



Department for Levelling Up,
Housing & Communities

Clive Betts MP
Chair, Levelling Up, Housing and Communities
Committee
House of Commons,
London
SW1A 0AA

Rt Hon Andrew Stephenson MP
*Parliamentary Under Secretary of State
for Housing and Communities*

***Department for Levelling up,
Housing and Communities***

Fry Building
2 Marsham Street
London SW1P 4DF

Website:

www.gov.uk/dluhc

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Dear Clive,

**DRAFT STRATEGY AND POLICY STATEMENT FOR THE ELECTORAL
COMMISSION**

Thank you for inviting me to give evidence to your Committee on 19 October regarding the draft Strategy and Policy Statement for the Electoral Commission. I am writing to follow-up on issues raised during the session.

Some Committee members expressed views regarding the potential for judicial review cases against the Commission as a result of the introduction of the Statement. As I said during the session, the Commission is, like any public body, already subject to the potential for legal challenges by way of judicial review. A number of existing regulators have statutory requirements to have regard to a policy statement, as approved by Parliament.

The Commission may decide to put processes in place to demonstrate, if required, how it has had regard to the guidance in the Statement in the discharge of its functions, in addition to or in the annual report which it is required to publish. I hope your Committee will be reassured by the evidence given by Ofcom to your inquiry which describes how they have successfully adapted their annual planning processes to ensure that they take account of the priorities set out in their Statement of Strategic Priorities when setting their priorities for the year ahead.

During the session, a query was also raised as to the appropriateness of the Government providing guidance via the Statement in relation to the Commission's enforcement responsibilities given Members of Parliament are subject to the political finance regime, regulated, in part, by the Commission. Where it has reason to believe that electoral law has been breached, the Commission has the power to investigate and impose sanctions. The Chair of the Commission and I agree strongly that the

Commission should always look to the law and nothing in the Statement will take precedence over the law. Additionally, the Elections Act prohibits the Statement from containing provision relating to any specific enforcement or investigatory activity. It is not though unreasonable for the Government to give the Commission guidance aimed at ensuring enforcement of electoral law is robust, transparent and proportionate, which is a reasonable expectation for any public body with enforcement powers.

Indeed, I note that the Public Administration and Constitutional Affairs Committee in its Report on 'The work of the Electoral Commission' published last week, welcomed '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.'

Lord Pickles' report into electoral fraud was clear that the Electoral Commission needed to change and that the existing system of oversight by the Speaker's Committee did not provide an effective third-party check on the Commission's performance.

I was asked by the Committee what the Statement required the Commission to have regard to specifically, that it is not already required to do by law. For example, the Commission already has responsibilities in relation to producing guidance for campaigners. Where the Statement adds value in this case is by requiring the Commission to have regard to the importance of high quality, user-friendly, consistent and clear guidance. The Statement encourages the Commission to offer practical advice, with illustrative examples, and seek regular feedback on the guidance it produces from the Parliamentary Parties Panel and voluntary organisations.

Finally, in answer to a question raised during the session, I wanted to clarify that the Speaker's Committee's powers in relation to overseeing the Commission's compliance with its duty to have regard to the Statement are provided for in statute and do not include any power to issue sanctions against the Commission in the event of non-compliance. Rather, section 17 of the Elections Act provides the Committee with the necessary tools to perform its scrutiny function, however it chooses to do so. This means the Committee may for example choose to report on the Commission's performance against its duty in relation to the Statement as part of the Committee's yearly reporting requirement.

As I said during the session, the Government is committed to working with your Committee, and the other statutory consultees to ensure that the guidance in the draft Statement supports the work of the Electoral Commission while respecting its operational independence, enables enhanced parliamentary scrutiny and contributes positively to public confidence in the Commission's work. We therefore look forward to receiving your Committee's feedback about the Statement to consider alongside other consultees' views.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Stephenson', with a long horizontal flourish extending to the right.

**The Rt Hon Andrew Stephenson MP
Parliamentary Under Secretary of State for Housing and Communities**