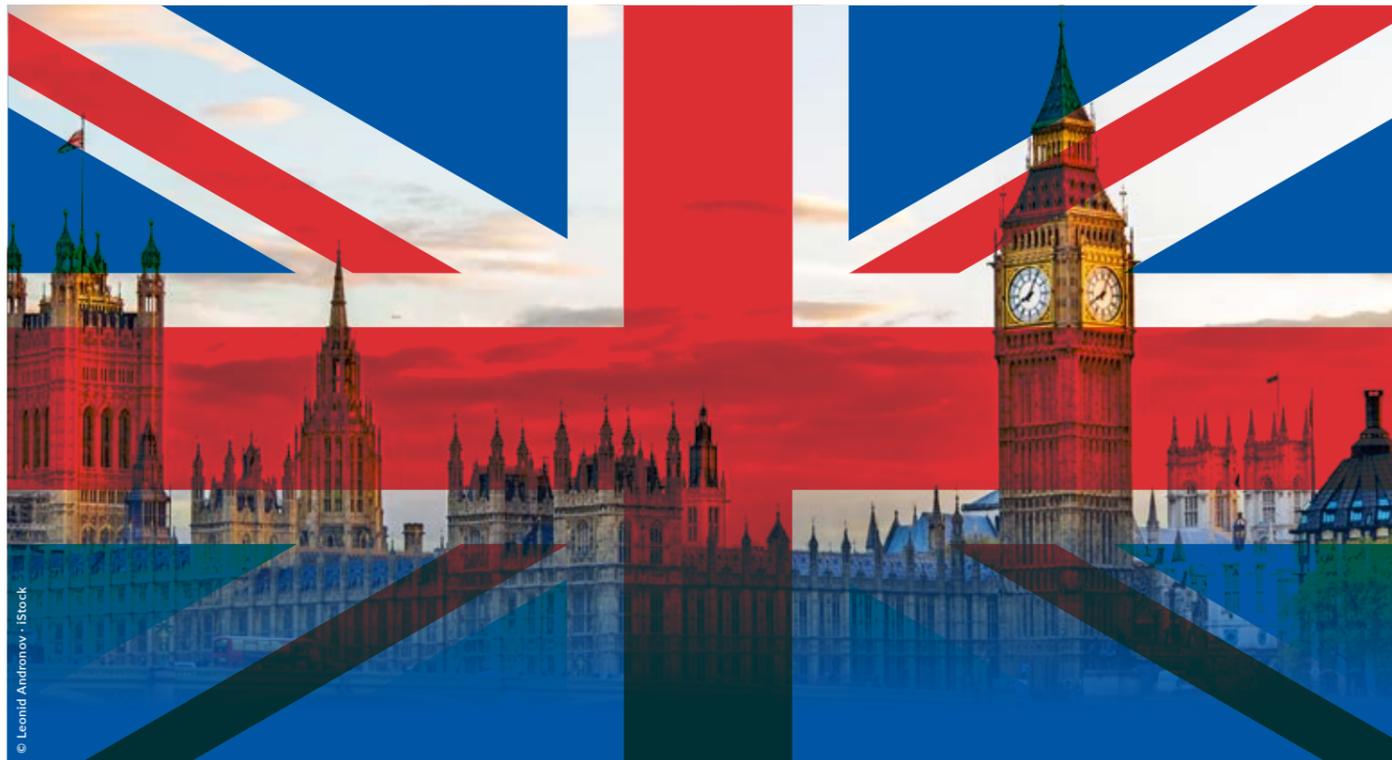


ELECTIONS FOR SALE?

**DO CURRENT UK
SPENDING LIMITS
PREVENT PARTIES
BUYING ELECTIONS?**

A REPORT BY CHRIS BOWERS



© Leonid Andronov / iStock

This is a short, user-friendly version of a longer report of the same name, commissioned by the Joseph Rowntree Reform Trust, and researched and compiled by the writer and broadcaster Chris Bowers. This shorter version of the report summarises the problem and focuses mainly on the recommendations for tackling it, in order to get the message across that the current regime of electoral spending rules is not doing the job it was intended to do. In doing so, it cuts several corners and does not back up certain statements. Therefore, any reader who questions the provenance of a statement or who wishes to engage more fully with the subject matter is requested to read the fully referenced main report.

In researching and writing this report, Chris Bowers was assisted by a 'reference group' of people with differing experiences of the political process: Alex Davies, Melanie Davis, Martin Moore and Polly Toynbee. The task of the reference group was to ensure that the final report, and this abbreviated version, formed a coherent contribution to political discourse in the UK with plausible and viable recommendations for updating the relevant electoral rules. In carrying out this task, the members of the reference group may have had to accept elements of the report's content that they do not necessarily agree with, so their involvement should not be taken to imply endorsement of all the content of this report.

The author wishes to acknowledge the assistance in compiling this report given by many people, some of whom do not wish to be named. Particular thanks go to Tom Hawthorn and Kate Engles of the Electoral Commission, and the compliance officers of the three main parties – David Allworthy (Liberal Democrats), Alan Mabbutt (Conservatives), and John Stolliday (Labour) – all of whom gave their valuable time to answer questions.

The Joseph Rowntree Reform Trust is a grant-giving body which funds political campaigns, education and lobbying in the UK to promote democratic reform, civil liberties and social justice. It should not be mistaken for the Joseph Rowntree Foundation, the Joseph Rowntree Charitable Trust, or the Joseph Rowntree Housing Trust.

Summary

In order for elections to be fair contests between rival ideologies, programmes for government and the competence of politicians, various rules exist to prevent money playing more than an incidental role. These rules include a limit on what candidates can spend on their constituency campaigns and what parties can spend on national campaigns.

Yet evidence has emerged in recent years, particularly from the 2015 election, that these rules have been circumvented, and that big money may have effectively 'bought' some key seats. Evidence has come from the fact that the costs of direct mailshots, targeted social media, imported campaigning, and questionable uses of voter intention surveys have been passed off under party (national) expenditure, when much or all of it was clearly intended to boost the chances of specific (constituency) candidates.

As the rules on fair financing of elections are intended to reinforce public confidence in the democratic system, there is clearly a problem that needs addressing.

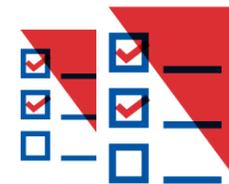
Among the solutions this report proposes are:



A new legal framework for the use of social media in an election context, in particular ending the loophole by which parties can target voters through Facebook and other social media without it being counted against a candidate's allowance



Renewed consideration to be given to public funding of political parties and a proportional voting system, in order to level the election playing field structurally



A raft of measures for 'incremental reform', including an increase in candidate spending allowances in conjunction with a commensurate decrease in party allowances and greater apportionment of candidate-specific activities to the candidate's allowance; a single body to investigate allegations of electoral wrongdoing; lowering the bar for re-runs of constituency elections where rules have been breached; a review of the purchase and use of personal data in a political context; annual spending limits for parties; and establishing core guidance about apportionment of expenses against party or candidate limits and thereafter insisting that ignorance of these rules is no defence.

What's the problem?

If democracy is to mean anything, people have to believe in it. They must believe that votes are fairly cast without undue pressure, that the results reflect what people have put on their ballot papers, and that all arguments get a fair crack of the whip in a way that is not unduly influenced by the relative wealth of the parties on offer.

The need for money to play only a peripheral part in British elections is enshrined in law. The amount of money a candidate can spend has been regulated since 1883, and in 2000 a new law was passed that regulated what parties can spend: the Political Parties, Elections and Referendums Act 2000 (or PPERA). This means individual candidates in a constituency have an upper limit for what they can spend on their local campaign – generally around £14-15,000 – while parties have a national upper limit for what they can spend in the year leading up to an election (up to a maximum of £19.5 million).

But numerous tales from the campaign trail in recent years have suggested that the rules may not be serving the purpose they were drawn up for. In particular, where a candidate's spending limit is likely to be reached, or is close to being reached, there is a tremendous incentive for constituency campaigning costs to be apportioned to national party spending limits. This incentive is particularly strong in the marginal constituencies which tend to decide elections, yet such apportioning plainly breaches the spirit of the rules designed to guarantee a level playing field.

Various news outlets, most notably Channel 4 News, have focused on alleged breaches of the law. But because the political landscape is made up of numerous volunteers and lay officials, the bar for legal action to be taken against candidates and agents is understandably high. If a treasurer or agent feared being indicted for an error of accounting, few would be willing to volunteer to support the political process. It has become clear that no-one is likely to be prosecuted for wrongdoing in politics unless it can be proved that they deliberately *intended* to breach the terms of either PPERA or the Representation of the People Act. And that leaves a wide space for the current rules to be broken and unfair advantages gained in decisive constituencies without much fear of sanction.

“ At the root of this issue is the credibility of British parliamentary democracy. If the public cannot believe it is the power of ideas and messages, and the credibility of candidates, which decides elections – not the scale of parties' spending – then the whole basis is perilously undermined. ”

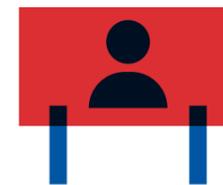
Despite the publicity given to areas of activity that have caused concern, the focus has remained on the problem, not any possible solution. This report is therefore the first attempt to propose solutions. That's why its principal section is a series of recommendations – some as discrete options, others as potentially bundled packages – which seek to bring to reality the intentions of the two Acts. At the root of this issue is the credibility of British parliamentary democracy. No system will be perfect, but if the public cannot believe that it is the power of ideas and messages, and the credibility of candidates, which decides elections – not the scale of parties' spending – then the whole basis on which governments and individual MPs assert their mandate is perilously undermined.

It should be noted that a lot of the focus in this report is on the Conservatives as the biggest pushers of boundaries – because their efforts had the most impact in the 2015 election. However, no party has a clean record on this, and all three major UK parties were fined for accounting failures after 2015. The focus when reading this report must therefore be on the actions themselves, and not on which party did what.

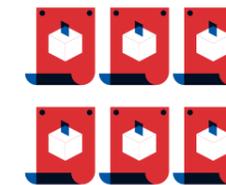
What the Electoral Commission says:

In its *Guidance to Candidates and Agents* for the 2015 general election, the Electoral Commission said:¹

Spending does not need to be counted against both the candidate's and the party's spending limit. An item of spending will fall into one category or the other:



Items that promote the candidate are likely to count towards the candidate's spending limit



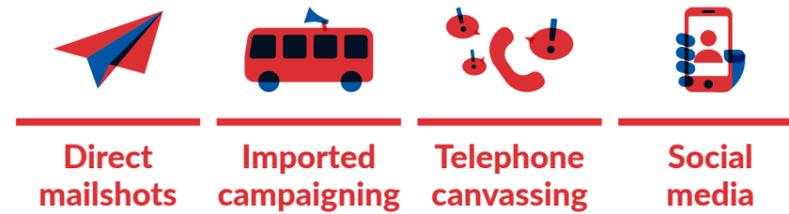
Items that promote the party are likely to be covered by the rules on party campaign expenditure. For example, posters with the party name and not the candidate's name.

¹ Electoral Commission, 'UK Parliamentary general election 2015: guidance for candidates and agents', Part 3, page 14



Areas of concern

There are four areas of campaigning which have raised concern that the present regime of expenditure limits has been ineffective:



In addition, there is a growing area that warrants some attention for its potential to influence elections in the immediate future: the use of personal and geographical data.

Direct mailshots

Modern mail merge allows for mass mailouts to look personalised, and for them to be segmented for different audiences. This has become a standard technique used by political parties to make millions of broadly similar letters look like they were written to a specific person. If that letter just sings the praises of a political

party and has nothing to do with a specific constituency, the cost of producing and sending it can be put down under the party's spending limit. But if its content makes it specific to a candidate or constituency, then its cost should go – in part or whole – against the candidate's local allowance. The problem is where the border line falls.

The letter (left) from David Cameron is an example of the kind of letter that electors receive from central party operations. This one was sent to people in the constituency of St Ives in west Cornwall, but is almost identical to others sent out at the same time in other marginal seats. Very similar to letters were sent out under Theresa May's name in 2017. St Ives was represented from 1997 to 2015 by the Liberal Democrat Andrew George, but the Conservatives were targeting it in 2015 and the letter arrived on door mats six days before the election.



It does not mention the name of the Conservatives' candidate, but it does mention St Ives five times, two of them as 'here in St Ives'. So should the cost of it be counted against the candidate's or the party's allowance? The Electoral Commission's guidance to candidates sent out before the 2015 election said: 'In deciding whether an activity was promoting the candidate or the party you should consider what the principal purpose is.'² The guidance goes on to say that if an activity has a dual-purpose, then its cost may be apportioned 50:50 between candidate and party allowances.

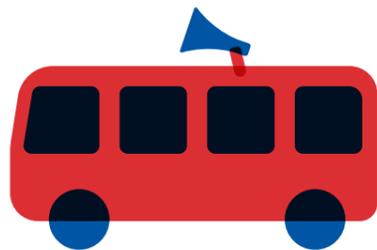
The Conservatives counted it wholly against the party allowance, and the Electoral Commission said this was acceptable. The Commission's Guidance Advisor who responded to a complaint about the letter by a resident of St Ives, said, 'Not all spending in, or targeted towards, a constituency is automatically candidate spending. The broad rule we suggest applying is whether the material mentions a candidate, a specific constituency, specific local issues, or in some other way is seeking to promote a particular candidate.' By mentioning a constituency five times, it is hard to see how at least a percentage of the letter's cost should not have been attributed to the candidate's allowance. In any case, it is hard to see how the 'principal purpose' of the letter could have been to do anything other than to get the Conservative candidate in that constituency elected. The purpose of a letter to electors within a given constituency cannot be to affect the national result – technically there is no national result in the UK system, however much constituency results help form the government – so it can only be intended to bring about the election of the local candidate.

In the 2017 election, there were a number of letters and advertising postcards sent to named voters in marginal constituencies (examples above), clearly with the assumption that these did not have to be attributed to candidate expenditure allowances. While this is clearly correct based on the guidance the Electoral Commission has given, it seems hard to justify given the naming of both the constituency and the specified recipient.



“ By mentioning a constituency five times, it is hard to see how at least a percentage of the letter's cost should not have been attributed to the candidate's allowance. ”

² ibid



Imported campaigning

Plenty of people campaign for a political party in a constituency other than where they live. If they go there of their own volition and under their own steam, there's no problem, but what if they are bussed in on a party 'battle bus' to go campaigning in certain decisive marginal seats?

With all parties finding it harder to get people to deliver leaflets and knock on doors,³ the idea of getting an army of activists into a few marginal constituencies is very attractive, but where do you account for the costs? Should the cost of the battle bus be shared among the constituencies to which or through which it drives? Should the costs of accommodating the battle bus activists after a day's delivering and canvassing be attributed to a candidate's allowance?

“
With all parties finding it harder to get people to deliver leaflets and knock on doors, the idea of getting an army of activists into a few marginal constituencies is very attractive, but where do you account for the costs?
”

Among the evidence unearthed by Michael Crick and his Channel 4 News team was the case of 50 Conservative activists who arrived in the North Cornwall constituency on the Conservatives' battle bus on 5 May 2015.⁴ When they arrived, they were given leaflets from the local campaign, and a script drawn up by Conservative Central HQ. According to Channel 4, the script read:

Hi [*insert name of voter*], my name's [*name of caller*] and I'm calling on behalf of Scott Mann, your Conservative candidate. As you know, it's election day on Thursday. Everyone's talking about how this seat is one of just 23 we need to win to make sure David Cameron is in No 10, working through our long-term economic plan. A vote for anyone else in North Cornwall will mean Ed Miliband held to ransom by the SNP.⁵

The leaflets these activists put through the letterboxes of those who did not answer showed David Cameron on one side and Scott Mann on the other. The imprint says the leaflet was promoted by Scott Mann's agent, Rachel Beadle.

The Conservatives logged the costs of their 2015 battle bus operation as party spending. The Electoral Commission looked at this as part of its investigation into the party's spending returns, and said 'there was a clear and inherent risk that activists might

³ Fisher, J, 'Legal regulation and political activity at the local level in Britain' (page 114) in 'The Funding of Political Parties: Where Now?' edited by Keith Ewing, Jacob Rowbottom and Joo-Cheong-Tham (Routledge, 2012); and Prof Tim Bale quoted on Channel 4 News, 21 April 2016

^{4,5} Channel 4 News, 20 April 2016, available online via www.electionexpenses.co.uk



© Nic Gould

engage in candidate campaigning'.⁶ In other words, the assigning of all costs to the party allowance was wrong, and part of the £70,000 fine the Commission levied against the party was because of 'inaccuracies' in reporting. But if a bus is kitted out for a national message, and then used to ferry volunteers to constituencies where they can act as imported campaigners, there needs to be some guidance as to which aspects of a battle bus operation can legitimately be counted as party costs and which should be counted against the candidate's allowance.

As things stand, candidates and their agents take a highly inconsistent view of what should be declared on the candidate's return. The Conservative campaign in Torbay in 2015 included the costs of canvass cards used by battle bus campaigners which went on the candidate's return. The 2015 Conservative campaign in Gower was also visited by the battle bus, and the candidate declared £500 for the bus as part of his candidate-specific expenses. And the 2015 Conservative campaign in Broxtowe listed £140 as having been spent on 'refreshments' for battle bus activists on the candidate's election return. The inconsistency reflects a lack of clarity in the guidance, and begs the question of whether expenses incurred on imported campaigning have been declared where there is room for them on a candidate's election return and left off where the candidate is already close to his/her limit.

“
As things stand, candidates and their agents take a highly inconsistent view of what should be declared on the candidate's return.
”

⁶ Electoral Commission, Investigation in respect of the Conservative and Unionist Party campaign spending returns for the ... 2015 UK Parliamentary General Election, March 2017, page 26



Telephone canvassing

Given the dwindling numbers of people willing to go out door-knocking, still less to travel to a distant constituency and go door-knocking, the role of telephone canvassing can only grow. As long as such canvassing is done by volunteers there is no legal restriction except that parties must not call numbers registered with the Telephone Preference Service, and they must ring from an identifiable telephone number. However, *paid* canvassing is prohibited by Section 111 of the Representation of the People Act 1983.

“
There is evidence of companies boasting about telephone polling work they have done for a political party in specific areas without any reference to such work ever appearing on the election returns of the relevant candidates.
”

What the law says on paid canvassing⁷

If a person is, either before, during or after an election, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting or procuring a candidate's election –



(a)

the person so engaging or employing him, and



(b)

the person so engaged or employed, shall be guilty of illegal employment.

Despite this apparent clarity, there is evidence that some parties might be using market research as a way of trying to influence voters as a way of getting round the restriction on paid-for telephone canvassing. This has become known as ‘push polling’. Evidence has been unearthed by *The Canary* (an online crowd-funded investigative news service) and Channel 4 News that suggests people may have been paid to phone voters, ostensibly asking for market research information but formulating questions in a way that attempts to persuade them to vote a certain way. One account from a person apparently hired for such work described the experience of being asked to read scripted questions that clearly encouraged people to vote Conservative: ‘The questions were designed to be misleading and to push answers in favour of the Conservative Party. They misled people

⁷ Representation of the People Act 1983, Section 111



© JumpStock - iStock

about other political parties and left out candidates for minority parties in most constituencies.⁸ A set of more blatant allegations of paid telephone canvassing against the Conservative Party and the company Blue Telecoms with evidence collected at the 2017 election was made in June 2017 by Channel 4.⁹

There are two concerns here for the integrity of election law. The first is that people might be paid to canvass under the guise of seeking out voting intentions; the second is that costs that are incurred to benefit one candidate in a given constituency might never find their way onto the candidate's election return. There is evidence of companies boasting about telephone polling work they have done for a political party in specific areas without any reference to such work ever appearing on the election returns of the relevant candidates.¹⁰

It's important to stress that the aim here is not to ban voter intention surveys as these are a useful and legitimate campaigning tool. But in order to ensure that the prohibition on paid-for canvassing is not being circumvented, it is important that the law on surveys is clarified, which is likely to mean some adaptation of the Market Research Society's code of conduct for electoral purposes (the code stipulates that respondents must not be ‘led towards a particular point of view’¹¹).

⁸ ‘A whistle-blower exposes a major new allegation in the Tory electoral fraud scandal’, *The Canary*, 31 May 2016, <http://www.thecanary.co/2016/05/31/whistleblower-exposes-major-new-allegation-tory-election-fraud-scandal-exclusive/>

⁹ Channel 4 News, 22 June 2017

¹⁰ Linked-In post: <https://www.linkedin.com/pulse/successful-conservative-party-call-campaign-sascha-lopez>

¹¹ Market Research Society, Code of Conduct page 16



Social media

In theory, social media should be just another method of communication that can be adapted to be a campaigning tool, but in practice its reach — or certain aspects of social media's reach — into the political world is massive. And as it has been developed since the two Acts of Parliament that set out the current electoral rules were drawn up (Facebook dates from 2004, PPERA from 2000), it's hardly surprising that the current rules do not make allowances for social media. Subsequent electoral administration Acts have also failed to update the regime.

“
Because Facebook users volunteer a lot of personal detail about themselves, Facebook can build up personal profiles which allow political parties to target certain people based on gender, age, and a range of preferences, and, to highly specialised degree, location.
”

Since this is a report about expenditure, it is important to stress that much political social media activity is free, such as tweets and individual posts on Facebook. This 'organic sharing' is by definition not subject to spending limits, nor could it be.

The branch of social media that is most relevant is that which offers political parties the chance to target voters in *paid-for* online advertising, and at the 2015 and 2017 elections this facility was offered by Facebook. Because Facebook users volunteer a lot of personal detail about themselves, Facebook can build up personal profiles which it uses to sell advertising to companies that want to get to specific markets. Those same profiles allow political parties to target certain people based on gender, age, and a range of preferences, and, to a highly specialised degree, location. This allows parties to focus on their target seats ('geo-targeting'), and on swing voters within marginal seats (demographic targeting).

Profile targeting on social media has hitherto been passed off as a party expense, and often at greater cost-effectiveness than mailshots or phone canvassing. The Conservatives spent £1,209,593 on Facebook in the 2015 election; this is not the sum total as a number of Conservative candidates declared small amounts of Facebook expenditure on their election returns, but there is a strong suspicion that much of that £1.2m was by definition spent on targeting specific seats yet was counted against the party's national spending allowance.

Social media in politics is also largely invisible, which perhaps explains the Conservatives' unexpected victory in 2015 and Labour's unexpectedly good showing in 2017 — nobody saw the political activity, as social media campaigning takes place in the privacy of a living room or a person's smartphone.

There are therefore two concerns here. One is the fact that money spent on candidate-specific activities is not counted against the candidate's spending allowance; the other is that the campaigning material often can't be seen or challenged by others. All printed matter at elections must carry an imprint showing the printer, publisher and promoter of a given piece of literature. By contrast, much paid-for social media advertising neither carries the detailed imprint required on printed letters and leaflets nor even a US-style 'paid for by X campaign' identification.

The Electoral Commission admits its ability to fully identify spend by campaigners on online campaigning at the 2015 election was 'limited',¹² and while it says 'any regulated spending by political parties would be subject to existing spending limits and reportable after the election', it also says it is entirely dependent on information volunteered by social media providers. And Facebook, which was responsible for 99% of social media activity in the 2015 election,¹³ cites client confidentiality as its reason for not releasing information on how much is spent targeting specific voters. This is a clear lacuna in the law.

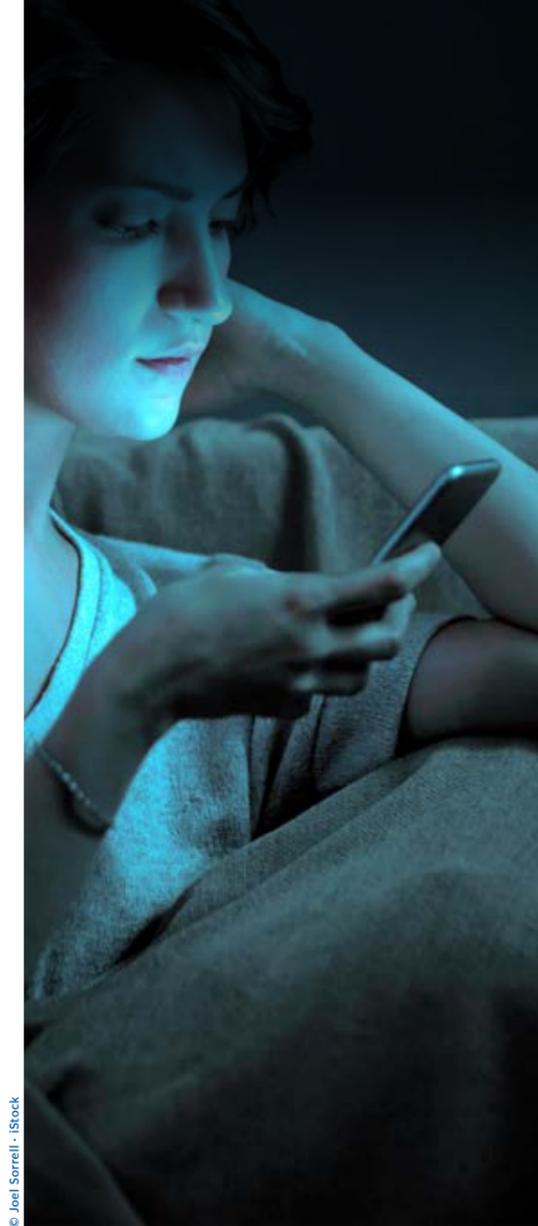
There is a broader issue about the transparency of Facebook, in particular the fear that it is a big beast that has so far escaped meaningful regulation. One of the ways to ensure Facebook is not used to circumvent rules on fair financing in elections is to require more specific data on the use parties make of Facebook to target voters, but for that to happen Facebook must be required to declare more information than it has so far been willing to do. There is a clear case for the law to make submission of certain information a condition of companies selling services for electoral purposes.

Linked with the question of Facebook is the subject of 'fake news'. Often treated as a joke topic because of the amusing nature of many fake news stories, deliberately faked stories are believed to have played a part in the 2016 US presidential election, including false information bulletins saying that Republican voters should vote on 8 November and Democrat voters on 9 November (polling day was 8 November).¹⁴ Given the potential for — and growing evidence of — fake news to maliciously influence voters, there is clearly a need for Facebook's overall role in the political process to be seriously scrutinised.

¹² Electoral Commission, 'UK Parliamentary General Election: Campaign spending report', February 2016, §3.29

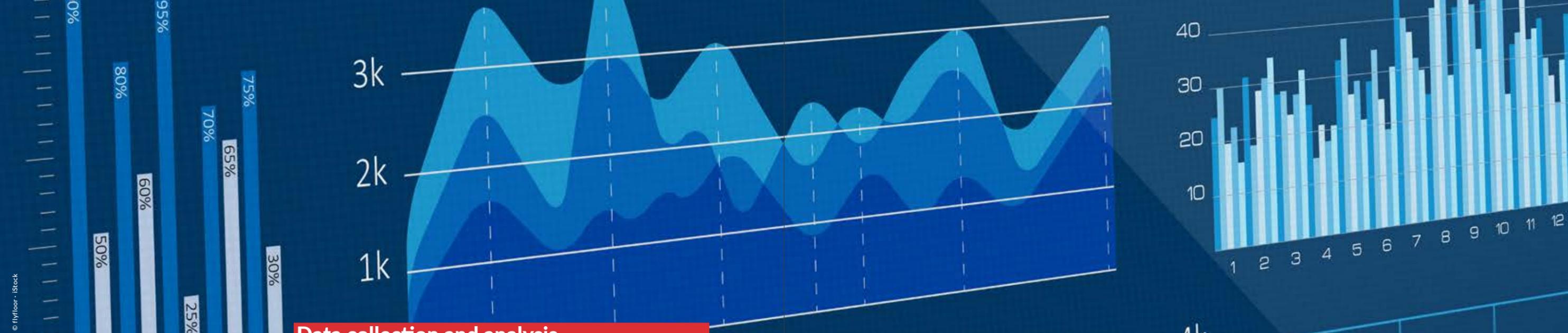
¹³ Electoral Commission, 'UK Parliamentary General Election: Campaign spending report', February 2016, §3.32

¹⁴ 'What Facebook knows about you', Panorama, BBC Television, 8 May 2017



© Joel Sorrell - iStock

“
Social media in politics is also largely invisible, as social media campaigning takes place in the privacy of a living room or a person's smartphone.
”



Data collection and analysis

It is easy to look at direct mailshots, imported campaigning, telephone canvassing and social media, and look at the costs of these activities to the various parties. But one of the features that determines the effectiveness of these techniques is how much data a party has in the first place, and what use it can put it to. Therefore, the cost of buying in such data is crucial to the fair funding of politics.

Data collection, analysis and use played a significant role in British politics for the first time at the 2015 election. In 2013, the Conservatives hired the American political strategist Jim Messina to help with their campaign. Messina is reported to have bought in lots of data which allowed for a more targeted approach to canvassing in 2015. The result of the election suggests this was very effective, but when was this data bought? And for how much money? If it was bought more than a year in advance, it is likely to have escaped all detection. And as national data bought by a party's head office, it will have been swallowed up in the *party* spending allowance, even though its most decisive usage will have been for the benefit of *candidates* in marginal seats. In an interview with *The Spectator* three days after the 2015 general election, Messina said 'I think we spent a total of £30 million on the election,'¹⁵ but he didn't specify over what time period; the period is crucial given that £30 million is 50% more than the amount permitted year-long party spending allowance leading up to a general election.

In other words, the potential for large sums of money to buy data that could be of vital importance in attracting floating

voters in the marginal constituencies may be slipping under the radar, and thereby circumventing the purpose for which spending limits were set.

There are also broader privacy issues surrounding the whole process of buying, aggregating, structuring, organising, manipulating and evolving data (and associated models). These are not financial issues but may present a form of unfair competition, and possibly illegal competition if it breaches data protection rules. Some of this is speculation, but there is enough evidence to indicate that the potential for getting round the rules is considerable, and that the problem is not just money, but money, secrets and privacy.

The use of databases clearly cannot be wished away. The question is how the use of data can be monitored so it does not allow those with the largest sums of money to buy elections. The key may lie in a beefed up role for the Information Commissioner's Office, the body that ensures compliance with data protection rules. After all, civil liberties and privacy issues go hand in hand with the freedom to choose one's government and leaders, so ensuring a person's right to withhold personal data may be as important a measure to be considered as ensuring the rules do not allow money to buy undue influence. In this context, it is worth noting that the new Information Commissioner, Elizabeth Denham, said in May 2017 she was opening a 'high priority' investigation into the use of data analytics for political purposes.¹⁶ Given that she recently confronted Facebook over privacy issues, she could have a crucial role to play.

“
The potential for large sums of money to buy data may be slipping under the radar, and thereby circumventing the purpose for which spending limits were set.
 ”

“
The question is how the use of data can be monitored so it does not allow those with the largest sums of money to buy elections.
 ”

¹⁵ <https://blogs.spectator.co.uk/2015/05/jim-messina-interview-how-the-pollsters-got-it-wrong-and-why-labour-lost/>

¹⁶ <https://iconewsblog.wordpress.com/2017/05/17/information-commissioner-elizabeth-denham-opens-a-formal-investigation-into-the-use-of-data-analytics-for-political-purposes/>

Does it matter?

There are breaches of the rules in all walks of life, so do the concerns outlined in the preceding pages really matter? Let's ask some questions.

What was PPERA designed to do?



The Act was passed in 2000 with the aim of restoring confidence in democracy both by ensuring donations to, and expenditure by, political parties were transparent and by imposing national spending limits to curb a spending arms race and encourage contests based on the merits of the parties' respective programmes. As the Labour minister who introduced it in the House of Lords said, 'The core purpose of this Bill is nothing less than to reinvigorate our democracy.' PPERA has largely been a success in terms of transparency, but it has failed in its second aim to ensure that elections cannot be won as a result of disproportionate spending by one party. By definition, it is therefore failing in its purpose.

Does money actually influence election campaigning?



Yes, and it is becoming more influential as parties find it harder to get volunteers out to deliver literature and knock on doors. Just because a party has money does not mean it has electoral effectiveness, but the more it targets key seats the more the money it has becomes a factor.¹⁷ And under the first-past-the-post electoral system, money can be used highly effectively in the handful of seats which will decide the outcome of an election nationally.

¹⁷ Fisher, J, 'Legal regulation and political activity at the local level in Britain' in 'The Funding of Political Parties: Where Now?' edited by Keith Ewing, Jacob Rowbottom and Joo-Cheong-Tham (Routledge, 2012)

What difference does it really make to results?



We can't quantify what percentage difference the allegations of passing off constituency-specific expenditure as party spending would have made to the result in constituencies. All we can do is look at margins of victory and see whether the failure to observe the rules would have given one party a decisive advantage. In the constituencies where allegations of such practices were made at the 2015 election, several produced results where less than 3% of those voting for the winning candidate would have had to vote for the runner-up for the result to have been different, and in the case of Gower in South Wales the figure was 0.04%. In other words, the potential for practices which should be outlawed to influence the result is clear in certain constituencies. In 2017, 10 constituencies were won with majorities of less than 100, and 52 were won with majorities of less than 1000.

Does the punishment fit the crime?



If there are rules by which all candidates and parties have to adhere, the punishment for breaking those rules ought to be commensurate with the unfair advantage gained, otherwise wrongdoers can factor in the cost of breaking the rules knowing the result won't be altered ('the cost of doing business' as the Electoral Commission's chair John Holmes described it). And the bar for a re-run of an election to be ordered is set very high – an MP effectively has to go to prison or lose a judgement in an election court before a re-run takes place. Clearly a minor breach of a rule that is unlikely to have made a difference to the result should trigger a sanction at the level of a slap on the wrist, but where a breach is likely to have affected the outcome, the current punishment does not fit the crime.

“
Where a breach is likely to have affected the outcome, the current punishment does not fit the crime.
”

“
Just because a party has money does not mean it has electoral effectiveness, but the more it targets key seats the more the money it has becomes a factor.
”

Conclusions

1 There is by definition a problem

The law is framed to promote confidence in the voting system by preventing those with the greatest wealth from using that wealth to disproportionately influence elections, yet there is ample evidence that this is happening, both through undetectable activities (Facebook and other digital techniques) and wrongly attributing candidate-specific activities to party spending allowances. There is therefore by definition a problem, and doing nothing ought not to be an option. The fact that no one has been convicted for alleged breaches of spending rules at the 2015 election does not mean that everything is satisfactory – the CPS has made judgements on the basis of whether it could prove intent to commit a criminal offence. The law is intended to promote confidence in the democratic process and even if no one has been convicted, the evidence presented by Channel 4, The Canary, this report and other sources, along with the concerns and calls for

reform expressed by Unlock Democracy, the Electoral Reform Society and others, suggest that the intention of the law is not being realised.

2 There is an absence of clarity

There is clearly a whole range of interpretations of the existing rules as they apply to party-specific and candidate-specific expenditure, which leads to different ideas of good practice from constituency to constituency. The Electoral Commission's guidance appears to be inadequate and at times inconsistent.

3 The current system encourages a presidential-style election

Under the British electoral system, voters vote for their MP, not for the Prime Minister. They can take into account who they would like as Prime Minister when they make their choice from a handful

of local candidates, and many do, but they are still voting for their MP. Yet the fact that the current rules allow for national figures, indeed national party officers, to be counted under party expenditure limits when working for specific candidates means there is an in-built financial incentive to use national assets in local election campaigns rather than local assets. Meanwhile, non-party campaigners have to account for staff costs at a national level, so there is inconsistency of rules between parties and non-party actors.

4 The collection, analysis and use of data is now a fundamental issue

As political campaigning techniques become more centralised and electronic, and less localised and paper-based, the role of personal data relating to all 46 million Britons with the right to vote is becoming ever more important. This makes the rules on data protection – and their

enforcement – a central part of guaranteeing a fair election. This is not distinct from the issue of money but a parallel issue related to wider data protection concerns.

5 Enforcement is at the heart of the credibility of the rules

Any rule that cannot be enforced merely serves to separate those with a conscience from those who feel the only crime is getting caught, and there are big questions about the enforceability of the current election spending rules. The presence of different bodies monitoring candidates' and parties' spending seems to defy common sense.

6 Campaign spending periods need to be reassessed

The focus in this report is on the 'short campaign', the period from when Parliament is dissolved (31

March in the case of 2015) to polling day (7 May). But much spending happens well before this period which can escape detection despite having a serious influence on elections.

7 It is important not to overregulate

It's very easy to look at a situation where actors are riding roughshod over rules and conclude that the answer is greater regulation. But overregulation in this context has the potential to discriminate against smaller parties that couldn't afford the lawyers, accountants and trained administrators needed to stay within the rules.

8 A proportional voting system would solve a lot of the problem

This is the elephant in the room. Many of the questionable practices highlighted in this report would not happen if all constituencies were worth

the same investment of resources, something that does not happen under the first-past-the-post voting system. However, even under a mixed-member proportional system such as those used for the devolved institutions in Scotland, Wales and London, one would not totally eliminate marginal constituencies.

9 The situation must be kept under constant review

Technology and human inventiveness are constantly changing the reality that affects the rules of electoral engagement. The social media landscape is forever evolving, and what of artificial intelligence and its likely impact on election campaigning? This is largely speculation at present, but the potential for AI to have a major impact is immense. Therefore, there is a need for regular reviews and revisions to keep the rules aimed at guaranteeing financially fair elections up to date.



Recommendations

The recommendations emanating from this report fall into two categories:



Wide-reaching reforms
Recommendations for wide-reaching reforms which seek to tackle the problem – or aspects of it – at source, even if it means a radical shake-up of the current electoral regime.



Incremental reforms
Recommendations that involve tweaking the existing system.

As the 2015-17 government committed to finding agreement on ‘incremental reform’ and ‘small-scale measures’¹⁸ in party funding and spending rules, it is reasonable to assume – though not entirely safe – that this commitment will be carried through to the current parliament. Not all of the recommendations here are alternatives or mutually exclusive, indeed some will only work in combination with others.

¹⁸ Hansard, 10 March 2017, columns 1620 & 1621

Wide-reaching reforms

A legal framework for social media in elections

Social media has developed into such a prominent campaigning tool that a legal framework for the use of social media in elections appears to be unavoidable. This framework should cover at least two principal areas:

- The establishment of consistency between social media and the rules on paid-for political advertising on broadcast media. If there is a ban on television advertising which can drop into someone’s living room without the residents necessarily having chosen to watch it, social media advertising that drops into someone’s news feed has to fall largely into the same category and therefore ought to be banned too.
- The imposition of an obligation on social media providers to make clear on invoices which constituencies are being targeted in social media activity to make it easier to track targeted expenditure. This will involve challenging Facebook’s refusal to give out such information for reasons of ‘client confidentiality’.

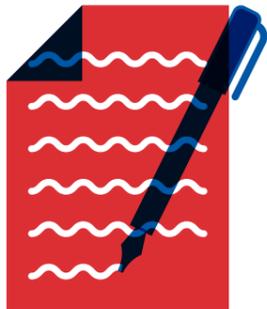


Public funding of political parties

The Committee on Standards in Public Life, in recommending a measure of limited public funding for parties, stipulated that such reform should only be instituted if accompanied by a clear cap on individual and corporate donations, thereby limiting the extent to which influence and access may be bought. Such a reform would effectively regulate from the input end the amount of money political parties are ever likely to spend; in other words, parties would be limited in their spending by having limited funds in their kitty. This option would be a form of admitting defeat, but may be the most pragmatic approach. It could also be done by taking money out of the government advertising budget (currently around £300 million a year) in order to avoid any new revenue-raising measures, which would help the political acceptability of introducing public funding of politics.

A proportional voting system

This is a controversial subject, and it wouldn't solve all the problems connected with fair funding, but making all votes of equal value would remove the incentive to throw large sums of money into a few seats and manipulate the expenditure limits. If one were to introduce a system similar to the Additional Member System used in Scotland and Wales, it would keep the constituency link while putting a premium on an even spread of campaigning in order to get MPs elected through the top-up mechanism.



Incremental reforms

Change the balance of national (party) and local (candidate) limits ...

This would involve increasing the amount that can be spent by a candidate and decreasing the amount a party can spend so the overall or aggregate spending limit stays the same. Some activists interviewed for this report stressed that fighting an election on a candidate's limit of around £14,000 is increasingly hard, but raising the candidate's limit without reducing the party limit is likely to bring more money into marginal seats, and thus allow for money to buy electoral advantage. Therefore, any *raising of the candidate-specific limit* should go hand-in-hand with *reducing*

the party-wide limit so the trade-off between the two involves no increases in overall spending, other than those linked to inflation.

... in conjunction with revising the determining factor of party/candidate distinction

But a quid pro quo of increasing the candidate expenditure limit has to be that more activities that clearly benefit a specific constituency are accounted for under the candidate's allowance. In terms of literature, this means apportioning more leaflets that are aimed at specific seats to the candidate's allowance, not the party's. This could be done by saying that if a piece of literature is sent to a named individual, it has to be counted against a candidate's allowance, even if it doesn't mention the candidate and is sent direct from party HQ.

Remove certain head office exemptions from spending limits

The exemption that allows national staff payroll bills to be excluded from party spending limits creates an incentive for national activity to trump local activity, which is exactly the opposite of the spirit behind the spending limits set out in PPERA. This exemption should be removed, even if it involves a slight increase in the party's spending limit (but only a slight one or nothing will be achieved). There is also the question of national party staff being sent to help specific candidates' campaigns – at present candidates and agents must make an 'honest assessment' as to how much time a national officer spends on a campaign, but in reality the amount of time is often underreported. As enforcement of timesheet records is very difficult, removing the exemption of national staff from party spending limits would mean a campaign staff member's time would have to appear on one return or the other. This would also reflect the position faced by registered non-party campaigners, who are required to declare the cost of their national staff at elections.

Annual reporting limits for parties

The current rule for parties is that they have to account for their expenditure in the year leading up a general election. In an election such as 2015, they had a start date so could plan

“
The exemption that allows national staff payroll bills to be excluded from party spending limits creates an incentive for national activity to trump local activity, which is exactly the opposite of the spirit behind the spending limits set out in PPERA.
”

and keep records accordingly, but in a snap election such as 2017, they have to go back to account for their expenditure retrospectively for the year leading up to the election date, which seems both unwieldy and unfair. A much simpler and fairer system would be to have annual limits which follow fixed accounting dates.

“
When rules are breached in a way that may cause the outcome of an election to be influenced, the obvious sanction is to order a re-run of a constituency election.
”

Lower the bar for ordering a re-run of elections

If the election rules exist to act as a deterrent to one or more candidates gaining an unfair advantage, there must be a reasonable sanction when the rules are breached. And when rules are breached in a way that may cause the outcome of an election to be influenced, the obvious sanction is to order a re-run of a constituency election. This is difficult territory as we don't want a surfeit of by-elections triggered by minor infringements, but with 'recall' of MPs who have somehow failed in their duty now enshrined in law, setting a lower level of error to force greater adherence to the rules could prove both consistent and a popular measure among the public.

Impose common accounting procedures

Part of the problem is that there is too much variety allowed in accounting procedures. If the Electoral Commission were to be empowered to standardise the requirements of agents and local party treasurers, perhaps through more guidance and common forms, this would aid transparency. It would have to be done in a way that doesn't make it harder for lay treasurers and agents, yet if it were done simply but well, it could make their life easier.

Revise the rules on detail required in expense receipts

A certain amount of redacting and couching expenses in general terms is legitimate and inevitable in order to protect confidentiality, but the current rules allow for so much redacting that information that legitimately belongs in the public domain can be withheld. If public confidence in elections being conducted fairly is to be established and maintained, transparency must be an essential attribute, which requires a clear framework for consistency in accounting for expenditure on both analogue and digital media.

Tighten the rules on telephone canvassing

It would be wrong to prevent political parties conducting their own voter intention surveys to check how their campaign messages are going down, and these require the professional services of a polling organisation that has to be paid. But if paid-for canvassing is illegal, as it currently is, there have to be clearer ways of eradicating clear abuses of telephone 'push polling' to prevent what is effectively canvassing – persuading – taking place on a paid basis. An obvious remedy would be to put into law the Market Research Society's code of conduct, adapted for the purposes of election polling.

Social media

This is partially covered in the section on wide-ranging reforms, but there are numerous aspects of social media in election campaigning, and it is a very difficult area to police as it is changing constantly. For example, it is worth investigating whether to tighten the rules that apply to 'third parties' (agencies and pressure groups working in support of political parties at election times) to require them to itemise what activity they undertake that could be considered targeting. There is a need for clear rules on imprints on social media political adverts so the publisher is identified – if only through a US-style 'X has paid for this message' attribution – and there ought to be a repository for all social media adverts so if anyone finds they have been targeted, they can trace the ad.

Data collection and analysis

Clearly the rules pertaining to the collection, analysis and use of data for electoral purposes will be vital for ensuring a level playing field for future elections. A number of ideas need to be meaningfully investigated, including whether to make a certain amount of data available to all registered political parties, whether data protection rules need better enforcement, and whether a separate 'political opt-out' (or 'opt-in') is required for all surveys that lead to data being collected that will or might be used for political purposes.

“
Clearly the rules pertaining to the collection, analysis and use of data for electoral purposes will be vital for ensuring a level playing field for future elections.
”

“
It would make most sense to have a single electoral offences authority, perhaps an off-shoot of the police but answerable to the Electoral Commission.”

Meaningful enforcement

Currently the Electoral Commission has jurisdiction over the enforcement of party spending limits but ‘has no direct responsibility for candidates’ compliance with the statutory spending limits and/or the accuracy of the candidates’ returns’.¹⁹ Because candidates come under the Representation of the People Act and parties come under the Political Parties, Elections and Referendums Act, any breaches of party limits are matters for the Electoral Commission, while any breaches of candidate limits are matters for the police. It seems daft to have two different enforcers, and neither body is ideally equipped to take on both roles. It would make most sense to have a single electoral offences authority, ideally an off-shoot of the police but answerable to the Electoral Commission. There is also a strong case for raising the £20,000 limit on fines that the Electoral Commission can levy on political parties who break the rules, a figure so low it has raised fears that the bigger parties factor the fine into their campaign strategy as part of ‘the cost of doing business’.

Candidate returns to be held by Electoral Commission

Whatever the overall distribution of responsibilities between the police and the Electoral Commission proves to be, it would make sense for all candidate returns to be held – if only in electronic form – by the Electoral Commission. This would allow anyone who wanted to check a candidate’s return to go to one single repository.

Adopt the ‘ignorance of the rules is no defence’ principle

If the Crown Prosecution Service is only going to prosecute if it can prove intent to break the rules, prosecutions are going to be very sporadic, as the presence – indeed encouragement – of voluntary officials in politics means ‘an honest mistake’ is likely to be a viable defence in most cases. In order to promote public confidence in the electoral process, the Electoral Commission should draw up clear guidelines for the apportioning of as many types of expenses as is practicable, and make it clear that failure to observe these guidelines will be considered an offence –

¹⁹ Paragraph 12 of the judgement by Judge Justin Barron at the Kent Police hearing in Folkestone, 1 June 2016

perhaps only a civil one – and will be treated as such, possibly with an order to re-run a constituency election if the offence is considered to have influenced the result. In other words, it would mean setting out certain core rules of electoral engagement and saying: ‘Ignorance of these rules is no defence, and therefore breaching them will be subject to punishment’.

Change the deadline for prosecutions

The current rules on prosecuting a person or party for a breach of financial limits is one year from the date that all returns have to be submitted (35 days after polling day). That leaves insufficient time for a fair assessment of whether offences have been committed that relate to party spending, given that party spending figures are only published about eight months after the election. The obvious deadline for prosecutions would be a year after the party spending figures are published.

Regular reviews

The speed with which social media and other forms of technology are advancing means that rules which allow for a largely fair election in one year cannot be relied upon to guarantee a similarly fair election five years later. A body – the most obvious being either the Electoral Commission or the Law Commission – should therefore be charged with ensuring that the rules that apply to spending limits are reviewed before each general election, or perhaps every five years given that snap elections interfere with five-year parliaments.

Compulsory voting

This is a slightly left-field idea that would not solve the problem on its own. However, making it compulsory to vote would free up money currently spent on polling day mechanics (getting out the vote) for use on parties’ policy messages. Removing the need to ‘get out the vote’ would also take away an element of the political system that not everyone is comfortable with, namely chasing up people to see if they have voted, offering them lifts to polling stations, and having rosette-wearing politicians asking for voter numbers as people go in to vote.



© Juergen Sack - iStock

The British election system is designed to guarantee that elections should be fought on the basis of who has the best arguments, programmes and people, not the most money. In fact the two Acts of Parliament that guarantee fair elections – the Representation of the People Act and the Political Parties, Elections and Referendums Act – set out rules limiting the amount of money that can be spent on local and national campaigns. Yet there is widespread evidence from the 2015 and 2017 general elections that parties and candidates are circumventing these rules, seemingly without sanction.

This report highlights the areas where concerns have been raised, and for the first time puts forward a series of recommendations for ensuring fair elections that cannot be ‘bought’ by the richest parties. At the root of this issue is the credibility of British parliamentary democracy; if the public cannot believe it is the power of ideas and messages, and the credibility of candidates, which decides elections – not the scale of parties’ spending – then the whole basis on which governments and individual MPs assert their mandate is perilously undermined.

“

There is a broad consensus that election law is fragmented, confused and unclear, with two different sets of legislation and poor guidance from the Electoral Commission. Conservatives are committed to strengthening electoral law.

”

– Conservative party statement, June 2017

