

Scottish Independence Referendum

Report on the regulation of campaigners
at the independence referendum held on
18 September 2014

June 2015

This report is laid before the Scottish Parliament in pursuance of Schedule 5, paragraph 14 and Schedule 6, paragraph 29 of the Scottish Independence Referendum Act 2013.

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Translations and other formats

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Tel: 020 7271 0500

Email: publications@electoralcommission.org.uk

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. The Scottish Independence Referendum Act 2013 gave the Commission a number of responsibilities for the independence referendum, for which we report directly to the Scottish Parliament.

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Foreword

This is the Commission's second report to the Scottish Parliament and represents our statutory duty to report to the Parliament under the provisions of the Scottish Independence Referendum Act 2013 (SIRA). Our previous report was laid before the Scottish Parliament in December 2014 and outlined our views on the overall administration of the referendum. This report looks at the spending of campaigners at the referendum and how we regulated this activity.

SIRA contained a number of rules drawn from those that applied at the 2011 referendums on increased powers for the National Assembly for Wales and the UK-wide referendum on UK Parliamentary Voting Systems (UKPVS).

These rules clarified aspects of the regulatory controls, reducing burdens on those that wished to campaign, and ensuring that voters had access to information to enable them to make an informed decision when they cast their vote.

This report provides an overview of the regulatory controls on spending that applied at the referendum and details our views on the effectiveness of the rules. It also sets out the extent to which the Commission has used our investigatory powers and civil sanctions at the independence referendum

Finally, it looks at what lessons can be learnt following the referendum, and makes recommendations as to how we think that these may be applied to the current legal framework and to future referendums in Scotland or elsewhere in the UK.

The independence referendum was an extraordinary event, with a historically high turnout for a Scotland wide poll of 84.6%; and the extension of the franchise to allow 16 and 17 year olds to vote for the first time meaning that many more young first time voters were given the opportunity to engage in voting. The referendum also saw extremely high levels of engagement from the campaigners supporting both outcomes and from the voters themselves, with active grass roots campaigning taking place across the whole of Scotland.

Against this backdrop, the Commission applied its established procedures for dealing with casework generated at the referendum. We consulted with the Crown Office and Procurator Fiscal Service (COPFS) in each case to establish whether they would be taking up investigation for possible criminal offences and if not we then determined whether to investigate and impose civil sanctions in connection with referendum offences.

Our powers under SIRA enabled us to effectively investigate matters, requiring information and obtaining voluntary co-operation. Overall, the regulatory controls worked well. This is particularly encouraging when we look at this in light of some of the key facts and figures from the referendum campaign. We know that registered campaigners reported receiving donations totalling £7,319,000 and reported spending a total of £6,665,000¹. Both designated lead campaigners spent 95% of the spending limit set for the lead campaigners of £1.5 million.

It is important to acknowledge that throughout the process the main campaigners worked collaboratively with the Commission, which, alongside the support of the Crown Office and Procurator Fiscal Service, was key to ensuring that campaigners voluntarily complied with the requirements of the legislation.

The Commission spent time meeting with and talking to campaigners to explain the rules and to let campaigners know, ahead of time, what was expected under the legislation. This approach will have gone some way to reducing the need to regulate using stronger measures. We know through feedback from the campaigners that by receiving guidance and advice from the early stages of the process, they found that the rules were clear and understood.

There are, however, lessons that can be learnt from the information campaigners were required to submit in their post-referendum returns. We discuss these in chapter 3 of this report.

The recommendations made in this report would allow for better regulation not only of future referendums in Scotland but across the UK. The independence referendum represents a model that can be built on for any future referendums, maintaining a balance between campaigners being able to campaign as freely as possible while giving voters the opportunity to take part in a transparent and open democratic process.

John McCormick
Electoral Commissioner

¹ Figures rounded to nearest £1,000

Executive Summary

About this report

On 18 September 2014, the people of Scotland voted in a referendum on whether Scotland should be an independent country (the independence referendum). In the months leading up to the day of poll, Scotland was energised by the debate and the voters engaged in the discussion around the referendum question.

The question asked, to which voters were required to vote either yes or no, was: 'Should Scotland be an independent country?'

This is the Electoral Commission's second report to the Scottish Parliament and fulfils our statutory duty to report to the Parliament, under the provisions of the Scottish Independence Referendum Act 2013 (SIRA), on the use of our investigatory powers and civil sanctions.

This report also analyses the funding and spending of those people and organisations that registered to campaign at the independence referendum. Where appropriate, we make recommendations for the future based on the information campaigners were required to submit in their post-referendum returns. The recommendations are intended to inform the regulation of future referendums, not only in Scotland, but elsewhere in the UK.

For further background and information on the wider context of the referendum on independence for Scotland, this report should be read in conjunction with our report published in December 2014 on the conduct of the referendum².

Funding the campaigns and campaign spending

After the independence referendum, registered campaigners were required to submit a campaign spending return to us. The returns included details of the

² Scottish Independence Referendum Report on the referendum held on 18 September 2014 December 2014
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

spending that the campaigners incurred campaigning at the referendum and all donations and loans they accepted over £7,500³.

Campaigners were also required to provide a total figure of the donations and loans they received over £500 but below £7,500. Anything with a value of £500 or less was not counted as a donation or loan for the purposes of the referendum rules.

Chapter 1 sets out some of the key facts and figures from those campaign spending and donation returns.

In summary:

- 42 campaigners registered during that period, 21 indicating they supported the yes outcome to the question asked, 21 supporting the no side.
- Registered campaigners reported spending a total of £6,664,980 campaigning at the independence referendum and reported having received donations and loans totalling £7,318,545.
- Out of total reported spending of nearly £7 million, there was a difference of just over £400,000 in total campaign spending by registered campaigners on each of the two sides of the debate. In total, all those registered to campaign on each side of the debate reported spending over 70% of their total combined individual limits.
- Both designated lead campaigners reported spending almost exactly the same amounts campaigning at the independence referendum: Better Together reported spending £1,422,602; and Yes Scotland reported spending £1,420,800.
- Overall, political parties also reported spending relatively similar combined amounts in support of the two outcomes (around £1.3m), despite their different individual spending limits.
- Out of total reported donations of over £7 million, the donations to those that registered to campaign for the 'No' outcome amount to £4,327,677 and for the 'Yes' outcome to £2,990,868; 59% and 41% of total reported donations respectively.
- Both the UK and Scottish Governments also published information, including distributing public awareness booklets to all households in Scotland, in the lead up to the referendum. We commented on the

³ Campaigners that are registered political parties are not required to report donations or loans during or after the independence referendum. Political parties report any donations or loans made to their campaign in their usual quarterly reports.

activities of the governments and made recommendations for future referendums in our report published in December 2014⁴.

More information on campaign funding and spending of the registered campaigners at the independence referendum can be found on our website⁵. This contains visualisations that allow users to analyse the data campaigners reported to us.

Casework and investigations

We aim to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. Wherever possible, we use advice and guidance proactively for campaigners in order to secure compliance. We will however take enforcement action where it is necessary and proportionate to do so.

SIRA gave the Electoral Commission the role of monitoring and taking steps to ensure compliance with the referendum campaign rules. To enable us to undertake that role, we had access to investigatory and sanctioning powers.

We applied our usual, established casework procedures for casework in Scotland at the independence referendum - where there was evidence or information substantiating a potential breach of SIRA, we considered whether it was in the public interest to investigate, taking into account the potential impact of the breach on confidence in the referendum rules, the cost of investigating relative to the impact of the breach, and any other relevant considerations. We consulted with the Crown Office and Procurator Fiscal Service (COPFS) in each case to establish whether they would take responsibility for investigating possible criminal offences or if they declined jurisdiction preferring for the Commission to investigate and impose sanctions in connection with referendum offences.

Our powers under SIRA enabled us to effectively investigate matters. We have been able to obtain voluntary cooperation in obtaining information.

We imposed one discretionary requirement, a variable monetary penalty of £500, on the Communication Workers Union for spending more than the registration threshold of £10,000 before registering with us as a campaigner.

⁴ Report on the referendum held on 18 September 2014 December 2014, paragraphs 5.146-5.161, recommendation 15

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

⁵

<http://search.electoralcommission.org.uk/Search/Donations?currentPage=1&rows=10&sort=AcceptedDate&order=desc&tab=1&et=perpar&prePoll=false&postPoll=true>

No fixed monetary penalties, or stop notices were issued, and no enforcement undertakings were offered or accepted. The existence of our stop notice power however, and our ability to indicate it would be used if voluntary compliance could not be achieved, was an important tool for us.

Lessons for future referendums

SIRA contained a number of rules drawn from those that applied at the 2011 referendums on increased powers for the National Assembly for Wales and the UK-wide referendum on UK Parliamentary Voting Systems (UKPVS). These rules clarified aspects of the regulatory controls, reduced burdens on those that wished to campaign, and ensured that voters had access to information to enable them to make an informed decision when they vote.

Overall, the regulatory controls that applied at the independence referendum worked well and improved on the rules from previous referendums. We made a number of recommendations intended to improve the regulation and reduce the burdens on those that wish to campaign at future referendums in our first report published in December 2014; the campaign regulation recommendations can be found in chapter 5⁶.

There are, however, further lessons that can be learnt from the information campaigners were required to submit in their post-referendum returns to further refine the legal framework in relation to:

- regulating campaigners that work together
- regulating loans
- reporting low-level spending
- reporting pre-registration spending
- late claims and payments, and
- the ability of campaigners to check the permissibility of donations and loans.

We discuss these in chapter 3 of this report.

⁶ Report on the referendum held on 18 September 2014 December 2014, Chapter 5 http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

List of recommendations

We have provided a list of the recommendations made in this report below. The recommendation list continues from those we made in our previous report published in December 2014. The Commission's campaign regulation recommendations can be found in chapter 5 of that report.

All the recommendations in this report are intended to apply at future referendums, not only in Scotland but also those held across or in other parts of the UK.

Recommendations

Recommendation 24: Regulating campaigners that work together (Paragraphs 3.53 & 3.57)

The legislation for future referendums should include 'working together' provisions that enable campaigners to work together to promote a coordinated message to voters, but ensure there are appropriate and proportionate regulatory requirements to prevent evasion of the spending controls. The provisions should:

- be based on the working together rules that applied at the Scottish independence referendum in 2014, and
- require campaigners to set out information in their post-referendum return about the other campaigners they worked with and the total amounts they each spent. This is information that campaigners should each already be compiling to ensure compliance with the rules and for inclusion in their own return.

If the legislation for a future referendum includes a framework which allows for designating a lead body on one side only, it will be important that relevant governments consider the implications for the rules on how campaigners can work together alongside the overall package of benefits available to a sole designated lead campaigner.

Recommendation 25: Regulating loans (Paragraphs 3.67-3.68)

For future referendums not held under the PPERA framework, relevant governments should ensure that appropriate controls on loans to referendum campaigners, including credit facilities and guarantees, apply.

We also recommend that the UK Government should bring forward the relevant secondary legislation to introduce loan controls for referendum campaigners at all future referendums held under the PPERA framework, as soon as practicable.

Recommendation 26: Reporting low-level spending (Paragraph 3.75)

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

Recommendation 27: Reporting pre-registration spending (Paragraph 3.82)

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

Recommendation 28: Late claims and payments (Paragraph 3.96)

The legislation for future referendums should include improved controls for when campaigner invoices must be received and paid. It should provide that:

- the requirement to receive all invoices within 30 days and pay them within 60 days of polling day should only apply to amounts over £200
- the responsibility for granting permission to pay invoices outside these deadlines should rest with the Commission
- where leave to pay is granted, the Commission should also have the ability to sanction the late receipt or payment of the claim in order to encourage compliance, but
- the Commission-based process should not apply to disputed claims as it would not be appropriate for the Commission to become involved in disputes over commercial transactions.

Recommendation 29: Checking the permissibility of donations and loans (Paragraph 3.104)

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

1 Campaign funding and spending

Legislation

1.1 The Edinburgh Agreement signed between the Scottish and UK Governments in October 2012 gave us the role, subsequently brought into legislation by SIRA, of regulating campaign spending and donations at the independence referendum. The Agreement also gave us a role in providing advice to the Scottish Government on the spending limits that should apply to campaigners.

1.2 Both Governments agreed that the principles underpinning the existing framework for referendums held in the UK should apply to the independence referendum. In particular, that Part 7 of PPERA should provide the framework for the independence referendum, including the rules about campaign finance and regulation.

1.3 SIRA received Royal Assent on 17 December 2013. It set out the regulatory controls that applied at the independence referendum and provided for the regulated referendum period to start on 30 May 2014 and end on the day of the poll, 18 September 2014. The referendum period was the period during which many of the campaigning rules applied, such as those concerning spending limits.

Referendum campaigners

1.4 Campaigners were able to register with us from 18 December 2013 through to polling day on 18 September 2014; 42 campaigners registered during that period, 21 indicating they supported the yes outcome to the question asked, 21 supporting the no side.

Designation of lead campaigners

1.5 Once registered, campaigners were able to apply to us to be designated as the lead campaigner for the outcome they supported. The period for applying to be designated as a lead campaign group opened on 20 March 2014 and closed at midnight on 16 April 2014. We were statutorily required to make the designation decision by 2 May 2014.

1.6 We received two applications: for 'Yes' from Yes Scotland Limited and for 'No' from Better Together 2012 Limited. Both these applicants met the statutory test and we were able to take the designation decision on 23 April 2014. Yes Scotland represented campaigners for the 'Yes' outcome and had

close links with the Scottish National Party and Scottish Green Party. Better Together represented campaigners for the 'No' outcome and had close links with the Labour Party, Conservative Party and Liberal Democrats.

Legal framework

1.7 From 18 December 2013, until the date of the poll, registered campaigners were required to record donations they received, and loans they entered into that were over £500 that they intended to put towards referendum campaign spending. Anything with a value of £500 or less was not counted as a donation or loan for the purposes of the referendum rules.

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

1.9 Referendum spending is regulated if it is expenditure for certain activities that are intended to promote or bring about a particular outcome at the referendum. That spending then counts towards the registration threshold and a campaigner's spending limit. It includes items or services given to campaigners free of charge or at a non-commercial discount of more than 10%.

1.10 Activities classed as referendum spending are those connected with:

- campaign broadcasts
- advertising of any kind e.g. street banners, websites or YouTube videos
- unsolicited material sent to voters
- other 'public' documents about the referendum, such as setting out a campaign's arguments
- market research or other methods of finding out how people intend to vote
- press conferences or other dealings with the media
- rallies and events, including the cost of people's attendance, and any goods, services or facilities provided.

1.11 However, volunteer time, certain staff costs, people's travel, food and accommodation costs while they campaign, expenses met out of public funds,

and expenses in respect of publication in a newspaper, periodical, and certain broadcasts⁷ did not count as referendum spending.

Reporting funding and spending

1.12 During the referendum period (30 May to 18 September 2014), 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. Information from the pre-poll returns can be found on our website⁸. We reviewed the approach to pre-poll reporting and made recommendations for future referendums in our December 2014 report⁹.

1.13 After the independence referendum, registered campaigners were required to submit a campaign spending return which included details of the spending they incurred campaigning at the referendum and all donations and loans they accepted over £7,500. Campaigners were also required to provide a total figure of the donations and loans they received between £500 and £7,500. Anything with a value of £500 or less was not counted as a donation or loan for the purposes of the referendum rules.

1.14 Although campaigners that are registered political parties are required to submit details of the spending they incurred campaigning at the independence referendum, they are not required to report donations or loans towards that spending during or after the referendum (unless they are minor parties). Information on the donations or loans made to political parties is available on our website in their usual quarterly reports¹⁰. Whilst the quarterly reports do not contain specific details about which donations or loans were used for the independence referendum campaign, the general regulatory rules on political parties ensure that there are controls on the sources of their funding and transparency of where that funding has come from.

1.15 The post-referendum returns were submitted by 18 December 2014 for campaigners that spent £250,000 or less and 18 March 2015 for those that spent over £250,000.

⁷ Broadcasts made by the British Broadcasting Corporation, or a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.

⁸ <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-scottish-referendum>

⁹ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

¹⁰ <http://search.electoralcommission.org.uk/?currentPage=0&rows=10&sort=AcceptedDate&order=desc&tab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true>

Key facts and figures

1.16 The remainder of this chapter sets out some of the key facts and figures about the money campaigners received to fund their campaigners and the spending they incurred campaigning.

1.17 More information about the funding received and spending by campaigners is available on our website¹¹. This contains visualisations that allow you to analyse the data campaigners reported to us. You can also get the raw data submitted to us via our online database¹².

Summary

1.18 In total, registered campaigners reported spending of £6,664,980 campaigning at the independence referendum, and receiving donations and loans totalling £7,349,643 towards their referendum campaigns.

Campaigner	Spending limit	Spending	Donations ¹³
Better Together	£1,500,000	£1,422,602	£3,685,104
Yes Scotland	£1,500,000	£1,420,800	£2,617,448
Scottish National Party	£1,344,000	£1,298,567	-
Labour Party	£831,000	£732,482	-
Conservative Party	£399,000	£356,191	-
Liberal Democrats	£204,000	£187,585	-
Scottish Green Party	£150,000	£13,734	-
Other registered campaigners	£150,000	£64,896 ¹⁴	£78,153 ¹⁵

¹¹

<http://search.electoralcommission.org.uk/?currentPage=0&rows=10&sort=AcceptedDate&order=desc&tab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true>

¹² <https://pefonline.electoralcommission.org.uk/search/searchintro.aspx>

¹³ Campaigners that are also registered political parties are not required to report specific donations or loans towards their referendum campaign spending. Information on the donations or loans made to political parties is available in their quarterly reports available at <http://search.electoralcommission.org.uk/English/Search/Donations?currentPage=0&rows=10&sort=AcceptedDate&order=desc&tab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true>

¹⁴ Mean average spending of the other 19 registered campaigners that submitted details of their spending

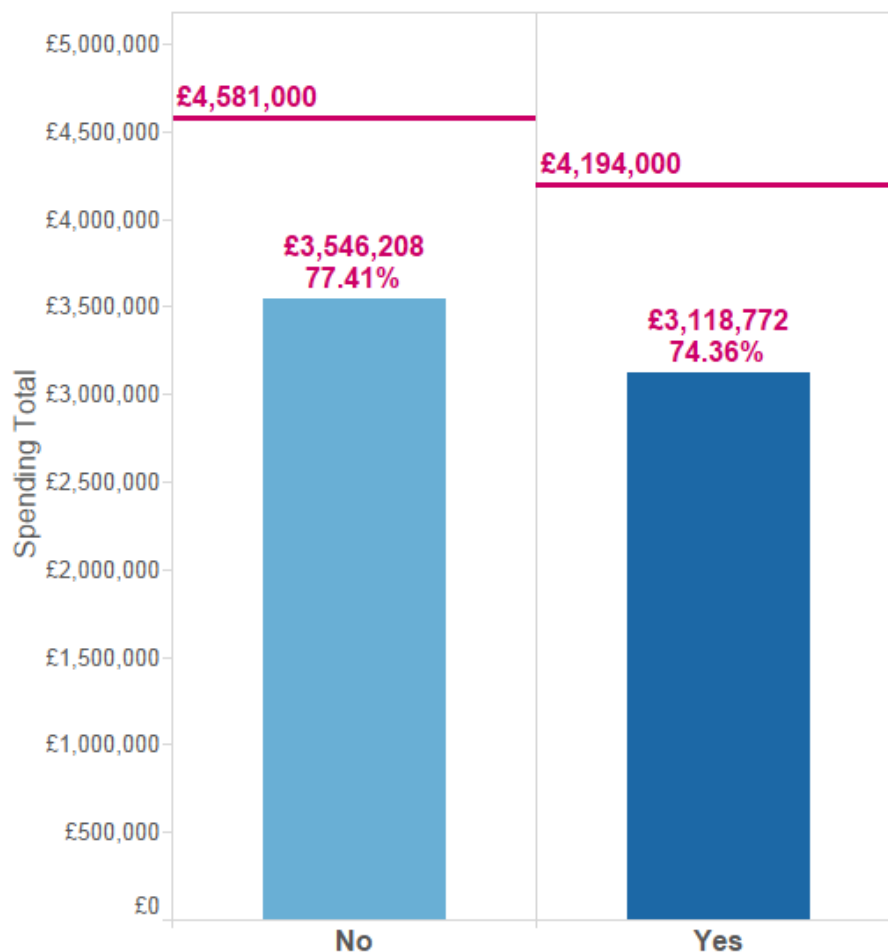
¹⁵ Mean average of donations to the other 13 registered campaigners that submitted details of their donations

Spending

Total spending by campaigners against the combined limits

1.19 The chart below sets out the total reported spending by all 'Yes' and 'No' campaigners against the total of the combined individual spending limits of all those that registered to campaign for each outcome (indicated by the pink line).

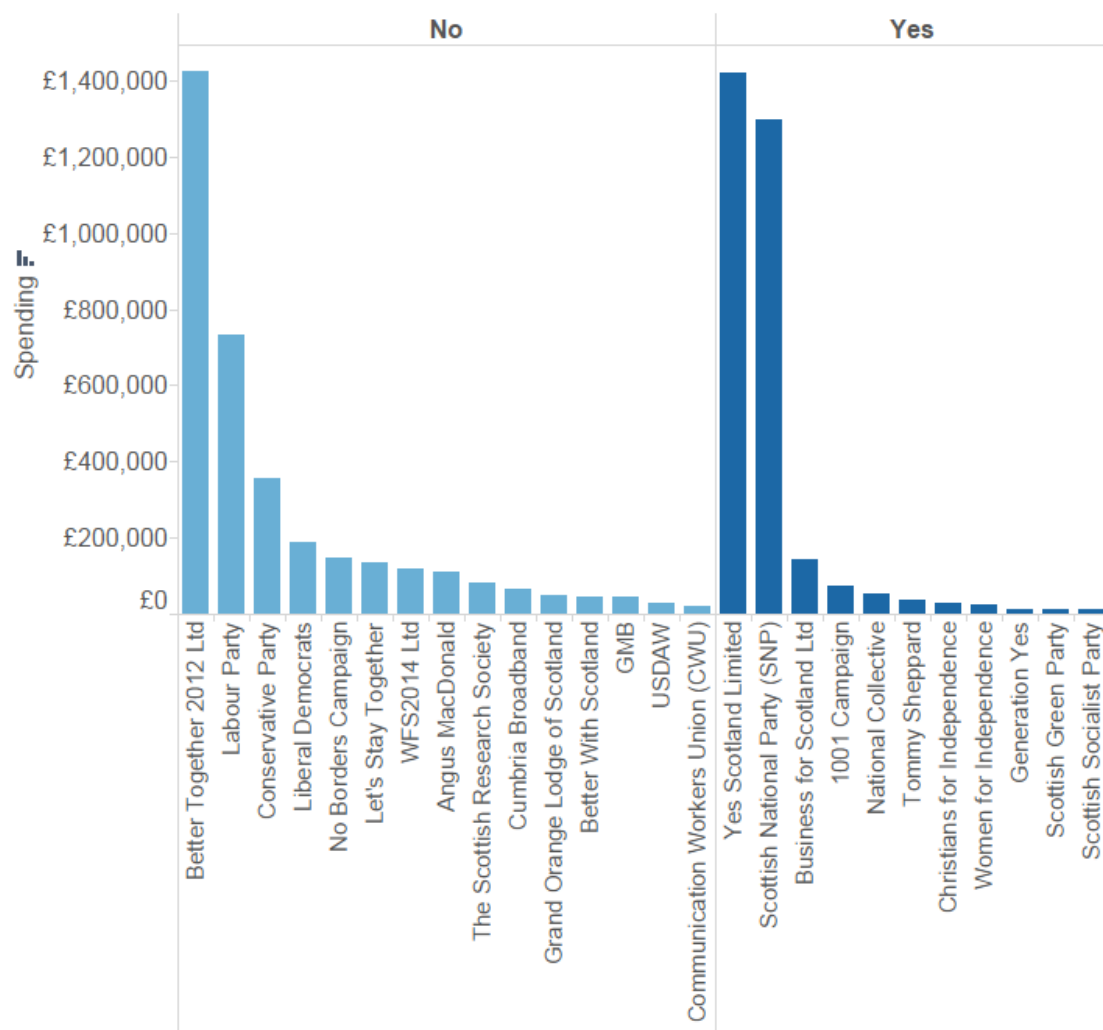
1.20 Out of total reported spending of nearly £7 million, there was a difference of just over £400,000 in the spending incurred by those campaigning for each outcome. In total, all those that submitted details of their spending for each side of the debate reported spending over 70% of their total combined individual limits.



Total spending by each campaigner

1.21 The chart below breaks down the total reported campaign spending on each side of the debate. It details the spending incurred by each of the campaigners that provided details of their spending after the referendum¹⁶.

1.22 Appendix 1 provides a table setting out the amount spent by each of those registered campaigners.



¹⁶ Registered campaigners that spent less than £10,000 were not required to provide details of their spending. 5 campaigners failed to submit a return and are the subject of enforcement activity.

Spending by designated lead campaigners and political parties

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

1.24 The chart also provides an illustration of the reported spending by the designated lead campaigners and the political parties against their individual spending limits (indicated by the pink line).

1.25 Both designated lead campaigners reported spending very similar amounts campaigning at the independence referendum. The political parties that registered to campaign also reported spending relatively similar combined amounts in support of each outcome (in total around £1.3m), despite their different individual spending limits.

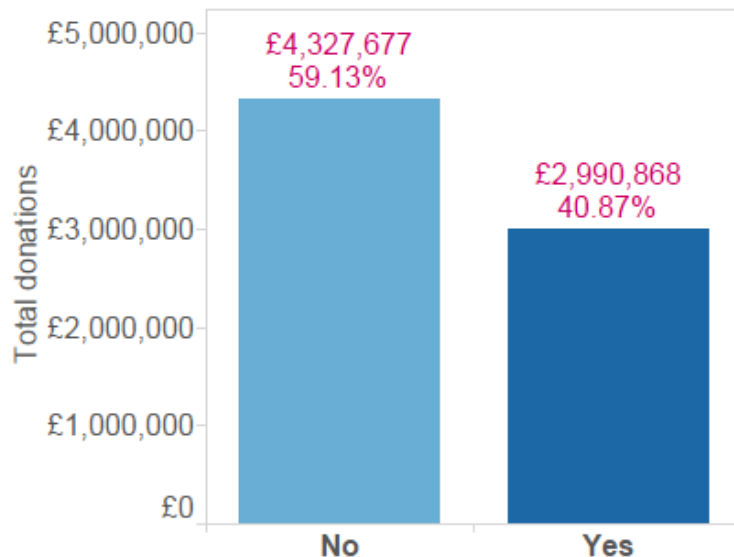


Donations and loans

1.26 As discussed at the start of this chapter, campaigners that are registered political parties (unless they are minor parties) were not required to report donations or loans during or after the independence referendum. This is because they report any donations or loans made to their campaign in their usual quarterly reports. This section does not therefore contain information about the donations and loans the political parties received¹⁷.

Total donations to all campaigners (excluding political parties)¹⁸

1.27 The chart below sets out the total donations to 'Yes' and 'No' campaigners. Out of total reported donations of over £7 million, the donations to those campaigning for the 'No' outcome amount to £4,327,677 and the donations to those campaigning for the 'Yes' outcome amount to £2,990,868; 59% and 41% of the total donations respectively.



Total loans to all campaigners (excluding political parties)

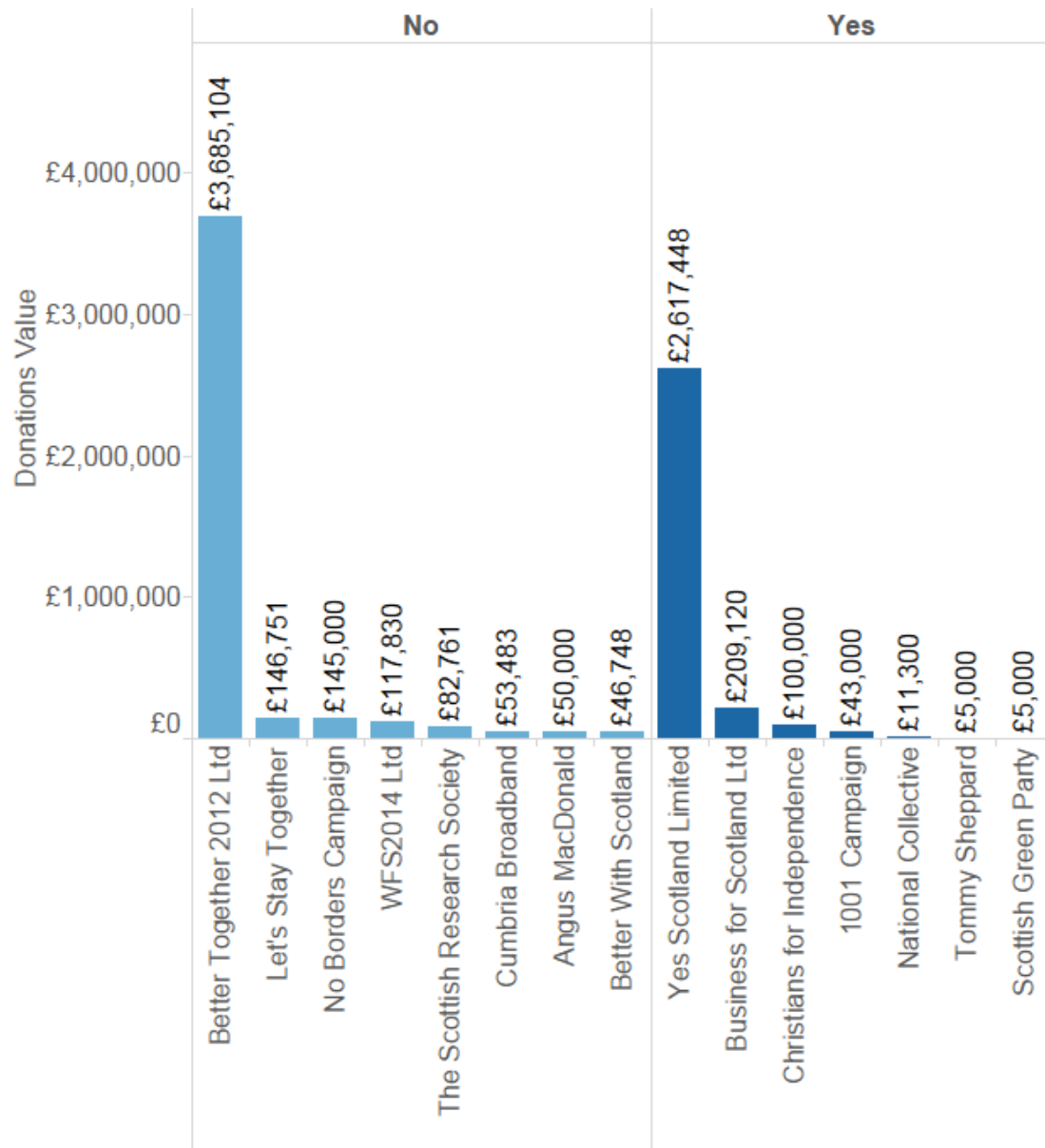
1.28 The total amount of loans reported by campaigners at the independence referendum was £31,098.47; £15,000 to 'Yes' campaigners and £16,098.47 to 'No'. Loans only represented 0.4% of total campaigner income.

¹⁷ Information on the funding of political parties is available at <http://search.electoralcommission.org.uk/Search/Donations?currentPage=1&rows=10&sort=Value&order=desc&tab=2&et=perpar&date=Accepted&from=2013-01-01&to=2014-12-31&prePoll=false&postPoll=true>

¹⁸ Appendix 2 provides a table setting out the reportable donations received by registered campaigners that submitted details. Registered campaigners that spent less than £10,000 were not required to provide details of their spending. 5 campaigners failed to submit a return and are the subject of enforcement activity.

Donations accepted by each campaigner

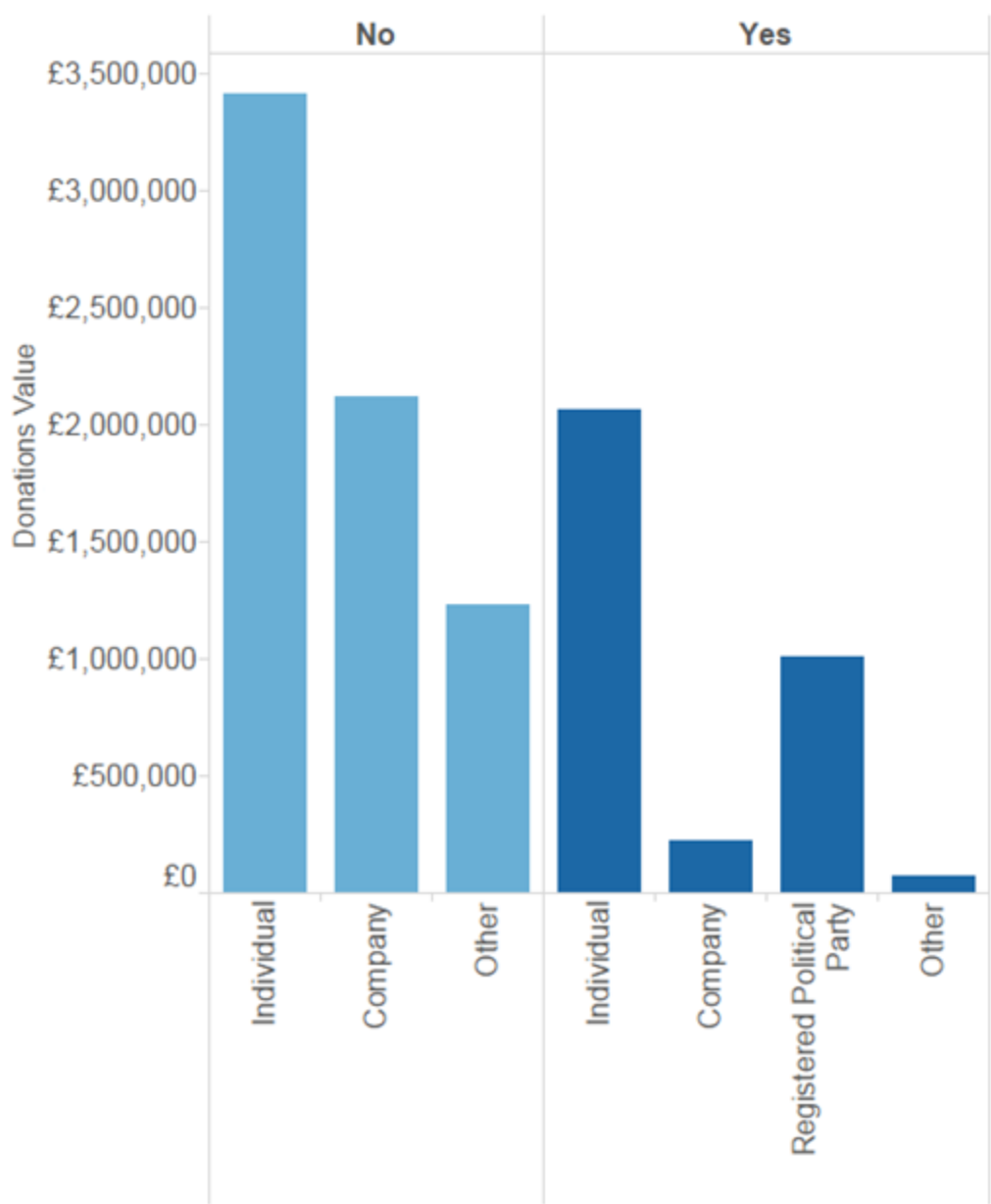
1.29 The chart below breaks down the total reported donations accepted by each side of the debate. It details the total reported donations accepted by each of the campaigners that registered with us.



Donations by donor type

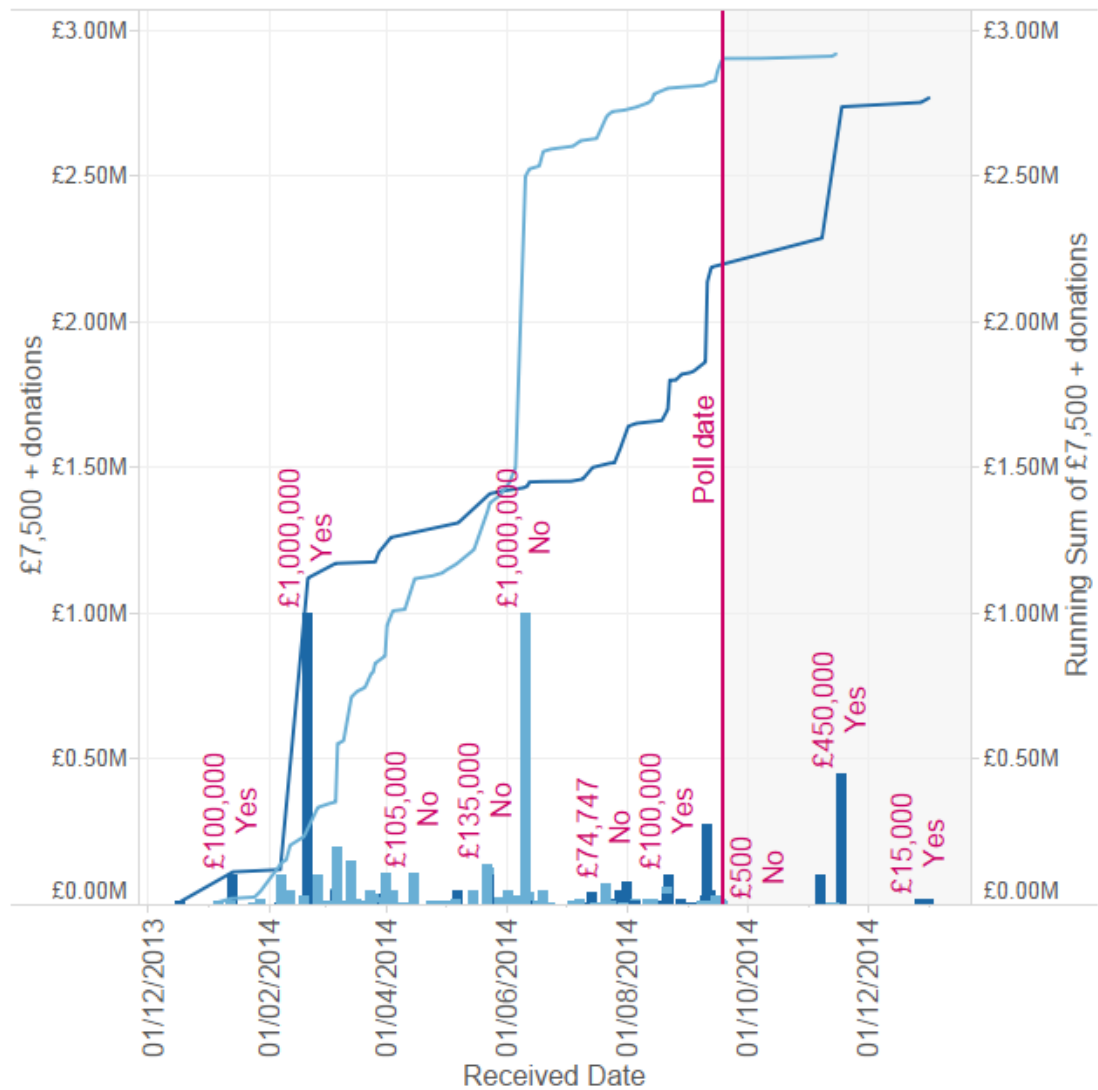
1.30 The chart below provides an illustration of the types of donor and the amounts and number of reported donations that were accepted by those campaigning for each outcome.

1.31 The majority of the funding for those campaigning on both sides of the debate came from individual donations. The majority of the other funding for those campaigning for ‘No’ came from company donations, whilst in comparison, the other funding for those campaigning for ‘Yes’ came from political parties.



Donations over £7,500 reported over time

1.32 The chart below illustrates the cumulative reported donations accepted by those campaigning for ‘Yes’ and ‘No’ over the duration of their respective campaigns. It also details the most significant donations towards that total.



Comparison between donations over and under £7,500

1.33 Registered campaigners were required to report detailed information about the donations they had received over £7,500. For donations between £500 and £7,500 campaigners were only required to provide a total figure of the donations and loans they received. Donations under £500 were not reportable in the post-referendum returns.

1.34 The table below provides a comparison of the donations campaigners reported receiving above and below the £7,500 threshold.

1.35 Out of total reported donations of over £7 million, donations under £7,500 made up 23% of the total. Reported donations under £7,500 made up:

- 33% of the total reportable donations received by those campaigning for the 'No' outcome; they also made up 33% of Better Together's total reportable donation income, and
- 8% of the total reportable donations received by those campaigning for the 'Yes' outcome; they made up 7% of Yes Scotland's total reportable donation income.

Referendum Outcome	Referendum Participant Name	Donations £500-£7,500	Donations above £7,500 inc Null	Total Participant F Donations
No	Better Together 2012 Ltd	£1,207,358	£2,477,746	£3,685,104
	Let's Stay Together	£35,250	£111,501	£146,751
	No Borders Campaign	£20,000	£125,000	£145,000
	WFS2014 Ltd	£87,830	£30,000	£117,830
	The Scottish Research Society	£8,014	£74,747	£82,761
	Cumbria Broadband Rural and Community Projects ..	£33,338	£20,145	£53,483
	Angus MacDonald	£25,000	£25,000	£50,000
	Better With Scotland	£26,024	£20,724	£46,748
	Total	£1,442,814	£2,884,863	£4,327,677
Yes	Yes Scotland Limited	£186,448	£2,431,000	£2,617,448
	Business for Scotland Ltd	£0	£209,120	£209,120
	Christians for Independence	£0	£100,000	£100,000
	1001 Campaign	£43,000	£0	£43,000
	National Collective (Artists and Creatives for Indepe..	£11,300	£0	£11,300
	Scottish Green Party	£5,000	£0	£5,000
	Tommy Sheppard	£5,000	£0	£5,000
	Total	£250,748	£2,740,120	£2,990,868
Grand Total		£1,693,562	£5,624,983	£7,318,545

2 Casework and investigations

Guidance and working with campaigners

2.1 We aim to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. Wherever possible, we use advice and guidance for campaigners proactively in order to secure compliance. We will however take enforcement action where it is necessary and proportionate to do so.

2.2 As the legislation for the independence referendum was in a settled state from early in the parliamentary process, we were able to introduce potential campaigners to the Commission's role as regulator, the main campaigning rules and the reasons for them through a series of updates¹⁹ from September 2013 onwards. We continued with these updates throughout the referendum period, including after polling day, using them to remind campaigners of key dates and responsibilities, any updates to the guidance and our role in regulating campaign spending.

2.3 We offered advice and guidance proactively in the run up to the start of, and throughout, the referendum period, offering to meet potential campaigners. We met with 24 groups before the start of the referendum period and were in contact with other potential campaigners. This included a number of meetings with the larger campaign groups such as Better Together and Yes Scotland and the political parties who intended to campaign at the referendum. We were able to discuss in detail how the rules would apply to their campaign plans, including how we intended to designate lead campaigners for the 'Yes' and 'No' outcomes.

Legislation

2.4 Where campaigners failed to follow the campaign rules, SIRA provided us with access to investigatory and sanctioning powers. These powers were closely based on PPERA. We had the same role under SIRA as we do under PPERA for other electoral events, such as the Scottish Parliament elections, to monitor and take steps to ensure compliance with the campaign rules.

¹⁹ Guidance for campaigners in referendums <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/campaigners-in-referendums>

Working with the Scottish authorities

2.5 We applied our usual, established casework procedures for casework in Scotland at the independence referendum - where there was evidence or information substantiating a potential breach of SIRA, we considered whether it was in the public interest to investigate, taking into account the potential impact of the breach on confidence in the referendum rules, the cost of investigating relative to the impact of the breach, and any other relevant considerations.

2.6 We consulted with the Crown Office and Procurator Fiscal Service (COPFS) in each case to establish whether they would be taking up investigation for possible criminal offences and if not we then determined whether to investigate and impose civil sanctions in connection with referendum offences.

2.7 The Commission and COPFS have a Memorandum of Understanding for general casework, but we held discussions with both COPFS and Police Scotland well before the independence referendum period to discuss specific working arrangements for the independence referendum, and to agree effective lines of communication. With the potential for allegations of breaches of SIRA to be made to Police Scotland, COPFS and / or to us, we agreed with COPFS what steps each would take on receipt of information and allegations which suggested a potential breach of SIRA.

2.8 As the regulator of the independence referendum, we took the lead in handling and reviewing complaints and allegations of breaches of the rules. We took a proactive approach to complaints and allegations seeking, with the agreement of COPFS, to bring campaigners into compliance quickly through guidance where appropriate.

Regulating and monitoring the independence referendum

2.9 Overall, compliance levels were high. Some campaigners were inexperienced and not familiar with the campaign rules. Where non-compliance did occur, or we were concerned it might occur, campaigners were generally receptive to us and keen to come into compliance. As a result, the level of casework was relatively low for such a high profile electoral event.

2.10 During the referendum period (30 May 2014 until 18 September 2014; the period during which the majority of the referendum rules apply) a number of cases of campaign material without imprints were resolved through advice and guidance, bringing the campaigner into compliance.

2.11 One campaigner (the Communication Workers Union) exceeded the registration threshold of £10,000 before registering with us as a campaigner. Following consultation with COPFS we investigated this matter, which resulted in a penalty of £500.

2.12 Where there was potential breach of the rules, attempts were made to bring campaigners into compliance through the use of advice and guidance. In three instances, the lack of a satisfactory response from campaigners led to us consulting with COPFS as to further action. In one case, extensive enquiries were made by Police Scotland on behalf of COPFS in relation to the potential offence which resulted in no further action. In the other two instances, COPFS declined jurisdiction in favour of us investigating the matters. Following an assessment of these cases, we concluded that one did not constitute a breach and that it would not be in the public interest to pursue the other matter.

2.13 Following the deadlines for submitting the post-referendum returns, we subsequently identified further breaches of SIRA: five campaigners with expenditure of less than £10,000 failed to submit a declaration of spending under £10,000 or a spending return by the 18 December 2014 deadline. These matters are currently being considered by us in accordance with our Enforcement Policy²⁰.

2.14 Better Together and Yes Scotland, the designated two lead campaigners, and three other registered campaigners that incurred expenditure in excess of £250,000 all delivered their post-referendum spending returns by the 18 March 2015 deadline. The reports for both lead campaigners were incomplete, although the omissions have been subsequently addressed. These apparent breaches are currently under consideration in accordance with our Enforcement Policy.

Statutory duty to report use of investigative and sanctioning powers

Investigative powers

2.15 We are required by paragraph 14 of schedule 5 to SIRA to report about the use made of our investigative powers, specifically:

²⁰ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf

- the cases in which a disclosure notice was issued under paragraph 1 or 3(3)
- the cases in which premises were entered using an inspection warrant issued by a Justice of the Peace under paragraph 2
- the cases in which we applied to a court for an order for disclosure under paragraph 3(5)
- the cases in which a court order under paragraph 4 or 5 was applied for, and
- the cases in which a court order under paragraph 4 or 5 was made.

2.16 We have not needed to use any of the above powers under SIRA. We have been able to obtain voluntary cooperation in obtaining information. The legal power to require information is however valuable and sometimes expressly needed by us in providing an incentive to voluntary cooperation by campaigners.

Sanctioning powers

2.17 We are required by paragraph 29 of schedule 6 to SIRA to report about the use made of our sanctioning powers, specifically:

- the cases in which a fixed monetary penalty or discretionary requirement was imposed or a stop notice served (other than cases in which the penalty, requirement or notice was overturned on appeal)
- the cases in which liability for a fixed monetary penalty was discharged as mentioned in paragraph 2(2), and
- the cases in which an enforcement undertaking was accepted.

2.18 We imposed one discretionary requirement, a variable monetary penalty of £500, on the Communication Workers Union.

2.19 No fixed monetary penalties, or stop notices were issued, and no enforcement undertakings were offered or accepted. We did need to consider the use of stop notices in achieving voluntary compliance with the rules.

Future use of investigative and sanctioning powers

2.20 It is possible that we will identify further non-compliance by campaigners of which we are not currently aware. Should we use our investigative or sanctioning powers in relation to non-compliance identified after publication of this report, we will write to the Scottish Parliament to notify it of the use of those powers.

3 Lessons for future referendums

3.1 This chapter explores the experience of those who campaigned at the independence referendum and deals with regulatory issues arising from the information campaigners were required to submit in their post-referendum returns. Where appropriate, we make recommendations for change drawing on the experience of the independence referendum.

3.2 All the recommendations in this chapter are intended to apply at future referendums, not only in Scotland but also those held across or in other parts of the UK.

Spending limits

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

3.4 Campaigners who intended to spend more than £10,000 campaigning at the independence referendum were required to register with us. The requirement to register also applied to registered political parties. Once registered, amongst other benefits, campaigners were entitled to a spending limit above £10,000.

3.5 The Edinburgh Agreement gave the Commission a role in advising the Scottish Government on the spending limits that would cover campaigning by registered campaigners during the referendum period - the last 16 weeks before the independence referendum - as we do for spending limits at PPERA referendums in other parts of the UK, such as the 2011 referendum on devolving further powers to the Welsh Assembly.

Advising on the spending limits for the independence referendum

3.6 For referendums in a part of the UK, PPERA gives the Commission a role in advising on the level of spending limits²¹. In 2010 we set out our principles for formulating advice on spending limits for PPERA referendums in

²¹ Paragraph 2, Schedule 14 PPERA

particular parts of the UK²². When assessing the spending limits for the independence referendum we considered that the principles we used in 2010 were still valid. These are that limits should be set at a level which:

- allow effective campaigning for all outcomes at a referendum
- deter excessive spending, and
- are not so low as to distort reasonable campaigning behaviour and affect transparency, for instance by giving campaigners an artificial incentive to split their spending between multiple campaigning bodies.

3.7 We then applied them to the context of the independence referendum, taking into account the information we had about the likely shape and scale of campaigning, the Edinburgh Agreement and, where relevant, lessons learnt from the 2011 PPERA referendums.

3.8 A specific consideration at the independence referendum was that the Edinburgh Agreement pointed to the need for “fairness and a level playing field” in campaign finance rules. We therefore recommended an alternative method to the way PPERA sets spending limits for political parties at UK-wide referendums to ensure there was a level playing field between political parties campaigning for either side of the outcome. This was because in the context of the independence referendum, the PPERA approach for UK-wide referendums which calculates spending limits based on bands of vote share would have created a significant imbalance between the cumulative limits of campaigners on each side of the argument. This had the potential to affect perceptions of fairness and thus to damage voters’ trust in the referendum rules.

3.9 Our alternative approach involved calculating the limits for political parties with reference to the actual share of the vote they received at the 2011 Scottish Parliament election, and applying the share of the vote to a maximum value equivalent to the combined value of the limits of the two designated lead campaigners. Based on what the political parties had said publicly about their campaigning intentions, the aim of this approach was to provide political party limits sufficiently high enough to enable the parties to campaign on a significant scale whilst reducing the imbalance between the cumulative limits

²² The Electoral Commission – Key principles for Referendums
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/87412/Referendum-Principles-Paper-2010-06-02-FINAL.pdf

on each side of the argument in comparison to the PPERA formula. This reduced the risk of damaging voters' trust in the rules.

3.10 The Commission's advice on the spending limits was published on 30 January 2013²³. Our advice was accepted by the Scottish Government and the political parties and campaigners on both sides of the debate and was included in the legislation for the independence referendum.

Spending by campaigners at the independence referendum

3.11 The spending limits compared to the spending reported by campaigners at the independence referendum were²⁴:

Campaigner	Limit ²⁵	Spending	% of limit
Designated campaigners ²⁶ :			
Better Together	£1,500,000	£1,422,602	95%
Yes Scotland	£1,500,000	£1,420,800	95%
Scottish National Party	£1,344,000	£1,298,567	97%
Scottish Labour Party	£831,000	£732,482	88%
Scottish Conservative Party	£399,000	£356,191	89%
Scottish Liberal Democrats	£204,000	£187,585	92%
Scottish Green Party	£150,000	£13,734	9%
Other registered campaigners	£150,000	Average £64,896 ²⁷	-

3.12 The total reported spending by those campaigning for a 'Yes' outcome that submitted details of their spending was: £3,118,772.

3.13 The total reported spending by those campaigning for a 'No' outcome that submitted details of their spending was: £3,546,208.

²³ Electoral Commission advice on spending limits for the referendum on independence for Scotland http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/153697/Report-on-spending-limits-for-the-referendum-on-independence-for-Scotland.pdf

²⁴ Registered campaigners that spent less than £10,000 were not required to provide details of their spending. 5 campaigners failed to submit a return and are the subject of enforcement activity.

²⁵ These figures are slightly different from those set out in the Commission's recommendations. This was due to the rounding provision in SIRA

²⁶ The reports for both designated lead campaigners were incomplete, although the omissions have been subsequently addressed. These apparent breaches are currently under consideration in accordance with our Enforcement Policy.

²⁷ Mean average spending of the other 19 registered campaigners that submitted details of their spending

Spending by designated lead campaigners

3.14 The limit for the designated lead campaigners was £1,500,000, which is the same for a political party contesting all seats at a Scottish Parliamentary general election. The intention was that the designated lead campaigners should be able to put their arguments to voters by campaigning on a similar scale to political parties campaigning at a Scottish Parliamentary general election.

3.15 In their feedback after the referendum, Better Together suggested that the limit of £1.5m was too low for a designated lead campaigner, noting that *“the costs of posting a letter to each registered voter in Scotland would be over £2m, the limit for lead campaigners was not sufficient to ensure the campaign could communicate effectively with all voters directly and necessitated a system of targeting campaign materials.”* Yes Scotland did not comment on the level of the spending limit for designated lead campaigners.

3.16 We note that the designated lead campaigners at the independence referendum received a number of benefits, including: higher spending limits than other campaigners, free campaign broadcasts in the run-up to polling day, and the free delivery of one referendum mailing, which could be sent either to all registered voters or all households. Although they had to pay for the costs associated with the production of this material – for example, the cost of designing and printing the leaflets or producing the campaign broadcasts – they did not have to pay or account for the cost of the distribution to voters. The £1.5m limit was insufficient for designated lead campaigners to engage in further nationwide direct mailings - to do so at the independence referendum would have required spending limits running into further millions of pounds. None of the spending limits that have applied at previous referendums in the UK have been high enough to allow campaigners to undertake multiple mail shots of this kind. On this issue, we do not believe that the designated lead campaigner limit was unduly restrictive. If, however, relevant governments consider that this would be beneficial as a further campaigning option, spending limits would need to be significantly higher.

3.17 Both designated lead campaigners reported spending £1.4m during the referendum period (including spending by others on their behalf); 95% of the legal maximum. Although spending by these campaigners was close to limit, considering the levels of engagement by both voters and campaigners and the context of the poll, it is unsurprising that the designated lead campaigners (and others) spent this much.

Spending by political parties

3.18 Political parties that wanted to campaign at the independence referendum had spending limits based on a proportion of the lead campaigner limit and their share of the vote at the 2011 Scottish Parliament election. The individual party limits are set out in the table earlier in this chapter.

3.19 The Labour Party, Conservative Party and Liberal Democrats - campaigning for the 'No' outcome - reported spending 88%, 89%, and 92% of their limits respectively. The Scottish National Party and Scottish Green Party - campaigning for the 'Yes' outcome - reported spending 97% and 9% of their limits respectively.

3.20 In total, the political parties that registered to campaign reported spending relatively similar combined amounts in support of each outcome (in total around £1.3m), despite their different individual spending limits.

Spending by other registered campaigners

3.21 The limit for other registered campaigners was £150,000, set at 10% of the limit for the designated lead campaigners. It was intended that this would give registered campaigners sufficient scope to put their message to voters, whilst also deterring excessive spending.

3.22 The information submitted by campaigners in their post-referendum returns shows that 19²⁸ other registered campaigners reported referendum spending, averaging just around £64,896. Five spent over £100,000 (four for 'No' and one for 'Yes') and two spent within £10,000 of the £150,000 spending limit (one for each outcome).

3.23 Of those campaigners that responded to our post-referendum survey²⁹, the majority were of the view that the spending limit was adequate to run their campaign.

Further information about campaign spending

3.24 Chapter 1 of this report sets out more detailed information about the spending by campaigners at the independence referendum. Our website also provides more information on campaign funding and spending including

²⁸ 11 campaigners submitted a 'nil' or 'sub-threshold' declaration. 5 campaigners failed to submit a return and are the subject of enforcement activity.

²⁹ Only 4 campaigners that were not political parties or the designated lead campaigners responded

visualisations that allow you to analyse what the campaigners have reported to us³⁰.

Assessment of the level of the spending limit

3.25 The spending limits were intended to allow effective campaigning. In our post-referendum survey of the Scottish public, of those respondents who voted:

- 90% said that knew a great deal or a fair amount about the referendum, and
- 78% said they strongly agreed or tended to agree that they had enough information on the yes and no campaigns to be able to make an informed decision.

3.26 Of those respondents that did not vote, only 4% said it was because they did not know enough about the different options.

3.27 In respect of the campaigners, we have not received any substantive evidence that the spending limits unreasonably restricted their ability to get their messages to voters.

3.28 Overall, the evidence of the experience of voters and the spending reported by campaigners indicates that the limits we recommended met our principles by:

- allowing effective campaigning for all outcomes at a referendum
- deterring excessive spending, and
- not being so low as to distort reasonable campaigning behaviour and affect transparency.

3.29 Specifically, the limits did not appear to unreasonably restrict the designated lead campaigners' ability to get their messages to voters.

3.30 The limits for political parties met the intended purpose of providing, as far as possible, a level playing field, and were sufficiently high to enable the parties to independently campaign on a significant scale.

30

<http://search.electoralcommission.org.uk/?currentPage=0&rows=10&sort=AcceptedDate&order=desc&tab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true>

3.31 In practice, those campaigning for the ‘Yes’ and ‘No’ outcomes at the independence referendum spent relatively similar amounts³¹. We are of the view that, as far as was possible, the limits for the designated lead campaigners and political parties met the intention of the Edinburgh Agreement.

Future referendums

3.32 A central factor in our advice on the spending limits for the independence referendum was the agreement between the UK and Scottish Governments in the Edinburgh Agreement that there should be “fairness and a level playing field” in the campaign finance rules. In that context, our alternative method of setting the limits for political parties by referencing their actual share of the vote at the most recent Scottish Parliament election significantly reduced the imbalance between the cumulative limits of those parties that had expressed support for each outcome compared to the PPERA model³².

3.33 Depending on the specific context and circumstances of any future referendum, we will take this approach into account where we have a role in advising on spending limits.

3.34 Where we do not have a statutory role in advising on referendum spending limits, it will be important for relevant governments and legislatures to consider whether the PPERA limits remain appropriate in the context of the specific referendum.

Regulating campaigners that work together

3.35 It is important that the rules regulating referendums include provisions to prevent campaigners circumventing the spending limits by setting up multiple campaign groups. The risk is that groups of campaigners could work together on a joint campaign for the same outcome to make use of the combined total of many individual spending limits.

3.36 In order for spending to be regulated as ‘working together’ it must be money spent as a result of an agreed plan or arrangement between two or more campaigners during the referendum period. Generally, the working together rules provided that if campaigners worked together, all the spending

³¹ Yes: £3,118,772 No: £3,546,208

³² as explained on page 26

they incurred counted against the limit of each campaigner involved³³. There was an exception to this where a campaigner worked together with one of the designated lead campaign groups. This allowed the designated lead campaigner to engage with other campaigners for the same outcome to put forward a unified message for voters as the costs would only count towards the designated lead campaigner's spending limit.

3.37 The working together rules at the independence referendum built on the ones used at the UKPVS referendum, particularly to address our 2011 recommendation³⁴ to reflect that the independence referendum legislation provided for the possibility of there only being a designated lead campaigner for one outcome. The rules also included new elements to make it easier for campaigners to work together, whilst maintaining the original policy intention.

3.38 The intention of the rules was to try and ensure that the rules struck the right balance between enabling campaigners to work together to get a coordinated message to voters whilst ensuring there were appropriate and proportionate regulatory and reporting requirements to prevent evasion of the spending controls.

3.39 The working together reporting requirements that applied at the independence referendum were:

³³ We considered that 'working together' involved spending money as a result of a plan or arrangement between one or more campaigners. Examples of this included: joint advertising campaigns, leaflets or events or coordinating activity with another campaigner.

³⁴ Referendum on the voting system for UK parliamentary elections. Report on the May 2011 referendum. October 2011 – paragraph 5.83
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/141328/Final-PVS-report.pdf

		Designated lead campaigner working with a ...		
Campaigners that work together without a designated lead campaigner		campaigner that spends less than £10,000	campaigner that spends more than £10,000	registered campaigner
Who needs to register?	If the total combined spending is above £10,000 then all those involved must register	There is no requirement for campaigner to register	The campaigner must register	All campaigners are already registered
Which limit does the spending count against?	The total combined spending counts against all those involved	The spending only counts against the designated lead campaigner's limit	The spending only counts against the designated lead campaigner's limit	The spending only counts against the designated lead campaigner's limit
Who is required to report spending & donations?	Campaigners only have to report their own spending and donations	There is no requirement for the campaigner or designated lead campaigner to report the sub-£10,000 spending or any donations towards it	The campaigner must report any spending on their own campaign and any donations towards it	The campaigner must report any spending on their own campaign and any donations towards it
Electoral Commission guidance: Best practice	Each campaigner should report a global figure of the spending incurred by each of the other campaigners that worked together	The designated lead campaigner should report a global figure of the spending incurred by each of the other campaigners on their behalf	The designated lead campaigner should report a global figure of spending incurred by each of the other campaigners on their behalf	The designated lead campaigner should report a global figure of spending incurred by each of the other campaigners on their behalf

3.40 In the run up to the independence referendum we offered all registered campaigners a meeting to discuss the working together rules. The meetings provided an opportunity for campaigners to ask any questions about their approach to campaigning and to clarify how the rules might apply to their campaign. Our post-referendum survey indicates that campaigners felt the rules were clear and understood.

3.41 We specifically discussed the working together rules with Yes Scotland and Better Together. This ensured we had a common understanding of how the rules applied and the associated reporting requirements. Both campaigners were aware that they needed to account for the full cost if they chose to work with other campaigners.

Working together spending at the independence referendum

3.42 Although there was a requirement to account for working together spending against campaigners' spending limits, there was no specific requirement for campaigners to separate out any working together spending from the campaigner's individual spending in their post-referendum return. Our best practice guidance was that each campaigner should report a global figure of the spending incurred by each of the other campaigners that worked together.

3.43 After the referendum, Yes Scotland and GMB followed our best practice guidance by separately reporting working together spending of £89,720 and £4,800 respectively.

3.44 Yes Scotland's campaign structure allowed for other authorised campaigners to campaign and incur spending on Yes Scotland's behalf in certain parts of Scotland. It also allowed campaigners to use Yes Scotland's campaign material and branding.

3.45 We understand that Better Together set up their campaign structure with central control of financing, requiring all other groups that wanted to work with them to form part of Better Together rather than allowing other campaigners to separately work on their behalf.

3.46 In the context of the independence referendum, the campaigning that the political parties undertook in their own names was different from that of the designated lead campaigners and from each other. It was therefore not covered by the working together rules. The political parties' spending on their individual campaigns counted against each of their own separate spending limits.

3.47 We are aware that a number of other registered campaigners engaged in minor levels of working together. However, there was no statutory requirement for them to disclose who they worked with, as long as they reported the total combined spending in their return. Based on the limited evidence available, the expenditure incurred by other registered campaigners that worked together was very low.

3.48 The most significant levels of working together was at the local / grassroots level where people and organisations wished to campaign without having a significant amount of funds to use. This is unsurprising considering the general high levels of engagement with the independence referendum. This was low cost campaigning which did not trigger the requirement to officially register as a campaigner, for example, local Yes groups would invite a range of Yes campaigners to speaking events, street stalls would distribute leaflets from different campaign groups, and there were a number of public meetings and demonstrations.

Recommendations for future referendums

3.49 When campaigners work together it can contribute to an effective campaign and mean that it is more likely that voters get clear and consistent information. However, it is important that there are rules in place to ensure that the regulatory controls are not easily evaded.

3.50 It appears that the working together rules broadly achieved their purpose at the independence referendum by preventing campaigners circumventing the spending limits by setting up multiple campaigns for the same referendum outcome. The rules addressed some of the burdens placed on campaigners that worked together at the UKPVS referendum and made it easier for small campaigners to work with the designated lead campaigner.

3.51 However, the high level of campaign engagement at a local level, most particularly for the Yes campaign, did test the effectiveness and scope of the working together rules. In practice, the lack of statutory provisions requiring campaigners to report who they worked with and how much they each spent made it difficult to accurately analyse what was reported about joint spending.

3.52 There is therefore scope for improving the transparency for voters and the robustness of the regulatory controls around campaigners that work together. To provide a more accurate picture of who worked with who and the levels of coordinated campaigning, campaigners should be required to set out information in their post-referendum return about the other campaigners they worked with and the amounts they each spent. This would also have the effect of improving the enforceability of the rules.

3.53 We recommend that the legislation for future referendums should include ‘working together’ provisions that enable campaigners to work together to promote a coordinated message to voters, but ensure there are appropriate and proportionate regulatory requirements to prevent evasion of the spending controls. The provisions should:

- be based on the working together rules that applied at the Scottish independence referendum in 2014, and
- require campaigners to set out information in their post-referendum return about the other campaigners they worked with and the total amounts they each spent. This is information that campaigners should each already be compiling to ensure compliance with the rules and for inclusion in their own return.

3.54 We also note that the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 recently introduced enhance working together rules for non-party campaigners³⁵. These build on the controls that have been in PPERA since it came into force in 2000. There may be relevant lessons for the referendum rules once the election spending returns are received. We expect to report on any lessons from these rules in our report following 2015 UK general election, due to be published in spring 2016.

The approach to designating lead campaigners and the working together rules

3.55 SIRA provided for us to designate a lead campaigner for only one outcome if there were no willing or able applicants for the other outcome. We considered the implications of this approach in detail in our December 2014 report³⁶.

3.56 As we discussed in that report, if there had only been a designated campaigner for one outcome, the working together rules would not have applied. This would have meant that campaigners would have been free to work together and make use of multiple spending limits in funding those

³⁵ The non-party joint campaigner rules apply where (i) spending on regulated campaign activity is incurred by, or on behalf of, a non-party campaigner, and (ii) the spending is incurred as part of a common plan or other arrangement with another non-party campaigner or campaigners (known as ‘working together’), and (iii) that spending can reasonably be regarded as intended to achieve a common purpose

³⁶ Report on the referendum held on 18 September 2014 December 2014, paragraphs 5.70-5.80, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

coordinated campaign messages. Whilst this was a useful technical provision, in our view, as the designated lead campaigner on one side of the debate would have had access to all the benefits of designation, just removing the spending restrictions would have had limited impact on the potential for a one-sided campaign.

3.57 We said in our December 2014 report³⁷, we would welcome the opportunity to work with relevant governments to consider the overall package of benefits available to designated in the case of a framework which allows for one-sided designation in order to balance the reduced incentive to make a tactical decision against applying for designation, whilst not artificially creating a one sided campaign. It will be an important element of that work to consider the wider implications for the rules on how campaigners can work together.

Regulating loans

3.58 It is important that there are robust controls on the funding for referendum campaigners to ensure that funding comes from appropriate sources and to provide transparency for voters about those that fund the campaigns. This is in line with our principles that there should be no undue influence at referendums and that there should be trust in the rules.

3.59 The Scottish Government included loan controls in the legislation for the independence referendum. This ensured that there were appropriate regulatory controls and reporting requirements on loans and other credit facilities and guarantees used to fund campaigning at the referendum.

3.60 The total amount of loans reported by campaigners at the independence referendum was £31,098.47; £15,000 to 'Yes' campaigners and £16,098.47 to 'No'. Out of total income to each side of over £7 million, loans only represented 0.4% of the total reported income campaigners received to campaign at the referendum.

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

³⁷ Report on the referendum held on 18 September 2014 December 2014, paragraph 5.79, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf

Loan controls at previous referendums

3.62 In 2006, PPERA was amended to introduce controls and reporting requirements on loans and credit arrangements entered into by political parties, members of registered parties, holders of elective office, and members associations. However, PPERA does not apply these controls to campaigners at referendums, other than those that are already regulated.

3.63 The legislation for the UKPVS referendum in 2011 extended the PPERA controls to campaigners at that referendum. The rules replicated those in PPERA where loans including credit facilities and guarantees, are taken out for campaigning at elections or for the political activities of regulated individuals and members associations, and provided that they could only be entered into with permissible sources. The details of all loans over £7,500 were required to be reported after the poll.

3.64 In our report following the UKPVS referendum³⁸ we noted that the rules had not been amended to apply at any future referendum, but that the UK Government has powers to apply loan controls for all future PPERA referendums via secondary legislation. We recommended that the relevant secondary legislation should be brought forward as soon as practicable. In its 2012 response to our report, the UK Government said that

The Government's intention remains to introduce a Statutory Instrument as provided for by section 62 of the Electoral Administration Act 2006, in order to bring these provisions into force in full.

3.65 To date, the UK Government has not used this power. However, the loans controls at the UKPVS referendum and the independence referendum have now provided important examples of how loan controls can be set out in legislation and be successfully implemented. We have not experienced any issues with extending the controls to apply to loans at referendums.

Recommendation for future referendums

3.66 Loan controls and reporting requirements add an important element to the regulation and transparency of referendum campaign funding. The absence of such controls would result in a significant gap in the regulation of campaign funding for future referendums.

³⁸ Referendum on the voting system for UK parliamentary elections Report on the May 2011 referendum October 2011
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/141328/Final-PVS-report.pdf

3.67 For future non-PPERA referendums, relevant governments should ensure that appropriate controls on loans to referendum campaigners, including credit facilities and guarantees, apply.

3.68 As in 2011, for future PPERA referendums, we recommend that the UK Government should bring forward the relevant secondary legislation to introduce loan controls at all future referendums held under the PPERA framework, as soon as practicable.

Reporting low-level spending

3.69 As discussed earlier in this report, campaigners who intended to spend more than £10,000 campaigning at the independence referendum were required to register with us before incurring that level of spending. Once registered, campaigners became subject to controls on the sources of their funding, spending, and reporting.

3.70 Registered campaigners who spent less than the £10,000 registration threshold were only required to submit a declaration that they had not exceeded that amount, rather than complete a full spending return³⁹. The independence referendum was the first referendum in the UK where this requirement applied.

3.71 We are pleased that the Scottish Government adopted our 2013 recommendation that referendum campaigners that spend less than the relevant registration threshold should only be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return⁴⁰. The recommendation was intended to remove an unnecessary administrative burden that may discourage campaigners who are unsure how much they will spend from registering on a precautionary basis.

3.72 Nine campaigners submitted the new declaration of sub-registration⁴¹ threshold spending after the independence referendum to confirm that,

³⁹ Schedule 4, paragraphs 21(5) and (6) SIRA

⁴⁰ A regulatory review of the UK's party and election finance laws Recommendations for change June 2013

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf recommendation 32

⁴¹ 5 campaigners failed to submit a return and are the subject of enforcement activity

although they had registered, they had not in fact spent more than £10,000 campaigning⁴².

Recommendation for future referendums

3.73 Whilst there was a minor reduction in transparency compared to the PPERA referendum rules which would have required campaigners that had spent less than £10,000 to submit a full spending return supported by invoices, in practice, there was no requirement for them to have registered and become subject to any reporting requirement at all. Any potential loss of transparency is therefore only a result of campaigners being subject to regulatory controls which need not have applied to them. Indeed, there may be a gain for transparency as campaigners might have registered earlier.

3.74 In line with the principles of good regulation, it is important to ensure controls to regulate campaigners are proportionate. This is an example of that.

3.75 We therefore continue to recommend that the legislation for future referendums should ensure that registered campaigners that spend less than the relevant registration threshold should only be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

Reporting pre-registration spending

3.76 Following the independence referendum, registered campaigners were required to submit a campaign spending return which included details of the spending they incurred campaigning⁴³, and donations and loans towards that spending⁴⁴. However, they only had to itemise and provide evidence of spending incurred after the date when they registered with us. Only a global figure of total spending was required for before that date⁴⁵. The same requirement applies at PPERA referendums.

3.77 There was therefore the potential for campaigners to choose to register only after they had incurred spending close to the £10,000 registration threshold, and thus to avoid detailed disclosure of that spending.

⁴² Britannica, English Democrats, Mr Ghill Donald, Radical Independence Campaign, Scottish Campaign for Nuclear Disarmament, Scottish Independence Convention, Spirit of Independence, Stirlingshire For No Thanks, Wealthy Nation

⁴³ Such as the specific amounts and items the spending has been incurred on

⁴⁴ Over £500

⁴⁵ Schedule 4, paragraph 21(4) SIRA

3.78 In practice, only just under £2,000 was reported by campaigners at the independence referendum as pre-registration spending. Although the experience of the independence referendum tends to indicate that campaigners did not delay registration to avoid disclosure of substantial levels of spending, nonetheless, the risk remains that the current rules are potentially a disincentive to early registration.

Recommendation for future referendums

3.79 As we noted in our 2013 review of the UK's party and election finance laws⁴⁶, where people or organisations are spending substantial amounts on campaigning activity intended to influence voters, campaigners should show what they have spent it on. The rules at the independence referendum and at PPERA referendums already require campaigners to report the total amount that they have spent during the pre-registration period, so requiring campaigners to report the details of that how that spending was incurred would not be a disproportionate increase in the regulatory burdens on them.

3.80 We therefore recommended in our 2013 review that referendum campaigners should be required to report itemised information for all regulated expenditure, including spending that is incurred before a campaigner registers with us. This recommendation was not developed in time for it to be considered for inclusion in the legislation for the independence referendum.

3.81 The current rules recognise that campaigners may not realise they are regulated (and therefore have to keep records) until after they have started campaigning. However, the evidence would only be required to accompany the campaigner's spending return which is due to be submitted either three or six months after the date of poll. This is a reasonable time period within which campaigners could obtain copies of any invoices and receipts over £200 if the originals were not retained when the spending was incurred.

3.82 We continue to recommend that the legislation for future referendums should ensure that those registered campaigners that are required to submit a full spending return should include itemised information for all regulated expenditure, including spending that is incurred before a campaigner registers with us.

⁴⁶ A regulatory review of the UK's party and election finance laws Recommendations for change June 2013
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf

Late claims and payments

3.83 The rules for the independence referendum provided that campaigners must receive all their invoices within 30 days of polling day and pay them within 60 days of the poll. The rules are intended to prevent campaigners and their suppliers colluding to evade the financial controls on campaigning. Providing a deadline for the receipt of claims, and having sanctions to deter noncompliance with these deadlines, helps ensure that evidence of regulated spending is accounted for and reported appropriately.

3.84 The independence referendum was the first referendum in the UK where the Commission had discretion for granting permission to pay invoices in breach of these deadlines. At other electoral events, campaigners are required to seek leave from a court.

3.85 The Commission-based process did not apply to disputed claims as it would not be appropriate for the Commission to become involved in disputes over commercial transactions.

3.86 We are pleased that the Scottish Government adopted the approach⁴⁷ we recommended in our 2013 review of the UK's party and election finance laws⁴⁸. Our recommendation was intended to reduce burdens on campaigners and the cost of dealing with late claim and payment applications.

3.87 We received 38 applications to pay invoices received later than 30 days and 3 to pay invoices beyond the 60 day deadline. These applications were made by four registered campaigners and the relevant invoices totalled £18,318.05. All the applications were granted. Information on the applications and our decisions to grant leave can be found on our website⁴⁹.

3.88 We have estimated that the total cost saving for each of the campaigners would have been at least £2,000 plus VAT, taking into account court fees and the likely cost of legal representation⁵⁰. In addition, whilst some

⁴⁷ Schedule 4, paragraph 15 SIRA

⁴⁸ A regulatory review of the UK's party and election finance laws - Recommendations for change. June 2013

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf page 50-52, recommendation 26.

⁴⁹ <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/campaign-spending-and-donations-at-referendums/campaign-spending-at-the-scottish-referendum/leave-to-pay>

⁵⁰ A solicitor's costs for an application for leave to make payment of a late claim could be expected to be at least £2000 + VAT on the basis of an hourly rate of £250+. A court fee would also be payable of £155 based on the fee set out in Civil Proceedings Fees Order 2008

Commission staff time was needed to assess and reach a decision on each application, overall, the process is likely to have achieved significant savings of public funds compared to each application requiring a court hearing.

3.89 Before the independence referendum there had been relatively few court applications to pay invoices in Scotland. The experience of the level of applications at the independence referendum may be isolated cases of non-compliance or it may reflect the possibility that the lack of court fees made it more likely that campaigners would apply for leave to pay. Considering that we granted leave to pay in all cases at the independence referendum we would not want to see a Commission-based process as being a 'soft option'. This is particularly true where campaigners themselves failed to comply with the requirement to pay invoices that they have received on time.

3.90 We note that the Scottish Government did not provide us with the ability to sanction campaigners where an invoice is received within 30 days but the campaigner had not paid it within the 60 days. In practice, given the specific late claim and payment applications we considered, this was not an issue due to the nature of the claims.

3.91 We note that there is no sanction available to the court where it has granted leave to pay; although the court fee may act as a deterrent. As there is no cost to a campaigner in applying to the Commission, there may be occasions where it would be appropriate for us to sanction a campaigner for not paying on time to help ensure future compliance.

Reducing burdens on campaigners at future referendums

3.92 The evidence from the independence referendum indicates that burdens on campaigners and the cost of dealing with late claim and payment applications could be reduced further. This could be achieved by linking the late claims and payments process to the threshold amount above which campaigners are required to obtain an invoice or receipt for their referendum spending.

3.93 SIRA only required campaigners to support payments for referendum spending over £200 with an invoice or receipt. This is the same requirement that applies at electoral events regulated under PPERA. Both the UK and the

S.I. 2008/1053) Schedule 1, item number 2.4 (on an application on notice where no other fee is specified).

Scottish Parliaments have taken the view that copies of invoices and receipts do not need to be submitted to us for items of spending under the £200 threshold. Therefore, it seems overly burdensome to ask campaigners to seek relief for payment of claims that have been considered to be of low regulatory interest by Parliament(s).

3.94 Both SIRA and PPERA require campaigners to account for disputed or unpaid claims in their post-referendum spending returns, and any such claims must also count towards their overall spending limit. We also have the ability to audit and check campaigners' financial records to ensure they have accurately reported their campaign spending. Removing the requirement to seek relief for payment of certain claims under £200 would therefore have little impact on the transparency of campaign spending or on the integrity of the rules. It will however be important to ensure that campaigners are required to update the information in their spending return should they receive and pay an invoice without leave after submission of their return.

3.95 In the circumstances of the independence referendum, this approach would have reduced the number of late claim and payment applications to 18 (rather than 41) totalling £15,823.53 (rather than £18,318.05).

Recommendation for future referendums

3.96 We therefore recommend that the legislation for future referendums should include improved controls for when campaigner invoices must be received and paid. It should provide that:

- the requirement to receive all invoices within 30 days and pay them within 60 days of polling day should only apply to amounts over £200
- the responsibility for granting permission to pay invoices outside these deadlines should rest with the Commission
- where leave to pay is granted, the Commission should also have the ability to sanction the late receipt or payment of the claim in order to encourage compliance, but
- the Commission-based process should not apply to disputed claims as it would not be appropriate for the Commission to become involved in disputes over commercial transactions.

3.97 We will also be considering how the lessons from the late claims and payments process at the independence referendum may be applied to other electoral events. We will be gathering information of late claims and payments at the 2015 UK general election to assess the scale and resource implications of a potential future Commission-based process. If we are given the role of

granting leave to pay late claims and payments at future electoral events, it will be important to ensure that the Commission is adequately resourced for the role.

Checking the permissibility of donations and loans

3.98 Similar to the rules for elections and PPERA referendums, SIRA provided that donations received and loans entered into by registered campaigners that they intended to use to fund their referendum campaign could only be accepted from certain permissible sources⁵¹.

3.99 During the passage of the legislation for the independence referendum we noted that SIRA provided for individuals across the UK to be permissible donors and lenders to referendum campaigners if they were on an electoral register. However, the duty to provide a copy of the register to enable campaigners to check the permissibility of donors was limited to Electoral Registration Officers (EROs) in Scotland, and only to a copy of the register of local government electors.

3.100 This was because SIRA was legislation produced by the Scottish Parliament and it could only legislate to impose a duty to supply the register on Scotland's EROs. This meant that registered campaigners were not provided with a copy of the registers from outside Scotland to enable them to permissibility check donations and loans from the rest of the UK.

3.101 In order to mitigate the risk of campaigners accepting impermissible donations from individuals from outside Scotland, our guidance set out in other ways that campaigners could confirm permissibility⁵². For example, we suggested that donors could be asked to provide written confirmation of their registration from their ERO before a campaigner accepted the donation. We also advised campaigners that they could inspect the relevant register at the ERO's office to check permissibility.

3.102 In practice we did not receive any complaints from campaigners about their ability to check donations from outside Scotland. There is also no evidence of problems with the permissibility of donations from individuals outside Scotland reported in campaigners' post-poll returns.

⁵¹ Schedule 4, paragraphs 1(2), 34 and 48 SIRA

⁵² Permissibility for referendum campaigners, page 6

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/164396/sp-ris-permissibility.pdf

Recommendation for future referendums

3.103 The lack of direct access to registers to check permissibility does not appear to have caused any significant issues for campaigners at the independence referendum. However, in our view, to minimise the potential for inadvertent non-compliance and to reduce the burdens on campaigners, it is important that those that are subject to regulatory controls have easy access to the necessary information to enable them to comply with their statutory obligations.

3.104 We therefore recommend that the legislation for future referendums should ensure that campaigners are easily able to comply with the requirement to only accept donations and loans from permissible sources.

Length of time to submit post-referendum returns

3.105 As discussed earlier in this chapter, registered campaigners that spend over £10,000 were required to submit a campaign spending return which included details of the spending they incurred campaigning at the independence referendum, any spending on their behalf, details all donations and loans they accepted over £7,500 along with the total of all donations and loans between £500 and £7,500.

3.106 The campaign spending returns were required to be submitted to us within three months of the poll if they had spent £250,000 or less (18 December 2014) or audited returns submitted within six months for those that spent over £250,000 (18 March 2015).

3.107 In practice, in order to comply with the reporting requirements, campaigners were required to:

- collate information about the campaign spending incurred centrally and from any others authorised to incur spending on their behalf
- provide detailed information about all campaign spending
- detail any unpaid or disputed spending
- support all spending over £200 with invoices or receipts
- detail all donations and loans over £7,500 towards the campaign spending along with the total of all donations and loans between £500 to £7,500, and

- arrange for the return to be independently audited if they have spent over £250,000.

3.108 Our best practice guidance also suggested that campaigners that worked together should report a global figure of the spending incurred by each of the other campaigners they worked with.

3.109 For example, in the case of Yes Scotland and Better Together, both were required to submit a return detailing all spending and donations towards to their campaign and support any spending over £200 with invoices or receipts totally nearly £1.5m. The returns were then required to be independently audited before being submitted to us.

3.110 The feedback we have received is that the three and six month submission time limits were not overly excessive to enable campaigners to undertake this work.

3.111 The timetable for submitting referendum returns at the independence referendum was consistent with the timetable for submitting post-poll returns following other electoral events. For example, the spending returns following elections to the Scottish Parliament (on which the spending limits for the independence referendum were based) are also three months or six months depending on how much has been spent.

3.112 Currently, the timetable for submitting post-poll returns is the same across all electoral events, irrespective of the length of the regulated period or the amount maximum spending limits. However, when considering the timeliness of campaigner returns, it is important that the need for early transparency is balanced with the need for campaigners to have sufficient time to submit complete and accurate returns.

3.113 The evidence from the independence referendum is that the deadlines for the post-referendum spending and donation returns were workable and proportionate. At this stage we are not convinced that there are likely to be significant transparency or workability benefits from changing them. We will however keep the issue under review, taking into account the potential range of different electoral events and spending limits.

Appendix 1

Spending reported by registered campaigners

Referendum Outcome	Entity Name	Total Spending
No	Better Together 2012 Ltd	£1,422,602
	Labour Party	£732,482
	Conservative Party	£356,191
	Liberal Democrats	£187,585
	No Borders Campaign	£147,510
	Let's Stay Together	£133,832
	WFS2014 Ltd	£118,303
	Angus MacDonald	£110,644
	The Scottish Research Society	£82,202
	Cumbria Broadband Rural and Community Projects Limited	£65,921
	Grand Orange Lodge of Scotland	£47,072
	Better With Scotland	£47,042
	GMB	£43,835
	Union of Shop, Distributive & Allied Workers (USDAW)	£30,550
	Communication Workers Union (CWU)	£20,437
	Total	£3,546,208

Yes	Yes Scotland Limited	£1,420,800
	Scottish National Party (SNP)	£1,298,567
	Business for Scotland Ltd	£143,027
	1001 Campaign	£72,055
	National Collective (Artists and Creatives for Independence Limited)	£54,849
	Tommy Sheppard	£35,094
	Christians for Independence	£29,248
	Women for Independence	£24,605
	Generation Yes	£14,065
	Scottish Green Party	£13,734
	Scottish Socialist Party	£12,728
	Total	£3,118,772
Grand Total		£6,664,980

Appendix 2

Donations reported by registered campaigners

Referendum Outcome	Referendum Participant Name	Donations £500-£7,500	Donations above £7,500	Total Participant Donations
No	Better Together 2012 Ltd	£1,207,358	£2,477,746	£3,685,104
	Let's Stay Together	£35,250	£111,501	£146,751
	No Borders Campaign	£20,000	£125,000	£145,000
	WFS2014 Ltd	£87,830	£30,000	£117,830
	The Scottish Research Society	£8,014	£74,747	£82,761
	Cumbria Broadband Rural and Co..	£33,338	£20,145	£53,483
	Angus MacDonald	£25,000	£25,000	£50,000
	Better With Scotland	£26,024	£20,724	£46,748
	Total	£1,442,814	£2,884,863	£4,327,677
Yes	Yes Scotland Limited	£186,448	£2,431,000	£2,617,448
	Business for Scotland Ltd	£0	£209,120	£209,120
	Christians for Independence	£0	£100,000	£100,000
	1001 Campaign	£43,000	£0	£43,000
	National Collective (Artists and Cr..	£11,300	£0	£11,300
	Scottish Green Party	£5,000	£0	£5,000
	Tommy Sheppard	£5,000	£0	£5,000
	Total	£250,748	£2,740,120	£2,990,868
Grand Total		£1,693,562	£5,624,983	£7,318,545