



Select Committee on Democracy and Digital Technologies

Corrected oral evidence: Democracy and Digital Technologies

Tuesday 3 March 2020

10.30 am

Watch the meeting

Members present: Lord Puttnam (The Chair); Lord German; Lord Harris of Haringey; Lord Lipsey; Lord Lucas; Lord Mitchell; Baroness Morris of Yardley.

Evidence Session No. 17

Heard in Public

Questions 200 - 225

Witnesses

[I](#): Louise Edwards, Director of Regulation, Electoral Commission; Craig Westwood, Director of Communications, Policy and Research, Electoral Commission.

Examination of Witnesses

Louise Edwards and Craig Westwood.

Q200 **The Chair:** Welcome. Thank you very much for being here. I have to read out the police warning, which I will do formally, and then we will get down to business. As you will know, this session is open to the public. A webcast of the session goes out live and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of your evidence and put on the parliamentary website. You will have the opportunity to make minor corrections for the purposes of clarification or accuracy.

Perhaps you would like to introduce yourselves for the record and, if you would, set out a little about the scale and remit, briefly, of the Electoral Commission, because we are at variance in understanding it fully.

Craig Westwood: Good morning. I am the director of communications policy and research at the Electoral Commission.

Louise Edwards: I am the director of regulation at the Electoral Commission.

Craig Westwood: We are a statutory regulator that is just heading towards its 20th anniversary. It was set up in 2000 under PPERA. We are an organisation of about 150 members of staff, principally based in the office in London, with offices also in Belfast, Edinburgh and Cardiff. We have three main functions. One is to oversee the delivery of well-run elections and polls. Another is to regulate the political finance sphere, so the flow of money into political parties and campaigners and out as spending. The third involves some of the areas we are talking about today; it is to provide expert advice on how the democratic process could be changed to improve the process and public confidence.

Q201 **Lord Harris of Haringey:** How many staff do you have, out of interest?

Craig Westwood: We have around 150.

Lord Harris of Haringey: Right. And a budget of—?

Craig Westwood: It varies significantly, depending on the polls that are happening in any given year, but it probably nets at around £20 million.

Lord Harris of Haringey: Is that determined by a Committee of Parliament?

Craig Westwood: Yes, it is a Speaker's Committee.

Q202 **Lord Harris of Haringey:** That is great. I think 21 months ago you produced a report on digital campaigning. What progress has been made?

Craig Westwood: We did a report in 2018, following on from a couple of national polls in which we saw a significant shift in the nature of political campaigning and how digital technology was being used. We felt it was important for us to take a broad look at the issues and see, as it was

developing, how the system might be changed. We made a suite of recommendations in that.

It is fair to say that there has been a mixed level of progress following that. To break that down into a couple of areas, from the UK Government we have seen a commitment to take forward digital imprints, which is encouraging. Chloe Smith said in December that the Government are still planning forward to bring forward those proposals, so we look forward to them with interest. It is something we have been recommending for some time, so it will be great to see that come to fruition. Beyond that, we have not seen much movement from the UK Government. We have not seen a formal response to that report, which is disappointing because we are eager to see their views holistically, across the recommendations.

Slightly more promisingly, in Scotland we have seen more engagement on these issues, particularly on the back of the Referendums (Scotland) Act, which has just passed through the Parliament there. They have basically taken forward framework legislation to enable them to deliver any type of referendum that falls within the competence of the Scottish Parliament. As part of that process, which was relatively quick — it began in April last year and the legislation is already on the statute book — they worked with us to incorporate into that legislation some of the key recommendations that we made in the digital campaigning report and elsewhere. In the event of a future referendum in Scotland, there will be all sorts of things that we have wanted to see for some time. They have increased our sanctions limit, which is very welcome as an effective deterrent. They have also put the digital imprints requirement in there, which is also very positive.

Some of the other detailed recommendations were, for example, the ability to require third-party organisations to provide us with information outside the formal setting of an investigation. That would help us to move very quickly on our regulatory role and either work out whether a problem had occurred or reassure the public that nothing was going wrong. That is now in place for referendums in Scotland, so there has been quite a bit of progress in that area, which is encouraging.

The third part is with social media companies. They have stepped in and taken voluntary action in a number of areas, which is welcome. That said, as will probably always be the case with self-regulation and voluntary action, it does not quite hit the mark in a number of ways. One of the key things that I suspect we will come on to in more detail is the advert libraries they have put in place, which have been some help to us in our regulatory role and to the public, but it certainly goes nowhere near what we think could be possible.

Q203 Lord Harris of Haringey: Okay. You put quite a positive gloss on the fact that Government are still saying, “Yes, we’re going to legislate on imprints”. You could argue that they have dragged their feet and allowed a lot of electoral things to happen in between.

However, if you like, that one is ticked in the sense that Government

have said they want to do it. In a UK Government context, which do you see as being the most important of your other recommendations, which you wish they would prioritise but so far there has been silence, apart from the Scottish Government?

Craig Westwood: One of the key one for us is raising our sanctions limit. It is quite an easy one to take forward, because it just requires a small change in secondary legislation. We currently have a threshold of £20,000 per offence found, which is just a cost of doing business for any campaigner that wishes to deliberately work against the rules. For referendums taking place just in Scotland, they have raised the limit to £500,000, which is a significant jump that we welcome, as it provides an effective deterrent in that context.

Lord Harris of Haringey: Your report was 21 months ago. A lot is going on and the digital world moves very rapidly. Are there things that you have observed in the last 21 months about which you think, "If we were doing that report now, we would certainly make some recommendations about that"?

Craig Westwood: One of the key things for us is that we are still analysing a lot of the data from the 2019 General Election, particularly the regulatory data, which Louise might want to comment on. The spending returns have not come in from parties yet. A lot of work has been focused on trying to bed in the recommendations that we have already established. Particularly for our policy function, that work to take those recommendations through with the Scottish Parliament has been resource-intensive. It was very rewarding, because it is now on the statute book, but it has taken a lot of time and effort.

Q204 **Lord Mitchell:** You mentioned that you are doing work on the 2019 election. Is that correct?

Craig Westwood: Yes.

Lord Mitchell: You would probably say that these are early days, but do you have any instinct about whether there was any change from previous elections, such as 2017?

Louise Edwards: It is difficult, because we are primarily a financial regulator and the spending returns have not come in yet. The first tranche is due later this month and the second tranche is due in June, so we will not get a really good sense of what was spent on digital, or any other form of campaigning, until quite a bit later in the year.

One of the things we have noticed, for example, is the number of non-party campaigners who want to get involved in the election. We now have more registered with us than we have ever had, and the majority are from the 2019 election. That taught us the importance of getting the name of the campaigner to match up with our published register and the ad library, so that people can look at an ad library or see an ad online and understand which campaigner it relates to on the official register. We have learned some things like that from it, but it is a little too early,

particularly in looking at the parties' finances, to understand exactly what happened yet.

Craig Westwood: One of the things that we can see from the information we already have is how the public felt about it. We hold central to our role that sense of protecting the public interest in the democratic process. Following every major poll, we do a public opinion survey to see how people felt about various aspects of the process. A lot of that is about the operational element of it, so how easy they found it to register and cast their vote with confidence.

Where we are talking to them about how well run the poll was, if they express concern or reservations about that, we then ask sub-questions about the things they were concerned about. Of course, we have had five national polls in a five-year period, which gives a rich seam of data, and we have seen an increasing amount of people who are concerned about aspects of those polls.

When asked about it, 18 per cent of people were not confident that the poll was well run in 2019. It was not the operational issues that were coming forward. For example, 35 per cent of people said they were unhappy about how parties conducted online campaigning, and 49 per cent were concerned because campaigning was based on incorrect information. Ahead of the regulatory role, that is one of the areas where we can see public concern steadily growing.

Q205 **The Chair:** Are there any other areas you are specifically analysing, such as the advert archives? Are they proving useful?

Louise Edwards: I would describe those ad libraries as a step in the right direction, but there are challenges for us and for voters in using them. The main thing for us is that the ad libraries of every one of the social media companies that have them are for paid-for advertising. They are only adverts that parties or campaigners have paid to go up on social media platforms. What in law is defined as election material — any kind of campaign material — is much broader than that and includes, for example, any kind of organic or non-paid campaign material that goes online as well.

One of the real challenges with ad libraries is that they do not capture everything in the legal definition of election material. Each of the definitions used by the social media companies is slightly different in and of itself, so there is a lot of confusion for voters and for us to work out what is in there.

Another thing is that they do not capture all online campaign platforms. We have seen campaigning on WhatsApp and on Tinder; that is not captured on any kind of ad library at the moment. There are other areas where we would like to see more granularity, such as in targeting information. That is down to the constituency level. We would also like to see better and more reliable data on spend, because some of the ad libraries have quite large spend brackets, which makes it difficult to

understand exactly how much any particular campaigner has spent. I am not dissing them completely; they are a step in the right direction. But they are not the whole picture of how to make online campaigning transparent.

Q206 **Lord Lipsey:** Let us continue with ad libraries for a moment, particularly political ad libraries, because the rest are not of major concern to us. You have just explained the inadequacies you see, and it is fair to say that nearly every witness who has appeared before us has made a point about the importance of ad libraries. It would no doubt be too cynical to say that this is because they are all university researchers who would very much like the information to assist them with their research. There is nothing wrong with that. It is one thing that companies can set up whatever they want. At the moment, however, although you have said what you think are desirable features of advertising libraries, as far as I understand it you do not have the power to tell companies they must do this. Would you like such a power? Would you like greater powers to regulate ad libraries?

Louise Edwards: That depends slightly on the purpose behind regulating the ad libraries. If ad libraries are to continue, there will come a point beyond which it will no longer be okay for each social media company to decide for itself what is going up there. We are probably moving towards a need for a clear statutory basis or something that makes the ad libraries consistent and, hopefully, applies the definitions in electoral law. We have no role at the moment in regulating social media companies. If the idea is to put the legal responsibilities on to the social media companies, you would need to think carefully about whether we are the right body to step in and do that work.

Another way to think of this is to ask who the entity or organisation is that knows exactly what campaign material is put out there, online or offline. That quite clearly is the party or the campaigner concerned, who is the only one who knows exactly what campaign material they have used. There is a question as to whether you are looking to make the ad libraries as good as they can be or to make online campaigning, and potentially even offline campaigning, as transparent as it can be.

They are two different questions. If you move towards the latter and start thinking about the sorts of responsibilities that parties and campaigners may have in this area, I can see closer parallels with the sort of work we currently do when we are monitoring spending, for example.

Lord Lipsey: I see the distinction you are drawing. To press you a bit further, if you take the ad libraries as a single entity within that complex of issues, the companies have to do it because they are the only ones that know what is coming in and being paid for. Are you able to regulate it so that this single ad library, if it is company-based, is as effective a tool as it could be?

Louise Edwards: At the moment, no. We do not have that power at all. We do not have any regulatory responsibilities for social media companies.

Lord Lipsey: Would you welcome being given it, if the resources came?

Louise Edwards: We would need to see exactly how that played out, partly because it would be a very new regulated community for us. Our regulated community is parties and campaigners. If we were to add social media companies to it, we would need to understand how it would work in practice. I am not saying no, but we would need to think it through quite carefully to see whether it really fitted us or not.

Q207 **The Chair:** Do you think the public are a little confused about the quite fierce position we have always taken over, for example, party political broadcasts, in their frequency, length and everything else, and what appears to be an incredibly laissez-faire attitude towards digital campaigning?

Louise Edwards: The public probably are confused. Craig has mentioned some of the public opinion survey data that we did out of 2019, which shows growing concerns about the conduct of campaigning online. You have to remember that the legislation in the Political Parties, Elections and Referendums Act is now 20 years old. Twenty years ago, I had just about got my first mobile phone and it had no internet access whatsoever. I could play "Snake" on it and that was it, so things have definitely moved on.

For quite a long time now, we have been saying that there is a need to update those laws for the digital age. At the moment, we have a legal framework that does not work for some of the new and advanced techniques that people can use online and that we probably want them, responsibly, carefully and properly, to use online, because they are a very effective tool for communicating with voters. We do not want to have a situation in which the benefits of using that way to communicate with voters start to be outweighed by the growing concerns about it. We are not quite there yet but, without some sort of action to improve the law and improve regulation in this area, you can see that we may be going in that direction.

Q208 **Lord Lucas:** One of the effects of recent regulation has been to sever the connection between voters and individual candidates. As a voter, you can no longer find any way of communicating directly with an individual candidate, because they no longer have to publish addresses or any other means of getting in touch with them.

Would it help democracy if candidates were required to publish an email address or some other similar method of getting in touch with them? These things are disposable; they can be thrown away afterwards. To have no way of communicating with candidates makes the operation of democracy, at an individual voter level, very difficult.

Louise Edwards: That is an interesting point. The rationale behind taking addresses off was primarily security-based.

Lord Lucas: I understand that.

Louise Edwards: You are right about the consequences of that. The short answer is that we would need to take that away and examine the extent to which that would be of benefit to voters. I am not sure I can give an answer.

Craig Westwood: Part of the work we have been doing following the 2019 election is a survey of candidates, the data for which is being processed by colleagues at the moment. We have also had quite a bit of one-to-one interaction with people who stood for election, and we have heard a huge variety of responses, from people who were very positive about the way digital technology was enabling exactly the kinds of direct contacts that you are talking about, to others who had had particularly horrifying experiences of intimidation and had effectively had to lock down that direct contact to preserve their safety and security. There is a huge variety out there. It is not something that we have looked at in detail, but it is something we could do in the future.

Q209 **Baroness Morris of Yardley:** You said a little while ago in response that the only people who know what has been put out are the political parties. That is true, but they only know what they have themselves put out. It makes me reflect that no one has an overall picture of what has been put out in an election campaign. Before digital, did you feel that it was possible to have that picture? Does it matter? Do you know what I mean by that broad picture?

Louise Edwards: Yes, I do, and I think the answer is no. It is always been possible to have various leaflets that parties use in different areas.

Baroness Morris of Yardley: You never had the whole picture.

Louise Edwards: Nobody ever had the whole picture, because you do not know whether the leaflet that is being used in your street or constituency is the same one the party is using somewhere else. In a way, digital provides an opportunity to get a level of transparency about printed material that has not been there in the past. What you have with printed material, and have had for the last 20 years, is at least an imprint, so something that tells you who has produced the material and on whose behalf. That might be a small bit of text on a big leaflet — who knows? — but it is there, so there is something that we and voters can use on printed material, if we want to follow it through. There has never been a central mechanism for all campaign material to be archived or accessible in that way.

Q210 **Lord German:** Can I just take you back to the statement that you made about regulation in the digital area and the point that was made about intimidation? I guess that most of the intimidation is when somebody puts up an advert and people then comment upon it. Once you have commented upon or liked it, you can be the recipient of external

comments that are nothing to do with the original advertiser. If that is correct, going to Louise's point, can you tell me what sort of regulation you would be looking for in this area, if the political advertisement is not the problem but rather the dialogue that goes on underneath it?

Craig Westwood: The intimidation point is much wider. It does not link to the regulatory role or advertising. It is a particular issue on social media platforms, particularly Twitter, where there is an opportunity for people to engage in many more conversations, targeting people, whether candidates, MPs or their staff, with all sorts of intimidatory or offensive behaviour. It is much broader than the regulatory role that we have.

Lord German: What regulation were you suggesting may help with digital? I think you said that this is an opportunity to do things you have never done before, and that digital gives you an opportunity to regulate in a space that feels out of date. I am trying to find out what you would like to do.

Louise Edwards: At the moment, we are focusing on our regulated community and the voter. It is about trying to make campaign material as transparent as possible for the voter, who can then see the different types of material that a particular party or campaigner is putting out.

As Craig says, intimidation is slightly separate. It is a much broader issue about how society uses social media, and it is much broader than the commission's remit, frankly.

Q211 **Lord Mitchell:** I am going slightly off the topic, but not too much. In the United States, we have seen Mr Bloomberg spend \$500 million so far, and counting — maybe for mixed results, we do not know. This may be a pointer of the way things will go in the future, both there and maybe here. We may have very rich people who want to influence elections. I am interested to know if we need regulation for that. Is there regulation? Are we worried about it?

Louise Edwards: There is regulation in place to prevent that idea of people being able to use huge amounts of money to influence elections, and that is the spending limit that exists for campaign material. For a general election, for example, in the year running up to a poll the maximum a party can spend depends on how many constituencies they are standing in, but the absolute maximum is about £19 million.

Lord Mitchell: Suppose it is not a party, but just an individual.

Louise Edwards: Again, there is a spending limit in place for individual campaigners.

Lord Harris of Haringey: It might not be saying, "Vote for a party" or "Vote for X", but simply, "We need a Government that will do this, this and this".

Louise Edwards: Under current law, what is called controlled or regulated spending by campaigners is only spending that is trying to

promote the electoral success or failure of individual candidates or a group of candidates. That does not necessarily have to be on a party split. It could be somebody campaigning, for example, on a green agenda and encouraging people to vote for candidates who have certain green credentials. It is slightly broader than just, "Vote for this particular party", but it is limited to what counts as campaign spending. There are limits in place for those campaigners and thresholds beyond which they have to register.

Part of the reason why those limits and clear definitions are in place is to avoid organisations that might, quite legitimately, want to campaign on social issues, for example, being brought into a regime that is not what they are about. Think back to 2014 when the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act was going through. You may remember that it was known as the gagging Act, because of the concern that it would stop particularly charities from being able to campaign on social issues and would bring them into a regulatory regime that could be disproportionate to what they are trying to do.

There are different balances that you need to try to play off here to get to the right regulatory regime. If any individual wanted to spend a significant amount of money trying to influence the outcome of an outcome, they would have a spending limit to which they needed to adhere. It is not very much for non-party campaigners; it is somewhere around £400,000.

The Chair: Louise, for clarity, you used the phrase "clear definitions". Have those definitions ever been judicially tested?

Louise Edwards: Not as far as I am aware, no.

Q212 **Lord Mitchell:** You have talked about your £20 million budget and your 150 staff. Does the commission feel it has the resources and expertise needed to regulate elections in this digital age? Secondly, do you feel you have the technical expertise to monitor election spending in real time, with all that is changing before our eyes?

Louise Edwards: In terms of the existing electoral law framework, we have the resources and expertise, including for regulating online campaigning. We can use various online tools, such as the ad libraries, to monitor campaigning. We have our own intelligence capability and intel that we have built up over years of regulating parties and campaigners. We have subject matter experts and a background of having run hundreds of investigations into potential electoral law offences.

The issue is that the legal framework does not allow us to regulate elections in a digital age. That is the real crux of the problem. While we may have all the resources and technical experience that we need for what we are able to do now, we are necessarily hindered and limited in that role. We have talked about a few of these issues, such as not having imprints for online campaigning, so it can sometimes be very difficult to find out who is behind a particular online campaign. We do not currently

have the power to go to a social media company, outside an investigation, to find out whose campaign it is. Our maximum sanction is too low to be an effective deterrent to people who are determined to break the law.

You mentioned monitoring election spending in real time. The short answer is that we cannot do that. Nobody can, because there is no obligation on political parties to report their spending in real time or to make it transparent in any way. If we had reason or concern to go to a political party and ask for their spending in real time, we could, but it would have to be based on us having the legal power to do it, and therefore a concern or rationale to put to the party as to why we were asking for it. We could not do it generally, because frankly we would be on a fishing expedition.

It is interesting to think now of whether it is technically possible for election spending to be reported in real time. If that were the way legislators were thinking, I would urge people to think, first, about what it would mean for the regulatory burden, particularly on smaller parties and campaigners. There are around 400 registered political parties in the UK and around 70 of them stood candidates in the last general election. You are not talking about the top 10 well-funded parties; you might be talking about 50 or 60 frankly not very well-funded parties, the campaigners and how they could meet that burden.

It is also really important that that data is reported in a way that is meaningful to the voter. At the moment, when we get spending returns in after elections, every now and then we will get one that is absolutely perfect, but generally we have to put quite a lot of work into processing that data to be able to publish it in a way that is really meaningful to voters. If we are going for faster, more real-time spending reporting, it needs to be really meaningful.

Q213 The Chair: Can I raise the temperature of this? We are talking about situations that occur within a set of norms that we can all accommodate. We took evidence yesterday from Estonia, where the possibility of electoral interference is an existential problem and seen as something significantly different. If you accept their position—that there are bad actors out there, whose interest is not in the result but in the chaos that can be created and the lack of trust in the results — it strikes me, on Lord Mitchell's point, that there is a need to have the resources to move very quickly.

It has been put to me — not in evidence, but I hope it will be — that we should be looking at the idea of a SWAT team that operates not just for you but across the piece, for Ofcom, the ICO and you. It could be put in place, maybe drawing from the social media companies to an extent, to deal with electoral processes, particularly looking for inauthentic behaviour. How comfortable would you be with that? Where would it fit into your overall remit?

Louise Edwards: That is a really interesting idea. Our remit, at the moment, gives us the ability to move very quickly, subject to the limitations on our ability to gather information on occasion. The majority of the regime that we currently regulate is all about self-reporting at a certain point in time, whether during a campaign when parties have to self-report where their money comes from, or after a campaign when parties have to self-report what they have spent it on.

I think you are talking about something different, which is looking for the anomalies in the pattern and going after them. We have done that before in our area. In every election, we have what is called an interventions team, which goes out and intervenes or speaks to parties and campaigners directly. Other than the general keeping in touch and information-sharing that we do with other regulators, this is not something that we have done jointly with other regulators in the past. If we were going to go down that route — I can see some advantage to it — we would need to think carefully about how we could share sufficient information with those other regulators to make this effective. It is a question of getting the right framework in place to do it, but that is a practical issue rather than an issue of principle.

Q214 **Lord Mitchell:** I have the sense, but I might be wrong, that much of what we have heard from you is about looking backwards. You look at the last election and the election before that, and that is clearly very important. One of the reasons why this Select Committee has been set up is because we feel there is almost an existential threat and a tipping point that could go in the wrong direction. All of us have to think about what is needed for the issues which the Chair has just suggested. You alluded to areas that you want to get into or more resources. I am not asking what they are, but do you have a method for putting them forward and requesting them? That is very important.

Louise Edwards: We do. It is through our annual planning process and the corporate planning we have to do after every general election. We mentioned earlier that a Speaker's Committee votes on our resources. Every year, we go there with a business plan that looks forward to exactly those sorts of things. After every general election, we produce a five-year corporate plan. This is very timely, because at the moment we are looking at what that corporate plan will look like over the next five years. In doing so, we are asking what our world will look like in 10 or 15 years, on exactly those sorts of issues. How is technology going to be used in campaigning, in five, 10 or 15 years' time? What will the legal challenges be? What social or environmental challenges will impact on the way we will be regulating and acting after the next scheduled general election?

We also need to think about the window of opportunity that we have now. The next scheduled general election and nationwide poll is not until 2024. It is important that we, government and maybe even parties and campaigners take that time to think about what they want this framework to look like in 2024, and take action now to put things in place to make sure that, when we get to that election, we are all confident about the

way that campaigning is conducted. Craig mentioned some of the statistics out of 2019, and it is important that we do these things based on evidence. It is important that we gather evidence from our surveys and the spending data that we get from parties.

From that, we have to extrapolate forwards and take the opportunity now to think about ad libraries and broader regulation. What do we want voters to see from campaign material to address some of the concerns they are expressing at the moment? We look backwards for evidence-gathering, which is important, but we are in the middle of an exercise, right now, looking forward five, 10 or 15 years, to work out what to do now to make things work then.

Q215 Lord German: This is about the distinction between national and local spend, and constituency spending. Does the commission have a view about how that is working presently, whether we have sufficient oversight of what is local and what is national, and whether there is need for change in this area?

Louise Edwards: There is no evidence that that distinction is not working at this time. There was one notable incident after the 2015 election, when we fined a party a significant amount of money for, among other things, reporting some candidate spending as party spending. That was an anomaly; it does not happen very often. This may be by virtue of the fact that the last two elections have been unscheduled but, actually, it is quite unusual for either parties or candidates to approach the limits of either their party or constituency spending.

Despite that, there is something in thinking about the risk of that happening and how we might try to mitigate that risk of it happening at all. We work closely with parties and candidates, issuing guidance, speaking to them and even reviewing some of the parties' internal guidance to make sure that they know what they need to report in each area. That includes, for example, producing new guidance products. Before the 2019 election, we produced new fact sheets on notional spending and on electoral pacts, which can get complicated when you start thinking about them operating in individual constituencies.

In terms of hopefully giving us oversight of candidate spending, yes, please. It is something we have been calling for, for a long time. We work closely with the police, who currently enforce the candidate rules, but you can see some quite obvious benefits from having a single regulator looking at the party and candidate spending, given the way they are supposed to meet in the middle. Very importantly, we think there should also be a civil sanctions regime for candidates.

At the moment, the only recourse the police have for candidate offences is to prosecute them. That is necessarily quite a high bar. If there was a civil sanctions regime sat behind that for cases that are not proportionate to prosecute, the regime could have a much greater impact on making sure that people comply with it, deliver their candidate returns and make sure they are complete. There is something quite telling about the fact

that very few offences have been prosecuted on the candidate side, yet if you go on our website you can see that we have run more than 500 investigations into parties.

Q216 **Lord German:** Can I ask you about the digital side? If you posted a digital advert, for example, which was sent to one area geographically, it can be counted as national spend. The only difference in legal terms is whether it involves the name of the candidate or the party. Is that right?

Louise Edwards: Strictly, it is about whether that particular advert is trying to promote the election of that candidate or promote people voting for that party. In practice, even if an advert is targeted at a single constituency, it comes down to whether the content of that advert is about the candidate or the party's national policies. If it is about the party's national policies, it is still party spending.

Lord German: Are you comfortable with that?

Louise Edwards: Broadly speaking, yes, we are. We have seen no evidence to suggest that is a particular problem for people. We have seen a need to make sure that the law is as clear as possible, for parties and candidates, so that voters can have confidence that they are reporting their spending correctly.

Q217 **The Chair:** Do you feel the law is as clear as it can be?

Louise Edwards: No. We have recently drafted what are called codes of practice, using powers that we have both on the party side, under the Political Parties, Elections and Referendums Act, and on the candidate side, under the Representation of the People Act. We have done that to make sure that, although we cannot draft legislation through codes, we make a lot clearer exactly what needs to be reported on each side of the fence. They are only draft codes at the moment. They are due to go back to the Minister for the Constitution and Devolution shortly, and they will need to be approved by Parliament before they can come into force. That is our effort to try to make things as clear as possible where people need to report their spending.

Q218 **Lord Lipsey:** How long are the draft codes? How many pages are they?

Louise Edwards: I do not know, off the top of my head. They are probably each about 10 or 15 pages.

Lord Lipsey: It is a matter of concern for me. You have amateur agents, who have no knowledge and very little training, trying to follow what become increasingly sensitive rules. Are you confident that the Electoral Commission allows enough leeway in that, or does the fact that you have a new code of practice make you think you have not got it quite right?

Louise Edwards: We put out a significant amount of guidance for candidates and agents. The codes will sit within that, so within a much broader framework of easy-to-use and easy-to-read guidance, which is already available on our website. We also work closely with parties and have reviewed some of the parties' own material that they produce for

their agents. We hope that helps. We also have ambitions to do more support for our regulated community. Ultimately, we do not enforce the rules that candidates and agents need to stick with. If we were given regulatory oversight for candidate spending as well, we would ensure that we took it forward in a way that was proportionate to agents and others.

The Chair: A blue touch paper has been lit here.

Lord Lucas: This is just a comment. Sitting in a constituency, it feels strange to have a total blizzard descending on you from one party, which is clearly out of proportion with anything anyone else is doing, which must be directed just at us, because there is so much that you could never afford it nationally. The perception is that an awful lot of money is being spent on behalf of one party in our constituency, which goes beyond the limits allowed to others. I am sure the same applies online.

Q219 **Lord Harris of Haringey:** Going back to my days as a candidate for the London Assembly, the names of the individual candidates would not have been known to the general public. I would regard expenditure by the party targeted at my London Assembly constituency, which promoted my party, as promoting me, and I think the electorate would regard it in the same way. The distinction which the law draws is possibly unhelpful. It comes back to my earlier point about the extent to which promoting an idea or a policy theme may be designed to influence an election. Do you think those grey areas are significant and in danger of undermining your core mission?

Louise Edwards: That is quite difficult to answer, partly because it is not something we have looked at in a huge amount of detail when it comes to campaigning material, party material and candidate material. It is important to remember that the party regime was bolted on to a pre-existing candidate regime 20 years ago. Then, the non-party campaigner regime was bolted on to that five or six years ago. Parliament chose at that point not to have one overarching regime but to work in that way, and that is what it has done. For us, being responsible for regulating part and not all of that—although we would like to be responsible for regulating all of it—we try to adhere to the core principles of making sure that campaigning is transparent for voters and that voters know that there is effective regulation and enforcement in place.

If we coming to the suggestion of a recalibration of the way the laws currently work, we would need to think that through very carefully to pick up any intended and unintended consequences. We simply urge that in doing so we do not undermine the transparency of the regime at all, so that we can make sure that voters can, as far as possible, understand who is seeking to influence their vote.

The Chair: I do not want to take us down any kind of rabbit hole, but by way of example it is generally accepted that in the last election, for a number of Conservative candidates, "Take back control" was the opposite of what they wanted as they were remainers. An advertisement that suggested taking back control and that was applied to a particular

constituency when it was well known that that candidate wished to remain in Europe is nonsense. Where does that fall?

Louise Edwards: On the basis that that is a party slogan, it is likely to have been party spending, but we would need to look at the details of each case.

The Chair: It strikes me that there is clearly a deficiency in one or other of the two operating Acts here. Maybe you could write to us about where those deficiencies lie and which Act we should possibly be attacking or amending.

Baroness Morris of Yardley: This is not clear in my head. Following Lord Harris's question, if a leaflet does not have the candidate's name on it, and money is spent only on 10 marginal, target constituencies—everyone knows that is the way the system works — it would count as party expenditure. Is that a grey area, because in truth it has been spent in those 10 constituencies because they are marginal or they have a particular interest in the leaflet?

Louise Edwards: If the message in that advert is about the party's national policies, it is party spending. That is very clear in the way the law currently works.

Baroness Morris of Yardley: It does not matter where that leaflet is distributed.

Louise Edwards: It could be targeted to one, 10 or 40 constituencies. If it is about the party and not the individual candidates, it is party spending, as the law stands.

Baroness Morris of Yardley: That is a bit of a grey area, is it not, because the intent is clearly to promote a particular candidate?

Louise Edwards: It includes intent, so that is something you need to think about there, but this is exactly why we have drafted codes of practice that give a lot of practical examples to try to help parties and candidates navigate these rules. We hope that, when we send them back to the Minister, Parliament will approve them.

Q220 **Lord Mitchell:** This is a longer question. I want to know what the Electoral Commission could do to disincentivise bad practices from small actors that operate below the current thresholds for reporting and accountability mechanisms. I will just ask the other questions, so you can frame this all together.

Where is the appropriate balance between holding bad actors to account and not suppressing well-intentioned activism? Has the Electoral Commission looked into Facebook's initiative in the US of displaying Federal Election Commission registration details on online advertisements, and how could a reform like this work in the UK? You have addressed some of them.

Craig Westwood: I will take the first part of your question, then pass to Louise to answer the second. The question of bad actors operating below the threshold relates to non-party campaigner area of activity. Thresholds are set in place there above which non-party campaigners need to register with us and comply with all the requirements that follow. That threshold is effectively the mechanism by which Parliament establishes the balance that you identify.

In thinking about that balance, you are clearly looking at a number of factors, including the reach that a certain amount of spending will buy you. What is the level of influence above which you start to have a concern, as spending above a certain point will have a disproportionate influence? You are also thinking about the regulatory burden on those organisations and not suppressing free speech or organisations' ability to push out their views. There is also the burden on the public purse. If one were to set a very low bar for the threshold, there would be an additional cost for us, in this case, as the regulator overseeing all of that. That might be a proportionate cost, but it is a factor to take into consideration.

This has been debated a number of times. The legislation was set in 2000. It depends where you are campaigning but, by way of example, at that point the limit was £10,000 for campaigning in England. This issue was reopened in 2014, when the lobbying legislation that Louise referred to earlier, which was referred to as the gagging Act, was passing through the House. The main reason for that was that a lot of concerns came forward from charities and other non-government organisations about what they perceived to be the risks of suppressing their free speech on particular policy issues and their ability to campaign on those issues, which is often part of their charitable purpose. The Government changed their position as that legislation was going through. The thresholds were originally proposed to be lowered to £5,000 for campaigning in England but were eventually upped to £20,000. That is where things are currently set at the moment.

Clearly, digital campaigning has come along in the intervening period. We and this Committee are looking at how, with technology, you can spend significantly smaller sums and reach significantly more people and target particular audiences. There is a live debate to be had about whether those limits are still set at the right point. That is something we are looking at, so I do not have a hard and fast answer at the moment. We will be interested in the Committee's thoughts, when you publish your report.

Louise Edwards: Picking up on the Federal Election Commission's work in America, we have slightly different regimes. In America, parties, candidates and political action committees have to register with the FEC. It is slightly different here. Political parties have to register if they intend to stand candidates in their own names on ballot papers in elections. Otherwise, they are under no obligation to register. Non-party campaigners register only if they are spending above the threshold, as Craig mentioned. Otherwise, they are not obliged to register. There is no

central register of candidates at all. Unlike in America, there will not always be registration details that could be added to anything to make clear who the campaigning is by.

We have talked to Facebook in particular about trying to link what the ad library says about who is campaigning to our registers, so that it is really clear, and you can go from one to the other and see who is doing what. It is not always perfect, partly because whoever is doing it may not be on our register at all. Also, they may use a different name. We had a few examples in 2019, for instance, of people who registered as individuals with us. If you look at our register you will see the name of an individual, but if you look at their campaigning online you see the name of a campaign slogan instead. That is fine; they can use a campaign name. If we know about it, we will add it to our register, but there is no particular reason why we will know about it. There are some challenges in the UK in trying to apply the work of America here, because our regime is different.

Lord Harris of Haringey: Just to follow this up, and to try to work out where it would be captured under the regime, let us assume there is a millionaire who wants a particular outcome or would like to distort or produce something. Rather than buy advertising, he approaches a number of social media influencers and encourages them, presumably financially, to say lots of nice things, not necessarily directly about a political party but about the particular issue about which that millionaire is concerned. Is that covered? Is his expenditure in relation to the social media influencers something you ought to be able to pick up? Would you ever know about it?

Louise Edwards: Again it would depend on whether the campaign messages fell into the category of regulated campaigning. Theoretically, that would be within the regime, because what that individual is doing is essentially running a campaign. The influencers would be the suppliers of the campaign, if you like. Whether we would know about it is a good question. Without a legal requirement for the influencers to say who is funding them, we might not. That is why we think it is hugely important that, first, if people are campaigning online they should say who has paid for it. Secondly, we should be able to go to Instagram, for example, and say, "We want to know who has paid for that, that and that", or go to an influencer and ask these questions. At the moment, outside an investigation, we do not have the powers to compel those answers.

Q221 **Baroness Morris of Yardley:** Do you think the increasing use of digital technology in political activity could cause multiple constituency results to be called into question and undermine the legitimacy of an election? That did not happen in the pre-digital age.

Craig Westwood: It is a really interesting question. You are right to say that it is not something we have seen happen, but we are certainly not complacent about it. We are very conscious that, as we mentioned earlier, we are not going to have a national poll for some years. If the current trends that we are seeing of public confidence in digital campaigning activity continue on their current trajectory, a national

election could look significantly different by the time we have another one.

Fundamentally for us, it comes back to trust. Ultimately, the voter has to trust in the process. They have to trust that they can believe what candidates are saying, they can see who is paying for it and they can understand who is trying to influence them. Most of the recommendations we make come back to that point. It is about directly reassuring the voter or ensuring that the regulatory system is working in the right way to provide reassurance for the voter.

There are a couple of things that we could take forward, some of which we have already outlined, so I can do this briefly. The first is the pre-emptive element: changing the rules so that digital material has to show its imprint so that we can do our job more effectively and the voter can see who is paying to influence.

The second, as we have mentioned, is the ability, when the campaign is running, to require social media platforms to provide information to us outside the frame of an investigation. It is important that people understand that ultimately we would like that to provide reassurance, because so many questions are raised about political advertising. We would like to be able to look under the hood of the issue and say, "Actually, this is fine. The people who have paid for this are legitimate, permissible donors, and everything is okay". There will always be circumstances in which that is not the case, but the most important thing is to move quickly and reassure the public in what is a live campaigning period, when people are trying to influence people every day and people are already starting to put in postal votes.

A third area is the deterrent, so increasing the sanction that we are able to put in place, so that voters can see that people are appropriately sanctioned when offences have occurred. Ideally, the deterrent is there so that people do not commit offences.

Another thing on the specific issue of challenging individual outcomes is the petition process currently in place. The UK's Law Commissions worked together some years ago to look in detail at electoral law, and they made some excellent recommendations which we are still urging the UK, Scottish and Welsh Governments to take forward. They include changing the petition process, because at the moment it is very burdensome in time and cost for private citizens to challenge the outcome of an election. The Law Commissions suggested, and we support, moving that to be part of the court process so it is more streamlined with other processes that people can use to challenge in the public sphere. Those are the key things that we think could change, along the full range of the process, in order to secure it.

There is also clearly an issue about parties and candidates behaving responsibly in campaigning. Until the general election, we had not talked about that kind of approach to campaigning, because it is not within our regulatory sphere, but because we hold responsibility in relation to public

confidence it is important sometimes, as the regulator in this area, to be able to step forward and make statements. There were some elements of campaigning behaviour that we saw this time that we felt crossed that line, and we came out and said so.

Q222 Baroness Morris of Yardley: That public confidence is important, because you can always reassure people about the structures but you cannot reassure them about the things you do not know about. As we have discovered today, there is a lot you do not know about. What is your feeling, from the time you have been at the Electoral Commission, of people's perception — not how many complaints were justified — of how trustworthy the electoral system is? Has there been a change?

Craig Westwood: Yes, there has been a change. One of the virtues of having had five national polls in five years is that we have a rich seam of data. I would be happy to send some detailed information to the Committee on that afterwards. We have seen a steady slight downturn in some of the indicators. They are not necessarily concerns at the moment, but we are projecting forward and thinking of the national poll in four years' time. If that trend carries on, we will be in a situation of concern. We might just have had a particularly turbulent time in politics which has underpinned people's lack of confidence, but we do not want to be complacent about that, because otherwise we risk ending up in a very different scenario in four years' time.

Lord Lipsey: Can you give us an idea of what kind of thing is declining?

Craig Westwood: Yes. We asked people to disagree or agree with the following statements. Some 58 per cent of the people who we surveyed agreed that, in general, campaigning online is untrue or misleading. That is quite a significant figure. Some 22 per cent agreed that information available online about politics is trustworthy. I do not have the trend data on those, but even as stand-alone figures they are significant.

The Chair: That is very helpful. Anything you can supply us would be very helpful.

Q223 Lord Harris of Haringey: I cannot remember the details of the petition process, but I know that, ultimately, you can get to an election court and an individual election result in a constituency or ward can be set aside, and there then has to be a new process. As I understand it, that does not apply to referendums. Do you think it should?

Louise Edwards: What applies to referendums at the moment is a judicial review brought after the result, so there is a mechanism to challenge them. There is a difference with a general election. Although we call it an election, it is actually 650 individual elections. An election petition could be brought in any one of those 650 individual instances. It is different in a referendum. In a referendum, you have one question and one result. Quite reasonably, for obvious administrative reasons, you build that up with a series of votes in particular areas across the UK, or wherever the referendum is, but it all leads to that one result. If you were to seek to challenge the outcome of a referendum, you would be

challenging that one result and none of the constituent parts that build up to it. There is a mechanism to challenge the outcome of a referendum.

Lord Harris of Haringey: What would a judicial review say?

Louise Edwards: You would have to challenge the outcome of the referendum on whatever basis you thought applicable. It would depend on the circumstances.

Q224 **Lord Lucas:** I hope you will make sure that we have a complete understanding of all the legislative changes you would like to see or might contemplate. If you do not receive additional powers, have you considered how you could be more active and effective as a regulator, within your current remit?

Louise Edwards: Yes. Each year through our business planning process, and every time there is a general election through our corporate planning process, we look at and ask what evidence there is of the impact of our regulatory work so far and how we think we can have a greater impact. It is a continual process for us. We continually try to get ahead of new campaign issues, to think about what intelligence we hold and what risks there are, and to feed that into the policy work.

Also, operationally, we try to be more risk-based and strategic about how we work with our regulatory activities. For example, we are ambitious to give more support to parties, campaigners and candidates to understand the rules in the first place. We think that the biggest impact we can have as a regulator is for people to get it right in the first instance, so they do not need to deal with the problems afterwards.

We already publish quite a lot of guidance, but we are working on putting that into a new, easier format for people to use, so they can get the support they need from us very quickly. We already have an advice service that deals with hundreds, sometimes thousands, of individual queries about the rules and how they apply to individual circumstances. We have ambitions to do more in that area, perhaps to think about online tools and maybe even some training we can do for parties and candidates to help them understand the rules.

We are in the middle of upgrading our IT system, which parties and campaigners use to give financial data to us, for example. We are trying to structure that in a way that embeds our guidance in the system itself, so it is much easier for somebody, when delivering a return, to be guided through the process by the way the system works. We are looking at where we can also use codes and regulations to help. I have mentioned the draft codes of practice that we are working on at the moment.

In terms of our enforcement work, we have stepped up our intelligence-gathering structures and the way we work with other regulators, and we are currently revising our enforcement policy, which is our public-facing document that sets out how we do our enforcement work. We are planning to consult on that policy later this year. For the first time, it will introduce a policy on when we might bring prosecutions.

We talked about how our £20,000 sanction is not really a great deterrent, given the amount of money that some parties and campaigners have. We strongly believe that a realistic prospect of being prosecuted for breaking the law might well have a different deterrence effect. That is one power that we already have in England, Wales and Northern Ireland, and we are building up that capability at the moment.

There is another side to all this, which is more about digital literacy and helping voters. At this point, I will hand over to Craig to talk about that.

Craig Westwood: I know that you have focused on this in other evidence sessions. We will never be a major player in this sphere because it is not our area of expertise, but there are particular things we can do to contribute to that agenda. We are discussing with the Speaker's Committee how to take that kind of work forward.

The first aspect is proper education within secondary schools that really feeds into a proper understanding of the democratic process so that teachers feel able to talk about that aspect of politics and democracy within the classroom. We get a lot of feedback that teachers feel unsure how to tackle some of those issues and therefore hold back and do not talk about them in the classroom.

The other area relates to the wider public. We want to launch a public-awareness campaign that would run alongside the election to make sure that people understand their rights to challenge things they see that are not right. If they see an advert that has no imprint or they do not understand who is paying for it, trying to influence them, targeting them or using their data, they have a right and ability to challenge that.

We want to take forward some public-awareness work that will help citizens to be more aware of those rights and then be able to follow that up with the relevant organisation. That may well be us, if it is a case of funding. It may be the ICO, if it is to do with data. We have already had some preliminary conversations with the ICO about how we can work together on that kind of campaign.

Q225 **The Chair:** You will be delighted to know that this is the last question. I will just make one point. You just mentioned going out to consultation. This is an observation: I am very impressed with both of you this morning; you have been very frank and helpful. I am pleasantly surprised, because the impression one gets, after the event, of the way the Electoral Commission operates is that it is passive and has always seemed less than satisfactory.

In a sense, there is a real job to be done on communications. The inference is that there has been political interference, but you have been told not to rock the boat or scare the horses but to give broad-brush approval to whatever is going on. Today has been very encouraging to me, but I think there is a communications issue here. The robustness that you have demonstrated this morning does not come across in the image that surrounds the Electoral Commission. That is just a personal

observation.

Has the commission considered what resources and legislative change would be required to conduct data audits of political parties before elections and include the value of the data they hold in their spending limits? To add to that, if the Government could do one thing to better support your work, what would it be?

Louise Edwards: I will respond on the question of data audits and hand over to Craig for the final word. This idea about data audits is interesting. It has come up quite often in the recent policy debate about these issues. I will be honest with you: I am struggling slightly to understand the problem that it is designed to solve, and therefore whether it is the right way to solve that problem.

The reason for that is because parties already have to report quite a lot about the data they hold, particularly their spending. Any spending on collecting, maintaining and enhancing that data, and that data then being used in an election campaign, already has to be reported. It already counts against the spending limits the party has for that election campaign. If it is a significant amount of spending, so over £200, it has to be supported by a receipt or invoice to show that the amount is correct. Any party that spends over £250,000 already needs to have their spending return audited, so there is an awful lot already out there that is very clear about what the parties are spending on collecting data.

If I am way off the mark here, please tell me, but it seems to me that this is not trying to get at the spending on collecting data but the intrinsic value of the data itself. That is very difficult, because there is no market for this data. It is extremely unusual for it to be sold. In fact, I can think of one instance only, in recent history, when that has happened. There is no market value of the data that political parties hold.

Added to that, the concept of personal data having its own intrinsic value is something that competition commissions and far better economists than me are looking at around the world. There is even an area of economics called infonomics, which looks specifically at this issue. As yet, there are no accountancy standards that apply to personal data in this way, so we would have no accountancy standards that we could use to audit the intrinsic value of the personal data that a party holds.

If competition agencies, economists and those who know far more about economics than I get to the point of having very clear accountancy standards that apply to personal data, I could clearly see how it would apply to the data that political parties hold. As we are not in that position at the moment, we need to bring out more fully the wealth of data already out there about how much political parties are spending and try to make that as transparent and obvious as possible, so that people at least have the reassurance of knowing what parties are currently spending on their data and how that is feeding into their spending limits.

Craig Westwood: On the second half of your question, this may sound like a way of trying to get lots of things into the same answer, but the main thing we would like from the UK Government is a commitment to holistic reform of electoral law. At the moment, the law is very fragmented and outdated. It is difficult for administrators in local authorities, parties, candidates and us — all the players in the sphere — to engage with to deliver well-run polls efficiently, in which people can have confidence. It is engaging with that debate, starting with the Law Commissions' work and taking that forward. That only in part addresses some of the issues we have been talking about today, but it provides the foundation on which they are all built.

The next step is moving on to our digital campaigning report and engaging with us across the whole detail of that space and the things we have been talking about today, in thinking about how electoral law should be reformed.

The Chair: I know I speak on behalf of the whole Committee; you have been enormously helpful and sent us back to exactly where our homework ought to be. Thank you very much indeed.