

Protecting the Debate: Intimidation, Influence and Information consultation response

18th October 2018

We welcome this consultation and the Government's proposals to protect democratic debate and participation. Ensuring that those who campaign and stand for election are protected is an essential part of creating a vibrant democracy and a democracy that fully represents the diversity of the UK. We also welcome proposals to extend an imprint requirement to online material. This is an urgent and important first step in ensuring that online spaces are contributing positively to democratic life.

In this response we address section one on electoral offences and section three on imprints.

Section 1: A New Electoral Offence

Question 1: Do you agree that the new electoral offence should apply electoral sanctions to existing offences of intimidatory behaviour, such as those identified by the CSPL, listed in Annex A, and equivalent offences in Scotland and Northern Ireland?

Our recent research in Wales, set out in the [New Voices](#) report, has detailed a shocking level of abuse and harassment in politics, which affects all levels of political office and staff supporting politicians. Of 266 Welsh politicians who took part in a survey we undertook, 45.5% confirmed they had experienced some kind of abuse and harassment. Among female respondents this increased to 54%.

While responses were anonymous, respondents detailed horrific examples of this abuse, including one who described having excrement sent through the post in a Valentine's card and another who detailed opening an envelope filled with razor blades, having a rock thrown through their window and threats made against family members.

As such we welcome proposals to deal with intimidatory behaviour, however, we would also emphasise other measures that could be taken in an effort to tackling the abuse candidates, elected politicians and their support staff face.

Other proposals that should be considered as part of protecting democratic debate include ensuring a stronger response from social media companies when people in political life are abused on their platforms. The recent failure of Twitter to tackle direct abuse faced by Stephen Doughty MP is a case in point. The decision by Twitter not to intervene in the activity due to their policies not applying to public figures highlights the gap between the processes available to the general public and to political figures. We would echo the CSPL's recommendations that social media companies should develop automated techniques for identifying intimidatory behaviour and that this should include public figures. We also agree that social media companies should offer tools for users to escalate reports of illegal online activity to the police.

We also recommend that political parties come together to tackle this abuse and establish a joint code of conduct and universal processes for dealing with abuse and harassment.

Section 3: Increasing Transparency in Digital Election Campaigning

Question 23: Do you as a voter believe that the current system as applied to printed election material promotes transparency and gives confidence in our systems?

The Political Parties Elections and Referendums Act 2000 requires political parties and non-party campaigners to display imprints on printed election materials. The ERS believes that the current system of requiring imprints for printed election material promotes transparency about who is campaigning during and outside an election or referendum period. The system ensures accountability in relation to election materials by making parties and campaigners responsible for their communications. It gives voters confidence in knowing who is communicating with them and is responsible for the production of election material. The system also allows the Electoral Commission to enforce spending rules.

Given their printed nature, election materials covered by current rules are visible to everyone equally and, if they do not display the appropriate imprints, can be easily traced and reported.

This is not the case in relation to online material, where there is currently limited or no transparency with regards to who is responsible for online election material and is communicating with voters through it. Indeed, voters may be micro-targeted with political advertising without their knowledge of which political campaign has produced the material and what alternative messages are being sent to others.

While Facebook have taken steps towards greater transparency in recent days, we believe the integrity of our elections cannot be left to the decisions of individual companies.

We support the Electoral Commission's recommendation to extend imprint requirements to online election material, which the Commission has advocated since 2003.

Question 26: What are your views on whether imprints should be required on all digital electoral material or only where spending on such material has been over a certain threshold?

The ERS strongly supports requiring imprints for all digital materials produced by parties, candidates and campaigners, and these requirements should be in line with those for printed election materials, where there is no spending threshold.

Given that digital electoral material can be disseminated at little cost, deciding on which spending level to set would be extremely challenging, and any threshold would end up being so low as to be meaningless. With online material, cost does not have the same direct correlation with reach that it does with printed materials. As such, lower spending does not mean fewer people seeing the ads.

Voters seeing political adverts should know who has commissioned them regardless of how much has been paid. We recommend requiring imprints for material regardless of its cost whilst ensuring those who are expressing a personal view are protected.

Question 27: Should any new rules on digital material only apply to what we would already consider to be “electoral material” or should broader categories be considered?

The ERS believes that the imprint requirements for online material should apply to what currently falls under ‘election material’, namely material which can reasonably be regarded as intending to influence voters.

We urge caution about the adoption of broader categories of campaigning and the potential effect this might have on democratic debate. The imprint requirements should be proportionate, ensuring that they provide transparency about who is campaigning without preventing ordinary citizens from voicing their opinion.

The experience of the 2014 Scottish referendum is instructive in this regard. The imprint requirement during the campaign generated some confusion among campaigners as to who was required to include additional information.

It is absolutely necessary to ensure that those who are merely expressing their personal political views are exempt from imprint requirements.

Question 28: Do you agree that the requirement for imprints on election material can arise all year round, not just during election periods?

The ERS believes that the requirements for imprints on digital election material should be in line with printed material and apply all year round. Current requirements for printed election material under PPERA are not limited to the election period, whilst requirements under the Representation of the People Act are related to the period in which someone is formally a candidate. Given that campaigning can occur all year round, bringing these two requirements in line and ensuring that imprints are required on digital material all year round should be considered.

Question 29: Should we prioritise regulating certain forms of digital communications over others? If so, please give reasons.

The ERS believes that the regulation of digital communications should be platform-neutral to ensure that the rules are fair, equal and can keep pace with developments in technology and trends. It should not prioritise certain forms of communication.

Platform-neutral regulation will allow the system to be future-proofed, so as to keep up with likely shifts in usage and popularity among digital platforms. It may also prevent the creation and exploitation of further regulatory loopholes in the future.

Question 30: What sort of mechanisms for including an imprint should be acceptable? Are there any technical difficulties that would need to be overcome to include text which is not accessible without a further step?

While the ERS does not have a view on the mechanisms that could be used to include an imprint, we recommend that the Government consider international practice in this regard.

For example, in New Zealand, online adverts must include an imprint (called a ‘promoter statement’) if someone has paid to target them directly at users. The statement must include the name and address of the person sponsoring the advert, and it must be displayed on the advert itself or in the

'About' section of a campaigner's social media profile. The New Zealand Electoral Commission monitors election advertisements on social media.

In Australia, social media content needs to have an 'authorisation' if it includes 'electoral matter' in a paid advert. This must indicate the name and address of the individual or entity that has paid for the advert. The details must be included at the end of the advert itself or – where this is not possible – on a website accessible from the communication or in a photo included in the advert. These regulations do not apply to personal communications. The Australian Electoral Commissioner is responsible for administering the authorisation requirements and enforcing compliance.

Question 34: Do you think the responsible bodies have sufficient enforcement powers?

The ERS believes that those charged with enforcing the rules should have sufficient enforcement powers and resources, and that any fines or sanctions are meaningful and act as a deterrent against wrongdoing. At present, the maximum fines from the Electoral Commission could be seen as part of the 'cost of doing business' for organisations with significant resources. This undermines the principle of a level playing field.

Given the fact that the electoral results often rely on just a few hundred votes in a handful of key seats, it is of vital importance that the monitoring and investigating of potential rule-breaking is timely and effective and that regulators can access the necessary information in order to do this.

The extent to which the responsible bodies have sufficient enforcement powers needs to be considered across the board, not just in relation to imprints.

The fundamental principle must be to ensure that the public have faith in the democratic process. One step towards achieving this is to ensure that there is transparency in the online sphere as well as outside it.

In the medium term it is necessary to consider the wider picture of electoral integrity and campaign finance. Whilst it is important to see who has paid for political ads, the source of the funding of those adverts, and of campaigns more widely, is still open to abuse. The ERS supports a comprehensive review of electoral legislation including reforms recommended in the Electoral Commission's Digital Campaigning report released earlier this year and of party funding more generally, to ensure they are fit for purpose in the digital age.