



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

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**The Work of the  
Electoral Commission**

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**Second Report of Session 2022–23**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 13 October 2022*

## Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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## Summary

It has been over twenty years since the Electoral Commission was established and the Committee believes it continues to play a fundamental role in overseeing free and fair elections and referendums and regulating political finance. However, there are numerous challenges facing the Electoral Commission that have the potential to impact its ability to effectively carry out its statutory functions in the modern era.

First and foremost, we are concerned with the challenges that lie ahead for the Electoral Commission in supporting electoral administrators, political parties, campaigners, and voters to understand and navigate the increasing complexity of electoral law and levels of divergence in electoral policy across the United Kingdom. We believe the Government missed an opportunity with the Elections Act 2022 to build an elections framework fit for the modern era and that the Government should now prioritise setting out a long-term strategy to rationalise electoral law, working with the other three governments of the United Kingdom to develop a more coordinated approach to elections. While it is welcome that the Government is taking a staged approach to implementation of the Elections Act 2022, and that it has shared draft legislation for the voter ID provisions with the Electoral Commission to support them in preparing the relevant guidance, we note that there is limited time available for the statutory instruments for voter ID to come into force and for the Electoral Commission to finalise its guidance ahead of elections in May 2023. The Government must allow sufficient time for our Committee to input into to these scrutiny procedures and, as a matter of priority, clarify its long-term timetable for the implementation of the rest of the secondary legislation envisaged under the Act. This will enable the Electoral Commission to adequately prepare its support and guidance to the electoral community ahead of any polls.

It is a positive sign that the Electoral Commission's guidance is broadly well-received by those it regulates. We welcome the organisation's ambition to improve its guidance provision further and support its proposed actions to review response times to request for advice, improve support for smaller and newer parties, campaigners, and volunteers, and deliver more training. We would encourage that the Electoral Commission reports back to the Committee on the viability of shortening its response time to within 48 hours in the two months prior to and after an election or referendum, and increasing its response rate outside those periods to 100% within five working days. Furthermore, as a priority, the Electoral Commission must ensure it has sufficient internal expertise to clarify ambiguities in the law or guidance in a timely manner, particularly during regulated periods. Irrespective of the complexity of the law, the Electoral Commission must have the institutional knowledge and capacity to advise in both election and referendum contexts, noting their distinct and unique characteristics. The Electoral Commission should also implement a new staff training programme to ensure its guidance and regulatory approach are tailored to each specific poll, with regular feedback from parties, including the four party panels, and campaigners, of all sizes.

The Electoral Commission has a strong record in performing its regulatory duties to ensure that political financing is transparent and compliant. Nevertheless, we recognise current weaknesses in the system. The legal up-to-six-month delay in receiving spending returns means that any investigations and enforcement action by

the Electoral Commission or police can occur long after the relevant electoral event. There can then also be a significant time lag in returns being published by the Electoral Commission. Therefore, we support the evidence that the reporting timelines for parties and campaigners spending over £250,000 should be reduced to four months and that the Electoral Commission should publish returns within two months of receipt. However, these should be kept under review with regular feedback from parties and campaigners. Furthermore, we recognise the potential gaps in transparency and weaknesses in the permissibility checks on donations to prevent foreign influence in UK politics, particularly through unincorporated associations. Therefore, we call on the Government to provide an update on the guidance indicated in its response to the Committee on Standards in Public Life's Regulating Election Finance report related to supporting campaigners to take a "risk-based" approach to donations.

The Committee acknowledges the rationale of the evidence it received advocating expanding the Electoral Commission's investigatory and enforcement powers to provide maximum transparency to voters, incentivise regulatory compliance, and increase the pace of investigations and enforcement action. However, we also heard concerns regarding the Electoral Commission's investigations and approach to enforcement. While we did not receive evidence that indicated systemic issues within the organisation, we believe that more evidence is needed to ensure that any expanded powers for the Electoral Commission, such as powers to monitor and investigate in real-time and impose civil sanctions for breaches of candidate finance law, would not place disproportionate burdens on the largely voluntary workforce that often support political campaigns. By the same token, we recommend that assessing the impact of lowering the tier of registration with the Electoral Commission for third party campaigners through the Elections Act 2022 is factored into the Government's statutory review of the Act in due course.

It is important that enforcement is fair and proportionate. We welcome the reforms the Electoral Commission has set out to its regulatory approach, such as mandatory case reviews if a case approaches six months in duration, new evidence trackers to aid disclosure of used evidence when proposing sanctions, and moving away from the practice of expanding existing cases when new potential offences arise. We also believe that regulated individuals, parties, and campaigners should have the opportunity to amend minor, administrative reporting errors before civil sanctions are imposed, and look forward to reviewing the new Political Finance Online platform to support individuals to submit their financial returns accurately when it goes live. We disagree with the view of the Electoral Commission that a fixed time limit on investigations could leave the subjects of investigations without a resolution and advocate a 12-month time limit, with the possibility of court extension. We also believe that there should be consistency in the promulgation of and a clear explanation for sanctioning decisions, and that these should be factored into the updated Enforcement Policy expected in the coming months.

A significant development since the creation of the Electoral Commission is the advance of digital campaigning. While we view this as a positive step for democracy, we must recognise that it has created a more complex regulatory environment over time. The legislation governing the Electoral Commission, passed in 2000, does not directly address the challenges presented by the growth of social media, targeted advertising using big

data, and viral marketing campaigns. The introduction of digital imprints through the Elections Act 2022 on paid-for and certain unpaid digital material is welcome. However, this must be kept under review to ensure the regime provides adequate transparency. We reiterate our call for regular reviews of the scheme and suggest that consideration is given to whether the scope of material that requires an imprint should be widened and whether the rules are being effectively enforced. Furthermore, we recommend that the Government puts forward proposals, and if necessary legislates through the Online Safety Bill currently passing through Parliament, to enable digital regulators with interlocking responsibilities in the digital sphere, such as the Information Commissioner's Office, Ofcom, the Electoral Commission and Advertising Standards Authority, to formally share appropriate levels of information to support their regulatory duties and create a coherent regulatory system. The fact that a significant amount of transparency for digital campaigning comes from voluntary initiatives by social media platforms to create political "advert libraries" is concerning, and we believe the Government should give Ofcom, as the prospective online safety regulator, a power to set minimum standards for political advert libraries. Likewise, we agree with the Electoral Commission that each of the four governments of the United Kingdom should amend the rules for reporting spending to provide greater transparency on the money being spent on digital campaigns, with a separate category for digital campaigns in spending returns. We recommend that this should be implemented ahead of the next General Election.

Finally, operational independence and parliamentary oversight are fundamental aspects of the Electoral Commission's governance and accountability. The Committee believes that periodic parliamentary scrutiny of the work of the Electoral Commission, in the form of inquiries such as this, dovetails effectively with the ongoing oversight by the Speaker's Committee on the Electoral Commission. The evidence we received also indicates it is crucial that the impartiality and independence of the Electoral Commission are maintained. Commissioners, including those who are politically nominated, play a useful role in the governance of the Commission, but they must act in accordance with the Board Code of Conduct and refrain from expressing any personal opinions that may suggest political bias. Furthermore, the Committee remains concerned by the Government's ability to set the strategic direction of the Electoral Commission through the issuance of a Strategy and Policy Statement, as set out in the Elections Act 2022. This significantly alters the Electoral Commission's relationship with Government as an independent body. We welcome the three-month statutory consultation period for the draft Statement and will continue to take an active interest in this area of constitutional significance, supporting the statutory consultees where appropriate. A commitment should be made that the three-month timeframe applies to future Strategy and Policy Statements. The Committee also welcomes that the Statement will be subject to the super-affirmative parliamentary procedure, in line with our previous recommendation. The Government must now ensure a motion is tabled for the draft Statement to be debated on the floor of both Houses, before it is brought forward for final approval.

# 1 Introduction

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1. The Electoral Commission is the independent statutory body responsible for overseeing the delivery of elections and electoral registration, delivering UK referendums,<sup>1</sup> and regulating political finance in the UK.<sup>2</sup> It also works to promote public confidence in the democratic process and ensure its integrity. The Electoral Commission was set up in 2001 under the Political Parties, Elections and Referendums Act 2000 (PPERA)—following a recommendation of the Committee on Standards in Public Life (CSPL) in 1998<sup>3</sup>—to be independent of Government and political parties.

2. It is over twenty years since the Electoral Commission was established. The last substantive review of the body’s functions, governance, and accountability was conducted by the CSPL in 2007.<sup>4</sup> Since then, among other modern developments, digital technology and an increased number of referendums have changed the nature of political participation in the United Kingdom. Furthermore, on 28th April, the Elections Act 2022 received Royal Assent, making several significant changes to the administration and conduct of elections, including creating the legal basis for the Government to “[set] out the strategic and policy priorities of the UK Government in relation to elections and the Commission’s functions” through a new Strategy and Policy Statement for the Electoral Commission.<sup>5</sup> Under the leadership of a new Chief Executive (as of April 2022), Chair (May 2021), five-year corporate plan (April 2022),<sup>6</sup> and the statutory consultation under way for the first draft of the Strategy and Policy Statement,<sup>7</sup> this report explores how effectively the Electoral Commission is fulfilling its role in the modern era. The conclusions of this inquiry build on a wealth of evidence from across the electoral landscape, including staff in the Electoral Commission, academic experts, electoral administrators, and a range of political parties, and non-party campaigners. Most of the conclusions and recommendations in this report are directed at Electoral Commission. However, where legislative change or parliamentary action is required, we have included a number of reforms to be implemented by the UK Government, and expect a response on these issues.

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1 Political Parties, Elections and Referendums Act 2000, [Section 101](#). Referendums can be run by other organisations under other legislation, for example the referendum on Scottish independence in 2014 was provided for by legislation of the Scottish Parliament, and the Localism Act 2011 provides for referendums on council tax increases.

2 A brief summary of the regulatory framework referenced in this report is included in Annex A.

3 Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, October 1998, [Cm 5047-1](#)

4 Eleventh Report of the Committee on Standards in Public Life, *Review of the Electoral Commission*, January 2007, [Cm 7006](#)

5 Elections Act 2022, [Part 3](#)

6 Electoral Commission, [Corporate Plan 2022/23- 2026/7](#) (April 2022)

7 Department for Levelling Up, Housing, and Communities, [‘Draft Electoral Commission Strategy and Policy Statement’](#), date accessed 20 September 2022.



## 2 Oversight of elections and delivery of referendums

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3. The Electoral Commission has a wide range of functions in relation to elections and referendums. For elections, the Electoral Commission provides support, guidance, and sets performance standards for local returning officers (ROs) in England, Scotland and Wales, and the Chief Electoral Officer in Northern Ireland, to deliver elections and count the votes. Under the Political Parties, Elections and Referendums Act 2000 (PPERA), the Electoral Commission runs national referendums and has powers to direct counting officers responsible for the poll, in addition to other responsibilities depending on the specified legislation.<sup>8</sup> There have been two instances where these powers to run referendums have been used; the Alternative-Vote referendum in 2011 and the European Union (EU) referendum in 2016.<sup>9</sup>

### Oversight of elections

4. We received evidence that satisfaction with the Electoral Commission's role in overseeing elections is high. The Association of Electoral Administrators' (AEA) written evidence to us stated:

We believe the Electoral Commission is very effective in discharging its statutory obligations in relation to electoral administration. The Commission has oversight of all aspects of the electoral process and provides excellent guidance, supporting resources and good practice... It is clear that this has been of great benefit to our members and without doubt they have confidence in the quality of Electoral Commission guidance, advice and wider support.<sup>10</sup>

5. The Electoral Commission's written evidence to the Committee states that, after the 2019 General Election, "more than two in three people (69% of voters and non-voters) said they were either very or fairly confident the election was well-run (12% said they didn't know)." However, the Electoral Commission also highlights challenges to the delivery of elections, including "pressures on local authority resourcing," and the "complexity of electoral law."<sup>11</sup>

6. In 2019, our predecessor Committee's report into electoral law concluded:

Under the current body of electoral law, nearly everyone involved in a general election faces significant risks or challenges. A primary cause of this is the archaic and confusing state of electoral law. This is not an acceptable state of affairs. The updating and simplification of electoral law must be seen as a pressing priority for the Government.<sup>12</sup>

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8 Electoral Commission, '[What we do in referendums](#),' accessed 5 May 2022; see Annex A for a summary of the legislative framework.

9 [Q100](#); the Electoral Management Board for Scotland had powers of direction for the 2014 Scottish Independence Referendum.

10 Association of Electoral Administrators ([TEC0012](#))

11 Electoral Commission ([TEC0008](#))

12 Public Administration and Constitutional Affairs Committee, First Report of Session 2019–21, [Electoral Law: The Urgent Need for Review](#), HC 244, para 41.

7. This call to consolidate, update, and simplify the body of electoral law has been echoed by others since then, including the AEA,<sup>13</sup> the Committee on Standards in Public Life (CSPL)<sup>14</sup> and the Law Commission and Scottish Law Commission jointly, who, in 2020, produced over 100 recommendations to address the “complex, voluminous and fragmented” system.<sup>15</sup> Nonetheless, the body of electoral law has continued to grow, with the Elections Act 2022. This Committee highlighted to the Government the risk that the Elections Act 2022 would add further complexity, and called on the Government to wait for the conclusions of this inquiry before making changes relevant to the Electoral Commission through this legislation.<sup>16</sup> We have also urged the Government to set out a timetable for the consolidation of electoral law, but the Government seems to lack the ambition or will to respond to our calls to action.<sup>17</sup>

8. As this Committee noted previously, the Elections Act 2022 adds to the levels of divergence across the UK on electoral policy. For instance, as a result of that legislation, voter identification (ID) will now be required in UK-wide general elections, but will not be required for other elections, such as elections to the devolved legislatures or local elections in Scotland and Wales.<sup>18</sup> The Strategy and Policy Statement will also not apply to the Electoral Commission’s devolved Welsh or Scottish functions.<sup>19</sup> We have called on the four governments of the UK to seek to develop a coordinated approach to electoral law and policy, to reduce confusion for electoral campaigners, electoral administrators, and voters.<sup>20</sup> Within this context, the Electoral Commission has the challenge of “ensur[ing] everyone involved in elections understands and is prepared for the changes” generated by the Elections Act 2022.<sup>21</sup> In May 2022, the AEA published a letter to the Government highlighting the difficulties in preparing the electoral community for implementation due to lack of clarity on timelines and outstanding policy decisions from the Government, given the large programme of secondary legislation envisaged under the Act.<sup>22</sup> The Chief Executive of the AEA reiterated these concerns to the then Secretary of State for Levelling Up, Housing, and Communities in a letter of 11th July:

Despite the continuing efforts of your departmental officials, the lack of progress since the Elections Act gained Royal Assent in April is disappointing.

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13 Association of Electoral Administrators, ‘[The AEA’s Blueprint for a Modern Electoral Landscape](#)’, July 2021, accessed 6 May 2022.

14 Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#), July 2021

15 Law Commission and Scottish Law Commission, [Electoral Law - A joint final report](#), 16 March 2020, HC 145, SG/2020/35

16 Public Administration and Constitutional Affairs Committee, Fifth Report of Session 2021–22, [The Elections Bill](#), HC 597, para 21 & para 192–3.

17 Public Administration and Constitutional Affairs Committee, [Fourth Special Report of Session 2021–22, the Elections Bill: Government Response to the Committee’s Fifth Report](#), HC 1133, p.1; Voter ID has been required in Northern Ireland since 2002.

18 The changes in the Act apply to UK Parliament elections, Police and Crime Commissioner elections in England and Wales, and local elections in England. Some provisions will apply to Northern Ireland Assembly elections and local elections in Northern Ireland.

19 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#)’, date accessed 20 September 2022.

20 Public Administration and Constitutional Affairs Committee, Fifth Report of Session 2021–22, [The Elections Bill](#), HC 597, para 45.

21 Electoral Commission, ‘[About the Elections Act](#)’, accessed 12 June 2022

22 [Letter from the Association of Electoral Administrations to the Minister for Levelling Up Communities](#), 17 May 2022

Submitting our detailed feedback on Voter ID, it has become clear its complexity has been underestimated. We no longer feel there is enough time to solve outstanding issues to an acceptable standard.

Our worries also extend to Electoral Commission guidance and publicity. The longer the wait for secondary legislation and policy, the less time the Commission has to develop and deliver comprehensive guidance, revise forms, and run voter education campaigns.<sup>23</sup>

9. The Committee wrote to the Government to follow up on this letter and it has since then confirmed that the timeline for implementation of the Elections Act 2022 will be in stages. Voter ID requirements will be in place for May 2023, whilst implementation of further changes, including changes to the postal vote handling rules, will be delayed until later in 2023, ahead of elections expected in 2024–25. The Government expects the relevant statutory instruments for voter ID to be laid in November and to be made by mid-January 2023 and has shared drafts with the Electoral Commission to support them in producing their forthcoming guidance.<sup>24</sup>

## Delivery of referendums

10. The evidence we received in relation to the Electoral Commission's performance in delivering referendums was varied. On the practical administration, Dr Alistair Clark, Reader in Politics at the University of Newcastle, told us that lessons had been learned between the Alternative-Vote (AV) and EU referendums:

There were difficulties in the 2011 AV referendum, with the Electoral Commission overriding local knowledge and expertise. However, by 2016, research I conducted (with [Professor Toby James, Professor of Politics and Public Policy at the University of East Anglia], and funded by the Electoral Commission) among counting officers found that the Commission ran the administrative side of the EU referendum well. Lessons had clearly been learned about exercising such powers of direction. While there were some limited difficulties, these were localised, not systemic and did not in any significant way impact or impede the overall referendum process and declaration of the result.<sup>25</sup>

11. However, alongside this positive account, we heard from a range of political parties and campaigners who raised concerns with the Electoral Commission's regulatory approach during referendums, which they felt did not acknowledge the specific situations and prevalent conditions of such events, particularly the short-lived existence of many campaign groups which tend to disband after polling day, unlike with political parties following elections. The former Responsible Person<sup>26</sup> for 'Vote Leave', Alan Halsall, told us during an oral evidence session:

23 [Letter from Peter Stanyon, Chief Executive of the Association of Electoral Administrators to the Secretary of State for Levelling Up, Housing and Communities, dated 11 July 2022.](#)

24 [Letter from the Minister of State at the Department for Levelling Up, Housing and Communities to the Chair of the Public Administration and Constitutional Affairs Committee, dated 30 August 2022](#)

25 [Dr Alistair Clark \(TEC0011\)](#)

26 All registered campaigners must have a 'responsible person'. This person is responsible for making sure that the campaigner's finances comply with the rules on spending, donations and loans.

I do not think [the Electoral Commission] understood—maybe it did understand, but maybe it was not too bothered by the fact that we did not have any resource or any function to deal with the Electoral Commission after the campaign.<sup>27</sup>

12. Paul Comer, former Compliance Director for Britain Stronger in Europe, explained the differences in terms of regulation for elections and referendums:

referendums are different in terms of regulatory need than regulating other elections that are contested by political parties that exist before and after those elections. Referendums are a different beast because of the short timeframe and the special purpose vehicle... No, I do not think [the Electoral Commission] paid sufficient attention to that difference. Yes, I think that it should.<sup>28</sup>

13. **It has been twenty years since the Electoral Commission was established and we believe it still plays a fundamental role in overseeing free and fair elections and referendums and regulating political finance, and should continue to do so. However, its ability to effectively fulfil its statutory functions is directly impacted by the unnecessary complexity of the law governing this area. There is a consensus that the law is in urgent need of rationalisation and simplification, and the Government missed an opportunity with the Elections Act 2022 to build an elections framework fit for the modern day. We are concerned by the reluctance from the Government to prioritise the necessary reform of electoral law. Changes to the way the Electoral Commission works will only go so far without a consolidated legal framework for elections and referendums for it to operate within.**

14. *The Government should prioritise implementing the Law Commission's recommendations to rationalise electoral law and immediately start work towards setting out a long-term strategy, with cross-party support, ahead of the next General Election.*

15. **The Committee notes the high levels of satisfaction in the Electoral Commission's role in guiding the practical administration of elections and delivering referendums. Nevertheless, we remain concerned by the challenges that lie ahead for the Electoral Commission in supporting electoral administrators, political parties, campaigners, and voters to understand and navigate the increasing complexity of electoral law and levels of divergence across the UK.**

16. *We welcome the Government's recent update that it is taking a staged approach to implementing the Elections Act 2022, which will support the electoral community in preparing to implement the necessary changes. While there is now limited time for the statutory instruments for voter ID to come into force and for the Electoral Commission to finalise its guidance ahead of elections in May 2023, the Committee is somewhat reassured by the Government's assertion that it has shared draft legislation with the Electoral Commission to support them in drafting the relevant guidance and that it expects the statutory instruments to come into force by mid-January 2023. Ahead of this date, the Committee expects to see the draft statutory instrument in order for our*

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27 [Q23](#)

28 [Q23](#)

*comments to be taken into consideration alongside other scrutiny committees. The Committee also recognises that the decision to prioritise voter ID implementation inevitably means that the timetable for implementing other measures under the 2022 Act will be compressed throughout 2023–24. Accordingly, the Government must, as a matter of priority, provide clarity on its timetable for the implementation of the remainder of the secondary legislation envisaged under the Act, so that the Electoral Commission can provide the necessary support and guidance to the electoral community and voters in advance of upcoming elections. Furthermore, in the interests of supporting the Electoral Commission’s UK-wide role, we reiterate our call, set out in our Fifth Report of Session 2021–22 on the Elections Bill, for the four governments of the United Kingdom to develop a more coordinated approach to electoral policy and law, which will, in turn, further reduce the complexity of the system. The UK Government should lead this work.*

17. The Electoral Commission should demonstrate greater awareness of the specific nature of referendums, particularly the short-lived existence of many campaign groups and be sensitive to the stressful nature of the duties required to be fulfilled by Responsible Persons or other nominated individuals after such groups have been wound up.

18. *The Electoral Commission must ensure it has the institutional knowledge and capacity to support those it regulates equally in both election and referendum contexts, noting their distinct and unique characteristics. There should be comprehensive training for Electoral Commission staff to ensure its guidance and regulatory approach is tailored to each specific poll. We expect the Electoral Commission to report back to the Committee on its implementation of an improved training programme.*

### 3 Provision of guidance

19. One of the Electoral Commission’s core functions is to provide guidance and support to candidates, parties, and campaigners so that they can understand the financial rules and limits that apply during the regulated periods<sup>29</sup> for elections and referendums.

20. In his written evidence to the inquiry, Professor Justin Fisher, Professor of Political Science at Brunel University London, considers that the Electoral Commission has been sufficiently effective in its advisory role to electoral agents.<sup>30</sup> He wrote:

At every general election since 2005, I have conducted surveys of electoral agents from all the major parties contesting those elections. These surveys repeatedly demonstrate high levels of satisfaction with the Electoral Commission. For example, in 2019, of those electoral agents who expressed an opinion, 78% of agents agreed that the rules in respect of election spending and donations, were clear; 72% viewed the Electoral Commission as a useful source of advice; 75% thought Electoral Commission guidance for candidates and agents was clear and easy to use; and 75% thought Electoral Commission written information on the verification and count was clear and easy to use.<sup>31</sup>

21. Whilst these statistics display a positive picture, we heard from range of representatives from political parties and non-party campaign groups during our inquiry who raised issues in the provision of support by the Electoral Commission. Some of these issues are explored below.

#### The pace of responses

22. Multiple political party representatives raised problems with the time taken for the Electoral Commission to respond to requests for advice.<sup>32</sup> Alan Mabbutt, Registered Treasurer and Legal Officer of the Conservative Party, told us:

From the feedback I get from candidates who have asked for it, it is never timely and that is part of the difficulty. I suspect with the number of candidates across the country who are involved, if they are all asking questions at the same time, the Electoral Commission would be overwhelmed. I know the current email response from its finance regulation team says that it expects to respond within five days but if it is more complex within 20 days, which is okay today but if you are in the middle of an election campaign, 20 days is a very long time within the election campaign to take to respond to a query.<sup>33</sup>

23. Andrew Whyte, Acting Director of Governance and Legal for the Labour Party, went further to question whether there was “a lack of confidence [in the Electoral Commission] in answering difficult questions or a resourcing problem.”<sup>34</sup> Alan Halsall, former

29 The length of the period varies for candidates and political parties and non-party campaigners, and for elections and referendums. See Annex A for further information.

30 An electoral agent is the person legally responsible for accounting for a candidate’s campaign finances.

31 Professor Justin Fisher ([TEC0006](#))

32 [Q8](#), [Q88](#)

33 [Q77](#)

34 [Q88](#)



Responsible Person for Vote Leave, suggested that during the regulated period for the EU referendum support should have been available between 8am and 10pm every day, with responses within hours.<sup>35</sup> However, the Electoral Commission informed the Committee that in the 2020–21 period, it responded to 89% of requests for advice within five working days.<sup>36</sup>

## Clarity of the guidance

24. One particular issue raised by the Committee on Standards in Public Life (CSPL) as far back as 2007, and referred to throughout our inquiry, is that the Electoral Commission should recognise that even large political parties are mostly comprised of volunteers.<sup>37</sup> Many witnesses said the advice from the Electoral Commission had to be effectively “translated” for the voluntary workforce to understand. As Andrew Whyte, Acting Director of Governance and Legal for the Labour Party, explained:

Largely, we have had a positive experience of working with the Electoral Commission in its advisory capacity. In keeping with the previous witnesses, as a filter between the commission and our voluntary agents, we tend to explain the rules to them and seek advice on their behalf where necessary.<sup>38</sup>

25. Dave Timms, Head of Political Affairs at the environmental campaign organisation Friends of the Earth, said that their organisation has to “rewrite the guidance that [the Electoral Commission] put out...for our own local groups to help their understanding.”<sup>39</sup> Whilst it may be viewed as a positive that many of our witnesses reported to have sufficient in-house expertise to fulfil this function, there is a real risk that smaller or newer, less-established political parties or non-party campaigners would not have access to the necessary resources, including the financial means, to rewrite the Electoral Commission’s guidance. Dave Timms noted to the Committee the “extraordinary amount of money” needed to draft their internal guidance.<sup>40</sup>

26. A key issue, recognised by several of our witnesses, is that the Electoral Commission cannot give “any certainty” in their advice unless the legislation is clarified by Parliament.<sup>41</sup> The Conservative Party’s written evidence to the Committee challenges the validity of the Electoral Commission’s enforcement role in this context, stating that the Electoral Commission “provides (often unclear) advice to political campaigners yet wants to prosecute breaches of its own unclear rulebook.”<sup>42</sup> Dr Rowan Popplewell, Policy Manager for the civil society organisation network Bond, expressed concerns about the “chilling effect” of lack of clarity:

The quality of the advice has improved; that is what our members tell us, but they also find it very frustrating because, as the other panellists have said, the Electoral Commission cannot tell you with certainty whether an activity is or is not regulated. They can only say it is likely or unlikely that it

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35 [Q13](#)

36 Electoral Commission ([TEC0051](#))

37 Eleventh Report of the Committee on Standards in Public Life, *Review of the Electoral Commission*, January 2007, [Cm 7006](#), para 1.24

38 [Q88](#)

39 [Q188](#)

40 [Q203](#)

41 [Q193](#); [Q13](#)

42 The Conservative Party ([TEC0032](#))

will be regulated, and that is not enough for a lot of our members. They find the rules very confusing and complicated and they are scared about getting it wrong... That does have a chilling effect and I do not think that is good for democratic debate at elections.<sup>43</sup>

27. Various non-party campaigners suggested to us in oral evidence that guidance from the Electoral Commission has improved in recent years, due to active engagement from the Electoral Commission with third parties on revisions to that guidance between 2017–2019.<sup>44</sup> The Electoral Commission also engages with political party representatives through the four “party panels”<sup>45</sup> that meet quarterly, one for Westminster and three for the devolved nations. These panels have political representatives from the main parties of each legislature.<sup>46</sup> Some smaller parties, and particularly those without parliamentary seats, are not represented, which was raised as a drawback during this inquiry,<sup>47</sup> however larger parties find these fora to be constructive.<sup>48</sup> The CSPL recommends that the Electoral Commission should draw on the expertise of voluntary organisations and the Westminster Parliamentary Parties Panel to ensure that its advice meets the needs of those it regulates.<sup>49</sup> Multiple witnesses suggested case studies, more accessible information, and bespoke training could support newer parties or volunteers.<sup>50</sup> The Government has recognised these sentiments in the draft Strategy and Policy Statement for the Electoral Commission proposing:

The Commission should consider the views of political parties, candidates and other campaigners to better understand the realities of campaigning activities when preparing guidance by seeking regular feedback and consulting with relevant stakeholders including the Parliamentary Parties Panel to ensure its guidance is helpful to campaigners...

The Commission should provide campaigners with clear, consistent and user-friendly guidance that supports campaigners in complying with electoral law.<sup>51</sup>

## Single points of contact

28. While most political party and referendum campaign representatives we took oral evidence from mentioned having a single point of contact (SPOC) in the Electoral Commission to speak to regarding issues during campaigns and generally finding these helpful, we found the practice to be less common for third party campaigners and smaller parties, who often did not have access to this facility.<sup>52</sup> Witnesses alluded to the corresponding disadvantaged position of smaller or newer parties and campaigners, which

43 [Q194](#)

44 [Q184](#), [Q187](#)

45 Electoral Commission, ‘Party panels’, accessed 26 May 2022

46 In Wales and Westminster, it is only parties that have two or more sitting Members of Parliament or Members of the Senedd that sit on the panels.

47 [Q158](#)

48 [Q112](#)

49 Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#), July 2021, para 9.43.

50 [Q147](#), [Q125](#), [Q120](#)

51 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#)’, date accessed 20 September 2022.

52 [Q12–13](#), [Q78–89](#), [Q191–196](#), [Q132–139](#)



have neither the comparative resources nor the well-established links with individuals in the Electoral Commission.<sup>53</sup>

29. When SPOCs were available, we heard accounts of them lacking sufficient experience to answer queries directly.<sup>54</sup> Richard Tice, Leader, Reform UK, and Alan Halsall, former Responsible Person for Vote Leave, suggested a potential role for a “rulings committee” or “panel of experts” covering different aspects of the campaign to be available within the Electoral Commission on a rolling basis.<sup>55</sup>

30. In March 2022, the Electoral Commission provided the Committee with an update on a number of welcome actions it is taking forward to improve its guidance provision, including:

- Developing a smaller parties strategy, appointing an in-house smaller parties’ lead, increasing resources to provide bespoke advice to those parties that do not generally have access to experienced experts, and using the expertise of the Commissioner nominated by smaller parties.
- Looking at response time and providing a more bespoke service.
- Exploring the viability of specific ‘account managers,’ following a recent survey of campaigners that found three-quarters said it was important to have a named point of contact.
- Increasing consultation with parties and campaigners on draft guidance.
- Delivering more training to support stakeholders – through videos, seminars and training workshops.<sup>56</sup>

**31. The Electoral Commission invests significant resources into providing guidance to candidates, parties, and non-party campaigners to support their understanding of complex legislation, and this is largely welcomed by those it regulates. However, as a matter of priority, further action is required to address issues such as ambiguous advice, slow responses to requests for information during elections and referendum campaigns, and a gap in support for smaller and newer parties and campaigners.**

*32. The Committee welcomes the proposed steps from the Electoral Commission to improve guidance provision, including a strategy to support smaller parties, reviewing response times, exploring the viability of ‘account managers’, increasing consultation with parties and campaigners on draft guidance, and delivering more training. As part of the training offer, we recommend interactive modules on the relevant legislation and including case studies in the guidance for both parties and non-party campaigners to support volunteers. We recommend the inclusion of the Government’s view in the draft Strategy and Policy Statement that the Electoral Commission should be seeking regular feedback from stakeholders when preparing guidance should be maintained in the final iteration of the Statement. Furthermore, stakeholder engagement should extend to parties and campaigners of all sizes, in addition to larger parties through the four party panels, to ensure the training and guidance meets the needs of its users.*

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53 [Q89 Q122](#)

54 [Q12–13](#)

55 [Q139](#), [Q8–13](#)

56 Electoral Commission ([TEC0051](#))

*33. The Committee believes, regardless of the complexity of the legislation, it is vital that the Electoral Commission has sufficient internal expertise to clarify ambiguities in the law or guidance in a timely manner, particularly during regulated periods. The Electoral Commission should report back to the Committee on the viability of shortening its response time to within 48 hours in the two months prior to and after an election or referendum, and increasing its response rate outside those periods to 100% within five working days. These improvements should be in place before the next General Election. We would welcome an update on their implementation in April 2023.*

## 4 Regulating Political Finance

34. The Electoral Commission has a role in ensuring that political finance is transparent and compliant. As the Electoral Commission itself explains:

We will achieve these aims by maintaining the official registers for parties and campaigners, and ensuring political finance data is accessible, transparent and complete. We will provide guidance and support for all types of campaigners and make regulatory decisions which command the confidence of candidates, parties, campaigners, and voters.<sup>57</sup>

35. A brief overview of the regulatory framework for political finance is provided in Annex A. This Chapter does not cover all of the Electoral Commission's regulatory responsibilities, but rather focuses on a few areas prominent in the evidence we received, including the reporting of party and campaigners' spending and donations and related action for any breaches of the rules.

### Reporting

36. The Electoral Commission publishes all prescribed information it receives on donations, loans, election/referendum spending, party accounts, and maintains a list of registered political parties, non-party campaigners, and referendum participants on the "Political Finance Online" database.<sup>58</sup> This is a searchable tool that provides an important level of transparency to voters with regards to political financing.

### Spending

37. Under the current rules for parties and campaigners during an election or referendum, expenditure of £250,000 or below must be reported to the Electoral Commission within three months of the electoral event. If spending is over £250,000, the reporting deadline is six months. Dr Kate Dommett, Senior Lecturer in the Public Understanding of Politics at the University of Sheffield, explained that the UK's deadlines for parties and campaigners to submit financial returns after electoral events are much lengthier than international comparators. She suggests that "there could be a case for legislating to make that disclosure requirement within a more condensed period," provided resource implications were considered.<sup>59</sup> The legal up-to-six-month delay in receiving returns means that any investigations and enforcement action by the Electoral Commission or police can long surpass the electoral event. There can then also be a lag in the returns being published by the Electoral Commission. Dr Dommett told us the speed of publishing returns and the Electoral Commission's communication on expected publication could be improved.<sup>60</sup>

38. There has been some discussion of whether "real-time" reporting to the Electoral Commission could ensure voters have access to information on the source of campaigns before the polling day.<sup>61</sup> However, the Committee on Standards in Public Life (CSPL) has

57 Electoral Commission, [Corporate Plan 2022/23- 2026/7](#) (April 2022) p.8

58 Electoral Commission, '[Political Finance Online](#)', accessed 7 June 2022

59 [Q123](#); also see the Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#), July 2021, Appendix 2, p.146 for a comparison of political finance regulation in 12 countries.

60 [Q123](#)

61 [Q50](#)

highlighted the risk of overburdening smaller parties and campaigners if real-time reporting was introduced. It recommends that deadlines for parties and non-party campaigners spending over £250,000 at a general election or UK referendum should be reduced from six months to four months. It also recommended that the Electoral Commission should publish election expenditure within two months of receipt.<sup>62</sup> Reporting after the EU referendum, the Independent Commission on Referendums recommended reducing the deadline for spending returns to three months.<sup>63</sup> While the political party representatives we spoke to were not opposed to real-time reporting in principle, they told us “the detail would need to be worked through.”<sup>64</sup>

## Donations

39. When political parties, individuals or other organisations receive a donation or loan over specified amounts,<sup>65</sup> they must check whether it comes from a permissible source,<sup>66</sup> and then donations over a certain threshold<sup>67</sup> are reported to the Electoral Commission. Under the Political Parties, Elections and Referendums Act 2000 (PPERA), similar rules about permissible sources apply to permitted participants<sup>68</sup> in referendum campaigns as apply to parties and registered non-party campaigners in elections. Although there are checks required to ensure donations are from certain sources and mainly UK-based, we heard concerns that elections in the UK are at risk of foreign interference due to weaknesses in the existing arrangements. Dr Alistair Clark, Reader in Politics at Newcastle University, explained his view of the “fairly lax” requirements:

All that needs to be done is basically for a party or recipient to check that a donation is permissible. Effectively, that leads to a check on whether they are on the voters’ roll or a business registered in the UK. That can take the form of things such as unincorporated associations and things of that sort. It is quite easy to donate to political parties but be outwith those regulations.<sup>69</sup>

40. Dr Clark went on to suggest that the system could be strengthened if political parties were required to comply with anti-money laundering (AML) regulations<sup>70</sup> and the associated ‘know your customer’ due diligence requirements.<sup>71</sup> These checks are currently required in the charity and financial services sectors.<sup>72</sup> Written evidence received from

62 Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#), July 2021, para 7.16.

63 Independent Commission on Referendums, [Report of the Independent Commission on Referendums](#) (Constitution Unit, UCL, July 2018) p.157

64 [Q28](#)

65 For a party or non-party campaigner the threshold is £500, for candidates it is anything over £50.

66 Only certain UK-based sources can donate to political campaigns, parties, or candidates. A list of permissible sources is included in Annex A. It is the responsibility of said political party, candidate or non-party campaigner to ascertain the source of the donation and whether it is permissible.

67 Donations over £7,500 to a national party/member association or £1,500 to a constituency association, and donations over £1,500 to a regulated individual must be declared.

68 Campaigners in a referendum wishing to spend over a specified amount during the regulated referendum period must register with the Electoral Commission as permitted participants.

69 [Q110](#)

70 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, [Part 3](#)

71 [Q110](#)

72 [Explanatory Memorandum to the Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) pp.2–3; Charity Commission for England and Wales, [Compliance Toolkit: Protecting Charities from Harm, Chapter 2: Due diligence, monitoring and verifying the end use of charitable funds](#) (September 2016), p.16.

Spotlight on Corruption, an anti-corruption charity, echoes Dr Clark’s view, stating that that “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 which they suggest would be published by the Electoral Commission.<sup>73</sup> The Electoral Commission itself supports the notion of enhanced due diligence checks on donations.<sup>74</sup>

41. Concerns regarding unincorporated associations (UAs)<sup>75</sup> as a potential avenue for anonymous donations were raised by several witnesses.<sup>76</sup> UAs do not have a legal personality (unlike companies), thus it can be difficult to find information about them and there is a concern they can “fall completely through the [regulatory] net.”<sup>77</sup> Peter Geoghegan, editor-in-chief of openDemocracy, the international media platform, told us that investigative journalists found that £15 million had been donated “into British politics” in recent years by UAs which “we don’t have any information on.”<sup>78</sup> The Conservative Party’s written evidence to the Committee however highlights that UAs are often smaller, voluntary organisations that play a “healthy” role in democracy through fundraising; it believes that the requirements for “big business” may not be suitable for small UAs.<sup>79</sup>

42. Nonetheless, the CSPL highlight two main gaps identified by the Electoral Commission in the current system. Firstly, that UAs are capable of receiving money themselves from other sources, including those overseas, which they do not have to report before donating to political parties. Secondly, no transparency is required from UAs where they provide donations directly to candidates, and therefore could fund a number of individual candidates.<sup>80</sup> Transparency International UK, an anti-corruption charity, recommends reducing the reporting threshold at which UAs report gifts from £7,500 to £500, in line with the de minimis threshold.<sup>81</sup> The CSPL has recommended that PPERA should be amended to require UAs that meet the threshold for registration with the Electoral Commission to conduct permissibility checks on any relevant donations intended for political activity. In response, the Government has said it is “considering further guidance on donations which might support campaigners to take a risk based approach to donations, similar to ‘know your customer/client’ guidelines used in financial services, and undertake enhanced checks where appropriate.”<sup>82</sup>

## Investigations and enforcement

43. The Electoral Commission has supervisory powers to monitor compliance with political finance rules. When there are reasonable grounds to suspect breaches of the law, the Electoral Commission has the power to take action through investigations

73 The Spotlight on Corruption ([TEC0016](#))

74 Electoral Commission, ‘[Digital Campaigning - increasing transparency for voters](#)’, accessed 16 June 2022

75 Refer to Annex A for further information on unincorporated associations.

76 [Q110](#); [Q168](#); [Q110](#)

77 [Q110](#)

78 [Q168](#)

79 The Conservative Party ([TEC0032](#))

80 Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#), July 2021, para 4.18.

81 Transparency International UK ([TEC0023](#)); the de minimis threshold is £500. Contributions by UAs of £500 or less are outside the scope of PPERA and do not need to be recorded or reported.

82 Cabinet Office, [Government Response to Twenty-Second Report of the Committee on Standards in Public Life: Regulating Election Finance](#), 15 September 2021

and enforcement.<sup>83</sup> The civil sanctions regime for PPERA offences was created in 2010, following recommendations by the CSPL, as an alternative to criminal prosecutions.<sup>84</sup>

44. During our inquiry, witnesses considered whether a potential conflict exists between the Electoral Commission’s role as adviser on the law and its role as enforcer of the same law.<sup>85</sup> Questions were raised as to whether the Electoral Commission should have any role in enforcement at all.<sup>86</sup> However, several of our witnesses, particularly smaller party representatives, did not feel that they had experienced or perceived any conflicts of interest in this dual role, and alluded to other regulators, such as the Information Commissioner’s Office, as balancing similar functions of advice and enforcement.<sup>87</sup> Our predecessor Committee explored these tensions in their 2018 report on the EU referendum, concluding:

The Electoral Commission’s dual role as a regulator and key delivery agent for referendums could pose potential difficulties. However, while we note suggestions that these roles should be divided between separate bodies, it is clear that the Electoral Commission is the only body, at present, which is capable of discharging both roles.<sup>88</sup>

45. Professor Justin Fisher similarly concludes that “the two [functions] are not necessarily irreconcilable, but tensions must be recongized.”<sup>89</sup>

### **Conduct of investigations**

46. In its evidence to the Committee, written in 2021, the Electoral Commission told the Committee:

...our investigations into parties and campaigners are robust and carried out to the highest standards...

We are putting renewed effort into supporting political parties, candidates and campaigners to comply with the rules before breaches happen. Most work hard to comply with the political finance rules, and we want enforcement action to be the exception, not the rule.<sup>90</sup>

47. It also told us it had carried out approximately 500 investigations in five years, and that:

In this period, there have been five enforcement decisions challenged in the courts using the statutory appeal process and a small number of High Court judicial reviews and other proceedings that have been brought. In all instances save for one County Court case, the outcomes have upheld the Commission’s main findings on breach of the law.<sup>91</sup>

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83 While the Commission has power to regulate parties and national campaign spending under PPERA, it has no powers to investigate or sanction candidate spending offences, which are regulated by the police and Crown Prosecution Service, see Annex A for further information.

84 See Annex A and the Electoral Commission, [Enforcement Policy](#) (April 2016) for further details.

85 [Q97](#); [Q16](#)

86 [Q25](#); The Conservative Party ([TEC0032](#))

87 [Q149](#)

88 Public Administration and Constitutional Affairs Committee, [Twelfth Report of Session 2016–2017, Lessons Learned from the EU Referendum](#), HC 496, para 133

89 Professor Justin Fisher ([TEC0006](#))

90 Electoral Commission ([TEC0003](#))

91 Electoral Commission ([TEC0008](#))

48. This indicates a strong record for the Electoral Commission’s regulatory decisions. However, we also heard from individual campaigners with negative perceptions of the Electoral Commission’s investigations into potential breaches of campaign finance rules following the EU referendum.<sup>92</sup> While we did not receive evidence that indicated systemic issues within the Electoral Commission, the individual cases raised with us suggest lapses in good practice may have taken place. Alan Halsall, former Responsible Person for Vote Leave, David Banks, Responsible Person for Veterans for Britain, and Jon Moynihan, Board Member of Vote Leave, supplied written evidence to the Committee on their experiences. Whilst we cannot generalise from these instances, some of the noteworthy criticisms include:

- Alleged failure to take into account that, following a referendum campaign, the campaigning organisation no longer exists (unlike a political party after an election) leaving nominated individuals unsupported in trying to meet the requirements of an investigation by the Electoral Commission;
- Subsequent opening of investigations after the investigated party had been informed the initial investigation had closed;
- Alleged failure to communicate clearly to the investigated party the basis for the investigation;
- Alleged failure to give due consideration to the accused party’s rebuttal of the case alleged against them;
- Alleged failure to give the accused party notice of the final decision against it before broadcast of the decision, naming private individuals in the media, and failure to advise individuals that they were being referred to the police;
- Inadequate retention and collation of documents relied upon in investigations decisions;
- Alleged failure to conclude investigations in a timely manner; and
- Failure to properly enforce the law.<sup>93</sup>

49. By way of balance, the Electoral Commission’s summary of the investigations into Vote Leave detailed issues with that organisation failing to comply with an ‘investigation notice’ requiring persons to give information to progress with the investigation.<sup>94</sup> Louise Edwards, Director of Regulation at the Electoral Commission, told the Committee that processes were followed “to the letter” during the cases relating to ‘BeLeave’ founder, Darren Grimes, and Alan Halsall and there is a “fair amount of misinformation about the actions of the Commission in those investigations.”<sup>95</sup>

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92 Further detail on these cases can be found: Electoral Commission, [‘Investigation: Vote Leave Ltd, Mr Darren Grimes, Be leave and Veterans for Britain’](#), accessed 29 June 2022

93 Jon Moynihan OBE ([TEC0030](#)), David Banks ([TEC0002](#)); Alan Halsall ([TEC0001](#))

94 Electoral Commission, [‘Investigation: Vote Leave Ltd, Mr Darren Grimes, Be leave and Veterans for Britain’](#), accessed 29 June 2022

95 [Q54-Q55](#)



50. Nevertheless, the Electoral Commission’s evidence to the Committee recognises the need to “build trust and confidence in the Commission where it has diminished.”<sup>96</sup> To address the length of investigations, the CSPL has put forward two recommendations:

- a) Investigations under PPERA should be opened within 12 months of the date of the offence allegedly being committed or, if later, from the date at which the Electoral Commission first became aware of the circumstances of a possible offence.
- b) There should be a 12-month limit on the duration of Electoral Commission investigations. Both time limits should be extendable by 12 months on application to a court in exceptional circumstances and/or where the subject of investigation has caused or contributed significantly to the delay.<sup>97</sup>

51. The Committee found that witnesses welcomed the idea of fixed time limits on investigations.<sup>98</sup> Jon Nott, Treasurer of the Green Party (England and Wales), told us he had been waiting two years, at the time of giving evidence last year, for the outcome of an investigation into allegedly misreported invoices.<sup>99</sup> The Electoral Commission, however, believes a fixed time limit on investigations would be “disproportionate” given that the “majority of [its] investigations are completed in less than six months (98% in 2020–21)” and it could leave the subjects of investigations without a resolution.<sup>100</sup>

52. The Electoral Commission’s Enforcement Policy was last updated in 2016. It has told the Committee that it is drawing up proposed changes to the document for consultation in Autumn 2022 and will consider feedback from our inquiry and this report when doing so. It has committed to some welcome changes to its regulatory approach, including mandatory case reviews if a case approaches six months duration; new evidence trackers to aid disclosure of used evidence when proposing sanctions; accelerating the process of identifying and citing relevant evidence; and moving away from the practice of expanding existing cases when new potential offences arise.<sup>101</sup>

### Proportionality

53. An issue raised more broadly by political party representatives during our inquiry was the desire for the Electoral Commission’s regulatory approach to be proportionate to the campaigners’ and parties’ resources and for it to recognise the potential for volunteers to make inadvertent errors.<sup>102</sup> Jon Nott of the Green Party (England and Wales) said:

...the question of proportionality is key here. As was mentioned in some of the earlier witness statements, the majority of experience we have is of relatively technical things like an invoice being formatted wrongly or a form not being submitted by a volunteer treasurer on time. A mechanism to resolve those things, to clarify and ensure that the due diligence and reporting is done, rather than moving straight to investigation and

96 Electoral Commission ([TEC0008](#))

97 Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#) July 2021, p. 123

98 [Q93](#)

99 [Q145](#)

100 Electoral Commission ([TEC0051](#))

101 Electoral Commission ([TEC0051](#))

102 [Q90–3](#)



sanction, would be helpful for the parties and also for the transparency of the system. That is the distinction between those relatively technical and often human error types of things and the perhaps rarer but much more significant breaches where parties or third parties are operating in a way that is intended to break the rules and to gain an advantage by doing so.<sup>103</sup>

54. The Government has heeded the call for “proportionate” enforcement in its draft Strategy and Policy Statement for the Electoral Commission stating:

The Commission should ensure robust, consistent, transparent and proportionate enforcement of the rules legislated by Parliament, by balancing the need to engage constructively with campaigners to support compliance, with the need to sanction electoral offences. Proportionate enforcement includes the need for the Commission to balance the impact of its enforcement policy on providing an effective deterrent for deliberate breaches of electoral law and not unduly discouraging participation in public life.<sup>104</sup>

55. The Electoral Commission has recently announced that it is launching a new Political Finance Online database to “make it easier and faster for parties and campaigners to submit financial data.”<sup>105</sup> The Electoral Commission has said that it is engaging with political parties through the Westminster Parliamentary Parties Panel on the new database currently under development.<sup>106</sup> The Electoral Commission additionally told us the reformed Political Finance Online system will include explanatory notes, error messages, prompts, and signals to support users to accurately input data.<sup>107</sup> This is welcome, but concerns remain, particularly among third party campaigners we heard from during our inquiry, that certain groups will not have the resources to comply with the complex reporting requirements associated with registering with the Electoral Commission, and these groups will be deterred from political engagement.<sup>108</sup> Particular concern was noted in relation to the changes resulting from the Elections Act 2022. Formerly, the rules were that non-party campaigners must register with the Electoral Commission if they plan to spend over £20,000 in England, or over £10,000 in Scotland, Wales or Northern Ireland during a regulated period. The new legislation standardises the tier of registration at £10,000 across the UK.<sup>109</sup> The need for the Electoral Commission to produce “clear, easily accessible, and comprehensive” guidance for third party campaigners has been recognised in the Government’s draft Strategy and Policy Statement for the Electoral Commission in light of the potential impact of the changes.<sup>110</sup> As Dr Popplewell, representing Bond, explained:

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103 [Q137](#)

104 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#),’ date accessed 20 September 2022.

105 Electoral Commission, [Corporate Plan 2022/23- 2026/7](#) (April 2022), p.18

106 Electoral Commission ([TEC0051](#))

107 Electoral Commission ([TEC0051](#))

108 [Q211–212](#)

109 Elections Act 2022, [Part 4](#)

110 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#),’ date accessed 20 September 2022.

You will get a lot of organisations having to register as lower-tier campaigners. It also adds another layer of complexity to what is already a complicated and complex area of legislation that most civil society organisations do not understand at all. That will have a chilling effect.<sup>111</sup>

56. Section 62 of the Act requires the Secretary of State to prepare, publish and lay before Parliament a review of the operation of the Act, no less than four and no more than five years from Royal Assent (which was received on 28th April 2022).<sup>112</sup>

### **Enforcement powers**

57. The Electoral Commission advocates gaining greater regulatory powers in several ways, including being given responsibility for regulating candidate finance offences under the Representation of the People Act 1983 (RPA) and the ability to impose a greater maximum sanction for breaches of the law.<sup>113</sup> The Electoral Commission has also been campaigning to develop prosecutorial powers, however the Elections Act 2022 provided that the Electoral Commission cannot initiate prosecutions under either PPERA or the RPA.<sup>114</sup> Witnesses to our inquiry had a variety of views on whether any additional powers would be appropriate.

58. The maximum fine that the Electoral Commission can impose for breaches of PPERA (£20,000) has not changed since PPERA was first passed. Written evidence by Liberal Democrat Party representatives suggests in the current day this is seen a “business expense rather than a real deterrent” to larger well-resourced parties or non-party campaigners.<sup>115</sup> Professor Rachel Gibson, Professor of Political Science at the University of Manchester, raised similar concerns.<sup>116</sup> The House of Lords Democracy and Digital Technologies Committee and the CSPL have recommended extending the maximum fine for breaches under PPERA to the same level as the Referendums (Scotland) Act 2020, which is £500,000 or 4% of total campaign spend, whichever is larger.<sup>117</sup>

59. Several pieces of written evidence we received in this inquiry, including from the Electoral Reform Society and the Association of Electoral Administrators, advocated expanding the civil sanctions regime to cover the enforcement of candidate finance laws under a single regulatory framework for candidates, parties, and non-party campaigners.<sup>118</sup> It is suggested that this could bridge “enforcement gaps given the lack of alternatives to police investigation and criminal prosecutions currently available under RPA 1983” and “improve fairness and accountability.”<sup>119</sup> However, we also heard that any changes would need to be mindful of the impact on volunteers, individual candidates, and small parties. As Amy Killen, Campaigns Manager for the Women’s Equality Party, explained when speaking about the maximum fine available under PPERA:

111 [Q212](#)

112 Elections Act 2022, [Section 62](#)

113 Electoral Commission ([TEC008](#)), Electoral Commission, ‘[Digital Campaigning - increasing transparency for voters](#)’ accessed 16 June 2022; Elections Act 2022, [Section 19](#)

114 Electoral Commission ([TEC003](#))

115 Rt Hon Alistair Carmichael MP and the Rt Hon Lord Paul Tyler ([TEC0010](#))

116 Professor Rachel Gibson ([TEC0045](#))

117 House of Lords Select Committee on Democracy and Digital Technologies, First Report of the 2019–2021 Session, [Digital Technology and the Resurrection of Trust](#), HL Paper 77, para 311 ; Twenty-Second Report of the Committee on Standards in Public Life, [Regulating Election Finance: A Review by the Committee on Standards in Public Life](#) July 2021, p. 126

118 See Annex A for a summary of the separate PPERA 2000 and RPA 1983 regimes.

119 Dr Alistair Clark ([TEC0011](#)); Electoral Reform Society ([TEC0015](#)); Association of Electoral Administrators ([TEC0012](#))

It is important to note that a large fine for a small party could be seriously damaging and could be a real strain on resources and, equally, for independent candidates. But a fine of £20,000 may not even be a deterrent for a larger party with sufficient resources to bear that cost. Like much of what we have already mentioned today, this represents a barrier to people accessing politics, being involved in the political process and playing the role they might want to play in our democracy.<sup>120</sup>

60. The Government has included in the draft Strategy and Policy Statement the line that “the Commission should be sensitive and proportionate to the voluntary nature of much of political parties’ infrastructure.”<sup>121</sup>

61. **The Committee recognises the complexity of the dual regimes for candidates under the Representation of the People Act 1983 and parties and campaigners under the Political Parties, Elections, and Referendums Act 2000. Consolidating the law into one regulatory framework should be within the scope of the Government’s work on the long-term strategy to rationalise electoral law recommended by this Committee.**

62. **The Committee recognises the rationale behind advocating an expansion of the Electoral Commission’s investigatory and enforcement powers to provide maximum transparency to voters, incentivise regulatory compliance, and increase the pace of investigations and enforcement action. However, we believe more evidence is needed to ensure that any expanded powers for the Electoral Commission, such as powers to monitor and investigate in real-time and impose civil sanctions for breaches of candidate finance law, would not place disproportionate burdens on the largely voluntary workforce that support political campaigns.**

63. *We welcome the Government’s view in the draft Strategy and Policy Statement for the Electoral Commission that the Commission’s enforcement of political finance rules should be proportionate to the voluntary nature of political parties’ infrastructure. We recommend this is maintained in the final iteration.*

64. **The Committee notes the concerns from non-party campaigners that the lower tier of registration with the Electoral Commission, introduced under the Elections Act 2022, may have the unintended consequence of deterring political campaigning by small groups that lack the resources to comply with the transparency requirements. If this is the case, it will be important not to exacerbate the issue further.**

65. *The Government should commit to reviewing the impact of the lower tier of registration for third party campaigners as part of its statutory review of the Elections Act 2022, due in four to five years’ time, to be published and laid before Parliament. Any future reform to the regulatory powers of the Electoral Commission by the Government should consider the potential impact of deterring political engagement. We agree with the recommendations from the Committee on Standards in Public Life that the reporting timelines for parties and campaigners spending over £250,000 should be reduced from six to four months and that the Electoral Commission should publish returns within two months of receipt. However, these timeframes should be kept under review with regular feedback from parties and campaigners. Additionally, it is important that transparency*

120 Q152

121 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#),’ date accessed 20 September 2022.

*goes both ways and, therefore, the Electoral Commission should ensure it communicates on its website any expected delays in this timeline.*

66. The Committee recognises the potential gaps in transparency and weaknesses in the permissibility checks on donations to prevent foreign influence in UK politics, particularly through unincorporated associations (UAs). However, we also note the important role that UAs play in supporting democracy through fundraising. It is vital that any further reporting requirements or mandatory checks on donations that may result from the Government's forthcoming guidance on donations referenced in its response to the Committee on Standards in Public Life's report on Regulating Election Finance are proportionate, and do not adversely affect the organisations subject to them.

67. *The Government should provide an update in its response to this report on the guidance it said it was considering in its response to the Committee on Standards in Public Life's Regulating Election Finance Report, that would support campaigners to take a "risk-based" approach to donations, similar to the "know your customer" requirements in financial services.*

68. Although the Electoral Commission has an overall strong record in relation to monitoring, investigations and enforcement, we were concerned by the individual cases of extremely lengthy investigations and poor communication raised throughout this inquiry. The Electoral Commission has said it will factor in the conclusions from this inquiry into its updated Enforcement Policy, due for consultation in the coming months, and we expect the issues raised by these individuals to be considered. We welcome the reforms the Electoral Commission has set out to its regulatory approach to date, including mandatory case reviews if a case approaches six months in duration; new evidence trackers to aid disclosure of used evidence when proposing sanctions; accelerating the process of identifying and citing relevant evidence; and moving away from the practice of expanding existing cases when new potential offences arise. However, it is disappointing that the Electoral Commission has resisted calls to impose fixed time limits on investigations.

69. *We agree with the Committee on Standards in Public Life that investigations under the Political Parties, Elections and Referendums Act 2000 should be opened within 12 months of the date of the potential offence being committed or, from the date the Electoral Commission was aware of the potential offence, with ability to be extended by application to a court. There should also be a 12-month limit on the duration of investigations, with the possibility of a court extension where appropriate. Throughout investigations, the Electoral Commission should improve its communication and explain clearly to those being investigated all actions and decisions. The Electoral Commission should report back to this Committee within a year setting out its progress in implementing its proposed changes to its regulatory approach.*

70. We believe the Electoral Commission should be sensitive to the role of volunteers in campaigns and the potential for inadvertent reporting errors to occur. We welcome the Electoral Commission's proposed changes to the Political Finance Online platform to support individuals to input their financial returns accurately. We agree with witnesses to our inquiry that the current maximum sanction of £20,000 for breaches of the Political Parties, Elections and Referendums Act 2000 may not act as an effective

deterrent for well resourced political parties and non-party campaigners. However, we also believe a larger fine would need to be carefully enforced to ensure it does not disproportionately impact smaller groups.

*71. We agree with the House of Lords Democracy and Digital Technologies Committee, and the Committee on Standards in Public Life, that the maximum fine the Electoral Commission can impose for breaches of Political Parties, Elections and Referendums Act 2000 should be increased to £500,000 or 4% of total campaign spend, whichever is higher. Equally, we believe that regulated individuals, parties, and campaigners should have the opportunity to amend minor, administrative reporting errors before civil sanctions are imposed, and that there should be consistency in making and a clear explanation for sanctioning decisions. This should be factored into the updated Enforcement Policy expected in the coming months.*

## 5 Adapting to the digital age

72. The current regulations governing electoral campaigning can be found in the Political Parties, Elections and Referendums Act 2000. However, since that Act received Royal Assent, digital campaigning has revolutionised the way in which parties and campaigners engage with voters during elections and referendums. This has made it harder to track exactly how much is being spent on what, where, by whom, the source of the information and which groups of voters are being targeted. PPERA was adopted in 2000, when communications with voters were primarily via face-to-face meetings, delivery of printed material and telephone canvassing. Its provisions do not therefore directly address the challenges presented by the growth of social media, targeted advertising using big data, and viral marketing campaigns. The challenge of regulating online campaigning has been raised in a number of written submissions to this inquiry.<sup>122</sup>

73. Various reports have advocated changes in relation to the regulation of online campaigning, including by the following bodies: the Electoral Commission in 2018; the House of Commons Digital, Culture, Media, and Sport Committee in 2019; and the House of Lords Select Committee on Democracy and Digital Technologies in 2020.<sup>123</sup>

### Digital imprints

74. A significant recent development to address these modern challenges is the introduction of mandatory digital imprints through the Elections Act 2022. Under the legislation, both paid-for and certain unpaid digital material produced for specified political purposes will require what is known as an “imprint,”<sup>124</sup> mirroring the requirement relating to printed material. Details of its promoter and publisher will be required on political material all year round, and not just in the run up to an election. The imprint regime also purports to assist the Electoral Commission and the police to enforce spending rules, although this is currently untested, given that the legislation was only recently enacted.

75. Many of the larger political parties we spoke to already use digital imprints and question why the UK Government has been slow to legislate in this space.<sup>125</sup> In Scotland, digital imprints were legally required for the 2014 for the Scottish Independence Referendum on both ‘paid for’ and ‘unpaid for’ material. The Electoral Commission considers the UK regime could be improved if the rules covered material not explicitly procured for campaign purposes and material produced by unregistered campaigners too.<sup>126</sup>

76. The introduction of digital imprints in UK legislation was welcomed by all witnesses to our inquiry, albeit with suggested limitations. For example, Peter Geoghegan, of the international media platform openDemocracy, told us that there was evidence from the 2021 Scottish Parliament election that some third-party campaigners did not comply

122 Unlock Democracy ([TEC0018](#)); The International Institute for Democracy and Electoral Assistance ([TEC0043](#)); The Spotlight on Corruption ([TEC0016](#)); Democracy Club ([TEC0021](#))

123 Electoral Commission, ‘[Digital Campaigning - increasing transparency for voters](#)’ accessed 16 June 2022; House of Commons Digital, Culture, Media and Sport Committee, Eighth Report of Session 2017–2019, [Disinformation and ‘Fake News’: Final Report](#), HC 1791; House of Lords Select Committee on Democracy and Digital Technologies, First Report of the 2019–2021 Session, [Digital Technology and the Resurrection of Trust](#), HL Paper 77

124 Elections Act 2022, [Part 6](#)

125 [Q109](#)

126 Electoral Commission, ‘[Introducing digital imprints](#)’, accessed 8th June 2022



with the legislation without any ramifications, and that this did not transpire until long after the electoral event due to the current reporting structures.<sup>127</sup> Other witnesses noted that imprints in their current form are “non-informative” for voters and do not provide transparency on funding sources for campaigns.<sup>128</sup> Dr Samuel Power, Lecturer in Corruption Analysis at the University of Sussex, supplied written evidence to the Committee suggesting “more granular detail” is needed in spending returns “on the ways in which political campaign spending is conducted online.”<sup>129</sup> The Electoral Commission has called for a distinct category in campaigners’ spending returns for money spent on digital campaigning activity.<sup>130</sup>

77. In our report on the Elections Bill, we recommended that the Government conduct regular reviews on the imprints scheme. The Government response said it would monitor the impact of digital imprints against several objectives, including compliance with the rules; increased transparency for voters; and improved enforcement of spending rules by the authorities.<sup>131</sup>

### Cooperation between regulators

78. The Electoral Commission maintains close working relationships with other regulators that have relevant responsibilities. Since 2016, it has convened a regular senior roundtable to discuss areas of common concern including campaign material and the regulation of digital campaigning. Members include the Advertising Standards Authority, the Committee on Standards in Public Life, the Equality and Human Rights Commission, Ofcom, the Information Commissioner’s Office (ICO), the UK Statistics Authority and the Office for Statistics Regulation.<sup>132</sup> Indeed, the ICO was frequently referenced by witnesses to our inquiry as a regulator the Electoral Commission should work closely with due to the fact that political campaigns use digital technologies to collect and analyse large amounts of personal data to target their messaging. It was suggested that these regulators would benefit from being able to share information more formally, so that there is a consistent and coherent approach to regulating across the digital landscape. As Dr Kate Dommett, Senior Lecturer in the Public Understanding of Politics at the University of Sheffield, explained to the Committee:

it is important to think about the Electoral Commission as one actor among many ... there is a real challenge at the moment about the inability of the Electoral Commission to share information with other regulators. If we had a situation in which almost every single regulator ends up with their own digital team, who are then working with platforms and trying to regulate, we would end up with a very fragmented regulatory system, which you would imagine social media companies would be able to play to their advantage.<sup>133</sup>

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127 [Q167](#)

128 [Q120](#)

129 Dr Samuel Power ([TEC0040](#))

130 Electoral Commission, ‘[Digital Campaigning - increasing transparency for voters](#)’, accessed 16 June 2022

131 Public Administration and Constitutional Affairs Committee, [Fourth Special Report of Session 2021–22, the Elections Bill: Government Response to the Committee’s Fifth Report](#), HC 1133, 10 February 2022

132 Electoral Commission ([TEC0051](#))

133 [Q120](#)

79. The Government has recognised the benefit of regulators cooperating in its draft Strategy and Policy Statement, but has failed to include any detail on how this could be achieved:

Where appropriate, the Electoral Commission should cooperate with other regulators (such as the Information Commissioner and Ofcom) and public bodies and executive agencies (such as Companies House), to deliver its functions and avoid regulatory duplication or confusion.<sup>134</sup>

80. The Online Safety Bill, in its current form after reaching Report Stage in the House of Commons on 12th July 2022, would establish a new regulatory regime to address illegal and harmful content online and give the communications regulator, Ofcom, new duties and powers to act as the independent regulator of online safety. Further demonstrating the interests of multiple regulators in this space, a Government amendment passed at Committee stage would require Ofcom to consult the ICO before publishing guidance on the use of its enforcement powers.<sup>135</sup> Similarly, the House of Lords Democracy and Digital Technologies Committee recommends relevant experts in the Electoral Commission, Ofcom and others should form “a regulatory committee on political advertising” to develop a code of practice on political advertising.<sup>136</sup> The Carnegie Trust, the well-being organisation, similarly calls for an “interlocking regulatory approach” between the online safety regulator and the Electoral Commission.<sup>137</sup> On 20th September 2022, the new Secretary of State for Digital, Culture, Media and Sport, Rt Hon Michelle Donelan MP, who assumed ministerial responsibility for the Bill, indicated the legislation will be subject to “tweaks” in relation to the wording around “legal but harmful” content in the Bill, when it returns to the Commons, however did not provide any further detail.<sup>138</sup>

## Social media

81. Only campaigners that meet a threshold of relevant expenditure beyond a certain limit must register with the Electoral Commission. In his appearance before the Committee, Peter Geoghegan from openDemocracy drew attention to the fact “most of the transparency we can get is from either Facebook or the small amount of registration details that are needed with the Electoral Commission.”<sup>139</sup>

82. Many social media companies have created advert databases known as “ad libraries” or “archives” that contain a searchable collection of political adverts on their platform. These are voluntary moves from the social media companies and there is no standard definition of a political advert. Dr Dommett highlighted to us the difficulties of regulating in this context:

We can see that each social media company has come up with a different definition of what a political advert is. Drawing the boundaries about what should and should not be within those archives is a real technical challenge, but it would certainly help to facilitate greater research and scrutiny.<sup>140</sup>

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134 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#),’ date accessed 20 September 2022.

135 Online Safety Bill, [Clause 130](#)

136 House of Lords Select Committee on Democracy and Digital Technologies, First Report of the 2019–2021 Session, [Digital Technology and the Resurrection of Trust](#), HL Paper 77, para 36

137 Carnegie UK Trust ([TEC0036](#))

138 “[No plans to ‘water down’ online safety reform plans](#)”, The Independent, 20 September 2022

139 [Q167](#)

140 [Q122](#)



83. The Government response to the House of Lords Democracy and Digital Technologies Committee report states clearly that “[the Government does] not support new regulation of the content of political advertising” which “would have a chilling effect on freedom of speech.”<sup>141</sup> However, throughout our inquiry, it has been suggested that social media companies should be mandated to provide a minimum amount of information in their libraries.<sup>142</sup> Part of Ofcom’s new role as the proposed online safety regulator would involve issuing codes of practice recommending measures that internet service providers could take to comply with their legal duties to address illegal and harmful content online. The House of Lords Democracy and Digital Technologies Committee suggests that these codes of practice should include standards for real-time and publicly accessible advert databases.<sup>143</sup> The Electoral Commission also suggests that Ofcom could have responsibility for setting common standards and obligations for what the social media companies publish, providing the definition of a political advert, and the information required about how adverts are targeted.<sup>144</sup>

**84. Digital technology is allowing more parties, campaigners, and voters than ever to participate in political debate. While we view this as a positive step for democracy, we must recognise that it has created a more complex regulatory environment for the Electoral Commission. The framework for regulating political campaign spending during elections and referendums has not kept pace with the challenges presented by the growth of social media, targeted advertising using big data, and viral online marketing campaigns. We are concerned by the fact a significant amount of transparency for digital campaigning comes from voluntary initiatives by social media platforms to create “advert libraries” and that there is no standard definition of a political advert.**

*85. The responsibilities of multiple regulators in the digital space interlock with the Electoral Commission’s role to regulate money spent on political campaigning. The Government’s draft Strategy and Policy Statement for the Electoral Commission encourages cooperation between regulators to avoid duplication but does not provide any detail on how this can be achieved. We recommend the Government puts forward proposals and if necessary legislates through the Online Safety Bill to enable digital regulators, such as the Information Commissioner’s Office, Ofcom, the Electoral Commission and Advertising Standards Authority, to formally share appropriate levels of information to support their regulatory duties and create a coherent regulatory system. We recommend that Ofcom, as the prospective online safety regulator, should be given a power to set minimum standards for advert libraries and advert labelling to provide maximum transparency and consistency across these databases.*

**86. The introduction of digital imprints on paid-for and certain unpaid digital material is welcome, but, in their current form, the requirements have notable limitations. This includes a potentially wide scope of activity that will not require an imprint, as well as challenges envisaged by our witnesses in enforcing the regime and providing sufficient transparency on the funding of online campaigns.**

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141 UK Government, Response to the First Report of the House of Lords Democracy and Digital Technologies Committee, 2019–2021 Session, [Digital Technology and the Resurrection of Trust](#), CP 285, September 2020

142 [Q111](#), [Q173](#)

143 House of Lords Select Committee on Democracy and Digital Technologies, First Report of the 2019–2021 Session, [Digital Technology and the Resurrection of Trust](#), HL Paper 77, para 337.

144 Electoral Commission to the Democracy and Digital Technologies Committee ([DAD0058](#))

87. *As recommended in our Fifth Report of Session 2021–22 on the Elections Bill, acknowledging the need for legislation to keep pace with rapid technological changes, the Government should commit to monitoring and conducting regular reviews of the digital imprints scheme, to ensure effectiveness in the monitoring and enforcement of the legislation and to prevent any unintended consequences or loopholes arising or emerging. We suggest particular consideration is given to whether the scope of material that requires an imprint should be widened and whether the rules are being effectively enforced.*

88. *We agree with the Electoral Commission that each of the four governments of the UK should amend the rules for reporting spending to provide greater transparency on the money being spent on digital campaigns in their jurisdictions. There should be a separate category for digital campaigning to be included in spending returns. We recommend that this is implemented before the next General Election.*

## 6 Governance and accountability

89. The National Audit Office (NAO) produced ‘A Short Guide to the Electoral Commission’ in March 2020. The summary section on governance states:

The Commission has a mature and well-established governance structure and its accountability framework meets the NAO’s four essentials of accountability. It has a mature approach to risk management, and it has not disclosed any significant control or other governance weaknesses over the past five years.<sup>145</sup>

90. This chapter considers some key aspects of the Electoral Commission’s governance and accountability.

### Parliamentary accountability

91. Under the Political Parties, Elections Referendums Act 2000 (PPERA), the Electoral Commission is accountable to the House of Commons Speaker’s Committee on the Electoral Commission,<sup>146</sup> to which it submits its five-year plans, annual plans, and estimated requirements for resources. Since 2021, the Electoral Commission is also directly accountable to the Senedd Cymru (Welsh Parliament) and Scottish Parliament for local and devolved parliamentary elections.<sup>147</sup> The Speaker’s Committee oversees the recruitment of the Board of Electoral Commissioners, including the Chair. For a brief period following the 2019 General Election, the Speaker’s Committee had a majority of MPs from the governing party, which witnesses to our inquiry suggested should be avoided to ensure a balance of views across the political spectrum is maintained.<sup>148</sup>

92. In its report of 2007 reviewing the Electoral Commission, the Committee on Standards in Public Life (CSPL) recommended that, in addition to its accountability to the Speaker’s Committee, “more formal arrangements should be put in place for the Electoral Commission to give a wider account of its activities to Parliament.” As well as regular debates on the work of the Commission, the CSPL recommended that the then Constitutional Affairs Select Committee “become the main mechanism through which the Commission can account for its performance to Parliament.”<sup>149</sup>

93. The Elections Act 2022 contains measures intended to improve the Electoral Commission’s accountability arrangements through the introduction of a Government-issued Strategy and Policy Statement (‘the Statement’) that sets out guidance and principles to which the Electoral Commission must give regard in exercising its functions. The

145 National Audit Office, [A Short Guide to the Electoral Commission](#) (March 2020), p.5.

146 The Speaker’s Committee on the Electoral Commission is a statutory body established under [Section 2](#) of PERA. It is chaired by the Speaker of the House of Commons and its membership includes the Secretary of State for Levelling Up, Housing, and Communities, the Minister for Local Government, Faith and Communities, the Chair of the House of Commons Select Committee for Levelling Up, Housing and Communities and five other Members of Parliament appointed by the Speaker.

147 The Scottish Parliament and Senedd Cymru have responsibility for local and devolved parliamentary elections. In these areas the Electoral Commission reports to the respective legislature. This is the case following the passage of the [Senedd and Elections \(Wales\) Act 2020](#) and the [Scottish Elections \(Reform\) Act 2020](#)

148 Electoral Reform Society ([TEC0015](#)), Dr Alan Renwick ([TEC0037](#))

149 Eleventh Report of the Committee on Standards in Public Life, *Review of the Electoral Commission*, January 2007, [Cm 7006](#), para 4.47

Elections Act 2022 also enhances the functions and powers of the Speaker's Committee to include assessing the Electoral Commission's performance against objectives set in the Strategy and Policy Statement.

94. In advance of publishing the Elections Bill, the former responsible Minister, Chloe Smith MP, made the following Written Ministerial Statement in respect of changes impacting the Electoral Commission:

The Electoral Commission has a vital role to play in upholding the integrity of free and fair elections and public confidence in that integrity. As the independent regulatory body charged with such pivotal responsibilities, the Commission should be fully accountable to Parliament for the way it discharges its functions.

In recent years, some across the House have lost confidence in the work of the Commission and have questioned the adequacy of the existing accountability structures. We must reflect on the current structures charged with this important responsibility, enhance good practice and, where there is a need for change, be prepared to make it.

The Government is therefore announcing today that we will bring forward measures in the forthcoming Elections Bill to improve the Electoral Commission's accountability arrangements through the introduction of a Strategy and Policy Statement that sets out guidance and principles to which the Commission must give regard in exercising its functions.<sup>150</sup>

95. The draft Strategy and Policy Statement was published on 22nd August 2022. The Government maintains that “[t]his Statement does not seek to interfere with the governance of the Commission and the Commission remains operationally independent.”<sup>151</sup> The importance of an independent Electoral Commission was supported by many witnesses to our inquiry, for example, Professor Toby James, Professor of Politics and Public Policy at the University of East Anglia, who explained that actual and perceived independence was necessary for several reasons, including:

- i) ... Research shows that when all factors are considered the quality of elections improves when authorities are independent.
- ii) The principal of the separation of powers means that independent electoral management bodies provide a check and balance within the system [sic].<sup>152</sup>

96. In 2006, the European Commission for Democracy through Law (Venice Commission) undertook a Europe-wide study of electoral administration and legislation, finding “autonomous electoral commissions which are independent from other government institutions are increasingly viewed as the basis of impartial electoral management in developing or new democracies throughout the world.”<sup>153</sup>

150 Increasing Parliamentary Accountability in Electoral Policy, 17 June 2021, [HCWS100](#)

151 Department for Levelling Up, Housing, and Communities, ‘[Draft Electoral Commission Strategy and Policy Statement](#),’ date accessed 20 September 2022.

152 Professor Toby James (Professor of Politics and Public Policy and Deputy Director of the Electoral Integrity Project at University of East Anglia) ([TEC0041](#))

153 European Commission for Democracy through Law (Venice Commission), [Report on Electoral Law and Electoral Administration in Europe: Synthesis Study on Recurrent Challenges and Problematic Issues](#) (June, 2006), para 21.

97. In February 2022, the Electoral Commission’s Board of Commissioners sent an open letter to the Government which set out their view that the measures contained in the then Elections Bill were “inconsistent with the role that an independent Electoral Commission plays in a healthy democracy.” Particular concern was raised with “enabling [a governing] party’s ministers to shape how electoral law is applied to them and their political competitors.”<sup>154</sup> Many witnesses to our inquiry into the Elections Bill felt strongly that this level of direction-setting from the executive through the proposed Strategy and Policy Statement was a direct challenge to the Electoral Commission’s actual or perceived independence from Government.<sup>155</sup> The Rt Hon Sir John Major KG CH, Prime Minister of the United Kingdom of Great Britain and Northern Ireland from 1990 to 1997, expressed similar concerns when he appeared before the Committee on 12th July 2022 in the context of one of the Committee’s other inquiries:

The Electoral Commission is meant to be an independent body. In that [Act] the Government [is] tak[ing] the power to control policy and strategy, so immediately it is no longer independent.<sup>156</sup>

98. A statutory consultation to consider the views of the Electoral Commission, the Speaker’s Committee on the Electoral Commission and the Levelling Up, Housing and Communities Committee on the draft Strategy and Policy Statement will run until 5 December 2022, after which point the final draft will be submitted to the UK Parliament for approval.<sup>157</sup> Although this Committee is not being formally consulted, we will continue to work with the statutory consultees to input our expertise in this area of constitutional significance. In our report on the Elections Bill, we noted widespread concern relating to the clauses of the Bill (now Act) detailing the parliamentary scrutiny processes that will take place after the statutory consultation and urged the Government to apply the “super-affirmative” procedure for its approval. The Committee is pleased that following further correspondence, the Government tabled amendments in the final stages of the Bill’s passage to apply the super-affirmative procedure to the Statement. This means after the statutory consultation period, both Houses of Parliament will have the opportunity to make recommendations on the draft Statement before orders for affirmative approval are brought forward in their final form.<sup>158</sup>

## The role of the Board

99. The Board of the Electoral Commission sets the strategic direction of the organisation, monitors its performance, and is responsible for ensuring that it acts within its statutory remit. Commissioners (Board members) are appointed by HM The King, on the recommendation of the House, for up to ten years, with the possibility of re-appointment. Four of the Commissioners are put forward by political parties, including a Commissioner for smaller parties. Three Commissioners represent Scotland, Wales and Northern Ireland. The Chair is one of the Commissioners but cannot be a party-political nomination.

154 Letter from Electoral Commissioners to the Rt Hon Michael Gove MP, the Rt. Hon Kemi Badenoch MP and the Rt Hon Lord True CBE, [Strategy and Policy Statement measures in the Elections Bill](#), 21 February 2022

155 Public Administration and Constitutional Affairs Committee, Fifth Report of Session 2021–22, [The Elections Bill](#), HC 597, para 139–149

156 [Q626](#)

157 Department for Levelling UP, Housing, and Communities, [‘Draft Electoral Commission Strategy and Policy Statement,’](#) date accessed 20 September 2022.

158 UK Parliament, [‘The super-affirmative procedure’](#), accessed 15th June 2022.

100. The Code of Conduct for the Board of Commissioners requires impartiality and fairness.<sup>159</sup> However, as the Electoral Commission’s evidence to our inquiry admitted, in 2018 allegations were made about Commissioner-bias due to public comments made by four Commissioners about the European Union (EU) referendum.<sup>160</sup> This included a comment by the former Chair that he regretted the EU referendum result.<sup>161</sup> The Electoral Commission initiated an independent review into the matter, which found no evidence of wrongdoing but recommended that “Commissioners should take care when speaking, writing, or tweeting to expressly comment that are sharing their own personal opinions.” It also suggested that for a future referendum, it should be clearly defined what is constituted as campaigning before and after the poll and that the Electoral Commission should publish a statement of how bias or perceptions of bias will be mitigated.<sup>162</sup>

101. When questioned about this incident, Bob Posner, former Electoral Commission Chief Executive, told us in 2020:

What is important is that, in their work as commissioners, they act and talk at all times impartially and properly, and they do not get involved in any matters or any decisions in which it could be said they should not have done.<sup>163</sup>

102. The Electoral Commission’s own research, referenced by the Electoral Reform Society in its written evidence to the Committee, noted that only 6% of respondents to their Winter Tracker survey perceived the Electoral Commission to be biased.<sup>164</sup> Nonetheless, several years on from the EU referendum, perceived institutional bias has continued to be raised. For example, as recently as 27th April 2022, the issue resurfaced during a debate in the House of Commons on the Elections Bill, in addition to in oral evidence to our Committee.<sup>165</sup> This shows the lasting damage that perceptions of bias can have in relation to an organisation which must be viewed as impartial at all times. As Professor Pippa Norris, Comparative Political Scientist at Harvard University, highlighted to us, “the problem is, as we can see, that in many countries a small incident or a fundamental issue that arises can lose public trust.”<sup>166</sup>

103. We heard different views on the desirability of non-partisan selection of Commissioners<sup>167</sup> and, on the other hand, whether party-nominated Commissioners provide a balance between political views<sup>168</sup> and enhance the Electoral Commission’s “authority and expertise as a regulator.”<sup>169</sup> We heard suggestions that the political Commissioners could work more effectively with the four party panels to benefit from their expertise in current party management.<sup>170</sup> The Government’s draft Strategy and Policy Statement for the Electoral Commission reinforces the notion that the Commission

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159 Electoral Commission, ‘[Code of Conduct for the Board of Commissioners](#)’, accessed 29th June 2022

160 Electoral Commission ([TEC0008](#))

161 ‘[Revealed: Election watchdogs face calls to resign over Brexit ‘bias,’](#) Sunday Telegraph (London), 1 April 2018

162 Elizabeth Butler FCA, [Report in response to complaints concerning four Electoral Commissioners](#) (June, 2018) paras 8.1–8.4

163 [Q50](#)

164 Electoral Reform Society ([TEC0015](#))

165 HC Deb, 27 April 2022, [col 813](#); [Q140](#)

166 [Q161](#)

167 Dr Jacob Eisler ([TEC0014](#))

168 [Q129](#)

169 Transparency International UK ([TEC0023](#))

170 [Q112](#)



and its staff should continue to uphold their political impartiality.<sup>171</sup>

104. The Electoral Commission has an effective governance structure. Commissioners, including those who are nominated by political parties, play a useful role in the governance of the organisation. However, this system only works if Commissioners abide by the clear standards of behaviour set out in the Board Code of Conduct and refrain from public activity that may damage their perceived impartiality, particularly in and around electoral events. The Electoral Commission should be mindful of the fact that any detriment to public trust in its independence and impartiality could diminish the perceived legitimacy of elections and the democratic process as a whole.

105. *It is vital that the impartiality and independence of the Electoral Commission is maintained at all times. Commissioners must act in accordance with the Board Code of Conduct and refrain from expressing any personal opinions that may suggest political bias. In the event of a future referendum, the Electoral Commission should produce specific guidance for Commissioners on how biases can and will be managed, and impartiality maintained.*

106. The Committee believes that periodic parliamentary scrutiny of the work of the Electoral Commission, in the form of inquiries such as this, dovetails effectively with the ongoing oversight by the Speaker's Committee on the Electoral Commission.

107. Operational independence is a fundamental aspect of the Electoral Commission. The Government's ability to set the strategic direction of the Electoral Commission through the issuance of a Strategy and Policy Statement, as set out in the Elections Act 2022, significantly alters the Electoral Commission's relationship to Government as an independent body. We welcome the three month statutory consultation period for the draft Strategy and Policy Statement and will continue to take an active interest in this area of constitutional significance, supporting the statutory consultees where appropriate. Following the consultation, it is vital that the Statement is afforded appropriate scrutiny through super-affirmative parliamentary scrutiny. As highlighted in our Fifth Report of Session 2021–22 on the Elections Bill, the Speaker's Committee on the Electoral Commission, as the body that will scrutinise the Electoral Commission's compliance with the Statement going forward, must be seen to exercise its powers impartially, with cross-party support. We note the support from witnesses to our inquiry that no single party should exercise a majority on the Speaker's Committee.

108. *We welcome the timetable provided by the Government to scrutinise the draft Strategy and Policy Statement and recommend a commitment is made that the same timeframe should apply to future Strategy and Policy Statements.*

109. *The Committee welcomes that the Strategy and Policy Statement for the Electoral Commission will be subject to super-affirmative parliamentary procedure, in line with our previous recommendation. The Government must now ensure a motion is tabled for the draft Statement to be debated on the floor of both Houses, before it is brought forward for final approval.*

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171 Department for Levelling Up, Housing, and Communities, '[Draft Electoral Commission Strategy and Policy Statement](#),' date accessed 20 September 2022.

# Conclusions and recommendations

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## Oversight of elections and delivery of referendums

1. It has been twenty years since the Electoral Commission was established and we believe it still plays a fundamental role in overseeing free and fair elections and referendums and regulating political finance, and should continue to do so. However, its ability to effectively fulfil its statutory functions is directly impacted by the unnecessary complexity of the law governing this area. There is a consensus that the law is in urgent need of rationalisation and simplification, and the Government missed an opportunity with the Elections Act 2022 to build an elections framework fit for the modern day. We are concerned by the reluctance from the Government to prioritise the necessary reform of electoral law. Changes to the way the Electoral Commission works will only go so far without a consolidated legal framework for elections and referendums for it to operate within. (Paragraph 13)
2. *The Government should prioritise implementing the Law Commission's recommendations to rationalise electoral law and immediately start work towards setting out a long-term strategy, with cross-party support, ahead of the next General Election.* (Paragraph 14)
3. The Committee notes the high levels of satisfaction in the Electoral Commission's role in guiding the practical administration of elections and delivering referendums. Nevertheless, we remain concerned by the challenges that lie ahead for the Electoral Commission in supporting electoral administrators, political parties, campaigners, and voters to understand and navigate the increasing complexity of electoral law and levels of divergence across the UK. (Paragraph 15)
4. *We welcome the Government's recent update that it is taking a staged approach to implementing the Elections Act 2022, which will support the electoral community in preparing to implement the necessary changes. While there is now limited time for the statutory instruments for voter ID to come into force and for the Electoral Commission to finalise its guidance ahead of elections in May 2023, the Committee is somewhat reassured by the Government's assertion that it has shared draft legislation with the Electoral Commission to support them in drafting the relevant guidance and that it expects the statutory instruments to come into force by mid-January 2023. Ahead of this date, the Committee expects to see the draft statutory instrument in order for our comments to be taken into consideration alongside other scrutiny committees. The Committee also recognises that the decision to prioritise voter ID implementation inevitably means that the timetable for implementing other measures under the 2022 Act will be compressed throughout 2023–24. Accordingly, the Government must, as a matter of priority, provide clarity on its timetable for the implementation of the remainder of the secondary legislation envisaged under the Act, so that the Electoral Commission can provide the necessary support and guidance to the electoral community and voters in advance of upcoming elections. Furthermore, in the interests of supporting the Electoral Commission's UK-wide role, we reiterate our call, set out in our Fifth Report of Session 2021–22 on the Elections Bill, for the four governments*



*of the United Kingdom to develop a more coordinated approach to electoral policy and law, which will, in turn, further reduce the complexity of the system. The UK Government should lead this work. (Paragraph 16)*

5. The Electoral Commission should demonstrate greater awareness of the specific nature of referendums, particularly the short-lived existence of many campaign groups and be sensitive to the stressful nature of the duties required to be fulfilled by Responsible Persons or other nominated individuals after such groups have been wound up. (Paragraph 17)
6. *The Electoral Commission must ensure it has the institutional knowledge and capacity to support those it regulates equally in both election and referendum contexts, noting their distinct and unique characteristics. There should be comprehensive training for Electoral Commission staff to ensure its guidance and regulatory approach is tailored to each specific poll. We expect the Electoral Commission to report back to the Committee on its implementation of an improved training programme. (Paragraph 18)*

### Provision of guidance

7. The Electoral Commission invests significant resources into providing guidance to candidates, parties, and non-party campaigners to support their understanding of complex legislation, and this is largely welcomed by those it regulates. However, as a matter of priority, further action is required to address issues such as ambiguous advice, slow responses to requests for information during elections and referendum campaigns, and a gap in support for smaller and newer parties and campaigners. (Paragraph 31)
8. *The Committee welcomes the proposed steps from the Electoral Commission to improve guidance provision, including a strategy to support smaller parties, reviewing response times, exploring the viability of ‘account managers’, increasing consultation with parties and campaigners on draft guidance, and delivering more training. As part of the training offer, we recommend interactive modules on the relevant legislation and including case studies in the guidance for both parties and non-party campaigners to support volunteers. We recommend the inclusion of the Government’s view in the draft Strategy and Policy Statement that the Electoral Commission should be seeking regular feedback from stakeholders when preparing guidance should be maintained in the final iteration of the Statement. Furthermore, stakeholder engagement should extend to parties and campaigners of all sizes, in addition to larger parties through the four party panels, to ensure the training and guidance meets the needs of its users. (Paragraph 32)*
9. *The Committee believes, regardless of the complexity of the legislation, it is vital that the Electoral Commission has sufficient internal expertise to clarify ambiguities in the law or guidance in a timely manner, particularly during regulated periods. The Electoral Commission should report back to the Committee on the viability of shortening its response time to within 48 hours in the two months prior to and after an election or referendum, and increasing its response rate outside those periods to 100% within five working days. These improvements should be in place before the next General Election. We would welcome an update on their implementation in April 2023. (Paragraph 33)*

## Regulating Political Finance

10. The Committee recognises the complexity of the dual regimes for candidates under the Representation of the People Act 1983 and parties and campaigners under the Political Parties, Elections, and Referendums Act 2000. Consolidating the law into one regulatory framework should be within the scope of the Government's work on the long-term strategy to rationalise electoral law recommended by this Committee. (Paragraph 61)
11. The Committee recognises the rationale behind advocating an expansion of the Electoral Commission's investigatory and enforcement powers to provide maximum transparency to voters, incentivise regulatory compliance, and increase the pace of investigations and enforcement action. However, we believe more evidence is needed to ensure that any expanded powers for the Electoral Commission, such as powers to monitor and investigate in real-time and impose civil sanctions for breaches of candidate finance law, would not place disproportionate burdens on the largely voluntary workforce that support political campaigns. (Paragraph 62)
12. *We welcome the Government's view in the draft Strategy and Policy Statement for the Electoral Commission that the Commission's enforcement of political finance rules should be proportionate to the voluntary nature of political parties' infrastructure. We recommend this is maintained in the final iteration.* (Paragraph 63)
13. The Committee notes the concerns from non-party campaigners that the lower tier of registration with the Electoral Commission, introduced under the Elections Act 2022, may have the unintended consequence of deterring political campaigning by small groups that lack the resources to comply with the transparency requirements. If this is the case, it will be important not to exacerbate the issue further. (Paragraph 64)
14. *The Government should commit to reviewing the impact of the lower tier of registration for third party campaigners as part of its statutory review of the Elections Act 2022, due in four to five years' time, to be published and laid before Parliament. Any future reform to the regulatory powers of the Electoral Commission by the Government should consider the potential impact of deterring political engagement. We agree with the recommendations from the Committee on Standards in Public Life that the reporting timelines for parties and campaigners spending over £250,000 should be reduced from six to four months and that the Electoral Commission should publish returns within two months of receipt. However, these timeframes should be kept under review with regular feedback from parties and campaigners. Additionally, it is important that transparency goes both ways and, therefore, the Electoral Commission should ensure it communicates on its website any expected delays in this timeline.* (Paragraph 65)
15. The Committee recognises the potential gaps in transparency and weaknesses in the permissibility checks on donations to prevent foreign influence in UK politics, particularly through unincorporated associations (UAs). However, we also note the important role that UAs play in supporting democracy through fundraising. It is vital that any further reporting requirements or mandatory checks on donations that may result from the Government's forthcoming guidance on donations referenced in its response to the Committee on Standards in Public Life's report on Regulating Election Finance are proportionate, and do not adversely affect the organisations subject to them. (Paragraph 66)

16. *The Government should provide an update in its response to this report on the guidance it said it was considering in its response to the Committee on Standards in Public Life's Regulating Election Finance Report, that would support campaigners to take a "risk-based" approach to donations, similar to the "know your customer" requirements in financial services. (Paragraph 67)*
17. Although the Electoral Commission has an overall strong record in relation to monitoring, investigations and enforcement, we were concerned by the individual cases of extremely lengthy investigations and poor communication raised throughout this inquiry. The Electoral Commission has said it will factor in the conclusions from this inquiry into its updated Enforcement Policy, due for consultation in the coming months, and we expect the issues raised by these individuals to be considered. We welcome the reforms the Electoral Commission has set out to its regulatory approach to date, including mandatory case reviews if a case approaches six months in duration; new evidence trackers to aid disclosure of used evidence when proposing sanctions; accelerating the process of identifying and citing relevant evidence; and moving away from the practice of expanding existing cases when new potential offences arise. However, it is disappointing that the Electoral Commission has resisted calls to impose fixed time limits on investigations. (Paragraph 68)
18. *We agree with the Committee on Standards in Public Life that investigations under the Political Parties, Elections and Referendums Act 2000 should be opened within 12 months of the date of the potential offence being committed or, from the date the Electoral Commission was aware of the potential offence, with ability to be extended by application to a court. There should also be a 12-month limit on the duration of investigations, with the possibility of a court extension where appropriate. Throughout investigations, the Electoral Commission should improve its communication and explain clearly to those being investigated all actions and decisions. The Electoral Commission should report back to this Committee within a year setting out its progress in implementing its proposed changes to its regulatory approach. (Paragraph 69)*
19. We believe the Electoral Commission should be sensitive to the role of volunteers in campaigns and the potential for inadvertent reporting errors to occur. We welcome the Electoral Commission's proposed changes to the Political Finance Online platform to support individuals to input their financial returns accurately. We agree with witnesses to our inquiry that the current maximum sanction of £20,000 for breaches of the Political Parties, Elections and Referendums Act 2000 may not act as an effective deterrent for well resourced political parties and non-party campaigners. However, we also believe a larger fine would need to be carefully enforced to ensure it does not disproportionately impact smaller groups. (Paragraph 70)
20. *We agree with the House of Lords Democracy and Digital Technologies Committee, and the Committee on Standards in Public Life, that the maximum fine the Electoral Commission can impose for breaches of Political Parties, Elections and Referendums Act 2000 should be increased to £500,000 or 4% of total campaign spend, whichever is higher. Equally, we believe that regulated individuals, parties, and campaigners should have the opportunity to amend minor, administrative reporting errors before civil sanctions are imposed, and that there should be consistency in making and a clear explanation for sanctioning decisions. This should be factored into the updated Enforcement Policy expected in the coming months. (Paragraph 71)*

## Adapting to the digital age

21. Digital technology is allowing more parties, campaigners, and voters than ever to participate in political debate. While we view this as a positive step for democracy, we must recognise that it has created a more complex regulatory environment for the Electoral Commission. The framework for regulating political campaign spending during elections and referendums has not kept pace with the challenges presented by the growth of social media, targeted advertising using big data, and viral online marketing campaigns. We are concerned by the fact a significant amount of transparency for digital campaigning comes from voluntary initiatives by social media platforms to create “advert libraries” and that there is no standard definition of a political advert. (Paragraph 84)
22. *The responsibilities of multiple regulators in the digital space interlock with the Electoral Commission’s role to regulate money spent on political campaigning. The Government’s draft Strategy and Policy Statement for the Electoral Commission encourages cooperation between regulators to avoid duplication but does not provide any detail on how this can be achieved. We recommend the Government puts forward proposals and if necessary legislates through the Online Safety Bill to enable digital regulators, such as the Information Commissioner’s Office, Ofcom, the Electoral Commission and Advertising Standards Authority, to formally share appropriate levels of information to support their regulatory duties and create a coherent regulatory system. We recommend that Ofcom, as the prospective online safety regulator, should be given a power to set minimum standards for advert libraries and advert labelling to provide maximum transparency and consistency across these databases.* (Paragraph 85)
23. The introduction of digital imprints on paid-for and certain unpaid digital material is welcome, but, in their current form, the requirements have notable limitations. This includes a potentially wide scope of activity that will not require an imprint, as well as challenges envisaged by our witnesses in enforcing the regime and providing sufficient transparency on the funding of online campaigns. (Paragraph 86)
24. *As recommended in our Fifth Report of Session 2021–22 on the Elections Bill, acknowledging the need for legislation to keep pace with rapid technological changes, the Government should commit to monitoring and conducting regular reviews of the digital imprints scheme, to ensure effectiveness in the monitoring and enforcement of the legislation and to prevent any unintended consequences or loopholes arising or emerging. We suggest particular consideration is given to whether the scope of material that requires an imprint should be widened and whether the rules are being effectively enforced.* (Paragraph 87)
25. *We agree with the Electoral Commission that each of the four governments of the UK should amend the rules for reporting spending to provide greater transparency on the money being spent on digital campaigns in their jurisdictions. There should be a separate category for digital campaigning to be included in spending returns. We recommend that this is implemented before the next General Election.* (Paragraph 88)

## Governance and accountability

26. The Electoral Commission has an effective governance structure. Commissioners, including those who are nominated by political parties, play a useful role in the governance of the organisation. However, this system only works if Commissioners abide by the clear standards of behaviour set out in the Board Code of Conduct and refrain from public activity that may damage their perceived impartiality, particularly in and around electoral events. The Electoral Commission should be mindful of the fact that any detriment to public trust in its independence and impartiality could diminish the perceived legitimacy of elections and the democratic process as a whole. (Paragraph 104)
27. *It is vital that the impartiality and independence of the Electoral Commission is maintained at all times. Commissioners must act in accordance with the Board Code of Conduct and refrain from expressing any personal opinions that may suggest political bias. In the event of a future referendum, the Electoral Commission should produce specific guidance for Commissioners on how biases can and will be managed, and impartiality maintained.* (Paragraph 105)
28. The Committee believes that periodic parliamentary scrutiny of the work of the Electoral Commission, in the form of inquiries such as this, dovetails effectively with the ongoing oversight by the Speaker's Committee on the Electoral Commission. (Paragraph 106)
29. Operational independence is a fundamental aspect of the Electoral Commission. The Government's ability to set the strategic direction of the Electoral Commission through the issuance of a Strategy and Policy Statement, as set out in the Elections Act 2022, significantly alters the Electoral Commission's relationship to Government as an independent body. We welcome the three month statutory consultation period for the draft Strategy and Policy Statement and will continue to take an active interest in this area of constitutional significance, supporting the statutory consultees where appropriate. Following the consultation, it is vital that the Statement is afforded appropriate scrutiny through super-affirmative parliamentary scrutiny. As highlighted in our Fifth Report of Session 2021–22 on the Elections Bill, the Speaker's Committee on the Electoral Commission, as the body that will scrutinise the Electoral Commission's compliance with the Statement going forward, must be seen to exercise its powers impartially, with cross-party support. We note the support from witnesses to our inquiry that no single party should exercise a majority on the Speaker's Committee. (Paragraph 107)
30. *We welcome the timetable provided by the Government to scrutinise the draft Strategy and Policy Statement and recommend a commitment is made that the same timeframe should apply to future Strategy and Policy Statements.* (Paragraph 108)
31. *The Committee welcomes that the Strategy and Policy Statement for the Electoral Commission will be subject to super-affirmative parliamentary procedure, in line with our previous recommendation. The Government must now ensure a motion is tabled for the draft Statement to be debated on the floor of both Houses, before it is brought forward for final approval.* (Paragraph 109)



## Annex A: The regulatory framework

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1) This section provides a brief overview of the framework for regulating political finance in the UK. It is not intended as a comprehensive account of all political finance rules.

2) There are a few separate pieces of primary legislation underpinning the Electoral Commission's regulatory work, including the Representation of the People Act 1983 (RPA), the Political Parties, Elections and Referendums Act 2000 (PPERA) and the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ('the Lobbying Act'). Candidate spending is controlled under the RPA and party expenditure and non-party campaigning are set out under PERA. The Lobbying Act amended existing PERA provisions regulating non-party expenditure during elections.

3) The Electoral Commission monitors and/or regulates the campaign spending of and donations and loans relating to:

- Political parties;
- Non-party campaigners;
- Candidates standing for election;
- Referendum campaigners; and
- Members' associations.

4) These bodies—apart from candidates—must submit specified financial information to the Electoral Commission, which publishes those details on its website.

5) In addition, the Commission regulates donations and loans to party members, members' associations, and elected office-holders; and regulates gifts to unincorporated associations that make political donations.

6) The Commission has a duty to:

- maintain registers of political parties and campaigners;
- make publicly available financial returns from political parties and campaigners, which, depending on the body concerned, may cover campaign spending, statements of accounts, and reports of donations and loans; and
- monitor and take all reasonable steps to secure compliance with the campaign finance laws by political parties, campaigners, and candidates. 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 and takes enforcement action if necessary in relation to breaches of PERA.

7) While the Commission has power to regulate parties and national campaign spending under PERA, it has no powers to investigate or sanction candidate spending offences, which are regulated by the police and Crown Prosecution Service.

- 8) The Commission can administer civil sanctions for breaches of PPERA. This include fines ranging from £200 to £20,000, issuing ‘compliance and restoration notices’ and ‘stop notices.’
- 9) The Elections Act 2022 provided that the Electoral Commission cannot initiate prosecutions under either PPERA or the RPA.
- 10) The Elections Act 2022 makes several further changes relevant to financial reporting by:
- Making clear in law that campaigning at UK elections is restricted to UK-based campaigners (but including overseas UK voters). Foreign entities will not be able to register as campaigners and spending money to campaign from overseas is illegal.
  - Requiring any non-party campaigner spending more than £10,000 across the constituent parts of the UK in the regulated period before a UK general election to register with the Electoral Commission (thereby introducing a new ‘lower’ tier of registration). Groups in this ‘lower tier’ will be subject to basic transparency requirements and need to be UK-based or otherwise eligible to register (e.g. a registered overseas elector). Formerly, non-party campaigners had to register with the Electoral Commission if they planned to spend over £20,000 in England, or £10,000 in Scotland, Wales or Northern Ireland at a general election.
  - Banning non-party campaigners from also registering as a political party. Formerly, a group could be registered as both a non-party campaigner and as a political party.
  - Requiring new political parties who register with the Electoral Commission to tell it if they have more than £500 in donations, income, loans or debts. Previously, parties were not required to declare anything regarding their financial position until after they were registered.

## Referendums

- 11) Part 7 of the PPERA 2000 Act provides a framework that regulates specified referendums. However, in a particular referendum, specific legislation is needed to set the date, the question, entitlement to vote, and to define the period in which parties and campaigners are subject to spending regulations by the Electoral Commission.
- 12) Groups (including political parties, campaign groups and other bodies) must register with the Electoral Commission if they plan to spend more than £10,000 during the referendum period.
- 13) PPERA limits the amount that all referendum campaigners can spend. Certain campaigners can be designated as ‘lead campaigners’ for each referendum outcome, and their spending limits are higher than for other permitted participants. These limits can be amended by the legislation for particular referendums. Similar controls on donations and reporting provisions apply as for elections.



## Candidates

14) There is a regulated period prior to each election campaign. The length of the regulated period depends on the election, but it covers the period that someone is formally a candidate. During the regulated period, candidates can only spend a limited amount of money on campaigning, and only on certain activities. Any money spent on activities such as advertising, leaflets, public meetings, and administrative costs, has to be declared to the relevant returning officer. After the election, candidates and their agents have to sign a declaration that the return is complete and correct to the best of their knowledge and belief. Returning officers send copies of the candidate spending returns to the Electoral Commission. The Commission publishes them for the public but if it finds inaccuracies in the returns it cannot take action or sanction.

## Parties

15) Political parties have separate rules for campaign spending. Items of spending that support the candidate are likely to count as candidate spending. Spending that supports the party is likely to count as party spending.

16) The regulated period for party spending is longer. UK general elections usually have a regulated period beginning 365 days prior to the election.

17) The list of what counts as party election spending is similar to the list for candidate election spending. But additionally, it includes market research, manifestos and rallies. It does not include party staff costs.

18) All regulated spending must be reported to the Electoral Commission after the election. If the party spent £250,000 or less, then it must be reported within three months. If a party spent above this, then it must be reported within six months. Parties will have registered officers responsible for compliance.

19) Larger parties may be divided into 'accounting units' for the purpose of compliance. Each accounting unit has its own officer responsible for submitting statements of accounts and donation and loan reports, though the treasurer of the party as a whole is responsible for delivering expenditure returns for the whole party.

## Campaigners

20) Campaigners that spend over a certain threshold (the Elections Act 2022 lowered this to £10,000 across the UK), where such expenditure can reasonably be regarded as intended to promote or procure electoral success, must comply with rules on spending, donations, and reporting and register with the Electoral Commission. The rules only apply in the regulated period before an election. Similar provisions apply for referendum campaigners, in respect of expenditure in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to any question asked in the referendum. Anyone spending more than £10,000 on referendum expenses must register as a 'permitted participant.'

21) If campaigners work together on a campaign, broadly speaking, the regulated spend is counted for both campaigners.

22) All registered campaigners at elections and permitted participants at referendums must have a 'responsible person'. This person is responsible for making sure that the campaigner's finances comply with the rules on spending, donations and loans under the relevant legislation.

## Donations

23) Donations and loans to registered political parties are regulated in a similar way by the Electoral Commission, and reported donations and loans are published quarterly, and at weekly intervals in the regulated period before general elections. Third party campaigners, referendum campaigners and candidates only have to report donations during the regulated period before electoral events.

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

25) A donation to a party or non-party campaigner is anything with a value of £500 or more. There are no limits on how much permitted donors can donate, but donations above certain limits must be identified and reported to the Electoral Commission. Under the Representation of the People Act 1983, a donation to a candidate is anything with a value of £50 or more.

26) Donations over £7,500 to a national party/member association or £1,500 to a constituency association, and donations over £1,500 to a regulated individual must be declared.

27) Permissible donors in Great Britain (the rules are slightly different in Northern Ireland) are:

- an individual registered on a UK electoral register, including overseas electors and those leaving bequests.
- most UK-registered companies.
- a Great Britain registered political party.
- a UK-registered trade union.
- a UK-registered building society.
- a UK-registered limited liability partnership (LLP) that carries on business in the UK.
- a UK-registered friendly society.
- a UK-based unincorporated association that carries on business or other activities in the UK.

28) Parties, campaigners, and candidates must ensure they know the true source of the money. If money is paid on behalf of someone else, the person handing over the donation (the agent) must tell the party:

- that the donation is on behalf of someone else;
- the actual donor's details.

29) Since 2010, unincorporated associations that donate more than £25,000 in a year have to register with the Commission and then report any gifts they receive. A political contribution is not counted towards the total £25,000 unless it exceeds £500. Unincorporated associations must also report any political 'gifts' of over £7,500 within a specified period.

# Formal minutes

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**Thursday 13 October 2022**

## **Members present**

Mr William Wragg, in the Chair

Mr David Jones

John McDonnell

Tom Randall

Lloyd Russell-Moyle

Karin Smyth

Draft Report (*The Work of the Electoral Commission*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 109 read and agreed to.

Annex agreed to.

Summary agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

[Adjourned till Tuesday 18 October 2022 at 09.30am

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Thursday 2 July 2020

**Bob Posner**, Chief Executive, Electoral Commission, **Louise Edwards**, Director of Regulation, Electoral Commission and **Ailsa Irvine**, Director of Electoral Administration and Guidance, Electoral Commission

[Q1-92](#)

### Tuesday 9 March 2021

**Dr Alistair Clark**, Reader in Politics, Newcastle University, **Dr Kate Dommett**, Senior Lecturer in the Public Understanding of Politics, University of Sheffield and **Professor Toby S. James**, Professor of Politics and Public Policy, University of East Anglia

[Q93-154](#)

### Tuesday 27 April 2021

**Dr Holly Ann Garnett**, Assistant Professor of Political Science, Royal Military College of Canada and Director of the Electoral Integrity Project; **Professor Pippa Norris**, Harvard University, Comparative Political Scientist and Founding Director of the Electoral Integrity Project; and **Dr Theresa Reidy**, Political Scientist, Department of Government, University College Cork

[Q155-205](#)

### Tuesday 25 May 2021

**Paul Comer**, Former Compliance Director, Britain Stronger in Europe; **Alan Halsall**, Former Responsible Person, Vote Leave Ltd; and **Scott Martin**, Solicitor to the SNP and former Responsible Person, Yes Scotland Ltd

[Q1-40](#)

**The Rt Hon Dominic Grieve QC**, former member of the Independent Commission on Referendums; **The Rt Hon Baroness Stuart of Edgbaston**, former member of the Independent Commission on Referendums; **Dr Alan Renwick**, Deputy Director of the Constitution Unit; and **Barry Ryan**, Principal Officer, Franchise Unit, Department of Housing, Local Government and Heritage of the Republic of Ireland

[Q40-60](#)

### Tuesday 29 June 2021

**Alan Mabbutt**, Registered Treasurer and Legal Officer, Conservative Party; **Scott Martin**, Solicitor to the Scottish National Party; **Rt Hon Lord Tyler**, Spokesperson on Political and Constitutional Reform, Liberal Democrats; and **Andrew Whyte**, Acting Director of Governance and Legal, Labour Party

[Q65-116](#)

**Geraint Day**, Deputy Chief Executive and Head of Campaigns, Plaid Cymru; **Jon Nott**, Treasurer, Green Party (England and Wales); **Richard Tice**, Leader, Reform UK; and Amy Killen, Campaigns Manager, Women's Equality Party

[Q117-160](#)

### Tuesday 20 July 2021

**Dr Jess Garland**, Director of Policy and Research, Electoral Reform Society; **Peter Geoghegan**, Investigations Editor, openDemocracy; and Lord Hodgson

[Q161-182](#)

**Dave Timms**, Head of Political Affairs, Friends of the Earth; **Chloe Hardy**, Director of Policy and Communications, Sheila McKechnie Foundation; **Dr Rowan Poplewell**, Policy Manager—Civic Space, Bond; and **Chris Weavers**, Acting Head of National Official Campaigns, Policy and Communications, NASUWT—The Teachers' Union

[Q183-213](#)

### **Tuesday 7 December 2021**

**John Pullinger CB**, Chair, The Electoral Commission; **Bob Posner**, Chief Executive, The Electoral Commission.

[Q214-292](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

TEC numbers are generated by the evidence processing system and so may not be complete.

- 1 A1 ([TEC0017](#))
- 2 AS, Julie James (Minister for Housing and Local Government, Welsh Government) ([TEC0026](#))
- 3 Association of Electoral Administrators ([TEC0012](#))
- 4 Banks, David ([TEC0002](#))
- 5 Boden, Professor Rebecca ([TEC0038](#))
- 6 Burton, Nick ([TEC0046](#))
- 7 Carnegie UK Trust ([TEC0036](#))
- 8 Clark, Dr Alistair (Reader in Politics, Newcastle University) ([TEC0039](#))
- 9 Clark, Dr Alistair (Reader in Politics, Newcastle University) ([TEC0011](#))
- 10 Clark, Dr Alistair (Reader in Politics, Newcastle University); and Prof. Toby S. James (Prof in Politics & Policy, University of East Anglia) ([TEC0013](#))
- 11 Commission, Electoral ([TEC0003](#))
- 12 Democracy Club ([TEC0021](#))
- 13 Eisler, Dr Jacob (Associate Professor of Public Law, University of Southampton) ([TEC0014](#))
- 14 Electoral Reform Society ([TEC0015](#))
- 15 Fisher, Professor Justin (Professor of Political Science, Brunel University London) ([TEC0006](#))
- 16 Gibson, Professor Rachel (Professor of Political Science, The University of Manchester) ([TEC0045](#))
- 17 Halsall, Alan ([TEC0001](#))
- 18 James, Professor Toby (Professor of Politics and Public Policy and Deputy Director of the Electoral Integrity Project, University of East Anglia) ([TEC0041](#))
- 19 James, Professor Toby (Professor of Politics and Public Policy, University of East Anglia) ([TEC0024](#))
- 20 Jones, Ms Elin (Presiding Officer, Welsh Parliament) ([TEC0033](#))
- 21 Kerr, David (Consultant Director of Education/Head of ITT, Young Citizens/University of Reading) ([TEC0022](#))
- 22 Kerr, Mrs Selina (Self Employed Marketing Consultant, I am self employed.) ([TEC0029](#))
- 23 Kneller, Frances ([TEC0025](#))
- 24 Kneller, Mrs Frances ([TEC0027](#))
- 25 Lord Paul Tyler (Peer, House of Lords); and Mr Alistair Carmichael (MP, House of Commons) ([TEC0010](#))
- 26 OBE, Jon Moynihan ([TEC0030](#))
- 27 Power, Dr Samuel (Lecturer, University of Sussex) ([TEC0040](#))



- 28 Price, Toby ([TEC0028](#))
- 29 QC, Timothy Straker ([TEC0005](#))
- 30 Renwick, Dr Alan ([TEC0037](#))
- 31 Scottish Assessors Association ([TEC0020](#))
- 32 Shout Out UK ([TEC0034](#))
- 33 Spotlight on Corruption ([TEC0016](#))
- 34 The Conservative Party ([TEC0032](#))
- 35 The Electoral Commission ([TEC0051](#))
- 36 The Electoral Commission ([TEC0008](#))
- 37 The International Institute ([TEC0043](#))
- 38 The Politics Project; ShoutOut Uk; The Association for Citizenship Teaching; Young Citizens; Migrants Organise; and James Weinberg - University of Sheffield ([TEC0035](#))
- 39 Transparency International UK ([TEC0023](#))
- 40 Unlock Democracy ([TEC0018](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

### Session 2022–23

Number	Title	Reference
1st	Parliamentary and Health Service Ombudsman Scrutiny 2020–21	HC 213
1st Special	Coronavirus Act 2020 Two Years On: Government response to the Committee's Seventh Report of Session 2021–22	HC 211
2nd Special	The Cabinet Office Freedom of Information Clearing House: Government Response to the Committee's Ninth Report of Session 2021–22	HC 576
3rd Special	Parliamentary and Health Service Ombudsman Scrutiny 2020–21: PHSO and Government responses to the Committee's First Report	HC 616

### Session 2021–22

Number	Title	Reference
1st	The role and status of the Prime Minister's Office	HC 67
2nd	Covid-Status Certification	HC 42
3rd	Propriety of Governance in Light of Greensill: An Interim Report	HC 59
4th	Appointment of William Shawcross as Commissioner for Public Appointments	HC 662
5th	The Elections Bill	HC 597
6th	The appointment of Rt Hon the Baroness Stuart of Edgbaston as First Civil Service Commissioner	HC 984
7th	Coronavirus Act 2020 Two Years On	HC 978
8th	The appointment of Sir Robert Chote as Chair of the UK Statistics Authority	HC 1162
9th	The Cabinet Office Freedom of Information Clearing House	HC 505
1st Special	Government transparency and accountability during Covid 19: The data underpinning decisions: Government's response to the Committee's Eighth Report of Session 2019–21	HC 234
2nd Special	Covid-Status Certification: Government Response to the Committee's Second Report	HC 670
3rd Special	The role and status of the Prime Minister's Office: Government Response to the Committee's First Report	HC 710

<b>Number</b>	<b>Title</b>	<b>Reference</b>
4th Special	The Elections Bill: Government Response to the Committee's Fifth Report	HC 1133

### Session 2019–21

<b>Number</b>	<b>Title</b>	<b>Reference</b>
1st	Appointment of Rt Hon Lord Pickles as Chair of the Advisory Committee on Business Appointments	HC 168
2nd	Parliamentary and Health Service Ombudsman Scrutiny 2018–19	HC 117
3rd	Delivering the Government's infrastructure commitments through major projects	HC 125
4th	Parliamentary Scrutiny of the Government's handling of Covid-19	HC 377
5th	A Public Inquiry into the Government's response to the Covid-19 pandemic	HC 541
6th	The Fixed-term Parliaments Act 2011	HC 167
7th	Parliamentary and Health Service Ombudsman Scrutiny 2019–20	HC 843
8th	Government transparency and accountability during Covid 19: The data underpinning decisions	HC 803