

Written evidence from Professor Rebecca Boden (TEC 38)

Public Administration and Constitutional Affairs Committee The Work of the Electoral Commission inquiry

1. I am submitting evidence on an interaction I am having with the Electoral Commission on a technical matter regarding the Political Parties, Elections and Referendum Act 2000 (PPERA 2000).
2. The substantive technical issue is of concern as it relates to a longstanding and ubiquitous failure of the Commission to take enforcement action within the law regarding the accuracy of parties' annual financial accounts as returned to it. Such accounts are, of course, essential to ensure transparency in the financial affairs of parties. This example further offers valuable insights into the Commission's general functioning.
3. I write in a personal capacity but am a professor of accounting and a former senior tax inspector – I therefore have expertise and training germane to these matters.

The law

4. To briefly summarise, political parties are obliged to keep reasonably accurate accounting records – and the records to be kept are closely specified (s41 PERA 2000). They are then obliged to draw up annual accounts (s42 PERA 2000). These accounts must be sent to the Commission within a specified time limit (s45 PERA 2000). If the accounts required under s45 PERA 2000 are not submitted in time, then the party treasurer is guilty of a criminal offence (s47 PERA 2000). Parties with an annual gross income in excess of £250,000 must be independently audited (s43 PERA 2000) – but this does not apply in the case I have raised. These accounts are then published on the Commission's website as an aide to public transparency and accountability.

The technical issue

5. I wrote to the Commission in a personal capacity on 2 November 2020 reporting a number of gross objective inaccuracies in the 2019 accounts of a political party reporting entity available on the Electoral Commission's website. The numbers, literally, do not add up. I considered this to be of especial concern as this was a general election year.
6. Since then, the Commission has vigorously asserted that whilst, under PERA 2000, parties must submit annual accounts to it, there is no legal obligation on parties to render accounts which in any way reflect their true financial position or are faithful to their accounting records. It claims that the only legal obligation is to submit accounts in time – but the accounts themselves do not have to reflect the affairs of the party.
7. This is the long-established position of the Electoral Commission, and I regard it as a gross regulatory failure. There is a general issue here well beyond the specifics of the case I have raised. Because the accounts I am questioning were submitted in time, the

Commission is absolutely refusing to address my concerns with regards to their objective inaccuracies. My discussion with the Commission is ongoing.

8. Accounts which are clearly incorrect are on the Commission's website for public inspection. The website carries no warning that the Commission holds the view that, in law, accounts do not need to be in any way accurate, or even a note that these particular accounts are known to be incorrect. Such an interpretation of the law comprehensively undermines an objective of PPERA 2000 to achieve financial transparency in parties' affairs in the interests of democracy. It will also hamper the work of the Commission in gaining accurate insights into parties' financial affairs.

The Commission's interpretation and a critique

9. I argue that the Electoral Commission has made three fundamental technical errors in its interpretation.
10. The first concerns the fact that s42(2)(a) PPERA 2000 enables the making of regulations regarding the 'form and contents' of accounts. The Electoral Commission argues that because no regulations have yet been made under s42(2)(a) regarding form and contents, there is no requirement that accounts in any way reflect the accounting records of the parties.
11. However, the form and contents of accounts are in no way synonymous with issues of their accuracy. The general accounting meaning of the 'form and contents' of accounts refers to such matters as the accounting principles (e.g. cash or accruals) and matters to be specifically disclosed (e.g. numbers of employees or a breakdown into categories of income).
12. That PPERA 2000 adopts such an understanding of form and contents is indicated strongly in s42(3), which states that regulations may 'require any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations' or 'specify information which is to be provided by way of notes to the accounts'.
13. This understanding is carried through in other law-making. For instance, s396(3) Companies Act 2006 states that accounts must comply with any regulations made as to the form and content of the balance sheet and profit and loss account, and additional information to be provided by way of notes to the accounts. The resulting Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 do just that (<https://www.legislation.gov.uk/ukxi/2008/409/contents>). The Institute of Chartered Accounts refers to these statutory instruments as concerning 'form and content' (e.g. <https://www.icaew.com/technical/financial-reporting/uk-regulation-for-company-accounts/overview>).
14. In accounting and law-making therefore, the form and contents of accounts are not synonymous with their accuracy and the Commission's argument is therefore a red herring.
15. The second of the Commission's errors lies in its interpretation of s47 PPERA 2000. The section states

Criminal penalty for failure to submit proper statement of accounts.

- (1) If in the case of a registered party—
- (a) any requirements of regulations under section 42(2)(a) are, without reasonable excuse, not complied with in relation to any statement of accounts delivered to the Commission under section 45, or
 - (b) any statement of accounts, notification or auditor's report required to be delivered to the Commission under that section [i.e. s45] is, without reasonable excuse, not delivered to them before the end of the relevant period,
- the person who was the treasurer of the party immediately before the end of that period is guilty of an offence.
16. The Commission argues that, because there are no regulations under s42(2)(a), the only criminal offence can be late submission – that is, as long as parties submit some form of accounts, of whatever accuracy or origin, in time there is no offence.
 17. The Commission is ignoring the 'or' at the end of s47(1)(a). This means that s47(1)(b) can stand alone in the absence of any regulations under s42(2)(a) and we can ignore s47(1)(a).
 18. s47(1)(b) specifies the delivery, in time, of accounts required under s45 – and these are the accounts that must be drawn up as per s42.
 19. Here the Commission commits a third error of interpretation - it surprisingly insists that there is no requirement in s42 that the annual accounts up in any way reflect the closely specified accounting records that are required under s41.
 20. There is no specific wording to this effect – but that is because there does not need to be. There is a strict requirement under s41 to keep reasonably accurate accounting records for the party and then, under s42, to draw up accounts for the party. Accounts of an entity are, quite simply, a presentation of the accounting records in summarised form. For instance, an entity records its income, item by item, throughout the year in its accounting records. In its accounts, it basically tallies up the income and states the total. An entity's accounts cannot come from any other place than its records – as night follows day, accounts are derived from the underlying records. If other figures are used, they are not the accounts of the entity.
 21. It follows that if a party does not submit accounts which present a summary of its reasonably accurate accounting records in time, then the treasurer is guilty of a criminal offence under s47 PPERA 2000. In taking an entirely contrary view, I believe that the Electoral Commission is failing in its obligations to uphold the law intended to ensure that political parties are reasonably transparent with regards to their finances.

Functioning of the Commission

22. This example is revealing of how the Commission works. I wrote to the Commission as a concerned member of the public, but also have expertise relevant to the area. I believe

that my communications with the Commission were well-argued and well-presented. I am happy to make the full correspondence available to the committee.

23. Despite this, as a member of the public, I have found the Commission extremely unwilling to engage with me in any serious manner. I felt constantly dismissed, with attempts to divert me into bureaucratic procedures designed to make the issue go away. It was remarkably difficult to get an email to the chief executive or to obtain an email address for the chair of the commissioners. The website is not up-to-date with regards to who the commissioners are. As a member of the public I am left with an impression of a deeply unaccountable and unresponsive body. I feel that a less knowledgeable person would have simply accepted the Commission's interpretation and a less tenacious one would have simply given up.
24. This leads to my second point, which is that the Commission appears to not be robustly challenging its own thinking on this matter – and possibly others. It is surprising that an electoral regulator should not critically question its conclusion that there is no statutory requirement that the accounts which a political party must compile and submit in the interests of public accountability and transparency do not need to reflect its underlying accurate accounting records, which it must keep. It is even more surprising that it does not appear to have raised urgently what it insists is a lacuna in the law preventing it from executing its mission.
25. Third, and relatedly, I am left with the impression that the Commission has little or no expertise in the area of law or accounting to support its activities in this area. I have repeatedly pressed the Commission to justify its stance and it has been unable to do so, merely repeating its unsubstantiated assertions. I have made a Freedom of Information request of the Commission for all of its internal guidance etc relating to the technical issue, but this is unfulfilled at the time of writing. My original letter of 2 November pointing out the numerous problematic areas of the party entity's accounts was, I feel, simply beyond the comprehension of the Commission.
26. Fourth, I believe that this case shows evidence of regulatory capture. My correspondence with the Commission evidences an unwillingness or inability to robustly and independently examine its own thinking. Senior staff in the Commission have twice written to me that if I have problems with the accuracy of a party's accounts, I should contact that party myself. This, I feel, undermines the credibility of the Commission as a regulator and therefore public trust and confidence in democratic processes.

Recommendations

R1 On the substantive technical accounting issue, the Commission should urgently seek independent competent legal and accounting advice as to its interpretation of the law.

R2 If the Commission's interpretation of PPERA 2000 is found to be justified, urgent legislation needs to be enacted to address this issue.

R3 If the Commission's interpretation of the law is found not to be justified, it should immediately amend its practices and guidance to staff.

R4 The Commission should undertake an audit of its competencies in the areas of law and accounting, map these against the requirements of its work and adjust its staffing accordingly.

R5 The Commission should ensure that, in all interactions with the public, it maintains an appropriately formal and professional tone and takes citizens' concerns seriously. Direct contact information for the chief executive and the chair of commissioners should be available on the website.

R6 Although strictly outside the scope of this inquiry, consideration should be given to introducing regulations under s42(2)(a) as to the form and contents of political parties' accounts as this would aid transparency, accountability and comparability. This would enhance the ability of the Commission to deliver its mission.

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