



# Electoral Regulation

Submission to the  
Committee for Standards in  
Public Life Review

August 2020



**UK Anti-  
Corruption  
Coalition**

## Our recommendations for robust and effective electoral regulation in the UK

We wish to begin by emphasising **the importance of the Electoral Commission as an independent, non-partisan body with responsibility for oversight of elections and regulation of election finance.**<sup>1</sup>

The politicisation of regulators should be avoided at all cost, as doing so creates the opportunity for abuses of power that undermine democracy and weaken trust in the political process. The Electoral Commission has attributes that go beyond pure political principle; in many respects, and compared to other jurisdictions, the UK's political finance rules are considered to be of a high standard.<sup>2</sup>

Nonetheless, the UK Anti-Corruption Coalition has significant concerns that ongoing weaknesses in our electoral regulations undermine the integrity of and public trust in the UK's institutions. Moreover, these weaknesses mean that we have been unable to adequately adapt to a new environment of digital campaigning or address increasingly concerning threats surrounding hostile interference.

In light of these concerns, the Coalition make recommendations throughout this submission that fall under the following categories:

- There should be **tighter rules around who can donate, how much can be donated, and how donations are reported and spent** to protect the UK from real or perceived foreign interference, cash for access scandals and to facilitate a wider donation base for political parties.
- There should be **more accountability for online activity** to ensure that the UK's electoral regulations keep pace with the evolving nature of campaigning.
- **Weaknesses in our enforcement regime** should be addressed to better support the existing framework for electoral regulation and ensure the success of the changes suggested in the previous recommendations.

## The values of the Electoral Commission

In line with the views of the Committee on Standards in Public Life (CSPL), we believe that there are three key values which should underpin the regulation of elections in the UK: **transparency, integrity and accountability.**<sup>3</sup>

We note further that the success of these values in practice is contingent on their interaction. For example, transparency alone is insufficient for creating electoral regulation that ensures the public's faith in our democratic system; in the absence of measures that ensure integrity and accountability, transparency alone risks breeding dissatisfaction and distrust in our political system and leading to a public perception of impunity for wrongdoers.<sup>4</sup>

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<sup>1</sup> OECD, 'Ensuring compliance with political finance regulations', in *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture* (2016); Council of Europe, *Recommendation (2003) Rec 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns*, Article 14

<sup>2</sup> Group of States Against Corruption (GRECO), *Third evaluation round: Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)* (2008) p.28

<sup>3</sup> Committee on Standards in Public Life (1998), *Fifth Report: The Funding of Political Parties in the United Kingdom*, (London: HMSO).

<sup>4</sup> Power, S. (2020), 'The Transparency Paradox: Why Transparency Alone will not Improve Campaign Regulations', *The Political Quarterly*, online first.

The following sections outline how key changes can support these values.

## Donations and spending

It is still possible for political parties to become heavily indebted to a small number of very wealthy donors, which undoubtedly has a material impact on their decision-making whilst in public office. Allowing donors to contribute unlimited amounts of money creates dynamics that are unhealthy for political parties and for trust in our politicians, and only serves to detach parties and their policies from their voter base.

The increased frequency of general elections in recent years and the level of spending may create circumstances in which party fundraisers feel pressured to secure larger and larger amounts and, in turn, take action which may prove detrimental to a well-functioning democratic system.<sup>5</sup> Recent controversies surrounding the possible influence of party donors on the decisions of Government ministers provide a case in point.<sup>6</sup>

Moreover, it is still too easy to hide the provenance of funds entering our political system. The recent findings of the Intelligence and Security Committee regarding the actions of Russia and research from civil society organisations like Transparency International UK have highlighted not only the risk but the reality of foreign interference in our democratic processes.<sup>7</sup>

All-expenses paid trips for UK parliamentarians and their staff may be used by foreign governments to try and improve the reputations of corrupt or repressive regimes, while the opacity provided by unincorporated associations offers the perfect cover for those seeking to exploit our system. A significant mismatch exists between the amount given to unincorporated associations since 2001 of £46 million, and the £27,500 reported to the Electoral Commission.<sup>8</sup> Further, to contribute to a UK political party, politician or other political campaign, companies must only show that they are ‘carrying on business’ in the UK - a relatively low bar for companies to pass to be considered a permissible donor.

Finally, because the security situation in Northern Ireland has changed, in 2014 the UK Parliament passed a law to enable contributions made after 1 January 2014 to be made publicly available.<sup>9</sup> However, this only applies to contributions received after 1 July 2017.<sup>10</sup>

The combination of these factors threatens the integrity of our electoral system. Urgent action should be taken to address the regulatory gaps which allow such a situation to occur.

### **Key changes required:**

- To reduce the perception and/or reality that wealthy donors can buy access and undue influence, there should be a cap of no more than £10,000 on the amount any individual or organisation can give annually.

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<sup>5</sup> According to their accounts submitted to the Electoral Commission, on average every year the Conservatives, Labour and Liberal Democrats receive £50.3 million, £37.5 million and £15.6 million respectively (not including inter-party transfers between accounting units or spending by accounting units who are not subject to annual reporting requirements).

<sup>6</sup> See, for example, recent events involving Robert Jenrick, the Secretary of State for Housing, Communities and Local Government. Further information available [here](#). Accessed 5 August 2020.

<sup>7</sup> [Intelligence and Security Committee \(2020\) \*Russia\*; Transparency International UK \(2018\) \*In whose interest?\*](#)

<sup>8</sup> Since 2001, UAs have given over £46 million in political contributions to British political parties and other British recipients, over half of which (£28 million) was given after new transparency rules were introduced in 2010. However, according to data published by the Electoral Commission, UAs have only reported receiving a total of £27,500 in political gifts – leaving a substantial gap between UAs’ declared income and their outgoing political donations.

<sup>9</sup> <https://www.legislation.gov.uk/ukpga/2014/13/crossheading/donations-and-loans-etc-for-political-purposes> [Accessed 18 August 2020]

<sup>10</sup> <https://www.legislation.gov.uk/ukxi/2018/328/contents/made> [Accessed 18 August 2020]

- To help provide meaningful transparency in a context where donation caps exist, the reporting threshold for donations and loans should be brought into line with the permissibility thresholds, currently £500.
- To reduce pressures on party finances, the spending limit for political party activity during UK parliamentary general elections should be reduced by at least 15 per cent and include campaign staff costs within the scope of those limits.<sup>11</sup>
- To help protect against funds of unknown provenance entering the political system, restrictions on corporate political donations should only allow companies to donate if they can demonstrate that they are trading in the UK *and* earning sufficient income here to fund any contribution they make.
- To help protect against funds of unknown provenance entering the political system, the level at which unincorporated associations have to report political gifts should be lowered to £500.
- To help reduce the perception or reality of foreign interference in our democracy, parliamentarians should be prohibited from accepting paid foreign travel valued over £500 other than from prescribed organisations.<sup>12</sup>
- To provide openness over the sources of all money spent during the EU Referendum, the Government should introduce transparency over donations and loans to political parties in Northern Ireland from 1 January 2014, as Parliament intended.

## Digital Campaigning

The Electoral Commission, the CSPL, Parliament’s Digital, Culture, Media and Sport Committee, and Intelligence and Security Committee all recommend that online political adverts should include an imprint stating who has paid for it.<sup>13</sup> The Cabinet Office has now launched a technical consultation on digital imprints.<sup>14</sup>

There are lessons to be learned from other regulators who have also faced the challenge of adapting to a digital world. The Competition and Market Authority (CMA)<sup>15</sup>, the Advertising Standards Agency (ASA)<sup>16</sup>, and the Information Commissioner’s Office (ICO) have all produced reports on the challenges posed by digital campaigning.<sup>17</sup>

Other key stakeholders have argued that, to anticipate and adapt to these new challenges, regulation must be “flexible, collaborative and innovative”.<sup>18</sup> Critically, HM Government should ensure that, as with existing regulations, increased transparency is supported with measures to ensure integrity and accountability.<sup>19</sup>

### Key changes required:

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<sup>11</sup> In line with CSPL recommendations: [CSPL, \*Political party finance: Ending the big donor culture\*, Cm 8208 \(November 2011\) p.13 Recommendation 6](#)

<sup>12</sup> These prescribed organisations should include those that are either organisations (1) that are acting in the UK national interest, (2) which the UK or UK Parliament is a full member, for example, the Inter-Parliamentary Union, or (3) would be sufficiently regulated to provide this safeguard, for example, UK political parties.

<sup>13</sup> [CSPL, \*Intimidation in public life\* Cm 9543 \(December 2017\) p.61; DCMS Committee, \*Disinformation and ‘fake news’: Final report HC 1791 \(February 2019\) p.60; Intelligence and Security Committee of Parliament, \*Russia\* p.12\*](#)

<sup>14</sup> <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints> [Accessed 20 August 2020]

<sup>15</sup> [https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim\\_report.pdf](https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf)

<sup>16</sup> <https://www.asa.org.uk/uploads/assets/c8cff5a2-0289-4dc2-bfedb834d8e13982/00dd9d68-23ca-40af-89a4383ac4b73237/ASA-CAP-2019-Annul-Report-Singles.pdf>

<sup>17</sup> <https://ico.org.uk/media/action-weve-taken/2259369/democracy-disrupted-110718.pdf>

<sup>18</sup> Chris Gorst of NESTA quoted in Margetts, H. and Dommett, K. (2020), ‘Conclusion: Four Recommendations to Improve Digital Electoral Oversight in the UK’, *Political Quarterly*, online first.

<sup>19</sup> Dommett, K. (2020), ‘Regulating digital campaigning: the need for precision in calls for transparency’ *Policy and Internet*, online first.

- To help provide greater accountability about who is trying to influence the outcome of elections in the UK, the Government should expedite measures requiring full transparency over who is paying for online election adverts, as is currently the case for ‘offline’ election material.
- To ensure that the Electoral Commission remains responsive to changes, the organisation consider how it can learn from adaptations carried out by other regulators.

## **Enforcement**

The previous sections deal with the need to ensure integrity in our system in light of changes in our elections, and point to areas where increased transparency would be beneficial. Our final section on enforcement focuses on the need to ensure there is more accountability for transgressions.

There is a pressing need to address the enforcement gap in the interaction between the Electoral Commission’s civil sanctions regime and the criminal prosecution regime. At present, this interaction does not form an effective and coherent system for deterring and punishing breaches of election finance laws.

In particular, the Electoral Commission’s civil sanctions fines - set at a maximum of £20,000, leaves referral to the Crown Prosecution Service as the only real deterrent for significant breaches - even though the bar for prosecution is significantly higher.

While prosecutory power should not be wielded against genuine and low-level mistakes, it would be false to assert that all transgressions fall into this category. An example from the 2017 election aptly demonstrates this point, alongside the need for higher civil sanctions. The Conservative Party failed to report a six-figure sum as part of their spending return, however the Electoral Commission was only able to impose a fine of £70,000 for this misconduct - a figure which the Commission itself accepts is merely seen as ‘a cost of doing business’.<sup>20</sup>

Meanwhile, criminal prosecution remains infrequent despite high amounts of low-level non-compliance with rules that carry a criminal offence. All failures to comply with the rules for candidates under the Representation of the Peoples Act 1983 (RPA 1983) carry a criminal offence, regardless as to the context or seriousness of the breach. As noted in the CSPL’s call for submissions, a large amount of criminal conduct under the RPA 1983 goes unpunished because it is often not proportionate to bring forward prosecution.<sup>21</sup> The Law Commission noted, too, that civil sanctions in certain contexts could be helpful,<sup>22</sup> and the Electoral Commission has recommended since 2013 that it be given civil sanctions at least for major elections.<sup>23</sup>

### **Key changes required:**

- To help provide a meaningful deterrent against breaches of the rules under PPERA subject to civil sanctions, we agree with the recommendation from the Select Committee on Democracy and Digital Technologies that the maximum fine the Electoral Commission can impose be increased to at least £500,000 or 4 percent of the spending limit (whichever is the greatest).<sup>24</sup>
- To help provide a meaningful deterrent against breaches of the rules under the RPA 1983, we recommend that the Electoral Commission’s investigatory powers and civil sanctions be extended to candidate offences at major elections.

<sup>20</sup> [Electoral Commission \(March 2017\) ‘Conservative Party fined £70,000 following investigation into election campaign expenses’](#). Accessed 16 July 2020.

<sup>21</sup> <https://cspl.blog.gov.uk/2020/06/11/new-review-to-look-at-regulation-of-political-finance/>

<sup>22</sup> Law Commission and Scottish Law Commission, Electoral law: a joint final report (March 2020) p.155

<sup>23</sup> Electoral Commission, A regulatory review pp.78-80

<sup>24</sup> [Select Committee on Democracy and Digital Technologies \(2020\), \*Digital Technology and the Resurrection of Trust: Report of Session 2019-2021\*](#), (London: HMSO).

The UK Anti-Corruption Coalition brings together the UK's leading anti-corruption organisations who, through their work, witness the devastating impact of corruption on society.



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