

FINANCING Political Parties in the United Kingdom

Shortly after the 2010 general election in the United Kingdom, the new Conservative/Liberal Democrat coalition government promised to reform the way British political parties are financed and ‘to remove big money from politics’. Such promises are not new, and in the last decade there has been no shortage of legislative action on party funding. The problem has been that the laws failed to address some of the biggest concerns about money in politics, and that the political actors found strategies to avoid the controls. Looking at the UK approach, this article aims to give an overview of the controls in place, while highlighting some of the main difficulties experienced. While the UK laws have some differences compared with those proposed in New Zealand (particularly in relation to third-party activity), there is much common ground and the British experience may offer some lessons and show some of the pitfalls in regulating political finance.

Election finance in the UK has been regulated since the Victorian era. The controls on election spending have their roots in the Corrupt and Illegal Practices Act 1883, which was the first statute to impose a limit on the amount

that candidates can spend during their campaigns. That law attempted to combat problems of bribing and treating voters by capping the amounts spent. While subject to amendment, this legal framework for regulating election spending remained in place during the 20th century. These controls limited only spending in relation to specific candidates and did not cap spending to promote the election of a political party generally.

As election campaigns became increasingly centralised and focused on the national party, the shortcomings of the framework became obvious. An indirect control on spending by political parties at the national level was, however, achieved through the regulation of the broadcast media, which prohibited paid advertising for political messages. Denying political parties the option of spending money on television advertisements, often a major expense in other jurisdictions, helped to restrain the cost of elections.

The regulatory framework was subject to a major overhaul in the Political Parties, Elections and Referendums Act 2000 (PPERA). This legislation sought to address concerns about an ‘arms race’ of economic resources between the major political parties and the dependence on large donors. The PERA introduced spending limits for political parties in the campaign period, which were added

to the existing restrictions on candidate spending. It also brought about greater transparency by requiring the disclosure of donations to political parties and registered third parties above a certain threshold. At the time of writing, the British framework for regulating political finance includes:

- limits on electoral expenditures during the campaign period by candidates, political parties and third parties;
- disclosure of donations above a specified amount to parties, candidates and registered third parties;
- a ban on all political advertising in the broadcast media.

Even with these measures in place, the PPERA has not ended the concerns about party funding in the UK. The last decade has seen numerous scandals and controversies surrounding donations to political parties. Most notable has been the 'loans for peerages' controversy, in which it was alleged that donations and loans to the Labour Party had secured nominations for honours. Other controversies have focused on allegations that donations secured government contracts and of donations being channelled through intermediaries to avoid the transparency rules. Even where the donors have been cleared of any wrongdoing after investigation, such episodes have fuelled speculation and led to further calls for reform of the party funding laws.

The continuing controversy need not be seen as a failure of existing laws, but as a sign of some success. Making the parties' sources of income more transparent will often generate suspicion that a donor received a political favour in return for the contribution. The legislative framework is also complex and detailed, which means there are now more rules for politicians to fall foul of and consequently controversies are more likely to arise. For example, media attention often focuses on whether a donation was properly disclosed to the Electoral Commission or whether a permissible donor made the donation. Prior to the PPERA, politicians were under no legal duty to disclose donations and allegations about the sources of funding relied simply on political argument rather than on a specific legal provision. That the PPERA has resulted in a proliferation of

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party funding scandals is unsurprising, and may be a sign that it has raised ethical standards and expectations rather than reflecting a decline in politicians' integrity.

If the New Zealand reform proposals are enacted, the British experience suggests that the controversies and concerns will continue for as long as parties rely on private sources of funding. Reforms are likely to be followed by calls for more reform. This is not, however, an argument for inaction. Public ignorance would have avoided the scandals and speculation over the last decade, but the democratic process would have been worse off for it. With this background in mind, the remainder of this article will look at some of specific difficulties that have arisen in the British system. To do this, the various types of regulation will be discussed in turn.

Spending limits

The UK has two tiers of spending control. The first tier applies to spending by candidates and the second tier to political parties. The spending limits for political parties are in place for the 12 months prior to a general election, and four months prior to elections for devolved assemblies and the European Parliament. In the case of general elections this obviously creates some uncertainty, as the date of the election is normally announced weeks prior to the polling day. This currently gives the party in government an advantage (given its power to dissolve parliament), as it will be able to plan its finances knowing the election date in advance. By contrast,

opposition parties lack this advance knowledge and may therefore be caught off-guard by a snap election. An opposition party that mistakenly anticipates an election being called on a particular day may also deplete its resources campaigning for an election that is not called. The new coalition government's proposal for fixed-term parliaments in the UK should, however, address these concerns.

The overall limit on party spending varies according to the number of seats being contested. In the 2010 general election, the maximum amount that could be spent by a political party contesting all 632 seats in Great Britain was £18.96 million. The cap has been subject to criticism from some quarters on the grounds that it is set too high and still allows for an arms race between parties. Consequently, some have called for the maximum expenditure limit to be reduced to £15 million. Another line of criticism is that the limits apply only in the year prior to an election. While a 12-month regulated period seems lengthy, calls have been made to extend the controls and impose annual caps on party spending outside election years. This would curtail pre-election spending by parties which can arguably have a greater long-term impact on voters.

The second tier of spending controls is imposed on the candidates, who are limited to spending £7,150 plus an additional 7 or 5 pence for each person on the electoral roll in the constituency. The limits on candidate election expenses are applicable for a shorter period of time, namely from the dissolution of parliament, leaving a campaign period of roughly four weeks.

The dual tiers of regulation created some complexity and led to a number of difficulties (Rowbottom, 2010, pp.117-212). First, the line between candidate and party spending is difficult to draw, as activities to support a party can benefit candidates and vice versa. It can therefore be unclear under which set of spending limits an item of campaign expenditure should fall, and campaigners are advised to consult the Electoral Commission for guidance.

Secondly, the short duration of the regulated period for candidate spending provided an incentive for higher spending to take place in key constituencies prior to the dissolution of parliament. The

significance of this trend is underlined by research from political scientists highlighting the importance of local activity to electoral outcomes (Johnston and Pattie, 2010). To address the concern that large sums were being channelled to marginal constituencies shortly before an election was called, a new set of spending limits was enacted in 2009 to cap candidate spending in the months prior to the dissolution of parliament (the so-called 'long campaign').¹

Third-party spending limits

The controls on political party spending would be undermined if third parties could spend without restraint. To prevent political money being channelled to groups other than the formal political parties, spending limits are applied to third-party campaigns. Like the party spending limits, there is a two-tier system, with one set of limits on campaigning in support of the party and another on campaigning for a particular candidate.

Third parties that wish to spend over £10,000 in England or over £5,000 in Scotland, Wales or Northern Ireland on 'election material' during a regulated campaign period must register with the Electoral Commission. Spending by registered third parties in the 12 months before a general election is capped at £793,500 in England, £108,000 for Scotland, £60,000 in Wales and £27,000 in Northern Ireland. Two or more third parties working together in a campaign cannot aggregate their spending limits, and the spending by all the third parties on a co-ordinated campaign would count towards the expenditure limit of each.

For the third-party controls, 'election material' is defined as material 'which can reasonably be regarded as intended' to 'promote or procure the electoral success' or 'enhance the standing' in an election of a political party, or of parties and candidates who 'advocate (or do not advocate) particular policies'. The promotion of a party's electoral success or standing also includes 'prejudicing the electoral prospects at the election of other parties or candidates' or 'prejudicing the standing with the electorate of other parties or candidates' (PPERA, s.85). As a result, the provision covers negative

campaigning by candidates. To count as 'election material', a publication need not expressly refer to a political party or candidate (s.85(4)). Guidance published by the Electoral Commission states that material campaigning on a policy which happens to be associated with one political party counts as 'election material', as does material 'publicising the names of candidates who have a particular view on an issue such as hunting or education' (Electoral Commission, 2010, para 2.5). Consequently, there is no 'magic words' requirement to distinguish electoral expression from ordinary political speech. The controls do not apply to communications to members within an

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organisation, 'provided that the material relates to an issue within the aims or objectives of the organisation' (Electoral Commission, 2010, para 3.8). A union sending material to its members assessing a party's industrial relations policy would not therefore fall within the controls.

In relation to expenditures in support of a particular candidate, third parties can spend only £500 in the formal campaign period (beginning with the dissolution of parliament) (Representation of the People Act 1983, s.75). An earlier version of the law had limited third-party expenditures to £5, but was found to violate the right

to freedom of expression under article 10 of the European Convention on Human Rights in 1999.²

In addition to the spending controls, registered third parties (i.e. those going over the £5,000 or £10,000 spending threshold) have to disclose donations received of over £7,500 from a single source that are made to pay for the election material. Donations to a third party that go into general funds and are not to be used for campaigning do not have to be disclosed. One question is how easily can that line be drawn? The third parties do not have to make donations out of a segregated political fund, so it may not always be clear which donations have been given to cover the cost of election material. As of June 2010, only 21 donations to third parties have been disclosed to the Electoral Commission since 2001. The transparency regime therefore sheds a small amount of light on who bankrolls the third parties.

Currently, there are only 32 registered third parties, consisting largely of pressure groups and trade unions. At the 2005 general election, 25 registered third parties submitted returns for electoral expenditures, of which two spent over £100,000 (the trade union Unison spent £682,115 and the Rural Action Group spent £550,370). The total amount spent by all registered third parties in 2005 totalled £1.7 million. While it may have been thought that caps on political party spending would encourage more sums to be channelled to independent bodies, the experience so far shows that this has not been a significant problem. One explanation may be that the caps on party spending are sufficiently generous that such strategies are not necessary. Alternatively, it may be that much political spending by third parties does not count as 'election material' and thereby falls outside the controls.

There is much independent activity that appears to take place outside the third-party controls, three examples of which will be given here. The first is political campaigning by newspapers and broadcasters, which are exempt from the controls. While broadcasters are subject to legal regulation requiring news and politics to be covered with 'due impartiality', newspapers are free to engage in partisan advocacy. In Britain there is a long history

of the national press having partisan attachments and seeking to influence elections. The press thereby occupies a privileged position, which allows it to use its resources to influence an election in a way that would not be permitted of any other organisation.

The second example is policy work by think tanks, which can play an influential role in election campaigns and in political debate more generally. The think tanks are independent entities, but clearly have political effects by promoting particular issues and producing research that may support a party's stance and lend it some credibility from seemingly independent experts. For example, the Institute of Public Policy Research is a registered charity, but is often seen as a testing ground for Labour Party ideas. The Taxpayers' Alliance, a charity which campaigns for lower public spending and taxation, has become increasingly influential in Britain and receives much media attention. While maintaining its independence, it is often associated in the press with the Conservative Party.

Although think tanks are not formally exempt from electoral finance controls, much of what they produce will not count as 'election material' and thereby falls outside the ambit of regulation. In such circumstances the think tank does not have to disclose donations received. This means that think tanks can provide an ideal location for political funds where the donor does not want his or her identity to be disclosed. In one recent lobbying scandal, a former minister advised an undercover journalist posing as a lobbyist to donate money to a think tank as a way of securing access to ministers, but without attracting public attention.

A third example is political activity on the internet, which is an increasingly important way that third parties can influence an election campaign. While outside the formal party organisation, many political blogs and websites have a party allegiance. Most notably, ConservativesHome is a website aiming to provide a forum for grassroots members, founded by Tim Montgomery, a former Conservative Party aide, and in 2009 Lord Ashcroft (a leading party donor) bought a majority stake in the site. LabourList is

a forum for Labour Party activists which is funded through donations, sponsorship and advertisements. Similarly, Left Foot Forward provides a forum for 'progressives'. According to the website it is non-partisan, but the title of the blog suggests where its loyalties lie and it was launched with help from the Labour Party members' organisation Progress and from some Labour Party donors.

In addition to this, many leading individual bloggers have links with the political parties. The websites are not, however, covered by the same exemption that applies to broadcasters

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and newspapers. Consequently, some of the spending by these websites that are engaged in electoral campaigning could potentially come within the third-party spending limits. It is not clear whether the various online campaigners will spend enough on election material to require registration. However, those larger sites that employ one or more people full time could well meet the threshold.

Donations

Donations above a certain threshold to the political parties, registered third parties and other regulated bodies have to be disclosed to the Electoral Commission (PPERA, s.62).³ For donations to a central political party, the threshold is

£7,500. Donations must be made by a 'permissible donor', which includes companies, unincorporated associations and trade unions, as well as individuals on the electoral register (s.54). The 2000 Act provides that where there is an agency relationship, in which one person receives money to be passed on as a donation to the party, the identity of the original source of funds must be disclosed. The register of donors to political parties and third parties can be accessed on the Electoral Commission website and aims to promote transparency by revealing the sources of income. By making such information public, the hope is that deals between donors and politicians will be discouraged, given the threat of adverse publicity.

The regulation of donations has, however, faced a number of difficulties where devices can be used to evade the spirit if not the letter of the law. First, and most notably, in the 'cash for honours' scandal individuals gave funds to political parties as loans, not as donations. Under the original terms of the PPERA, commercial loans did not have to be disclosed. Much debate at the time concerned whether the loans given by the individuals were really on commercial terms. However, the law has since been amended so that commercial loans also have to be disclosed (PPERA, part IVA).

A second area of controversy concerns donations given by institutions. Companies that carry on business in the UK and unincorporated associations whose activities are based in the UK can donate money to a political party (PPERA, s.54).⁴ In the absence of an agency agreement, the company or unincorporated association is recorded as the donor. This means that while an individual who is not on the electoral register cannot make a donation, a UK-based company owned by that individual can give money. Institutions can also undermine the transparency requirements, as it may not be known who or which interests are behind the company or association making the donation. This problem was to some extent addressed by a requirement that an unincorporated association disclose donations it receives of over £7,500.⁵ However, concerns about transparency still arise in relation to

companies, which do not have to disclose their sources of income.

The UK does not impose a limit on the amounts that can be donated to a political party. At the time of the PPERA's enactment it was thought a donation cap would be too great an interference with the freedom of parties or donors, and that the spending caps would curtail the demand for money in any event. This relaxed approach to donations did not last and the absence of a donation limit has been the cause of much controversy in the last decade. Individuals have made a number of very large donations, some in excess of £1 million. Institutions have also made large donations. For example, in 2005 the company 5th Avenue Partners gave £2.4 million to the Liberal Democrats; between 2003 and 2009 Lord Ashcroft's company Bearwood Corporate Services donated over £5 million to the Conservative Party; and between 2007 and 2009 the trade union Unite donated over £11 million to the Labour Party.

The major political parties are committed to some reform of donations, at least to the extent of considering whether a cap should be imposed. Yet if such a cap is introduced there will be difficult questions about the level at which it should be set, how it should apply to institutions, and how the techniques of evasion can be avoided. These issues of detail and design are likely to be the main barriers to an agreement on reform among the parties and have been the main sticking points in previous negotiations.

Broadcasting

All broadcasters, both publicly and privately owned, are required to cover politics and current affairs with 'due impartiality' (Geddis, 2010). A stricter set of rules applies in the context of an election, where the broadcasters have to go to greater lengths to treat parties and candidates fairly. Political advertising in the broadcast media is prohibited. The ban is broader than its New Zealand equivalent and prohibits advertisements 'directed towards a political end', and by anybody 'whose objects are wholly or mainly of a political nature' (Communications Act 2003, s.321). Consequently, it applies to all political groups and not just parties

and candidates, and it applies to political messages generally, as opposed to just electoral messages.

The ban has come under criticism from a number of academic commentators, in particular in the light of two rulings from the European Court of Human Rights which found similar bans in Switzerland and Norway to be in violation of the right to freedom of expression under article 10 of the European Convention.⁶ However, in 2008 the House of Lords declined to declare the ban incompatible with the European Convention.⁷ Unlike the Strasbourg

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Court, the House of Lords found a ban to be a proportionate measure to protect the integrity of the electoral process. While upholding the legislation, two of the lords expressed a willingness to consider future challenges to the application of the ban, for example where it has a discriminatory effect. This might arguably arise where the ban prevents a political group, such as an environmental organisation, from advertising in response to a commercial advertisement by an oil company.

Aside from the ban, political parties are entitled to free time on the public service broadcasters. In a general election, at least one broadcast is allocated to parties contesting one sixth or more of the seats up for election. While this allows parties with no MPs to access the mass media, the larger political parties are normally allocated more slots on television and there have been (albeit unsuccessful) legal

complaints that the smaller parties are treated unfairly.

The televised debates between the leaders of the three main political parties, held for the first time in 2010, added a new dimension to the issue. The debates proved to be the most high profile campaign 'event' and played a central role in giving the Liberal Democrats greater exposure. Unsurprisingly, the smaller parties argued that the broadcasters' inclusion of the leaders of only the Labour, Conservative and Liberal Democrat parties was a breach of the impartiality obligations. However, when faced with that argument, a Scottish court declined to issue an injunction restraining the broadcast of the third leaders' debate a week before the election.⁸ This type of issue is one faced whenever a subsidy, in this case media access, is to be allocated among political speakers and raises difficult questions about the appropriate threshold for inclusion.

Parliamentary funding

The central issue with parliamentary funding in the last year has been the expenses scandal, in which the Daily Telegraph published leaked details of the expenses claimed by MPs. Following this, the system for allowances has been reformed and a number of MPs have been found to be in breach of the rules and have made repayments. A small number have also faced criminal prosecution. Possibly the biggest effect has been the political backlash, with a large number of MPs standing down at the 2010 election. While the expenses scandal focused on allegations that MPs had gained personally through the expenses, there have also been concerns about parliamentary funds being channelled to political parties.

One way parliamentary funds can end up in a party treasury is by the allowance for an MP's office being used to rent space from the party headquarters in the constituency. In November 2009, the Committee on Standards in Public Life concluded that such a practice should not be prohibited, as there was little evidence of abuse. Instead, such arrangements are now subject to an audit by a qualified independent assessor to ensure the market rate for the premises is not exceeded.¹⁰ While this ensures that public funds are not misused, the practice

does give the party with a sitting MP a regular source of income.

A second route is through the use of parliamentary allowances for communications to voters. MPs have allowances for informing constituents and replying to messages. The rules provide that such allowances are not to be used for partisan purposes. For example, party logos and slogans should not be used in material funded through the allowances. However, the line between an MP informing constituents of his or her work and the use of such resources to persuade or promote his or her re-election is a difficult one to draw. Political references will sometimes be necessary to explain a particular stance to a constituent, and even those communications that merely raise the MP's profile potentially contribute to a re-election campaign.¹¹

Third, there is a practice known as 'tithing', in which MPs and councillors are asked to contribute a percentage of their salary to their political party. This is not an improper use of public funds, as it is merely a donation coming from the representative's salary (albeit that it is demanded by the party as a condition of membership). However, like the use of communications allowances, this approach means that parties that are already in power attract further resources, which help them stay in power. The danger is that such practices can reinforce the status quo.

These issues are connected with a much broader issue about the advantages enjoyed by incumbents. There are many rules stating that government property and resources should not be used for 'political purposes', yet it is difficult to define just what these are. For example, inevitably some partisan points will be made at a

ministerial press conference. Similarly, the use of civil servants in developing government policies will provide an advantage when defending those policies in the electoral arena. It is likely that incumbents will also receive greater media attention in the coverage of political events. The benefits of being in office are thus very hard to regulate through any strict rules. While it is important to police the system to avoid clear abuses, a fair process may also require that opposition parties and those not elected receive some support to offset some of the advantages of incumbency.¹²

Conclusion

The controls on political donations and party expenditures in Britain have not yet been in force for a decade, but have been subject to regular revision. Part of this relates to the complexity and technical nature of election regulations. Unforeseen problems inevitably emerge once a new framework is in place and loopholes need to be closed. The complexity is not helped by the new framework having been superimposed on the longstanding candidate expenditure limits that were introduced in the Victorian era. However, the calls for reform are not just due to difficulties in design, but are also based on policy considerations. These include demands to cap donations to parties and to extend the spending limits to cap party expenditures on an annual basis. These demands have largely been fuelled by the numerous scandals, which have often come to light as a result of the increased transparency in the UK's political funding.

While regulations are a necessary and important part of a fair process, one lesson from the UK is that there are

limits to what such legal controls can achieve. The law is targeted at electoral activities, which are just one part of political process. Even with these rules in place, considerable power still lies with those who control the infrastructure of political communications, such as the mass media and the think tanks, which provide a channel for economic resources to influence politics outside the legal regulations. All the main political parties promised reform in their 2010 election manifestos and the new government may have the political capital to push through a new set of reforms, just as Labour did in its early years. Yet even if it does, it is unlikely that the issue will go away.

- 1 Spending by individual candidates in the five months prior to the dissolution of parliament is now limited to £25,000, with an additional sum for each person on the electoral roll in the constituency. The long campaign limits come into effect after the parliament has been sitting for four years and seven months. If an election is called much earlier, then the pre-campaign limits do not apply.
- 2 *Bowman v UK* (1998), 26 EHRR 1. See also *R v Holding* [2005], EWCA Crim 3185.
- 3 This includes a series of smaller donations given over the same year, the aggregate of which exceeds the threshold.
- 4 Companies must be registered under the Companies Act 2006 and incorporated in the EU.
- 5 If the association is to make donations of over £25,000 in a year.
- 6 *Vgt Verein gegen Tierfabriken v Switzerland* (2002), 34 EHRR 4 and *TV Vest As & Rogaland Pensjonistparti v Norway* (2008), 48 EHRR 120.
- 7 *R (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15.
- 8 *Scottish National Party* [2010], CSOH 56. However, compare *Houston v BBC* [1995], SC 433.
- 9 See the 12th report of the Committee on Standards in Public Life, *MPs' Expenses and Allowances* (2009, Cm 7724) at [7.14-15], finding that this issue requires further investigation before any further steps are taken.
- 10 Independent Parliamentary Standards Authority, *The MPs' Expenses Scheme* (2010, HC 501) at [9.7].
- 11 For discussion of the difficulties, see House of Commons Standards and Privileges Committee, *Use of Pre-paid Envelopes and Official Stationery* (HC 1211 2008).
- 12 For example, opposition parties in parliament receive Short and Cranborne money, which recognises that some public funds should be allocated to offset some of the advantages of incumbency.

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