

# DEFENDING OUR DEMOCRACY IN THE DIGITAL AGE

Reforming rules.  
Strengthening institutions.  
Restoring trust.

A new report from the APPG on Electoral Campaigning Transparency



FAIR  
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Published January 2020



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# FOREWORD

The internet is now an essential part of the lives of the overwhelming majority of people in the UK. In this hyper-connected world, many of us shop, travel, study, and even search for love using the internet. It has been nothing short of a cultural revolution.

It has had a similarly all-encompassing impact on politics. The digital sphere – social media, in particular – is now an indispensable tool for discussing views, donating to campaigns and getting messages out to the public.

2016 was a watershed year that brought to life public awareness of political campaigning online. For the first time online campaigns not only played a significant role in reaching new voters, but played a key part in influencing the result of elections all over the West. We learnt how campaigning on the internet, within the letter but not the spirit of the law, could affect political outcomes. The campaign to leave the European Union, along with Donald Trump's presidential campaign, raised serious concerns that Western democracies were in danger of being overwhelmed by a toxic combination of data misuse, dirty money, insidious disinformation and foreign meddling.

The APPG notes as well several key new issues that emerged in the 2019 General Election which must also be considered but were not picked up through our inquiry, which pre-dated the election. The first is the impact of Facebook's policy to allow known lies to appear in political ads. This must be addressed in a way that both preserves the sanctity of free speech without undermining the shared truth that is essential for a democracy to function correctly. The second is the promulgation of 3rd-party campaigning groups. Originally conceived to widen the reach of debate, the unlimited ability of one individual to fund dozens at a time means the rules are ripe for abuse.

Election laws have not been revised since 2001, a time when Facebook and Twitter did not exist. The recent malfeasance has acutely demonstrated that the legislative and regulatory frameworks that protect the integrity of elections are not fit for purpose.

As a result, campaigners have managed to circumvent the law with few meaningful repercussions. In fact, former Chief Executive of the Electoral Commission, Claire Bassett has said that the maximum £20,000 for breaking spending laws was seen by some as "just the cost of doing business". As a result of weak and outdated legislation trust in our democracy is diminishing at an alarming rate.

Democracy will only function if the public is confident that elections and referenda are being policed effectively and that the playing field is level. If democracies are to survive in the information age, they will need to keep up.

The All Party Parliamentary Group for Electoral Campaigning Transparency, which I am proud to chair, was formed in 2019 in partnership with Fair Vote UK to act on these valuable lessons

about the existing dangers to our democratic system. Our inquiry into the UK's electoral campaigning rules has produced an extensive survey of how this threat might be tackled. We took oral and written evidence from over 70 sources, including academic experts, leaders in civil society groups, civil servants members of the public and industry leaders such as Facebook. Our approach, analysis and recommendations are structured around three focal areas: Transparency, Monitoring and Deterrence. We believe that the product of our work in this report is the most comprehensive response to what has to be done if we are to restore public trust and build a regulatory environment that is fit for purpose in the 21<sup>st</sup> century.

The report produced 20 recommendations, which seek to increase campaigning Transparency, the efficacy of Monitoring and Deterrence for rule breaking.

Key recommendations include, but are not limited to:

1. Removing the limit on fines for election offenses
2. Regulating all donations by reducing permissibility check requirements from £500 to 1p
3. Regulating the ability of campaigns to target voters based on personal data
4. Streamlining national versus local spending limits with a per-seat cap on total spending
5. Giving the Electoral Commission prosecutorial capabilities

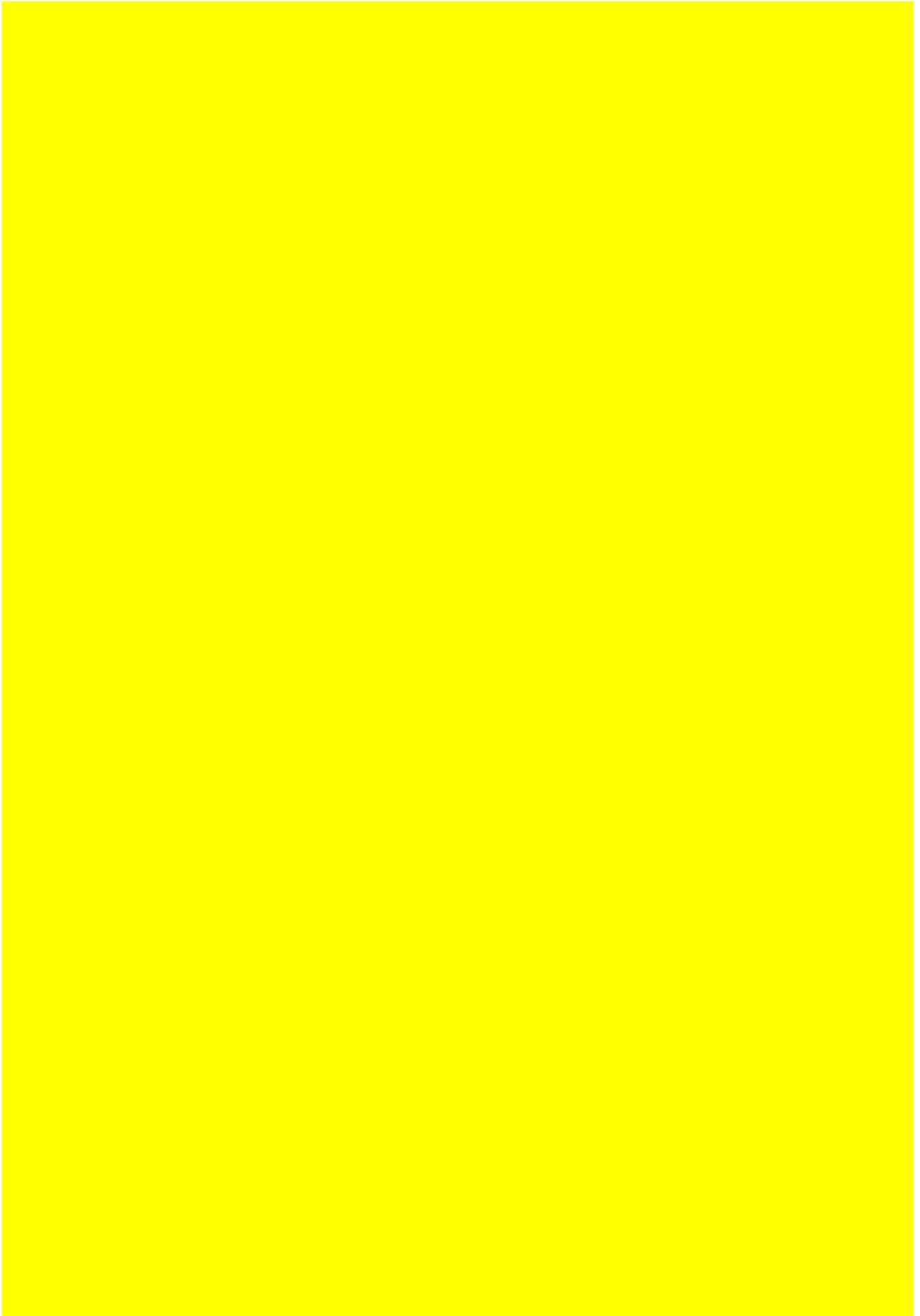
Electoral safeguarding is already urgent. The UK has already had two General Elections since the first revelations about data misuse. As social media use increases and online campaigning becomes more sophisticated, the need for true legislative change will only increase.

The 2019 election was a watershed moment because it was the first time these issues began to crop up on the doorstep. A small but significant number of people are noticing adverts online and wondering who is behind them. They instinctively feel that this goes against the notion of fair play, and this erosion of trust will in time further damage the integrity of our democracy, possibly beyond repair.

It is all too easy for politicians to watch from the sidelines while the world carries on, oblivious, as a tsunami of dirty money and dodgy data smash through our flimsy defences. But now is the time for leadership. Now is the time to fight back. We now find ourselves in a battle for the very soul of our democracy, and future generations will not forgive us if we fail to take a stand.

Stephen Kinnock MP  
Chair of All-Party Parliamentary Group on Electoral Campaigning Transparency

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# ACKNOWLEDGMENTS

The APPG on Electoral Campaigning Transparency has been an extensive undertaking and would not have been possible without the generosity of those who contributed, led and authored this report.

Thank you to our Chair Stephen Kinnock MP and our active Vice Chairs including Deirdre Brock MP, Caroline Lucas MP, Lord Rennard and former MP and father of the house, Ken Clarke.

We would like to thank those individuals and organisations who contributed in both oral and written evidence. Thank you to Dr Jessica Garland, Nick Anstead, Will Moy, Bethany Shiner, Sam Power, Prof Rachel Gibson, Kate Dommet, Duncan Hames, Steve Wood, Craig Westwood, Tom Hawthron, Jim Killock, Pascal Crowe, Polly Mackenzie, Prof Vian Bakir, Prof Andrew McStay, Dr John Ault, Harry Busz, Prof Justin Fisher and Prof Jacob Rowbottom. Also thanks to the following organisations: Electoral Reform Society, Full Fact, Transparency International, the Information Commissioner's Office, The Electoral Commission, Open Rights Group, Demos, Democracy Volunteers, Facebook, Privacy International and Who Targets Me. Thank you as well to all those individuals who provided submissions online.

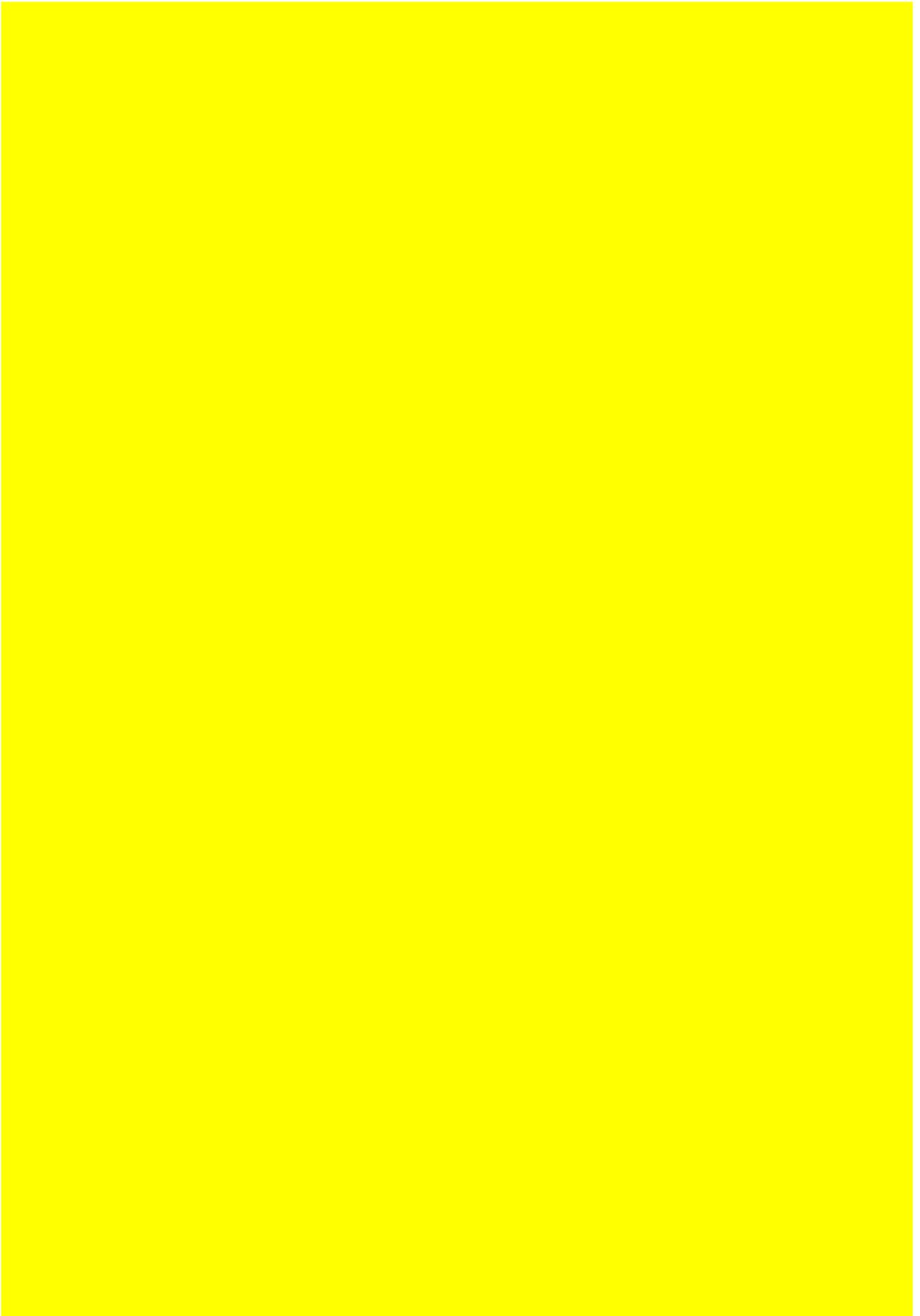
The Fair Vote UK Secretariat has provided unrivalled organisational and drafting skills to produce this report. Thank you to Arnold Le Goeuil for providing key organisational support during the hearing.

The more than seventy submissions provided ample source material, requiring a great deal of focused work to turn brilliant ideas into a coherent and accessible report. Thank you to Matt Gallagher for transcribing, compiling, and organising all submissions as well as drafting our summary findings. Thank you to Dr. Sarah French Brennan for writing our full, footnoted report to doctoral level standards. You are a deeply gifted academic and author.

Thank you as well to David Mogilner for synthesising the hundreds of pages of evidence submissions into proper appendices and for overseeing the report's completion and release. And to Francesca de Bassa for turning these words into a visually stunning and accessible final document.

Challenging deeply institutionalised norms to update antiquated laws in an effort to future-proof the safety and security of our elections is unenviable but necessary work. There is no more precious aspect of democracy than the truth that on one particular day, every individual has the same value in determining how our society should function. That principle is non-partisan and universal. It must be defended at all costs.

Kyle Taylor,  
Director, Fair Vote UK



# APPG ELECTORAL CAMPAIGNING TRANSPARENCY SAFEGUARDING ELECTIONS 101



MPs from all  
UK parties

+

**70+**  
**SOURCES**  
including

The  
Electoral  
Commission



+

**FAIR**  
**VOTE**

Secretariat

=



The most comprehensive  
look at election  
safeguarding possible

The APPG on ECT was formed in 2019 to act on the valuable lessons learnt from the Cambridge Analytica scandal that revealed the existing dangers to our democratic system. Its inquiry into the UK's electoral campaigning rules has produced an extensive survey of how this threat might be tackled. This report presents the most comprehensive answer to the concerns about election safeguarding in the UK first raised in 2016.

## IT LED TO RECOMMENDATIONS IN 3 AREAS:

Transparency



Monitoring



Deterrence



We have had  
**TWO**  
General  
Elections

and countless  
local elections  
since we learned our  
**DEMOCRACY**  
was compromised.

There have been  
**NO**  
**significant**  
**changes**  
to election law  
**since 2001.**

**Facebook** didn't  
even exist then.  
The time for  
**action is**  
**NOW.**

flip over for key recommendations by area



## TRANSPARENCY

1. Regulate all donations by reducing permissibility check requirements from £500 to 1p for all non-cash donations and £500 to £20 for cash donations.
2. Increase transparency and regulation of local candidate financial reports by shifting oversight to the Electoral Commission.
3. Streamline national versus local spending limits with a per-seat cap on total spending.
4. Regulate the ability of campaigns to target voters based on personal data.
5. Modernise spending regulations by instituting per-annum spending limits.
6. Submit all on- and offline advertisements to the Electoral Commission.
7. Standardise financial reporting.
8. Require digital imprints on political adverts.
9. Include market-based costs of data sets in spending regulations.
10. Third Party Political Organisations and political parties should complete an "Exit" audit after an election period.
11. Require corporate donations to come from profits reported in the UK.

## MONITORING

12. Significantly increase the regulatory power of the Electoral Commission.
13. Ensure Online Harms regulator is fit for purpose.
14. Increase interagency cooperation through an Office for Election Integrity.
15. Establish a "Fact checker" coalition for election periods.
16. Long-term digital education campaigns.
17. Enhance ability of civil society to make collective complaints.

## DETERRENCE

18. Unlimited fines for election offenses.
19. Prescribe legal accountability to persons of significant control of the campaign.
20. Give Electoral Commission prosecution capability.



CHAIR – STEPHEN KINNOCK MP

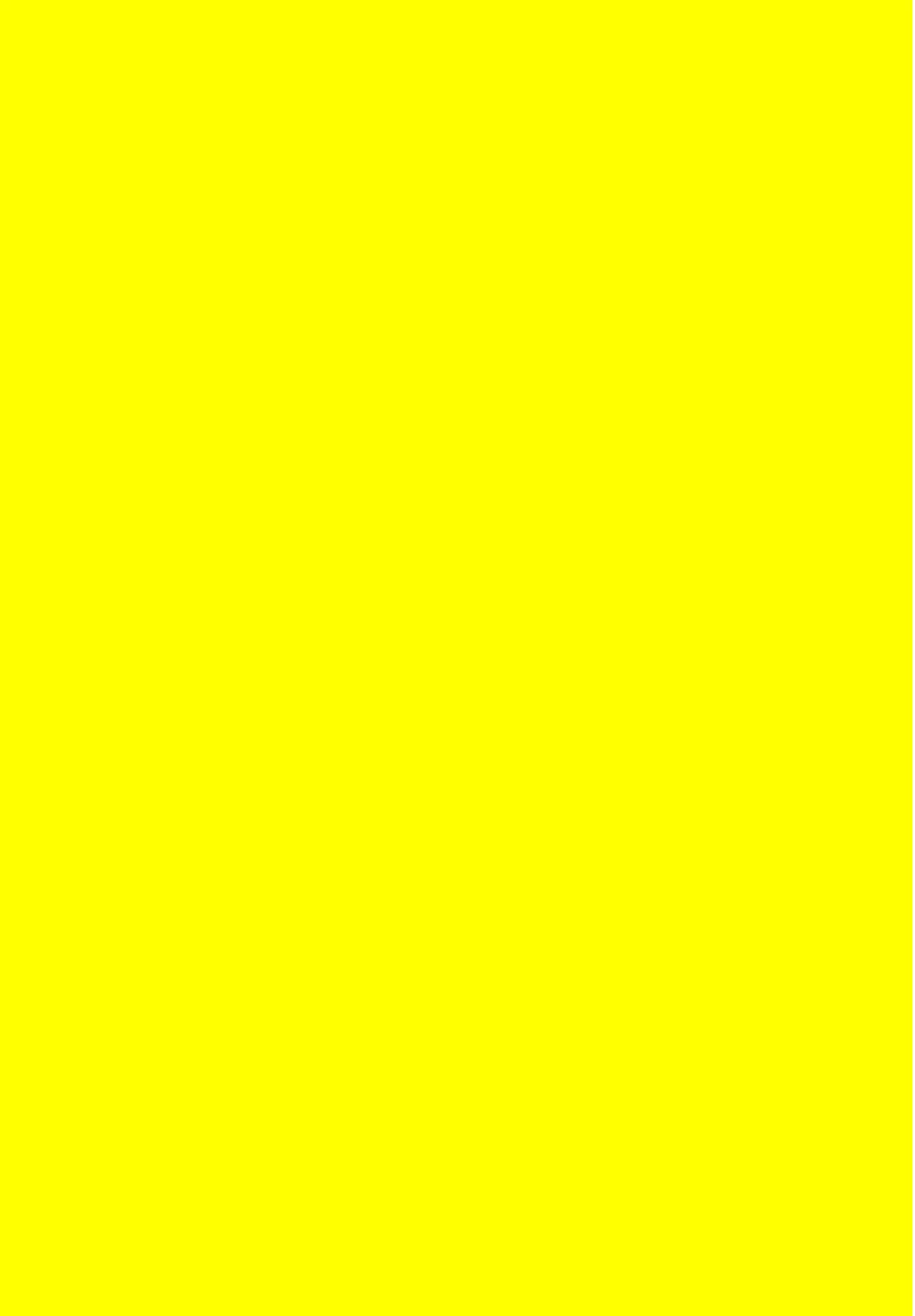
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## REPORT

Our report divides 20 recommendations across three areas: Transparency, Monitoring and Deterrence. Please note that these recommendations have wide consensus across multiple sources. Unless otherwise noted, our evidence does not show disagreement with these propositions.

### TRANSPARENCY

#### 1. Regulate all donations by reducing permissibility check requirements from £500 to 1p for all non-cash donations and £500 to £20 for cash donations.

In the age of online giving, the current rules are no longer practical or sufficient. These laws were created in pre-digital eras, or at moments when the law makers could not possibly have anticipated the ways regulations could be so easily and immediately circumvented through digital mediums. The £500 limit on donations - under which there is no requirement that the donor be confirmed as being on the electoral roll, or a business registered with Companies House - was conceived at the time when tracking such sums was relatively simple. In his oral evidence, Dr. Samuel Power of University of Sussex explained, “now when this was set up, I imagine that the idea was that actually £500 - physically giving someone £500 - it’s very easy to track that kind of thing.”<sup>1</sup>

Today, £500 can be transferred from anywhere in the world instantaneously, and can be done an unlimited number of times in a day. Lord Paul Tyler, in oral evidence, stated, “you can contribute £500 from Monaco or California without anybody noticing, but you can do it every day of the year.”<sup>2</sup> It is impossible to be certain that one nefarious actor is not making repeated gifts “just under the limit” using multiple aliases, or “proxy donors”, as Oxford Professor Jacob Rowbottom argued in written evidence<sup>3</sup>, a concern also emphasised by Craig Westwood, Director of Communications, Policy and Research at the Electoral Commission. This is an issue of national sovereignty, as international donations of this type amount to “international interference,” argued Duncan Hames, Director of Policy for Transparency International<sup>4</sup>. The potential for “lots of donations of less than £500... being sought from foreign donors, [is] such that a UK political party could become responsive to overseas interests,” stated Prof. Rowbottom<sup>5</sup>. If we are serious about stopping the flow of illegal money, permissibility checks must be required *for all non-cash donations*.

Additionally, Mr. Westwood stated that remedying permissibility checks must “work hand-in-hand”<sup>6</sup> with greater enforcement and increased sanctions for rule-breaking, an issue this report explores in a later section. Stephen Kinnock MP highlighted this link as well, stating, “the risk is that there’s not enough of a disincentive... who knows, there may well be somebody

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1 Dr. Samuel Power, Oral Evidence. Appendix D, p. 4.

2 Lord Paul Tyler, Oral Evidence. Appendix D, p. 14.

3 Jacob Rowbottom, Written Evidence. Appendix N, p. 2.

4 Duncan Hames, Oral Evidence. Appendix D, p. 10.

5 Jacob Rowbottom, Written Evidence. Appendix N, p. 2.

6 Craig Westwood, Oral Evidence. Appendix E, p. 17.

in Moscow who decides to send in 10,000 donations of £499 to the Brexit party.”<sup>7</sup> Currently, penalties may be considered simply the “cost of doing business” and so must be increased sufficiently to truly deter interference.

In their oral testimonies Mr. Westwood and Mr. Tyler expressed particular concern over the inability to effectively audit donations made through PayPal. Stephen Kinnock stated that, “we [the APPG] invited PayPal to give evidence to this inquiry and they declined.”<sup>8</sup> Mike Campbell, in written evidence, suggested that IP addresses for online donors be recorded in order to reduce the ability of actors to make multiple and frequent donations below the limit.<sup>9</sup> As Jessica Garland testified<sup>10</sup>, we generally imagine that our laws must certainly be protecting our democracy from foreign interference of this type, but at present, a failure to modernise our elections laws has left us open to dishonest meddling.

## **2. Increase transparency and regulation of local candidate financial reports by shifting oversight to the Electoral Commission.**

As Kyle Taylor of Fair Vote UK noted in his testimony, transparency issues arise from the documents not being stored centrally.

“National Party expenses are available online, but individual candidate expenses, for example, in a general election are not, they’re held by local returning officers ... oftentimes, an item like a leaflet or an ad will have a split expenditure between the candidate and the National Party. Well, if you can only verify the national party side of it online, you’re unable to actually be sure that that item has been adequately and accurately reported in both places.”<sup>11</sup>

Responsibility over financial reports submitted by the candidate in local elections should be put to the Electoral Commission for their expert and thorough review. These financial reports should be made available to all constituents and interested parties online in near real-time. The ability of constituents to view this information for themselves will increase confidence in our regulatory bodies and in the democratic system itself.

## **3. Streamline national versus local spending limits with a per-seat cap on total spending.**

Lines between national and local campaign spending are increasingly being blurred, particularly in digital campaigns, allowing campaigns to use national funds to unfairly target “swing” seats and neglect others. This loophole can be closed by setting an overall cap on spending for any one seat to sit alongside what has traditionally been known as “local spend.” Additionally, classifying all online campaign materials as “national spend” must be introduced and monitoring the intended location of these materials must be increased, so that there is a clear understanding of where the money used for these digital campaigns is coming from. Dr. Samuel Power argues:

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7 Stephen Kinnock, Oral Evidence. Appendix E, p. 27

8 Ibid. p. 30.

9 Mike Campbell, Written Evidence. Appendix G, p. 12.

10 Jessica Garland, Oral Evidence. Appendix A, p. 4.

11 Kyle Taylor, Oral Evidence. Appendix A, p. 2.

“What I would suggest is that it is the case that local and national spending limits are becoming increasingly cosmetic and I think that’s across the board. However, there’s utility in keeping local and national spending limits. If you got rid of the distinction between local and national, then it’s very likely that parties would just focus all of their spending on very specific areas and just leave kind of whole swaths of the country - leave them completely neglected. So, there’s an argument to say tightening up the regulation in this area so that spending and targeting that looks local, and is considered local actually is understood as local under the law.”<sup>12</sup>

More clearly defining the local and the national is an achievable legislative goal that updates our election law to reflect changing campaign environments. We must close loopholes that allow for the blending of local and national funds, and for the targeting of certain swing seats. Bethany Shiner argued that the problem of “shoveling” money from national campaigns toward local seats is an “unfortunate symptom of the UK’s First Past the Post System”<sup>13</sup>. Reform can be achieved through better monitoring of online campaign materials, and better reporting of spending on these materials. All campaign materials should be required to specify their intended target, and how the individual was targeted.<sup>14</sup>

#### **4. Regulate the ability of campaigns to target voters based on personal data.**

Resolving issues of data protection and personal privacy are vital to a functioning democracy, and are woefully under-addressed in regards to campaign law. Regulation must specify the ways in which political campaigns are and are not permitted to use data to target voters, and must work to prevent foreign actors using that data to influence voting behaviours. For example, there should be limits to target data for political advertisements to postcodes only.

Voters have the right to know who is collecting and distributing or selling their personal data, and how campaigns are buying and using that information to specifically target them for advertisement. Transparency about this highly sophisticated “invisible processing” of personal data will allow individuals to better understand the context of the messages being delivered to them, and the ways different agents may be attempting to manipulate their thinking and behaviors.

#### **“Different promises to different groups”**

Will Moy outlined the type of fundamental change in campaign advertising that has occurred in recent decades. For example, while in the past a campaign would put up a billboard advertisement that everyone could see, today:

“[w]e’re talking about you go to a website and an auction happens immediately where people use data from your computer, data from your past, browsing history data from the social media network and data from other brokers that they might be able to get hold of labour credit networks to automatically design and deliver an envelope that is personalised to you. And then they crack what else you interact with and they might deliver a second follow up app three days later, which is related to that. The collective term for this is dynamic content optimisation, and it is a totally different understanding

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12 Sam Power, Oral Evidence. Appendix D, p. 2.

13 Bethany Shiner, Written Evidence. Appendix O, p. 5.

14 Ibid. p. 6.

of advertising..."

The relevant difference between this digital approach to targeted advertisement is that when you have advertising in public settings like a newspaper or billboard, "[y]our side can see it, their side can see it, and everybody can have an argument about it."<sup>15</sup> Public debate is vital to democracy. The current state of targeted digital advertisements threatens our democratic system by "fracturing" that debate. It also changes the content of advertisements: "Targeted ads allow parties to aim specific messages at narrow audiences to attract their votes, without the risk of other groups who reject that message being dissuaded from supporting those parties."<sup>16</sup> Further, it encourages the radicalisation of our political landscape. Argued the organisation Who Targeted Me:

"Targeted ads allow parties to present extreme or populist messages to voters who like them, without suffering consequences from other groups. This is likely to make politics more extreme, as parties not so much compete but instead split the population in totally different audiences... Such fragmentation undercuts the idea of a community or demos which forms the basis of a working democracy and healthy public debate."<sup>17</sup>

Unlike broadcast television, Mr. Anstead points out, on Facebook what you see is "inherently private", that is, specific to you and not visible to others. All social media companies use specific algorithms that determine what appears on an individual's page. The problem is that this lack of transparency about the variability of what is shown to different individuals leads to, for example, "parties making different promises to different groups of voters"<sup>18</sup>. Polly MacKenzie presented this issue through the lens of the Brexit referendum, and voters being shown "three different Brexits":

"as things are hyper-personalised you get into this situation where democracy is sort of chasing itself further and further away from a kind of common space and into individual offers offered to individual voters, which in the end can't be delivered on. And we saw that with the Brexit vote. Even though obviously they won a majority, that's partly because at least three different Brexits were offered to different voting groups. And that enables you to get to the situation where something has won a majority, but we're not really sure what. And that's particularly acute in a referendum, but I think it's really problematic for the future of democracy as a whole too."<sup>19</sup>

### The Right to Data Protection

Of course, testified Kate Dommett, "political parties have long gathered data, but this is a bit of a game-changer" as our current system does readily allow individuals to see where their data is coming from, or how it is being used by campaigns and data brokers.<sup>20</sup> Just as individuals have a fundamental right to privacy, so too is there a fundamental right to data protection, and a right to know where an individual's data is coming from, and how it is

15 Will Moy, Oral Evidence. Appendix C, p. 8.

16 Who Targets Me, Written Evidence. Appendix P, p. 3.

17 Ibid. p. 9.

18 Nick Anstead, Oral Evidence. Appendix B, p. 2.

19 Polly Mackenzie, Oral Evidence. Appendix F, p. 8.

20 Kate Dommett, Oral Evidence. Appendix D, p. 6.

being used.

In 2017 inquiries regarding the Brexit referendum, the Information Commissioner's Office (ICO) found questions about data use in the democratic process as being of "vital importance", said Steve Wood, as they land at the intersection of several fundamental rights, including rights to privacy and rights to free and fair elections.<sup>21</sup> A central concern is that the public may be substantially unaware of how their data is being used, and what technologies and techniques are being used to harvest, sell, and utilise it. Wood called this "invisible processing", a system that should be discussed more openly in the public sphere, with the opportunity to take an "ethical pause" so that voters can think through the complex issues involved, and their wide-ranging implications.<sup>22</sup>

"So for us as well at the ICO it was very important for us to look at the issues in the realm so our investigation really covered 30 organisations. So we looked at all of the key actors, so we looked at critical parties, referendum campaigns, analytics companies, obviously famously Cambridge Analytica, we looked at the data brokers who were supplying the data, we obviously looked at the social media companies, the internet platforms that were playing a crucial role in the delivery and the microtargeting of the adverts that take place and the profiling that takes place behind the scenes, that service of profiling and ad-targeting, the internet platforms provide the political actors, the parties, the referendum campaigns who want to take part in the particular process. So for us as well we talked about political data ecosystem, to use that term, in terms of all of these different actors sharing data, data flowing between them in different parts of the process with all of that leading to that greater micro-targeting of the customer being in the middle. We've got a number of sort of diagrams that explain that in our "Democracy Disrupted" report, we show how the individual voter can actually can lead up to being targeted about different aspects of their characteristics about how they're analysed and profiled and how that leads to very specific and targeted messages being delivered to them."<sup>23</sup>

As a result of their investigations, the ICO fined Facebook £500,000 (the legal maximum at the time) for "their role in the gathering of the data which led to that data being supplied to Cambridge Analytica" reported Wood.<sup>24</sup> They also fined a data broker called MS Diary who provided data to the Labour Party. During this investigation, the ICO "instigated formal use of our audit powers to go and do formal audits of all of the major parties".<sup>25</sup>

The Democracy Disrupted report made recommendations including "a stronger set of rules of the road... a statutory code of practice under the Data Protection Act 2018 for use of personal data in political campaigning."<sup>26</sup> This recommendation was endorsed by the DCMS Select Committee, but Wood reported that (as of July 2019, when he gave evidence) the ICO is still waiting for a full reply from the government. The code of practice would make it very clear what the risks are "in relation to personal data and political campaigning and also how political parties can actually utilise data in digital campaigning with that being a positive aspect

21 Steve Wood, Oral Evidence. Appendix E, p.2.

22 Ibid. pp 2 - 3.

23 Ibid. p. 3.

24 Ibid. p. 3.

25 Ibid. p. 3.

26 Ibid. p. 4.

in terms of engagement of voters."<sup>27</sup> Additionally, the code of practice would also "show where political parties, particularly, can actually make use of data in campaigning so they feel empowered to know how to do that within the law..." Finally, the ICO made recommendations regarding raising voter awareness about these issues, which should be done in collaboration with the Electoral Commission.<sup>28</sup>

Wood also proposed an open-access website where individuals could see what data of theirs is being used by political campaigns, suggesting "a sort of 'mypoliticaldata.org' or just a direct 'url' for people to go to a website which very clearly sets out to them how their data is used in general terms in the political campaigning process"<sup>29</sup>. Additionally, the parties and the other actors would still be responsible for providing privacy notices on their own websites.

### **Working through the "Fog of Information"**

Concerns that regulations on advertising could amount to limits on free speech were addressed by many in evidence. Polly Mackenzie stated: "if you complain to the advertising standards authority, who are perfectly happy to tell us that we can't have gender stereotypes in soap adverts, which I support, but they're totally happy to regulate that, but they're not happy to regulate basically just pathological lies being put on leaflets and on posters and billboards."<sup>30</sup>

Craig Westwood emphasised that the issue of targeting voters is about transparency, not "stifling communication".<sup>31</sup> These topics can be complex, and deal with difficult categorical definitions, so the key to working out solutions and keeping the public informed is being transparent about what is being done and what is being proposed. Part of this transparency initiative should be making clear which agencies and bodies deal with which issues so that the public knows where to go with their concerns.<sup>32</sup>

Pascal Crowe highlighted one of the issues of great complexity in this area: "[I]t's incredibly difficult to know often who is just an interested citizen who wants to get a message across, and who is a kind of subversive astroturf [someone involved in the practice of obfuscating the sponsorship of an advertisement, specifically to imply that it was created organically by unaffiliated individuals]"<sup>33</sup> This is in part because "the barriers to entry to participating in online political activity have been so massively lowered by the growth of social media," and today, "it's so easy for an average citizen to take out an ad and have real impact and reach with relatively little money."<sup>34</sup>

The use of "bots" and "troll farms" in political campaigning is another worrying trend. Will Moy outlined four ways the promotion of ideas online can happen: 1) paid advertising, 2) automated bots, 3) troll farms, and 4) organised volunteers.

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27 Steve Wood, Oral Evidence. Appendix E, p.4.

28 Ibid. p. 3.

29 Ibid. p. 4.

30 Polly Mackenzie, Oral Evidence. Appendix F, p. 9.

31 Craig Westwood, Oral Evidence. Appendix E, p. 24.

32 Ibid. p. 26

33 Pascal Crowe, Oral Evidence. Appendix F, p. 13.

34 Ibid. p. 13.

“There are essentially a few different ways you can amplify messages online. One is by paying for it. That’s your advertising. That’s the conversation we’ve been having so far. One is through automation. That’s the bots and bots that potentially pretend to be human beings, potentially can have been set up several years ago who had been mocking up the appearance of real human activity online and are there to selectively amplify certain messages. One is a troll farm which is essentially paid groups of human beings, acting online in coordinated ways. The fourth is volunteers. So actually something like significant online campaign interventions start as groups of likeminded people, not on Facebook or other high profile Internet sites, but on more marginalised forums collectively planning to intervene in the campaign by making something go viral, ... making a particular topic take off.”<sup>35</sup>

Left unregulated, any of these categories of agenda promotion can be easily hijacked by hostile state or non-state actors. But more broadly, the issue is deception – an individual may believe they are interacting online with another human being, as Bethany Shiner argued, taking part in a “genuine debate and they’re actually talking to a bot based in... a third country, who’s being paid for by someone with financial motives or political motives.”<sup>36</sup>

Updated regulations to reflect these extraordinary changes will help people sort through an increasingly disorienting media landscape. Moy described the challenge ahead:

“We have to think about a world in which everybody is exposed to thousands of different sources of information and it is almost impossible to reasonably judge where you can and cannot place your faith. In that world we need to accept that there is greater fog around information than they used to be in a world where everybody watched the BBC nine and 10 o’clock news and there were 4 TV channels and 10 newspapers and that was about it when it came to reaching millions of people. In this world, you can reach millions of people without the other millions of the electorate even knowing you’re doing it. And thousands, if not tens of thousands of sources can reach very large numbers of voters. And when you take that down to the individual constituency, you don’t have to reach very large numbers of voters to be influential. In that context of information fog, we need brighter beacons to cut through. We need to be providing reliable information that people feel able to trust.”<sup>37</sup>

## Regulating Data Targeting

Regulations on data targeting must be clear, focused, and future-looking. To begin, “regulation needs to clearly define the obligations for different stakeholders, most notably advertisers (that is, political parties and campaigners), platforms and the regulators overseeing this space.”<sup>38</sup> Bethany Shiner laid out an example of how the ICO’s statutory code of conduct should manage issues of personal data collection:

“In future, it should be abundantly clear that, for example, the use of smartphone apps to Hoover up data from the smartphone owner as well as their contact details is unlawful unless consent is gained from each person whose data is accessed and that data

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35 Will Moy, Oral Evidence. Appendix C, pp. 17 - 18.

36 Bethany Shiner, Oral Evidence. Appendix C, p. 19.

37 Will Moy, Oral Evidence. Appendix C, p. 6.

38 Who Targets Me, Written Evidence. Appendix P, p. 9.

protection impact assessments must be provided, that the data is obtained only for one or more specified and lawful purposes and be processed compatibly with those purposes only."<sup>39</sup>

Facebook itself submitted written evidence to our inquiry suggesting how regulation should address data use by campaigns.<sup>40</sup> Broadly, Facebook stated that "[r]egulation should specify how political campaigns are and are not permitted to use data to target voters" and argued that the regulating body should "specify clearly what an eligible entity who wants to engage in political advertising must do in order to do so legally. Options might include requiring eligible entities to register with the Electoral Commission as a political advertiser, requiring them to report all political advertising activity, and requiring them to adhere to specific guidelines on use of data."<sup>41</sup>

Other suggestions submitted to our inquiry included ideas that might help reign in the "permanent campaign" environment. Jacob Rowbottom suggested restricting the sale of "certain types of targeted political advertisements in the period prior to an election,"<sup>42</sup> thereby making it easier for regulatory bodies to track the advertisements to ensure compliance with the rules.

Alan Renwick suggested that initially, online political advertising should be regulated "via voluntary agreement between government and tech companies" until the proper laws can be enacted.<sup>43</sup> Because they benefit greatly from a lack of supervision on these issues, campaigns and social media companies alike must be subject to government regulation in order to ensure they work within the rules. Social media companies will not voluntarily self-regulate or disclose how their algorithms help groups and campaigns specifically target individuals because these algorithms are their "secret sauce", or what makes their businesses so profitable, stated Nick Anstead.<sup>44</sup> Kate Dommett argued that "even political parties with the best intentions could not tell you where a lot of their data comes from."<sup>45</sup> Clear regulation will force campaigns to keep careful records of their data sources.

Regulation must also work to anticipate challenges presented as technologies continue to innovate. Steve Wood asked, "so what does this look like when the world develops artificial intelligence, concepts like sentiment analysis, taking data from a wider range of sources... so a large number of devices which produce patterns of people's behaviour..."<sup>46</sup> Reactionary measures will not be sufficient; as technology develops, so too must our system of oversight.

Finally, there must be consequences for rule breaking that are substantial enough to actually serve as a deterrence. Because today "fake news" can fly around the world in an instant, and can influence such large numbers of people, Wilf Forrow argued that "[w]e need a mechanism

39 Bethany Shiner, Written Evidence. Appendix O, p. 6.

40 Facebook, Written Evidence. Appendix J, p. 4.

41 Ibid. p. 4.

42 Jacob Rowbottom, Written Evidence. Appendix N, p. 5.

43 Alan Renwick, Written Evidence. Appendix G, p. 52.

44 Nick Anstead, Oral Evidence. Appendix B, p. 3.

45 Kate Dommett, Oral Evidence. Appendix D, p. 6.

46 Steve Wood, Oral Evidence. Appendix E, p. 3.

to punish deliberate lying and fake news. Not just by the campaigning groups, but by the media in general."<sup>47</sup>

## **A Pivotal Historical Moment**

The aim of new regulations is to ensure that rules are applied to all groups fairly. Because, as Jim Killock put it, "I don't think you can separate necessarily the worst people" from those who would act in good faith with the public good in mind, "[y]ou've got to assume that everybody's got to abide by the same set of rules" and that "data practices... have to be cleaned up across the board."<sup>48</sup>

The use of personal data in targeting political campaigns has stealthily invaded our system, largely unquestioned and undiscussed on the national level. Said Nick Anstead:

"I would argue that really without any kind of meaningful debate or discussion, we have overturned a consensus that has existed for about 50 years on not allowing commercial advertising or commercial advertising or mass commercial advertising on the primary advertising medium of the day into politics. So, for a long time we agreed that radio and television advertising... would be forbidden, would not be legal in the United Kingdom. But now political parties and campaigners have access to a new media-- social media advertising-- where they can spend literally millions of pounds on targeted political advertising."<sup>49</sup>

Anstead called this a "fundamental shift in how we communicate and the way we undertake politics."<sup>50</sup> Will Moy argued that our elections "must be a shared experience for it to be a democratic experience."<sup>51</sup> Questions about the use of personal data will only become increasingly more pertinent to democratic systems. Anstead framed this as a question of national values: "the conversation we probably need to have is one about values... [what] we want to regulate into our electoral system, and the behavior we want to regulate out of it."<sup>52</sup> Only then can we "start to build a robust institutional framework that can tackle not just current but future challenges as well."<sup>53</sup>

## **5. Modernise spending regulations by instituting per-annum spending limits.**

We live in the age of permanent campaigning, in which current campaign spending periods no longer account for the ways our system operates, excluding the realities of snap elections and social media campaigning. The timelines for regulated campaign spending must be modernised and simplified by instituting per-annum spending limits as a replacement for the "long campaign," with fresh spending limits starting only when an election has been called.

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47 Wilf Forrow, Written Evidence. Appendix G, p. 39

48 Jim Killock, Oral Evidence. Appendix F, p. 3.

49 Nick Anstead, Oral Evidence. Appendix B, p. 2.

50 Ibid. p. 2.

51 Will Moy, Oral Evidence. Appendix C, p. 9.

52 Nick Anstead, Oral Evidence. Appendix B, p. 5.

53 Ibid. p. 5.

Sam Power reported that, “we know from research that elections aren’t the only time when these debates can affect real political outcomes. Just because there’s not an election, it doesn’t mean that this money can’t have an effect.”<sup>54</sup> This is not an issue of individuals organically discussing political topics, but of coordinated, strategic efforts to influence elections. The challenge, said Duncan Hames, “is how to develop a response which recognises that the tactics happen far out from an electoral campaign or even a ‘long period’ of an electoral campaign.”<sup>55</sup>

### **Non-Party Campaigners and Social Media Sharing**

Of particular concern with regard to spending outside of campaign periods are non-party campaigners, or third-party campaigners. They are not required to record or submit their donation information the way parties and campaign organisations must<sup>56</sup>, and increasingly, they are able to reach voters in a coordinated way via social media. Jacob Rowbottom described an example:

“...an organisation may target people on social media urging them to contact an MP about a particular issue. There may be relatively little information about who is behind that campaign. While such activity can be considered as a form of lobbying, it would not be covered under the current rules for the Register of Consultant Lobbyists (which is limited to the direct lobbying of Ministers and Permanent Secretaries). The register does not cover lobbying activities that attempt to mobilise members of the public to contact an office holder. One measure worth further consideration is whether paid attempts to mobilise the public to write to/apply pressure on an office holder should be disclosed by certain types of organisation. The Canadian Lobbying Act, for example, contains a requirement for the professional lobbyist to disclose details of ‘grass-roots communications’.”<sup>57</sup>

Another challenge presented by social media is the issue of organic sharing – the concept of the regulated period is made very fuzzy by the fact that “there is no shelf life on social media and posts.”<sup>58</sup> While a post could be taken down by the original person who posted it after a certain amount of time, in the interim, the post can be shared an almost infinite number of times, and that original person loses all control of when it is reposted. Pascal Crowe noted that it is “difficult to be able to parse out how you would regulate material that has been shared organically... and what was paid for in this content and production outside of the regulated period.”<sup>59</sup> Coordinated efforts can be made to make the post appear to have been shared organically, when in fact bots, troll farms and organised volunteers did the sharing, outside of the regulated period (see section on voter targeting).

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54 Sam Power, Oral Evidence. Appendix D, p. 4.

55 Duncan Hames, Oral Evidence. Appendix D, 12.

56 Craig Westwood, Oral Evidence. Appendix E, p. 14.

57 Jacob Rowbottom, Written Evidence. Appendix N, p. 3.

58 Open Rights Group, Written Evidence. Appendix L, p. 3.

59 Pascal Crowe, Oral Evidence. Appendix F, p. 5.

## Spending Report Deadlines

Currently, campaigns must submit returns on their spending with a certain time frame after the election. For example, campaigns that have spent under £250,000 must report their spending within three months and those that spend over £250,000 must report within six months. Tom Hawthorn suggested that these deadlines be made closer to the time of the election, as this would mean their investigations and write-ups could be made public in shorter order after the polling day.<sup>60</sup>

Justin Fisher argued for more frequently reporting of donations made during the campaign, stating that:

“The growth of digital campaigns, which have a shorter lead time, has meant that there is more relevance to ‘late money’ – donations made in the few weeks before a campaign. This being so, for the public to be better informed about the funds that are supporting parties’ election campaigns, there is a case for more regular reporting between elections and ‘real time’ reporting during the short campaign to ensure voters are informed about funding – particularly in the last week of the campaign, which is not currently reported upon until after polling day.”<sup>61</sup>

More frequent and “real time” reporting of donations to campaigns would promote transparency, and increase public trust in the campaign process. Efforts need to be made, however, to make sure that an “unreasonable and unsustainable burden was not placed on candidates’ agents”, noted Fisher.<sup>62</sup>

Another initiative that would promote transparency in donations would be centralising reports on campaign spending. Craig Westwood suggested creating an official website where all spending reports, local and national, would be accessible to the public. Currently, he reported, “[i]f you want to see what a candidate has been spending, you’d need to go to a local authority, speak to the returning officer, and probably consult a hard copy of the records.”<sup>63</sup>

## 6. Submit all on- and offline advertisements to the Electoral Commission.

All advertisements should be submitted as soon as they are published to the Electoral Commission, which will maintain a database of campaign adverts. Craig Westwood advocated for an “ad library” to be maintained somewhere—a compellation published online of all campaign adverts. He noted that “some of the social media companies have stepped up really well to do voluntary action in this area” but, he added, “there are deficiencies, there are areas where they could be improved”.<sup>64</sup> Advert libraries need to be standardised, centralised, and made a legal requirement.

The goal of standardised advert libraries is allowing individuals, journalists, and political opponents to scrutinise advertisements, and be able to determine if, for example “this an ad which is legitimately targeting people generally on national party messages, or ... focused

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60 Tom Hawthorn, Oral Evidence. Appendix E, p. 28.

61 Justin Fisher, Written Evidence. Appendix K, p. 3.

62 Ibid. p. 3.

63 Craig Westwood, Oral Evidence. Appendix E, p. 13.

64 Ibid. p. 11.

on a specific constituency".<sup>65</sup> Open Rights Group testified that this registry should include information about the sponsor of the adverts.<sup>66</sup> They further argued that the process of registering an advert should be streamlined: "This should be a process like registering with Companies House, except cheaper and faster."<sup>67</sup>

The registry should be linked to the adverts seen by the public: watermarks on the adverts need to be clickable, linking to the Electoral Commission database and details about the sponsor and targeting information. Open Rights Group specified that the database must be user-friendly, "clear, easy to use and widely available."<sup>68</sup> Finally, the Electoral Commission must review the database periodically to ensure compliance with all regulation.

### Deficiencies in Current Practices

Some internet companies have created their own publicly accessible advert databases. However, Will Moy argued that they are doing so in order to "to set the terms of what those databases contain."<sup>69</sup> The information available in the Facebook advert library is only a fraction of what is available to ad buyers—while the library available to the public contains "very basic" information about targeting, Facebook ad buys get details that allow for targeting "specific locations, connections, demographics and interests"<sup>70</sup>—all of which should also be available to the public as well. Open Rights Group testified that "there should be information parity between advertiser and user for political purposes. Users should be able to see exactly what advertisers see in terms of their targeting in an easily accessible and understandable format."<sup>71</sup>

Pascal Crowe cited a case from Facebook in which an advert was identified as being sponsored by a "problematic" group who had their own Facebook page already taken down for rule violations but then resurfaced.<sup>72</sup> The apparent ease of bypassing the Facebook moderators is a great concern.

Additionally, the process by which social media companies decide what adverts are political should be made fully transparent and "opened up to public scrutiny".<sup>73</sup> This information needs to be up-to-date and available in real-time.<sup>74</sup> Will Moy proposed that campaigns be forced to give a "reason for their targeting choice"<sup>75</sup>, which would help the public draw clearer lines between political agendas and the modes and means of conveying messages to specific populations. Peter Stanyon said that the AEA supports this proposal.<sup>76</sup>

65 Craig Westwood, Oral Evidence. Appendix E, p. 20.

66 Open Rights Group, Written Evidence. Appendix L, p. 2.

67 Ibid. p. 2.

68 Open Rights Group, Written Evidence. Appendix L, p. 2.

69 Will Moy, Oral Evidence. Appendix C, p. 5.

70 Pascal Crowe, Oral Evidence. Appendix F, p. 4.

71 Open Rights Group, Written Evidence. Appendix L, p. 2.

72 Pascal Crowe, Oral Evidence. Appendix F, p. 4.

73 Ibid. p. 5.

74 Neil Maybin, Written Evidence. Appendix G, p. 67.

75 Will Moy, Oral Evidence. Appendix C, p. 14.

76 Peter Stanyon, Association of Electoral Administrators, Written Evidence. G, p. 47

## 7. Standardise financial reporting.

Currently, it is difficult to compare spending between parties, as parties release financial accounting returns using different formats and categories. In order to better understand where party money is going, or where donations are coming from, there must be common accounting standards and practices to which all parties must adhere to when releasing their financial information.

Privacy International recommended:

“that campaign finance law require timely online reporting on spending on online campaigning and on the funding obtained online. The information should be sufficiently granular and detailed to promote transparency and accountability. This should include provisions to require political parties and other political actors to make publicly available (e.g. as a minimum, prominently on their websites) information on their expenditure for online activities, including paid online political advertisements and communications. This should include information regarding which third parties, if any, have assisted the political actors with their online activities, including the amount spent on each third parties' services.”<sup>77</sup>

The spend and return categories currently specified in the law ought to be made more specific require more detail, including geographic and demographic details on targeting of advertisements.<sup>78</sup> Privacy International wrote that financial reporting “should be broken down into meaningful categories such as amount spent on types of content on each social media platform, information about the campaign's intended target audience on platforms, as well as actual reached audience.”<sup>79</sup>

Financial reports must be submitted online, and signed off by both the candidate and the agent.<sup>80</sup> Duncan Hames argued that this financial information must be available to journalists so that they may carry out their own investigations in order to ensure accountability.<sup>81</sup> Stephen Kinnock hoped that this type of financial transparency would serve as a deterrent to wrongdoing, and argued more generally that “sunlight is the best disinfectant.”<sup>82</sup>

## 8. Require digital imprints on political adverts.

Political adverts must include a digital imprint that allows constituents access information about the source of the advert and why they are seeing it. This information will include details about why the individual was targeted for this particular advert, what its variants look like, and who paid for its production and publication.

77 Privacy International, Written Evidence. Appendix M, p. 8.

78 Craig Westwood, Oral Evidence. Appendix E, p. 20.

79 Privacy International, Written Evidence. Appendix M, p. 8.

80 Peter Stanyon, Association of Electoral Administrators, Written Evidence. G, p. 46.

81 Duncan Hames, Oral Evidence. Appendix D, p. 23.

82 Stephen Kinnock, Oral Evidence. Appendix D, p. 23.

Kate Dommett illustrated what these standardised imprints should look like:

"this has been paid for by the Labour Party" and kind of a round-about one percent of the people in this area are seeing this. And then so this is one of six variants of the ads and you can click on it and it took you then to the six variants of the ad that were in the ad archive. You could also click on the Labour Party and it shows you the Labour Party - all the adverts that they're running. So its possible to have like a click-through system, where you give people more information on the front page and then you click through to additional information and I think that kind of response to me seems a very logical way of going..."<sup>83</sup>

Open Rights Group proposed that:

"each political actor (including all 3rd parties) registered with the Electoral Commission should have a designated webpage/page on each social media platform that they operate on. This must be clearly labeled. Each campaign should list its campaigning partners on the page and on its communications. For example, in the case of non-party campaigners, you should list lead/minor campaigners somewhere clearly on the page. This is to be updated regularly and reviewed against a set of criteria by the Election Commission."<sup>84</sup>

Dommett specified that this information should be available for both online and offline political adverts.<sup>85</sup> Also included in the imprints could be information about the current and proposed financial laws, so that when an imprint specifies the cost to the campaign of that advert, that amount can be put into the context of the total allowable expenditure of the campaign.<sup>86</sup>

Privacy International outlined the proposed requirements thus:

"Companies that are hosting or distributing political advertising, must, at a minimum, disclose information as to:

- how political advertising and social 'issue-based' advertising is defined;
- number of impressions that an ad received within specific geographic and demographic criteria (e.g. within a political district, in a certain age range), broken down by paid vs. organic reach;
- targeting criteria used by advertisers to design their ad campaign, as well as information about the audience that the ad actually reached;
- information about ad spend per political actor;
- information about microtargeting, including whether the ad was a/b tested and the different versions of the ad; if the ad used a lookalike audience; the features (race/ethnicity, gender, geography, etc.) used to create that audience; if the ad was directed at platform-defined user segments or interests, and the segments or interests used; or if the ad was targeted based on a user list the advertiser already possessed."<sup>87</sup>

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83 Kate Dommett, Oral Evidence. Appendix D, p. 14.

84 Open Rights Group Written Evidence. Appendix L, pp. 2 - 3.

85 Tom Hawthorn, Oral Evidence. Appendix E, p. 11.

86 Ibid. p. 11.

87 Privacy International, Written Evidence. Appendix M, p. 4.

While some platforms are already providing pieces of information through imprints, Dommett argued, "I think it important to really press platforms and not let them lead and define the terms of debate, and... given the degree of consensus around digital imprints... that's the place to push because the government have already said that they might need to act on this..."<sup>88</sup> Open Rights Group argued the current advert library on Facebook offer "disclaimers" on adverts, but that while these disclaimers supposedly provide information about who has paid for the advert, very little information other than an "innocuous campaign group" name is provided, and information like names of people behind the group, email addresses or physical addresses are not mandatorily submitted (or not enforced by Facebook).<sup>89</sup> Facebook itself submitted testimony proposing the Electoral Commission or Government should define clearly:

- 1) which entities are eligible to engage in political advertising,
- 2) what steps such entities must take when purchasing online political advertising and
- 3) what constitutes a political advertisement".<sup>90</sup>

## 9. Include market-based costs of data sets in spending regulations.

Data sets should be assigned a market-based monetary value, which can then be included in spending regulation sums. Monetary value of digital media is difficult to specify on its face, because virality and social media "sharing" makes the materials a moving target. The ICO and Electoral Commission must carry out data audits in order to assign appropriate monetary values to diverse data sets.

Estimating the cost of data sets is made difficult because share-ability and virality "reduce the marginal cost of digital distribution to almost zero", and because technical innovations that automated content generation.<sup>91</sup> Data audits must therefore be performed through joint effort of the Electoral Commission and the ICO. As outlined by Pascal Crowe, the joint task force's mandate is to

"[First] assess the commercial value of datasets bought and sold before an election and have incorporated that into their spending limits,  
[Second] Do... a legal and ethical audit of data because most of the most valuable data is obtained, at least... potentially might be unlawfully obtained.  
Thirdly, the ICO and the Electoral Commission should reserve the right to do "drug tests" any time during the election to see if political actors are already doing anything unlawful or unethical. I know that they both already have powers in relations to this, and we think that could be more fully fleshed out in terms of their cooperation. There should be clear guidance for regulators on how they do that."<sup>92</sup>

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88 Kate Dommett, Oral Evidence. Appendix D, p.20.

89 Open Rights Group, Written Evidence. Appendix L, p. 1.

90 Facebook, Written Evidence. Appendix J, p. 4.

91 Pascal Crowe, Oral Evidence. Appendix F, p. 6.

92 Ibid. p. 6.

## 10. Third Party Political Organisations and political parties should complete an “Exit” audit after an election period.

At the conclusion of a campaign, third party political groups and political parties must continue to be subject to audit by the ICO and Electoral Commission. They must maintain a level of functionality such that - should there be an inquiry or questions about financial operations - there is someone to provide that information to the regulatory bodies.

New regulation should reflect current realities of political campaigns. Kate Dommet testified that “we are seeing a large number of these third party organisations which are increasingly unrecognisable... pop up, which are transient from election to election and are subject to very, very limited oversight.”<sup>93</sup> These “here today gone tomorrow” organisations, said Duncan Hames, need to be held accountable the same way parties are.<sup>94</sup>

Understanding who is placing advertisements and where that money comes from is vital. While the Electoral Commission does currently attempt to regulate these non-party campaigners, “only 31 organisations have registered on that since 2014. Clearly there’s a lot of more of these organisations out there.” This suggests, argued Dommet, a large loophole that needs to be addressed. This reality calls for “a third party audit before the campaign closes down to make sure all the data governance is done properly”, testified Steve Wood.<sup>95</sup> This is particularly important because of the current popularity of referendums.<sup>96</sup>

## 11. Require corporate donations to come from profits reported in the UK.

The ability of corporations to make donations to parties and campaigns from unknown sources creates huge gaps in transparency and allows shell corporations to donate untold amounts of funds. In order to ensure that a donation is coming from an actual trading company and not an impermissible agent of any kind, donations must only come from corporate profits.

This requirement would help to limit funds coming from abroad and prevent international interference.<sup>97</sup> There are many ways international interference can occur, including a scenario outlined by Jessica Garland in which, “UK foreign companies can funnel money into our political system through UK subsidiaries, even if that UK subsidiary is not doing enough business in this country to make that money that’s been transferred.”<sup>98</sup>

Duncan Hames explained the proposal to make campaign funding more transparent:

“[T]here should be a requirement that the donation is made out of profits generated from business done by the company - so, if you like, out of its earned profits, rather than simply as a result of flows of cash between different corporate entities. This is not a million miles away from the approach that has taken to rules in corporate governance around when dividends can be paid to shareholders by a company, the dividends have

93 Kate Dommett, Oral Evidence. Appendix D, p. 5.

94 Duncan Hames, Oral Evidence. Appendix D, p. 11.

95 Steve Wood, Oral Evidence. Appendix E, p. 6.

96 Lord Paul Tyler, Oral Evidence. Appendix E, p. 6.

97 Duncan Hames, Oral Evidence. Appendix D, p. 10.

98 Jessica Garland, Oral Evidence. Appendix A, p. 4.

to be paid out of profits. So we would recommend close attention given to a control there that need not therefore be very controversial, but would establish that a corporate donation in British politics is indeed that, it is a donation made out of the profits of that corporation, that it is not acting as some kind of agent for a donation which may or may not otherwise be permissible."<sup>99</sup>

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<sup>99</sup> Duncan Hames, Oral Evidence. Appendix D, p. 12.

## MONITORING

**A Democracy Defence League: Increased cooperation between ICO, Electoral Commission and Online Harms Regulator**

A fundamental move that must be made to safeguard our system is increased cooperation between the vital agencies charged with supporting the democratic process. Increased collaboration of expertise and resources has received wide and enthusiastic support, being called “absolutely... crucial”<sup>100</sup>, and important for “doing work jointly in the public interest”<sup>101</sup>. For this reason, we propose a Democracy Defence League – a body that would coordinate the ICO, Electoral Commission and the Online Harms Regulator to efficiently and dynamically monitor, investigate, and respond to challenges of democratic processes in the digital age.

Bethany Shiner highlighted an example of how cross-over in jurisdiction between agencies creates the need for joint efforts:

“the complex legal framework applicable to micro-targeting, for example, is overlapping provisions in data protection law, direct marketing, and electoral law. The Electoral Commission needs the expertise and resources to monitor and investigate contemporary electoral campaign practices. The ICO has benefited from the GDPR [General Data Protection Regulation] and the Data Protection Act 2018 by being given powers that will enable it to respond quickly and effectively to allegations and begin collecting evidence promptly.”<sup>102</sup>

The recent LSE Truth, Trust & Technology (T3) Commission came to a similar conclusion, advocating for a new regulator to coordinate experts in tackling social media platform issues. Nick Anstead, who sat on the T3 Commission, also supported this type of interagency cooperation between the Electoral Commission and ICO.<sup>103</sup> The organisation Privacy International recommended looking to another recent example of cooperative expertise, the measures adopted by the EU in the run up to the 2019 European Parliament elections.<sup>104</sup> These measures focused on “cooperation between national authorities with competences in electoral matters and authorities in connected fields (such as data protection authorities, media regulators, cyber security authorities, etc.)” and specified that there needed to be ‘sanctions on political parties or political foundations that take advantage of infringements of data protection rules with a view to deliberately influencing the outcome of elections to the European Parliament’.<sup>105</sup>

100 Steve Wood, Oral Evidence. Appendix E, p. 22.

101 Craig Westwood, Oral Evidence. Appendix E, p. 23.

102 Bethany Shiner, Written Evidence. Appendix O, p. 3.

103 Nick Anstead, Oral Evidence. Appendix B, p. 10.

104 Privacy International, Written Evidence. Appendix M, p. 6.

105 Ibid. p.6.

Open Rights Group has proposed “data audits” as a collaborative effort between the ICO and Electoral Commission.<sup>106</sup> The process of a “data audit” would commence before the regulated election period, and would require political actors covered under the regulation to submit certain materials for review:

“Audited material includes data assets that have been purchased outside of the regulatory period, but will be used inside the regulated period. This is necessary in part because the process of pricing, acquiring and purchasing data is very murky and unclear, even in a standard commercial environment. In addition, it is likely that some of the most useful granular data may not be purchased but obtained by other means. The audit will have three elements: a) Assessing the commercial value of data sets bought and sold before an election, and incorporating that into their spending limits; b) a legal and ethical audit of data. Much of the most valuable granular data for targeting purposes (such as that scraped from social media) is obtained at least unethically and potentially unlawful re: consent. In addition, apart from labour costs, such data is often essentially ‘free’. So there needs to be a way of capturing this; c) The ICO/ Electoral Commission will reserve the right to conduct a ‘drug test’ audit during the election to see if political actors are doing anything unlawful/unethical/breaching spending limits, providing reasonable suspicion is present.”<sup>107</sup>

The Open Rights Group specified that the public could be consulted on this process. Indeed, transparency will be paramount in any collaborative process pursued here. Steve Wood argued that those collaborating should work to “raise awareness about what data political parties generally hold about individuals”.<sup>108</sup>

The Democracy Defence League will necessarily also be future-looking, rather than simply reacting to trends of the recent past. Shiner emphasised that bodies tackling contemporary electoral practices must remain “flexible enough to anticipate future campaign methods”.<sup>109</sup> Finally, the League will take seriously the imperative to transparency, both to the public and to campaign actors.

## **12. Significantly increase the regulatory power of the Electoral Commission.**

A central and urgent call is for a significant increase in scope, power and resources for the Electoral Commission. The Commission must have greater resource to support its independent authority in order to ensure the law is followed. It must be empowered to impose stronger sanctions on groups that break rules, so that fines are no longer viewed as just “the cost of doing business”. The Commission should be able to draw on expertise of academics and data scientists. Regional offices should be set up, without constraints on operations outside of electoral periods.

Lord Tyler argued for increased strength for the long-under-supported Electoral Commission: “I am not particularly critical of the electoral commission. It’s our fault. Parliamentarians set this thing up with inadequate powers and inadequate resources and of course, successive governments have been very too pleased to keep them in their

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106 Open Rights Group, Written Evidence. Appendix L, p. 6.

107 Ibid. p. 6.

108 Steve Wood, Oral Evidence. Appendix E, p. 4.

109 Bethany Shiner, Written Evidence. Appendix O, p. 3.

box. Because when they're answered to, they actually do move quite quickly."<sup>110</sup> Sam Power also acknowledged the challenges faced by the Electoral Commission: "it's always worth bearing in mind that very real financial constraints the Electoral Commission operate under, the very real resource constraints the Electoral Commission operate under, and the political environment which means that any decision that they make ends up with them getting called to be shut down essentially for the people that don't agree with their decision."<sup>111</sup> Democracy Volunteers testified that it "welcomes the expansion and clarification of the jurisdiction of the Electoral Commission. Interference, foul play and a poor understanding of electoral laws are witnessed at many of the polling stations our organisation observes."<sup>112</sup>

### **Create a faster feedback loop to enforce electoral infractions**

The Electoral Commission must be given the resources necessary to act quickly and enforce penalties "in real time".<sup>113</sup> Wrote Robert Jenkins, "There should be no wondering (years after the alleged infraction of electoral procedure) whether the CPS might have enough evidence to prosecute. Instead there should be arrest by Electoral Police Officers on suspicion of involvement with actions aimed at the subversion of electoral procedure."<sup>114</sup> Currently, the outcomes of monitoring initiatives take too long to become public. Duncan Hames argued, "you have a feedback loop which enables some disruption of whatever unlawful or otherwise malicious activity is that you're concerned about."<sup>115</sup>

The ability to act quickly depends on sufficient staffing of the Electoral Commission.<sup>116</sup> Neil Maybin argued for a specialised police force within in Electoral Commission.<sup>117</sup>

### **Higher fines and penalties**

Nick Anstead asked, "do people actually feel they can get away with it and do they feel the price of being caught is actually worth doing it?"<sup>118</sup> The answer to both questions is often yes, which means the Electoral Commission must be able to institute higher fines in order for deterrence to be effective, which Belinda Taylor called "[e]ssential for successful policing of campaigns".<sup>119</sup>

Craig Westwood , Director of the Electoral Commission, testified:

"actually looking at our sanctioning regime is a really fundamental part of this. We do look at the ICO with some envy, actually its well known that our limit is £20,000 per offense, I think we - our position is that you know that is a cost of doing business

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110 Lord Tyler, Oral Evidence. Appendix D, p. 14.

111 Sam Power, Oral Evidence. Appendix D, p. 3.

112 Democracy Volunteers, Written Evidence. Appendix I, p. 3.

113 Helen Rushby, Written Evidence. Appendix G, p. 35.

114 Robert Jenkins, Written Evidence. Appendix G, p. 9.

115 Duncan Hames, Oral Evidence. Appendix D, p. 11.

116 Geraldine Douglass, Written Evidence. Appendix G, p. 42.

117 Neil Maybin, Written Evidence. Appendix G, p. 67.

118 Nick Anstead, Oral Evidence. Appendix B, p. 3.

119 Belinda Taylor, Written Evidence. Appendix G, p. 32.

actually for a campaign or political party that looks to breach the law. So, actually significantly raising that cap would be immensely helpful to us to make sure that we can use it as a tool to ensure compliance."<sup>120</sup>

Discussing his thoughts on fines, Westwood continued:

"So we haven't set a figure effectively as our wish list of where we want the cap to be. We'd like that to be a discussion with parliamentarians, but something north of £500,000 is where we'd like to start. Actually anything below that really we don't think gives us the kind of latitude that we need for some of the more egregious breaches that we have seen and that we risk seeing again."<sup>121</sup>

There is precedent for increases in fines in response to changing digital practices. Privacy International testified:

"The previous maximum fine of £500,000 under the Data Protection Act 1998 did not appear to act as a significant deterrent, as many of the practices which we see today would have fallen short of the DPA 1998's requirements. For this reason, Data Protection Authorities were further empowered under GDPR to fine up to, the greater of €20 million or 4% of global annual turnover. The Electoral Commission could no doubt benefit from being similarly empowered."<sup>122</sup>

Of course, fines must be proportional and carefully calculated. Bethany Shiner stated, "there must be formal guidance on how the Electoral Commission will calculate the fines based on the size of the party or campaign group, the amount spent when electoral law was broken, and other factors such as amount of people affected by the breach."<sup>123</sup> Justin Fisher suggested that fines be levied in direct proportion to party income.<sup>124</sup> William Tobin stated that the fine should be "at least equal to the amount spent."<sup>125</sup>

Another factor that should be considered in determining the size of the fine is repeat offence. Helen Salmon argued for "[s]tronger penalties for deliberate and sustained fraud...there has to be effective deterrence for those who deliberately flout the rules."<sup>126</sup>

There is wide support and even preference<sup>127</sup> for non-financial penalties for violating campaigning laws as well, including criminal prosecutions<sup>128</sup> with prison sentences,<sup>129</sup> disbarment,<sup>130</sup> bans on future political activities for individuals and

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120 Craig Westwood, Oral Evidence. Appendix E, p. 17.

121 Ibid. p. 17.

122 Privacy International, Written Evidence. Appendix M, p. 7.

123 Bethany Shiner, Written Evidence. Appendix O, p. 3.

124 Justin Fisher, Written Evidence. Appendix K, p.4.

125 William Tobin, Written Evidence. Appendix G, p. 8.

126 Helen Salmon, Bristol for Europe, Written Evidence. Appendix G, p. 5.

127 William Lees, Written Evidence. Appendix G, p. 41.

128 Roger Hurst, Written Evidence. Appendix G, p. 18.

129 Jill Brian, Written Evidence. Appendix G, p. 25.

130 William John Tobin, Written Evidence. Appendix G, p. 24.

organisations,<sup>131</sup> and annulment of elections,<sup>132</sup> with a “re-running of the vote”.<sup>133</sup> These penalties must be “mandatorily reported in all media so that future fraud is discouraged.”<sup>134</sup>

### More auditing power

Westwood argued that increased auditing power is essential to the Electoral Commission being able to carry out its mandate, and that it needs to have “the ability to go in and obtain information and require provisional information from bodies which are not regulated by us... for example, [be able to go to] a social media company and request them to provide us information about who is funding a campaign for example would be really helpful to us in being able to speed up the regulatory activity that we take forward.”<sup>135</sup>

### Utilising academic expertise

The Electoral Commission must be able to utilise more academic insight and expertise, both through the hiring of more data scientists, and through cooperative projects. Rachel Gibson argued for the Electoral Commission hiring “a team of data scientists who would be able to use machine learning techniques, social network analysis, sentiment analysis, topic modelling...”<sup>136</sup> Roger Boaden argued specifically for legal experts to be hired for the Electoral Commission task force.<sup>137</sup> Kate Dommett suggested “some kind of very basic low level academic partnership/fellowship scheme within the Electoral Commission, like... what happened at the ICO: they appointed an academic to come and work with them... [that] could be an easy way to get in some expertise to allow them to do things that they’re currently not able to.”<sup>138</sup>

Will Moy testified that the Commission is currently unable to address the kinds of urgent questions about technical issues that have been arising in regards to elections. And so, “part of increasing that funding must be that they get a tech team that is meaningful, that actually works in the 21st century.”<sup>139</sup> While the Electoral Commission is currently tasked with analysis of digital advertising, “[i]t doesn’t have the time or the expertise to engage in those questions seriously.”<sup>140</sup> He argued for the creation of a “team that would be doing this kind of insight work... There should be a much greater body of work and much greater body of evidence, a much greater source of analysis that we can all lean on and the electoral commission has a statutory responsibility to do that but not the funding.”<sup>141</sup>

131 Wilf Forrow, Written Evidence. Appendix G, p. 39.

132 Francesco Gianni, Written Evidence. Appendix G, p. 6.

133 Stephen Lunn, Written Evidence Appendix G, p. 37.

134 Roger Hurst, Written Evidence. Appendix G, pp. 18 - 19.

135 Craig Westwood, Oral Evidence. Appendix E, p. 12.

136 Rachel Gibson, Oral Evidence. Appendix D, p. 17.

137 Roger Boaden, ECREU, Written Evidence. Appendix G, p. 55.

138 Kate Dommett, Oral Evidence. Appendix D, p. 18.

139 Will Moy, Oral Evidence. Appendix C, p. 8.

140 Ibid. p. 7.

141 Ibid. p. 8.

**13. Ensure Online Harms regulator is fit for purpose.**

The Electoral Commission has the mandate but neither the funding nor the expertise to do the kind of monitoring, analysis and reporting on online harms that is required. An independent group of monitors with specific expertise in data sciences, specifically in the realm of social media, is needed to tackle these complex issues. The new Online Harms regulator must have authority over all sources of online harm. It should be independent of both government and industry influence with the resources to hold power to account.

The LSE Truth, Trust & Technology Commission (T3) advocated for a new expert regulator for social media platforms.<sup>142</sup> This unit, suggested Rachel Gibson, “would have data science skills, would understand ways in which machine learning and computer science techniques can be used to track and trace. Because there are patterns, and there are detectable aspects of these behaviours...”<sup>143</sup> This specialised team should also be able to “track in real time the way that political parties are spending this money online”.<sup>144</sup>

The Online Harms Regulator would defend against international interference in elections by focusing on a “cyber resilience” to “trolls and bots particularly coming from state actors or from other parts of the world”.<sup>145</sup> This regulator must be independent and autonomous. It must be, testified Nick Anstead, “simultaneously removed enough from government to ensure confidence that it wasn’t a censor, but at the same time had sufficient clout and power to ... enforce a level of openness and transparency from the platforms.”<sup>146</sup>

**14. Increase interagency cooperation through an Office for Election Integrity.**

An Office for Election Integrity—a COBRA for elections—should be convened quarterly outside election time and twice-weekly during an election period. It would promote efficiency in interagency cooperation around these issues, so that the ICO, Electoral Commission, Online Harms regulator and any other relevant regulatory body are pooling their resources, knowledge and expertise to more fully safeguard elections. Indeed, Steve Wood of the ICO noted that “some form of coordination and us getting together is very helpful, but equally I think our remits are quite distinct ... but we must make sure they work closely together.”<sup>147</sup>

**15. Establish a “Fact checker” coalition for election periods.**

The creation of an independent, real-time fact checking coalition for political ads and statements during elections will increase trust in the democratic system and slow the spread of propaganda and blatant falsehoods. This coalition will have clear, transparent duties and fact-finding procedures to provide trustworthy, impartial information in areas of public concern.

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142 Nick Anstead, Oral Evidence. Appendix B, p. 10.

143 Rachel Gibson, Oral Evidence. Appendix D, p. 9.

144 Sam Power, Oral Evidence. Appendix D, p. 3.

145 Steve Wood, Oral Evidence. Appendix E, p. 9.

146 Nick Anstead, Oral Evidence. Appendix B, p. 14.

147 Steve Wood, Oral Evidence. Appendix E, p. 22.

Who Targets Me testified that “61% of Britons believe that the government should do more to separate what is false and true online.”<sup>148</sup> Kate Dommett acknowledged the difficulty of tackling the issue of deciding “truth” in the political arena:

“politics doesn’t actually have many uncontestable facts, right? It’s a values game; it’s about interpreting... we have moved to this type of debate in which you know there are right and wrong things, there are certain bits of factual information which you can say that is just a blatant falsehood, and I think there is potentially a role there...”<sup>149</sup>

Rachel Gibson also highlighted the difficulty of the fact-checking project: “[E]veryone is going to have sort of an axe to grind, or they’re going to say that... they have been discriminated against, so that would be quite difficult but I think it doesn’t mean that it shouldn’t be done.” Gibson suggested that a body could at least offer a way to rebut certain factual statements, or “something whereby these stories are countered” in real-time.<sup>150</sup>

The organisation Full Fact believed that the government should be responsible for providing “authoritative public information on topics where harm may result from inaccurate information and fill gaps”.<sup>151</sup> They further suggested how other trusted agencies and organisations might lend their expertise to the Fact-checking body:

“This kind of public service could potentially be provided by a wider range of public service institutions depending on the topic. It could be government itself (for example, when it comes to the law this could build on the work on public legal education already overseen and supported by the Solicitor General); trusted and independent public bodies such as the NHS (their Behind the Headlines service is a good example); or academic initiatives with a specific communications role and resources (where successful models include the Institute for Fiscal Studies, the Migration Observatory at Oxford University, and the UK in a Changing Europe initiative).”<sup>152</sup>

## 16. Long-term digital education campaigns.

There is an urgent need for education around digital literacy and critical thinking about information technology. Digital literacy programs, such as those championed by LSE’s Sonya Livingstone, operating across schools, colleges and adult education settings, should be part of a broader expansion of efforts to provide wider public access to information and literature via books, audiobooks, newspapers, journals and safe reading spaces.

Demos testified, “the government needs to reinvigorate the character and resilience education agenda in all schools, colleges and adult education settings. This should be incorporated into Ofsted’s new inspection framework.”<sup>153</sup> This program should include government zero-rating “VAT on eBooks, audiobooks, digital newspapers, journals and other

148 Who Targets Me, Written Evidence. Appendix P, p. 13.

149 Kate Dommett, Oral Evidence. Appendix D, p. 19.

150 Rachel Gibson, Oral Evidence. Appendix D, p. 9.

151 Full Fact, Written Evidence. Appendix R, p. 6.

152 Ibid. p. 33.

153 Demos, Written Evidence. Appendix Q, p. 7.

online publications.<sup>154</sup> Further recommendations from Demos included:

“The Government should work with and fund the publishing industry to develop a ‘Citizen Editors’ voluntary training scheme. Arts Council England should spend more on literature and the Government should encourage it to do so. It should also ensure that the UK retains its membership of Creative Europe, with funding access, after Brexit. The Government should invest in school and college libraries with the ambition that all schools can provide access to safe reading spaces that protect children from the attention economy whilst they read online.”<sup>155</sup>

## **17. Enhance ability of civil society to make collective complaints.**

Civil society also has an important role to play in defence of its own democratic system. The vigilance of individual members of society will be “invaluable... to detecting ads which contravene regulations”.<sup>156</sup> Bethany Shiner testified “[t]here must also be an accessible, independent and affordable process of complaints and appeals.”<sup>157</sup>

Privacy International argued:

“Regulatory regimes are stronger and more effective if the ability of individuals to make complaints is supplemented by the ability of civil society acting in the public interest to bring complaints. This is particularly important if complaints are to address and prompt scrutiny of systemic issues, including those that might impact on more than one individual, particular groups, or society as a whole. This is recognised to an extent, for example, in the introduction of Police Super-complaints. This mechanism has been used by Liberty and Southall Black Sisters to challenge Police data sharing for immigration purposes”.<sup>158</sup>

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154 Demos, Written Evidence. Appendix Q, p. 7.

155 Ibid. p. 7.

156 Who Targets Me, Written Evidence. Appendix P, p. 11.

157 Bethany Shiner, Written Evidence. Appendix O, p. 1.

158 Privacy International, Written Evidence. Appendix M, p. 5.

## DETERRENCE

### 18. Unlimited fines for election offenses.

The £20,000 maximum fine per offence that the Electoral Commission can impose has proved to be ineffectual as a deterrent. If fines are to be viewed as more than “the cost of doing business”, penalties must rise in proportion to the offense committed.

Sam Power, of the APPG on Electoral Campaigning Transparency testified that “the kind of sanctions the Electoral Commission has to offer are insufficient, and I think the EC have recognised this on a number of occasions.” Power called for unlimited fines in addition to sanctioning powers for the EC.<sup>159</sup> Who Targets Me argued that the fine should, while proportionate, be “genuinely painful for even well resourced, major parties.”<sup>160</sup>

### 19. Prescribe legal accountability to persons of significant control of the campaign.

For true accountability to be present, the primary legal responsibility for campaigns must lie with those who actually run the campaigns. Too often, with the professionalisation of campaigns, agents—“fall persons”—are assigned for the purpose of obfuscating responsibility. Meanwhile, the campaign manager and other persons with significant control are not adequately held responsible for campaign rule breaking.

Kyle Taylor argued that while the agent of a campaign currently has legal responsibility for the campaign, there are others with significant control who ought to be accountable “to hold them responsible as well for rule breaking will be much greater deterrence.”<sup>161</sup> The professionalisation of campaigns, Taylor argued, has led to most campaigns having a campaign manager who is not the agent, which is done “intentionally so that the campaign manager can stretch far beyond the rules with a very weak agent who just says, ‘well you’re the campaign manager.’ And yet that agent, the one held responsible and the campaign manager, literally no responsibility.”<sup>162</sup>

Taylor described a situation on a 2017 where he was an agent:

“there was fly posting going up in buildings, calling my candidate an expletive word, next to their candidate, you know, [positioned as] hero of the world. I immediately got in touch with the agent of the other campaign who [said], ‘yes, this is bad. Let’s take it down. I’ll find out who did it.’ They provided me with the names and contact details of the people responsible. I gave all of that to Electoral Commission and the police... so we had agreement [with] the offending campaign and we were interviewed, all the rest of it, you know, four months later get a letter: “Well we just couldn’t confirm the case and therefore we’ve dropped it.” I mean we have photos and names and agreement from the party responsible that it was done and an apology and yet it still leads to nothing, no action.”

159 Sam Power, Oral Evidence. Appendix D, p. 3.

160 Who Targets Me, Written Evidence. Appendix P, p. 12.

161 Kyle Taylor, Oral Evidence. Appendix A, p. 7.

162 Ibid. p. 8.

And so, Taylor said, knowing this, campaigns will sometimes use this as a “tactic to waste the time of the other campaign because if you commit an offence, you know there is no real deterrence.”<sup>163</sup>

## **20. Give Electoral Commission prosecution capability.**

The Electoral Commission should have the ability to initiate prosecutions both at national and local levels, so that the responsibility is not entirely on local law enforcement bodies, whose resources on these issues are already stretched. Prosecution capabilities will boost the Commission's scope of authority and deterrent aptitude.

Craig Westwood of the APPG on Electoral Campaigning Transparency, testified “at the moment we don't take forward our own prosecutions... It actually is the bread and butter of many other regulators so actually it's the natural progression of our work to just step out a bit further and start doing some of the low level prosecutions where actually the police simply don't have the time to be able to take them forward.”<sup>164</sup> Jessica Garland, Director of Policy and Research at the Electoral Reform Society, argued that the current divide in enforcement responsibility between local police on one end and the Electoral Commission at a national level can contribute to confusion and risk problems slipping between the gaps. Garland argued, “that's very dangerous because of course the buck can be so easily passed”.<sup>165</sup>

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163 Kyle Taylor, Oral Evidence. Appendix A, p. 7.

164 Craig Westwood, Oral Evidence. Appendix E, pp. 11 - 12.

165 Jessica Garland, Oral Evidence. Appendix A, p. 14.

## CONCLUSION

Thank you for taking the time to read this report. You can read the full transcript of our evidence sessions and all appendices online at [fairvote.uk](https://fairvote.uk)

The APPG's task for 2020 is to encourage Parliament to implement these 20 recommendations and make appropriate changes to legislation where required. It is the duty of politicians to respond. Now is the time to reform the rules, strengthen institutions and restore trust in political campaigning.

We look forward to working with you as we seek to defend our democracy in the digital age.

## 20 RECOMMENDATIONS

### Transparency

1. Regulate all donations by reducing permissibility check requirements from £500 to 1p for all non-cash donations and £500 to £20 for cash donations.
2. Increase transparency and regulation of local candidate financial reports by shifting oversight to the Electoral Commission.
3. Streamline national versus local spending limits with a per-seat cap on total spending.
4. Regulate the ability of campaigns to target voters based on personal data.
5. Modernise spending regulations by instituting per-annum spending limits.
6. Submit all on- and offline advertisements to the Electoral Commission.
7. Standardise financial reporting.
8. Require digital imprints on political adverts.
9. Include market-based costs of data sets in spending regulations.
10. Third Party Political Organisations and political parties should complete an "Exit" audit after an election period.
11. Require corporate donations to come from profits reported in the UK.

### Monitoring

12. Significantly increase the regulatory power of the Electoral Commission.
13. Ensure Online Harms regulator is fit for purpose.
14. Increase interagency cooperation through an Office for Election Integrity.
15. Support a non-governmental "Fact checker" coalition for election periods.
16. Long-term digital education campaigns.
17. Enhance ability of civil society to make collective complaints.

### Deterrence

18. Unlimited fines for election offenses.
19. Prescribe legal accountability to persons of significant control of the campaign.
20. Give Electoral Commission prosecution capability.

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