

# The Electoral Commission's response to recommendations of the House of Commons Constitutional Affairs Committee report into Party Funding

## 1. Introduction

1.1 The Electoral Commission welcomes the Constitutional Affairs Committee's report into Party Funding. The report, and its findings, provide a valuable contribution to the ongoing debate into the future of party funding and regulation in the United Kingdom. The Committee's report is largely consistent with how the Commission views its key priorities for the next five years, namely to demonstrate and enhance our effectiveness as the regulator of party and election finance.

## 2. Funding principles

2.1 In May 2006, as part of the wider debate into the future of party funding in the UK, the Commission published a set of key principles, which it believes should underpin any system for the funding of political parties.

2.2 These principles recognise the vital role that political parties play in the successful functioning of a sustainable and representative democracy. Parties serve as a channel through which individuals and groups are integrated into the political system, organise campaigns in order to mobilise voters to express their wishes at elections and make possible the effective conduct of government. There is accordingly a vital public interest in ensuring that parties operate in a framework that enables them to carry out these functions effectively and enjoy public confidence in doing so. In terms of the funding system, that public interest can be expressed through quantitative and/or process controls on expenditure, or income, or both.

2.3 The Commission is therefore of the view that any system for the funding of political parties must:

- encourage smaller contributions from a larger number of people rather than small numbers of high value contributions
- ensure that no single funding source can exert undue influence
- ensure that parties continue to generate a significant proportion of their income from voluntary contributions
- neither entrench the existing party system nor inhibit the development of new parties
- be based on clear and fair rules for how parties qualify for any public funds
- be simple and practicable in terms of implementation
- be open and transparent so that the public can see clearly the sources and uses of funds

- take account of the needs of parties at all levels and in all parts of the United Kingdom

2.4 These principles are in line with the Committee's views on the central role of the political parties, and on the principles which they consider should underpin any proposals for reform of the party funding system, and are outlined in paragraph 146 of the Committee's report. The Commission welcomes this shared understanding of the key principles that should form the basis of any system of party funding.

### 3. Response to recommendations

3.1 The remainder of this response outlines the Commission's views on a number of the specific recommendations made by the Committee.

**Political parties receive income from a variety of different sources. Despite the introduction of a duty to produce accounts under PPERA, a lack of common accounting practices makes it difficult to compile a comprehensive account of the income profile of the political parties. The Government should ensure that the Electoral Commission produce more digestible, thorough and transparent figures of private and public sources of party income. (Paragraph 39)**

**... We recognise that current reporting methods fail to provide adequate transparency in the way accounts are presented by the Electoral Commission. We urge the Electoral Commission and the Government to work together to improve and strengthen these processes. (Paragraph 55)**

3.2 We agree on the importance of changing our approach in this area. The Commission is currently developing a more rigorous and comprehensive approach to analysis and publication of the data we receive from those subject to regulation. We shall work to publish information in a more accessible and understandable format to promote more public engagement, as well to support our own regulatory work.

3.3 As part of this work, the Commission is developing a database to allow for the online submission of statutory returns. Online submission, or e-filing, is increasingly standard practice among other international regulators, and allows for forms to be submitted efficiently and in a standardised format. It will also allow for data to be more easily accessed and analysed, and will assist the Commission in the development of a more rigorous analytical approach.

3.4 Additionally, the Commission is currently considering the extent to which making regulations to prescribe the content of some returns would help ensure and improve the consistency and quality of information provided within submissions and statutory returns. Particular consideration is being given to the use of regulations in two areas. Firstly, the Commission is considering prescribing the format and content of the annual statements of account submitted by parties and accounting units to ensure that the information provided is comprehensive and allows for meaningful comparisons. Secondly we are looking at making provisions for additional information to be included in quarterly donation returns, such as further information relating to how

benefits in kind are valued to assist with compliance checks, and additional information about the make up of unincorporated associations in order to provide greater transparency about the sources of private funding.

**We believe that there are problems, both actual and perceived, with the current arrangements for party funding in the UK. While parties struggle with escalating costs and a reduction in the traditional financial support base, public confidence is damaged by the fear that donors may be able to buy political influence. While the PPERA 2000 introduced closer regulation and some improved transparency, it has not finally resolved problems with the system; if anything increased transparency, by revealing the extent of and dependency on donations from a few rich individuals, corporations and trade unions, has increased the negative impact on public confidence. (Paragraph 49)**

**While we endorse a transparent system, transparency does not solve problems, but draws attention to them. It also invites “sniping” between opponents. It must be based on readily identifiable risks so that audit functions have a clear overall purpose. (Paragraph 53)**

3.6 The step change in transparency about the financial affairs of the political parties since the introduction of the PPERA framework in 2001 is evident through the donations reporting; the campaign expenditure reporting and the annual statements of accounts submitted by parties. Before the introduction of reporting requirements by PPERA, people knew very little about where political parties got their money or how they spent it. Today, the reverse is true. Over the past six years, the Commission has published details of more than 15,000 donations to parties with an overall total of over £215 million. It’s precisely because so much information has been put into the public domain that there is so much comment now on where the parties get their money and how they spend it.

3.7 The Commission recognises, as the Committee notes, that this increased awareness of the financial affairs of parties may not in itself foster public trust in politicians and parties, and within the Commission’s 2007-2008 corporate plan we have identified one of our key objectives as enhancing public confidence in the funding of political parties through more effective regulation and enforcement, in addition to transparency.

3.8 In respect of the need for audit functions to be based on identifiable risks, the Commission is changing its regulatory approach so that in the future it will be underpinned by comprehensive risk assessment, allowing us to focus resources in areas where they will have most impact and ensuring the Commission does not intervene unnecessarily or excessively in the financial affairs of parties, particularly those parties or issues identified as low risk.

**We welcome the changes and transparency that have come about as a result of the PPERA. We agree with the basic principles of the current system. We note that the system of regulation has largely developed as a response to specific problems which have emerged, and emphasise the need for consistent review and flexibility in what is a very fluid and dynamic environment. (Paragraph 54)**

3.9 The Commission supports the views of the Committee in respect of the need for consistent review of the regulatory framework and the context in which it operates. As the body responsible for the regulation and administration of the PPERA regime the Commission keeps the controls of the framework under continual review, in order that where gaps are identified, or where it is clear that current controls are not operating properly, the case for change can be considered.

**There needs to be a fine balancing act between regulation and providing the parties with adequate resources to ensure compliance. It would be counter-productive to increase further the financial burden on the political parties by requiring them to redirect resources in order to assure compliance. (Paragraph 60)**

**We acknowledge the difficulties with regulation, especially its application at the local level. However, these obstacles should not prevent the pursuit and development of a robust, transparent, workable and enforceable regulatory framework. (Paragraph 61)**

3.11 The Commission is keenly aware of the burden placed on parties and others by the legislative framework, especially in view of many of those subject to regulation being largely volunteer organisations, and as outlined above our planned risk based approach will be designed to ensure that as a regulator the Commission is not excessively intervening in the financial affairs of parties. The Commission also aims to support parties and others in meeting the regulatory requirements of PPERA through the provision of training, advice and guidance, and as announced in March 2007, is currently working to further review our guidance and advisory capacities. Additionally, following the completion of a first full cycle of elections under PPERA, we have moved in favour of more rigorously intervening to ensure compliance. This trend will continue and strengthen over the next five years.

3.12 In 2003 the Commission recommended introducing a two-tier regulatory system, under which parties could register to contest local elections only and would be subject to lighter touch regulations. The Government rejected this recommendation stating that they did not consider it appropriate for parties contesting the same elections to be subject to different regulations. They did however accept that the framework was burdensome for smaller parties, and a number of provisions were included in the Electoral Administration Act 2006, which were aimed at ensuring that the more administrative regulatory requirements placed on parties are not overly onerous. For example, since the introduction of the 2006 Act, and at the time of writing over 227 political parties who have not received reportable donations in the past year have now been exempted from requirements to prepare and submit quarterly 'nil' returns to the Commission, and will only be required to submit reports again when they receive a relevant donation. The Commission does however continue to support the concept of a two-tier system.

**We recommend change to the Electoral Commission to help it become an effective watchdog with appropriate powers for enforcement. We recommend the provisions in PPERA should be changed to allow a minority of Commissioners to be people with practical past experience of politics from across the political spectrum. (Paragraph 64)**

3.14 The Commission is already taking steps to make more effective and consistent use of the powers and penalties which are available to us, and to be more pro-active in our regulatory role.

3.15 But we would welcome consideration by the Government of additional, more flexible, financial penalties for non-compliance. Our 2003 review of the regulatory framework made a similar recommendation, and the Government indicated that it would support the proposal. Unfortunately, there was not sufficient time available to allow for the necessary legislative provisions to be included in the Electoral Administration Act 2006. We continue to take the view that a more proportionate and flexible penalties regime will bring benefits, including the opportunity to apply a range of sanctioning options in response to the needs of the particular case and underlying offence.

3.16 In respect of appointing Commissioners with a recent political background, we recognise there is a case to be made for changing the present ten year restriction on previous political activity by prospective Commissioner appointees. The existing rules were designed to protect the organisation's political independence and were the subject of considerable debate in Parliament at the time the Commission was established. At that time, a majority in both Houses took the view that the Commission's independence was best secured through a ten year prohibition.

3.17 If Parliament now takes the view that such a lengthy period of political inactivity is not required before seeking appointment as a Commissioner – for at least some members of the Commission - the key issue will be to define what the appropriate minimum period between an active political role and appointment as a Commissioner should be.

3.18 We agree with the Committee's recommendation that those Commissioners appointed with recent experience of politics and the political process be in a minority among the wider group of Commissioners, and in addition consider that such Commissioners should:

- Not be eligible for appointment as Chairman of the Commission
- Contribute to Commission proceedings and decision-making on the same basis as any other member, and not be part of a separate 'cadre' of Commissioners, i.e. they should be members of a 'unitary board'
- Be appointed through a transparent appointment process that is consistent with the OCPA guidelines for other public appointments
- Not be nominated as formal representatives of their political party, in order to demonstrate a commitment to the Commission ahead of any party allegiance.
- Demonstrate the competencies expected of any other Commissioner, in addition to knowledge and understanding of the political world.

- Ensure adequate representation of minority parties especially those active in Northern Ireland, Scotland and Wales.
- Not be eligible to Chair the Boundary Committee for England, so long as the Commission continues to be responsible for this function.

**We recommend there should be a tighter cap on overall party spending. This limit should be set by the Electoral Commission, and should be determined as a result of an open debate about the real cost of politics. (Paragraph 72)**

**Although election spending at constituency level is subject to defined limits, extensive spending can take place, including in marginal constituencies outside these limits. Any change, even if designed to encourage a more general shift from national to local campaigning would still be subject to loopholes, and it is not clear whether it would be administratively feasible to close these. (Paragraph 78)**

**We see merit in the focus of campaigning being shifted from the national to the local level. Whilst recognising that parties must take control of spending, we recommend that there be a modest increase in local spending limits to be set by the Electoral Commission. (Paragraph 79)**

3.19 In our 2004 report, *the Funding of political parties*, the Commission recommended a rebalancing on national and local spending limits, with the national spending limit applying to UK parliamentary elections being reduced, and candidates' spending limits be raised to enable more activity at the local level. We also recommended reviews be undertaken for the rebalancing of national and candidate spending limits with respect to other relevant elections.

3.20 Following the publication of Sir Hayden Phillips report on party funding, which considered issues of the scope and nature of spending controls, decisions on appropriate levels of spending limits will be dependent on the outcome of the further discussions between the main parties being chaired by Sir Hayden and the form future controls on spending at the national and local level will take. While, the Commission is happy to assist, it is important that there is consistency of approach and co-ordination regarding setting spending limits at relevant elections in order to ensure their effective operation.

3.21 The Commission is also aware of concerns regarding the targeting of funds in specific constituencies before the start of the regulated period for candidates' expenditure, which either fall to be counted as party expenditure rather than candidates' expenses or fall outside reporting requirements completely. This raises issues regarding the regulated period for candidates' spending, as well as about the relationship of controls on party and candidate spending, which the Commission hopes parties will make progress on as part of the inter-party discussions following on from the recent Phillips report.

**It is essential that, both in perception and reality, money cannot buy undue influence, (or indeed, buy the election result) from within or outside the party. Third party spending should therefore be regulated within the same accounting period as that determined for political parties so that current loopholes can be eradicated. (Paragraph 92)**

3.22 PPERA introduced controls on third parties campaigning for or against a party or a group or parties or candidates, in the run up to devolved, UK and European elections. Under these controls third parties are subject to spending limits on the amount of expenditure they can incur on election materials which can reasonably be regarded as intended to promote or disparage a party or a group or parties or candidates at an election. Separate controls are also in place under the Representation of the People Act 1983 on third party spending to promote or disparage individual candidates at elections.

3.23 The Commission's 2003 review of the administrative framework of PPERA considered third party controls. Within the report we looked at third party controls in two key areas, firstly in respect of whether the definition of 'election materials' was the right one, and secondly whether third parties should be subject to the same controls as political parties, as there are currently key differences, such as when they are required to report donations, and what types of campaign spending are regulated. We considered at that time that more experience in this area was needed before any case for change could be made, as the controls had applied for a reduced regulated period at the 2001 UK Parliament election, which took place shortly after PPERA came into effect, but had only been fully effective in respect of the 2003 elections to the Scottish Parliament and National Assembly for Wales.

3.24 Since the completion of that review the Commission has also identified issues relating to confusion over the operation of two sets of separate controls on third party activities and how specific activities are caught by either, or both, sets of controls.

3.25 Controls on such organisations and individuals have now been applicable to a complete cycle of national elections. While in our early years the Commission primarily focussed our regulatory work on the application of the framework to political parties and accounting units, to ensure that those at the heart of the regulatory regime understood and were equipped to comply with the requirements of PPERA, we have more recently also been increasingly focussing on the application of the controls to those other organisations and individuals engaging in political campaigns.

3.26 We are currently considering the various third party activities at the 2007 elections in Scotland and Wales, in respect of both compliance with relevant controls and in order to further consider how well the current controls operate. We plan to publish our initial assessment of third party controls in late summer 2007.

