

Committee on Standards in Public Life

Review of electoral regulation

Written evidence

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WRITTEN SUBMISSION TO COMMITTEE ON STANDARDS IN PUBLIC LIFE REVIEW OF THE REGULATION OF ELECTIONS

Submitted on behalf of Compass Campaigns Ltd by Mark Cooke, Treasurer and non-executive director.

Background

1. Compass is a research, policy and campaigning organisation. It started life as an organisation around the Labour Party with membership only open to those eligible for Labour Party membership. After the 2010 election it opened its membership to people from all parties and has operated as a cross-party group.
2. It formerly operated as an unincorporated association, but in 2019 following a governance review transferred its activities to a company limited by guarantee Compass – Together for a Good Society Ltd. It also created a subsidiary Compass Campaigns Ltd to ring-fence any regulated activities.
3. Compass, in its old form, registered as a third party campaigner for the 2017 general election, and carried on significant campaign activity in support of the ‘progressive alliance’ primarily promoting tactical voting in that election.
4. Compass Campaigns Ltd registered as a third-party campaigner for the 2019 general election, but in the event carried out only minimal regulated activity.
5. As an indication of scale:
 - a. Compass typical budget is £200-300k a year
 - b. It disclosed about £130k of expenditure for the 2017 general election
 - c. It has 1-3 staff at any one time.

Particular issues of concern to Compass

6. Compass experience of the regulation of elections, and its interactions with the Electoral Commission leads us to have the following concerns:
 - a. The burden of regulation on small organisations inhibits legitimate campaigning activity. Compass actively sought to avoid being required to register for earlier elections and the EU referendum, as I was so concerned about how we would comply with the regulatory requirements.
 - b. The very broad and, in many cases, subjective definitions of regulated activities makes it very difficult to understand what is permitted without registration.
 - c. There seems to be a complete lack of proportionality in the enforcement regime. The EC seems to take the view that every breach of the regulations, even if inadvertent and conferring no unfair advantage on anyone, must be formally investigated and result in a civil penalty. There seems to be no regard for the resources available to small organisations.
 - d. The boundary and different enforcement regimes between local and national campaign spending in elections are incomprehensible. Compass spent a large sum on obtaining legal advice, and this still left many unresolved questions.

There seems to be no rationale for the huge differences in spending limits at different levels. A single regulator with an integrated regime would make things much easier

- e. The regulatory regime was designed for a world in which formal organisation was the norm. It does not work effectively when campaigning groups can be set up through social media and operate without any formal structures.

Specific responses to questions

Q1. The fundamental purposes of election spending regulation must surely be:

- 1) Limits on spending agreed by law to ensure a reasonably level playing field between candidates
- 2) Transparency of the sources of that spending to ensure no secret influence.

But this needs to be balanced against the need to allow civil society to freely express views, and making regulatory burdens proportional to the purposes of the regulation.

Q3. The EC could play a more active role in improving and reforming the regulations that apply, rather than simply seeing its role as enforcing them. It should find out what regulations participants find difficult to comply with, and consider whether these are really material to the purposes of the regulation, and if they are how they could be modified to improve compliance. A higher priority should be given to improving the guidance materials. In many cases these simply state (in plain English, to be fair) rules that are inherently difficult to understand. The EC needs to operate with a greater sense of materiality and purposiveness.

Q5. The inherent obscurity of some of the main definitions; the complete lack of clear purpose of some rules; the split between local and national expenditure rules. We would also suggest that significantly higher thresholds for being brought into the regulatory regime could be considered for third-party campaigners, without affecting the purposes of the regulation.

Q6. Lack of focus on issues that are likely to materially affect elections etc (ie which go to the fairness of the election process). Excessive focus on formal compliance with detailed rules.

Q7. Clearly not, when millions of pounds are being spent.

Q8/Q9. It would be far better to have a single regime. Criminal prosecution is only proportionate for deliberate and serious breaches of the rules intended to secure an unfair advantage, not regulatory breaches.

Version of July 31st

THE ELECTORAL COMMISSION SHOULD BE ABOLISHED

1. The Committee on Standards in Public Life has invited submissions for its review on electoral regulation, which is tightly focused on expanding prosecutorial and fining powers for the Electoral Commission:
 - 1.1. Your consultation document has 5 ‘Terms of Reference’. The first is boilerplate regarding “Principles and Values”; the third consults on interaction between the EC and Police/CPS. The second, fourth and fifth ToR directly invite submissions regarding increase to the EC’s powers. Not one ToR questions the EC’s fitness for purpose, nor to well-known allegations of the EC’s bias, incompetence, inappropriate behaviour
 - 1.2. You invite responses to ten questions. Five are on increasing the Commission’s powers. The other five are mostly boilerplate.
2. The Terms of Reference and questions do not ask whether the EC should exist at all. Nor whether its existing powers are excessive, nor what the pitfalls are of regulators in society, nor whether the EC has fallen into some or all of those. They do not articulate a higher purpose for the review –for example, to protect democracy, or to avoid unnecessary expansion of the Administrative State.
3. I hope that the CSPL is not unaware of the many respectable critiques of the regulatory/administrative state, and does not mistakenly think that:
 - 3.1. *More Regulation is an unalloyed good to society and democracy* – in fact, regulators often officiously seek out offences (sometimes concocted), and tend to seek ever-wider powers, as the EC is doing. Regulators can constrain legitimate activity and aspiration
 - 3.2. *There is no danger of groupthink among regulators and quangos* –in fact, groupthink abounds, because in the UK, regulators’ officials are drawn almost entirely from a small pool of often unqualified civil servants (as with the EC), and their boards from former public servants; thus excluding some 80% of the electorate. The field is narrowed further because many at the ‘libertarian’ end of the social spectrum reject taking positions of rule over their fellow citizens

- 3.3. *Unelected regulators are unreservedly within the traditions of the British justice system* –in fact, the traditional freedoms and separations of power of our justice system are routinely violated in the UK regulatory world. The EC, often with little or no legal knowledge or understanding, acts as investigator, police, prosecutor, judge, jury and executioner, with a far lower bar for prosecution. For complaints against itself, the Electoral Commission internally reviews them –there is no Ombudsman. Responses become arrogant and peremptory with no constraint.
- 3.4. *A regulator will have governors and officials who are unimpeachably qualified and objective in their subject* –in fact, regulators often show woefully lacking knowledge and attitudes, whether jurisprudentially or in terms of the area they are regulating. This can be because the officials are drawn (as with the EC) from the generalist civil service, with no subject-specific knowledge
4. Over the past four years, the behaviour of the Electoral Commission illustrated these pitfalls. See [Moynihan](#), [Halsall](#), [Banks](#). The Commission’s most egregious error, as court judgements subsequently documented, was its failure to apply “Beyond Reasonable Doubt” (the standard the EC is required to use) correctly. Under political pressure, the Commission (having earlier failed to persuade the High Court that it understood the law on ‘Common Plan’) came up with a theory that Vote Leave had undertaken a ‘Common Plan’ with BeLeave; used bizarre allegations by three publicity-seeking, self-styled “whistle-blowers” as the prime, indeed almost only, evidence for that claim; ignored (if they ever read) VL’s comprehensive rebuttal of those allegations; failed to apply “Beyond Reasonable Doubt” properly (they proffered zero argument as to how, as they claimed, the BRD standard had been reached). No evidence other than from the ‘whistleblowers’, and a letter from Dominic Cummings to Anthony Clake, was discussed (that letter had entirely understandable other reasons to have been written, as VL clearly explained in its probably unread rebuttal to the EC). In a related case, that of Darren Grimes, His Honour Judge Dight castigated the Commission for failing to comprehend how the BRD standard works. The EC had got it “the wrong way around”. In essence the EC said, in both the Grimes and the Vote Leave matters: ‘here’s a theory we have; here’s an allegation supporting that theory; we therefore find the theory proved Beyond Reasonable Doubt’. They didn’t take into consideration the plentiful evidence that spoke against their theory, and failed to show how the scant allegation they had could possibly amount to a BRD conclusion. The Commission therefore showed itself incompetent with the fining powers it already has --let alone with greater prosecutorial powers.

5. The above central point is only one aspect of the Commission's comprehensive incompetence and partiality. Vote Leave showed, mostly in its rebuttal documents to the EC, that the Commission:
 - 5.1. Falsely denied, in court, that they had given advice on 'Common Plan' to Vote Leave during the Referendum; were chided by judges for attempting to conceal that they had in fact offered that advice
 - 5.2. Gave ludicrously tight deadlines when demanding information from VL's unpaid part-time post-referendum skeleton staff, yet fined VL for delivering information less than four hours after the Commission's 1pm deadline
 - 5.3. Wrongly persecuted a young campaigner, Darren Grimes, several years of whose life were ruined as he, eventually successfully, defended himself
 - 5.4. Wrongly (as Dight's judgement showed) fined Veterans for Britain
 - 5.5. Behaved arrogantly and pre-emptively toward many Leave campaigners (evidenced in the correspondence)
 - 5.6. Failed to respond over many months to requests for information and clarification
 - 5.7. Failed to stick to their own rules (making three enquiries on the same point, when they were permitted only one)
 - 5.8. Failed to be timely (pursued investigations more than three years after the referendum, something previously unheard of)
 - 5.9. Failed to interview Vote Leave board or ex-staff, even when both had requested interviews
 - 5.10. Interviewed those making allegations (we understand twice) while refusing to meet those who were alleged against
 - 5.11. Falsely asserted on the Today Programme that Vote Leave had refused to meet with them
 - 5.12. May have sought to entrap Vote Leave through concealment of evidence
 - 5.13. Were notorious for publicly pronounced partiality, both by board and officials, for the Remain (or Left Wing) view; denied to Parliament that this posed a problem; failed to acknowledge that a virtually (or, possible, completely) monolithic view at the EC, that the vote to Leave the EU was a travesty, had any impact on the way the regulator disgracefully behaved to a series of Leave campaigns
 - 5.14. Aggressively investigated and wrongly (as shown in Dight's judgement) fined BeLeave, Vote Leave and Veterans for Britain, for example claiming that over-reporting was misreporting, yet flatly refused to investigate clear breaches by the Remain side

- 5.15. Showed naïve (possibly false-naïve) credulity, in lock stock and barrel accepting the allegations of three clearly politically-inspired, publicity-seeking activists and their lawyers (who had been funded lavishly by anonymous pro-Remain sources)
 - 5.16. Failed to clearly articulate what their central allegation against Vote Leave, 'Common Plan', consisted of
 - 5.17. Initiated their investigations against Vote Leave and Grimes as a result of political pressure from aggrieved campaigners (who boasted at their success in that)
 - 5.18. Used their (the State's) unrestricted and unsupervised financial muscle to prevent Vote Leave from bringing its case to Court
 - 5.19. Argued in court against Vote Leave being awarded a cost cap (which would have allowed us to come to court)
 - 5.20. Wrongly claimed that the case had been 'determined' (by them!) and that therefore Vote Leave were by definition guilty
 - 5.21. Apologised to Parliament for their wrongful pursuit of Grimes – but did not apologise to Grimes, nor change their report's allegations against Grimes --a report which is still published on their website
 - 5.22. (Raided the Brexit party two days before the EU Parliament elections, thus clearly 'putting their thumb on the scales' of those elections –nothing to do with Vote Leave, but scandalous)
6. The above sorry list surely is enough to show that the EC is not fit for purpose. CSPL will I am sure be cautious of rushing to assume that the Electoral Commission is an unalloyed good, and I hope will bear in mind that:
 - 6.1. Quangos and regulators are not necessarily loved by the British public. They are essentially undemocratic. They get it wrong much of the time, making things worse not better
 - 6.2. The principles of the British justice system are violated when a quango is given fining and prosecutorial powers. The British system of Justice has very careful separation of powers between police, prosecution service, and the courts. Currently, the EC serves as investigator, police, prosecutor, judge, jury and executioner all rolled into one. There is a reason we don't do justice that way in this country. Why on earth is the current EC allowed, let alone making it worse? (And why is there no Ombudsman or other invigilator of the EC?)
 7. Due to the Electoral Commission's behaviour of the past four years, British democracy now faces a crisis. In any future referendum it's unlikely that as things stand, any sensible person will be prepared to take on a position of responsibility for any campaign

that is on the non-establishment side of the argument. The experience of the skeleton Vote Leave board, assailed for four years reputationally, wasting years of their lives unproductively responding to the Commission's depredations, and having to incur personal expense to the level of hundreds of thousands of pounds defending themselves, eventually overwhelmed by a state-funded inequality of arms, is a stark warning to others not to involve themselves in the democratic process. Should the Commission, ludicrously, be awarded even more powers, it would be even *more* unlikely that anyone would volunteer for the 'Responsible Person', or other board position, on such a campaign. A fair referendum, where arguments from both sides are equally represented, would effectively be ruled out.

8. The CSPL, it would seem, used to believe that prosecutorial and sanctioning powers were not appropriate for the EC. In its original 1998 Report, page 148, para 11.6, the CSPL clearly said "*we ought perhaps to state explicitly that there is one role which we do not envisage the Election Commission playing. . .we do not envisage (it) in any way functioning as, or substituting itself for, the ordinary courts. The Election Commission should not be, or be thought to be, a judicial body.*" And yet, the EC were given unilateral fining powers, and now CSPL wish to consult on *expanding* its powers. What changed everyone's mind? (Was it because Labour, who were in power at the time, and so drafted the law, was receiving most of its funding from Unions, relatively untouched by the EC, while the Conservatives rely on donations from individuals, who are directly impacted?) Why is CSPL not asking in its consultation why such powers were, despite your advice, awarded, and why they should not be removed --rather than consulting on whether they should be increased? You were right the first time.
9. While CSPL has not specifically requested views on the EC's potential demise, abolition must surely be a possibility that falls within the remit of this enquiry, and where you must surely welcome views. Correctly or not, over the past four years the EC has been widely seen as the Establishment's instrument for revenge against Leavers. I am sure that CSPL would not want itself associated with such a view, would not want to be seen as believing '*Brexit trumps bad behaviour*'.
10. I (in [Moynihan](#)) and others have argued that the EC is unnecessary, and should be abolished. It's hard to see downside in doing that. Over centuries, other bodies fulfilled those duties perfectly well, and they can do so again. A cloud over British Democracy would be removed, and volunteerism would again be encouraged. It would be a travesty if the Electoral Commission were allowed to stay in its present form, let alone if it were given increased powers.

5 August 2020

To whom it may concern,

Thank you for inviting Twitter to participate in CSPL's review into the regulation of election finance. We have been pleased to engage with your work in other areas, like on intimidation in public life, and welcome the opportunity to contribute here.

Having met virtually in late June, your team provided a series of questions for which responses from Twitter would be helpful. Please see below answers to those questions.

Comprehensive information about our approach is also available in the links below:

- [Political content policy](#)
- [Political content policy FAQs](#)
- [News exemption](#)
- [Cause-based advertising policy](#)
- [Cause-based advertising policy FAQs](#)

“Generally, we are interested in understanding how social media companies assure themselves that money being spent via them is compliant with electoral spending regulations in the UK and respects the principles and norms that underpin them.”

It is the Electoral Commission's role to ensure money being spent on social media is compliant with electoral spending regulations in the UK. Not only does the Electoral Commission have the credibility to make these determinations, it also has the legal authority and powers.

“Twitter’s policy on political advertising”

Twitter globally prohibits the promotion of political content.

“What drove Twitter to adopt this policy, what it covers and how you determined the scope.”

Our decision to ban political advertising was informed by 3 principles:

- Political message reach should be earned, not bought.
- Advertising should not be used to drive political, judicial, legislative, or regulatory outcomes; however, cause-based advertising can facilitate public conversation around important topics.
- Advertising that uses micro-targeting presents entirely new challenges to civic discourse that are not yet fully understood.

“Your definition of a political advert. (We note concerns from the Electoral Commission that social media companies each have different definitions of political advertising which do not completely align with election law, and their recommendation that SM companies should ensure their policies fit the legal definitions of election campaigning).”

We define political content as content that references a candidate, political party, elected or appointed government official, election, referendum, ballot measure, legislation, regulation, directive, or judicial outcome.

Ads that contain references to political content, including appeals for votes, solicitations of financial support, and advocacy for or against any of the above-listed types of political content, are prohibited under this policy.

We also do not allow ads of any type by candidates, political parties, or elected or appointed government officials. Only news publishers who meet [our exemption criteria](#) may run ads that reference political content and/or prohibited advertisers under our political content policy, but may not include advocacy for or against those topics or advertisers.

Twitter restricts the promotion of and requires advertiser certification for ads that educate, raise awareness, and/or call for people to take action in connection with civic engagement, economic growth, environmental stewardship, or social equity causes.

“Your position on whether there should be consistency across the platforms in the definition used.”

We would assert that different services should be able to develop their own political advertising policies. We would, for instance, strongly defend our restrictions on micro-targeting as applied to cause-based advertising (defined above) - any industry-wide definition could theoretically require us to reverse this decision.

More broadly, services work in different ways - Twitter is a short form instant-messaging service, while others are more focused on video sharing or private discussions. As with the offline world, it is challenging to envisage one articulation of political advertising across different services that adequately captures all relevant content, let alone being future-proofed as the most popular services change. A fixed definition may also encourage the development of technologies designed to get around this obligation. With that in mind, we would advise a principles-based approach as more appropriate - and enforceable. The key distinction and basis for a principles-based approach should be “buying reach.”

Twitter is constantly reviewing its rules and policies given the always-evolving nature of the content on the service. When it comes to space that has not been purchased from us (i.e. ‘organic content’), one of the challenges for a service like Twitter is that we do not have visibility of commercial arrangements made by a political party outside of our service (e.g. paying for the creation of a video offline that is then shared organically on Twitter). More broadly, requiring that services remove organic content risks a detrimental impact on freedom of expression, particularly at key moments like elections. If Twitter is tasked with arbitrarily removing content that does not violate our rules - and has yet to be determined whether it breaks the law - we would be concerned about the implications for freedom of expression.

For content that does break the law, the Electoral Commission can already make legal requests.

We believe this responsibility for organic content should therefore remain with political parties and the Electoral Commission. We believe that an obligation on political parties to provide a digital imprint where feasible and proportionate (such as in a Twitter biography, or at the end of a video) is the best approach - rather than an industry-wide obligation on an ever-changing selection of very different digital services.

“How you enforce your policy and the resources you have to do so.”

As with all our rules, we use a mixture of reactive and proactive tools to enforce this. We have been able to leverage technology to identify attempts to advertise that are not compliant with our political advertising policy with high effectiveness. More information is available [here](#) about our advertising approval process.

“Whether you have received any complaints about your policy.”

As with any major decision, there will be those who oppose the approach that we have taken. We received, however, a wide range of endorsements for introducing this prohibition - from [Hillary Clinton](#) to [Bernice King](#) to [Carl Miller](#).

“The Electoral Commission is seeking powers to compel the provision of documents, information and explanation outside of an investigation so that they may request information from any person (such as a SM company) who may hold relevant material. This is something the EC have sought to allow them to act more quickly when they identify concerns or when allegations are made to them (similar to powers given to the ICO). What is Twitter’s view on whether the Electoral Commission should be granted such powers?”

The Electoral Commission is already able to make legal requests via our dedicated portal ([here](#)). Information about how to report Twitter ads is available [here](#).

Given that Twitter prohibits political advertising, we do not expect to see many circumstances in which the Electoral Commission reach out to us in such a future regime as this - unless the regime also applied to organic content. We would argue this approach, however, would be disproportionate and risks creating confusion, inconsistency and ultimately a chilling effect on free speech.

Yours sincerely,

Katy Minshall
Head of UK Public Policy
Twitter

Public consultation - review of electoral regulation

The Committee on Standards in Public Life (CSPL) is undertaking a review of electoral regulation in the UK.

The Electoral Commission was established by the Political Parties, Elections and Referendums Act 2000 (PPERA), following recommendations made by the CSPL in our report, *The Funding of Political Parties in the United Kingdom, 1998*.

The CSPL reviewed the Electoral Commission in 2007. Since that time, digital campaigning has transformed the way in which parties and campaigners engage with voters, creating challenges for the regulation of election and referendum campaigns.

With the Electoral Commission approaching its twentieth anniversary, the CSPL believes the time is right to return its focus to the regulator. The review will focus on an important aspect of the Electoral Commission's role - the regulation of donations and campaign expenditure by political parties and non-party campaigners under PERA. It will also consider how this interacts with the separate regime under the Representation of People Act 1983 (RPA) for the regulation of candidate expenditure. The review will look at what the regulation of election finance should achieve and how it is regulated.

The successful regulation of the money that is spent to influence the outcome of elections in the UK is vital to public confidence in the operation of our democracy.

As part of this review, the Committee is holding a public consultation. The consultation is open from 09:00 on Monday 8 June 2020 and closes at 17:00 on Friday 31 July 2020.

Terms of reference

This consultation should be read alongside the terms of reference for the review.

Summary and organisation information

This is a joint consultation submission from Fair Vote UK and Open Rights Group (ORG). ORG is a UK based digital rights NGO that fights for freedom of speech, privacy, and freedom from government surveillance online. ORG has over 3000 members UK wide. Fair Vote UK is an NGO set up to tackle the issue of data misuse, voter manipulation and lack of transparency in elections head-on. Fair Vote UK are committed to ensuring the institutions that protect our democratic processes are fit for purpose in a digital age.

ORG's data and democracy project officer can be contacted at:
pascal@openrightsgroup.org

Fair Vote UK's campaigns and policy officer can be contacted at: nico@fairvote.uk

Paragraphs are numbered corresponding to the question number, followed by paragraph number.

Consultation questions

The Committee invites responses to the following consultation questions. Submissions do not need to respond to every question.

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 Committee on Standards in Public Life attempts to ensure that the Nolan Principles are carried through public life, and recommended the creation of the Electoral Commission to help safeguard them in the context of elections.¹ However it is arguable that the Nolan Principles as they currently stand are no longer sufficient in the era of digital campaigning. Additional principles, such as principles of data protection, should also be applied. ORG and Fair Vote UK consider that two principles of data protection, transparency and fairness, should be considered.

1.2 These two principles are linked. The Information Commissioner's Office (ICO), the UK data protection regulator, states that:

1.3 "Transparency is important even when you have no direct relationship with the individual and collect their personal data from another source. In some cases, it can be even more important - as individuals may have no idea that you are collecting and using their personal data, and this affects their ability to assert their rights over their data."²

1.4 This is obviously not the case in many campaigning circumstances. Privacy International's ongoing work has demonstrated the complex web of companies that trade personal data, including that used by political campaigns, second and third hand.³ Individual rights are clearly at risk here.

1.5 The principle of fairness is of particular relevance to the profiling of individuals by UK political parties. The ICO has stated that:

1.6 "You need to pay particular attention if you use psychographic analytics and psychometric profiling with regards to fairness obligations in the law. These techniques involve attempting to deduce certain personality attributes from both factual and inferred personal data about individuals. Campaigns have used these attributes to target particular political messages designed to influence voting behaviour, which could be considered unfair and thus in breach of GDPR."⁴

1.7 Research by ORG has clearly demonstrated that UK political parties have attempted to determine or predict elements of voters' personal life and opinions for political gain.⁵ These attempts at voter manipulation appear inherently unfair, not least because they value one group of voters over another.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf, p146.

² <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/lawfulness-fairness-and-transparency/#:~:text=At%20a%20glance&text=You%20must%20use%20personal%20data,will%20use%20their%20personal%20data.>

³ <https://privacyinternational.org/advocacy/2434/why-weve-filed-complaints-against-companies-most-people-have-never-heard-and-what>.

⁴ <https://ico.org.uk/media/about-the-ico/consultations/2615563/guidance-on-political-campaigning-draft-framework-code-for-consultation.pdf>.

⁵ <https://www.openrightsgroup.org/publications/who-do-they-think-we-are-report/>.

1.8 The Electoral Commission should attempt to incorporate these, and other relevant data protection principles, into its remit.

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.

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.

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 The Electoral Commission - in conjunction with the ICO - should determine a standard formula for costing datasets held by political parties and campaigning organisations. A dataset can be defined as a "collection of separate sets of information that is treated as a single unit by a computer."⁶ In a campaigning context this can relate to collections of information such as detailed voter profiles, lists of email addresses and other materials used to target communications, engagement and fundraising strategies. Recent research by ORG has shown the extent to which voter profiling is conducted by major UK political parties, with varying degrees of complexity.⁷ Political campaigns attempt to gain electoral advantage from this, although its precise effect on political outcomes is contested.⁸

3.2 There are a number of issues that the use of this data throws up for the regulator. First, it is difficult to certify that political campaigns have obtained this data lawfully, particularly if the campaign is using personal data or special category data. In addition, its use must follow the data protection principles set out in the General Data Protection Regulation (GDPR) and incorporated into domestic law in the Data Protection Act 2018.⁹ Although there is a lack of case law in this area, the Electoral Commission and ICO should conduct exit audits to ensure data is being obtained and used lawfully. There is a clear need for this -

⁶ <https://dictionary.cambridge.org/dictionary/english/dataset>.

⁷ <https://www.openrightsgroup.org/publications/who-do-they-think-we-are-report/>.

⁸ <https://medium.com/viewpoints/cambridge-analytica-and-the-big-data-panic-5029f12e1bcb> and others.

⁹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/>.

demonstrated, for example, by the recent case of Momentum chief Laura Parker taking Momentum membership data for her constituency election campaign without their consent.¹⁰

3.3 This would necessitate that third party political campaigns maintain some functionality beyond the election period, in order for representatives to be able to provide information to regulatory bodies should there be further questions or an enquiry. Although this places some additional burden on smaller campaigns, an updated registration portal managed by the Electoral Commission could ease some of the burden. In addition, it is imperative that new regulation reflects the new reality of political campaigning, where transient and unaccountable third party campaigns are increasingly common and influential. These organisations thrive upon and depend on the current loose definition of what counts as campaigning and registration criteria.¹¹

3.4 Further, even if data sets have been obtained lawfully it is difficult to capture their value consistently and accurately within a costs-based regulatory framework. It is essential that election law differentiate between the *cost* of data and the *value* to the entity of said data. This is for two reasons. First, there are no industry wide standards for costing data sets across the private sector.¹² This means that datasets of equivalent worth to campaigns may end up being costed differently; valuable datasets may be undervalued in cost and vice versa. This may be increasingly difficult to do if a product is outsourced and there is a complex chain of subcontracting.¹³ One common practice - evaluating how datasets have helped increase revenue - does not work for political parties.¹⁴ It could be the case that the cost of hiring the subcontractor is less than the cost to the subcontractor of obtaining the data. Secondly, it is difficult to account for datasets that are obtained at very low cost or for free.¹⁵ For example, Facebook ads are used by some political campaigns, including major political parties, to amass lists of email addresses and individual's opinions on policies.¹⁶ Although the cost of developing the ads and purchasing the ad space must be reported, the actual value of the data gained by the campaign is not accounted for in the current cost-based framework. This is hindered further by unclear spending categories for digital spend, which should be made more granular.¹⁷

3.5 This benefits incumbents and large campaigns, who can accrue vast datasets at little or no cost over the course of multiple elections. This is not the only electoral resource for which this is the case, but as spending continues to shift online it will become more and more significant. Although the Electoral Commission already audits campaigns spending over £250,000 and all campaigns have to declare spending over £20,000, this still leaves a significant regulatory gap.¹⁸ Small online campaigns can spend under £20,000 with reporting their spend, opening the door for coordination.¹⁹ Similarly, campaigns spending under £250,000 could be seriously underestimating the cost of their data sets without detection.

¹⁰ <https://www.standard.co.uk/news/londoners-diary/the-londoner-momentum-turns-on-its-own-chief-a4235886.html>.

¹¹ <https://www.electoralcommission.org.uk/faqs-election-spending-2019-european-parliamentary-elections-non-party-campaigners>.

¹² <https://committees.parliament.uk/oralevidence/148/html/>.

¹³ <https://www.hanburystrategy.com/data-strategy>.

¹⁴ <https://www.pwc.co.uk/data-analytics/documents/putting-value-on-data.pdf>.

¹⁵ Although guidance around notional spending is meant to address this we discuss its current limitations at 5.4.

¹⁶ <https://www.wired.co.uk/article/conservative-boris-johnson-facebook>.

¹⁷ https://privacyinternational.org/sites/default/files/2020-07/Submission%20to%20the%20Cttee%20on%20Standards%20in%20Public%20Life_Final_0.pdf.

¹⁸ <https://committees.parliament.uk/oralevidence/148/html/>.

¹⁹ <https://inews.co.uk/news/long-reads/general-election-2019-lobbyist-brexiteer-party-financier-shadow-campaigns-365815>.

3.6 It is worth noting that the value of data to political campaigns is a really underserved policy issue. Regulators, unable to take a lead from the private sector, have avoided the issue. Similarly major political parties, who benefit from the status quo, are desperate for it not to be on the policy agenda. The reticence of political parties to talk about how they use data, particularly personal data, was noted in the report of the Democracy and Digital Technologies Select Committee.²⁰

3.7 ORG and Fair Vote UK consider it imperative that the Electoral Commission and the ICO determine a standard formula for costing datasets and incorporate that into a cost-based regulatory framework. This could draw on a number of factors, including types of data used, and the size of the datasets. There is a clear need for policy in this area - demonstrated, for example, by the sale of Lib Dem membership data to the campaign “Better for Britain” for £100,000.²¹ How was such a number reached?

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?

5.1 The laws creating the Electoral Commission were written in the pre digital age and a time of different campaigning norms. Campaigning innovations incubated in the USA are now commonplace in the UK. Regulation must evolve to meet them.

5.2 For example, we live in the era of ‘permanent campaigns’, with political parties advertising on social media all year round.²² As a result the current rules narrowly defining election periods and corresponding spending limits are outdated. They should be replaced with per-annum spending limits, with fresh spending limits imposed again once an election has been called.²³

5.3 Similarly, third party campaigner groups are increasingly instrumentalized by bigger campaigns and political parties to evade spending limits and coordinate inauthentic behaviour.²⁴ These campaign groups can be quickly dismantled after an election leaving the authorities little way to hold them to account. Moving deadlines for post-election financial reporting closer to the time of the election would help to address this.²⁵ In addition, centralising reports on campaign spending in an easily accessible website database would improve transparency.

5.4 There is an additional question about whether the cost of something, rather than its value to a campaign, is the only relevant metric for a financial regulator. ORG and Fair Vote UK think that the value of data, rather than only its cost, is also a relevant metric for a financial regulator. There are several reasons for this. For example, the value of data is incredibly volatile. This is particularly the case when data sets are mixed or combined with internal analysis. ORG and others have demonstrated how political parties mix insights from

²⁰ <https://publications.parliament.uk/pa/ld5801/ldselect/lddemdigi/77/7702.htm>.

²¹ <https://www.opendemocracy.net/en/dark-money-investigations/new-evidence-that-libdems-sold-voter-data-for-100000-held-back-till-after-election/>.

²² <https://www.newstatesman.com/politics/uk/2020/02/boris-johnson-s-government-permanent-campaign-left-must-change-defeat-it>.

²³ Regularly adjusted to account for inflation.

²⁴ <https://fairvote.uk/wp-content/uploads/2020/01/Defending-our-Democracy-in-the-Digital-Age-APPG-ECT-Report-Jan-2020.pdf> p1.

²⁵ Currently set at three months for under £250,000 and six months for over £250,000.

companies like Experian with information from the electoral registers in an attempt to generate meaningful individualised insights.²⁶ Similarly, Eldon Insurance, a company owned by a prominent Brexit supporter allegedly shared customer data with Leave.EU for political campaigning purposes.²⁷ Secondly, there is little consensus on the market value of datasets, which makes notional spending rules difficult to apply.²⁸ This makes it easier for campaigns to (deliberately or accidentally) undervalue their datasets. Thirdly, value is used as a metric by other financial institutions; for example when looking at the changing value of money, and inflation. In the UK, price inflation is recorded in the annual basket of goods, carried out by the Office for National Statistics.²⁹ There is clear precedence for the implementation of a value-based measure.

5.5 Finally, ORG and Fair Vote UK support the creation of a body - the Office for Election Integrity - that would coordinate the work of the relevant regulators. It is clear from the elections of recent years that not only do the responsibilities of several regulators overlap in this space, no single regulator can currently sufficiently regulate it. Whilst the ICO and the Electoral Commission have increased their coordination in recent years, recently signing a memorandum of understanding, this should go further. Coordination must be formalised, structured, scrutinised and put on a statutory footing. This body should be future-facing and strategic, not merely reactive. Formalising collaborative arrangements between regulators, particularly for digital policy, is entering the mainstream of policy discourse. For example, the CMA recently recommended a collaborative body between regulators to tackle digital competition issues.³⁰

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

6.1 ORG and Fair Vote UK feel several steps should be taken to empower the Electoral Commission, including:

- 6.2 A mechanism to enforce electoral infractions quicker. The ability to act quickly depends in part on resources such as sufficient staffing, regional offices, and more funding.
- 6.3 Raise the level of fines to a degree where they are not merely seen as the 'cost of doing business', and ensure fines are adjusted for inflation annually so their efficacy does not dissipate over time.
- 6.4 Stronger auditing powers to demand information from organisations such as social media companies.
- 6.5 More utilisation of academic expertise. For example, the ICO has rotating academics working with them in house. The Electoral Commission should have similar.³¹

²⁶ <https://www.openrightsgroup.org/publications/who-do-they-think-we-are-report/>.

²⁷ <https://ico.org.uk/media/action-weve-taken/2259371/investigation-into-data-analytics-for-political-purposes-update.pdf> p34.

²⁸ https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Notional-Spending-Factsheet-2019.pdf.

²⁹

<https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukconsumerpriceinflationbasketofgoodsandservices/2020>.

³⁰

https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020.pdf p429.

³¹ Covered in more detail in Fair Vote UK's consultation response.

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.

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

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?

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.

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

Who can respond?

Anyone with an interest may make a submission. The Committee welcomes submissions from members of the public.

How to make a submission

Submissions can be sent either in electronic format or in hard copy.

Submissions must:

- State clearly who the submission is from, i.e. whether from yourself or sent on behalf of an organisation;
- Include a brief introduction about yourself/your organisation and your reason for submitting evidence;
- Be in word, rtf, or odt format, not PDF;
- Be concise – we recommend no more than 2,000 words in length; and
- Contain a contact email address.

Submissions should:

- Have numbered paragraphs; and
- Comprise a single document. If there are any annexes or appendices, these should be included in the same document.

It would be helpful if your submission included any factual information you have to offer from which the Committee might be able to draw conclusions, and any recommendations for action which you would like the Committee to consider.

The Committee may choose not to accept a submission as evidence, or not to publish a submission even if it is accepted as evidence. This may occur where a submission is very long or contains material which is inappropriate.

Submissions will be published online with any contact information (for example, email addresses) removed.

The Committee will publish anonymised submissions (where the name of the respondent and any references to named individuals are removed) where a respondent makes a reasonable request to do so.

Submissions sent to the Committee after the deadline of 17:00 on 31 July 2020 may not be considered.

Given remote working due to the coronavirus, we can only accept submissions via email. Please email your submission to: public@public-standards.gov.uk

If you have any questions, please contact the Committee's Secretariat by email (public@public-standards.gov.uk). If you have any questions you would prefer to discuss by telephone, please include your contact number in the email.

Electoral Regulation Submission

Q1. I think key concepts are transparency and accountability. Currently it's very hard for local parties to hold their own party's MPs accountable without likely losing the next election. It should be possible for a Tory constituency to remove and replace its Tory candidate without expecting to be hit in the polls. The financial power of parties is part of this.

Q2. I read about lots of breaches in electoral finances which do not result in prosecutions or significant issues for the parties involved. This is an issue for which new approaches should be tested.

Q3. Be required to loudly report its conclusions from the last election in detail just after a new election is called. Get some game theorists in to work out how to have better election incentives. I don't know, these are just some ideas.

Q4. I don't know.

Q6. There seem to be lots of times the law gets broken and there is no accountability. This seems like a problem.

I am not sure the EC is aware enough of systemic factors. It's not that there are a problem with the rules, it's that there is a problem with the outcomes. Many iterations of otherwise reasonable rules may be required to have significant impact on the outcomes.

Q7. I don't know. Is it causing less rule breaking? I think we could make a case that the fallout from electoral tampering is worth far more than £20,000 (Imagine how much it's worth to replace an MP or to affect a referendum)

Q8. Only if it causes better adherence to election law. What's more it should be very responsive. It's no good prosecuting people after an election has been illegally won.

Note:

This was extremely difficult to fill in. I had to see a tweet follow 3 links, download a document, write a separate document and send it to your email. Why not just create a typeform. You'd get a lot more responses? If you don't want more responses in a public consultation lets talk about that.

Thanks for all your hard work.

Committee on Standards in Public Life - Electoral Regulation Review

1. Overview: Principles & Values

The foundation stones of the UK's Parliamentary democracy are the constituencies. We do not elect a President or Prime Minister, let alone a Government, but individual Members of Parliament. The Executive derives its authority from the collective mandate of those individuals.

It must follow that the integrity of the process by which they are elected is of huge significance in determining the overall health of our political system. Ever since 1883, when Parliament legislated to restrict the ability of wealthy men (they were almost always men) to purchase election outcomes, and thereby MPs, this has properly been an overriding principle.

The application of that principle has been severely strained by changes of campaign techniques and technology in the last decade.

We therefore warmly welcome this timely review by the Committee on Standards in Public Life.

2. Transparency, Fairness & Accountability

We believe it is important that the elector should be able to see clearly the source of all campaign messages that are employed to seek to obtain his or her vote. This has been the basic requirement for the long established rules for the identification of printed campaign material and for the responsibility of the appointed constituency agent for all campaign expenditure.

It follows that the Electoral Commission – as the statutory regulator, independent of all political parties or non-party campaigners – has to be in a position to examine this information. Hence the need for comprehensive transparency to achieve enforceability and accountability.

Parliament has also sought to secure fairness between different campaigners, to avoid constituency campaigns being left to the mercies of the market, with no limit on the amounts that could be invested in them. The relatively modest limits of the regime set up by the Representation of the People Act 1983 (RPA) owe their origin to this objective.

3. Clarity & Consistency

Until relatively recently these objectives have been clearly defined, well understood and capable of effective monitoring. The ever increasing targeting of constituencies identified as marginal, and therefore susceptible to change, and increasingly sophisticated communication techniques, have dramatically changed the position. The expenditure limits observed by constituency candidates and their agents can pale into insignificance beside the much greater sums employed by national political parties, and national campaigning organisations, to spread their message to selected electors.

We start from the basic assumption that ANY communication, by a regulated election participant, which seeks to influence a potential voter to vote in a particular way in a particular constituency should be the responsibility of that candidate and his/her agent. There may be minimalist exceptions but this should be the objective.

Therefore:-

- * targeted mail-shots to named electors at specific addresses in specific constituencies, and
- * digital campaign messages targeted to specific postcode areas in specific constituencies, and
- * telephone call centre activity seeking support on the same basis

should all be considered as potential regulated expenditure by the appropriate political party and its nominated candidate, and included in his/her return.

The same approach should apply to campaigning non-party organisations, where they seek to support or oppose candidates.

We welcomed the initiative of the Electoral Commission in drafting, consulting on and publishing the Codes of Practice for Candidates and for Political Parties in July 2019. These sought to achieve greater clarity, and went some way towards the consistency we wish to promote. It would have been beneficial for these to have been fully endorsed by Parliament before the November/December 2019 General Election campaign: the subsequent delay by Ministers in tabling them is both inexplicable and causing suspicion.

4. Parallel Regulation & Enforcement

The existence of the two distinctive regimes for constituencies (RPA 1983) and for political parties (Political Parties, Elections and Referendums Act 2000 - PPERA) is a frequent cause of confusion and excuse for non-compliance. A series of recommendations to legislate for a more coherent regulatory framework have been ignored. We strongly support the evidence to the Committee from the Electoral Commission that:-

“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.”

This is especially desirable and urgent in the context of monitoring, investigation and penalties for serious infringement. The lack of an effective role for the Electoral Commission throughout this process where there has been deliberate action to avoid compliance in a constituency campaign, and where sparse and ill-equipped police resources have to be engaged instead, is an obvious weakness. We would support the Commission taking on a prosecution role for lower order suspected electoral offences ([see 5 below](#)).

5. Interaction between Civil Sanctions & Criminal Prosecution

As the Electoral Commission reports:-

“The civil sanctions regime works well, but it doesn’t interact with the criminal prosecution regime. In practice the two regimes function separately”

We consider this to be a serious defect. For example, lacking practical and contemporary experience at all levels, the prosecuting authorities and smaller police forces often take very many months to examine breaches of electoral law which give rise to possible criminal proceedings. Some recent cases have only been brought to court, and to a conclusion, years after the events to which they relate. This is inherently unfair to all concerned, and a real blemish on the UK’s justice system.

It seems that the Commission could also resolve regulatory issues, and ensure compliance, more swiftly, outside a formal investigation of any sort, if it had the power to do so. Sharing information with the police or other regulators (eg the Information Commissioner) must be made speedier and simpler.

The actual penalties available to the Commission are woefully inadequate. To be limited to a maximum fine of £20,000 when the excess expenditure may run into £ millions, and the political advantage may be huge, invites the potential

culprit(s) to treat this as a very modest business expense rather than a real deterrent. We suggest that the penalty should be related to the scale of the financial offence, perhaps 50%, so treating minor infringements (which may be unintentional) quite differently from planned, deliberate, major offences.

As matters stand, party candidates and agents can claim that they are not aware of the campaign targeting – and expenditure – that their national parties may be undertaking on their behalf. This should not be an eligible defence. All concerned should be fully aware that any expenditure on any activity that seeks to secure the election of a candidate must be recorded and reported, within the regulated constraints, by whosoever they are undertaken.

For the same reason, all should be aware that the candidate could be personally unseated (if elected) and/or prevented from seeking election again, in extreme cases. Despite moving the initiative more into the area of responsibility of the Commission we would not recommend dispensing with the ultimate threat of criminal proceedings and penalties altogether. The Commission must be able to refer such cases to the prosecuting authorities.

The eventual objective should be a single regulatory framework for candidates, parties and non-party campaigners, but we recognise that this may be only achieved by wholesale rationalisation of electoral legislation, and may therefore be some years away.

In the meantime, the strengthening of the Commission's regulatory role along the lines indicated above will both assist law-abiding campaigners and give the public greater confidence in the integrity of the electoral process.

6. Referendums

Recent experience of referendums in the UK has raised concerns which go beyond those for elections. For example, while political parties which contest major local authority and national elections tend to have continuity, and can be held responsible for their actions after polling day, this is not always the case with those who seek to influence referendum outcomes.

Substantial sums of money have been spent during the last few days of referendum campaigns by organisations which can literally cease to exist as soon as the polls close. These may be more commonly mobilised and funded from foreign sources, whether legitimately or illegitimately, than in elections. There is a strong case for the powers of the Commission to be able to insist on real-time financial data in such circumstances, and to tighten up on the delay before reports are required.

In a referendum there tend not to be hundreds of different participants, of all shapes and sizes, as there are in election campaigns, and the logic of more rigorous and timely regulation is obvious.

The public have shown themselves more sceptical of the transparency and integrity of referendum results than of elections, and the Committee is surely right to invite special attention to their regulation.

7. Digital Campaigning

In all forms of electoral campaigning, whether for Parliament, local authorities or in a referendum some of the regulatory apparatus has been left behind by the advance of technology, and specifically by the digital revolution.

Attempts to update PPERA since 2000 – let alone RPA since 1983 – have failed to keep pace, and to incorporate effective regulation to ensure transparency and responsibility.

Despite a chorus of official recommendation from the Electoral Commission, the Information Commissioner and Select Committees of both Houses of Parliament that all campaign messages in social media should identify its source (and thus, it would be hoped, its eligibility) Ministers have dragged their feet. The current switch of investment, to the tune of £ millions, from traditional written material to on-line communication, demands urgent attention.

The logic is impeccable: if all printed campaign material must include an “imprint” giving this information, so should digital messages. As the Committee implies, this is especially necessary *“to protect the electoral process from the influence of foreign players.”*

The Commission should be empowered to insist on the provision of appropriate documentation from social media companies. They may well have real-time data on expenditure patterns, and their funding sources, to which the regulator should have immediate access.

It is unsatisfactory for the commercial companies to be expected to carry the full responsibility for establishing which campaigners are legitimate, any more than they should be beyond the remit of the statutory regulator in such a sensitive, politically important area.

We welcome the latest announcement of a Cabinet Office consultation on digital campaigning, but by the time Ministers act on its recommendations an unnecessary and damaging delay of at least two years will have elapsed.

8. Conclusion

We welcome this initiative by the Committee, and we trust that the exercise and its recommendations will have more success with the Government and Parliament than its excellent report *“Political Party Finance”* of November 2011.

We broadly endorse the Electoral Commission’s suggested interim improvements for its regulatory functions – independent of Government and political party interference – while also reiterating our support for comprehensive updating and rationalisation of electoral legislation, along the lines outlined by the Law Commission.

A key objective would be to create a single regulatory framework for election expenditure for candidates, parties and non-party campaigners, in the interests of transparency, fairness and accountability.

Lord Tyler & Wendy Chamberlain MP
on behalf of the Liberal Democrat Party – 12 August 2020.

Submission 27

I just want to provide a short and uncomplicated response to your consultation. The Electoral Commission promotes its commitment to a level playing field for parties and in particular their financial expenditure in digital campaigning. I fully understand agree with this but it overlooks one important issue. There is not equal access to social media available to parties and individuals. Some parties and indeed individuals are precluded from campaigning on social media because they have been banned by these companies, often as the result of mass lobbying. There is no point in having a level playing field in finance if there is not a level playing field for access to digital media. This means that some candidates cannot use social media to campaign at election times. This seems unfair particularly as the banning process is totally in the hands of social media companies. There is no external appeal process, their criteria also seem rather biased and inequitably applied.

Also digital payment processes are likewise not equally available. Last year PayPal banned my party, again as the result of mass lobbying. There needs to be an enforced level playing field for all parties.

Best Wishes

Mike Speakman

Nominating Officer

The For Britain Movement

Committee on Standards in Public Life – Review of electoral regulation

Written evidence submitted by the Electoral Reform Society

20 August 2020

We welcome the CSPL's review of electoral regulation in the UK, particularly in light of how digital campaigning has transformed the way parties and campaigners engage with voters. Public trust in our democratic processes, especially in key political events such as elections and referendums, is contingent upon ensuring transparency, fairness and accountability. However, there have been a multiplicity of threats affecting public trust, and our democracy, more generally in recent years.

The Electoral Reform Society has been at the forefront of highlighting the issue of unregulated online political campaigning. Online campaign regulation and more broadly the role of money in politics are intimately connected with key issues on which the ERS has long campaigned: transparency of the UK's democratic processes, good quality information and political debate, and up to date electoral law.

Executive Summary

- The regulation of political finance in the UK should be based on the values of transparency, fairness and accountability. Their interpretation and application should be updated to account for the increase in online political campaigning, as a way of ensuring public trust and allowing the Electoral Commission to fulfil its important regulatory role effectively. Our submission outlines steps which can be taken to close some of the loopholes surrounding political finance, particularly online.
- The government's recent proposals on extending imprints to online election material are a welcome first step towards enhancing transparency, fairness and accountability, and will assist the Electoral Commission in its important monitoring and enforcement work. However, a clear timeline as to when the new digital imprints regime will be introduced needs to be set out as a matter of urgency.
- The Electoral Commission has a strong track record as an independent regulator and there are high levels of satisfaction among those who work with the regulator and among the public. Its roles in overseeing the delivery of elections and electoral

registration have equipped it with considerable expertise, institutional capacity and ability to liaise with a variety of stakeholders (from election officials to third-party campaigners), which assist it in its role as regulator of election finance.

- The Electoral Commission's powers as regulator of election finance should be enhanced so that it can appropriately monitor and investigate those it regulates, including powers to obtain and share information outside a formal investigation, and to investigate breaches. The enhanced resources and powers granted to the Information Commissioner's Office (ICO) are an example of how a regulator can keep pace with changes brought about by online campaigning.
- Though the Commission supports compliance with campaign finance laws through the guidance and advice it provides, its enforcement and sanctioning powers should be increased so that they act as a deterrent against infractions, rather than being seen as the cost of doing business. We strongly believe the civil sanctions powers available to the Commission are completely out of date and inadequate for modern political campaigning.
- Currently, there are two separate regimes governing political finance laws: candidate finance is regulated under the Representation of the People Act 1983 (RPA 1983), with the police as enforcer; party and campaigner finance is regulated under the Political Parties, Elections and Referendums Act 2000 (PPERA 2000) and enforced by the Electoral Commission. The current disjointed and inconsistent regime risks creating 'enforcement gaps', given the lack of alternatives to police investigation and criminal prosecutions currently available under RPA 1983 for breaches to candidate finance laws.
- We believe the Electoral Commission should be responsible for enforcing candidate finance laws as well so that there is one simple, consistent and proportionate regime, rather than the current outdated dual regime. A civil sanction regime enforced by the Electoral Commission could help bridge this gap and improve fairness and accountability. Expanding the Electoral Commission's powers to include the enforcement of candidate finance laws could also enhance the transparency of candidate expenses, which are currently held by local returning officers rather than stored centrally as they are for parties and campaigners.

About the Electoral Reform Society

The Electoral Reform Society is the UK's leading voice for democratic reform. We work with everyone – from political parties, civil society groups and academics to our own members and supporters and the wider public – to campaign for a better democracy in the UK.

Our vision is of a democracy fit for the 21st century, where every voice is heard, every vote is valued equally, and every citizen is empowered to take part. We make the case for lasting political reforms, we seek to embed democracy into the heart of public debate, and we foster the democratic spaces which encourage active citizenship.

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.

1.1. We believe that the regulation of political finance in the UK should be based on the three key values outlined above: transparency, fairness and accountability. Our polling on election integrity shows that these values are also supported by the public: When presented with 12 options on problems with British democracy, 48 percent of respondents chose election campaigns being free from the influence of large financial donors as one of the issues of importance to them; 42 percent said that all parties having fair access to elections was important; and 41 percent thought that online campaigning activities should be transparent and regulated.¹ But the interpretation and application of these values must be updated to account for the increase in digital campaigning techniques and consequently in the amounts being spent on social media platforms in recent years, which have threatened the effective implementation of these principles and have the potential to undermine public trust.

1.2. With regards to **transparency**, voters should know how much money is being spent and received by parties and campaigners in an effort to engage them in democratic debate. The Electoral Commission should be able to monitor political finance easily through accurate and timely reporting of donations and spending, and thus ensure compliance with the law. However, reporting of spending online is subject to limited regulatory oversight. Parties, for example, do not need to provide a breakdown of social media spend, but can ‘hide’ online advertising under larger categories, such as market research, advertising and unsolicited campaign material. The invoices parties provide for online adverts do not specify to who or where the adverts are targeted, potentially allowing national spending to be used for campaigning in marginal seats and for spending thresholds to be breached. The Electoral

¹ Electoral Reform Society (2018). Poll: ‘Need’ for voter ID should be least of our worries, say voters. 6 June. <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/poll-need-for-voter-id-should-be-least-of-our-worries-say-voters/>

Commission made a recommendation, which we endorse, that spending returns should include more detailed and meaningful information on spending online.²

1.3. Under the Political Parties, Elections and Referendums Act 2000 (PPERA 2000), any contribution of more than £500 (to a political party or campaign) must come from a UK-based individual or company. However, since sums below £500 are not classed as ‘donations’ in the law, there is a major loophole for foreign donors to fund party activities or campaigns in the UK, for example by breaking up large donations into smaller units – an issue that came to prominence during the 2019 European Parliament elections, through the alleged use of PayPal donations to hide country of origin.³ We recommend that parties and campaigners check the source and admissibility of the donations they receive,⁴ and that all donations, regardless of amount, are classed as such or at least that the £500 threshold for donations reporting is lowered significantly to prevent the rules being circumvented.

1.4. The lack of real-time donation reporting during elections means that voters often only find out about potential conflicts of interests or influences driving the debate long after the voting. The format in which donations are published, frequently in inaccessible PDFs, rather than as live, fully searchable digital records, exacerbates this problem. Donations are reported weekly during an election campaign (quarterly at other times) and spending returns are required only 3-6 months after an election, depending on the amount spent. In the case of a referendum, this is especially problematic given their ‘one-off’ nature which means that voters do not have another chance to take these factors into consideration and hold campaign directors to account, as they might with a general election.

1.5. While UK campaigners are required to register with the Electoral Commission for election periods, foreign states, organisations or individuals are able to influence UK campaigns with online ads with little regulatory oversight. Rules require that companies must be carrying out some business in the UK (and registered in the UK or any EU member state) in order to fund political parties or campaigns, but they do not need to prove that the funds are generated from their UK-based activity. It is therefore possible for an unscrupulous power to set up a UK company, begin trading a nominal amount of cashflow through it, and then use this as a vehicle to fund elections. Millions can also be pumped into campaign groups – including from foreign donors – outside of the regulated campaign period, without funding transparency.

² Electoral Commission (2018). *Digital campaigning: Increasing transparency for voters*. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improving-transparency-for-voters.pdf

³ BBC News (2019). Brexit Party 'at high risk' of accepting illegal donations. 12 June. <https://www.bbc.co.uk/news/uk-politics-48611704>

⁴ The Electoral Commission has also recommended this. Electoral Commission (2019). Political parties and non-party campaigners accepting payments online. 12 June. <https://www.electoralcommission.org.uk/political-parties-and-non-party-campaigners-accepting-payments-online>

1.6. The Electoral Commission made a series of recommendations, with which the ERS strongly agrees, on how to improve transparency around who pays for digital campaigns in its 2018 report.⁵ These include ensuring that spending money on election and referendum campaigns by foreign individuals or organisations should not be allowed, and that there should be enhanced controls – including by social media companies – on donations and loans to prevent foreign money being used in our democratic processes. The Electoral Commission has also long recommended that company donations should be funded only from UK-generated activities with checks to ensure companies can prove this – but this recommendation has not been implemented.

1.7. In terms of **fairness**, political finance rules should apply to candidates, parties and campaigners in a way which fosters a level playing field for all – they should be able to raise funds, within the limits imposed by law, in order to conduct an election or referendum campaign and spend these in a way that is permissible by law. Political finance laws should not pose an unnecessary burden on parties and campaigners, preventing them from taking part in democratic processes.

1.8. Finally, it is important to ensure that those regulated are held **accountable** and comply with the law, through working with the regulator. Appropriate sanctions should be imposed if this is not the case. Currently, the Electoral Commission's sanctioning powers are limited – with its maximum fine of £20,000 potentially being seen as merely the 'cost of doing business' by well-resourced campaigners seeking to circumvent the rules. Further, the fact that online adverts can easily be purchased from overseas at the moment raises jurisdictional and regulatory enforcement concerns, making it hard to track down, verify and, if necessary, take action against foreign actors interfering in the UK's democratic processes. The Electoral Commission (and, in the case of candidate finance, the police) must be able to obtain information from social media platforms (such as the registered address of the account paying for an advert) in order to monitor compliance with the law and take action where necessary. In this work, it could collaborate with other international regulators, as the Information Commissioner has been able to do with regards to data privacy law.

1.9. We welcome the government's recent proposals on extending imprints to online election material, which will enhance transparency, fairness and accountability, and assist the Electoral Commission in its important monitoring and enforcement work. However, a clear timeline as to when the new digital imprints regime will be introduced should be set out as a matter of urgency, to avoid kicking the issue even further into the long grass, especially

⁵ Electoral Commission (2018). *Digital campaigning: Increasing transparency for voters*. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improving-transparency-for-voters.pdf

considering that the government first committed to introducing digital imprints more than 15 months ago, following a previous consultation.

1.10. The First Past the Post electoral system exacerbates many of the potential problems set out above. The fact that a candidate can win a seat/a party can win an election on a minority of the vote by a very small margin, means that the hyper-localised, precise targeting of spending and information made possible by unregulated online campaigning can have considerable impact on who represents and governs us. This undermines the value of a level playing field we highlighted above. First Past the Post encourages candidates and parties to focus their efforts on winnable marginal seats – the extent to which this is the case, however, is unknown given the disjuncture between candidate and party finance laws (with the former being regulated under the Representation of the People Act 1983), and the fact that current rules do not allow for an accurate picture of where and how parties are investing digital campaign resources, thus undermining the values of transparency and accountability.

The regulatory remit of the Electoral Commission

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.

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

2.1. The ERS believes that the Electoral Commission's powers as regulator of election finance should be enhanced so that it can effectively monitor and investigate those it regulates. The Commission should be given enhanced powers in relation to obtaining information, investigating breaches and issuing appropriate sanctions, so that it can perform its role even more effectively, particularly given the challenges brought about by digital campaigning.

2.2. The Commission has a strong track record as an independent regulator and there are high levels of satisfaction among those who work with it, as stated by Professor Justin Fisher and the Association of Electoral Administrators (AEA) in evidence to this consultation.⁶ Through publishing guidance on the law and providing advice in response to queries, the Commission supports compliance with campaign finance laws and helps to prevent wrongdoing before it occurs. Nevertheless, where this is not the case, the Electoral Commission's enforcement and

⁶ Committee on Standards in Public Life (2020). Review of electoral regulation Written evidence Submissions 1 - 20.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905688/CSPL_Regulation_of_election_finance_-_written_submissions_1_-_20.pdf

sanctioning powers should be increased so they can act as a meaningful deterrent against infractions.

2.3. The Electoral Commission does not currently have the power to obtain information from those it is seeking to regulate outside of a formal investigation, which limits its ability to assess whether or not an investigation is the most appropriate course of action. The Electoral Commission has called for this power to be granted to it,⁷ and this was recently backed by the House of Lords Democracy and Digital Technologies committee.⁸

2.4. The Commission does not also currently have the explicit power to share information with the police or other regulators, which hinders its ability to take action more promptly.

2.5. The current Electoral Commission sanctions for wrongdoing can be viewed as the ‘cost of doing business’. Leveraging a maximum individual fine of £20,000 after campaigns have finished, in relation to spending in the millions, constitutes a major flaw in the legal framework. Perhaps the most well known example of this are the £61,000 fines the Electoral Commission imposed upon Vote Leave in 2018 for overspending during the EU referendum campaign.⁹ Another example is the £20,000 fine imposed upon the Liberal Democrats for missing spending returns accounting for payments totalling £184,676.¹⁰ The government’s recent imprints proposals have highlighted the contrast between the Electoral Commission’s limited sanctioning powers in relation to parties and campaigners, and the unlimited fines which can be levied by the police against candidates.¹¹ Multiple parliamentary committees, civil society organisations and others have called for the Commission’s fines to be increased in recent years.¹² Most recently, the House of Lords Democracy and Digital Technologies

⁷ E.g. Electoral Commission (2018). *Digital campaigning: Increasing transparency for voters*. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improving-transparency-for-voters.pdf

⁸ House of Lords Select Committee on Democracy and Digital Technologies (2020). *Digital Technology and the Resurrection of Trust. Report of Session 2019-21*. <https://committees.parliament.uk/publications/1634/documents/17731/default/>

⁹ Electoral Commission (2020). Investigation: Vote Leave Ltd, Mr Darren Grimes, BeLeave and Veterans for Britain. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-vote-leave-ltd-mr-darren-grimes-beleave-and-veterans-britain>

¹⁰ Electoral Commission (2016). Investigation: Liberal Democrats 2015 UK Parliamentary general election campaign spending return. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-liberal-democrats-2015-uk-parliamentary-general-election-campaign-spending-return>

¹¹ Cabinet Office (2020). *Transparency in digital campaigning: Technical consultation on digital imprints*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908358/Digital_imprints_consultation.pdf

¹² See, for example, Electoral Reform Society (2019). *Reining in the Political ‘Wild West’: Campaign Rules for the 21st Century*. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/reining-in-the-political-wild-west-campaign-rules-for-the-21st-century/#sub-section-9>

committee recommended increasing the Electoral Commission's maximum fine to £500,000 or four percent of a campaign's total spend, whichever is greater.¹³

2.6. The enhanced resources and powers granted to the Information Commissioner's Office (ICO) following the implementation of the EU General Data Protection Regulation (GDPR) and associated UK Data Protection Act 2018 (DPA 2018) might serve as an example of how a regulator can keep pace with changes brought about by online campaigning. The GDPR and DPA 2018 allow the ICO, inter alia, to fine organisations up to four percent of global turnover, or £17 million, and grant them the powers of compulsory audit, no notice inspections, and demands for access.¹⁴ It is striking that we now have a regulator with substantial powers to protect data privacy, but no such powers have been granted to the regulator entrusted with protecting our democracy.

2.7. Under PPERA 2000, the Electoral Commission regulates the funding and spending of political parties and other campaigners, but not the direct funding of and spending by candidates, which fall under the Representation of the People Act 1983 (RPA 1983) and are enforced by the police. Granting the Electoral Commission the power of monitoring and enforcing candidate finance laws would provide for a more coherent, proportionate approach and eliminate some of the existing gaps in regulation and enforcement.¹⁵ It would also free up police resources and remove their involvement in contentious electoral matters, with which they may not be best placed to deal.

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

4.1. We do not believe that the Electoral Commission's roles of overseeing the delivery of elections and electoral registration detract from its function as regulator of political finance. Quite the contrary, in fact. These aspects of its role are mutually beneficial and have equipped it with considerable expertise, institutional capacity and ability to liaise with a variety of stakeholders (from election officials to third-party campaigners), which assist it in its role as regulator of election finance.

¹³ House of Lords Select Committee on Democracy and Digital Technologies (2020). *Digital Technology and the Resurrection of Trust. Report of Session 2019-21.*

<https://committees.parliament.uk/publications/1634/documents/17731/default/>

¹⁴ Electoral Reform Society (2019). *Reining in the Political 'Wild West': Campaign Rules for the 21st Century.* <https://www.electoral-reform.org.uk/latest-news-and-research/publications/reining-in-the-political-wild-west-campaign-rules-for-the-21st-century/#sub-section-9>

¹⁵ See also recommendation 36 of the House of Lords Democracy and Digital Technologies committee: <https://committees.parliament.uk/publications/1634/documents/17731/default/>

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

5.1. As outlined in our response to questions 2 and 3, the Commission's limited enforcement and sanctioning powers, combined with the outdated inconsistencies in finance law between what is regulated under PPERA 2000 and the RPA 1983, means that the regulation of election finance is not as effective as it could be.

5.2. As mentioned above, we believe that the Electoral Commission should be given enhanced powers to oversee political finance, ensure compliance and take action against wrongdoing. This should apply to candidates, as well as political parties and campaigners.

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

6.1. The Commission's strengths are its independence, its expert knowledge in matters relating to elections (and referendums) and campaign finance, the quality guidance it provides to electoral administrators (which the AEA described in its submission as 'outstanding'), and the high levels of satisfaction reported by electoral agents and administrators. Further, the Electoral Commission enjoys high levels of public trust and performs important public service roles, including: its research outputs and online resources; encouraging voter registration and promoting awareness of electoral events, which could not be fulfilled by other bodies given the need for UK-wide coordination.

6.2. The Commission's main weakness as a regulator of election finance are its limited powers in obtaining and sharing information prior to/during a formal investigation, and the limited sanctions it can impose for wrongdoing.

6.3. Another weakness relates to the gap in enforcement between offences committed under PPERA 2000 (which are the responsibility of the Commission) and those committed under the RPA 1983 (which are a matter for the police), which is primarily the result of the historic failure to consolidate, simplify and modernise our current 'complex, voluminous and fragmented' electoral law, as recommended by the Law Commissions and countless others in recent years.¹⁶ As mentioned above, we believe the Electoral Commission should be given the role of monitoring and enforcing compliance with candidate finance laws.

6.4. A final weakness relates to the jurisdictional issue raised by online campaigning, with infractions potentially being committed by foreign actors and/or on internationally-based

¹⁶ Law Commission and Scottish Law Commission (2020). *Electoral Law A joint final report*. https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf

digital platforms. The Electoral Commission should have the ability to work with international partners, as the ICO does, to prevent and/or punish wrongdoing.

The enforcement regime for election finance offences

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

7.1. As noted above, we strongly believe that the civil sanctions powers available to the Commission are completely out of date and inadequate for modern political campaigning, especially online. The Commission's sanctioning powers should be sufficiently high to act as a deterrent against wrongdoing, similar to those granted to the ICO following the implementation of the GDPR and DPA 2018.

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?

8.1. The ERS does not have a position on this issue.

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. The ERS does not have a position on this issue.

Enforcement of candidate finance laws

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

10.1. As mentioned in response to previous questions, we believe that the Electoral Commission should be responsible for enforcing candidate finance laws so that there is one simple, consistent and proportionate regime.

10.2. Having the police as regulator of candidate finance laws risks creating 'enforcement gaps', given the lack of alternatives to police investigation and criminal prosecutions currently available under RPA 1983 for breaches to candidate finance laws. A civil sanction regime enforced by the Electoral Commission could help bridge this gap and improve fairness and accountability.

10.3. Expanding the Electoral Commission's powers to include the enforcement of candidate finance laws could also enhance the transparency of candidate expenses, which are currently held by local returning officers rather than stored centrally as they are for parties and campaigners.¹⁷

¹⁷ APPG on Electoral Campaigning Transparency (2020). *Defending Our Democracy in the Digital Age*. <https://fairvote.uk/wp-content/uploads/2020/01/Defending-our-Democracy-in-the-Digital-Age-APPG-ECT-Report-Jan-2020.pdf>

REVIEW OF ELECTORAL REGULATION

Transparency International UK's submission of written evidence to the Committee on Standards in Public Life (20.08.2020)

SUMMARY

Historically, experts perceived the UK's political finance rules to be of a high standard and in-line with most good practice recommendations.¹ However, major deficiencies remain and new threats have emerged since the last comprehensive review of these laws by the Committee on Standards in Public Life (CSPL) in 2011, which allow activity that undermines the integrity of our political process and trust in our democratic institutions.

It is still possible for political parties to become heavily indebted to a small number of very wealthy donors, which undoubtedly has a material impact on their decision-making whilst in public office. It is still too easy for political parties and campaigners to break the law without fear of significant repercussion. And it is still too easy to hide the provenance of funds entering our political system.

¹ Group of States Against Corruption (GRECO), *Third evaluation round: evaluation report on the United Kingdom on transparency of party funding (theme II)* (2008) p.28
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca480>

Our submission outlines how these issues conflict with the values the UK's system for regulating political finance should embody.

KEY RECOMMENDATIONS

INTEGRITY

1. Introduce a cap of no more than £10,000 on the amount any individual or organisation can give annually.
2. Bring the reporting threshold for donations and loans into line with the permissibility thresholds, currently £500.
3. Reduce the UK parliamentary general election spending limit by at least 15 per cent for political parties, as previously recommended by the CSPL, and include campaign staff costs within the scope of national political party spending limits.
4. Introduce tighter controls on who can pay for parliamentarians' overseas visits.

ACCOUNTABILITY

5. Increase the amount the Electoral Commission can levy in fines up to £500,000 or 4 per cent of the spending limit (whichever is the greatest).
6. Extend civil sanctions to candidate offences at major elections.

OPENNESS

7. Tighten the rules to ensure companies can only make political contributions from genuine business activity in the UK.
8. Reduce the reporting threshold for political 'gifts' given to Unincorporated Associations to £500.
9. Make online campaigning more accountable by requiring full transparency over who is behind digital campaign adverts and who created them, as is currently the case for 'offline' election material.
10. Introduce transparency over donations and loans to political parties in Northern Ireland from 1 January 2014, as Parliament intended.

KEY VALUES

We agree with the CSPL's fifth report that the core values that should inform the regulation of political finance include integrity, accountability and openness. We also agree that the aim of these rules should still seek the eradication of 'grounds for criticism and suspicion which lead to public scepticism, and have proved damaging to the political parties'.² However, in light of recent findings by the Intelligence and Security Committee (ISC)³ as well as our own previous research into foreign interference,⁴ we would extend this to include the eradication of grounds for suspicion that foreign state actors unduly influence our political system.

Disappointingly, despite numerous reforms since 2000, much of the activity that prompted the CSPL's fifth review remains today. Below we outline briefly the key loopholes undermining the current system's ability to deliver on the values and aims mentioned above. We also include ten solutions that, if implemented together, would enshrine these values and help secure a more resilient democracy.

INTEGRITY

Central to issues undermining integrity in our political system are pressures on the supply and demand for funding. Despite advances made since 2000, the continued absence of more robust controls on donations creates the perception, and perhaps the reality, that senior office holders can be influenced inappropriately by wealthy backers. In turn, the lack of effective controls on political party spending fuels the demand for such funds. The recent saga over the Westferry Printworks development provides a powerful case in point.⁵

On the supply side, allowing donors to contribute unlimited amounts of money creates dynamics that are unhealthy for political parties and for trust in our politicians. Where major political parties become dependent on soliciting funds from a small number of wealthy donors, cases like the Westferry scandal are almost inevitable. History shows political parties will use senior party members, including ministers, as a means to solicit funds from those with extensive wealth at their disposal. This can easily create the perception that any contribution is part of a quid pro quo for favours.

There would be far fewer grounds for suspecting foul play if the amounts that donors could give were relatively modest and a much smaller proportion of a party's overall income. There are also wider benefits to limiting the amounts that can be donated by any individual or company. Removing parties' dependency on a small number of wealthy backers would not only reduce the risk of actual or perceived impropriety, but also encourage them to expand and diversify their donor base. This should increase financial resilience and facilitate a deeper connection between parties and the wider electorate than is currently the case.

Recommendation 1

² CSPL, *Fifth report* p.26

³ Intelligence and Security Committee of Parliament, *Russia* HC 632 (July 2020) <https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&srcid=aW5kZXBlbmRIbnQuZ292LnVrfGlzY3xneDo1Y2RhMGEyN2Y3NjM0OWFI>

⁴ Transparency International, *In whose interest? analysing how corrupt and repressive regimes seek influence and legitimacy through engagement with UK parliamentarians* (July 2018) <https://www.transparency.org.uk/publications/in-whose-interest/>

⁵ <https://www.transparency.org.uk/press-releases/robert-jenrick-westferry-printworks-richard-desmond-ministerial-code> [Accessed 7 August 2020]

To reduce the perception and/or reality that wealthy donors can buy access and undue influence, we propose there is a cap of no more than £10,000 on the amount any individual or organisation can give annually.

On the demand side, the need for large donations would also be lower if there were more effective controls on political party expenditure. Currently, the limits on national campaign spending at elections are substantial – almost £20 million for those contesting every seat in Great Britain at a Westminster general election – and can add almost 50 per cent to parties' usual annual expenditure.⁶ We note the current spending limit does not include parties' campaign staff costs, which can constitute a large proportion of their expenditure even outside UK parliamentary general election years.⁷ We also note that campaign staff costs are regulated for non-party campaigners regulated by PPERA⁸ and candidates regulated by the RPA 1983,⁹ so this current omission for parties is not through issues of drafting or practicality. Since 2013, the Electoral Commission has also called for these costs to be regulated.¹⁰

According to their accounts submitted to the Electoral Commission, on average every year the Conservatives, Labour and Liberal Democrats spend around £50.3 million, £37.5 million and £15.6 million respectively.¹¹ The frequency in which general elections have taken place in recent years and the amounts spent – both directly by central parties and channelled locally to candidates – must put an immense pressure on party fundraisers. All of this money must come from somewhere. Indeed, the November 2019 event at which Richard Desmond sat next to Robert Jenrick was an event to solicit money for the forthcoming election in December of that year.¹² Moreover, to illustrate these risks are not isolated, another minister has since recused themselves from an unrelated decision because they, too, sat next to another donor at the same event who is also seeking planning permission.¹³ So long as there are no limits on political contributions and overly generous caps on campaign spending at major elections, these incidents will continue, to the detriment of public confidence in the integrity of our politicians.

Recommendation 2

To ease political parties' demand for funding, we propose reducing the spending limit at UK parliamentary general elections by at least 15 per cent, as previously recommended by the CSPL,¹⁴ and include campaign staff costs with the scope of national political party spending limits.

⁶ Based on data from political parties' central accounting units published by the Electoral Commission.

⁷ Electoral Commission, *A regulatory review of the UK's party and election finance laws: recommendations for change* (June 2013) pp.48-50

https://www.electoralcommission.org.uk/sites/default/files/pdf_file/PEF-Regulatory-Review-2013.pdf

⁸ Political Parties, Elections and Referendums Act 2000 (PPERA) Section 85(2) and Schedule 8A
<https://www.legislation.gov.uk/ukpga/2000/41/contents>

⁹ Representation of the People Act 1983 (RPA 1983) Section 90ZA and Schedule 4A Paragraph 5
<https://www.legislation.gov.uk/ukpga/1983/2/schedule/4A>

¹⁰ Electoral Commission, *A regulatory review* pp.48-50

¹¹ This does not include inter-party transfers between accounting units or spending by accounting units who are not subject to annual reporting requirements.

¹² <https://www.dailymail.co.uk/news/article-8373141/Cabinet-minister-accused-bias-1billion-planning-row.html> [Accessed 7 August 2020]

¹³ <https://www.mirror.co.uk/news/politics/tory-energy-secretary-dined-donors-22349093> [Accessed 7 August 2020]

¹⁴ CSPL, *Political party finance: Ending the big donor culture*, Cm 8208 (November 2011) p.13

Recommendation 6

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336913/13th_Report_Political_party_finance_FINAL_PDF_VERSION_18_11_11.pdf

There are also supply-side issues that are separate from the pressures associated with campaigning but nonetheless have the potential to undermine the integrity of our body politics. Our research¹⁵ and research by others^{16,17,18} has highlighted the frequency with which foreign governments sponsor all-expenses paid trips for parliamentarians and their staff. In many cases this is done seemingly with a view to help provide a veneer of legitimacy to what are otherwise corrupt and repressive regimes. Some of this activity borders on that which led to the suspension of Ian Paisley Jr from the House of Commons for over 30 days.¹⁹ There would be fewer questions about the malign influence of some foreign governments if the existing permissibility controls on foreign donations also applied to overseas visits.

Recommendation 3

To help reduce the perception or reality of foreign interference in our democracy, we recommend parliamentarians be prohibited from accepting paid foreign travel costing over £500 other than from prescribed organisations that are either:

- **acting in the UK national interest;**
- **which the UK or UK Parliament is a full member, for example, the Inter-Parliamentary Union; or**
- **would otherwise be sufficiently regulated to provide this safeguard, for example, UK political parties.**

ACCOUNTABILITY

Key to ensuring accountability of those involved in the democratic process is effective and independent enforcement of the rules when they are broken. Expert bodies impress the importance of having a non-partisan oversight body endowed with this responsibility and adequate resources for policing political finance rules.^{20,21} Removing or hindering the work of the Electoral Commission would be regressive and counter to international good practice. Indeed, currently it needs strengthening to be more effective.

Despite Parliament providing civil sanctions to the Electoral Commission a decade ago, there remain enforcement gaps that need closing and an insufficient deterrent against egregious non-compliance with the law. Currently, the Electoral Commission does not have civil sanctions sizeable enough to be dissuasive against serious breaches of the Political

¹⁵ Transparency International, *In whose interest?*

¹⁶ <https://inews.co.uk/news/uk/revealed-700k-hospitality-bill-mps-visits-repressive-regimes-131658> [Accessed 17 July 2020]

¹⁷ <https://www.bbc.co.uk/news/uk-politics-45883411> [Accessed 17 July 2020]

¹⁸ <https://www.channel4.com/news/dozens-of-mps-flown-to-riyadh-in-saudi-charm-offensive> [Accessed 17 July 2020]

¹⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1397/139702.htm> [Accessed 17 July 2020]

²⁰ OECD, 'Ensuring compliance with political finance regulations', in *Financing democracy: funding of political parties and election campaigns and the risk of policy capture* (2016) pp.95-106 <https://www.oecd-ilibrary.org/docserver/9789264249455-en.pdf?expires=1597854987&id=id&accname=guest&checksum=149FE5C8E08C5082D55FF1E44DFA6609>

²¹ Council of Europe, *Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns*, Article 14 <https://rm.coe.int/16806cc1f1>

Parties, Elections and Referendums Act 2000 (PPERA).²²²³ Consequently, those not following these rules can do so with relative impunity. The limitations of the current maximum civil penalty are evident from cases over the past five years.

At the 2015 general election, the Conservative Party failed to report a six-figure sum as part of their spending return. Yet, cumulatively, the Electoral Commission was only able to impose a fine of £70,000 for this misconduct.²⁴ At the same general election, the Liberal Democrats under-reported spend by around 5 per cent, which only incurred a penalty of £20,000.²⁵ These sanctions are not large enough to be dissuasive against similar behaviour in the future.

Recommendation 4

To help provide a meaningful deterrent against breaches of the rules under PPERA, we agree with the recommendation from the Select Committee on Democracy and Digital Technologies that the maximum fine the Electoral Commission can impose be increased to at least £500,000 or 4 per cent of the spending limit (whichever is the greatest).

Conversely, criminal prosecution remains infrequent despite high amounts of low-level non-compliance with rules that carry a criminal offence. All failures to comply with the rules for candidates under the Representation of the Peoples Act 1983 (RPA 1983) carry a criminal offence, regardless as to the context or seriousness of the breach. As noted in the CSPL's call for submissions, a large amount of criminal conduct under the RPA 1983 goes unpunished because it is often not proportionate to bring forward prosecution.²⁶ The Law Commission noted, too, that civil sanctions in certain contexts could be helpful.²⁷ And the Electoral Commission has recommended since 2013 that it be given civil sanctions at least for major elections.²⁸

Recommendation 5

To help provide a meaningful deterrent against breaches of the rules under the RPA 1983, we recommend that the Electoral Commission's investigatory powers and civil sanctions be extended to candidate offences at major elections.

OPENNESS

²² Electoral Commission, *UK parliamentary general election 2015: Campaign spending report* (February 2016) pp.7-8 https://www.electoralcommission.org.uk/sites/default/files/pdf_file/UKPGE-Spending-Report-2015.pdf

²³ Select Committee on Democracy and Digital Technologies, *Digital technology and the resurrection of trust* (June 2020) p.95 <https://committees.parliament.uk/publications/1634/documents/17731/default/>

²⁴ <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigation-election-campaign-expenses> [Accessed 16 July 2020]

²⁵ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-liberal-democrats-2015-uk-parliamentary-general-election-campaign-spending-return> [Accessed 18 August 2020]

²⁶ <https://cspl.blog.gov.uk/2020/06/11/new-review-to-look-at-regulation-of-political-finance/> [Accessed 16 July 2020]

²⁷ Law Commission and Scottish Law Commission, *Electoral law: a joint final report* (March 2020) p.155 https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf

²⁸ Electoral Commission, *A regulatory review* pp.78-80

The current reporting thresholds for political contributions can be as high as £7,500. In a context with donation caps, as we propose above, this would be disproportionately high and damaging for transparency. Intuitively, it would be much easier for political parties and other regulated entities to report any contributions they have had to check for permissibility. There is precedent for this, with the donation permissibility and reporting thresholds for candidates at elections both being £50. Feedback from political parties to a review of the rules in 2012/13 highlighted that administratively it would be easier for them to report contributions they receive over £500 rather than aggregating them to a higher reporting threshold.²⁹ We agree.

Recommendation 6

To help provide meaningful transparency in a context where donation caps exist, we recommend bringing the reporting threshold for donations and loans into line with the permissibility thresholds, currently £500.

There are also still dark corners where money of unknown provenance can slip into the political system. To contribute to a UK political party, politician or other regulated entities, companies only have to be registered and 'carrying on business' in the UK. Previous casework into alleged breaches of these rules has shown that this is a relatively low bar for companies to pass and difficult to enforce in practice.³⁰ Our research has highlighted how companies with little history of trading can donate millions to regulated political campaigns.³¹ And more recently, a company seeking planning permission for a major infrastructure project has donated £216,365 during a two period (2018 to 2019),³² yet never turned a profit and has been financially dependent on loans and transfers from its wider group of companies.³³ These examples illustrate the laxness of the current rules, which allow companies to make political contributions with money of unknown provenance.

Recommendation 7

To help protect against funds of unknown provenance entering the political system, we recommend introducing tighter restrictions on corporate political donations by only allowing companies to donate if they can demonstrate that they are trading in the UK and earning sufficient income here to fund any contribution they make.

Despite new laws intending to enhance transparency over donors who are Unincorporated Associations (UAs) during the last decade, there remains woefully little information about the source of their political contributions. From 2010, new rules require UAs to register with the Electoral Commission if they make regulated political contributions over £25,000 in a year, and to report any political 'gifts' over £7,500 that they receive during the year prior to registration with the Commission.³⁴ The intention of these rules is to address concerns about UAs being used to hide the original source of political contributions. However, these rules are not achieving their intended aim.

²⁹ Electoral Commission, *A regulatory review* p.27

³⁰ Electoral Commission, *Case summary: Electoral Commission investigation into donations reported by the Conservative Party from Bearwood Corporate Services Limited* (March 2010) https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Case-summary-Bearwood-Corporate-Services.pdf

³¹ Transparency International UK, *Take back control: how big money undermines trust in politics* (October 2016) https://www.transparency.org.uk/sites/default/files/pdf/publications/Take_Back_Control_TIUK.pdf p.9

³² <https://tinyurl.com/yYu9e3q7> [Accessed 19 August 2020]

³³ This is based on a review of all the company's accounts submitted to Companies House, which cover the period 2009 to 2019 <https://beta.companieshouse.gov.uk/company/06681477/filing-history>

³⁴ PPERA, Schedule 19A <https://www.legislation.gov.uk/ukpga/2000/41/schedule/19A>

Since 2001, UAs have given over £46 million in political donations to British political parties and other British recipients, over half of which (£28 million) was given after the new transparency rules were introduced in 2010.³⁵ However, according to data published by the Electoral Commission, UAs have only reported receiving a total of £27,500 in political gifts – leaving a substantial gap between UAs’ declared income and their outgoing political donations.

Although a number of these groups are made up of councillors, many of the biggest UA donors are opaque groups whose funding and operations are unclear. This is especially so for UAs donating to political parties in Northern Ireland prior to 1 July 2017, due to the current prohibition of the Commission publishing information about political contributions made to parties in that part of the UK prior to this date.

Recommendation 8

To help protect against funds of unknown provenance entering the political system, we recommend reducing the level at which unincorporated associations report political gifts to £500.

All offline campaign material are required by law to include an ‘imprint’ identifying who paid for and promoted it. Currently, there is no similar requirement for digital campaign material, and social media platforms are left to self-regulate this content. This undermines confidence in the openness of our body politic and its resilience against foreign interference. The Electoral Commission,³⁶ the CSPL,³⁷ Parliament’s Digital, Culture, Media and Sport (DCMS) Committee³⁸ and ISC³⁹ all recommend that digital election campaign adverts should include an imprint. Between July and September 2018, the UK Government consulted on a range of proposals, including introducing imprints for digital election campaign material.⁴⁰ In May 2019, it stated it would bring forward a technical consultation on the details of how this should be implemented.⁴¹ In August 2020, the Government published a technical consultation on introducing digital imprints.⁴²

The Electoral Commission has been calling for the introduction of a legal requirement to include imprints on online campaign material since 2003, and digital imprints were a legal requirement at the Scottish Independence Referendum in 2014.⁴³ The time to introduce these requirements for campaigning at other polls is now long overdue.

³⁵ <http://search.electoralcommission.org.uk/> [Accessed 7 August 2020]

³⁶ Electoral Commission, *Digital campaigning: increasing transparency for voters* (June 2018) <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>

³⁷ CSPL, *Intimidation in public life* Cm 9543 (December 2017) p.61 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666927/6.3637_CO_v6_061217_Web3.1_2_.pdf

³⁸ DCMS Committee, *Disinformation and ‘fake news’: Final report* HC 1791 (February 2019) p.60 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>

³⁹ Intelligence and Security Committee of Parliament, *Russia* p.12

⁴⁰ <https://www.gov.uk/government/consultations/protecting-the-debate-intimidation-influence-and-information> [Accessed 19 August 2020]

⁴¹ <https://www.gov.uk/government/news/government-safeguards-uk-elections> [Accessed 19 August 2020]

⁴² <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints> [Accessed 19 August 2020]

⁴³ Scottish Independence Referendum Act 2013, Schedule 4 paragraph 27 <https://www.legislation.gov.uk/asp/2013/14/schedule/4>

Recommendation 9

To help provide greater accountability about who is trying to influence the outcome of elections in the UK, the Government should expedite measures requiring full transparency over who is behind digital campaign adverts and who created them, as is currently the case for 'offline' election material.

Until 2018, there was no public information about those donating or loaning money to political parties in Northern Ireland. The details of donors and lenders was reportable to the Electoral Commission and subject to similar controls as for political contributions in Great Britain; however, it was a criminal offence for their staff to disclose the details of these transactions except for very specific purposes, such as for criminal or civil legal proceedings. This was intended as a precautionary measure to protect the security of individuals and businesses after the ending of the troubles in this part of the UK. Since then the security situation there has changed and in 2014 the UK Parliament passed a law to enable contributions made after 1 January 2014 to be made publicly available.⁴⁴ However, when Government made regulations to publish these details, it only applied them to contributions received after 1 July 2017.⁴⁵ Given the importance of events during this three and a half year period, it is in the public interest to understand who donated or loaned money to political parties in Northern Ireland at this time, as Parliament had intended.

Recommendation 10

To provide openness over the sources of all money spent during the EU Referendum, Government should introduce transparency over donations and loans to political parties in Northern Ireland from 1 January 2014, as Parliament intended.

⁴⁴ <https://www.legislation.gov.uk/ukpga/2014/13/crossheading/donations-and-loans-etc-for-political-purposes> [Accessed 18 August 2020]

⁴⁵ <https://www.legislation.gov.uk/uksi/2018/328/contents/made> [Accessed 18 August 2020]

ABOUT TRANSPARENCY INTERNATIONAL UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare. We are independent, non-political, and base our advocacy on robust research.

CONTACT

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Full Fact submission to CSPL review of electoral regulation

Summary

1. Without the basic level of transparency provided by much needed reforms to electoral law, voters can be targeted without scrutiny or accountability, something which fundamentally undermines the idea that democracy should be a shared experience.
2. Our democracy can only truly be protected if those charged with protecting it can see developments in online election campaigning in real-time. The Electoral Commission needs better funding and a strong tech team to develop the tools necessary to monitor spending in real-time.
3. As well as the important focus on the challenges raised by digital campaigning, it is important not to overlook gaps in regulation in the offline space. The Electoral Commission should look again at the effectiveness of current size and placement requirements for offline imprints.
4. A democracy is about much more than a single, defined election period, and actions have the potential to have an impact on society well beyond that particular vote. We believe the Electoral Commission's regulatory remit should cover a wider period, beyond the current time limit. Public trust can be undermined at any time.
5. The UK needs to learn from the experience of our international partners in protecting elections from interference, such as Canada's Protecting Democracy programme.
6. We welcome this inquiry, but it should not be left up to ad hoc inquiries to ensure that election law stays robust in an uncertain world. We invite the inquiry to consider whether the Electoral Commission is adequately resourced to fulfil its duty to report on and review important aspects of electoral law.

About Full Fact

7. Full Fact fights bad information. We're a team of independent fact checkers, technologists, researchers, and policy specialists who find, expose and counter the harm it does. We check claims made by politicians, public institutions, in the media and online and ask people to correct the record where possible to reduce the spread of specific claims. We campaign for systems changes to help make bad information rarer and less harmful, and we advocate for higher standards.

8. Full Fact is a registered charity. We're funded by individual donations, charitable trusts, and by other funders. We receive funding from both Facebook and Google. Details of our funding can be found on our website¹.

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?*

&

Q2 *Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA?*

The value of transparency

9. As the Electoral Commission says, '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'.²
10. Voter confidence and trust is crucial in a democracy, and so transparency is a vital part in identifying attempts to undermine that trust. As a fact checking charity, Full Fact works inside and outside of election periods to provide high quality information to voters and to prevent harmful misinformation from spreading.
11. We have, along with the Electoral Commission and many other bodies, campaigned³ for the introduction of spending transparency for digital campaigning through the requirement of digital imprints. This would require online political campaign material to display information on who paid for it, as is the case for offline material. **The government is currently consulting on a technical proposal for digital imprints and we would urge a quick resolution once this has been agreed.**
12. It is now easy for people who do not belong to the official campaigns to run online advert campaigns on their behalf, and only those who spend more than £20,000 in England or £10,000 in the rest of the UK, have to register with the Electoral Commission. As online ads can be cheap, not everyone will need to register to play a part in attempting to influence the vote. This can be a great positive – more people are able to engage in politics and campaigning, which benefits democratic process. But it also makes it harder to keep on top of all the groups or individuals that are attempting to influence the vote, and the claims they make while trying to do so.
13. **We and others have also asked for a database of all political adverts that is updated in real-time and includes at a minimum information on who is being targeted by the advert, who it reached, who paid for it and how much it cost.**

¹ <https://fullfact.org/about/funding/>

² <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/responses-consultations/committee-standards-public-life-review-electoral-regulation-response-consultation>

³ <https://fullfact.org/media/uploads/fullfactreport2020.pdf>

14. Without this basic level of transparency, voters can be targeted without scrutiny or accountability, which fundamentally undermines the important idea that democracy should be a shared experience. Full Fact believes that candidates, political parties and non-party campaigners in the UK should not be able to campaign without there being an opportunity for journalists, academics and groups like ours to scrutinise the messages and tactics of the campaigns.
15. This spending information can only be truly useful – and offer real protections for democracy – if it is made public in real-time. **The Electoral Commission needs better funding and a strong tech team to develop the tools necessary to monitor spending as it happens so that any fraud or misuse is caught before it has effects on the overall outcomes of elections or referendums.**

Offline campaigns

16. There is a tendency to focus only on where the regulation is failing to protect democracy in the online space. While fact checking the 2019 election, Full Fact came across a number of examples of misleading campaigns and tactics offline.
17. This included local printed campaign materials masquerading as newspapers or lifestyle magazines.⁴ Unlike digital campaigns, offline campaign materials are required by law to identify themselves as such – stating who printed it and who authorised it to be printed. Guidance from the Electoral Commission says that this must be on the first or last page of a multi-sided document or, if it's a single-sided document, it on the face of the document⁵. This does not say how big the imprint has to be. The result is that campaigners can publish a multiple page newspaper with the smallest of small print in a corner of the back page.
18. **We believe that the Electoral Commission should consult on requirements for imprints to be in proportion to the size of the campaign material and in a specific, consistent location and format on all materials so the public gets used to looking in the same place.**

Digital campaign periods are more fluid

19. While the focus of electoral regulation in the UK is to provide transparency, the nature of modern elections has left many of our laws outdated.
20. In all conversations about regulating to protect democracy, we need to think more widely than elections. A democracy is about much more than a single, defined election period, and actions during the period have the potential to have an impact on society well beyond that particular vote. Public trust can be undermined at any time.
21. Currently in the UK, electoral regulations are in place only for the duration of the campaign period. The most recent General Election in the UK has shown this to be an outdated principle. For instance, between mid-June and mid-September in 2019,

⁴ <https://fullfact.org/media/uploads/fullfactreport2020.pdf#page=40>

⁵ Electoral Commission, 'Factsheet for Candidates: Election Material and Imprints-Great Britain', electoralcommission.org.uk/sites/default/files/pdf_file/Factsheet-Candidates-Imprints-May-2016.pdf

UK political parties spent £1m on partisan Facebook ads⁶, despite no election having been called. **We believe the Electoral Commission's remit should cover a wider period, beyond the current time limit.**

22. The government's current consultation on digital imprints⁷ proposes that this aspect of regulation will be enforceable year-round, recognising the changing nature of elections and political debate.

International examples

23. While the UK government has been a world leader in seeking to develop a proportionate response to the risks and harms from disinformation, it has not yet taken the urgent action needed to safeguard elections.
24. The UK could learn from other free countries as they develop their own responses to prevent foreign interference and protect electoral integrity. Canada has taken a number of steps in recent years through its Protecting Democracy programme⁸, including:
- Publishing the Critical Election Incident Public Protocol explaining to citizens how a panel of named public servants will be responsible for warning the public of election interference attempts.
 - Publishing the Canada Declaration on Electoral Integrity Online covering the responsibilities of internet platforms.
 - Developing public education material and dedicating \$7m towards a Digital Citizen Initiative to support digital, news and civic literacy programming, supported by a \$19.4m Digital Citizen Research Program.

The need for foresight

25. While we welcome this inquiry, it should not be left to ad hoc inquiries to ensure that election law stays robust in a volatile, uncertain, complex and ambiguous world.
26. The Electoral Commission has a power and a duty under section 6 of the Political Parties Elections and Referendums Act⁹ to keep under review and report on important aspects of elections and election law.
27. Powers without adequate resources are moot. **We invite the inquiry to consider whether this function of the Commission is adequately resourced given the scale of the change our democracy has to adjust to and, if so, whether the processes for considering and responding to those reports are adequate.**

⁶ Mark Scott, 'Britain's Election Is Alive and Kicking Online', POLITICO, 13 September 2019, [politico.eu/article/general-election-boris-johnson-uk-facebook-digital-campaign-disinformation](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908358/Digital_imprints_consultation.pdf)
⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908358/Digital_imprints_consultation.pdf

⁸ <https://www.canada.ca/en/democratic-institutions/services/protecting-democracy.html>

⁹ <https://www.legislation.gov.uk/ukpga/2000/41/section/6>

**For more information about this submission please contact our Policy Manager
Cassie Staines.**

Review of electoral regulation

Committee on Standards in Public Life

By email: public@public-standards.gov.uk

20 August 2020

Dear Sir/Madam,

RESPONSE TO REVIEW OF ELECTORAL REGULATION

I am writing to provide evidence on behalf of the Conservative Party to the Committee's review into electoral regulation.

Values underpinning regulation of electoral finance (Q1)

1. In the Committee's 2007 review into the Electoral Commission, the Committee noted the two key pillars of our democratic system: (i) free and fair elections and (ii) healthy, competitive political parties. We believe that these pillars should remain the bedrock of any legislative and regulatory regime.
2. The Electoral Commission's primary function is an executive and administrative one, to oversee the compliance regime for national campaigning finance. In the performance of its functions, it should ensure that the prevailing laws are fairly and proportionately followed, allowing for an appropriate level of transparency on significant donations and significant spending.
3. Political parties and campaigners are essentially voluntary sector bodies, and local associations are almost entirely volunteers (e.g. association officers, members, councillors). As the Committee stated in its 2007 review, "the regulator must... recognise that political parties are much more like large voluntary organisations than organisations in the public or private sector usually subject to regulation. Behind each career politician stands a regiment of dedicated voluntary party workers; even the local treasurers and election agents (who are subject to regulation) of the largest parties are mostly volunteers. The approach of the regulator must be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure."¹
4. The Commission should not be a lobbying organisation, nor should it supplant the role of Government and Parliament in determining the broader legislative and regulatory policy framework.

The regulatory remit of the Electoral Commission (Q2 - Q6)

5. This review by the Committee is timely and highlights a number of flaws with the operation of the Commission:

¹ Committee on Standards in Public Life, *Review of the Electoral Commission*, 2007, p.2, ([link](#)).

- a) The Electoral Commission is unaccountable. Ministers have no direct role. The Speaker's Committee in Parliament is ineffectual and has minimal influence.² There is little outside challenge or scrutiny.
 - b) Its core business is to oversee reporting requirements, but in practice its remit is confused. It is often asked to intervene in areas over which has no role. It is disjointed from the direction of government policy.
 - c) It has conflicts of interest. It provides (often unclear) advice to political campaigners, yet wants to prosecute breaches of its own unclear rulebook.
 - d) There is overlap and confusion with other regulatory regimes (notably data protection), and with the role of the Cabinet Office. To be fair to the Commission, the regulation of digital campaigning has been complex and convoluted because of the imposition of EU law.
 - e) The party-nominated Commissioners (board members) have minimal influence, and are often not consulted.
6. The Electoral Commission must focus on its core administrative and executive function. But it is not working as it should. As practical illustrations of problems with how the Electoral Commission operates:
- a) Different staff members within the Electoral Commission will contact the Conservative Party on advice or investigations with no evidence of co-operation or co-ordination within the Commission. This results in multiple points of contact who have no shared information between them. It is often difficult to keep track of which Commission employee is dealing with which investigation, sanction or submission.
 - b) The advice provided by the Electoral Commission is often deficient or out of date. For example, the Conservative Party's auditors needed guidance on producing annual reports and accounts; they had guidance from early 2000's; when requested, the Commission did not have an up to date version that was equally as comprehensive. The more recent version lacked information, which resulted in confusion on areas of reporting which were missing in the more recent guidance.
 - c) Investigations into supposed breaches can take years – for example, the Conservative Party is still currently discussing issues with the Electoral Commission from 2016. The review into the Conservative Party's campaigning activities during 2015 general election campaign only concluded two years later. The Electoral Commission finalised its inquiries into the EU referendum up to three years after the event.
 - d) Advice when provided is often contradictory. For example, the Conservative Party previously requested greater clarity over the rules on aggregation of donations (of those under £500, with those above), but different answers were provided by different parts of the Electoral Commission (though this is now concluded).

² The Speaker's Committee sets a broad financial envelope for the Electoral Commission, and has a degree of influence over senior appointments. Otherwise, there is little oversight over policy. As set out in Section 15 of PPERA, at the start of a Parliament it can scrutinise the Electoral Commission's Five Year Plan. But in practice, this oversight is weak. The Electoral Commission can diverge from that plan, and it is not clear if the Speaker's Committee can stop the Electoral Commission from undertaking a policy step that it was in disagreement with.

- e) Political parties often have to wait weeks for a response from the Commission; but parties are often given a very tight deadline at turning around requests for information.
 - f) Processes are more bureaucratic than they need to be. For example, quarterly donation reports are requested to be provided in Excel format as well as PDF format.
 - g) Guidance are not easily accessible to party volunteers who make up the majority of political activists.
7. The Electoral Commission consistently lobbies for itself to be given more powers – this is not an argument for doing so.³ Rather, this is public choice theory in action: quangos seeking to expand their remit for their own sake.
 8. In light of the fundamental flaws with the operation of the Commission, we believe that reform is needed.
 9. One option would be to amend legislation such that the Government would publish a regulatory policy statement, setting out the Electoral Commission’s remit and goals (activities it should undertake and *not* undertake). This framework would be ratified by Parliament as a piece of secondary legislation. This mirrors the approach taken for regulators like Ofgem and Ofwat;⁴ similarly, the Government publishes each year strategic advice and priorities for the Office for Students.⁵ Parallel arrangements could be made in the devolved assemblies /parliaments in relation to the oversight of devolved elections.
 10. Better use could also be made of the party-nominated Election Commissioners, especially in the development of guidance and broader operational policy. (It is worth noting that there are statutory restrictions on the party-nominated Commissioners getting involved in parties’ day-to-day operations).
 11. Such a framework would allow for clear Ministerial and Parliamentary oversight, whilst providing a check and balance against election gerrymandering or conflicts of interest
 12. A second option would be to abolish the Electoral Commission. Its statutory donation/spending registration and reporting functions could be transferred to Companies House, who would retain civil sanction powers. Companies House registers large quantities of company information and make it available to the public for scrutiny; it follows up with penalties for the small minority of companies that fail to meet registration requirements; and it works closely with a number of legal bodies to tackle economic crime. The Electoral Commission’s core functions could be easily absorbed.
 13. Investigations of ‘national/party’ electoral fraud would be a matter for the police (who already have oversight of ‘local/candidate’ Representation of the People Act offences). There would be scope to establish a specialist police arm, such as within a body like the National Crime Agency or within a lead police force (akin to the City of London Police

³³ Whilst the Electoral Commission might deny it lobbies – it has said: “We will continue to promote and build support for changes to our democratic processes through dedicated campaigns and collaborative working with key partners and stakeholders... This will include public relations and public affairs support” (Electoral Commission, *Interim Corporate Plan 2020/21 - 2024/25*, April 2020, p.14-15).

⁴ As an illustration of how such legislation is framed, see Section 3B of the Electricity Act 1989, ([link](#)).

⁵ Office for Students, *Guidance from government*, ([link](#)).

being the national policing lead for fraud) – which would receive additional government funding for such functions. The Commission’s broader policy, guidance and evaluation functions would be transferred to the Cabinet Office.

14. Either option would ensure there is a clearer strategic direction on the substance of electoral policy, whilst ensuring operational decisions are taken at arms’ length from the elected representatives who may be personally affected by them.
15. Notwithstanding such potential reforms, we are supportive of the principle – already allowed under PPERA – of statutory guidance, which is drafted by the Electoral Commission following consultation, reviewed or amended by Government, and then presented to Parliament for approval. This allows for clarity and democratic oversight of changes to the law, and would prevent some of the problems with unclear or inconsistent guidance that we have highlighted.
16. We would also wish to draw to the Committee’s attention the constructive role of the Parliamentary Parties Panel, which is a useful cross-party forum for political parties to engage with both Government and the Electoral Commission. For example, the Government has recently used the Panel to engage effectively over legislative reforms to the Parliamentary Boundary Review process.
17. We recognise that a broader challenge is the fact that electoral law is fragmented and complex.⁶ We welcome the broader work of the Law Commission in seeking to consolidate electoral law, but we appreciate that the Government’s immediate legislative priorities in the field of election law will be to deliver on its 2019 manifesto commitments.
18. This legislative complexity is clearly not the fault of the Electoral Commission, but the Electoral Commission’s lack of guidance has not helped. For example, the Electoral Commission’s ‘situations’ guidance on spending for political parties was a thin 14 pages in 2015.⁷ Only since September 2018 did the Electoral Commission start consulting on new statutory guidance on election spending by candidates and political parties, to make clearer the distinctions between candidate and party spend.⁸ The Supreme Court’s 2018 *Mackinlay* judgement has since made the law even more complex, and legislative revisions are urgently needed to clarify the law on notional expenditure.

The enforcement regime for election finance offences (Q7 – Q9)

⁶ As the Law Commission’s review of electoral law has asserted: “Electoral law in the UK has become complex, voluminous and fragmented... The law [on campaign expenditure], which is contained in the Representation of the People Act 1983 (the 1983 Act) and replicated in election-specific provisions, is extremely complex. The scheme of the 1983 Act is not obvious even to lawyers... At present, the law governing expenses returns, which report expenses, is confusing”; and “From a basic rule of law viewpoint, the law must be clear enough to achieve its policy aim of ensuring that candidates’ conduct conforms to its requirements. Yet the law, which has been the subject of several amendments, has grown very complex” (Law Commission, *Election law: a joint consultation paper*, 2014, para 12.5-12.6, [link](#)).

⁷ Electoral Commission, *UK Parliamentary General Election 2015 (GB and NI): Situations and procedures*, 2015, ([link](#)); by the 2017 election, it had been expanded to 29 pages, with added sections on campaign spending ([link](#)).

⁸ Electoral Commission, *Draft Codes of Practice for candidates* and *Draft Codes of Practice for political parties*, September 2018, ([link](#)).

19. The Electoral Commission has civil sanctioning powers that apply to referendums and elections. More serious criminal matters can and are referred to the police, and then considered by a court of law. The courts already have the power to levy unlimited fines and indeed, jail sentences. We see no reason to change this. It is entirely appropriate that the most serious sanctions are overseen by a court of law.
20. The Electoral Commission has repeatedly issued press comments claiming that political parties just see fines as a “cost of being in business”. This is wholly incorrect and is a derogatory comment which damages public trust. Being fined brings with it significant political and reputational risk and damage to a governing or opposition party. The courts have powers to issue unlimited fines, and even jail sentences. No professional staff member or voluntary party member would knowingly wish to break the law and risk such penalties. Nor would they knowingly want to attract the associated negative publicity to their professional reputation, or to their party organisation.
21. Although the Information Commissioner has been given powers following an EU Regulation to issue far greater fines, this has merely resulted in such large fines being challenged legally (e.g. as evident by the fines against British Airways, and Marriott hotels); ultimately, these cases are likely to end up in the courts anyway. If the Electoral Commission were to have such powers, we would expect a similar situation. This would lead to more litigation and court disputes, and would not be an improvement on the current regime. Whilst beyond the scope of this Committee’s review, we would simply note that the Information Commissioner practices are not a good model of a regulator to emulate.
22. One of the ‘Macrory’ principles of regulatory enforcement (which underpinned the basis of civil sanctions regime introduced via the Regulatory Enforcement and Sanctions Act 2008) is that sanctions should not be focused solely on punishment, but should ensure that the offender changes their behaviour and moves back into compliance. We suggest that the Electoral Commission’s enforcement regime could make greater use of advice, warnings, statutory improvement notices and enforceable undertakings.
23. For example, the Conservative Party was fined £6,000 in January 2018 owing to the late delivery of a Q4 2017 report. The return was delivered one day late, owing to staff illness. This was not a proportionate sanction given the nature of the breach. Had this been a pattern of behaviour (repeated and lengthy late returns), then it might have been. But otherwise, this illustrates a heavy-handed approach by the Commission in its use of fines.
24. Political parties and referendum participants of all colours/sides have been fined for breaches of technical reporting requirements, across general elections, the EU referendum and the Scottish independence referendum. This suggests we also need to look at whether the actual reporting timetables and processes are fair, manageable and reasonable.
25. Questions also need to be raised about the advice given by the Electoral Commission (and the conflicts of interest within a body responsible for advice and enforcement of its own advice).

26. Whilst the remit of this Committee's review does not extend to party funding, we would observe that political parties are required to raise money to fund their operations and campaigning, and this requires the regulatory system to be receptive to the principle of political donations. There is no public support for the state funding of political campaigning, since it would divert taxpayers' money away from public services. However, the Electoral Commission appears hostile to the concept of parties raising money from donors.
27. As we have previously noted, regulation needs to be proportionate to recognise that most political activism is by local volunteers. Political parties across the spectrum receive the bulk of their donations from individual members, and local clubs, councillor groups and political societies. Smaller, voluntary sector organisations tend to be set up as unincorporated associations. It is healthy for democracy for parties to raise money from such small-scale fundraising. But as a consequence, heavy-handed compliance regimes (that might be suitable for 'big business') is not in the public interest and undermines democratic participation.

Prosecution powers

28. The Electoral Commission has neither the capacity nor the competence to act as a prosecutor. There are too many conflicts of interest, and would end up 'marking its own homework'. This should remain a matter for the police and the independent Crown Prosecution Service, overseen by the courts.
29. Whilst there are precedents of other bodies than the Crown Prosecution Service operating as prosecutors, we also understand that the judiciary are concerned about the operations and skillsets of them. We note for example, there has been controversy over the conflict of interest the RSCPA has in bringing prosecutions.⁹
30. There is a fundamental conflict of interest if the body which provides operational advice and drafts guidance on the law, then has a role as an arbiter and prosecutor of that law.
31. Prior to the 2005 general election, the failure of the Electoral Commission to issue an advisory opinion on the application of PPERA in relation to soft loans to the Labour Party was instrumental in the decision of the police and Crown Prosecution Service not to prosecute over the 'loans for peerages' scandal. But had the Electoral Commission been the prosecutor, it would have put them in an even more conflicted position.

⁹ The Environment, Food & Rural Affairs Select Committee has concluded: "The Committee does not believe that the current model in England and Wales where the RSPCA brings private prosecutions alongside its investigative, campaigning and fundraising functions provides the necessary separation to ensure that there is no conflict of interest. The Committee recommends that the RSPCA should continue its important work investigating animal welfare cases and working closely with the police and statutory authorities. It should, however, withdraw from acting as a prosecutor of first resort where there are statutory bodies with a duty to carry out this role. We are not convinced by its arguments that it is in a better position than the CPS to prosecute animal welfare cases" (EFRA Committee, *Animal welfare in England: domestic pets*, November 2015, para 164-165, [link](#)). Such criticism have a clear read across to the Electoral Commission.

32. The Conservative Party did not campaign in the 2016 EU Referendum. But we note that since the referendum, there has been criticism of the how the Electoral Commission has acted over the legal advice it gave¹⁰, for failing to ask for evidence from the accused¹¹, its document handling¹², and its enforcement decisions.¹³
33. We would also add that the Electoral Commission has not handled itself well when it has referred prosecution cases to the police. Claims of criminal breaches of spending rules by Vote Leave and BeLeave were investigated and thrown out by the Metropolitan Police in May 2020.¹⁴ Indeed, Vote Leave followed the advice from the Electoral Commission on making donations to other campaigns such as BeLeave, illustrating the potential conflicts of interest within the Commission.
34. Claims of criminal breaches by Leave.EU were similarly rejected by the police. The National Crime Agency also announced in September 2019 that there was “no evidence that any criminal offences have been committed”.¹⁵ This decision to throw out the case was upheld by the High Court in April 2020.¹⁶ The Electoral Commission was forced to retract its claims.¹⁷
35. Unrelated to the EU referendum, the Electoral Commission referred the Conservative Party’s (then) Registered Treasurer to the Metropolitan Police in March 2017 for alleged breaches of PPERA and made the very serious allegation that a criminal offence may have been committed. However, at no point did the Electoral Commission provide any evidence to substantiate this claim that he had knowingly signed an incorrect return, despite stating in their press release that “...the evidence gathered during the course of the investigation has given the Commission reason to suspect that an offence may have been committed.” The Metropolitan Police subsequently concluded that there was no case of wrongdoing.¹⁸ The individual’s professional body also concluded that there was no case of wrongdoing. Despite this exoneration, the Electoral Commission refused to issue any comment recognising this individual had been cleared – even though it had named the individual on its website in its 2017 press release, where those allegations still remain on its website to the present day.¹⁹ This does not inspire any confidence in the competence, fairness or judgment of the Commission and raises a significant question

¹⁰ *The Guardian*, “Elections watchdog got law wrong on Brexit donations, court rules”, 14 September 2018, ([link](#)).

¹¹ “It is astonishing that nobody from Vote Leave has been interviewed by the commission in the production of this report, nor indeed at any point in the past two years” (Vote Leave spokesman in response to Electoral Commission report, *BBC News*, 17 July 2018, [link](#)).

¹² *Daily Telegraph*, “Electoral Commission in row with Met police, after they are accused of failing to hand over documents”, 3 July 2019, ([link](#)).

¹³ *BrexitCentral*, “Darren Grimes’ total exoneration leaves the Electoral Commission with huge questions to answer”, 11 August 2019, ([link](#)).

¹⁴ *Daily Telegraph*, 8 May 2020, ([link](#)).

¹⁵ NCA press release, 24 September 2019, ([link](#)). The Metropolitan Police also stated in September 2019 that whilst there had been some “technical breaches” there was not sufficient evidence of a criminal breach (*Daily Telegraph*, 13 September 2019, [link](#)).

¹⁶ Cited by *Guido Fawkes blog*, 29 April 2020, ([link](#)).

¹⁷ *Electoral Commission press release*, “Joint announcement by The Electoral Commission, Mr Robert Posner, Mr Arron Banks and Ms Elizabeth Bilney”, April 2020, ([link](#)).

¹⁸ Statement by Blackford LLP, 11 May 2019, ([link](#)); and *Evening Standard*, “Tory treasurer cleared of false campaign spending claims”, 10 May 2019, ([link](#)).

¹⁹ Electoral Commission press release, 16 March 2017, ([link](#)).

mark of how fair-minded the Commission would have approached this case if they had then the powers they now wish for.

36. Indeed, we are unclear today of what has happened with the criminal prosecution referral into the Liberal Democrats' chief executive announced by the Electoral Commission in December 2016.²⁰ If the individual has been cleared by the Metropolitan Police, the Electoral Commission should update and correct the public record, rather than leaving the claims of criminal conduct standing on its website – to the detriment of the individual's reputation and undermining public trust.
37. We observe that the proposal for the Electoral Commission to become a prosecutor has come from the Electoral Commission itself. This has not been a proposal endorsed by the Speaker's Committee or by Parliament, nor something that the Government has been consulted over. This highlights serious flaws within the accountability of the Electoral Commission – namely, it is accountable to no-one.
38. If the Electoral Commission seeks to give itself prosecution powers, we would encourage the Government to legislate to stop this. But the fact that primary legislation would be required again illustrates the problems with the underlying governance and accountability of the Electoral Commission. Our proposals for the Government and Parliament to set out a regulatory policy framework would address such governance problems.
39. In 2007, the Committee on Standards in Public Life recommended that the Electoral Commission lose its responsibilities in 2007 over reviewing local government boundaries in order to “fundamentally focus” on its “core regulatory roles”.²¹ This recommendation was implemented by then Labour Government. We also note that the Committee recommended that the Commission should not have a statutory duty to encourage democratic participation in order to focus on its regulatory tasks, nor a role in undertaking policy development in relation to electoral legislation. These points are still valid: the Electoral Commission should continue to focus on its core tasks.

Enforcement of candidate finance laws (Q10)

40. In light of our previous comments, we would not support the Electoral Commission taking over responsibility for aspects of Representation of the People Act enforcement, which should remain a matter for the police.
41. This reflects the fact that any such offences will be local and on the ground, rather than taking place at a national level.
42. We also note the systemic failures of the Electoral Commission to recognise electoral fraud in the London Borough of Tower Hamlets. As the 2016 review into electoral fraud by (then) Sir Eric Pickles observed: “Despite years of warnings on misconduct in Tower Hamlets, the Electoral Commission gave the Borough's electoral system a gold-star

²⁰ Electoral Commission press release, 7 December 2016, ([link](#)).

²¹ Committee on Standards in Public Life, *Review of the Electoral Commission*, 2017, pp.45, 49, 50.

rating for electoral integrity in its inspection reports. We still have a series of tick-box inspections of town hall electoral registration departments that are as ineffectual as those once practiced by the now abolished Audit Commission. Indeed, after the February to April 2015 Tower Hamlets election court hearing and judgment, both the Electoral Commission's backward-looking annual report and the forward-looking corporate plan made no substantive reference to the Tower Hamlets case or learning the lessons from it. One can only conclude there was an attitude of denial."²²

43. This laxness has not changed. As of July 2020, we understand that the initial drafts of the Electoral Commission's new Performance Standards for Electoral Registration Officers made no direct reference to tackling electoral fraud.
44. This is not to say that the enforcement of Representation of People Act offences could not be improved. We note the points made by the Pickles review into the failure of the Metropolitan Police to follow up on the 2015 Tower Hamlets election court with criminal prosecutions, despite the corrupt mayor being found guilty of multiple breaches of election fraud to a criminal standard of proof in an Election Court sitting in the Royal Courts of Justice.
45. The subsequent inspection report by the HM Inspectorate of Constabulary into the failures of the Metropolitan Police concluded: "The policing of the election and the subsequent investigation was deficient in too many areas. There was a lack of corporate responsibility, a lack of training and insufficient resources for the SET [Special Enquiry Team] investigation. In essence, the MPS did not consider the election and investigation a priority... There was an otherwise uncoordinated approach to all the investigations."²³ Lessons clearly must be learned, but we simply do not see how the Electoral Commission would have been more proficient in Tower Hamlets, given its unwillingness to recognise the corrupt culture in the (then) mayoralty.
46. The Pickles review recommended work to ensure a greater consistency of approach by the police. It also recommended looking at how electoral fraud can interact with other financial or benefit fraud (for example, most fraudulent electoral registration applications are made in relation to financial fraud, rather than to change the result of elections). This cross-cutting approach is another reason why enforcement of Representation of the People Act offences sits better with the police and CPS, rather than the Electoral Commission.

Conclusion

²² Sir Eric Pickles MP, *Securing the Ballot*, August 2016, paras 219-220, ([link](#)). The reports notes Parliamentary answers from the Electoral Commission on the performance of Tower Hamlets: "The Commission monitors the performance of electoral registration officers (EROs) in Great Britain, including their plans for preventing and detecting electoral malpractice. The most recent report of performance against the standards set by the Commission found that the ERO for Tower Hamlets exceeded this standard in 2010" (*Hansard*, 27 February 2012, Column 29W) and "Between 2008 and 2013, the ERO for Tower Hamlets was assessed as 'meeting' or 'above' all the ERO standards (including the integrity standards) each year" (*Hansard*, 15 July 2015, PQ 5938).

²³ HMICFRS, *Operation Lynemouth: Final Report*, March 2019, p.48, ([link](#)).

In short, we would argue that the work of the Electoral Commission needs to be more focused and targeted, and there should be greater clarity over its governance and accountability. This will require legislative change to deliver.

We hope these points will be useful.

Yours faithfully,

Alan Mabbutt OBE

*Registered Treasurer and Legal Officer
Conservative Party*

FROM MR TIMOTHY STRAKER QC
20 August 2020

4-5 Gray's Inn Square,
London WC1R 5AH

Sir,

I submit this document to assist the work of the Committee in its consideration of electoral law and the Electoral Commission. It is part of the consultation process in the review of electoral regulation.

INTRODUCTION

I am Queen's counsel in independent practice having an acknowledged speciality in electoral law. I have acted in the vast majority of important election cases in the past thirty years. My first such case concerned the Liberal Democrat candidate in a European Parliamentary election. This case directly led to the registration of political parties.

I have acted for returning officers, the Director of Public Prosecutions, police forces and the Electoral Commission. I have acted in many election petitions in this country. I have presented multiple election petitions in the Caribbean. In the course of any given year I advise scores of returning officers. I have lectured and written on the conduct of elections. I have acted as an election commissioner on at least half a dozen occasions. I have heard a variety of petitions including a trial, in Birmingham, lasting 25 days or so.

PRINCIPLES

I proceed on the footing of an intention to achieve full, participatory democracy in the United Kingdom. The word 'full' signifies that all should be able to participate. Accordingly, the use of the phrase 'full, participatory democracy' signifies a universal ability to participate.

Certain principles are clear if that intention is to be fulfilled. These include the following.

First, participation cannot depend on permission by an organisation, however well-meaning that organisation may be.

Second, participation has to be initiated locally and is best so done. (This is entirely consistent with the constituency based position of Parliament and the multitude of council elections). Anything other than participation being initiated locally undermines participation for there will always be some who find remotely initiating participation, i.e. away from their locality, off putting. The involvement of individuals must never be overlooked.

Third, consistently with the second principle, the election must be run locally and reported on locally. (This is entirely consistent with the current law and the law that has obtained for more than 150 years. It will be appreciated that the Electoral Commission does not regulate or run elections and has no experience in doing so. My experience abroad where electoral commissions do run elections has strongly suggested that running elections through returning officers is better).

Fourth, an election can only fairly and properly be run if done so on the basis of openly available rules with no scope, save in remarkably limited circumstances, for discretionary action. This has been recognised by the Courts as essential for, amongst other things, it avoids any perception of bias or favouritism and ensures that all are treated absolutely equally.

It should be noted that the Electoral Commission asserts it has considerable discretion and maintains that such a rule of law, about the conduct of elections, does not apply to the Commission.

TERMS OF REFERENCE: (a)

Principles and values underpinning regulation of donations and campaign expenditure by candidates, political parties and non- party campaigners in election and referendum campaigns.

This term of reference raises broad but different matters: donations that might be construed as having a political aspect and expenditure at an election or for political purposes. Each is capable of being either precluded or limited.

Further, each is capable of being publicly recorded.

If the aim is full participatory democracy the principle ought not so much to be regulation as openness and reporting. Regulation carries the connotation of

control together with an inhibition on the immediacy of action required in an election.

In this regard we can note a fundamental error by the Electoral Commission, which was judicially exposed last year. The error was that the Commission supposed that participation, i.e. the ability to spend some money in the EU referendum depended on registration with the Commission as to which it contended it had a discretion. However, as the judge made clear (E40CL216, HHJ Dight CBE) all that was required was notification.

Donations:

Identity: This resolves itself into two issues. Should the identity of a donor be known? Should the ability to be a donor be limited?

As to the first issue the principle of a full, participatory democracy demands that identities of donors be known to the public. This simply requires a register of donors making donations for political purposes. This phrase will require definition.

As to the second issue, the ability to be a donor, considerable care needs to be taken lest one is going to fall foul of the principle of a full, participatory democracy. This issue tends to be discussed in terms of those currently or previously regarded with disfavour or as being unacceptably foreign.

The matter has to be approached as one of principle for otherwise subjective judgments are made, which can be unsatisfactory. North American donors in Northern Ireland may be regarded by some as more foreign than some other donors. What of population movements? There are very many British or former British living overseas. They may have an acute interest in their country of birth or upbringing and may feel strongly, say, that education should be improved. It would appear a denial of the principle of full, participatory democracy if such people could not contribute by way of donation to political life in the United Kingdom. On the other hand 'pure foreign involvement' may be regarded as unsatisfactory.

The answer is to enable, as was done in the EU referendum, anyone to be a donor who has a personal or business connection in the UK.

The important point is that there should be a public register. There is here a point to be made. A concomitant of full, participatory democracy is that one must trust the people. This has been an exhortation since at least the time of Lord Randolph Churchill. This means that one should not be concerned to restrict involvement, other than as said, but rather to ensure that the involvement is made clear.

Campaign Expenditure

It is vital to identify the period of time that constitutes the campaign. It should be taken as a given that outside that period of time there is no expenditure to be limited, as there is with a campaign. I suggest this is the only coherent position. If outside the campaign there is a limit on political expenditure there are profound definitional questions. How do you deal with a campaign that grows, whether slowly or otherwise? How do you deal with something like the Anti Corn Law League?

During a campaign limits on expenditure by candidates have long been regarded as appropriate. These are necessarily recorded and made public locally. Such should remain the case with sanctions being enforced as has occurred in the past. The Electoral Commission plays and need play no part in this at all. Indeed it would be unsatisfactory if it did as the Commission is not local.

The other question is the regulation of campaign expenditure by parties. The present disclosure of party expenditure is not, as a matter of time, synchronised with candidate expenditure. I suggest careful consideration be given to synchronisation.

A difficulty arises over the distinction between party expenditure and candidate expenditure. (I argued this matter for the Director of Public Prosecutions in the Supreme Court). This requires careful consideration. It may be more sensible to treat most expenditure that occurs in a constituency as referable to the candidate and treat party expenditure as relating to expenditure that is truly significantly broader than merely one constituency.

TERM of REFERENCE (b)

This seeks, amongst other things, to examine the remit of the Electoral Commission as a regulator of election finance and associated electoral law.

This language is quite vague. As stated the Electoral Commission does not regulate elections. In so far as it has a regulatory role its approach ought to be consistent with and follow the lead of returning officers. The Electoral Commission has behaved in a way that is inconceivable for returning officers. Thus, the Commission actively pursues publicity prior to any determination as to whether its contentions are correct. Further, it has maintained publicity even when such publicity has been shown to be wrong and legally insupportable. In addition the Commission has allowed itself to be subjected to pressure from political groupings and maintained, in controversial circumstances, communications with one side to the prejudice of and unknown to another side.

This significantly contrasts with the approach of returning officers, which is to restrict publicity to that which is required by law and to deal with all involved in the election process on exactly the same basis. There is a physical representation of this at the time of elections when Mr Bucket Head stands next to the Prime Minister or Leader of the Opposition.

In so far as the Electoral Commission has a role as regulator of election finance it ought to be one of maintaining any register of such finance and making it available for inspection. This avoids another problem that has beset the Commission, that is to say of allowing themselves to be subject to pressure to take steps. Proceedings have been taken against them that have as part of their design a desire that those who take the proceedings should bear no responsibility for the proceedings they desire taken by the Commission against others.

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

The term of reference speaks of greater transparency. This is available by requiring a record to be kept and made available to the public. The term of reference also speaks of protecting the electoral process from foreign players.

Careful consideration needs to be given to the definition of foreign players and also what is meant by protection. Do we say the Irish cannot comment on an election in the United Kingdom? Or the English cannot comment on an election to the Scottish Parliament? Protection of the electoral process is a vague expression and cannot be treated as protection from ideas seen as unpalatable by some. The best form of protection is to ensure that it is known what is being said and by whom it is being said with participants declaring their expenses. Recourse to law is best undertaken in this field by the police or the participants themselves. The Electoral Commission is not and should not be a prosecuting authority; nor should it be able to be a quasi prosecuting authority by pursuing civil sanctions.

TERM OF REFERENCE (c)

This looks at the enforcement regime. The regime has consistently been one whereby concerned citizens or the police could take action. This is far more satisfactory than the present situation, which would worsen if the Commission were given a prosecutorial role.

A number of problems exist with the Commission as an enforcement body. First, it always has its own interest to protect. In every instance a prior decision will have been made by the Commission that such and such has happened and this view will be sought to be defended. Second, the Commission is or will be reluctant to produce documents that undermine the position on which it has settled. Third, in proceedings that have so far occurred the Commission would not voluntarily produce documents, argued that its officers should not be cross examined and argued that the facts were not to be independently determined by a judge but were to be taken as the Commission had determined them to be. Fourth, the Commission committed gross errors in its consideration of its role. For instance in the Grimes and related cases it asserted that the punishment levels were inadequate but those were as given by Parliament. Further, it fined Mr Grimes the maximum (on a false legal basis) without making any inquiry as to Mr Grimes's means. This is a gross error which would not have been committed by a first year law student.

TERM OF REFERENCE (d)

It would, for reasons that are apparent above, be highly unsatisfactory if the Electoral Commission played any role in criminal prosecutions. There are enough potential prosecutors to remove any apprehension that criminality would go unprosecuted.

TERM OF REFERENCE (e)

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

Some general points

Any organisation charged with running an election should do so on the basis that it is operating a set of openly available rules with no scope for discretionary action, save in remarkably limited circumstances. This avoids any possibility of even the perception of bias, sub-conscious or otherwise.

As stated above the Electoral Commission does not run or regulate elections, they are run locally by independent returning officers. This has been the case for well over a hundred and fifty years. Local returning officers have the highest reputation and are able to deploy, which is important, local knowledge. The Commission does not have that knowledge and, moreover, generally proceeds on the footing that it has a discretion as to how it acts. This is fundamentally at odds with the proper conduct of elections.

Finance is undoubtedly best dealt with by being referenced to elections, which are local. Such remains the position even in the case of a general election. Further, finance is best dealt with by speedy, local reporting with it then being a question for any opposing candidate or the police as to whether any prosecution should be brought. This has been the position for well over 150 years. Such an approach avoids difficulties (and injustices) exposed in the last year in respect of the Commission and the EU referendum.

Thus, expedition is required so as to secure early resolution about the election, if in any way it is questioned. It is difficult to balance the Commission's approach, which even today is keeping alive cases under the EU referendum, with that desideratum (or with the legislative requirement that the EU referendum could only be challenged within 6 weeks after the result was announced). It is also difficult to balance the desirable approach with that followed by the Commission which was not to act as the person to whom a report was made but also to judge the character of that report, whether or not anybody else did so.

This led to a grave injustice exposed by HHJ Dight CBE but not rectified by the Commission. He records the Commission's approach that if a participant,

whether for the avoidance of doubt or otherwise, in reporting his expenses reported something that on analysis was not an expense then even though he had accurately and fully set out all his expenses he was still to be penalised.

HHJ Dight CBE was able to remedy the matter in the case (Grimes) before him but the Commission have not rectified the matter elsewhere (and consequently have levied penalties on a legally insupportable basis). It has to be remembered that this would not have happened if the Commission did not have the functions of 'judge and jury' but merely recorded what was reported leaving it to others to assert (the defective proposition) that reciting all your expenses and one that was not was a failure to record your expenses.

The only contribution the Commission makes to the running of elections is a list of political parties and a record of party finance. Indeed on analysis these are, given elections are (and have to be) run locally, the only possible contributions the Commission could make. However, it should not be supposed the existence of the Commission is necessary for their fulfilment. The requirement to register names of political parties can be traced to the *Literal Democrat* case and the legislative requirement that followed for a register to be kept at Companies House. It was; no complaint was ever made about it. The record of party finance could also be recorded elsewhere, especially if it be accepted that the purpose of the record is exposure. Accuracy is ensured by the willingness of others to question a list if there be any doubt about it. (This has the great benefit of removing an otherwise invidious task in choosing to pursue party A rather than party B).

Further, it can be noticed that the Electoral Commission avoids, through expediency, treatment of some important electoral matters. Absent voting is a matter of great significance on which the Commission express no view. This is despite the fact that absent voting is incompatible with the secret ballot as introduced by the Ballot Act 1872; that absent voting stimulates fraud and oppression in voting; and that it undermines participatory democracy. An election consists of a period of time in which arguments are put and considered, at the end there is a poll. However, an absent voter can no longer participate after the vote has been cast. The voter may learn that so and so's views are intolerable but the vote having been cast for so and so it cannot be retrieved.

I trust the preceding points are of interest to the Committee. I should add that long experience has taught me that unobtrusive, non-discretionary

conduct of elections by returning officers, whose independence is given by statute, is undoubtedly the best way to operate elections. There are other matters that contribute to their integrity such as the minimisation of absent voting but there is an ultimate dependence on the returning officer system, as refined, that has served the United Kingdom well for over 150 years.

Yours faithfully
Timothy Straker

CSPL Inquiry: 'Review of electoral regulation'

Fair Vote UK is a civil society organisation focussed on digital democracy and election-safeguarding. While we were founded in the wake of the Cambridge Analytica scandal, our work is now focussed on future-proofing election law. In that vein, we secretariat the All-Party Parliamentary Group on Electoral Campaigning Transparency in Westminster and campaign across the United Kingdom for practical democratic reform.

Early this year we published a report on how to modernise UK electoral law and protect elections and referenda from abuses in the digital age. *Defending Our Democracy in the Digital Age* was the result of a major inquiry which took place over several months in 2019 and called a range of leading experts on electoral law. We received written and oral evidence from more than 70 organisations and experts including Facebook, the Information Commissioner's Office and the Electoral Commission. It is the most comprehensive blueprint yet to the challenge of protecting our democracy in the twenty-first century.

This submission has drawn the relevant conclusions from that report to answer the questions posed in the CSPL's current inquiry. It is vitally important that the UK's electoral law is brought up to date. If more time is lost, trust in democracy in this country will continue to erode.

Contact: Nico Docherty, Campaigns and Policy Officer.

***Paragraphs are numbered corresponding to the question number, followed by paragraph number.**

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 **Fairness** and **Trust** are the headlines. An electoral regime should have both as its central mission.

1.2 The fundamental values that should underpin the regulation of election finance are fairness and trust. Essential to the functioning of a healthy democracy, these should be the foundations of any regulatory regime. Electoral law has not significantly changed in this country since 2000. Society, however, has changed dramatically in that time. The fact that regulation has not kept pace with these

changes has eroded the public's trust in the system and the perception that it is a fair environment.

1.3 Feeding into these two core values are transparency and accountability. Transparency and accountability provide the bedrock for a system to be deemed fair and trusted.

1.4 While we would like to believe that most actors are behaving properly, that isn't true and we must design an electoral regime that hopes for the best but is written with the behaviour of the worst actors in mind.

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. The Electoral Commission does not have the powers it needs to fulfil its role as a regulator of election finance. PPERA was introduced in 2000, when the world was a very different place. The internet was then in its infancy but is now a central part of life. In politics this is as true as it is elsewhere. Much political conversation, campaigning and fundraising has moved online. The COVID-19 pandemic is likely to accelerate this collective migration into the digital sphere.

2.2 Electoral law needs to be updated to contend with this new reality. The regulatory power of the Electoral Commission needs to be significantly increased. The Commission needs more power, more resources and a wider scope. None of which can be achieved without a significant empowering of the Commission at the legislative level.

2.3 Priority should be given to:

- **Creating a faster feedback loop to enforce electoral infractions.** The internet has made every aspect of politics (including legal infractions) faster. There needs to be "real time" responses from the Electoral Commission. Otherwise trust in the process will continue to erode. The ability to act quickly depends on sufficient staffing and resourcing of the Commission.
- **More auditing powers.** The Commission must possess the ability to regularly audit political parties and other campaigning organisations. It should also have the ability to demand information from organisations (such as social media companies) that are not directly regulated by the Commission.
- **Utilising academic expertise.** The online world is a complex place. A particular set of analytical skills are required to understand digital processes. The Commission would be a more effective regulator if it could partner with academic institutions or bring teams of data analysts and digital experts "in house".

- **Regional offices.** This would allow the Commission to operate with much more flexibility and specificity.
- **Higher fines and penalties.** More detail is provided on this recommendation later in our submission.
- **Prosecution capabilities.** More detail is provided on this recommendation later in our submission.

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

We have eight distinct recommendations that are relevant to this question:

3.1 Regulate all donations by reducing permissibility check requirements from £500 to 1p for all non-cash donations. The current limit was conceived of at a time when it was impossible to envisage how easy it would become to transfer money. In 2020, because of digital technology, an organisation can transfer and receive money instantaneously from anywhere in the world. It is also exceedingly easy to set up repeated transfers and as such, political organisations can brazenly circumnavigate the rules. This disjunct between the law and the reality on the ground has shrouded party financing in mystery. As such it should be made law for all digital donations to require permissibility checks. This would greatly increase transparency in party financing. Fair Vote UK advocates the establishment of a national, networked electoral roll (managed by the Electoral Commission) to help party functionaries and smaller parties handle the added workload this change would necessitate. The non-digital, cash donation requirement should be reduced from £500 to £20. This would help increase transparency but allow very low-level fundraising to continue unhampered.

3.2 Increase transparency and regulation of local candidate financial reports by shifting oversight to the Electoral Commission. The current situation splits expenditure between the local candidate and the national party. Only the national party side of financing is currently verifiable online. This is far from transparent. This information needs to be held in a transparent central location managed and overseen by the Commission.

3.3 Streamline national versus local spending limits with a per-seat cap on total spending. Digitisation has also blurred the lines (and the rules) between national and local campaign spending. Campaigns are increasingly using "national" funds to unfairly target local seats, invariably the "swing seats" that exist under First Past the Post. An overall cap on spending in any one seat would rectify this problem. Online campaign expenditure should be incorporated into these rules and the Electoral Commission needs the power and wherewithal to monitor targeted, localised online political advertisements.

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

campaigners are an additional problem here as their spending is generally unregulated. They are not required to record or submit their donation information the way parties and official campaign organisations must, despite the fact the internet has greatly increased their ability to influence voters. On top of this, spending report deadlines should be made stricter. The current timeline (three months for under £250,000 and six months for over £250,000) is inadequate. As are the rules surrounding financing of the "short campaign" during an election period. Parties and campaign organisations should be required in this period to provide frequent reports to the Electoral Commission. Voters should be able to know who is spending what and where in the weeks leading up to polling day and not the weeks following it.

3.5 Standardise financial reporting. It is currently difficult to compare spending political parties as they release financial accounting returns using different formats and categories. Common accounting standards and practices should be introduced that all parties must adhere to. They should also be required to report their spending with more detail than is currently mandated. New categories should include the amount spent on types of content on each internet platform, information about the campaign's intended target audience on platforms and actual reached audience. These records should be publicly accessible to journalists and members of the public.

3.6 Require corporate donations to come ONLY from profits reported in the UK. Foreign companies should not be allowed to donate through UK subsidiaries (above the amount of recorded profit said subsidiary has made exclusively in the UK).

3.7 Third Party Political Organisations and political parties should complete an "Exit" audit after an election period. New regulation needs to be implemented to reflect the aforementioned new reality of political campaigning - in which transient and unaccountable third-party actors are more frequent and more influential. Before an election campaign closes there should be a third-party audit to ensure information is stored properly and the sphere can be governed properly. After an election campaign, third party political groups and political parties must continue to be subject to audit by the Electoral Commission. This would necessitate that third-party political organisations maintain a level of functionality beyond the election period. That way representatives are available to provide information to the Commission should there be questions or an inquiry after the fact. The audit should require the organisation's sources of data and money. The Commission does currently attempt to regulate these non-party campaigners but there are a lot more operating than the ones officially registered with the Electoral Commission.

3.8 Include valuations of data set costs in spending regulations. A system should be in place that values the data held by political parties and campaigning organisations and includes this information in spending regulations. Fair Vote UK have jointly (with Open Rights Group) sent a separate submission that focuses specifically on this problem.

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

7.1 No. The £20,000 limit is inadequate and ineffectual. The limit is well known and parties and political organisations intent on bending the rules often do so with the foreknowledge that the punishment for being caught is merely a manageable hindrance. Claire Bassett (former Chief Executive of the Electoral Commission) and Craig Westwood (current Director of Communications, Policy and Research) both told our inquiry in 2019 that the £20,000 limit is now seen by some as merely, 'the cost of doing business'. Westwood said that a cap above £500,000 would be more appropriate and allow the Electoral Commission to be a more effective regulator. The General Data Protection Regulation (GDPR) provides an example of recent and successful emboldening of sanctioning authority. Under GDPR, data protection authorities now have the capacity to fine malefactors the greater of €20 million or 4% of global annual turnover.

7.2 Fair Vote UK advocate that there should be no limit on fines for electoral offences. Infractions in this sphere are extremely serious and should be treated as such. Repeat offences should also bring greater fines for the responsible organisation. Of course, fines should be proportional and carefully calculated depending on the size of the guilty party/organisation, the scale of the infraction, the amount spent and the number of people impacted. They should also be adjusted annually for inflation so that penalties do not become weaker over time.

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 The system would be made more efficient and more effective if prosecutorial responsibility was brought "in house" and made a function of the Electoral Commission itself. The fact that the Commission does not take forward its own prosecutions is unusual in the sphere of state regulators. This should be amended and the Commission should have the ability to initiate prosecutions both at national and local level. This would boost the Commission's authority and its deterrent aptitude. The current sharing of responsibility between the (centralised) Electoral Commission and (often over-stretched) local law enforcement bodies has created a confusing and ineffectual system in which problems can too easily "slip between the gaps". Setting up local offices of the Electoral Commission would help remedy this, as would a wholesale transferring of responsibility.

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 There is currently a significant loophole in the regulatory regime that allows campaigning organisations to hide significant decision-makers behind layers of obfuscation. Frequently, agents that in reality do not have significant power are assigned simply to act as a shield for those with the real authority (i.e. the managers and other persons with significant control). This has become increasingly common with the professionalisation of political campaigns. It is done intentionally so that managers can stretch and break the rules while hiding behind a "fall person". If an organisation is running this way and gets implicated in malpractice, the significant

decision-makers are able to avoid responsibility and punishment. This practice is clearly a further hindrance to transparency and accountability. If the people clearly responsible for transgressions are not appropriately punished it fosters a culture of cynicism in the public. Cynicism is not a good bedrock for democratic culture. The law must be changed to allow the primary legal responsibility for campaigns and organisations to lie with the people actually running the campaigns and organisations. This would embolden the Electoral Commission and allow it to more effectively bring prosecutions before the courts.

Committee on Standards in Public Life – Review of Electoral Regulation

Evidence submitted by Dr Sam Power (University of Sussex)

Sam Power is Lecturer in Corruption Analysis at the University of Sussex, Law, Politics and Sociology Department (and researcher within the Centre for the Study of Corruption). He has previously submitted oral evidence to the APPG on Electoral Campaigning Transparency and has written extensively on issues related to political financing, electoral regulation and online campaigning. His monograph *Party Funding and Corruption* was released through Palgrave in 2020.

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 question that should be thought about more fundamentally – and prior to simply considering the values that ought to underpin any legislation – is what you want this legislation to achieve in the first place?
- 1.2 Underpinning PPERA was the desire that the public have confidence in the electoral system, political institutions and, at root, our democracy. From the Queen’s Speech, for example, ‘My Government will seek to restore confidence in the integrity of the nation’s political system by upholding the highest standards of honesty and propriety in public life. They will consider how the funding of political parties should be regulated and reformed’.¹
- 1.3 If this basic premise remains the same, the Committee should consider the ways that values, however well meaning, actually deliver on this promise. Transparency, for example, was the guiding value that underpinned recommendations from the CSPL’s Fifth Report (1998) which went on to form much of PPERA – whilst ‘not sufficient by itself...the most significant part of our philosophy depends on transparency’.²
- 1.4 In the intervening years, however, we have seen a clear paradox emerge in terms of the guiding philosophy (or value) of transparency. It might well have stemmed actual instances of wrongdoing (which were nevertheless the exception rather than the rule) and has allowed regulators, academics and interested members of the public to track and trace donations and spending far more effectively. However, it might be doing all those things whilst having an inverse effect on public confidence.³
- 1.5 This does not mean that transparency ought not to be a value that underpins the regulation itself, but that we should think a little deeper about what transparency both means and achieves. Katharine Dommett, for example, has suggested a greater need for precision in terms of calls for

¹ Queen’s Speech, 14 May 1997, Hansard (HL), col. 44.

² Committee on Standards in Public Life (1998), *Fifth Report: The Funding of Political Parties in the United Kingdom*, (London: HMSO): 2.

³ Power, S. (2020), ‘The Transparency Paradox: Why Transparency Alone will not Improve Campaign Regulations’, *The Political Quarterly*, online first.

transparency with regards to digital campaigns.⁴ Others have suggested that transparency – as a core value – needs to be buttressed with a clearer focus on citizen engagement and digital literacy.⁵

- 1.6 All that aside, Karl-Heinz Nassmacher's 'magic quadrangle' of party funding is as good a place to start as any when we consider what ought to underpin this regulation. This quadrangle is made up of: professional accounting by campaign and party workers, administrative practicality, propensity to sanction violations and transparency for the general public.⁶
- 1.7 In terms of professional accounting it should be considered whether common accounting practices would allow the Electoral Commission, academics and armchair auditors alike to more efficiently analyse returns. In the online world, for example, we have seen different platforms provide vastly different information in terms of targeting.⁷
- 1.8 In terms of administrative practicality and a propensity to sanction violations it should be considered whether the Electoral Commission has adequate funding (and guidance) in the first respect and adequate powers in the second respect – but these issues will be addressed below. Transparency has been covered above.
- 1.9 A final point to consider is the role that public opinion (rightly) plays in any considerations around electoral regulation. It has consistently been shown that public opinion is often both mistaken in terms of the operation of the party funding regime and also contradictory in terms of any potential reforms.⁸ In this sense public opinion has acted as a both a spur but also significant barrier to any reform.⁹ As such there is a clear argument that 'public opinion is unlikely to offer a rational choice for effective reform'.¹⁰

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 In terms of investigating those that it regulates, the separation of powers (for want of a better term) between the police (in terms of breaches of the RPA) and the Commission in terms of PPERA (often with regards to candidate and party spend) presents issues. It can lead to situations in which the only recourse for action for the Commission is to refer a case to the Crown Prosecution Service (or not), which is a problem for two reasons.
- 2.2 Firstly, campaigners and, indeed, political campaigning is a democratic good. Moreover, many people involved in campaigns are (generally) well-meaning volunteers. The Commission should balk – and, in fairness, does balk – at the idea of criminalising those that with good reason to not understand the precise ins and outs of PPERA and the RPA.
- 2.3 Secondly – and a good example of this occurred during the various Conservative election expenses episodes of the mid-2010s (2014-2017) – is that the Commission on uncovering wrongdoing (in

⁴ Dommett, K. (2020), 'Regulating digital campaigning: the need for precision in calls for transparency' *Policy and Internet*, online first.

⁵ Power, S. (2020); see also Margetts, H. and Dommett, K. (2020), 'Conclusion: Four Recommendations to Improve Digital Electoral Oversight in the UK', *Political Quarterly*, online first.

⁶ Nassmacher, K-H. (2003), 'Monitoring, control and enforcement of political finance regulation', in Austin, R. and Tjernstrom, M. (eds.), *Funding of Political Parties and Election Campaigns: Handbook Series*, (Stockholm: IDEA).

⁷ Power, S. (2020).

⁸ vanHeerde-Hudson, J. and Fisher, J. (2013), Parties Heed (with Caution): Public Knowledge of and Attitudes Towards Party Finance in Britain, *Party Politics*, 19(1): 41-60; Power, S. (2016), 'What Do You Do When the Voters Are Wrong? Party Funding Reform', in Cowley, P. and Ford, R. (eds.), *More Sex, Lies and the Ballot Box: Another 50 Things You Need to Know About Elections* (London: Biteback).

⁹ Power, S. (2017), 'The British Party Funding Regime at a Critical Juncture? Applying New Institutional Analysis', *Politics*, 37(2): 134-150; see also Power, S. (2020b), *Party Funding and Corruption*, (Basingstoke: Palgrave).

¹⁰ vanHeerdeHudson, J. and Fisher, J. (2013): 56.

relation to PPERA) has little choice but to refer any further breaches of the RPA to the CPS. Here, the bar for criminal prosecution was/is much higher and as such prosecution remains exceptional.¹¹

- 2.4 The Commission has produced many reports and reviews with specific recommendations in this area. One particular priority area is in the sharing of data and best practice with other regulators. To name a few, the CMA, the ICO and the ASA have all produced reports which have looked into, for example, the various challenges that digital campaigning presents. However, they are hamstrung from any closer collaboration without explicit powers/permission to be able to share information/data.

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 is better addressed by thinking wider than the Commission and about what regulators (in the round) can do differently. In this sense Chris Gorst of NESTA – speaking at a ‘regulatory innovation’ workshop – suggests that all regulators should aim to conduct ‘anticipatory regulation’ that is ‘flexible, collaborative and innovative’.¹² If the Commission is unable to perform as a regulator in this sense, then there should be consideration of the ways in which PPERA and other legislation (with regards to Q2) actively prevents them from doing this.
- 3.2 One such area – in terms of anticipation – that the Commission does focus on is compliance and education rather than merely sanctioning wrongdoing. A greater focus on resources aimed at demystifying PPERA (and other relevant legislation) with, perhaps, online walkthroughs and, even, courses might help the many volunteer activists navigate this often-tricky terrain.

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

- 4.1 No. In fact, there have been recent discussions about the potential need for a digital regulator with regards to the increased prevalence of online campaigns.¹³ However, given the Commission’s two main roles are the oversight of elections (and registration of elections) and regulating political finance, the Commission – if properly funded (which is a big if) – remains best placed to perform this role.
- 4.2 Moreover, evidence from party finance experts responsible for cross-country comparison have described the transparency regime in the UK and, perhaps by association, regulatory landscape in the UK as ‘effectively world leading at this point’.¹⁴

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

- 5.1 Yes. There is a case for updating the rules in a number of areas. As mentioned above the distinction between the RPA and the PPERA (and the separate roles of the CPS and the Electoral Commission respectively) can create issues with regards to effective sanctioning. It also highlights specific issues with regards to candidate and party spending.

¹¹ See, for example, Power, S. (2017b), *No charges in Conservative party election spending affair – here’s why*, available at <https://theconversation.com/no-charges-in-conservative-party-election-spending-affair-heres-why-77522>, accessed 05/08/2020.

¹² Quoted in Margetts and Dommett (2020): 3.

¹³ Dommett, K. (2020b), ‘Introduction: Regulation and Oversight of Digital Campaigning – Problems and Solutions’, *Political Quarterly*, online first.

¹⁴ Quoted in Power (2020b): 130.

- 5.2 The Conservative expenses episode, however, was indicative of the relative confusion surrounding the functional difference between candidate and party spending. Whilst there has ‘always been a blurred line between the two’ recent elections have shown that the ‘difference [is] becoming increasingly cosmetic’.¹⁵ This is not just a Conservative Party issue – all parties engage in the kind of campaigning which ‘look[s] darn local, with local references peppered in the expensive direct mail’ but with ‘the one key omission’ of ‘the name of the constituency candidates’.¹⁶ See Q10 for further recommendations.
- 5.3 Whilst the transparency regime enacted by PPERA (and subsequent legislation) is effectively world leading and provides a pretty good official story of election campaigns, there remain certain issues to grapple with (the reflection in Q1 notwithstanding). For example, there are currently nine categories of spend reported on the Electoral Commission website: advertising; campaign broadcasts; manifesto or referendum material; market research/canvassing; media; overheads and general administration; rallies and other events; transport; unsolicited material to electors.
- 5.4 There may well be a case to update these categories to take into account recent trends with regards to targeted advertising.¹⁷ For example, if we look at spending in the 2017 general election, we see that £3.16m was spent on Facebook. However, we also know that the Conservative Party spent £544,153.57 with the Messina Group (on market research/canvassing, advertising and transport). We can reasonably intuit that some of that money was spent on targeted advertising, very possibly on Facebook, but we simply don’t know from the data. Recommendations along the lines of those made in the recent report published by the Lords select committee on Democracy and Digital Technologies in this respect (and in respect of online ad imprints – now out for public consultation) should be considered.¹⁸
- 5.5 There is also a need to rethink and reconsider regulation in terms of third-party spending. These have come to light due to the systems of disclosure implemented by social media companies, rather than UK legislation, and raised concerns about so-called shadow campaigns operating (largely) outside of electoral law. What the effects of these campaigns actually is remains to be seen, but it highlights several issues with the current regulation surrounding third parties in the UK.¹⁹
- 5.6 Many of these campaigns are active between regulated election periods and whilst any regulation needs to balance the need for legitimate (independent) political engagement on social media there is a case that rules surrounding third party spending should be updated such that there is a requirement for disclosure year-round. Politics does not just happen at elections.

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

- 6.1 As already mentioned, the transparency requirements, as is, mean that the regulatory landscape in the UK is effectively world leading. In fact, the biggest problem the Commission faces is that as a regulator of elections and political parties it often finds itself in the firing line from all political

¹⁵ Fisher, J. (2015), ‘Party Finance: The Death of the National Campaign’, in Geddes, A. and Tonge, J. (eds.), *Britain Votes 2015*, (Oxford: Oxford University Press): 153

¹⁶ Pack, M. (2015), *Constituency expense limits are dying off in the UK, but neither politicians nor the regulator will act*, available at <https://www.markpack.org.uk/130283/internet-speeds-up-the-killing-off-of-expense-controls-in-marginal-seats/>, accessed 05/08/2020; see also Power, S. (2017c), *Q+A: how the Conservatives landed a £70,000 fine after an expenses scandal*, available at <https://theconversation.com/q-a-how-the-conservatives-landed-a-70-000-fine-after-an-expenses-scandal-74711>, accessed 05/08/2020.

¹⁷ Dommett, K. and Power, S. (2019), ‘The Political Economy of Facebook Advertising: Election Spending, Regulation and Targeting Online’, *Political Quarterly*, 90(2): 257-265.

¹⁸ Select Committee on Democracy and Digital Technologies (2020), *Digital Technology and the Resurrection of Trust: Report of Session 2019-2021*, (London: HMSO).

¹⁹ See Rowbottom, J. (forthcoming), ‘The Regulation of Third Party Campaigning in UK Elections’, *Political Quarterly*.

sides. It is somewhat akin to a referee in a football game – openly disliked by 50% of the fans, 50% of the time, dependent on the decision made.²⁰ Therefore, if we take the ‘administrative practicality’ point of Nassmacher’s ‘magic quadrangle’ we might ask if the Commission with ever be plied with the appropriate funds it needs to carry out its work as effectively as possible.

- 6.2 The simple fact that there is an Electoral Commission itself, with 20 years of institutional knowledge of ‘what works’ in terms of electoral regulation is a significant strength and is not the case in many countries across the world – inclusive of long-standing democracies in Western Europe. In Denmark, for example, sanctions are rarely (if ever) forthcoming due to the fact that this aspect of the law falls under the purview of a specific government ministry (who are rightly anxious about being seen to be overtly political).²¹

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

- 7.1 No – they should be significantly larger. These fines are simply seen – as noted by the Commission themselves – ‘as a cost of doing business’.²²

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. This is largely captured in the above but the sanctions the Commission has at its disposable means that a maximum £20,000 fine, or referral to the CPS is the only real course of action available. As the bar for prosecution for the CPS is considerably higher than that of the Commission you are broadly left in a worst of both worlds situation where the Commission is seen as toothless and the police unlikely to prosecute unless there is a clear and irrefutable evidence (which is incredibly unlikely).
- 8.2 It brings to mind the words of (then) Assistant Commissioner of the Metropolitan Police, John Yates, when he gave evidence to the Public Administration Select Committee in the wake of the loans-for-honours affair in 2007: “These types of cases are very, very difficult to prove because they are bargains made in secret. Both parties have an absolute vested interest in those secrets not coming out.”²³

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 When we think about the range of sanctions available to the Electoral Commission it is tempting to also consider whether the power to bring prosecutions to the courts should be a part of their arsenal. However, it is also worth remembering that before the Political Parties and Elections Act (2009) the only real option the Commission had was ‘to decide between referral for criminal prosecution (which was often not proportionate to the

²⁰ Power, S. (2020): 3.

²¹ Power, S. (2020b): 177-179.

²² Electoral Commission (2017), *Conservative Party Fined £70,000 Following the Investigation into Election Campaign Expenses*, available at <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigation-election-campaign-expenses>, accessed 05/08/2020.

²³ Power, S. (2020b): 139

breach) or taking no action at all'.²⁴ This led the Commission to be incredibly wary of referring any cases to the CPS because it seemed both like a disproportionate response, and counter to the primary goal of encouraging democratic activity. They do not 'want to criminalise people who don't do this as a day-to-day job'.²⁵

- 9.2 Therefore, any prosecutory power would have to be balanced in such a way so as to support the base philosophy of not making examples of people, unless it is truly in the public interest. This isn't to say that prosecutory power shouldn't be a part of the regulatory regime underpinning the Commission, but great thought should be given to the scope of this power and, most importantly, that it doesn't come at the cost of other civil sanctions.

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

- 10.1 On balance, yes. The answer to Q5 outlined the myriad ways in which candidate and party spending have become largely indistinct from each other. As such, there are a multitude of good reasons that candidate finance laws should fall under the purview of the Commission. The system as it stands is also incredibly complicated for voters and campaigners to understand, so some form of clarity and joined up thinking would be welcome.
- 10.2 A final note. Whilst the line is increasingly blurred between candidate and party spend there remains utility in keeping the two forms of spending as is. There is a real danger that if candidate spending was removed then large swathes of safe seats would be ignored come election time and an increasing amount of resources would be intensified in a select few areas.

²⁴ Electoral Commission, (2012), *Use of New Investigatory Powers and Civil Sanctions*, available at https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Powers-and-sanctions-report-2012.pdf accessed 05/08/2020.

²⁵ Quoted in Power, S. (2020b): 77.

CPSL - Review of Electoral Regulation - Public Consultation 2020

Submission by: Liberal Democrats

Overview

Thank you for the opportunity to contribute to your latest review of party and election finance rules and regulations. Whilst the main parties have central party HQ's and varied staff resources It is important that it is remembered that campaigning in elections is primarily a volunteer activity carried out by people in their spare time not as a full time job particularly when it comes to independent candidates. Political campaigning is an important part of the democratic process in facilitating public engagement through voting. Therefore the balance of regulation needs to be proportionate and not lead to any further reduction in turnout and participation levels.

Whilst any review of the RPA and PPERA is to be welcomed as campaigning is changing faster in the modern world it is important to note that there is already a significant backlog of suggested reforms that have not yet been implemented by Government that could alter the response to this consultation if they were implemented. For example the Electoral Commission's own review of 2013, Lord Hodgson's third party campaigning review of 2016 and the recent Law Commission review.

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 main value that could be added is simplicity. The regulatory regime for elections has become increasingly complicated in recent years and that is not helpful for a primarily volunteer activity.

1.2 There is a strong case for the Law Commission's recommendation to bring forward a single Electoral Administration Act to simplify electoral legislation.

1.3 The regulatory regime should not be so bureaucratic and opaque as to prevent a wide range of participants whether they be parties, independents or campaigners from participating in the democratic 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.

2.1 The important issue to consider here is that there is quite a lengthy backlog of existing proposed reforms that have not yet been given legislative time by the government which would address the answer to this question. For example,

- (i) The Electoral Commission's own review of 2013
- (ii) Lord Hodgson's third party campaigning review of 2016
- (iii) The recently published Law Commission review
- (iv) The Electoral Commission's proposed codes of practice for candidates and political parties

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 seems to assume that the issues that need addressing are with the Electoral Commission rather than with the legislation that it is given to work with (see answer to question 2)

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

4.1 No the functions that the Electoral Commission currently carries out in terms of guidance and support for both parties and electoral administrators are complementary and necessary for effective running of the electoral system.

4.2 Indeed it is arguable that the early reform of one of the original Electoral Commission responsibilities of playing an educational role has weakened its effectiveness in fostering public confidence in the system.

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

5.1 Streamlining the 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.

5.2 There is still work to do on making sure the legislation properly addresses the challenges of modern campaigning techniques like digital advertising not just the issue of imprints.

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

6.1 Some commentators seem to regard the number of prosecutions or lack thereof as the measure of success of a regulator. However regulators should work with the regulated and assist them with being able to comply with the regulations rather than just penalising them. One of the successes of the Commission since the early-2000s

has been the way it has worked with those it regulates in order to promote compliance and understanding of the legal framework.

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

7.1 When looking at the appropriate level of sanctions it should be remembered that most political parties are unincorporated associations dependent on voluntary contributions from members and supporters for their financing. Also that campaign groups involved in electoral events particularly in referendums may not have a permanent presence and only be entities that exist for the duration of a campaign. Therefore any review of the level of fines should not necessarily accept that the regimes of other regulators who deal with a primarily corporate environment are an appropriate comparison to make.

7.2 We note that the Scottish Parliament has recently reviewed the fines for Scottish Referendums and determined that a maximum of £500,000 would be appropriate.

7.3 The issue of sanctions however should be considered in a wider context than just financial penalties. There are already limited occasions within the RPA and PPERA when candidates or party officers can be banned or disqualified from holding party office. A wider consideration of whether banning or disqualifying elected office holders, candidates, agents and party officers from holding office permanently or for a specified period of time would be worth consideration. This could be a way of addressing the temporary nature of some organisations that are being regulated to ensure that individuals do not just create multiple entities.

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 There are clearly some disconnects between the two systems as the RPA candidate regime has existed in a largely unchanged, occasionally updated for since 1883 and the PPERA regime was overlaid to regulate party spending in 2001.

8.2 As set out elsewhere in our answers clearly a more modern approach with an established regulator would apply civil sanctions to some offences identified in the RPA as a more appropriate level of dealing with them. The statistics you quote on the number of recent prosecutions would seem to support such a review.

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 This may not necessarily be the right solution if a proper review of the appropriate level of civil and criminal sanctions across both the RPA and PPERA was to be carried out and appropriate legislative change was to be agreed.

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

10.1 There is a clear gap in the regulatory regime at the moment in that the Representation of the People Act only allows for criminal prosecution and resort to the courts to resolve issues relating to election law for candidates and agents. However the legislation contains a whole range of potential offences for which that is an excessive penalty and it is unlikely the CPS would say a prosecution was in the public interest.

10.2 Whilst police investigation and court proceedings are appropriate for the more serious offences, for example section 106 of the RPA about making a false statement about another candidate. There are a whole range of issues that could be more effectively be dealt with by a civil sanctions fine regime, for example: failure to submit an election expense return, permission to pay a disputed bill after the legal deadline, permission to pay a late invoice after the legal deadline, failure to include an imprint on election material.

10.3 Therefore we would argue that a mixed system as recognised in the reform of PPERA in 2009/10 that keeps criminal proceedings where appropriate for the more serious offences and introduces a system of fines for the less serious administrative issues would be an appropriate and more flexible approach.

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21st August 2020

Written Evidence to the Committee on Standards in Public Life review of Electoral Regulation

1. My expertise is in electoral integrity and administration, with several published research articles including on the relationship between political parties and their regulators. I write in a personal capacity.

2. Democracy demands transparency and accountability. Through the Electoral Commission's existing work in regulating party finance and electoral processes, we have much more information and data about how electoral processes work in the UK than prior to the Commission's establishment in PPERA. This is extremely valuable, and needs to be recognised. The Commission's work should be extended to enable further transparency and accountability.

3. This review by CSPL is welcome. I have one reservation around its terms of reference. These exclude 'matters relating to the arrangements for the funding of political parties' (3a). This is unfortunate, and could potentially limit the Committee's deliberations, findings and recommendations. The Electoral Commission's role as a regulator cannot be understood without some understanding of how the political parties it regulates behave and are funded. I discuss this below, although I am mindful to relate this directly to the key points of the review.

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.

4. There are competing principles involved. In general, political parties rely on principles such as freedom of association, equality of participation and the encouragement of political competition. When considering the regulation of party funding, these broad principles may have to be offset against transparency, accountability, fairness and openness.

5. The Council of Europe's Venice Commission have discussed these principles in depth.¹ While donating to political parties can be seen as a form of political participation which relies on freedom of association, they point to the central issues – that party funding should allow parties to compete without undue hindrance and influence (para 159), and that the rights of voters to information should be central to a party funding regime (para 194).

6. The achievement of transparency in political funding is crucial, and allows accountability to be exercised. To quote:

¹ Venice Commission/OSCE-ODIHR (2010) *Guidelines on Political Party Regulation*, Venice: Venice Commission.

Transparency in party and campaign finance ... is important to protect the rights of voters as well as prevent corruption. Transparency is also important because the public has the right to receive relevant information and to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable (para 194).²

7. I would recommend that *the key principle guiding regulation be to achieve transparency around donations to political parties, with other principles – competition, participation etc, being subordinated to that aim*. In achieving this, there will undoubtedly be a balance to be struck. Nonetheless, the Venice Commission indicate that restrictions and regulations upon party financing, including placing limits, are a reasonable way of achieving such aims.

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

8. Not really. The Electoral Commission's role in the administration of elections needs some reform, but this is outside this inquiry's terms of reference.

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

9. Yes. The rules are too lenient. The permissibility requirement for donations requires only that a check be carried out by the recipient party that the donor is permissible within the rules, using all reasonable steps to do so. This generally means that they are UK resident or a business registered in the UK. There are clear difficulties with this. The recent ISC Russia report has shown that it is not difficult for those permissibility rules to be circumvented with foreign nationals and influences becoming involved with UK businesses and politicians and subsequently donating to political parties.³

10. *Rules on donations need to be much tighter*. One suggestion has been made by the Electoral Commission's Director of Regulation to the House of Commons DMCS Select Committee. This is that integrating money laundering 'know your customer' requirements might be a straightforward idea which can be implemented into electoral law.⁴ Given that these rules are implemented in most financial transactions and are a requirement for the charity sector and its financing, that they are not already a requirement for political party donations is, to say the least, astounding. I would therefore, at minimum, support such a change *to give the Electoral Commission the powers it needs to regulate political party donations effectively, and recommend that the Committee pursue this as an issue for action*.

11. A further issue that would introduce further trust is *the introduction of maximum annual total donation limits*. Several countries have such caps to donations. In Canada, for example the maximum donation to a political party is as low as C\$1625.⁵ In New South Wales, it is A\$6600 to a registered party or group of parties.⁶ According to International IDEA, 65% of countries in Europe have such caps on donations to political parties. France has a €7500 cap,

² Venice Commission/OSCE-ODIHR (2010).

³ Intelligence and Security Committee of Parliament (2020) *Russia*, London: House of Commons HC 632, pp15-17.

⁴ Digital, Media, Culture & Sport Committee (2019) *The Online Harms White Paper: Twelfth Report of Session 2017-19*, London: House of Commons HC2431, p.4.

⁵ <https://www.elections.ca/content.aspx?section=pol&document=index&dir=lim&lang=e>

⁶ <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Caps-on-political-donations>

and Ireland a €2500 cap. At the higher end of the spectrum, Finland has a limit of €30,000, Spain €50,000 and Italy €100,000.⁷

12. The intention of a donations cap is twofold. Firstly, to keep donations low enough as to limit the perception, and ability, of any single donor to buy influence. Secondly, donation caps should mean that parties need to extend their fundraising efforts beyond a handful of wealthy donors and interests, to a broader section of society. There will be various thorny issues to deal with in doing so. The most recent discussions on donations between the main parties stalled over the issue of maximum corporate donations and trade union funding, for example.

13. *The party donations regime also needs to keep pace with technology.* Thus, issues such as digital and micro-payments are something that the Electoral Commission may need further powers to regulate, monitor and investigate.

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

14. A fundamental difficulty in the Electoral Commission's ability to regulate party finance effectively is that it is a creature of statute, created by and responsible to parliament via the Speaker's Committee for the Electoral Commission and other parliamentary committees.⁸

15. This is constitutionally correct, but it has a serious conflict or paradox at its heart. While the Electoral Commission may be operationally independent, it seeks to regulate the very political parties whose politicians make the laws which can delimit (or extend) the Commission's power.⁹ There is therefore a delicate balance to be struck. One commentator, writing as the Commission's was being established, described its challenge as being:

to operate in a manner which simultaneously *maintains the goodwill of the regulated community* and satisfies the legitimate expectations of the public and press that it will be an effective watchdog prepared to bare its teeth and if necessary bite hard.¹⁰

16. Given that the Commission can restrict party activities, there is seldom much goodwill towards the Commission evident among politicians and parties. There is thus an institutional opportunity and incentive for parliamentarians to seek to limit the powers of the Electoral Commission. The Commission is regularly attacked and pressured from parliamentarians from all sides of the political spectrum, both in the press and through institutional processes such as parliamentary committees.

17. *Any review of Electoral Commission's regulatory powers over party finance and other electoral law should start from the assumption that political parties will seek to exploit loopholes in the party finance and electoral law regime.* There is plenty of evidence in this regard from most political parties. This has included the two major parties at Westminster, but also parties like the DUP who were connected with exploiting anonymity rules in Northern Ireland during the Brexit referendum.¹¹ Most parties, including sometimes their accounting units, have attracted fines for various breaches. These have included serious offences where

⁷ <https://www.idea.int/data-tools/continent-view/Europe/55>

⁸ Clark, A. (2017a) 'The Relationship between Political Parties and Their Regulators', *Party Politics*, 23, (6), pp646-656.

⁹ Clark, A. (2017a).

¹⁰ Ewing, K. D. (2001) Transparency, accountability and equality: The political parties, elections and referendums act 2000. *Public Law*. Autumn, pp. 542–570. Author's italics.

¹¹ For example: Clark, A. (2017a) and Clark, A. (2017b) 'Conservative election expenses: the problem with attacking electoral regulators', *LSE British Politics Blog*, <https://blogs.lse.ac.uk/politicsandpolicy/conservative-election-expenses/> May 11th.

there is considerable public interest, as well as less serious offences, such as slightly overdue submissions.

18. One difficulty for the Electoral Commission is that it is reliant on parties for accurate information on donations and their sources, party spending etc. This is a form of regulatory capture, which can prevent the effective performance of the Commission's regulatory role.¹² Such accurate information is not always forthcoming in timely fashion, and co-operation has been wilfully withheld in some cases, with parties not always accepting the requirements of electoral law. The Commission's report into Conservative Party election expenses breaches in the 2015 general election noted:

- The party's 'unreasonable' lack of co-operation with the Commission and
- The party *not accepting the need* to keep particular records regardless of regulations.¹³

The Labour Party have also in the past displayed similar attitudes towards compliance with the Commission.¹⁴

19. A continued complaint since the PPERA regime was established has been that it is too complex for parties' local accounting units' volunteer treasurers, and smaller parties, to understand and comply with. This has been strenuously argued by parties, and by some commentators. I would expect many submissions to this review to argue something similar. The Electoral Commission has, throughout, accepted these difficulties and aimed to offer advice on compliance and other supportive means for such treasurers. I would expect such regulatory good practice to continue.

20. I am not unsympathetic to this issue for very small and local organisations. However, for the main political parties and their accounting units this argument is wearing somewhat thin. The PPERA regime has been in force for 20 years. Political party donations are a source of influence in public life. Parties have compliance departments which could assist their local volunteers, should they wish to do so. Accepting looser standards for local accounting units and their treasurers creates loopholes which can be exploited by those seeking influence but aiming to minimise transparency.

21. *While the Electoral Commission should continue with advice and support to ensure compliance among treasurers, candidates etc, they need to be less accepting of this issue.* It is simply not good enough after 20 years for political parties to say that it is difficult to comply.

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

22. The Electoral Commission's civil sanctions powers are entirely inadequate. Their powers have fallen significantly behind other equivalent regulators, such as the Information Commissioner's Office. The Commission has repeatedly indicated that political parties and campaigners see such low fines as little more than a 'cost of business'. The largest set of fines for multiple offences that the Commission has levied has been £70,000. For parties and organisations spending millions between and during elections and referendums, such fines are hardly serious propositions.

¹² For full discussion of this point see: Clark, A. (2017a) p648.

¹³ Clark, A. (2017b). Author's italics.

¹⁴ Clark, A. (2017a) p651.

23. The Referendums (Scotland) Act 2020 has recently introduced a maximum fine of up to £500,000. I have argued that this sets a precedent that should be extended UK-wide in order to provide a meaningful deterrent under both normal electoral circumstances as well as referendums.¹⁵ *I would reiterate this suggestion of a maximum £500,000 fine as a very strong recommendation to the Committee's review.* The House of Lords Democracy and Digital Technologies Committee has also recommended extending the maximum fine to £500,000, or 4% of total campaign spend.¹⁶

24. The Commission recognises that increased civil sanctions would need to be utilised proportionately.¹⁷ Thus, the maximum fine should be imposed for serious law-breaking activity, repeated misconduct and repeated non-compliance and non-disclosure. Lesser fines would be imposed for lesser breaches, first offences, minor non-compliance and so on.

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?

25. No. It is not always clear that the police want either to touch political matters, or know what they are looking at when faced with breaches of party finance laws. There should certainly be a wariness about police involvement in electoral matters. Even if this reluctance is only a perception, it remains extremely damaging because it can encourage breaches given that no serious consequences are likely to follow.

26. There is also a difficulty of different evidentiary standards between criminal and civil law in England. This means that while the Electoral Commission may impose civil fines, the evidence may not reach the necessary standard for charges to be brought against offenders. That there have been no convictions under PPERA does not mean that wrongdoing has not happened. Clearly, the civil sanctions imposed by the Commission suggest otherwise.

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?

27. This potentially could strengthen the regulatory regime greatly for serious offences. It would resolve the difficulties of inter-agency co-operation and standards noted above between the police and Electoral Commission. I would make one point in this regard. *If this were done, the Electoral Commission would need to be given additional capacity to hire appropriate in-house legal skills and resourced appropriately to investigate to a criminal standard.* To be given additional powers, but no additional resources to develop and implement them would be to hamper those very powers at the outset.

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

28. Yes. There is a clear need for consistency and consolidation in electoral law, which is widely seen to be difficult to understand and not fit for purpose.¹⁸ *Bringing candidates under*

¹⁵ Clark, A. (2020) 'More than IndyRef2? The Referendums (Scotland) Act 2020', *Political Quarterly*, 91, (2), pp467-472.

¹⁶ House of Lords (2020) *Digital Technology and the Resurrection of Trust*, HoL Select Committee on Democracy and Digital Technologies Report of Session 2019-20, London: HL Paper 77.

¹⁷ Evidence to Scottish parliament Finance & Constitution Committee, 18th Sept. 2019, cols 23-25. <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12261&mode=pdf>

¹⁸ House of Commons Public Administration and Constitutional Affairs Committee (2019) *Electoral Law: The Urgent Need for Review (HC 244)*, London, House of Commons.

the Electoral Commission's regulatory remit in this regard would be one small element of beginning to consolidate powers and laws around the crucial issue of electoral finance. This would simplify the regulatory regime, ensuring the Electoral Commission had sole responsibility, whether this was a civil or criminal matter.

Summary of Recommendations

R1. The key principle guiding regulation should be to achieve transparency around donations to political parties, with other principles – competition, participation etc - being subordinated to that aim.

R2. Rules on donations need to be much tighter, with money laundering 'know your customer' requirements, at minimum, enshrined in electoral law.

R3. The introduction of an annual maximum donations cap or limit.

R4. Consideration of how technology and issues around digital and micro-payments might affect the ability of the Electoral Commission to regulate party finance.

R5. Any review of Electoral Commission's regulatory powers over party finance and other electoral law should start from the assumption that political parties and campaign organisations will seek to exploit loopholes in the electoral finance regime.

R6. There needs to be less acceptance of the argument that funding regulations are difficult to comply with for volunteer local treasurers, although they should continue to be assisted and advised on compliance.

R7. The Electoral Commission's civil sanctions to be expanded, with a new maximum fine of up to £500,000.

R8. Extending the Electoral Commission's powers to permit prosecutions should be accompanied by appropriate resourcing to permit the Commission to implement such powers effectively.

R9. Candidate finance regulation should be added to the Electoral Commission's remit, thereby providing some simplification to electoral law.



Spotlight on Corruption submission to the Committee on Standards in Public Life consultation on Electoral Regulation

Organisation overview:

Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK's anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

Spotlight on Corruption welcomes this review and calls for an overhaul of the body's enforcement powers to keep pace with the evolving challenges of regulating elections. This submission is intended to identify issues in urgent need of review by the Committee ahead of formally presenting its report to the Prime Minister. As an organisation, we are concerned that the shifting nature of campaigning and use of technology means that the UK's current approach to regulation and oversight of the electoral process leaves the door open to corruption and undermines confidence in the democratic system.

Summary of recommendations:

- Financial sanctions available to the EC should be increased beyond the current £20,000 maximum and instead be benchmarked to a percentage of campaigns' total spend.
- The EC's sanctions regime for breaches of the Political Parties, Elections and Referendums Act 2000 should be extended to cover acts of non-

compliance with the Representation of the People Act 1983 with the objective of closing the current enforcement gap.

- The EC should be given an explicit mandate to perform as a specialist prosecutor for electoral offences.
- Parties should undertake AML checks on beneficial owners and refuse donations from companies failing to provide evidence of genuine economic activity in the UK.
- The EC should be granted powers to compel social media companies to release data on political parties' online advertising spend.

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(a) Transparency

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

1(b) Proportionality in enforcement

The subject-matter with which the EC engages is a core tenet of our democracy; encouraging compliance within the regulations and deterring breaches. To the latter, the appropriate level of proportionality in enforcement is absent from the current rules: the most serious offences are met with comparatively small fines, a slap on the wrist compared to the benefits gained. The enforcement options available to the EC should be proportionate to the offence and it should be given the power to take action swiftly and without ambiguity.

In the case of EC's 2018 investigation into Vote Leave,¹ the EC fined the organisation a total of £61,000 (including three £20,000 individual fines) for nearly £500,000 in overspend during the Brexit referendum. This penalty, however,

¹ https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Report-on-Investigation-Leave.EU.pdf

equates to a 13.5% levy on the total overspend and cannot be seen as an effective deterrent for future violations. At present the maximum penalty could easily be perceived as a “cost of doing business”² or as a manageable expense for parties operating on multi-million pound budgets.

Where serious breaches occur that put the democratic process at risk, the EC should have the powers to intervene strongly. To do this, the maximum £20,000 penalty available to the EC should, at a minimum, be benchmarked with similar regulatory bodies such as the Information Commissioner which under the Privacy and Electronic Communications Regulations is able to impose sanctions of £500,000. Given the potential for serious electoral offences to cause damage to the fabric of democracy we think proper consideration should be given to removing the upper limit altogether and fines should instead be linked to total campaign expenditure.

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.

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

Questions 2 and 3 are addressed together:

2/3(a) Current rules on the permissibility of donations provide entrance into UK election finance for foreign sources.

Section 54 of PPERA allows UK-registered companies to donate money to a political party provided it *carries on business in the United Kingdom*. EC guidance³ to the legislation recommends that further checks can be made, including on the status of a company’s registration at Companies House, or whether its latest accounts prove it is undertaking economic activity in the UK.

This guidance lacks any legal basis and as we know from undertaking research in this area, the rules in the present form leave the door open for overseas actors using complex corporate offshore vehicles (while taking advantage of the ease of

² The phrase was first used by Sir John Holmes in 2017 as well as by Claire Bassett, former chief executive of the Electoral Commission the following year: <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigation-election-campaign-expenses> and <https://www.theguardian.com/politics/2018/may/15/uk-elections-watchdog-calls-for-bigger-fines-for-rule-breaches>

³ Permissibility checks for political parties. The Electoral Commission. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/sp-permissibility-rp.pdf

setting up a UK-registered company) to skirt rules and donate to political parties. This poses real corruption risks when donations are channelled to parties in this manner through non-transparent sources and from non-transparent jurisdictions where the ultimate beneficial owner of a company remains unknown.

An example of how the current rules are circumvented can be observed in the case of Aquind Ltd – a UK company owned via a Luxembourg parent company which has donated £126,300 to the Conservative Party since November 2019 but whose owner has until recently remained anonymous. Aquind Ltd had moved to obfuscate the ownership of the company by invoking a rare exemption at Companies House to avoid declaring a PSC statement. During this period there was no available means for the public (or the party treasurer) to find information on the owner of the company. According to its latest accounts published at Companies House,⁴ Aquind runs at a loss in the UK and is financed by loans from its parent company OGN Enterprises Limited registered in the British Virgin Islands (BVI). Companies registered in the BVI do not publish their annual accounts meaning that the source of donations channelled through this and other similar jurisdictions is hidden.

We understand that some party treasurers have said that they scrutinise donations by following Financial Conduct Authority (FG 17/6) anti-money laundering (AML) guidance⁵ requiring registered firms to undertake beneficial owner checks on customers. This guidance is clearly not binding on political parties as they are not regulated by the FCA. Spotlight on Corruption believes that expanding the scope of what needs to be checked in terms of permissibility of donations is essential and should include checks on the origin of funds and whether the funds could be the result of criminality or money laundering. Mandatory AML checks made by a party on donations would go some way toward guaranteeing the legitimacy of the funds and also to protect parties themselves from the reputational risks arising from accepting money from non-permissible sources. The results of the beneficial owner checks should be made available to EC which should then promptly publish the information on its database ensuring that voters can see the ultimate beneficial owner behind any company making donations to parties. Given weaknesses in verification and the potential loopholes in providing the UBO, this requirement would help ensure greater transparency in electoral finance. Where PSC information is not immediately available through filings deposited at Companies House then party treasurers should request confirmation from the company in question and share information with the EC.

⁴ Aquind Limited. Company information available at Companies House. <https://beta.companieshouse.gov.uk/company/06681477/officers>

⁵ See: FG 17/6 The treatment of politically exposed persons for anti-money laundering purposes. Financial Conduct Authority. <https://www.fca.org.uk/publication/finalised-guidance/fg17-06.pdf>

Current PPERA regulations prohibit foreign actors from entering into agreements with UK agents (e.g. UK-registered companies) to act as a conduit for donations. In practice, this is unenforceable while the onus remains on the EC to prove the existence of a formal agreement between the prospective donor and UK agent – a task made even more difficult when involving companies based in ‘secrecy jurisdictions’ where the EC has no means of accessing even basic company information on ownership, control, beneficial interests or an overview of the company’s trading activities.⁶ The current regulations in this area should be reviewed to require parties to undertake more thorough checks on the origin of donations where companies have limited or ambiguous connections to the UK.

2/3(b) EC should be granted powers to compel social media companies to release data connected to political party spend on online activities.

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

2/3(c) Unincorporated associations should publish information on ‘political gifts’ they receive over £500.

According to figures taken from the EC database, some 389 cash donations with a value of £2.4 million were given to political parties in 2019 through Unincorporated Associations (UAs). The funding mechanisms behind some of these groups is opaque with no requirements on filing accounts or publishing membership lists. UAs’ reporting to the EC on gifts they receive points to significant gaps in income received and donations made as expenditure. Spotlight on Corruption recommends decreasing the threshold for reporting requirements on ‘political gifts’ UAs receive from the current £7,500 to £500 in order to bring more transparency to their source of their income.

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

⁶ As demonstrated in the EC investigation into potential violations of PPERA involving Bearwood Corporate Services Limited on this specific point, the EC relied on voluntary disclosure of Stargate Holdings Limited – a company registered in Belize which did not disclose any information on the source of its funding.
https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Case-summary-Bearwood-Corporate-Services.pdf

Spotlight on Corruption feels that the EC plays an essential role defending democratic principles and processes and also acts as a bulwark against interference by illicit and questionable sources of finance. However, for the reasons stated in response to other more specific questions, we feel that its sanctioning powers are insufficient and its civil sanctions regime should be extended to cover RPA violations.

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

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

Questions 5 and 6 are addressed together:

5/6 Rules on 'meaningful connections' to the UK to become further strained in the digital economy.

As already identified in the responses to questions 2 and 3, Section 54(2)(b) of PPERA does not establish the necessary grounds to demonstrate that potential donors have a meaningful connection to the UK. This should be updated to ensure that companies, beyond being registered in the UK, a) undertake substantial economic activity in the UK including regularly paying corporation tax b) have British-based company directors c) declare accurate and up to date beneficial ownership to Companies House. Special consideration should also be directed toward incoming changes to the digital economy where, in the not too distant future, it could be conceivable for non-permissible sources to register companies in the UK with the stated claim of managing non-existent intellectual property rights in the UK for foreign companies. This is a clear weak link in the current arrangements and provides an entry point for foreign money in UK elections without breaking any of the current rules.

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

7 The EC's present sanctions regime does not provide a sufficient deterrent to prevent non-compliance.

As is recognised widely, the maximum fine of £20,000 is in danger of being perceived as "the cost of doing business" when parties operate on multi-million pound annual budgets. The maximum £500,000 fine or 4% of the total spending limit proposed by the Select Committee on Democracy and Digital Technologies in

June 2020⁷ is welcome. However, the £500,000 figure is in danger of becoming outpaced by increases to election spending limits. For instance, in the 2019 election the spending limit for parties contesting all constituencies was £19.5 million⁸ meaning a 4% fine would equate to £780,000, already far beyond £500,000.

Where this amount is still not sufficient to provide a deterrent effect, the EC could be given powers to levy fines proportional to a party's income during an election cycle or parliamentary term. This would ensure that the EC would have appropriate measures to proportionately enforce infractions consistent with the size of the party involved.

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?

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?

Questions 8 and 9 are addressed together.

8/9(a) Lack of criminal prosecutions for violations of Representation of the People Act underlines serious 'enforcement gap'

As the CSPL notes in its call, prosecutions for violations of the RPA are rare and point to the existence of an enforcement gap where low-level but serious infractions (e.g. late delivery of a spending returns) go uninvestigated and unpunished by the police. The enforcement gap is further widened when the EC has found evidence of violations of the RPA and shared information with the police which then chooses not to open investigations. In the case of the EC investigation into claims of overspending relating to the *Conservative and Unionist Party campaign spending returns for the 2014 European Parliamentary Election, 2015 UK Parliamentary General Election, and the 2014 parliamentary by-elections in Clacton, Newark and Rochester and Strood*⁹ – the EC believed that it had amassed enough evidence of breaches of the RPA to discuss the matter with the police. The police, however, did not believe the information it received was sufficient to open an investigation. A stronger civil sanctions regime made available to the EC would be

⁷ <https://publications.parliament.uk/pa/ld5801/ldselect/lddemdigi/77/77.pdf>

⁸ <https://www.bbc.com/news/election-2019-50170067>

⁹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-conservative-and-unionist-party-campaign-spending-returns-2014-european-parliamentary>

better suited to monitoring, investigating these types of offences while additionally creating a more effective deterrent against non-compliance.

8/9(b) Spotlight on Corruption supports calls made by the Electoral Commission to build a specialist prosecution function to address the dearth in prosecutions.

We believe that the EC should be granted powers to perform as a specialist electoral prosecutor in the same manner as the Financial Conduct Authority regulates financial firms with robust enforcement powers¹⁰ including the option to bring criminal prosecutions for serious electoral offences. The EC has the benefit of in-depth expertise and is best-prepared to consider the sensitivities of bringing a case for election finance offences. It would also ensure continuity and the efficient disposal of an investigation. This would be the most efficient use of the EC's expertise in ensuring the integrity of our electoral process, and providing a strong encouragement for compliance.

It is a welcome development that the EC is calling for the power to bring prosecutions before magistrates' courts involving "lower complexity offences that involve recklessness or deliberate dishonesty and cannot be subject to the civil sanctions regime."¹¹ More serious offences, under the proposed arrangement, would still be handled by the police but should benefit from specialist input and support from the EC which would be achieved by deepening existing information exchange between the EC,¹² each force's election single point of contact (SPOC) and senior investigating officers. Receiving specialist advice from the EC would improve the police's ability to investigate electoral offences by building knowledge of specific offences and would then contribute to developing case files with a better chance of meeting the Crown Prosecution Service's prosecution threshold. There are more fundamental questions to be resolved over the role of the police in prosecuting electoral offences where in recent years, forces have expressed their reluctance to wade in on 'live' political issues.¹³ It is vital that expertise in enforcing electoral law is developed in the police force and consideration should be given to the creation of a central contact point in policing to ensure consistency of application of the law nationally.

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

¹⁰ This power is bestowed under sections 401 and 402 of the Financial Services and Markets Act 2000.

¹¹ See the Electoral Commission's submission to the CSPL consultation.

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/responses-consultations/committee-standards-public-life-review-electoral-regulation-response-consultation>

¹² In its submission to the CSPL the EC has called for more explicit powers to share information with the police.

¹³ <https://www.opendemocracy.net/en/dark-money-investigations/met-police-stall-brexit-campaign-investigations-claiming-polit/>

10 Yes – investigative powers and the civil sanctions regimes available to the EC under PPERA should be extended to cover candidate offences currently regulated by RPA.

Under the current arrangements the EC investigates electoral offences at national level following PPERA legislation while the police undertake the same function at local level guided by RPA. All violations of the RPA committed by candidates carry a criminal offence but prosecution is rare¹⁴ – the police may decide that bringing a prosecution forward is not in the public interest or a priority.¹⁵ The enforcement gap left as a result means that non-compliance for lesser offences goes unpunished. Bringing these offences within the scope of the civil sanctions regime overseen by the EC would offer an alternative to police investigation and criminal prosecution and would encourage compliance through the imposition of civil fines. The separation of lesser offences under a single regulatory remit would promote clear oversight while police intervention would be reserved for the most serious of breaches.

¹⁴ In 2019 the police investigated 585 cases under the RPA with two leading to a conviction and one individual was given a police caution. <https://www.gov.uk/government/publications/review-of-electoral-regulation-public-consultation>

¹⁵ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/responses-consultations/committee-standards-public-life-review-electoral-regulation-response-consultation>

CONSULTATION RESPONSE

Democracy Volunteers

Who we are

1. Democracy Volunteers is a UK-based not-for-profit non-partisan election observation group. Our mission is to improve the quality of democratic elections by advising those who legislate for, administer, and oversee elections, to enhance them for the benefit of voters. We are a member organisation of the Global Network of Domestic Election Monitors (GNDEM).
2. We aim to do this by attending elections and empirically reporting our findings in an accessible way through statistical analysis and interlocutor meetings to support this objective. We do this through a strong methodology, based on the international standards for election observation as set out by the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and others.
3. We maintain strict impartiality and require our observers to abide by UK and international standards, as well as the relevant local legal framework, when acting as our observers.
4. We aim to report on our observations in a constructive and encouraging way to benefit the delivery of democracy and to benefit the electorate as a whole.
5. For more information about Democracy Volunteers our website is:
<https://democracyvolunteers.org/>

Introduction

6. Since its creation, Democracy Volunteers has had an ongoing, constructive, and open dialogue with the Electoral Commission both in the field at elections where our observers and their staff are present, and outside of election periods where we have consulted with the Commission and fed back on our findings where relevant.

7. We are therefore responding to this consultation as we feel that reform of the role of the Electoral Commission is key to strengthening the integrity and safety of UK elections for voters, candidates, parties, and impartial observers, such as ourselves. We hope to be able to continue the work we have been doing to date with the Electoral Commission and hope that this consultation will aid the Commission in their continuing work.
8. Please note we have focused on areas where the work of the Electoral Commission intersects with our own and have left some questions unanswered as we feel other individuals and organisations are better suited to dealing with them.

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.

9. The core values behind any regulation pertaining to elections should be both trust in the process and transparency in the eyes of the voting public. It is vital that, whatever the regulations, they and their application are understandable to voters.
10. Of course, accountability and fairness are important, but the previously mentioned values are essential to maintain public trust in both the electoral system and elections themselves.

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.

11. Democracy Volunteers has not yet engaged in assessing election finance, precisely because the primary objective, and funding for, the Electoral Commission is designed to assess campaign and party finance.
12. Democracy Volunteers feels that to give a formal and more considered response on this specific issue, a more thorough legal background in relation to party and election finance issues is required. As we focus on observing polling stations, counting

processes and electoral integrity of the voting process in general, which are the public facing aspects of elections, we feel other individuals and organisations are better suited to respond to questions specific to the details of campaign and party finance.

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

13. As with the previous question we feel that to give proper advice on this issue, a more thorough legal background is required. However, what is clear to us is the small-scale nature of the Electoral Commission in the UK, compared to some other countries, potentially limiting its capacity to oversee elections in an entirely thorough and effective manner. Whilst the Commission's own stated goal is as 'the independent body which oversees election and regulates political finance in the United Kingdom. We work to promote public confidence in the democratic process and ensure its integrity,'¹ we believe that to conduct those role effectively requires a much larger and stronger organisation that can make recommendations that are enacted by government rather than taken as advice.

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

14. The Electoral Commission has many roles which it needs to function, some of which are just as important as monitoring election finance. Whilst we do accept that a lot of the Commission's role is taken up with this aspect, we also believe that, if anything, more time should be spent on other parts of their role.
15. We would contend that electoral integrity, such as issues like family voting, voter registration, assessing the potential impacts of the potential requirement of voters to show ID, and the rejection of over 2% of all postal votes as they are completed incorrectly, would benefit from greater insight from the Commission. More oversight

¹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/who-we-are/our-plans-and-priorities/annual-report-and-accounts-2019/20>

of these issues would make the Electoral Commission more relevant to the electorate, as well as making elections safer.

16. We appreciate that an expansion of the Electoral Commission in terms of staff and finance would be required to achieve greater oversight and impact in these areas.

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

17. As previously stated, our focus is not on this question and Democracy Volunteers feels that to give proper advice on this issue, a more thorough legal background is required, better suited to other organisations.

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

18. The Electoral Commission's unique position in our electoral system means that it is well placed to deal with issues pertaining to election finance.
19. Strengths: a comprehensive view over many aspects of electoral legislation and a body of experts in the field of election finance enabling a good potential response to issues arising.
20. Weaknesses: limited scope for action as an advisory body as well as a lack of power to enforce decisions. Coupled with several other tasks that the Commission must enact as the UK's election body means that this may distract from the increasingly important area of election finance.

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

21. During the six weeks prior to the 2019 General Election period, parties received a total of £30.7 million of registered donations². A fine of £20,000 does not constitute a significant enough sum of money to the main political parties. We would suggest that the Committee on Standards in Public Life explore either increasing the sanction

² <https://commonslibrary.parliament.uk/insights/general-election-2019-which-party-received-the-most-donations/>

amount or the allocation of different forms of sanction when dealing with larger organisations, perhaps based on a percentage of income basis.

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?

22. Although we are not deeply familiar with the exact relations between the Commission and the police criminal prosecution regime, there seems to be an effective relationship between the parties that has enabled a number of prosecutions and convictions over the past twenty years.
23. We would however propose that during election periods a specialist liaison group be set up that includes representatives of the Electoral Commission and the police criminal prosecution regime in order to increase the speed and reactivity of such sanctions, thus increasing the effectiveness of the sanctions regime in the eyes of the public and strengthening confidence in the Commission's role.
24. We do, however, believe that the focus on party and campaign finance in elections, whilst extremely important, can detract from other issues of electoral malpractice which are rarely investigated and even less often prosecuted.

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?

25. Democracy Volunteers feels that to give proper advice on this issue, a more thorough legal background is required.

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

26. Democracy Volunteers agrees that to render the Electoral Commission more effective in its role, the regulatory powers should be expanded to include the enforcement of candidate finance law as well as some of the other areas that we have identified in our submission.

Authors:

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Committee on Standards in Public Life
Public consultation - review of electoral regulation

Response to consultation from the Institute of Economic Affairs (IEA).

These replies have been prepared by Victoria Hewson, IEA Head of Regulatory Affairs. The IEA is the UK's original free-market think-tank. Our mission is to improve understanding of the role of markets in solving economic and social problems.

In summary, we submit that the Electoral Commission as currently constituted is flawed in terms of supporting good governance, which should be the overriding objective of electoral regulation. Good governance in a democracy requires participation in election and campaigns to be accessible; the system should be simple for entry level and grass roots campaigners to understand and be capable of complying with, without needing specialist advice. The role of the Commission as provider of guidance and investigator/enforcer of the rules (without applying adequate safeguards in the interests of justice), while making recommendations to government on the future direction of the law, compromise its independence and could undermine voter confidence. It seems unlikely that the expansion of the powers of the Commission envisaged by the questions in this consultation can be justified.

Responses to the questions are set out below.

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 objective of regulation in this area should be good governance. Values such as transparency, fairness and accountability are important in their own right and should be reflected in all laws and regulations but the fundamental attribute of the regulation of election finance should be the delivery of good governance and the absence of corruption. This should be the focus of the regulation and any associated regulator. This review of the current system should be seeking to establish whether they achieve this. Is Britain better governed and experiencing better outcomes and less corruption from elected representatives since the current system of regulation of campaign finance was instituted? If it is simply drawing attention to minor transgressions, and trust, political efficacy and quality of law making are not improving, then the system cannot be said to be working.*
- 1.2. Transparency is an important value in law making and the law should be clear, certain and simple. The degree of transparency in election financing required by the substance of the regulation should be informed by the overall driver of whether it facilitates good*

governance. Because good governance in a democracy requires participation to be accessible, the system should be simple for entry level and grass roots campaigners to understand and be capable of complying with, without needing specialist advice.

- 1.3. The absence of corruption, and voter trust in the absence of corruption, is an important aspect of good governance and supports democratic legitimacy. A system of electoral regulation should aim to prevent corruption in elections. It should not be concerned with minor accounting or administration errors. Excessive focus amplifying minor administrative breaches can cause greater distrust amongst voters, giving the impression of widespread corruption where there is none.*
- 1.4. While funding transparency has been shown to improve voter trust and political efficacy, donor privacy, especially at the lower end of individual donations is also important to encourage grassroots participation and discourage reliance on a smaller number of large donors. Respect for privacy should also be a value that informs the regulatory approach.*
- 1.5. Without due regard for donor privacy and simplicity of compliance, participation may be reduced, which not only detracts from good governance and political efficacy but can act to restrict freedom of expression and association. These are core values that all law-making should respect and which electoral regulation should be especially protective of.*
- 1.6. The positive aspects of party and campaign financing should be recognised for the value they bring in enabling communications and encouraging voter engagement and turnout, rather than seen as being inherently suspicious and potentially fraudulent or non-compliant. Voters have the right to hear and be informed about all views, and not have some, especially minority or less popular messages, excluded by complexity or fears about harassment of donors. Those campaigning for new or challenging causes or ideas are most likely to be deterred by rules that are complex or costly to comply with, and are also most likely to be targeted by complaints from opposing, incumbent interests.*
- 1.7. It seems unlikely that the application of these overriding principles and values could justify and expansion of the powers of the Commission, as envisaged by the other questions in this call for evidence.*

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.

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 This question assumes that the Electoral Commission needs the powers that it has. Given that it has shown flaws in its capability to properly exercise those existing powers, both as provider of guidance and investigator/enforcer of suspected violations, it seems feasible that reverting to a more limited role of maintaining the registry of disclosures and monitoring and publishing information about compliance with regulations (as originally envisaged by this Committee in its recommendations that led to the establishment of the Commission) could be beneficial.

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 If effectiveness is measured by delivery of good governance (including elimination of corruption, and increasing trust and participation in elections and campaigns) the Commission should do less. It has become viewed as politicised by many voters and participants in the EU referendum of 2016 and the European Elections in 2019. With more limited functions, the lack of qualifications and perceived or actual political biases of officials will be less damaging and electoral regulation will be less susceptible to being weaponised for partisan ends.

3.2 The functions of the Commission are relatively new and most election compliance still occurs at a constituency level via returning officers. The public record of campaign finance and expenses is the Commission's main useful function. The Commission has been most criticized for its role in referenda where it seen to have been susceptible to outside influence. Referenda could return to being overseen by a temporary committee of returning officers as it was before the Commission existed. A temporary committee would have the advantage of being able to draw on returning officer experience and a committee could be chosen with a view to reducing the risk of members being seen as politically biased on the question.

3.3 In practical terms, the Commission could improve the guidance that it publishes by citing the legal authority for its position, for example by referring to the statutory provision that a point of guidance refers to or, if there is none, making this clear.

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

4.1 The Commission is subject to conflicts of interest as both provider of guidance and enforcer of laws on which it has given guidance. This would be exacerbated by extending the enforcement powers and sanctions available to the Commission. Its ability to investigate offences and make findings and issue penalties, without following rigorous procedures on the conduct of investigations and rules of evidence, is not consistent with separation of powers or the interests of justice.

4.2 The Commission can achieve a key aim by simply being the public custodian and publisher of information on elections. It does not need to be the policeman, prosecutor, judge and jury; a major problem is that it has all of these functions and fails to separate clearly the processes that each need.

4.3 The Commission, through its reporting and review functions, in effect lobbies government in respect of changes to the law and its own powers, which could also be seen to be self-interested and negatively affect public confidence in the system.

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

5.1 The complexity of the regime and low thresholds for registration and disclosure of donations act against good governance by deterring participation and potentially marginalising less popular causes and parties.

5.2 There is a lack of accountability – the Speaker's Committee has not been a suitable forum for holding the Commission to account as it has no powers and a very limited public profile. If the Commission is to continue as a body, it should be considered whether it should be made directly accountable to ministers and, through them, to Parliament or to a suitable committee of MPs.

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

6.1 The Commission has a weakness in its prioritisation of countering actual fraud and corruption, and focuses excessively on administrative infringements. For example, the Pickles Review found that the Commission was in "denial" of the issue of electoral fraud in Tower Hamlets and not sought to learn lessons from it.

6.2 In recent court cases, the Commission has been found to have issued incorrect guidance, misapplied the burden of proof in respect of civil offences it investigated, misinterpreted statutes it is responsible for overseeing and relevant common law. This suggests that its powers and responsibilities are already beyond its competences.

6.3 The Commission has a high profile and levels of awareness of its role in elections and campaign finance is high. However, given that much of this has arisen from widespread criticism, it is not necessarily evidence of a strength.

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.

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

7.1 In most cases they are excessive. The great majority of investigations recorded by the EC result in no action as they are minor, technical infringements. In recent high profile cases where the maximum fine was applied, one was successfully overturned on appeal, one was reduced on appeal and another was highly contested and only not appealed because of the costs burden on the appellant. If any infringement is serious enough to warrant a fine that would be a heavy financial penalty (certainly in the case of an individual and for most political parties or campaigners that have quite limited resources) and cause serious reputational damage, this should surely attract all of the procedural protections that come with a police investigation and criminal hearing. This should include the decision of the prosecutor/investigating officer as to whether the case is serious enough to be pursued in the interests of justice.

7.2 It is not self-evident that an infringement that is not serious enough to warrant criminal action should necessarily have an alternative civil penalty – perhaps only those infringements that are serious enough to warrant criminal action (because they amount to corruption at a material scale) should be penalised. The alternative would be for administrative breaches to be publicised, allowing voters to make up their own minds as to what this conveys as to the competence and trustworthiness of a candidate or party. If the hypothesis is correct that voters are concerned about such matters and value correct spending returns, this should be enough and provide sufficient incentive to compliance without creating new crimes and civil offences.

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 In the Tower Hamlets case, neither the police nor the Commission brought action in the face of massive electoral corruption, as highlighted in the Pickles Review. In the Grimes and Halsall cases, which were the subject of civil fines and referred to the police, the Commission was criticised by the police for its poor procedural practices and disclosure of evidence that did not meet criminal standards. Even if the Commission's current enforcement powers are not extended, their procedures on matters like disclosure of evidence and procedural propriety in the conduct of investigations should be clarified and improved for greater transparency and fairness. Control of legal costs should also be addressed to prevent the 'inequality of arms' that results when the Commission brings an unlimited legal budget to legal proceedings against individuals or small organisations.

8.2 There is a case, as made in the Pickles Review, for the police to be more active in investigating election fraud, but it does not follow that because the police do not always act, the Commission must. The objective of the system of regulation is not the creation and prosecution of offences but the delivery of good governance.

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 Absolutely none and such a development would be bad for trust, participation and governance.

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.

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

10.1 There is a case to be made, as noted by the Law Commission, for a holistic approach bringing the two sets of regulations together. But this should not be done if it will bring greater complexity to the system as a whole.

Internet Association Written Evidence – Committee On Standards In Public Life: Review Of Electoral Regulation

Introduction

1. Internet Association (“IA”) welcomes the opportunity to provide written evidence to the Committee on Standards in Public Life’s Review of Electoral Regulation.
2. IA represents over 40 of the world’s leading internet companies¹ and is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA’s mission is to foster innovation, promote economic growth, and empower people through the free and open internet. In 2018, IA established a London office to constructively engage in the internet public policy debate in the UK.
3. We are firm believers in the benefits that technology brings to everyday life and the economy, and for the potential that internet innovation has to transform society for the better. IA economic analysis shows that the internet sector contributes £45 billion to the UK economy each year, and is responsible for nearly 80,000 businesses and around 400,000 jobs.² IA polling found that three-quarters of British people believe that the internet had “made their lives easier and more enjoyable.”³
4. IA notes the Committee’s terms of reference and the consultation questions for its review, which focus primarily on election finance and the functions and powers of the Electoral Commission. We also note the Committee’s FAQs relating to the review, which state that “this is not a review of digital campaigning as a subject in its own right and will not examine interconnected issues around misinformation and targeting.”
5. While we recognise the stated scope of the review, in this evidence IA seeks to set out an overview of internet industry activity to protect the integrity of elections, focusing on policies relating to political advertising, with the aim of providing a useful resource to the Committee. Within IA’s membership, internet companies take different approaches to this important issue, depending on the nature of the specific service.

Internet Association Written Evidence

6. The internet industry acknowledges the importance of shared trust in the democratic process. The industry supports this objective through initiatives that make it easier for people to access the authoritative electoral information that they need, by helping people engage with the political process, and by focusing on election integrity, including supporting elections and campaigns.

Internet Companies Enable Democratic Debate And Participation

7. The internet industry, and social media companies in particular, have made it easier for the general

¹ IA Member Company List: <https://uk.internetassociation.org/our-members/>

² <https://uk.internetassociation.org/publications/measuring-the-uk-internet-sector/>

³ https://uk.internetassociation.org/wp-content/uploads/sites/2/2020/08/IA_Digital-Nation-An-Internet-Enabled-Recovery-1.pdf

public to have a voice in government and politics, and to engage in democratic debate. The industry has allowed different groups to form communities, share their experiences and seek support in ways that may not have been available to them before. In doing so, digital technology has broadened access to the democratic process and expanded the ability of people to take part in debate.

8. Further, in order to increase engagement, some internet companies remind people to register to vote ahead of elections, and on election day remind eligible voters to vote and connect them with resources and information. For example, ahead of the 2019 UK General Election, Facebook launched a Voter Registration Reminder which led to over 335,000 registrations, according to the Electoral Commission,⁴ and on election day itself launched several products to encourage participation, including an Instagram “Vote” sticker which was used by more than 450,000 people.
9. Some internet companies also enable candidates to engage with their constituents, share information about their work, and hear feedback from the public. Research has shown that 78% of MPs agree that social media is now an essential communication tool for political debate, and 70% agree that it has changed the way campaigning is done in their constituency.⁵

Internet Companies Take Steps To Protect The Integrity Of Elections

10. In this section, IA provides examples of how internet companies have taken different measures in relation to political advertising. The internet industry is committed to doing its part to increase accountability and trust in online political ads, and internet companies take a range of measures to increase trust and transparency around digital campaigning.

Advertising Verification And Transparency

11. Some internet companies take steps to verify the identity of political advertisers, and provide transparency to users in relation to the advertisers responsible for the ads they see.
 - a. Facebook, for example, maintains and enforces a clear policy in relation to electoral or political ads, which states “advertisers can run ads about social issues, elections or politics, provided that the advertiser complies with all applicable laws and the authorisation process required by Facebook. Where appropriate, Facebook may restrict issue, electoral or political ads.”⁶ Under this policy, advertisers who want to create or edit ads about social issues, elections or politics in the UK need to go through an authorisation process and place “Paid for by” disclaimers on ads. Ads are then entered in Facebook’s Ad Library for seven years.⁷ Facebook’s Ad Library now houses over 250,000 ads about social issues, elections and politics targeting the UK.
 - b. Google’s activity includes:
 - i. Maintaining and enforcing a clear policy in relation to political content and election ads, which states that Google supports “responsible political advertising, and expect[s] all political ads and destinations to comply with local legal requirements, including campaign and election laws and mandated election ‘silence periods,’ for any geographic areas they target.”⁸ Political advertisers can only target their ads based on geography (down to the postal code level), age and gender, and contextual

⁴ <https://news.sky.com/story/general-election-record-number-of-people-apply-to-register-to-vote-on-deadline-day-11871433>

⁵ <https://comresglobal.com/mps-unduly-modern-or-dinosaurs/>

⁶ https://en-gb.facebook.com/policies/ads/restricted_content/political

⁷ https://en-gb.facebook.com/business/help/208949576550051?id=288762101909005&locale=en_GB

⁸ <https://support.google.com/adspolicy/answer/6014595?hl=en>

content (like content topics or video types – for example, “cooking” or “sports” or “politics”). In addition, the policy requires all advertisers who run election ads on their platforms to go through a verification program to confirm their identity. This identity is then displayed in the ad unit so that users can learn more about the election ads they see.

- ii. Providing a publicly accessible, searchable, and downloadable transparency report of election ad content and spending on its platforms.
- iii. All ads that run on Google platforms must also comply with all Google Ads policies, including prohibitions on inappropriate content⁹ and misrepresentation¹⁰ such as “deep fakes” (doctored and manipulated media) and ads or destinations making demonstrably false claims that could significantly undermine participation or trust in an electoral or democratic process.

12. Internet companies are committed to continual improvement, and have enhanced their policies in relation to political ads in recent years.

- a. Google, for example, continues to take steps to enhance its transparency measures. Building on its existing identity verification requirements for political advertisers, Google plans to extend identity verification to all advertisers. Under this plan, advertisers will need to submit personal identification, business incorporation documents or other information that proves who they are and the country in which they operate. Following this, users will start to see disclosures that list this information about the advertiser behind the ads they see.¹¹ The advertiser identity verification program will be global, rolling out in stages, with the US first, expanding to the UK and EU in early 2021, and advertisers in other parts of the world in 2021 and beyond.
- b. Facebook continues to take steps to enhance its advertising policies. Prior to October 2019, Facebook’s authenticity and transparency requirements in the UK only applied to electoral ads and ads about Brexit, however the policy was expanded to include social issue ads in the following categories: 1) civil and social rights; 2) crime; 3) economy; 4) environmental politics; 5) health; 6) immigration; 7) political values and governance; and 8) security and foreign policy.

Prohibiting Advertising

13. Other internet companies take the approach of prohibiting political advertising. Twitter, for example, “globally prohibits the promotion of political content”,¹² a policy which has been in place since 22 November 2019. Under Twitter’s policy, “ads that contain references to political content, including appeals for votes, solicitations of financial support, and advocacy for or against any of the above-listed types of political content,¹³ are prohibited under this policy”. Twitter’s policy also includes some exceptions for ads from news publishers, but they must not include advocacy for or against topics or advertisers.

Internet Companies Welcome Further Dialogue On Digital Campaigning

14. As set out above, internet companies take a range of measures to protect electoral integrity and increase trust and transparency around digital campaigning. Within IA’s membership, internet companies take

⁹ https://support.google.com/adspolicy/answer/6015406?hl=en-GB&ref_topic=1626336

¹⁰ https://support.google.com/adspolicy/answer/6020955?hl=en-GB&ref_topic=1626336

¹¹ <https://blog.google/products/ads/advertiser-identity-verification-for-transparency/>

¹² <https://business.twitter.com/en/help/ads-policies/ads-content-policies/political-content.html>

¹³ Defined as content that references a candidate, political party, elected or appointed government official, election, referendum, ballot measure, legislation, regulation, directive, or judicial outcome.

different approaches to this important issue, while some companies do not carry political advertising at all, depending on the nature of the specific service.

15. For those companies that do permit political advertising, IA believes that there is merit in continued industry dialogue with policymakers and regulators on best-practice approaches to increasing trust and integrity in relation to political advertising. IA also notes the recently published Cabinet Office consultation on digital imprints¹⁴ and will discuss the proposals with member companies.

Conclusion

16. IA welcomes the opportunity to provide written evidence to the Committee on Standards in Public Life's Review of Electoral Regulation.
17. In this evidence, we outlined how the internet sector enables democratic debate and participation. We also set out how the internet is playing its part to increase accountability and trust in online political ads, and described measures that companies are taking to increase trust and transparency around digital campaigning, ranging from verification measures and greater transparency, through to prohibition of political advertising. We also noted that, for companies that do carry online political advertising, continued dialogue with policymakers and regulators would be useful.
18. The internet industry will continue to improve accountability as our companies partner with policymakers and other stakeholders to ensure the integrity of elections. IA hopes that this evidence is useful to the Committee as it undertakes its inquiry.

Internet Association
21 August 2020

¹⁴ <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints>

1. **Public consultation - review of electoral regulation**

2. This Submission is by Thomas Borwick, Director of Kanto Systems and Board Member of the European Association of Political Consultants. [REDACTED]
Thomas has been working in UK election campaigns for the last 10 years.
3. **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.**
4. "Ease of Use", is not often talked about. Many industry professionals want a clear "Code of Practice" that would function as a legal defence for what we did and how we did it.
5. The processes requested are complicated, for example, to validate a donor one must request the electoral roll from a council. This can come in 10+ different formats and systems and the stitching and integration for smaller entities is excessively burdensome. It is not cost-effective to validate donors if there is no central voter registration list available to campaigns. (NB a person contributing less than £500 is not a donor and as such is not validated)
6. A primary purpose of a campaign is to communicate with voters. A voter must make a choice in our political system, to vote for 1 thing over another. If we do not allow campaigns to communicate, then we will not have the ability to assess candidates. Typically a campaign will create a huge amount of content: 650 seats* 5 candidates with 30+ political activities every day quickly produces millions of pieces of content. Campaigns need to be allowed to reach the voters in many different ways to listen to what the voters want and then to create a platform that is salient to their voter groups.
7. I have always thought highly of the electoral commission but there is a perception that some campaigns have been investigated more than others.
8. **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.**
9. PPERA is complicated and monitoring is difficult. The electoral commission only focuses on the parties and the big entity campaigns. Expenditure and donation reports are self-reported and in doing so, the entity needs to ensure that it has all the paperwork submitted, there are limited spot checks for incompleteness. The invoices received are often vague, heavily redacted and it is hard to review allocations of costs across areas.
10. The electoral commission does not review the receipts of individual candidates in an election, which surprises many people. Only local authorities review the expenses of individual candidates and so there is the strong possibility issues will not be noticed due to the lack of a centrally published dataset. As of July 2020 there are candidates from the 2019 election that have not provided even a summary table of their expenditure to the electoral commission. IPSA have very clearly said that a minority of MPs wrongly used Government resources in their election campaign. Currently there is no easy

way to see the full expenditure of the December 2019 election and so it is not yet possible to determine the extent to which there could be more serious issues.

11. Issues with Common plan and coordination regulations mean they are not fit for purpose but are not part of this scope.
12. The electoral commission does not actively monitor small infractions such as posters not bearing a "Printed on behalf of" imprint. Most of these small infractions do not appear to be investigated.
13. The Electoral Commission has a vital job of providing the resources and guidelines to participants and they do this well. For example, the electoral commission holds outreach sessions and is proactive in reaching out to new entities and this is very helpful.
- 14. Q3 What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?**
15. There are limited reasons for local councils to oversee candidates' expenditure regulations, but this practice is unworkable and should be changed urgently. Similarly, the notion that education/ outreach can be separated from the enforcement team is unlikely to be successful.
16. Much more training and support could be provided to Election Officer teams across the Local Authorities.
17. There is a strong rationale for a central authority of election supervision but this must be considered an "arms' length" approach. The process by which its leadership board has been selected could be re-reviewed. I am reminded of my time spent as an election monitor, the UK is held as an example in countries that are less democratic than ourselves and we must be beyond reproach.
18. Some campaign groups are prohibited from spending too much in one constituency and this is very difficult to enforce digitally. I don't think there is any thought when deciding constituency boundaries as to what they look like on a digital map. There appears to be a mythical idea that an online advert will respect a constituency boundary and not cross over to another area. Perhaps as part of the boundary reviews, better geographic identification of constituencies at postcode level could be encouraged.
19. I would suggest better digital forms and processes for uploading receipts. The receipt entry process was very time consuming. I felt that much of the receipt process reconciliation did not meet the reality of real-world expenditure.
- 20. Q4 Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?**
21. Not maintaining accountability for the accuracy or completeness of the Electoral Roll makes donor validation very difficult. There is also the significant problem of voters moving from one area to another. A central updated register of the deceased is also not kept in the UK. The register to vote government tool does not have the ability to securely tell you if you have registered. As such, about 1/3rd of those who register are already valid voters.
22. The Electoral Commission has piloted comprehensive voting-method experiments in previous years - ranging from red button to online voting, but it is disappointing that such innovation is not continually advanced.
23. I am not sure the Electoral Commission/ local Electoral Registration Officers procure products and services as well as they could for many of the tools they

use. We seem to pay a huge amount to only a few suppliers for the postal ballots and advertising related to an election.

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

25. There is no reason to differentiate between national and local expenditure and, with different readings of the **Mackinlay** decision, it appears central party expenditure was minimised in the 2019 election by the odd situation of local MP's not appearing with their national leader at key events. There is no current process by which the local and national expenditure is reviewed together.
26. Legislation in Northern Ireland needs an update to bring it in line or else to deliberately omit the territory.
27. Campaigning is the primary purpose of a campaign, any extended time-based restriction on expenditure in advance of an election would be very problematic for new challenger candidates. A great campaign is always based on communication and there is a very limited reason to have any restriction on campaigns communicating with voters.
28. The 6 weeks time-based spending cap at our current level restricts better engagement with voters. Perhaps an arm's length commission could investigate other alternatives. Low limits heavily favour incumbent status quo campaigns and are a primary reason that new political parties have a difficulty in the UK and probably results in fewer candidates to choose from.
29. On transparency of campaign material: there is a mistaken belief that "everything a campaign produces online should be published in a central register". This would be very burdensome for smaller campaigns to centrally store all the content of their advocates. The advertising libraries by Google and Facebook probably cover 80% of the current political advertising, there are many ways to advertise not on these platforms.
30. If campaigns have tighter budgets, they will find other ways of pushing messages out. Newspapers are not impartial, and they run "advertisements and images" as news stories. There are some groups that are particularly good at getting certain journalists to retweet specific campaign "advertisements". When this occurs, there is no financial transaction but this is as impactful as any other paid advertisements.
31. An advertisement shown to some journalists will get retweeted quickly by them and that is much cheaper than approaching the voters.
32. An online advert does not have a neat geographic boundary, so there are concepts of layering and adjacency that are not provided for in legislation.
33. Complexities of loans and when they are converted to donations is of concern and perhaps could be prohibited.
34. Trade Union participation is sensible, though perhaps with the caveat of increasing the frequency of the 10 yearly political ballot.
35. A seat trigger threshold for registration on expenditure,
36. The next election may see some serious tests on the "Public Test" eg what it means to communicate with voters (something that has to be declared) and with members (something that does not need to be declared).
- 37. Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?**

38. Some of the previous election Chairs possess significant skill sets but there are gaps in competencies from others. Domain knowledge is useful in this job.
39. The lack of oversight of individual candidates is problematic.
40. The Electoral Commission is not responsible for the totality of election security/integrity and it does not have the team required for that. The UK lacks a minister for Democracy.
41. **Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?**
42. Yes, see later points on re-running the election. There needs to be the ability to do a re-run quickly and cost effectively. A fine is not a solution to the problem. The electorate are very good raising their concerns if they think wrongdoing has occurred and we should let the people show their displeasure if needed.
43. There are examples of MP's having "discrepancies" with their expenditure returns but the CPS decided that pursuing an investigation was not in the public interest. I have not seen the details of some of the public interest tests applied but I would hope that it is a rigorous and consistent process. There may be a strong and understandable hesitancy of getting involved.
44. We cannot have an electoral system that has fines and sanctions that discourage candidates from standing. If the fines are raised too high, will challenger candidates be able to risk standing?
45. The Information Commissioner's Office (ICO) have power to impose very high fines for data malpractice and has given many warnings to political parties and they do stop some entities getting involved in politics.
46. There are stories of campaigns reporting each other, a situation that will create the need for investigations. A regulator that is overly quick to investigate might find themselves stopping new political entrants that are not prepared for these attacks.
47. **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?**
48. It is not clear that the police and Electoral Commission work together well, and some significant cases have collapsed.
49. A simplistic way of looking at this is that the Electoral Commission regulates entities and the police regulate people. It is often unclear who in a campaign is responsible.
50. **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?**
51. As to what to do about election over expenditure: Are there any circumstances by which "society" will rerun the election, and be able to do that with such speed that no other election has occurred in the interim? If as a country we are not going to ever rerun an election, then perhaps you need an inflated threat of criminal sanctions.
52. Some of the civil cases that have occurred recently have cost a small fortune to defend.
53. There are different regulatory frameworks for political parties and candidates, ideally that would be harmonised.

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

55. Yes. The lack of public oversight of individual candidate expenditure is very poor. It makes a mockery of local and national expenditure differentials.

56. A final note

57. I would also hope that MPs took a more active interest and understood they hold ultimate responsibility for their campaign expenditure.

58. In 2015 (the last date for which data was available) it cost the UK government £2.37 per voter to run a ballot. Without large scale reform, how do we expect MP's to communicate with voters at an available cost of only 7p per voter? Without a dramatic increase to £2 per voter we are going to see politicians no longer able to communicate with their voters.

59. On Third parties,

60. A non-party campaign group/third party is a necessary addition to elections and whilst the American expression "A Political Action Committee (PAC)" probably sums up what they do, it is useful to expand on three simplest types of messages.

61. "Advocacy" of their own issues to their own members in a non-political way,

62. "Political campaigning" changing political priorities of elected members.

63. "Electoral campaigning" changing voters' minds,

64. Many third parties have a series of ideas eg, to put up posters of tweets, or to target swing voters and then they solicit donors for these objectives. Some do this as an activity ancillary to their normal activities, while others are special purpose vehicles.

65. Non-Party campaign groups allow individuals to participate in a sensible easy method. If third parties were not allowed, then people would set up their own parties and I am sure the electoral commission would not want to oversee validating those political parties.

66. If a company runs a "voter registration drive" it is usually being partisan and at what stage should it need to register?

Crown Prosecution Service response to the public consultation on the review of electoral regulation in the UK

Introduction

1. The Crown Prosecution Service (CPS) welcomes the opportunity to contribute to the Committee's review of electoral regulation via this public consultation.
2. Within the CPS, the Special Crime and Counter Terrorism Division (SCCTD) advises on and, where appropriate, prosecutes some of the most sensitive and demanding cases across England and Wales. This includes electoral offences, and allegations of breaches of the Representation of the People Act (RPA) 1983, and criminal offences under the Political Parties, Elections and Referenda Act (PPERA) 2006, are referred to SCCTD.
3. As in any case referred to the CPS, we will review the evidence in accordance with the Code for Crown Prosecutors to determine if there is a realistic prospect of conviction and, if so, whether the public interest is best served by such a prosecution.

Consultation Questions and Response

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.

4. The principal purpose of the relevant legislation and regulation is to maintain not only the integrity and probity of the electoral process but public confidence in it. It is for these very reasons that criminal proceedings for major infringements will normally be in the public interest. To maintain public trust, it remains vital that electoral processes remain transparent, even handed, and that those who abuse the system are held to account.
5. To support these principles, regulations and legislation should be clear and as user friendly as possible to ensure a clear understanding of the rules, so that those engaged in electoral processes fully understand their obligations.

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.

6. As you will be aware, political party finance is governed by PPERA 2006. Breaches of its provisions in England and Wales may be subject of criminal prosecution by the CPS (as the Electoral Commission currently has no power to prosecute) or the imposition of a civil financial sanction by the Electoral Commission. The enforcement powers and options are set out within PPERA. While PPERA campaign finance offences can be

subject to a criminal prosecution, some PPERA rules can only be dealt with by civil sanction. An assessment on the efficiency and effectiveness of these powers in relation to their statutory functions will be for the Electoral Commission to consider, including perhaps the levels of cooperation it receives from those it seeks to monitor and regulate. However, we would add that the majority of cases referred to the CPS relate to RPA offences. While we do not collate official statistics, anecdotally, we receive very few PPERA criminal referrals.

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

7. We have no specific observations.

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

8. We have no specific observations.

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

9. The CPS does not make the law or decide what is criminal, so we have no specific observations. As noted above, clarity and understanding of the rules remains vital to ensure those involved in electoral processes understand their obligations and that the rules are interpreted correctly.

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

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

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

11. The CPS cannot comment on questions in relation to civil sanctions, or their effectiveness, although we acknowledge the large sums that can be involved in election finance offences and the question of proportionality when compared to the current maximum fine. What is important is that these sanctions provide a sufficient deterrent, and that they are enforceable. Others may be better placed to make this assessment.

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?

12. We would highlight that the police do not prosecute electoral offences. In England and Wales that is a matter for the CPS, while the police carry out their investigatory functions.
13. The RPA 1983 is the primary piece of legislation creating the criminal offences relating to elections which the CPS has to consider. Although couched in terms of Parliamentary or local government elections, subsidiary and secondary legislation applies it to a variety of elections, including Mayoral elections, Welsh Assembly elections, and referendums, for example. The starting point is section 181 of the RPA. Section 181(1) imposes a duty on the Director of Public Prosecutions 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'. We have outlined the PPERA powers, and the civil sanction function of the Electoral Commission at question two.
14. CPS Prosecutors work closely with police and the Electoral Commission to uphold the law. There are of course clear distinctions in our respective functions. In short, the CPS deals with criminal offences under the RPA and criminal charges under PPERA, while the Electoral Commission has civil powers to deal with PPERA cases. We assess this is an appropriate division. There are important prosecutorial functions that the CPS has vast experience of, and expertise in, including police PACE processes, adherence to CPIA legislation and to disclosure rules. Any adjustment in these respective functions will require careful consideration, including whether current arrangements are already correct and proportionate.

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?

15. We note the RPA and PPERA powers that already exist for the CPS to bring such prosecutions before the Courts. As we have indicated above, and for context in relation to this question, the majority of CPS cases relate to RPA offences and we received very few referrals relating to PPERA criminal offences; the CPS can only consider prosecutions in the cases that are referred to us. The CPS can provide advice to the police in any case where requested to do so. It is always a matter for the police to take their own decisions about whether to continue an investigation or not. The CPS will make a decision in accordance with the Code for Crown Prosecutors where the police refer a full file of evidence for a charging decision.
16. To consider in what circumstances the regulatory regime would be strengthened by the Electoral Commission bringing prosecutions before the courts, perhaps in the first instance requires further assessment of perceived weaknesses. We would also suggest that any new proposals would require careful scrutiny and discussion, including how respective functions are defined. In our view, a criminal – civil divide provides a good level of precision, and any adjustment would require a clear demarcation between the Electoral Commission and CPS prosecution cases. Any unintentional blurring of the lines would be counter-productive.

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

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

**Special Crime and Counter Terrorism Division
Crown Prosecution Service
18 August 2020**

Committee on Standards in Public Life - Electoral Regulation Review

Submission from the UK Anti-Corruption Coalition, August 2020.

The UK Anti-Corruption Coalition brings together leading non-governmental organisations and academic institutions working on corruption who, through their work, witness the devastating impact of corruption in the UK and abroad. We welcome the opportunity to input to the Committee on Standards in Public Life's (CSPL) review of electoral regulation in the UK.

Our recommendations for robust and effective electoral regulation in the UK

We wish to begin by emphasising **the importance of the Electoral Commission as an independent, non-partisan body with responsibility for oversight of elections and regulation of election finance.**¹

The politicisation of regulators should be avoided at all cost, as doing so creates the opportunity for abuses of power that undermine democracy and weaken trust in the political process. The Electoral Commission has attributes that go beyond pure political principle; in many respects, and compared to other jurisdictions, the UK's political finance rules are considered to be of a high standard.²

Nonetheless, the UK Anti-Corruption Coalition has significant concerns that ongoing weaknesses in our electoral regulations undermine the integrity of and public trust in the UK's institutions. Moreover, these weaknesses mean that we have been unable to adequately adapt to a new environment of digital campaigning or address increasingly concerning threats surrounding hostile interference.

In light of these concerns, the Coalition make recommendations throughout this submission that fall under the following categories:

- There should be **tighter rules around who can donate, how much can be donated, and how donations are reported and spent** to protect the UK from real or perceived foreign interference, cash for access scandals and to facilitate a wider donation base for political parties.
- There should be **more accountability for online activity** to ensure that the UK's electoral regulations keep pace with the evolving nature of campaigning.
- **Weaknesses in our enforcement regime** should be addressed to better support the existing framework for electoral regulation and ensure the success of the changes suggested in the previous recommendations.

¹ OECD, 'Ensuring compliance with political finance regulations', in *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture* (2016); Council of Europe, *Recommendation (2003) Rec 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns*, Article 14

² Group of States Against Corruption (GRECO), *Third evaluation round: Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)* (2008) p.28

The values of the Electoral Commission

In line with the views of the Committee on Standards in Public Life (CSPL), we believe that there are three key values which should underpin the regulation of elections in the UK: **transparency, integrity and accountability**.³

We note further that the success of these values in practice is contingent on their interaction. For example, transparency alone is insufficient for creating electoral regulation that ensures the public's faith in our democratic system; in the absence of measures that ensure integrity and accountability, transparency alone risks breeding dissatisfaction and distrust in our political system and leading to a public perception of impunity for wrongdoers.⁴

The following sections outline how key changes can support these values.

Donations and spending

It is still possible for political parties to become heavily indebted to a small number of very wealthy donors, which undoubtedly has a material impact on their decision-making whilst in public office. Allowing donors to contribute unlimited amounts of money creates dynamics that are unhealthy for political parties and for trust in our politicians, and only serves to detach parties and their policies from their voter base.

The increased frequency of general elections in recent years and the level of spending may create circumstances in which party fundraisers feel pressured to secure larger and larger amounts and, in turn, take action which may prove detrimental to a well-functioning democratic system.⁵ Recent controversies surrounding the possible influence of party donors on the decisions of Government ministers provide a case in point.⁶

Moreover, it is still too easy to hide the provenance of funds entering our political system. The recent findings of the Intelligence and Security Committee regarding the actions of Russia and research from civil society organisations like Transparency International UK have highlighted not only the risk but the reality of foreign interference in our democratic processes.⁷

All-expenses paid trips for UK parliamentarians and their staff may be used by foreign governments to try and improve the reputations of corrupt or repressive regimes, while the opacity provided by unincorporated associations offers the perfect cover for those seeking to exploit our system. A significant mismatch exists between the amount given to unincorporated associations since 2001 of £46 million, and the £27,500 reported to the Electoral Commission.⁸

³ [Committee on Standards in Public Life \(1998\), *Fifth Report: The Funding of Political Parties in the United Kingdom*, \(London: HMSO\).](#)

⁴ Power, S. (2020), 'The Transparency Paradox: Why Transparency Alone will not Improve Campaign Regulations', *The Political Quarterly*, online first.

⁵ According to their accounts submitted to the Electoral Commission, on average every year the Conservatives, Labour and Liberal Democrats receive £50.3 million, £37.5 million and £15.6 million respectively (not including inter-party transfers between accounting units or spending by accounting units who are not subject to annual reporting requirements).

⁶ See, for example, recent events involving Robert Jenrick, the Secretary of State for Housing, Communities and Local Government. Further information available [here](#). Accessed 5 August 2020.

⁷ [Intelligence and Security Committee \(2020\) *Russia*; Transparency International UK \(2018\) *In whose interest?*](#)

⁸ Since 2001, UAs have given over £46 million in political contributions to British political parties and other British recipients, over half of which (£28 million) was given after new transparency rules were introduced in 2010. However, according to data published by the Electoral Commission, UAs have only reported receiving a total of £27,500 in political gifts – leaving a substantial gap between UAs' declared income and their outgoing political donations.

Further, to contribute to a UK political party, politician or other political campaign, companies must only show that they are 'carrying on business' in the UK - a relatively low bar for companies to pass to be considered a permissible donor.

Finally, because the security situation in Northern Ireland has changed, in 2014 the UK Parliament passed a law to enable contributions made after 1 January 2014 to be made publicly available.⁹ However, this only applies to contributions received after 1 July 2017.¹⁰

The combination of these factors threatens the integrity of our electoral system. Urgent action should be taken to address the regulatory gaps which allow such a situation to occur.

Key changes required:

- To reduce the perception and/or reality that wealthy donors can buy access and undue influence, there should be a cap of no more than £10,000 on the amount any individual or organisation can give annually.
- To help provide meaningful transparency in a context where donation caps exist, the reporting threshold for donations and loans should be brought into line with the permissibility thresholds, currently £500.
- To reduce pressures on party finances, the spending limit for political party activity during UK parliamentary general elections should be reduced by at least 15 per cent and include campaign staff costs within the scope of those limits.¹¹
- To help protect against funds of unknown provenance entering the political system, restrictions on corporate political donations should only allow companies to donate if they can demonstrate that they are trading in the UK *and* earning sufficient income here to fund any contribution they make.
- To help protect against funds of unknown provenance entering the political system, the level at which unincorporated associations have to report political gifts should be lowered to £500.
- To help reduce the perception or reality of foreign interference in our democracy, parliamentarians should be prohibited from accepting paid foreign travel valued over £500 other than from prescribed organisations.¹²
- To provide openness over the sources of all money spent during the EU Referendum, the Government should introduce transparency over donations and loans to political parties in Northern Ireland from 1 January 2014, as Parliament intended.

Digital Campaigning

The Electoral Commission, the CSPL, Parliament's Digital, Culture, Media and Sport Committee, and Intelligence and Security Committee all recommend that online political adverts should

⁹ <https://www.legislation.gov.uk/ukpga/2014/13/crossheading/donations-and-loans-etc-for-political-purposes> [Accessed 18 August 2020]

¹⁰ <https://www.legislation.gov.uk/uksi/2018/328/contents/made> [Accessed 18 August 2020]

¹¹ In line with CSPL recommendations: [CSPL, *Political party finance: Ending the big donor culture*, Cm 8208 \(November 2011\) p.13 Recommendation 6](#)

¹² These prescribed organisations should include those that are either organisations (1) that are acting in the UK national interest, (2) which the UK or UK Parliament is a full member, for example, the Inter-Parliamentary Union, or (3) would be sufficiently regulated to provide this safeguard, for example, UK political parties.

include an imprint stating who has paid for it.¹³ The Cabinet Office has now launched a technical consultation on digital imprints.¹⁴

There are lessons to be learned from other regulators who have also faced the challenge of adapting to a digital world. The Competition and Market Authority (CMA)¹⁵, the Advertising Standards Agency (ASA)¹⁶, and the Information Commissioner's Office (ICO) have all produced reports on the challenges posed by digital campaigning.¹⁷

Other key stakeholders have argued that, to anticipate and adapt to these new challenges, regulation must be "flexible, collaborative and innovative".¹⁸ Critically, HM Government should ensure that, as with existing regulations, increased transparency is supported with measures to ensure integrity and accountability.¹⁹

Key changes required:

- To help provide greater accountability about who is trying to influence the outcome of elections in the UK, the Government should expedite measures requiring full transparency over who is paying for online election adverts, as is currently the case for 'offline' election material.
- To ensure that the Electoral Commission remains responsive to changes, the organisation consider how it can learn from adaptations carried out by other regulators.

Enforcement

The previous sections deal with the need to ensure integrity in our system in light of changes in our elections, and point to areas where increased transparency would be beneficial. Our final section on enforcement focuses on the need to ensure there is more accountability for transgressions.

There is a pressing need to address the enforcement gap in the interaction between the Electoral Commission's civil sanctions regime and the criminal prosecution regime. At present, this interaction does not form an effective and coherent system for deterring and punishing breaches of election finance laws.

In particular, the Electoral Commission's civil sanctions fines - set at a maximum of £20,000, leaves referral to the Crown Prosecution Service as the only real deterrent for significant breaches - even though the bar for prosecution is significantly higher.

While prosecutory power should not be wielded against genuine and low-level mistakes, it would be false to assert that all transgressions fall into this category. An example from the 2017 election aptly demonstrates this point, alongside the need for higher civil sanctions. The Conservative Party failed to report a six-figure sum as part of their spending return, however the

¹³ [CSPL, *Intimidation in public life* Cm 9543 \(December 2017\) p.61](#); [DCMS Committee, *Disinformation and 'fake news'*: Final report HC 1791 \(February 2019\) p.60](#); [Intelligence and Security Committee of Parliament, *Russia* p.12](#)

¹⁴ <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints> [Accessed 20 August 2020]

¹⁵ https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf

¹⁶ <https://www.asa.org.uk/uploads/assets/c8cff5a2-0289-4dc2-bfedb834d8e13982/00dd9d68-23ca-40af-89a4383ac4b73237/ASA-CAP-2019-Annul-Report-Singles.pdf>

¹⁷ <https://ico.org.uk/media/action-weve-taken/2259369/democracy-disrupted-110718.pdf>

¹⁸ Chris Gorst of NESTA quoted in Margetts, H. and Dommett, K. (2020), 'Conclusion: Four Recommendations to Improve Digital Electoral Oversight in the UK', *Political Quarterly*, online first.

¹⁹ Dommett, K. (2020), 'Regulating digital campaigning: the need for precision in calls for transparency' *Policy and Internet*, online first.

Electoral Commission was only able to impose a fine of £70,000 for this misconduct - a figure which the Commission itself accepts is merely seen as 'a cost of doing business'.²⁰

Meanwhile, criminal prosecution remains infrequent despite high amounts of low-level non-compliance with rules that carry a criminal offence. All failures to comply with the rules for candidates under the Representation of the Peoples Act 1983 (RPA 1983) carry a criminal offence, regardless as to the context or seriousness of the breach. As noted in the CSPL's call for submissions, a large amount of criminal conduct under the RPA 1983 goes unpunished because it is often not proportionate to bring forward prosecution.²¹ The Law Commission noted, too, that civil sanctions in certain contexts could be helpful,²² and the Electoral Commission has recommended since 2013 that it be given civil sanctions at least for major elections.²³

Key changes required:

- To help provide a meaningful deterrent against breaches of the rules under PPERA subject to civil sanctions, we agree with the recommendation from the Select Committee on Democracy and Digital Technologies that the maximum fine the Electoral Commission can impose be increased to at least £500,000 or 4 percent of the spending limit (whichever is the greatest).²⁴
- To help provide a meaningful deterrent against breaches of the rules under the RPA 1983, we recommend that the Electoral Commission's investigatory powers and civil sanctions be extended to candidate offences at major elections.

About us

The UK Anti-Corruption Coalition brings together leading non-governmental organisations and academic institutions who, through their work, witness the devastating impact of corruption. The Coalition includes Article 19, CAFOD, Corner House, Global Witness, International Lawyers Project, International State Crime Initiative, Natural Resource Governance Institute, ONE, Open Contracting Partnership, Open Ownership, Oxfam, Protect, Publish What You Pay UK, RAID-UK, Spotlight on Corruption, The Sentry, Transparency International UK and the University of Sussex Centre for the Study of Corruption.

Contact

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²⁰ [Electoral Commission \(March 2017\) 'Conservative Party fined £70,000 following investigation into election campaign expenses'](#). Accessed 16 July 2020.

²¹ <https://cspl.blog.gov.uk/2020/06/11/new-review-to-look-at-regulation-of-political-finance/>

²² Law Commission and Scottish Law Commission, Electoral law: a joint final report (March 2020) p.155

²³ Electoral Commission, A regulatory review pp.78-80

²⁴ [Select Committee on Democracy and Digital Technologies \(2020\), *Digital Technology and the Resurrection of Trust: Report of Session 2019-2021*, \(London: HMSO\).](#)

Joseph Rowntree Reform Trust response to the Committee on Standards in Public Life review of electoral regulation in the UK

Alex Runswick (with Ben Williams)

About JRRT

The Joseph Rowntree Reform Trust (JRRT) works for democratic and political reform in the UK through our activities and the campaigns we fund. JRRT's values are rooted in liberalism and Quakerism. The Trust seeks to bring about significant changes in the political system, making it more accountable, democratic and transparent and to rebalance power for the well-being of society. JRRT is a limited company, paying tax on its income, which makes grants for political, campaigning or lobbying purposes that are ineligible for charitable funding: this has included support for the Liberal Democrat party. JRRT is entirely separate from the Joseph Rowntree Foundation (JRF) and the Joseph Rowntree Charitable Trust (JRCT).

JRRT has a long-standing interest in electoral regulation. In our founding memorandum Joseph Rowntree drew attention to the importance of 'purity of elections'. In recent years JRRT published [Funding Political Parties in Great Britain: a Pathway to Reform](#) by Stuart Wilks-Heeg and Stephen Crone, 2010 [and Elections for sale?](#) by Chris Bowers, 2017, which reviewed laws governing the conduct of elections – in particular with regard to spending by parties and candidates - and whether reform is required.

Introduction

1. We welcome CSPL's inquiry into electoral regulation in the UK. Campaigning in elections is an essential part of a modern democracy. Political parties have to be able to communicate with voters and publicise their policy programmes effectively. Voters have to be able to assess the differences between the parties and candidates so that they can make their choice. Effective electoral regulation not only facilitates this but ensures that the process is free and fair.
2. There have been significant developments in recent years which make this review not just timely but urgent. Not only has social media and online campaigning, which did not exist when the Political Parties, Elections and Referendums Act 2000 (PPERA) framework was created, become a major force in our elections, but referendums have become an accepted part of our political life.
3. Throughout this submission we refer to examples of behaviour which we believe at the very least breaks the spirit of the law and undermines trust in our

elections. However, these are not partisan points. We recognise that these practices are not limited to a single party of issue and that in 2015 the three main political parties were fined by the Electoral Commission for breaches of the regulations. It is precisely because breaches of the regulations are so widespread that we are making this submission.

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.

4. A fundamental principle of democracy is that elections should be fair contests. JRRT agrees with the CSPL's fifth report, that transparency, integrity and accountability¹ are the key values which should underpin the regulation of elections in the UK but would also add fairness. The values underpinning electoral regulation are of particular significance when we consider how to regulate what may come next in a rapidly changing environment. Responding to the challenge of digital campaigning for example, is a future-facing task. How can we respond not just to challenges uncovered at past elections, but actively adapt regulations (and regulators) in a more fundamentally anticipatory sense?
5. While ensuring that the correct values are at the heart of our electoral laws is essential, it is important to recognise that these values on their own are not enough to guarantee effective regulation. There are a number of areas where the principles of transparency, accountability, integrity and fairness are already present in principle but not in practice. These are explored in more detail below.

Transparency

6. The system for publishing candidate spending returns is a good example of where, because of the Victorian underpinning of many of our electoral regulations, transparency is present in the letter of the law but does not operate in practice without the investment of significant resources.
7. Each candidate standing in a general election has to submit a spending return to the local Returning Officer. In principle these records are transparent as they are made publicly available by the relevant local authority. However, they can only be viewed by visiting a local authority in person. So, if an interested party wanted to analyse how a political party was dividing campaign expenditure between local and national spending, they are expected to visit

¹ [Committee on Standards in Public Life \(1998\), *Fifth Report: The Funding of Political Parties in the United Kingdom*, \(London: HMSO\).](#)

hundreds of local authorities in person to access the data. The amount of time and money required to do this are preventing transparency and accountability being fully realised in this area.

8. In April 2020, the Electoral Commission started publishing online aggregates of this data. Whilst this is a very welcome step that goes as far as they can under the current legal framework, it is not enough for proper scrutiny². For transparency to be meaningful the full breakdowns need to be available. At a time when most people expect information to be available at the click of a button, it is disappointing to have transparency curtailed by such outdated laws.

Fairness

9. The UK has spending limits for both candidates and political parties to prevent elections being won by those with the most money. Legally the principle of fairness has been established but in practice these rules are routinely being breached, so the fairness of the outcomes can be called into question.
10. The lack of clarity about the distinction between national party spending and candidate spending undermines the effective regulation of election finance. For many years the way these expenses have been apportioned had been considered a grey area. However, as campaigning has changed in recent years, relying less on the unpaid labour of local activists and more on data for heavily targeted campaigns run by the party HQ, this has become a significant loophole that undermines trust in the fairness of our elections. These issues came to a head in the 2015 general election and have yet to be resolved. The imbalance between relatively low levels of permitted constituency spend and high levels of permitted national spend has compounded this growth of a more presidential style of national campaigning and the use of creative language to circumvent the rules on local spend through locally-targeted national campaign material.
11. There is evidence from the 2015 general election to suggest that significant constituency-specific activities were categorised as national expenditure. The use of direct mailshots, staff working under instruction from head office, imported campaigners (many transported on official party 'battle buses'), the use of social media to target specific voters, and the collection and use of data have all been used in ways that have gained advantage for candidates in certain marginal constituencies. This is not illegal, as long as the costs of such activity are counted against a candidate's election allowance, and the candidate does not go above their designated spending limit. However, there is evidence of activities that have been apportioned to national spending limits

² <https://www.electoralcommission.org.uk/a-new-way-see-and-compare-candidate-spending-elections>

that should have been assigned to candidate expenses. This prompts the worry that the parties, candidates or third parties can circumvent spending limits, and therefore breach the spirit, and sometimes the letter, of the law.

12. Interviews conducted by Chris Bowers for our *Elections for Sale?* report found that political parties had an unofficial rule of thumb that material devised, created and sent out by head office was national spending even if some of the messaging was targeted to a particular constituency. The belief that materials sent out centrally can be assumed to be national spending avoids the need for candidates' agents to liaise with party HQ on what central costs they need to note on a candidate's return as well as what can be quite complicated conversations about apportionment.³

Integrity

13. The integrity of our electoral regulations is being undermined by the influence of big donors on our politics. The publication of donations, introduced with PPERA, was a significant step forward. However, the continued absence of more robust controls on donors creates the perception, and arguably the reality, that money can buy access and influence in our political system. There have been a number of loopholes, from converting loans into donations, to using unincorporated associations and donations being made in the names of family members, that have been used to evade transparency. While individual loopholes can and must be closed, the root cause of these problems is the lack of a cap on donations to political parties.
14. Allowing donors to contribute unlimited amounts of money to campaigns creates dynamics that are unhealthy for both political parties and trust in our politicians. The controversy of the Westferry Printworks development⁴ is the most recent example of a financial relationship seeming to influence policy decisions but there have been many over the last twenty years. Where major political parties become dependent from a small number of wealthy donors, using access to government ministers as a means of soliciting money, the perception that influence can be bought is inevitable.
15. There would be far fewer grounds for suspecting foul play if the amounts that donors could give were relatively modest and a much smaller proportion of a party's overall income. Removing parties' dependency on a small number of wealthy backers would reduce the risk of actual or perceived impropriety, and it would encourage them to expand and diversify their donor base. This would help to facilitate a deeper connection between political parties and the wider electorate than is currently the case.

³ Bowers C, *Elections for Sale?* JRRT 2017 p14

⁴ Former Tory donor's housing project 'unlawfully approved to avoid £40m hit' Guardian 27 May 2020 <https://www.theguardian.com/politics/2020/may/27/richard-desmond-housing-project-unlawfully-approved-robert-jenrick-isle-dogs-london-avoid-40m-hit>

16. An additional pressure on political parties to seek out large donations is the very high national spending limit in general elections. Political parties that field candidates in every seat in Great Britain can spend almost £20 million. However, in reality only the Conservative Party and Labour Party have ever come close to spending this amount. There is such a significant spending differential between the two largest parties and other political parties that they frequently spend more than all other parties combined. Political campaigning needs to be well resourced so that parties can engage with voters. The current levels of spending go far beyond this and, rather than incentivise meaningful engagement, it encourages parties to seek large donations for fear of being outspent.

Accountability

17. When the Electoral Commission was first established, they recognised that political parties are largely voluntary organisations and worked hard to support parties to adapt to the new regulatory regime. In recent years they have taken a stronger approach, using the full force of their limited powers to sanction parties for breaches in the rules. This is an important development.
18. It is also important to recognise that these values cannot operate independently of each other. When PPERA was passed, it was hoped that transparency would increase the public's trust in the political system. This has not been the case. Evidence shows that unless accompanied by accountability measures such as sanctions, transparency alone can reduce public trust in the regulatory system⁵.

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.

19. The creation of the Electoral Commission was a significant step forward in electoral regulation in the UK. It is widely recognised that an independent, non-partisan regulator is an important safeguard in reducing the risk of policy capture by those funding politics.⁶ However it has been clear for some time that the Electoral Commission does not have the powers it needs to adequately fulfil these functions. These issues are explored in detail below.

Online advertising and social media campaigning

⁵ Power, S. (2020), 'The Transparency Paradox: Why Transparency Alone will not Improve Campaign Regulations', *The Political Quarterly*, online first.

⁶ OECD, 'Ensuring compliance with political finance regulations', in *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture* (2016)

20. As most of our electoral law, and certainly PPERA, was passed before Facebook was created, it is perhaps inevitable that it does not address the phenomenon of social media advertising adequately. However, these are now a dominant feature of UK elections and urgently need to be regulated. Political parties now routinely spend hundreds of thousands of pounds, in some cases over a million pounds, on Facebook advertising. We welcome the government's [consultation](#) on digital imprints. However, this is only one aspect of electoral law that needs to be updated. Campaigners spent an estimated 42.8% of their total ad spending on digital platforms during the 2017 election. This was almost double than in the 2015 election, at 23.9%⁷. Online advertising is a significant part of election campaigning in the UK and yet there is no effective regulatory framework to ensure that this conforms to the values of transparency, integrity, accountability and fairness.
21. Although there are a number of different social media platforms that political parties use to get their messages across, Facebook is the predominant medium. Effective regulation of Facebook advertising is critical because of the level of targeting (sometimes called micro targeting) that it allows. Targeting has always been part of political campaigning and is not necessarily a bad thing. However, the level of targeting available through Facebook advertising, based on an extensive range of behavioural and interest-based factors as well as demographics, is unlike anything that has gone before. It raises risks that a party could send out a vast number of different messages to different people, raising significant questions about transparency, privacy and equal access to information. This is particularly problematic if the messages contain inaccurate and misleading content.
22. These issues are exacerbated by the fact that much of the public is unaware of how closely they can be targeted by political ads, who they are being targeted by, and how their information can be used. Who targets me? argue that as our social media use is analysed and used to refine campaign messages, "we the Facebook audience are in fact lab rats in a giant experiment"⁸. This is an experiment with significant political and policy implications, and which remains largely unregulated.
23. High levels of targeting also mean that it can be difficult to effectively audit what money is being spent in individual constituencies, making spending limits hard to enforce. Facebook invoices typically give each campaign a number but

⁷ Digital campaigning - increasing transparency for voters Electoral Commission
<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>

⁸ The many faces of Jo Swinson? What is A/B testing? Examples from the Liberal Democrat, Conservative and Labour 2019 election campaigns Medium 11 November 2019
<https://medium.com/@WhoTargetsMe/the-many-faces-of-jo-swinson-55a7f766c324>

don't detail which audience it is reaching, making it virtually impossible for the Electoral Commission to confirm if expenses have been apportioned correctly⁹.

24. This is a gap in the legal framework that has been widely commented on. The Electoral Commission¹⁰, the CSPL¹¹, Information Commissioner's Office¹², the Digital, Culture, Media and Sport Select Committee¹³, and the Intelligence and Security Committee¹⁴ have all raised concerns about this and called for action. The LSE Truth, Trust and Technology Commission report¹⁵, published in late 2018, went as far as to say that "The UK should not find itself having to go to the polls again before the legislative framework is modernised." This gap in electoral law must be addressed as a matter of urgency.

Referendums

25. At the time PPERA was passed, the UK had very little experience of referendums and they were not considered to be a regular part of the UK political system. This is no longer the case. There have been two UK wide referendums, as well as one in Wales and Scotland respectively, since PPERA was passed. Electoral law should be updated to reflect this experience.

26. Unlike most other countries, the UK does not have constitutional provisions or legislation setting out in what circumstances a referendum can be triggered. This means that issues that would normally be considered administrative, such as the franchise, timing of the referendum can become highly politicised issues. This is a particular problem when the legislation setting up the referendum is rushed through Parliament. These factors put additional pressure on the Electoral Commission as the regulator where decisions they have to make can be construed as being partisan.

27. Some of the flaws in regulating referendums, such as the lack of transparency in social media advertising, apply more generally to elections and are addressed elsewhere in this submission. However, there are particular challenges in regulating referendums. For example, how can accountability be ensured when campaign groups are temporary?

⁹ An example of a Facebook ad invoice can be found in Bowers C, Elections for Sale? JRRT 2017 p28

¹⁰ Electoral Commission [Report: Digital campaigning - increasing transparency for voters](#);

¹¹ [CSPL, Intimidation in public life Cm 9543 \(December 2017\) p.61](#);

¹² Democracy disrupted? Personal information and political Influence ICO 11 July 2018

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

¹³ [DCMS Committee, Disinformation and 'fake news': Final report HC 1791 \(February 2019\) p.60](#);

¹⁴ [Intelligence and Security Committee of Parliament, Russia p.12](#)

¹⁵ Tackling the Information Crisis: A Policy Framework for Media System Resilience LSE

<https://www.lse.ac.uk/media-and-communications/truth-trust-and-technology-commission/The-report>

28. One problem is that the financial regulations do not reflect the modern world and the way campaigns are run. The major costs of a campaign, such as creating databases or profiling citizens for micro-targeting, may be incurred outside the regulated period. Online campaigning is only as good as the dataset that the targeting is based on. Election campaigns are run on data from previous elections and campaigning in between elections. Referendum campaign groups don't have pre-existing data sets that they can use. Martin Moore highlights the very creative way Vote Leave built their database. They set up a competition where a participant could win £50m by correctly guessing the results of European Cup fixtures. Mathematically this was very difficult to do but the campaign also took out insurance to cover costs in case someone was successful¹⁶. Collecting data in this way gave the campaign a far richer data set than they could have achieved through political preferences or voting records. Campaigners would also want to ensure the data was in place as early as possible and certainly before the regulated campaign period. Groups with comprehensive, expensive databases collected prior to the 10-week regulated period could gain an advantage over opponents, undermining the level playing field that spending limits are designed to achieve.
29. The quality of campaign discourse was also a concern after the EU referendum. The Electoral Commission's post-referendum survey¹⁷ found that over half of the public disagreed that 'the conduct of the campaign was fair and balanced', a third of these citing 'inaccurate/misleading information' as the reason. Referendums are often held on politically contentious issues and are very hard to undo, so it is important that even where people may disagree with the outcome, they have trust in and respect for the process.
30. The Independent Commission on Referendums¹⁸ explored a range of interventions designed to promote good information in other democracies. It concluded that any mechanisms for promoting good discourse should be 'bottom-up' rather than 'top-down'. The US state of Oregon, where citizen panels produce considered information prior to ballot initiatives, provides an interesting example.

Non-party campaigners

31. The law on non-party campaigners was changed in 2014 with the passage of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (Lobbying Act). Ensuring that all actors that seek to influence the result of an election are transparent and accountable is undeniably important. However, there is significant evidence to show that the

¹⁶ Martin Moore *Protecting Democratic Legitimacy in a Digital Age* in Gamble, A Wright T (eds) Rethinking Democracy Political Quarterly 2019

¹⁷ Report on the 23 June 2016 referendum on the UK's membership of the European Union Electoral Commission September 2016 https://www.electoralcommission.org.uk/sites/default/files/pdf_file/2016-EU-referendum-report.pdf

¹⁸ Report of the Independent Commission on Referendums UCL July 2018 https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/182_-_independent_commission_on_referendums.pdf

current legal framework is not only not adequately capturing non-party campaigning that is in breach of the rules but is having a chilling effect on civil society organisations that wish to participate in our democracy.

32. Social media campaigning means that it is very easy for groups to be set up, spend significant amounts of money targeting adverts at specific groups of voters and then disappear without acknowledging who is behind the campaign. One high-profile example of this was Britain's Future, which spent £340,000 on Facebook and Instagram adverts in a five-month period asking people to write to their MP to support a no deal Brexit. This was a sophisticated, targeted campaign to influence politics, but the group did not publish its donors or even publicly list an address. Even with additional transparency measures introduced by Facebook after the Cambridge Analytica scandal, it was possible for a group to spend significant amounts of money but remain in the shadows¹⁹. The lack of clarity over who is behind ads also increases the risk of foreign interference in election campaigns.
33. This is far from being an isolated incident. Who targets me? have been monitoring online campaigning in the UK since 2017 and have called for stronger verification of who is behind online advertising because of the number of front organisations that quickly emerge and then disappear having spent significant sums of money.²⁰
34. While there are examples of non-party campaigning that are not being captured, civil society organisations are being over-regulated. Research by the Sheila McKechnie Foundation found that the overall impact of the Act had been that people's voices went missing from the debate. This was in part because the administrative burden of the Act limited the ability of organisations to speak out and support their beneficiaries to have their say. 51% of respondents said it had affected their ability to achieve their organisational mission or vision, with this having a significant impact on organisations working on politically sensitive or controversial issues, like welfare, disability, and immigration. In addition, 42% say they have avoided activity where they were uncertain it comes within the scope of Act²¹

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

¹⁹ Obscure no-deal Brexit group is UK's biggest political spender on Facebook Guardian 9 March 2019 <https://www.theguardian.com/politics/2019/mar/09/obscure-no-deal-brex-it-group-is-uks-biggest-political-spender-on-facebook>

²⁰ <https://medium.com/@WhoTargetsMe/ten-simple-ideas-to-regulate-online-political-advertising-in-the-uk-52764b2df168>

²¹ The Chilling Reality: How the Lobbying Act is affecting charity & voluntary sector campaigning in the UK https://smk.org.uk/wp-content/uploads/SMK_The_Chilling_Reality_Lobbying_Act_Research.pdf

35. The Electoral Commission has an important role in providing guidance on the law to officials, parties, candidates and campaigners during an election, but its main role is after the event. It looks retrospectively at the spending returns to determine if the rules have been breached. In a very fast-paced campaign environment this can seem a little outdated. Combined with the low level of fines that can be imposed this means that it is also something that parties can prepare and budget for.

36. There is perhaps a role for the Electoral Commission to intervene during the campaign. This would be very challenging. It would be difficult to do in a way that was not perceived as seeking to influence the election and would be very resource intensive. However electoral regulation is going to be more forward facing and based less on closing the loopholes from previous campaigns. This is perhaps an issue which should be explored.

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

37. No. As outlined above the main detraction from the Electoral Commission being an effective regulator of election finance is the outdated legal framework. However, it is important to recognise that the Commission also carries out a wide variety of other functions that get much less publicity but also need adequate resources. For example, the support that the Electoral Commission provides for election administrators is critical, particularly when Council budgets have been cut. The frequency of elections, with three general elections in the last five years, has also put a particular strain on electoral administration. It is worth noting that while it remains high, the public's confidence in the running of the local and European Parliament elections was lower than in previous years²². The Electoral Commission's roles in voter registration and ensuring that voting is genuinely accessible for people with disabilities are also critical. Proper resourcing of these areas could help raise the profile of the Electoral Commission and elections in general, allowing for more work to be done in these areas outside of regulated periods.

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

38. The main challenges to the Electoral Commission as an effective regulator are out of date laws. Many of these are addressed elsewhere in this submission. The key legislative framework is now 20 years old and does not address the key tenets of modern campaigning. This is most extreme in the case of the use of social media platforms which simply did not exist when the law was passed

²² Electoral Commission Corporate Plan 2020-21 <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/who-we-are/our-plans-and-priorities/corporate-plan>

but also applies to other areas. For example, the regulations on referendums have also not been updated in light of recent experience and publication of local spending returns is based on Victorian practices. The concerns raised in this submission are not new; many have been raised by the Electoral Commission themselves as well as parliamentary committees and CSPL. The challenge is how to ensure that such recommendations are addressed in a timely manner when government always has pressing business that can be seen as more urgent than electoral law. It is worth noting that while the Electoral Commission has a statutory duty to report on elections, the government does not have a duty to respond as it does with other bodies such as the Law Commission.

39. The overlapping roles of the Electoral Commission, Police, CPS and Information Commissioner's Office in regulating this area can also cause confusion. The most significant of these issues is the lack of investigatory powers for the Electoral Commission which is addressed elsewhere in this submission.

The enforcement regime for election finance offences

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

40. No. The millions of pounds that are spent during an election campaign by the bigger parties mean that a fine of this level could be considered a cost of doing business. Aaron Banks famously tweeted "Gosh I'm terrified"²³ when it was announced that the Electoral Commission was investigating the original source of his donations to the Leave.EU campaign.

41. The Democracy and Digital Technologies Select Committee recommended that the maximum fine the Electoral Commission can impose be increased to at least £500,000 or 4 percent of the spending limit (whichever is the greatest).²⁴

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?

42. No, it does not. The investigations by both the Electoral Commission and the Crown Prosecution Service (CPS) into the Conservative Party's spending in

²³ https://twitter.com/Arron_banks/status/925681829889429504?s=20

²⁴ [Select Committee on Democracy and Digital Technologies \(2020\), *Digital Technology and the Resurrection of Trust: Report of Session 2019-2021*, \(London: HMSO\).](#)

the 2015 general election, demonstrated that there is a significant difference in approach to regulating this area of electoral law.

43. Both investigations found that there were inaccuracies in the spending returns. The Electoral Commission imposed fines on this basis. However, the CPS took the view that there needed to be evidence not just of a breach of the rules, but also of intent to do so. It is not enough for the return to be inaccurate to bring about a prosecution, the person signing it must know that is inaccurate and therefore be acting dishonestly by signing it²⁵.
44. Accountability is essential for public trust in the electoral process and it is difficult to see how this can be achieved with two different regulatory approaches. The CPS decision effectively leaves a large amount of scope for infringements before a candidate, agent or party official would stray into the realm of criminal prosecution.
45. This is not to say that all breaches of the rules should be referred for criminal prosecution. Civil sanctions are a necessary part of the regulatory regime, particularly when all political parties rely on volunteers to at least some extent. However, where there are serious breaches, there needs to be a consistent approach in how they are handled. The Electoral Commission itself has been calling for additional powers to investigate breaches in candidate spending since 2013 and we support those calls.

Enforcement of candidate finance laws

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

46. As outlined above we strongly believe that there should be a single regulator responsible for election finance. The different regulatory approaches taken by the Electoral Commission and CPS have created significant loopholes in our electoral law which undermines trust in our elections. Whilst in principle this specific issue could be resolved, dividing electoral regulation in this way will always run the risk of this problem recurring.
47. The strong interrelationship between party and candidate expenditure suggests it would be more sensible to have one authority investigating both. This single authority would allow a group of experts to become experienced in electoral enforcement, rather than forcing detectives to learn many new cases from scratch as electoral issues are only, at best, a peripheral part of their

²⁵ Crown Prosecution Service statement, 10 May 2017

normal job. This new monitoring authority could be the Electoral Commission if it is given adequate resources.

48. In principle the single authority could be a specialist electoral investigations unit within the police force. However, the creation of the political post of Police and Crime Commissioner (PCC), means that there is the potential for significant conflicts of interest for any electoral regulator that is part of the police. For example, a PCC who has been elected under the banner of a political party, might find they are in a 'hire and fire' role over a chief constable who has a decision to make on whether to investigate alleged wrongdoing on the part of the commissioner's party. In addition, investigations into any breaches of spending rules have to be conducted within 12 months. If the party under suspicion is the same party of which the PCC is a member, the PCC has an incentive to go slow on the investigation. For this reason, we believe that these powers should be given, with additional resources, to the Electoral Commission which has a strong track record as an independent non-partisan regulator.

Conclusion

49. This inquiry comes at a critical time. There have been many recommendations from different committees on specific problems with our electoral regulations. This holistic view is welcome and timely. Our electoral law is hopelessly out of date and fails to address the realities of modern campaigning. Social media campaigning is a fixed feature of political campaigning and our electoral regulations need to address that head on if they are to be effective. Just as the potential for micro-targeting that Facebook provides could not have been predicted at the time PPERA was passed, there will be other technological and campaigning developments that will be equally disruptive in the future. It is essential we start to think about how we address these future regulatory challenges now. Electoral law must keep up with the pace of change in campaigning or the principles of transparency, integrity, accountability and fairness, that underpin our elections will be undermined as a matter of routine.
50. We note that the way political parties are funded is outside the terms of reference for this inquiry but feel that how politics is funded is integral to understanding how money is spent during elections and the broader question of trust in our political system. Whilst we welcome the fact that donating to parties in Northern Ireland can no longer be used to avoid transparency, it is concerning that there are still so many questions about the actual source of donations to the Brexit campaigns. At best there is only partial transparency, and this undermines public trust in the system.

51. The Electoral Commission has greatly improved the way it presents the data on political donations in recent years. However, the current registers of political donations, while comprehensive, are hard to navigate. It relies on the user having some understanding of how both the database and political donations work to be a really effective tool. The Electoral Commission should lead the way on transparency, promoting the use of clear open data standards to make information on money in politics – both its sourcing and spending – easy to see, to track and to cross-reference. There is considerable data on money and influence in our political system that is officially in the public domain but it is very difficult to actually use. Information is not easy to access or machine readable, it does little to facilitate scrutiny and accountability. There could be a role for the Electoral Commission in setting new standards for open data.

Response to the Committee on Standards on Public Life

Public Consultation: Review of Electoral Regulation

Evidence Submitted by Dr Alan Renwick (Constitution Unit, University College London)

August 2020

Dr Alan Renwick is the Deputy Director of the Constitution Unit and Associate Professor in British Politics at University College London. His research focuses on elections, referendums, and citizens' assemblies. He is co-author of a detailed report on improving information available to voters during election and referendum campaigns¹ and was Research Director for the Independent Commission on Referendums.²

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. The basic underpinning value of the regulatory system should be that it should help to **empower citizens**. That is the core of democracy, and it is important to keep it squarely in mind when considering more specific values. The regulatory system should enable citizens to participate **actively, equally, and effectively** in the democratic system, whether as candidates, campaigners, participants in democratic discussion, or voters. It should also enable voters to make an **informed choice** at the ballot box.
2. The following specific values derive from this starting point:
 - **Fairness among candidates/campaigners:** All candidates and campaigners should be treated equally and should have equal opportunities to express themselves. That has three elements: (1) all candidates and campaigners should be subject to the same rules; (2) these rules should be enforced by a body that has the resources and powers that it needs and is genuinely independent; (3) a level playing field should be maintained through limits on donations and/or spending.
 - **Timely transparency:** Voters should know who makes substantial donations to candidates, parties, or campaigns, and who spends it. They should know how money is spent, particularly so that they can understand how particular

¹ Alan Renwick and Michela Palese, [*Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?*](#) (Constitution Unit, 2019).

² [*Independent Commission on Referendums*](#) (Constitution Unit, 2018).

constituencies or groups are being targeted. They should know who is behind particular claims or campaign activities. Crucially, they should know as much as possible of this before they vote, consistently with the principle of proportionality (below).

- **Accountability:** Where breaches occur, those responsible should be held to account. That requires sufficient investigatory powers and resources, and sanctions that are large enough to have a significant deterrent effect. It also requires timeliness.
- **Proportionality and simplicity:** Many campaigners are volunteers who wish to do good for the communities they belong to. Active participation in politics is both a right and a wonderful thing. Rules should therefore not be too onerous. They should be as clear and simple as possible, and compliance procedures should be streamlined and accessible.
- **Enabling informed choice:** The value of fairness above includes the principle of equality among campaigners. The regulatory system should also have regard to the balance between campaigners and other sources of information available to voters. If voters are to be enabled in making an informed choice, they must be able to access information and analysis from impartial sources. In referendums in New Zealand, for example, spending caps for campaigners are deliberately set well below the budget for neutral public information provision, precisely so that potentially misleading campaign claims do not dominate.³ While this might be beyond the scope of the present inquiry (and the precise New Zealand model would not necessarily transfer to the UK), it is an important aspect of the broader context that should be borne in mind. The regulation of campaign finance is about more than just campaigners: it is about empowering citizens.

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.

3. No. The Electoral Commission obtains information in two ways: registered campaigners are required to submit information about donations and spending; and the Commission may request information. Both of these could be strengthened. Requirements regarding the reporting of donations during election or referendum campaigns vary greatly between electoral events, without good reason. They should be standardised, with regular reporting during campaign periods required. As the Electoral Commission has repeatedly argued, rules on spending returns should be tightened up to provide greater

³ Alan Renwick and Michela Palese, [*Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?*](#) (Constitution Unit, 2019), pp. 152–3.

clarity on how money is spent, particularly on online campaigning.⁴ The Commission has also called for greater powers to seek information outside formal investigations.⁵

4. I will not comment in detail on the Commission's further investigatory powers: others have greater expertise. The Electoral Commission has made a series of proposals, which should be respected as serious and considered.

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

5. Though the Electoral Commission is sometimes subject to political criticisms, there is ample evidence that it performs its functions very well given the constraints that it operates under. The evidence submitted to this inquiry by Justin Fisher and the Association of Electoral Administrators strongly attests to that. Where the Electoral Commission is unable to fulfil the expectations placed upon it, that is typically because it lacks the powers or resources to do so.
6. I encourage the Committee to press upon all those in public life the importance of respecting the vital role that the Commission plays as an impartial, non-partisan regulator. When individuals or organisations respond to decisions made by the Commission that they disagree with by seeking to undermine the Commission's legitimacy without justification, they do a grave disservice to our body politic. I hope the Committee will see itself as having an important role in upholding the integrity of our independent watchdogs.

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

7. I have seen no evidence of difficulties. It is important that the regulator have wide understanding of elections, and the combination of several related roles facilitates this.
8. As Justin Fisher notes in his evidence to this inquiry, the Electoral Commission originally had wider public education functions, which were subsequently pared back. This has left the UK with very limited public information provision, and Electoral Commission research has repeatedly shown high levels of public dissatisfaction with the information that is available to them.⁶ With others, I have proposed the gradual development of a 'democratic information hub' to help address this.⁷ It could be difficult for the Commission to coordinate such a hub alongside its current regulatory functions. If

⁴ E.g., Electoral Commission, [Digital Campaigning: Increasing Transparency for Voters](#) (London: Electoral Commission, 2018).

⁵ Ibid.

⁶ Most recently, Electoral Commission, [UK Parliamentary General Election 2019](#) (Electoral Commission, 2020), p. 12.

⁷ Alan Renwick and Michela Palese, [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) (Constitution Unit, 2019), pp. 235–44; Alan Renwick, Michela Palese, and Joe Mitchell, [supplementary written evidence](#) to the House of Lords Democracy and Digital Technologies Committee, March 2020.

information provision were to be developed, therefore, it would be preferable that a new body be established for the purpose.

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

9. Other reviews have commented extensively on the inadequacy of the present regulatory framework. First, that framework is fragmented, notably between the rules for candidates in the Representation of the People Act 1983 and those for political parties and others in the Political Parties, Elections, and Referendums Act 2000. Second, it is out of date, particularly in that the current rules were largely conceived before online campaigning was of any significance. The need for a thorough legislative overhaul is great, as extensively argued by the Electoral Commission,⁸ the Law Commissions,⁹ several parliamentary committees,¹⁰ and the Independent Commission on Referendums.¹¹

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

10. The Electoral Commission has two great strengths. First, it is independent of government and of any political party. Second, over two decades, it has built up a great body of expertise and experience. Future arrangements should build on these features.
11. It is vital to ensure that the structures are in place to preserve the Commission's independence. The Commission is overseen by the Speaker's Committee on the Electoral Commission. This comprises the Speaker of the House of Commons and eight other MPs, three of whom hold this role *ex officio* and five of whom are appointed by the Speaker. At present, a majority of the Committee's members are from the governing party. I make no judgement about the individuals in question. But a government majority has never happened before, and it is wholly inappropriate. Independence can be ensured only if cross-party consensus is maintained. I hope CSPL will recommend that the present arrangement be changed.

The enforcement regime for election finance offences

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

⁸ Especially Electoral Commission, [Digital Campaigning: Increasing Transparency for Voters](#) (London: Electoral Commission, 2018).

⁹ Law Commission and Scottish Law Commission, [Electoral Law: A Joint Final Report](#) (London and Edinburgh: Law Commissions, 2020).

¹⁰ House of Commons Digital, Culture, Media, and Sport Committee, [Disinformation and 'Fake News': Final Report](#), Eighth Report of Session 2017–19, HC 1791, 18 February 2019; House of Lords Select Committee on Democracy and Digital Technologies, [Digital Technology and the Resurrection of Trust](#), HL Paper 77, 29 June 2020.

¹¹ Independent Commission on Referendums, [Report of the Independent Commission on Referendums](#) (London: Constitution Unit, 2018).

12. No. The Electoral Commission has set out the case for higher fines very clearly in its evidence, and I will not repeat it.

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?

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?

13. I do not have expertise on these questions and do not comment on them.

Enforcement of candidate finance laws

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

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

Review of Electoral Regulation

Consultation Response from Plaid Cymru – The Party of Wales

Plaid Cymru – The Party of Wales is a political party registered with the Electoral Commission (Commission). The party is responding to this consultation as the functions of the Commission directly impact the way in which the party operates.

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:

- 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.**

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

The Commission has an important role in ensuring compliance and the source of funding for election expenses. The Commission must ensure both funding and compliance is transparent. The regulation needs to promote fairness and accountability.

Publishing financial returns from political parties and campaigners provides information allowing scrutiny of funding sources. Permitted sources of income need to be clearly defined, as well as being published publicly.

The guidance and advice published by the Commission should be clear and easy to recognise allowing compliance to be fully understood. Training should be made available to all persons who are required to oversee elements of Electoral Commission

compliance. Currently, smaller parties are at a significant disadvantage as compliance can often be time consuming and costly, making it difficult for those who are mostly volunteers to take up the role effectively. Larger parties, such as those who contest elections across the UK, are able to fund roles that are solely focussed on compliance.

The Electoral Commission should also have a better understanding of how its reporting requirements intersect with the reporting requirements of other public bodies. For example, the reporting requirements and deadlines of the House of Commons.

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 is a need for clear guidelines on who within the regulatory framework has the remit and the power for ensuring compliance. Processes and procedures need to be clearly defined on where power lies to investigate alleged breaches, and what are the sanctions when people are found to have fallen short of the standard.

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

As a regulatory body the Commission's role should be to assist and advise by providing accessible and clear guidance and support. Those who have committed minor breaches should be encouraged and supported to correct such breaches, allowing the necessary correction before prosecution.

The Commission should be advocating compliance and supporting those who show a willingness to comply. Indeed, were the Commission not minded to support candidates/parties to comply before taking disproportionate action, the Commission itself could be actively discouraging candidates from contesting elections.

The Commission should discourage the use of its capacity as the regulator by candidates and organisations for political purposes. For example, the use of vexatious complaints.

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

No specific observations in this regard.

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

No specific observations in this regard.

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.

It is unclear what the Commission's role is in respect of election finance during the official election period. The use of retrospective investigation has indeed proven to be successful but, in the example of the EU Referendum campaign, finding against a candidate/campaign for improper use of resources and/or donations from non-permitted sources means little when the votes have been cast and the result cannot be changed.

Consideration must be given to what real-time monitoring and reporting of election finances – donations and expenditure - can be made leading up to and during the official election period so that electors can be made aware if the Commission identifies questionable practices or donations, for example.

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

No. Fines should of course be proportionate to the offence committed but a maximum fine of up to £20,000 for those whose donations and spending run into the millions of pounds is unlikely to be a deterrent. This could lead itself to consistent breaches of the regulations. Plaid Cymru supports sanctions and fines which are proportionate to the size of the offence.

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?

There needs to be clear distinctions between the Commission's civil sanctions regime and the police criminal prosecution regime on jurisdiction for deterring and punishing breaches of election finance laws for non-compliance.

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.

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

If the Electoral Commission regulatory powers are to be expanded to include the enforcement of candidate finance laws, these need to be balanced against the severity of the offence.

Once again, the fundamental principle should be to ensure that any citizen is able to present themselves for election and are provided with adequate guidance, training and support to do that. The Commission should always, in the first instance, support those who seek to comply and use any powers of sanction for significant and persistent breaches.

Submitted by Paula Reed, Head of Finance and Compliance on behalf of Plaid Cymru.

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Facebook Submission: Committee on Standards in Public Life's Review of UK Electoral Regulation

The Facebook Company¹ ("Facebook") welcomes the opportunity to respond to the Committee on Standards in Public Life's review of electoral regulation in the UK. Facebook was built to help people stay connected. Our mission is to give people the power to build community and bring the world closer together. We're committed to building technologies that enable the best of what people can do together. Our products empower more than 2 billion people around the world to keep in touch, share ideas, offer support and make a difference. Over \$2 billion has been raised by our community to support the causes they care about, over 140 million businesses use our apps to connect with customers and grow, over 100 billion messages are shared every day to help people stay close even when they are far apart and over 1 billion stories are shared every day help people express themselves and connect.

This submission does not seek to cover all of the specific questions outlined in this inquiry's terms of reference, but we welcome the opportunity to provide our comments on existing regulation in this space, and to highlight Facebook's own work to protect elections. Below we have outlined some initial thoughts about the regulatory updates that might work in this area, but this is not a definitive position and we would welcome the opportunity to engage in further discussion in this area with the Committee.

1. Introduction

- 1.1 Facebook believes that existing electoral regulation needs to be updated to take account of how political campaigns are increasingly characterised by online advertising. Currently, platforms such as ours are having to fill regulatory gaps to ensure that our users can see who is posting and funding the paid-for political content that they see. At present there is no industry-wide best practice in this area, and the Electoral Commission does not play a role in deciding who can engage in political advertising, how they can do so or even how we define what a "political" advert is.
- 1.2 One of our goals is to ensure that our services contribute to a healthy civic life. We believe that regulations that create clear, industry-wide standards for political actors are key to creating a fairer and more transparent environment across online platforms during elections.
- 1.3 We are committed to improving transparency in digital campaigning and believe that updating electoral regulation to include clear regulatory guidance on requirements in this space would ensure a level playing field and enable voters to understand who is running campaigns and who is seeing those campaigns.
- 1.4 Facebook has taken an industry-leading position on political ad transparency in the UK, introducing new tools that go beyond what is currently required of us by law and that go further than any other platforms that allow political advertising. We are unique in offering this level of transparency around political advertising in the UK.

¹ The Facebook Company comprises the Facebook app, Instagram, Messenger and Whatsapp

- 1.5 But we do not think that it should be the responsibility of online platforms to set the standards for political advertising and we encourage the Government to consider what more can be done to ensure fairness and transparency in UK elections.

2. Reforming Electoral Regulation

Greater Clarity in Definitions and Requirements

- 2.1 Given the role that social media companies currently have to play in setting transparency standards for online political advertising, we believe that the Government or Electoral Commission should have the responsibility to define:
- 1) which entities are eligible to engage in political advertising online;
 - 2) what steps such entities must take when purchasing online political advertising;
 - and
 - 3) what constitutes a political advertisement online
- 2.2 Regulation should set forth how disclosures will reveal the identity of the person or entity behind an ad, creating common criteria for how to verify an entity that purchases online advertisements. It should also specify how political campaigns are and are not permitted to use data to target voters.
- 2.3 The Regulator should specify clearly what an eligible entity who wants to engage in political advertising must do in order to do so legally. Options might include requiring eligible entities to register with the Electoral Commission as a political advertiser, requiring them to report all political advertising activity, and requiring them to adhere to specific guidelines on use of data.
- 2.4 Currently, there are significant gaps within existing electoral legislation when it comes to transparency and digital campaigning. For example, under the Representation of the People Act 1983, all printed election material must carry an imprint which includes details of the printer, the promoter, and any person on behalf of whom the material is being published (and who is not the promoter). While the Electoral Commission has issued guidance recommending the inclusion of an imprint on electronic materials, at present there is no legal obligation on campaigners to do so. We understand the Government is currently exploring proposals to extend electoral legislation to require an imprint on digital election material. Facebook welcomes the ambition to introduce parity between digital and printed materials in this regard, and we will continue to work constructively with the Government and the Electoral Commission on this issue.
- 2.5 We believe it is important to consider carefully how responsibilities should be allocated in any updated regulatory framework. The primary responsibility for the legality of political campaigns should always lie with those who run those campaigns, while other entities may need to accept some specific requirements if they choose to offer their services to political campaigns. These requirements need to be reasonable if the intent is for service providers to feel able to continue supporting political campaigns.

Extending the Regulated Period

- 2.7 Facebook believes that the 'regulated period' should be expanded, so that it is not limited to election periods. At present, UK spending rules (limits on amounts per Party nationally or per candidate locally) are restricted to election periods, which vary depending on the type of election. This means that outside of an election period - for example in the period between

the referendum being announced as coming and the formal declaration of it beginning, or in non-election years etc - campaigns can build audiences, make arguments and generate pressure for political outcomes with very little transparency.

Reducing Expenditure Thresholds for Non-Party Campaigners

- 2.8 At present, 'non-party campaigners' - individuals and organisations who campaign around elections without standing candidates themselves - are allowed to advocate on behalf of one or other group of candidates, or for or against a party nationally, but are required to register with the Electoral Commission should their expenditure in campaigns reach a certain threshold in order to ensure transparency around spending and donations. Currently, the expenditure threshold for registration with the Electoral Commission is relatively low and varies in different parts of the UK (£20,000 in England; £10,000 in Northern Ireland, Scotland and Wales).
- 2.9 Reducing these thresholds would ensure that more organisations engaged in campaigning online were required to be transparent to the Electoral Commission on the funding of their political campaign activity.

3. Transparency in Political Advertising Online

- 3.1 Online political advertising laws primarily focus on candidates and elections, rather than divisive political issues where we've seen more attempted interference. Some laws only apply during elections, although information campaigns are non-stop. We believe legislation should be updated to reflect the reality of the threats we face and set standards for the whole industry.
- 3.2 In October 2019, Facebook expanded our ads enforcement policy to include social issue ads. We now enforce on ads covering eight social issues: 1) civil and social rights; 2) crime; 3) economy; 4) environmental politics; 5) health; 6) immigration; 7) political values and governance; and 8) security and foreign policy. Previously, our authenticity and transparency requirements in the UK only applied to electoral ads and ads about Brexit.
- 3.3 Our Ad Library now houses over 250,000 ads about social issues, elections and politics targeting the UK, amounting to over £25 million of political ads spend.
- 3.4 While we believe that we have created a transparent and accountable mechanism for political advertising in the UK, we maintain that there should be industry-wide standards on online political advertising and we would welcome further clarity in this area.

4. Facebook and UK Elections

- 4.1 Protecting the integrity of elections while making sure people have a voice is a top priority for Facebook. Over the past few years, we have developed smarter tools, implemented greater transparency, and built stronger partnerships to help us.
- 4.2 We have improved our rapid response efforts and now have more than 35,000 people working on safety and security, with 40 teams contributing to our work on elections globally.
- 4.3 We block fake accounts so they can't spread misinformation and we are working with independent fact-checkers to reduce the spread of fake news. We've also set a new standard for transparency in Pages and ads so people can see who is behind them.

- 4.4 We work with government authorities, law enforcement, security experts, civic organisations, the news media, and industry partners to share knowledge about the types of threats we anticipate and identify key opportunities for collaboration.
- 4.5 Our teams of expert investigators actively look for threat actors involved in coordinated influence operations - domestic and foreign - aiming to manipulate or corrupt public debate for a strategic goal, as well as malicious actors engaging in an inauthentic way on our platforms.
- 4.6 We have improved our machine learning tools to better detect and block voter suppression and other content that violates our Community Standards, and also improved our capabilities to remove violating content in bulk and prevent it from being posted again.
- 4.7 We employ a range of measures to support candidates on safety, security and reporting malicious behaviour during an election period. We have a dedicated team which focuses on outreach to elected officials and candidates. Ahead of scheduled elections, or even during a snap election period, this team reaches out to political parties and relevant government bodies, such as the Electoral Commission, to provide them with advice and guidance on safety and security on the platform, which they can share with candidates.
- 4.8 We work with fact-checkers, including Full Fact and Factcheck NI in the UK, and other civic organisations to launch media literacy awareness campaigns on our platforms. And we try to encourage voter participation by launching a suite of products such as a Voter Registration and Election Day Reminders.
- 4.9 We are learning from each election and applying those lessons to the next election. For the 2019 UK general election, we continued building on our efforts from the European election last May, fostering stronger partnerships, strengthening our defenses to prevent our platforms from abuse, introducing more transparency around political ads, and deploying tools to support an informed electorate.
- 4.10 Outside of election periods, the team works closely with the political parties and other groups to ensure that members of both Houses have access to resources and understand the range of tools available to them in order to ensure they are protected. There is more we can do in this area, and we are reaching out via new channels including the Parliamentary and Diplomatic Protection branch of the Metropolitan Police. We also have a publicly available website, facebook.com/gpa, which provides insight and advice on best practice across a range of areas, including protecting account safety and security.

Submission to the CSPL enquiry on Electoral Regulation by Who Targets Me

Who Targets Me was established in 2017 to monitor and report on the use of online political ads in British election campaigns. Our main objectives are to increase transparency and trust in such ads, put pressure on platform companies to do a better job of publishing relevant data, and work with journalists to raise awareness of campaigns and their consequences.

For the purposes of this submission, per the terms of reference, we will not share ideas directly to do with the content or targeting of ads. Instead, we focus on six areas where we feel the Electoral Commission needs new powers.

1. Always-on monitoring

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

In addition, with data sources such as the Facebook Ad Library providing near real time campaign spending information, it’s clear that in digital campaigning at least, the platforms are ahead of the regulations, particularly in terms of real time transparency and accountability.

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

2. Limiting the number of ads a campaign runs to create a ‘level playing field’

Campaigns should be able to say what they like, but it’s hard to hold them accountable when they’re saying thousands of things at once. Limiting the number of ads they can run increases the chances of them being held accountable for problematic messages. It also reduces the need for campaigns to collect large quantities of data about individuals for targeting (or microtargeting) purposes.

We think this brings ads back to a scale at which the traditional accountability mechanism (journalism) can do its work.

While further consultation is needed, the quotas set should vary depending on the type of campaigner. For example, a national party, standing candidates in over 500 seats, might get a quota of 500 ads to run per week, whereas an individual candidate or non-party campaign group could be allocated just 10.

While this is not directly related to political finance, it would have a material effect on the way parties raise and spend money.

3. Lower spending limits and reporting thresholds.

Political parties and candidates are increasingly “digital first”. The total spent on digital advertising at each election continues to increase, while the cost of reaching voters continues to fall. £20,000 will pay for over a million impressions of targeted Facebook ads. Other platforms are cheaper still.

As such, we think the current spending limits and reporting thresholds need to be revised downwards to account for the changing nature of campaigning. A regulatory system based on spending no longer holds when the marginal cost of reaching a voter nears zero.

4. Forcing strong verification of campaigners

Voters should be confident who is behind an ad. There have been a number of examples of UK political advertisers operating as ‘fronts’ for unidentified interests and sources of money in recent years. Foreign governments also use these methods. This loophole needs to be closed. Companies accepting political advertising should publish the name and address of the ultimate entity paying for ads and feel confident that the source of their funds is clear.

If they cannot establish these facts, the advertiser should be prevented from buying ads until the regulator has investigated. Legislation about the sources of money in politics needs to be tightened.

5. A spending ‘taper-in’ for new campaigners

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

We recommend that new entrants (such as new Facebook pages, or those with existing audiences that change their name) should be subject to strict limits on their spending while they establish their identity, credibility and accountability.

6. Stronger enforcement

Fines for breaches of electoral law can be seen as a ‘cost of doing business’. This must end. If campaigns abuse the rules the fines levied should be significantly increased. Furthermore, candidates who abuse the rules should be banned from standing for a period of time.

7. Automatic reevaluation of election rules mid-cycle

It’s been 20 years since electoral law was last updated. An entire internet and new models of campaigning have emerged in the meantime. The proposals here won’t be perfect and, if implemented, campaigns would still look to stretch them to their advantage. They’ll therefore need to be openly and automatically tested (perhaps by political campaigners, regulators, transparency organisations), and revised on a regular basis.

Contact information:

Submission by Sam Jeffers, Executive Director, Who Targets Me

Further information about our work is available on our website: <https://whotargets.me>

Public consultation - review of electoral regulation
Submission to the Committee of Standards in Public Life (CSPL)
Jointly from the Independent Network and the
Lincolnshire Independents, Lincolnshire First

1. Introduction

- 1.1 The Independent Network is an over-arching group, embracing Independent councillors, colleagues and supporters from across the UK. We remain Independent of any party whip and work together to focus on what residents need and want. The Independent Network registered as a political party as a clear force for residents, recognisable in the media and on the ballot paper.
- 1.2 The Lincolnshire Independents are members of the network, focussing on the residents of Lincolnshire. We currently lead the opposition on North Kesteven District Council. "Lincolnshire Independents, Lincolnshire first" are registered with the Electoral Commission.
- 1.3 This response is submitted by Leader of both, Cllr Marianne Overton MBE. In compiling this response, we have consulted with lead members from both organisations who have worked closely with the Electoral commission. This submission behalf of both organisations.

1.4 Contact Details

- 1.4.1 Councillor Marianne Overton MBE, Independent Councillor for Bassingham and Welbourn on Lincolnshire County Council and for the Cliff Villages on North Kesteven District Council
- 1.4.2 Leader of the Lincolnshire Independents and the Independent Network, Vice Chairman of the Local Government Association www.lincolnshireindependents.org and www.independentnetwork.org.uk

2. Question 1 Values

- 2.1 The Nolan Principles provide a firm foundation for everyone in public life, with the addition of respect.

Selflessness. Holders of public office should take decisions solely in terms of the public interest, Integrity, Objectivity, Accountability , Openness , Honesty, Leadership and Respect

2.2.1 The crux of the matter

- 2.2.1 A party and the responsible individual treasurer or campaign manager can be all these things and still get reported to the police for breach of the law.

- 2.2.2 The problem is that the Electoral Commission rules are complicated, and thus difficult for them to explain and difficult to fulfil exactly. Then whilst working through the complications, a day over the deadline or a sentence misunderstood, results in referral to the police for investigation.
- 2.2.3 Hence the high number of referrals and very low number of prosecutions.
- 2.2.4 A further value should be to take a supportive approach to local democratic representatives to ensure compliance and only refer to the police for a punitive approach when it is believed there is a deliberate hiding of criminal over-spending or illegal donors.
- 2.2.5 The whole point of controlling spend was to encourage a more level playing field, where it is the quality of the candidate, not their purse, that determines democracy. Hence the focus should be on tackling over-spends and excessive donations.

3 Q2: Enough Powers?

- 3.1 Yes, the EC monitors and investigates freely and any suspected intentional criminal activity is passed to the police.

4 Q3 What might the Commission do differently?

- 4.1 The Electoral Commission (EC) should concentrate on achieving compliance from flagrant over-spending rather than launching extensive investigations for the most minor incidental error by small parties working on tiny budgets.
- 4.2 Responses need to be proportionate and that includes the initial threatening letters. We are seeking to encourage people to come forward and support our local government and these letters cause nothing but resignations.
- 4.3 The focus should be on compliance, and that means easily accessible, sound advice. Staff need to focus from the customers point of view, the party representatives. Staff working in siloes have been known to assure the Treasurer or campaign manager that they have complied, without mentioning there is a page not signed or a different form for a different department that is about to cause a serious offence.

5. Overly bureaucratic

- 5.1 There needs to be a shared responsibility with the EC and support. The beauty of our democracy is that anyone who passes the legal tests can stand for election to represent and serve their communities. Diversity is encouraged so bureaucracy needs to be minimal and responsibility shared.

- 5.2 Selection of the right form, understanding complicated instructions with jargon requires experience. A customer should be able to ring or email to explain any small delay, but there is no leeway on deadlines and an apparently automatic passing to investigation. Another example is the required financial statement where the name of the party and treasurer have to be written in many times. If one is missed, a person has not completed correctly by the deadline and committed an offence.
- 5.3 The allocated periods are short and without leeway on time. For example, two weeks to inform the EC of a change of Treasurer, which should require a simple e-mail, but instead, it requires a meeting, which itself requires two weeks notice, minutes, the right form found, printed and posted four times to collect the three or four signatures required.
- 5.4 Forms on line is not a simple solution, as all signatories need separate remembered password accounts, only the Treasurer can do certain actions, the website is not easy to use and it all relies on good signal. There should be the option of making changes by e-mail or using Teams. The system is too bureaucratic.

6. Supporting Democracy

- 6.1 Democracy in the UK is for everyone, not just big business. It important to enable diversity of parties and candidates. Many Independents and small parties have tiny budgets, voluntary treasurers, and campaign managers and many new candidates who have never stood before. The electoral commission has the requirement to maintain the registers and take all reasonable steps to secure compliance. It passes that to us, the customers and is quick to threaten and fine even minor unintended transgressions.
- 6.2 The process currently takes an adversarial approach, rather than a governing one. The EC legal approach is very heavy-handed when applied to minor offences such as a new Treasurer who got the forms submitted a day or two late.
- 6.3 The electoral commissions of Northern Ireland and the rest of the UK should work together more so that forms can be shared, rather than the whole bureaucratic process being repeated.

7. Q4 Any detracting factors?

- 7.1 Although Councils collect the campaign expense forms, they are not empowered to advise on how to fill them in, but they should be. For Independents who have never stood before and have no agent, the manuals are complicated. Access to detailed, accurate advice from the electoral commission is difficult at busy times is difficult. Councils could provide significant support. Candidates are ordinary people wanting to serve their community.

8 Q5 Rules

- 8.1 The deadlines are too short for the whole form and supporting information. An e-mail of the impending change should be enough within two weeks, with paperwork to follow in two months.
- 8.2 The detailed rules need simpler explanation. A person standing as an Independent for the first time is expected to read and understand every part of large documents including considerable legal jargon. The Councils do assist as much as they can, but complicated rules take a long time to explain.

9 Q6 Strengths and Weaknesses

- 9.1 Strengths: Some excellent staff available of the phone.
- 9.2 Weaknesses: Too standardised an approach, firing off letters accusing ordinary upstanding independents of criminal activity with significant fines, in response to very minor and unintended transgressions. This is very damaging to democracy.

10 Q7 Is the civil fine of up to £20K enough?

- 10.1 The fine should be proportionate to the size of the party's budget as well as to the seriousness of the offence. The maximum fine seems terrifying for Independents and small parties working on a shoestring, but must seem insignificant for large parties with multi-million-pound budgets. It is probably the reputational damage that is the biggest deterrent.

11 Q8 Interaction between the Civil and Criminal proceedings

- 11.1 It feels like double jeopardy and confusing that the same minor transgression can be dealt with twice under civil and criminal law.

12 Q9 Should the commission take election finance cases to court?

- 12.1 The police have a system already and should be encouraged to focus on serious offences of intentional criminal activity to give public confidence.

13 Q10 Should the commission be able to fine candidates as well as parties and non-party campaigners?

- 13.1 No, Independent candidates find there is plenty enough to daunt them from standing, without further discouraging "mantraps".

Responsible Person for Vote Leave submission to the CSPL relating to the Electoral Commission

Date: 21/08/20

1. My name is Alan Halsall. From 2016-2020 I have been the 'Responsible Person' for Vote Leave. I wish to respond to the CSPL's request for submissions on the Electoral Commission, as I see that the CSPL is conducting a 'health check' of the EC's role as a regulator of Party and Election finance.

2. I have given a detailed submission to PACAC, which they have published here: <https://committees.parliament.uk/writtenevidence/6792/default/>. This shows the heavy toll inflicted on me by the Electoral Commission's unwarranted persecution of Vote Leave (VL) and myself. I should like to give some additional detailed evidence on one very important matter: the questionable behaviour and motivation of the Electoral Commission (EC) relating to their justifications for commencing an investigation into VL on the 20th Nov 2017 into an alleged overspend of Vote Leave arising out of a purported 'common plan' with Be Leave (having in 2016 and earlier in 2017 conducted two long assessments on exactly the same issue by a senior EC investigator, which both gave VL a clean bill of health and confirmed there was no evidence of a common plan).

3. To commence and justify this investigation the Commission needed to show that new evidence had arisen since their last assessment of March 2017. In their opening of the investigation the EC alleged its new evidence was:

- (a) A new awareness of a donation of £100,000 from VL to Veterans for Britain which was paid directly to AIQ (digital marketers)
- (b) Increased awareness of digital campaigning and financial interconnections between certain campaigners.

4. There was never any substance given on (b) which was a very general clause and the EC never produced any detail to prove this was new evidence that they had just become aware of.

5. However, after many requests by VL lawyers for details on the more specific new evidence in (a), the EC eventually admitted in their letter of the 16/2/18 that they had known of the donation to Veterans for Britain, in 2016, but that the amount was uncertain and was only confirmed in October 2017. Thus, the only new information they had to justify the investigation was knowledge of the amount of £100,000 given by VL to Veterans for Britain.

6. VL then proved this could not be true by producing an e-mail from the EC that showed the EC were aware of this amount in 2016.

7. The EC immediately backed down, admitting they were mistaken in their letter of the 16/2/18 - but now made a new claim in their letter of the 01/03/18 that they weren't aware until Oct 2017 that the donation had gone to AIQ --and that was their new evidence justifying the 3rd investigation.

8. However, the EC must have seen the Veterans for Britain expense report dated the 23/9/16 which reported that the donation had gone to AIQ. Therefore, the EC knew all about VL and their donations to BeLeave and Veterans for Britain and the involvement of AIQ with all 3 campaigns prior to the end of 2016. (And have anyway explicitly publicly stated that it is perfectly acceptable for different campaigns to share an advertising agency, which is what AIQ was, provided no common plan in place.)

9. Why did the EC attempt to deceive VL by asserting they had new evidence to justify their investigation when they quite obviously had no such evidence? Why have they never acknowledged, despite repeated representations by Vote Leave's lawyers, that they had no legal basis for reopening the investigation? Should a Regulator ever behave in this way? There was no new evidence in Nov 2017, so no investigation was justified in accordance with the EC's own protocols and legal requirements. Thus, there was no foundation for the Commission attacking and fining Vote Leave for an alleged overspend.

10. VL had no one they could complain to about this huge potential miscarriage of justice. They complained to the Commission and were ignored.

11. In my linked-to statement in paragraph 2 and others' statements from Vote Leave personnel we have shown, in great detail, how the behaviour of the Commission prevented us from having our appeal over this injustice heard in Court, due only to the Commission accumulating enormous costs for which we could have been liable. Vote Leave are absolutely clear that they felt they would have been vindicated in court, and it would be proven that there was no common plan, but the financial risk to myself and one other director of VL meant we had no choice but to abandon our appeal. We have never agreed that an offence was committed.

12. It is noteworthy that in his evidence to PACAC this summer, Bob Posner, CEO of the Electoral Commission, who had taken personal charge of the Commission's case against Vote Leave, emphasized on discussing appeals against commission decisions, that the idea was that there should be a cheap accessible appeal process for everyone. It is difficult to reconcile this with the Commission's opposition in Court to Vote Leave's attempt to get a cost cap against the Commission's enormous fees, the incontinent way in which the Commission incurred those costs (at the taxpayers' expense - over £400,000 was amassed in legal costs by the EC pre the appeal hearing), and the deliberate attempt by the Commission's QC to have Vote Leave's appeal removed from the courts on the basis that Vote Leave might not be able to afford those costs. Opposition to Vote Leave's cost capping request was, along with an overall very high level of costs, weaponised by the Commission to deny Vote Leave Justice.

13. *"Louise Edwards, Director of Regulation at the Commission, in evidence to PACAC claimed: Mr Halsall was the responsible person for Vote Leave. He was responsible and he had a degree of responsibility and political obligations upon him when he took that role. He did not meet all those obligations, and offences were committed . . . We were looking at very specific offences around the almost £500,000 spending limit breach that occurred, for example, and around the contents of the spending report, where things were missing. Those offences have been determined; they were offences, and Vote Leave has paid the fine."*

I suggest those offences were never determined as they were never tested in a court by an independent judge. The Commission know well that Vote Leave adamantly denies the Commission's allegations of a breach, and that only the crushing potential court costs, which would have fallen directly on me and a fellow director, prevented us from challenging the allegations in Court. His Honour Judge Dight's remarks regarding the Commission's elementary failure to understand "Beyond Reasonable Doubt" can be applied fully to Vote Leave's case, where the Commission credulously accepted false and fully rebutted allegations by attention-seeking so-called 'whistleblowers' as the truth; refused to meet with Vote leave to discuss our refutation of those allegations, and, out of thin air, asserted their 'determination' as being "Beyond Reasonable Doubt". Anyone looking objectively at the evidence they proffered must query that conclusion.

14. I trust that the Commission will consider the above plus my impact statement (linked in paragraph 2), and question whether this is a body that should be given even more powers --or rather, whether they should be allowed to keep their current investigatory role and powers?

Constitution and Cabinet Directorate
Elections and FOI Division



Lord Evans of Weardale KCB DL
Chair
Committee on Standards in Public Life
1 Horse Guards Road,
London
SW1A 2HQ

01 September 2020

Dear Lord Evans,

Thank you for your correspondence of 8th June 2020, announcing the Committee on Standards in Public Life's review into the regulation of elections and its associated consultation. Please accept our sincere apologies for missing your deadline.

Since gaining additional powers over elections in the Scotland Act 2016, the Scottish Parliament has passed the following Acts of Parliament: the Referendums (Scotland) Act 2020; the Scottish Elections (Franchise and Representation) Act 2020; and the Scottish Elections (Reform) Act 2020.

As stated in your terms of reference, the regulation of elections is a reserved matter. However, during the development of this recent legislation, matters related to the regulation of elections arose which may be of interest to the Committee.

Please find attached the Scottish Government's consultation response in the Annex below.

Yours sincerely,

Maria McCann
Head of Elections Team
Scottish Government

Scottish Government Response to Electoral Regulation Review Consultation

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.

In addition to the values highlighted we would add the importance of clarity as to the requirements of all rules, so as to reduce or remove any scope for confusion. There would also be merit in strengthening the rules around donations from non-resident individuals and companies/organisations.

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

There would also be merit in the Commission being given a general power enabling it to share information with other regulators or law enforcement bodies where that would be in the public interest. There is also a need for higher penalties for non-compliance.

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

This issue has recently been debated in the Scottish Parliament during the passage of the Referendums (Scotland) Act 2020 and the Scottish Elections (Reform) Act 2020. The Referendums (Scotland) Act 2020 increased the maximum fine that the Electoral Commission can impose for breaches of rules at Scottish devolved referendums to £500,000¹. The lead Committee for the Reform Bill, the Standards, Procedures and Public Appointments Committee, supported the case for increasing the maximum fine that the Electoral Commission can impose for each breach of the election spending rules².

¹ See schedule 5: <https://www.legislation.gov.uk/asp/2020/2/schedule/5>

² See para. 133 of the Committee's Stage 1 Report on the Scottish Elections (Reform) Bill: <https://digitalpublications.parliament.scot/Committees/Report/SPPA/2020/1/14/Stage-1-Report-on-the-Scottish-Elections--Reform--Bill>

A change would bring the Commission's enforcement powers up to date and be more likely to deter improper conduct. Although the Scottish Government would welcome an increase in the Commission's civil sanctions powers to £500,000 across the board, no change was made in the Scottish Elections (Reform) Act 2020, in part because of the difficulty in making changes in this area: because of restrictions relating to Parliamentary elections in the devolution settlement. As the punishment element of various provisions of electoral law is reserved, it would seem desirable for a change in maximum penalty to be made across the UK to minimise inconsistency. This is notwithstanding the Scottish Government's interest in further powers in this area.