

**1. Is the mandate set out in the Political Parties Elections and Referendums Act 2000 conducive to the efficient and effective operation of the Electoral Commission as the regulator of elections and party political donations in the UK?**

The Electoral Commission has, overall, worked remarkably well since its inception following the passing of the 2000 Act. The reason for a failure to work as well as it might in some areas of its mandate can largely be traced back to ambiguities or lacunae in the mandate itself and not generally to the failings of leadership or incompetence. Although there are areas of its mandate (such as the recording of donations to Political Parties) where a more robust use of its existing authority might have produced a more complete picture. There have been areas of concern about the extent to which the Commission is able to add teeth to its recommendations or advice, but it is bound by the limits of the powers given to it by the legislation: as it is currently in terms of the extent to which it is able to bring political experience to bear upon its deliberations.

**2. In the light of the experience of the last five years are there any appropriate revisions to the mandate of the Commission that should be made to the Political Parties Elections and Referendums Act 2000?**

There are areas of the Commission's mandate that have not yet been implemented, such as the responsibility for the codification and operation of a unified Boundaries body. Despite fears that the workload involved in taking this responsibility on would be too high for the size and present operational limitations of the Commission, there seems to be no logical reason why this responsibility should not now be placed into its hands.

A wider responsibility for the standards of operation and the equality of reporting by Returning Officers at local level has been widely suggested and will be implemented through the passing of the current Electoral Administration Bill. There does not seem to be a case for overall centralised control of local electoral activity by the Commission over and above what is contained in the EA Bill.

**3. In particular, is there an appropriate balance between the executive and advisory functions of the Commission?**

**4. Has the appropriate balance been struck in the division of responsibilities between the Electoral Commission and other public bodies in promoting public awareness of and participation in elections and referendums?**

The Electoral Commission has devoted a considerable proportion of its resources to promoting awareness of the democratic process and to providing information on the practice of elections and referendums. It has performed this role in response to a requirement placed in PPERA late in the day, which was not initially included in its proposed remit arising from the original report by the Commission for Standards in Public life. Within the terms of this remit, it has promoted electoral awareness effectively - although measured by the yardstick of turnout this effectiveness can be questioned - one can always say that a reduction in the decline of turnout could be counted as a success over and above the modest increase in turnout achieved, for example at the last general election and in recent council elections. However, turnout as a main measure of success of any programme of awareness must be treated with some degree of caution, since within a general trend of falling turnout there is evidence that factors such as the perceived closeness of the election, or other local or regional factors, can increase

turnout.

It should also be noted that this precise limitation in the Commission's participation remit means that, effectively, only one aspect of voter disengagement is addressed and that is the issue of awareness of the mechanics and practice of voting in an era of atomised families, where a successive generation may not have been introduced to the practice by parents or neighbours.

This needs to be put within the context of an increasing non-voting habit – the results of the Commission's own audit of political engagement shows that other factors are at work; in particular, a distaste for voting among those in their thirties and forties and not just among the newly enfranchised.<sup>1</sup>

The question of whether such a distaste results from the inability of parties to engage voters, or from a more problematic 'anti politics' societal norm is a difficult one to answer, but either way presents the Electoral Commission with a difficult task if it is to promote voting on a wider basis with the information about how to do it. It is, in essence, a challenge of promoting the norms and necessities of democracy and politics themselves, which may be considered to be outside the remit of the Commission.

It is tempting, therefore to argue for a bifurcation of the 'promoting' role. There certainly is a need for information, reminding, and research into the process of voting itself – and indeed about whether the present geographically based system of casting votes is seen to be appropriate to the new generations of voters, and whether changes in its structure can overcome other issues such as security and integrity of the vote. However, the process argument about the role politics plays in democracy in the UK itself, and why the political process (including elections) is important, may be a remit too far for the Commission, and it may be that the development of 'political democracy foundations' similar to those established in Germany (e.g. the Fredrich Ebert Stiftung and the Konrad Adenauer Stiftung representing the Social and Christian Democrats respectively) would be a better course of action to address the issue. This would entail, of course, the development and resolution of the argument about State funding for political parties, since the establishment of such foundations could not be seriously contemplated within the present structure of voluntary funding of political parties.

##### **5. Does the Electoral Commission operate as a strategic regulator in exercising its responsibilities in relation to (a) the registration of political parties (b) the regulation of donations to parties and (c) the control of campaign finance?**

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<sup>1</sup> 'In 1997, moreover, the impetus to non-voting also spread to the next cohort two cohorts – in that year the 25-34s increased to 32 percent non-voting while the 35-44s increased to 22 percent. In 2001, some 44 percent of 35-44s failed to vote. By 2005, this pattern had even begun to affect the 45-54 cohort, 24 percent of whom failed to vote... What all this indicates is that the effective British electorate is becoming progressively older, election by election. Moreover, it seems unlikely that this is a 'life cycle effect' in which currently young non-voters will turn into voters as they get older. On the contrary, the spread of relatively high levels of non-voting to all three of the younger cohorts suggests that, over the last 30 years or so, habits of non-voting acquired in youth have tended to be carried forward into middle age – and will perhaps continue even into old age. If this is indeed the case, then unless remedial steps can be taken to address the abstention tendencies of the current generation of under 45s, turnout looks set to continue trending downwards in the future.' *The 2005 General Election in Great Britain*, David Sanders, Harold Clarke, Marianne Stewart and Paul Whiteley, Report for the Electoral Commission August 2005, p16.

The Electoral Commission has, in general been relatively effective, within a flawed regulatory brief at implementing and policing the registration of political parties, and in the control of campaign finance. It has been less effective in the regulation of donations to political parties, partly because of its own timidity in asking questions about donations that might be considered at the margins of its remit, and partly because of the limitations of that remit itself.

The question that perhaps should be asked of the Electoral Commission is: what exactly does it regulate? Its name suggests that it regulates elections, but its practice suggests that it regulates the conduct and practice of elections and the functioning of political parties where they relate to elections. Since elections are an important but by no means sole activity of political parties this entails the close regulation of some party activity relating to the democratic process, and no regulation of other matters, even where those matters are closely connected. For example, the registration of parties in order to nominate candidates is regulated, but the process of nominating candidates for elections is not. The activity of such candidates, once nominated may be, provided it is within the period of an election itself. The activity and funding methods of adopted candidates outside an electoral period is not regulated. In reality, political parties do not make such distinctions, and in any event do not operate financially and in terms of soliciting and managing donations in identical ways. The first problem may be said to arise from an implied assumption within the legislation that UK political parties are in essence machines for electing people to posts (essentially the American Party model) and the second form an apparent assumption by the Electoral Commission that, provided certain reporting rules and accounting conventions were laid down, it would be possible to gain a coherent picture of parties funding, and hence donations.

In reality, however, the Conservative and Labour Parties do not, and never have worked in identical ways as far as organisation is concerned. This affects the way they are funded fundamentally. The Conservative Party historically was a party formed within Parliament which gained supporters associations that raised money for the Party. Only in 1999 was the distinction between the Conservative Party (Westminster) and the Association of Conservative and Unionist Associations abolished: but today the tradition of raising large amounts of money for the Conservative Party outside of the accounting procedures of the Central Party persists. The Labour Party, on the other hand is historically a federation of organisations combining to get into Parliament from the outside: and the individual membership Party is a centralised body with branches. Funding, and the subsequent accounting for funds, is therefore centralised, but with a tradition of receiving funds to the centralised organisation from other bodies associated with it in federation.

The regulation of donations by the Electoral Commission, therefore, fails to record accurately the real income of parties, and does not pick up innovations such as the funding of local parties outside the campaign period to promote nominated candidates by the use of money that otherwise would be declared as central donations (the so-called 'Ashcroft' funding). However, proper regulation would probably entail an extension of the assumption of regulation of political parties generally, and might therefore also entail a required operating standard for parties themselves, which might call into question the reasonable right of political parties to organise themselves how best they feel is appropriate to the political and geographical circumstances. Alternatively, regulation that covered the whole range of party financial activity, local and national,

regardless of the method of organisation might be a more appropriate way for the Electoral Commission to discharge its regulatory function effectively in the future.

Perhaps because of this dichotomy in the regulatory function of the Commission, it has also struggled to regulate campaign expenditure. It has regulated well the expenditure that clearly occurs within the campaign: but this is, and always has been an artificial construct. 'Campaigns' in marginal seats arguably start on the day the result is declared and the seat is then appraised as being, or becoming a 'marginal'. Regulating the campaign better by defining more accurately what the 'campaign period' is will probably be doomed to fail, and the question of whether proper regulation implies some oversight over the whole activity of party politics again arises.

This implies a radically enhanced role for the Electoral Commission in looking accurately at overall levels of expenditure and relating them to a 'cap' across national and local party expenditure on an annual basis outside election years, and to a larger 'cap' within election years.

**6. Does the independent legal status of the Electoral Commission provide it with sufficient independence from Government?**

**7. Is the financing of the Electoral Commission – through a combination of income received by the Commission for services, and money provided by Parliament from the consolidated fund – compatible with its independent regulatory role? Is there a more appropriate way of financing the Electoral Commission?**

**8. Are the restrictions in who can be an Electoral Commissioner appropriate in the light of the responsibilities of Commissioners under the Political Parties Elections and Referendums Act 2000?**

PPERA (Clause 3.4) sets out a very restrictive definition of who may be appointed as an Electoral Commissioner, or as a Deputy Electoral Commissioner. This person may not have been a member of a political party, or held any form of office in one, or have been employed by a political party, or have been a named donor to a political party if they are to be appointed to such a post. Less known is the similar if only slightly less onerous requirement upon any member of staff of the Commission, from the most junior office assistant to the assistant to the Chief Executive - all are subject to the exclusions pertaining to the appointment of Commissioners, with the exception of inactive membership of a political party. The Chief Executive is subject to the same exclusions as Commissioners.

The duties and responsibilities of the Electoral Commission lie at the heart of the functioning of the democratic system of government in the UK. Political parties are an integral part of the functioning of the political process: a number of aspects of the functioning of political parties are both central to the system but are outside the realms of regulation. For example, virtually all candidates for the elections that the Electoral Commission is required to regulate derive from registered political parties, but without any regulation of the procedures or processes whereby they come to be candidates. At local council and indeed at national level, these candidates are routinely required to sign declarations, before they are elected, that they will obey the whip of their party once in

local or national office as councillors or MPs, and sanctions that effectively prevent such candidates standing for election can be meted out to those who do not do what they sign up to undertake. The activity of parties in relation to the process of democracy is only meaningfully regulated in respect of elections themselves, (only a part of the process albeit an important one) and the means by which parties raise funds for elections. Even the process by which parties raise funds for activities between elections is only marginally regulated, despite the existence of powers available to the Electoral Commission to do so.

The Electoral Commission is therefore placed in the precarious position, whereby the legislation permits it to regulate only a fraction of the activity that parties undertake, whilst the basis of its establishment forces it to abjure any appointments to its numbers as Commissioners or staff where candidates have some knowledge or experience of the party political process in action. This seems quite perverse and surely prevents a comprehensive understanding of party politics from being represented. Political even-handedness is not the same as political celibacy. Whilst it can be understood that the intention of the framers of PPERA was that the Electoral Commission should be seen to be even-handed as well as being even-handed in practice, the proscriptions on office in the Electoral Commission go well beyond what is required to achieve that level of confidence, and have, arguably led to several instances over the past five years where the publication of material and advocacy by the Commission has appeared naive or unattainable politically, and has perhaps seen them marginalized in the debate on democracy and political parties as a result. If the Commission is to take a wider role in future in the regulation of the activity of political parties, then it is important that a review is conducted of the 'political' status of Commissioners and employees of the Commission. The possession of 'in-house' political experience and judgement which pertains to political parties has to be seen under these circumstances as an asset rather than an impediment.

There have been suggestions that a wider number and range of Commissioners would be desirable, and that there should be a role for political parties in nominating such additional Commissioners. The addition of three Commissioners nominated by the majority party, main opposition party and smaller parties represented at Westminster has merit, but would need to overcome two obstacles to proceed. Firstly, it would be important that Commissioners were seen to be equal in input to the work of the Commission, and should not be divided into 'non-political' executive Commissioners and 'political' non-executive Commissioners. In order to achieve that, it would of course be necessary to amend section 3 and schedule 2 of PPERA. Secondly, it would be inappropriate if there were to be a looser prohibition on the political past and activities of Commissioners, whilst staff at the Commission remained, effectively disbarred from appointment if they had ever been politically active.

#### **9. Does the Speakers Committee of the House of Commons constitute an appropriate accountability mechanism for the electoral commission?**

It is not clear either from the designation of the function of the Speakers Committee as the ultimate body to which the Electoral Commission is responsible in the PPERA 2000, or in the actual functioning of the Speakers Committee, what actual function the Speakers Committee plays in the life of the Commission.

The Speakers Committee might be regarded as an inspired invention to provide a 'home' for the Electoral Commission in terms of the constitutional difficulty the framers of the legislation found themselves in when considering to whom the Electoral Commission should be accountable. After all, it exists in reality as a medium-sized QUANGO, with a staff of 150 and a budget of £26 million. QUANGOs, non-departmental government bodies and certainly 'Next Steps' agencies, are normally allocated to a parent government department, and will enter into a framework agreement with the relevant department. This will include, among other matters Key Performance Indicators for the NDP or agency. The agency can also be scrutinised by the Select committee with responsibility for the Department acting as the 'parent' of the agency or NDP.

In this sense, the allocation of the Electoral Commission to 'the Speaker' as a 'parent' department has parallels, except that the Speaker is clearly not of the executive, or party political and has, in any event responsibility for the House itself (e.g. the House of Commons Commission.). However, unlike the relationship of an agency to a department, there is, and never has been, any parallel 'framework' agreement. Instead, the Speakers Commission, through the legislation, is simply enjoined to look at the estimates and the five year plan of the Commission, and after making such modifications as it feels appropriate, to lay the estimate before the House. It does not appear to have, either indirectly or directly any scrutiny function outside its role concerning estimates and long term plans.

**10. Of it does, are there any incremental changes to its composition, mandate or procedures which would contribute to its effectiveness?**

**11. If it does not, is there an alternative mechanism to make the Electoral Commission more accountable?**

In practice, the Speakers Committee has performed something of a scrutiny role through its meetings – but these are not held in public and accidentally, rather than deliberately scrutinise what the Electoral Commission is doing. A very indirect form of running accountability to the House is achieved by the short period (ten minutes) for questions to the chairman of the Speakers Committee every month when the House is sitting.

These shortcomings might be rectified in two ways:

The Commission might be scrutinised through the medium of a Select Committee in the same way that departmentally attached agencies can be. The obvious 'candidate' committee for this role would be the constitutional Affairs Select Committee, the chairman of which, sits on the Speakers Committee by statutory authority.

The Speakers Committee might change its function and remit: it could take upon itself a scrutinising role, perhaps through the appointment of senior backbenchers to form a scrutiny committee in association with the Speakers Committee. It would not be necessary for the Speaker to chair such a Committee, and it would in event effectively report to the Speakers Committee, and through it, to the House.

**12. Are the devolved administrations of the UK appropriately incorporated into**

**the accountability mechanism?**

**13. Has the Parliamentary Parties' panel and its decentralised variants been an effective way of the Electoral Commission engaging in dialogue with political parties? Is there a more effective way of conducting this dialogue?**

**14. The Committee would find it valuable to receive evidence about the development and operation of policy areas within the remit of the Electoral Commission that highlight issues regarding the Commissions mandate, governance and accountability.**