

Committee on Standards in Public Life

Review of electoral regulation

Written evidence

Submissions 52 - 54

Submission	Name
52	Metropolitan Police Service
53	Crown Office and Procurator Fiscal Service
54	Labour Party

The Committee also received and accepted as evidence a submission from Stuart Coster in relation to Q10 of the consultation: "Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?"

***METROPOLITAN POLICE SERVICE:
Response to the
Committee on Standards in Public Life
consultation on the review of the
regulation of election finance in the
UK***

Introduction

1. The Metropolitan Police Service (MPS) welcomes this opportunity to contribute to the Committee on Standards in Public Life (CSPL) review of the regulation of election finance.
2. The MPS Special Enquiry Team is responsible for assessing and reviewing allegations relating to offences committed by those in public office where the matter relates to the discharge of their duties as a public official. As part of these responsibilities, since 2014 the Special Enquiry Team has been the MPS Single Point of Contact (SPOC) for Electoral Fraud and Malpractice allegations, the majority of which relate to the Representation of People Act 1983 (RPA) and the Political Parties Elections and Referendums Act 2000 (PPERA).
3. Whilst the respective MPS Basic Command Units (BCU's) maintain responsibility for the local policing of elections, including policing polling stations and community issues, the Special Enquiry Team's role is to investigate all allegations of electoral fraud and malpractice across the 32 boroughs within London. It also provides specialist, focussed advice to all Basic Command Units with regard to guidance, as well as close working with the Electoral Commission (EC), Crown Prosecution Service (CPS) and local

authorities in a proactive and preventative capacity to ensure free and fair elections.

4. All election allegations made to the MPS are assessed and recorded promptly. The overwhelming majority of these allegations are not in fact crimes, however every one is assessed thoroughly by the Special Enquiry Team. Some may be closed quickly if it is established that there are no criminal offences, some may be referred to the Electoral Commission if they are the relevant regulating authority and others may be referred to another force if the allegation does not relate to the Metropolitan Police District (MPD). Others may require further investigation such as obtaining witness statements or interviewing suspects. Where appropriate CPS advice is then sought from the specialist prosecutors within the CPS Special Crime and Counter Terrorism Division (SCCTD).

Response to Consultation Questions:

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.

5. The MPS is committed to bringing offenders to justice, ensuring all politicians, parties and those in positions of public authority are held to account where there is evidence they have committed a criminal offence, whatever their political/public position or sphere of influence.
6. The MPS therefore supports the idea that electoral law and its enforcement should be as simple and coherent a regime as possible. The investigation into any breaches of legislation must be open and transparent.
7. This will aid public understanding and maintain confidence in the integrity of the electoral process, which is the bedrock of our democracy.
8. The MPS would also echo the view expressed by the CPS in their response paper that “*regulations and legislation should be clear and as user friendly as*

possible to ensure a clear understanding of the rules, so that those engaged in electoral processes fully understand their obligations”.

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.

9. Whilst this may be a question best answered by the Electoral Commission themselves, the MPS does note that the EC have stated in their response paper that they would “welcome explicit powers to share information with the police” as they “currently rely on general powers and data protection law which makes working with partner agencies complex and, at times slow”. The MPS would also support this position.

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

10. The MPS agrees with the Electoral Commission’s statement in their response paper that the EC “should rely more heavily on encouraging compliance to prevent wrong doing than on taking enforcement action”. From the police perspective, proactively preventing electoral offences through consistent advice and clear guidance is always preferable to reactively investigating such offences after the alleged wrongdoing has taken place.

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

11. The MPS can offer no specific comment in this area.

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

12. The current complexity of having two sets of rules (PPERA and RPA) and two regimes (civil and criminal) which are regulated in different ways and under different time limits may affect or detract from the effective regulation of election finance. As is outlined at point 6 above, the MPS therefore strongly advocates having as clear and coherent a regime as is possible for the

regulation of election finance; this would ensure that all those involved in electoral processes can easily understand their obligations and the wider public can have confidence that election finance is being regulated effectively.

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

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

14. The MPS considers the independence of the Electoral Commission to be a strength. In the same way that the MPS is based on the principle of policing without 'fear or favour', it is important that the EC is an independent regulator, accountable to Parliament rather than to Government.
15. PPERA is complex and the EC has specialist knowledge and expertise in this area.

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

16. Given the large sums potentially spent on election campaigns, it is perhaps understandable that the public perception may be that a fine of £20,000 will not act as a sufficient deterrent to offending given the potential results at stake (winning the election/referendum).

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?

17. Firstly, it is important to understand that the police are not prosecutors. The police gather the evidence and present our findings to the CPS who in turn then apply the criminal prosecution threshold test and will only bring a criminal case to court if they consider there is sufficient evidence. Every CPS charging decision is based on the same two-stage test in the Code for Crown Prosecutors, namely:

- *Does the evidence provide a realistic prospect of conviction? That means, having heard the evidence, is a court more likely than not to find the defendant guilty? And;*
- *Is it in the public interest to prosecute? That means asking questions including how serious the offence is, the harm caused to the victim, the impact on communities and whether prosecution is a proportionate response.*

18. Section 181 RPA makes the distinction between the role of the police and the role of the CPS even more explicit in relation to the prosecution of election offences. Section 181(1) RPA imposes a duty on the Director of Public Prosecutions (DPP) to *“make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require where information is given to him that any offence under the Act has been committed”*. There is thus discretion for the CPS whether to request police enquiries or not. All allegations of breaches of RPA must be referred to the CPS Special Crime and Counter Terrorism Division (SCCTD) who are responsible for all charging decisions, including cautions.

19. The second key point to make is that the referral of PPERA matters from the Electoral Commission to the police is relatively rare as the EC tends to deal with the vast majority of PPERA offences via their own civil sanctions regime. To date the MPS has received only four (4) formal referrals from the EC relating to election finance offences under PPERA and a further two (2) referrals from the EC relating to election finance offences under RPA.

20. Early Investigative Advice files were submitted by the MPS to the CPS in relation to all these referrals. Having specialist lawyers from the CPS SCCTD review these referrals ensured a consistent approach to each of the allegations. In each case, as a result of the CPS initial advice, the decision was then taken by the MPS that no further action should be taken.

21. Whilst the individual circumstances of each of these cases were all different, broadly speaking the main reasons for taking no further action is that the criminal offences require a high standard of proof (beyond reasonable doubt), and with the criminal offences under PPERA being *mens rea* offences, they are often the most challenging to prove (i.e. proving 'guilty mind'/guilty intent). For example, the Section 83 (3) PPERA and Section 123(4) PPERA offences makes a requirement to evidence not only that a return was inaccurate but also that the person knew or was aware of a risk that it was inaccurate. It is this second strand that in our experience may be the most difficult to evidence, i.e. proving what constitutes 'recklessness' in respect of signing the declaration on behalf of a party/campaign. Therefore, whilst it may be possible to show technical breaches or discrepancies in the respective returns, these may not automatically follow with a criminal sanction.
22. Perceptions about criminal prosecutions for election finance offences may be further confused by the use of the two regimes (civil and criminal) to sanction connected conduct. Whilst that perception does not preclude the police from investigating or the CPS from bringing cases to court, it may create a false impression that the police are not being effective or robust when the individuals/parties subject of such allegations have already been fined under the Electoral Commission's civil sanction regime.
23. The criminal law is reserved for those matters where there is persuasive evidence of guilty intent (*mens rea*) and which the state chooses to punish by means of criminal penalties. These are of a different order of seriousness than civil/regulatory penalties such as those available to the Electoral Commission under PPERA. The latter are used where there is no such evidence of guilty intent but where an infringement of rules (whether accidental or not) needs to be marked and deterred but not with the same force that results in a criminal conviction and a criminal penalty.

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?

24. The MPS considers that the regulatory regime would be strengthened by the Electoral Commission taking on responsibility to *investigate* all PPERA offences in the first instance. There are only a small number of breaches

where the EC currently cannot deal with them by way of civil sanction and it would be more beneficial to have just one organisation dealing with all breaches of PPERA. The police are not the appropriate organisation to deal with the civil sanctions associated with electoral finances.

25. The experience of the last 20 years (very few prosecutions) and the above logic now point, we suggest, towards serious consideration being given to the benefits of having a single agency (the Electoral Commission) moving to become an expert 'Election Finance Regulator and Investigator' with responsibility for both regulatory/civil sanctions and the investigation of criminal offences as they relate to all election finance under all legislation. It is appreciated that such a change may require some amendment of the law.
26. The MPS suggests that if there were one election finance regulator with a range of civil and criminal investigatory powers at its disposal it could then choose the most appropriate and proportionate according to the precise circumstances of each case. This would also avoid the 'double jeopardy/abuse of process' risks which exist with the current enforcement regime already referred to at point 13 above.
27. An additional benefit in having the Electoral Commission as a single regulator is that it would simplify the current situation, which has the potential for any one of 43 police forces to be involved in election finance investigations.
28. Any reform should be incremental and the MPS does not therefore suggest that the Electoral Commission should move immediately to bringing its own prosecutions. It takes time to develop expertise in the investigation of criminal offences such as gathering all necessary evidence or CPIA obligations. In addition, there are benefits in maintaining the current situation of the impartiality and objectivity of a separate prosecutor. The MPS strongly values the CPS in providing that independent oversight for our criminal investigations and considers that the EC would also benefit from the CPS' specialist role as prosecutor being retained for the foreseeable future.

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

29. The current different legislative frameworks for party/non-party campaigners on the one hand and candidates on the other does potentially

present issues due to the differing legislative timeframes under RPA and PPERA.

30. Under the two regimes, candidates are required to submit their expenses returns within different periods. For the candidates these are within a month to 35 days of the election whilst for the party/campaigners the time limits are significantly longer, between 3 and 6 months.
31. In the MPS's experience, the majority of allegations made to the police in relation to election finance and candidate spending are usually made by one of two sources, either (a) rival candidates or (b) interested members of the public. There is a potential issue here, where possible discrepancies with a candidate's spending return (which is under RPA and therefore investigated by the police) do not come to light until the corresponding party return (which is under PPERA and therefore investigated by the Electoral Commission) has been submitted and reviewed some months later.
32. In particular, notional spending, i.e. the splitting of expenses between a candidate and a party, is often contentious as it is largely subjective and may lead to disputes as to how much should be apportioned to each return.
33. This is further exacerbated by the 12 month time limit for prosecution under RPA, albeit this may be extended for up to a further 12 months under a Section 176 RPA application to the magistrates court (in exceptional circumstances).
34. Having the Electoral Commission's regulatory powers expanded to include the enforcement of the candidate finance laws (which are currently under RPA) would have considerable benefits in terms of simplicity, coherence and public confidence. There would be one election finance regulator for both candidates and parties/campaigns and it would have a range of civil and criminal investigatory powers at its disposal.

CONCLUSIONS:

35. Whilst the MPS considers that the Electoral Commission-Police-CPS relationship under the current system is a positive one, we recognise that this review is a good opportunity for all stakeholders to reflect on how the system can be improved.

36. Given the current complexity of having two sets of rules (PPERA and RPA) and two regimes (civil and criminal) which are regulated in different ways, we would welcome change with both RPA and PPERA being updated to reflect modern election campaign activities and how these activities are funded.
37. As part of this change, the MPS suggests that the Electoral Commission could be given the powers to investigate all election finance allegations, not only those under PPERA but also those relating to candidates (currently under RPA) although it is accepted it may require legislative changes in order for this to be achieved.
38. If the Electoral Commission had both civil/regulatory and criminal investigation powers at its disposal, it would allow the EC not only to choose the appropriate powers to use but to join the police and CPS in maintaining the important distinction in our law between civil /regulatory penalties on the one hand and criminal penalties on the other, thus avoiding any 'double jeopardy'/abuse of process' risks which exist with the current enforcement regime.
39. The MPS accepts that in its current structure and format, the Electoral Commission would not be in a position to take responsibility for investigating all election fraud and malpractice allegations, given the geographic spread of elections and the numbers of candidates, agents, campaigners, parties and members of the public involved.
40. We do not suggest the police could withdraw from all elections related enforcement, only from the enforcement of election finance offences. There will remain a number of other types of election offences under RPA that require an immediate response for which police are best placed to retain responsibility (for example personation or tampering with ballot boxes).
41. The MPS (and UK policing) would therefore only retain responsibility for those other election offences which do not relate to election campaign finances committed by a candidate/agent or party related offences which the Electoral Commission would be responsible for investigating (and prosecuting should this happen in the longer term).

42. Should such changes be implemented the MPS looks forward to continuing to build upon our existing good working relationship with the Electoral Commission, providing them with advice and support should their role extend into criminal investigation and (in the longer term) prosecution.

43. Finally, whether or not there are moves to reform the structure of election finance offences enforcement as suggested above, the MPS considers there is merit in continuing the regular joint training between police, CPS and the Electoral Commission so that there is effective understanding between the agencies of the different roles, powers and obligations that each agency has in the field of elections law enforcement.

Written Submission by the Crown Office and Procurator Fiscal Service

Committee on Standards in Public Life: Review of electoral regulation - Public Consultation

In Scotland, the Lord Advocate is head of the system for the prosecution of crime. These are functions which are exercised independently of any other person. For practical purposes, all prosecutions are brought by professional public prosecutors acting within the system for which the Lord Advocate is responsible. Those prosecutors are either staff of, or are supported by Crown Office and Procurator Fiscal Service (COPFS), which is Scotland's sole public prosecution agency. COPFS receives reports about crimes from the police and other Specialist Reporting Agencies. The decision regarding whether to bring a public prosecution or not in Scotland is one for professional public prosecutors within the system for which the Lord Advocate is, acting independently of any other person, responsible.

COPFS works closely with the police and the Electoral Commission (the Commission) regarding any allegations of breaches of electoral law. It is recognised by COPFS that the Commission has particular expertise in relation to electoral offences and a protocol has been agreed between the Commission and COPFS in relation to sharing information on reported crimes. This protocol is publically available and a copy is enclosed as Annex A.

To ensure a consistency of approach and to ensure early consultation with the appropriate agencies it has been agreed with the Commission and Police Scotland that all reports involving offences committed in relation to elections and referendums will be considered by the Serious & Organised Crime Unit (SOCU), a specialist unit within COPFS.

COPFS notes the terms of reference pertaining to the review and the questions set out in the public consultation document. There are specific consultation questions on which COPFS can provide comment.

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?

From a prosecutorial perspective, the transparency and traceability of funds are a necessary foundation for the regime of election and political party financing. A significant amount of time and resource can be spent seeking to identify the source of funds, particularly when these come from abroad, in order to establish whether offences have been committed. An ability to identify the provenance of funds should be at the centre of the financing of elections and political parties.

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

The rules regarding how funds must be split between local and national campaign expenditure as set out in the Political Parties, Elections and Referendums Act 2000 (PPERA) can be complex.

Where an allegation is made regarding an overspend it can be difficult for investigators and prosecutors to secure sufficient corroborated evidence that there was an overspend in a particular area. It can be difficult to prove the exact nature of election material and whether this has properly been identified and recorded as part of the local or national campaign expenditure, and whether any split in spending between the campaigns has been apportioned correctly.

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?

Where the Commission is considering imposing a civil sanction for an offence which has occurred in Scotland, the Commission will first ask COPFS to consider whether criminal proceedings will be pursued. COPFS will then assess whether prosecutorial action is required and may instruct Police Scotland to carry out further enquiries to inform this decision. COPFS will then advise the Commission of its decision. This approach ensures there is an appropriate interaction between the civil sanction and criminal prosecution regimes in Scotland.

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?

It would be constitutionally inappropriate, in Scotland, for a person other than a professional public prosecutor within the system for which the Lord Advocate is constitutionally responsible to be given power to initiate prosecutions. This proposal could not appropriately be extended to Scotland. For awareness, all cases regarding allegations of breaches of electoral law in Scotland are currently reported by the police to COPFS. Discussions are ongoing regarding the Commission becoming a Specialist Reporting Agency in Scotland. This would give the Commission the ability to report cases directly to COPFS for consideration of prosecution.

General Comments

COPFS wish to provide the following general comments to the Committee. Under section 143 of PERA certain requirements must be adhered to in relation to 'election material'. In relation to 'printed material' the requirements include that certain 'relevant details' must be included on the material. Failure to comply with these provisions is a criminal offence.

'Printed material' is defined in the Act and the explanatory notes give examples of printed documents as 'leaflets, posters and newspaper advertisements.' There is a provision which extends the requirements to "other materials", however Regulations must be passed to set out the extent of the requirement. Such Regulations have not been passed.

COPFS have been made aware of allegations regarding material posted online. The material posted online did not meet the definition of 'printed material' and therefore there was no requirement for it to include the 'relevant details'. This resulted in there being no means of identifying the document for local or national campaign costs for a particular party nor was there means to identify any individual for potential breach of election finance laws. The Committee may therefore wish to consider the applicability of the current requirements to the breadth of modern communications

I hope this information is useful in your consideration of this important issue.

Written Evidence from the Labour Party

Response to Committee on Standards in Public Life: Review of Electoral Regulation

This submission is made by Cat Smith MP, the Shadow Minister for Voter Engagement on behalf of the Labour Party.

We welcome the Committee on Standards in Public Life Review of Electoral Regulation. This review presents an important opportunity to reflect on the regulation of political parties and candidates, the role of the Electoral Commission and the urgent need to modernise and clarify the legal framework governing elections to improve public confidence and transparency.

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

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 Labour Party believe that the regulation of electoral finance in the UK should be based on the three key values outlined above: transparency, fairness and accountability.

1.2 The fulfilment of all three values depends on the creation of an electoral rulebook which is consistent, transparent and fit for purpose in the 21st Century.

Electoral law is voluminous, fragmented and in many cases archaic. We strongly believe that the current laws governing elections and their regulation should be rationalised into a single, consistent legislative framework governing all elections. Labour has repeatedly called for the harmonisation of the main legal frameworks governing elections, along with the patchwork of accompanying secondary legislation into an overarching UK Elections Act, supported where necessary with specific regulations for each election.

The changing nature of election campaigns in recent years, including the significant increase in the use of online and targeted digital communications has reinforced the need for effective and comprehensive reform of our electoral laws. Indeed, significant improvements must urgently be made to improve transparency about money that is spent on campaigning by political parties, candidates and other third-party activists, when it comes to digital campaigning. The Government's recent proposals on extending imprints to online election material is a welcome first step, but the change is long overdue and there is no clear timeline for implementation.

Those administering UK elections have faced growing pressures in recent years. Multiple experts and organisations – including the Electoral Reform Society, Electoral Commission, Democracy Club, and the Association of Electoral Administrators – have highlighted the urgency of dealing with our 19th century electoral law¹. Labour welcomed the extensive work carried out by the Law Commission between 2012 and 2016 and its Joint Interim Report on electoral law. We support the vast majority of the recommendations made in the Law Commission's Final 2020 Report on Electoral Law. These proposals provide a well-researched and widely supported blueprint for the Government and parliament.

¹ <https://www.electoral-reform.org.uk/weve-told-parliament-the-case-for-updating-our-campaign-rules-now-its-time-to-act/>

1.3 Fairness & accountability within electoral regulation depends on a strong, independent regulator. The Electoral Commission fulfils this vital role as an effective regulator to oversee our elections and regulate political finance in the UK. The Electoral Commission's independence is established in statute, as a public body independent of Government and accountable to Parliament through the Speaker's Committee on the Electoral Commission. The Conservative Party's recent call to abolish or 'radically overhaul' the Electoral Commission is a harmful and worrying step for the integrity of our democracy which Labour will continue to strongly oppose.

1.4 The Labour Party would like to take this opportunity to commend the fantastic work of Electoral Registration Officers. They must be included at every stage of this planning process, to recognise the vital role that they play.

The regulatory remit of the Electoral Commission

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 The Labour Party fully supports the role of the Electoral Commission as a strong and effective regulator to oversee our elections and regulate political finance in the UK. There are adequate provisions in place to ensure the Electoral Commission is accountable. The Commission is wholly independent of government, a vital feature of an electoral management body, and reports to the Speaker's Committee in Parliament. The Commission also has a representative in Parliament to answer Parliamentary Questions, reports annually on its work and after major electoral events, and appoints representatives from the main political parties to its board.

2.2 The Conservative Government's threat to abolish the Electoral Commission is a harmful and worrying step for the integrity of our democracy. This move comes straight out of the Republican Party playbook, threatening the basic tenants of scrutiny and accountability in our democracy.

More on Question 2 answered in Question 5.

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

Question 3 is answered below in Question 6

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

4.1 There is a case for reviewing the Commission's various non-regulatory functions as part of a wider assessment of their role, which might include increasing their sanctioning powers/civil sanctions regime, which would naturally lead to questions about their resourcing and where priorities should lie.

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

5.1 The complexity of electoral law on party and candidate finance causes widespread confusion in the everyday running of elections for volunteer local treasurers and agents, with damaging consequences for democracy.

Labour have received feedback from local volunteers about the complexity of electoral law and the perceived risk of being found guilty of criminal offences for inadvertently getting things wrong. It can be confusing for candidates and their agents to understand what constitutes an electoral offence due to the archaic nature of

the terminology in electoral law. These concerns create barriers for members getting involved as either election agents or treasurers. We have seen regular instances of local treasurers, agents and campaigners failing to comply with the law due to this confusion. These positions are entirely dependent on the goodwill and time devoted by volunteers. The confusion and complexity of complying with these rules not only presents a direct challenge for all political parties in ensuring effective compliance with the rules but is also damaging for wider engagement with the democratic process. Given the serious personal consequences of prosecution, let alone conviction, there is inevitably a chilling effect which impedes campaigning.

5.2 The Government's piecemeal approach to reform only exacerbates the confusion. By continuing with a piecemeal approach, the Cabinet Office is increasing risk for error in the facilitating the delivery of elections. By focusing on changes that can only be made via secondary legislation, the Cabinet Office is limiting the scope for electoral innovation. For example, the Government legislated via a statutory instrument to remove the requirement for local candidates to disclose their home address on ballot papers. We welcome this as part of efforts to tackle initiation in public life. However, the law still requires election agents to disclose their address on election imprints.

5.3 Labour have consistently called for the harmonisation of the main legal frameworks governing elections, along with the patchwork of accompanying secondary legislation into an overarching UK Elections Act, supported where necessary with specific regulations for each election. This would of course require equivalent legislation in Scotland and Wales. This would provide an important and overdue opportunity to modernise and clarify electoral law, reducing the risk of further entrenching complexity and inconsistency which is characteristic of the government's approach of restricting changes to those which can be affected by secondary legislation.

5.4 Greater transparency and regulation when it comes to foreign donations to political parties and campaigns is urgently needed. The Government have failed to tackle loopholes in donation law, as well as foreign interference in online and targeted digital communications. Under UK law political campaigners can only accept loans and donations from a prescriptive list, which excludes money from overseas or foreign donors (save for registered UK electors who are resident overseas). Although there is a general principle that funding from abroad is not allowed, the rules do not explicitly ban overseas spending.

The UK's rules for minimum campaign spending before people or organisations must register as a non-party campaigner (£20,000 in England or £10,000 in Scotland and Wales for national campaigning during the regulated period for 'national' elections regulated by PPERA) allow foreign individuals or organisations to spend under the minimum and not break specific electoral laws in the UK. The lower limit of £700 relating to third party campaigning in support of particular candidates at elections further deepens this issue. Tighter controls on donations and loans for political parties and campaigners from abroad are urgently required.

5.5 As mentioned above, there remain significant gaps in legislation when it comes to digital campaigning and advertising.

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

6.1 The Electoral Commission has a strong track record as is an important institution at the heart of our democratic process, harbouring numerous strengths. Inherently, the transparent, independent character of the Commission is vital to upholding fair democratic oversight of electoral law and regulation.

6.2 The Commission is highly accessible by candidates, political parties and the general public.

6.3 However, there are a number of areas which require improvement. Investigations into alleged breaches of the rules tend to take an inordinate amount of time to reach a conclusion, and invariably end up with a variable monetary penalty being issued, regardless of the submissions Parties may make or any extenuating circumstances that are set out. The Commission should have greater regard to the range of sanctions available to it, including using statutory notices to improve compliance where appropriate. We also consider that the Commission should revisit its interpretation of “reasonable excuse” which provides a defence against findings of breaches of PPERA in a number of respects – this appears to sit at an impossibly high threshold, and does not sufficiently take into account the fact that the vast majority of breaches are a direct result of the fact that political parties are largely voluntary organisations.

6.4 We acknowledge that the Commission must cater for all levels of ability and experience in producing guidance on campaign finance and electoral law, and that major political parties with professional compliance staff are not necessarily the key audience for the Commission’s published guidance. However, we consider that the Commission could be more responsive and proactive in issuing guidance (which may also include the use of advisory opinions) on complex areas of the regulatory regime and electoral law that have particular resonance for larger, better resourced parties with more complex delegated structures.

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

7.1 Currently, the Electoral Commission’s sanctioning powers are limited – with a maximum fine of £20,000 per offence. When we consider the huge value of donations contributed and the multi-million pound expenditure during national election campaigns, the relatively low level of penalties (in comparison to other regulators such as the ICO) that the Commission is able to impose can be seen as an acceptable risk for well-resourced campaigners that seek to gain an undue advantage by refusing to abide by the rules. The current sanctions regime is not sufficient to act as a deterrent against wrongdoing.

7.2 We support the Electoral Commission’s calls for an increase in the maximum financial penalties they can issue for breaches of the law that undermine public confidence in the integrity of the electoral process, and which represent a deliberate or reckless attempt to gain an undue advantage over other campaigners. Any increase in the maximum sanction should be considered in the context of the Commission’s overall enforcement policy and approach to inadvertent breaches where “reasonable excuse” under PPERA may be demonstrated. In essence, we would expect that any higher sanctions were used proportionately for serious offences rather than administrative issues.

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 We would support the introduction of a civil sanctions regime to deal with some offences under the Representation of the People Act 1983, particularly in relation to more administrative, technical offences which are not always subject to Police investigation or subject to CPS referral. However, we think it is important that criminal prosecutions can continue to be brought where serious breaches of the rules that damage public confidence in the conduct and outcome of elections, or those that affect the integrity of the electoral process are identified.

8.2 While not directly related to sanctions or offences, there could be further opportunities to make electoral law processes more efficient by transferring powers to the regulator. For example, election spend invoices that are received after statutory deadlines cannot be paid without seeking leave to pay from the Court in advance. This is a lengthy, unduly bureaucratic process that is a waste of the court’s time, accrues unnecessary legal fees for parties and election agents, and delays payment for suppliers. This process could be much more

straightforwardly dealt with by application to the Electoral Commission to determine leave to pay, as was the case in the legislation for the Scottish Independence and EU referendums.

8.3 The introduction of an expanded civil sanctions regime would need to be considered in the context of the Electoral Commission's remit, functions and resourcing.

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

10. The Labour Party welcomes detailed discussion about the possible avenues to creating a more proportionate and consistent enforcement regime, which treats candidates and parties fairly.