

## **Written evidence from The International Institute for Democracy and Electoral Assistance (International IDEA)<sup>1</sup> (TEC 43)**

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

#### **The UK Electoral Commission – A Global Comparative Perspective**

Impartiality in the management of electoral processes is a tenet of a democratic society. Electoral processes are becoming increasingly complex, and the perception of electoral outcomes are under ever-increasing scrutiny by all stakeholders involved – political parties, candidates, and the electorate. Globally, specialised public institutions established with the legal and functional autonomy to manage electoral processes are viewed with increasing incidence as the most effective and impartial mechanism to deliver electoral outcomes that are accurate and trusted. To avoid conflicts of interest or political interference that may undermine an electoral process, certain dimensions in the design of such institutions are of increased importance. Namely, the legal and structural independence from the executive branch of government, a politically autonomous governance organ composed of an impartial membership (the commission), a defined mandate, expert staff to discharge that mandate, and control over its financial resources (an adequate operating and activities budget).

#### **Electoral management model, comparing the UK to other countries**

The institutional frameworks different countries adopt to manage their electoral processes are diverse. Many countries establish a single institution – an electoral management body (EMB) – to perform the activities necessary to deliver an election or referendum. In other countries, these activities are managed by several EMBs, each with complementary mandates. An EMB is “An organization or body that has been founded for the sole purpose of, and is legally responsible for, managing some or all of the essential (or core) elements of the conduct of elections and direct democracy instruments. These elements include determining who is eligible to vote, receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates), conducting balloting, counting votes and tabulating votes. They are normally headed by a chairperson or president” ([Electoral Management Design](#), International IDEA 2014). The variation in institutional design is the outcome of numerous and often context-specific attributes – political, societal or historical. Globally, electoral management in the UK is comparatively decentralised, largely the outcome of historical approaches to managing elections – the responsibility focussed on the logistical arrangements of delivering an election, shared across several levels of government. This is not unusual in comparison to countries in Western Europe; however, it is unusual

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<sup>1</sup> The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organisation with 33 member states headquartered in Stockholm, Sweden. International IDEA seeks to advance democracy worldwide, as a universal human aspiration and an enabler of sustainable development, through support to the building, strengthening, and safeguarding of democratic political institutions and processes at all levels. We develop comparative knowledge, assist in democratic reform, and influence policies and politics, focusing in our main impact areas: electoral processes, constitution-building, democracy assessments, and political participation and representation.

compared to other regions, including **Australia, Canada** and **New Zealand** where electoral management is performed by a single or few institution with a national remit. The UK Electoral Commission may be regarded as a specialised regulatory agency of political party and electoral campaign finance.

Irrespective of the institutional framework, globally accepted principles of political neutrality and ‘fearless independence’ are expected of all EMBs in the management of elections (International IDEA 2014). The Venice Commission advocates that an impartial body is responsible for applying electoral law ([Code of Good Practice in Electoral Matters](#) 2002). Global and regional normative frameworks ([election standards database](#)) emphasise principles of impartiality and independence since the acceptance of election results is established on the credibility of these institutions. Their credibility is constructed and cumulatively strengthened over successive elections. It is linked to the establishment and maintenance of institutional reputation. This key aspect of credibility explains the global trend towards establishing electoral authorities (such as the UK Electoral Commission), which are functionally independent of government, to safeguard against political interference that might jeopardise this credibility. Such political interference could be real; could be perceived or could be alleged by actors who wish to undermine the electoral process. In any case, it is unwise to take universal acceptance of the importance of the credibility of elections for granted.

### **The mandate of EMBs, comparing the UK to other countries**

The accompanying global norm of EMBs with broader remits covering a wide range of electoral activities is in part about improving effectiveness – recognising the complexity of modern day electoral operations; and in part about authority – the ability to protect the electoral process against risks and harm. A single institution can provide coherence in regulation and guidance.

The majority of EMBs worldwide are established as independent institutions (63.7 percent) ([Electoral Management Design Database](#)) which are accountable through parliamentary oversight by reporting to a permanent legislative committee (with the exception of EMBs in several Latin American countries that possess executive, legislative and judicial powers; an institutional framework based on their specific political history). **Australia, Canada, and New Zealand** are countries in this category, where EMBs are responsible for organising and overseeing all electoral activities (International IDEA 2014; [Electoral Management Design Database](#)).

The **UK Electoral Commission** is similarly independent of government. Its remit is however limited: elements include political finance regulation, political party registration, provision of guidance on electoral administration, and the conduct of national referendums. Most basic electoral administration activities – for example electoral registration and conduct of election day proceedings – are conducted by local government, while constituency boundary delimitation is the responsibility of a separate institution in each part of the UK. This is a reflection of the development of the UK electoral framework over more than two hundred years, focused in its early days entirely on electoral organisation at the constituency level. Campaign finance regulation grew up similarly, covering expenditure by individual candidates at the constituency level. The increasingly dominant role of political party campaign spending at national level and the need to formalise political parties as participants

within the electoral process were two major factors in the legislation in 2000 which established the Electoral Commission ([Political Parties, Elections and Referendums Act 2000](#)). The fact that the Electoral Commission does not itself implement elections makes it a unique outlier in global electoral practice but is not a point of concern. **New Zealand** used a similar model of electoral administration from 1993 ([Electoral Act 1993](#)) but changed it in 2010 following the enactment of legislation to establish a single independent electoral commission with overarching responsibilities ([Electoral \(Administration\) Amendment Act 2010](#)).

The [guidance](#) issued by the Electoral Commission as part of its remit to Electoral Registration Officers (EROs), Returning Officers (ROs) and their staff, is of ever-increasing importance in an environment where the successful delivery of elections is becoming ever more complex. The continuing credibility of elections in any country requires effective responses to existing and emerging challenges, as well as new opportunities. In addition, the inevitable fragmented nature of an electoral framework, which has evolved incrementally over many years strengthens the need for electoral administration practice to continually be under review.

### **The composition of EMBs, comparing the UK to other countries**

The governance of independent EMBs is normally achieved through an autonomous commission, varying in membership size from one to more than thirty. Commissioners should be autonomous of government, provide policy and operational direction to the work of the EMB in the discharge of its statutory duties, and report to the legislature through a designated permanent committee. **Australia** and **New Zealand** have a commission membership of three and **Canada** of one. In each country, commissioners have a fixed and secure tenure and are appointed without involvement of political parties. Selection is based on professional criteria deemed necessary for the role, such as experience in delivering public services or other work in a civic duty. The national election commission of the **Republic of Korea** is comprised of nine commissioners, three appointed by the president, three selected by the National Assembly and the final three nominated by the chief justice of the Supreme Court. The **UK Electoral Commission** governance structure combines political party and expert representation for a mix of experience and perspective. Ideally, this dual structure can provide the optimum benefits of political acceptance while avoiding the twin pitfalls of decision-making impasse or politicisation of elections.

Irrespective of the institutional design but adhering to the global normative framework of impartiality and independence, EMBs should be established with a mandate that does not overlap with that of other institutions; have an inclusive and transparent process of commissioner appointments that ensures independence from political pressure and uphold public confidence; commissioners and staff must have a secure tenure to be protected against undue influence; EMBs must receive sufficient funding and possess adequate control over the institutional budget; and engage with the regulated community to (wherever possible) encourage compliance and prevent violations (International IDEA 2014). Impartiality and independence is at the core of democratically managed elections, underpinning public and political trust in the entire democratic process.

International IDEA has worked alongside the Electoral Commission in global conversations on regulatory challenges in elections relating to health and safety, the expansion of special voting arrangements, and political finance regulation. The Electoral Commission consistently

demonstrates exemplary specialist knowledge and is held in high regard by international counterparts.

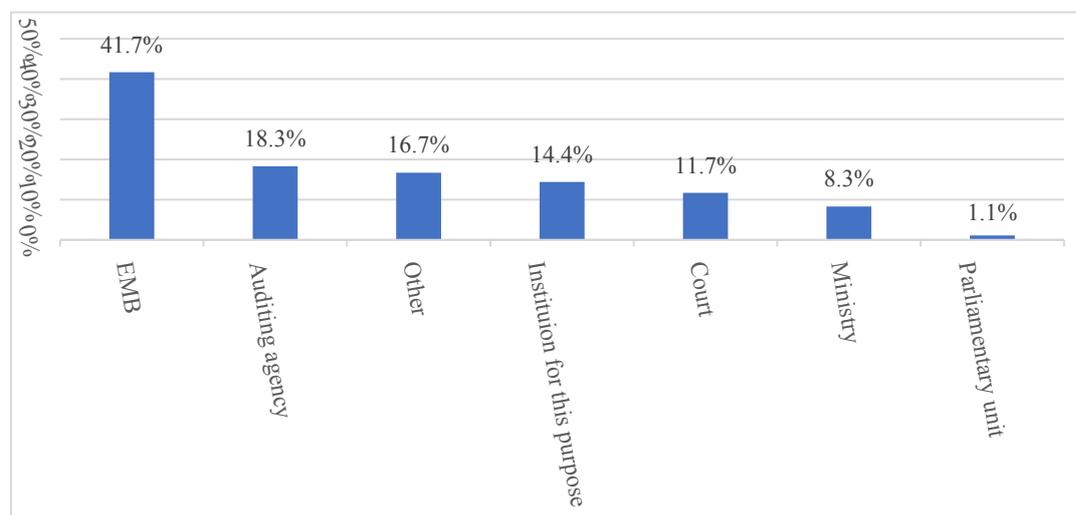
### The Electoral Commission – The Specialised Political Party Finance Regulator

The UK Electoral Commission remit primarily oversees the regulation of political finance. Comparatively, the UK Electoral Commission performs well in performing its statutory obligations, recognised for its expertise and possessing an esteemed reputation globally – critical elements for the legitimacy of EMBs. The following section provides an overview demonstrating this effect and its position to oversee political finance in the emerging and evolving digital era for political finance.

### Global trends in political finance oversight

EMBAs assume the responsibility for examining financial reports and investigating violations in 41.7% of countries globally (Figure 1). **The UK, Australia, Canada, New Zealand and the USA** all fall under this category. In other countries, state audit agencies, anti-corruption agencies, and administrative or higher-level courts perform the political finance oversight function. The requirement for political finance to be regulated is an international standard established through various jurisprudence ([International Obligations for Elections: Guidelines for Legal Frameworks](#), 2014). In addition, the importance of transparency of political finance is also highlighted by the [United Nations Convention Against Corruption](#) (UNCAC).

**Figure 1. Institution(s) responsible for political finance oversight (multiple answers allowed)**



Source: International IDEA, Political Finance Database <<https://www.idea.int/data-tools/question-view/570>>, accessed 18 May 2021

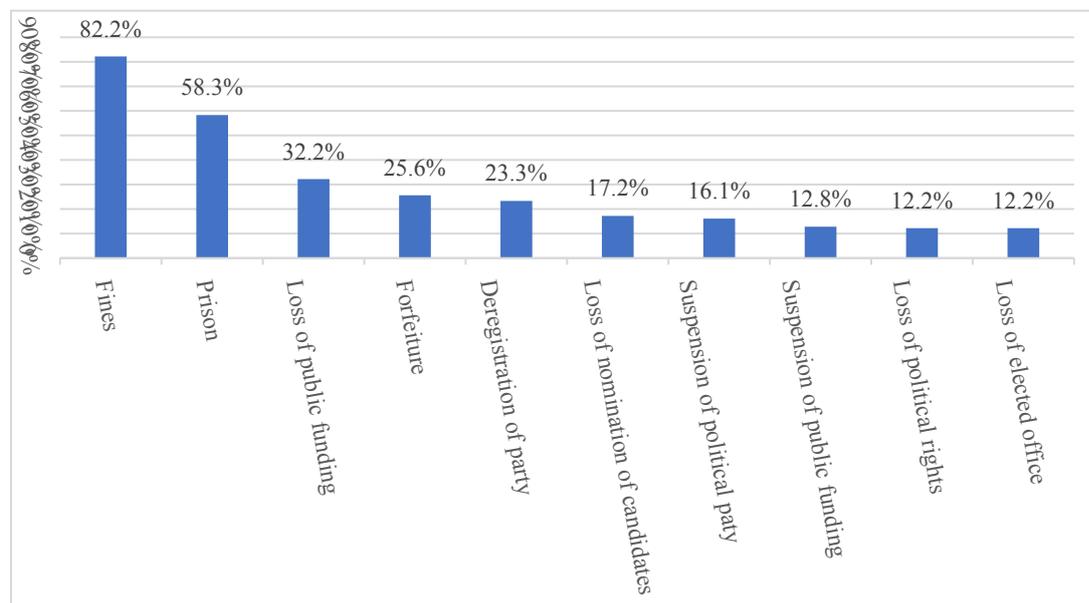
*Note: Data covers 180 countries. “Other” typically refers to anti-corruption agencies. “Institution for this purpose” typically includes bodies such as a commission for control of electoral accounts and political finance (e.g. France) and political party funding supervision committee (e.g. Estonia).*

## Sanctions for finance violations, comparing UK to other countries

A range of enforceable, proportionate, and dissuasive sanctions must be available to an EMB or regulatory institution for violations to be corrected and/or punished. Fines, loss of public funding and even imprisonment are several of the sanctions available to an EMB to deter serious legal infringements (Figure2). Almost all countries have certain sanctions in existence, with fines (82.2%) the most prevalent.

The UK Electoral Commission's enforcement policy guideline outlines the sanctions that apply to different offences and contraventions of political finance regulations. The UK Electoral Commission's supervisory, investigatory and sanctioning powers are sufficient in comparison to countries with similar regulatory environments. However, fines issued for breaches of political finance regulations are limited to a maximum of £20,000 per offence. This is the only sanction available to the UK Electoral Commission, which may effectively be regarded as an acceptable 'cost of business' to candidates, political parties or campaign organisations.

**Figure 2. Sanctions for political finance infractions in the world (multiple answers allowed)**



Source: International IDEA, Political Finance Database <<https://www.idea.int/data-tools/question-view/570>>, accessed 18 May 2021

*Note: Data covers 180 countries.*

### General observation of the UK Electoral Commission's political finance oversight

The UK Electoral Commission is an example of global best practice in political finance oversight. Its website provides a comprehensive database of political finance information

(donation sources, expenditures by political parties, non-party campaigners, etc.) in a timely and accessible format optimal for transparency and public scrutiny. The Electoral Commission also provides detailed guidelines to political parties, candidates, voters and other stakeholders to support their compliance with the political finance regulations. The level of advisory service, supervision, enforcement capacities, data publication and policy development are mostly in line with international good practices. However, the recent trend towards increased political finance spending through the digital sphere has posed several challenges to the current oversight framework. This may require the Electoral Commission to revise its internal structure or acquire new powers to conduct effective political finance oversight.

### **Political finance oversight in digital era**

An emerging challenge to political finance oversight in the UK is the online political advertisement and their associated costs/spending. In the UK, and in other countries, expenditure on digital campaigning has increased significantly over the last decade. In 2011, campaigners spent 0.3 per cent of their total advertising budgets on digital advertising; by 2017, that share had increased to 42.8 per cent (based on data reported by campaigners in their statutory spending returns for elections and referendums held in the UK between 2011–2017).

As the UK examines the revision of its political finance legislation to account for the digital revolution in election campaigns, the Electoral Commission could consider enhancing its capacity to monitor and audit online political spending by political actors. While some social media companies have advertisement (ad) libraries that provide summaries of political advertisements on their platforms and how much money campaigners have spent on them, they do not provide a comprehensive overview. Digital advertising expenditure could be hidden within larger categories such as market research or could be conducted through intermediaries such as advertising agencies. The current regulation does not explicitly require political actors to report their spending for online political campaigns. This category of expenditure is often clustered with other advertising expenses. Moreover, the ambiguous nature of online campaigns – falling between coordinated and organic actions – makes tracking and monitoring of online spending a challenging task. This requires a strong digital audit capacity on the part of the oversight agencies. Although the Electoral Commission is adequately staffed to be able to identify political finance infractions and impose sanctions, the oversight of online political advertisement will require specific technical and digital audit expertise. It will also require strong inter-agency cooperation given the involvement of multiple actors in the online political campaign realm. Since the UK Electoral Commission is the main authority regulating political finance, it could facilitate coordination with and between other agencies including the Advertising Standards Authority, the Information Commissioner's Office, the UK Statistics Authority, the UK Government Cabinet Office and other public agencies, social media platforms, and others to ensure transparency of political finance in the digital age.

Political party and electoral finance regulation are one of the more complex activities in an electoral process. A regulatory agency with the capacity, remit and authority to perform this function, independently of political or private interest ensures effectiveness, transparency and equality of the process.

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