



HOUSE OF COMMONS

LONDON SW1A 0AA

Sir Alistair Graham  
The Committee on Standards in Public Life  
35 Great Smith Street  
London  
SW1P 3BQ

8 June 2006

Dear Sir Alistair,

**REVIEW OF THE ELECTORAL COMMISSION**

1. The Conservative Party welcomes the opportunity to give evidence to the Committee's inquiry into the Electoral Commission's mandate, governance and accountability. The ongoing controversies over the integrity of the electoral system and party funding make such a review particularly timely and appropriate.
2. We remain supportive of the fundamental changes to electoral law and compliance resulting from the Political Parties Elections and Referendums Act 2000; more than ever, the introduction of transparency in donations was and remains in the public interest. However, since the Act, public confidence in the electoral system has plummeted. This review presents an opportunity to examine the role of the Commission in this context, and look positively at suggestions for addressing this crisis in confidence.

***Electoral participation vs. Integrity of the ballot***

3. We view the Commission's core and most important functions as the registration of political parties, the regulation of donations and the regulation of campaign finance. Final responsibility for changes to electoral law and practice rightly remain with Parliament, with the government of the day taking the lead in proposing primary and secondary legislation to Parliament. We continue to believe that Parliament must remain sovereign in facilitating, amending or blocking any legislative change.
4. The Electoral Commission's statutory responsibilities go beyond these core functions. We have concerns that the Commission may have attempted to do too much, such that it has spread itself too thinly and failed to deliver on inflated expectations of what an 'independent electoral watchdog' should achieve. This problem of 'mission creep' is not unique to the Commission and has affected other public sector agencies.
5. Although the Commission has a statutory function to review and issue reports on matters relating to elections, it has produced a excessive flurry of investigations into every single aspect of the electoral system. We are concerned that the Commission may have adopted the institutional mindset of 'change for change's sake'.



Its research work and reviews have included, beyond its statutory election reviews, such diverse constitutional topics as whether to lower the voting age to 16, fixed term Parliaments, election timetables, the cycle of local government elections, and the regulation of political advertising. Its attitude was summed up in its 2003 publication, *Voting for change - an electoral law modernisation programme*, where it criticised “the slow pace of change in the electoral sphere over the last century”.<sup>1</sup> We would suggest that the Commission has interpreted its remit to believe that elections must be ‘modernised’ as an end in itself. RPA 2000, PPERA, and successive legislation, have created an institutional instability in the electoral system.

7. In a classic example of public choice theory in action, these reviews have resulted in the conclusion that the Commission should have a bigger budget and more power. “The need for the Commission to take on new functions has been pressed on us... We recognise that now a central electoral body exists, there is an inevitable logic in locating certain central functions with the Commission.”<sup>2</sup> Mirroring this trend, of constantly seeking to expand its role, the Commission’s expenditure has spiralled from £7 million in 2001-02<sup>3</sup> to £26 million in 2006-07<sup>4</sup>.
8. We would not support this “inevitable logic”. We oppose the centralisation of local authority electoral services into the Electoral Commission. Whilst councils’ electoral services departments may often be seen as a ‘Cinderella’ service, the same could be said about many other local services that unfortunately are not always perceived as a frontline priority (e.g. libraries and museums). Yet this is not an argument for the centralisation or ring-fencing of such funding; rather, if central government imposes additional costs on local councils (e.g. postal voting on demand that has added to the workloads of local councils) then these additional costs should be supported via funding from Whitehall according to the ‘new burdens’ principle.
9. We believe that electoral modernisation has become the problem not the solution. Even the Commission has been forced to concede that many of its recommendations for modernisation were flawed. For example, the Commission recommended in 2003, “there should be a statutory presumption that all local elections be run as all-postal ballots”<sup>5</sup>, only to then advise in 2004, “the Commission recommends that all-postal voting should not be pursued for use at UK statutory elections.”<sup>6</sup>
10. The Commission’s bold claim that “our electoral processes are now changing at a faster pace than at any point in the previous 100 years”<sup>7</sup> is not something that has been beneficial to the political health of our democracy. If anything, the constant

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<sup>1</sup> Electoral Commission, *Voting for change - An electoral law modernisation programme*, 2003, p.13

<sup>2</sup> Ibid, p.30.

<sup>3</sup> Electoral Commission, *Annual Report 2001-2*, p.53, covering its first full year of operation.

<sup>4</sup> Electoral Commission, *Corporate plan 2006-07 to 2010-11*, p.35. Although the Commission’s statutory responsibilities have also increased in this period, such as for the Boundary Committee, this is still a significant jump.

<sup>5</sup> Electoral Commission, *The shape of elections to come*, July 2003, p.6.

<sup>6</sup> Electoral Commission, *Delivering democracy?*, August 2004, p.7.

<sup>7</sup> Electoral Commission, *Voting for change - An electoral law modernisation programme*, p.33.



statutory changes to electoral law since 1997<sup>8</sup> are a sign of weakness, not progress, and are evidence of the Labour Government meddling in the electoral system for partisan advantage.

11. It has become clear that the Government's weakening of electoral law in the name of 'increasing turnout' has in practice compromised Britain's traditional reputation for free and fair elections, and undermined the integrity of the system and public confidence in it. Rather than condemning our 'Victorian' electoral system, the Government and the Commission would be better to focus on preventing the electoral practices of the rotten boroughs of the 18th and early 19th Centuries becoming the hallmark of the 21<sup>st</sup> Century.
12. In the 2005 general election, international election observers from as far away as Ukraine and Serbia were brought in to police the UK general election – a sign of weakness. They noted that the extension of postal voting had raised continuing doubts about electoral fraud in Britain, and commented, "although the legal and administrative procedures in this regard appear to have been developed to prioritise enfranchisement, the issue of postal voting raised lingering doubts about the ability to securely regulate this aspect of the process."<sup>9</sup>
13. In this context, the Commission's main emphasis must be ensuring 'free and fair' elections, and restoring security, confidence and integrity, rather than attempting to increase turnout or the diversity of participation as an end in itself. In any democracy, a higher turnout is worthless if the integrity or veracity of the result itself could be called into question.
14. Whilst there is clearly a need for tighter anti-fraud measures, such as the introduction of individual electoral registration as successfully used in Northern Ireland, there now needs to be a period of consolidation with regards electoral practice, innovation and modernisation.

#### ***Regulator or administrator ?***

15. Aside from the collation and auditing of information on political donations, the Commission's other prominent function is to review and provide advice. There is clearly a role for an independent body to provide frank and open advice to Government and Parliament. Yet for an 'electoral watchdog' to have teeth, it necessarily needs to be at arms-length from government and prepared to bare its teeth from time to time.
16. More broadly, we are concerned that the Commission has positioned itself as not just as a strategic regulator and auditor, but also as an active administrator in the running of elections. We believe that this creates a fundamental conflict of

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<sup>8</sup> Registration of Political Parties Act 1998, European Parliamentary Elections Act 1999, Representation of the People Act 2000, Political Parties Elections and Referendums Act 2000, Election Publications Act 2001, Elections Act 2001, Electoral Fraud (Northern Ireland) Act 2002, European Parliament (Representation) Act 2003, European Parliamentary and Local Elections (Pilots) Act 2004, Electoral Registration (Northern Ireland) Act 2005, Electoral Administration Bill 2006.

<sup>9</sup> OSCE Office for Democratic Institutions and Human Rights, *Assessment Mission Report – UK General Election*, August 2005, p.1.



interest, as it is unable to review and regulate its own decisions in an unbiased manner. In addition, by acting as an agent of government, it is less able to be critical of decisions taken by government.

17. For example, in 2004, the Commission was drawn into selecting the all-postal pilot regions for the Government. Questions should have been asked from the start whether it was suitable to have all-postal voting on such a large scale. Yet the very action of the Commission drawing up advice for the Government (which was then ignored), in itself fatally undermined the Commission's ability to be critical of the Government's plans.
18. The Commission is considering bidding to be the keeper of CORE, the new centralised electronic electoral register. If it were to become the keeper, it is not clear who would audit the competence and efficiency of the Commission in running the register, especially given the public sector's poor record in managing large IT projects.
19. There is a perception that the Commission has failed to provide sufficient censure of the Government when actions have been taken that could compromise a free and fair election or referendum. For example, in 2004, there were serious concerns over the Government's abuse of taxpayers' money for an 'information campaign' in the run up to (potentially three) regional assembly referendums. Although the Commission was critical of the Government in its report on the referendum twelve months later, this was simply too late.<sup>10</sup> This does not set a welcome precedent for potential future referendum campaigns.

### ***Recommendations***

20. This review has highlighted the need for further *ongoing* scrutiny of the Commission's work, without compromising its independence. From a Parliamentary perspective, we would support measures to strengthen the role of the Speaker's Committee to make it more pro-active in scrutinising the work programme of the Commission. We would agree with Andrew Tyrie's personal suggestions for reform, as outlined in his submission to this review.
21. A stronger role for such a Committee should also be combined with a more transparent process of scrutiny. The minutes of such a Committee should be published more frequently, with a presumption in favour of full openness. There should be time allocated for an annual debate on the role and activities of the Commission in both the Commons and the Lords.
22. The Commission should become more focused on its core functions of registration of parties, regulation of party funding and regulation of campaign finance. The Commission should not seek to involve itself in executive or administrative electoral work, but should take an arms-length approach. Local authorities and the Government should take the lead in executive and

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<sup>10</sup> Electoral Commission, *The 2004 North East regional assembly and local government referendums*, 4 November 2005. The Commission recommended, "the Government should not use public money after the referendum period begins."



administrative functions, scrutinised by the Commission and by both Houses of Parliament.

23. Confidence in Britain's electoral system needs to be restored. There should be a period of consolidation and an end to the ongoing process of 'modernisation'. For the Commission, restoring integrity must take priority over participation. For Parliament, tightening of electoral law is needed through the introduction of individual registration (using National Insurance numbers to verify identities) and consideration of some form of written identity being required to vote in person at polling stations.

I will be happy to elaborate on any points in more detail during the forthcoming oral hearing.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Oliver Heald', with a horizontal line underneath.

**Oliver Heald MP,**  
*Shadow Secretary of State for Constitutional Affairs*  
*House of Commons*

*On behalf of the Conservative Party*