

Loans for lordships: the joker in the middle

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The Electoral Commission is a liability

It isn't every day that the Prime Minister is interviewed for two hours by Scotland Yard. Yet the "loans for lordships" affair is not all the fault of rascally politicians. It goes deeper — electoral administration in Britain is a disgrace. A central problem is the poor quality of the referee.

The Electoral Commission is incompetent. It has neglected vital problems of defective voter registration and electoral fraud. It has inadequately inspected campaign accounts of parliamentary candidates. It has been forced to admit that it even does not know the overall incomes and expenditures of the main parties. Above all, its leaders have allowed the political parties to bear all the blame for its failings.

The "loans for lordships" saga has led to parties, politicians and donors pilloried and threatened with prosecution. Yet, there is compelling evidence that one of the two potential charges is groundless. If the police uncover any explicit deal to promise peerages for party donations, this deserves to be charged under the Honours (Prevention of Abuses) Act 1925.

However, if the charge — as some insiders predict as more likely — is that parties have not declared loans at below-commercial terms as required by the Political Parties Elections and Referendums Act 2000, it would be wrong to prosecute. The main parties merely followed the woolly non-advice about the requirements of the new Act given before the 2005 general election by the Electoral Commission.

The commission only came into existence in 2001. It so lacks expertise that its senior officials have been unaware of basic provisions of election law, as its written statements during the Graham inquiry (on standards in public life) have shown.

Last June, Sam Younger, the commission's chair, and Peter Wardle, its chief executive, gave formal evidence about their handling of the loans issue in April 2005. Mr Wardle gave at least six replies that, to put it charitably, were questionable. This had the effect of shifting responsibility from themselves to the parties. Crucial to possible prosecutions is whether loans to parties before the election were "commercial" and did not need to be declared. The commission's advice to the parties — or lack of it — about what the word meant becomes key. Mr Wardle stated that the Electoral Commission had provided "comprehensive guidance" and that the commission had remained unaware of the scale of the loans.

Evidence from The Times tells another story. The commission couldn't have been unaware of the extent of the loans. The Times reported two weeks before polling day that the Tories had received loans of no less than £16 million. The article carried a statement by the Conservative treasurer that these were at lower interest rates than those of banks. Banks give lower interest to savers than the rate they charge borrowers. The Conservatives were proceeding on the basis that the rate available to savers qualified as "commercial" under the terms of the 2000 Act.

Did the commission issue any warning between the time the main loans became known and the time of the poll that the parties were using an unacceptable definition of a "commercial" loan? Labour and Conservative headquarters assert that they never received it. The commission's replies to freedom of information requests indicate that the parties are right.

My own evidence also supports the parties' version. When The Times published its report on loans on April 21 last year, I was preparing another article for The Times and sent a written inquiry to the commission about the rate of interest needed to make a loan qualify as "commercial". The commission sent a vague non-answer and made a verbal statement that it refused to be a

referee in real time. A party official who sought written clarification from the commission at the same time reports he received the same answer.

Without directions from the commission, parties obtained advice instead from their lawyers about the meaning of a "commercial" loan and, as the commission admitted, stuck by that advice. Against this background, the threat of prosecution of parties and donors for non-disclosure of the loans is an injustice.

The commission's refusal to guide the parties about the meaning of new laws about political funding is part of a wider problem of do-nothing regulation and of denial of problems.

The commission's briefing on the electoral register published on July 11 in response to a freedom of information request from Dominic Kennedy, a reporter on The Times, was an effort to deny that there are roughly seven million errors in the registers for England and Wales. The commission was then obliged to admit its document was riddled with mistakes. The commission has never investigated the inclusion of invalid names of the registers, which makes voting fraud possible. It has played down the problem of fraud in the inner cities, admitting in another Freedom of Information Act reply to Kennedy that it does not "and cannot" even collect statistics about prosecutions and convictions for electoral offences.

In the meantime, the assistant superintendent of the Metropolitan Police has issued a grim warning about "a range of questionable practices which call into question the integrity of the postal voting system". The Council of Europe has gone farther. Its parliamentary assembly resolved in October to set up an inquiry into British electoral fraud and cast doubt on the very existence of free and fair elections in Britain. Richard Price, QC, editor of Parker's Law and Practice of Elections and a leading expert in this field, has argued the same, adding that postal voting fraud has "shattered" British democracy.

Within Whitehall and Westminster there is a growing view that the Electoral Commission has become dysfunctional and too concerned with its own expansion. The Speaker's Committee of

the Commons has recommended the reappointment of Mr Younger for only a shortened term. This appears to be a healthy recognition that British democracy is being sullied by unacceptably poor enforcement of existing electoral laws. A strong, proactive regulatory body is desperately needed.

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