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Dear Mr Godson

## 'Electoral Omission'

I read with interest the report that Policy Exchange published on 23 October, written by Dr Michael Pinto-Duschinsky.

I have no issue with Dr Pinto-Duschinsky's particular perspective on the electoral system and the Commission's role. The Commission welcomes scrutiny of our role, and to that end we engaged constructively with Dr Pinto-Duschinsky before he wrote his report, providing him with a significant amount of information and arranging meetings for him with our Chair and other key members of staff.

Given the extent of these discussions, however, I am disappointed at the number of significant, sometimes quite basic, factual inaccuracies and misrepresentations that ended up in the final report that Policy Exchange published. In my view, they risk undermining a number of your report's recommendations.

I have set out some of our specific concerns as an annex to this letter and I would be happy to discuss any of these issues further if that would be helpful. I am making a copy of this letter available on our website.

Yours sincerely,



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## Annex

### Issues raised in the Policy Exchange report ‘Electoral Omission’ by Dr Michael Pinto-Duschinsky

#### The electoral registers

In **Chapter 3** of the report the author states that the Electoral Commission’s 2011 study on the accuracy and completeness of the electoral registers in Great Britain, “*revealed that in April 2011, the electoral rolls of England, Wales and Scotland for parliamentary elections contained an estimated 15 million errors*”. This suggests that the figure of 15 million is taken from our report, but this is not the case. Instead, it has been derived by adding together two different figures – the estimated number of people not registered at their current address, plus the estimated number of inaccurate entries on the electoral registers. The Commission does not consider this figure of ‘15 million errors’ to be a genuine reflection of the state of the electoral registers.

The two different estimated numbers that the author has added together in fact overlap – someone who is not included on the registers at their current address may be included on the registers at a previous address. Indeed, the author acknowledges this on page 14 of his report when he notes that not all of the 8.5 million people estimated by the Commission to be not correctly registered, “*were disenfranchised. A considerable (though unknown) number were registered at a previous address.*”

The figure of 15 million therefore double counts errors, and is misleading. This mistake is repeated several times in the analysis, using the results of other assessments of the registers.

We specifically addressed this issue with the author in several discussions designed to inform his reporting.

In **Recommendation one** of the report, the author states that “*instead of measuring the accuracy of the register, the Electoral Commission has merely conducted an annual survey of procedures followed by Electoral Registration Officers in each district.*” In fact, the Commission has collected key registration data from Electoral Registration Officers every year since 2007 and uses this data to support periodic assessments of the accuracy and completeness of the electoral registers. We have also published a number of reports which assessed both accuracy and completeness of electoral registers (several of which are referenced by the author in the report) including:

- The quality of the 2014 electoral registers in Great Britain (July 2014)
- Electoral registration in 2011 (July 2014)
- Continuous electoral registration in Northern Ireland (November 2012)
- Great Britain's electoral registers (December 2011)
- The completeness and accuracy of electoral registers in Great Britain (March 2010)
- Electoral registration in Northern Ireland: accuracy and comprehensiveness (September 2008)

The timing of these full studies on accuracy and completeness are determined by several factors including the wider context in which we work. For example, our most recent study has set a baseline for the registers before the move to individual electoral registration and our next will allow for an assessment of the initial impact of IER once the transition period has been completed.

Also, as the report acknowledges, each assessment of the accuracy of the registers is costly and – not least because headline levels of accuracy have clearly remained stable for some time – the Commission does not believe there is a case for repeating a full assessment every year.

## Campaign finance

In **Recommendation five** of the report the author states that, *“the central recommendation of the Committee on Standards in Public Life was that the Electoral Commission should concentrate on its core regulatory responsibilities – something which the Electoral Commission has strongly resisted”*.

The Commission did not resist the CSPL recommendation to concentrate on its core regulatory responsibilities - which was (see below) made in relation to our responsibilities for regulating campaign finance. Like the CSPL, the Commission itself argued for new powers to strengthen our ability to regulate campaign finance, and we welcomed the Political Parties and Elections Act 2009 ('PPE Act') which gave us stronger investigative and sanctioning powers for most breaches of the campaign finance rules, and required us to set out our enforcement policy, which is available on our website<sup>1</sup>. Since the Commission was given these updated enforcement powers, there has been a general improvement in compliance with the rules, including those that

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<sup>1</sup> See - <http://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finance/making-an-allegation>

require campaigners to put information into the public domain (via reporting to the Commission) in a timely way. There is plenty of information available on our website about how we approach the business of regulating campaign finance.

The updated enforcement powers at our disposal in relation to political parties and some other organisations are not, however, available to us in relation to individual candidates. As explained to Dr Pinto-Duschinsky, we recommended<sup>2</sup> in June 2013 that our investigative and sanctioning powers should be extended to cover donations to and spending by candidates. Those recommendations arose from our continuing review of our core regulatory responsibilities, and they are designed to further improve our effectiveness in this area. We understand that the UK government plans to respond to our recommendations soon.

In **Recommendation six** the author paraphrases a recommendation made in the CSPL's 2007 report but in doing so, incorrectly suggests that the CSPL's recommendation was about the administration of electoral registration, rather than the administration of campaign finance regulation.

Dr Pinto-Duschinsky says that the CSPL recommendation was, *“that the Electoral Commission should assign enforcement of election administrative standards to a dedicated internal unit. This report goes further and recommends the creation of a wholly separate body to carry out the enforcement functions that have been neglected.”* In fact, the CSPL report<sup>3</sup> recommended that a compliance and enforcement function should be established to, *“ensure a proactive risk-based approach to the regulation of political party finance”*.

The Commission established a compliance and enforcement function following the changes introduced by the PPE Act; this is clear in our organisation chart<sup>4</sup>, which we shared with the author on more than one occasion. This function includes a compliance manager with four staff and an enforcement team manager with five casework and investigation staff (an endnote to the report does reflect one aspect of our discussions with the author, which was that the function is likely to be reviewed in the near future following the appointment of a new Director of Party and Election Finance).

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<sup>2</sup> See - [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/157499/PEF-Regulatory-Review-2013.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf) (page 81)

<sup>3</sup> see page 4, point 3.2 of the CSPL's report

<sup>4</sup> See - [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/177875/Commission-Org-chart-September-2014-no-names.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/177875/Commission-Org-chart-September-2014-no-names.pdf)

Also in **Recommendation six** the author proposes that, “*a purpose-built enforcement body could be responsible for...field audits of campaign finance returns by local government and Parliamentary candidates. The Electoral Commission reports that it has never carried out a field audit of any candidate’s expense returns; nor does it employ any in-house forensic accountants*”.

We explained to Dr Pinto-Duschinsky the monitoring and proactive guidance work that the Commission undertakes to support and ensure compliance by election candidates, and indeed it is briefly referred to in footnote 148 despite not being acknowledged in the body of the report. We also explained that we engage forensic accountancy advice as needed; we do not consider there is a case for employing forensic accountants directly.

The author also fails to acknowledge that in relation to non-compliance with the rules on candidate spending and donations, it is currently the police and Crown Prosecution Service that have both the primary responsibility, and the statutory powers, to address alleged breaches. (As mentioned above, we highlighted the case for reviewing this in our ‘*Regulatory Review of the UK’s party and election finance laws*’.)

The Commission is proactive when it comes to compliance with the rules for candidates. When we receive an allegation that the candidate spending or donations rules have been breached, we explain the role of the police and encourage any evidence to be presented to them; if we consider that there is clear evidence of an offence, we will refer the matter to the police ourselves. We do not refer allegations to the police that are unsupported by evidence or where we do not consider it likely, based on our ongoing discussions with the police and CPS, that the public interest test will be met.

## **Electoral fraud**

In **Chapter 4** of the report the author cites a wide range of police data, media reports and comment by individuals to support his argument that electoral fraud is not only widespread, but that the Commission is complacent and/or in denial about the scale of electoral fraud in the UK. Much of the data cited is, as the endnotes acknowledge, sourced from reports published by the Commission, which is active in putting this information into the public domain.

Preferring an oversimplified characterisation of the Commission’s position, the author fails to engage with and assess the Commission’s detailed analysis of the nature and

extent of electoral fraud, as set out in our January 2014 report on electoral fraud vulnerabilities<sup>5</sup>:

- There is a consistent underlying level of concern about electoral fraud, shared by a broad range of people including voters, campaigners and those running elections
- Reports of electoral fraud are not widespread across the UK; they are focused in specific places in England, and concentrated in a small number of local authority areas
- We do not believe it is likely that fraud has been attempted in more than a handful of wards in any particular local authority area
- Relative to the scale of participation by candidates and electors, only a small number of cases of alleged electoral fraud are reported to the police each year
- Most cases of alleged electoral fraud relate to local government elections in England, rather than other elections
- Electoral fraud is attempted or committed by relatively few people, and they tend to be candidates or their supporters
- In communities affected by electoral fraud, most people are victims rather than offenders.

In **Table 1 on page 24** of the report, the way the author has presented important data is misleading. As recorded in the note to the table, the dates in the table refer to the year of conviction, not when the offence was committed – this means, for example, that the case in Bradford which led to convictions in 2010 actually related to an election in 2005; the case from Slough which led to convictions in 2009 actually related to an election in 2007.

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<sup>5</sup> See - <http://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/electoral-fraud-vulnerabilities-review>