

Electoral Commission – supplementary written evidence (DAD0100)

At our oral evidence session on 3 March we agreed to follow up with further information regarding the candidate and political party spending rules. You were particularly interested in the Commission's view on whether there is a deficiency in one or other of the two operating Acts that set out the legal framework for candidates and parties.

In relation to campaign funding and spending, we believe that the main deficiency lies in how the two operating Acts interrelate, rather than with one particular piece of legislation. The law regulating funding and spending of election campaigners was developed in two main stages: firstly in the late 19th century for candidates (initially through the Corrupt and Illegal Practices Act 1883, now incorporated in the Representation of the People Act 1983); and much later in the late 20th century for parties and non-party campaigners (through the Political Parties, Elections and Referendums Act 2000).

This two-stage development means that the party and candidate regulatory frameworks are not always well-aligned. Our experience has been that this lack of alignment leads to several deficiencies in compliance with and enforcement of the regime.

We have seen on occasions a lack of understanding about the two kinds of spending that are controlled by those regimes. The law focuses on spending that promotes a candidate's election, or spending that promotes a political party more generally. However, this is often understood differently as a distinction between spending that is targeted on a national or local/constituency basis. Campaigners report spending inconsistently which reduces transparency and makes it harder to check for compliance.

While comprehensive law reform to join up the separate frameworks would be preferable, we are also taking the steps available to us to help clarify the spending rules.

Last year we prepared statutory Codes of Practice about election spending for political parties and candidates, in close consultation with political parties. The Codes clarify what items of spending count towards each spending limit and are to be reported in party and candidates returns. We will shortly be submitting final versions to the Minister for the Constitution and Devolution, and would be pleased to send copies to your Committee when they are ready. We hope that Parliament will be invited by the Minister to approve the Codes this summer.

There is also a compliance and enforcement gap in the regulation of candidate spending and donations because there is a lack of alternatives to criminal investigation and prosecution. In contrast, we have had powers since 2010 to investigate and sanction political parties or non-party campaigners for breaches of the spending or funding rules.

We have recommended that the Commission should have powers to enforce both sets of rules. Giving us new powers to investigate and sanction candidates would enable us to ensure a better alignment between the regimes. For example, we would be able to address issues involving both a party and its candidates, including situations where one or both have failed to report spending against the correct limit.

By operating in closer alignment, these two regimes would deliver more complete transparency and a more level playing field for parties, candidates and non-party campaigners. Campaigners would benefit if the different sets of rules they follow become better aligned as part of a coherent regime. And we think that voter confidence would increase as a result of the more joined-up oversight we could provide.

If the Committee is interested to consider the background to the current candidate and party spending limits in more depth, it may wish to refer to the 1998 report into [*The Funding of Political Parties in the United Kingdom*](#) by the Committee on Standards in

Public Life. The report recommended creating party limits and its recommendations led to PPERA. The Committee considered two options for an integrated party and candidate limit, as well as the current system of separate party and candidate limits. It opted for the current system because it felt that the two integrated options would be unworkable.

It is 22 years since that report, and if Parliament wishes to look again at the current system, we would strongly advise that the party and candidate regulatory frameworks should be considered together. There are close and sometimes complex interrelationships between candidates, political parties and non-party campaigners. A piecemeal approach to electoral law reform is likely to lead to further complexity, and increases the risk of inadvertently introducing inconsistency or contradictions between different pieces of law.

We await the findings of your inquiry with interest and would be pleased to provide you

with any further information.

Yours sincerely,

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Appendix

Last year the Commission published a [booklet setting out why electoral reform is needed](#) and what needs to change.

We believe there is an urgent need for simplified and modernised electoral law to underpin efficiency, innovation and voter confidence in electoral administration and campaign regulation.

Sanctions

- When parties and campaigners break electoral law, the maximum fine we can impose is £20,000 per offence. We are concerned that this fine could be seen as the cost of doing business. We recommend that this be increased to ensure that sanctions are proportionate and provide a genuine deterrent for campaigners. This increased would bring our sanctions in line with other regulators, who levy fines in the £100,000s

Candidate regulation

- Our remit should be extended to cover enforcement of candidate finance, in addition to party and campaigner finance, in addition to party and campaigner finance. This change would bring result in candidates offences, where appropriate, would be addressed with civil sanctions.

Modernise legal challenge process

- The electoral petition process is costly and can take more than a year to resolve. Currently claimants can face high costs which can be a deterrent for potential claimants. This time consuming process can lead to prolonged uncertainty as to the rightful holder of the elected position which is challenging for candidates, parties and voters. Petitions should be incorporated into the ordinary court process, so that it is easier for voters and candidates to challenge the outcome of an election if there is any evidence to suggest it has not been delivered in accordance with the law.

Prevent postal voting fraud

- The Government have proposed to introduce restrictions on campaigners handling postal votes – this would formalise the ‘best practice’ approach in our guidance and a voluntary [code of conduct](#) for campaigners. This would be beneficial as we do not see universal compliance by campaigners with current non-legally binding arrangements.
- The Government have proposed to require people to re-apply to vote by post every three years – as we have [previously recommended](#), this would mean that voters are encouraged to regularly review and confirm that they still want to vote by post, or choose to vote in person at a polling station instead. This would help to ensure records are up-to-date and accurate.

Digital campaigning

- We strongly welcome the Government’s commitment to implementing an imprint requirement for digital campaigning material; this is urgently needed

to ensure transparency for voters about who is spending money online to influence them. We will work to ensure these proposals can improve transparency and public confidence.

- Effective campaigning is an essential part of well-run elections, but we need transparency and safeguards to maintain trust and confidence. We have set out a [package of recommendations](#) to increase transparency about digital campaign spending, and to strengthen our investigation and enforcement tools.

Parliamentary General Election Public opinion survey

After each election we survey people's views about the election. This year we found that:

- 69% of respondents stated they were confident the 2019 UKPGE were well run
- 93% of people were satisfied with the process for voting
- 80% of respondents said they knew a little or a lot about the election.
- 88% of people said it was easy to get information on how to both register and to cast their vote

Digital campaigning

As there's been a growing use and focus of digital technologies in campaigning, we added questions on this topic to our public opinion survey this year to learn more about people's perceptions of online campaigning.

Reach of different campaign materials

People were consistently more likely to say they saw paper campaign material than online.

- 55% of respondents saw leaflets from candidates or parties
- Nearly a quarter (24%) of respondents saw information about parties/candidates from generic social media posts and adverts. The 18-24 age group were more likely to say this than other groups (40% compared to 13% of those aged 65+).
- Other types of digital media were mentioned less often, for example 16% said they received an advert or post from a party/candidate on social media, 14% saw an advert or message from a different type of campaigner on social media, and 6% said they saw in-app advertising. Younger respondents were more likely to say they had seen these than older respondents.

Public perceptions of political information online

- **Nearly half** (46%) of respondents were concerned about why and how political ads were targeted at them.
- **Nearly half** (45%) disagreed that they can find out who has produced the political information they see online (e.g. who has paid for it and who it is by).
- **More than half** (52%) felt that 'inadequate control of political activity on social media' is a problem.
- Almost **two-thirds** (60%) of people think that information available online about politics is not trustworthy.
- **Two thirds of respondents (67%) said that bias in the media is a problem.**