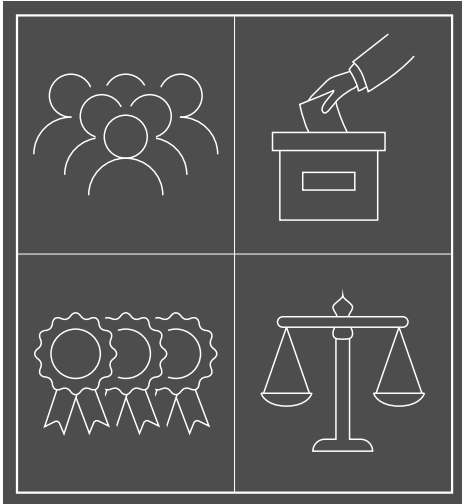
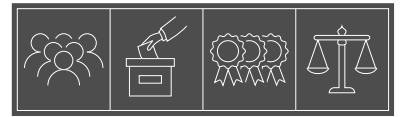


# Regulating Election Finance

## A Review by the Committee on Standards in Public Life

The Committee  
on Standards  
in Public Life



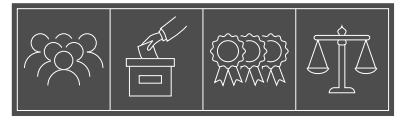


# **Regulating Election Finance**

**A Review by the Committee on  
Standards in Public Life**

**Chair, Lord Evans of Weardale**

July 2021



# Chair's foreword

Dear Prime Minister,

I am pleased to present the 22nd report of the Committee on Standards in Public Life on the regulation of election finance.

Digital campaigning is revolutionising the way parties and campaigners engage with voters. But it has also made it harder to track how much is being spent, on what, where and by whom. Questions have been raised, both by those with direct experience of the system and by the public, as to whether the current framework for regulating campaign finance is coherent and proportionate.

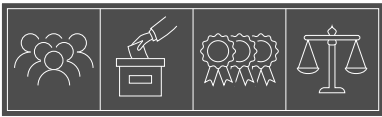
In regulating election finance it is vital to have effective rules that ensure fairness without designing a system so complex and demanding that it deters those who cannot rely on the support of well-resourced party machinery. Some will think that the recommendations in this report don't go far enough. Others will think they are too radical. We have sought to take into account the diversity of views that we heard, and make practical recommendations that will lead to tangible improvements to the current system, both for those who must understand and comply with it and for the public, who are entitled to know how money is being spent to influence their vote.

We have been guided by the principles that people have told us should underpin the regulation of election finance. These include fairness, transparency and accountability. Participation is also crucial: elections should be open to all and we have sought to ensure that our recommendations would not penalise smaller political parties and campaigners who are not supported by professional compliance teams.

Our report focuses on practical proposals that seek to modernise and reform aspects of the regime.

We recommend tightening the requirement to identify the true source of donations and reduce the potential for foreign money to influence UK elections. We also make recommendations to increase voter access to information about how money is spent at elections and referendums in the age of digital campaigning. We look at the issue of non-party campaigning and what changes can be made to improve regulation in this area.

A main area of focus is on compliance with the law. Criminal sanctions remain necessary for serious breaches, such as deliberate attempts to circumvent the system. However, where there has been a breach of the rules as the result of an inadvertent error, we believe a civil sanction is the more appropriate route.

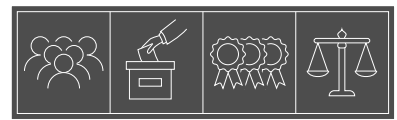


This is why we have proposed a package of recommendations to enhance the civil sanctions regime. These include the decriminalisation of criminal offences that relate to essentially administrative requirements; extending the civil sanctions regime to include candidate finance laws (to end the cliff edge for candidates where the only enforcement action that can be taken is either criminal prosecution or nothing); and new time limits for Electoral Commission investigations to encourage timely enforcement action. There are also recommendations to improve provision of guidance and advice.

Together, the recommendations we have made in this report will deliver significant improvements to the current framework for regulating election finance, creating a more transparent, proportionate and effective system.

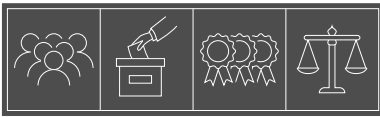
**Lord Evans of Weardale**

Chair, Committee on Standards in Public Life



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# Executive summary

Proportionate and effective regulation of the money spent to influence the outcome of elections and referendums is vital to the operation of a functioning democracy. A little over twenty years since the regime for regulating party expenditure was established, we have taken the opportunity to review whether the current system continues to live up to the principles demanded of it.

While we believe that the case for consolidation and simplification of electoral law, as proposed by the Law Commission, is unarguable, we believe that additional reforms are needed and these can be made in advance of any wholesale consolidation of the law. The majority of our recommendations are designed to deliver practical reforms to address modern campaign practices, meet emerging threats around the source of donations, deliver greater transparency and enhance compliance with election finance law.

Taken together, the package of recommendations in this report will modernise the current system and increase the effectiveness of electoral regulation.

## Chapter summaries

### **Chapter 1 - What principles should underpin the regulation of election finance?**

In this chapter, we set out the principles that contributors to our review told us should matter the most when seeking to regulate the money that is spent to influence the outcome of election and referendum campaigns.

We group these principles into seven categories:

#### **Fairness**

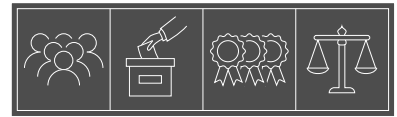
The outcome of an election should be based on the electorate freely choosing and voting for their preferred candidate and policies. Electoral rules should be fair and coherent.

#### **Open to all**

Democratic engagement should be open to all and the regulatory system should support this. Participation should not be limited to those with deep pockets.

#### **Transparency**

The amount of money received by political parties, campaigners and candidates, where that money comes from and what it is spent on, are legitimate matters of public interest. Journalists and academics must have access to this information to enable them to analyse and interpret the data for voters.



### **Confidence and trust**

The voting public must be confident that donations and campaign expenditure are being regulated fairly.

### **Simplicity and clarity**

Campaign finance laws should be clear and easy to comply with.

### **Accountability**

Those involved in raising and spending money in elections need to be accountable for their actions. There needs to be a proportionate response to breaches of the law.

### **An independent regulator**

The majority of contributors to the review told us they believe in the principle of a strong, independent regulator of election finance, free from the influence of any particular political party or group.

## **Chapter 2 - Electoral law**

This chapter discusses the complexity of electoral law. It sets out the evidence we heard about the negative impact that this complexity may have on the willingness of people to participate in the democratic process by becoming treasurers, candidates and campaigners and on the effectiveness of electoral administration and regulation.

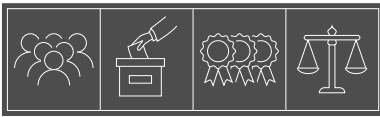
We also examine the legal framework for party (national) and candidate (local) expenditure. Some contributors to the review expressed concern that digital campaigning has helped larger parties to focus their spending on marginal constituencies, blurring the regulatory division between expenditure intended to secure the success of the party, recorded against (high) party spending limits, and that intended to secure the success of the candidate, recorded against (relatively low) candidate spending limits.

The principle of candidate spending limits is undermined if national parties are able to target expenditure heavily in particular constituencies. We signpost the recommendations in our report that will increase transparency and allow for closer monitoring of whether expenditure is correctly allocated against party or candidate spending limits.

We also call on the government to bring forward a bill to simplify and consolidate electoral law as proposed by the Law Commission.

## **Chapter 3 - The Electoral Commission**

The focus of our review is the Electoral Commission's role as a regulator of donations and campaign finance laws. However, contributors were keen to share their perspectives on the Electoral Commission more broadly.



In this chapter we set out the Electoral Commission's governance structure and accountability framework, before moving on to discuss the evidence we heard about the Commission's mandate, its effectiveness and its status as an independent regulator.

The majority of contributors expressed confidence in the Commission as an independent, non-partisan regulator, including those who see room for improvement in how the Commission carries out its role. However, we also heard from some MPs and campaigners who believe the Commission is institutionally biased, and cited their personal experiences to support their case.

We set out our strongly-held belief in the value of an independent regulator, insulated from political pressures and at arm's length from the government. The Electoral Commission needs to command the confidence of political parties, campaigners and the public through effective delivery and assiduous impartiality. The Commission performs an important role in our democratic system and it should be respected but also open to scrutiny and challenge.

## **Chapter 4 - Donations**

In this chapter we set out the evidence we heard about the shortcomings in the system for regulating donations and loans. The rules on permissibility in the Political Parties, Elections and Referendums Act 2000 (PPERA) were intended to ensure that foreign donations were not able to influence the operation of the political process, but we heard concern about the scope for these rules to be circumvented.

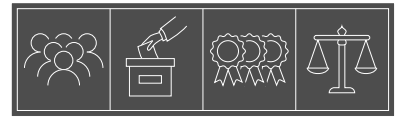
To address the risk that the current rules on donations from companies provide a route for foreign money to influence UK elections, we recommend that donations should only be made from profits generated in the UK. We recommend tighter rules on unincorporated associations, which the evidence suggests are a weak point in the regime. We propose recommendations regarding the permissibility requirements for unincorporated associations and a simplification of the rules on disclosure to provide greater confidence in the original sources of donations.

The final package of recommendations in this chapter reflects our conclusion that parties and non-party campaigners should have appropriate procedures in place to determine the true source of donations. Parties and campaigners should develop a risk-based policy for managing donations, proportionate to the levels of risk to which they are exposed, and the Electoral Commission should provide detailed guidance on how to develop such a policy.

## **Chapter 5 - Regulated periods and campaign expenditure**

In this chapter we consider the evidence we heard about 'regulated periods'. These are the periods during which spending limits and reporting obligations apply. Many contributors told us that we are now in an age of permanent campaigning and regulated periods no longer reflect the way that politicians and campaigners seek to influence the electorate. We heard arguments for shorter periods, longer periods and a case made for year-round regulation of campaign expenditure. Our conclusion is that while the current system is far from perfect,





there is no obvious alternative on the basis of the evidence to date. Ongoing consideration of the nature of regulated periods in modern elections is needed.

We also consider two areas where election finance laws require modernisation. First, to bring the rules for parties in line with the rules for non-party campaigners and candidates, we recommend that the costs of directly employed staff working on election and referendum campaigns should be included in the spending limits for political parties and referendum campaigners. Second, we recommend that all new parties and referendum campaigners should be required to submit a declaration of assets and liabilities over £500 on registration so that their financial position is known before the election or referendum.

## **Chapter 6 - Digital campaigning and election finance**

This chapter sets out the evidence we heard that election finance regulations require updating for the digital age. Digital campaigning can have a positive impact on participation, yet the rules provide insufficient transparency about how digital campaigning is being used in election and referendum campaigns, and by whom.

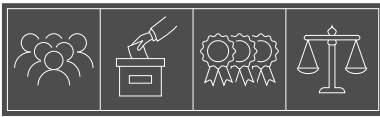
The government has committed to introducing an imprint regime for digital campaign material through the Election Integrity Bill. Our recommendations include changing the law to require parties and campaigners to provide the Electoral Commission with more detailed invoices from their digital suppliers and to report what medium was used for each category of expenditure in their spending returns. We recognise that social media companies have created advert libraries but these have significant shortcomings. There should be a legal requirement for advert libraries to include detailed information including precise figures for the amounts spent, who paid for the advert and the intended target audience of the advert.

Finally, in keeping with the core principle that foreign money should not be permitted to influence the outcome of elections, we recommend the rules explicitly ban spending on campaign advertising by foreign individuals or organisations. This is to address the risk of foreign sources using digital campaigning to exert influence in the UK.

## **Chapter 7 - Reporting timeframes**

The current timeframes for reporting campaign expenditure are too long. This chapter notes that those parties and campaigners spending over £250,000 have six months to file their spending returns with the Electoral Commission, which must then check the details before publishing them. Since most of the offences the Commission can investigate relate to reporting, this also builds in a delay to the investigation of potential offences.

We consider that there should be parity between the reporting timeframe for both parties and candidates. This would allow candidate and party returns to be scrutinised together and discrepancies more easily identified. However, we recognise that moving to 35 days (the timeframe for reporting candidate spending returns) may not be realistic for all parties in the short term. We recommend a package of measures designed to ensure more timely availability of the full details of the money spent by parties and non-party campaigners for public scrutiny.



## Chapter 8 - Non-party campaigning

This chapter explores issues raised about non-party campaigning. Concerns were expressed to us about the amount of money spent by non-party campaign groups on messages closely aligned to political party policies at the 2019 General Election, and a lack of regulation of non-party campaigners spending under the registration thresholds specified in legislation.

We also heard about the significant challenges that charities and other civil society organisations face in complying with the law, given the complexity of determining whether their activities would come within the remit of electoral law and therefore need to be reported to the Electoral Commission.

We are clear that non-party campaigning has a role in the democratic process and can broaden the pre-election debate to include agendas that are not being actively advanced by political parties.

The recommendations we make in this chapter are intended to increase transparency around campaigning that is carried out on behalf of political parties and increase the information available about non-party campaigners in advance of an election. Third parties should be required to disclose more information when registering with the Electoral Commission. We would also like to see specific non-party campaigner registers for each election event and the requirement for non-party campaigners to register at each election in which they intend to campaign.

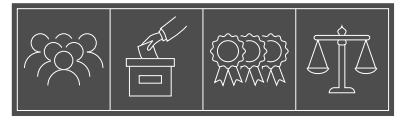
We consider there should be greater certainty for voluntary organisations about whether particular activities they engage in meet the ‘purpose test’ of promoting electoral success. We recommend the government should clarify in legislation the scope of the law on issues-based campaigns.

## Chapter 9 - Compliance part 1 - the criminal and civil regimes

This chapter describes the framework for the enforcement of election finance offences. There is a criminal route for the investigation of offences for which there is persuasive evidence of guilty intent. This involves the police and the courts. There is a civil regime for lesser offences, which is managed by the Electoral Commission.

We make a package of recommendations that focus on increasing the effectiveness of the system for securing compliance with election finance law. These recommendations aim to:

- Create a more coherent balance between the criminal and civil aspects of the regime by recommending decriminalising criminal offences in PPERA that relate to essentially administrative requirements.
- Improve the provision of guidance and advice to parties, non-party campaigners and candidates. Parties and campaigners who seek advice from the Electoral Commission should have a reasonable expectation of receiving a clear and authoritative response.



- Give the Electoral Commission additional powers to obtain information outside of an investigation and to share information with the police and other regulators.
- Improve the timeliness of investigations. We recommend Electoral Commission investigations should be opened within 12 months of the date of the offence being committed or, if later, from the date at which the Electoral Commission first became aware of the circumstances of a potential offence. There should also be a 12-month limit on the duration of Electoral Commission investigations. Both time limits should be extendable by 12 months on application to a court in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.
- Empower the Electoral Commission to impose more proportionate and meaningful sanctions. The maximum fine the Commission may impose should be increased to 4% of a campaign's total spend or £500,000, whichever is higher.
- Make electoral law processes more efficient and cut bureaucracy. This includes transferring the responsibility from the courts to the Electoral Commission for granting permission to parties, non-party campaigners and referendum campaigners to pay late invoices or bills from suppliers.

## **Chapter 10 - Compliance part 2 - candidates**

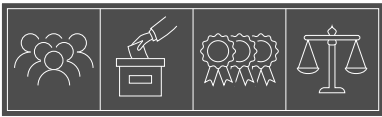
There is a disconnect between the regime for regulating the finance rules for parties and non-party campaigners, and that for candidates. If a candidate has committed an offence, the only option is criminal prosecution or the offence goes unaddressed.

This chapter explores the evidence we have heard that the fear of criminalisation risks deterring volunteers from becoming candidates and election agents. A civil sanction regime, overseen by the Electoral Commission, would deliver a more proportionate route for enforcing offences committed as a result of a genuine mistake or misunderstanding.

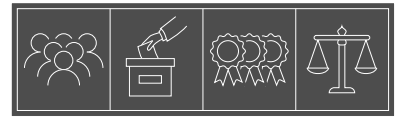
While we note that some contributors to the review were opposed to the Electoral Commission taking on new powers as a matter of principle, we conclude that a civil sanctions regime for candidates would improve the effectiveness of the enforcement of both parts of the regime. It would allow for more joined-up oversight of how parties, campaigners and candidates comply with the requirements in PPERA and the Representation of the People Act 1983 (RPA), including whether spending is correctly allocated according to the key test of whose electoral success is being promoted.

We consider that a civil sanctions regime for candidates should go hand-in-hand with the responsibility to administer a single, centralised database for spending returns.

The current process for submitting spending returns is out-of-date and delivers limited transparency – involving submitting paper copies to returning officers who are required to store them and make them available for inspection. Candidates' election expense returns should instead be submitted through a secure online facility and be available to all to view online.



In line with our recommendation to decriminalise administrative offences in PPERA, we propose the administrative offences in the RPA should also be decriminalised and replaced with a civil sanctions regime overseen by the Electoral Commission. The same time limits described in chapter 9 should apply.



# List of recommendations

## **Recommendation 1**

The government should bring forward a bill to simplify and consolidate electoral law as has been recommended by the Law Commission.

## **Recommendation 2**

PPERA should be amended to provide specific clarification that to be a permissible donor, an individual must be on a UK electoral register.

## **Recommendation 3**

PPERA should be amended to provide that company donations should not exceed net profits after tax generated in the UK within the preceding two years.

## **Recommendation 4**

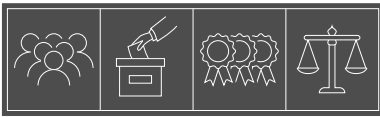
PPERA should be amended to require unincorporated associations that meet the threshold for registration with the Electoral Commission to conduct permissibility checks on a relevant donation (that is, money intended for political activity).

## **Recommendation 5**

The government should amend the law to simplify the disclosure requirements that apply to unincorporated associations. The new rules should provide transparency around political gifts made to unincorporated associations donating more than £25,000 (the current threshold) to political parties in a year. They should also be straightforward to understand and simple to comply with.

## **Recommendation 6**

The law should be updated so that disclosure requirements apply when unincorporated associations provide donations to candidates, in addition to parties and non-party campaigners.



### **Recommendation 7**

PPERA should be updated to require parties and non-party campaigners to have appropriate procedures in place to determine the true source of donations.

Parties and non-party campaigners should be required to develop a risk-based policy for managing donations, proportionate to the level of risk that they are exposed to.

### **Recommendation 8**

PPERA should be updated to require political parties to include a statement of risk management in their annual accounts that sets out the risks relating to their sources of funds and the steps taken to manage those risks.

### **Recommendation 9**

The Electoral Commission should provide detailed guidance to parties and non-party campaigners on how to develop a proportionate risk-based policy on procedures and checks for identifying the true source of a donation.

### **Recommendation 10**

PPERA should be updated to require all donations over £500 to be donated only through the banking system.

### **Recommendation 11**

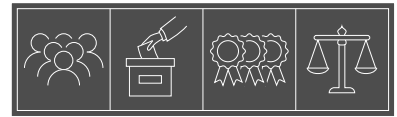
The costs of directly employed staff working on election and referendum campaigns should be included in the spending limits for political parties and referendum campaigners.

### **Recommendation 12**

All new parties and referendum campaigners should be required to submit a declaration of assets and liabilities over £500 on registration. The declaration should include an estimate of the costs invested in buying or developing the data they hold when they register.

### **Recommendation 13**

The government should change the law to require parties and campaigners to provide the Electoral Commission with more detailed invoices from their digital suppliers. For targeted adverts this should include the messages used in those campaigns, which parts of the country they were targeted at, and how much was spent on each campaign.



#### **Recommendation 14**

The government should change the law to require parties and campaigners to subdivide their spending returns to record what medium was used for each activity so that more information is available about the money spent on digital campaigns.

#### **Recommendation 15**

The government should legislate to require social media platforms that permit election adverts in the UK to create advert libraries that include specified information.

#### **Recommendation 16**

Social media platforms' advert libraries should, as a minimum, include all adverts that fit the legal definitions of election campaigning in UK law.

Social media platforms should ensure their advert libraries contain the following information:

- precise figures for amounts spent, rather than ranges
- who paid for the advert
- for targeted adverts, information about the intended target audience of the advert and the types of people who actually saw the advert.

#### **Recommendation 17**

In line with the principle of no foreign interference in UK elections, the government should legislate to ban foreign organisations or individuals from buying campaign advertising in the UK.

#### **Recommendation 18**

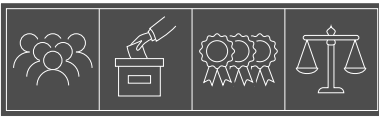
Reporting deadlines for parties and non-party campaigners spending over £250,000 at a general election or UK referendum should be reduced from six months to four months.

#### **Recommendation 19**

The Electoral Commission should publish election expenditure of parties and non-party campaigners spending over £250,000, within two months of receipt of the full set of spending returns, i.e. within six months of the election or referendum.

#### **Recommendation 20**

Parties and campaigners spending over £250,000 at a general election or UK referendum should submit spending returns to the Electoral Commission in electronic format. Parties and non-party campaigners spending under £250,000 should do so where this is practicable.



### **Recommendation 21**

Parties should be required to identify what is spent by third parties as targeted spending on their behalf. The government should introduce a specific reporting category for targeted expenditure that non-party campaigners have spent in relation to an authorisation given by a political party.

### **Recommendation 22**

To increase the information available about third parties in advance of an election, non-party campaigners should be required to disclose the following information when registering with the Electoral Commission:

- a brief summary of the purpose of the campaign
- geographical location of the campaign
- whether it is part of a joint campaign
- website address.

### **Recommendation 23**

The law should be amended to require a specific non-party campaigner register for each election event and to require non-party campaigners to register at each election in which they intend to campaign.

### **Recommendation 24**

Registered non-party campaigners and referendum campaigners that spend less than the relevant registration threshold should be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

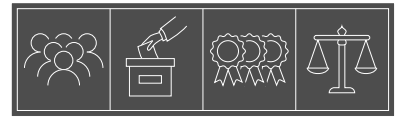
### **Recommendation 25**

The government should clarify in legislation the scope of the law on issues-based campaigns. The aim should be to provide campaigners with greater confidence that campaign activity from before an election is called is unlikely to meet the 'purpose test' of promoting electoral success if that activity does not focus on candidates or parties and does not mention voting or elections.

### **Recommendation 26**

The government should change the law to give the Electoral Commission the power to issue codes of practice on key aspects of third-party campaigning.





### **Recommendation 27**

Criminal offences in PPERA that relate to essentially administrative requirements, such as the late submission of spending returns, should be decriminalised. The government should consult the Electoral Commission to identify those offences which fall into this category.

### **Recommendation 28**

The Electoral Commission should, as a priority, focus resources on upgrading their website. This should take place in collaboration with interface and user experience professionals so that it is as user friendly as possible.

### **Recommendation 29**

The Electoral Commission should develop an interactive guidance resource accessible through its website, with online walkthroughs or training modules to explain the legislation and its requirements to parties, campaigners, candidates and interested individuals.

### **Recommendation 30**

The government should approve the draft statutory codes of practice on campaign expenditure for political parties and candidates, prepared by the Electoral Commission, and lay a copy of the codes before each House of Parliament for approval.

### **Recommendation 31**

The Electoral Commission should be granted the power to issue statutory codes of practice on any other area of regulation for which it is responsible.

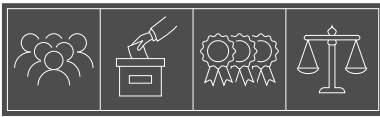
### **Recommendation 32**

The Electoral Commission should provide clear and authoritative advice that parties and non-party campaigners can rely on.

The Commission should seek regular feedback from the Parliamentary Parties Panel and voluntary organisations on the advice it provides to ensure that it meets the needs of those it regulates.

### **Recommendation 33**

The Electoral Commission's powers to compel the provision of documents, information and explanation outside of an investigation should be extended to enable the Commission to request information from any person who may hold relevant material that it reasonably requires for the purposes of carrying out its functions.



### **Recommendation 34**

The Electoral Commission should have new, explicit powers to share information with the police and other regulators such as the Information Commissioner's Office, where the Commission considers it to be in the public interest.

### **Recommendation 35**

Electoral Commission investigations under PPERA should be opened within 12 months of the date of the offence being committed or, if later, from the date at which the Electoral Commission first became aware of the circumstances of a potential offence. This period should be capable of being extended on application to a court by up to 12 months in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.

### **Recommendation 36**

There should be a 12-month limit on the duration of Electoral Commission investigations under PPERA. This period should be capable of being extended on application to a court by up to 12 months in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.

In a case where the Commission goes to court to force a party to comply with an investigation notice, the Commission should have the ability to ask the court to extend the time limit further. The extension would be the period from the first request by the Commission to the date on which the party in question supplies the information.

### **Recommendation 37**

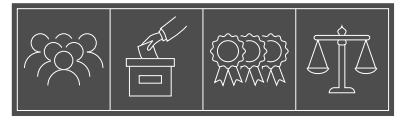
The maximum fine the Electoral Commission may impose should be increased to 4% of a campaign's total spend or £500,000, whichever is higher.

### **Recommendation 38**

The Electoral Commission should be required to provide those it regulates with a clear explanation of the rationale for the size of the sanctions it imposes in individual cases, to improve confidence in the fairness of its decision-making.

### **Recommendation 39**

The responsibility for granting permission to parties, non-party campaigners and referendum campaigners to pay late invoices or bills from suppliers should be transferred from the courts to the Electoral Commission.

**Recommendation 40**

Where leave to pay is granted, the Electoral Commission should have the ability to sanction the late receipt or payment of the claim in order to encourage compliance.

**Recommendation 41**

The requirement to receive all invoices within 30 days and pay them within 60 days of polling day should apply only to amounts over £200.

**Recommendation 42**

Political parties should be required to provide a pre-election report only if they are standing candidates for election and receive a reportable donation or loan (worth over £7,500) during the pre-election reporting period.

**Recommendation 43**

Political parties should be required to submit a PPERA spending return only if they incur regulated PPERA campaign spending.

**Recommendation 44**

For uncontested elections, candidates should not be required to submit zero spending returns.

**Recommendation 45**

Criminal offences in the RPA that relate to essentially administrative requirements, should be decriminalised and replaced with civil sanctions.

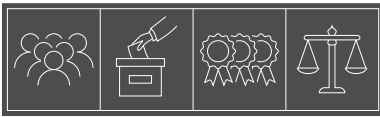
The Electoral Commission's regulatory powers should be expanded to include the enforcement of civil sanctions for candidates.

**Recommendation 46**

The Electoral Commission should develop a secure online facility for the submission, certification and publication of candidates' election expenses returns.

**Recommendation 47**

The requirement on returning officers to publish the availability for inspection of candidates' election expenses returns at all applicable polls, and to publicise outstanding returns in local newspapers, should be revoked and returning officers should be placed under a new obligation to publicise this information on the council website.



# Introduction

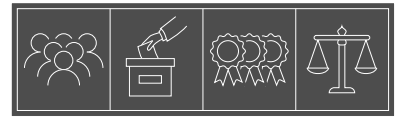
1. The Committee has long taken a close interest in electoral regulation. Its 1998 report, *Funding of Political Parties in the United Kingdom*, recommended the establishment of the Electoral Commission, and subsequent reports in 2007 and 2011 reviewed the Electoral Commission and examined the funding of political parties respectively.<sup>1</sup>
2. Electoral regulation has been the subject of many inquiries in recent years. These include reports from Parliamentary select committees, civil society organisations, the Electoral Commission and the Information Commissioner's Office.<sup>2</sup> Of particular importance is the Law Commission's report on electoral law which calls for the rationalisation of electoral laws to bring them into a single, consistent legislative framework, which we support.<sup>3</sup>
3. This review does not attempt to re-examine the full range of issues covered by these reports, but focuses on the regulation of campaign expenditure and the regulation of the money donated to parties and non-party campaigners for campaign purposes. We have termed this the regulation of election finance for the purposes of this review.
4. Our core focus is elections, but where the rules are similar the recommendations apply to referendums too – for example, in relation to donations, where similar rules on permissibility of donations apply to elections and referendums, and on the transparency of digital campaigning. When looking at the Electoral Commission's compliance and enforcement function, our recommendations apply to all aspects of the Commission's enforcement powers.
5. The review was not prompted by a specific concern about misconduct, but given the rapidly changing environment and increasing digital communications we wanted to consider whether the current framework for regulating campaign finance laws is still fit for purpose, coherent and proportionate. The Committee's remit does not extend to the devolved administrations of the UK and so this review does not cover the matters relating to the regulation of elections that are devolved.
6. The legislation surrounding electoral regulation is complex and so are the problems identified by those who gave evidence to the review. Likewise, potential solutions to

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1 Committee on Standards in Public Life (1998), *The Funding of Political Parties in the United Kingdom*, Cm 4057, Committee on Standards in Public Life (2007), *Review of the Electoral Commission*, Cm 7006, Committee on Standards in Public Life (2011), *Political Party Finance: Ending the big donor culture*, Cm 8208

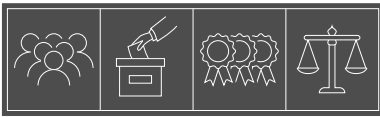
2 The Electoral Reform Society report, *Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond*, by Dr Katharine Dommert and Dr Sam Power summarises the range of recommendations that have been made in these reports. Available at: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-in-the-dark-digital-campaigning-in-the-2019-general-election-and-beyond/>

3 The Law Commission of England and Wales and the Scottish Law Commission (2020), *Electoral Law: A joint final report*. Available at: [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339\\_LC\\_Electoral-Law\\_Report\\_FINAL\\_120320\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf)



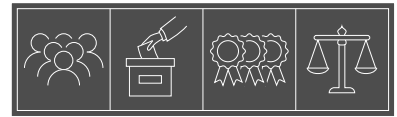
the problems are not straightforward. Striking the right balance in election finance regulation is crucial. It would be easy to design a very tightly regulated system that maximises transparency and firmly punishes contraventions, but this could have a damaging impact on people's willingness to stand for election or volunteer as an agent or party treasurer. Equally, if breaches have no consequences there is little incentive for parties, non-party campaigners and candidates to put robust systems in place to comply with the rules, and democracy suffers.

7. Our recommendations are therefore intended to balance the needs of those regulated by the system in terms of proportionality, clarity and fairness, with the need for transparency and the right of the public to know how money is being spent in trying to influence their vote. The recommendations deliver significant improvements to the current framework for regulating election finance, creating a more transparent, proportionate and effective system.
8. Our recommendations are directed at government, political parties and campaigners, social media companies and the Electoral Commission, and cover a range of issues within election finance regulation. These include: tighter permissibility requirements for donations, increased public information about how money is spent on digital campaigning at elections and referendums, and improved regulation of non-party campaigning.
9. A main area of focus has been to encourage compliance with the law. Our recommendations are directed at improving the civil sanctions regime, which we believe is the most appropriate way to encourage compliance in cases where there has been a breach of the rules as the result of minor or inadvertent errors. The criminal law remains the right route for serious breaches.
10. Our recommendations include: the decriminalisation of criminal offences in PPERA that relate to essentially administrative requirements, extending the civil sanctions regime to include candidate finance laws, and time limits for opening and running Electoral Commission investigations. These will result in a more coherent balance between the criminal and civil sides of the system. We also make recommendations to improve provision of guidance and advice by the Electoral Commission.
11. We are acutely aware of the views expressed on the remit, governance and performance of the Electoral Commission itself. While we have looked at the Commission's remit and powers as the regulator of donations and campaign finance laws, and how it carries those out, this review does not make recommendations on other aspects of the Commission's work or its governance. However, we cannot ignore the wider debate on the Commission's remit and governance and we make some general observations.
12. Views expressed to us about the Electoral Commission were wide-ranging. Some commended the Commission as an effective regulator, maintaining independence in a highly charged political environment and against a background of highly complex legislation. Indeed, the majority of contributors to this review were broadly confident



in the Commission as an independent, non-partisan regulator. We also heard from those who criticised the Commission for failing to be impartial, for providing unclear and inconsistent advice, and for delaying investigations. Some went so far as to recommend the Commission's abolition with its functions transferred elsewhere.

13. Our view is that it is imperative that there exists a strong, independent electoral regulator. For the electoral system to be fair and to be seen to be fair, and to command the confidence of political parties and the public, it must be overseen by an independent regulator, protected from political pressures and separate from the government. Such a regulator must demonstrate its impartiality and effectiveness at all times. The evidence we have heard suggests that there is room for improvement by the Commission in some areas and our report sets out recommendations designed to improve its effectiveness as a regulator.
14. As part of this review, we received 55 written submissions to our public consultation from a range of political parties, candidates, returning officers, academics, organisations and members of the public. These have been published on our website. We held three roundtable discussions: one with smaller parties and independent candidates, one with returning officers, and one with academics and organisations. We held 30 stakeholder meetings. We also held three focus groups, facilitated by Deltapoll, with members of the public. We would like to thank the Electoral Commission for responding promptly and fully to our requests for information.
15. The Committee is grateful to all those who willingly gave their time to give evidence to our review. In particular, we would like to thank Piers Coleman, specialist adviser to the review, and Dr Sam Power, Lecturer in Corruption Analysis, University of Sussex, for their support and expert advice throughout.



# Chapter 1

## What principles should underpin the regulation of election finance?

### Introduction

- 1.1 The Electoral Commission was established by the Political Parties, Elections and Referendums Act 2000 (PPERA), following recommendations made by the Committee in 1998.<sup>4</sup> The Committee reviewed the Electoral Commission in 2007 and examined the funding of political parties in 2011.<sup>5</sup> In each of these reports the Committee gave careful thought to the principles that should underpin regulation in this area.
- 1.2 The 1998 report highlighted three of the Seven Principles of Public Life as especially relevant to the funding of political parties: integrity, accountability and openness. The report noted that, while insufficient by itself, “the most significant part of our philosophy depends on transparency”. The report took that view because it believed that the public needed to see that elections were being fought fairly and without being unduly influenced by individuals, corporate donors or overseas interests.
- 1.3 In this review, we have taken a fresh look at what regulation of election finance should achieve and the principles that should underpin it. Through our written consultation, oral evidence sessions and public focus groups, we have asked people to tell us what matters most to them in the regulation of money that is spent to influence the outcome of election and referendum campaigns.

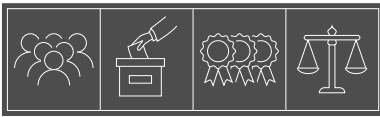
### Key principles

- 1.4 The principles identified here are those that underpin the electoral process in our representative democracy. There is a balance to be struck between accessibility on the one hand and robustness against manipulation of the system on the other. The Nolan Principles identify standards of conduct for those who hold public office. In this report we are predominantly concerned with the principles underlying elections in the United Kingdom – where these are best understood as principles relating to process,

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4 Committee on Standards in Public Life (1998), *The Funding of Political Parties in the United Kingdom*, Cm 4057

5 Committee on Standards in Public Life (2007), *Review of the Electoral Commission*, Cm 7006 Committee on Standards in Public Life (2011), *Political Party Finance: Ending the big donor culture*, Cm 8208



rather than conduct. Nonetheless, there are clearly strong connections between these process principles – especially those of fairness, openness, and accountability – and the Nolan Principles of openness, accountability and objectivity.

“Too much emphasis is frequently placed upon seeking to close loopholes (real or hypothetical) and too little emphasis is placed upon using party finance legislation to promote and enable healthy party competition... The aim must be to strike a balance between the desire to ensure that politics is conducted in an equitable and transparent way, and the need to protect privacy and avoid the excessive intrusion of the state into voluntary activity.”

**Professor Justin Fisher, written evidence 15.**

“There are competing principles involved. In general, political parties rely on principles such as freedom of association, equality of participation and the encouragement of political competition. When considering the regulation of party funding, these broad principles may have to be offset against transparency, accountability, fairness and openness. The Council of Europe’s Venice Commission have discussed these principles in depth.<sup>6</sup>”

**Dr Alistair Clark, written evidence 36.**

- 1.5 We set out below the evidence we have heard on the principles that should underpin the regulation of election finance. Some of the principles overlap and some mean different things to different contributors, especially when they are interpreted and developed into practical proposals for change and criticisms of the operation of the current system.

“The basic underpinning value of the regulatory system should be that it should help to empower citizens. That is the core of democracy, and it is important to keep it squarely in mind when considering more specific values.”

**Dr Alan Renwick, written evidence 45.**

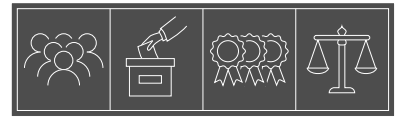
## Fairness

- 1.6 We held three focus groups to understand what principles matter to the public. Each focus group concluded that ‘fairness’ was the most important and was considered an umbrella term for the other principles. It was cited regularly by contributors to the review, often in combination with the concept of free elections.

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<sup>6</sup> Venice Commission/OSCE-ODIHR (2020), Guidelines on Political Party Regulation, second edition. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e)





- 1.7 The metaphor of a level playing field was invoked by many to illustrate the principle of fairness. At a roundtable we held with smaller parties and independent candidates there was consensus that it is difficult for those whose focus is on one constituency or ward to compete with parties contesting on a national or council-wide level and who can rely on a larger national or council-wide campaign to provide additional support and publicity.

“If you could only choose one word that you would like the voting system to be, I think ‘fair’ would be a pretty good one.”

**Focus group participant, age group 24 to 30.**

“At the simplest level, we should be guided by free, fair and open elections.”

**Dr Martin Moore, oral evidence.**

“In the Committee’s 2007 review into the Electoral Commission, the Committee noted the two key pillars of our democratic system: (i) free and fair elections and (ii) healthy, competitive political parties. We believe that these pillars should remain the bedrock of any legislative and regulatory regime.”

**Conservative Party, written evidence 31.**

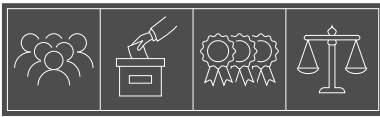
“In democratic elections, candidates need to be able to campaign and win based on policies and not on how deep their election pockets are. In other words, there needs to be a level playing field, without significant financial advantage for established main-stream parties.”

**Paul Freeman, former member of local campaign group of independent candidates for local government elections, written evidence 2.**

- 1.8 The Committee’s 2007 report described ‘free and fair elections’ (along with ‘healthy, competitive political parties’) as a key pillar of the UK democratic system: “Effective electoral administration underpins our democracy. There cannot be democracy without elections and elections cannot be free and fair unless electoral rules are fair and coherent, unless they are properly administered and unless they are actively enforced.”

## Open to all

- 1.9 Contributors to the review emphasised that democratic engagement should be open to all and that the regulatory system should support this. In practice this means preserving a system in which candidates from all walks of life can actively participate and which is not just for major parties.



“Without due regard for donor privacy and simplicity of compliance, participation may be reduced, which not only detracts from good governance and political efficacy but can act to restrict freedom of expression and association. These are core values that all law-making should respect and which electoral regulation should be especially protective of.”

**Institute of Economic Affairs, written evidence 39.**

“... democratic engagement must be open to all. If ordinary people are fearful that they risk being penalised by an incompetent regulator, the regulator risks becoming an impediment to participation in our democratic process. British politics relies in large part on volunteers.”

**Darren Grimes, written evidence 1.**

“The fundamental principle which should be upheld by the Commission is that the democratic process throughout the United Kingdom is open to all. Any member of society – whether an individual citizen or member of a political party – is able to present themselves for election to the state’s democratic institutions. That principle must mean that elections are not restricted to those with access to large financial resources.”

**Plaid Cymru, written evidence 46.**

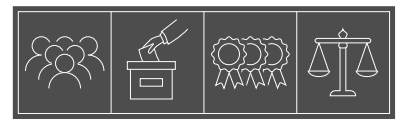
- 1.10 Fundamentally, ‘open to all’ is a reference to the right of any individual to stand for election and to canvas for support from the electorate. Candidacy should not be the preserve only of those with substantial financial resources or with the right political connections and it should not be the monopoly of a few large political organisations or parties.

## Transparency

- 1.11 The importance of transparency was cited by many contributors. For the focus groups, the amounts received by political parties, from whom and what the money is spent on, were all considered legitimate matters of public interest. Even if the public does not routinely search for this information, the principle of transparency and the arrangements in place to ensure it, were considered to be important. There was a discussion at our roundtable about the value of spending returns as a tool to enable journalists and academics to analyse and interpret the data.<sup>7</sup>

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<sup>7</sup> Dr Katharine Dommett and Dr Sam Power, roundtable with academics and organisations, 5 October 2020. Transcript available on the Committee’s website



“What money is spent on should be visible to all people in the UK so that they can find out what is happening and what is not happening. That would give a bit of confidence to the people that there is some transparency.”

**Focus group participant, age group 46 to 60.**

“Transparency is key in the political campaigning environment... Political campaigns around the world and in the UK have turned into sophisticated data operations...The current lack of transparency by political campaigns and those companies they work with is a significant obstacle to scrutinising their practices, further eroding trust in the campaigning environment and the electoral process.”

**Privacy International, written evidence 20.**

“Transparency is a core value underpinning the integrity of the democratic process but is being undermined by the realities of conducting elections and referenda in the 21st century. Political parties are increasingly being drawn to online campaigning and now deploy sophisticated data operations to reach voters while sources of donations are often hidden behind opaque corporate structures with connections to non-transparent jurisdictions. This lack of transparency, a product of the UK’s antiquated election finance laws, means that at present the Electoral Commission is, in our view, unable to fully regulate election finance as effectively as it should.”

**Spotlight on Corruption, written evidence 37.**

- 1.12 ‘Transparency’ requires that people are able to see how much money has been spent by whom and where that money has come from. Without transparency, there are no grounds for the public to trust the political process, and that threatens a sharp loss of political legitimacy for those in political office.

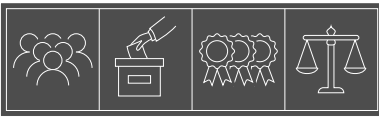
## Confidence and trust

- 1.13 Confidence and trust were cited as important values in the evidence and were often linked positively with transparency. Some have suggested the correlation is more nuanced and have argued that transparency should be supported by a positive information agenda to promote high-quality information in election and referendum campaigns.<sup>8</sup>

“Voter confidence and trust is crucial in a democracy, and so transparency is a vital part in identifying attempts to undermine that trust.”

**Full Fact, written evidence 30.**

<sup>8</sup> University College London, The Constitution Unit (2019), Doing Democracy Better: How can information and discourse in election and referendum campaigns in the UK be improved? Available at: [https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/184\\_-\\_doing\\_democracy\\_better.pdf](https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/184_-_doing_democracy_better.pdf)



“The core values behind any regulation pertaining to elections should be both trust in the process and transparency in the eyes of the voting public. It is vital that whatever the regulations, they and their application are understandable to voters.”

**Democracy Volunteers, written evidence 38.**

- 1.14 People need to be confident that the political process conforms to the principles by which it justifies its claim to authority. If people do not believe that it is functioning fairly, confidence will be lost and people will cease to trust it. Where people do not trust a system, they tend not to participate in it. And the more they view the system as illegitimate, the fewer reasons they have for following its rules and requirements. Measuring confidence and trust is not simple, and we cannot assume that low levels of ‘trust’ in opinion polls actually means that people regard the process and its outcome as seriously illegitimate. Nonetheless, it is clear both that a real and substantial loss of trust can be extremely damaging to a political culture – and once lost, trust can be very hard to rebuild.

### **Simplicity and clarity**

- 1.15 Contributors highlighted their view that political finance laws should be simple to understand. Several emphasised that many campaigners are volunteers who wish to do good for the communities they belong to, this should be encouraged, and the rules should not therefore be unnecessarily bureaucratic or unduly restrictive.

“Efficiency – regulations should be rationalised so they are simpler and less confusing.”

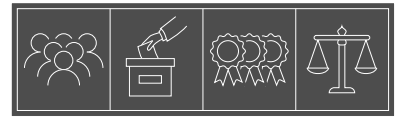
**Association of Electoral Administrators, written evidence 17.**

“To maintain public trust, it remains vital that electoral processes remain transparent, even handed, and that those who abuse the system are held to account. To support these principles, regulations and legislation should be clear and as user friendly as possible to ensure a clear understanding of the rules, so that those engaged in electoral processes fully understand their obligations.”

**Crown Prosecution Service, written evidence 42.**

“The MPS ... supports the idea that electoral law and its enforcement should be as simple and coherent a regime as possible. The investigation into any breaches of legislation must be open and transparent. This will aid public understanding and maintain confidence in the integrity of the electoral process, which is the bedrock of our democracy.”

**Metropolitan Police Service, written evidence 52.**



- 1.16 The values of simplicity and clarity should apply to the rules and requirements for making and reporting contributions to and expenditure on campaigns. The more complex the rules are, the less transparent they will appear, the more they will deter people from becoming involved, and the more they will favour those who can afford to pay someone else to do the paperwork.

## Accountability

- 1.17 The review heard the importance of ensuring that strong enforcement action can be taken to protect the integrity of elections and to build trust and confidence in the system. The use of digital campaigning methods poses challenges for delivering accountability given the lack of transparency about who is behind political campaigns. Many contributors emphasised the importance of proportionality in regulation. This has two elements. First, the intensity of regulation should acknowledge the varying level of resources available to parties, non-party campaigners and candidates. Second, the approach to enforcement should recognise that most campaigners are volunteers who sometimes make mistakes. Firm action is needed against deliberate non-compliance.

**“If people break the law, there has got to be some accountability, people have got to be held to account, surely, because if they’re not then it defeats the purpose.”**

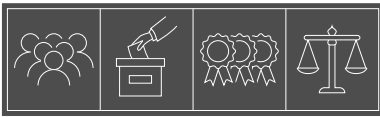
**Focus group participant, age group 31 to 45.**

**“Campaigning is now a highly professionalised influencing game. Perhaps by getting stronger enforcement in place, we can rebuild trust and take us back to a more honourable position, but something has to be done that is clear and resolute to inject a basic level of trust and confidence back into the system.”**

**Stephen Kinnock MP, oral evidence.**

**“For me, the most important thing is that it’s volunteers doing this and that the system understands this – they’re not accountants or lawyers on the whole, they are trying their best and don’t always get it right. But of course there are people who do want to abuse the system and the system should come down on them like a ton of bricks. So you need a framework for people doing their best but one that also punishes those abusing it for their own means. It’s a hard path to tread.”**

**Kerry Buist, Head of Compliance, Liberal Democrats, oral evidence.**



**“We believe that proportionality is an important part of fairness. The current regulatory framework, created by the Lobbying Act and PPERA, places a disproportionate burden on civil society organisations as non-party campaigners in the UK.”**

**Quakers in Britain, written evidence 18.**

- 1.18 Those involved in raising and spending money in elections need to be accountable for their actions, both in terms of being subject to measures of audit, and in terms of being liable to sanctions in cases where the rules are broken. At the same time, there needs to be proportionality – in respect of the sums involved, the resources of the organisations involved, the potential impact on the outcome of an election, the discernible intent, and the type of election.

### **Independence in regulation**

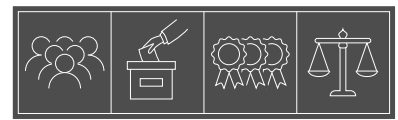
- 1.19 The majority of contributors to the review supported the principle of a strong, independent regulator of election finance. Some referred to the opinion of international expert bodies that an independent regulator is an important safeguard against political influence in the regulatory process, though the form of this body may vary (see the international comparison of political and electoral finance regulation at appendix 2).<sup>9</sup>
- 1.20 Some of the contributors to the review who were critical of the Electoral Commission as a body argued for a more limited role for the regulator. Some even suggested that the Commission should be abolished with some of its functions transferred elsewhere. While the criticism was in part linked to concerns about the performance of the Commission, it also revealed some disagreement with the concept that a regulator is a necessary part of the system for regulating election finance. The evidence heard by the review on the role and accountability of the Electoral Commission is explored in chapter 3.

**“The Electoral Commission... have the overriding responsibility of making sure that all political parties play by the rule book.”**

**Focus group participant, age group 24 to 30.**

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<sup>9</sup> OECD (2016), Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture, OECD Public Governance Reviews, OECD Publishing, pages 95-106. Available at: <https://doi.org/10.1787/9789264249455-en>



“It is widely recognised that an independent, non-partisan regulator is an important safeguard in reducing the risk of policy capture by those funding politics.”

**Joseph Rowntree Reform Trust, written evidence 44.**

“Fairness and accountability within electoral regulation depends on a strong, independent regulator.”

**Labour Party, written evidence 54.**

“Key to ensuring accountability of those involved in the democratic process is effective and independent enforcement of the rules when they are broken. Expert bodies impress the importance of having a non-partisan oversight body endowed with this responsibility and adequate resources for policing political finance rules.”

**Transparency International, written evidence 29.**

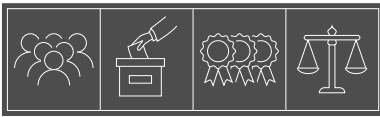
“... we would argue that the work of the Electoral Commission needs to be more focused and targeted, and there should be greater clarity over its governance and accountability.”

**Conservative Party, written evidence 31.**

“Quangos and regulators are not necessarily loved by the British public. They are essentially undemocratic. They get it wrong much of the time, making things worse not better.”

**Jon Moynihan, written evidence 22.**

- 1.21 Politics is partisan, and maintenance of the rules, procedures and principles underlying the electoral process cannot be policed by organisations or individuals in political office. Moreover, the rules themselves have to command wide consent and cannot be partial to any particular party or group. At the same time, independent regulatory bodies need to get the balance right between a hands-off approach and over-regulation, and need to carry with them both the public and the political organisations of the day.



# Chapter 2

## Electoral law

### The legal framework

- 2.1 In very broad terms, the law on election campaigns is contained in two separate pieces of primary legislation, the Representation of the People Act 1983 (RPA) and the Political Parties, Elections and Referendums Act 2000 (PPERA). Election expenditure incurred by a constituency candidate is controlled under the RPA. The controls on party expenditure and non-party campaigning are set out under PERA. This legislation introduced regulation of parties and non-party campaigners in parallel to the existing electoral law that applied to candidates, creating a two-tier system of regulation.
- 2.2 A summary of the legal framework for regulation of political and election finance in the UK is set out at appendix 1.<sup>10</sup>

### The case for rationalisation and simplification of electoral law

**“I did my PhD on 19th century electoral law - I never expected it to turn into vocational training!”**

**Dr Mark Pack, President, Liberal Democrats, oral evidence.**

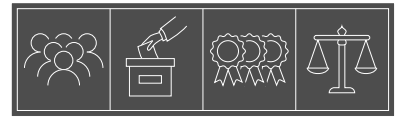
#### Complexity

- 2.3 The piecemeal development of electoral law since the Victorian period has created a complex mesh of rules, which vary for candidates, parties and campaigners and differ across election types.
- 2.4 There are now at least 25 statutes containing rules for running elections. The RPA contains the law governing UK Parliamentary and local government elections. The rules for all other types of election are contained in separate pieces of legislation that apply to that particular type of election. After 1999, each time a new type of election was introduced, a new piece of legislation was added to provide the rules for that election, which copied or replicated significant portions of the RPA. This has resulted in a large volume of legislation. It also means that when policy

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<sup>10</sup> Dr Sam Power, Lecturer in Corruption Analysis (University of Sussex), The legal framework for regulation of political and election finance in the United Kingdom: a summary





is updated, amendments need to be made to multiple pieces of legislation, which further complicates the framework. The Law Commission has described this as an “election specific” approach to electoral legislation.<sup>11</sup>

- 2.5 In addition, different rules apply to different participants in the same election. In oral evidence, the Electoral Commission gave a striking illustration of the effect of the current framework on the rules on campaign expenditure that apply at constituency level.

**“In a single constituency, you can have a candidate with a limit; you could also have a non-party campaigner with a different limit plus parties campaigning with a UK nationwide limit; you might have a national non-party campaigner as well and their limit per constituency and an overall national limit. All of that is going on at the same time subject to slightly different rules. It is hard for anyone to keep on top of.”**

**Louise Edwards, Director of Regulation, Electoral Commission, oral evidence.**

- 2.6 Contributors told us that the complexity of electoral law has created an onerous administrative burden on candidates, parties and campaigners that is damaging for wider engagement with the democratic process. Campaigning is largely carried out by volunteers and the complexity of the administrative burden, combined with the level of personal legal risk involved, may deter people from volunteering and participating. Even among the larger political parties, treasurers and agents are either wholly or mainly a volunteer workforce. The larger parties cope with the complexity through training, guidance and legal insurance, but some smaller parties and independent candidates do not have access to support from HQ compliance teams and are therefore more exposed.

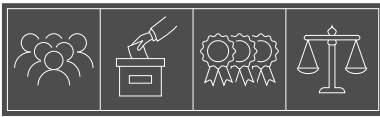
**“Complexity is a bigger factor than the fear of repercussions. If you have lots of forms etc and even if you do everything in line with the law, the complexity of the system produces a non-trivial administrative burden. It is also helpful if people are fearful of breaking the law, but an area for improvement is complexity and the administrative burden it generates.”**

**Dr Mark Pack, President, Liberal Democrats, oral evidence.**

**“Labour have received feedback from local volunteers about the complexity of electoral law and the perceived risk of being found guilty of criminal offences for inadvertently getting things wrong. It can be confusing for candidates and their agents to understand what constitutes an electoral offence due to the archaic nature of the terminology in electoral law. These concerns create barriers for members getting involved as either election agents or treasurers.”**

**Labour Party, written evidence 54.**

<sup>11</sup> The Law Commission of England and Wales and the Scottish Law Commission (2020), Electoral Law: A joint final report. Available at: [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339\\_LC\\_Electoral-Law\\_Report\\_FINAL\\_120320\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf)



- 2.7 Local treasurers, agents and candidates remain the lifeblood of the democratic process. The Committee takes seriously the suggestion that the complexity of electoral law could be a barrier to participation. Without people willing to dedicate their time to supporting the political process and campaigning for the election of candidates, there would be less choice for voters with damaging consequences for democracy. That is not to say that the complexity excuses non-compliance, especially by the larger parties.<sup>12</sup> But as we note in chapter 1, simplicity is a key principle for the regulation of election finance and the system should not be more complex than it needs to be.
- 2.8 Third parties are subject to electoral law if they are engaged in activities at an election that may influence how people vote. Some have told us how they have struggled with navigating the legal framework. This is particularly challenging for those charities and civil society organisations for whom politics is not their main purpose. We explore non-party campaigning in chapter 8.

**“Despite being a large campaigning organisation with dedicated and experienced public affairs staff we still find navigating electoral law a time consuming and often confusing process, which requires careful judgment and an organisational willingness to accept a level of risk of unintentionally breaching the legislation, in order simply to undertake campaigning and advocacy activity which is an essential part of a functioning democracy.”**

**Friends of the Earth, written evidence 55.**

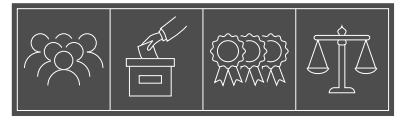
- 2.9 Aside from deterring participation, the complexity of the legal framework may have an adverse impact on electoral administration and regulation. The Association of Electoral Administrators told us that the complexity of current electoral law across so many separate pieces of legislation makes the administration of electoral processes inefficient and introduces significant risk.<sup>13</sup> We heard from the Metropolitan Police Service that having two sets of rules (PPERA and RPA) and two regimes (civil and criminal) which are regulated in different ways and under different time limits may detract from the effective regulation of election finance.<sup>14</sup>

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12 Dr Alistair Clark, written evidence 36

13 Association of Electoral Administrators, written evidence 17

14 Metropolitan Police Service, written evidence 52



## Law Commission report on electoral law

- 2.10 The Law Commission published ‘Electoral Law: A joint final report’ in March 2020, the culmination of its long-running project to review the state of electoral law. The key outcome was to recommend a rationalisation of electoral law into a single, consistent legislative framework that applies to all elections and referendums. Aspects fundamental to laying down the structure for conducting elections should be contained in primary legislation, with detailed rules contained in secondary legislation so far as possible.
- 2.11 The report examined the regulation of campaign expenditure at the constituency-level campaign run on behalf of a particular candidate. It avoided the regulation of national campaigns conducted by political parties, stating it was “too politically sensitive a topic for non-political law reform bodies such as the Law Commissions to address”. Nonetheless, it noted that a holistic reform of the law of campaign expenditure would ideally address both types of campaign.
- 2.12 The report explained that the principal reform aim was to retain electoral law’s approach to regulating campaign spending, but to set it out more clearly in primary legislation. The law, which is contained in the RPA and replicated in election-specific provisions, is extremely complex. To support this aim, the report recommended:
- a. legislation governing the regulation of campaign expenditure should be in a single code set out for all elections, subject to devolved legislative competence
  - b. a single schedule to the legislation should contain the prescribed expense limits and rules governing expenditure and donations.
- 2.13 We have heard overwhelming support for consolidated legislation that builds on the Law Commission report, with a single set of controls on political finance. It is therefore disappointing that the government is not prioritising consolidation of electoral law in this Parliament.<sup>15</sup>

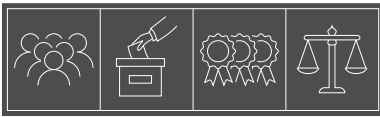
## Our view

### **Recommendation 1**

The Government should bring forward a bill to simplify and consolidate electoral law as has been recommended by the Law Commission.

- 2.14 We are clear that simplification and consolidation of the legislation, while crucial, is not sufficient in itself to address all of the inadequacies in electoral law that we heard about in the evidence we took. Reforms are needed to address modern campaign practices, meet emerging threats around the source of donations, deliver greater transparency and enhance compliance with election finance law. We explore these themes in the following chapters.

<sup>15</sup> Queen’s Speech 2021, 11 May 2021. Available at: <https://www.gov.uk/government/speeches/queens-speech-2021>



## National party and local candidate expenditure

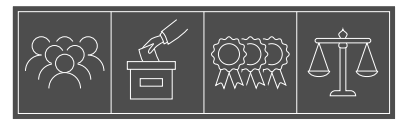
- 2.15 Contributors to the review from among smaller political parties, independent candidates, academics and democracy campaigners have described the shift in focus in recent decades from the local candidate to a more presidential style of national campaigning. Some felt there is an imbalance between high levels of permitted spend by parties and relatively low levels of permitted spend by candidates (see appendix 1 for an explanation of the spending limits).<sup>16</sup> For some, this imbalance raises a fundamental question about the type of democracy we want for the UK.
- 2.16 This focus on spending on marginal constituencies has put a strain on the distinction between what is and is not party or candidate spending. On the face of it, the separation appears straightforward: if expenditure is ‘promoting or procuring electoral success for the party,’ it counts as party expenditure and must be recorded against the party spending limit and reported in the party’s spending return. If expenditure is used for the purposes of the candidate’s election, it counts as candidate expenditure and must be recorded against the candidate’s spending limit and reported in the candidate’s spending return.
- 2.17 However, the distinction is not as clear as this suggests. “Whilst there has ‘always been a blurred line between the two’ recent elections have shown that the ‘difference [is] becoming increasingly cosmetic”.<sup>17</sup> This is a consequence of technologically driven practices such as nationally sent direct mail and targeted social media adverts, and of some more traditional campaigning methods, such as election tours by national party figures to marginal seats and transporting party activists to assist with campaigns in constituencies. Whether the purpose of these activities is to promote a party or candidate is a grey area.

**“It is entirely clear that national political parties run local campaigns dressed up as national campaigns and evade the campaign rules that way. Political party campaigners will be quite direct about that. When I say ‘evade’ there, I mean evading the intention behind the rules. My question therefore is whether those intentions are actually meaningful anymore.”**

**Will Moy, Chief Executive, Full Fact. Roundtable with academics and organisations, 5 October 2020.**

16 The government has indicated that it will be reviewing spending limits with a view to uprating them in line with inflation, see: <https://hansard.parliament.uk/Commons/2020-12-03/debates/20120378000008/ElectionSpendingLimitsUprating>

17 Dr Sam Power, written evidence 34, quoting Justin Fisher (2015), ‘Party Finance: The Death of the National Campaign’, in *Britain Votes 2015*, edited by Andrew Geddes and Jonathan Tonge (Oxford: Oxford University Press), page 153



“It is possible to do a very large amount of targeting of national spend to particular constituencies without meeting the threshold for that becoming reportable constituency spend. If you are a small party or an independent bound with a single constituency limit, a party that has a multimillion pound national limit can target a large amount of spending many times the constituency limit, whether that is through printed material that does not mention the candidate or online material generally promoting the party, that a small party or an independent cannot possibly hope to match.”

**Jon Nott, Treasurer, Green Party. Roundtable with smaller parties and independent candidates, 7 October 2020.**

“The local limit is important, it was a level playing field provision in the 19th century, as that determined what ran the election. But the battle ground now is hidden national contributions to local campaigns that don’t get reflected in the return and limit. A lot of that happens in marginals and by-elections. The interface between the two has to be brought into a single system.”

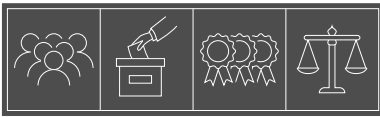
**Gavin Millar QC, oral evidence.**

- 2.18 The case of the Thanet South constituency and the 2015 election, in which a Conservative Party official was found guilty of encouraging or assisting an election offence, shone a light on this grey area and set down a legal precedent for parties to follow. Ahead of the criminal trial, in a ruling on a point of law, the Supreme Court ruled that goods, services, or facilities provided free-of-charge or at a discount to a candidate for election need to be declared by the candidate as an election expense even if they had not been authorised by the candidate, their election agent, or someone else authorised by the candidate or agent. All that is required is that the goods/services/facilities were used by or on behalf of the candidate, not that they were authorised by or on their behalf. The court was clear however that this required positive use of the services by the candidate or agent.<sup>18</sup>
- 2.19 The Electoral Commission issued a factsheet on notional spending and included guidance in draft codes of conduct for political parties and candidates.<sup>19</sup> However, some political parties remain concerned that, because there is no explicit requirement to authorise expenditure, candidates may face criminal prosecution for not declaring an expense they knew nothing about.

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18 R v Mackinlay and others [2018] UKSC 42

19 Notional expenditure refers to property, goods, services or facilities provided to a candidate free of charge or at a discount that must be declared as an election expense in the candidate’s return. See Electoral Commission (2019), Notional spending: How does it work for candidates and agents. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Notional-Spending-Factsheet-2019.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Notional-Spending-Factsheet-2019.pdf)



- 2.20 The Cabinet Office has consulted Parliamentarians, the Parliamentary Parties Panel and the Electoral Commission on a proposal to amend the law to state that candidates or agents will either have explicitly to authorise the expense, or “positively engage” with it. All changes to electoral law risk having unintended consequences and it will be important to ensure that in seeking to clarify this area, existing concerns about national parties targeting spending in constituencies are not exacerbated.
- 2.21 A range of solutions have been proposed to create a fairer system. Fair Vote UK have suggested streamlining national and local spending limits with a per-seat cap on total spending.<sup>20</sup> Another possible reform is that all national-level activity focused on constituencies should count as candidate expenditure. However, this would risk centralising all constituency-level spending as, in order to comply, the centre would need to control both national and constituency-level spending. A further potential reform is to remove the distinction between national and constituency-level spending, creating a single spending limit for each party. This would remove the administrative burden and potential legal difficulties in seeking to ascribe that national spending which was focused on particular constituencies. However, both of these options would likely lead to election spending being even more concentrated in parties’ target seats than is already the case.<sup>21</sup>

“Whilst the line is increasingly blurred between candidate and party spend there remains utility in keeping the two forms of spending as is. There is a real danger that if candidate spending was removed then large swathes of safe seats would be ignored come election time and an increasing amount of resources would be intensified in a select few areas.”

**Dr Sam Power, written evidence 34.**

- 2.22 Rebalancing of the local and national limits was discussed at our roundtable with smaller parties and independent candidates, but there was no consensus that this provided the answer.

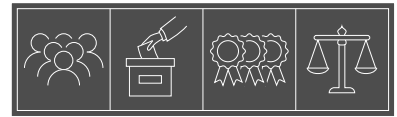
“That boundary between constituency-level and national-level spending is so crushing with £19 million as the overall national spend. You can target as a party as you want, but it is roughly £10,000 per constituency. It makes it so impossible for independents or parties without those resources to fight in that constituency. I would really want to see the relationship between those two spending limits revisited.”

**Robert Buckman, Chief Operating Officer, Green Party. Roundtable with smaller parties and independent candidates, 7 October 2020.**

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20 Fair Vote UK, written evidence 33

21 Public Administration and Constitutional Affairs Committee (2019), Electoral Law inquiry. Written evidence from Professor Justin Fisher. Available at: [http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Public%20Administration%20and%20Constitutional%20Affairs%20Committee%20/Electoral%20Law/Written/102168.html#\\_ftn6](http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Public%20Administration%20and%20Constitutional%20Affairs%20Committee%20/Electoral%20Law/Written/102168.html#_ftn6)



“If there was going to be a rebalancing there, I would be nervous about substantially increasing the constituency limit in that you would see more and more spend pouring into those marginal seats and less into the safe seats.”

**Geraint Day, Deputy CEO and Head of Election Campaigns Unit, Plaid Cymru. Roundtable with smaller parties and independent candidates, 7 October 2020.**

2.23 In its 1998 report, which recommended introducing controls on party expenditure, the Committee looked at the distinction between candidate and party spend and the utility of various regulatory alternatives.<sup>22</sup> The Committee concluded that a separated system would, in practice, be the simplest and most straightforward to operate, with constituency limits remaining and new national limits introduced. However, more than twenty years on, it is unclear whether this remains the right approach.

## Our view

2.24 We were struck by the strength of feeling we heard that it is unfair for national parties to target spending in marginal constituencies, leaving smaller parties and independent candidates unable to compete. It would appear to undermine the principle of candidate spending limits if national parties are able to spend heavily in constituencies. We can therefore see an argument for change. Yet, while the current system is imperfect, it is far from clear what kind of reform would succeed in delivering a fairer system.

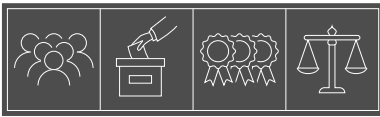
2.25 The principle of fairness, highlighted in chapter 1, requires that national expenditure does not damage local democracy. We make a number of recommendations in this report that will, in time, illuminate the scale of the problem. These recommendations will increase transparency around the extent to which money from party funds is being targeted in constituencies, and will allow for closer monitoring of whether expenditure is correctly allocated against party or candidate spending limits. We recommend:

- proposals to increase transparency around digital campaigning (recommendations 13 to 16)
- shorter timeframes for spending returns for parties and non-party campaigners (recommendations 18 to 20)
- the Electoral Commission should have responsibility for the enforcement of candidate finance laws, providing more joined-up oversight of the PPERA and RPA regimes (recommendation 45)
- a single, centralised database displaying spending returns for parties, non-party campaigners and candidates (recommendation 46).

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<sup>22</sup> Committee on Standards in Public Life (1998), *The Funding of Political Parties in the United Kingdom*, Cm 4057, pages 122-123





# Chapter 3

## The Electoral Commission

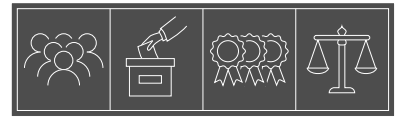
### Introduction

- 3.1 The Electoral Commission was established as an independent statutory body under the Political Parties, Elections and Referendums Act 2000 (PPERA) following the recommendations of the Committee's fifth report, 'The Funding of Political Parties in the United Kingdom'. The Commission oversees elections and referendums and regulates political finance in the UK.
- 3.2 In this review we have set out to look at the regulation of election finance. We are therefore concerned principally with the Commission's duties and powers as a regulator of donations and campaign finance laws. However, during the course of the review we found that people were keen to share their perspectives on the Commission as a body. We heard views about its status as an independent regulator, its mandate and its effectiveness. This evidence, while not directly aligned to our terms of reference, provides important context for our inquiry. We begin therefore by describing the Electoral Commission's governance structure and accountability framework, before moving on to discuss the evidence we have heard. We conclude with our own observations.

### Governance

- 3.3 The strategic direction of the Commission is set by 10 electoral commissioners who are appointed by Her Majesty The Queen on the recommendation of the House of Commons for a period of up to 10 years. They are responsible for enabling the Commission to discharge its functions effectively, ensuring high standards of corporate governance and overseeing risk management and are held to a strict code of conduct. Six commissioners, including the Chair, are appointed following open recruitment processes, and four are nominated by the leaders of political parties.
- 3.4 The appointment of nominated commissioners followed recommendations made in the Committee's 2007 report. The recommendations were intended to remove barriers that might prevent the Commission from benefiting from the appointment of individuals with direct experience of the political process. This principle applied to staff as well as commissioners. While it was essential to ensure the real and perceived independence and impartiality of the Commission from government and political parties, the Committee judged that the then blanket 10-year ban on employing individuals who had been politically active was not justified, proportionate





or necessary. Following the Committee's recommendations, the so-called '10-year rule' was reduced to one year for the majority of staff, a period between two and five years for 'designated posts' and five years for the Chief Executive.

- 3.5 Commissioners are required to declare that they agree to be bound by the principles and procedures in the Electoral Commission's Code of Conduct for Electoral Commissioners.<sup>23</sup> The code sets out expected standards of behaviour, in line with the Nolan Principles. Staff must comply with the staff Code of Conduct, which forms part of the terms and conditions of employment. Both codes caution that particular care should be taken to ensure that any use of social media does not call into question the political impartiality of the Commission.

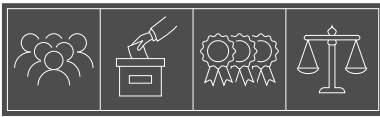
## Accountability to Parliament

- 3.6 The Electoral Commission is accountable to the UK Parliament through the Speaker's Committee on the Electoral Commission, a statutory body established under PPERA and chaired by the Speaker of the House of Commons. The Committee includes MPs from across the House and *ex officio* members, including ministers with responsibilities for local government and electoral matters, and the Chair of the Public Administration and Constitutional Affairs Committee (PACAC). The Speaker's Committee's core responsibilities relate to ensuring that the Electoral Commission is operating economically, efficiently and effectively and include the duty to scrutinise and approve the Commission's annual financial estimate, business plan and five-year plan, and oversee the selection of commissioners. In turn, the Speaker's Committee answers written and oral Parliamentary questions about the work of the Commission and is required to report to the House of Commons annually on the exercise of its functions.
- 3.7 The National Audit Office (NAO) is required to produce a report to the Speaker's Committee on the Electoral Commission's Corporate Plan. In 'A Short Guide to the Electoral Commission' submitted to the Speaker's Committee in March 2020, the NAO noted, "the Commission has a mature and well-established governance structure and its accountability framework meets the NAO's four essentials of accountability".<sup>24</sup>
- 3.8 The Electoral Commission will become funded by and accountable jointly to the UK Parliament, the Scottish Parliament and the Senedd from 2021-22, when arrangements come into effect following UK legislation to devolve competence for major electoral events that take place in Scotland and Wales.

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23 Electoral Commission (2017), Code of Conduct for Electoral Commissioners. Available at: <https://www.electoralcommission.org.uk/sites/default/files/2020-10/Code-of-Conduct-for-Electoral-Commissioners-March-2017.pdf>

24 National Audit Office (2020), A Short Guide to The Electoral Commission, page 5. Available at: [https://www.nao.org.uk/wp-content/uploads/2020/10/short\\_guide\\_The\\_Electoral-Commission\\_2020.pdf](https://www.nao.org.uk/wp-content/uploads/2020/10/short_guide_The_Electoral-Commission_2020.pdf)



- 3.9 PACAC has the lead role in scrutinising the activities, policies and decisions of the Electoral Commission. It holds evidence sessions following UK elections and launched an inquiry into the work of the Electoral Commission in September 2020.<sup>25</sup> The Electoral Commission has given evidence to inquiries by other Parliamentary committees when aspects of the Commission’s responsibilities are in scope.<sup>26</sup>
- 3.10 An additional mechanism of accountability is provided by the Parliamentary Parties Panel, which consists of a representative of each political party with two or more MPs. The panel provides a forum for consultation between the Commission and political parties on the work of the Commission and, in particular, enables parties to make representations to the Commission about regulatory issues.

## A trusted regulator?

“I’ve been involved in politics since I was 15, more than 50 years. I’ve come across all sorts of organisations independent of government and never came across one that has been biased, inefficient, not known its own rules and been the judge, jury and executioner, like the Electoral Commission.”

**Peter Bone MP, oral evidence.**

“... contrary to claims of bias being made of it, it is clear that the Electoral Commission strives to execute its functions in party regulation in an independent manner. Thus, the Conservatives are not the only party to have fallen foul of spending regulations recently. In other high-profile compliance cases, Labour were fined £20,000 for undeclared expenses in the 2015 general election, including the infamous Ed Stone while the Liberal Democrats were also fined the same amount for undeclared expenses.”

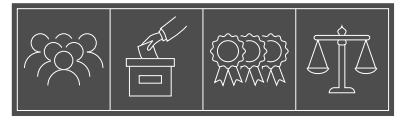
**Dr Alistair Clark, written evidence 36, footnote 11, LSE blog, 11 May, 2017.**

“I encourage the Committee to press upon all those in public life the importance of respecting the vital role that the Commission plays as an impartial, non-partisan regulator. When individuals or organisations respond to decisions made by the Commission that they disagree with by seeking to undermine the Commission’s legitimacy without justification, they do a grave disservice to our body politic.”

**Dr Alan Renwick, Constitution Unit, UCL, written evidence 45.**

25 PACAC announcement of new inquiry: work of Electoral Commission, 23 September 2020. Available at: <https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/news/119414/new-inquiry-work-of-electoral-commission/>

26 Department for Culture, Media and Sport Select Committee (2019), Disinformation and ‘fake news’: Final Report. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>



- 3.11 The above quotes illustrate the diversity of views that we heard about the Electoral Commission during the course of this review. The majority of contributors expressed confidence in the Commission as an independent, non-partisan regulator, including those who see room for improvement in how the Commission carries out its role. However, we also heard from MPs and campaigners who believe the Commission is institutionally biased, and cited their personal experiences of the Commission to support their case.
- 3.12 The consultation response from the Conservative Party set out concerns about the operation of the Commission and its accountability. It suggested that the government should either have more oversight over the Commission (with one option to amend legislation such that the government would publish a regulatory policy statement, setting out the Electoral Commission’s remit and goals), or it should be abolished altogether with its functions transferring elsewhere. Its statutory registration and reporting functions could be transferred to Companies House, investigations could be a matter for the police and the Commission’s broader policy and guidance functions could be transferred to the Cabinet Office. In oral evidence Alan Mabbutt clarified: “We were making a point rather than necessarily calling for its abolition. You could do all that it does in other areas of regulation without it existing... my submission refers to CSPL’s 2007 report, which emphasised that the Electoral Commission should focus on its core responsibilities, rather than necessarily calling for its abolition.”<sup>27</sup>
- 3.13 The review received a wealth of evidence emphasising the value of a strong independent Electoral Commission that is not accountable to the government. Submissions making this case came from political parties, law enforcement bodies, academics, anti-corruption organisations and campaigners. A majority of countries surveyed in the international comparison at appendix 2 have some form of Electoral Commission.

**“The regulator of elections needs to be totally sovereign and not at the whim of a minister. We need an independent process for selecting them. There is an international perspective. If the Electoral Commission were to report to a minister then I’ll hear the same arguments in Belarus in six months’ time.”**

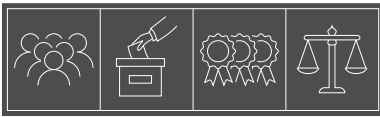
**Thomas Borwick, Kanto Systems, oral evidence.**

**“The MPS considers the independence of the Electoral Commission to be a strength. In the same way that the MPS is based on the principle of policing without ‘fear or favour’, it is important that the EC is an independent regulator, accountable to Parliament rather than to Government.”**

**Metropolitan Police Service, written evidence 52.**

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27 Registered Treasurer and Legal Officer, Conservative Party, oral evidence



“We recognise the important role of the Electoral Commission as an independent regulator, accountable to Parliament, not the Government. The Government is not involved in decisions over what the Electoral Commission investigates, and we support these independent principles.”

**Crown Prosecution Service, written evidence 42.**

- 3.14 A significant body of evidence provided to the review by a range of voices, including some political parties, the police, the Association of Electoral Administrators (AEA), National Council for Voluntary Organisations (NCVO), academics and civil society organisations described the Commission as an effective regulator. Contributors recognised that there was room for improvement, but there was broad confidence in the ability of the Commission to perform its role.

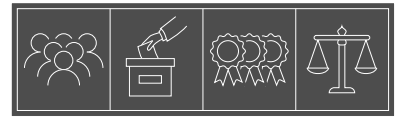
“The strength of the Commission is the active work it undertakes with those it regulates to build understanding of the law and ensure compliance. An indication of that strength is best demonstrated not by levels of satisfaction amongst professional compliance officers, politicians or commentators, but by those working on the ground in elections, many of whom are volunteers. Surveys of electoral agents repeatedly report satisfaction with the information and guidance provided by the Commission as well as high levels of satisfaction with electoral administration, and low levels of perception of electoral fraud.”

**Professor Justin Fisher, written evidence 15.**

“The Electoral Commission in its current role has oversight of all aspects of the electoral process. It is an excellent provider of guidance, supporting resources and good practice, providing a consistency of approach across the UK. The guidance it produces for Returning Officers, Electoral Registration Officers and administrators is invaluable, and its work goes a long way to ensuring the smooth conduct and transparency of various elections, referendums, and electoral registration. It also provides essential guidance to candidates and political parties.”

**Association of Electoral Administrators, written evidence 17.**

- 3.15 We also heard from witnesses who felt very strongly that the Commission had demonstrated incompetence by giving inaccurate advice, making errors of law, delaying investigations and generally taking an overbearing approach to regulation.



“I volunteered to be ‘responsible person’ for Vote Leave in the referendum campaign, and as a volunteer I was not expecting to have four years of hell imposed upon me that I don’t think was justified. A lot of questions have arisen as a result of my experiences that need to be asked of the Electoral Commission and the way they performed their investigations after the referendum.”

**Alan Halsall, ‘responsible person’, Vote Leave, oral evidence.**

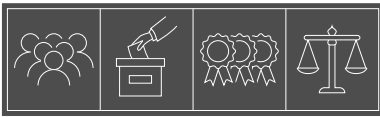
- 3.16 Chapter 9 explores how the Commission exercises its role as a regulator of campaign finance by examining the evidence we heard on the quality of guidance and advice it provides and the approach it takes to enforcement.

## The role of the Electoral Commission

- 3.17 Under the Electoral Commission’s remit as a regulator of political finance, it has a duty to:
- maintain registers of political parties and campaigners
  - publish financial returns from political parties and campaigners, covering spending at elections, statements of accounts and reports of donations and loans
  - monitor and take all reasonable steps to secure compliance with the campaign finance laws (under this duty, the Commission publishes guidance on the law, provides advice in response to queries from parties, campaigners, candidates and the public and conducts investigations).
- 3.18 Some witnesses argued that there is a tension between the Commission issuing advice and conducting investigations. The argument was put that it creates a conflict of interest for a body to both provide guidance and enforce the laws on which it has advised, since in every instance a prior decision will have been made by the Commission which it will be predisposed to defend.
- 3.19 Some witnesses felt that the Commission should be stripped of its current investigatory role and powers and that it should have a more limited role.

“In so far as the Electoral Commission has a role as regulator of election finance it ought to be one of maintaining any register of such finance and making it available for inspection.”

**Timothy Straker QC, written evidence 32.**

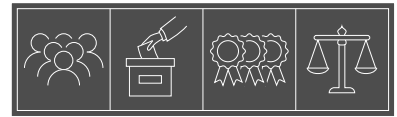


“... reverting to a more limited role of maintaining the registry of disclosures and monitoring and publishing information about compliance with regulations (as originally envisaged by this Committee in its recommendations that led to the establishment of the Commission) could be beneficial.”

**Institute of Economic Affairs, written evidence 39.**

## Our view

- 3.20 As we set out at the beginning of this chapter, this is a review of the regulation of election finance. We have not therefore conducted a root and branch review of the Electoral Commission and its governance. However, we offer some observations.
- 3.21 In the Committee’s fifth report, ‘The Funding of Political Parties in the United Kingdom’, published in 1998, we recommended the establishment of an independent Electoral Commission to oversee a range of measures designed to increase transparency in relation to the sources of party donations and party expenditure during election campaigns.
- 3.22 In the Committee’s eleventh report, ‘Review of the Electoral Commission’, published in 2007, we reviewed the mandate of the Commission. We assessed that the very wide breadth of the Commission’s mandate had led to a concentration on ‘softer’ issues such as policy development and voter participation work at the expense of a ‘harder edged’, more contentious regulatory and advisory role. We took the view that the Commission should have two principal statutory duties:
- a. the regulation of political party funding, third-party and campaign expenditure in the UK
  - b. the regulation of the electoral administration system in Great Britain.
- 3.23 The 2007 report asserted that the clear intention in the Committee’s 1998 report and the government’s response was that the Electoral Commission should be a proactive regulator with investigatory powers and should have an active role in regulating party finance. The 2007 report made recommendations that aimed to reinforce this aspect of the Commission’s mandate, including the introduction of a system of financial penalties, which was brought into effect through the Political Parties and Elections Act 2009 (PPEA) and which the Commission has today.
- 3.24 We do not believe that there is an inherent problem with the Commission providing advice and conducting investigations. It is not uncommon for regulators to both provide guidance and investigate breaches of the law - examples include the Financial Conduct Authority, the Environment Agency and the Health and Safety Executive. One advantage of the dual role is that significant weight can be placed on the Commission’s advice if responsibility for enforcing and interpreting the rules lies with the same body. Conversely, there might be a disconnect if regulation and guidance provision sat in separate organisations.



“... the biggest problem the Commission faces is that as a regulator of elections and political parties it often finds itself in the firing line from all political sides. It is somewhat akin to a referee in a football game – openly disliked by 50% of the fans, 50% of the time, dependent on the decision made.”

**Dr Sam Power, written evidence 34.**

- 3.25 In the course of gathering evidence we heard some affecting personal stories of a small number of MPs and campaigners who have been regulated by the Electoral Commission. Their experiences were clearly extremely difficult and stressful – both personally and professionally – and we think there are changes that can be made to improve the way the Electoral Commission approaches its role, which we set out in this report. Nevertheless we continue to believe strongly that there needs to be an independent regulator that is insulated from political pressures and at arm’s length from the government. Such a regulator needs to demonstrate its value through effective delivery and its impartiality through scrupulous care to avoid any impression of political bias either towards a party or in respect of any matter likely to become a significant factor in the course of an election or referendum. It is crucial that staff, the Chair and independent commissioners go out of their way to ensure that they do not make any public comments that could suggest a partisan view.
- 3.26 We stated in chapter 1 that an electoral system needs to be demonstrably fair and to command the confidence of political parties and the public and must be overseen by a strong independent regulator. As we were reminded by a contributor to our public consultation,<sup>28</sup> when the Commission was being established, its challenge was: “to operate in a manner which simultaneously maintains the goodwill of the regulated community and satisfies the legitimate expectations of the public and press that it will be an effective watchdog prepared to bare its teeth and if necessary bite hard.”<sup>29</sup> This is a considerable challenge and while the Commission has some stern and vocal critics, the large majority of those we talked to felt that it does important work and should be supported. As one of the checks and balances in our democratic system, the Commission should be respected as well as scrutinised and challenged. It must also have the powers it needs to perform its role effectively.
- 3.27 We conclude with some observations on points of governance.
- a. It was brought to our attention that, for the first time, a majority of the members of the Speaker’s Committee on the Electoral Commission are from the governing party. This is unfortunate and the Committee agrees that “independence can be ensured only if cross-party consensus is maintained”.<sup>30</sup>

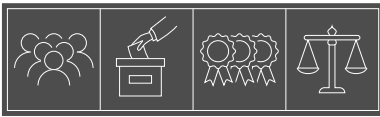
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28 Dr Alistair Clark, written evidence 36

29 Keith D Ewing (2001), Transparency, accountability and equality: The political parties, elections and referendums act 2000, Public Law, pages 542-570

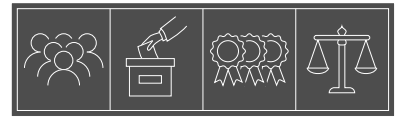
30 Dr Alan Renwick, written evidence 45





- b. For most constitutional regulators, the Chair is appointed for a single non-renewable term and it is anomalous that the Commission is not in that position.
- c. A common complaint shared across the political parties is that the Commission lacks an understanding of campaigning and that this impacts on its effectiveness. We agree that the Commission should ensure its staff have a practical understanding of what it is like to run an election campaign. Some parties commented that the politically nominated commissioners appear to be underused and could be consulted more extensively on strategic matters. Having recommended the appointment of political commissioners in 2007 precisely to expand the source of information available to the Commission, we would encourage it to explore ways of using the commissioners to best effect.





# Chapter 4

## Donations

### Introduction

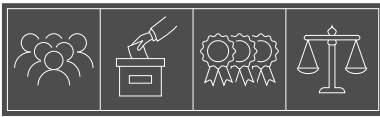
- 4.1 In this chapter we look at the permissibility requirement for donations and loans and the adequacy of the current legal framework.
- 4.2 The rules on ‘permissible donations’ in the Political Parties, Elections and Referendums Act 2000 (PPERA) followed recommendations made in the Committee’s fifth report, ‘The Funding of Political Parties in the United Kingdom’. The report recognised the climate of opinion at that time, with the two largest political parties having declared that they were determined not to accept foreign donations. All parties that submitted evidence to that review agreed that donations from foreign governments or governmental agencies should be outlawed. The Committee concluded, “it is right to take the opportunity to lay down the principle that those who live, work and carry on business in the United Kingdom should be the persons exclusively entitled to support financially the operation of the political process here”.<sup>31</sup>
- 4.3 In its fifth report, the Committee noted that the same arguments about the inappropriateness of foreign donations in relation to the funding of political parties apply with equal (if not more) force to the funding of referendum campaigns, since these are likely to be concerned with major constitutional questions. Under PERERA, similar rules about permissible sources apply to permitted participants in referendum campaigns as apply to parties and registered non-party campaigners at elections. Our recommendations in this chapter should therefore be taken as applying to all types of donations and loans regulated by PERERA.

#### **What is a donation?**

Donations are considered to be money and/or goods or services given to a party either without charge or on non-commercial terms. In guidance provided by the Electoral Commission, examples of donations are: a gift of money or other property, sponsorship of an event or publication, subscription or affiliation payments and free (or specially discounted) use of an office.

Under PERERA, a donation to a party or non-party campaigner is anything with a value of £500 or more. Under RPA, a donation to a candidate is anything with a value of £50 or more.

31 Committee on Standards in Public Life (1998), *The Funding of Political Parties in the United Kingdom*, Cm 4057, page 70



There is no upper limit on donations to political parties, candidates or non-party campaigners in the UK, as long as this money comes from a permissible source. It is the responsibility of said political party, candidate or non-party campaign to ascertain the source of the donation and whether it is permissible.<sup>32</sup>

- 4.4 Given the challenge of producing a definition of a foreign donation which would be reasonably simple to operate and free from ambiguities while catering for exceptions, such as donations from UK citizens who happened to be working abroad, the Committee approached the problem from the opposite direction and attempted to define what was to be regarded as ‘a permissible source’ from which donations may be received.<sup>33</sup>
- 4.5 This approach was implemented in PPERA. Before a party, non-party campaigner or regulated donee accepts any donation or loan of more than £500, it must take all reasonable steps to: make sure it knows the identity of the true source and check that the source is permissible.<sup>34</sup>
- 4.6 Concern about foreign influence in UK politics has come to prominence in recent years. The publication of the Intelligence and Security Committee of Parliament’s 2020 Russia report confirmed that Russia is using a range of methods to seek to disrupt and exert influence in the UK, including political financing and the spread of disinformation.<sup>35</sup>

## Permissibility of individuals

- 4.7 Under PPERA, to be permissible as a donor or lender an individual must be on a UK electoral register – not just eligible to be on a register. However, in a 2009 Supreme Court decision on a forfeiture application, the judges took into account a donor’s eligibility to be on an electoral register in deciding whether the donor should be treated differently to a source of overseas funds and therefore whether to order forfeiture, and how much of the donation should be forfeited.
- 4.8 This has added complexity to the test and to the Commission’s regulatory work. It creates a risk of inconsistent treatment of donations. It also means that where a party accepts a donation without taking steps to check permissibility, and the donation

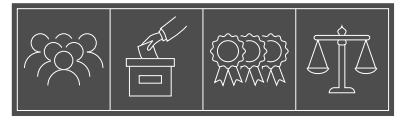
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32 See summary of the legal framework for regulation of political and election finance in the UK at appendix 1

33 The categories of permissible donors are set out in section 54 of PPERA. Similar controls are applied to other types of campaigners (non-party campaigners, referendum campaigners and candidates). These controls for other campaigner types generally refer back to the concepts and definitions established in Part 4 of PPERA

34 Schedule 7 of PPERA defines regulated donees as: members of registered parties, holders of relevant elective offices or members associations. ‘Relevant elective office’ includes MPs and members of the devolved legislatures

35 Intelligence and Security Committee of Parliament (2020), Russia. Available at: [https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721\\_HC632\\_CCS001\\_CCS1019402408-001\\_ISC\\_Russia\\_Report\\_Web\\_Accessible.pdf](https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf)



is impermissible, the party may nonetheless be able to retain the donation, which weakens the incentive for the recipient of donations to make the appropriate checks.

- 4.9 The Committee's 2011 report, 'Political Party Finance, Ending the Big Donor Culture', recommended that, "the requirement in PPERA that only donors on an approved electoral register can make donations to a UK political party should be put beyond doubt". We continue to believe that this is necessary.
- 4.10 We note that the 2019 Conservative manifesto committed to enable overseas voters to remain eligible to appear on a register for life by removing the 15 year limit. The Queen's Speech of 11 May 2021 confirmed that this measure will be included in an Electoral Integrity Bill to be introduced in the 2021-22 session of Parliament.
- 4.11 It will be important for the government to make clear that overseas voters will need to be on an electoral register if they wish to donate to a political party. PPERA needs to be clarified to put beyond doubt that to be a permissible donor, an individual must be on a UK electoral register.

### **Recommendation 2**

PPERA should be amended to provide specific clarification that to be a permissible donor an individual must be on a UK electoral register.

## Permissibility of companies

### **What makes a company a permissible donor?**

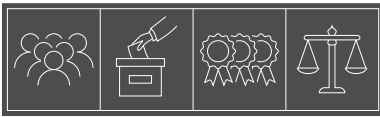
A company is permissible if it is:

- registered as a company at Companies House
- incorporated in the UK
- carrying on business in the UK

The company must meet all three criteria.<sup>36</sup>

- 4.12 In 'The Funding of Political Parties in the United Kingdom', the Committee said the principle should be that donations may be received from companies, provided that they are incorporated under domestic law. The Committee foresaw the possibility that a foreign company might seek to evade the underlying purpose of the provisions by creating a UK subsidiary with the sole function of receiving money from the foreign corporation to channel to the political party of its choice. To address this risk, the Committee recommended provisions designed to ensure that, in the case of a

<sup>36</sup> Electoral Commission, Permissibility checks for political parties. Available at: [https://www.electoralcommission.org.uk/sites/default/files/2021-01/sp-permissibility-rp\\_0.pdf](https://www.electoralcommission.org.uk/sites/default/files/2021-01/sp-permissibility-rp_0.pdf)



donation from a UK subsidiary of a foreign company, that subsidiary was carrying on a genuine business within the United Kingdom and was generating income here sufficient to fund any donation made to a UK political party. This would be backed up by a general provision making it a criminal offence to attempt to evade or to render nugatory the statutory provisions limiting donations to those coming from ‘permissible sources’. “It would, for example, be a crime for an individual in the United Kingdom, who did not, himself or herself, have the resources to make a large donation, to become a mere conduit pipe through which foreign money was channelled to a particular party.”

- 4.13 While anti-evasion measures were included under PPERA, there was no provision included to require that a donation must be made from income generated in the UK. The Electoral Commission has told us that the very broad scope of the test that a company must be ‘carrying on business in the UK’ is problematic, not least because it exposes parties to risk, including the risk of accepting the proceeds of crime. They have seen instances of UK companies that have made donations and are carrying on business but are generating significantly less profit than the value of donations made.
- 4.14 We heard widespread concern about the risk that the current rules on donations from companies provide a potential route for foreign money into UK elections, and we heard calls for regulation in this area to be tightened. A contributor to one of our roundtables noted that the very fact that organisations such as companies can make contributions to political parties presents risk to the political system.<sup>37</sup>

“There are vulnerabilities in the system - my concern is that if an offshore company set up to avoid scrutiny can be a source of donations, it is a loophole that can be exploited.”

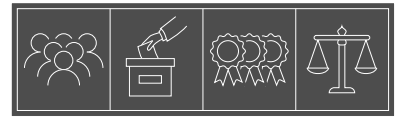
**Damian Collins MP, oral evidence.**

“...the rules in the present form leave the door open for overseas actors using complex corporate offshore vehicles (while taking advantage of the ease of setting up a UK-registered company) to skirt rules and donate to political parties. This poses real corruption risks when donations are channelled to parties in this manner through non-transparent sources and from non-transparent jurisdictions where the ultimate beneficial owner of a company remains unknown.”

**Spotlight on Corruption, written evidence 37.**

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37 Professor Justin Fisher, roundtable with academics and organisations, 5 October 2020



## Our view

- 4.15 We note that Canada and France ban corporate donations, but that this is unusual for countries broadly analogous to the UK.<sup>38</sup> We continue to take the view that the Committee held in its fifth report, that we have no principled objection to donations being received from companies. However, we consider the current rules are insufficient to guard against foreign interference in UK elections. Companies should not be able to donate more money than they generate in profits. To achieve this we recommend that PPERA is amended to require a company making a donation to demonstrate that the donation does not exceed net profits after tax generated in the UK within the preceding two years.

### Recommendation 3

PPERA should be amended to provide that company donations should not exceed net profits after tax generated in the UK within the preceding two years.

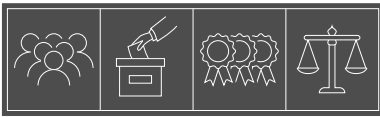
## Permissibility of unincorporated associations

- 4.16 To be a permissible donor, an unincorporated association (UA) must have more than one member, have its main office in the UK, and be carrying on business or other activities in the UK.<sup>39</sup> This definition is very wide and intended to allow various types of bodies, not included elsewhere in the list of permissible donors, to donate. There is nothing inappropriate in UAs being donors but establishing their status is difficult as a UA is not a hard-edged legal entity. We note that most of the major political parties have fundraising groups or clubs which are UAs, while other unincorporated groups have appeared which have a less obvious link to any party.
- 4.17 New controls were added in 2010 with the aim of addressing concerns about UAs being used to hide the original source of donations. These require any UA donating more than £25,000 in a calendar year to notify the Commission. UAs must also report details of any political ‘gifts’ of over £7,500 received in the preceding calendar year and quarterly reports on gifts of over £7,500 received in the year that the donation was made, with quarterly reporting continuing until the end of the next calendar year. The Electoral Commission’s experience is that the disclosure requirements are very complex for people to comply with, especially the retrospective element.

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38 Dr Sam Power, Lecturer in Corruption Analysis (University of Sussex), appendix 2: A comparison of political and electoral finance regulation in 12 countries

39 Electoral Commission, Permissibility checks for political parties. Available at: [https://www.electoralcommission.org.uk/sites/default/files/2021-01/sp-permissibility-rp\\_0.pdf](https://www.electoralcommission.org.uk/sites/default/files/2021-01/sp-permissibility-rp_0.pdf)



- 4.18 The Electoral Commission told us that, while these controls have added transparency, there remain gaps in the regime. The Commission has identified two key vulnerabilities. First, while UAs are included in the list of permissible donors, those who give money to them are not required to be permissible donors. This means that they could legitimately receive money from overseas sources and donate that money to political parties. If the sums received were over the PPERA threshold of £25,000 in a calendar year, they would have to disclose ‘whatever details the unincorporated association knows of the name and address of the person by whom the gift was made’, but they would not be prevented from receiving it and donating it.<sup>40</sup> That UAs are not required even to report (or, by implication, establish) full details of those who give them funds, is a significant weakness. Second, no transparency is required from UAs where they provide donations to candidates, rather than to parties.<sup>41</sup> The Commission saw one UA funding a number of candidates at the 2019 General Election.
- 4.19 The weak regulation of UAs has been raised as an issue in evidence to the review from expert organisations, while others cautioned against over-regulation. Some contributors, including Transparency International and Spotlight on Corruption have recommended reducing the level at which UAs report political gifts that they receive from £7,500 to £500.

“Since 2001, UAs have given over £46 million in political donations to British political parties and other British recipients, over half of which (£28 million) was given after the new transparency rules were introduced in 2010. However, according to data published by the Electoral Commission, UAs have only reported receiving a total of £27,500 in political gifts – leaving a substantial gap between UAs’ declared income and their outgoing political donations.”

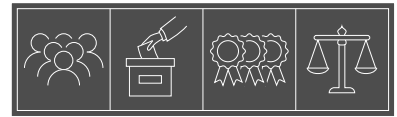
**Transparency International, written evidence 29.**

“... regulation needs to be proportionate to recognise that most political activism is by local volunteers. Political parties across the spectrum receive the bulk of their donations from individual members, and local clubs, councillor groups and political societies. Smaller, voluntary sector organisations tend to be set up as unincorporated associations. It is healthy for democracy for parties to raise money from such small-scale fundraising. But as a consequence, heavy-handed compliance regimes (that might be suitable for ‘big business’) is not in the public interest and undermines democratic participation.”

**Conservative Party, written evidence 31.**

40 PPERA Schedule 19A, paragraph 3(1)(d)

41 PPERA prescribes the recipients of donations from unincorporated associations which cause the controls to be engaged. While the various entities regulated by PPERA are included, candidates are not



## Our view

- 4.20 The evidence we have heard suggests that the rules on UAs are a weak point in the regime for regulating donations, and a potential route through which money from overseas sources can enter (and may already have entered) UK politics. Requiring UAs that meet the threshold for registration with the Electoral Commission to conduct permissibility checks on donors would mitigate the risk of a UA acting as a conduit for foreign funds since they would be subject to the same legal requirement as parties themselves.
- 4.21 We recognise that, like non-party campaigners (NPCs), UAs may receive funds which are intended for activities outside politics. It would therefore be unreasonable to require all donations to be subject to permissibility checks and thus potentially restrict funding under electoral law for matters not concerned with political activity. Therefore, the requirement to require permissibility checks should be confined to a donation intended for political activity. As with NPCs, it would be a matter for each UA to determine how to arrange its finances to comply with this requirement. The Electoral Commission has suggested there are a number of ways to achieve this. Hypothetical examples range from a UA accepting only permissible donations regardless, to a UA maintaining two ‘pots’ of money (one from permissible sources and one from others for different uses), to fundraising specifically from permissible donors to fund planned political activity.

### **Recommendation 4**

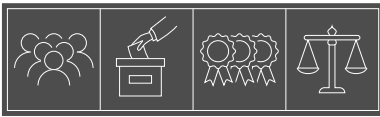
PPERA should be amended to require unincorporated associations that meet the threshold for registration with the Electoral Commission to conduct permissibility checks on a relevant donation (that is, a donation intended for political activity).<sup>42</sup>

- 4.22 The rules on disclosure introduced in 2010 do not appear to be adequate – they are neither easy to follow, nor do they provide sufficient confidence in the original sources of donations. Clearly there needs to be transparency around the sources of large donations, but the current requirements – such as the range of forms that need to be completed – strike us as overly complicated. If this aspect of regulation is to meet the principle of simplicity, identified in chapter 1, improvements are needed. We therefore recommend the government should amend the law to simplify the disclosure requirements that apply to unincorporated associations. The new rules should provide transparency around political gifts made to unincorporated associations donating more than £25,000 (the current threshold) to political parties in a year. They should also be straightforward to understand and simple to comply with.

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42 Unincorporated associations donating more than £25,000 in a year must register with the Electoral Commission





- 4.23 We further recommend that donations to candidates from UAs should be subject to similar disclosure rules as apply to donations to parties.

#### **Recommendation 5**

The government should amend the law to simplify the disclosure requirements that apply to unincorporated associations. The new rules should provide transparency around political gifts made to unincorporated associations donating more than £25,000 (the current threshold) to political parties in a year. They should also be straightforward to understand and simple to comply with.

#### **Recommendation 6**

The law should be updated so that disclosure requirements apply when unincorporated associations provide donations to candidates, in addition to parties and non-party campaigners.

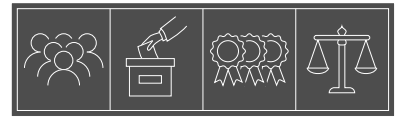
## The case for anti-money laundering style checks

- 4.24 The purpose of the permissibility controls in PPERA is to prevent foreign money from entering UK politics, yet it is clear that there is scope for these controls to be circumvented. The ISC's 2020 Russia report set out that it is possible for foreign nationals to use money to attempt to build influence in the UK through their involvement with UK business and politicians. Contributors to our review have said that this report and other research suggests the permissibility criteria for party donations are out of date and need to be replaced with more robust controls.

“Spotlight on Corruption believes that expanding the scope of what needs to be checked in terms of permissibility of donations is essential and should include checks on the origin of funds and whether the funds could be the result of criminality or money laundering. Mandatory AML checks made by a party on donations would go some way toward guaranteeing the legitimacy of the funds and also to protect parties themselves from the reputational risks arising from accepting money from non-permissible sources.”

**Spotlight on Corruption, written evidence 37.**





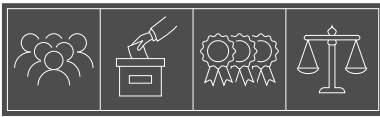
### What are the “AML regulations”?

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (2017) are designed to prevent criminals laundering money. They require certain companies and professional organisations to have processes in place to mitigate the risk of receipt of proceeds of crime. They are known as the “AML regulations” and have been strengthened over the past decade as part of implementation of EU money laundering directives.

- 4.25 The Electoral Commission has been making the argument since 2018 that risk management principles from anti-money laundering (AML) checks by businesses could apply to election finance.<sup>43</sup> They told us that they believe some concepts from the AML risk-based approach could be adapted and incorporated into the PPERA requirements for election campaigners who receive donations or loans. They argue this would help parties to identify foreign money and also to identify potential proceeds of crime, establishing a culture of ‘know your donor’ within parties – similar to the ‘know your customer’ (KYC) approach, encouraged through AML regulations for the financial sector.
- 4.26 The Commission recommended PPERA is updated to require:
- risk assessments (these could cover typical donors/lenders, geographical connections of donors/lenders etc)
  - enhanced due diligence for new donors/lenders (for example: knowing its principal place of business if different from its registered office, knowing the law it is subject to and its governing document/constitution, and knowing the names of its directors or senior person responsible for its operations)
  - simplified customer due diligence for regular donors/lenders
  - specified procedures for record keeping, monitoring and management of compliance with, and internal communication of, the policies.
- 4.27 In the charity sector, trustees are required to take reasonable and appropriate steps to know who a charity’s donors are, particularly where significant sums are being donated or where the circumstances of the donation give rise to notable risk. Charity trustees need to put effective processes in place to provide adequate assurances about the identity of donors, particularly substantial donors, and take steps to verify this where reasonable and it is necessary to do so. They should also have assurance on the provenance of funds. Guidance produced by the Charity Commission encourages charities to take a risk-based approach to due diligence. The starting point is: the greater the risks, the more charity trustees need to do to mitigate them.<sup>44</sup>

43 Electoral Commission (2018), Report: Digital campaigning - increasing transparency for voters. Available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>

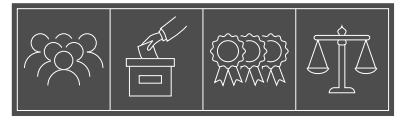
44 Charity Commission (2016), Compliance toolkit: Protecting charities from harm, chapter 2: Due diligence, monitoring and verifying the end use of charitable funds, page 4. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/677252/Chapter2new.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677252/Chapter2new.pdf)



“Given that these rules [money laundering ‘know your customer’ requirements] are implemented in most financial transactions and are a requirement for the charity sector and its financing, that they are not already a requirement for political party donations is, to say the least, astounding. I would therefore, at minimum, support such a change to give the Electoral Commission the powers it needs to regulate political party donations effectively, and recommend that the Committee pursue this as an issue for action.”

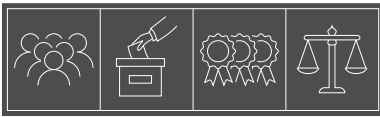
**Dr Alistair Clark, written evidence 36.**

- 4.28 The Conservative Party told us that they thought that current regulations for donations are sufficient. The Labour Party and Liberal Democrats thought there was merit in exploring anti-money laundering style regulations but it would be important to think about how such a process would work and the administrative workload that would be involved. The Labour Party believed that very careful consideration should be given to extending anti-money laundering rules beyond companies to individuals, and that the transparency benefits must be weighed against the risk of intrusion and the extent to which any additional regulatory requirements would introduce barriers to participation in politics and the democratic process. The Scottish National Party (SNP) thought that the proposal for anti-money laundering style checks made sense, that it is important to make sure that money is being properly sourced and did not anticipate that the party would have any difficulties complying with such requirements.
- 4.29 Some people we spoke to noted that the majority of donations are small and it is important that the requirements are proportionate to the nature of the risk. They suggested that there should be a higher bar for big donations, requiring more detailed checks for donations over a specified threshold (or amounting to the same figure in any year).
- 4.30 In oral evidence, the Electoral Commission was clear that the amount of money was not the only risk factor to consider. They are mindful of overburdening small parties and would like parties to be required to develop a risk-based policy proportionate to their own situation. The Commission noted that charities are required to have a statement of risk management in their accounts and suggested that a similar requirement could apply to parties.
- 4.31 The comparison of political and electoral finance regulation at appendix 2 shows that, while none of the countries of study have implemented anti-money laundering legislation, three countries (Canada, France, USA) explicitly require donations to go through the banking system. This measure benefits from the identity checks built into the banking system and allows money to be tracked. It increases accountability by placing the onus on political parties to take responsibility for the donations they receive.



## Our view

- 4.32 Requiring additional checks would undoubtedly increase the administrative burden on parties. However, we are persuaded that, providing the requirements are proportionate, it is entirely appropriate to require parties to do more to determine the true source of donations. We believe the argument that additional checks would be overly onerous is partly countered by the precedent provided by the charity sector, which, as with politics, relies on a system of voluntarism.
- 4.33 It is impossible to say with any certainty the extent to which the current rules are being circumvented, but there is increasing concern in this area and there is certainly scope within the current regime to do so. Confidence in electoral regulation is partly about perception and the results of the focus groups we held suggest public concern that regulation in this area is insufficient. There was a clear feeling in the focus groups that foreign actors can conceal financial transactions designed to influence UK elections and a consensus that this should not be tolerated under any circumstances.
- 4.34 We believe that PPERA should be updated to require parties and non-party campaigners to have appropriate procedures in place to determine the true source of donations. This may involve incorporating some aspects of anti-money laundering requirements into electoral law for parties and relevant donations received by non-party campaigners (i.e. money intended for political activity). Parties and non-party campaigners should be required to develop a risk-based policy for managing donations, proportionate to the risk that they may not know the true source of a donation. Parties should also be required to include a statement of risk management in their annual accounts that sets out how risks relating to the source of their funds have been managed.
- 4.35 These measures would provide a much-needed additional layer of protection and would strengthen the message that the responsibility and legal burden for ascertaining the true source of a donation lies with the party or campaigner. They would need to show they conducted their due diligence and would not be able to rely on the defence that they were not aware a donation (that is, a sum over £500, applying the definition of a donation in PPERA) was not a permissible donation.
- 4.36 The Electoral Commission should provide detailed guidance to parties and non-party campaigners on how to develop a proportionate risk-based policy on procedures and checks for identifying the true source of a donation.
- 4.37 In addition, we recommend that all donations over £500 received by a political party or non-party campaigner should be donated only through the banking system, following the international precedent set by Canada, France and the USA.



### **Recommendation 7**

PPERA should be updated to require parties and non-party campaigners to have appropriate procedures in place to determine the true source of donations.

Parties and non-party campaigners should be required to develop a risk-based policy for managing donations, proportionate to the level of risk that they are exposed to.

### **Recommendation 8**

PPERA should be updated to require political parties to include a statement of risk management in their annual accounts that sets out the risks relating to their sources of funds and the steps taken to manage those risks.

### **Recommendation 9**

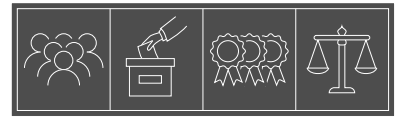
The Electoral Commission should provide detailed guidance to parties and non-party campaigners on how to develop a proportionate risk-based policy on procedures and checks for identifying the true source of a donation.

### **Recommendation 10**

PPERA should be updated to require all donations over £500 to be donated only through the banking system.

## Threshold for permissibility checks

- 4.38 Contributors to the review have raised concerns about the potential for multiple donations to be made below the thresholds in the legislation, with online payment systems creating greater scope to circumvent the rules.
- 4.39 Damian Collins MP discussed this vulnerability with us, an issue the DCMS (Department for Culture, Media and Sport) Select Committee had examined as part of its inquiry into disinformation and fake news under his chairmanship. He would like to see requirements built into payment systems to make it harder to hide large donations. Fair Vote UK have recommended addressing the risk by lowering the threshold for permissibility checks to 1p for all non-cash donations, with a £20 limit for cash donations, supported by a national, networked electoral roll to help smaller parties manage the added workload this change would necessitate.



- 4.40 The Electoral Commission told us that they have been advising parties and campaigners since 2015 about what checks and systems they need to have in place when raising funds online to ensure they comply with the law. They continue to recommend that all political parties and campaigners: check every payment that they receive online to make sure they have identified all donations and not accepted any that they are not entitled to; and request as much information as possible from people wanting to give funds, to be sure all payments are from a permissible source.
- 4.41 The potential impact of lowering the threshold was raised with us at a roundtable we held with smaller parties and independent candidates. National parties have access to the electoral register for checking the permissibility of donors, while smaller parties and candidates do not and must approach councils to ask them to make checks on their behalf, with varying levels of service provided.

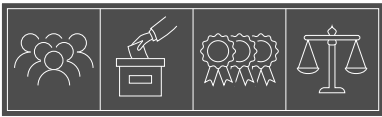
*“When the donation is to the local party rather than the central party, it becomes much harder. We have all of the electoral registers, whereas a lot of local authorities are not very helpful in providing help to a local party that has received a donation of over £500. It can be very challenging for them. They are in the fortunate situation that they can get in touch with us and we have that information centrally. For smaller parties, it can be really tricky to get that. A lot of the local authorities do not seem to realise that they have a responsibility to provide that information.”*

**Robert Buckman, Chief Operating Officer, Green Party. Roundtable with smaller parties and independent candidates, 7 October 2020.**

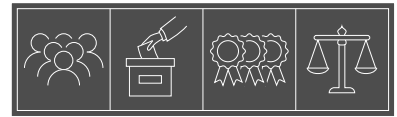
*“If you think we have problems checking anything over £500, having to check the permissibility check on someone giving you £20 would be chaotic. Setting the correct limit is quite important there. There is maybe an argument for review of that limit because those limits have been set for quite a while now.”*

**Geraint Day, Deputy CEO and Head of Election Campaigns Unit, Plaid Cymru. Roundtable with smaller parties and independent candidates, 7 October 2020.**

- 4.42 The wider angle is that money paid below the threshold is not treated as a donation by PPERA and aggregation controls do not apply. This means that money received below the thresholds for a donation in the legislation is not regulated at all. Some contributors to the review argued that this should change and that all money coming into a party should be categorised as a donation and the reporting threshold for donations and loans should be reduced. When we asked the Electoral Commission if changing the threshold would help to address risks of the threshold being exploited the Commission observed that wherever you set the bar, it would still be possible to make multiple payments below the threshold.



- 4.43 We have been guided by the principles set out in chapter 1 in considering whether to recommend lowering the threshold for permissibility checks. It is legitimate for parties to raise funds online, including through large numbers of small contributions which can widen participation. While parties must be accountable for the money they receive, regulation must be proportionate to the level of risk. We are mindful that the threshold for conducting permissibility checks was raised from £200 in the Political Parties and Elections Act 2009 to be less burdensome for volunteer party treasurers. We have concluded that lowering the threshold is likely to impact disproportionately smaller parties and independent candidates, who do not have easy access to the electoral register.
- 4.44 Rather than lowering the threshold for permissibility checks, or indeed, proposing changes to the definition of a donation itself, the recommendations in our review focus on the categories of permissible donors. We are content that this strikes the right balance in the regulation of donations in the UK.



# Chapter 5

## Regulated periods and campaign expenditure

5.1 In this chapter we examine the ‘regulated periods’ during which spending limits apply. We ask whether the rules relating to regulated periods continue to meet their purpose. We then consider two areas where finance laws require modernisation: the inclusion of costs of directly employed staff brought in to work on campaigns by political parties or referendum campaigners, and the disclosure of assets by all new parties and referendum campaigners.

### Regulated periods

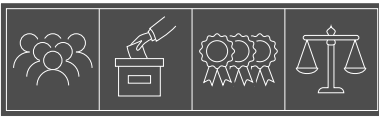
- 5.2 Limits on spending by parties, non-party campaigners and candidates apply in regulated periods before elections.<sup>45</sup> For parties and non-party campaigners the period is 365 days before polling day. There are (typically) two candidate spending limits at general elections, one for the ‘short campaign’ (which officially begins when Parliament dissolves) and one for the long period (which relates to the approximately three-month period leading up to the short campaign).<sup>46</sup> Regulated periods can overlap, which requires complicated apportionment exercises when other planned elections happen to have taken place in the preceding 12 months. For example, when local elections fall within the regulated period for a general election.
- 5.3 In 2017 and 2019, there were snap general elections. Money spent by parties and non-party campaigners in the preceding 365 days was retrospectively liable to be accounted for and reported within the spending limits. Parties and non-party campaigners did not know at the time of spend that this would be the case.
- 5.4 The Fixed Term Parliament Act 2011 (FTPA) was intended to bring certainty about when general elections would take place. However, the act is to be repealed by the Dissolution and Calling of Parliament Bill.<sup>47</sup> This means it is highly likely that the 365 day regulated period will routinely apply retrospectively, and that money spent when there was no expectation of an election happening within the next 12 months would be included within campaign spending rules.

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45 Limits also apply in regulated periods before referendums. The period is included in the primary legislation for each referendum

46 There was no long campaign for candidates in 2017 or 2019 (see appendix 1)

47 Dissolution and Calling of Parliament Bill, introduced 12 May 2021: <https://bills.parliament.uk/bills/2859>



- 5.5 We heard how the retrospective nature of regulated periods for elections called outside the FTPA has created particular problems for non-party campaigners, especially charities and other civil society organisations for whom politics is not their core purpose. We explore the regulation of non-party campaigning in more detail in chapter 8.

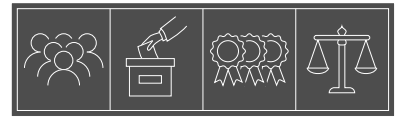
“The length of the regulated period and the fact that it applies retrospectively is problematic for the charity sector. For charities, when there is a snap General Election, they have to look back at what they have done over the past 12 months to see if anything could be caught by electoral law, so there is a fear of constantly being in a regulated period. There is uncertainty, also more time and effort is involved to look back at whether any activity could be caught or not. This is more problematic for NPCs than parties.”

**Elizabeth Chamberlain, then Head of Policy and Public Services, NCVO, oral evidence.**

“There has been a concern in the charity sector that regulated periods applied retrospectively are dampening free speech. It’s a different concern for us as we were set up to operate politically but it still takes up time and energy working out rules that didn’t apply at the time expenses were incurred or donations accepted. It makes more sense to apply the period from when the election is announced. Though I see that candidates will be campaigning for a year or so before the next scheduled election. As an NPC generally campaigning on issues not related to the outcome of any election, not standing candidates and not having fixed view as to who should win, I am not sure that fixed retrospectively-applied 12 month periods for snap elections do anything to improve the transparency of political donations.”

**Cary Mitchell, Director of Operations, Best for Britain, oral evidence.**





## Move to year-round regulation?

- 5.6 We heard from some contributors that regulated periods reflect an assumption that politics is something that happens primarily at elections and this is no longer a true representation of the form that campaigning takes. Many contributors told us that we are now in an age of permanent campaigning with political actors seeking to shape debates long before election campaigns start.

“Modernise spending regulations by instituting per-annum spending limits. This is also the age of permanent campaigning. The timelines for regulated campaign spending need to be modernised and simplified. Per-annum spending limits would provide this clarity.”

**Fair Vote UK, written evidence 33.**

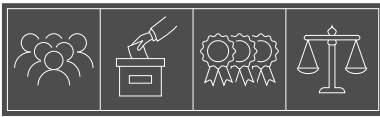
“Political actors seek to shape debates long before election campaigns start. Many, if not all, election finance rules should be applicable all year round, not just in the ‘regulated period’ preceding polling day.”

**Who Targets Me, written evidence 48.**

- 5.7 Year-round regulation would simplify some aspects of the system and ensure that all campaign expenditure is captured, but it might create some problems and have unintended consequences.
- 5.8 The political parties and candidates we spoke to expressed concern about the administrative impact of a change to year-round regulation. Some were not persuaded that the transparency benefits outweighed the compliance burden and queried the value of publishing spending information for an election that would occur more than a year later. We were told that campaigns are often decentralised and it is a challenge to obtain information from hundreds of accounting units. Some smaller parties and candidates said that the greater problem is regulating what money is being spent on, rather than when it is spent.

“The current system works in the sense it fulfils the criteria of being simple and easy to understand, part of rhythm of what we do – when short campaigns kick in they know they have to adhere to a tighter regulated set of rules. It probably could be improved. But wouldn’t support moving to year-round regulation because it would set us back from where we are now where there is clear understanding between long and short campaign.”

**David Evans, General Secretary, Labour Party, oral evidence.**



“My experience in the 2019 General Election was that in October 2019 my incumbent MP said he wasn’t seeking re-election so a year round period would have meant I spent money on a candidate who was then not standing... And if you have regulated election period this must be a level playing field for all. If you try to restrict over a longer period, that would be a barrier for entry for independents and smaller parties.”

**James Cockram, Conservative Party agent, oral evidence.**

- 5.9 The Electoral Commission’s guidance states that campaign spending includes “items or services bought before the regulated period begins, but used during it.”<sup>48</sup> If we take as an example expenditure on a database used for election campaigning, a party must report in their spending return: spend on any data purchased from a third party, spend on activities to enhance that data and spend on storing and manipulating that data, regardless of whether the spending happened in a regulated period. If a dataset is donated, then the party should record what it would normally cost in full under the ‘notional spending’ rules that apply when goods or a service are provided at a discount or for free.

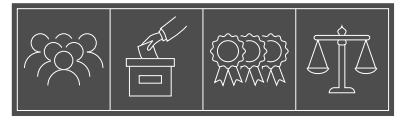
## Our view

- 5.10 We have some sympathy with the view that regulated periods are a relic of an earlier age and no longer reflect the way that campaigning takes place. Activity 18 months before an election might still have an impact on the outcome, particularly given the way that datasets are developed over time and used to target digital campaigning.
- 5.11 Year-round regulation has some attractions as it would ensure all campaign expenditure is included. However, the evidence we have heard is that this would create an administrative burden for parties and campaigners, especially for campaigners for whom elections are not their core focus and it would act as a barrier to entry.
- 5.12 Some campaigners have called for a shorter regulated period. Lord Hodgson’s 2016 review of the operation of third-party campaigning rules, recommended a reduction of the regulated period for non-party campaigners at general elections from 365 days to four months, accompanied by anti-evasion measures to ensure a non-party campaigner cannot be used as a front for a political party.<sup>49</sup> However, there is a risk that different regulated periods for parties and non-party campaigners might drive attempts to circumvent the rules. We note the emergence at the 2019 General

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48 Electoral Commission (2019), UK Parliamentary General Election in 2019: Political parties (GB and NI). Available at: <https://www.electoralcommission.org.uk/sites/default/files/2019-10/Political%20parties%202019%20UKPGE.pdf>

49 The Lord Hodgson of Astley Abbotts CBE (2016), Third Party Election Campaigning – Getting the Balance Right. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507954/2904969\\_Cm\\_9205\\_Accessible\\_v0.4.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507954/2904969_Cm_9205_Accessible_v0.4.pdf)



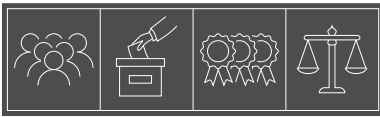
Election of groups that appeared to be closely connected to political parties and that placed hundreds of thousands of adverts on social media platforms. There is a strong case for maintaining the principle that the rules for non-party campaigners should mirror the rules for parties.

- 5.13 In summary, while we accept that the current system is far from perfect, it is not clear what alternative would deliver a fairer system with rules that are simple and relatively easy to comply with.
- 5.14 The Fixed Term Parliament Act (FTPA) was meant to bring certainty about when general elections would take place. It hasn't turned out that way, but repealing the act will formalise that lack of certainty, which as we have noted in this chapter, is a source of concern for campaigners. Further, the Joint Committee on the FTPA has recommended that the government should establish a cross-party working party group to examine how the general election campaign period can be shortened from 25 days. The Electoral Commission flagged in its evidence to the Joint Committee that the 'short' regulated period for candidate spending is linked to the election campaign period – so a shorter election timetable would also mean a reduction in the length of the regulated period for candidate spending.
- 5.15 The government intends to repeal the FTPA through the Dissolution and Calling of Parliament Bill. We consider that as part of this change in legislation, the government should address the appropriate period under which campaign expenditure is regulated. We would expect this to be considered as part of the consolidation and simplification of electoral law that we call for in recommendation 1.
- 5.16 It is important that all parties are clear that spending returns must include items or services bought before the regulated period begins but used during it. The Electoral Commission has prepared draft codes of practice to support parties and candidates in this. In the absence of the codes being approved by the UK Parliament, the Commission has incorporated them into its own guidance, but we consider that statutory guidance issued in the form of a code of practice would give greater prominence to which expenses a political party is required to report. We discuss the codes of practice in more detail in chapter 9.

## Campaign expenditure

### **Staff costs of directly employed staff of political parties and referendum campaigners**

- 5.17 The spending limits at elections are designed to control campaign expenditure. It is therefore an anomaly that the costs of directly employed staff brought in to work on campaigns by political parties or referendum campaigners are not included.
- 5.18 The Electoral Commission raised this issue in its 2013 report, which pointed out the inconsistency in the election rules, given that campaign staff costs are included in



the spending limits for non-party campaigners regulated by PPERA and candidates regulated by the RPA.<sup>50</sup> It is also the case that the cost of campaign staff who are seconded to parties by other organisations and the cost of campaign staff hired by parties via an agency count towards the party's PPERA limit.

- 5.19 The Commission noted that this exclusion also means that the party spending controls do not cover a potentially large element of election campaign spending. It noted that bringing directly employed staff costs within the scope of the spending controls would have significant implications, which would need to be considered before the change could be implemented.
- 5.20 We consider that this anomaly should be addressed and the current inconsistency in the rules should be ironed out. As a matter of principle, campaign-related staff costs should be controlled by the limits on political party and referendum campaign spending. Including these costs may capture some of the unseen costs associated with data analysis. It will also bring greater transparency. While this could amount to a significant chunk of campaign spending, in the light of the government's intention to increase spending limits in line with inflation, we do not expect the limits to require any further adjustment.

#### **Recommendation 11**

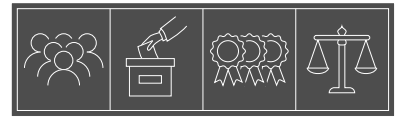
The costs of directly employed staff working on election and referendum campaigns should be included in the spending limits for political parties and referendum campaigners.

#### **New campaigners - disclosure of money spent on assets**

- 5.21 The rules on donations and loans apply to parties and campaigners only after they have registered with the Electoral Commission. Depending on when a new party registers and whether its accounts require auditing, the first statement of accounts may not have to be submitted for publication for as long as 18 months after registration. The Commission recommended in 2013 that all new parties should submit a declaration of assets and liabilities over £500 on registration. In its digital campaigning report, the Commission said this requirement should also apply to all referendum campaigners who have to register. The Commission also said that the declaration should include an estimate of the costs the campaigner has invested in buying or developing the data they hold when they register.
- 5.22 We support this proposal. The principle of transparency means it is important that voters know the financial position of a new party or referendum campaigner before the election or referendum happens. It is also important for the Electoral Commission to have this information to inform its approach to providing advice and auditing compliance.

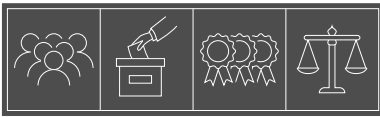
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<sup>50</sup> The Electoral Commission (2013), A regulatory review of the UK's party and election finance laws. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/PEF-Regulatory-Review-2013.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/PEF-Regulatory-Review-2013.pdf)



### **Recommendation 12**

All new parties and referendum campaigners should be required to submit a declaration of assets and liabilities over £500 on registration. The declaration should include an estimate of the costs invested in buying or developing the data they hold when they register.



# Chapter 6

## Digital campaigning and election finance

### Introduction

- 6.1 In this chapter we explore the ways in which election finance regulations need to be updated for the digital age. We begin by considering voter access to information about how money is spent at elections and referendums. Then, building on a key theme of chapter 4, that foreign money should not be permitted to influence the outcome of elections, we look at what can be done to address the risk of foreign sources using digital campaigning to exert influence in the UK.
- 6.2 There has been a huge volume of work looking at digital campaigning in recent years, including reports from Parliamentary committees, civil society organisations, the Electoral Commission and the Information Commissioner’s Office, and a growing consensus among expert bodies who have studied the area as to where change is needed.<sup>51</sup>
- 6.3 This review’s focus is on financial regulation and we do not examine other aspects of digital campaigning, such as the data protection issues raised by targeted advertising and issues relating to disinformation and the trustworthiness of the content of communications.

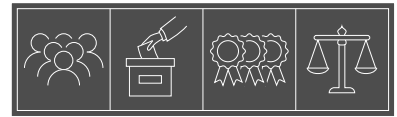
### The digital campaigning phenomenon

- 6.4 It is clear that the use of digital campaigning has rapidly accelerated in recent years and is now fully integrated into the campaigner’s methodology for communicating with potential voters at elections. Some politicians we spoke to were sceptical about whether digital campaigning has a decisive impact on the outcome of elections, believing rather that elections are won on the doorstep and that digital campaigning plays a supporting role. However, digital campaigning accounted for 42.8% of reported spend on advertising in the UK at the 2017 General Election.<sup>52</sup>

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51 Electoral Reform Society (2020), Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond, by Dr Katharine Dommett and Dr Sam Power. Available at: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-in-the-dark-digital-campaigning-in-the-2019-general-election-and-beyond/>

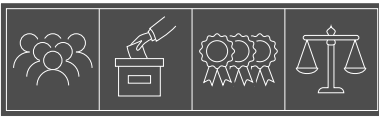
52 Electoral Commission (2018), Report: Digital campaigning - increasing transparency for voters. Available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>



- 6.5 If we look at the official accounting returns from the Electoral Commission, we can see that this figure rose again in 2019. We know given the current transparency obligations that any figure is likely an underestimate. However, if we simply take the data at face value and look at Facebook, Google, Twitter and Snapchat, we see that they accounted for £7,545,363.84 of the total advertising spend. This is 53.96% of the advertising budget for the election itself. This does not include spending on Facebook that may have been undertaken by consultants or digital campaigning organisations, undertaking market research and canvassing activities for parties (and as such recorded under different headings). Academic research has estimated that political party spending on platforms is likely to have increased by over 50% in 2019 compared with 2017.<sup>53</sup>
- 6.6 In facilitating the development of social networks, digital campaigning can have a positive impact on participation. It allows campaigners to reach voters, voters to reach each other and can generally facilitate engagement in politics, particularly among the young. The problem is that election finance law has not been updated in the past decade and the existing law is not adequate to regulate this new campaign method. In principle, digital campaigning is no different to leafleting as they both allow campaigners to get their message out to voters. However, digital communication allows for a more granular level of targeting and at a greater volume – meaning more messages are targeted, more precisely and more often. Spending to target these messages further undermines the boundary between national and constituency campaigning and expenditure, exacerbating the problems discussed in chapter 2, of drawing a line between national and local expenditure.
- 6.7 Parliamentarians, academics and campaigners have argued that there is now an urgent need for reform to ensure that digital campaigning is appropriately regulated. There is also public concern. Discussion at the public focus groups we held revealed a general sense that regulation has not kept up with the speed at which digital campaigning has developed. Research conducted by the Electoral Commission following the 2019 General Election revealed that concerns about transparency are having an impact on public trust and confidence in campaigns.

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<sup>53</sup> Electoral Reform Society (2020), Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond. Available at: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-in-the-dark-digital-campaigning-in-the-2019-general-election-and-beyond/>



- Nearly three-quarters of people (72%) agreed that it was important for them to know who produced the political information they see online.
- Less than one-third (29%) agreed that they can find out who has produced the political information they see online.
- Nearly half (46%) agreed that they were concerned about why and how political adverts were targeted at them.

Data taken from the Electoral Commission report, 'In depth: campaigning at the 2019 UK Parliamentary general election.'<sup>54</sup>

## Transparency - voter access to information about how money is spent at elections

6.8 In practice, transparency of campaign finance is delivered through two routes: the regulatory system, and voluntary disclosure by social media companies. We heard that both are important and have their place. However, there are significant shortcomings in the information provided voluntarily, not least a lack of consistency in the information provided by different platforms, prompting calls for greater regulation. Social media companies themselves have said that they would welcome clear and consistent requirements for how they should deal with campaign material.<sup>55</sup> In this section, we look at the current rules, at the actions that have been taken voluntarily by social media companies, and at proposals for change.

### Invoices and spending categories

6.9 The spending limits for campaign expenditure and the rules requiring spending to be reported apply to all forms of campaign spending, whether campaigners use long-standing techniques, such as printed leaflets or billboards, or newer forms of campaigning through social media. As well as the costs of creating and targeting digital campaign materials, the spending rules cover the costs of storing and enhancing data. However, the outdated legal requirements for reporting expenditure can in practice mean that little is revealed about how digital campaigning is being used and by whom.

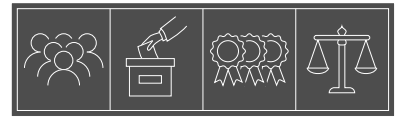
6.10 As noted at appendix 1, campaign spending over £200 needs to be supported by an invoice. However, the law does not stipulate the level of detail that should be included and some invoices contain very little information. For example, the Electoral Commission has reported some campaigners have given them invoices from

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54 Electoral Commission (2020), In depth: campaigning at the 2019 UK Parliamentary general election. Available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/uk-general-elections/report-2019-uk-parliamentary-general-election-was-well-run/depth-campaigning-2019-uk-parliamentary-general-election>

55 Facebook, written evidence 47





Facebook which say only ‘campaign 1’, ‘campaign 2’, whereas other campaigners have provided more meaningful detail that shows the text of the campaign messages sent to voters or information about the area of the country they were targeted at. Evidence from those who have studied the published invoices in an effort to establish how money was spent at the most recent general elections showed how difficult it was to establish what was spent, on whom and where.<sup>56</sup>

- 6.11 To provide a better understanding of how money is spent on digital campaigning, the Electoral Commission has recommended that campaigners be required to provide invoices from their suppliers which contain meaningful information about the details of their campaigns. The Commission also recommended that the spending categories should be revised to introduce sub-categories to record what medium or format was used for the activity.<sup>57</sup> It was suggested to us by one contributor that specifying the information that must be included on an invoice could limit a campaign’s choice of suppliers if a supplier declines to issue invoices in this format. However, these proposals have been supported in some responses to our public consultation and reports such as the House of Lords Democracy and Digital Technologies Committee Report, ‘Digital Technology and the Resurrection of Trust’.<sup>58</sup>

“The invoices parties provide for online adverts do not specify to who or where the adverts are targeted, potentially allowing national spending to be used for campaigning in marginal seats and for spending thresholds to be breached. The Electoral Commission made a recommendation, which we endorse, that spending returns should include more detailed and meaningful information on spending online.”

**Electoral Reform Society, written evidence 28.**

## Advert libraries and the definition of political advertising

- 6.12 At the 2019 General Election, Facebook, Google and Snapchat voluntarily published libraries and reports of the political advertising run on their platforms and channels during the election. They also required political advertisers to include some similar information to imprints by putting ‘paid for by’ disclaimers on their political adverts.<sup>59</sup>
- 6.13 However, not every company that runs political advertising has created special labelling or advert libraries and those that do only reveal only what they want to, applying their own individual definitions of political advertising. This results in inconsistency across the platforms and gaps in the information provided. Money can also be spent on other forms of digital campaigning activity, beyond advertising, such

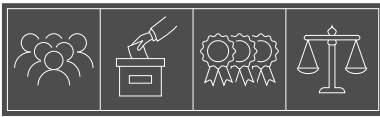
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56 Dr Martin Moore, oral evidence; Roundtable with academics and organisations, 5 October 2020

57 Electoral Commission (2018), Report: Digital campaigning - increasing transparency for voters

58 House of Lords Select Committee on Democracy and Digital Technologies (2020), Digital Technology and the Resurrection of Trust, Report of Session 2019-21. Available at: <https://committees.parliament.uk/publications/1634/documents/17731/default/>

59 Electoral Commission (2020), In depth: campaigning at the 2019 UK Parliamentary general election



as paying to boost posts on Facebook and to sponsor content, which is not currently recorded in any archive.

- 6.14 Academics and organisations we spoke to who analyse expenditure on digital campaigning, told us that it is difficult to marry up information provided in the social media archives with the spending reports and invoices information published by the Electoral Commission. The social media archives provide information in real time, but it can be inaccurate, while the official data published by the Commission is not available until more than six months after the election event and includes insufficient detail.

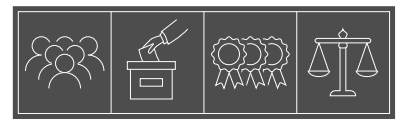
“The internet companies have – and it is welcome – created their advertising libraries, which sadly broke several times during the last election campaign. Apart from their unreliability, they do not give you enough data to actually understand the campaigning that is happening... What we need is full transparency of the content, the targeting, the reach and the spend of online advertising. It needs to be in real time.”

**Will Moy, Chief Executive, Full Fact. Roundtable with academics and organisations, 5 October 2020.**

- 6.15 Advert libraries can be a hugely valuable resource for journalists in holding campaigners to account for their use of digital campaigning during election periods, when real-time intervention by regulators could give rise to concerns about interference with the electoral process. But in performing that role, journalists are constrained by their reliance on the rather scant information that platforms disclose.

“They [journalists] are an incredibly valuable resource that we should be utilising, but they are massively underpowered because they are completely reliant upon platforms and the information that platforms disclose. This is why transparency is so important, because if the media were able to have access to accurate and reliable information about what is happening online they could perform that real-time scrutiny function, because they do have the resource to be able to set up very sophisticated and well-resourced data teams. Then you can have regulation come in at a later point to offer that more detailed and rigorous scrutiny. We should see it as more of an ecosystem and think about how we support the different parts of that.”

**Dr Katharine Dommett. Roundtable with academics and organisations, 5 October 2020.**



“In terms of solutions... it is also something that needs to be dealt with in future proposals for social media regulation, as well, so there is consistency in the libraries and the political ad archives and so on. That would be another place to look so that the transparency rules apply in a similar way across different social media platforms, so we know who is advertising.”

**Professor Jacob Rowbottom. Roundtable with academics and organisations, 5 October 2020.**

- 6.16 A number of inquiries into digital campaigning have made recommendations to address inadequacies in the social media archives in recent years. The Electoral Commission has called for the platforms hosting libraries to be required to apply the legal definitions of election campaigning when including material in their archives.<sup>60</sup> This would ensure that the material included corresponds with the material regulated by the Commission and would encourage consistency between the different platforms. Some campaigners and reports have called for a standardised, centralised and searchable database of all campaign adverts maintained by the Electoral Commission.
- 6.17 We note that the Centre for Data Ethics and Innovation (CDEI) recommended in February 2020 that the Online Harms Bill should include a requirement for online platforms to host publicly accessible advertising archives for types of personalised advertising that pose particular societal risks, including politics. This is “so that political claims can be seen and contested and to ensure that elections are not only fair but are seen to be fair.”<sup>61</sup> The CDEI report stated that the online harms regulator should consult to agree a shared definition of what constitutes a ‘political’ advert and specified that political advertising archives should include data about the source of the advert (including the amount spent on the campaign and who paid for it), how it was targeted and who saw it. Who Targets Me has argued that the definition of a ‘political’ advert should be developed collaboratively.<sup>62</sup>
- 6.18 In ‘Digital Technology and the Resurrection of Trust’, the House of Lords Democracy and Digital Technologies Committee recommended that, “Ofcom should issue a code of practice for online advertising setting out that in order for platforms to meet their obligations under the ‘duty of care’ they must provide a comprehensive, real-time and publicly accessible database of all adverts on their platform. This code of practice should make use of existing work on best practice.”<sup>63</sup>

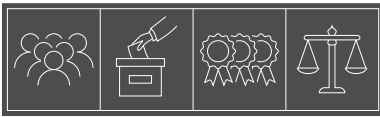
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60 Electoral Commission (2020), In depth: campaigning at the 2019 UK Parliamentary general election

61 Centre for Data Ethics and Innovation (2020), Online targeting: Final report and recommendations. Available at: <https://www.gov.uk/government/publications/cdei-review-of-online-targeting>

62 Who Targets Me (2020), Ten simple ideas to regulate online political advertising in the UK, 4 June 2020. Available at: <https://medium.com/@WhoTargetsMe/ten-simple-ideas-to-regulate-online-political-advertising-in-the-uk-52764b2df168>

63 House of Lords Select Committee on Democracy and Digital Technologies (2020), Digital Technology and the Resurrection of Trust. Report of Session 2019-21, paragraph 337



- 6.19 Facebook, Twitter and the Internet Association outlined to us the steps social media companies have taken to increase transparency around digital campaigning. Twitter has prohibited political advertising. In addition to advert libraries, some companies, such as Google and Facebook, have put in place a verification process to confirm the identity of political advertisers. Google allows targeting for election adverts but restricts the criteria that can be used. For example, adverts cannot be targeted according to specific political affiliation, rather; “political advertisers can only target their adverts based on geography (down to the postal code level), age and gender, and contextual content (like content topics or video types – for example, ‘cooking’ or ‘sports’ or ‘politics’).<sup>64</sup>
- 6.20 The response from the Internet Association emphasised internet companies’ willingness to engage in further dialogue on digital campaigning with policymakers and regulators, which we welcome.

## Imprints

- 6.21 Printed election material must contain details (referred to as an ‘imprint’) about who is behind a campaign and who created the materials. The Electoral Commission has been calling for this requirement to be extended to online material since 2003 and this recommendation has been supported by numerous bodies, including the Committee in our 2017 report, ‘Intimidation in Public Life’.<sup>65</sup>
- 6.22 The Electoral Integrity Bill, announced in the Queen’s Speech on 11 May 2021, will extend the ‘imprint’ requirement to digital political campaigning. The government made a commitment to introduce digital imprints in its consultation response, ‘Protecting the debate: intimidation, influence and information’. A technical consultation on the scope of the proposals for digital imprints followed in 2020.<sup>66</sup> The consultation sought input on technical aspects of the regime, such as: the details on the imprint, the location of the imprint and the appearance of the imprint. The underlying policy objective is that the regime should mirror the existing regime for printed election material. The consultation document stated that the intention is for election material to have an all-year-round meaning, and not be anchored to the proximity of any particular electoral event.

## Our view

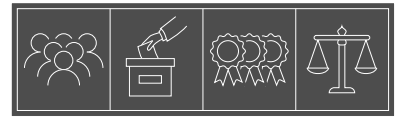
- 6.23 The evidence we have heard, combined with the conclusions reached by a range of expert reports on digital campaigning in recent years, has led us to conclude that urgent action is needed to require more information to be made available about how

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64 Internet Association, written evidence 40

65 Committee on Standards in Public Life (2017), Intimidation in Public Life, Cm 9543. Available at: <https://www.gov.uk/government/publications/intimidation-in-public-life-a-review-by-the-committee-on-standards-in-public-life>

66 Cabinet Office (2020), Transparency in digital campaigning: technical consultation on digital imprints. Available at: <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints>



money is spent on digital campaigning. This would help the Electoral Commission better monitor expenditure and ensure that spending limits are being complied with. It is also needed to shine a light on how digital campaigning is used to reach voters.

- 6.24 As we said at the start of this chapter, online methods of communication have had a positive impact on increasing engagement with voters. There is also something inevitable about its use in campaigning – after all, we now conduct many aspects of our lives online. Yet, given the granularity with which people can be targeted through digital campaigning, and concerns about the blurring of the line between local and national campaigning, many people view it with suspicion as a ‘dark art’ and capable of being exploited by overseas interests. We believe that increased transparency would allow greater public awareness of who is being targeted, by whom and with what message and thus help to dispel this suspicion.
- 6.25 We welcome the work the government is doing to introduce a regime for digital imprints through the Electoral Integrity Bill. We believe that digital imprints will have a significant impact in increasing transparency about who is behind political campaigns. It will help the Electoral Commission enforce the spending rules and knowing who is responsible for election material will enable voters to assess the validity of its claims. However, more needs to be done. We have concluded that the government should change the law to require parties and campaigners to provide the Electoral Commission with more detailed invoices from their digital suppliers and to report what medium was used for each category of expenditure in their spending returns.

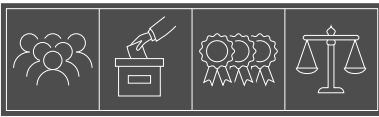
### **Recommendation 13**

The government should change the law to require parties and campaigners to provide the Electoral Commission with more detailed invoices from their digital suppliers. For targeted adverts this should include the messages used in those campaigns, which parts of the country they were targeted at, and how much was spent on each campaign.

### **Recommendation 14**

The government should change the law to require parties and campaigners to subdivide their spending returns to record what medium was used for each activity so that more information is available about the money spent on digital campaigns.

- 6.26 We consider that social media companies that permit campaign adverts in the UK should be obliged to create advert libraries. As a minimum they should include adverts that fit the legal definition of election material in UK law. However, we can see merit in the calls made by others for the definition of a political advert to be developed in collaboration with platforms, civil society groups, academics and others.



- 6.27 We agree that the information specified by CDEI should be included in the archives, including the amount spent (a precise figure rather than a range), who paid for the advert and information about the target audience. While we consider that the government should legislate to compel social media companies to act, the companies do not need to wait for legislation and should act now to provide more detail about expenditure on their platforms.
- 6.28 We note that some campaigners have called for the Electoral Commission to maintain a central database of all adverts. While there are attractions to the idea of a centrally maintained database, we do not think that this is where the Electoral Commission, as the regulator, should be focusing its resources and it would risk distracting the Commission from its core regulatory function.

#### **Recommendation 15**

The government should legislate to require social media platforms that permit election adverts in the UK to create advert libraries that include specified information.

#### **Recommendation 16**

Social media platforms' advert libraries should, as a minimum, include all adverts that fit the legal definitions of election campaigning in UK law.

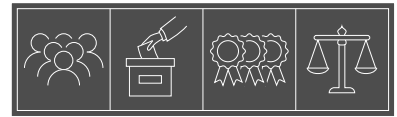
Social media platforms should ensure their advert libraries contain the following information:

- precise figures for amounts spent, rather than ranges
- who paid for the advert
- for targeted adverts, information about the intended target audience of the advert and the types of people who actually saw the advert.

## **Banning foreign expenditure on digital campaigning**

“It is absolutely critical [for the rules to ban overseas spending on digital campaigning]. I would be very keen to bring electoral law up to date to cover digital campaigning. There should be more emphasis on social media platforms to take responsibility for what they are doing. Digital imprints are fine as far as it goes, but it doesn't stop someone masquerading as an individual then forwarding out messages.”

**Chris Matheson MP, Member of the Speaker's Committee on the Electoral Commission, oral evidence.**



- 6.29 As we discuss in chapter 4, the rules on permissible donations were based on the principle that there should be no foreign interference in UK elections. However, the rules do not explicitly ban spending on campaign advertising by foreign individuals or organisations. To register with the Electoral Commission as a non-party campaigner (a legal requirement for campaigners who intend to spend over the registration threshold), the campaigner must be on the UK electoral register. This means that anyone outside the UK may spend under the registration threshold for a non-party campaigner on adverts targeting voters in the UK without breaking any specific electoral laws.<sup>67</sup>
- 6.30 In the Electoral Commission's digital campaigning report, the Commission said that a specific ban on any campaign spending from abroad would strengthen the UK's election and referendum rules.
- 6.31 The ISC's Russia report agreed with the conclusion of the DCMS Select Committee that "the UK is clearly vulnerable to covert digital influence campaigns" and stated that if the Commission is to tackle foreign interference, then it must be given the necessary legislative powers.<sup>68</sup>
- 6.32 We note that Google and Facebook have changed their policies to require advertisers who want to run election adverts in the UK to go through a process to verify that they are a citizen or resident of the UK before posting the advert. However, we do not think that provides sufficient reassurance and have concluded that the government should act and legislate to ban foreign expenditure on digital campaigning.
- 6.33 We note that there is international precedent for taking action in this area, with Canada legislating to prohibit the use of foreign funds by third parties for partisan advertising and activities in the Elections Modernization Act 2018 (EMA).<sup>69</sup>

### **Recommendation 17**

In line with the principle of no foreign interference in UK elections, the government should legislate to ban foreign organisations or individuals from buying campaign advertising in the UK.

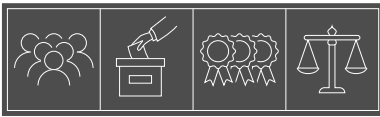
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67 The threshold is more than £20,000 in England or £10,000 in any of Scotland, Wales or Northern Ireland on 'regulated campaign activity' during a regulated period

68 Intelligence and Security Committee of Parliament (2020), Russia. Available at: [https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721\\_HC632\\_CCS001\\_CCS1019402408-001\\_ISC\\_Russia\\_Report\\_Web\\_Accessible.pdf](https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf)

69 See appendix 2: A comparison of political and electoral finance regulation in 12 countries





# Chapter 7

## Reporting timeframes

- 7.1 In this chapter, we review the timeframes for reporting spending to the Electoral Commission (in the case of parties and non-party campaigners), and to local councils (for candidates). We consider whether the right balance has been struck between timely public access to information about expenditure and the need to ensure that campaigners are not subject to excessive administrative requirements.
- 7.2 Under PPERA, spending by parties and non-party campaigners at elections and referendums must be reported to the Electoral Commission. Spending returns must include the details of the spending, invoices and receipts for payments above £200. The reporting date depends on how much was spent on the campaign. If campaign expenditure is £250,000 or below a report must be received within three months. If campaign expenditure is over £250,000, a report must be received within six months.<sup>70</sup>
- 7.3 The rules governing the reporting of the money spent on campaigns to elect candidates are quite different. Agents are required to report details of candidate spending to the returning officer (RO) at the relevant local council no later than 35 days after the election result is declared. The return must include a detailed breakdown of spending and invoices or receipts for any payment of £20 or over. The RO is responsible for collating the spending returns and forwarding them to the Electoral Commission.

### Timely access to information about expenditure

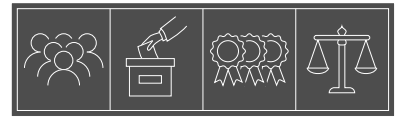
“At the moment these things are published six months to a year after the event. There needs to be some time markers on these things... These take six months to a year to be published. That’s not transparency, that’s not openness.”

**Focus group participant, age group 46 to 60.**

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70 See appendix 1: The legal framework for regulation of political and election finance in the United Kingdom: a summary





7.4 The review has heard that the timeframes for reporting campaign expenditure for parties and non-party campaigners are too long, particularly for those parties and campaigners spending over £250,000. The delay built into the system risks reducing public confidence in the integrity of the electoral process and impacts on the timeliness with which the Electoral Commission or the police are able to take enforcement action in cases where an offence has been committed. As a financial regulator, most of the offences that the Commission regulates relate to the reporting of spending returns. It will often not be clear whether an offence has been committed until the return has been submitted.

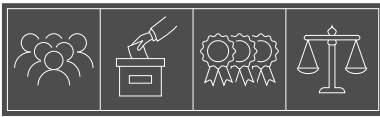
<b>Parties and non-party campaigners (PPERA)</b>	<b>Candidates (RPA)</b>
Report spending to Electoral Commission	Report spending to local council
Report within three months if £250k or below	Report no later than 35 days after the election result is declared
Report within six months if over £250k	

“While the EC publishes information about larger donations during the regulated period, no equivalent information on spending is made available. We think expenditures above a set threshold (say £1,000) should be filed and made available in real (or near real) time.”

**Who Targets Me, written evidence 48.**

“...spending report deadlines should be made stricter. The current timeline (three months for under £250,000 and six months for over £250,000) is inadequate. As are the rules surrounding financing of the ‘short campaign’ during an election period. Parties and campaign organisations should be required in this period to provide frequent reports to the Electoral Commission. Voters should be able to know who is spending what and where in the weeks leading up to polling day and not the weeks following it.”

**Fair Vote UK, written evidence 33.**



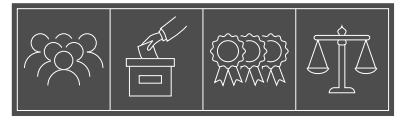
- 7.5 The Electoral Commission told us that they would like to see information about spending made available to the public more quickly after polling day. However, they are conscious this will be a challenge for parties given the decentralised system of party campaigning in the UK. The Commission has been working with parties to understand what processes campaigners are following in the six-month period between the election event and the spending deadline and are providing more support to campaigners as they prepare to send in the returns.

“Six months seems a long time but we’re talking to parties about that and the practicalities of reducing it. It is probably possible but we need to be realistic. Some of the major parties have a limit of £19m so there could be 100,000s, if not a million of lines of accounting. But for parties without compliance teams, how can you be fair to them? The system needs to be fair to everyone.”

**Louise Edwards, Director of Regulation, Electoral Commission, oral evidence.**

## Views from the parties

- 7.6 Many of the political parties we spoke to argued that real-time monitoring would be impractical and impede their core campaigning activity. We heard that there would be a risk of malicious complaints being made, with the Electoral Commission being drawn into the political arena when called on to act as a referee during the course of the campaign. An investigation launched during the campaign could have an impact on the election result. Parties may also be unwilling to reveal their campaign activity to the opposition during the course of the campaign.
- 7.7 We also heard how campaign plans can change very quickly and it would be difficult to set down in real time how money is being spent. It was suggested that there was a stronger argument for real-time reporting in referendums, which are by their nature one-off events where a campaigning organisation may close down after the event, as opposed to a political party which remains accountable during and beyond the campaign. Concerns about the burden of real-time reporting on small parties were raised by contributors, although it was noted there could also be some benefits, if it could be handled practically.



“We would have practical concerns – I can see an argument from a transparency point of view but the focus of the party should be on the campaign not the regulatory framework. I’d be worried about the resources we’d have to allocate – we are not an organisation of compliance and accounting officers. I support the weekly donation requirements during the polling period. It is the right balance currently.”

**Andrew Whyte, Acting Director of Governance and Legal, Labour Party, oral evidence.**

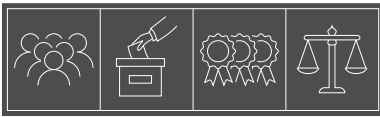
- 7.8 The SNP was receptive to the idea of real-time reporting and suggested that if parties were required to have a single bank account it would make it easier to report what goes in and out of that account. They noted that it would be important to have public information to aid interpretation of the figures during and after the election.

“One aspect of a way forward might be to have a requirement for candidates and parties to have a single bank account. This happens in a number of countries, including Canada. You could have real-time reporting on the money going in and out of the account. It would be very transparent. There would be no significant additional burden on local agents or treasurers and it would be a simple way to operate. It’s not something that should challenge big political parties, although no doubt some detail would need to be worked through, such as how credit terms might affect the transparency of spend reporting.”

**Peter Murrell, Chief Executive, SNP, oral evidence.**

## International comparisons

- 7.9 We have looked at other countries’ timeframes for submitting spending returns and note that six months for the biggest spenders at elections and referendums in the UK is towards the higher end of the range. The disclosure requirements differ greatly. The USA has the quickest national level turnaround with a requirement to submit monthly returns (which are then made available on the Federal Election Commission website within 48 hours). In Ireland, election expenses statements must be delivered to the Standards Commission within 56 days of polling day. In France, for both parties and candidates it is effectively 10 weeks after the first ballot. In New Zealand, parties must deliver reports within 90 days after polling day, and for candidates this requirement is within 70 days after polling day. In Australia, reports are to be submitted no later than 15 weeks after polling day (Queensland has ‘real-time’ disclosure of 48 hours). In Canada, election returns must be delivered within eight months of polling day.



Country	Reporting timeframes <sup>71</sup>
USA	Monthly during election periods (and for presidential candidates)
Ireland	56 days
France	10 weeks (approximately)
New Zealand	Parties = 90 days, candidates = 70 days
Australia	15 weeks
Canada	8 months

## Electronic returns

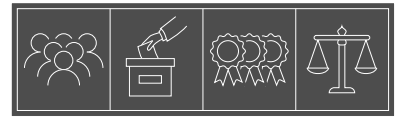
- 7.10 Campaigners can choose to submit their returns to the Electoral Commission electronically, using the Political Finance Online system, or on paper. Some campaigners choose to use a mixture of both formats. For paper spending returns, the Commission has to input the data into their systems, which delays publication. It may also mean a delay in identifying any possible problems with the spending returns.
- 7.11 The Political Finance Online system is now a decade old. The Electoral Commission is modernising the system and is due to launch a new system later this year which it intends to be more user friendly. The new database will allow parties and campaigners to upload their spending data using a bulk upload mechanism, with a similar upload option available for invoices and receipts. While the Commission's preference is for spending returns to be submitted digitally, it will continue to offer parties and campaigners offline options to complete their returns.

## Our view

- 7.12 We have noted the arguments made by many of the representatives of the political parties we spoke to who were opposed to real-time reporting in the heat of a campaign. We also think it may have the unintended effect of penalising those parties and organisations with fewer resources at their disposal. We do not therefore recommend real-time reporting. However, the current timeframes for the publication of information on the money spent at elections and referendums are incompatible with the principles of openness and accountability that contributors have said should underpin the regulation of election finance. We have concluded that reporting periods should be shorter.

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<sup>71</sup> The same timeframes apply to parties and candidates unless stated



- 7.13 Ideally, parties and non-party campaigners would be required to report donations and campaign expenditure to the same deadlines as candidates – that is, within 35 days of an election. This would allow both candidate and party returns to be scrutinised and discrepancies more easily identified.
- 7.14 However, we acknowledge that this may not be realistic for all parties in the short term given the dependence on volunteers and because we recognise parties may need to invest in their systems for collating expenditure from accounting units. We think that the timeframes should be kept under review with the aim of reducing them incrementally until parity is reached. For now, we recommend that there should be a reduction in the reporting time from six months to four months for parties and non-party campaigners spending over £250,000. The Electoral Commission should publish spending returns within two months of receiving a complete set of spending returns from a party or non-party campaigner.
- 7.15 We anticipate that some of the concerns about the practicality of shortening the timeframes for spending returns will be alleviated by improvements to online processing expected with the new Political Finance Online system. We recommend that parties and campaigners spending over £250,000 at a general election or UK referendum should be required to submit spending returns to the Electoral Commission in electronic format. Parties and campaigners spending under £250,000 should do so where this is practicable.
- 7.16 The measures at recommendations 18 to 20 should be viewed as a package. Together they mean that full details of the money spent by parties and non-party campaigners would be publicly available within six months of an election or referendum.

#### **Recommendation 18**

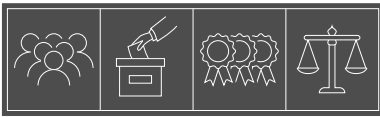
Reporting deadlines for parties and non-party campaigners spending over £250,000 at a general election or UK referendum should be reduced from six months to four months.

#### **Recommendation 19**

The Electoral Commission should publish election expenditure of parties and non-party campaigners spending over £250,000, within two months of receipt of the full set of spending returns, i.e. within six months of the election or referendum.

#### **Recommendation 20**

Parties and campaigners spending over £250,000 at a general election or UK referendum should submit spending returns to the Electoral Commission in electronic format. Parties and non-party campaigners spending under £250,000 should do so where this is practicable.



# Chapter 8

## Non-party campaigning

### What is a non-party campaigner?

“Non-party campaigners are individuals or organisations that campaign in the run-up to elections, but are not standing as political parties or candidates. In electoral law, these individuals or organisations are called ‘third parties’. Where non-party campaigners have registered with the Electoral Commission they are called ‘recognised third parties’.”

Source: Electoral Commission guidance: UK Parliamentary general election 2019: Non-party campaigners<sup>72</sup>

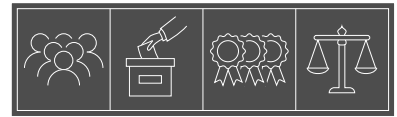
### Historical context

- 8.1 When the Committee recommended the introduction of spending limits for parties in its fifth report, it concluded that limits on the amounts that can be spent in support of a party would also be needed, otherwise, “it would be possible for the spirit and the letter of our overall proposals on party funding to be evaded quite easily. Interest groups and other organisations, despite any spending limits imposed on them, could easily become the repository of funds from individuals and organisations that were above the limit set for donations to political parties or were derived from foreign sources.”<sup>73</sup>
- 8.2 The Committee’s report noted that the intervention of ‘third parties’ in British elections was not just a theoretical possibility. Throughout the 1950s, the privately owned steel industry had campaigned against steel nationalisation, which formed part of Labour’s programme at that time, and later UNISON spent more than £1 million at the 1997 General Election on adverts promoting a national minimum wage, a cause supported by the Labour and Liberal Democrat parties but opposed by the Conservatives.
- 8.3 In addition to a spending limit on any individual or organisation that incurs election expenses (calculated as a percentage of the party spending limit), the Committee proposed that if a third party intends to incur election expenses, then, subject to a

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72 Electoral Commission (2019), UK Parliamentary general election 2019: Non-party campaigners. Available at: <https://www.electoralcommission.org.uk/sites/default/files/2019-11/Non-party%20campaigner%20UKPGE%202019.pdf>

73 Committee on Standards in Public Life (1998), The Funding of Political Parties in the United Kingdom, Cm 4057, page 133



minimum threshold, the third party should be required to register with the Electoral Commission. Only registered third parties should be permitted to incur election expenses above the threshold.

- 8.4 The core elements of the Committee’s proposals on third parties were implemented in the Political Parties, Elections and Referendums Act 2000 (PPERA), but concerns remained about the scope for third parties to exert undue influence at elections. This ultimately led to Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (referred to in this chapter as the 2014 Act). This was a controversial piece of legislation, which was perceived by charities and voluntary organisations as imposing severe restrictions on their legitimate campaigning activities, to the extent that it was branded by its critics as the “gagging act”.<sup>74</sup>
- 8.5 During the passage of the legislation, provision was made for a review of third-party campaigning, which would take into account experience at the 2015 General Election. Lord Hodgson was appointed to this role and published his report, ‘Third Party Election Campaigning: Getting the Balance Right’ in 2016.<sup>75</sup> The Hodgson report proposed around 30 changes to reform the 2014 Act and was seen by the voluntary sector as achieving a better balance for non-party campaigners. The proposals were backed by the cross-party House of Lords Select Committee on Charities and many were supported by the Electoral Commission. However, they were never implemented, with the government citing a lack of space in the legislative programme.
- 8.6 Meanwhile, concerns about the risks to the fairness and transparency of the electoral system posed by third-party campaigning remain, fuelled by the growth in digital campaigning.

## The rise of the ‘shadow campaign’

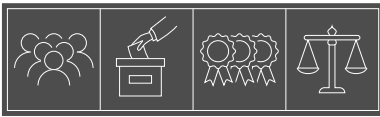
“Pre digital, the opportunities for non-party campaigners to be involved in a significant way were constrained for practical reasons and because it would be obvious. Now it is very easy for non-party campaigners to participate in ways it’s hard to track and assess.”

**Dr Martin Moore, oral evidence.**

74 OpenDemocracy (2013), The government’s new gagging law is a serious attack on Britain’s civil society. 1 December 2013. Available at: <https://www.opendemocracy.net/en/opendemocracyuk/governments-new-gagging-law-is-serious-attack-on-britains-civil-society/>

75 The Lord Hodgson of Astley Abbots CBE (2016), Third Party Election Campaigning – Getting the Balance Right. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507954/2904969\\_Cm\\_9205\\_Accessible\\_v0.4.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507954/2904969_Cm_9205_Accessible_v0.4.pdf)





- 8.7 Contributors to the review highlighted the rise in non-party campaigners spending money on political advertising on social media platforms during election periods. We heard concern that the activities of third parties have obscured how money is spent to influence voters. It is very easy for groups to be set up, spend significant amounts of money targeting adverts at specific groups of voters and then disappear, without it being clear who was behind the campaign. Knowing the source of the material and who is funding it is important because it enables voters (whether directly or through the work of journalists and fact-checking organisations) to assess the veracity of the claims being made, and it helps the Electoral Commission to monitor compliance with campaign finance rules.

**“The proliferation of non-party advertisers, particularly those who didn’t exist before the election period is destabilising. Such advertisers have no reputation on which to be judged. Who Target’s Me’s data shows that a small number of brand new political Facebook pages were set up and got vast reach for their ads during the 2019 election campaign, then disappeared immediately thereafter. No-one was able to hold these sources of information accountable.”**

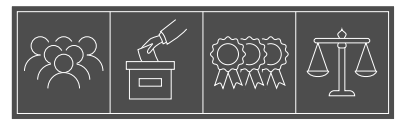
**Who Targets Me, written evidence 48.**

**“As online ads can be cheap, not everyone will need to register to play a part in attempting to influence the vote. This can be a great positive – more people are able to engage in politics and campaigning, which benefits democratic process. But it also makes it harder to keep on top of all the groups or individuals that are attempting to influence the vote, and the claims they make while trying to do so.”**

**Full Fact, written evidence 30.**

- 8.8 Some submissions raised concerns about the lack of accountability following an electoral event, given the ease with which groups can disband after the election or a referendum. Fair Vote UK suggested in their consultation response that there should be a third-party audit before an election campaign closes, and that non-party campaigners should maintain a level of functionality beyond the election period so that they are able to provide information to the Electoral Commission should it be required. The Commission told us however, that the legal duties on the responsible person still apply even if the organisation ceases to exist. The Commission has a range of tools it can use to require information, and they have not, to date, experienced a need for this kind of additional requirement.
- 8.9 Investigations by journalists before and after the 2019 General Election have revealed the way in which some groups (sometimes referred to in the media as ‘shadow campaigners’) had connections to specific political parties and were putting out





advertises with messages that were closely aligned to party policies.<sup>76</sup> This prompted campaigners to query whether there had been any coordination with political parties that had not been disclosed to the Electoral Commission, as required by electoral law.

8.10 A report commissioned by the Electoral Reform Society gives an overview of the digital activity of third parties at the 2019 General Election.<sup>77</sup> As the table below shows, the number of organisations that have registered with the Electoral Commission has more than doubled since 2015.<sup>78</sup> Many of the 64 non-party campaigners registered before the 2019 General Election were new organisations or bodies who had previously not been registered in election campaigns. However, the most eye-catching finding is the amount of money spent by non-party campaign groups. Analysis of Facebook’s advertising archive shows that 88 UK organisations were listed as non-party campaign groups during the 2019 General Election. These groups placed 13,197 adverts at a calculated cost of £2,711,452.

General election	Number of registered non-party campaigners <sup>79</sup>
2019	64
2017	43
2015	30
2010	18

76 BBC News (2019), Facebook bans political ad posted by ex-Downing Street aide, 29 November 2019. Available at: <https://www.bbc.co.uk/news/technology-50296664>

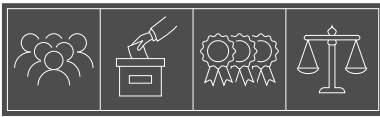
Financial Times (2019), Voters left in the dark over money behind online election ads, 6 December 2019. Available at: <https://www.ft.com/content/f42f9aa2-16ba-11ea-8d73-6303645ac406>

Open Democracy (2021), Pro-Tory campaigns spent over £700,000 without declaring a single donation. Available at: 19 February 2021: <https://www.opendemocracy.net/en/dark-money-investigations/pro-tory-campaigns-spent-over-700000-without-declaring-a-single-donation/>

77 Electoral Reform Society (2020) Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond by Dr Katharine Dommert and Dr Sam Power. Available at: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-in-the-dark-digital-campaigning-in-the-2019-general-election-and-beyond/>

78 Under PPERA, the thresholds for registration with the Electoral Commission are spending over £20,000 on a campaign in England, or over £10,000 in Scotland, Wales or Northern Ireland

79 Data taken from Electoral Reform Society (2020) Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond by Dr Katharine Dommert and Dr Sam Power. Available at: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-in-the-dark-digital-campaigning-in-the-2019-general-election-and-beyond/>



## Transparency and oversight

- 8.11 We discuss the proposals for digital imprints in chapter 6. The government’s technical consultation on digital imprints proposed that the regime encompasses paid adverts by unregistered third parties.<sup>80</sup> This will bring much needed transparency benefits.

“There are more third parties than ever before and more registered than ever before. Those spending above the registration threshold have to sign up to the [political finance] rules but there are a lot below the threshold that don’t. That’s why we are interested in imprints as it captures material on the basis of content and purpose rather than whether who is putting it out there is registered.”

**Louise Edwards, Director of Regulation, Electoral Commission, oral evidence.**

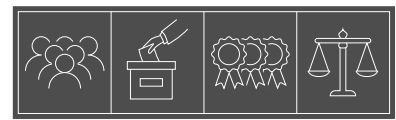
- 8.12 Notwithstanding the forthcoming digital imprints regime, regulation normally only kicks in if a non-party campaigner intends to spend or spends over the thresholds for registration.<sup>81</sup> At this point they must register, and rules apply on spending, donations and reporting. If a third party spends below the threshold, they are not subject to regulation, yet, as we have heard, they may still be able to reach and influence large numbers of UK voters. Even without any kind of co-ordination it would be possible for multiple groups to be established, all promoting the same party or candidate. “The spending of each group may fall below the threshold for registration, but in the aggregate the activities could have a significant effect on the campaign debate.”<sup>82</sup> Understanding who is financially backing these campaigners was raised as a significant concern in the evidence we heard.
- 8.13 Some have argued that transparency could be enhanced by either lowering the threshold for registering with the Electoral Commission or by creating a dual tier of regulation, with less onerous requirements for those groups spending below the current threshold. Friends of the Earth’s view was that the impact on them of lowering the threshold for registration would likely be minimal but raised the potential impact on smaller non-party campaigners.

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80 Cabinet Office (2020), Transparency in digital campaigning: technical consultation on digital imprints. Available at: <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints>

81 Constituency limits apply whether a non-party campaigner is registered or not

82 Jacob Rowbottom (2020), The Regulation of Third Party Campaigning in UK Elections. The Political Quarterly, 91, pages 722-730. Available at: <https://doi.org/10.1111/1467-923X.12897>



“There are many, smaller NPCs where the burden of compliance requirements means they either must stop substantial amounts of work to redirect resources, or simply avoid undertaking regulated activity to avoid the possibility of registering. The knock-on impacts to unregulated work, and the chilling effect of the regulations, are already a substantial problem for the sector, and this would be worsened considerably by any lowering of the registration threshold.”

**Friends of the Earth, written evidence 55.**

- 8.14 The House of Lords Select Committee on Democracy and Digital Technologies proposed that the Electoral Commission should look into the feasibility of creating a secondary registration scheme for campaigners who would otherwise fall below the threshold for registration. The select committee was clear that it was not their intention to make onerous demands on small campaigners, hence the select committee recommended that the only information that should be disclosed is the identity of a small campaign’s trustees if they are incorporated (or legally responsible persons if they are not), and the identity of their five largest funders. There would be no requirement to disclose spending.<sup>83</sup>

## Grass-roots democracy and activism

- 8.15 When considering calls for greater regulation of non-party campaigning it is important to be mindful of the role of non-party campaigning in the broader ecosystem of democracy and pre-election debate.<sup>84</sup> As the Committee made clear when it first concluded that spending limits for non-party campaigners would be necessary, there is nothing wrong with individuals and organisations sending out explicitly political messages in advance of and during election campaigns – “On the contrary, a free society demands that they should be able to do so, indeed that they should be encouraged to do so.”<sup>85</sup> The right to campaign is also protected by law through the right to freedom of expression.<sup>86</sup> This should act as a check on ensuring that regulation strikes the right balance.

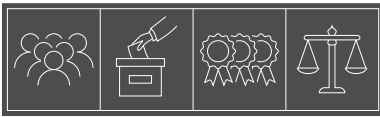
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83 House of Lords Select Committee on Democracy and Digital Technologies (2020), Digital Technology and the Resurrection of Trust, Report of Session 2019-21, pages 97 - 98

84 Roundtable with academics and organisations, 5 October 2020

85 Committee on Standards in Public Life (1998), The Funding of Political Parties in the United Kingdom, Cm 4057, page 133

86 In the article above, while arguing that there is a case for reforming election laws, Jacob Rowbottom cautions that it is important to be aware of potential chilling effects and other unintended consequences. The potential for such perceived censorship is a particular risk with digital media, which is seen as a vehicle for citizen participation



## The complexity of the legal framework

8.16 As we discussed in chapter 2, the legal framework for regulating campaign finance is complex and difficult to understand. This is particularly so for non-party campaigners, where there are numerous spending limits for campaigners to get to grips with, across two sets of legislation.<sup>87</sup> The limits under PPERA only apply if ‘regulated campaign activity’ is covered by the definition of controlled expenditure. The Electoral Commission explains this via two tests: the purpose test and the public test. While these tests might seem clear, there are challenges. Changing forms of communication have blurred the boundaries between what is private and public. Establishing whether a campaign meets the purpose test is not straightforward, involving an assessment of the tone, timing, context of the campaign and whether it is a ‘call to action’ to voters.<sup>88</sup>

### **What spending is regulated?**

Under PPERA the limits on ‘regulated campaign activity’ apply if an activity meets two tests: the purpose test and the public test.

The purpose test: can the activity reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or do not support particular policies or issues?

The public test: is the activity aimed at the public or a section of the public?

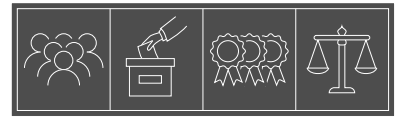
### **What are the spending limits for non-party campaigners in a UK Parliamentary General Election?**

Under PPERA there are four categories of spending limits for non-party campaigners:

1. registration thresholds. A campaigner spending more than £20k in England and £10k in each of Scotland, Wales and NI must register with the Electoral Commission
2. national limits (one for each part of the UK). These apply to campaigners on the statutory register
3. non-party campaigns in support of a candidate, if the campaigning is in support of a particular political party (known as ‘focused constituency campaigning’)

87 See appendix 1 for a summary of the rules on non-party campaigners

88 Electoral Commission guidance on assessing whether campaign activity meets the purpose test is available at: <https://www.electoralcommission.org.uk/non-party-campaigners-where-start/does-your-campaign-activity-meet-purpose-test>



4. spending on regulated campaign activity intended to influence voters to vote for a specific party or its candidates (known as ‘targeted spending’). This puts a limit on the targeted spending that can be incurred by a non-party campaign where a party has not authorised the expenditure.

There is an additional spending limit for campaigns in support of a candidate in a constituency, under the RPA.

- 8.17 Some campaigners told us that the complexity has created difficulties for them, leading them to spend large sums on legal advice to make sure they are correctly interpreting the law.

“The boundary and different enforcement regimes between local and national campaign spending in elections are incomprehensible. Compass spent a large sum on obtaining legal advice, and this still left many unresolved questions. There seems to be no rationale for the huge differences in spending limits at different levels. A single regulator with an integrated regime would make things much easier.”

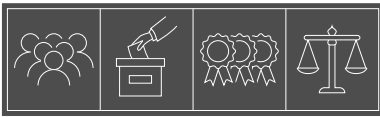
**Compass Campaigns Ltd, written evidence 21.**

“Confusion between the two sets of rules (PPERA and RPA) may stop people taking part or taking part as fully as they could do. The rules aren’t intended to do that, but to be fair and transparent and it should be easy for anyone to take part.”

**Cary Mitchell, Director of Operations, Best for Britain, oral evidence.**

## Compliance challenges for civil society organisations

- 8.18 We heard evidence that the current regulatory framework, created by PPERA and the 2014 Act, places a heavy burden on charities and civil society organisations as non-party campaigners.



“The Act restricts the campaigning activities of trade unions, charities and other civil society groups, including those who seek to protect the rights of citizens, fight oppression and discrimination and are perceived as being designed to silence Government critics.

The NASUWT would argue that this legislation has the effect of unduly restricting civil society by shrinking the operating space for civil society organisations by inhibiting their ability to stand up for the interests of their members and beneficiaries. Indeed, the Act has been described as having a chilling effect on charity advocacy.”

**NASUWT, The Teachers Union, written evidence 8.**

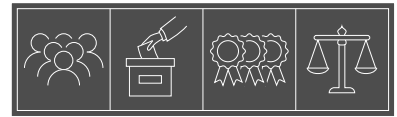
- 8.19 When PPERA was amended by the 2014 Act, many charities weren’t aware their activities could come within the remit of electoral law. This is because, under charity law, charities may not be established for political purposes. Charities found it hard to understand how campaigning activities that were legitimate under charity law could still be caught by electoral law and that they may have to register with the Electoral Commission as non-party campaigners. Elizabeth Chamberlain, then Head of Policy and Public Services at the National Council for Voluntary Organisations (NCVO) told us that amended guidance from the Electoral Commission has given charities more confidence about campaigning in the run up to elections, but concerns remain.

“Amended guidance from the Electoral Commission and the reassurance it provides has given charities more confidence about campaigning in run up to elections. However, the small proportion of the charity sector that is very visible in public debate is still concerned about whether a particular public awareness campaign or debate they are engaging in could be caught by election law close to an election. If a politician endorses a campaign, it is a huge challenge to work out what this means, there is a reputational risk, charities don’t want to be perceived as party political.”

**Elizabeth Chamberlain, then Head of Policy and Public Services, NCVO, oral evidence.**

### What constitutes regulated activity?

- 8.20 We have received submissions from campaigners who have found it challenging to determine whether activities count as regulated activity, in particular, determining whether the ‘purpose test’ is met. NASUWT, The Teachers’ Union, referred to recent guidance issued by the Electoral Commission and stated that the clarifications provided should be adopted into legislation, “to give civil society organisations the certainty they need to pursue their legitimate campaign activities without fear of sanction”.



8.21 The Friends of the Earth and Quakers in Britain both described the resource impact of calculating whether their activities fall under electoral law. In 2017, Friends of the Earth had a regulated spend of £46,730.83. They noted that, on top of this, “following that election we calculated that over £17,000 of staff time was spent on ensuring compliance with the Act, including briefings for all relevant staff members, reading and preparing guidance documents, and staff responsible for decision-making around regulated activity, interacting with the Electoral Commission and logging regulated spend, and completing returns”.

“In the run-up to the 2017 general election, Quakers in Britain spent £76,385 on activities that fall under the Lobbying Act. In order to calculate this total for the Electoral Commission, our staff spent an estimated 21 working days fulfilling the requirements. We estimate that this cost us almost £3,000 in staff time. In the run-up to the 2019 general election we decided not to register with the Electoral Commission because we were not spending enough on campaigning to meet the minimum threshold. But we still spent a significant amount of staff time on recording our expenditure in case we were asked to prove we didn’t meet the threshold.”

**Quakers in Britain, written evidence 18.**

8.22 We were told that the effect of the administrative burden of the regulation was that organisations were reluctant to campaign, affecting their ability to achieve their organisational objectives.

“Research by the Sheila McKechnie Foundation found that the overall impact of the Act had been that people’s voices went missing from the debate. This was in part because the administrative burden of the Act limited the ability of organisations to speak out and support their beneficiaries to have their say. 51% of respondents said it had affected their ability to achieve their organisational mission or vision, with this having a significant impact on organisations working on politically sensitive or controversial issues, like welfare, disability, and immigration. In addition, 42% say they have avoided activity where they were uncertain it comes within the scope of the Act.”<sup>89</sup>

**The Joseph Rowntree Reform Trust, written evidence 44.**

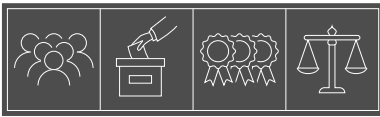
### The retrospective nature of the regulated period

8.23 We have described in chapter 6 how the ‘retrospective regulated period’ caused concern for charities and other campaigners in the unscheduled UK Parliamentary General Elections of 2017 and 2019.

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89 Sheila McKechnie Foundation (2018), The chilling reality: How the Lobbying Act is affecting charity and voluntary sector campaigning in the UK. Available at: [https://smk.org.uk/wp-content/uploads/2020/08/SMK\\_The\\_Chilling\\_Reality\\_Lobbying\\_Act\\_Research.pdf](https://smk.org.uk/wp-content/uploads/2020/08/SMK_The_Chilling_Reality_Lobbying_Act_Research.pdf)





8.24 We note that campaign activity undertaken before an election is announced is very unlikely to meet the ‘purpose test’ if it does not focus on candidates or parties – and it is even less likely if it also does not mention voting or elections. However, the test has to be applied to the facts of the particular case and therefore requires the campaigner to make a judgement. Expanded guidance was issued by the Electoral Commission in 2019 which helped to clarify the position and to assist campaigners with understanding the key test in the legislation that determines what is regulated spending.

## Our view

8.25 Political parties are rightly the primary participants in election campaigns because they present candidates who are accountable through the ballot box. Parliament clearly intended that to remain, given the provision in PPERA that only a small proportion of the spending limit for parties (2%) can be spent by non-party campaigners. We are equally mindful that third-party campaigning is a good thing, because it encourages people to vote and injects a range of different agendas – as well as those represented by the parties – into elections. Recalling the principles in chapter 1, we believe that campaigning by third parties should:

- a. be transparent, so that the audience knows who is funding the adverts they see and can assess the credibility of the message
- b. respect the right to participate on equal terms with others
- c. not be dependent on a campaigner’s level of wealth and access to money (that is, it should be open to all)
- d. be regulated in a way that is proportionate and administratively practical (campaigners should be accountable).

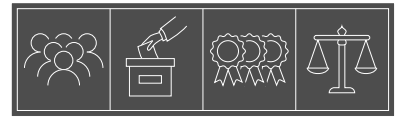
8.26 The rise of digital campaigning has posed particular transparency challenges for non-party involvement in elections. This needs to be addressed without making changes that will unduly increase the burden on charities and other civil society organisations. The recommendations we have set out below seek to focus on the specific issues of concern. Many draw on the recommendations made by Lord Hodgson in his 2016 report.

8.27 Lord Hodgson noted: “Judging from the organisations that registered at the 2015 general election, campaigning third parties tend to have a primary purpose not directly connected with campaigning at elections. There have been few third parties that were set up solely to campaign at elections.”<sup>90</sup> This is not an observation that can be made about the 2019 General Election, in the light of the investigations by journalists and democracy campaigners discussed in this chapter. We have concluded that the increase in non-party campaigners spending money on political

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90 The Lord Hodgson of Astley Abbots CBE (2016), Third Party Election Campaigning – Getting the Balance Right, page 24





advertising on social media platforms during election periods strengthens the case for greater transparency around what money is being spent to support parties.

## Increasing transparency

- 8.28 As we note above and at appendix 1, one of the four spending limits on non-party campaigners is for ‘targeted spending’ – campaign activity that can reasonably be regarded as intended to influence voters to vote for a particular political party or any of its candidates. If a party authorises a third party to incur an amount of targeted campaign spending, this falls within the party’s spending limit. If the political party does not authorise the third party to incur the spending, the targeted spending limit applies. The purpose of this rule is to stop spending limits being circumvented. Parties must report what is spent by third parties on their behalf, but there is no requirement to distinguish it from other spending.
- 8.29 The Electoral Commission explained in their 2015 General Election spending report that it is difficult to identify in the spending returns how much targeted spending has been incurred and if it has been correctly attributed to the relevant limits. The Commission proposed that this gap should be addressed by introducing a specific reporting category for targeted expenditure that non-party campaigners have incurred and spent in relation to an authorisation given by a political party.<sup>91</sup> The Hodgson report later made a similar recommendation. We agree that this change should be made to increase the transparency around campaigning that is carried out on behalf of political parties.

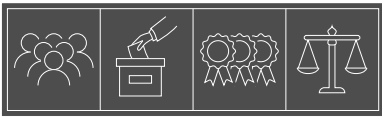
### **Recommendation 21**

Parties should be required to identify what is spent by third parties as targeted spending on their behalf. The government should introduce a specific reporting category for targeted expenditure that non-party campaigners have spent in relation to an authorisation given by a political party.

- 8.30 We also agree with Lord Hodgson’s proposal that non-party campaigners should have to disclose more information about themselves when they register with the Electoral Commission so that there is more publicly available information before the election. As noted above, third parties intending to spend over the thresholds must register with the Electoral Commission, but the register reveals very few details. Some information can be gleaned from the pre-poll donation reports through the course of the campaign, but spending reports (and statements of accounts where required) are only required after the election, which, as we discussed in chapter 6, may not be submitted until up to six months after the event. The requirement should

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<sup>91</sup> Electoral Commission (2016), Report: Political finance regulation at the May 2015 UK general election. Available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/uk-general-elections/report-political-finance-regulation-may-2015-uk-general-election>



not be onerous, and we do not think campaigners should be required to disclose more information than the law requires of political parties. This recommendation will provide a much-needed increase in transparency in return for only a minimal increase in administrative burden.

### **Recommendation 22**

To increase the information available about third parties in advance of an election, non-party campaigners should be required to disclose the following information when registering with the Electoral Commission:

- a brief summary of the purpose of the campaign
- geographical location of the campaign
- whether it is part of a joint campaign
- website address.

8.31 When a third party registers with the Electoral Commission, the law requires that the third party is kept on the register for 15 months. If its registration is due to expire during a regulated period for another election, the registration is extended to the end of that period. This makes it difficult to see which NPCs will be campaigning at any given election. We agree with the Hodgson report that there should be a specific register for each election and NPCs should be required to register at each election at which they expect to spend over the thresholds on campaign activity. The Electoral Commission believes that the law would need to be amended to allow for a specific register for each election event and we recommend that this change is made.<sup>92</sup>

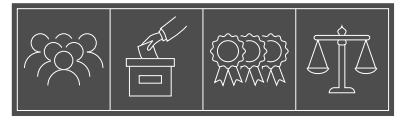
### **Recommendation 23**

The law should be amended to require a specific non-party campaigner register for each election event and to require non-party campaigners to register at each election in which they intend to campaign.

8.32 The law requires that all NPCs and referendum campaigners that register with the Electoral Commission submit a spending return. In some cases, registered campaigners will find that they do not end up spending over the threshold, yet are still required to submit a spending return. This penalises those who register out of a sense of caution. We agree with the recommendation made by the Electoral Commission in their 2013 report that campaigners who spend less than the relevant threshold should only be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

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92 The Electoral Commission's response to Lord Hodgson's review of Third Party Campaigning is available at: [https://webarchive.nationalarchives.gov.uk/20170511151433/http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0006/216942/WatsonJ-to-SkidmoreC-2016-10-Lord-Hodgson-Review-PDF.pdf](https://webarchive.nationalarchives.gov.uk/20170511151433/http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/216942/WatsonJ-to-SkidmoreC-2016-10-Lord-Hodgson-Review-PDF.pdf)



### **Recommendation 24**

Registered non-party campaigners and referendum campaigners that spend less than the relevant registration threshold should be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

- 8.33 We have given careful consideration to the case for lowering the threshold for registration with the Electoral Commission.<sup>93</sup> We are mindful that the thresholds were raised via the 2014 Act to the current levels. Lord Hodgson reviewed the thresholds in his 2016 report and recommended that they remain as they are, given the resource implications for charities and voluntary organisations. It is not clear to us that lowering the threshold would deliver a meaningful increase in transparency that would outweigh the potential administrative burden on campaigners.

### **Simplifying and consolidating electoral law**

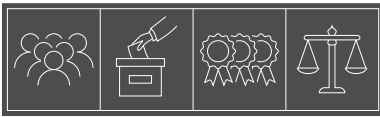
- 8.34 Lord Hodgson noted the complexity of having in place both longstanding rules on candidate-supporting spending and the newer, constituency-level, party-supporting spending controls (introduced through the 2014 Act), and he called for greater alignment of the two regimes. He noted the burden imposed on smaller campaigns to ensure compliance, and the challenge for regulators to determine how campaign activity should be split across the two regulatory regimes.
- 8.35 We recommend in chapter 2 that the government should bring forward a bill to simplify and consolidate electoral law.

### **Increased certainty for voluntary organisations**

- 8.36 While the expanded guidance issued by the Electoral Commission has been generally well received, charities and other voluntary organisations remain concerned about whether particular activities they engage in are caught by the rules.
- 8.37 We have concluded that more needs to be done to provide charities with reassurance that expenditure by issues-based campaigns that predates an election being called will not usually be considered to meet the purpose test of promoting electoral success. We note that it may not be possible to set this down definitively in legislation as exempting any kind of activity from the spending rules would run the risk that a loophole could be created and exploited. However, charities and other voluntary organisations would benefit from further clarity in the law about the scope of the law and we recommend that the government consults the Electoral Commission on how the law could be clarified.

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93 Currently £20,000 for England and £10,000 for Scotland, Wales or Northern Ireland



### **Recommendation 25**

The government should clarify in legislation the scope of the law on issues-based campaigns. The aim should be to provide campaigners with greater confidence that campaign activity from before an election is called is unlikely to meet the ‘purpose test’ of promoting electoral success if that activity does not focus on candidates or parties and does not mention voting or elections.

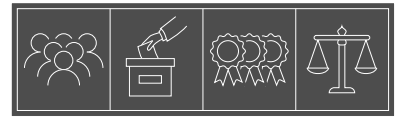
- 8.38 Under paragraph 3 of Schedule 8A to PPERA, the Electoral Commission has the power to issue a code of practice for non-party campaigners regarding the type of expenses that fall to be regulated. Codes of practice need to be approved by Parliament and provide a statutory defence and reassurance for those regulated.<sup>94</sup> The Commission has produced draft codes for parties and candidates (see chapter 8) but has not produced a code for non-party campaigners. Lord Hodgson noted in his report it is not solely the topic of the expenses that fall to be regulated that has caused third parties difficulties at elections, or that is perceived as being difficult to interpret. He proposed that it may be considered helpful for the Commission to be able to issue codes of practice on key areas of the regulation, not least so that this would provide ‘safe harbour’ protection to third parties. We agree.

### **Recommendation 26**

The government should change the law to give the Electoral Commission the power to issue codes of practice on key aspects of third-party campaigning.

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<sup>94</sup> Section 94(4a) PPERA states it is a defence for a third party to show that it was acting in accordance with a code issued under Schedule 8A



# Chapter 9

## Compliance part 1 - the criminal and civil regimes

### The framework for the enforcement of election finance offences

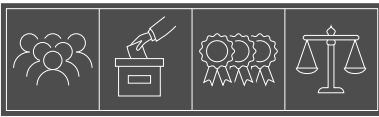
- 9.1 Criminal investigations and sanctions for election finance offences are the responsibility of the police and the courts.<sup>95</sup> Investigations are conducted first by the police who then present their findings to the Crown Prosecution Service (CPS). The CPS may bring a case to court if they determine that there is both a realistic prospect of conviction and that it is in the public interest to prosecute.
- 9.2 The Committee's 2007 report on the Electoral Commission recommended a system of financial penalties to supplement the existing criminal sanctions in PPERA.<sup>96</sup> The rationale was that a civil regime would provide a more proportionate route for less serious offences. The report stated, "Understandably, in virtually all cases the Commission has been reluctant to refer the matter to the CPS because, usually, such a move would be out of all proportion to the offence committed and a prosecution unlikely to be judged as in the public interest."
- 9.3 The Political Parties and Elections Act 2009 (PPEA) introduced a new civil regime to enforce some breaches of PPERA by parties and non-party campaigners under a broadened mandate for the Electoral Commission.<sup>97</sup>
- 9.4 In essence, the civil and criminal regimes operate separately. While the civil sanctions regime added a more proportionate way of dealing with breaches that aren't intentional, those offences remain in the legislation as criminal offences. There is no civil sanctions regime for the enforcement of breaches of the RPA by candidates, meaning the only enforcement route for candidates is criminal prosecution (this is a matter we explore in more detail in chapter 10).
- 9.5 In their consultation response, the Metropolitan Police Service (MPS) explained how the criminal and civil law is used for election offences.

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95 See appendix 1 for a summary of the criminal and civil sanctions regimes

96 Committee on Standards in Public Life (2007), Review of the Electoral Commission, Cm 7006

97 See schedule 2 of The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010. Available at: <https://www.legislation.gov.uk/uksi/2010/2860/made>

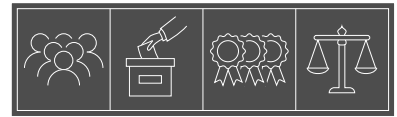


“The criminal law is reserved for those matters where there is persuasive evidence of guilty intent (*mens rea*) and which the state chooses to punish by means of criminal penalties. These are of a different order of seriousness than civil/regulatory penalties such as those available to the Electoral Commission under PPERA. The latter are used where there is no such evidence of guilty intent but where an infringement of rules (whether accidental or not) needs to be marked and deterred but not with the same force that results in a criminal conviction and a criminal penalty.”

**Metropolitan Police Service, written evidence 52.**

### Offences in PPERA – key facts

- There are over 100 offences listed in PPERA.
- **There is a category of offences for which only criminal proceedings are available.** These include:
  - knowingly giving a registered party treasurer false information about donations
  - making a false declaration as to the source of a donation to a third party
  - alteration, concealment, suppression or destruction of documents to evade any of the provisions of PPERA.
- **There is a category for which criminal and civil sanctions are available.** These include:
  - a registered treasurer of a party failing to deliver a proper statement of accounts
  - a third-party exceeding limits on controlled expenditure
  - failing to comply with any requirement imposed under the Electoral Commission’s investigative powers.
- **There is a separate category of ‘prescribed restrictions or requirements’ where civil sanctions are the only available sanction.** These include:
  - if a registered treasurer of a minor party fails to submit an annual notification of details within the specified time
  - a registered party failing to provide details of the nature of a non-cash donation in a donation report.



- 9.6 The Electoral Commission has previously recommended that the criminal offences in PPERA that relate to essentially administrative requirements (about 30 of the 69 criminal offences where civil sanctions are currently available), such as late submission of spending returns, should be reframed as civil offences only. The Commission proposed that this change should coincide with a lowering of the standard of proof for civil sanctions from the criminal standard of ‘beyond reasonable doubt’ to ‘balance of probabilities’.<sup>98</sup>

## Election finance and the police

- 9.7 Each of the 43 police forces in England and Wales is responsible for any election-related crime within their area. The National Police Chiefs’ Council (NPCC) has a Policing Elections Portfolio, which was created to raise awareness of the RPA through central coordination and training. The NPCC has a network of dedicated officers or SPOCs (specific points of contact) in every force in England and Wales, who are knowledgeable in election related crime. The NPCC has created a bespoke training course run through the City of London Police, and holds an annual conference to share best practice.
- 9.8 In the 2015 ‘Battlebus case’ which involved 17 separate police forces, the NPCC co-ordinated the investigation through the SPOCs to ensure a consistent approach. Individual forces managed the local aspects of the cases, such as gathering receipts and interviewing MPs.<sup>99</sup>

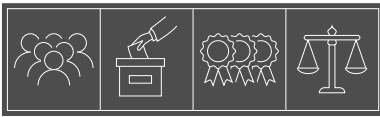
## The interplay between the criminal and civil regimes

- 9.9 Where the Electoral Commission becomes aware of a potential criminal offence for which civil sanctions are not an option, the Commission will liaise and share information with the relevant authority. A potential criminal offence may not be clear at the outset and may only come to light during the course of the Electoral Commission’s investigations. The police may also investigate potential offences referred to them by members of the public or investigative journalists.

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98 The Electoral Commission (2013), A regulatory review of the UK’s party and election finance laws, page 82. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/PEF-Regulatory-Review-2013.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/PEF-Regulatory-Review-2013.pdf)

99 BBC News (2017), No charges over 2015 Conservative battle bus cases, 10 May 2017. Available at: <https://www.bbc.co.uk/news/uk-politics-39865801>



6.14. We have agreements in place with the police and prosecutors in England and Wales, Scotland and Northern Ireland. Where we become aware of a potential criminal offence within our regulatory remit for which we do not have civil sanctions, or which we consider to be so serious that our civil sanctions may not be an adequate measure, we will liaise and share information with the relevant authority so that it can consider investigating or prosecuting. We may also notify the relevant authority of potential offences we become aware of outside our regulatory remit where we consider it appropriate to do so.

6.15. We will liaise with relevant authorities at the earliest possible stage, in order to minimise duplication of investigative work. In Scotland only, we will liaise with the relevant authorities in all cases.

Source: Electoral Commission Enforcement Policy<sup>100</sup>

- 9.10 The MPS told us that to date they have received four formal referrals from the Electoral Commission relating to election finance offences under PPERA and a further two referrals relating to election finance offences under the RPA.
- 9.11 No cases have ever been brought to court for prosecutions of offences under PPERA. In 2019, the police investigated 595 cases under the RPA. Four led to a conviction and two individuals were given a police caution.<sup>101</sup> It is striking that there are so few prosecutions, though the number of prosecutions should not be the principal criteria for measuring the success of a regime intended to deliver compliance.

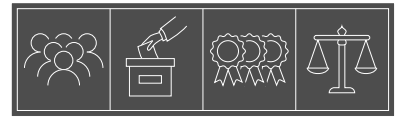
“The criminal threshold we are required to meet and get over is very high and I assume it is deliberately set that high and if you get over that then the public interest considerations come into it as well. We’ve had examples of where the public interest was not best served in running a prosecution which was likely to have succeeded. So it is those two issues.”

**Deputy Chief Constable Gareth Cann, National Police Chiefs’ Council, oral evidence.**

100 Electoral Commission (2016), Enforcement Policy. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/April-2016-Enforcement-Policy.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/April-2016-Enforcement-Policy.pdf)

101 See 2019 electoral fraud data published on the Electoral Commission’s website: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data/2019-electoral-fraud-data> Very few polls took place in 2020, which meant that the number of allegations reported to police forces for investigation was particularly low and the data cannot be meaningfully compared with data for previous or future years: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data/2020-electoral-fraud-data>





“I would say that most of the offences that we deal with are more likely to fail the evidential test rather than the public interest test... We don’t have a huge amount of electoral offenses referred to us – the majority of cases referred to CPS relate to allegations of breaches of the RPA and we have received very few referrals relating to PPERA criminal offences.”

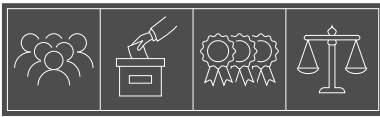
**Rosemary Ainslie, Head of Special Crime Division, CPS, oral evidence.**

- 9.12 Contributors to our review who have been subject to both civil and criminal investigations told us that they felt aggrieved at the length of time that they were subject to enforcement action by the Electoral Commission and the police. There was a feeling they were being judged twice. This is an understandable reaction – although in reality, the Electoral Commission and the police were investigating different offences.
- 9.13 The MPS explained the potential risk to a criminal trial if a trial were to take place after an individual has been named and sanctioned first under civil powers.

“...under the current rules there is the potential risk of unfairness or an abuse of process where the Electoral Commission impose civil/regulatory fines and publicise that they have done so whilst at the same time referring the individuals concerned to the police for investigation under the criminal law. This situation could potentially lead to circumstances in which those individuals may complain that they cannot have a fair criminal trial.”

**Metropolitan Police Service, written evidence 52.**

- 9.14 While the civil and criminal regimes operate separately, as is clear from the Electoral Commission’s enforcement policy, the Commission liaises with and shares information with the police when this is appropriate. The Electoral Commission provided us with an example of how they would liaise with the police in a hypothetical case to illustrate their approach.



“Take the example of where we identify that a spending return is incomplete: this may be on the basis of our analysis of the return itself or because of a complaint with evidence. At that point we reasonably suspect that the return is incomplete, but it is unlikely that we would have grounds to suspect a knowingly or recklessly false declaration had been made. As an evidence-based regulator we would not ‘assume’ incompleteness was intentional, but might come to reasonably suspect that if, as we investigated, we find that evidence of such was uncovered.

If we found reasonable grounds for suspecting both an offence that is prescribed for civil sanctions and an offence that is not, we would certainly consider how best to deal with the enforcement of each offence. Whatever the options, we would have an early conversation with the police and seek to reach agreement on the best way forward. For completeness, the options could include passing both matters to the police at the outset in order for both offences to be considered by them simultaneously. It could involve notifying the police of the offence we could not sanction, whilst proposing to continue our own investigation, or placing our investigation on hold. It could even involve a joint investigation between the Commission and the police.”

**Electoral Commission.**

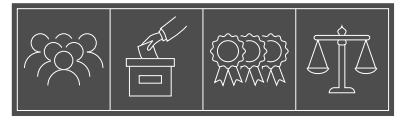
## A single specialist investigator?

- 9.15 The MPS told us that the experience of the last 20 years suggests serious consideration should be given to the Electoral Commission becoming an expert ‘Election Finance Regulator and Investigator’ with responsibility for both regulatory/civil sanctions and the investigation of criminal offences. This would allow the police to withdraw from the enforcement of election finance offences and would simplify the current situation, which has the potential for any one of 43 police forces to be involved in election finance investigations. The MPS would envisage the CPS retaining its role as prosecutor, at least for the foreseeable future.

“The MPS suggests that if there were one election finance regulator with a range of civil and criminal investigatory powers at its disposal it could then choose the most appropriate and proportionate according to the precise circumstances of each case. This would also avoid the ‘double jeopardy/abuse of process’ risks which exist with the current enforcement regime...”

**Metropolitan Police Service, written evidence 52.**

- 9.16 The Electoral Commission’s Corporate Plan stated that the Commission intended to consult on developing a prosecutions capability and our public consultation asked



for views on this.<sup>102</sup> The Electoral Commission told us that it has paused plans to consult on a prosecutions policy but has not changed its view on the desirability of the principle of it building the capacity to prosecute lower order suspected offences.

- 9.17 The evidence we received from the MPS and the NPCC emphasised the value of the independent oversight for criminal investigations provided by a separate prosecutor. The CPS noted that they had vast experience and expertise in important prosecutorial functions.

**“In our view, a criminal – civil divide provides a good level of precision, and any adjustment would require a clear demarcation between the Electoral Commission and CPS prosecution cases. Any unintentional blurring of the lines would be counter-productive.”**

**Crown Prosecution Service, written evidence 42.**

- 9.18 The consultation responses reveal the range of views expressed.<sup>103</sup> Some were opposed as a matter of principle to the Electoral Commission having a prosecution capability and others were supportive. In between these extremes, were those who were less certain. Some thought it could potentially strengthen the regime but careful consideration would need to be given to the approach and the scope of the power, and others had reservations about whether this was the right solution.

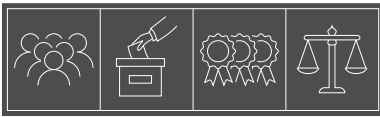
## Our view

- 9.19 There may be some advantages to a single agency with responsibility for investigating all election finance offences and determining in each case whether to use the civil sanctions available or to refer criminal cases to the CPS. However, it does not seem from the evidence we have heard that there is broad support for the Electoral Commission developing a criminal investigation aspect to its role. Further, it is not clear whether this would have an impact on the number of prosecutions, since the evidence we have heard from the police and the CPS is that the criminal threshold is set very high and most offences are likely to fail the evidential test rather than the public interest test.
- 9.20 Criminal sanctions are appropriate for the most serious cases and the police and the CPS should pursue prosecutions vigorously when the evidential and public interest tests are met. The maintenance of skills in the police is important and we hope that both the National Police Chiefs’ Council and the College of Policing remain alert to this issue so they are best placed to take forward serious cases as they arise.

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<sup>102</sup> Electoral Commission (2018), Corporate Plan 2018/19 – 2022/23. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Corporate-Plan-2018-19-to-2022-23.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Corporate-Plan-2018-19-to-2022-23.pdf)

<sup>103</sup> The consultation response are available at: <https://www.gov.uk/government/publications/review-of-electoral-regulation-written-evidence>



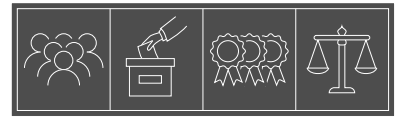
- 9.21 Where there is no intent behind the offence, civil sanctions will usually be the most appropriate way to encourage compliance. Our recommendations therefore focus primarily on improving the civil sanctions regime. They are intended to be implemented as a package. We start with a recommendation which will result in a better balance between the criminal and civil offences in PPERA.
- 9.22 As we discuss in chapter 2, contributors have told us that the risk of an administrative error leading to a criminal prosecution is deterring agents and candidates from becoming involved in politics. We also consider it does little for confidence in the regime to have numerous criminal offences in PPERA that would generally be considered inappropriate for criminal action. We have concluded that decriminalising essentially administrative requirements in PPERA would help to address concern about the legal risk carried by volunteers in the political system and result in a more coherent balance between the criminal and civil sides of the regime. We understand that decriminalising these requirements would result in the standard of proof being lowered to a ‘balance of probabilities’ in these cases.

#### **Recommendation 27**

Criminal offences in PPERA that relate to essentially administrative requirements, such as the late submission of spending returns, should be decriminalised. The government should consult the Electoral Commission to identify those offences which fall into this category.

## The Electoral Commission’s compliance duties and powers

- 9.23 The Electoral Commission has a statutory duty under s145(1) PPERA to monitor and take all reasonable steps to secure the compliance of parties and campaigners with the requirements in PPERA. Initially the Commission only had supervisory powers and had to rely heavily on the co-operation of parties and campaigners in their investigations over alleged offences. The civil sanctions regime introduced via PPEA 2009 added:
- investigatory powers (to require information from anyone where there has been a suspected breach of electoral law and to require witnesses to attend interviews)
  - the power to issue stop notices (used to require a particular action or intended action be stopped)
  - powers to impose a range of sanctions.



## What sanctions can the Electoral Commission impose on parties and campaigners?

### 1. Fines:

- a) Fixed money penalties of £200.
- b) Variable monetary penalties ranging from £250 to £20,000.

2. **Compliance and restoration notices.** These are used to require particular actions to be taken by a regulated organisation or individual who has breached the law, so that the breach does not continue or recur. These notices may be used on their own, in combination with each other or in combination with a variable monetary penalty.

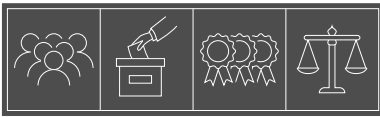
3. **Enforcement undertakings.** A regulated organisation or individual may offer to take action to ensure that an offence and/or contravention does not continue or recur. They may also offer to take action to ensure that a position is restored so as far is possible to what it would have been had the offence and/or contravention not occurred.

9.24 The Electoral Commission also has the duty to monitor and take all reasonable steps to secure compliance with rules on election expenses incurred by (or on behalf of) candidates and election agents or donations to such candidates or their election agents. The Commission does not have investigatory powers in relation to candidates or the powers to require information. We explore the implications of this in chapter 10.

9.25 Under the Commission's duty to monitor and take all reasonable steps to secure compliance, the Commission carries out a range of actions, including publishing guidance on the law, providing advice in response to queries from parties, campaigners and the public and conducting investigations.

## The Electoral Commission's published guidance

9.26 The evidence to the review on the guidance provided by the Electoral Commission was mixed. There was positive feedback from the Association of Electoral Administrators on the guidance produced for returning officers and staff. The National Council for Voluntary Organisations identified the efforts made by the Commission to engage with the voluntary sector to clarify the legal position on non-party campaigning following the 2014 Act. Professor Justin Fisher pointed to surveys with electoral agents, which repeatedly report satisfaction with the information and guidance provided by the Commission, as an illustration of the active work the Commission undertakes to build understanding of the law among those it regulates.



**“The Commission’s guidance, supporting resources and good practice is outstanding.”**

**Association of Electoral Administrators, written evidence 17.**

- 9.27 Some of the political parties we spoke to were more critical. There was an acknowledgement that the Electoral Commission must cater for a broad audience and that given the complexity of the law and the range of situations to cover, this is a difficult task. However, it was generally felt that the guidance could be clearer and simpler to understand, particularly for those who are unfamiliar with the law. Some contributors said that they found it difficult to locate the information they needed on the Commission’s website.

**“The advice from the Electoral Commission is huge in scale and it can be really daunting for an independent. It is also pretty vague, and in many cases it is really outdated for things like online campaigning. As an independent candidate you have 100 questions a day.”**

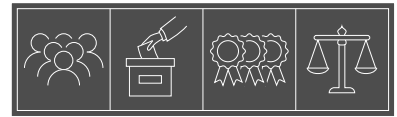
**Adam Zerny, Independent Councillor for Central Bedfordshire and Potton Town Council. Roundtable with smaller parties and independent candidates, 7 October 2020.**

**“For Independents who have never stood before and have no agent, the manuals are complicated...The detailed rules need simpler explanation.”**

**Lincolnshire Independents, written evidence 49.**

## **Codes of practice**

- 9.28 Under paragraph 3 of Schedule 8 to PPERA, the Electoral Commission may prepare a draft code of practice giving guidance on the type of expenses that fall to be regulated. The code must be approved by Parliament, having been laid before each House by the Secretary of State. Codes of practice made under PPERA provide a statutory defence and therefore provide reassurance for those regulated. The Commission has prepared draft codes for parties and candidates and presented them to the Minister for Constitution but they have not been brought into force.
- 9.29 Many contributors to the review told us that the draft codes prepared by the Commission are helpful and should be implemented, given the level of detail included and the reassurance they would provide to the regulated community that they can demonstrate compliance with the law.
- 9.30 We were told the government’s position is that it recognises the need to implement the codes to ensure clarity for candidates and parties on electoral spending. The government is considering a number of reforms as part of its work on electoral



integrity and announced a new elections bill in the Queen's Speech of May 2021. It considers it would be best to wait until this work has been completed before the codes are laid before Parliament, to ensure that when the codes come into effect they reflect any changes made to the regulatory framework.

“...we are supportive of the principle – already allowed under PPERA – of statutory guidance, which is drafted by the Electoral Commission following consultation, reviewed or amended by Government, and then presented to Parliament for approval. This allows for clarity and democratic oversight of changes to the law, and would prevent some of the problems with unclear or inconsistent guidance that we have highlighted.”

**Conservative Party, written evidence 31.**

“They [codes of practice] were produced in an admirable way, parties were consulted and the codes had the advantage over primary legislation in that you could update them swiftly and sensitively without need for a slot in the legislative programme. I thought they were a good step forward and I am disappointed they have not been brought before Parliament.”

**The Rt Hon Lord Tyler, Spokesperson for Political and Constitutional Reform, Liberal Democrats, oral evidence.**

“We engaged in the Electoral Commission consultation on that – the Commission was very good at listening to us. A useful step forward. Helpful up to a point but doesn't give you assurance that you won't get into trouble in the courts so putting it on a statutory footing would be useful.”

**Andrew Whyte, Acting Director of Governance and Legal, Labour Party, oral evidence.**

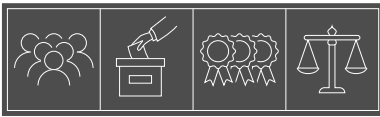
## The advice provided by the Electoral Commission

9.31 We heard a range of views on the advice the Electoral Commission has provided to those it regulates in response to questions about the law. Some contributors told us that they found individuals working at the Commission to be helpful and responsive to requests for information and advice. Others criticised the Commission for providing advice that was inconsistent and sometimes too slow during campaign periods.

“I am an admirer of what they [the Electoral Commission] do and rely heavily on their support and advice.”

**Deputy Chief Constable Gareth Cann, National Police Chiefs' Council, oral evidence.**





“I would like to say that when we have phoned up, in some of the contact, that most of the actual individuals who we speak to in the Electoral Commission are very nice. I think they are trying to do their best, and they have never been rude or disrespectful to me. It is more about reform of the system, and there probably is a capacity issue for the Electoral Commission.”

**Lorraine Roberts, Chief Operating Officer, Women’s Equality Party. Roundtable with smaller parties and independent candidates, 7 October 2020.**

“Yes, some of the people there can be helpful. That is great, but then others will contradict what other staff have told us. It has been a repeating thing. We have actually had the wrong information from the Electoral Commission...Their advice has actually led to them starting an investigation and they gave us the wrong information.”

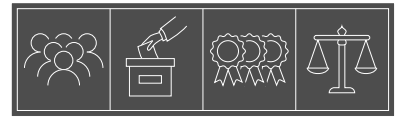
**Andrew Pope, Leader, Somerset Independents. Roundtable with smaller parties and independent candidates, 7 October 2020.**

- 9.32 Several contributors shared frustration at the Commission’s non-committal approach to giving advice in some cases, where a more specific response was sought but the response received did not go far enough to assist parties and non-party campaigners in interpreting the law on complex regulatory matters. We also heard an appetite for more proactive advice and support provision from smaller parties and independent candidates.

“The reality of the situation is such that, when organisations such as FOE contact the Electoral Commission, the body that will decide whether or not activity is regulated should an investigation occur, they are unable to give a clear answer and will only suggest certain activities are “likely” or “unlikely” to be regulated – even though they are the ones who will make the final judgement... For smaller organisations, especially those that are not in and of themselves “campaigning organisations”, or perhaps because they are primarily concerned with service delivery rather than advocacy and therefore unused to these levels of risk, this is not a reasonable environment for them to be operating in. Many organisations faced with the maximum reassurance that activity was ‘unlikely’ to be regulated may still decide not to proceed and be ‘chilled’.”

**Friends of the Earth, written evidence 55.**





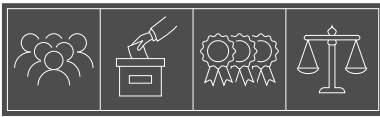
“On some things, the guidance was clear. The truth is that a lot of responsibility for interpreting the law lies with the entity i.e. not the Electoral Commission. So when we said we want to understand the working together rules or apportioning expenditure from outside the regulated period, they said we had to interpret it. The guidance they gave was rather vague, so it was frustrating.”

**Will Straw, Executive Director, Britain Stronger in Europe, oral evidence.**

- 9.33 The Electoral Commission told us about the work that they have done and are continuing to do to encourage compliance through the provision of guidance and advice. They pointed to the guidance issued on splitting expenditure by parties and candidates following the 2015 General Election when there were examples of volunteers being sent to certain constituencies to actively campaign, followed up by draft codes of practice, as an example of where they have been responsive and proactive in issuing guidance to clarify the law. The Commission told us that they put a lot of effort into talking to small parties and campaigners during the registration process, which is the first point of contact with the Commission and are open to doing more.
- 9.34 The Electoral Commission has a regulation helpline that provides advice on political finance matters. Between July 2019 and June 2020, the helpline received over 1,900 queries. Unsurprisingly, the volume of queries fluctuates around electoral events and major deadlines for reports from parties. The timely provision of accurate advice is one of the measures against which the Commission monitors its performance. For the 2019/20 reporting year, the Commission reported providing “accurate advice within five to 20 days of receipt of the request, depending on the complexity of the advice” in 94% of cases.
- 9.35 The Electoral Commission told us that it is developing a more responsive regulatory service. While it has always published guidance and had an advice team, the Commission has invested in an expanded proactive approach. The plans are in development but as a minimum, the team will approach political parties to ask what they see as difficult or need more help with. They are discussing with parties what support they would find helpful, prior to implementing the service.
- 9.36 Some contributors have suggested online guidance or advice sessions would be helpful for those who are unfamiliar with electoral law.

“A greater focus on resources aimed at demystifying PPERA (and other relevant legislation) with, perhaps, online walkthroughs and, even, courses might help the many volunteer activists navigate this often-tricky terrain.”

**Dr Sam Power, written evidence 34.**



## Our view

- 9.37 The complexity of the guidance reflects the fact that the law itself is complex. The larger parties have compliance teams who issue their own guidance to their candidates, agents and treasurers and are available to support them through the process. We note the work the Electoral Commission has done to reach out to smaller parties and campaigners who may not have access to the same resources. However, it is clear to us that more can be done to help volunteers navigate the complexity of electoral law.
- 9.38 As a starting point, the guidance needs to be more accessible on the Electoral Commission website. There is a huge volume of information available, with specific content produced for each election and referendum but it is not always easy to find. Multiple documents are connected via hyperlinks which can take you to more detailed information. However, navigating in this online space can be difficult: a user will often end up at a particular destination – with little clear idea of the route taken and how to find this information again.
- 9.39 Interactive guidance could have a significant impact on helping people to understand the law. This could take the form of videos, or an online course with modules that provide a walk-through guide on how to comply with the key requirements.<sup>104</sup> It would be for the Commission to consider how best to deliver this, but a partnership with an external provider to create a good online resource is one possible approach.

### **Recommendation 28**

The Electoral Commission should, as a priority, focus resources on upgrading their website. This should take place in collaboration with interface and user experience professionals so that it is as user friendly as possible.

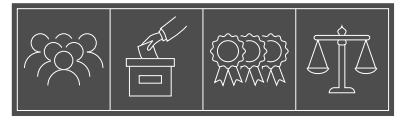
### **Recommendation 29**

The Electoral Commission should develop an interactive guidance resource accessible through its website, with online walkthroughs or training modules to explain the legislation and its requirements to parties, campaigners, candidates and interested individuals.

- 9.40 Codes of practice are a helpful tool for providing guidance and a statutory defence for parties, campaigners and candidates to rely on where they can demonstrate that they have complied with the content. We would like to see greater use made of codes of practice and recommend that the law is changed so that the Commission has the power to prepare codes on the subjects it deems would be helpful, having consulted the regulated community, the police and the CPS.

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<sup>104</sup> Such as those produced by HMRC, for example, on how to complete the self-employed tax return: <https://www.youtube.com/watch?v=revvcPm40IE>



- 9.41 The Commission has prepared codes giving guidance on the kinds of expenses incurred for election purposes for parties and candidates. These should be presented to Parliament for approval as soon as possible. We see no reason for the government to wait for the completion of its reforms on electoral integrity before doing so. We note that statutory codes of practice for candidate spending and party spending have been brought into force for Senedd (Welsh Parliament) elections.<sup>105</sup>

### **Recommendation 30**

The government should approve the draft statutory codes of practice on campaign expenditure for political parties and candidates, prepared by the Electoral Commission, and lay a copy of the codes before each House of Parliament for approval.

### **Recommendation 31**

The Electoral Commission should be granted the power to issue statutory codes of practice on any other area of regulation for which it is responsible.

- 9.42 The complexity of the law makes it essential that the Commission is able to deliver advice that is accurate, helpful and timely. The evidence we heard suggests that the Commission has perhaps been too cautious in the advice it gives. We were struck by the number of contributors – both parties and charities – who felt that the advice gave insufficient reassurance as to whether activity was regulated campaign activity and therefore fell to be included within spending limits.
- 9.43 The Commission must be able to take action where its advice has not been followed or where it was not provided with the full circumstances when it was asked for advice in the first place. However, we would encourage the Commission to provide more definitive advice to parties and campaigners. We consider that parties and campaigners who seek advice from the Commission should have a reasonable expectation of receiving a clear and authoritative response that can be relied on should it be necessary to defend their actions at a later stage. This advice should be provided in writing if requested.

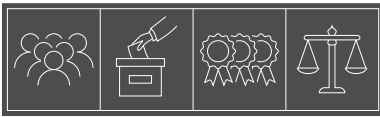
### **Recommendation 32**

The Electoral Commission should provide clear and authoritative advice that parties and non-party campaigners can rely on.

The Commission should seek regular feedback from the Parliamentary Parties Panel and voluntary organisations on the advice it provides to ensure that it meets the needs of those it regulates.

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<sup>105</sup> Candidate Election Expenses (Senedd Elections) Code of Practice 2021. Available at: [https://www.electoralcommission.org.uk/sites/default/files/2021-03/Candidate%20Election%20Expenses%20%28Senedd%20Elections%29%20Code%20of%20Practice%202021\\_2.pdf](https://www.electoralcommission.org.uk/sites/default/files/2021-03/Candidate%20Election%20Expenses%20%28Senedd%20Elections%29%20Code%20of%20Practice%202021_2.pdf)



## Powers to request information from any person who may hold relevant information

- 9.44 The Electoral Commission has powers to obtain information from registered political parties or non-party campaigners to secure compliance with the law, separate from their powers to gather evidence for the purpose of an investigation. However, these powers do not extend to third parties such as digital platforms, advertising suppliers or unregistered campaigners. Currently, the Commission can only require information from suppliers or unregistered campaigners if they have reasonable grounds to suspect an offence has been committed and open an investigation.
- 9.45 The Commission has recommended that their powers to compel the provision of documents, information and explanation outside of an investigation should be extended to enable them to request information from any person who may hold relevant material. The Information Commissioner has been granted similar powers by Parliament. The Commission has argued that this change would allow them to act more quickly when they identify concerns or when allegations are made to them. It would also help them when gathering information about a campaign that involves a number of different campaigners and suppliers.<sup>106</sup> This request has been supported by other reports, including ‘Disinformation and Fake News’<sup>107</sup> and ‘Digital Technology and the Resurrection of Trust.’<sup>108</sup>
- 9.46 The Commission first sought these powers in 2018 and more recently emphasised the need for them in order to secure compliance with the proposed legislation for digital imprints.<sup>109</sup> It will otherwise need to make and rely on voluntary agreements on a platform-by-platform basis to allow the providers to share information about non-compliant campaigners with them. This would reduce the Commission’s ability to act quickly and proportionately.
- 9.47 Many submissions to our public consultation identified the need for the Electoral Commission to have these powers. We heard a strong case at our roundtable with academics and organisations for empowering the government and regulators to be able to compel platform companies to disclose information about activity on their platforms. This was both in relation to advertising but also other methods of communication, such as activity by social media influencers.<sup>110</sup>

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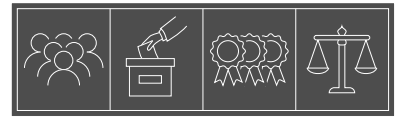
106 Electoral Commission (2018), Report: Digital campaigning - increasing transparency for voters. Available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>

107 DCMS Select Committee (2019), Disinformation and ‘fake news’: Final Report. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>

108 House of Lords Select Committee on Democracy and Digital Technologies (2020), Digital Technology and the Resurrection of Trust. Report of Session 2019-21

109 Electoral Commission response to Cabinet Office technical consultation on digital imprint. Available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/transparency-digital-campaigning-response-cabinet-office-technical-consultation-digital-imprints>

110 Roundtable with academics and civil society organisations, 5 October 2020



“The EC should be given the power (equivalent to the Information Commissioner) to compel social media companies to release data and relevant information to assist the EC with its investigations. At present, allegations relating to the misuse of digital technology and overspending on online campaigning are aired in the press while EC investigations are slowed down by a lack of automatic information sharing. Prompt cooperation from the social media companies would speed up the investigative process and promote effective intervention.”

**Spotlight on Corruption, written evidence 37.**

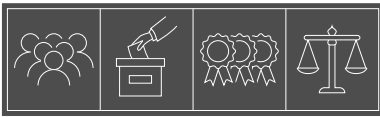
“The investigatory powers of the Commission, as they apply in relation to Scottish Parliament elections, are largely reserved under the devolution settlement. Enhancing the Electoral Commission’s information gathering powers would be a useful step. The Commission’s power to obtain information in circumstances where it has not commenced an investigation is limited and could usefully be strengthened.”

**Scottish Government, written evidence 51.**

- 9.48 Some contributors objected to the Commission having further powers since they were concerned about the way in which the Commission has used its existing powers.

“This term of reference asks whether the Commission should have an ability to compel the provision of documents by third parties. This is an unsatisfactory idea. It would undoubtedly have a chilling effect on electoral discourse or campaigning. This would be both immediate, i.e. during an election as the Commission would be pressurised to investigate whilst the election was being pursued, and, long term, as the Commission have shown, in contradiction of established principles of electoral law, a willingness to maintain or re-open inquiries years after the event. (A clear principle of electoral law is that all issues arising at it have to be dealt with, if at all, speedily).”

**Timothy Straker QC, written evidence 32.**



## Powers to share information with the police and regulators

9.49 The Electoral Commission has also called for explicit powers to share information with the police or other regulators such as the Information Commissioner. While the Commission has the power to share information that relates to electoral law matters with relevant bodies, it is reliant on others' powers to allow it to share information that relates to compliance with other legal frameworks, such as data protection law. The Commission explained in their digital campaigning report that a general power, enabling the Commission to share information with other regulators or law enforcement bodies where it is in the public interest to do so, would enable them to refer information more proactively where needed and streamline their processes.<sup>111</sup>

**“We currently rely on general powers and data protection law which makes working with partner agencies complex and, at times, slow.”**

**Electoral Commission, written evidence 16.**

**“... the EC have stated in their response paper that they would “welcome explicit powers to share information with the police” as they “currently rely on general powers and data protection law which makes working with partner agencies complex and, at times slow”. The MPS would also support this position.”**

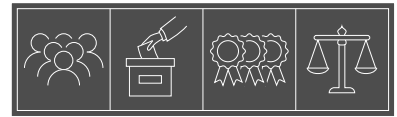
**Metropolitan Police Service, written evidence 52.**

**“There would also be merit in the Commission being given a general power enabling it to share information with other regulators or law enforcement bodies where that would be in the public interest.”**

**Scottish Government, written evidence 51.**

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<sup>111</sup> Electoral Commission (2018), Report: Digital campaigning - increasing transparency for voters



## Our view

- 9.50 We have concluded that there is a strong case for the Electoral Commission to have additional powers to obtain information outside of an investigation. Most of the offences the Electoral Commission can investigate are about reporting spending or funding during a campaign. Given the delay between an election and the requirement for spending returns to be submitted to the Electoral Commission, offences may be apparent only months after the event. To be an effective regulator and command public trust, the Commission needs to be able to monitor expenditure on campaign material actively, in close to real time so that it can act quickly to prevent the rules from being broken. It is currently impeded in this task as it is unable to obtain information from third parties such as social media platforms and unregulated campaigners – or to request that parties and campaigners provide rapid answers to questions about their digital activity.
- 9.51 We also consider that it is sensible for the Electoral Commission to have explicit powers to share information with the police and other regulators and can see no down-side to this.

### **Recommendation 33**

The Electoral Commission's powers to compel the provision of documents, information and explanation outside of an investigation should be extended to enable the Commission to request information from any person who may hold relevant material that it reasonably requires for the purposes of carrying out its functions.

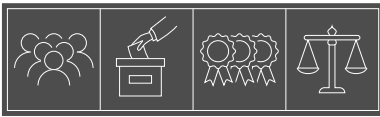
### **Recommendation 34**

The Electoral Commission should have new, explicit powers to share information with the police and other regulators such as the Information Commissioner's Office, where the Commission considers it to be in the public interest.

## Investigations and decisions

- 9.52 The Electoral Commission's approach to enforcement is set out in its published enforcement policy. The Commission emphasised to us in evidence that they believe a successful regulator should rely more on encouraging compliance to prevent wrong-doing than on taking enforcement action after wrong-doing has occurred. Many contributors we heard from, in particular academics and democracy organisations, felt that the Commission gets this balance right. However, most of the political parties and referendum campaigners we spoke to expressed the view that the Commission takes a heavy-handed approach to enforcement and gave examples to illustrate their claims.





2.1 The aim of our enforcement activity is to ensure that the PPERA rules on party and election finance are complied with, and that people throughout the UK are confident in the integrity and transparency of party and election finance.

2.3 Our approach to our enforcement activity is that we will:

- regulate in a way that is effective, proportionate and fair
- use advice and guidance proactively in order to secure compliance and to give those we regulate a clear understanding of their regulatory requirements
- undertake supervisory work to ensure that regulated organisations and individuals meet their legal requirements
- take enforcement action, including using investigatory powers and sanctions, where it is necessary and proportionate to do so in order to meet our enforcement aim and objectives
- take the facts of each situation into account.

Source: Electoral Commission Enforcement Policy<sup>112</sup>

9.53 As we explain at the outset of this report, we do not examine individual cases. However, we have looked at the themes raised in the evidence to see if there are areas that can be addressed by recommendations.

## Proportionality

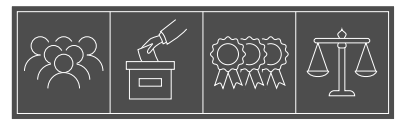
9.54 One of the most common complaints about the Commission's actions in specific cases was that it had not taken into account whether there was a deliberate attempt to breach the rules and whether a party had gained an advantage in the case of minor breaches. Many examples were given where a party felt they had been unduly punished for genuine mistakes and that the Commission's response was disproportionate. Some contributors suggested that the Commission was too quick to impose fines and that greater use should be made of the range of sanctions available to it, including statutory notices to improve compliance where appropriate.

**“... the negative impact or malicious intent of any contravention is not really taken into account in the first instance. It may be when you get right down the line as to what fine you are going to get given, but it is not in the first instance.”**

**Lorraine Roberts, Chief Operating Officer, Women's Equality Party.  
Roundtable with smaller parties and candidates, 7 October 2020.**

112 Electoral Commission (2016), Enforcement Policy. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/April-2016-Enforcement-Policy.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/April-2016-Enforcement-Policy.pdf)





**“The Electoral Commission (EC) should concentrate on achieving compliance from flagrant over-spending rather than launching extensive investigations for the most minor incidental error by small parties working on tiny budgets.”**

**Lincolnshire Independents, written evidence 49.**

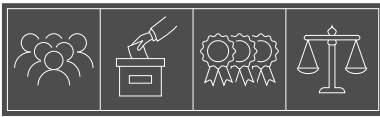
- 9.55 The Commission told us that they do take into account the difference between mistakes and deliberate action when deciding what action is appropriate. However, mistakes are potentially still offences under the law and even where there may be no advantage to a party there is a loss of transparency to voters. The Commission told us that fines are not the only tool they use in seeking to bring parties into compliance and in a reasonable proportion of cases they investigate they don't impose a sanction. They take into account the nature of each individual offence in setting the level of fine for that offence. This would include considering the number of minor breaches, how 'minor' the breach is, and how 'significant' other breaches are.
- 9.56 The Electoral Commission is required to report on its use of investigatory powers. Its 2019-20 annual report and accounts records that 38 penalties were imposed, down from 58 in 2018-19 and 86 in 2017-18. The 2019-20 period includes nine cases where parties paid fixed penalties early so the Commission did not have to issue notices to impose payments. In addition, there were 20 cases where the Commission found an offence but decided not to impose a sanction.<sup>113</sup>

### **Length of investigations**

- 9.57 Concerns were raised in the evidence to the review by some political parties and referendum campaigners about the length of time that can pass between an offence occurring, an investigation starting, and an investigation being concluded under PPERA. There was also concern about the cost of investigations and the fairness of the investigatory process.
- 9.58 The Commission has told us that it is rare for a PPERA case to be opened more than three years after the potential offence occurs. During the period 1 April 2020 to 31 March 2021, the Electoral Commission opened 52 investigations. On average, the time between the date the alleged offences took place and the investigation being opened was five months and two days.
- 9.59 The majority of Commission investigations are concluded within the Commission's internal target of 180 days from the date of the investigation being opened. While some cases necessarily take longer, it is very rare for cases to go beyond 12 months.

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<sup>113</sup> Electoral Commission (2020), Annual Report and Accounts 2019-20. Available at: <https://www.electoralcommission.org.uk/sites/default/files/2020-08/2019-20%20Annual%20Report%20and%20Accounts.pdf>



“The whole process should have been done quicker. The Electoral Commission did not appear to adhere to any time restraints.”

**Alan Halsall, ‘responsible person’, Vote Leave, oral evidence.**

“Investigations into supposed breaches can take years – for example, the Conservative Party is still currently discussing issues with the Electoral Commission from 2016. The review into the Conservative Party’s campaigning activities during 2015 general election campaign only concluded two years later. The Electoral Commission finalised its inquiries into the EU referendum up to three years after the event.”

**Conservative Party, written evidence 31.**

“When we received a fine for honest mistakes, we acknowledged we’d got something wrong. But the enforcement process does take a long time. Seeing the conclusion of processes started during the referendum – it’s far too long. It leaves campaigners in limbo – reputations to be upheld or trashed. If you only find out they broke the rules three years later after you voted, that doesn’t help voters trust the system.”

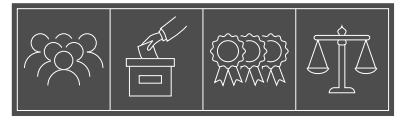
**Cary Mitchell, Director of Operations, Best for Britain, oral evidence.**

### Co-operation by political parties

9.60 We heard from some contributors that a lack of co-operation by political parties in some cases has undermined the effective performance of the Commission’s regulatory role, with parties not always accepting the requirements of electoral law.<sup>114</sup> A specific example relates to the Commission’s investigations into the spending returns made by the Conservative Party at elections in 2014, 2015 and 2016 during which the Conservative Party refused to hand over all the material sought by the Commission, until the Commission went to the High Court to order them to do so. The Labour Party has also in the past displayed similar attitudes towards compliance with the Commission.

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<sup>114</sup> Dr. Alistair Clark, written evidence 36



“...the report makes it clear that the party under investigation was able to delay the process resulting in the Commission ultimately having to apply to the High Court for documents and an information disclosure order.<sup>115</sup> While those under investigation must have a legal right to protection against a regulator exceeding their powers, it is apparent from the report that the case for delay made by the party was not a sound one. The implication of this is that the Commission should have stronger powers of investigation available to it to prevent unnecessary delaying tactics by those under investigation, and time-consuming (and expensive) recourse to the courts in order to fulfil its regulatory function.”

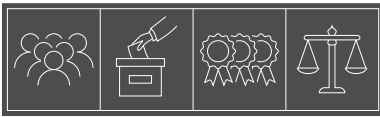
**Professor Justin Fisher, written evidence 15.**

## Our view

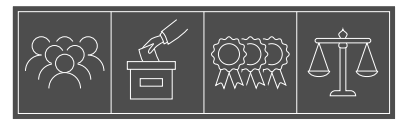
- 9.61 It is undesirable for doubt about whether campaign finance rules have been followed correctly at elections and referendums to remain any longer than absolutely necessary. Lengthy investigations can have a serious personal and professional impact on individuals. The uncertainty that results from a long delay between the election or referendum and the outcome of an investigation can also have a negative impact on public confidence in the integrity of the electoral system.
- 9.62 One reason for the gap that can occur between an election and the outcome of an investigation by the Electoral Commission is the long reporting deadlines that we have discussed in chapter 7. Most of the Commission’s enforcement powers relate to reporting offences. Parties and campaigners spending over £250,000 at elections and referendums have six months to send their spending returns to the Commission, meaning that offences are not identified and – in some cases – do not in fact occur until the deadline has been reached. Shortening the reporting periods for parties and campaigners spending over £250,000 will go some way to reducing the delay that is built into the system, but alone is insufficient to address the problem.
- 9.63 There is no deadline under PPERA for criminal or civil investigations, whereas under the Representation of the People Act (RPA), an investigation must be concluded within 12 months of an offence being committed (with the potential to extend the deadline by 12 months by making an application to a court). The RPA time limit refers to the time from a potential offence occurring to court proceedings being brought.
- 9.64 We have concluded that there should be new time limits that govern, first, the timeframe within which an Electoral Commission investigation may be opened and second, the duration of Commission investigations.

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<sup>115</sup> Electoral Commission (2017), Investigation in respect of the Conservative and Unionist Party campaign spending returns for the 2014 European Parliamentary Election, and 2015 Parliamentary Election, and in respect of parliamentary by-elections in Clacton, Newark and Rochester and Strood page 12, paragraphs 36-38. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Report-in-respect-of-the-Conservative-and-Unionist-Party.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Report-in-respect-of-the-Conservative-and-Unionist-Party.pdf)



- 9.65 An effective regulatory regime should encourage parties to self-disclose mistakes. To maintain this ethos and avoid deterring parties from coming forward to the Electoral Commission to report errors, Electoral Commission investigations under PPERA should be opened within 12 months of the date of the offence being committed or, if later, from the date at which the Electoral Commission first became aware of the circumstances of a potential offence. The second limb of this time limit mitigates the risk that the clock could time out before the Electoral Commission becomes aware of a potential offence and could therefore realistically be expected to act. The Committee has also concluded that there should be a 12-month limit on the duration of Commission investigations to ensure that they progress as swiftly as possible.
- 9.66 Parties and campaigners should not be able to frustrate the Commission in exercising its statutory functions. This is why, for both recommendations, the 12 month time-limit should be capable of being extended on application to a court by up to 12 months in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.
- 9.67 We recognise that these recommendations come with some risks, the most significant of which is the possibility that some offences could go unpunished, with the most complex and potentially the most serious investigations the most likely affected. The limits could present a challenge for the Commission as a PPERA spending return can be complex to analyse – a party may report up to £19 million of expenditure (formed of between several hundred and thousands of line items). A time limit on the duration of Commission investigations would also impose a burden on the Commission as a PPERA spending return can be complex to analyse – a party may report up to £19 million of expenditure (formed of between several hundred and thousands of line items).
- 9.68 There is also a risk that parties and non-party campaigners could seek to delay investigations to push a case past the deadline. However, the Electoral Commission has powers to impose a notice on parties during an investigation to require them to provide the Commission with information. If a party fails to comply, the Commission is able to go to court to force them to comply or report this to the police as a criminal offence.
- 9.69 As a further safeguard, in a case where the Commission goes to court to force a party to comply with an information notice, the Commission should have the ability to ask the court to extend the time limit further to compensate for the delay. This extension would be the period from the first request by the Commission to the date on which the party in question supplies the information.
- 9.70 Despite the challenges that these time limits may present, we believe these recommendations would create greater certainty in the regulatory system, which would be good for participants and increase public confidence in the regulatory framework. We believe that democracy requires justice to be served in a timely manner and these recommendations will go some way to delivering this.



### **Recommendation 35**

Electoral Commission investigations under PPERA should be opened within 12 months of the date of the offence being committed or, if later, from the date at which the Electoral Commission first became aware of the circumstances of a potential offence. This period should be capable of being extended on application to a court by up to 12 months in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.

### **Recommendation 36**

There should be a 12-month limit on the duration of Electoral Commission investigations under PPERA. This period should be capable of being extended on application to a court by up to 12 months in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.

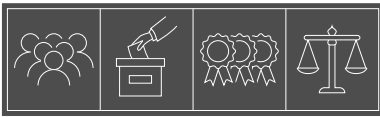
In a case where the Commission goes to court to force a party to comply with an investigation notice, the Commission should have the ability to ask the court to extend the time limit further. The extension would be the period from the first request by the Commission to the date on which the party in question supplies the information.

## **Sanctions**

- 9.71 The maximum fine that can be imposed by the Electoral Commission under PPERA is £20,000 per offence. Contributors to our review were clear that fines should be proportionate to the nature of the offence and many felt that the current maximum fine is insufficient to act as a meaningful deterrent to deliberate breaches of the rules. We heard that there need to be serious financial consequences so that anyone contemplating breaching the rules recognises that they could face a substantial penalty, and parties and campaigners are incentivised to comply with the rules – although one contributor cautioned that the fine should not be so large as to potentially threaten the entire operation of a party.<sup>116</sup>
- 9.72 The lower reputational impact of breaching laws for referendum campaigners (where the organisation might dissolve itself after an election) in comparison with political parties was raised in evidence.

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<sup>116</sup> In written evidence (number.15) Professor Justin Fisher referred to such a case in Georgia, when in 2012, the regulator imposed the largest party finance sanction ever in a Council of Europe member state



“Recent research indicates that the public believe that fines for breaking political finance laws are too lenient, given the amount of money that could be spent on campaigning. More than half of the respondents (52%) in our regular tracking research carried out in early 2020 said that a £20,000 maximum fine was not high enough. Only 27% felt that it was about the right amount.”

**Electoral Commission, written evidence 16.**

“There needs to be a judgment that looks at the scale of wrongdoing, culpability and harm. In a system trying to ensure adherence to election law you need some sort of serious financial threat hanging over people if they knew they were doing wrong.”

**Gavin Millar QC, oral evidence.**

“I agree the Electoral Commission should have stronger sanctions available – this might sound odd coming from a body representing those regulated. NCVO believes the regulator needs to be effective, ultimately good regulation is beneficial for public trust in the regulatory framework and the charities’ role in it. Agree with the Electoral Reform Society and the DCMS Select Committee that probably the Electoral Commission should have a wider range of sanctions so it can apply the most appropriate and proportionate sanction.”

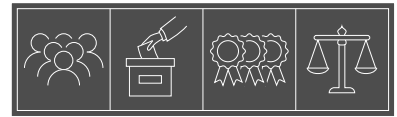
**Elizabeth Chamberlain, then Head of Policy and Public Services, NCVO, oral evidence.**

- 9.73 Not all contributors supported an increase in the maximum fine, for example the Conservative Party told us they see no reason to change the current position. The Institute of Economic Affairs queried whether infringements that are not serious enough to warrant criminal action should be penalised.

“It is not self-evident that an infringement that is not serious enough to warrant criminal action should necessarily have an alternative civil penalty – perhaps only those infringements that are serious enough to warrant criminal action (because they amount to corruption at a material scale) should be penalised.”

**Institute for Economic Affairs, written evidence 39.**

- 9.74 An increase in the maximum fine has been recommended by a number of other inquiries and different models have been proposed. Under the General Data Protection Regulation (GDPR), the ICO can fine an organisation the greater of £17.5 million or 4% of global annual turnover. Even before the introduction of the large fines available under the GDPR, the Information Commissioner was able to fine up to £500,000 under the Data Protection Act 1998.



- 9.75 The House of Lords Democracy and Digital Technology Committee suggested that the maximum fine the Commission can sanction should be £500,000 or 4% of a campaign's total spend, whichever is greater. The DCMS Select Committee report, 'Disinformation and Fake News', suggested fines should be based on a fixed percentage of turnover.
- 9.76 A maximum fine of up to £500,000 for Scottish referendums was introduced in the Referendums (Scotland) Act 2020. It has been argued that this sets a precedent that should be extended UK-wide in order to provide a meaningful deterrent under both normal electoral circumstances as well as referendums.<sup>117</sup> The Scottish Government told us that increasing the maximum fine that the Electoral Commission can impose for each breach of the election spending rules would bring the Commission's enforcement powers up to date and would be more likely to deter improper conduct. The Scottish Government observed that, as the punishment element of various provisions of electoral law is reserved, it would seem desirable for a change in maximum penalty to be made across the UK to minimise inconsistency.<sup>118</sup>

## Right of appeal

- 9.77 The decisions of the Electoral Commission to impose sanctions can be appealed to a county court. PPERA provides four grounds for appeal, of which one is the level of fine.<sup>119</sup> The Commission has told us that in most cases appeals are based on all of the grounds. Few decisions to impose sanctions have been appealed since the civil sanctions regime came into force in 2010. There have been a total of five appeals: one withdrawn, three dismissed and one successful. Several submissions referred to the one court judgment which overturned the Electoral Commission's findings and criticised the size of the fine awarded.<sup>120</sup>
- 9.78 We were told that it is costly to appeal cases to court. In one case a referendum campaigner told us that he withdrew an appeal that he would have pursued had the cost of doing so not been prohibitive. It was suggested to us that if there was a more inexpensive route to challenge the decisions of the Electoral Commission, there would be more appeals.

## Our view

- 9.79 We consider that an effective regulatory system must be backed by strong sanctions. The prospect of significantly greater fines will act as an incentive to ensure that parties and campaigners put in place robust systems to ensure that the requirements

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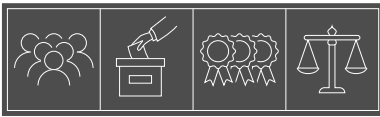
117 Alistair Clark, written evidence 36

118 Scottish Government, written evidence 51

119 The four grounds are: error of fact, error of law, penalty unreasonable, or the decision unreasonable in any other way

120 Darren Grimes v The Electoral Commission, 19 July 2019, Central London County Court [E40CL216]





of electoral law are complied with. For anyone contemplating deliberately breaching the law, it should give pause for thought. It seems that the Commission's powers have fallen behind equivalent regulators such as the Information Commissioner's Office and we have concluded that this should be redressed.

- 9.80 The Electoral Commission's enforcement policy states that if the Commission seeks to impose a penalty, they will allow a period of time for written representations or objections. When making representations or objections, recipients can put forward any information they consider relevant. This may include their ability to pay the penalty. We consider this to be an important factor and one to which the Commission should have regard, so far as possible, when it issues its initial notice of the proposed sanction.
- 9.81 We support the recommendation made by the House of Lords Democracy and Digital Technology Committee that the maximum fine the Electoral Commission may impose should be increased to 4% of a campaign's total spend or £500,000, whichever is higher.
- 9.82 Some of the parties we spoke to did not understand why they had been sanctioned in individual cases or fined the sum levied. This suggests there is more the Commission can do to explain the reasons for its decisions to recipients of sanctions. We recommend that the Commission should be required to provide those it regulates with a clear explanation of the rationale for the size of the sanctions it imposes in individual cases, to improve confidence in the fairness of its decision-making.

**Recommendation 37**

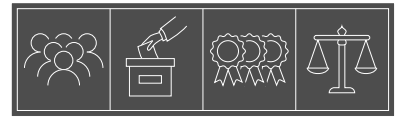
The maximum fine the Electoral Commission may impose should be increased to 4% of a campaign's total spend or £500,000, whichever is higher.

**Recommendation 38**

The Electoral Commission should be required to provide those it regulates with a clear explanation of the rationale for the size of the sanctions it imposes in individual cases, to improve confidence in the fairness of its decision-making.

- 9.83 We note that there have been very few appeals against the decisions of the Electoral Commission to sanction those it regulates. However, it is possible that the number of appeals may grow with the increase in the size of the maximum sanction.
- 9.84 We recognise that, in cases where there is an interpretation of the law at stake, the court would need to adjudicate. However, we have considered whether it would be desirable to recommend an alternative appeals process for challenges to the size of the penalty alone. One option would be an informal internal appeals panel, potentially formed of two independent Commissioners and another independent





person. The panel could look at appeals on the size of a fine but not the facts of the case or points of law. However, it seems unlikely that an internal mechanism would provide sufficient confidence in the impartiality of the appeal process. An alternative option would be an external tribunal. This is more likely to be perceived as a viable alternative to the court process and may enhance confidence and trust in the level of fines applied. It ought to be less expensive than full court proceedings, providing there was no ability for the winning side to recover costs. However, it is currently unclear what the demand would be for an external appeals process that is limited to reviewing sanctions alone.

- 9.85 The government should monitor the number and nature of appeals against the sanctions imposed by the Commission and keep under review whether the county court continues to be the most appropriate route for these appeals or whether an alternative independent appeals process should be established.

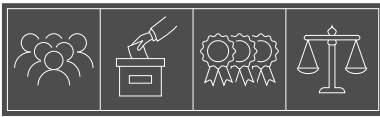
## Making electoral law processes more efficient

- 9.86 The final section of this chapter looks at where the regulatory framework could be made more efficient.
- 9.87 Where a party fails to pay an invoice on time it must seek permission from a court to make the payment. This control on late claims is intended to prevent campaigners and their suppliers colluding to evade the rules. Three political parties raised with us the practical issues created by the need to seek leave from the courts to pay overdue invoices. The Electoral Commission has suggested that it should be empowered to take on the role of giving the required permission.<sup>121</sup> The legislation for the Scottish Independence Referendum in 2014 took forward that suggestion and the Commission had a formal role to deal with late claims by campaigners at that referendum.<sup>122</sup> As PPERA requires campaigners to submit invoices or receipts only for spending over £200, the Commission suggested it seems overly burdensome to ask campaigners to seek relief for payment of claims below the £200 threshold.
- 9.88 The Commission also made recommendations in its 2013 Regulatory Review intended to ease bureaucracy for smaller parties and candidates. These include the proposal that parties should only be required to submit a PPERA spending return if they incur regulated PPERA campaign spending. The report also recommended that political parties should only have to provide a pre-election report if they are standing candidates for election and receive a reportable donation or loan (worth over £7,500) during the pre-election reporting period.

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121 The Electoral Commission (2013), A regulatory review of the UK's party and election finance laws, page 50. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/PEF-Regulatory-Review-2013.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/PEF-Regulatory-Review-2013.pdf)

122 The Electoral Commission included a summary of how it performed the late claims process in its report on the regulation of campaigners at the 2014 Scottish independence referendum, page 42. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Casework-and-spending-report.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Casework-and-spending-report.pdf)



- 9.89 The Association of Electoral Administrators explained in their consultation response that AEA members who collect expense returns on behalf of returning officers or proper officers often need to prompt candidates to submit their returns and this is a waste of resources for uncontested elections.
- 9.90 We consider that the following recommendations will result in procedural improvements to the operation of the enforcement regime under PPERA and ease bureaucracy.

**Recommendation 39**

The responsibility for granting permission to parties, non-party campaigners and referendum campaigners to pay late invoices or bills from suppliers should be transferred from the courts to the Electoral Commission.

**Recommendation 40**

Where leave to pay is granted, the Electoral Commission should have the ability to sanction the late receipt or payment of the claim in order to encourage compliance.

**Recommendation 41**

The requirement to receive all invoices within 30 days and pay them within 60 days of polling day should apply only to amounts over £200.

**Recommendation 42**

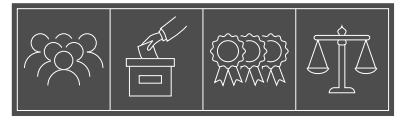
Political parties should be required to provide a pre-election report only if they are standing candidates for election and receive a reportable donation or loan (worth over £7,500) during the pre-election reporting period.

**Recommendation 43**

Political parties should be required to submit a PPERA spending return only if they incur regulated PPERA campaign spending.

**Recommendation 44**

For uncontested elections, candidates should not be required to submit zero spending returns.



# Chapter 10

## Compliance part 2 - candidates

### Introduction

- 10.1 As we set out in chapter 9, the only route for enforcing breaches of election finance laws by candidates is criminal prosecution. Unlike the framework for parties and campaigners under PPERA, the Electoral Commission has no powers to investigate potential breaches of the law by candidates or to sanction non-compliance through civil sanctions.
- 10.2 The rules and processes for reporting election expenditure and donations by candidates are also different from those for parties and non-party campaigners. This has implications for the transparency of spending at elections and the effectiveness of election finance regulation.

### Absence of a civil sanctions regime for candidates

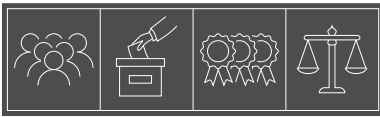
- 10.3 The absence of a civil sanctions regime for candidates has two specific consequences. It creates a fear of criminal prosecution for candidates and agents, who are aware that they could potentially face police investigation for relatively minor breaches of the law. It also means that offences which are not serious enough to trigger a police investigation are not addressed.

### Fear of criminalisation for volunteers

- 10.4 We heard from contributors that the threat of a criminal prosecution for administrative offences risks deterring volunteers from becoming involved in politics as candidates and election agents.

**“More often than not, the people involved in these campaigns are volunteers. Necessarily having something which is only a criminal sanction is dangerous in and of itself, because it risks criminalising people who for quite good reason do not understand the ins and outs of the RPA or PPERA, which are incredibly confusing.”**

**Dr Sam Power, roundtable with academics and civil society organisations, 5 October 2020.**



“The risk of being part of a criminal process for a rather trivial point has an impact on volunteers. It causes huge concern and is a perception issue. They feel as an agent, they could be reported to the police for something minor.”

**George Carr-Williamson, Deputy Regional Director, Labour Party, oral evidence.**

- 10.5 A clear majority of contributors to the review argued that civil sanctions should be available for candidates in order to create a more proportionate route for addressing genuine mistakes. We were told that criminal sanctions should be reserved for serious breaches of the rules that damage public confidence in the conduct and outcome of elections or affect the integrity of the electoral process.

“There is a case for having a more nuanced set of enforcement options for candidates. You need a distinction between when someone makes a genuine mistake or was reckless or there was a clear intention to deceive.”

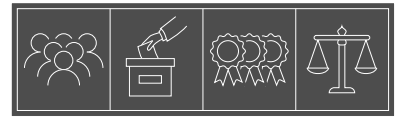
**Chris Matheson MP, Member of the Speaker’s Committee on the Electoral Commission, oral evidence.**

### The ‘enforcement gap’

- 10.6 We noted in chapter 9 the evidence of the MPS that, “The criminal law is reserved for those matters where there is persuasive evidence of guilty intent (*mens rea*) and which the state chooses to punish by means of criminal penalties.” Guidance from the Crown Prosecution Service states, “The principal purpose of the relevant legislation is to maintain not only the integrity and probity of the electoral process but public confidence in it. Proceedings for major infringements will normally be in the public interest.” The guidance notes that proceedings for other infringements may not be in the public interest in certain situations, including where the offence is of a ‘technical’ nature which does not infringe the spirit of the legislation and where the offence was committed as a result of a genuine mistake or misunderstanding.<sup>123</sup>
- 10.7 The Electoral Commission has described an ‘enforcement gap’ for candidates, where administrative or careless offences, for which criminal investigation is not proportionate, are left unaddressed.

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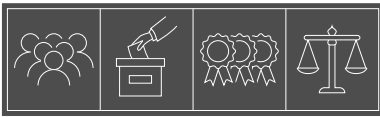
<sup>123</sup> CPS guidance on electoral offences (last updated October 2019). Available at: <https://www.cps.gov.uk/legal-guidance/election-offences>



“The current rules for candidates and agents do not offer any flexibility or any alternative from police investigation and criminal prosecution. Criminal investigation is a significant step and is disproportionate for many breaches such as late delivery of a spending return or minor missing items. This can be described as an ‘enforcement gap’ for administrative or careless breaches, and introducing a civil sanctions regime for candidates would address that gap.”

**Electoral Commission, written evidence 16.**

- 10.8 Some contributors noted that few breaches of electoral law by candidates appear to be investigated by the police. It was suggested that the police lack the necessary specialist skills and experience as they do not investigate cases frequently enough to build up expertise, partly because each of the 43 police forces in England and Wales are responsible for election related crime within their area. One contributor noted that the creation of the political post of Police and Crime Commissioner (PCC), means that there is the potential for conflicts of interest to arise – since many PCCs are aligned to a specific political party. The Association of Electoral Administrators shared the frustration felt by returning officers that candidates’ failure to submit spending returns on time is rarely pursued by the police.
- 10.9 The Electoral Commission has argued that having a civil sanctions regime for candidates would allow action to be taken in cases where a criminal route would be disproportionate, but where it is still important to encourage people to follow the rules. The Commission’s experience of the civil fines system for parties and campaigners is that the prospect of a swift civil fine has succeeded in incentivising compliance and delivering transparency of political finance.
- 10.10 The Electoral Commission considers that the existing civil sanctions regime could be expanded to encompass specific offences in the candidate regime. The Commission does not believe this approach would require the creation of new offences, or changes to the existing offences set out in the Representation of the People Act 1983. The introduction of the civil sanctions regime for PPERA did not involve creating any new offences, but prescribed a set of existing offences that can be dealt with by the Electoral Commission. The Commission has recommended considering whether and how a similar approach could be adopted for election finance offences in the RPA.
- 10.11 We heard strong support, from a wide variety of sources, for the Electoral Commission’s powers to be expanded to include the administration of a civil sanctions regime for candidates. The MPS has recommended that the Electoral Commission be given the powers to investigate all election finance offences under PPERA and RPA. Some contributors spoke about the importance of the Commission having a range of proportionate sanctions at its disposal. This would enable it to deploy the most appropriate intervention. This might be a fine, or remedial action



(such as training), or new processes to improve compliance. It was also noted that the Commission may be able to observe wider patterns of behaviour, which could feed into their regulatory service.

“It is about maximising the range of options you have, to reflect in a proportionate way the crimes that are taking place. Legislation is outdated and a blunt instrument. You need to bring it all into the 21st century, and have a deterrence scheme linked to how it works. There should be a repository of expertise. With the best will in the world, with all the local police forces, the knowledge is not there, and I understand why that is the case. You need to put the knowledge and deterrence capability in institutions that own the issue.”

**Stephen Kinnock MP, oral evidence.**

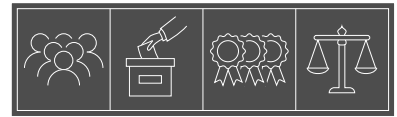
“Their [the Electoral Commission’s] regulatory powers should be expanded to include the enforcement of candidate finance laws rather than having to rely on the police taking enforcement forward. At present, under PPERA the Electoral Commission is the regulator and under RPA police are the regulator. As such there is a crossover and it is not clear which organisation regulates each type of offence. A far better approach would be to agree on a single regulator.”

**Association of Electoral Administrators, written evidence 17.**

- 10.12 The CPS commented that “increased regulatory powers for the Electoral Commission may be beneficial, and could enable a more flexible enforcement approach for civil sanctions. However, without more detailed proposals to allow for a proper assessment of the risks and benefits, and consideration of how it might work in practice, it is difficult to provide a detailed answer at this time.”

### **Concerns that Electoral Commission should not have further powers**

- 10.13 Contributors who were opposed to the Electoral Commission taking on new powers as a matter of principle were clear in their view that the Commission should not oversee a civil sanctions regime for candidates. Some had reservations about whether such a regime would work. Alan Mabbutt, registered treasurer for the Conservative Party, told us that he did not believe that creating civil offences under the RPA would incentivise compliance. Craig Mackinlay MP was concerned that civil penalties might be issued too freely and candidates faced with such a penalty would face immediate calls for resignation.



“...you absolutely cannot safely give any more power to this regulator until it has been reformed. Reform is essential.”

**Dirk Hazell, Leader, UK EPP. Roundtable with smaller parties and independent candidates, 7 October 2020.**

“This [consultation question] asks whether, putting on one side 150 years of tried practice, the Electoral Commission should cover the enforcement of candidate finance laws. The answer is that they should not. First, the system works and has worked perfectly well for over 150 years. Second, candidates are local and the Commission is not. Third, the Commission would, undoubtedly, require all to operate on line, which is unsuitable and deters participants in elections.”

**Timothy Straker QC, written evidence 32.**

## The view of the Law Commission

10.14 We note that the Law Commission has considered the suggestion that the Electoral Commission should have investigative and sanctions powers for offences relating to campaign spending and donations rules at major national elections. The Law Commission concluded that the primary legal deterrent should be through the criminal law but that there may be a role for civil sanctions as a more proportionate response to less serious breaches:

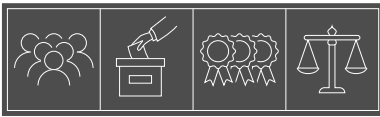
“Where a failure to provide expenses returns, or a false statement on an expenses return, is attributable to a candidate, he or she will face the consequences of having committed an illegal practice. Those consequences include losing his or her seat and being disqualified for a period of three years from holding public office. We remain of the view that civil sanctions do not produce this effect and cannot replace corrupt and illegal practices.”

We consider however that there may be a role for civil sanctions in addition to, rather than instead of, the current scheme of offences. They could be used as a more proportionate response to less serious breaches; for example, those committed by smaller and less well-resourced parties, or for the first time. We note that the current law already permits a criminal court to grant relief from the imposition of a disqualification, recognising that some offences are less significant than others.”<sup>124</sup>

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<sup>124</sup> The Law Commission of England and Wales and the Scottish Law Commission (2020), Electoral Law: A joint final report. paragraphs 12.31 - 12.34. Available at: [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339\\_LC\\_Electoral-Law\\_Report\\_FINAL\\_120320\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf)





## Consolidation of powers and laws

- 10.15 Some contributors considered that bringing candidates under the Electoral Commission's regulatory remit would be a significant step towards simplifying the regulatory regime, making it easier for voters and campaigners to understand. It would also allow for more joined-up oversight of how parties, campaigners and candidates comply with the requirements in PPERA and RPA, including whether spending is correctly allocated according to the key test of whose electoral success is being promoted. This would have the benefit of improving the effectiveness of the enforcement of both parts of the regime.

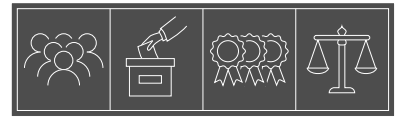
“...combining these two elements would make for a simpler, more streamlined, and more proportionate system. It would allow the Electoral Commission to bring its expertise in elections to bear on candidate spending. The distinction between candidate and party spending is a fine one, and it is not drawn optimally at present: it is possible for considerable campaigning to be targeted at a particular constituency without incurring any official constituency spending. This should be reformed. In the absence of such reform, a single body should be responsible for both parts of the system, and that should be the Electoral Commission.”

**Dr Alan Renwick, written evidence 45.**

## Transparency - roles and processes

- 10.16 Under PPERA, parties and campaigners must send spending returns directly to the Electoral Commission, supported by invoices and receipts for payments above £200. As discussed in chapter 7, the reporting date depends on how much was spent on the campaign. The Electoral Commission then checks the information provided and publishes full details, including the invoices, on the Commission's public political finance database. This database is fully searchable and is an important tool for academics who are able to analyse and interpret the data and for journalists who are able to hold parties and campaigners to account for the money they spend.
- 10.17 Candidate expenditure must be reported to the returning officer (RO) at the relevant local council, supported by invoices or receipts for any payment of £20 or over no later than 35 days after the election result is declared. The legislation also requires election agents and candidates to submit declarations confirming the candidate's election spending return is complete and correct.
- 10.18 The RO must send copies of election spending returns and declarations to the Electoral Commission as soon as reasonably practicable after the return or declaration is received. The invoices and receipts themselves are not sent to the Electoral Commission but must be provided on request.



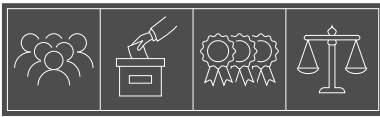


- 10.19 Election expenses returns and declarations are held by the RO for two years and must be made available for public inspection on request. Anyone can also request copies of the returns or declarations and any accompanying documents, which must be supplied on payment of the fee of 20p per side.<sup>125</sup>
- 10.20 No later than 10 calendar days after the deadline for spending returns to be submitted, ROs are required to publicise a notice of the time and place at which the spending returns and declarations (including the accompanying documents) can be inspected. This must be publicised in two newspapers circulating in the constituency and this notice must also be sent to each election agent. If, by the time the notice is dispatched for publication, there are outstanding returns or declarations, this must be stated in the notice. If the returns or declarations are received subsequently, a revised notice must be published.
- 10.21 Full spending returns for candidates are not published. In April 2020, the Electoral Commission launched a new tool allowing people to see and compare how candidates spent money at the 2019 General Election.<sup>126</sup> The Commission intends to continue to use this tool as a way to provide information about expenditure at general elections and other national elections.
- 10.22 The tool is pre-loaded with searches for candidates who spent and received the most and the least money during the election. It is also possible to run searches comparing spend with the size of the majority, largest spend without winning a seat, and constituency size. However, this information is not broken down to the level of the individual expenses that candidates report. Under current legislation, individual spending returns can only be viewed by visiting a local council in person.

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<sup>125</sup> Electoral Commission (2018), UK Parliamentary elections in Great Britain: guidance for (Acting) Returning Officers, pages 9 - 10. Available at: [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/UKPE-Part-F-After-the-declaration-of-result.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/UKPE-Part-F-After-the-declaration-of-result.pdf)

<sup>126</sup> Available at: <https://www.electoralcommission.org.uk/2019-candidate-spending>



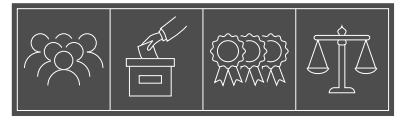
## Calls for an on-line returns and centralised database for candidate spending returns

- 10.23 In oral evidence, the Chief Executive of the Association of Electoral Administrators (AEA) described the practical issues for ROs presented by the current system.

“The local authority acts as a librarian for two years, there is very little checking to be done, which surprises candidates...For parliamentary elections you have to give notice to two newspapers - there aren't always two local newspapers! Queen Victoria would recognise the electoral system today – it hasn't changed much. Everything is about transparency and ensuring everyone can see the election is being undertaken fairly... The time consuming part of it all is chasing people up, making photocopies, redacting pieces – could all that not be far more automated and centralised? Instead of a returning officer taking scanned copies and sending them to the Electoral Commission, why can't that be automated?”

**Peter Stanyon, Chief Executive, Association of Electoral Administrators, oral evidence.**

- 10.24 The AEA first recommended in their 2015 post-election report that consideration should be given to developing an online facility for the submission of candidates' election expenses returns, with provision for both the candidate and agent to securely approve the final return. Such a system could also provide a means for inspecting the returns, declarations and associated papers. In evidence to the review, the AEA highlighted the transparency benefits of a central database managed by the Electoral Commission, which could allow spending to be compared across constituencies.
- 10.25 We heard from contributors who observed that a process that requires people to visit local council offices in person to view spending data delivers limited transparency in practice. Given concerns about the blurring of the line between party and candidate expenditure that we discussed in chapter 2, there is interest in being able to compare what a candidate has spent and what a party has spent in specific constituencies, yet the lack of alignment between the transparency provided by each regime means this is impractical.



“In April 2020, the Electoral Commission started publishing online aggregates of this data [candidate spending returns]. Whilst this is a very welcome step that goes as far as they can under the current legal framework, it is not enough for proper scrutiny. For transparency to be meaningful the full breakdowns need to be available. At a time when most people expect information to be available at the click of a button, it is disappointing to have transparency curtailed by such outdated laws.”

**Joseph Rowntree Reform Trust, written evidence 44.**

“The storage of all expenditure needs an open, digital, central return. It could be the Electoral Commission. It shouldn’t be with returning officers and they can’t always get returns from candidates.”

**Thomas Borwick, Kanto Systems, oral evidence.**

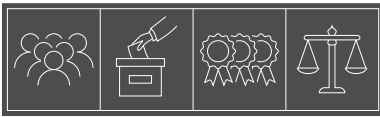
- 10.26 The Electoral Commission has previously noted that the provisions for making returns public are outdated and recommended that they should be published on local council’s websites.
- 10.27 The proposal for an online returns process received strong support at a roundtable we held with ROs from across the UK. Several ROs remarked on their passive role in the process and some questioned whether the RO should continue to collate spending returns at all, arguing that this leads to confusion about their role and a misplaced expectation that they are able to investigate compliance with the rules.

“My sense is that this is absolutely an area that is ripe for digitisation and automation. We have to get an online system. That would make it so much easier not only for the Electoral Commission to be able to access the information that we have, but it would also allow us to issue automatic reminders. It would then be really clear in a public-facing way when we do not have submissions by the deadlines.”

**Graham Farrant, Chief Executive of Bournemouth, Christchurch and Poole Council. Roundtable with ROs, 17 September 2020.**

## Our view

- 10.28 The RPA is a blunt instrument for enforcing compliance with election finance offences for candidates. We believe that there is a compelling case for broadening the Electoral Commission’s regulatory powers to include the administration of a civil sanctions regime for candidates. We have reached this view for three principal reasons.

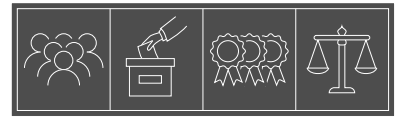


- 10.29 First, the level of personal legal risk carried by candidates and agents, when combined with the administrative burden that results from the complexity of electoral law, has the potential to act as a barrier to participation in the electoral process. A civil sanctions regime will provide candidates and agents with some reassurance that there is an alternative to criminal prosecution for administrative offences.
- 10.30 Second, we have heard that, in practice, many offences go unaddressed, creating an ‘enforcement gap’. This damages the integrity of the electoral process and the transparency which the rules are designed to deliver. A civil sanctions regime would allow action to be taken in cases where a criminal investigation would be disproportionate but where it is nevertheless important to incentivise compliance.
- 10.31 Third, we think the current role of the Electoral Commission in relation to candidates is unsatisfactory. It is required by law to monitor the compliance of candidates and agents with the rules on election spending and donations – but does not have the power to investigate or sanction breaches. It would be more efficient if the Commission had oversight of and responsibility for the enforcement of both parts of the regime.
- 10.32 In line with our recommendation to decriminalise criminal offences in PPERA that relate to essentially administrative requirements, we propose that the same approach is taken to candidate finance laws, separating the jurisdictions of the police and the Electoral Commission. The administrative offences in the RPA should be decriminalised and replaced with civil sanctions overseen by the Electoral Commission.
- 10.33 In line with our recommendation that there should be time limits in PPERA that govern the timeframe within which an Electoral Commission investigation may be opened and the duration of Electoral Commission investigations into parties and non-party campaigners, we recommend that the same limits should apply for Commission investigations into potential offences by candidates. The periods should be capable of being extended on application to a court in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.

#### **Recommendation 45**

Criminal offences in the RPA that relate to essentially administrative requirements, should be decriminalised and replaced with civil sanctions.

The Electoral Commission’s regulatory powers should be expanded to include the enforcement of civil sanctions for candidates.



- 10.34 There is a strong case for introducing an automated process for candidates and agents to submit and certify their spending returns and for this information to be centrally held and made available online to the public. It is not reasonable in the 21st century that the only way of seeing the invoices and receipts of the money spent by candidates is to visit local councils in person. The level of transparency available for candidates should be brought in line with that available for parties and non-party campaigners through a single, centralised database.
- 10.35 The development of an online facility for the submission, certification, and viewing of spending returns would mean that it would no longer be necessary for ROs to receive paper spending returns, store them and make them available for viewing locally.
- 10.36 We consider that responsibility for overseeing a civil sanctions regime for candidates should go hand-in-hand with managing an online process for receiving and publishing spending returns. A single regime for civil sanctions should therefore sit with the Electoral Commission.
- 10.37 We recognise that centralising responsibility for administering the collation of spending returns would create an administrative cost for the Electoral Commission. However, we consider that this is necessary in order to increase the effectiveness of the regulatory system and deliver increased transparency to the public.

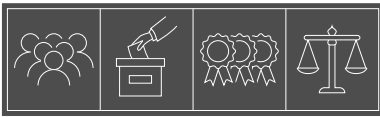
#### **Recommendation 46**

The Electoral Commission should develop a secure online facility for the submission, certification and publication of candidates' election expenses returns.

- 10.38 Pending the introduction of an online facility for spending returns and donations, the requirement on ROs to publish the availability for inspection of candidates' election expenses returns in local newspapers at all applicable polls should be replaced with a new requirement to publicise this information on the council website. ROs should also be required to publicise outstanding returns in this way.

#### **Recommendation 47**

The requirement on returning officers to publish the availability for inspection of candidates' election expenses returns at all applicable polls, and to publicise outstanding returns in local newspapers, should be revoked and returning officers should be placed under a new obligation to publicise this information on the council website.



# Appendix 1

## The legal framework for regulation of political and election finance in the united kingdom: a summary

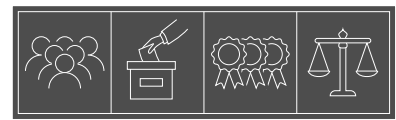
**Dr Sam Power, Lecturer in Corruption Analysis (University of Sussex)**

### I. Introduction

1. The following is a brief summary of the legal framework for the regulation of political and election finance in the UK. The work is separated into six categories: (1) rules on permissible donations, (2) rules on expenditure, (3) guidance for non-party campaigns, (4) the civil sanctions regime, (5) the criminal sanctions regime, (6) the interaction across the Political Parties, Elections and Referendums Act 2000 (PPERA) and the Representation of the People Act 1983 (RPA).
2. Whilst there is, of course, some degree of variance in the rules and regulations in the devolved administrations – for brevity, parsimony and space this summary will take a ‘broad view’ of the regulatory landscape.

### II. Summary of the rules on permissible donations

3. There is no upper limit on donations to political parties, candidates or non-party campaigners in the UK, as long as this money comes from a permissible source. It is the responsibility of said political party, candidate or non-party campaign to ascertain the source of the donation and whether it is permissible.
4. Donations are considered to be money and/or goods or services given to a party either without charge or on non-commercial terms. In guidance provided by the Electoral Commission (EC) examples of donations provided are: a gift of money or other property, sponsorship of an event or publication, subscription or affiliation payments and free (or specially discounted) use of an office.
5. Whilst foreign donations to parties and candidates are in theory subject to a ban, anything with a value of £500 or less (party) and £50 or less (candidate) is not considered a donation under PERA. Therefore, this effectively means that foreign donations are subject to a cap of £500 and £50 respectively.
6. All donations and loans either above or aggregate to £7,500 or more during a calendar year must be reported to the EC, and the information is published quarterly (in February, May, August and November). The information provided will include the entity that accepted the donation or loan, the amount of the donation or loan, and who provided the donation or loan. This includes their name and status (such as individual or company), or if it was public funding. These reporting requirements are set at £1,500 to ‘accounting units’, which are ‘sections of a party whose finances



aren't managed directly by the party's headquarters' (which often encompasses specific candidates, as opposed to the national party).

7. Non-party campaigns are only subject to rules in the period before certain elections, stated as the 'regulated period' (see below). During this regulated period, the rules are much the same in that any donations above or aggregate to the £7,500 threshold must be reported to the EC as a part of their spending return.
8. At general elections parties are required to conduct weekly pre-poll reporting of donations and loans from the date of the dissolution of parliament. This counts as an additional requirement to the quarterly report of donations and loans.
9. Candidates are not required to provide weekly reports, but their agent must report details of candidate spending and donations to the Acting Returning Officer no later than 35 days after the election result is declared. As well as including a detailed breakdown of spending the return must also include details of all donations over £50.

### III. Rules on expenditure<sup>127</sup>

10. There are limits on spending at both the party (national) and candidate (local) level. The limit is calculated on a formula of £30,000 for each seat a party is contesting which makes the 'official' spending limit £19,500,000. However, in reality different political parties stand in the different devolved administrations so, excluding Northern Ireland, the spending limit at general elections is £18,960,000.
11. These national spending limits were introduced as a part of PPERA but represent a historical echo of the Corrupt and Illegal Practices (Prevention) Act 1883 (CIPPA), which introduced spending limits at the local level.<sup>128</sup> This also explains why there is a regulatory distinction between candidate and party spending in UK law.
12. There are (typically) two candidate spending limits at general elections, one for the 'short campaign' and one for the 'long campaign'. For the short campaign (which officially begins when parliament dissolves) the candidate spending limits take into account the number of registered electors there are in each constituency so they vary. This is currently calculated at a base amount of £8,700 with 6p added per elector in a borough constituency, and 9p added per elector in a county constituency.
13. During the long campaign (which relates to the approximately three-month period leading up to the short campaign) there are 'pre-candidacy' spending limits. In the lead up to the 2015 general election these were set at £30,700 with 6p added per elector in a borough constituency and 9p added per elector in a county constituency.<sup>129</sup>

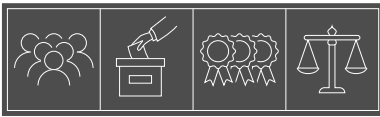
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<sup>127</sup> What constitutes 'campaign expenditure' (or otherwise) is complex in and of itself. The Electoral Commission provides lengthy and detailed guidance for those standing for election. The guidance provided for the 2019 general election is available at <https://www.electoralcommission.org.uk/sites/default/files/2019-10/Political%20parties%202019%20UKPGE.pdf>, accessed 04/05/2021.

<sup>128</sup> See Fisher, J. (2009), 'Hayden Phillips and Jack Straw: The Continuation of British Exceptionalism in Party Finance', *Parliamentary Affairs*, 62(2): 298-317.

<sup>129</sup> For a good summary of the long and short campaign at the 2015 general election see Chakelian, A. (2014), 'The 2015 election campaign officially begins: what does this mean?', available at <https://www.newstatesman.com/politics/2014/12/2015-election-campaign-officially-begins-what-does-mean>, accessed 5/1/2021.





14. There was no long campaign for candidates in 2017 or 2019 due to the ‘surprise’ nature of the elections themselves. Therefore, any spending promoting a candidate before the regulated period at these general elections fell under the rules for party spending (and counted towards the abovementioned national spending limit).
15. Spending at elections by parties and non-party campaigners must be reported to the EC. These spending returns must include the details of the spending, invoices and receipts for payments above £200, and a declaration from the ‘responsible person’ that the return is complete and correct.
16. The reporting date depends on how much was spent on the campaign. If campaign expenditure is £250,000 or below a report must be received within three months of the general election. If campaign expenditure is over £250,000, a report must be received within six months of the general election. As mentioned at paragraph 10 above, agents must report details of candidate spending to the Acting Returning Officer no later than 35 days after the election result is declared.

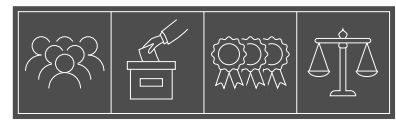
#### **IV. Rules on non-party campaigners**

17. Individuals and organisations that campaign around elections, without standing for elections themselves, are designated by the EC as ‘non-party campaigners’. They are only subject to regulation during the ‘regulated period’ which begins 12 months before an election is due. If non-party campaigns spend over a certain threshold, they are required to register with the EC. This threshold is dependent on which part of the UK the non-party campaign is active. In England the threshold is £20,000 and in Northern Ireland, Scotland and Wales it is £10,000.
18. A number of spending limits apply to non-party campaigns. Candidate campaigns are subject to a £700 expenditure limit during a general election and a £9,750 limit in the twelve months prior to a general election, if their campaigning is in support of a particular political party. National non-party campaigns are subject to spending limits in the twelve months leading up to a general election, which in 2019 stood at £390,000 (though if the non-party campaign runs separate campaigns in all four nations this limit is £465,300).<sup>130</sup>
19. There is also a newly amended limit – as of the passage of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (TUAA) – on so-called ‘targeted spending’. Non-party campaigns conduct targeted spending when it is intended to benefit a specific party or any of its candidates. This puts a limit on the targeted spending that can be incurred by a non-party campaign where a party has not authorised the expenditure – at the 2019 general election, the limit was £39,000.

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130 Rowbottom, J. (2020), ‘The Regulation of Third Party Campaigning in UK Elections’, *Political Quarterly*, 91(4): 730.





## V. Civil sanctions regime

20. The EC has the main responsibility to enforce civil sanctions in the event of breaches of PPERA (see below concerning breaches of the RPA). The civil sanctions regime was updated in the Political Parties and Elections Act 2009 (PPEA) and provided the EC with a considerably broader mandate than was initially laid out under PPERA.<sup>131</sup>
21. The sanctions available to the EC are fines ranging from £200 to £20,000, the issuance of ‘compliance and restoration notices’ (by which they can request particular actions are taken to achieve compliance) and ‘stop notices’ (by which they can request a particular action or intended action be stopped).

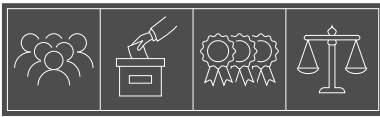
## VI. Criminal sanctions regime

22. The law does not provide for the EC to bring criminal sanctions under either PPERA or the RPA – this is a matter for the police and courts. Investigations are conducted first by the police (who may receive guidance from the EC) who then present their findings to the Crown Prosecution Service (CPS). The CPS will then bring a case to court on applying a ‘two-stage test’. The first is whether the evidence provides a realistic prospect of conviction, the second is whether it is in the public interest to prosecute.
23. Under the RPA election offences are separated under the categories of either ‘corrupt’ or ‘illegal’ practices (though there are other offences which do not fall under either category and are subject to their own penalties). As per Section 168(1) of the RPA a person found guilty of a corrupt practice is subject to imprisonment for a term not exceeding two years, to a fine, or both. As per Section 169 of the RPA a person found guilty of an illegal act is subject to a fine not exceeding level five on the standard scale (£5,000).
24. As per Section 150(3c) of PPERA terms of imprisonment must not exceed either one year or six months (dependent on the case). Sanctions available under PPERA, then, fall under five categories: fixed monetary penalties, variable monetary penalties, compliance notices and restoration notices, enforcement undertakings and convictions.<sup>132</sup>
25. Enforcement under PPERA can be separated into three categories. The first are those for which only criminal proceedings are available. These include knowingly giving a registered party treasurer false information about donations, making a false declaration as to the source of a donation to a third party and alteration, concealment, suppression or destruction of documents to evade any of the provisions of PPERA.
26. The second are those for which criminal and civil sanctions are available. These include if a registered treasurer of a party fails to deliver a proper statement of

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<sup>131</sup> For more see Power, S. (2020), *Party Funding and Corruption*, (Basingstoke: Palgrave MacMillan): 76-78.

<sup>132</sup> For a detailed summary of the EC’s enforcement policy (as of 2016), see Electoral Commission (2016), *Enforcement Policy*, available at [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/April-2016-Enforcement-Policy.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/April-2016-Enforcement-Policy.pdf), accessed 6/1/2021.



accounts, a third-party exceeding limits on controlled expenditure and failing to comply with any requirement imposed under the EC's investigative powers.

27. Finally, there are those for which only civil sanctions are available. These include if a registered treasurer of a minor party fails to submit an annual notification of details within the specified time and a registered party failing to provide details of the nature of a non-cash donation in a donation report.<sup>133</sup>

## VI. Interaction across PPERA and the RPA

28. In very broad terms, the law on election campaigns is set out in two separate primary pieces of legislation the RPA (1983) and PPERA (2000) – though the legislation set out in the RPA is an incorporation of candidate spending limits initially set out in CIPPA. There are also further aspects of electoral law amended under the Electoral Administration Act 2006 (EAA), PPEA and TUAAs.
29. This reflects the reality that electoral law in the UK is piecemeal, where regulations are 'superimposed upon, rather than integrated with' existing (sometimes Victorian) legislation.<sup>134</sup> It is, therefore, 'complex, voluminous and fragmented'<sup>135</sup> and understanding it, 'best thought of as a Jane Austen-style intricate dance, where all sorts of daring and dicey moves are permissible, provided you know precisely where to step and when, and how not to upset the crowds'.<sup>136</sup>
30. The interaction between the RPA and PPERA creates a two-tier system of regulation, with candidate spending limits (which have been in place since 1883) and party spending limits falling under differing regulatory controls. Election expenditure incurred by a constituency candidate is controlled under the RPA.
31. This is separate to the party controls as set out under PPERA, which brought party legislation, in line with century-old electoral law as it applied to candidates. The basic principles of this distinction remain in place, though PPERA introduced some changes around the detail of these local controls (as did elements of PPEA).
32. Put in the simplest terms, the regulation of candidate spending is (largely) laid out in the RPA, whereas party spending is covered by PPERA.

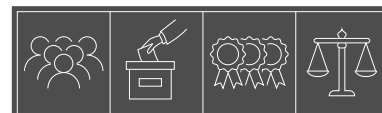
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133 For a full summary of available sanctions under PPERA see (Electoral Commission, (n.d.), Offences and proposed sanctions, available at [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Table-of-offences-and-sanctions\\_for\\_EP.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Table-of-offences-and-sanctions_for_EP.pdf), accessed 6/1/2021.

134 Johnston, R. and Pattie, C. (2012), 'Local parties, local money and local campaigns: regulation issues', in Ewing, K., Rowbottom, J. and Tham, J-C. (eds.), *The Funding of Political Parties: Where Now?*, (Abingdon: Routledge): 105.

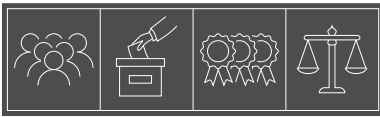
135 Law Commission (2020), *Electoral Law: A Joint Final Report*, available at [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/03/6.6339\\_LC\\_Electoral-Law\\_Report\\_FINAL\\_120320\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf) accessed 15/12/2020: 1.

136 Ball, J. (2020), *The real story of Cambridge Analytica and Brexit*, available at <https://www.spectator.co.uk/article/were-there-any-links-between-cambridge-analytica-russia-and-brexit> accessed 12/12/2020.



**Table 1: Summary of political and electoral finance regulation in the UK**

<p><b>Rules on donations</b></p>	<ul style="list-style-type: none"> <li>• Foreign donations capped at £50 (candidate) and £500 (party)</li> <li>• Anonymous donations capped at £50</li> <li>• No other limits on donations from permissible sources</li> </ul>
<p><b>Rules on expenditure</b></p>	<ul style="list-style-type: none"> <li>• Party spending limits are £30,000 per contested constituency</li> <li>• Candidate spending limits vary depending on size of electorate in constituency</li> </ul>
<p><b>Disclosure obligations</b></p>	<ul style="list-style-type: none"> <li>• Annual statement of accounts submitted to EC</li> <li>• Quarterly donation and loan reports submitted to EC</li> <li>• Weekly donation and loan reports submitted to EC during election campaigns</li> <li>• Political parties, candidates and (regulated) non-party campaigns must also provide election spending returns to EC</li> </ul>
<p><b>Civil and criminal sanctions</b></p>	<ul style="list-style-type: none"> <li>• Civil sanctions administered by the EC for breaches of PPERA</li> <li>• Criminal breaches (of PPERA and the RPA) investigated by the police and brought to court by the CPS</li> <li>• All breaches of the RPA fall under the purview of the police, the CPS and the courts</li> </ul>
<p><b>Non-party campaigns</b></p>	<ul style="list-style-type: none"> <li>• Required to register with the EC if spend is greater than £20,000 (England) or £10,000 (Northern Ireland, Wales, Scotland)</li> <li>• Only subject to regulation during the ‘regulated period’</li> <li>• Spending limits vary but three main limits are: £390,000 (for a national campaign run across the UK); £39,000 for campaigns conducting ‘targeted spending’; £9,750 for campaigns focused in a particular constituency in the 12 months prior to polling day; £700 for candidate centred campaigns in the weeks prior to an election</li> </ul>
<p><b>Selected important legislation</b></p>	<ul style="list-style-type: none"> <li>• Ballot Act (1872)</li> <li>• Corrupt and Illegal Practices (Prevention) Act (1883)</li> <li>• Honours (Prevention of Abuses) Act (1925)</li> <li>• Representation of the People Act (1983)</li> <li>• Political Parties, Elections and Referendums Act (2000)</li> <li>• Electoral Administration Act (2006)</li> <li>• Political Parties and Elections Act (2009)</li> <li>• Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014)</li> <li>• Trade Union Act (2016)</li> </ul>



## Appendix 2

A comparison of political and electoral finance regulation in 12 countries (Australia, Canada, Denmark, Finland, France, Germany, Ireland, the Netherlands, New Zealand, Norway, Sweden, and the United States of America)

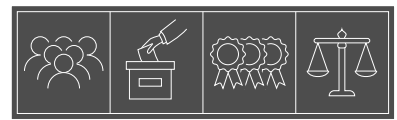
**Dr Sam Power, Lecturer in Corruption Analysis (University of Sussex)** <sup>137</sup>

### I. Executive summary

1. There is considerable variance among all the countries of study in the way in which political and electoral finance is regulated. The majority have some form of Electoral Commission, whilst some have no specific regulatory body. However, commission or no commission if the body in question does not have operational independence from the levers of government it is likely to be ineffective.
2. Foreign donations are commonly banned, or capped at (relatively) low levels, as are anonymous donations. Similarly, either no- or partial limits, to the amounts that corporations and trade unions can donate to parties or candidates is the norm. Individual donations are not subject to limits in most countries of study, but in a significant minority some limits do apply.
3. Limits on spending are not the norm but in three countries there are partial limits and in two limits apply across the board.
4. A mix of both civil and criminal sanctions apply, but criminal enforcement commonly falls under the purview of the relevant prosecutor, rather than an independent Electoral Commission. In two countries, criminal sanctions are not written into party law.
5. Every country has some form of transparency regime underpinned by (at the very least) the annual release of party/candidate accounting returns – though the level of detail varies. Only in Sweden is there no requirement of disclosure when donations fall above a certain level.

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<sup>137</sup> I conducted background interviews with seven academic experts: Professor Robin Kolodny (Temple University), Dr Karina Kosiara-Pedersen (University of Copenhagen), Professor Iain McMenamin (Dublin City University), , Dr Magnus Ohman (International Foundation for Electoral Systems), Professor Graeme Orr (University of Queensland), Professor Ingrid van Biezen (Leiden University), Professor Lisa Young (University of Calgary). All have either comparative or country-specific expertise and I would like to recognise the time that they gave me, which amounted to invaluable input in the shaping of this report.



6. There is no clear evidence of best practice in terms of linking anti-money laundering legislation to that relating to political and electoral finance. In only three countries of study is it required that donations go through the banking system.
7. The Referendums (Scotland) Act 2020 represents some innovation in terms of electoral law at the devolved level. This is particularly as it relates to requirements for a digital imprint and increased sanctions of £500,000 for the Electoral Commission.

## II. Introduction

8. The following will draw on a detailed comparison of 12 countries. In doing this I have been reliant on a number of open access databases (as well as expert support). The two primary sources have been the International Institute for Electoral Democracy and Assistance (International IDEA) and the European Public Accountability Mechanisms (EuroPAM) databases.<sup>138</sup>
9. Whilst we ought to be careful when drawing country-level comparisons due to several institutional factors – amongst other things, a variance in terms of party system, electoral system and constitutional constraints – it remains a useful exercise. However, we should not discount that there are a number of effects with regards to specific country and, in many instances, state level contexts which have a bearing on both the regulatory course of action, and the effectiveness therein of said regulation.<sup>139</sup>
10. The comparator countries have been drawn from a pool of those sharing one of two broadly analogous conditions (or in some instances, both).<sup>140</sup> The first is that they share ‘basic historical similarities’ (as advanced industrial democracies in Western Europe). The second are countries that have been described as ‘influence markets’, which should, it is suggested, ‘re-examine electoral and party laws, and pay particular attention to their political finance systems’.<sup>141</sup>
11. The work will be separated under eight broad categories, specified as areas of particular interest under the remit of the Committee on Standards in Public Life’s review of electoral regulation: (1) where the responsibility lies for regulating political and election financing, (2) rules on donations, (3) rules on spending, (4) civil sanctions and criminal enforcement, (5) transparency, (6) foreign interference, (7) anti-money laundering measures, (8) evidence from the devolved administrations.

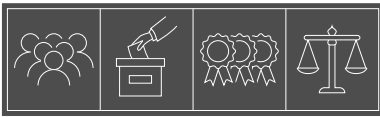
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138 The International IDEA political finance database is available at <https://www.idea.int/data-tools/data/political-finance-database>, accessed 22/11/2020; the EuroPAM dataset is available at <http://europam.eu/>, accessed 22/11/2020.

139 For example, where we see compulsory voting is in place (such as Australia) we will likely see a fundamentally different role played by the Electoral Commission, similarly, where (more) proportional electoral systems are in place there is likely to be a differential focus on both party and candidate.

140 For more on the logic behind this approach to comparison, see Power, S. (2020), *Party Funding and Corruption*, (Basingstoke: Palgrave MacMillan):

141 Johnston, M. (2005), *Syndromes of Corruption: Wealth, Power and Democracy*, (Cambridge: Cambridge University Press): 201.



### III. Who is responsible for regulating political and electoral finance?

12. A majority of countries have some form of Electoral Commission, which serves as the institution with the primary responsibility for oversight in terms of regulating political and electoral finance (Australia, Canada, France, Ireland, New Zealand, Sweden and the USA). However, they also have some form of relationship with either the police and/or the relevant Department for Public Prosecutions where criminal proceedings are instigated.
13. In three countries (Denmark, Finland, Germany) there is no specific regulatory body such as an Electoral Commission, instead the role is performed by a combination of ministries and auditing offices. In Germany, for example, this role (at the national level) largely falls under the purview of the President of the German Bundestag. In two countries (Netherlands and Norway) a hybrid system, with regulatory responsibility falling under the dual purview of an independent committee that is administratively subordinate to a specific ministry, is in effect. A view from international experts in this area is that when it comes to the regulation of political and electoral finance the body overseeing this, 'really doesn't matter – as long as they are independent'.<sup>142</sup>

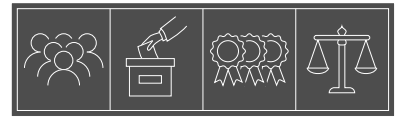
### IV. Rules on donations

14. In six countries (Canada, Finland, France, Ireland, Norway, USA) there is a ban on foreign donations. However, certain exceptions do apply. For example, in Finland, parties and candidates can receive foreign contributions from individuals and international associations that represent their ideological views. In France, foreign individuals that are resident may contribute to political campaigns. In three countries (Australia, Germany, New Zealand) there is a cap on foreign donations, though the level of this varies considerably. In Germany, this cap does not extend to donations to candidates where no ban applies. In three countries (Denmark, Netherlands, Sweden) no ban on foreign donations applies.
15. In six countries (Australia, Denmark, Ireland, Netherlands, Norway, Sweden) there are no limits to the amount that corporations or trade unions can donate to political parties or candidates. In four countries (Finland, Germany, New Zealand, USA) 'partial' limits apply in this respect. Canada and France apply bans to both trade union and corporate donations.
16. In terms of individual donations, there is no limit in seven countries (Australia, Denmark, Germany, Netherlands, New Zealand, Norway, Sweden), whilst in four (Canada, France, Finland, Ireland) donations are capped at varying levels. In Canada, at the state level (British Columbia) contributions limits also apply to third parties. In the USA there are limits to how much individuals can donate but this is contingent on the type of donor, and the recipient of the donation (e.g. individual, candidate committee, PAC, party committee).

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<sup>142</sup> Interview with Magnus Ohman.





17. Anonymous donations are capped in nine countries (Australia, Canada, Denmark, France, Germany, Ireland, Netherlands, New Zealand, USA) often at a relatively low level. In Finland and Norway anonymous donations are banned but in Finland this does not apply to regular collections, and Norway this does not apply to candidates. In Sweden, there is no ban on anonymous donations but those parties in receipt of them are not eligible for public funding.

## V. Rules on spending

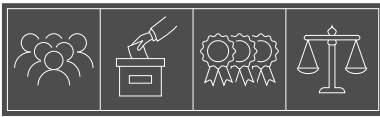
18. In seven countries (Australia, Denmark, Finland, Germany, Netherlands, Norway, Sweden) there are no limits to the amount that political parties, candidates or third parties can spend. In three countries (France, Ireland and the USA) partial limits apply. In France and Ireland this partial limit is broadly comparable in that political parties and candidates are not subject to spending limits, but candidates are. In the USA, there are coordinated spending limits at the party level, but spending limits only apply to candidates that receive public funding. Corporations, trade unions and (other) third parties have a constitutionally protected right to make unlimited 'outside spending'. In Canada and New Zealand, spending limits apply at both the candidate and party level.

## VI. Civil sanctions and criminal enforcement

19. A clear majority of countries have both a civil and criminal sanctions regime, only in Sweden and Finland are there no criminal sanctions written into the party law. In the Netherlands, only criminal sanctions apply in the case of bribing voters. Of the nine countries that have both a civil and criminal enforcement regime, in six of these (Australia, Canada, Denmark, France, Germany, Ireland) all sanctions fall under the purview of relevant authorities (e.g. the director of public prosecutions or the police). However, in Canada the Commissioner of Canada Elections can enter non-punitive corrective measures, such as compliance agreements. Moreover, whilst some of the regulatory bodies do not have the power to levy fines, in the instance where countries have significant levels of public subsidisation the regulator often has the power to withhold public funds. In three countries (New Zealand, Norway, USA), enforcement powers are split, with the regulatory body holding the power to levy fines, and a prosecutory body such as the police (New Zealand) or the Department of Justice (USA) handling any criminal enforcement.

## VII. Transparency

20. Every country covered in this report has some kind of transparency regime, in that parties are required to report (at the very least) annually on donations and spending – though the degrees vary. Sweden and Denmark, for example, have relatively lax disclosure requirements. On the other end of the spectrum, in the USA candidates, political parties, PACs and Super PACs are required to regularly report their finances to the Federal Election Commission (FEC). For example, at presidential elections



the principal campaign committee must file monthly returns. The FEC then makes reports available within 48 hours of their receipt.

21. All in all, in five countries (Denmark, Finland, Germany, Netherlands, Sweden) political parties are required to submit annual returns only (though in Finland candidates also have to file annual returns). In six countries (Australia, Canada, France, Ireland, New Zealand, Norway) there are requirements to publish both annual returns, and reports concerning elections – though these vary. In Australia, only candidates must post separate election reports, whilst in France, parties and candidates must post them. In Canada, Ireland and New Zealand parties, candidates and third parties must post election returns separate to their other reporting requirements (in Canada this is quarterly returns, in Ireland and New Zealand these returns are annual). In the USA, political finance – and the general disclosure regime – is based entirely around elections, as they do not have an institutionalised party system as we would understand it in much of Western Europe.<sup>143</sup> In this sense, all returns should be understood as election returns.

## VIII. Foreign interference

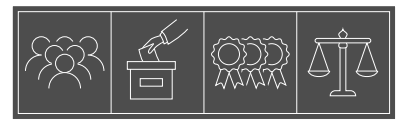
22. Much like the way in which all countries of study have different rules surrounding foreign donations, all have taken a different approach to addressing the threat of foreign interference. Whilst the vast majority of the 12 countries covered here are primarily concerned with the threat from Russian interference, for reasons that are obvious geographically Australia and New Zealand are far more pre-occupied with the threat from China.
23. Academic work highlights ‘five Is’ that represent vulnerabilities in this area in liberal democracies: institutions of democracy (both formal and informal), democratic infrastructure (in the form of automated systems performing key tasks), private industry (and their role in storing and managing data), the role that individuals play and the ideas which fundamentally underpin democratic legitimacy.<sup>144</sup>
24. It is argued that a holistic approach is needed. This approach should encompass the range of both formal threats to democratic infrastructures and institutions but, perhaps more importantly, informal institutions and norms that secure confidence in the democratic process itself. Germany and Australia, for example, have been critiqued for taking an overly state- and/or legislation-centric approach to a threat that is considerably more malleable. However, Finland – perhaps due to more immediate and direct concerns with regards to Russian interference – is held up as representing somewhat of a gold standard in this area. First, there is a clear and unequivocal recognition of the threat from Russia representing clear tone from the top messaging (then president Sauli Niinisto in 2015 ‘called on every Finn to take

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143 Indeed, political financing is generally known as ‘campaign financing’ in the USA.

144 Henschke, A., Sussex, M. and O’Connor, C. (2020), ‘Countering foreign interference: election integrity lessons for liberal democracies’, *Journal of Cyber Policy*, 5(2): 180-198.





responsibility for the fight against false information').<sup>145</sup> Second, there is a societal approach, which underpins any top-down efforts in which specific education reforms, and a shifting of focus to emphasise critical thinking amongst the Finnish population is heralded as a key pillar of their successful approach.

25. There are also evident successes in countries such as France and Sweden. In France, institutions such as the National Cybersecurity Agency have been empowered to ensure the integrity of electoral processes. This has been coupled with stakeholder buy in from private industry in both coordinating with, and providing pressure to, Facebook to ensure the suspension of c. 70,000 accounts before the 2017 election.
26. In Sweden, there was a clear collaboration between the private sector, social media companies, broadcasters and newspapers in the run up to the 2018 elections. This included the creation of a 'Facebook hotline', which allowed officials to report fake Swedish government pages and the active encouragement of Facebook Sweden to report on suspicious behaviour. Sweden also conducted a nationwide education programme delivered to every high school student, distributed leaflets to 4.7 million homes and trained 7,000 government officials to spot influence operations.<sup>146</sup> During the election itself, a 'pop-up newsroom' of students, international journalists and fact-checkers tracked disinformation and published a daily newspaper.

## IX. Anti-money laundering

27. In the expert interviews conducted as a part of the research for this paper it became apparent that few countries were linking (if at all) anti-money laundering legislation to that surrounding political and electoral regulation/financing. Another way to look at this question is to ask whether in the countries of study provisions are in place requiring donations to go through the banking system. In only three countries (Canada, France, USA) was this the case, whereas in the others (Australia, Denmark, Finland, Germany, Ireland, Netherlands, New Zealand, Norway, Sweden) there were no requirements in this area (though in Australia bank accounts are required for parties to follow the Australian Electoral Commission's financial disclosure guide).

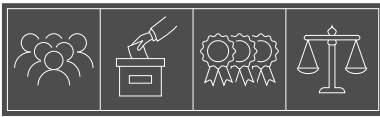
## X. Lessons from the devolved administrations

28. Whilst electoral regulation in the UK applies to all devolved administrations, there are considerable differences in the way that it is applied. For example, donations and spending in Northern Ireland were not subject to the same transparency obligations as those in the rest of the UK until 2017 (this was for reasons largely related to the peace process). In Scotland, voting at devolved elections is extended to those that are 16 and over. Indeed, Scotland is the administration that (after the Northern Irish

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145 Mackintosh, E. (2019), Finland is winning the war on fake news. What it's learned may be crucial to Western democracy, available at <https://edition.cnn.com/interactive/2019/05/europe/finland-fake-news-intl/> accessed 15/11/2020.

146 Taylor, M.L. (2019), Combating disinformation and foreign interference in democracies: Lessons from Europe, available at <https://www.brookings.edu/blog/techtank/2019/07/31/combating-disinformation-and-foreign-interference-in-democracies-lessons-from-europe/> accessed 15/11/2020.



transparency regime was largely brought in line with the other devolved states) has deviated the most in terms of its political and electoral regulation. This is most notable concerning the Referendums (Scotland) Act 2020 (RSA) which, whilst ostensibly presented as a framework enabling any given range of referendums (inclusive of any second referendum on Scottish independence), also provides considerable innovation in electoral law more generally.<sup>147</sup>

29. These innovations are interesting in two specific areas (which may provide some sort of non-binding legislative precedent for any future national-level changes). The first is that the RSA provides for digital imprints on election material – which puts it ahead of UK-wide legislation in this area (though this question went out for government consultation, which closed on the 4<sup>th</sup> November 2020). This included the removal of an exemption in the case where imprints were ‘not reasonably practical’. Secondly, the Electoral Commission more widely has complained that their £20,000 maximum fine ‘risks being seen as the cost of doing business by campaigners with significant funds’.<sup>148</sup> The RSA legislates not only that the range of people that can be served disclosure notices by the Electoral Commission be widened, but also increases the maximum possible fine to £500,000.

## Summary table

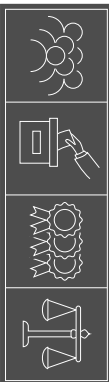
**Summary of political and electoral finance regulation in 12 countries (Australia, Canada, Denmark, Finland, France, Germany, Ireland, the Netherlands, New Zealand, Norway, Sweden, and the United States of America)**

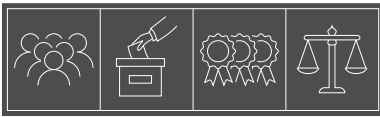
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147 Clark, A. (2020), ‘More Than IndyRef2? The Referendums (Scotland) Act 2020’, *Political Quarterly*, 91(2): 467-472.

148 Electoral Commission (2019), Statement following Leave.EU’s appeal, available at <https://www.electoralcommission.org.uk/statement-following-leaveeu-appeal> accessed 28/11/2020.

	AUS	CAN	DEN	FIN	FRA	GER	IRE	NED	NZL	NOR	SWE	USA
<b>Is there an independent Electoral Commission?</b>	Yes	Yes	No	No	Yes	No	Yes	Hybrid	Yes	Hybrid	Yes	Yes
<b>Are foreign donations banned?</b>	Capped at 1,000 AUD	Yes	No	Yes (partial)	Yes (partial)	Capped at 1,000 EUR (parties)	Yes	No	Capped at 50 NZD	Yes (partial)	No	Yes
<b>Are there restrictions on corporate and trade union donations?</b>	No	Yes (ban)	No	Yes (limits)	Yes (ban)	Partial corporate ban	Yes (limits)	No	Limit (corporate donations only)	No	No	Yes (ban)
<b>Are anonymous donations capped?</b>	Yes at 1,000 AUD	Yes at 20 CAD	Yes at 20,900 DKK	Ban (partial)	Yes at 150 EUR	Yes at 500 EUR	Yes at 100 EUR	Yes at 1,000 EUR	Yes at 1,500 NZD	Ban (partial)	No	Yes at 50 USD
<b>Do spending limits apply at the national level?</b>	No	Yes	No	No	Partial	No	Partial	No	Yes	No	No	Partial
<b>Is there a civil and criminal sanctions regime?</b>	Yes	Yes	Yes	No (civil only)	Yes	Yes	Yes	No (civil only)	Yes	Yes	No (civil only)	Yes
<b>How often are financial reporting requirements?</b>	Annual returns	Returns every quarter	Annual returns	Annual returns	Annual returns	Annual returns	Annual returns	Annual returns	Annual returns	Annual returns	Annual returns	Monthly returns
<b>Is there regulation of third parties at election?</b>	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	Yes
<b>Is it required that donations go through the banking system</b>	No	Yes	No	No	Yes	No	No	No	No	No	No	Yes





# Appendix 3

## About the Committee on Standards in Public Life

The Committee on Standards in Public Life (CSPL, the Committee) advises the Prime Minister on ethical standards across the whole of public life in England. It monitors and reports on arrangements for upholding ethical standards of conduct across public life in England. The Committee is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

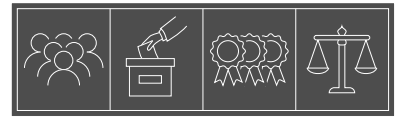
The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister:

“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee “should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the Government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office.”

The Committee is a standing committee. It not only conducts inquiries into areas of concern about standards in public life, but can also revisit those areas to monitor whether and how well its recommendations have been put into effect.



## **Membership of the Committee for the period of this review**

Lord (Jonathan) Evans, Chair

The Rt Hon Dame Margaret Beckett DBE MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey (until 28 October 2020)

Monisha Shah

The Rt Hon Lord (Andrew) Stunell OBE

The Rt Hon Jeremy Wright QC MP

## **Chair of Committee's Research Advisory Board**

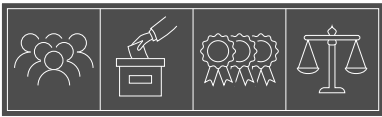
Professor Mark Philp

## **Secretariat**

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Amy Austin (Senior Policy Adviser), Nicola Richardson (Senior Policy Adviser), Aaron Simons (Senior Policy Adviser) and Lesley Glanz (Executive Assistant). Press support is provided by Maggie O'Boyle.

Piers Coleman was specialist adviser to the review.

Dr Sam Power, Lecturer in Corruption Analysis at University of Sussex, provided expert academic support.



# Appendix 4

## The Seven Principles of Public Life

The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

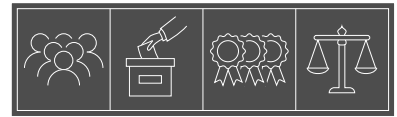
Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



# Appendix 5

## Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

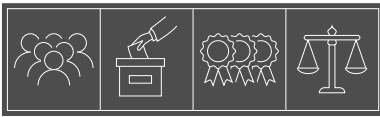
- a public consultation, which received 55 responses, published on the Committee's website
- 30 individual stakeholder meetings
- 3 roundtable seminars
- focus group research
- desk research, including research on the legal framework for the regulation of election finance and relevant reports by expert bodies.

Due to the COVID-19 pandemic, all meetings and roundtables were held online.

### Stakeholder meetings

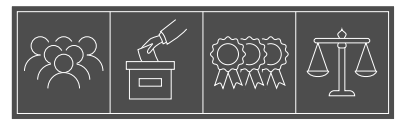
The Committee held 30 meetings with individual stakeholders.

	Name	Organisation
1	Stephen Kinnock MP	Labour MP; APPG on Electoral Campaigning Transparency
	Kyle Taylor, Director, Fair Vote UK	
2	Peter Stanyon, Chief Executive	Association of Electoral Administrators
3	Cary Mitchell, Director of Operations	Best for Britain
4	Will Straw CBE	Britain Stronger in Europe
5	Peter Lee, Constitution Group	Cabinet Office
	Becca Crosier, Constitution Group	
6	Alan Mabbutt OBE, Registered Treasurer and Legal Officer	Conservative Party

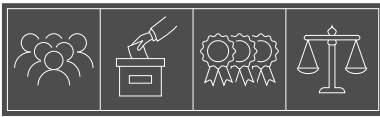


	<b>Name</b>	<b>Organisation</b>
<b>7</b>	James Cockram, Conservative Party agent, Cities of London and Westminster	Conservative Party
	Rachel Shawcross, Conservative Party agent, Finchley and Golders Green	
<b>8</b>	Peter Bone MP	Conservative MP
<b>9</b>	Craig Mackinlay MP	Conservative MP; Member of the Speaker's Committee on the Electoral Commission
<b>10</b>	Damian Collins MP	Conservative MP; Chairman of the Digital, Culture, Media and Sport Select Committee from October 2016 to January 2020
<b>11</b>	Rosemary Ainslie, Head of Special Crime Division	Crown Prosecution Service (CPS)
	Zoe Martin, Unit Head, Special Crime and Counter Terrorism Division	
<b>12</b>	Sir John Holmes GCVO KBE CMG, then Chair	Electoral Commission (3 meetings)
<b>13</b>	Bob Posner, Chief Executive	
<b>14</b>	Louise Edwards, Director of Regulation	
	Dan Adamson, Head of Monitoring and Enforcement	
<b>15</b>	Thomas Borwick	Kanto Systems
<b>16</b>	Dr Martin Moore	Centre for the Study of Media, Communication and Power, King's College London

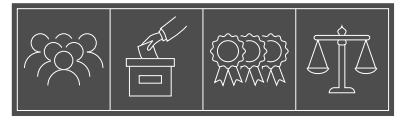




	<b>Name</b>	<b>Organisation</b>
<b>17</b>	David Evans, General Secretary	Labour Party
	Alex Barros-Curtis, Director of Governance and Legal	
	Andrew Whyte, Acting Director of Governance and Legal	
<b>18</b>	Anna Hutchinson, Senior Regional Director, Labour North West	Labour Party
	George Carr-Williamson, Deputy Regional Director, Labour East Midlands	
<b>19</b>	Chris Matheson MP	Labour MP; Member of the Speaker's Committee on the Electoral Commission
<b>20</b>	Dr Mark Pack, President	Liberal Democrats
	Kerry Buist, Head of Compliance	
	David Allworthy, Compliance Team	
<b>21</b>	The Rt Hon Lord Tyler CBE, Spokesperson for Political and Constitutional Reform	Liberal Democrats
<b>22</b>	Gavin Millar QC	Matrix Chambers
<b>23</b>	Deputy Assistant Commissioner Graham McNulty	Metropolitan Police Service (MPS)
	Detective Chief Inspector Gail Granville	
<b>24</b>	Elizabeth Chamberlain, then Head of Policy and Public Services	National Council for Voluntary Organisations (NCVO)
<b>25</b>	Deputy Chief Constable Gareth Cann	National Police Chiefs' Council (NPCC)
	Superintendent Ed Foster	
	Detective Chief Inspector John Askew	
<b>26</b>	The Rt Hon Sir Lindsay Hoyle MP	Speaker of the House of Commons



	Name	Organisation
27	Dr Katharine Dommett	Department of Politics and International Relations, University of Sheffield
28	Peter Murrell, Chief Executive	Scottish National Party (SNP)
	Scott Martin, Solicitor to the SNP	
29	Alan Halsall, 'responsible person'	Vote Leave
30	David Pitt-Watson	Practitioner, author and advocate in the field of Responsible Investment, Assistant General Secretary/Director of Finance, Labour Party 1997-1999

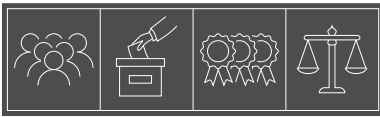


## Roundtable seminars

The Committee held three online ‘roundtable’ seminars as part of this review. Transcripts of the roundtables are available on the Committee’s website.

### Roundtable for returning officers, 17 September 2020

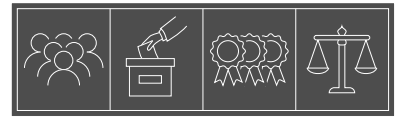
Name	Role and organisation
Lord (Jonathan) Evans	Chair, Committee on Standards in Public Life
Dr Jane Martin CBE	Independent Member, Committee on Standards in Public Life
Dame Shirley Pearce DBE	Independent Member, Committee on Standards in Public Life
Jane Ramsey	Independent Member, Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Liberal Democrat representative, Committee on Standards in Public Life
Rt Hon Jeremy Wright QC MP	Conservative representative, Committee on Standards in Public Life
Robert Connelly	Assistant Director Governance and Returning Officer for Birmingham.
Lindsay Dixon	Senior Manager, Electoral Services and Deputy Electoral Registration Officer
Graham Farrant	Chief Executive, Bournemouth, Christchurch and Poole Council
Mark Heath	Returning Officer and Electoral Registration Officer, Southampton City Council
Chris Highcock	Secretary to the Electoral Management Board for Scotland
Fiona Ledden	City Solicitor, Manchester City Council
Virginia McVea	Chief Electoral Officer for Northern Ireland



Name	Role and organisation
Glynne Morgan	Electoral Services Manager, Pembrokeshire County Council
Louise Round	Chair of Solace Electoral Matters Panel

### Roundtable for academics and organisations, 5 October 2020

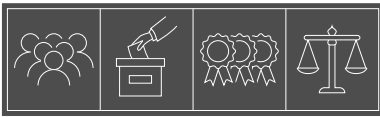
Name	Role and organisation
Lord (Jonathan) Evans	Chair, Committee on Standards in Public Life
Dame Shirley Pearce DBE	Independent Member, Committee on Standards in Public Life
Jane Ramsey	Independent Member, Committee on Standards in Public Life
Monisha Shah	Independent Member, Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Liberal Democrat representative, Committee on Standards in Public Life
Professor Mark Philp	Chair, Committee on Standards in Public Life Research Advisory Board
Piers Coleman	Adviser to the Review
Dr Nick Anstead	Associate Professor, Department of Media and Communications, London School of Economics
Dr Alistair Clark	Reader in Politics, Newcastle University
Dr Katharine Dommett	Senior Lecturer in the Public Understanding of Politics, Department of Politics and International Relations, The University of Sheffield
Professor Justin Fisher	Professor of Political Science, Brunel University London
Duncan Hames	Director of Policy, Transparency International UK
Darren Hughes	Chief Executive, Electoral Reform Society



Name	Role and organisation
Will Moy	Chief Executive, Full Fact
Dr Sam Power	Lecturer in Corruption Analysis, Law, Politics and Sociology Department, University of Sussex
Dr Alan Renwick	Constitution Unit, University College London
Professor Jacob Rowbottom	Faculty of Law, Oxford University
Kyle Taylor	Director, Fair Vote UK

**Roundtable for smaller political parties and independent candidates,  
7 October 2020**

Name	Role and organisation
Lord (Jonathan) Evans	Chair, Committee on Standards in Public Life
Dame Shirley Pearce DBE	Independent Member, Committee on Standards in Public Life
Jane Ramsey	Independent Member, Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Liberal Democrat representative, Committee on Standards in Public Life
Rt Hon Jeremy Wright QC MP	Conservative representative, Committee on Standards in Public Life
Piers Coleman	Adviser to the Review
Robert Buckman	Chief Operating Officer, Green Party
Geraint Day	Deputy CEO and Head of Election Campaigns Unit, Plaid Cymru
Dirk Hazell	Leader, UK EPP
Amy Killen	Elections Co-ordinator, Women's Equality Party
Jon Nott	Treasurer, Green Party



Name	Role and organisation
Anne Milton	Former independent parliamentary candidate for Guilford; Former MP for Guildford
Tabitha Morton	Deputy Leader, Women's Equality Party
Annabel Mullin	Leader, Advance Together
Andrew Pope	Leader, Somerset Independents
Paula Reed	Head of Finance and Compliance, Plaid Cymru
Lorraine Roberts	Chief Operating Officer, Women's Equality Party
Gavin Shuker	Former independent parliamentary candidate for Luton South; Former MP for Luton South
Claire Wright	Independent Councillor for Otter Valley, East Devon
Adam Zerny	Independent Councillor for Central Bedfordshire and Potton Town Council

## Focus group research

The Committee commissioned Deltapoll to run three focus groups on attitudes to election finance. They were made up of people from the following age groups:

- 24 to 30
- 31 to 45
- 46 to 60

A report is available on the Committee's website.

Committee on Standards in Public Life  
1 Horse Guards Road, London, SW1A 2HQ

July 2021