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Response: Online Harms White Paper    You are in the Transparent digital campaigning section Home    Transparent digital campaigning First published: 25 October 2019 Last updated: 9 June 2021 Our response to the Department for Digital, Culture, Media and Sport 1 July 2019 Summary Campaigning is an essential part of well-run elections and referendums because it enables political parties and campaigners to communicate with voters. We also need transparency and other safeguards to maintain trust and participation in our democratic processes. The Electoral Commission's role includes making sure campaigners follow the UK's laws on election spending, funding and declaring who is running a campaign. We would welcome early discussions with the UK Government and the online harms regulator. The proposals to make social media companies provide transparency about political advertising will be more effective if they are well joined-up with election and referendum law. If designed well, these proposals could: support our aims for transparency and controls on election spending, assist political parties and other campaigners to comply with their responsibilities to follow election law and help voters to have greater trust that they know who is campaigning for their vote. It is essential that any UK regulator working in the digital sphere has the right enforcement tools to deal with activity online. We urge the Government to take steps to modernise electoral law and our powers at the same time as tackling online harms. We need the power to obtain information from social media companies and want better abilities to share information with other regulators. We are pleased that the White Paper confirms our 2018 policy report into Digital Campaigning is being considered as part of the online harms agenda and we look forward to seeing the UK Government's response to our recommendations.

Introduction Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. . This includes using our expertise to make and advocate for changes to our democracy, aiming to improve fairness and transparency. This response comments on the consultation questions most relevant to our statutory responsibilities. It also sets out our views on the White Paper's proposals for increasing transparency of political advertising. Responses to specific consultation questions Q1 Building a culture of transparency, trust and accountability The White Paper references our role to regulate funding and spending by political parties and other campaigners, including their use of social media. It recognises that there are regulatory gaps in addressing online harms and challenges (para 2.5). An increasing proportion of election spending happens online via advertising on social media platforms, websites and search engines. s also fundraise through online payment facilities and crowdfunding sites. Election law already requires political parties and other campaigners to report their spending and donations. We have a close interest in the Government's proposals to impose a duty of care and obligations on technology companies. This is because the White Paper proposes to regulate companies that supply some of the advertising or communication services that help campaigners engage with the public online. We therefore want to see how the new online harms framework can assist us to deliver parts of our responsibilities more easily and effectively. We are pleased to see that the White Paper also proposes that the new model of regulation could include measures for improving the transparency of political advertising and helping meet any requirements in electoral law (para 7.28). There is a clear opportunity to design the new requirements for technology companies to ensure that voters and regulators can get a clearer picture of what is spent on election campaigns and we can ensure that campaigners comply with election law. We look forward to our experience and expertise

contributing to the development of these requirements and providing advice on the regulatory framework for election spending and funding. Q2 The role of designated bodies to bring 'super complaints' and other ways we may want to share information with the online harms regulator We may want to raise concerns if the technology and social media companies do not comply fully with the proposed obligations about transparency for political advertising. At the European Parliamentary Elections, we regularly used the ad libraries and reports that Facebook, Twitter and Google voluntarily published for election advertising in accordance with the EU Code of Practice on disinformation . In the future, it would support our work if the companies are formally required to run these kinds of libraries and reports. It is useful to have these additional tools for monitoring who is spending money on election and other political campaigning. If the tools become mandatory and the companies do not run or maintain these tools effectively, we could report problems to the online harms regulator. It could be treated as a 'super complaint' because any deficiencies would affect transparency for members of the public and would affect our monitoring role as regulator of political finance. We would also expect to work closely with the online harms regulator on operational matters where we have common interests. We recommend that the Government ensures we have appropriate information-sharing gateways with the online harms regulator. For example, we could share knowledge about the services that these companies provide to campaigners and assist the regulator with updating and future-proofing. We would also expect the online harms regulator to be equipped with sufficient powers to share information with us and other law enforcement bodies where appropriate. Q3 Other measures for users to raise concerns about specific pieces of harmful content or activity Election material that does not identify the source of a campaign is an example of potentially harmful content. It can affect voter confidence in election campaigners. It also affects our ability to enforce the rules on election spending by political parties and other campaigners. The Government should ensure that it is clear that concerns about election material without a clear explanation of its source will continue to be dealt with by us or the police and not by the online harms regulator. Election law requires campaigners to include an "imprint" on their election materials to identify the source. But these rules only apply to printed material and we have been calling for the law to be changed since 2003. We are pleased that the UK Government has recently announced its commitment to extending the imprint rules to digital election material. We will be responsible for enforcing these imprint rules on parties and some other campaigners when they are extended. The police are responsible for allegations about candidates and other local campaigners. If users raise concerns about digital material that does not contain an imprint, the online harms regulator should refer these concerns to us or to the police. Q18 Plans for education and media literacy The White Paper says that the government will develop an online media literacy strategy before the new regulator is set up and asks what role the online harms regulator should have in relation to education and awareness activity. Some countries are seeing public awareness-raising and the development of media literacy skills as being increasingly important to help the public engage with political campaigns. We are beginning to consider how we can contribute to this in a UK context, including discussions with the Government and with other regulators and public agencies. We have begun to discuss this with the DCMS and would be pleased to contribute to further scoping. Increasing transparency of political advertising and supporting electoral law This part of our response explains why we have a close interest in the White Paper's proposals that social media and technology companies should be required

to improve transparency of political advertising. If these proposals are implemented as described, it will mean that UK law, which currently provides for regulation of campaign spending by political parties and other campaigners, will also extend to the online providers of the tools they use for advertising and communicating with the public. It will also mean that the overarching aim of transparency of election spending will be delivered by two regulatory regimes – one for parties and other campaigners and one for social media companies. It is essential that these two regulatory regimes dovetail together, and this aim should be carefully considered when designing the online harms regulator and the proposed Codes of Practice. The UK presently has electoral and political finance laws that provide the ‘rules of the game’ that underpin fairness, trust and confidence in our democratic processes. These laws aim to ensure the UK’s election processes and results are trusted and accepted as legitimate and that funding and spending at elections and referendums is transparent. They level the campaign playing field to ensure elections are not unduly influenced. But there are obvious gaps when it comes to digital campaigning. It should assist if the new online harms regulator addresses some of these gaps by placing new requirements on social media companies. Other gaps need to be tackled by making direct improvements to electoral law. We recently welcomed the Public Administration and Constitutional Affairs Committee’s inquiry into electoral law and highlighted the need for reforms. For example, voters should be able to see clearly who is spending money online to influence them at elections and referendums and changes should also be made to strengthen our powers to compel social media companies to disclose information. The online harms agenda and electoral reform are complementary and should come hand in hand to maintain voters’ trust and protect elections from undue interference. Increasing transparency of political advertising and supporting electoral law Public attitudes to digital election campaigning The White Paper sets out high level expectations of companies, including addressing disinformation. It says the online harms regulator will reflect these further in Codes of Practice and we are pleased to see the government’s expectation that “companies will need to take proportionate and proactive measures to help users understand the nature and reliability of the information they are receiving” (para 7.27). We can share research findings to assist the government and new regulator with scoping this work. More should be done to help the public to understand digital campaign material and advertising at elections and referendums. In 2018 we commissioned research into the public’s attitude to digital campaigning and political finance regulation. In general the participants tended to approach digital campaign content with a sceptical attitude. They did not anticipate that all information online is true or that all sources are credible. However, it was also clear that they were unlikely to be aware of the extent that they may be influenced by digital material. For example, the participants often did not recognise certain issues based digital content as being political, or as linked to a specific campaign. In addition, we recently published the findings of our annual research measuring public attitudes towards elections and the voting process. We asked people whether they think inadequate regulation of political activity on social media is a problem. We found that 46% respondents overall think it is a problem, nearly half of whom (21%) say it is a ‘serious problem’. Improving transparency of political advertising We also welcome the government’s expectation that the Code on disinformation could include measures about “improving the transparency of political advertising, helping meet any requirements in electoral law” (para 7.28). We want to see more information about targeting of activity on social media platforms so that voters, and we as the

regulator, can see why and where campaign messages are being targeted. It will assist our regulatory role if we know more about how adverts are targeted geographically and by which campaigners on behalf of others. The new online harms regulator should use this Code of Practice to ensure there are common standards and obligations on what the social media companies publish. There should also be significant sanctions if the companies do not publish meaningful information. The advert libraries/reports that Facebook, Google and Twitter ran for the European Parliamentary Elections were a positive first step and we had constructive conversations with the companies about their plans. We actively used the libraries and reports for our election monitoring work and they made it easier to identify who was paying to advertise on these platforms. From the user and voter's perspective, we think that some kinds of European election advertising were more clearly labelled than for past elections. But the companies should add better functionality so the links between candidates, parties and other campaigners can be clearly displayed. The companies should also do more to signpost users to the ad libraries and reports of top spenders. In future, there should be a more direct 'click-through' from election adverts to the reporting tools. This would help voters to access and understand the information that is provided and provide greater transparency. From our perspective as regulator, the approaches to publishing information about targeting and the level of detail were inconsistent across the three companies. For example: The definitions used by the three companies to identify political campaigning did not fully align with those used in electoral law. Significantly, this meant that in some cases the transparency libraries and reports did not identify advertising that is defined as election material under UK law, for example issue based campaigns paid for by non-party campaigners. The libraries provide information about who viewed the adverts, but they do not provide meaningful information about how adverts were targeted, such as a breakdown of the geographical areas used. The libraries and reports will only give real transparency if the companies increase the amount of information that they publish about targeting of advertising, and ensure greater consistency across different platforms. We are continuing to evaluate their policies and how the tools worked in practice and will share our conclusions in the autumn. Political advertising and election campaigning It will assist with scoping the proposed Code on disinformation if the differences between election campaigning as defined in electoral law and other forms of political campaigning are well understood. Political campaigning could have a wide variety of aims, including influencing public opinion or the opinions and decisions of politicians. It can happen at any time. Election campaigning is a sub-set within political campaigning. Election law covers campaigns that are intended to influence how people vote. Election or referendum spending rules only apply during a period of time ahead of a vote, known as the 'regulated period'. We can assist the online harms regulator to understand these differences and design the requirements in the Code accordingly. That should make the aims clearer to companies, campaigners and the public and make the operation of the Code more effective. As the Code will be legally enforceable and impact on electoral law, we recommend that the online harms regulator should be required to formally consult us when developing or amending it. This would be consistent with election law, where the UK's governments must consult us before making statutory instruments, and with the general practice of governments to involve us when drafting electoral reforms. The White Paper refers to political advertising, but not all election campaigning is done through formal paid advertising. Election campaign material can also be displayed or circulated by political parties, candidates and other campaigner via their websites

or social media profiles. This material can be shared onwards by others. We think that all election campaigners should have to identify themselves on their campaign material, including where they have spent little or nothing on creating and distributing the message. Voters should be able to see who is trying to influence them so that they can make informed decisions about whether to trust different sources. We recommended this in our response to the Cabinet Office's consultation on extending the imprint rules and it would be consistent with the current law that requires imprints on all kinds of printed election material. We are awaiting details of the UK Government's approach to extending the imprint rules. We recommend that the Cabinet Office and DCMS consider the relationship between their respective proposals for imprints on digital election material and for a Code to increase transparency of political advertising. The timing of these two initiatives brings an opportunity for complementary proposals that increase transparency for voters about election and political campaigning, including paid advertising and other forms of content. We would be happy to contribute our expertise to these discussions. Supporting requirements in electoral law We welcome the government's expectation that the Code of Practice on disinformation could include measures about " helping meet any requirements in electoral law " (para 7.28). We also note that " the regulator will be expected to incorporate insights from law enforcement and other relevant government agencies to ensure the codes are adequately addressing the threat " (para 6.8). We would be pleased to provide expert advice to the regulator with scoping how a Code could ensure that companies help meet requirements in electoral law. This could include requiring companies to: Ensure that campaigners who are using their online services to advertise or campaign can clearly label them with the source and who has paid for the campaign. This would help campaigners meet requirements for 'imprints' and to help us enforce the spending limits for different types of campaigner Publish information about how adverts are targeted. This would also help us ensure the spending limits are followed by campaigners Ensure that a person/organisation paying for election advertising is based in the UK. This would help meet one of the overall objectives of UK election law, that campaigners and their funding are from UK based sources Provide information to us about the services they provide to election campaigners. This would allow us to deal with compliance issues in real time, and for example, require social media companies to give us information about the source of an online campaign that is running anonymously. These recommendations are set out in further detail in our Digital Campaigning report. We would welcome further discussions with the DCMS and Cabinet Office about how these proposals could be taken forward. Helping meet requirements in electoral law – potential measures to prevent foreign spending and donations on social media and technology platforms The proposed Code of Practice on disinformation could be used to set standards about how social media and technology companies and online payment providers design their software. Political parties and other campaigners already use crowd-funding sites and online payment systems to raise donations. We also note that Facebook is reported to be developing an online currency called Libra . We would expect to talk with the online harms regulator about how it sets, monitors and updates standards for companies about helping meet requirements in electoral law. For example, companies could be encouraged or required to design systems that help campaigners to comply with rules on spending and funding. It would still be a campaigner's responsibility to follow the law and we would continue to regulate that. Companies could assist by ensuring their functionality is easy to configure and includes the right features that campaigners need, such as full information about an

online donor to check if the donation is from a permitted source. Powers to obtain information from social media and technology companies It is essential that any UK regulator working in the digital sphere has the right enforcement tools to deal with activity online. The UK Government should therefore consider strengthening the powers of UK regulators, including the Electoral Commission, so they are equipped to deal with future challenges. We note that the Cabinet Office is planning a consultation on improving electoral integrity in political finance. We also would welcome discussion with Government about whether the Online Harms Bill or Codes of Practice could be a suitable vehicle to enhance our powers to obtain information from social media and technology companies and online payment providers. Related content Transparency in digital campaigning: response to Cabinet Office technical consultation on digital imprints Report: Digital campaigning - increasing transparency for voters Read our report about digital campaigning Response to the UK Government policy consultation: Protecting the Debate Read our response to the consultation about three proposed changes to electoral law to protect candidates and voters from intimidation Register to vote All you need to register to vote is 5 minutes and your National Insurance number.