

# Fair and Free – Ensuring the Integrity of Elections in the UK

September 2019

## Introduction

Our democracy is at a critical juncture. We live in a time when our democratic processes face considerable threats from a range of sources – from ‘dark ads’ and fake news, to foreign interference and the misuse of personal data on a monumental scale.

As the use of online political campaigning has grown, so too have concerns about the implications for our democratic processes. Though online campaigning is not new, it has changed significantly in terms of scale, reach and sophistication. The increasing use of online campaigning has exposed the many loopholes that can allow people to circumvent our rules perfectly legally in the digital realm. The traditional principles of fairness and transparency underlying our democratic processes are being undermined by a multiplicity of actors and processes.

Our rules have not kept up with the shifting nature of campaigning, and our regulators appear powerless in the face of threats. Despite recent scandals, online political campaigning remains an almost entirely unregulated Wild West.

Protecting the integrity of our elections and referendums is vital to ensuring public confidence in our democratic processes. We hope the government will tackle this unregulated online Wild West with the urgency it deserves.

## Reining in the Political ‘Wild West’: Campaign Rules for the 21st Century

Traditionally, most political campaigning occurred around fixed political moments (elections and referendums) given the time, financial and resource costs involved. This is reflected in the two main pieces of legislation governing party campaigning – the Political Parties, Elections and Referendums Act (PPERA) 2000 and the Representation of the People Act (RPA) 1983. But the cheap and easy access to new campaigning techniques available online means that political parties have shifted to low-cost, 24/7 campaigning, outside of regulated periods.

The growth in online campaigning has exposed the many loopholes and ways of circumventing the UK’s election rules – often in a perfectly legal manner:

- Imprint requirements, for example, apply to campaign material in print, but not online. This means that voters cannot be certain of who created an online political advert. It also has implications for the spread of mis- and dis-information: purveyors of false or misleading information cannot be held to account if their identity cannot be verified.
- ‘Dark ads’ can be micro-targeted to individual voters who may not be aware of the fact they are being targeted, and why. As these ads are visible only to the creator and the individual or group being targeted, different voters can be targeted with conflicting information without the sender facing any scrutiny. These techniques as well as playing into tribalism and polarisation in politics are also moving democratic life outside of our shared public space.

- The shift to online campaigning also creates problems for regulating money in politics and for attempts to create a level playing field. With online material, cost does not have the same direct correlation with reach that it does with printed materials: lower spending does not necessarily mean fewer people seeing the ads.
- Additionally, reporting of spending online is subject to limited regulatory oversight (parties, for example, do not need to provide a breakdown of social media spend). This makes it now easier than ever to blur what is spent at the local/constituency level and nationally. In this context, spending caps appear increasingly meaningless.
- The growing role of a handful of private tech companies and external agencies exacerbates these concerns. Tech platforms do not have the same liability as traditional news outlets, and the fact that they are not based in the UK raises jurisdictional and regulatory enforcement concerns. External agencies are increasingly involved in data collection and analysis, including outside of regulated campaign periods, but the extent of their involvement remains hard to ascertain.

The ERS's report *Reining in the Political 'Wild West': Campaign Rules for the 21st Century* brings together an unprecedented range of voices to address these challenges and offer solutions on what digital-age campaign regulation would look like. Featuring a foreword by the Rt Hon Dame Cheryl Gillan MP, it includes the following contributions:

- Tom Hawthorn, Head of Policy at the Electoral Commission, looks at what should be done to enhance voters' confidence in digital campaigning. *"The Electoral Commission needs the right tools to enable us to enforce electoral law in the digital era. This includes a significant increase to the maximum fine that we can impose on those who break the rules"*
- Academics Martin Moore and Damian Tambini similarly raise the pressing need to update our outdated electoral law, and reinforce the calls made by our regulators to ensure they have sufficient powers. *"The ICO and the EC are to be admired for the work they have done. And pitied. The problem is that they are each working on a small piece of the complex jigsaw of regulatory reform that is desperately needed."* *"None of the main political parties has taken leadership on electoral law reform. But the longer that government and parliament take to acknowledge the transformation of our political system as a consequence of the digital revolution, the more this country's democratic legitimacy will suffer."*
- Stephen Kinnock MP considers how we can enhance transparency around campaign finance and announces the planned launch of an All-Party Parliamentary Group on Electoral Campaigning Transparency *"to investigate how we can better ensure our democratic processes are protected."* *"We cannot allow this issue to be side-lined or overlooked. This is far bigger than Brexit, and if we do not act now to fix our democracy the consequences could be even worse in the future."*
- Legal expert Bethany Shiner examines the laws surrounding 'big data' in politics, and what a statutory code of practice – as proposed by the ICO – should take into account. *"There is a nuance in that some manipulative tools that seek to shape and engineer political discourse, including amplification, bots, troll farms plus micro-targeting contain misleading and manipulative content – but not false or illegal content. In the battle to fight disinformation, we should not regulate political communication in an expansive or suppressive way. Instead, we should focus on the mechanisms of manipulation, not the content."*

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- “Although technology giants have vowed to self-regulate by taking steps towards greater transparency and better monitoring of electoral interference, it has been repeatedly shown that they are irresponsible and have no more regard for the democratic process than their fluctuating stock market value dictates they should.”*
- Kyle Taylor, founder of Fair Vote, considers how we can constrain the role of money in politics in the digital age and update our election rules.
 

*“Democracy is already more unpopular with the citizenry than at any point since records have been kept. If our very way of life – the very foundation of how we ‘set up’ our society – falters, there is little chance we will be able to come back from the brink without some cataclysmic event.”*
  - Cassie Staines of Full Fact focuses on misinformation and how best to respond to it.
 

*“It is welcome that internet companies have taken some steps to increase transparency without waiting for parliament to catch up – but it is no substitute for proper democratic decision-making about how our democracy works.”*

*“Any election or referendum conducted under the current rules would be vulnerable to abuse. Currently, it is possible for a candidate to run a thousand different political campaigns in the same election, promising something different to each group it targets. If we do not act, we risk undermining the principle that democracy is a shared experience.”*
  - In conversation with the ERS, Deputy ICO Commissioner Steve Wood discusses how the data regulator is navigating the changing environment around the political use of personal data.
 

*“We have got ways we can start to improve trust and confidence in the system. If we take these actions across the board, if everybody does their bit, I think that’s key. [We need] to work on accountability for all of the different parts of the system: accountability of the parties, the data brokers, the analytics companies – it’s got to work in a systematic way, to achieve that.”*
  - Doteveryone reiterate their call for the establishment of an Office for Responsible Technology to address the challenges of the existing regulatory landscape.
 

*“The gap between regulation and the realities of ubiquitous digital campaigning practices cannot be ignored. The current failure to hold political campaigners to account risks undermining public faith in democracy. To bring political campaigning regulation into the digital age we need to fundamentally rethink the role of the regulator. An Office for Responsible Technology can lead this transformation and steward the system to uphold the public good in a digital age.”*
  - Josh Smith of the Centre for the Analysis of Social Media at Demos considers the future of political campaigning in the face of new and advanced forms of technology.
 

*“Making individually crafted, algorithmically-boned offers to people is a sound marketing technique, but politicians need a way to ensure those offers are followed up. At present, it is difficult for campaigners themselves (let alone regulators) to know on which basis they are targeting voters, and what they are telling them.”*

*“It is imperative that these technologies are used to improve our political process, and understood by their users as well as their targets. Otherwise, we run the risk of becoming an electorate resigned to a politics which says the right things but never fulfils its promises, singled out for persuasion in ways we do not expect or understand, and to which we cannot meaningfully consent.”*

As shown in these contributions, the calls for a comprehensive review of our campaign laws have never been so widespread. The proposals they have suggested are realistic and feasible, and some would require little change to our existing rules.

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The full ERS report is available at: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/reining-in-the-political-wild-west-campaign-rules-for-the-21st-century/>

### **What the ERS are calling for:**

The ERS supports the proposals put forward by the contributors to this report:

1. Extending the imprint requirement to online campaign materials to ensure voters know who is targeting them and why.
2. Improving how campaigners report funding and spending are two of the most readily achievable solutions.
3. The creation of a single online database of political adverts, which would be publicly available and easily searchable, would similarly increase transparency and allow voters to identify who has produced a piece of content.
4. Those charged with enforcing the rules should have sufficient enforcement powers and resources. That must involve strengthening the fines or sanctions so they can act as a meaningful deterrent against wrongdoing. The ICO's powers were increased considerably in the past year, showing what can be achieved if there is political will.
5. Parties and the government must properly engage in efforts to establish a statutory code of practice for political parties and campaigners without delay.
6. More broadly, the ERS is calling for a comprehensive review and overhaul of our electoral law, which needs to be updated and future-proofed for the digital age. The fundamental principle must be to ensure that the public have faith in the democratic process. Alongside efforts to improve the quality of public debate itself, this could transform the murky world of online campaigning into a force for good. The cross-party APPG on Electoral Campaign Transparency recently completed its inquiry into Britain's electoral campaign rules and is expected to soon publish its report and recommendations. More information on the APPG is available at: <https://fairvote.uk/electoral-campaigning-transparency>

The UK government has committed to implementing a digital imprint regime and to bringing forward the technical proposal for this later this year. It has also committed to launching a consultation on electoral integrity, which may consider recommendations for increasing transparency on digital political advertising, including by third parties; closing loopholes on foreign spending in elections; preventing shell companies from sidestepping the current rules on political finance and on action to tackle foreign lobbying.

We urge these proposals to be expedited and implemented as soon as possible to ensure the next election is free and fair.

### **Conclusion**

We cannot risk another election or referendum being undermined by dodgy donors, dark ads and disinformation. Now is the time for politicians and parties to take charge of this issue. Political will is needed to fix these problems and secure our democratic processes.

Online political campaigning has the potential to increase citizens' participation in our political processes significantly. The cheap and easy access to information, and the fact that everyone has – at least theoretically – equal voice online are important democratising features of digital campaigning. But our rules and laws need to be sufficiently robust to protect us from the potential threats of online campaigning while allowing us to reap its benefits.

The calls for a comprehensive review of our campaign laws have never been so widespread, now is the time to bring our rules into the 21st century – before this spirals out of control.