

Submission to the Public Administration and Constitutional Affairs Select Committee Inquiry into the work of the Electoral Commission

Key recommendations

The independence of the Electoral Commission must be maintained. This is fundamental to ensuring the integrity of democracy in the UK and reducing the risks of corruption in our politics. Furthermore, changes to the standing of the Electoral Commission here in the UK, would serve as a green light overseas to those who would wish to challenge the independence of electoral administration in their own countries, with serious consequences for the resilience of democracy internationally. Ultimately, maintaining the Electoral Commission's independence is an important underpinning to the UK's reputation for tackling corruption.

Increase the maximum amount the Electoral Commission can levy in fines to at least £500,000 or 4 per cent of the spending limit (whichever is the greatest). This will help to provide a meaningful deterrent against breaches of the rules under PPERA and challenge the notion that fines are just a 'cost of doing business' in electoral campaigns.

Extend civil sanctions to candidate offences at major elections. This will allow a proportionate response to breaches of the rules, increase enforcement, and relieve the Police of investigations which simple are not a priority for them.

The importance of the Electoral Commission as an independent regulator

1. The creation of the Electoral Commission was a significant step forward for electoral administration and probity in political finance in the UK. It is an essential part of mitigating the risks of corruption and ensuring the integrity of our democracy.
2. While most countries have laws and regulations on political financing, if the institutions charged with overseeing and enforcing these laws lack the independence or legal authority to impose sanctions for breaches, these cannot be fully enforced. Only 29 per cent of OECD countries have an independent electoral management body.¹
3. The fact that the Electoral Commission is independent of government but also benefits from the experience of Commissioners with direct political experience gives it authority and expertise as a regulator. The Commission has been accountable to the Speaker's Committee of the UK Parliament since its creation and is now also becoming accountable to the Scottish Parliament and the Senedd Cymru/Welsh Parliament. This model of accountability to all UK Parliaments whilst maintaining independence of

¹ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264249455-en>.

government is a strength.² In addition, political parties have the opportunity to make formal representations to the Commission both bilaterally and through the statutory Parliamentary Parties Panels.³

4. An independent regulator that can impose effective sanctions is essential for trust in our political system and reducing the risks of corruption. Regulators must be free to investigate and where necessary sanction political parties that break rules on election spending or party finance. The Electoral Commission has demonstrated an ability to do this within its current powers. For example, the Conservative⁴, Labour⁵ and Liberal Democrat⁶ parties were all fined for breaching rules on spending in the 2015 general election. This is undoubtedly uncomfortable for political parties and makes the Electoral Commission an attractive target for censure.
5. Countries where the regulator is under the auspices of a government department find this much harder and are at greater risk of certain types of corruption. For example, in Denmark sanctions are rarely forthcoming as it is, rightly, argued that it would be politically dangerous to have a body of the state investigating political parties. However, this means that party accounts are not independently audited, investigated or scrutinised⁷. This system of self-regulation within broad rules that are not open to external scrutiny risks the misuse of public funds and perception of corruption, as we saw in the 2010 election expenses scandal in the UK.
6. The Electoral Commission has 20 years' experience of what works and expertise in political finance regulation, which is a significant and rare resource. Experts responsible for cross-country comparison have described the transparency regime in the UK 'effectively world leading at this point'.⁸
7. The OECD commended the approach taken by the Electoral Commission in providing support to those it regulates to build understanding of the law and ensure compliance, as this is something that is often neglected internationally.
8. The Committee asks whether the Electoral Commission is valued by politicians and the public. As a body that regulates political parties it is to be expected that the Electoral Commission would, in the course of its work, draw of the ire of politicians and political

² The Northern Ireland Assembly does not have legislative responsibility for political finance regulation.

³ <https://www.legislation.gov.uk/ukpga/2000/41/section/4>

⁴ <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigation-election-campaign-expenses>

⁵ <https://www.electoralcommission.org.uk/electoral-commission-concludes-investigation-labour-partys-2015-general-election-spending>

⁶ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-liberal-democrats-2015-uk-parliamentary-general-election-campaign-spending-return>

⁷ *Power S Party Funding and Corruption* Palgrave Macmillan (2020) p177

⁸ Quoted in *Power S Party Funding and Corruption* Palgrave Macmillan (2020)p130

commentators. Perhaps the most realistic measure is not whether there are grievances from political parties, but whether they have an opportunity to raise these grievances, which as mentioned above they do, and whether there is opposition to the Electoral Commission from across the political spectrum.

9. Prof. Justin Fisher argues that the best judges of the strength of the Electoral Commission as a regulator are the electoral agents working on the ground in elections, many of whom are volunteers. Surveys of electoral agents repeatedly report satisfaction with the information and guidance provided by the Commission as well as high levels of satisfaction with electoral administration, and low levels of perception of electoral fraud.⁹

The need for additional powers for the Electoral Commission

10. There are significant challenges with political finance regulation in the UK, but these are primarily a result of an outdated legal framework. TI-UK made a number of recommendations to the recent CSPL inquiry on electoral regulation in the UK¹⁰ that would reduce the risk of corruption in our politics. These included introducing a cap of no more than £10,000 on the amount any individual or organisation can give annually; reducing the UK parliamentary general election spending limit by at least 15 per cent for political parties; bringing the reporting threshold for donations and loans into line with the permissibility thresholds, currently £500; and introducing tighter controls on who can pay for parliamentarians' overseas visits.
11. These are serious risks, but they are the product of deficient legislation, not the Electoral Commission. Removing or hindering the work of the Electoral Commission would be regressive and counter to international good practice.
12. The Electoral Commission should be given additional powers to strengthen its hand as a regulator. The Electoral Commission does not currently have the power to obtain information from those it is seeking to regulate outside of a formal investigation, which limits its ability to assess whether or not an investigation is the most appropriate course of action. The Electoral Commission has called for this power to be granted to it,¹¹ and this was recently backed by the House of Lords Democracy and Digital Technologies committee.¹²

⁹ Fisher, J. & Kumar, J. (2020) *Attitudes of Electoral Agents on the Administration of the 2019 General Election*.

¹⁰ See submission 29 from Transparency International UK here

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/914797/CSPL_Regulation_of_election_finance_-_written_submissions_21_-_51__1_.pdf

¹¹ Electoral Commission *Digital campaigning: Increasing transparency for voters* 2018

https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improvingtransparency-for-voters.pdf

¹² House of Lords Select Committee on Democracy and Digital Technologies (2020). *Digital Technology and the Resurrection of Trust. Report of Session 2019-21*. <https://committees.parliament.uk/publications/1634/documents/17731/default/>

13. The granting of civil sanction powers to the Electoral Commission in 2009 was a welcome step, which has had both deterrent effects and improved compliance. The OECD found that since the UK Electoral Commission was given its civil sanction powers, compliance rates have increased by 9%.¹³ However, there remain significant enforcement gaps that need closing and an insufficient deterrent against egregious non-compliance with the law.
14. Currently, the Electoral Commission does not have civil sanctions sizeable enough to be dissuasive against serious breaches of the Political Parties, Elections and Referendums Act 2000 (PPERA).¹⁴¹⁵ Consequently, those not following these rules can do so with relative impunity. The limitations of the current maximum civil penalty are evident from cases over the past five years.
15. At the 2015 general election, the Conservative Party failed to report a six-figure sum as part of their spending return. Yet, cumulatively, the Electoral Commission was only able to impose a fine of £70,000 for this misconduct.¹⁶ At the same general election, the Liberal Democrats under-reported spend by around 5 per cent, which only incurred a penalty of £20,000.¹⁷ These sanctions, even accounting for the reputational risk that goes with them, are not large enough to be dissuasive against similar behaviour in the future. It remains cheaper for well-established political parties to pay these penalties than to address weaknesses in the capacity of their compliance teams.
16. The Select Committee on Democracy and Digital Technologies recommended that the maximum fine the Electoral Commission can impose be increased to at least £500,000 or 4 per cent of the spending limit (whichever is the greatest). We agree with the recommendation. It will help to provide a meaningful deterrent against breaches of the rules under PERA and challenge the notion that fines are just a cost of doing business.

Extending civil sanctions to candidate offences at major elections

- 17. To help provide a meaningful deterrent against breaches of the local rules on spending and donations for candidates, we recommend that the Electoral**

¹³ OECD (2016), "Ensuring compliance with political finance regulations", in *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264249455-7-en>.

¹⁴ Electoral Commission, *UK parliamentary general election 2015: Campaign spending report* (February 2016) pp.7-8 https://www.electoralcommission.org.uk/sites/default/files/pdf_file/UKPGESpending-Report-2015.pdf

¹⁵ Select Committee on Democracy and Digital Technologies, *Digital technology and the resurrection of trust* (June 2020) p.95

¹⁶ <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigationelection-campaign-expenses> [Accessed 12 November 2020]

¹⁷ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcementnetwork/investigations/investigation-liberal-democrats-2015-uk-parliamentary-general-election-campaignspending-return> [Accessed 13 November 2020]

Commission's investigatory powers and civil sanctions be extended to offences under the Representation of the People Act 1983 (RPA 1983) at major elections.

18. Empowering the Electoral Commission to apply civil sanctions for administrative offences by candidates and their agents, rather than relying on criminal prosecution, would close significant loopholes and improve the enforcement of the law. 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. However, despite high amounts of low-level non-compliance with these rules, criminal prosecution remains infrequent. A large amount of criminal conduct under the RPA 1983 goes unpunished because it is often not proportionate to bring forward prosecution.¹⁸ The Law Commission noted, too, that civil sanctions in certain contexts could be helpful.¹⁹ The Electoral Commission has recommended since 2013 that it be given civil sanctions at least for major elections.²⁰

Conclusion

19. An independent Electoral Commission ensures the integrity of our democracy and helps mitigate the risks of corruption in our politics. The UK's international reputation in tackling corruption is also enhanced by having an independent electoral regulator. It would be a retrograde step to limit the powers or the remit of the Electoral Commission. It would be particularly concerning if these changes could be seen as being made in response to either individual decisions taken by the Commission or a general sense of grievance. This would not only damage our democracy in the UK, but also send entirely the wrong message internationally.

ABOUT TRANSPARENCY INTERNATIONAL UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design

¹⁸ <https://cspl.blog.gov.uk/2020/06/11/new-review-to-look-at-regulation-of-political-finance/> [Accessed 12 November 2020]

¹⁹ Law Commission and Scottish Law Commission, *Electoral law: a joint final report* (March 2020) p.155 https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage11jsxou24uy7q/uploads/2020/03/6.6339_LC_Electoral-Law_Report_FINAL_120320_WEB.pdf

²⁰ Electoral Commission *A regulatory review* pp.78-80 2013

https://www.electoralcommission.org.uk/sites/default/files/pdf_file/PEF-Regulatory-Review-2013.pdf

practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.