

# **Committee on Standards in Public Life**

## **Review of electoral regulation**

### **Written evidence**

#### **Submissions 1 - 20**

Submission	Name
1	Darren Grimes
2	Paul Freeman
3	Steven Pruner
4	David Stevenson
5	Dr Andrew Swain
6	News Media Association
7	Piers Coleman
8	NASUWT
9	Jonathan B. I. Marius-Sheridan
10	Charles Dibsdale
11	Alliance EPP (Europe People's Party) UK
12	Charles Baily
13	Jean Brant
14	Robin Lambert
15	Prof. Justin Fisher
16	The Electoral Commission
17	Association of Electoral Administrators
18	Quakers in Britain
19	Ben Meade
20	Privacy International

## Submission 1

On Thursday night, the Metropolitan Police wrote to me confirming they will not be acting on allegations made against me by the Electoral Commission and various Remain campaigners. Let me tell you, on Friday morning I had quite the hangover.

It would be remiss of me not to thank the editors of this site for allowing me to publish here two years ago, with a call to arms to start my crowdfunding efforts that allowed me to go to court, and win against the Electoral Commission in my appeal against the fine they imposed on me.

I owe it all to all of you that donated, whether big or small. It is thanks to you that I can leave these last hellish four years behind me.

In his judgment in my appeal, His Honour Judge Dight preferred the submissions of my CrowdJustice-funded legal team on the true facts and the law, to those of the Commission, even though it instructed expensive City solicitors, James Eadie, and two junior counsel in an attempt to rescue it at vast expense to the taxpayer. In a damning judgement, Dight found that the Commission had not understood the law it exists to uphold.

The Commission told the High Court in 2018 that it never advised Vote Leave, the official pro-Brexit campaign, that it could lawfully donate to a separate group. Two judges ruled that this assertion was misleading – as proved by emails between Vote Leave and the Commission.

An investigation by The Sunday Telegraph found that four out of ten of the quango's commissioners had openly criticised Brexit or called for a rethink, amounting to almost half the entire board commissioners, including the Chairman. In 2019, the police claimed that the Commission had failed to supply "potentially relevant" documents required in order to determine whether criminal charges could be brought against me and others.

To whom is the Electoral Commission accountable? By operation of the statute that established it (the Political Parties, Elections and Referendums Act), it is answerable to Parliament, via a Speaker's Committee.

The House of Commons Public Administration and Constitutional Affairs Committee (PAC) also scrutinises the Commission. In its first Report of Session 2019, this Committee made a recommendation that caught my eye: "we also recommend that our successor Committee should carry out an inquiry into the role and effectiveness of the Electoral Commission". I could not agree more, and will argue below its urgency.

In light of the series of costly mistakes made by the Commission, the Speaker's Committee, the PAC and the Cabinet Office (the government department with responsibility for ensuring the effective running of government) need to review the operation of this state regulator that purports to "promote public confidence in the democratic process and ensure its integrity".

The Electoral Commission has been stuffed full of mediocre bureaucrats who aren't legally trained and who have no first-hand experience of elections or campaigns. They made serious procedural errors and exceeded their powers on several occasions: Louise Edwards, their Head of Regulation (who has made anti-Conservative statements in the past), breached an explicit undertaking to my solicitor to provide the transcript of an interview she conducted with me. I was interviewed under caution – under what authority is still unclear to me.

I was twice cleared by her of wrongful conduct, but was sanctioned on allegedly fresh evidence, after the wealthy Remain activist, Jolyon Maugham, judicially reviewed the Electoral Commission's second investigation. I asked during the third investigation for disclosure of fresh evidence, but they produced none. These mistakes were thoroughly exposed at the appeal in court.

The quango tried to have me settle out of court, when they realised the hearing was not going well for them. They knew that I was a young man in my twenties of very limited financial means, a fact they acknowledged in their notice. My mother had offered to sell her ex-council house to cover the cost of my legal fees. In their egregious offer, I would still have had to accept guilt, but would walk away from it with a reduced fine of £5,000. I did not have £500, never mind £5,000.

I am firmly of the view that this goes to the very heart of the issue: this is a regulator out of control. The Electoral Commission, in recognising it did not have a case, should have withdrawn it and accepted its failings. It did not. It continued to pursue me.

My own tribulations with the quango are accompanied by a slew of other examples of bias. Guido Fawkes revealed how Remainers had shared data, suppliers and campaign materials, coordinated spending, and shared unbranded Keira Knightley fronted videos amongst themselves without declaring it, and funnelled £1 million to new campaigns set up in the month before the vote. The Electoral Commission's response? "After a thorough assessment, our conclusion is that we can find nothing beyond conjecture."

After all of this, you might be forgiven for believing that heads would roll at the Electoral Commission. Not so. Claire Bassett voluntarily left the Electoral Commission after a three-year stint as Chief Executive during which the regulator conducted its three investigations into Vote Leave and me, only to end up with a plum job as Chief Executive of the UK Trade Remedies Authority. What should really

stick in your craw is how important that body will be for the UK's post-Brexit trade landscape. There is no accountability in the UK's quango-state – only rewards for failure.

Fundamentally, voters must be served by institutions they can trust. Take Alan Halsall, Vote Leave's responsible person, a patriotic businessman who put his head above the parapet in UK politics. He has also been subject to four years of hell from this. Why would anyone like Alan now selflessly engage with our democratic process? Risking action in our courts, incompetence and bias from the state regulator and financial ruin.

The important point I would ask you all to take away from this is that 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.

People volunteer their time to be candidates, to assist candidates getting elected and the vast majority of election agents are volunteers. If the Electoral Commission continue to aggressively pursue such volunteers, then there will simply be fewer volunteers prepared to get involved.

And there are hundreds of bodies just like the Electoral Commission, many without an obvious route of appeal. Judicial review, open to the wealthy, is one route to challenge a regulator's decision.

But it's expensive and not available to challenge substantive decisions in most cases. After four years, three investigations, a court case and an investigation by the Metropolitan Police, I'm absolutely clear: there needs be a reckoning – before irreparable damage is done to trust and confidence in our ballot box.

What happened to me and Vote Leave, who I am confident would have also won their appeal had they had the millions required to continue it, must never be allowed to happen again. I would argue a full review of the law in this is needed. It is byzantine – and beyond the understanding of the institution created to oversee it.

In the meantime, If the Government decides that new leadership is needed over at the Electoral Commission and requires someone with an understanding of the Political Parties, Elections and Referendums Act 2000, after four years I'm now pretty well versed and willing to make myself available.

## Submission 2

Dear Members of the Committee on Standards in Public Life

Please find enclosed my submission relating to this review. My submission is made as an individual – I was previously a rank-and-file member of a local campaign group of Independent candidates for local government elections, forced to register as a political party which was felt to be disproportionate. I have also made several previous submissions and complaints to the Electoral Commission on local election issues, and found them to be somewhat disinterested in local electoral issues (where there had been allegations of impropriety by the Electoral Registration / Returning Officer, including informal allegations of both electoral fraud and embezzlement – none of which were ever investigated).

Before answering the specific questions raised for this review, I would like to summarise my current view of Democracy and elections as a whole, not just the question of finance.

I) In my opinion, democracy in the UK is currently fundamentally broken, not only because of election financing, but also because of financing in general, and because of an almost absolute failure of politicians to follow the Nolan Principles resulting in an almost complete lack of transparency and accountability in UK politics today. Trust in politics and politicians has never been lower in several centuries, and this trust needs repairing as a matter of urgency. Democracy is also fundamentally broken because the newspaper/media role in democracy, to investigate politics and politicians and to report the facts without fear or favour, is also almost completely lacking – and because when such investigations do happen and identify non-criminal breaches of the Nolan Principles, there is no independent mechanism for those involved to be held to account – politicians get away with it almost every time, and this leads to a view of one law for them and another for us.

II) Another area requiring regulation is lobbying – as this completely distorts politics and results in decisions based on what is best for special interest groups rather than what is best for the electorate. However this is a complex area in its own right and I am not going to consider it in this response.

III) To repair democracy therefore needs a great deal more action than simply tackling election financing, though of course fixing election financing is still a much needed fix. Specifically (excluding election financing which I will explicitly answer later), I believe that the following actions are needed:

a. Politicians (and indeed any other individuals or parties subject to the Nolan Principles), any political advertisements (whether made by politicians, parties or anyone else) and the media need to be forced by law to distinguish between fact and opinion – with an independent JUDICIAL body able to investigate complaints made of falsehoods stated as fact with guilty parties forced to make a public retraction and pay a significant fine. The media need to be forced by law to be unbiased in the reporting of facts, though clearly stated opinion should not be subject to any constraints other than existing racial / sexual / religious discrimination laws. Politicians, parties and the media should be expected to maintain detailed records of where they got their facts from, with due regard given if they are unable to substantiate their sources. Due to the time-critical nature of facts both in

elections and outside elections, the complaints review process needed to be undertaken in a very timely fashion for any cases relating to current or imminent political decisions or for elections. For elections, any fines need to be considered part of election spending, in order to avoid the “better to ask for forgiveness later than permission now” syndrome. (Note: More difficult to regulate, but it should not be legitimate for e.g. the Conservative Party to label itself as an independent Fact Checker on social media as they did during the last election. This is tantamount to a lie and should be subject to the same factual rules as above.)

b. The Nolan Principles need to be backed up by additional laws and an independent judicial body that can give a judgement and appropriate punishment for proven breaches. Punishments should be proportional to both the severity of the breach and the seniority of the person, and punishments should include forced loss of office, fines or (for criminal acts) referral to the police / CPS for criminal investigations / charges.

c. Election manifestos needs to be made binding – promises made in elections are highly influential, and if politicians can make promises and then break them, or alternatively leave out controversial policies from their manifestos, then they can say whatever they feel the electorate want to hear regardless of whether that is what they intend to do if they gain office. Examples of this are Leave’s Brexit campaign (promising to retain access to the EU Single Market, stay in THE Customs Union (not just any customs union), not have customs border between mainland UK and Northern Ireland, and to spend £350m per week extra on the NHS from what they claimed we had to pay the EU even though this was established as a falsehood at the time), Academy Schools (not mentioned with any significance in several recent Conservative & Union Party manifestos, but subject to a vote to make all schools in England and Wales Academy schools as one of the first votes following the general election) etc. Policies contained in a manifesto or referendum campaign need to be legally binding, with a referendum needed for any major policies not stated in the manifesto during the first two thirds of any administration.

d. Non-election politician and party financing needs to be made completely transparent at all times – not only at election time. Donations need to be limited to being made by individuals who are both British Citizens and resident for tax in the UK, and not corporations – and should not be a tax-deductable expense under any circumstances. The size of donations by individuals should also be limited to a multiple of the median income of UK citizens in order to limit the undue influence of very rich individuals.

In order to prevent both actual moral/ethical corruption (even if it is not currently legally corrupt) and any appearance of corruption (as required by the Nolan Principles), it also needs to be made a criminal offense to either give or receive donations, made by any individual who stands to benefit individually from any policy or decision made by the recipient politician/party or any other politician or public body associated with the same party.

IV) Turning to election financing, I would like to make a couple of background observations before answering the specific consultation questions...

A. 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. At the present time, party candidates have a significant advantage over independent

candidates because the party candidates benefit from the additional central party advertising funding that independent candidates do not have. This is fundamentally undemocratic.

B. If truthfulness (transparency and accountability) are important normally, they are even more so during elections and (as with advertisements for products and services) election advertisements (of any sort – including social media) particularly need to be factual – it should therefore be a criminal offense for false advertisements during elections and referenda.

V) Now to the specific questions:

1. “What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.”

a. In the interest of fundamental fairness of elections, election expense allowances should be the same for all candidates regardless of whether they are party or independent candidates. If parties wish to spend money on elections from central offices, this should be funded by candidates donating part of their election expense allowance to the centre.

b. The source of funding for election expenses – and indeed outside elections – need to be fully transparent in order to avoid actual or appearance of favouritism towards donors. Donations need to be limited to individuals (and not special interest groups, businesses etc.) who are both British Citizens and tax-resident in the UK in order to avoid influence by those who do not themselves have a vote, and need to be limited in size either relative to the average income of a UK tax payer or as a small proportion of the total election expense allowance for the candidate - in order to avoid the rich having a disproportionate influence over elections. Donations need to be made to individual politicians rather than a party and recorded and published in real-time – and such donations can then be passed to central party funds by politicians if they wish.

c. As we saw in the Brexit referendum expenses scandal, the current regulation and law relating to expenses is completely toothless. Politicians who oversaw spending and who were found guilty of overspending by the Electoral Commission’s formal investigation have suffered no consequences, and have gone on to greater ministerial offices rather than being held to account. This has brought our election processes and indeed the Electoral Commission into disrepute, and the law needs to be made substantially tougher with criminal records and either personal fines (rather than campaign fines), prison sentences or loss of office as potential punishments depending on the seriousness of the offense.

2. “Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission’s role in a) monitoring and b) investigating those it regulates.”

a. As we saw in the Brexit Referendum expenses scandal, it is clear that the Electoral Commission does NOT have the powers it needs. It needs to have far greater powers to investigate alleged breaches, and far greater sanctions / punishments when they find



people guilty of breaches. Breaches need to be criminal offenses by individuals – not organisations – and guilty verdicts need to create a criminal record and result in significant punishment that will act as a genuine deterrent.

b. During the Brexit Referendum expenses investigation by the Electoral Commission allegations were made of political bias – whilst I do not personally believe that this was the case, we need to be absolutely certain that the investigating body is genuinely independent – but we also need to give them the same protection of “contempt of court” that the judiciary have in order to protect an independent investigatory body from political interference, with investigations of such contempt made and punished by a separate independent organisation (to avoid a reluctance to issue contempt proceedings because of how it would be perceived – which we have seen for example in some of the scurulous allegation made by Paul Dacre and the Daily Mail over senior judges, where they were unable to issue contempt of court proceedings because of how it would have appeared).

3. “What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?”

a. Organisations should only need to register with the Electoral Commission as Political Parties if they intend to accept part of election expense allowances / donations for central expenditure. If candidates / elected officials are independent and do not share funding but wish to register under a common “brand”, they should be free to do so without registering as a political party - this will reduce the bureaucracy associated with such small groups and help with a more level playing field.

b. As we have seen in recent elections and referendums, advertisements are often paid for directly by individuals, businesses and interest groups other than candidates – these should be banned outright. If such individuals want to contribute to the election spending, they need to do so via the donations route. It should be made a criminal offense for political advertisements to be either paid for or received / published by anyone other than a party or candidate during an election or referendum.

c. As we have seen in recent elections and referendums, both paid advertisements and paid-for social-media-trending-posts are often factually misleading (or as most people would call them “lies”). Any paid for advertising or social-media-posts should have a requirement to clearly identify itself as such, and to distinguish between facts and opinion, and it should be an offense for such paid for adverts or posts to be factually inaccurate, with a fast-track process for adjudication of complaints and a range of sanctions from forced retractions, fines against organisations and individuals proportional (and multiples of) the advertising spend, and in the worst most blatant cases, criminal records and even prison sentences. The role of the Electoral Commission should be expanded to include investigating any such paid advertisement / social media posts. It may be necessary to require the platforms used for such adverts / posts to be responsible for ensuring that paid for adverts are labelled as such and for making all reasonable efforts to identify where social-media posts are likely to be from organisations being paid to create them, and to ensure that they are labelled as such as well.

4. “Are there aspects of the Electoral Commission’s role which detract from its function as a regulator of election finance?”

- a. No comment.
5. "Are there aspects of the rules which affect or detract from effective regulation of election finance?"
  - a. No comment.
6. "What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?"
  - a. It is clear from the Brexit Expenses finance and the examples given in the Consultation document, that the Electoral Commission's powers to regulate are entirely inadequate.
7. "Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?"
  - a. It is clear from the Brexit Expenses finance and the examples given in the Consultation document, that the Electoral Commissions sanctions are entirely inadequate. A £20,000 fine on an organisation which has overspent by one or more orders of magnitude more than that is clearly utterly inadequate, and will be considered no more than a cost of cheating rather than a deterrent. Responsibility for adhering to the regulations, and accountability for breaking them need to be allocated to individual candidates / politicians (as well as party officials) rather than some nebulous organisation, and guilty verdicts need to result in a criminal record and punishment made against individuals, to include prison sentences in the most blatant cases, and fines and loss of office in less serious cases.
8. "Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?"
  - a. It is clear from the Brexit Expenses finance and the examples given in the Consultation document, that criminal sanctions are also inadequate as well as the civil sanctions of the EC. Without suitably serious sanctions, there is no incentive to stay within the law and every incentive to breach it, with the paltry fine of £20,000 against an organisation seen as a minor overhead of campaigning rather than any sort of punishment – assuming that is that the case ever gets to "court", as the statistics show that only a tiny proportion are ever prosecuted.
9. "In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?"
  - a. I am unclear in my mind whether the EC should be given court prosecution powers or whether prosecution should be brought by a separate body (entirely independent of political interference – which might rule out Police / CPS).
10. "Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?"

- a. Yes. See above.

## Public consultation - review of electoral regulation

### Brief introduction

This submission is from a private individual, responding as a private individual. I do not represent any organisation. I am a voter who has come to believe our electoral system is unfair, biased, and no longer fit for purpose in the current age.

Money is everything, nearly. Be honest. Money is important and the more you have of it, in relation to those who do not, the more power you have. Knowledge might equal power, but money is even more powerful.

The wealthy in and outside the country will use their wealth to influence politics. How can that be a good thing? It means my voice is less than those who have access to wealth and political power.

In today's de-regulated global financial markets with the dramatic rise of global financiers (the multi-millionaires and billionaires) who can buy what they want. Difficult to buy an election, but they try anyway.

This is why I am responding to this consultation. In my view, the system is broken. In fact, it could be labelled corrupt. Yes, that's a serious accusation, but can the Electoral Commission, hand on heart, confirm that no foreign money, under any circumstances, in any way, ever made its way to any group, individual or party in any of the UK general elections and referendums since 2014? My money is on the answer "no" it cannot.

My replies are below.

### Consultation questions and replies

**Q1** *What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.*

1.1 The values of trust, neutrality, robust policing should underpin the regulation of election financing. It is not enough to maintain a register, publishing information from parties and campaigners and to monitor compliance.

1.2 After three general elections and two referendums since 2014, an unpublished report on Russian interference, and acres of misinformation shared across social media and, in our own politically-biased press, how can anyone now in the UK trust or even believe in British democracy? Our democracy has been trashed.

1.3 The first past the post voting system in a multi-party state does not work for the vast majority of voters. A minority of voters in a minority of seats determines the outcome, regardless of the work of the Electoral Commission.

1.4 And all we can talk about here is the values that should underpin the regulation of election finance. Do we really know where some of the election campaigning money comes from? No.

**Q2** *Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.*

2.1 No, it does not. If we really believe in open, fair and transparent British elections (including referendums) that are funded by people who are resident and living in the UK and eligible to vote, then the commission has a lot more work to do.

2.2 I am an ordinary person and find it a challenge to work out how to respond to this question. My faith and trust *is* in the Electoral Commission and if it cannot properly do its job properly, then there is no hope. I want the commission to have greater powers to obtain documents, information, data, to investigate and publish - anything to help it determine whether laws have been bent, broken, or not followed. I would like the Russian interference report to be published, but there is nothing the Electoral Commission can do to get a copy of that report to the public.

2.3 My impression, rightly or wrongly, is that it is a mess. I no longer trust our electoral system after decades of voting / following politics as best I can. It is over. How do we really know if foreign money or other foreign interference has not been involved in recent elections and referendums? We don't. Not even the Electoral Commission can say definitively that no foreign influence was involved in any way.

**Q3** *What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?*

3.1 A greater public presence is needed by the Commission. It needs to educate the public, hold public information events, develop a presence on social media, and focus on how money now flows almost unimpeded through companies, banks, offshore entities, and global financial systems (people now can easily email money to each other). I would argue it is very easy now to secretly move money around in such a way that a foreign entity could easily (from a distance, using social media) outspend any UK limits and break electoral financing laws.

**Q4** *Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?*

4.1 No, but I would argue it needs to ramp up its public presence.

**Q5** *Are there aspects of the rules which affect or detract from effective regulation of election finance?*

5.1 No reply.

**Q6** *What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?*

6.1 No reply.

**Q7** *Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?*

7.1 No, it is not. Fines should start as at minimum of at least £20,000. I propose a minimum fine of £25,000 and maximum fine of £100,000 with the option to go to £250,000 in extreme cases. Everyone should know that if any irregularities are found or anything illegal, the punishment has to be extreme. There is no way round it. If we really believe that voting is important and the funding and running of elections is paramount to a healthy democracy, then the punishment needs to be extreme.

7.2 It has to be seen clearly that attempting to bend or break the rules is such an attack on our democracy that big minimum fines have to be in place.

**Q8** *Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?*

8.1 No, it does not. If it did, you would not have investigated over 500 cases resulting in 2 convictions.

**Q9** *In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?*

9.1 It would show to the public and those in politics that the Commission means business; that it has the power, strength, and resources to bring about successful prosecutions.

**Q10** *Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?*

10.1 Yes, absolutely. And the powers should be provided as soon as possible, again with very heavy fines starting with a minimum. I would suggest at least £10,000 minimum up to a

max of £100,000. It has to be seen that any attempt to circumvent election finance law will be dealt with harshly. That has to be seen by the public and made clear to everyone.

*Fair and free elections are the basic tenet of democracy. Voters should feel confident that campaigners operate on a level playing field.....*

There is NOT a level playing field. Candidates at elections have to pay a deposit and if they fail to reach a certain threshold of votes they lose that money. In a true democracy we would not have to pay to stand for election. The system is designed for the benefit of the large Parties with unlimited funds or the occasional wealthy person who stands as an Independent. No ordinary person can possibly match the amount spent by the main parties on an election campaign. Nor can they spare the time to get themselves known locally because ordinary people have to go out to work, a concept alien to the average MP.



## ***Submission to Public consultation - review of electoral regulation***

I am contributing as a member of the public but I am also an elected member of Teignbridge District Council. I stood for election in part, because I am horrified by the appalling breaches of the democratic process and the lack of consequences after the election. I believe this is due to a lack of support and powers for robust investigation and enforcement by the EC from outside that organisation, not failings by the EC.

1. Q1      What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.
2.      Campaigns should be won by the strength of the arguments.  
Currently it seems Elections can easily be bought by the candidate with the most funding, and the least regard for transparency, fairness, accountability and even rule of law. These things do not win elections.
3.      A fundamental value must be that the consequences of breaking the law outweigh the benefits.
4. Q2      Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.
5.      Absolutely not. Looking at the appalling breaches of funding rules that occurred during the Brexit Referendum, when these cases were detected, investigated and successfully prosecuted (which must be a subset of all the offenses) the maximum allowable cash fines are an "Absolute bargain" for the perpetrators and can be treated as a justifiable election expense. They don't even count against election spending limits. Breaking the law has become a useful financial transaction.
6. Q3      What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?
7.      Robust funding, Investigative powers, Power to levy effective punitive measures. The expectation at every level that the law will be complied with, and failure has serious consequences. These consequences must be expected and supported at every level. Government, Police and Electorate. The EC should get the support it needs.
8. Q4      Are there aspects of the Electoral Commission's role which detract from its

function as a regulator of election finance?

9. No.
10. Q5 Are there aspects of the rules which affect or detract from effective regulation of election finance?
11. Lack of investigatory powers, and robust enforcement.
12. Lack of power to scrutinise and block blatant "avoidance" schemes such as bogus UK companies, token trading, but acting as a conduit for overseas donations. Or large donations, broken up to be below the thresholds.
13. What we must not do is make the rules more complex and onerous - impacting legitimate campaigners. Complying with election law is complex and difficult. We must not make elections harder for those trying to comply we must make it harder for those trying NOT to.
14. Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?
15. independence of the EC is a strength.
16. "fines (civil sanctions) up to a maximum of £20,000" Many would view this as an affordable price for an election victory. A Modern day rotten borough. Fines must be sufficient to act as a genuine deterrent.
17. Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?
18. Absolutely not. Sanctions must always be in line with the damage done, and the gain acquired. In extreme cases of deliberate fraud there should be mechanisms for voiding results, and even banning perpetrators from standing again.
19. Q8 Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?
20. There seems to be a complex distinction here, with the capacity for breaches to fall between the stools, or for a lack of follow up between investigation, prosecution and sanctions.
21. Q9 In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?
22. If this simplified the process, and reduced for example the need for EC to persuade Police to take up a case that is complex and difficult and outside the Police areas of

expertise.

23. Q10 Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?

24. Yes the EC should have powers to sanction any breach by any party, but the emphasis must be on deliberate and large scale breaches. Those who attempt to comply in good faith must be supported.

Thank you

## NMA Response to the Committee on Standards in Public Life's Review of Electoral Regulation

1. The News Media Association (NMA) is the voice of UK national, regional, and local newspapers in print and online. Our members publish around 1,000 news media titles read by 49 million people each month. Collectively these publishers are by far the biggest investors in news, accounting for 58 per cent of the UK's total spend on news provision. The services our members provide – holding the powerful to account, informing the public, and offering narratives and perspectives that help readers engage with the political sphere – are essential to a healthy democracy.
2. This includes the provision of comprehensive robust and lively reporting, analysis, comment, views, opinion, and forum for diverse debate at local, regional, and national level throughout election and referendum campaigns. We trust therefore that care will be taken to ensure that any recommendations arising from the wide ranging terms of the review would not impact upon media coverage of elections and referendums. It is vital that any review of campaign and donation expenditure does not narrow the established exemptions for newspaper and broadcast editorial coverage from expenditure offences under the Representation of the People Act 1983 (see section 75, Schedule 4A Part 2), the Political Parties, Elections and Referendums Act 2000 (see Schedule 8 and Schedule 8A) or other relevant exemptions (e.g. The Companies (Political Expenditure Exemption) Order 2007).
3. To our knowledge, to date, the Representation of the People Act 1983, the Political Parties, Elections, and Referendums Act 2000, The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 or other relevant legislation have not raised problems for news media organisations. In considering any changes to campaign finance regulation and enforcement, we trust that care will be taken to avoid the creation of any difficulties.
4. We also trust that any proposals for extension of criminal or civil liability upon advertisers, or any extension of imprint requirements, will be confined to the advertiser and not inadvertently catch any news media publisher of third party material.
5. The NMA did raise one issue with the political parties during the 2019 general election, which it also brought to the attention of the Electoral Commission. Local newspaper publishers were concerned by the circulation of election campaigning material which would mimic the look and feel of independent local media and [called on them to stop this damaging practice](#).
6. The NMA is happy to engage with the Committee on Standards in Public Life at later stages of its review, and particularly to help assess the impact of any proposed amendments on news organisations' ability to cover elections.

To the Committee,

I have recently retired as a practising solicitor, having practised all my working life in the field of election law, and having been involved in many of the major elections cases of the last 40 years.

I make this submission in my capacity as a private person. I am no longer a law firm partner. I operate as a very part-time non-lawyer consultant. I am based in Piltdown, East Sussex, and I make this submission from my own knowledge and experience and without any commitment to any entity.

It is undoubtedly a feature of electoral processes in the last five years that the role of non-party campaigners ('NPCs') has increased hugely. They have had many national polls to contend with too, with three general elections, a European election, and a referendum.

The Electoral Commission ('EC') have become increasingly prominent throughout this period. Partly because they were criticised for not taking a pro-active enough role, partly because they have become aware of abuses (by all sides), partly because they have begun to regard themselves as the defenders of the integrity of our system of voting.

Whether or not justified (and I express no view about that), they have come under increasing criticism in recent months with suggestions of bias and inappropriate actions. There is even talk of their abolition. The Committee may in its considerations need to consider whether the EC should continue in its current form, or whether the Government should provide it with increased powers to deal with the abuses that the EC (and others) have identified, or whether there is a better means of regulating the conduct of elections.

In my opinion, the need for some regulator is greater than ever. The abuse arises partly through slackness in the rules, and the fact that they are wholly unsuited to modern methods of communication and of electioneering. Abolition of the EC will only allow those who wish us ill, or who wish to distort our democratic processes, to thrive all the more. As the methods of providing funding to political parties and especially to NPCs become more sophisticated, the need to provide some appropriate rules (ie UK elections to be funded from within the UK on a fair basis, and the interests of those outside the UK being excluded) becomes more urgent too.

Taking account of the introductory words, and dealing with those of the consultation questions to which I am able to contribute:

1 This is a huge question. I have partly answered it in the last paragraph. The concept of a "level playing field" is rather trite but it is applicable. The party that has the most money should not be able to skew a result in its own favour. Limits on campaigning expenditure must be retained. The concept of what is local expenditure and what is national expenditure has become blurred at the edges for some years now, but all the more so with the advent of social media messaging. NPCs should be subject to regulation as well and not just at election time. Campaigning should be undertaken within the UK using funds generated in the UK. Material produced (hard copy or digital) should show clearly who is responsible for that material, and that person/entity should be within the UK too (ie digital imprints, see further below).

You summarise the regulatory remit of the EC. That remit established by PPERA in 2000 sits in parallel – and slightly uncomfortably – with the remit established by the last major RPA in 1983. The EC has no ability itself to prosecute, although it makes findings of civil "offences" and levies fines but ultimately has to refer those findings to the Police to re-investigate. The Police have many demands on their time, even though the DPP is under a statutory obligation to investigate every complaint.

2 The EC is only able to monitor on the basis of the reports that are filed with it (which are necessarily retrospective) and then on the occasions when a member of the public or more likely a member of the media make their own complaint coupled with a dossier of papers. By way of example, the EC may well have taken no action against the Brexit Party and their multiple sub £500 donations via PayPal until a prominent politician had drawn their attention to this: even so they did not find any evidence of any failings, and the failings if any arose more from the inadequacy of the applicable laws.

Regulatory investigations in any industry are a relatively clumsy and heavy-handed process. There is no ability – probably no resource – to undertake "real-time" investigations or to take "real time" actions. But in the case of elections it is absolutely vital that a participant is corrected during the campaign rather than after the campaign is over and a result has been achieved. The "result" is not of course always in securing the election of a person or party, it could also be in ensuring the defeat of a person or party. Long and costly investigations after an election is over, coupled with potentially inadequate penalties, have little effect other than to promote resentment for the parties and a feeling that time (and money) has been wasted.

This applies as much in the case of election finances as it does in the case of social media. It is very, very difficult to deal with infractions at the time and prior to poll but it is an ambition that we should have.

You may not be aware that I handled the case known as the 'Oldham East and Saddleworth' case in 2010 which related to a complaint made by a losing candidate (having lost by only about 100 votes) against the winning candidate who had published untrue material about that candidate's politics. This was the first case of its kind for almost 100 years. The petition was won, and partly because the petitioner was able to show that the material was published too late for him to be able to rebut it in time for polling day. So, by far the best way of countering misinformation (more difficult in the case of over-spending) is to counter it during the election campaign itself, and in the case of material that is national in scope, the EC may well have a role in achieving that (and see again below principally in relation to online material).

3-5 If the EC is to be retained in its current form – and definitely I believe that a single regulator is necessary, then it should be provided with the tools for its work. It does not suit any political party – especially whoever is the governing party – to promote legislation which ultimately curtails its activities at election time, and it will take great determination coupled with an ambition for real democratic progress, to pursue that.

The "tools for the job" should include greater resource to handle investigations during an election campaign and to take action as necessary; maybe there needs to be an independent board (do the Commissioners perform that function now?) to ensure as best they can that the EC acts in an even-handed way. They must have the ability to initiate court proceedings, and to curtail the activities of parties or candidates, and NPCs, during an election period. They must have the ability to investigate promptly and forcefully after an election is over, maybe even with a statutory time period in which to achieve a conclusion. If

acting in parallel with the Police (and in parallel rather than in sequence) then a great deal more co-operation between the two will be required. Perhaps even the ability for the EC to investigate and prosecute themselves.

Fines levied by the EC should be payable by the party or by the NPCs (or their board members) and should be paid (effectively in escrow) even when pending an appeal. Fines should match the offences and be subject only to limits similar to those capable of being imposed by the ICO. (There is no inconsistency in that, very often the EC and the ICO are investigating similar related offences, and again it would help if they were able to work together). Fines should be proportionate, as has not always been the case.

There is a sense that the EC regard themselves as the sole protectors of the integrity of our electoral processes. The press statements made by the EC in publishing one of their findings do tend to annoy the protagonists, and could potentially be avoided: it is not even the case that the EC are the only protectors of our democratic processes, of course they are extremely important, but they are also just the first port of call.

The term 'election finance' as I understand it relates as much to the raising of funds for election purposes as to the spending of funds for election purposes. Here, the reporting procedures have not worked well, and are not nearly tight enough in the case of NPCs who nowadays exert considerable influence, and fund-raising should be reported prior to an election campaign as well as during it and then after it. The source of the funds also requires care, eg the threshold of £500 and an inability to regulate multiple donations each just under £500, the fact that funds from a UK entity could have been earned abroad and funnelled into the UK, and the concept of 'common plan' spending – much litigated over in the last few years – but maybe requiring further thought particularly considering who controls the relevant NPC; the need to report spending may at the moment be too tightly controlled because spending may not directly promote a party or person but might indirectly have the same effect (and in one case is reportable and in the other case is not).

6-10 The EC have complained regularly, and with reason, about several particular issues. First, their inability to prosecute and the fact that they then operate in sequence with the Police, ending up in a clumsy and long-winded and duplicative and expensive structure; second, their inability to impose sanctions is severely constrained by statute to no more than £20,000 per offence, an aspect quoted by one political observer as no more than 'the cost of doing business', ie it is largely ineffective: when you compare the fining ability of the EC with that of the ICO, who perform a similar (and equally important) function, there is a huge difference.

Should the EC be given the power to prosecute as well: definitely the number of legal cases in recent years challenging the work of the EC suggests that some changes do need to be made. By the time that the EC refers a matter to the Police, it is ancient history in political terms and pursuing prosecutions may then not be in the public interest. Having said that, the EC are 'judge and jury' on their own investigations and the result (let alone the manner of communicating the result and the associated fine) have not always been appropriate.

Part of this arises from the twin track created by the RPA (Police investigate) and by PPERA (EC investigate first and then the Police investigate), and those two approaches need to be rationalised. For instance, the series of RPAs over the decades were drawn principally on the basis that elections were fought by individuals and that what mattered was just the cost of promoting that individual in their constituency (ie local spending). PPERA recognised for the first time the concept of political parties campaigning nationally, and the political party files returns for national fund-raising and spending and the local candidate files returns for local fund-raising and spending. Of course the distinction between the two has been

becoming more blurred in recent years, and there are even court decisions going back over 50 years about how you should treat national expenditure (eg certain types of newspaper advertising) in a local context. This is relevant all the more so now when much hard copy material is produced centrally, with minor adjustments to suit the individual locality, and then distributed locally. Call centres are retained by political parties to telephone individual voters and enquire about their voting preferences: is that a vote for the party or a vote for the local candidate, the party would say the former, because were it the latter the candidate may breach his local spending limit. Digital advertising has soared in recent years too, some of it specifically catered to individual areas which are in marginal seats or where it is known that the recipients are susceptible to a certain message, and yet all of that is treated as national expenditure as well. And as political parties choose to run their campaigns more and more on a presidential basis (ie the identity of the Leader – and the involvement of the Leader – become more and more critical to the fate of the party itself), any concept of local spending and local promotion becomes less relevant and feeds the urgent need for rationalisation.

This is not specifically mentioned in your brief but cannot be ignored here, and I mention it briefly above. There is significant pressure for reform of the rules on election advertising, so that digital advertising should also be regulated and so that any recipient can identify the true source of the digital material and the name of its publisher, much as applies in the case of hard copy advertising now. Digital advertising and social media messaging have become more and more important in the last five years, and are likely to continue to be very influential. It is here that the DCMS Select Committee called last year for the introduction of digital imprints, and more recently the APPG on Electoral Campaigning Transparency and the Lords Committee on Democracy and Digital Technologies. (Allied to this is the need to also control the content of that material, and to be sure that it can be effectively withdrawn or rebutted in the course of an election campaign rather than in a law court two years later, see for instance the open article by the Chief Executive of the ASA on 4 June 2020, and see also the Lords Committee report, and that there will need to be a regulator for that as well, which may or may not be the EC).

I feel sure that I have slightly exceeded the number of permitted words, for which I apologise, but I hope that my contribution is helpful, and I remain available to speak to the Committee – if asked – and probably by Zoom – at any time, and I hope that you can see from this submission that I have had some experience in this field and very much wish to assist in modernising the way in which our democratic processes may be maintained and regulated.





**Independent Committee on Standards in Public Life**

**Review of the Regulation of Elections**

**July 2020**

1. The NASUWT welcomes the opportunity to comment on the Independent Committee on Standards in Public Life review of the regulation of elections.
2. The NASUWT, The Teachers' Union, represents teachers and headteachers across the United Kingdom.
3. The Union is not linked to any political party and makes no political donations either directly or indirectly. Its aim is to serve the best interests of teachers, no matter what party forms the Government at national or local level.

***SPECIFIC COMMENTS***

**Context**

4. The NASUWT believes that measures to protect the electoral process are, in principle, a legitimate aim and that the law rightly regulates how groups other than political parties campaign in elections. The Union also recognises that getting the balance right between free speech and fair election rules will never be easy.

5. It is for these reasons the NASUWT joined other trade unions, charities and civil society organisations in criticising the process by which the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Bill was introduced and subsequently became legislation.
6. Specifically, there was no consultation in advance of the Bill being published. There was no attempt at building a consensus on any changes required, and no proper pre-legislative scrutiny. Additionally, there was no clear statement from the Government about the need for change, or about what activities occurred in previous elections that required legislation to prevent in future.
7. The Electoral Commission had previously recommended that the rules on non-party campaigning intended to influence voters should be changed so that they more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material. However, the Government's proposals in the Bill were far broader, including constituency limits on how much could be spent on campaigning, regulation of spending to support a particular political party, and proposals to lower the expenditure thresholds at which bodies had to register with and report expenditure to the Electoral Commission.
8. The Union supported calls at the time for the Bill be withdrawn for the above reasons, as well as the inadequacy of the lobbying provisions in Part 1 and the unwarranted intrusions into trade union administration in Part 3.

### **Hodgson Review of Part 2**

9. Lord Hodgson of Astley Abbotts CBE was appointed as the Reviewer of Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 on 28 January 2015.
10. The review assessed the effectiveness of the legislation in achieving Parliament's aim, which it described as:

*To maintain the rich diversity of public participation and involvement which historically has characterised British elections while not jeopardising public trust and confidence in the integrity of the electoral system.*

*To achieve this:*

- a. As regards the voting public by providing clarity and transparency about significant campaigning activity undertaken with a view to influencing the outcome of an election, especially any with an underlying party political motivation; and*
- b. As regards third parties by establishing a regulatory system which is accessible, comprehensible and proportionate and does not discourage third parties from campaigning.*

11. Despite this review making clear proposals, including to reduce the regulated period covered by the Act, and change the test that the Electoral Commission uses to determine whether organisations are seeking to influence how people vote, the Government announced that it would not be implementing any of Lord Hodgson's recommendations.
12. 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.
13. 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.
14. Indeed, a report from the Commission on Civil Society and Democratic Engagement found that more than half of the organisations it surveyed said compliance with the Lobbying Act made their work more difficult even before the election period began.

### **The Purpose Test**

15. The legislation describes the 'purpose test', one of the tests which determines whether activities count as regulated activity, as activity being 'reasonably regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or candidates who support or do not support particular

policies or issues.’ This has caused a good deal of confusion among civil society and non-party campaigners.

16. Guidance issued recently by the Electoral Commission<sup>1</sup> provides a clearer and sharper definition which should assist in interpretation. This new wording makes it clearer that the Electoral Commission is not considering all campaigns asks from non-party campaigners. It is only concerned with an explicit or implicit ask to vote for or against candidates or parties.
17. This guidance also defines ‘implicitly promoting parties or candidates’ more tightly. In particular, it now refers to ‘setting out or comparing the merits of the positions of political parties or candidates on a policy’ – not just the positions.

### **The Regulated Period**

18. The legislation places a limit on campaign spending by civil society organisations in the 12 months before a general election. When it was introduced, the Government had put the Fixed-term Parliaments Act on the statute books, intending to make general elections regular, five-yearly events instead of their timing being in the hands of the Government. This has clearly not been the case in practice in recent years, and non-party campaigners have had to behave as if they were always in the middle of an election campaign.
19. The new guidance also covers this issue of ‘unexpected’ elections by making it clear that in the Electoral Commission’s view, campaigners usually cannot reasonably be regarded as intending to influence an election they did not know about.

### **Recommendations**

20. The Union would support calls to repeal the Act, not least as the freedom of speech of any organisation should not be restricted without far greater justification than the Lobbying Act had.

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<sup>1</sup> <https://www.electoralcommission.org.uk/non-party-campaigners-where-start/what-are-rules-non-party-campaigners>.

21. As a minimum, the clarifications provided by the Electoral Commission should be adopted into legislation through an amendment to the Bill, to give civil society organisations the certainty they need to pursue their legitimate campaign activities without fear of sanction.

Dr Patrick Roach

**General Secretary**

Dear Sir/Madam,

I am writing in response to the Committee on Standards in Public Life (CSPL) consultation on electoral regulation in the United Kingdom of Great Britain & Northern Ireland.

This submission is sent by me, Jonathan B. I. Marius-Sheridan, as an individual. I am a British Citizen resident in the United Kingdom and registered to vote on the electoral roll.

It is my opinion that the current registration, reporting and visibility of election finance and associated political registration records are negatively impacted by the Electoral Commission's poor and outdated registration and search platforms and processes. The accounts, registration details, and financial reporting records of parties and other political participants mostly consist of scanned paper documents, often handwritten, that can be difficult to view and search. In addition, the process of signing up for and using their on-line system, called "Party and Election Finance Online" ("PEF Online"), is not simple and automated, and does not integrate with other state digital services such as GOV.UK Verify.

It is my view that the accessibility and accuracy of financial reporting would be vastly improved by the use of a fully digital on-line system for registration of political parties, campaigners, et cetera, with submission of financial records in an easily searchable and viewable format such as Microsoft Excel spreadsheet files. As a system similar to this already exists with Companies House for the registration of companies, which is better integrated with the universal gov.uk systems and processes, it would seem to be the most efficient and cost-effective solution to migrate registration of parties, campaigners, et cetera, and their financial reporting over to the existing Companies House systems, with the Electoral Commission working to oversee and check these things after their submission and processing.

## Submission 10

I have been shocked at the bias of the electoral commission since 2016, after the Brexit referendum, where the commission have been seen to disproportionately investigate Leave campaigners, Leave organisation and the Brexit Party itself. The degree of blatant bias and the disgusting behaviour of Parliament after 2017 disturbed me to such a degree that I thought our democracy and constitution were being destroyed. The investigation launched into the Brexit Party couple of days after the intervention of Gordon Brown and after the party had openly invited the commission to review their funding arrangements, that has since proven there had no grounds for concern absolutely sickened me. As a patriotic citizen I urge you to sack the current cabal in the EC and appoint new people who have demonstrable integrity, with a Diverse set and balance of political views.

**Evidence of Alliance EPP (Europe People's Party) UK  
to the review of electoral regulation in the UK  
by the Committee on Standards in Public Life**

**Introduction**

1. Alliance EPP (European People's Party) UK ("**UK EPP**") was formed after the Conservative Party left the European Parliament's political group attached to Europe's largest political family, the mainstream centre-right EPP (European People's Party). We contested the 2014 European Parliament election in London on the EPP's platform.
2. On behalf of UK EPP, this evidence is provided by UK EPP's leader, Dirk Hazell, a barrister and former European General Counsel and Compliance Director of a large investment bank, with long experience of UK and international regulation especially in financial and environmental sectors. He was also formerly the Conservative Party's Chair in London, with non-executive oversight of elections at all levels of government.
3. We would welcome effective and equitable electoral regulation in the UK.
4. We agree that the statutory basis of this regulation should be consolidated and that, to benefit the British polity, some regulatory powers and sanctions should be enhanced.
5. However, the Electoral Commission ("**the Commission**"), as currently constituted is unfit for purpose as the UK's electoral regulator.



6. On 6 December 2017, the Commission's current Chair, who had then been in office for about a year, delivered a lecture to the Institute for Government. He indicated that he understood, and that the Commission would address, core problems, including hostile overseas interference, facing British elections. The Commission's subsequent deed fell short of his word.
7. **The core thrust of our evidence is that while adjustments to regulatory law are required, the necessary positive effect can be achieved only by a better regulator.**

**The joint report ("the Report") of the Law Commission and Scottish Law Commission into Electoral Law**

8. We offer comments pertinent to both Chapter 12 of the Report and to the Committee's specific questions.
9. As an election candidate and an increasingly senior party officer, I had direct knowledge of the relatively high degree of care taken - and training provided - by the Conservative Party in elections at all levels of government from 1979 to 2006. By 2015, with the Electoral Commission established for many years, the standard of compliance had fallen, aided in part by technological developments.
10. From about 2005 onwards, I saw increasing use by the Conservative Party, and then the Liberal Democrats, of commercial data used to target voters. In part, this was a response to all political parties having fewer voluntary members able accurately to assess individual voters' intentions. My own perception on the doorstep - after some thousands of mostly unwelcome encounters - was that this commercial data was for some years no more precise than a random canvass.
11. However, by the 2015 General Election, it had clearly become a precise and potent political weapon, at least for the Conservative Party. For example, a then Conservative MP told me he had held his constituency only because those on the campaign bus had correctly identified from the (national) commercial data exactly which of his constituents to target, as they then did in some force in the final days of the campaign.

12. In such a context, the Report's formulation at para 12.42 of campaign buses promoting the national campaign and *providing support to local candidates along the way* is under-stated allusion to a nationally funded but locally applied political resource, untransparently available only to the most substantially funded political parties. The criminal conviction of Ms Marion Little barely scratched the surface of the blurring of national and local expense.
13. In the context of the 2016 referendum on the UK's membership of the EU, the Constitutional Research Council ostensibly donated £435,000 - spent partly in Great Britain - to the DUP in Northern Ireland. This pass-through transaction was apparently designed both to conceal the identity of the real donor and also to arbitrage divergent electoral regulation as between Northern Ireland and the rest of the UK.
14. Further, at para 12.48, the Report's cautious reference to *the emerging use of micro-advertising* under-states the opaquely funded - but nonetheless probably decisive - context of tools pioneered in the UK by the winning side in the 2016 referendum on membership of the EU.
15. Such episodes evidence the need for law to be clarified, consolidated and made more relevant to current political campaigning techniques.

### **The Electoral Commission's governance**

16. Unfortunately, the Commission as currently constituted is unfit for the purpose of implementing modernised - or indeed any - law. I below briefly substantiate this assertion, then turn to cause and proposed remedy.
17. From our own direct experience we can more amply corroborate / evidence each of:-
- a) Court Judgments characterising the Commission's evidence as unsafe;
  - b) the Commission's unreliably consistent, impartial or lawful regulation; and
  - c) the Commission's routine and improper concealment of its incompetence.
18. When we drew the attention of the Commission's current Chief Executive to a serious imprecision in his affidavit in *English Democrats Party v. Electoral*

*Commission*, (contrary to what he had expressly assured the Court, the Commission had unlawfully prevented us from contesting the 2015 General Election, which we had planned to do, as it had decided to censor “EPP”, so reversing its earlier position), the eventual response was merely that someone else had drafted his affidavit. The Committee may agree that such insouciance fails to attain the conduct of a fit and proper regulator.

19. In the run-up to the 2019 European Parliament election, the Commission initiated an Investigation based on its own failure to distinguish between our lawful reporting of that which PPERA did not expressly require us to report and unlawful reporting of an incorrect amount of money. Having purported to rely on one provision in PPERA, it then accused us of non-compliance with another and - after the best part of a year - alleged we had contravened yet another. A regulator grasping the simplest concepts of neither financial regulation nor natural justice cannot prudently be awarded additional powers.
20. The Commission’s ballot paper in the 2016 referendum was unprecedented in that its layout contained visual bias (all the more effective for being covert) in favour of Leave, a matter we evidenced in objective detail. For the avoidance of doubt, I emphasise our focus on the visual appearance and not words which Parliament had agreed. When we showed this to a campaigning expert at the EPP’s headquarters, the immediate response was that this would cost Remain 2% of the vote. The Commission has remained determined not to disclose whether the visual infelicity arose from innocent internal incompetence or instead from covert receipt of a template from a Leave campaigner. Again, this evidences an unfit regulator.
21. For the best part of two decades I ran the representative bodies of two significant economic sectors and, in short, never in that time encountered such chronically dysfunctional regulation as we have seen from the Commission.
22. The Political Parties and Elections Act 2009 inserted Section 3A into the Political Parties, Elections and Referendums Act 2000, resulting in four Electoral Commissioners being appointed by political parties: the entities the Commission regulates.

23. This was a recipe for avoidable difficulty. It made more credible various populists' allegations of bias. We also encountered evidence of some - albeit not current - political appointees' defective grasp of basic regulatory duties.
24. The governing body of a regulator such as the Financial Conduct Authority includes those with practitioners' deep knowledge of matters being regulated but does not include regulated entities' current officers or nominees. In terms of regulatory credibility, this is a critical characteristic.
25. Our experience leads us to conclude it would do more harm than good to allow the Commission to accrue any further powers without:-
- a) repeal of Section 3A PPERA; and
  - b) far more emphasis on the need for Commissioners to be expert in, or manifestly qualified by their professional experience to become, authoritative and impartial regulators of matters within the Commission's remit. Put differently, former judges might make more suitable Commissioners than do former journalists.
26. Much of the technique required properly to regulate the financial component of electoral regulation is - as was obliquely implied by the Commission's Chair in his comments to the Institute for Government - within the skill set of a financial regulator.
27. While the Report correctly identifies confusion arising from the patchwork of regulation including the Representation of the Peoples Acts and PPERA, the underlying regulation itself is basic compared to the retail and wholesale market financial regulation undertaken by the Financial Conduct Authority ("the FCA"), now with several decades of accumulated experience.
28. We suggest that - with a re-constituted body of Commissioners with much greater regulatory expertise and with repeal of s. 3A PPERA - the Commission should be required to subcontract, initially for not less than three years, to a new and specialist unit of the FCA the financial component of electoral regulation. This new unit would report both to FCA's Board and to the Commission before being incorporated by the latter.

29. In arguing for s. 3A PPERA, the Commission had asserted that it wanted the benefit of practitioner experience of regulation.
30. We agree that such experience is valid and it appropriately has three components.
31. To provide input to the Commission from those holding elected office, we suggest that the Speaker's Committee is modified to the extent needed to include representation from elected members in the devolved administrations and local government, with its proceedings fully and publicly recorded to the standard of Hansard.
32. Normal regulators structure consultation with regulated entities. We believe the Commission could have become a better regulator had it had done this (rather than covertly meet leading parties). With repeal of s. 3A PPERA, the Commission should establish an independent consultative body of regulated entities (political parties and independent candidates), to be routinely and relevantly consulted on a timely basis.
33. Third, the Commission should transparently and systematically structure consultation with returning officers and other officials responsible for the conduct of elections.

### **Response to specific questions**

34. Q1: accountability, fairness and transparency would be welcome improvements. The overall cap on spending should remain relatively constrained.
35. Q2: as above detailed, the Commission misdirects its existing powers. Enhancing its powers with its current governance would fuel the fire of justified opprobrium.
36. Q3: as above detailed, the Commission's governance needs to be seen to be competent and impartial. A good regulator welcomes accountability, challenge and transparency.
37. Q4: the Commission came into being at a time when some regulators (such as the Environment Agency) were also invited to be advocates. This was always an undesirable fudging of remits. The Commission should do less better, with undiluted focus on regulation. If public education is needed, this should be undertaken by a separate and properly constituted body with a clear mandate.

- 38.Q5: amendments to PPERA have further obscured what are in essence basic tenets of regulation. Statutory consolidation would be helpful.
- 39.Q6: the Commission is a manifestly poor regulator, and compromised by s. 3A PPERA. The British polity needs a competent regulator, able and willing to speak truth to power.
- 40.Q7: the present civil sanctions are manifestly inadequate. However, the Commission as currently constituted cannot be entrusted with enhanced powers to sanction.
- 41.Q8: as above intimated, we have reason to suspect that the conviction of Ms Little was essentially inadequate tokenism.
- 42.Q9: we would welcome a competent regulator being empowered to bring prosecutions before the courts. However, we have if anything under-stated the extent to which the Commission fails to attain the required standard of governance to be entrusted with this power.
- 43.Q10: enforcement of candidate finance laws should be consolidated within a competent electoral regulator with appropriate governance: again, these are criteria the Commission does not currently satisfy.
44. We are happy to provide such further information as may assist the Committee.

## Public consultation - review of electoral regulation

**Submission by:**

Charles Baily

**Status:**

Personal

**Interest:**

Labour Party member

Sometime chair of Constituency Labour Party, local authority election candidate,  
local authority election agent

1. Q1: Transparency, fairness and accountability are obviously essential values in the regulation of the funding of political parties, both of the regulator and the regulated. But there is more: the regulator must have the authority to impose its judgments on the regulated; and it must be clearly and indisputably independent.
2. Q2, Q3, Q4, Q8: It seems clear that the EC does not have sufficient legal powers. With reference to the EU Referendum campaign, it was not empowered to compel the attendance of key members of the Vote Leave or Leave.EU movements, nor was it able to otherwise demand information from them. If it is to regulate effectively, it must have instruments available to compel the compliance of agents of whom it has grounds for suspicions of malpractice.
3. There was clear evidence of, for example, insurance agents in the GoSkippy offices being arbitrarily switched by their supervisor between commercial sales activity and political campaigning, recorded and broadcast on separate occasions by BBC1 and C4 News. This is clearly illegal; but the EC was not empowered to take more than trivial action; and the Met, who did have the necessary powers, but seem to have been operating entirely independently of the EC (the EC reported frustration that the Met showed no urgency in seeking relevant information, if any interest at all) years later dropped the investigation, citing, opaquely, 'lack of evidence'. A regulator without the necessary powers brings the entire system into disrepute. It must be given quasi-judicial powers.
4. Q6: See also above, para 1. On the one hand there has been no indication, beyond unsubstantiated assertions of 'bias' from the Leave campaigns, that the EC has acted in anything other than an impartial way. On the other, its range of jurisdiction is limited almost entirely to matters of funding and expenditure. Having acted as an election agent, I know the levels of anxiety and obsessive attention to detail and documentation that the possibility of running foul of the EC can cause, with possible penalties, even at ward level, hugely exceeding the level of the offence. To see multi-million pound campaigns, affecting the entire future course of the nation, subject to the same scale of penalties was deeply concerning.
5. Furthermore, in the absence of any legislation relating to the veracity of electoral campaign literature (in stark contrast to the regulations relating to commercial

advertising), the level of disinformation disseminated, without any recourse to legal challenge by the Electoral Commission, or anyone else, clearly indicated an urgent need for reform.

6. Q7: The scale of penalties available to the EC is grossly inappropriate. The EU Referendum Bill was hustled through with virtually no scrutiny. There was no reference throughout the debate to a qualifying turnout or a qualifying majority: no country with a tradition of referendums would dream of allowing a simple majority of a floorless turnout to overturn the entire constitutional basis on which the nation has been governed for the last half-century, on the basis of a virtually meaningless binary question.
7. Equally seriously, and more germanely, there was also no acknowledgement of the fact that the penalties for electoral malpractice are by default calibrated on the assumption that an offender cannot affect more than 1/650 of the final outcome. To be able to buy the future of a significant global power for £20k was clearly a bargain that proved irresistible to some players (I use the word advisedly). Multiplying penalties by 650 might have prompted second thoughts. This factor was completely, and irresponsibly, ignored.
8. Q9: Where the result of an electoral process has immediate effects, as, for example, where the outcome of an election is so finely balanced that the outcome of an individual parliamentary or council seat is enough to tip the balance of power, or where the outcome of a referendum is likely to set in train processes that have profound and irreversible effects on policy or governance, to concentrate jurisdiction in one agency, rather than enter a sequential process of investigation by a weaker agency, followed by a handover to a stronger agency to conduct an investigation within its own terms of reference, would clearly inject the element of pace necessary to avert the results of successful malpractice to take effect. The EU referendum was a clear case: all Leave campaigns were judged by the EC to have committed serious breaches of regulations or expectations regarding the source and transparency of funding, the separation of political and commercial activity, the veracity of campaign materials, etc. Evidence was then handed over to the Met, who, after an inexplicable delay of something like two years, decided not to proceed on the grounds of 'lack of evidence' (see above, para 3). By this time the execution of the heavily tainted result was all but irreversible.
9. Q10: If the powers of the EC were to be expanded, for the reasons offered above, to include criminal prosecution, there would seem no obvious case for separation.



### **To: Independent Committee on Standards in Public Life.**

I would like to make a submission to the consultation invited by the committee. I am responding as a British citizen. I am Jean Brant, MPH, MSc, RN, a retired nurse and University lecturer. My reason for submitting is my concern about the abuses of the electoral system, especially online campaigning.

Please see my responses below:

### **Consultation questions**

**Q1 What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.**

Transparency, fairness and accountability need to be applied to spending for online campaigning.

There needs to be a breakdown of online spending, of how much was spent, where it was spent.

Online materials need to be explicit about the source, making clear they are from a political source.

Targetted materials need to be explicit that targetting has been applied, and the criteria for selection must be stated.

There needs to be a limit on the amount spent on online campaigning. This needs to be a lower amount than the amount spent on non-online campaigning.

There needs to be a single online database of political adverts, which would be publicly available and easily searchable, to increase transparency and allow voters to identify who has produced a piece of content.

There needs to be a statutory code of practice for political parties and campaigners, including social media campaigning, disseminated and explained, to build confidence in the electoral process.

**Q2 Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.**

There needs to be sufficient enforcement powers and resources. That must involve strengthening the fines or sanctions so they can act as a meaningful deterrent against wrongdoing.

There needs to be a statutory code of practice for political parties and campaigners without delay. There is evidence of unethical practice which detracts from faith in the democratic process: the law needs to be updated for the digital age.

**Q3      What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?**

More extensive investigation, especially of online campaigning. Raising awareness of incidences of abuse.

**Q4      Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?**

**Q5      Are there aspects of the rules which affect or detract from effective regulation of election finance?**

There needs to be a single online database of political adverts, which would be publicly available and easily searchable. This would increase transparency and allow voters to identify who has produced a piece of content.

**Q6      What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?**

There needs to be more regulation of the overt campaigning in the press. Most print media has non-domiciliary owners, and publish materials which have undergone independent research and been found to be politically biased.

**Q7      Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?**

The maximum limit of fines is insufficient to deter. Custodial sentences and banning from further involvement are needed.

## Submission 14

I spent £108 on Leaflets thats all. i'd like to know if ANY councillors in Leicester (Labour) Harborough, Oadby & Wigston (Conservative & Lib-dem) have links to House builders ? As they ignore residents who dont want Lutterworth, Hinckley, Harborough, Great Glen, Kibworth Concreted over....

## Committee on Standards in Public Life

### Review of Electoral Regulation

*Evidence submitted by Professor Justin Fisher (Brunel University London)*

Justin Fisher is Professor of Political Science at Brunel University London. He has worked extensively with the Electoral Commission, the Committee on Standards in Public Life and the Council of Europe on previous enquiries related to party finance and electoral regulation. He has advised electoral bodies both in the UK and overseas.

**July 2020**

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*Q1 What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.*

- 1.1 At the outset, the question that should underpin all such regulations is *What do you want to achieve?* rather than *What do you want to stop?*
- 1.2 Debates about the regulation of political finance focus too often on the latter question resulting in sub-optimal outcomes. 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.
- 1.3 Regulators should work with the regulated, rather than against them. One of the successes of the Commission since the mid-2000s has been its practice of working with those it regulates in order to promote compliance and understanding of the legal framework, rather than acting as a body which seeks to hinder parties.
- 1.4 Fundamentally, political activity and campaigning is a good thing. It engages citizens in democratic life. It is also frequently undertaken by volunteers. That activity should therefore be encouraged, rather than being restricted to an excessive degree. 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. The answer to the first question (*What do you want to achieve?*) is therefore more important for a healthy democracy than an undue focus on the second (*What do you want to stop?*).
- 1.5 That said, regulation is both inevitable and desirable in order both to encourage participation, but also deliver free elections (the meaning of

'fairness' is disputed in this context). To that end, in an election, primacy should be given to those standing for election. It is they (rather than non-electoral participants) who are accountable, with accountability being exercised via the ballot box.

- 1.6 There should also be an underlying principle that any regulation designed to deliver these demands can be implemented and operated effectively. This is important because it influences both the effective operation of democratic activities like elections, as well as confidence in the probity and effectiveness of these activities – both by political actors and citizens.
- 1.7 Finally, policy-makers and legislators should recognise that while citizen opinion is very important, public perceptions in respect of probity are frequently exaggerated.<sup>2</sup> Moreover, where problems exist, they are rarely universal. As a consequence, recourse to public opinion alone is rarely a good guide to political reform.

*Q2 Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.*

- 2.1. On balance, no. While a balance must be struck between supporting the democratic process and ensuring that wrongdoing is investigated and punished, recent cases have exposed the relative weakness of the Commission's position – especially in relation to investigation. 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.<sup>3</sup> Two matters are worthy of note.
- 2.2. First, 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>4</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.

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<sup>2</sup> vanHeerde-Hudson, J. & Fisher, J. (2013) 'Parties heed (with caution): Public knowledge of and attitudes towards party finance in Britain', *Party Politics*. 19 (1): 41-60; Fisher, J & Sällberg, Y. (2020) 'Electoral Integrity – The Winner Takes It All? Evidence from Three British General Elections' *British Journal of Politics & International Relations*. Published Online Early DOI: 10.1177/1369148120912668

<sup>3</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*, 16<sup>th</sup> March 2017, accessed at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0005/222935/Report-in-respect-of-the-Conservative-and-Unionist-Party.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/222935/Report-in-respect-of-the-Conservative-and-Unionist-Party.pdf) on 22nd July 2020.

<sup>4</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* p.12 paragraphs 36-8

- 2.3. Second, (and in relation to question 9 below), some of these allegations in this report were related to alleged breaches of the Representation of the People Act. The Commission has no specific investigation powers it can use to enquire into potential breaches of the RPA rules, and enforcement of those rules falls to the police and prosecution authorities. In the absence of investigatory powers, the matter was referred to the Crown Prosecution Service, and as a result, some candidates were subject to police investigation, where arguably, there was unlikely to be any successful prosecution.

*Q3 What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?*

- 3.1. This question appears to be based on a presumption that the regulator itself is ineffective. That should be demonstrated rather than assumed. Surveys of electoral agents repeatedly demonstrate good levels of satisfaction with the Commission as a source of advice and guidance in respect of electoral administration and finance.<sup>5</sup>

*Q4 Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?*

- 4.1 No. There may be a case to be made that the Commission's role should be expanded rather than contracted. When it was established, the Commission played both an educational as well as a regulatory role. Early on in its life, this was re-focused to be more of a regulatory one.<sup>6</sup> In my view, this was probably an error. Support for, and the regulation of, elections and party finance is a critically important role. There is a need for a central body that oversees all of that. Notwithstanding, such a dual role can produce conflicts, whereby the Commission is responsible for investigating potential breaches of electoral law, while simultaneously seeking to enhance public confidence in the political process. The two are not necessarily irreconcilable, but the tensions must be recognized.

*Q5 Are there aspects of the rules which affect or detract from effective regulation of election finance?*

- 5.1 Yes. There are three aspects. 1) Poorly drafted or conceived legislation – especially in relation to referendums;<sup>7</sup> uncertainty over the legal boundaries in

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<sup>5</sup> Fisher, J. & Kumar, J. (2020) *Attitudes of Electoral Agents on the Administration of the 2019 General Election*. Report produced for the Electoral Commission; Fisher, J. & Sällberg, Y. (2017) *Attitudes of Electoral Agents on the Administration of the 2017 General Election*. Report Produced for the Electoral Commission.

<sup>6</sup> Fisher, J. (2006) *Research in support of the Committee's 11<sup>th</sup> Enquiry: Review of the Electoral Commission*. Report produced for the Committee on Standards in Public Life

<sup>7</sup> Fisher, J. & Rottweiler, B. (2016) *Research among permitted participants at the EU referendum*. Report Produced for the Electoral Commission

respect of national and candidate election expenditure;<sup>8</sup> and the failure to adopt fines of a sufficient size to effectively deter parties from breaches of the law.

*Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?*

- 6.1. 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.<sup>9</sup> Variations in such attitudes are generally driven by electoral success or failure, party difference and geography.<sup>10</sup>
- 6.2. The statistics cited above on convictions present an incomplete picture. Some convictions have failed because of weaknesses in the legislation. Notwithstanding, the number of prosecutions is arguably the wrong criterion to apply. The role of regulators is to deliver compliance, and in this case, healthy party competition. So, the principal measure of success should not be how many convictions there are, but how much compliance occurs.

*Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?*

- 7.1 No – they should be larger. A figure of £20,000 risks making the fine part of the 'costs of business' But, caution must be paid not to make the fine so large as to potentially threaten the entire operation of a party. This is a good example of the tension between the questions identified in question 1. Such a case occurred in Georgia, when in 2012, the regulator imposed the largest party finance sanction ever in a Council of Europe member state<sup>11</sup>

*Q8 Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?*

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<sup>8</sup> Fisher, J. (2018) 'Party Election Expenditure Election Effects: National vs. District Level and the Regulatory Challenges' in J. Mendilow & E. Phelippeau (eds) *Handbook of Political Party Funding*. Cheltenham: Edward Elgar. pp. 55-77; Fisher, J. (2020 Forthcoming) 'Party Finance in 2019 – Advantage Conservative Party' *Parliamentary Affairs: Britain Votes 2019*

<sup>9</sup> Fisher, J. & Kumar, J. (2020) *Attitudes of Electoral Agents on the Administration of the 2019 General Election*. Report produced for the Electoral Commission; Fisher, J. & Sällberg, Y. (2017) *Attitudes of Electoral Agents on the Administration of the 2017 General Election*. Report Produced for the Electoral Commission.

<sup>10</sup> Fisher, J. & Sällberg, Y. (2020) 'Electoral Integrity – The Winner Takes It All? Evidence from Three British General Elections' *British Journal of Politics & International Relations*. Published Online Early DOI: 10.1177/1369148120912668

<sup>11</sup> Fisher, J. & Klein, L. (2013) *Party Finance in Georgia. Recommendations for Reform – Final Report*. Report Produced for the Council of Europe

- 8.1 No. The bar for the CPS acting on a breach is justifiably high, while the level of fines available for civil sanctions is arguably too low. As a consequence, there is a risk of breaches not being adequately captured by either.

*Q9 In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?*

- 9.1. Based on past experience, this would be inadvisable. When the Commission was first established, the only sanctions available were those of criminal prosecution. There was a reluctance to invoke these resulting both in non-compliance going unpunished, and the behaviour of the regulated, cognisant of the fact that criminal prosecution is unlikely to be used.<sup>12</sup> A better solution is a wider range of civil sanctions being available to the Commission, with the most serious cases being referred to the Crown Prosecution Service.

*Q10 Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?*

- 10.1 Yes. The quality of electoral administration in the UK is uneven. There is evidence both in the UK and US that where electoral administration is devolved, the level of electoral integrity varies. In the UK, this is particularly the case in very urban areas.<sup>13</sup> Coupled with that, while the Electoral Commission collates candidates' election returns, these are rarely 100% complete.
- 10.2 Given the close relationship between national and candidate spending,<sup>14</sup> there is a good case for the enforcement of candidate spending coming under the umbrella of the Commission. The separation is an historic anachronism – while candidate spending has been regulated since 1883, national party spending has only been so since 2001.

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<sup>12</sup> Fisher, J. (2006) *Research in support of the Committee's 11<sup>th</sup> Enquiry: Review of the Electoral Commission*. Report produced for the Committee on Standards in Public Life pp.5-6.

<sup>13</sup> Fisher, J & Sällberg, Y. (2020) 'Electoral Integrity – The Winner Takes It All? Evidence from Three British General Elections' *British Journal of Politics & International Relations*. Published Online Early DOI: 10.1177/1369148120912668

<sup>14</sup> Fisher, J. (2015) 'Party Finance: The Death of the National Campaign?' *Parliamentary Affairs*. 68 (Suppl 1): 133-153; Fisher, J. (2018) 'Party Finance' *Parliamentary Affairs: Britain Votes 2017*. 71 (Issue suppl\_1): 171–188; Fisher, J. (2020, forthcoming) 'Party Finance in 2019 – Advantage Conservative Party' *Parliamentary Affairs: Britain Votes 2019*.



# Committee on Standards in Public Life review of electoral regulation: response to consultation

24 July 2020

## Overview

The Electoral Commission is the independent statutory body which oversees elections and referendums and has regulated political finance in the UK since 2000. We work to promote public confidence in the democratic process and ensure its integrity.

We welcome this review, which provides an important opportunity to learn from the experiences of campaigners, the police, prosecutors and the Commission, and identify recommendations to improve regulation of the UK's political finance laws.

The current regulatory framework broadly works well to support public confidence in the integrity of elections and referendums in the UK. There are generally high levels of compliance with the law, and the framework has been updated over time.

There is still room for significant improvement, however. This response sets out our suggested priorities for reform in three main areas:

- Important recommendations to modernise electoral law have already been made in government-commissioned reports, by parliamentary select committees and by the Commission. Accordingly there are opportunities for governments to achieve a more transparent, fair and sustainable regime that is clearer and more consistent for different campaigners, to support the democratic system across the UK.
- The current dual jurisdiction for the party and campaigner regime offences between the Commission and the police has created some uncertainties for those we regulate, and for voters. This can be readily addressed by the police and the Commission, with the CPS, bringing more transparency and clarity on which body will lead on the different prosecutory aspects of the offences regime. This would be a normal and common step for regulation and retain the most serious matters still being taken before the courts by the police and the CPS.
- The civil fines system administered by the Commission has supported compliance by parties and campaigners and has improved transparency of

political finance. A similar regime across election finance laws for candidates and agents would be fairer to them and can equally be administered by the Commission.

## Rationalising the current regulatory framework

This section responds to the Committee's questions 1, 4, 5 and 6

**Q1 What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.**

1. Political finance regulation in the UK is underpinned by **transparency**. The law requires timely and accurate reporting of information about campaigner funding and spending, to give voters confidence that funding comes from permissible sources and spending does not exceed the limits agreed by Parliament. We publish this information and use it to identify whether we need to take enforcement action against those who may have broken the law. There is still scope to improve transparency about the money that is spent on campaigning by political parties, candidates and other campaigners, particularly in relation to digital campaign activity.
2. The UK regime currently reflects two important principles less effectively: **proportionality** and **enforceability**. Political finance laws should be easy to understand and apply without imposing unnecessary bureaucracy on those involved. Enforcement tools should also be proportionate and unambiguous, with clear and effective sanctions for any breaches. Our response explains how and why this should be improved.
3. The law and the approach to regulation should also promote **sustainability** and **fairness** for campaigners. Campaigners need to be financially viable, so that parties can function effectively in government or in opposition, and so that voters can continue to receive relevant information and arguments from a broad range of perspectives. Future reforms should recognise the different types of campaigners and should not unduly restrict particular candidates, political parties or other campaigners from participating.

**Q4 Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?**

4. The Commission has two main statutory roles: overseeing the delivery of elections and electoral registration (and directly delivering most UK referendums); and regulating political finance.
5. This dual role enhances our institutional knowledge, and how we act as a regulator. We are able to regulate political finance more effectively because of our wider knowledge and experience of how elections are run. The UK's model is admired internationally and reflected in similar ways in certain countries,

including Australia and Canada for example, as best fits their particular needs. We also have a responsibility to advise the UK's governments and legislatures on improvements to the system, and importantly our dual role enables us to do this effectively.

**Q5 Are there aspects of the rules which affect or detract from effective regulation of election finance?**

6. The rules for regulating candidate spending and donations in the Representation of the People Act 1983 (RPA) are little changed from the late nineteenth century.
7. The additional regime established by the Political Parties, Elections and Referendums Act 2000 (PPERA) regulates the funding and spending of political parties and others, and has broadly worked well to improve transparency of political finance in the UK. Rationalising these two separate legal frameworks, including considering the balance between different spending limits and controls, would achieve a regime that is clearer and more consistent for different campaigners.
8. Based on our experience of monitoring compliance and enforcing the PERA rules since 2000, we have identified a number of areas where the framework could be improved. This includes recommendations from a wide-ranging [regulatory review](#) that we published in 2013, and a focused review of [digital campaign regulation](#) in 2018. Other reviews have also identified significant areas for improvement, including [Lord Hodgson's third party election campaigning review](#) in 2016, [the Law Commissions' recent review of electoral law](#) and Parliamentary select committee reports on [disinformation and 'fake news'](#) and [democracy and digital technologies](#). Our key recommendations are highlighted below in response to the Committee's questions.

**Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?**

9. The fact that the UK has an independent Electoral Commission that is accountable to legislators in all three Parliaments of the UK is a significant strength. A genuinely independent regulator is an essential element to ensure confidence in the integrity of the political finance regime. We have been accountable to the Speaker's Committee of the UK Parliament since 2000, and we are now also becoming accountable to the Scottish Parliament and the Senedd Cymru/Welsh Parliament. The Northern Ireland Assembly does not have legislative responsibility for political finance regulation.
10. Another strength is our decision to approach regulation by working to ensure compliance before an electoral event rather than having to take enforcement action afterwards. Our guidance on the law is welcomed by candidates and agents as clear and helpful, parties rely on it, and its value and authority has also been recognised by the courts. We are currently developing new ways of supporting regulated entities, which we explain below.

11. We have established our role as a specialist expert regulator, and also developed strong relationships with other regulators that work across the wider area of democracy and public life. We also use our expertise to work constructively with Ministers and civil servants from all of the UK's governments to ensure their policy priorities are effective and workable.
12. The Commission has 20 years' worth of knowledge and experience of election law and regulating the UK's political finance regime. We have ten years' experience of investigating and applying civil sanctions to offences under that regime. But the regime is still being tested, by digital and other new campaign techniques, by cases brought before the courts, and by the growing consequences of the historic development, outlined above and expanded below, of multiple regimes and dual regulatory responsibilities. Our regulated community generally has a culture of compliance, and works with us to find a way through these challenges. But with complex and out of date rules, not all those regulated welcome or accept the way the regime works or our application of it, and translate that view into criticism of us as the regulator.

## Improving regulation and enforcement of PPERA

This section responds to the Committee's questions 2, 3, 7, 8 and 9

**Q2 Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.**

13. There are several areas where improved powers would help the Commission to ensure compliance with political finance law. Our previous reviews of the regulatory framework identified a range of recommendations, and we highlight two priority areas below.
14. We would welcome the ability to resolve regulatory matters swiftly and effectively outside a formal investigation where one is not warranted. If we were able to obtain information outside a formal investigation (from social media companies or other suppliers to campaigners, for example), we could assess allegations more quickly and determine whether an investigation is in fact necessary.
15. We would also welcome explicit powers to share information with the police or other regulators such as the Information Commissioner, for example. We currently rely on general powers and data protection law which makes working with partner agencies complex and, at times, slow.
16. These improvements would help the Commission to respond more quickly and proportionately when dealing with allegations. This would be better for anyone who could be subject to investigation, for anyone making an allegation, and for the wider public in terms of reaching swift conclusions and providing timely reassurances.

**Q3 What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?**

17. We believe that a successful regulator should be able to rely more heavily on encouraging compliance to prevent wrong-doing than on taking enforcement action after wrong-doing has occurred. We support those who wish to comply, but there should be effective deterrent sanctions for those who do not.
18. Our current corporate plan, which was approved by the UK Parliament Speaker's Committee earlier this year, sets out two new actions to further develop our approach. First, we are investing in supporting compliance through a user-friendly online tool and a more responsive regulatory service. We will bring the high quality advice and guidance we already produce for parties, candidates and campaigners under a new strategy that offers new and impactful tools to support compliance with the law.
19. Second, to deter people from deliberately committing offences, and to make sure we can respond proportionately if they do, we will build the capacity to prosecute lower order suspected offences, while more serious offences will still be a matter for the police. We say more on this below.

**Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?**

20. The current maximum fine that has been available since 2009 as a civil penalty for offences under PPERA is not proportionate for the most serious instances. A maximum fine of £20,000 is unlikely to act as a deterrent for inadequate compliance by campaigners dealing with donations and spending which can involve tens of millions of pounds.
21. The maximum fine should be raised to give greater flexibility to respond proportionately to the range of offences we regulate. We only impose the maximum fine in serious cases that would impact on public confidence, such as a breach of spending limit or omissions of tens or hundreds of thousands of pounds of spending from a campaigner's report. But a maximum £20,000 fine is not a proportionate deterrent for serious offences, and does not incentivise all campaigners to invest in robust compliance procedures.
22. 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.
23. The maximum fine should be set at a credible level for all elections and referendums across the UK, as has been recommended by several Parliamentary select committees. The Scottish Parliament recently raised the maximum fine to £500,000 for Scottish referendums, and we believe this would

be a reasonable benchmark for the maximum fine in relation to the other parts of the UK's political finance regulations.

**Q8 Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?**

24. The civil sanctions regime works well, but it doesn't interact with the criminal prosecution regime. In practice the two regimes function separately. The civil sanctions regime is only in place for certain legal requirements and offences that apply to political parties, non-party campaigners and referendum campaigners. The police and criminal prosecution regime can be used for all election offences, and is the only enforcement option for offences involving deliberate dishonesty.
25. This means it is a shared jurisdiction system between the Commission and the police, working with the existing prosecution authorities: the Crown Prosecution Service (CPS) in England and Wales; the Crown Office and Procurator Fiscal Service in Scotland; and the Public Prosecution Service in Northern Ireland. We can ask the police to consider evidence we hold, or any police force can decide to investigate of its own accord most often following complaint by anyone to them. We maintain good working relationships with the main police bodies, the National Police Chiefs' Council (NPCC), the Metropolitan Police Service and the prosecution authorities. We also work with the NPCC and the City of London Police to provide support and training to a network of police specialists in election crimes
26. In practice, however, the overall system is not coherent and does not provide an effective deterrent. For offences which involve intent or recklessness, the only option is police investigation and then criminal prosecution. This means there is still an 'enforcement gap' for cases which are intentional but which are not, from a police perspective, in the public interest to take forward. Police forces' pressured resources are understandably commonly prioritised to both more traditional police work and importantly serious victim-based crimes.
27. The PPERA regime includes over 100 offences. To our knowledge, no prosecutions have been brought forward by the police or the CPS during the twenty years since 2000. Voters and campaigners should be able to know that non-compliance will be identified and dealt with proportionately and swiftly. The absence of any criminal prosecutions undermines the ability to deter or punish offences.

**Q9 In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?**

28. The UK Parliament gave the Commission powers to investigate breaches of PPERA in 2009 via the Political Parties and Elections Act. The civil sanctions regime was created in 2010 as an alternative to criminal prosecution. Ten years

on, we are building a prosecution function to address a remaining gap between the civil sanctions regime and the current criminal investigation and prosecution regime of the police.

29. We will consult on the factors we would consider when deciding whether to prosecute, and it will be a limited aspect of our future regulatory work. We will continue to use civil sanctions to deal with the vast majority of the offences that we find, and that were not reckless or deliberate. Putting prosecutions before the court would enable us to deal with lower complexity offences that involve recklessness or deliberate dishonesty and cannot be subject to the civil sanctions regime. For example, where a campaigner knowingly does not comply with an order for disclosure, or where repeated failures which have been dealt with using civil sanctions have not led to compliance. These cases would typically be brought before a magistrate's court rather than at crown court level.
30. It is normal and common for specialist regulators to bring prosecutions. They bring expertise to the subject matter; and having the power to prosecute enables the regulator to demonstrate the consequences of non-compliance. It also relieves police and public prosecutors of the burden of bringing offences to court which do not necessarily have identifiable victims and which understandably may not be a priority for them. Where more significant or complex criminal offences are suspected, prosecutions will rightly continue to be a matter for the police and the prosecution authorities.

## Improving regulation and enforcement of the RPA

### **Q10 Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?**

31. Expanding our role to include enforcement of candidate finance laws would bring more proportionate enforcement to this half of the political finance system, with benefits for campaigners, voters and public confidence. We have seen that the prospect of a swift civil fine has incentivised compliance by parties and campaigners and been a success in delivering transparency of political finance since 2010.
32. 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.
33. Police investigation and criminal prosecution would still be the only route for dealing with serious breaches with intent to break the rules. Criminal prosecutions for serious breaches committed by candidates and agents would be out of scope for the Commission, with these powers reserved to the Director of Public Prosecutions.

34. If the Commission had powers to investigate both halves of the party and candidate regime, we could provide more joined-up oversight over the co-existing regimes in the RPA and PPERA. We could look in more detail at whether campaigners correctly allocate spending according to the key test of whose electoral success is being promoted, and ensure that spending limits serve their purpose. The police could focus on the most serious breaches that involve intent to break the law, and we could ensure that there is a proportionate deterrent for all other breaches.
35. The overall result would be a simpler system to explain to voters and campaigners. It would still be a shared jurisdiction system between the regulator and the police, but the factors that determine who has the power or responsibility to address allegations would be much clearer than at present.



## **Response to the Committee on Standards in Public Life (CSPL) Public Consultation – Review of Electoral Regulation in the UK**

### **Organisation:**

Association of Electoral Administrators (AEA).

### **Summary of Organisation:**

Founded in 1987, the AEA is the professional and qualifications body of electoral administrators in the United Kingdom. It is non-governmental and non-partisan with just under 2,000 members, the majority of whom are employed by local authorities to provide electoral registration and election services. There are eleven regional branches of the Association covering the United Kingdom.

### **Consultation Questions:**

#### **The fundamental values that should underpin the regulation of election finance in the UK**

**Question 1:** What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.

*The regulatory remit of the Electoral Commission*

The Commission has a duty to:

- a) maintain registers of political parties and campaigners;
- b) publish financial returns from political parties and campaigners, covering spending at elections, statements of accounts and reports of donations and loans; and
- c) 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 and the public and conducts investigations.

1.1 We agree with the values of transparency, fairness and accountability as outlined above. In addition, consistency, efficiency, and integrity should also underpin both the regulation of donations and loans and campaign expenditure by candidates, political parties and non-party campaigners in the UK.

- Consistency - a consistency of approach for all offences in that they are investigated and enforced.

- Efficiency –regulations should be rationalised so they are simpler and less confusing as outlined in question five.
- Integrity – ensuring honesty and trust within electoral finance.

1.2 AEA members have a role to play in campaign expenditure as they collect in expense returns on behalf of Returning Officers (RO) or Proper Officers (PO). This process is paper-based and often requires much prompting to receive returns, primarily for local government elections.

1.3 We believe it is difficult for campaign spending to be properly scrutinised through a paper-based system and urge the UK Government to introduce an online returns process.

1.4 We would also ask for a review of the process relating to uncontested elections. Where there is no contest it seems a gross waste of council resources to continually chase for zero returns from people unfamiliar with the electoral expenses system.

**Question 2:** Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.

2.1 As mentioned in question one, we would suggest making the expenses process an online exercise will greatly assist the Electoral Commission in monitoring returns.

2.2 Powers relating to investigation are largely outside the AEA's remit. However, we would stress the importance of ensuring investigations are conducted by those with a detailed knowledge of electoral law and campaign finance.

**Question 3:** What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?

3.1 At UK parliamentary general elections, ROs are required to submit to the Electoral Commission copies of expenses returns made to them. The original returns are then held by the RO and made available for public inspection for a period of two years from submission at individual local authority level. There is no single place of inspection for the UK. The RO and their staff effectively act as intermediaries in the regulation of election finance, with their employing local authorities meeting the costs. Consideration should be given to the Electoral Commission providing a single location for inspecting returns in addition to them being made available by each local authority.

3.2 Consideration should also be given to developing an online facility for candidates to submit their election expenses returns, allowing both the candidate and agent to securely approve the final return. Such a system could also provide a means for inspecting returns, declarations, and associated papers.

3.3 In the UK Government's response to our [2015 post-election report](#), it highlighted that the development and maintenance of such an online platform would likely incur substantial cost. However, it was prepared to consider the recommendation further with the Electoral Commission, in consultation with key stakeholders such as electoral registration officers (EROs) and political parties.

3.4 In our [2017 post-election report](#) we expressed our disappointment as to the lack of progress on this issue, and made the following recommendation:

*A full and thorough review of the processes that deal with the recording of candidates' expenses should be undertaken, including consideration of the return to, and subsequent reporting of, expenses to Returning Officers and the possible provision of online reporting and inspection mechanisms.*

3.5 We have continued to raise this issue in subsequent post-election reports.

**Question 4:** Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?

4.1 The Electoral Commission has different roles relating to political parties and the administration of the electoral process:

- it is the regulator of political party funding in the UK to ensure the integrity and transparency of party and election finance;
- it registers political parties and maintains the register of political parties;
- it sets performance standards for electoral registration officers and returning officers;
- it produces guidance for elections and electoral registration; and
- national referendum responsibilities are its responsibility, including as the chief counting officer.

4.2 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 ROs, EROs 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.

4.3 It also provides essential guidance to candidates and political parties.

4.4 We would urge the Government to see the Electoral Commission's role as a holistic one, working across all aspects of electoral administration, rather than thinking each set of responsibilities detracts from the other elements of its work.

**Question 5:** Are there aspects of the rules which affect or detract from effective regulation of election finance?

5.1 We have recommended on a number of occasions, most recently in our [2019 statement](#), that:

*The UK Government should consider and progress the Law Commission recommendations as a matter of urgency including addressing the issues raised in our response to the inquiry by the Public Administration and Constitutional Affairs Committee.*

5.2 The Law Commission recommendations include bringing forward a single Electoral Administration Act to simplify electoral legislation. The complexity of current electoral law across so many separate pieces of legislation does not support the effective delivery of electoral services to voters. It makes the administration of electoral processes inefficient and introduces significant risk. We have passed the point where consolidating legislation will solve problems inherent in the electoral process. 'Root and branch' electoral reform and rewritten modernised legislation is urgently needed.

5.3 Likewise, there are separate sets of rules for election finance and spending for local government candidates, UK Parliamentary candidates, and political parties. These rules can be confusing, especially where there is overlap, and there are inconsistencies within the legislation. The different sets of rules need to be rationalised to make the process easier for everyone to follow.

5.4 In relation to enforcement, there are two different sets of legislation:

- Political Parties, Elections and Referendums Act 2000 (PPERA) which empowers the Electoral Commission to issue and enforce fines,
- Representation of the People Act 1983 (RPA) giving police the powers to investigate and prosecute.

5.5 Further details about the issues with this process are outlined in question six.

5.6 In addition, for certain elections like a UK parliamentary general election, ROs are required to publicise the availability of election expenses returns for inspection in local newspapers. In this digital age, the process seems archaic and incurs unnecessary expenditure when publishing the notice online seems far more appropriate and accessible. We first raised this issue in our [2016 post-election report](#) in the following recommendation:

*That the requirement on ROs to publish the availability for inspection of candidates' election expenses returns in local newspapers at all applicable polls be revoked and that ROs be placed under a new obligation to publicise their availability on the web.*

**Question 6:** What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?

6.1 The Electoral Commission has many strengths in that it has a specialist knowledge of election finance regulations and the conduct of elections. It has a full understanding of all electoral and regulatory processes including offences, and provides invaluable guidance to ROs, political parties and candidates on the various funding returns. The Commission's guidance, supporting resources and good practice is outstanding.

6.2 The Electoral Commission can only investigate and issue a fine to a political party which has committed an offence under PPERA. However, it does not have the powers to investigate and bring forward a candidate's criminal offence for prosecution as that comes under the RPA, and has to be enforced, investigated and prosecuted by the police. In some cases, prosecutions can sit across both sets of legislation. This is a serious disconnect.

6.3 Police and Crown Prosecution Service (CPS) resources are stretched dealing with more serious criminal offences, and both organisations lack specialist electoral knowledge. As a result, we believe there have been few, if any, criminal prosecutions over the years<sup>15</sup>. There is no deterrent to breaking the rules if the alleged offences are not taken forward to criminal prosecution. However, if the Electoral Commission was given statutory regulator powers, it could assist the police and CPS by bringing forward smaller criminal cases to magistrates' courts. An example of the type of case this could apply to is given in question eight.

***The enforcement regime for election finance offences***

The police may investigate offences under PPERA and RPA. In 2019, the police investigated 585 cases under the RPA; two led to a conviction and one individual was given a police caution. There have been no convictions for offences under PPERA.

The Electoral Commission has powers to investigate breaches of election finance rules and can issue fines (civil sanctions) up to a maximum of £20,000 for certain offences under PPERA.

**Question 7:** Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?

7.1 This question falls outside the scope of the AEA's work and, we therefore do not have an opinion to express.

**Question 8:** Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?

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<sup>15</sup> [Public Administration and Constitutional Affairs Committee](#) - 2 July 2020

8.1 As outlined in question three, following an election, candidates and their agents are required to submit an election expenses return and declaration to the RO or PO within 35 calendar days of the election result. It is an offence not to comply with these requirements. However, the CPS has continually failed to prosecute in cases where candidates and agents have failed to comply. This being the case, we would question whether the current legislation is relevant or effective.

8.2 In our previous post-election reports we have highlighted the need for an urgent review. If the requirement to make such returns is maintained in either its current or an adapted format, it must be properly enforced by the relevant authorities.

**Question 9:** In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?

9.1 As outlined in question eight, if the regulatory regime was strengthened to provide the Electoral Commission with additional powers, some criminal offences not presently taken forward by the police and CPS could be taken forward in magistrates' courts and act as a deterrent.

#### *Enforcement of candidate finance laws*

There are different regulatory frameworks for political parties and candidates. The Electoral Commission has the power to investigate and sanction political parties and non-party campaigners for breaches of the rules. Under the RPA, civil sanctions are not available for candidates and criminal prosecution is the only enforcement approach available.

**Question 10:** Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?

10.1 Yes. Their regulatory powers should be expanded to include the enforcement of candidate finance laws rather than having to rely on the police taking enforcement forward.

10.2 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.

## Quakers in Britain response to CSPL consultation on electoral regulation in the UK

1. [Quakers in Britain](#) is a national body working on behalf of 21,575 people who attend 475 Quaker meetings in Britain. Quakers have a testimony to equality, peace, truth, justice and simplicity. Our faith leads us to campaign on issues such as climate breakdown, peace, and migration.
2. We are submitting evidence to this consultation because we have been negatively affected by the regulation of elections in the UK and we believe our views and experience may be helpful for the Committee.

**Q1: What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.**

3. We agree that transparency, fairness and accountability are important values to underpin this area of regulation. 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.
4. 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.
5. The impact of this regulatory framework on civil society organisations is that they either (a) stop campaigning on behalf of those they help, to avoid the burden of recording and registering their expenditure, or (b) register, spend large amounts of resources on complying with the regulations, and then have fewer resources to spend on helping their beneficiaries.

**Q3 What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?**

6. We are grateful to the Electoral Commission for its work with civil society organisations so far to clarify how it is interpreting the Lobbying Act in relation to non-party campaigners. However there is still an enormous amount of confusion about what counts as regulated activity. This is having a chilling effect on civil society organisations, making them reluctant to campaign on behalf of the people they help, in case it turns out they are doing something wrong.
7. We have still been unable to obtain clarification on what would happen if an organisation broke the maximum threshold for spending in the run-up to a snap general election if the organisation did not know that there was going to be an election, and therefore that they were in a regulated period.
8. We believe the Electoral Commission could engage with civil society organisations more frequently and effectively to understand our challenges and improve its ways of working.

**Q5 Are there aspects of the rules which affect or detract from effective regulation of election finance?**

9. PPERA and the Lobbying Act state that if charities are campaigning in the 365 days before a Westminster election (the 'regulated period'), they must:
  - a. Register with the Electoral Commission if they are spending over a certain minimum threshold on 'regulated activity' (political campaigning)
  - b. Keep records of their expenditure and submit these to the Electoral Commission if they are spending over the minimum threshold on regulated activity.
  - c. Not spend over a maximum threshold on regulated activity.
10. If the dates of elections are fixed in advance, non-party campaigners know when they are in a regulated period. PPERA was introduced at a time when there had not been a snap election since 1979, and is therefore based on the presumption that elections will be held every 5 years. But with snap elections, the regulated period is enforced retrospectively. For example, an election was announced in October 2019 to take place on 12 December 2019. The regulated period then became 13 December 2018 to 12 December 2019.
11. There are two main problems with the regulatory framework set out by PPERA, aside from the aforementioned administrative burden:
  - a. It is impossible for any organisation to know whether they have crossed the minimum spending threshold for registration, or the upper spending limit for campaigning, during a potential regulated period. Trustees are therefore unable to mitigate the risk of non-compliance with PPERA and the Lobbying



Act at any given point. We have raised this issue with the Cabinet Office, the Electoral Commission, and the Equality and Human Rights Commission. It was also raised by Lord Hodgson of Astley Abbotts in his [government-commissioned review](#) of the legislation. Trustees and senior managers therefore become risk-averse in their attempts to ensure they comply with the law. They discourage their teams from campaigning at any time because of the risk that it could later be deemed 'regulated activity' during a 'regulated period'. Even if charities know they are in a regulated period, lack of clarity about what is permitted makes them reluctant to campaign. More information is available in the Sheila McKechnie Foundation's report, [The Chilling Reality](#), and their annual [campaigner surveys](#).

- b. Charities are disinclined to carry out joint campaigning because the expenditure on the joint campaign counts towards the individual charities' threshold. This reduces collaboration and creativity in the third sector, and decreases the likelihood that civil society voices will be heard by key decision-makers.

12. The Hodgson Review acknowledged the widely-held understanding that the 365 day regulated period was 'unnecessarily restrictive'. It recommended that the government reduce the regulated period to four months and clarify the regulatory position in the event of 'unexpected' general elections.

I am submitting this as a private citizen of the United Kingdom, and am not submitting on behalf of any organisation.

During my A-Levels I took Politics as one of my subjects, and I learnt much about the UK political system, and have been a politically engaged member of the voting public ever since. One thing that was highlighted to me during my Politics A-Level are the multitude of issues with the UK's Democracy, particularly when it comes to how elections work (voting system, funding etc...) these beliefs have since been reinforced by the events with scandals revolving around funding (Leave Campaign), and concerns about how social media is used for political campaigning.

When I refer to political campaigning I am referring to both traditional forms of campaigning, and social media campaigning. The questions set out do not really address the issues regarding social media, however; legislation is desperately needed in this area, both in transparency, use of targeting and in addressing deliberately misleading content.

In answering the questions below I will frequently be referring to the Electoral Reform Society's (ERS) Loop-hole List. Whilst I am not a member of the Society or represent it, I do agree with the issues the ERS have identified here.

Q1 What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.

#### *The regulatory remit of the Electoral Commission*

The Commission has a duty to:

1. maintain registers of political parties and campaigners;
2. publish financial returns from political parties and campaigners, covering spending at elections, statements of accounts and reports of donations and loans; and
3. 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 and the public and conducts investigations.

**Answer:** Under the current system it has been possible for parties to sidestep elements of regulation, such as the Brexit Party having received donations via Paypal with no country of origin info.<sup>16</sup> To combat this total transparency should be a priority, in doing so this will increase the fairness and accountability. For example, Political Party accounts should be

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<sup>16</sup> "Fair elections under threat? The Loop-hole List", Electoral Reform Society, Oct 2019, pg. 1. <https://www.electoral-reform.org.uk/wp-content/uploads/2019/10/Fair-elections-under-threat-The-Loop-hole-List-1.pdf>, last accessed 30th July 2020.

accessible to the Commission at all times, including outside of election periods. Over the last 5 years we have had 3 general elections. What this has highlighted is that the political parties have had to be election ready for almost the entirety of this time period, meaning that donations made outside of the campaign period could still be potentially used for campaigning just outside of when official campaigning period beings.<sup>17</sup>

**Q2** Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.

**Answer:** The short answer here is no. The commission lacks powers to obtain information outside of a formal investigation, the commission should be in a position to obtain information constantly to act as a watchdog. Also: "As noted by FairVote UK and the ERS, the current Electoral Commission sanctions for wrongdoing can be viewed as the 'cost of doing business'. Leveraging maximum fines of £20,000 after campaigns have finished, in relation to spending in the millions, constitutes a major flaw in the legal framework."<sup>18</sup> Having the Commission be able to levy a fine in direct proportion to the misspending or to the total amount spent on campaigning may be a more effective deterrent.

**Q3** What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?

**Answer:** The Electoral Commission should have oversight over party finances at all times. Any and all donations could be made through a single platform to improve transparency concerning where and who donations come from. Alternatively, outside of Campaign periods registers Political Parties should send the Commission Quarterly statements showing their funding, and parties are held responsible for the traceability of donations they receive, if it can't be traced, the party should not accept the donation. When an election is called all parties should submit a statement of the party's finances, after this the parties finances should be reported to the Commission on a weekly basis, with any finances diverted to campaigning highlighted, this should be for both local and national campaigning.

**Q4** Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?

**Answer:** The role of the Electoral Commission should also extend to a wider regulation of political finances, and finances diverted to political advertising campaigns outside of election campaigning periods. Please see the answer to Q1 and Q5 for more info on why this should be the case.

**Q5** Are there aspects of the rules which affect or detract from effective regulation of election finance?

**Answer:** The Commission only having the ability to scrutinise spending during official campaigning, this is particularly relevant when parties are spending their time on standby for

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<sup>17</sup> "Fair elections...", ERS, Oct 2019, pg. 3.

<sup>18</sup> "Fair elections...", ERS, Oct 2019, pg. 3.

having an election at any time (see period between 2015-2020). Having the Commission able to levy a fine in direct proportion to the misspending or to the total amount spent on campaigning may be a more effective deterrent than a base fine of £20,000 when campaign spending might be in the millions.

Cassie Stains from Full Fact has highlighted that what happens between elections and before referendums can be as important as during the campaigning period, and the harm this can do included economic damage, as well as abuse of power.<sup>19</sup>

Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?

*The enforcement regime for election finance offences*

The police may investigate offences under PPERA and RPA. In 2019, the police investigated 585 cases under the RPA; two led to a conviction and one individual was given a police caution. There have been no convictions for offences under PPERA.

The Electoral Commission has powers to investigate breaches of election finance rules and can issue fines (civil sanctions) up to a maximum of £20,000 for certain offences under PPERA.

**Answer:** As previously stated, the Commission's lack of powers to act as a watchdog outside of official campaigning periods means that it cannot effectively regulate advertising campaigns that may be taking place outside of campaigning periods, but may have a direct effect on the electorate when it comes to casting their votes.

In addition to this, the powers of the Commission are not nearly far reaching enough to act as an effective deterrent. For parties who are well funded, a fine of £20,000, levied after an election, can simply be budgeted into the costs of running an election campaign that costs millions. If the Commission had more power to monitor parties finances they could hit parties who break the rules with the fines during campaigning this would be another deterrent from breaking the rules.

Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?

**Answer:** No, £20,000 is not nearly enough to constitute a serious deterrent. Having the Commission able to levy a fine in direct proportion to the misspending or to the total amount spent on campaigning may be a more effective deterrent than a base fine of £20,000 when campaign spending might be in the millions.

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<sup>19</sup> "Increasing the Resilience of our Democracy." Cassie Staines, pg 40.  
<https://www.electoral-reform.org.uk/wp-content/uploads/2019/02/Reining-in-the-Political-Wild-West-Campaign-Rules-for-the-21st-Century.pdf> last accessed 29th July 2020.

Q8 Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?

No, the crux of the issue here is that the police may be overly cautious due to "political sensitivities." The Commission should have the powers to bring wrongdoers to court by itself. The following from the ERS's report sums up why this the current system with the police is ineffective: " In the case of the Metropolitan police, concerns over 'political sensitivities' over Brexit may have undermined the ability of the police to investigate criminal allegations on what is a live political issue – perhaps understandably given public concern over the need for the police to focus on other crimes."<sup>20</sup>

Q9 In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?

#### *Enforcement of candidate finance laws*

There are different regulatory frameworks for political parties and candidates. The Electoral Commission has the power to investigate and sanction political parties and non-party campaigners for breaches of the rules. Under the RPA, civil sanctions are not available for candidates and criminal prosecution is the only enforcement approach available.

**Answer:** The Commission's powers to prosecute wrongdoers could be a stronger deterrent, the negative press surrounding a court case would in itself be a strong deterrent. Given the seriousness of breaking rules in elections, the consequences for breaking the rules should be stronger. This could include triggering by-elections if spending in a particular seat may have given a winning candidate an unfair advantage.

Q10 Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?

Yes, this should be part of the package of the Commissions powers to regulate finances during elections. In cases of the most serious breaches candidates should be prosecuted and have their seats removed, triggering by-elections, thereby negating any advantage the candidate may have given themselves in breaking the rules. This would also give the parties a real cause to self-regulate the spending of their candidates.

#### Bibliography:

"Fair elections under threat? The Loophole List", Electoral Reform Society, Oct 2019, pg. 1. <https://www.electoral-reform.org.uk/wp-content/uploads/2019/10/Fair-elections-under-threat-The-Loophole-List-1.pdf>, last accessed 30th July 2020.

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<sup>20</sup> "Fair elections...", ERS, Oct 2019, pg. 3.

“Increasing the Resilience of our Democracy.” Cassie Staines, pg 40.  
<https://www.electoral-reform.org.uk/wp-content/uploads/2019/02/Reining-in-the-Political-Wild-West-Campaign-Rules-for-the-21st-Century.pdf> last accessed 29th July 2020.

**Submission to the Committee on Standards in Public Life**

**About Privacy International**

Privacy International (PI) is a leading UK registered charity advocating for strong national, regional, and international laws that protect the right to privacy around the world. Founded in 1990 and based in London, PI challenges overreaching state and corporate surveillance so that people everywhere can have greater security and freedom through greater personal privacy.

Within its range of activities, PI investigates how peoples' personal data is generated and exploited, and how it can be protected through legal and technological frameworks.

PI employs technologists, investigators, policy experts, and lawyers, who work together to understand the technical underpinnings of emerging technology and to consider how existing legal definitions and frameworks map onto such technology.

PI is frequently called upon to give expert evidence to Parliamentary and Governmental committees around the world on privacy issues and has advised, and reported to, among others, the Parliament of the United Kingdom, the Council of Europe, the European Parliament, the Organisation for Economic Co-operation and Development, and the United Nations.

**Q1     What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.**

**Transparency**

Transparency is key in the political campaigning environment. Though an established principle of public life, the articulation of transparency or openness in the Nolan Principles does not sufficiently address the reality of elections in the modern age.

Political campaigns around the world and in the UK have turned into sophisticated data operations. As revealed by the Cambridge Analytica scandal, 'invisible' or 'hidden' mechanisms in online political advertising have a growing impact on electoral processes and outcomes. Through profiling, micro-targeting, and powerful machine learning, potential voters can be targeted with finely-honed messages tailored to their interests, views, or personality traits. Digital advertising accounted for 42.8% of campaign spending in the UK in

2017<sup>21</sup> – the most recent year for which data exists – yet very little is known about the systems behind political ads.

Privacy International has documented how online targeted advertising is facilitated by a complex and opaque ecosystem that includes AdTech companies<sup>22</sup>, data brokers<sup>23</sup>, and other third-party companies that track people on websites and apps and combine this data with other online and offline information. Profiling and data-driven targeting techniques<sup>24</sup> used by the broader digital advertising industry are increasingly deployed in the political campaigning environment, with various companies offering specific services tailored to the election context. In the UK, the Information Commissioner's report *Democracy Disrupted?*<sup>25</sup> and updates to the DCMS Committee in July<sup>26</sup> and November<sup>27</sup> 2018 reference a number of such companies. 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.

It is unclear from where political parties and the companies they employ to run digital political campaigns are getting their data. In October 2019, PI was one of six organisations which jointly wrote to all the political parties in the UK to ask which companies they were working with and where they got data from. We were very concerned that we received little to no response.<sup>28</sup>

Privacy International believes that the obligation of transparency should not merely be applied to the Electoral Commission as a public body, but should extend to those regulated by the Electoral Commission and relevant third parties in the interest of free and fair elections, and in line with the transparency obligations imposed by the EU General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

Companies and political parties are subject, among others, to the principles of transparency and accountability, as enshrined in the GDPR, and moreover need to abide by several obligations, such as those that oblige them to provide information to individuals (data subjects) with regard to their data practices (Article 13 and 14 of GDPR). Data protection laws also oblige them to facilitate the effective exercise of individuals' data protection rights, such as their right to access their data, their right to have their data deleted, or the right to restrict the processing. To date, there is a long way to go in terms of their

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<sup>21</sup> <https://www.electoralcommission.org.uk/cy/node/534>

<sup>22</sup> <https://privacyinternational.org/learn/adtech>

<sup>23</sup> <https://privacyinternational.org/advocacy/2434/why-weve-filed-complaints-against-companies-most-people-have-never-heard-and-what>

<sup>24</sup> <https://privacyinternational.org/news-analysis/3735/why-were-concerned-about-profiling-and-micro-targeting-elections>

<sup>25</sup> <https://ico.org.uk/media/action-weve-taken/2259369/democracy-disrupted-110718.pdf>

<sup>26</sup> <https://ico.org.uk/media/action-weve-taken/2259371/investigation-into-data-analytics-for-political-purposes-update.pdf>

<sup>27</sup> <https://ico.org.uk/media/action-weve-taken/2260271/investigation-into-the-use-of-data-analytics-in-political-campaigns-final-20181105.pdf>

<sup>28</sup> <https://privacyinternational.org/sites/default/files/2019-10/Letter-to-Political-Parties.pdf>



compliance with these provisions, as Privacy International highlighted in submissions to the ICO<sup>29</sup>. To the extent that political parties are answerable to the Electoral Commission, the latter is uniquely placed to improve transparency standards. The Electoral Commission should hold all actors in the electoral ecosystem, and in particular political parties, and platforms facilitating online campaigning, to high transparency standards in its monitoring activities. Privacy International makes more detailed suggestions with regard to the nature of such transparency in relation to the financial aspects of digital campaigning in response to Q3.

## **Fairness**

Free and fair elections are not only the linchpin of democracy, but an obligation under international law.<sup>30</sup> However, elections can hardly be said to be fair in an age where online campaigning is rampant and consequential,<sup>31</sup> and voters resent the data-driven mechanisms used therein. Only this year, in a poll carried out by Privacy International and Open Rights Group, half of respondents opposed the use of targeted ads during elections.<sup>32</sup>

Data protection principles provide a yardstick by which fairness in elections can be measured. But the way in which data is increasingly used in digital campaigning can hardly be said to be fair in circumstances where individuals to whom that data pertains are unaware of the full extent of its use, and many of those who are aware of it find it unacceptable.

Voters should know how their data is being used at every stage of political campaigning. From collection - what data is being gathered about voters (e.g. whether they've voted before, their phone number, email or online identifiers), from where (e.g. voter lists, data brokers or social media), to how voters are profiled (what data is inferred about us, how and why), and how and why voters are being targeted (e.g. based on our demographics, interests or other criteria). Voters should be given total insight into the process that puts them on specific target lists. If political parties and companies are profiling a voter a certain way, there are underlying assumptions being made about that voter based on their data. And unless voters know exactly what these entities base their targeting on, then the fairness of the whole process is questionable. For these reasons, it also needs to be clear who is involved and how – from the political groups to the companies they contract with.

The Electoral Commission could help to maximise fairness in online digital campaigning by taking into account data protection law in the interpretation of its mandate and regulatory activities.

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<sup>29</sup> <https://privacyinternational.org/advocacy/2426/our-complaints-against-acxiom-criteo-equifax-experian-oracle-quantcast-tapad>

<sup>30</sup> Article 21 of the Universal Declaration of Human Rights (UDHR); Article 25 of the International Covenant on Civil and Political Rights (ICCPR); Article 3 of the First Protocol to the European Convention on Human Rights (ECHR).

<sup>31</sup> [https://edps.europa.eu/sites/edp/files/publication/18-03-19\\_online\\_manipulation\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf)

<sup>32</sup> <https://privacyinternational.org/video/3956/public-opinion-about-data-driven-election-campaigning-uk>

Further, the above described transparency and fairness requirements should be applied beyond the strict electoral period – known as the regulated period in electoral law<sup>33</sup> –, and at all times in the Electoral Commission’s exercise of its powers.

**Q2 Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission’s role in a) monitoring and b) investigating those it regulates.**

The Electoral Commission does not have the powers it needs to accomplish its general functions. Under s.6(1)(f) PPERA 2000, the Electoral Commission is tasked with keeping under review political advertising in the broadcast and other electronic media. However, it is unclear how the Electoral Commission is able to carry out this reviewing function in the absence of a single, standardised source collating all political advertising. While some online platforms provide ads databases containing political ads (Facebook’s Ad Library, Google’s Transparency Report, etc), each online platform defines political ads differently, if at all.<sup>34</sup>

In order to properly meet its statutory duties, it is essential for the Electoral Commission to be able to keep a standardised and centralised database of all campaign adverts.<sup>35</sup> For this purpose, new powers are necessary for the Electoral Commission to be able to compel political parties, candidates and other political actors to submit to it all political advertisements, whether off-line or online, along with a description of where the advertisement appeared, for how long, and to whom it was targeted. This would in turn make it easier for the Electoral Commission to enforce spending rules, and for researchers or members of the public to be able to conveniently consult ads.

**Q3 What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?**

As has been stated in the answers to previous questions, the Electoral Commission could stand to improve its role as a regulator.

### **Heightened campaign spending reporting requirements**

As outlined in the answer to Q1, the online political campaigning environment involves multiple processes and actors which are often invisible, and therefore escape scrutiny and oversight. Recent and ongoing investigations have shown how the traditional rules of campaign financing fail to regulate and shed a light on these new forms of online fundraising and expenditures. In its 2018 report on online manipulation and personal data, the European Data Protection Supervisor noted that “the reported spending on campaign materials may not provide sufficient details about spending on digital advertising and associated services, e.g. targeted ads on social media, analytics services, creation of voter

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<sup>33</sup> <https://www.electoralcommission.org.uk/non-party-campaigners-where-start/does-your-campaign-activity-meet-purpose-test/purpose-test-regulated-period-early-uk-parliamentary-general-election>

<sup>34</sup> [https://privacyinternational.org/sites/default/files/2019-10/cop-2019\\_0.pdf](https://privacyinternational.org/sites/default/files/2019-10/cop-2019_0.pdf)

<sup>35</sup> <https://fairvote.uk/wp-content/uploads/2020/01/Defending-our-Democracy-in-the-Digital-Age-APPG-ECT-Report-Jan-2020.pdf>

databases, engagement with data brokers.”<sup>36</sup> In this regard we note that the Electoral Commission has also called for changes in the laws to increase transparency for voters in digital campaigning, including on spend.<sup>37</sup>

Privacy International recommends that campaign finance law, and the Electoral Commission, require timely online reporting on spending on online campaigning and on the funding obtained online. The information should be sufficiently granular and detailed to promote transparency and accountability. This should include provisions to require political parties and other political actors to make publicly available (e.g. as a minimum, prominently on their websites) information on their expenditure for online activities, including paid online political advertisements and communications. This should include information regarding which third parties, if any, have assisted the political actors with their online activities, including the amount spent on each third party’s services.<sup>38</sup>

While the Electoral Commission’s search register provides some information as to the services contracted by political parties and candidates, it does not go far enough. Currently, the Electoral Commission’s search register does not specify whether advertising spend relates to online or off-line political advertising. Furthermore, there is some inconsistency as to the labelling of expense types: expenses classed as “advertising” and “market research/canvassing” could overlap in the online context. According to the Electoral Commission’s Draft Code of Practice on qualifying expenses for political parties<sup>39</sup>, the “advertising” spend category includes the cost of use or hire of a service to prepare, produce or facilitate the production and dissemination of digital or electronic advertising material. Conversely, “market research or canvassing” includes the use of data analytics to facilitate market research or canvassing. At present, because the production of electronic advertising material is so intertwined with data analytics (e.g. micro-targeting), market/canvassing expenses may easily be accounted for under the advertising category, and vice-versa.

To ensure effective monitoring, the disclosure of campaign expenditure should be broken down into meaningful categories such as amount spent on types of content on each social media platform, on data sources, and how these were used e.g. which targeting techniques were deployed. The Electoral Commission should similarly require the disclosure of information on groups that support political campaigns, yet are not officially associated with the campaign, and disclosure of campaign expenditure for online activities, including paid online political advertisements and communications.

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<sup>36</sup> [https://edps.europa.eu/sites/edp/files/publication/18-03-19\\_online\\_manipulation\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf)

<sup>37</sup> [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf)

<sup>38</sup> [https://privacyinternational.org/sites/default/files/2019-07/19.07.26%20APPG%20Submission\\_cover.pdf](https://privacyinternational.org/sites/default/files/2019-07/19.07.26%20APPG%20Submission_cover.pdf)

<sup>39</sup> <https://www.electoralcommission.org.uk/sites/default/files/2020-04/Code%20of%20practice%20Political%20Parties%20UK%20April%202020.pdf>

## **Online repository of all political ads**

In line with the increased need for transparency (as outlined in the answer to Q1), Privacy International supports the creation by the Electoral Commission of an online repository of all political ads. Solutions must enable meaningful transparency for users as well as enable effective scrutiny by researchers and civil society.

To do so, the Electoral Commission should compel political parties and other political actors to provide timely information on expenditure for online activities, including paid online political advertisements and communications. This should include information regarding companies assisting in online activities, including the amount spent on each companies' services. On the basis of the information received, the Electoral Commission should create a single, easily searchable and machine-readable, online database of all online and offline political advertisements (including any funded content) produced, with detailed reports of spend, reach and so on, which can then be cross-referenced against publicly available records held by online platforms themselves.

The Electoral Commission should also consider compelling online platforms to standardise the transparency required with regard to political advertisements, including the information described in the new section on digital imprints.

## **Digital imprints on ads**

Transparency is also required for people as and when they see content, so as well as creating an online repository for political ads, the Electoral Commission should compel political parties and online platforms to label online campaign content as such to ensure that it is clear that something is campaign content, including information of who is behind the content (i.e. who paid for it), who created it, and why it is being targeted at an individual and on what basis. We note that the Electoral Commission has called for digital imprints to be included on online campaigning material since 2003.<sup>40</sup>

## **Regulation of data-driven processes behind political ad targeting**

In close coordination with the ICO, and with the benefit of a public consultation process, the Electoral Commission should work towards developing binding guidelines specifying the ways in which political campaigns are and are not allowed to use data to target voters.

## **Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?**

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<sup>40</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>

Insofar as the solutions outlined in answer to Q3 are not implemented, the Electoral Commission will not be able to comprehensively carry out its duties under s.6(1)(f) PPERA 2000. This would constitute a weakness in its regulation of election finance.

**Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?**

No. Fines for electoral offences should be unlimited rather than subjected to a maximum of £20,000, an amount with little deterring potential.

Approaching this issue from a data protection perspective, previous experience tells us that weak enforcement powers create a culture of non-compliance. The previous maximum fine of £500,000 under the Data Protection Act 1998 did not appear to act as a significant deterrent. For this reason, Data Protection Authorities were further empowered under GDPR to fine up to, the greater of €20million or 4% of global annual turnover. The Electoral Commission could no doubt benefit from being similarly empowered, and we note that the Commission has previously expressed the insufficiency of the £20,000 maximum fine.<sup>41</sup>

However, monetary penalties should not be the only sanction and consideration should be given to what type of behaviour can be prohibited as part of a sanction.

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<sup>41</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>