

# The extent of Russian-backed fraud means the referendum is invalid



*Four separate reports have fatally undermined the Brexit vote, argues **Ewan McGaughey (King's College London)**. They show how Russia used the Leave campaigns, official and unofficial, to sway the referendum. A case soon to be heard in the High Court will argue that the result should consequently be deemed void.*

Four reports from the US and UK on the Brexit poll have damaged the legitimacy of the vote. They documented the Kremlin-backed cyber-war, the harvesting of UK voters' personal data, criminal overspending, and how the biggest donation to Brexit, £8.4m by Arron Banks, may not have come from the UK. (Banks denies his money came from a Russian goldmine, but failed to sue those who said he '[colluded w/ Russians to deliver #Brexit](#)', and Banks' lawyers [dropped him](#).) Now a [legal case](#) is listed for 7 December to declare Brexit void, and nullify notification of article 50. It is being led by two QCs against the Prime Minister. The campaign for a 'People's Vote' on the actual deal – not a mystery Brexit prize – is also gathering strength. So after four reports, is a funeral for Brexit coming soon?

The reports make compelling viewing. First, in January 2018 a US Senate minority committee [documented](#) how 'Putin's Asymmetric Assault on Democracy' in the UK was coming 'into sharper focus'. It said this was 'all the more stunning given the innate resilience within British society to the Kremlin's anti-democratic agenda.' Before he quit the Foreign Office on 9 July, Boris Johnson told a Commons committee he hadn't seen '[a sausage](#)' of evidence for Russian interference in Brexit. That appears to have been as truthful as a certain bus.



Donald Trump and Vladimir Putin, July 2018. Photo: [White House](#). Public domain

Second, released on 11 July, the Information Commissioner's Office issued a '[notice of intent](#)' to bring the maximum fine against Facebook, for allowing 'harvesting of data', which ended up in the hands of the Leave campaigners. The fine was [imposed](#) on 25 October. The ICO explained how Facebook enabled online ads to be psychologically targeted at UK voters. Vote Leave leader Dominic Cummings said after the referendum he '[dumped our entire budget](#) in the last 10 days, and really in the last three or four days'. This targeted 'roughly 7 million people, who saw something like one and a half billion ads'.

Third, on 17 July, the Electoral Commission's [Report](#) announced a fine against Vote Leave for (at best) recklessly breaking its legal spending limit by £449,079.34. It coordinated a 'common plan' with its youth wing, BeLeave, to overspend. This amounted to 6.4% excessive spending, compared to a margin of 1.8% of voters in the poll result. Would Vote Leave have won without that spending and advertising? According to Cummings, '[All our research and the close result strongly suggests No.](#)' The same goes for Vote Leave's criminal offences.

In the fourth report, perhaps the most shocking, the Conservative-led Department for Culture, Media and Sport select committee [concluded](#) Russia engaged in 'unconventional warfare' during the Brexit campaign. This included '156,252 Russian accounts tweeting about #Brexit' and posting 'over 45,000 Brexit messages in the last 48 hours of the campaign.' As it said, Kremlin-controlled media, 'RT and Sputnik had more reach on Twitter for anti-EU content than either Vote Leave or Leave.EU, during the referendum campaign'. This alone is damning – but we know it is nowhere near the full extent, because Facebook and Alphabet (which owns YouTube and Google) have not been forced to disclose how their platforms were exploited. The DCMS committee did not undertake legal analysis, but it is an [offence](#) for broadcasts (which [include memes or videos online](#)) 'to [influence persons to give or refrain](#)' from giving their votes 'from a place outside' the UK. Aiding and abetting a crime is also potentially a crime. This should enable the police to force Facebook and Alphabet to disclose its data on the extent to which Russian-financed bots exploited 'like', comment and sharing functions.

The select committee also [backed](#) the National Crime Agency's [investigation](#) of Banks, which began on 1 November. Banks – a failing insurance salesman – ostensibly gave the biggest political donation in UK history to Brexit: £8.4 million. The committee said Banks 'failed to satisfy us that his own donations had, in fact, come from sources within the UK.' It is [reportedly](#) clear that the Kremlin offered Banks a multi-billion dollar goldmine. Banks tweeted four weeks after the Brexit poll "I am buying gold at the moment & big mining stocks." Taking money from a hostile foreign party would be a national security issue of the highest order: with '[unconventional war](#)' it may raise the prospect of offences under the Trading with the Enemy Act 1939. Vince Cable called it '[treason](#)'.

These four reports are just the tip of the Brexit-berg. Professor Timothy Snyder, a Yale historian, explains in [The Road to Unfreedom](#) how Russia has engaged in hot, cold, and cyber-war against Europe and America. A turning point appears to be the run-up to both the Ukrainian conflict and the Paris climate agreement of 2014. Putin has long [mocked](#) the existence of manmade climate damage. [Russia's exports are 60% fossil fuels](#) (compared to China with 2% or the UK and US around 8%). When we get a zero-carbon economy, Russia's economy is in serious trouble because its oligarchs are failing to diversify. This is why Russia backs climate-damage deniers or sceptics everywhere: Donald Trump, Marine Le Pen, the Alternative für Deutschland, Lega Nord, the United Kingdom Independence Party, or indeed Vote Leave's CEO Matthew Elliot, who co-founded the Conservative Friends of Russia.

The illegal data harvesting, the overspending, the cyber-war by Russia, the possibly criminal source of the biggest donation to Brexit, delegitimise the Brexit poll. This matters because at common law, votes can be void when they break the law. The [common law principle](#) applies to both elections and referendums. First, in the leading case called *Morgan v Simpson*, the Court of Appeal held if an

'election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected or not.'

Second, where there is an irregularity – even one that is not major – that 'did affect the result' (and it is arguable it did for Brexit) a vote must also be declared void.

This specific rule, which requires a vote is free and fair, is connected to the general principle that 'fraud unravels everything'. As a leading case once said, 'No judgment of a court, [no order of a Minister](#), can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever.' '[Fraud in law is an objective concept](#). It implicates the fraudulent appropriation of Facebook data; Vote Leave 'knowingly or recklessly' overspending; the fraudulent pretence that Russian cyber-bots or algorithms were a legitimate part a UK political discourse; or potentially fraudulent funding of Brexit by Russia through Arron Banks. It means that the 'order' of the Prime Minister to trigger article 50, and negotiate to leave, could be unravelled.

The case that will argue this – which begins on 7 December – is called *Wilson v Prime Minister*. The [full grounds](#) are well worth reading, but its opening sentence is the nub: the question is whether a ‘free and fair vote is one of the constitutional requirements of the United Kingdom’. Wilson and the other claimants submit that it is.

Now, it’s a big thing to litigate the very validity of Brexit. But if Russian athletes win Olympic medals when they are taking drugs, their victories are not valid. The same is true of a corrupt vote. The Prime Minister’s lawyers have already said that maybe the PM knew about the possibility of fraud, and has gone ahead with Brexit anyway. If that’s true (without having the full facts) the PM’s discretion can still be declared void because she didn’t take into account relevant considerations: the full extent of the fraud.

What’s clear is that the UK is now in a terrible situation. It’s not just the economy. We are genuinely facing the breakup of the country: the end of a 210 year union between Britain and Northern Ireland, and the risk of ending a 311 year union with England, Wales and Scotland. For Putin, the ability to disable two permanent members of the United Nations Security Council in two years is a genuine geopolitical victory. It didn’t work with Le Pen in France, and it can’t touch China. But it gave the UK Brexit, and it gave the US Trump. Our senior politicians need to look impartially and dispassionately at what has been unfolding, and act.

After the last physical invasion of British sovereignty, in 1947, the Electoral Law Reform Committee said irregularities in votes were ‘attempts to wreck the machinery of representative government’ and ‘an attack upon national institutions which the nation should concern itself to repel.’ Our constitution is not codified, but it is written in the case law and the statute books. The law tells us every vote must be free and fair. If Brexit was not, as four reports show, it looks like it’s time for a funeral.

*This post represents the views of the author and not those of the Brexit blog, nor the LSE.*

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