottish ⁷⁹ Devolution	1 March 1979	Yes (51.6%)	63.7%
UK European Communities Membership	5 June 1975	Yes (67%)	64.5%

⁷⁸ This referendum required that a minimum of 40% of the eligible electorate voted in favour of the question. This was not achieved and therefore the provisions of the Wales Act 1978 were not enforced.

⁷⁹ This referendum required that a minimum of 40% of the eligible electorate voted in favour of the question. This was not achieved and therefore the provisions of the Scotland Act 1978 were not enforced.