

Spotlight on Corruption submission to the Committee on Standards in Public Life consultation on Electoral Regulation

Organisation overview:

Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK's anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

Spotlight on Corruption welcomes this review and calls for an overhaul of the body's enforcement powers to keep pace with the evolving challenges of regulating elections. This submission is intended to identify issues in urgent need of review by the Committee ahead of formally presenting its report to the Prime Minister. As an organisation, we are concerned that the shifting nature of campaigning and use of technology means that the UK's current approach to regulation and oversight of the electoral process leaves the door open to corruption and undermines confidence in the democratic system.

Summary of recommendations:

- Financial sanctions available to the EC should be increased beyond the current £20,000 maximum and instead be benchmarked to a percentage of campaigns' total spend.
- The EC's sanctions regime for breaches of the Political Parties, Elections and Referendums Act 2000 should be extended to cover acts of non-compliance with the Representation of the People Act 1983 with the objective of closing the current enforcement gap.
- The EC should be given an explicit mandate to perform as a specialist prosecutor for electoral offences.
- Parties should undertake AML checks on beneficial owners and refuse donations from companies failing to provide evidence of genuine economic activity in the UK.
- The EC should be granted powers to compel social media companies to release data on political parties' online advertising spend.

Q1 What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.

1(a) Transparency

Transparency is a core value underpinning the integrity of the democratic process but is being undermined by the realities of conducting elections and referenda in the 21st century. Political parties are increasingly being drawn to online campaigning and now deploy sophisticated data operations to reach voters while sources of donations are often hidden behind opaque corporate structures with connections to non-transparent jurisdictions. This lack of transparency, a product of the UK's antiquated election finance laws, means that at present the Electoral Commission (EC herein) is, in our view, unable to fully regulate election finance as effectively as it should.

1(b) Proportionality in enforcement

The subject-matter with which the EC engages is a core tenet of our democracy; encouraging compliance within the regulations and deterring breaches. To the latter, the appropriate level of proportionality in enforcement is absent from the current rules: the most serious offences are met with comparatively small fines, a slap on the wrist compared to the benefits gained. The enforcement options available to the EC should be proportionate to the offence and it should be given the power to take action swiftly and without ambiguity.

In the case of EC's 2018 investigation into Vote Leave,¹ the EC fined the organisation a total of £61,000 (including three £20,000 individual fines) for nearly £500,000 in overspend during the Brexit referendum. This penalty, however, equates to a 13.5% levy on the total overspend and cannot be seen as an effective deterrent for future violations. At present the maximum penalty could easily be perceived as a "cost of doing business"² or as a manageable expense for parties operating on multi-million pound budgets.

Where serious breaches occur that put the democratic process at risk, the EC should have the powers to intervene strongly. To do this, the maximum £20,000 penalty available to the EC should, at a minimum, be benchmarked with similar regulatory bodies such as the Information Commissioner which under the Privacy and Electronic Communications Regulations is able to impose sanctions of £500,000. Given the potential for serious electoral offences to cause damage to the fabric of democracy we think proper consideration should be given to removing the upper limit altogether and fines should instead be linked to total campaign expenditure.

Q2 Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.

Q3 What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?

Questions 2 and 3 are addressed together:

2/3(a) Current rules on the permissibility of donations provide entrance into UK election finance for foreign sources.

Section 54 of PPERA allows UK-registered companies to donate money to a political party provided it *carries on business in the United Kingdom*. EC guidance³ to the legislation recommends that further checks can be made, including on the status of a company's registration at Companies House, or whether its latest accounts prove it is undertaking economic activity in the UK.

This guidance lacks any legal basis and as we know from undertaking research in this area, the rules in the present form leave the door open for overseas actors using complex corporate offshore vehicles (while taking advantage of the ease of setting up a UK-registered company) to skirt rules and donate to political parties. This poses real corruption risks when donations are channelled to parties in this manner through non-transparent sources and from non-transparent jurisdictions where the ultimate beneficial owner of a company remains unknown.

An example of how the current rules are circumvented can be observed in the case of Aquind Ltd - a UK company owned via a Luxembourg parent company which has donated £126,300 to the Conservative Party since November 2019 but whose owner has until recently remained anonymous. Aquind Ltd had moved to obfuscate the ownership of the company by invoking a rare exemption at Companies House to avoid declaring a PSC statement. During this period there was no available means for the public (or the party treasurer) to find information on the owner of the company. According to its latest accounts published at Companies House,⁴ Aquind runs at a loss in the UK and is financed by loans from its parent company OGN Enterprises Limited registered in the British Virgin Islands (BVI).

¹ https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Report-on-Investigation-Leave.EU.pdf

² The phrase was first used by Sir John Holmes in 2017 as well as by Claire Bassett, former chief executive of the Electoral Commission the following year: <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigation-election-campaign-expenses-and> <https://www.theguardian.com/politics/2018/may/15/uk-elections-watchdog-calls-for-bigger-fines-for-rule-breaches>

³ Permissibility checks for

political parties. The Electoral Commission. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/sp-permissibility-rp.pdf

⁴ Aquind Limited. Company information available at Companies House. <https://beta.companieshouse.gov.uk/company/06681477/officers>

Companies registered in the BVI do not publish their annual accounts meaning that the source of donations channelled through this and other similar jurisdictions is hidden.

We understand that some party treasurers have said that they scrutinise donations by following Financial Conduct Authority (FG 17/6) anti-money laundering (AML) guidance⁵ requiring registered firms to undertake beneficial owner checks on customers. This guidance is clearly not binding on political parties as they are not regulated by the FCA. Spotlight on Corruption believes that expanding the scope of what needs to be checked in terms of permissibility of donations is essential and should include checks on the origin of funds and whether the funds could be the result of criminality or money laundering. Mandatory AML checks made by a party on donations would go some way toward guaranteeing the legitimacy of the funds and also to protect parties themselves from the reputational risks arising from accepting money from non-permissible sources. The results of the beneficial owner checks should be made available to EC which should then promptly publish the information on its database ensuring that voters can see the ultimate beneficial owner behind any company making donations to parties. Given weaknesses in verification and the potential loopholes in providing the UBO, this requirement would help ensure greater transparency in electoral finance. Where PSC information is not immediately available through filings deposited at Companies House then party treasurers should request confirmation from the company in question and share information with the EC.

Current PPERA regulations prohibit foreign actors from entering into agreements with UK agents (e.g. UK-registered companies) to act as a conduit for donations. In practice, this is unenforceable while the onus remains on the EC to prove the existence of a formal agreement between the prospective donor and UK agent - a task made even more difficult when involving companies based in 'secrecy jurisdictions' where the EC has no means of accessing even basic company information on ownership, control, beneficial interests or an overview of the company's trading activities.⁶ The current regulations in this area should be reviewed to require parties to undertake more thorough checks on the origin of donations where companies have limited or ambiguous connections to the UK.

2/3(b) EC should be granted powers to compel social media companies to release data connected to political party spend on online activities.

The EC should be given the power (equivalent to the Information Commissioner) to compel social media companies to release data and relevant information to assist the EC with its investigations. At present, allegations relating to the misuse of digital technology and overspending on online campaigning are aired in the press while EC investigations are slowed down by a lack of automatic information sharing. Prompt cooperation from the social media companies would speed up the investigative process and promote effective intervention.

2/3(c) Unincorporated associations should publish information on 'political gifts' they receive over £500.

According to figures taken from the EC database, some 389 cash donations with a value of £2.4 million were given to political parties in 2019 through Unincorporated Associations (UAs). The funding mechanisms behind some of these groups is opaque with no requirements on filing accounts or publishing membership lists. UAs' reporting to the EC on gifts they receive points to significant gaps in income received and donations made as expenditure. Spotlight on Corruption recommends decreasing the threshold for reporting requirements on 'political gifts' UAs receive from the current £7,500 to £500 in order to bring more transparency to their source of their income.

Q4 Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?

Spotlight on Corruption feels that the EC plays an essential role defending democratic principles and processes and also acts as a bulwark against interference by illicit and questionable sources of finance. However, for the reasons stated in response to other more specific questions, we feel that its sanctioning powers are insufficient and its civil sanctions regime should be extended to cover RPA violations.

Q5 Are there aspects of the rules which affect or detract from effective regulation of election finance?

⁵ See: FG 17/6 The treatment of politically exposed persons for anti-money laundering purposes. Financial Conduct Authority. <https://www.fca.org.uk/publication/finalised-guidance/fg17-06.pdf>

⁶ As demonstrated in the EC investigation into potential violations of PPERA involving Bearwood Corporate Services Limited on this specific point, the EC relied on voluntary disclosure of Stargate Holdings Limited - a company registered in Belize which did not disclose any information on the source of its funding. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Case-summary-Bearwood-Corporate-Services.pdf

Q6 What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?

Questions 5 and 6 are addressed together:

5/6 Rules on 'meaningful connections' to the UK to become further strained in the digital economy.

As already identified in the responses to questions 2 and 3, Section 54(2)(b) of PPERA does not establish the necessary grounds to demonstrate that potential donors have a meaningful connection to the UK. This should be updated to ensure that companies, beyond being registered in the UK, a) undertake substantial economic activity in the UK including regularly paying corporation tax b) have British-based company directors c) declare accurate and up to date beneficial ownership to Companies House. Special consideration should also be directed toward incoming changes to the digital economy where, in the not too distant future, it could be conceivable for non-permissible sources to register companies in the UK with the stated claim of managing non-existent intellectual property rights in the UK for foreign companies. This is a clear weak link in the current arrangements and provides an entry point for foreign money in UK elections without breaking any of the current rules.

Q7 Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?

7 The EC's present sanctions regime does not provide a sufficient deterrent to prevent non-compliance.

As is recognised widely, the maximum fine of £20,000 is in danger of being perceived as "the cost of doing business" when parties operate on multi-million pound annual budgets. The maximum £500,000 fine or 4% of the total spending limit proposed by the Select Committee on Democracy and Digital Technologies in June 2020⁷ is welcome. However, the £500,000 figure is in danger of becoming outpaced by increases to election spending limits. For instance, in the 2019 election the spending limit for parties contesting all constituencies was £19.5 million⁸ meaning a 4% fine would equate to £780,000, already far beyond £500,000.

Where this amount is still not sufficient to provide a deterrent effect, the EC could be given powers to levy fines proportional to a party's income during an election cycle or parliamentary term. This would ensure that the EC would have appropriate measures to proportionately enforce infractions consistent with the size of the party involved.

Q8 Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?

Q9 In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?

Questions 8 and 9 are addressed together.

8/9(a) Lack of criminal prosecutions for violations of Representation of the People Act underlines serious 'enforcement gap'

As the CSPL notes in its call, prosecutions for violations of the RPA are rare and point to the existence of an enforcement gap where low-level but serious infractions (e.g. late delivery of a spending returns) go uninvestigated and unpunished by the police. The enforcement gap is further widened when the EC has found evidence of violations of the RPA and shared information with the police which then chooses not to open investigations. In the case of the EC investigation into claims of overspending relating to the *Conservative and Unionist Party campaign spending returns for the 2014 European Parliamentary Election, 2015 UK Parliamentary General Election, and the 2014 parliamentary by-elections in Clacton, Newark and Rochester and Strood*⁹ - the EC believed that it had amassed enough evidence of breaches of the RPA to discuss the matter with the police. The police, however, did not believe the information it received was sufficient to open an investigation. A stronger civil sanctions regime made available to the EC would be better suited to monitoring, investigating these types of offences while additionally creating a more effective deterrent against non-compliance.

⁷ <https://publications.parliament.uk/pa/ld5801/ldselect/lddemdigi/77/77.pdf>

⁸ <https://www.bbc.com/news/election-2019-50170067>

⁹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-conservative-and-unionist-party-campaign-spending-returns-2014-european-parliamentary>

8/9(b) Spotlight on Corruption supports calls made by the Electoral Commission to build a specialist prosecution function to address the dearth in prosecutions.

We believe that the EC should be granted powers to perform as a specialist electoral prosecutor in the same manner as the Financial Conduct Authority regulates financial firms with robust enforcement powers¹⁰ including the option to bring criminal prosecutions for serious electoral offences. The EC has the benefit of in-depth expertise and is best-prepared to consider the sensitivities of bringing a case for election finance offences. It would also ensure continuity and the efficient disposal of an investigation. This would be the most efficient use of the EC's expertise in ensuring the integrity of our electoral process, and providing a strong encouragement for compliance.

It is a welcome development that the EC is calling for the power to bring prosecutions before magistrates' courts involving "lower complexity offences that involve recklessness or deliberate dishonesty and cannot be subject to the civil sanctions regime."¹¹ More serious offences, under the proposed arrangement, would still be handled by the police but should benefit from specialist input and support from the EC which would be achieved by deepening existing information exchange between the EC,¹² each force's election single point of contact (SPOC) and senior investigating officers. Receiving specialist advice from the EC would improve the police's ability to investigate electoral offences by building knowledge of specific offences and would then contribute to developing case files with a better chance of meeting the Crown Prosecution Service's prosecution threshold. There are more fundamental questions to be resolved over the role of the police in prosecuting electoral offences where in recent years forces have expressed their reluctance to wade in on 'live' political issues¹³ and therefore it is vital the EC and the police receive explicit political backing to undertake enforcement actions.

Q10 Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?

10 Yes - investigative powers and the civil sanctions regimes available to the EC under PPERA should be extended to cover candidate offences currently regulated by RPA.

Under the current arrangements the EC investigates electoral offences at national level following PPERA legislation while the police undertake the same function at local level guided by RPA. All violations of the RPA committed by candidates carry a criminal offence but prosecution is rare¹⁴ - the police may decide that bringing a prosecution forward is not in the public interest or a priority.¹⁵ The enforcement gap left as a result means that non-compliance for lesser offences goes unpunished. Bringing these offences within the scope of the civil sanctions regime overseen by the EC would offer an alternative to police investigation and criminal prosecution and would encourage compliance through the imposition of civil fines. The separation of lesser offences under a single regulatory remit would promote clear oversight while police intervention would be reserved for the most serious of breaches.

Contact: Susan@spotlightcorruption.org

¹⁰ This power is bestowed under sections 401 and 402 of the Financial Services and Markets Act 2000.

¹¹ See the Electoral Commission's submission to the CSPL consultation. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/responses-consultations/committee-standards-public-life-review-electoral-regulation-response-consultation>

¹² In its submission to the CSPL the EC has called for more explicit powers to share information with the police.

¹³ <https://www.opendemocracy.net/en/dark-money-investigations/met-police-stall-brexite-campaign-investigations-claiming-polit/>

¹⁴ In 2019 the police investigated 585 cases under the RPA with two leading to a conviction and one individual was given a police caution.

<https://www.gov.uk/government/publications/review-of-electoral-regulation-public-consultation>

¹⁵ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/responses-consultations/committee-standards-public-life-review-electoral-regulation-response-consultation>