



Public Administration and Constitutional Affairs Committee

Oral evidence: [Work of the Electoral Commission, HC 488](#)

Tuesday 9 March 2021

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; Rachel Hopkins; Mr David Jones; John McDonnell; Tom Randall; Lloyd Russell-Moyle; John Stevenson.

Questions 93-154

Witnesses

I: Dr Alistair Clark, Reader in Politics, Newcastle University, Dr Kate Dommett, Senior Lecturer in the Public Understanding of Politics, University of Sheffield and Professor James, Professor of Politics and Public Policy, University of East Anglia.

Written evidence from witnesses:

- [Dr Alistair Clark](#)
- [Professor Toby James](#)
- [Dr Alistair Clark and Professor Toby James](#)

Examination of witnesses

Witnesses: Dr Clark, Dr Dommett, and Professor James.

Q93 **Chair:** Good morning and welcome to a hybrid public meeting of the Public Administration and Constitutional Affairs Committee. I am here in a Committee Room in the Palace of Westminster with the small number of staff needed to facilitate the meeting—suitably socially distanced from one another, of course. Our witnesses and my colleagues are in their homes and offices across the country.

The Committee launched a call for evidence on the Electoral Commission last year, and this is our first oral evidence session. I am very grateful to



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our three witnesses today. I wonder if they might introduce themselves.

Dr Clark: My name is Dr Alistair Clark. I am a reader in politics at Newcastle University and I have research interests in electoral integrity and the regulation of politics.

Dr Dommett: Hello, and thanks ever so much for the invitation. I am Dr Kate Dommett, a senior lecturer at the University of Sheffield. My research interests are in digital campaigning.

Professor James: Good morning. Thank you again for the invitation. My name is Toby James and I am a professor of politics and public policy at the University of East Anglia. I am also the deputy director of the Electoral Integrity Project.

Q94 **Chair:** Thank you. I am going to ask the three of you to reflect in that same order on the question I am about to pose. The Electoral Commission was established 20 years ago, and now is an opportune time to review its functions and effectiveness, particularly ahead of the appointment of a new Chair of the Commission. The last substantive review of all functions of the Commission was conducted by the Committee on Standards in Public Life in 2007, and it concluded that the Commission's mandate was "too broad, diffuse and potentially conflicts" with its core tasks. It recommended that the Commission focus on the twin goals of electoral administration and regulating political finance. Do you think the Commission's current mandate and its responsibilities are clear to those whom it oversees or regulates and to the public?

Dr Clark: First, I should say a word or two about how I come at this as an issue. The Electoral Commission in many ways is a valuable public good. It has produced some valuable work to date. We now know much more about the electoral process than we did 20 years ago when there was no such commission in existence.

I tend to approach these issues from the voters' viewpoint. Voters have a right to know who is trying to influence them and that, if they are eligible and appropriately registered, they can cast their vote and have that counted and tabulated securely. To my mind, those are really the two sets of functions that still exist for the Electoral Commission in regulating campaign finance campaigns, but also in relation to electoral administration, making sure that those who are eligible to vote can actually cast their vote safely and securely. That said, you are absolutely right to point to CSPL's review in 2007 being the last substantive look at these things.

I think that, going forward, the Commission very clearly has some challenges caused by the environment within which it is operating. The first of these is that we are very much in an environment of fragmented electoral law. The Committee looked at this for its 2019 report, and nothing really has changed in that regard. I think this still causes difficulties and problems for practitioners, for the Electoral Commission and for everyone who is interested in delivering elections. So that is one issue.



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The second issue is that the Electoral Commission is operating in an environment where there are challenges from actors who are seeking to undermine free and fair elections in a way that there probably was not 20 years ago. That is a very big environmental change. It is not just in the UK that we are seeing this, but the UK is no exception to this particular rule. One aspect of challenges from so-called dark money campaigns, third-party organisations, and non-party organisations, is that they campaign in a way that political parties obviously do not. I think regulating that is quite a challenge for a body such as the Electoral Commission going forward, and it will become a bigger challenge as the years pass.

One thing that is important to say here is that the idea of the short campaign around the Dissolution of Parliament is a historical misnomer now. We are very much in an era of permanent campaigning, so we see parties campaigning and donations feeding into politics in a longer-term sense, beyond the immediate four to six weeks in advance of a general election. Then, of course, there is the challenge of everything moving online, with digital campaigning and so on.

The functions of the Commission are probably right, but it faces a number of challenges for which we need to review those functions going forward.

Q95 Chair: Thank you, Dr Clark. May I come, with the same question, to Dr Kate Dommett? Given your interest in and expertise on digital and technological matters, Dr Dommett, could you reflect on the question with that in mind as well?

Dr Dommett: I will definitely focus on the digital aspect, as the other two panel members have far more expertise than me on the Commission and its work. Thinking about what has changed since that CSPL review, it is quite easy to forget quite how quickly technology and the role of digital has become the new normal. The Electoral Commission was created at a time when digital campaigning was just not happening. If you think back, even to a time as relatively recent as 2010, we had very basic websites and the very first uses of social media. There has been huge change in what it means to campaign and how people get involved in elections.

There have also been technological changes in the general landscape of how people consume information and find out about processes such as elections, so we now have a much more crowded information landscape in which the position of traditional and established institutions is being challenged by the emergence of other authorities. We also see a very significant role being played by private corporations, particularly those big platforms that span international boundaries.

The way I come at this question is by thinking about the new challenges and what the Electoral Commission's remit does not acknowledge. On the essential competencies of thinking about electoral finance and trust and confidence, those functions are a very solid foundation for the work of the Commission, but there needs to be more thought, and indeed, the Electoral Commission itself has said how it sees its remit updated to reflect the rise of new technology and the new landscape in which it finds itself.

That means thinking about updating the existing reporting requirements and the way the Electoral Commission is able to monitor what is happening online, but also thinking about the Electoral Commission as one regulator in a broader context.

When you think about digital campaigning in particular, the real challenge in that space is that digital is not just about digital elections; there have been seismic changes in how a whole range of societal processes work. If you think just in isolation about the Electoral Commission and updating it to digital technology, there is a danger that interventions will not work. What is needed is a much more cross-governmental view of how digital technology is affecting society, in which the oversight of elections is one part of the bigger picture.

Q96 **Chair:** Thank you very much indeed. Finally, to rehash the question but put it more simply, do any of those conflicts remain, Professor James?

Professor James: I think the big picture is that international best practices drawn from the international community, as well as academic research that has come through in the last 10 years, have been increasingly clear that we need independent electoral authorities that have autonomy from the Government of the day for at least four core functions of democracy. The first is to regulate and report on campaign finance. The second is to ensure strong professional delivery of elections. The third is about encouraging participation—electoral authorities have a proactive role there—and the fourth relates to electoral justice and resolving disputes.

Clearly, in the UK, like many countries taking these steps, the trajectory was to introduce new bodies, as the UK did 20 years ago. In the US we saw the Election Assistance Commission, and there has been a lot of demand in Ireland for an electoral commission, as well.

Broadly speaking, the remit as it currently stands is correct and much needed. I would say, maybe in contradiction to the 2007 report, that there is a need for an independent electoral authority to promote participation. If that is not the Electoral Commission, in a context where we do not teach political history in schools, who does that? Who encourages and helps to address those gaps?

The other area is electoral justice, and we will maybe zoom in on that in the questions. There are some problems that the Committee has looked at before in relation to candidates and citizens gaining access to electoral justice. That system does not quite work. That is not to say that it should go to the Electoral Commission, but there are some problems there, and the Electoral Commission needs to be situated in that discussion.

Q97 **Chair:** On that, Professor James, you pre-empt my next question. You raised the prospect of who would do this, if not the Electoral Commission. How effectively do you think the Commission is fulfilling its statutory obligations? If it were not the Electoral Commission, who would it be?



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Professor James: With respect to which core functions? Is that all functions?

Q98 **Chair:** I beg your pardon. It is statutory duty and overseeing the delivery of elections.

Professor James: Absolutely. It would raise a real problem if there were no electoral commission. It is difficult to turn back the clock in many respects. Thinking about the role of the Electoral Commission in the delivery of elections and referendums, it clearly does not run elections. Instead, it provides important guidance and materials to electoral officials. If you go to a polling station in May, it will have on the desk what to do in a certain type of scenario, which is produced by the Electoral Commission. The research that we have shown, with Alistair Clark, is that this is very effective.

Referendums are still relatively new to this function. I can point to some problems that occurred with the first run at elections in 2011, but they seem to have learned and improved on that.

What would happen if there were no electoral commission, in an imaginary world? You could leave some functions to the Association of Electoral Administrators, which could step up and has proved to be a very professional, well-organised body. It produces resources, but speaks for electoral administrators and, therefore, its role and function are very different from those of an electoral commission. It has oversight of that body, so it would not be appropriate.

The function could go to the Cabinet Office but, again, that is not a body that is independent of Ministers and Government of the day. Research shows that independence in the running of elections ensures they run better. Or we could just leave it to local authorities to run themselves. Obviously, that was the situation up until 2000.

Colleagues have pointed to an increasing number of challenges, such as the complexity of electoral law and decline in completeness of electoral registers. That means that you really need a national body to have oversight and give guidance and structure. It would be difficult to imagine a situation in which we could work without the Electoral Commission.

Q99 **Chair:** The same question to Dr Clark, please.

Dr Clark: I largely agree with that—if not the Electoral Commission, who? The difficulty with that as a kind of hypothetical is that you end up with some of this back with Government, and that would seem to violate the principle of independence, which is the gold standard for delivering electoral events internationally.

Where else might it be? Professor James mentioned the Association of Electoral Administrators. My understanding is that that is a private membership body, rather than a public organisation, so whether it would be willing to take on such a responsibility I possibly doubt.

Returning officers? That is the formal position. The delivery of elections is the responsibility of returning officers. The Electoral Commission has no power of direction in England over those returning officers. That is perhaps one area of improvement that we could examine, to give the Electoral Commission that power of direction in particular circumstances—it does not need to be in every circumstance—to guide returning officers as and when necessary.

The Electoral Commission very often ends up being blamed for problems in elections when it actually has no formal responsibility for delivering those elections. It has responsibility only for guidance, advice and those kinds of things in the administration of elections. In that regard, I would suggest considering a power of direction, certainly in England, over elections for the Electoral Commission.

Chair: Thank you. I will now go to my colleagues, starting with Ronnie Cowan, please.

Q100 **Ronnie Cowan:** Your answer there, Dr Clark, trampled on my question. I will expand on that, because I am very interested. As you said, the Commission largely has an advisory role, but that role changes when it comes to referendums, because of PPERA—the Political Parties, Elections and Referendums Act 2000. It has more control in referendums. Twice you mentioned the differences in England. First and foremost, what is different about the role in a referendum from that in a general election and, secondly, are there differences between the devolved powers?

Dr Clark: With referendums, yes, the Electoral Commission has powers of direction in UK-wide referendums. It has twice had those: first, with the AV referendum in 2011; and, secondly, with the EU referendum in 2016—

Ronnie Cowan: Sorry, with UK-wide referendums?

Dr Clark: Yes. Those were UK-wide referendums.

Ronnie Cowan: What about a Scottish referendum?

Dr Clark: Let me park that for a second; I will come to Scotland.

Toby James and I have done research into those referendums. While in 2011, Toby found that the powers of direction had not really been used terribly well, by 2016—when we both evaluated that referendum, its administration and the role of the Commission in it—we found that the Commission had learned a lot of lessons and had used those powers of direction sparingly and largely wisely, always in collaboration with the administrators it was talking to.

In Scotland there is a different set-up. Not for UK general elections, but for devolved elections, there is something called the Electoral Management Board for Scotland, which was introduced after a bit of a disaster in the 2007 Scottish Parliament elections, when there were large numbers of rejected ballots and so on. The Scottish Electoral Management Board does have powers of direction over returning officers in Scotland for devolved

elections—by that, I mean Scottish Parliament elections and, initially, local government elections.

That has generally been a successful enterprise. The chairs of the Electoral Management Board have tended to use those powers of direction sparingly, in consultation with returning officers and so on. To give you an example of what we mean by “power of direction”, in the 2014 independence referendum—and as is happening now for the Scottish Parliament elections in May—returning officers were directed to restrict the numbers of voters in polling stations to manage queues. In 2014, it was because of expected high levels of turnout; in the forthcoming elections, it is because of the need for social distancing. Normally, returning officers are wise and experienced enough not to need those powers of direction, but in that degree, the Scottish Electoral Management Board has very much added something north of the border.

Q101 **Ronnie Cowan:** What was the Electoral Commission’s role in that? Was it superseded by the EMB?

Dr Clark: No, the role is complementary. Again, its role for Scottish Parliament and local government elections is largely advisory.

Ronnie Cowan: Professor James, would you like to add to that?

Professor James: Yes. What I am going to say complements what Dr Clark was saying. In the 2011 AV referendum, and also the Welsh devolution referendum of that year, the Electoral Commission had its first go, if you like, at using the power of direction. I spoke to a lot of administrators on the ground as part of a research project at the time, which pointed to some good things that this could bring about.

Consistency was one important thing: being able to set some essential directions and say, “There should be so many people in each polling station,” does bring consistency for the voter. It eliminated some errors because they could ask in real time for information on the planning of the election. They could issue instructions for all returning officers and say, “Have you sent out your poll cards? When have you sent them out? Are they on time?” That reduces some scope for error. It eased implementation in some ways because some—perhaps inexperienced—officials welcome that kind of instruction: “Do this now. Do this by that moment in time.”

There were also some negatives. There was additional cost because more money was spent on having a belt-and-braces approach to ensure that things worked; that is not necessarily a bad thing. There were a lot of complaints about lost local experience. A local returning officer knows their patch and knows the problems in their area. At the time it did lead to quite a lot of lost experience and quite a big fallout, but if you fast-forward to the Brexit referendum, you then see the Electoral Commission being less forceful in terms of issuing those directions and asking for less information, whereas under the AV referendum, electoral officials were under a lot of pressure, and being asked for lots of information by the



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Electoral Commission got in the way and stopped them actually getting on and doing the job they needed to do. A happy medium seemed to be reached for the referendum.

There is probably a case for extending that to elections. I probably did not really flag that in my written evidence, but the covid pandemic makes the case for that, because if you look at what the EMB has done in Scotland for Scottish elections, it has issued directions by saying, for example, "The count is going to take place at this time. We are not going to count overnight but the following day. It will take place during these hours." In England and Wales, there is no central authority to be able to do that, so you are going to get varied practice. We do not know the planning for these pandemic elections in May. For example, has every polling station been booked? Are they all there and in place? Are there sufficient staff? In a referendum situation, the Electoral Commission could request that information from every single returning officer. In this current situation, it does not have the opportunity to do that. We will see what happens in May, which may make the case for this slightly more centralised approach.

Q102 Ronnie Cowan: That takes me to my next question. I was looking at it from a different point of view. There is the EMB in Scotland, but there is no similar organisation in Wales or Northern Ireland, so it is still the Electoral Commission that would be in control of supervising that. I was thinking the opposite of what you were saying—I am not saying I'm right or you are wrong. Does it not mean that a more devolved approach and a more localised view of this would be more in touch with what is happening within the separate nations or even regions throughout the United Kingdom?

Professor James: I will let Alistair take that. The key thing at the moment is that we still have UK-wide elections. As long as we do that—obviously, there is a different electoral framework in Scotland—there needs to be a UK-wide board here.

Dr Clark: I do not disagree with that. There is no body like the EMB in Wales. In Northern Ireland, however, there is something called the Electoral Office of Northern Ireland, which organises many of these elections, particularly for Assembly elections and local elections there. What this shows is precisely what you have just been suggesting: the need for a localised approach. Bear in mind that what I suggested was that directions be used sparingly. Most returning officers have lots of experience before they get to that point to begin with. What the EMB in Scotland has added is the ability to add that consistency where it is needed, and one focal point for advice around those sorts of things. Obviously, if there was one covering English elections or even regional elections in England, I would have no problem with that whatsoever. Feeding local advice into these things is helpful, but that is done by talking to returning officers to begin with.

Q103 Ronnie Cowan: Finally on this subject, when it comes to a Scottish referendum, who is doing the supervising? Who is the adviser: the EMB or the Electoral Commission?



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Dr Clark: Basically, the responsible person under the Referendums (Scotland) Act is the chair of the EMB.

Chair: Can I bring in Lloyd, who has a supplementary question?

Q104 **Lloyd Russell-Moyle:** I want to ask two quick supplementary questions. You said that the Electoral Commission have an overview and can still give advice to Scotland. Is it that they give advice to the returning officers, or is that they give advice to the EMB?

Secondly, Toby and Alistair have mentioned the idea that it would be useful to use these directions sparingly. Is there evidence that returning officers are not following the advice of the Electoral Commission and therefore would need direction, or evidence that direction would be any more helpful than the advice? There are two ways you can phrase that question. You presented supposition that it would be useful, but I have not heard any evidence that it will actually be useful.

Dr Clark: In relation to the Electoral Commission's advice, they talk to the EMB and to all the other actors—the returning officers, the Scottish Government and so on. Advice is given to every set of stakeholders in this regard. As far as I can see, advice is given where the Electoral Management Board and its chair feel that there is a need for consistency. For whatever reason, there may be a need to underline the fact that there should be only X amount of voters in polling stations, because of the potential for queues, social distancing or those sorts of things. That is really when the power of direction is used. Certainly in the 2016 referendum, when we did research on that with the Electoral Commission, what they seemed to do was have an ongoing set of discussions with returning officers anyway, so that any problems were forestalled before it came to the need to set up that direction in the first place. What I think we are suggesting is that the power to give direction removes the anomaly whereby the Electoral Commission get all the blame when something goes wrong in elections but very little of the credit, when they do not actually have responsibility for delivering those elections on the ground to begin with.

Chair: Thank you, Lloyd. Professor James wants to come in quickly.

Professor James: Just briefly. In terms of evidence that directions improve the quality of elections, there are some examples from the studies I did on the effects of issuing these directions. It tends to be the case that the Electoral Commission can request confirmation that something has been done—for example, that poll cards have been sent out. In the case of the 2011 referendums, by requesting this and not getting that information back, the Electoral Commission was able to reach out to the local level and say, "What's happening? What's going on?" They could therefore identify and eliminate some possible issues. So it did give an area of oversight, but I think, as Dr Clark is saying, it is absolutely critical that this tool is not overused.

The other thing that is worth saying is that there is a separate scheme, confusingly called performance standards. That might be part of your later



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questions, so I can talk about that now or perhaps later, depending on what suits the Committee.

Chair: We will hold fire on that, because Lloyd has had his supplementary and I think we are going back to Mr Cowan for more.

Q105 **Ronnie Cowan:** We are, but we are changing subjects slightly here and looking at the regulation of political finance. Are the Electoral Commission's current supervisory, investigatory and sanctioning powers sufficient?

Dr Clark: No, I don't think they are. First, in sanctioning, their maximum power is a fine of £20,000. The most they have ever fined has been a set of fines up to £70,000, which I think from memory they have imposed on two or three occasions.

The Electoral Commission themselves have argued that campaign organisations, who often command budgets in the millions, do not really see that as being a serious deterrent. Effectively it has become a cost of business for these organisations to exploit the loopholes in the law. If they can do that, they will take the fine at the end of it if they get found out. The Commission have requested—I think rightly—the ability to levy a much higher fine. Indeed, this is already on the statute book in the Referendums (Scotland) Act, with a fine of up to £500,000 if there are serious campaign violations under that legislation.

Q106 **Ronnie Cowan:** I have issues with that because it is always after the fact. Brexit is the perfect example here. People will say, "Okay, I'm going to get fined. We will break the rules that we want to, and we will get fined afterwards," but they have won the election; the deed is done. Is there nothing that can be done to prevent that sort of behaviour?

Dr Clark: Sadly, the implementation of law is not a speedy process. *[Interruption.]* Well, sadly it is not, and there is the need for due process and so on. This is one of the difficulties with electoral law. It is a fragmented process. One of the requirements that I think people have talked about with the Electoral Commission is the ability to investigate in real time. It does have some powers to ask campaign organisations to stop doing various things during campaigns—for instance, it can issue stop notices and warnings and things of that sort—but that is very different from having a serious power of investigation and doing things in real time.

When we talked to this Committee back in 2019 about fragmentation of electoral law, one of the things we discussed was the fact that the ability to challenge results and elections because of severe wrongdoing and so on is actually outdated. This may be one of the things that the Committee wants to think about in the longer term.

Q107 **Ronnie Cowan:** It seems that in recent years there has been a greater need to flex the enforcement muscles. Is that the case?

Dr Clark: You have to see that in context of the fact that it has only been in recent years that the Electoral Commission has actually had the powers to do that. With increasing powers from 2009, you would expect to see an



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increase of activity in that regard, and I think that has been the case. To be clear, most of the investigations end up either not going anywhere because it finds there has been no offence, or if there has been an offence no fine is levied, but there is a need for it to be able to do things in real time.

Q108 Ronnie Cowan: We also have the situation where a few people were fined after Brexit and they said, "We are going to pay this fine, because we don't have the resources to take this case to court." They were not admitting guilt; they just paid the fine to bring it to an end. That's hardly a fair system, is it?

Dr Clark: I'm saying the system probably needs looking at again. Broadly, I am in agreement with you. It may be that it is the best that can be done, if that is all the agreement with law makers that can be achieved. There is certainly no harm in looking at that again.

Q109 Ronnie Cowan: Bringing Kate Dommett into the conversation, would similar powers to those of the Information Commissioner's Office help the Electoral Commission to enforce complex technical investigations of suspected campaign finance rules breaches?

Dr Dommett: The Electoral Commission has certainly called for those increased information powers, akin to those of the Information Commissioner. If we think about the role of the Electoral Commission first in terms of almost preventive action, it likes to work with different actors to understand what is happening within organisations, so that it can take preventive action, rather than sanctions.

At the moment, there is a real lack of understanding about what is happening in different organisations and a real challenge of gaining insight, especially into what is happening online. It is very difficult—there is a real lack of transparency there. Having additional information-gathering powers would help its role at all stages of the process.

It has particularly called for the power to share information with other regulators. That is a real challenge and definitely something that should be pursued, given what I was saying earlier about the expansive nature of digital and the fact that this touches on the work of a range of different regulators. There is definitely a case for the extension of its information-gathering powers there.

Q110 Ronnie Cowan: Finally, Dr Clark, you have argued that political party donations should comply with anti-money laundering legislation. What has brought this about?

Dr Clark: What is fairly clear is that the permissibility regime for political party donations is fairly lax. All that needs to be done is basically for a party or recipient to check that a donation is permissible. Effectively, that leads to a check on whether they are on the voters' roll or a business registered in the UK. That can take the form of things such as unincorporated associations and things of that sort. It is quite easy to donate to political parties but be outwith those regulations.



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I don't think the permissibility checks do anything to help with that. Consider this: charities are required to go through "know your customer" money-laundering requirements; political parties are not. That seems to me to be a fairly big anomaly in the ability to donate money into the political system. There is absolutely no reason why political parties should not be able to adopt those "know your customer" requirements. We have all had to deal with these when we have opened a bank account, done something online, and so on. I see no reason why political parties should not have to apply those money-laundering regulations as well. Importantly, they would also need to be future-proofed, so it a case not just of applying what is on the statute book now, but of thinking about what problems in this regard may be coming down the line.

Q111 Ronnie Cowan: Could this be applied to a broader base, and not just political parties? Obviously, lobbying groups jump up and appear out of nowhere during campaigns, and then they disappear again. Could they be controlled in the same way?

Dr Clark: I would recommend looking into any way in which they could. This is a fairly obvious gap in the transparency regime that we have at the moment, so yes.

Q112 Ronnie Cowan: Not that I am not thinking of doing this, but is there anything to stop an individual spending their money to promote a particular cause or campaign off their own back? They are not accountable to anybody at that stage, are they?

Dr Clark: There are, clearly, ways of avoiding transparency. The use of unincorporated associations seems to be one in that regard. Yes, there does seem to be the ability to do that. For instance, the ISC's Russia report pointed to Russians being able to do that. The permissibility regime that we have is very much beyond its sell-by date. We need to be thinking about tightening up here; otherwise a situation arises whereby—as was in the newspapers today—people will be asked for their identities to vote and yet nobody is really asking for the identity of those donating money to political parties.

Ronnie Cowan: That was very informative, thank you.

Q113 Mr Jones: I wish to declare an interest as a former member of the compliance committee of Vote Leave. Dr Clark, how should the Electoral Commission, as regulator, take into account the fact that the field it regulates is primarily a voluntary field, particularly in respect of local candidates in local elections and independent campaigners?

Dr Clark: Thanks for that question. It is a crucial issue, and that argument has been made about the Electoral Commission over the past 20 years and, indeed, before that, when the legislation was going through Parliament. In some ways, I am not overly sympathetic to that as an argument for the major parties, because it seems to be almost a kind of special pleading that volunteer treasurers and so on should be exempt from the law because they are volunteer treasurers.



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It is important that volunteers are active in political life, but there are three things that I suggest are looked at. The first is that the Electoral Commission continues—it does this already—with its advice, help and support for those fulfilling these roles. Secondly, political parties all have fairly articulated compliance departments. You clearly have more experience of that than I do, Mr Jones, but they do have compliance departments. I would like to see political parties offering more support to volunteer treasurers and so on in that regard. Thirdly, and absolutely crucial in this regard, it is not just about the Electoral Commission; it is also about the broader environment. If there is one thing that could help volunteer treasurers in executing their roles and not getting into difficulties and so on, it is to start dealing with the problem of the consolidation of electoral law. Normally, the complaint is that electoral law is complex and difficult to understand. We have covered that ground in previous evidence to the Committee, for your previous review, but I think that would go a very long way towards helping the parties' voluntary treasurers, agents, candidates and so on. In that case, it should be something that is taken forward again.

Q114 Mr Jones: Clearly you regard the rules as being overly complex and in need of consolidation. What would be the headlines of any reforms that you would recommend being adopted in that regard?

Dr Clark: Twofold, I think. First of all, clearly, we heard a lot about this in regard to local treasurers, accounting unit treasurers and so on, so look at the regulations that they are having to deal with and how to potentially simplify those or how to support those treasurers going forward. You mentioned candidates as well. I thought about the candidate regime as well. It stands alone in all this. It is not under PPERA; it is under other legislation. Bringing that together with PPERA is an obvious thing to try to do, and think of simplification along those lines.

Q115 Mr Jones: What about independent supporters of campaigns?

Dr Clark: Do you mean non-party campaigners?

Mr Jones: Yes.

Dr Clark: Again, I think this is probably an issue that is going to grow over the next few years. Again, I think advice and support is crucial, and by that I mean clear advice and support. That is fundamental. The Electoral Commission, as Dr Dommett mentioned, tends to try to deploy a preventive approach. It tries to provide advice and it tries to provide support to campaigners, volunteers and so on, but that is not to say that that cannot be improved. Doing that would go a long way to helping that as a group, if that makes sense.

Mr Jones: Thank you very much.

Q116 Rachel Hopkins: Dr Clark, you have suggested that the Electoral Commission take on candidate regulation under the Representation of the People Act. How would this help?



Dr Clark: Basically, as I have just suggested, by bringing everything under one house and enabling a degree of advice and clarity about who is responsible for what. The fact is that the fundamental revision of the Representation of the People Act was almost 40 years ago. There is a consequence. That is probably well out of date, and pooling it under a regime where it is being regulated by one single body where candidates can go for advice and so on would be incredibly helpful. The fragmented nature of electoral law in this regard helps no one.

Q117 **Rachel Hopkins:** What would this mean for police and prosecutors?

Dr Clark: That is one you will have to ask the police. Obviously, there are different evidentiary regimes between a civil law set of sanctions and the criminal law set of sanctions—different probabilities versus near certainty, and so on. Before things of that sort got to the police, in the first case, they would need to be very serious. I think that the preference of everybody involved in the field would be that they did not end up at that kind of level of seriousness. This is where the preventive approach comes in. Advice, support and simplification would be crucial to helping out in that regard.

Rachel Hopkins: Thank you.

Chair: Thank you, Rachel—commendably brief.

Q118 **Lloyd Russell-Moyle:** Before I move on to my central question, I just want to follow up on that last—*[Inaudible.]* You said that candidates—*[Inaudible.]*

Chair: Lloyd, I'm afraid we are losing you. I am just having a word in the Committee Room here to see if there are any issues. Lloyd, I wonder if you could sort your connection out. We will go to the next colleague and come back to you. Or perhaps you could try it now, Lloyd.

Lloyd Russell-Moyle: Is that a bit better now? Can you hear me?

Chair: Yes, it is. Thank you, Lloyd.

Lloyd Russell-Moyle: Perfect. Sorry about that. Parliamentary computers—what do you expect? I just want to quickly come back on Dr Clark's point that it would help candidates if there was a central place where they could go and seek advice. When there is a local dispute between two local candidates, how does it help having to ring up an anonymous number, compared with being able to speak to a local election official who knows what is happening on the ground? Is there a balance there that you need to strike?

Dr Clark: There is undoubtedly a balance that needs to be struck. Resolving things locally is always better than escalating things, and my advice in that regard would be to try to deal with whatever it is locally to begin with. However, if the Electoral Commission is producing advice and support, and if there is a unified regime around candidate regulation, for instance, there is no saying that they will not produce something that actually is quite helpful for candidates to begin with that stops something getting to that level of issue to start with.



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Q119 Lloyd Russell-Moyle: This distinction between local and national, and even international, is quite interesting, in terms of developing digital channels. I wonder if I can bring in Dr Dommett on this. What impact has the rapid development of online social media, information and digital campaigning had on elections?

Dr Dommett: That is a rather big question. I think digital technology has had a significant impact in a number of ways. It is now easier than ever before for someone to get involved in election campaigns. Whereas previously you had to create infrastructure in order to be able to go out and conduct ground campaigns, now it is possible for a lone individual at home, sitting on their own, to engage in campaigning. That is interesting, in terms of what it means for local and national divisions. You can imagine, for example, local activists running a campaign on a local issue in a different constituency without that local constituency knowing. It is possible for them to target adverts to specific geographies. Similarly, a national campaign could run interventions in localities with little understanding and knowledge from those local activists.

I think that capacity to intervene, the ease with which digital technology blurs those boundaries, the lack of transparency around what is happening and the different kinds of interventions that are being made by different actors really makes it difficult to draw clear distinctions between local, national and international. I am not sure that there is a clear solution to this kind of problem, but it is really interesting to think about how digital technology creates problems for some classifications that were created before these technologies emerged. There is a need to go back and revisit those to work out whether they are actually useful and, if they still are, how we provide and gather the information to work out whether the reporting is being done under the right heading.

Q120 Lloyd Russell-Moyle: That is really useful. You are not saying that campaigning that is unauthorised or even secret could not happen before digital, just that it can happen now at such scale and mass and at such distance that it is even harder to clamp down on. I think of those awful leaflets that went out during Peter Tatchell and Simon Hughes's campaign—they all denied sending them out, but they were still sent out. At least that was in a local area and someone had to physically put them through a door, whereas now it could be someone on the other side of the world. How should the Electoral Commission maintain trust in the electoral process if we do not even know where in the world these things are coming from? Do you have solutions for that?

Dr Dommett: This is a real challenge. In part, in thinking about solutions, it is important to think about the Electoral Commission as one actor among many. There is a challenge around trust and digital campaigning, but a lot of the trends that are leading to a cause of concern around distrust, such as misinformation or voter suppression, are not actually under the remit of the Electoral Commission. They do not have the remit to look at misinformation. It is important to think about what is within the Electoral Commission's power and remit to try to tackle the distrust that has emerged around digital technology. That is about making sure that we



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understand who is active within this space and that we are able to monitor and oversee, just like with offline campaigning material, what is happening, who is spending money in elections, and where influence is occurring.

There are certainly steps that could be taken to increase transparency online. It is excellent that the Government are finally moving towards digital imprints, to allow increased understanding of what is happening, but this is scratching the surface of what is needed in order to drive transparency online. My own research has shown that imprints in their current form contain non-informative information for voters, so they do not particularly help people understand who is actually funding, especially when it is a third-party campaigner who may be a new entrant on the campaigns landscape and therefore it is difficult to understand who they are or where their money has come from.

There is additional work to be done, thinking about what information we actually need to give to people in the digital and non-digital realms to help them understand who is trying to influence their vote. There needs to be some thinking about moving this conversation on digital imprints forward to make it more informative.

Part of the type of oversight that the Electoral Commission offers is about monitoring declarations—do we need to have more meaningful disclosures around where money is being spent online?—and following up issues where external actors flag areas of concern. Historically, the media and civil society have offered a really important scrutiny function in identifying concerning practices, by monitoring what is actually happening in campaigns. That is incredibly difficult to do online.

It is currently reliant upon the voluntary initiatives created by certain social media platforms, which are incredibly patchy and have been shown through an audit to be incredibly unreliable. Indeed, I have done research myself with people who used these archives, and they are not reliable. In thinking about how you could increase trust, it is about making sure that there are robust procedures to guarantee and offer insight into what is happening online, and that the Electoral Commission has the power to request additional information to follow up on these concerns and make meaningful sanctions where concerning practices are uncovered.

Q121 Lloyd Russell-Moyle: Let me follow up on that. You have talked about the money and the finances, and the imprint not being useful, but are we focusing too much on the finances and not enough on the messages? A lot of the online activity isn't hugely costly per se, but it can reach people in ways that are hidden. Do we need to move away from transparency about money and an obsession with following the money—although it is important—to an openness about who is targeted and what messages are put out there?

Is it beyond our wit, for example, to require all leaflets and online adverts to be registered in a central authority, with who they are being targeted at? Constituents contact me saying, "Why did I get that letter? How did



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you target me? Why did I get that advert? How was I targeted?" Do we need to be more honest, open and transparent in real time about the targeting methods and the message that goes out with that targeting, so that everyone can see all the messages that that candidate is putting out, and then judge that candidate or campaign honestly?

Dr Dommett: Those are really important questions and I have a lot of sympathy for them. They have been prompted by the rise of digital technology, because it is possible to micro-target in a non-transparent way, to an extent that can't be observed. I think there is a case for potentially giving people information about the extent to which they are being targeted, so that they understand why they are seeing a message and that not everyone is seeing it.

My pause for caution is that there is a danger that we are treating debates around digital technology as entirely divorced from campaigning offline. Targeting has been happening, as you just suggested, with leaflets, door-knocking and pretty much every campaign intervention going from a traditional political party. Even the targeting decisions of whether to knock on the door of a registered or unregistered voter happen all the time in campaigning interventions. While I think there is a case for thinking about what information we actually want citizens to have, I think we need to be very cautious about doing so because the implications of applying this to online and offline campaigning would create a huge potential burden in terms of requiring declarations of each campaigning activity.

I have sympathy, but I also would sound a word of caution that before we rush into creating these new transparency requirements, we need to really think through what they would mean in terms of the reporting requirements that we would then be placing on local activists, who are just out knocking on certain doors.

Q122 **Lloyd Russell-Moyle:** There is a difference between having a conversation on the doorstep and putting out a piece of printed literature that could be defamatory, or a piece of online material that can be based on half-truths or no truths, or be used to whip up fear and so on. Printed material, whether it is physical or digital, could easily be deposited somewhere in real time, couldn't it, without much burden?

Dr Dommett: It could be deposited. I do think it is still possible to give very different information to voters through conversations from as it is printed, but you could create an archive. There have been some efforts through academics to create archives of leaflets, for example, to allow scrutiny and independent examination. There are increasing calls for that to be done online.

As an academic, I am in favour of that kind of transparency and disclosure, because I think it does enable some very interesting studies of what is going on. The only word of caution I would have is that it is quite easy to draw the boundaries of what is and isn't campaign material in the offline world—a leaflet or a poster. In the online world, it is far more challenging. There has been a lot of ongoing work, actually, within DCMS



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to try and determine what a political advert is, for example. We can see that each social media company has come up with a different definition of what a political advert is. Drawing the boundaries about what should and should not be within those archives is a real technical challenge, but it would certainly help to facilitate greater research and scrutiny.

Chair: Thank you. I don't think there is a need for us to be reticent or coy on this issue, because I am quite sure we all know what we are talking about, Lloyd. If I can hand over now to John McDonnell.

Q123 John McDonnell: Thank you for those responses, Dr Dommett. Lloyd has opened up a can of worms and I look forward to the seminar that you will now organise for all of us to go through that in more detail. I just refer you—you most probably know about this—to the reports from Open Democracy over the past few weeks about third-party campaigning. That does relate to the non-declaration or declaration weaknesses in third-party campaigning that we need to address. But I think we all have the same plea that Lloyd has of trying to get to a situation with online campaigning where people can be given the best opportunity to determine truth and untruth, and at the same time to determine where the information is coming from. That might be a pious hope and a challenging hope, but it is one that I think we need to address in some form as rapidly as possible.

Can I just come back to the issue around political parties? All of you have addressed that to a certain extent. What sort of challenges do you think political parties face in accounting for spending accurately in modern campaigning? We have all experienced this.

Just a few supplementary questions to speed us on our way. How effectively do you think the Commission supports parties in addressing these sorts of issues? Again, a lot of it is about investment of resources by the parties themselves, but the assistance from the Commission needs to be looked at.

It has been raised by Mr Cowan that enforcement usually occurs months if not years after the alleged breach. Would real-time reporting of spending using some sort of reporting portal help with compliance and prevent enforcement by catching things much earlier? Finally, in your view, does the Commission present data on its enforcement actions and fines promptly, transparently and consistently? Obviously, in doing so, it could assist in deterrence as much as anything.

Chair: I think that question was first of all directed at Dr Dommett.

John McDonnell: Sorry, Dr Dommett, I have landed them all on you. I am really sorry.

Dr Dommett: That is fine. I think that means I get to pick the one I can answer, and then defer to the other two. Always good to go first.

I think the Commission does provide guidance to political parties on how to declare and make sure they are compliant with the spending returns.



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That has been reviewed recently, with a view to simplifying and clarifying some of the categories that overlap. In a way they are enforcing, and helping to support parties that are compliant with, a disclosure system that potentially isn't particularly useful. I think there is perhaps a preceding question about what parties should be disclosing. Particularly in the realm of digital campaigning, for example, there is no separate category on digital spending, so those disclosure requirements are pretty useless in understanding what is going on. I think the Electoral Commission does a good job in supporting parties. It could potentially make itself a little bit more open in terms of some of that support. For example, with work I have done with colleagues, we were looking at whether it would be possible to open up an offer like webinars, for example, for agents, on how to make those disclosures at a local level, to really open up that process and show exactly what is wanted from the ground up—so, there are steps that could be taken there.

I think in regard to enforcement and the retrospective look, there are real challenges around real-time declarations, but I point the Committee to work that has been done by one of my collaborators, Dr Sam Power, who has been working with the CSPL on their inquiry. He has done a review of the different reporting requirements that are apparent in different countries. So in some places—for example, the US returns go up within 48 hours; there is much more speed in places like Australia, for example. If it is looking at the returns after elections: in the USA, again, it is 48 hours; in Australia, within 15 weeks; but is six months within the UK. So there is a significant lag there and it feels almost like the Electoral Commission works to its legislative deadline of having to field these things after six months. There could be a case for legislating to make that disclosure requirement within a more condensed period. The only thing I would say with that is that it would potentially have implications for resource and so that would need to be looked into, but theoretically it would be possible to make disclosure more timely.

Just on that final question, on whether it presents data in a prompt, transparent and consistent way, I think I have two answers. As a researcher it was with incredible frustration that I was waiting for the returns from the general election from the last year, and there was very little information about when they were going to be released, even after the deadline for disclosure passed. In preparing for the Committee I did find that the Electoral Commission has now explained that it was a covid-related delay, so it may be an aberration, but there was a frustration about the lack of information about when disclosures would be made. I think there is potential for the Commission to maybe be slightly more proactive in how it is publicising and drawing attention to its disclosures when it comes out, to enhance transparency. For example, as a researcher working in this space I usually find out about disclosures from the odd media story that you see, and there is potential to maybe build a community of people who are interested in this work and to be more proactive in drawing attention to that beyond those media releases; but I would be interested to hear what the other two panel members say,



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because I think they have more day-to-day experience with rummaging through the Electoral Commission's websites and disclosures.

Q124 **John McDonnell:** Can we throw it open then? Dr Clark, have you any comments?

Dr Clark: Not a huge amount—just very briefly: I think one of your questions was about how they put information online about the cases they have been investigating, and so on. The information, there, is up as quick as, I think, the law allows them to do. I think they could make that information more accessible. It is currently up on kind of internet tables, which are not very easy to work with or to get to the bottom of. I think there could be a bit more transparency around this. Indeed, the Commission's website is often a frustration in trying to negotiate this. I am sure that it is not just us as academics who find that but those who have to deal with it on a day-to-day basis.

In relation to your point about electoral justice taking a long time, the one thing I would add is that it is likely to take even longer, given the backlog in the courts, if things ever end up at that kind of level in the first place.

Professor James: I echo everything that has been said there by Dr Dommett; she is the expert and you have got real detail there.

One of the things that the Electoral Integrity Project does is to provide a global rating or ranking of the quality of elections worldwide, and we do that through expert surveys of experts everywhere. We have collected data from 2012 to 2018, which has involved over 3,500 experts. One of the questions there is to what extent a party's candidates publish transparent accounts. Actually, the UK performs very well on that characteristic. There are lots of other faults for the UK in how we run elections. Overall, for example, the UK ranks 39th out of 166 countries. It is on the 23rd percentile, so it is kind of like a B+ or just a B. However, in terms of transparent financial accounts, it is ranked 15th at the ninth percentile. There are obviously huge challenges—increasing challenges—in the role of dark money and of the lack of transparency with adverts. We are going into a very different era, as colleagues have flagged up, and there are obviously major challenges that you are also pointing to.

Internationally, the system seems to be working well, although there are lots of areas for improvement. But sometimes at international conferences when you show EMBs what the Electoral Commission is doing, they are quite impressed that there is so much information that they can see and that journalists can therefore go in and look at who is funding who. It is not perfect, but there is a lot of good material there none the less.

Q125 **John McDonnell:** Did your assessment include the referendum?

Professor James: It doesn't include the referendum, no, because they are sort of national elections and so would not have been included in that sample. But I am not denying at all that there are major issues with digital campaigning—that is a real problem. But that is a real problem everywhere around the world.



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John McDonnell: I suspect we might have taken a dip if we had included the referendum, but we'll see.

Chair: On that note, we'll move on to Mr Randall, please.

Q126 **Tom Randall:** Dr Dommett, the Government are bringing forward legislation on online harms and the regulator for any proposed online harms will be Ofcom. How do you think the Commission should interact with Ofcom once that legislation has been brought forward?

Dr Dommett: The online harms paper touches on some issues that are of relevance to elections, but as the final proposals have fallen it is not particularly focusing on issues of electoral law. There is some mention, for example, of misinformation as a potential harm. Obviously, though, because the Electoral Commission doesn't focus on content, there is only an overlap rather than a clear role to work together.

That being said, I think that greater co-ordination across regulators working in this space is absolutely vital. It is something that Professor Helen Margetts and I recommended in some work that we did on working with different regulators with responsibility for digital.

Particularly around elections, there is a case for what we have called a regulatory liaison committee, where you would see regulators who have different responsibilities with regard to dealing with digital companies and platforms, for example, coming together to think about the possible digital challenges that you would encounter around elections.

That kind of regulatory co-working happens to a limited extent within Government currently. There are groups that meet very infrequently, according to my understanding.

Going forward, I think the Electoral Commission should certainly create strong links with Ofcom, and there should be thought at a cross-regulatory level about how skills and competencies around digital are being cultivated. Ofcom is currently rapidly hiring a lot of experts in digital to be able to deal with its new remit, and it would be excellent if those skilled staff were able to work and share their expertise with people within the Electoral Commission, because one of the key challenges that any regulator working in this space faces is understanding how different digital actors operate, and therefore what they need to be aware of when offering scrutiny in this space. There is definite potential for co-learning and synergistic work, but on an actual day-to-day level, it is unlikely that the Electoral Commission would need to work hugely closely with Ofcom, because there is not a clear overlap in their remits.

Q127 **Tom Randall:** If social media companies end up becoming more regulated than they are at the moment, particularly in regard to election campaigns, where should the regulatory authority for that sit? Should it be with an Ofcom-type body or with the Electoral Commission, or with someone else?



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Dr Dommett: This is a real challenge. I think it makes sense for it to sit with Ofcom as the primary regulator in this space. This raises the question about the sharing of information between regulators, and there is a real challenge at the moment about the inability of the Electoral Commission to share information with other regulators. If we had a situation in which almost every single regulator ends up with their own digital team, who are then working with platforms and trying to regulate, we would end up with a very fragmented regulatory system, which you would imagine social media companies would be able to play to their advantage.

What is going to be key is for the different actors within Government to have a very co-ordinated approach in terms of how they are working and trying to regulate these spaces, and making sure that there is a high degree of consistency in the approach they are taking. I would err towards the side of giving Ofcom the power, just because that seems to be where the resource and the expertise is being invested within Government, but I think more attention needs to be paid to how to ensure that the Electoral Commission is able to interface and share information with that regulator, to ensure that they can also work effectively through them to oversee social media companies.

Q128 **Tom Randall:** When we opened this session, you talked about how the landscape has changed so much; you know, going back 10 years, the way that politics is done has changed so much in that time. We do not know how we are going to be doing political campaigning 10 years in the future. How do we ensure that any revised regulatory regime is future-proofed, so that it is still going to keep up with trends that we perhaps just cannot predict at the moment?

Dr Dommett: This is a really difficult question; it is one I have pondered myself, and I am not sure I have a completely satisfying answer to it. A common approach in tackling this kind of challenge is to take a principles-based approach, and to invest in defining what we want good practice to look like in this area going forward so that we can adapt and be responsive to technological change. I think that approach is sensible.

It really means thinking about those core principles, especially with the Electoral Commission—you know, what are the values that it is promoting in order to fulfil its key objectives? It is around oversight. It is around transparency as a means of securing trust, so that means thinking about what kind of transparency and how that goal can be pursued. Maybe there is a need to step back to those core functions and think about what the principles are through which those functions are promoted, and then think about practices that can evolve in order to enable the promotion of those ideals.

Tom Randall: Thank you. Do Dr Clark or Professor James want to mention anything? No? Thank you, Chair.

Chair: Thank you, Tom. Just to declare for the next questions that I am a member of the Speaker's Committee, by virtue of being the Chair of this Committee.



Q129 **John Stevenson:** My questions are about governance and accountability.

Dr Clark, you initially mentioned the importance of independence. Quite clearly, you see the Commission's independence as being very important. Three questions flow from that. First of all, what is your view on the political membership—the appointees? Presently, the Electoral Commission is accountable to the Speaker's Committee. Given the fact that we have one party dominating Parliament right now, is the composition of the Speaker's Committee a concern to you? Thirdly, where should accountability lie within Parliament? Should it be the Speaker's Committee, or should it be this Committee or some other part of Parliament?

Dr Clark: Thank you for those questions. I will take them as you gave them to me. First of all, on political party commissioners, we need to remember where we were when they were introduced back in the late 2000s. The reason they were introduced was because there was a sense in the first five, six or seven years of the Electoral Commission that they had not been taking account of the real-life experience of being active in a political party. As a consequence, subsequent legislation added the party-nominated commissioners to the Commission. There were four party-nominated commissioners on the Commission's board of 10. I think I am right in saying there was one from the SNP, one from Labour, one from the Conservatives and one from the SDLP to represent smaller parties.

My sense is that that works relatively well, looking at international comparative evidence. Where electoral commissions tend to have party commissioners on their boards, what seems to happen is that they almost balance each other out, to some degree. But let's remember that the commissioners sit on a non-party basis. They are recommended to do that by their party leaders, to bring in the expertise of having been active in political parties. If we were to change that, we would end up back in the situation that we were in between 2000 and 2007 or thereabouts, whereby the next argument would be that the Commission is not taking into account the reality of life in political parties, so I have no real problem with the party commissioners.

There are issues with the Speaker's Committee. I note that the Chair is on the Committee, but there are two issues. The first, as John Stevenson has just mentioned, is the fact that one single party has a majority in this regard for the first time ever. The second is transparency, because there is not that much known about what the Speaker's Committee on the Electoral Commission discusses. I would add a third thing: it is not wholly clear that the Speaker's Committee considers the interests of voters in its deliberations. I have a serious proposal for the Committee to think about in this regard: the Speaker's Committee for the Electoral Commission could fall into line with a couple of other Committees that are involved in regulating political behaviour, by appointing lay members to it—in other words, lay members to represent the voters' interests. With the Committee on Standards in the House of Commons and SCIPSA—the Speaker's Committee on IPSA—you have lay members on both of these bodies in order to represent interests other than just those of political

parties. Potentially this would be a way forward for the Speaker's Committee on the Electoral Commission to bring in another group of stakeholders and to deal with the issue of public confidence in the accountability of the Electoral Commission to Parliament.

In terms of the broader question on where that should lie, it is entirely appropriate that the Electoral Commission comes before this Committee and gives evidence to it. There may well be various other inquiries—not just on the Electoral Commission—that the Commission comes and gives evidence to you on. I don't have any difficulty with that.

There has been an issue with other regulators; IPSA's former chair Ian Kennedy has noted overload in the kind of scrutiny they were given from Parliamentary Committees. I do not think that is necessarily the case with the Electoral Commission. I think broadly the arrangements are okay. It is perfectly reasonable for control of it to sit with the Speaker's Committee, but I do think the Speaker's Committee does need some reform in this regard. I point particularly to lay members. Parliament has already conceded that on other Committees where the regulation of political behaviour is involved.

Q130 John Stevenson: Professor James, you have indicated that you would quite like to see academics taking more of a role with the Electoral Commission. Could you explain why, please? Could you then go onto the two questions I raised about the Speaker's Committee and the wider accountability to Parliament where that should necessarily lie?

Professor James: I guess these questions are broadly related insofar as what we're thinking about here is the governance and the people that are involved in making the decisions about how our elections are run. Clearly, the political parties there have some representation in terms of the membership on that Committee. I guess I am concerned more broadly about the potential role of civil society here. One disadvantage, for example, of having political party appointees as commissioners for the election is that it crowds out other people. There are other ways in which political party experience could be brought in here. So potentially involving civil society groups and having a broader network of involvement here.

In more general terms, outside of all formal Committees, what is often the case is that decision making tends to work through a triangle of regular meetings between the Cabinet Office, the Electoral Commission and the Association of Electoral Administrators or SOLACE. There are regional variations there, but it tends to be quite governmental in nature. I think there just needs to be a way of bringing in a wider variety of stakeholders. There are some mechanisms; the APPG on political literacy is a great example of where you have got an organisation like Shout Out UK being involved. There is always a risk that civil society groups could be put too much to the fringes here. This is something that could be brought through as a whole.

Q131 John Stevenson: And the general responsibility of the Electoral Commission to whom in Parliament? Speaker's Committee or this Select



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Committee, for example?

Professor James: I don't see any problem with the Speaker's Committee. I think Dr Clark's proposal about lay members is a good one. An alternative situation could be to require a Committee to make two-thirds majority decisions in a situation where you have a single party in control—that would be a kind of international experience. At the moment it seems to be making unanimous decisions so there isn't a problem, but it is futureproofing that so that one party isn't overriding other parties.

John Stevenson: Dr Dommett, do you have any observations or comments?

Dr Dommett: No, I will leave it to the other two, because they have much more expertise than me in this field.

Q132 **Mr Jones:** Dr Clark, your evidence makes it clear that you hold the Electoral Commission in high regard. Is that right?

Dr Clark: Yes.

Q133 **Mr Jones:** And you have been highly critical of politicians for their criticism of the Electoral Commission, particularly the Conservative party and senior officeholders in the Conservative party.

Dr Clark: Yes.

Q134 **Mr Jones:** Talking about fair criticism, you said, "current attacks on the Electoral Commission and its senior office holders by the Conservative Party go well beyond this, are entirely inappropriate and amount to attacks on the Commission's independence." That's right, isn't it?

Dr Clark: That's absolutely correct, I have nothing really to add to that. That is my position.

Q135 **Mr Jones:** In terms of independence, do you equate that with impartiality?

Dr Clark: I think the two things certainly overlap and I don't really see a difficulty with impartiality and the Electoral Commission.

Q136 **Mr Jones:** You don't think, therefore, that attacks by senior Conservatives on the impartiality of the Commission are justified?

Dr Clark: There may well be reason for senior members of the Conservative party to point to things that the Electoral Commission can do better. That is not what is going on. There have been calls from the party chairperson in the newspapers, and indeed in evidence to this Committee, for the abolition of the Electoral Commission, and there are senior Conservative Back Benchers talking about knowing that this Committee will recommend the abolition of the Electoral Commission. Now, it is entirely up to the Committee what it decides, but the fact that senior Conservative Back Benchers and senior party members are going around saying those sorts of things is wholly inappropriate for the maintenance of an independent Electoral Commission.



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Q137 **Mr Jones:** Do you think that the electoral commissioners have always displayed impartiality?

Dr Clark: Yes.

Q138 **Mr Jones:** How would you comment, therefore, on the remarks by the former chairman of the Commission, who, shortly after he was nominated to chair the Commission, and after the referendum, said in a speech that he regretted the result of the referendum, and complained about the “panoply of Eurosceptic nonsense about the EU” heard during the campaign. Does that appear impartial to you?

Dr Clark: That was a clearly unwise comment, but I would just note—if I understand the chronology of events correctly—that Parliament still went on to appoint him.

Q139 **Mr Jones:** Yes, but if you could answer my question. Would you not agree that that was not an impartial comment to make?

Dr Clark: I have just said that it was an unwise comment.

Q140 **Mr Jones:** Unwise and not impartial. Would you agree?

Dr Clark: I have just said that it was an unwise comment. I think I have answered your question.

Q141 **Mr Jones:** I do not think you have, because you are refusing to say whether you agree that it was not impartial.

Dr Clark: I am sorry, but what matters is how he then goes on to implement his role. Let us remember that he was chair of the board, and he was not involved in the day-to-day workings of investigations and so on and so forth. Parliament still went on to appoint him. Those were unwise comments—they have given rise to the discussion we are having now, so they were very clearly unwise—and I do not have anything to add to that.

Q142 **Mr Jones:** What about the remarks of the Conservative nominee for commissioner, who was commissioner at the time, and who actually supported calls in the House of Lords for a second referendum. Was that unwise and impartial?

Dr Clark: I am sorry, which commissioner are you talking about?

Mr Jones: Lord Horam.

Dr Clark: And he said what, precisely? I am not aware of these comments, Mr Jones.

Q143 **Mr Jones:** It is surprising therefore that you have been so bullish in the advice that you have given the Committee. In July 2017, following the speech of another peer who said that a second referendum was needed, he said, “There is great logic in what the noble Lord has just said about...the possibility of a second referendum. I agree with him that there is an absolutely logical case for that.”



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Dr Clark: We start to go back to the issue of political party commissioners. I am sure that those commissioners have not lost their political beliefs—I assume they still believe them. Lord Horam is still sitting in the legislature, and he is entitled to his views. I would say that that was unwise and hardly demonstrates impartial views, but I have nothing in particular to add to that. My view is that the Conservative party has embarked on a campaign basically to influence the Electoral Commission by threatening to abolish it and so on. Don't get me wrong; other parties have engaged in criticism of the Electoral Commission in the past well—this is not an anti-Conservative thing—but this goes beyond the realms of acceptability.

Going back to my original point that I started this session with, the Electoral Commission is a public good. We all know a lot more about the conduct of electoral politics now than we did 20 years ago. I think that is ultimately a good thing.

Q144 **Mr Jones:** What about Professor David Howarth, who is a Lib Dem appointee as commissioner, as you know? He asked in an online article how the referendum could be allowed to bind the young, given that, "Leave's majority will have been reversed merely by the process of Leave voters dying and new Remain voters reaching the age of 18." Is that unwise? Or is it impartial? How would you describe that?

Dr Clark: Given that no Parliament can bind its successor, I am not sure that that is necessarily that big a point. He is talking about the generational thing. He is entitled to talk about the generational thing. Again, if he has a role with the Electoral Commission, that is probably unwise, but I have no more to say on this.

Q145 **Mr Jones:** So we have three unwise electoral commissioners, including the nominee for chairman of the Commission.

Dr Clark: And how many electoral commissioners have there been who have not made these sorts of comments? Certainly more than three.

Q146 **Mr Jones:** Dr Clark, you conducted an evaluation of electoral administration in the EU referendum, didn't you?

Dr Clark: I did indeed, yes.

Q147 **Mr Jones:** And that was commissioned by the Electoral Commission.

Dr Clark: It was commissioned by the Electoral Commission and I conducted it with Professor James, who is also on this call.

Mr Jones: Thank you very much.

Chair: Professor James, you indicated that you wished to add something.

Professor James: I have just a few quick points to make. One of the questions was about the independence of the Electoral Commission. I spoke about the Electoral Integrity Project's work in terms of collecting data and the management of the running of elections around the world. There are lots of faults that that picks up in terms of the running of



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elections. One that is the highest regarded is in terms of where the electoral authorities were impartial, and the UK is ranked at the eighth percentile. What this tends to do is merge the Electoral Commission into one pot with electoral officials such as returning officers and so on, but that does seem to be very much the case there.

There is an argument maybe that one disadvantage of having political party members as commissioners is that they make off-the-cuff comments that are more likely to be picked up, and that leads to criticism. But in the round, if we are talking about a body that has been here for 20 years, these things are likely to be found. Overall, I am not aware of any evidence that the Commission has acted improperly or impartially.

Mr Jones: Thank you very much.

Chair: We will briefly go to Lloyd Russell-Moyle. We have been storing Jackie Doyle-Price up and we must get to her quickly. Lloyd first.

Q148 **Lloyd Russell-Moyle:** I just wanted to seek clarity on that last set of questions. Am I right in thinking that a body can be impartial and made up of partial people, and those partial people could therefore balance out the body to ensure its impartiality? Would I be right in suggesting that Mr Jones's questions are a good demonstrator of how partial people can make up an impartial body?

Dr Clark: Yes, I agree entirely. If you go back to my comments about the political party commissioners, that seems to be simply what's happened, and international evidence would suggest that that is what happens. What matters is that the Electoral Commission acts impartially in what it does in its investigation work, its regulation work, and its directions and so on and so forth.

Q149 **Lloyd Russell-Moyle:** But the commissioners can still have their own view and that is perfectly acceptable.

Dr Clark: Sure. The whole point of having those political party representatives as commissioners nominated—although they sit independently, they sit on a non-party basis—is to bring that evidence from recent experience with political parties to it. I see that they do that, but they still clearly have their own views.

Chair: Thank you very much. Jackie Doyle-Price next.

Q150 **Jackie Doyle-Price:** I would like to turn attention towards learning from other countries' experiences of regulating elections. Can I start with Professor James? How does the Electoral Commission perform relative to other bodies around the world? You touched on it in your previous remarks.

Professor James: At one level it is quite difficult to make a perfect comparison of the Electoral Commission with other bodies around the world, because of course in each country a combination of different bodies contribute towards the running of elections. In the UK you have got the Electoral Commission, returning officers and so on. In some countries, like



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India, for example, you just have one body, the Electoral Commission of India, so it is much easier to make a direct comparison.

As I mentioned before, we have done expert evaluations of electoral integrity around the world. Generally speaking, the UK ranks 39th, which is on the 23rd percentile. For areas in particular that the Commission is involved in—such as the electoral authorities were impartial, political parties publish transparent financial accounts, electoral officials were fair, and votes were counted fairly—elections in the UK do particularly well.

There are some areas where the UK fares particularly poorly. Voter registration completeness is much lower down the order. Clearly, the Electoral Commission only plays a slightly distant role there in terms of advising, but it has done some important reports there. In answer to the question about whether rich people buy elections, the UK is ranked 60th, so there are some concerns in that area.

So, broadly speaking internationally, the Commission does well in the areas that it looks at and is involved in, but that is not to say there are not substantial areas for improvement in the future.

Q151 Jackie Doyle-Price: Should we explore whether it should be more involved in voter registration?

Professor James: That is an interesting idea. As I say, the completeness of the electoral register is a major issue. It has been estimated that up to 9 million people are missing or inaccurately registered on the electoral register, so things need to happen. I recently wrote a report for the Joseph Rowntree Reform Trust that looked at the idea of automatic voter registration and some mechanisms that could be introduced. We recommended automatic voter registration, for example, for 16-year-olds when they get their national insurance number. You could look at other groups there, too.

Most of these things do not require the Electoral Commission to get involved; they could happen anyway. But one thing that the Electoral Commission could do—there have been some ideas here—is the possible move to a single electoral register. We have 370-plus electoral registers in the different areas, and that is just parliamentary registers; you have the same for local electoral registers there as well. Countries like Canada, who have gone down the route of combining these into a single electoral register, have a much better voter experience at the election. The central body has taken a key role in that—Elections Canada has been absolutely crucial in that. So yes, there is a role for the Commission if you are to go down the route of a central electoral register, but other reforms may be a little bit more important than that one.

Jackie Doyle-Price: Thank you. Dr Clark, what is your view?

Dr Clark: I have nothing really to add to that. I think Professor James has largely answered the question.

Q152 Jackie Doyle-Price: Thank you. My final question, starting with Dr Clark:



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what do you think is undermining public and political confidence in the Electoral Commission? Is that shared in other jurisdictions as well?

Dr Clark: I think all electoral commissions are challenged at the moment. As I mentioned in my opening remarks, there is an international element to this, but there is also a domestic element to this. There is lots of concern about public satisfaction about the electoral process as well, but that tends to ramp up when you have political parties casting aspersions on aspects of the political and electoral process. We see this across the world. It is not so much that electoral commissions are necessarily doing anything to affect public confidence in the electoral system; it tends to be about how particular parties, candidates and campaigners are dealing with these things and seeking to undermine some of the processes that underpin the electoral process.

Professor James: One of the things that leads to trust in elections is, obviously and unsurprisingly, the quality of the elections themselves. Research has shown that the things that are important are: statutory independence, which we have in the UK; well-resourced election machinery, which we are struggling a bit with in the UK; well-trained and managed staff, where we are doing a bit better; and transparency of political parties, which we have spoken about.

Having a well-run election is crucial. The research shows that the media cycle, and the role of the media, is particularly important. Obviously, the more criticisms you get in the media, the more trust goes down. Clearly, that could be a result of problems with an election, but it can also be the case that newspapers, or particular journalists and editors, are pushing a key story that is not actually evidence based.

The third thing that is really important is the characteristics of individuals. What is increasingly becoming the case, it seems, is that confidence in elections is shaped by whether an individual's party actually won that election. In other words, if your party won the election, you feel lots of confidence. If your party lost the election, you feel less confidence. That is really troubling, because what we really want to have is a situation where we all accept the result of the umpire, or the response of the referee.

That is where it is really important that people talk about elections responsibly, and about faults in the elections proportionately, and that it is well grounded and evidence based. That is a responsibility, I guess, for politicians, but also for journalists and what is posted on social media as well. As we saw at the US Capitol very recently, these are unthinkable things that we never thought would happen, and we have to be very careful and treat with a lot of care our democracy, because it is really important.

Q153 **Jackie Doyle-Price:** That leads me on to another thought. Where the result is clear, people will accept it, but where the result is close there are obviously question marks about the rules of the game and the performance of the regulator. If we look at some of the enforcement decisions and enforcement activities of the Commission, to what extent



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do you think that the closeness or otherwise of an election determines what they do? We have seen examples like Tower Hamlets, where there was quite a lot of evidence of bad behaviour in the conduct of those elections, but to what extent would the result have been different, as opposed to the referendum, where it was a close result and, clearly, there was a question about whether activities influenced the outcome?

Professor James: I agree: certainly the closeness of the election is really important in terms of the extent to which people naturally trust it. There are things that we can do here in terms of increasing access to electoral justice. We do not do that very well in the UK. You mentioned the Tower Hamlets case. There is an example that dragged on for months and months, and the people involved did not get justice. It was in the newspapers for a long period of time. Clearly that is going to eat away at the confidence that we have, so a much quicker system of electoral justice is really important there.

Another thing, which I think I have proposed to the Committee before, is having a very simple complaints system that the Electoral Commission could manage itself. The citizen finds out that they did not get the chance to vote on election day, for some reason. They did not get their poll card, there was a problem with the registration, or there was some kind of issue there. Maybe a candidate is unsatisfied with the process. To get some kind of redress they have to go through full legal proceedings. A simplified process where people can make a short complaint that would not necessarily lead to legal action, but they could raise it with the Electoral Commission, which could log the problems. On the basis of that, they could get some sense of whether remedial action is needed.

We are used to doing that with things like if our mobile phone is not working, or if there is something wrong with our shopping order. We put in a complaint and things get fixed. There is no way for voters, parties and candidates to do that quite so easily. I think that that would make quite a big difference to leaving people satisfied and not making claims that are not necessarily in proportion to the scale of the issue in the first place.

Q154 **Jackie Doyle-Price:** Thank you. Finally, Dr Clark, you have been very forthright in your views about Conservative politicians criticising the Commission, but frankly we have all had experience of making referrals to the Commission and it seems very subjective which things are investigated, when actually it is simply a matter of law. Either a criminal offence has been committed or otherwise. It is the character of regulation, when it comes down to it. What observations do you have in comparison with other countries on that?

Dr Clark: Thanks for that. I would note that the Electoral Commission do not execute criminal law but civil cases. If you look at what they have investigated, it is not the easiest part of the website to negotiate. That was one of the things that I was referring to earlier, but if you go through the investigations that they have had, you will see that they investigate all sorts of organisations. Unite the union is one of the top ones. Momentum is not much further underneath. There are some party accounting units



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further down. There are third parties. There are major parties. There are all sorts.

I do not really see any difficulty with any sort of bias towards what they are investigating or anything of that sort, in that regard. If they could be better at communicating what they are doing and why they are doing it, that is certainly something that should be looked at, but I do not think that that is a problem that is exclusive to the Electoral Commission. I think that most people's experience of communicating with Government would be of that kind of nature as well.

I come back to a point that I mentioned earlier on: the confusing nature of electoral law. To some degree, trying to sort that out as an issue might also help in this particular area. I do not really have any international examples to speak to in this regard. Other academics may well be better placed to speak to those from an international perspective.

Chair: May I thank our three witnesses for an at times bracing exchange? I am very grateful for your time, and grateful to my colleagues around the country. To our witnesses, if you have submitted written evidence but wish to add any more, you are more than welcome to do so. Thank you very much indeed for sharing your interests and expertise with us.