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Summary

“Surveys taken in the aftermath of a referendum campaign regularly show that ‘insufficient information’ is one of the most common complaints of citizens about the referendum process.”¹

There is very little regulation of election or referendum campaign literature in the United Kingdom. Political parties, candidates and referendum campaigners are responsible for the content of their own campaigns and they are subject to the general restrictions of criminal and civil law.

Party political, election and referendum broadcasts must adhere to editorial guidelines in relation to taste and decency but broadcasters have no control over the content of the message being conveyed.

There are two areas where campaign material is specifically regulated.

- Section 106 of the *Representation of the People Act 1983* prohibits the making or publishing a false statement of fact about the personal character or conduct of a candidate at an election (this does not apply at a referendum).
- There is a legal requirement that campaign material should include an imprint of who has published the material to ensure voters can identify the source of the campaign literature.

The regulatory role of the Electoral Commission relates to donations, loans and spending. During election or referendum campaign periods there are strict limits on spending. The Electoral Commission works actively with parties and referendum campaigns to ensure campaign expenditure is correctly declared. This includes advice on what is considered campaign activity for the purposes of the reporting of spending. However, the Commission has no role in regulating the factual content of material. The Commission has a page on its website, [What we do and don't regulate](#).

There have been criticisms of the recent campaign during the referendum on the UK's membership of the European Union. Leading academics signed an open letter in the *Daily Telegraph* during the campaign complaining that “the level of misinformation in the current campaign is so great that democratic legitimacy is called into question”.

There have also been calls for an independent regulator to oversee campaign claims. There is an Early Day Motion calling for an independent Office of Electoral Integrity to be established to factually verify the truthfulness of claims made during political campaigns, with powers to issue clarifications and fines where appropriate.

¹ *Campaign tactics and outcomes in referendums: a comparative analysis* by Lawrence LeDuc, 2009 in *Referendums and representative democracy: responsiveness, accountability and deliberation* edited by Maija Setälä and Theo Schiller, Routledge / ECPR Studies in European Political Science, 2009

1. Regulation of the content of campaign literature

There are requirements under electoral law regarding campaign literature but these relate mainly to the imprints that should be included on such documents and to the making or publishing a false statement of fact about the personal character or conduct of a candidate at an election (this does not apply at a referendum). Campaign publications are also subject to the general restrictions of both civil and criminal law.

The Electoral Commission is not able to comment on the legality of any particular referendum material and the Commission's [guidance for campaigners](#) in the referendum campaign notes that:

We do not regulate the content of campaign material and are not able to comment on the legality of any particular referendum material beyond what is covered in this guidance.

The guidance gives details of electoral offences that relate to campaign material:

1.40 Certain offences relate specifically to referendum campaign publicity material. Printed referendum campaign publicity material must contain an imprint and not resemble a poll card.

1.41 Under the Public Order Act 1986, it is an offence to publish or distribute threatening, abusive or insulting material that is intended to stir up racial hatred or which is likely to stir up racial hatred.

The Electoral Commission made the following comments about its impartiality during the Scottish Independence referendum and explained why the Commission does not comment on the arguments put forward in literature published by referendum campaign groups:

Literature circulated by official campaign groups representing both sides in the [Scottish] independence referendum will not be monitored for factual accuracy.

The Electoral Commission has confirmed that in keeping with its current responsibilities, it will not be seeking to extend its remit to include checking leaflets and other literature for accuracy and honesty.

Speaking to Newsnet Scotland, a spokesperson explained that it was the Commission's view that *voters* should decide the merit or otherwise of claims made in literature circulated by both the Yes and No camps and that to try to police content could undermine the Electoral Commission's impartiality.

"The Commission is an independent body tasked with regulating the rules on campaign spending, donations and loans at the referendum. However, we do not have a remit to regulate the accuracy of the content of political campaign communications and materials, whether at referendums or elections." A spokesperson told Newsnet Scotland.

Asked, given the significance of the independence referendum, whether the Commission believed it should seek an extension to its remit to include campaign literature, the spokesperson added:

“We do not think that any role in policing the truthfulness of referendum campaign arguments would be appropriate for the Commission. It would be very likely to draw the Commission into political debate, significantly affecting the perception of our independent role.”²

1.1 Imprints

There is a legal requirement that campaign material should include an imprint. An imprint is added to election material to show who is responsible for its production. It helps to ensure that there is transparency about who is campaigning. On printed material such as leaflets and posters, campaigners must include the name and address of the printer, the promoter, and any person on behalf of whom the material is being published (if they are not the promoter).

Imprints also apply to online material. Where it is impractical to place the full imprint on the online election material campaigners should consider how to provide some other means for the material to be associated with them.

It is an offence not to include an imprint on printed campaign material which is made available to the public during the referendum period. The Electoral Commission does not regulate compliance with the requirement to include an imprint and decisions on the investigation and prosecution of imprint offences are a matter for the police.

² [Electoral Commission rules out monitoring of indy campaign literature](#), Newsnet.Scotland.com, 6 February 2014

2. Government leaflet on the EU referendum

The Government published its own [leaflet](#) on the EU referendum setting out its recommendation that the UK should remain a member of the EU. The leaflet was distributed to every household in England in the period between 11 and 13 April 2016 and was delivered to households in Scotland, Wales and Northern Ireland during the week beginning 9 May 2016. The total cost of publishing and distributing the leaflet was £9.3 million.

The then Minister for Europe, David Lidington, made a statement to the House of Commons on 11 April 2015 and gave further information about the publication, costs and distribution of the leaflet and about the Government website:

...every household in the country will receive a leaflet from the Government. The leaflet sets out the facts, explains why the Government believe that a vote to remain in the European Union is in the best interests of the British people and shows some of the choices that the country would face if the British people were to vote to leave. The leaflet encourages the public to register to vote by 7 June and directs electors to where and how they should do that.

Last week, the Government launched a stand-alone website that features the leaflet online and provides further information to the public. That will be advertised on social media and other digital channels. The leaflet follows precedent from previous referendums, including those on EU membership in 1975, on the creation of the Scottish Parliament and Welsh Assembly in 1997 and on the creation of the mayoral system in London in 1998; in addition, there were two Government leaflets during the Scottish referendum in 2014. Government publications of that kind, and the distribution of a Government leaflet, are entirely lawful. Special rules limiting all Government publications and communications will apply in the last 28 days of the referendum campaign under the provisions of the Political Parties, Elections and Referendums Act 2000.³

There were complaints about the publication of the leaflet from Brexit campaigners and an e-petition about the leaflet attracted over 200,000 signatures.

See the Library Briefing Paper, [Government leaflet on the EU referendum](#), for further information.

³ [HC Deb 11 April 2016 c72](#)

3. Questions about the accuracy of the claims made by referendum campaigns

3.1 EU referendum 2016

Alan Renwick, of UCL's Constitution Unit, wrote an article in June 2016 which looked at the issue of accuracy in the claims of the referendum campaigners.⁴ Renwick asked:

How can we encourage accuracy in the claims made by referendum campaigners? This has become a vital concern. In its [report](#) published last month, the House of Commons Treasury Select Committee said, 'The public debate is being poorly served by inconsistent, unqualified and, in some cases, misleading claims and counter-claims. Members of both the 'leave' and 'remain' camps are making such claims.' Speaking at the weekend, [Sir John Major said](#), 'I am angry about the way the British people are being misled', and argued that Vote Leave were running 'a deceitful campaign'.

Such concerns are not unique to the current EU debate. [My analysis](#) of the last UK-wide referendum – the vote five years ago on whether to introduce the alternative vote (AV) electoral system – found that 26 per cent of the claims made in newspaper reporting of the campaign were not merely misleading, but actually false. This mattered to how voters viewed the choice before them: the political scientist Jack Vowles [surveyed voters](#) at the start and end of the campaign asking whether they thought various statements about AV were true or not. He found that, over the campaign, voters came on the whole to believe the false statements more and the true statements less.

So what, if anything, can be done to promote truthfulness in referendum campaigning? In elections, we have the ultimate backstop that some types of lying are prohibited by [section 106](#) of the 1983 Representation of the People Act. The [recent case](#) involving Orkney and Shetland MP Alistair Carmichael shows the limits of that provision. Nevertheless, the [experience of former Labour MP Phil Woolas](#) illustrates that there are some claims that candidates need to be very careful of making. There is no such constraint in the case of referendum campaigns.

Renwick considered "whether any mechanism can be established for definitively assessing the truthfulness or otherwise of the claims that are made". He noted that "in any referendum campaign, there will be many issues that are matters of legitimate disagreement. But there are also numerous issues of fact, where definitive judgements are in principle possible":

The clearest case of ongoing falsehood is Vote Leave's claim...that the UK sends £350 million pounds a week (or £50 million a day) to the EU. This claim has been called 'potentially misleading' by the UKSA and 'highly misleading' by the Commons Treasury Committee. The BBC's Reality Check site [says](#), 'The UK does not

⁴ [Can we improve the quality of the referendum debate?](#) Alan Renwick, Constitution Unit, 8 June 2016

send £50 million a day to the EU.’ Full Fact [says](#), ‘We send £250 million not £350 million.’ Channel 4’s FactCheck blog points out that the net contribution is substantially lower even than that. Yet Vote Leave continue to use the £350 million number. The official Remain campaign has not engaged in such repeated lying. But it too regularly exaggerates its points or paints as certain forecasts that may or may not prove accurate.

Renwick suggested that after the EU referendum the UK should address the question of whether a mechanism could be put in place for assessing the truthfulness of claims made during the campaign:

Failure to do so may do more than render future referendums unhealthy. If the degree of mendacity witnessed in this campaign were to become commonplace in our electoral politics as well, one of the crucial foundations of our democratic system would be badly damaged.⁵

3.2 Open letter from over 200 academics about misinformation in the EU referendum campaign

An open letter was published in the Daily Telegraph on 14 June 2016 from over 200 academics about the misinformation in the referendum campaign. The letter was co-ordinated by Alan Renwick of the Constitution Unit.

The text of the letter is given below:

SIR – A referendum result is democratically legitimate only if voters can make an informed decision. Yet the level of misinformation in the current campaign is so great that democratic legitimacy is called into question.

Both sides are making misleading claims. Their official communications have been dropping through letter boxes – at taxpayers’ expense – in recent days.

Vote Leave’s leaflet purports to offer “The Facts”, yet leads with the claim that EU membership costs the UK £350 million a week – repeatedly exposed by independent authorities as a blatant falsehood.

The Remain leaflet begins by saying that “over three million UK jobs are linked to our exports to the EU”. Though this is in line with independent analyses, not all these jobs would go in the event of Brexit.

Propagating falsehoods, with support from the public purse, distorts the public communication upon which democracy depends. When the dust from this referendum settles, we must review ways to strengthen campaign truthfulness without curtailing legitimate free speech.

In the short term, broadcasters and the media must focus more fearlessly on challenging deliberate misinformation. Impartial fact-checkers are doing excellent work, but are receiving insufficient attention.

⁵ *ibid*

As the campaign draws to a close, an informed public decision true to the values of British democracy depends on a change of tone.⁶

3.3 Treasury Committee report

Before the referendum the House of Commons Treasury Committee published a report, [The economic and financial costs and benefits of the UK's EU membership](#). In the introduction to the report the Committee commented that "a recurring complaint in the debate on the European Union is the absence of 'facts' about the case for and against the UK's membership on which the electorate can base their vote on 23 June." The Committee examined a number of the claims made by the campaigns and reported that:

The public debate is being poorly served by inconsistent, unqualified and, in some cases, misleading claims and counter-claims. Members of both the 'leave' and 'remain' camps are making such claims.

The Committee aimed to "assess the accuracy of some of these claims, and enable the wider public more confidently to set aside unqualified assertions about the economic impact of their vote".

Paragraphs 22 – 37 of the report related to the £350 million "windfall" claim by the Leave Campaign. The Committee stated in its conclusions and recommendations that:

5. Vote Leave has said that £350m a week is "the core number", and that it is using the number "again and again". It is very unfortunate that they have chosen to place this figure at the heart of their campaign. This has been done in the face of overwhelming evidence, including that of the Chair of the UK Statistics Authority, demonstrating that it is misleading. Without qualification this is unavoidable. Brexit will not result in a £350m per week fiscal windfall to the Exchequer as a consequence of ending the UK's contributions to the EU budget. Despite having been presented with the evidence contradicting this claim, Vote Leave has subsequently placed the £350m figure on its campaign bus, and on much of its recent campaign literature. The public should discount this claim. Vote Leave's persistence with it is deeply problematic. It sits very awkwardly with its promises to the Electoral Commission to work in a spirit that reflects its "very significant responsibility" and the "gravity of the choice facing the British people". (Paragraph 36)⁷

3.4 Complaints about the use of the NHS logo by the Leave campaign

The *Guardian* and *Observer* reported on 31 May 2016 that Government lawyers acting on behalf of NHS England threatened to sue the lead Brexit campaign group, Vote Leave over the campaign's use of the NHS logo in campaign material. The NHS logo is a registered trademark owned by the Department of Health and there are guidelines on how it

⁶ [Over 200 academics criticise deliberate misinformation in EU referendum](#), Constitution Unit, 14 June 2016

⁷ [The economic and financial costs and benefits of the UK's EU membership](#), Treasury Committee, HC 122, 27 May 2016

should be used by NHS organisations. It should not be used by outside organisations without permission.

Justin Madders, MP for Ellesmere Port and Neston, tabled a Parliamentary Question asking what steps the Department was taking in response to use of the NHS logo by the Vote Leave Campaign. This was answered on 9 June 2016 [[See PQ 39429](#)] and the Minister responded that:

Vote Leave is not authorised to use the National Health Service trademark, or an adaptation of it. The Department has sought legal advice and has been in contact with the Vote Leave campaign about misuse of the NHS brand.

3.5 Leave Campaign's leaflet headed "Official Information about the Referendum on 23 June 2016"

There were complaints about leaflets published by the Leave Campaign's which many considered gave the appearance of an official Government document. One version had "Official Information about the Referendum on 23 June 2016" at the top of the first page and was entitled "The European Union and your family: the facts". Another version had "Information about the Referendum on 23 June 2016" on the first page and the title "The UK and the European Union: the facts". The imprints on both stated that the leaflets had been published on behalf of the Leave Campaign.

The *Independent* reported on 6 April 2016 that Chris Bryant MP (then Shadow Leader of the House) had complained to the Electoral Commission about the leaflets:

While the leaflet was produced by the Vote Leave campaign it contained none of the group's branding – and directed people to a website which Mr Bryant suggested seemed "deliberately designed to appear impartial".

Pro-EU campaigners claimed the leaflet made "at least" eight misleading claims despite suggesting it was presenting "the facts" about Britain's membership.

Among the disputed assertions in the leaflet were claims that the EU had "taken control" over Britain's "borders and public services".

[...]

James McGrory, the chief campaign spokesman for Britain Stronger in Europe, claimed Vote Leave was trying to pull "a grand deception on the British people" and were using a "fact" sheet that was "remarkably short on facts to do so".

[...]

Addressing the lack of branding on the leaflet a source in Vote Leave pointed out that Britain's Stronger in Europe had also produced literature with deliberately obscure branding on it.

A spokesman added: "People want to know the facts on the EU such as the fact that we send £350m every week to Brussels that

could go to the NHS if we vote leave and we are experimenting with different formats to see what is most effective.”⁸

3.6 Complaints to the Advertising Standards Authority

The Advertising Standards Authority (ASA) received a number of complaints about political adverts during the EU referendum campaign. The *Guardian* stated on 28 June 2016 that the ASA had received 374 complaints about what have been called “misleading, inaccurate and discriminatory ads and claims made to sway voters” ahead of the referendum.⁹ The ASA published an article on its website explaining why it could not look into such complaints:

As the clock counts down to the UK’s EU Referendum...we’re reminding everyone that political ads are not within our remit. The best course of action for anyone with concerns about a political ad is to contact the party responsible and exercise your democratic right to tell them what you think.

[...]

Political advertisements are banned from being broadcast on TV under the Communications Act 2003 (instead parties are given airtime via party political broadcasts which aren’t classed as advertising). Meanwhile, political ads in non-broadcast media (posters, newspapers etc) whose principal function is to influence voters in local, regional, national or international elections or referendums are exempt from the Advertising Code. We can’t, therefore, look into complaints that political ads are misleading, harmful or offensive. A potted history reveals why.

Until 1999, non-broadcast political advertising was subject to some rules in the Advertising Code. However, following the 1997 General Election, the [Committee of Advertising Practice](#) (the body that writes the Advertising Code) made a decision to exclude political advertising from the ASA’s remit because of several factors that risked bringing advertising regulation in general into disrepute.

These factors included the short, fixed timeframes over which elections run (i.e. the likelihood that complaints subject to ASA investigation would be ruled upon after an election has taken place). Also, the absence of consensus between the Labour, Conservative and Liberal Democrat Parties to bring political advertising wholly within the scope of the Code played its part in CAP taking the decision to exclude all of it.

In 1998, the ASA referred the matter to the Neill Committee on Standards in Public Life. The Neill Committee recommended that political parties should establish a code of best practice in partnership with the advertising industry. The [report](#) was presented to Parliament in July 1999.

And in 2003, the Electoral Commission conducted a consultation on the regulation of electoral advertising. They concluded that the ASA should not be responsible for regulating election

⁸ [EU Referendum: Remain campaign reports Vote Leave to Electoral Commission over ‘misleading’ leaflet](#), *Independent*, 6 April 2016

⁹ [Ad watchdog powerless to act on controversial Brexit campaigns](#), *Guardian*, 28 June 2016

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advertising, but the Commission did not establish a separate Code
- and this remains the case today.¹⁰

¹⁰ [Political advertising complaints, ASA website](#)

4. Previous referendum campaigns

There have been complaints about campaign literature in other referendum campaigns in the UK.

4.1 AV referendum 2011

In October 2011 the Electoral Commission published a report on the administration of the AV referendum that took place on 5 May 2011.¹¹

The Commission noted that during the referendum campaign it had received a number of complaints from campaigners urging the Commission to take steps to deal with alleged misinformation in the content of campaign literature.

The BBC reported on 24 February 2011 that the No to the Alternative Vote campaign was to argue that money spent on the referendum could be used instead on health, education and defence.¹² The Yes to Fairer Votes campaign said that adverts which showed a picture of a sick baby were “shameful and a smear”. The Yes campaign particularly took issue with an advert in the Birmingham Mail which juxtaposed the picture of the baby with the words “she needs a new cardiac facility not an alternative voting system”.¹³

The Yes campaign urged the Advertising Standards Authority to issue guidance on what was acceptable in the advertising for the referendum campaign. The BBC reported that the ASA said that “for reasons of freedom of speech”, it did not have powers to adjudicate on print adverts “where the purpose of the ad is to persuade voters in a local, national or international election or referendum”.

Opponents of AV claimed that the cost of the referendum and the change to a different voting system would cost the UK a total of £250 million; the Yes campaign accused them of “peddling lies” about this, saying that claims that £130 million would have to be spent on electronic counting machines in the event of AV being adopted “were false as ministers have confirmed they have no plans to introduce such procedures in future whatever the outcome of the referendum”.

The Electoral Commission set out its position on regulating such material in its report on the referendum:

5.106 Our statutory remit in respect of regulating referendum campaign materials, as set out in PPERA, provides for us to issue guidance on the rules relating to campaign materials, such as the need for printed material to carry an imprint showing who has produced it. We do not have a remit to regulate the accuracy of the content of campaign materials, either at referendums or elections.

¹¹ [Referendum on the voting system for UK Parliamentary elections: report on the May 2011 referendum](#), Electoral Commission, October 2011

¹² [No to AV campaign reject rivals' scare stories claim](#), BBC News, 24 February 2011

¹³ *ibid*

5.107 In a referendum campaign, campaign materials, like normal advertising materials, may be subject to defamation laws. Parliament has also legislated for certain criminal offences regarding political campaign materials at elections, such as making false statements about the personal character or conduct of candidates. Complaints of this nature would be investigated by the police.

5.108 The Commission is an independent body tasked with running the administration of UK referendums as well as regulating the spending of registered referendum campaigners. We do not think that any role in policing the truthfulness of referendum campaign arguments would be appropriate for the Commission. It would be very likely to draw the Commission into political debate, significantly affecting the perception of our independent role, and posing substantial operational and reputational risks. We therefore invite the Government and Parliament to confirm that a role of this nature would be inappropriate for the Commission.¹⁴

4.2 Scottish independence referendum 2014

The Electoral Commission noted in its report on the 2014 referendum that it had received a number of allegations and complaints about printed campaign material that did not contain an imprint:

A number of these related to homemade campaign material, such as signs and posters. Although there was technically a requirement to include an imprint on this material, we did not consider it to be proportionate or in the public interest to require individuals to include these details when it was either obvious who had produced it or there did not appear to have been significant costs incurred in its production.¹⁵

The Commission had also received a number of enquiries urging it to regulate the referendum debate but reiterated its statement following the 2011 AV referendum when it said it would not be appropriate for the Commission “to have any role in policing the truthfulness of referendum campaign arguments” because it would mean being drawn into political debate. The Commission also referred to the evidence of the then Deputy First Minister, Nicola Sturgeon, during consideration of the Franchise Bill on 28 March 2013 that “it was not for the Electoral Commission to assess the arguments put forward by the Yes and No sides at the referendum.”¹⁶

¹⁴ [Referendum on the voting system for UK Parliamentary elections: report on the May 2011 referendum](#), Electoral Commission, October 2011

¹⁵ [Scottish independence referendum: report on the referendum held on 18 September 2014](#), Electoral Commission, December 2014

¹⁶ *ibid*

5. How much could campaigners spend in the EU referendum campaign?

The EU referendum campaign was regulated by the *Political Parties, Elections and Referendums Act 2000* (PPERA), and the *European Union Referendum Act 2015*.

Controls did not apply to campaigners who spent under £10,000. Anyone spending over £10,000 on campaigning was required to register with the Electoral Commission as a 'permitted participant' and was subject to controls. When the 2015 Act came into force on 1 February 2016, campaigners could register as permitted participants. The Electoral Commission published the [register of permitted participants](#) on its website.

Most controls came into effect when the referendum period began on 15 April 2016.

Income and expenditure relating to referendum campaign activities is regulated. The [Electoral Commission](#) provided detailed guidance for campaigners about the rules they had to comply with and in a [campaigner update briefing](#) the Commission listed what referendum expenditure included:

Referendum spending is what you expend on campaigning to promote or bring about a particular outcome in the referendum.

Referendum spending includes the money you spend on:

- campaign broadcasts (if you are a designated organisation)
- advertising of any kind. For example, street banners, websites or YouTube videos
- unsolicited material sent to voters. For example, letters or leaflets you send that aren't in response to specific queries
- other 'public' documents about the referendum, such as setting out your 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
- transport in connection with publicising your campaign

Limits applied to how much permitted participants could spend on campaign activity. Certain expenditure incurred before the start of the referendum period counted towards a permitted participant's spending limits; and so could expenditure incurred before a person or body registered as a permitted participant.

Box 1: The spending limits for campaigners in the EU referendum

Campaigner type	Vote share in the 2015 general election (if relevant)	Spending limit
Lead campaign organisation		£7m
Conservative Party	36.9%	£7m
Labour Party*	29.0%	£5.5m
UKIP	12.6%	£4m
Liberal Democrat Party	7.9%	£3m
All other permitted participants		£0.7m

Source: *BBC News, Election 2015*; House of Commons Library calculations

* Adjusted to account for votes for Co-op candidates

All registered campaigners, including political parties, must report their campaign spending, donations and loans to the Electoral Commission after the referendum. The date by which they must report this to the Commission depends on how much they spent on their campaign. Registered campaigners who spent £250,000 or less must report by 23 September 2016 and those who spent over £250,000 must report by 23 December 2016. The Electoral Commission's [guidance](#) on reporting deadlines for the referendum gives further details.

6. Referendums in other countries

Alan Renwick (see Section 3 above) argues that the UK should address the question of whether a mechanism could be put in place for assessing the truthfulness of claims.¹⁷

Renwick cites the example of the **New Zealand** Electoral Commission, which issued a news release during the country's 2011 referendum on electoral reform. The release followed complaints that had been received about claims made by the Vote for Change organisation relating to the number of MPs. The Commission's press release stated that:

With the General Election and Referendum on the Voting System only eight days away, the Electoral Commission wants to ensure that voters are not misled by factually incorrect advertising about the content of the referendum.

The Electoral Commission has received a complaint about material issued by the Vote for Change organisation that states MMP "requires 120 MPs", while the alternative voting systems to be considered in Part B of the referendum "could work with 99 MPs".

"The Electoral Commission has no interest in stifling legitimate debate, but does have a direct interest in ensuring voters are provided with factually correct information," says Robert Peden, Chief Electoral Officer.¹⁸

However the remit of the NZ Electoral Commission in New Zealand's 2011 referendum is slightly different to that of the Electoral Commission in the UK. The New Zealand Commission was charged with educating voters on the different systems being proposed in the referendum. This caused issues for the Commission because the New Zealand general election was held on the same day. In its voter information for the general election the Commission could not provide information on how to vote as this would have given undue prominence to one type of voting system being considered in the referendum.¹⁹

In the Commission's press release the Chief Electoral Officer highlights this:

"The Commission has responsibility for the official referendum education campaign. It is in that context, in relation to the number of MPs, where the Commission's concerns lie."²⁰

In terms of election advertising (campaign material in New Zealand is considered advertising, both in print and in broadcasts) the New Zealand Commission does not have a role in regulating content. In the media guidance for the 2011 election and referendum:

¹⁷ *ibid*

¹⁸ New Zealand Electoral Commission, *Accurate information about referendum vital, says Electoral Commission*, 18 November 2011.

¹⁹ New Zealand Electoral Commission, *Report of the Electoral Commission on the 2011 General Election and referendum*, April 2012, page 15

²⁰ New Zealand Electoral Commission, *Accurate information about referendum vital, says Electoral Commission*, 18 November 2011.

The legislation does not regulate the substantive content of election advertisements, and election programmes, but publishers and broadcasters may have a liability if election or referendum advertising or election-related material breaches a relevant industry code of practice.²¹

In **Australia**, where as in New Zealand campaign material during the election purdah period is an election advertisement, the prohibition of untrue election advertising was enacted in 1983 by inserting new section 116(2) [subsequently section 329(2)] into the *Commonwealth Electoral Act 1918*. However, following a report by the Australian Parliament's Joint Select Committee on Electoral Reform the provisions were repealed in 1984. A majority of the Committee's members concluded:

that even though fair advertising is desirable it is not possible to control political advertising by legislation. As a result, the Committee concludes that s 329(2) [161(2)] should be repealed. In its present broad scope the section is unworkable and any amendments to it would be either ineffective, or would reduce its scope to such an extent that it would not prevent dishonest advertising. The safest course, which the committee recommends, is to repeal the section effectively leaving the decision as to whether political advertising is true or false to the electors and to the law of defamation.²²

The Australian Electoral Commission has provided background to the federal electoral law:

The Australian Parliament has determined that the Act should not regulate the content of political messages contained in electoral advertising. Rather, the intent of the Act is to ensure electors are informed about the source of political advertising and to ensure that political advertising does not mislead or deceive electors about the way in which a vote must be cast

...

Accordingly, the AEC has no role or responsibility in deciding whether political messages published or broadcast in relation to a federal election are true or untrue. However, the AEC does have a role in ensuring, to the extent possible, that electoral advertisements which appear in the print media, on posters and on videos are properly authorised so that electors know who is responsible for the statements contained in them.²³

Ireland has a Referendum Commission. Its role is to give general explanations of the issue being voted on and to promote public awareness of and encourage participation in the poll.²⁴ As this article from the *Irish Times* shows, there are similar issues about fact checking referendum claims:

What is needed is for the Commission (in Ireland and the UK) to be given a remit to call out misleading information, which can in turn be utilised by broadcasters and others when mediating debates. Without this many broadcasters are left with the option

²¹ New Zealand Electoral Commission, *Media handbook*, 2011, p28

²² Parliament of Australia, *Truth in Political Advertising Legislation in Australia*

²³ Australian Electoral Commission, *Electoral Backgrounder: Electoral advertising*, June 2016.

²⁴ Irish Referendum Commission, *FAQs*, accessed 20 July 2016

allowing one side to argue white and the other to shout black. The viewer is of course left confused.

The current government has again committed to establishing an electoral commission and it is essential that the Referendum Commission becomes a permanent part of this new architecture (if it ever happens). Referendums are likely to be a regular part of our political future and in particular, any government considering putting another question on abortion to voters would be well advised to bolster the independent and trusted role that the Commission plays. They might consider specifying an additional function of fact-checking for the Commission.²⁵

²⁵ Irish Times, *Brexit post mortem: Vote highlights the danger of referendums*, 10 July, 2016

7. An Office of Electoral Integrity?

There have been calls for an independent regulator to oversee campaign claims. An Early Day Motion published on 4 July 2016 has called for an independent Office of Electoral Integrity to be established:

That this House welcomes the petition on the change.org website, entitled Restore truthful politics - create an independent office to monitor political campaigns; notes that this petition has gained more than 160,000 signatures since it was launched following the EU referendum; agrees that misleading claims put forward during the referendum campaign undermine the integrity of our democratic system; supports the call for the establishment of an independent Office of Electoral Integrity (OEI) to factually verify the truthfulness of claims made during political campaigns, with powers to issue clarifications and fines where appropriate; believes that this will help to ensure that future elections and referenda are contested on the basis of accurate and verifiable facts, strengthen accountability in political campaigning in the UK and restore faith in the democratic process; and urges the Government to consider the merits of creating an OEI and provide a response to the petition as soon as possible.²⁶

The EDM had 42 signatures on 26 July 2016.

²⁶ EDM 278 4 July 2016

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