Claims EU Referendum was not Legal

2 February 2025

The Claims

An X (Twitter) account made the following claims on 02/02/2025:

1) Not a record breaking turn out – Leave lie to try and prevent people questioning it.

2) Advisory referendum with no legal standing

3) 2% swing changes result – were no one duped/mislead?

Interpretation:

1. The turnout in the EU Referendum was not the highest turnout in British history
2. The EU Referendum was only advisory and not legally binding
3. A 2% swing would have changed the result and therefore the referendum outcome is questionable or illegitimate

Response

1. Turnout Analysis

The 2016 Referendum saw a higher turnout than every General Election since 1992, showing the public's strong interest in the Brexit issue. It was up there at No5 in the list of highest turnouts by percentage of the electorate and No2 by total votes cast.

Election	Turnout (%)	Total Votes Cast	Rank by Total Votes	Rank by % of Electorate
1992 General Election	77.70%	33,614,074	1	3
2016 EU Referendum	72.20%	33,577,342	2	5
1974 General Election	78.80%	31,321,018	3	4
1979 General Election	76.00%	31,221,362	4	6
1950 General Election	83.90%	28,771,124	5	1
1951 General Election	82.60%	28,596,594	6	2
1970 General Election	72.00%	28,305,533	7	8
1966 General Election	75.80%	27,870,161	8	7

2. Legality

it's important to distinguish between the **legal status of the referendum** and the **political reality of its implementation**. Here are some key points that address the argument:

1. The Referendum Act Did Not Specify It Was Advisory

- The **European Union Referendum Act 2015**, which enabled the vote, **did not** state that the referendum was advisory.
- Some past UK referendums (such as the **2011 AV referendum**) had explicit legal provisions stating the result **must** be implemented, but the 2015 Act **was silent** on this point.
- However, UK constitutional principles mean that unless explicitly binding, **referendums technically do not have automatic legal force**—it is Parliament that decides the next steps.

2. The Government's Clear Commitment to Implement the Result

- Before the vote, the **UK government repeatedly stated it would respect the outcome**.
- The official government leaflet, sent to every household, explicitly said:**"This is your decision. The Government will implement what you decide."**
- This created a **legitimate expectation** among voters that the result

would be acted upon.

3. Parliament Endorsed the Referendum's Outcome

- After the referendum, Parliament voted to **trigger Article 50** of the Treaty on European Union (by **494 to 122 votes** in the House of Commons).
- The **European Union (Withdrawal) Act 2018** then passed, repealing the **European Communities Act 1972**, formally enacting Brexit in UK law.
- These acts show that the referendum result was **not merely advisory in practice**—it was given full legal effect through legislation.

4. Courts Acknowledged the Referendum's Political Force

- In the **Miller case (2017)**, the Supreme Court ruled that **Article 50** could only be triggered by an Act of Parliament, but it did **not** question the legitimacy of the referendum result itself.
- The ruling reinforced that the referendum, while not legally binding on its own, **compelled Parliament to act in line with the public mandate**.

5. International and Political Precedent

- Many countries have held referendums that were not explicitly "binding" but were still **respected as mandates for change**.
- If the referendum had been ignored, it would have set a **dangerous precedent for disregarding democratic votes**.

Conclusion: Legal vs. Political Reality

- **Legally**, the referendum result did not **automatically** change the law—it required Parliament to act, which it did.
- **Politically**, the government had committed to following the outcome, and Parliament **overwhelmingly endorsed it**, making the claim that it was

"only advisory" largely **irrelevant in practice**.

The key rebuttal to those claiming it was **only advisory with legal standing** is that:

1. **It was treated as binding in political and legislative terms.**
2. **The government and Parliament followed through with legal changes.**
3. **If it were merely advisory, Parliament would not have passed laws to implement Brexit.**

David Cameron was quite clear on this:

3. A 2% swing would have changed the result

The argument that a **2% swing would have changed the result** and therefore the referendum outcome is questionable or illegitimate is **logically flawed** for several reasons:

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1. Close Margins Are Still Democratic Outcomes

- In **democratic systems**, a narrow margin **does not invalidate the result**.
- Many elections and referendums worldwide are decided by small swings. Examples include:
    - The **1975 UK Referendum on EEC membership**: 67.2% **Remain** vs. 32.8% **Leave**—a large margin, yet no one argued that a swing could have changed the outcome.
    - The **2000 US Presidential Election**: George W. Bush won despite a **537-vote margin in Florida** (effectively 0.009% of total votes).
    - The **2014 Scottish Independence Referendum**: 55.3% "No" vs. 44.7% "Yes"—a 5.6% margin, yet accepted as final.

A democratic process does not require a landslide to be legitimate. A win by a single vote is still a win.

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2. If a 2% Swing Matters, Then So Does the 52% Leave Majority

- The claim suggests that a small change could have reversed the result.
- But **that same logic applies to any democratic vote**—a small shift could always change history.
- **The reality is that the 52% majority was the actual result.** Speculating about "what ifs" is irrelevant unless you apply the same standard to every election.

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3. "Duped/Misled" Argument is Unprovable and Cuts Both Ways

- The suggestion that people were **"duped or misled"** assumes:
  1. **Only Leave voters could have been misled**, when in fact **both campaigns had questionable claims**.
     - **Remain's "Punishment Budget"** warning never materialised.
     - **Leave's £350 million NHS claim** was misleading.

  2. **People weren't capable of making informed choices**—which is a **dangerous anti-democratic argument**.
     - If misinformation invalidates votes, then **no democratic vote is ever legitimate**, since all campaigns involve rhetoric and contested claims.

Unless you apply the same scrutiny to every past election, this argument is selective and weak.

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4. No One Argued This About Other Close Votes

- The **1979 Scottish Devolution Referendum** required 40% of all eligible voters (not just turnout) to approve, despite a 51.6% "Yes" vote—it failed.
- The **1997 Welsh Devolution Referendum** passed with just **50.3% Yes vs. 49.7% No**—a **0.6% margin**—yet was implemented.
- The **2014 Scottish Referendum** (55.3% No) was not rerun despite a closer margin than the 1975 EEC Referendum.

Why apply a different standard to the EU referendum?

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5. The "People Didn't Know What They Were Voting For" Argument is Elitist

- This assumes voters are **incapable of making decisions**—a **fundamentally anti-democratic stance**.
- If we say **"people didn't understand"**, where does it stop? Do we re-run every election where campaign claims were disputed?

Democracy means accepting that people make choices—even if some regret them later.

Conclusion: The Margin Argument is Weak

- **A 2% swing is irrelevant because the vote was counted under clear rules.**

- **Democracy doesn’t require a landslide to be legitimate.**
- **Claims of misinformation are unprovable and apply to all votes.**
- **Applying this logic inconsistently is anti-democratic.**