

Public Administration and Constitutional Affairs Committee

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

Tuesday 27 April 2021

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Members present: Mr William Wragg (Chair); Jackie Doyle-Price; Rachel Hopkins; Mr David Jones; Tom Randall; Karin Smyth; John Stevenson.

Questions 155 - 205

Witnesses

I: Dr Holly Ann Garnett, Assistant Professor of Political Science, Royal Military College of Canada and Director of the Electoral Integrity Project; Professor Pippa Norris, Harvard University, Comparative Political Scientist and Founding Director of the Electoral Integrity Project; and Dr Theresa Reidy, Political Scientist, Department of Government, University College Cork.

Examination of witnesses

Witnesses: Dr Holly Ann Garnett, Professor Pippa Norris and Dr Theresa Reidy.

Q155 **Chair:** Good morning and welcome to a public meeting of the Public Administration and Constitutional Affairs Committee. This is our second oral evidence session into the work of the Electoral Commission, which today focuses on international comparisons. I am grateful to our three witnesses today for giving of their time and expertise in answering our questions. I am going to ask them to introduce themselves for the record, starting please with Dr Garnett.

Dr Garnett: I am an Assistant Professor of Political Science at the Royal Military College of Canada and cross-appointed at Queen's University. I am currently the director of the Electoral Integrity Project.

Professor Norris: It is a pleasure to be with you. My name is Pippa Norris. I am a comparative political scientist now at Harvard University. I have been there now for three decades but before that I was in Edinburgh University working on British elections. I have also been the founding director of the Electoral Integrity Project, for which Dr Garnett



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has now taken on responsibility. I also have practitioner experience because I used to head up the UNDP—the United Nations Development Programme—democratic governance practice, working worldwide on elections and strengthening democracy. It is a pleasure to be with you today.

Dr Reidy: Good morning. It is a great pleasure to be with you today. My name is Theresa Reidy and I am a senior lecturer at University College Cork. I work primarily on elections and referendums in the Republic of Ireland.

Q156 **Chair:** My opening questions are primarily directed towards Professor Norris and Dr Garnett, and then we will come on to Dr Reidy shortly. Professor Norris, today's evidence session considers the UK's Electoral Commission's reputation remit and powers in governance and accountability mechanisms from an international comparative perspective. On what basis or criteria can or should the performance of electoral management bodies be assessed?

Professor Norris: Electoral management bodies are obviously a critical issue in every country around the world. There has been increasing development about the criteria that should be there and the standards. Essentially there are six different criteria.

First, de facto independence from undue interference from anybody, whether it is international and foreign bodies, political parties or the Government. Secondly, there has to be integrity, honesty and a sense that it can be trusted by the public and by everybody—all the politicians and everybody engaged in campaigning. That of course means transparency, one of the key aspects that the Electoral Commission has always emphasised as one of its core values, so that people can see that the work is effective and not in any way unfair.

Fourthly, impartiality. That is increasingly difficult, particularly because elections have become much more partisan and polarised. Things that we used to take for granted 10, 15 years ago are now much more a matter of public debate. Fifthly, for any government body there has to be efficiency, meaning effective roles for the taxpayer. Even small things in elections can sometimes go wrong and then that loses public trust. And then professionalism—making sure that the standards are explicit, and that there are ways to evaluate them, and that oversight bodies, like your own and others, can work out how the work of the commission is effective and step in to provide recommendations to improve it.

Those are the performance criteria, which are in particular implemented in many places around the world, but to different degrees.

Dr Garnett: I would echo most of what Professor Norris said absolutely. I would just like to take some time to delve a little deeper on two of the aspects that she mentioned. That is the independence issue and the



capacity issue. Each of these have a de jure or a formal legal component, and a de facto or a component in practice. Both have to be considered.

Independence we often talk about in election law to mean that the election management body—EMB—is formally separate from the executive branch of Government, meaning that an assigned agency, rather than a Government Department or Ministry, will manage elections. This is important because those managing elections need to be independent from those running in the elections. We know that election management decisions—things like the procedures and the tactics used—can have implications on who votes, and thus the results. It is important that an election management body is not being run by somebody who is being elected in that election.

In addition to that formal act of independence, we also know that just having an independent model of an election management body is not sufficient—that that aspect of impartiality needs to come in as well.

There are certainly countries where there are independent election management bodies formally that are actually not all that independent. This one is less easy to measure or to legislate, but some key factors might be the time that an EMB has been in existence, has built up that length of time of demonstrating its impartiality, its mandate, its broader public expectations of the EMB. But I would highlight that having it in this independent model certainly makes it easier to have this de facto impartiality.

Looking at the second issue of capacity, again, there are both the de facto and the de jure components there. Any election management body needs to have the resources at their disposal in order to run competent elections. Budgets are a good starting point but we also know that simply having a high budget or a wealth of technology or any sort of things at your disposal are not necessarily sufficient. So capacity also includes having very well-trained, experienced and qualified personnel who have a breadth and depth of experience.

This can be assisted by having an Electoral Commission that has personnel that are working full-time year-round throughout the electoral cycle to be gaining this competence in order to have a high-capacity EMB. Those two issues would be the ones I would pull out.

Q157 **Chair:** How easy is it to make international comparisons between those electoral management bodies with different structures, and indeed different functions? Based on your research and analysis, which electoral and management bodies are “world-leading” and why?

Professor Norris: This is very much part of the function of the Electoral Integrity Project that we started in 2012, well before it was quite such a controversial issue in many countries. In developing countries, in new democracies, elections are being held worldwide but the standards were not very good. Many agencies—whether it was the UNDP or whether it



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was other bodies that brought together Electoral Commissions around the world, whether it was issues of things like capacity development or observers or the role of, for example, the OSCE or the European Union—all of these have made a much more professional set of understandings about how to improve elections and how to establish, in particular, the bodies which, as Dr Garnett says, have a degree of independence from undue influence and the capacity.

Those two things, let me emphasise, are working together; because you can have a body that is set up, which looks as though it will be effective—it is distanced from the Government, it is bipartisan in terms of its composition—yet if a single thing goes wrong, for example, in the local district and therefore people do not have confidence in that election everything can unscramble, including liberal democracy as well as confidence and trust in the public.

On the other hand, you can have something that is very efficient, and effective on paper and looks as though it is working well, but in fact has undue pressures from one party or another, or from outside influences or from foreign money. There are many ways again in which elections—everybody has a stake in them.

Over time we have managed to get much better evidence. Just to give you a snapshot of the results of the perception of electoral integrity index project, we have over 4,000 experts around the world who assess elections, and we do this every year, so it is an annual report. It is a bit like our corruption index. We try to ask our experts on 50 different items how well or how badly the election does throughout the electoral cycle. To give you a sense of the results of the most recent one, in overall electoral integrity, experts ranked the UK 31st out of 38 liberal democracies—so, unfortunately not doing as well as you might expect.

Which were the countries at the top? It is always the Nordic countries; they always do well in democracy and they do well in elections. It is the Denmarks, the Norways, the Swedens, who were 1, 2, 3. Northern Europe, Germany was doing well, the Netherlands was doing well. But also some new democracies, which is interesting. Estonia, for example, ranked 8th. Costa Rica ranked 9th. Slovenia was doing well.

In general the UK therefore is by no means at the bottom—we have 166 countries—but among liberal democracies, like other Anglo-American countries, it is a kind of moderate level of electoral integrity, according to our experts. For example, New Zealand was 16th out of 166 countries, Canada—which Dr Garnett can talk about—was 17th ranked. Ireland 23rd, which Dr Reidy can talk about. Australia 25th. The United States unfortunately at the time we ranked it came 37th out of 38 democracies; it was—it is the worst.

Again we can go into the reasons, as questions are being asked, about why there are so many problems in this particular type of countries. But in particular majority return elections raise the stakes of elections, and



particularly for small parties and for a range of other factors they can be much more problematic than in many of what we term consensus democracies in western Europe.

There are many areas that we can go into and I would welcome more questions on that.

Q158 **Chair:** I am sure we will. Therefore, could I ask Dr Garnett—developing that theme—how important is the principle of independence and how can it best be achieved? I am thinking, for example, do electoral regulators need to be independent of the Executive to be credible and trusted or are there examples where those bodies are run out of central Government ministries and they operate effectively and impartially?

Dr Garnett: As I mentioned earlier, independence has two components, de facto and the de jure components. Yes, it is possible to have a very highly impartial election management body that is being run from within the Government. You will get a better shot at independence with very clear structures that put an EMB at arm's length from the Government in some way.

The example, when you asked of world-leading election management bodies, I would provide the example of Canada of course; I am coming from Canada. If you look at the independence and the capacity aspect, Elections Canada has existed for over 100 years and has a chief electoral officer that has a 10-year non-renewable term, meaning that they have a great deal of independence and are accountable only to Parliament rather than to a Cabinet Minister who is then running in that election that the chief electoral officer will be administering.

Canada's example works because of the structural aspect but also because of the long history of 100 years of having this system of chief electoral officer at arm's length from the Government of the day. Elections Canada has done a good job being cautious to keep that independence intact and to work in a manner that lives up to their independent formal status.

Q159 **Chair:** That is helpful. I am going to bring in Dr Reidy now. In January, the Irish Government published a general scheme for the establishment of a statutory independent Electoral Commission for Ireland, which is currently, I believe, undergoing pre-legislative scrutiny. What has motivated the push for establishing an Irish Electoral Commission?

Dr Reidy: To keep it within the framework that we have been discussing so far, in the case of Ireland there have been questions about effectiveness and capacity of the electoral management activities but not so much about independence. Ireland has a governmental system in that elections are managed through the franchise section of a Government Department but there is decentralised operation on the ground, in that a lot of electoral functions are handled directly through local authorities, of course very similar to the United Kingdom.



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Over a period of time very significant questions have arisen about particularly the management of electoral registers. There are great concerns and a lot of research that shows that they are in very poor shape.

The second thing—something that of course is a global concern but is particularly acute in Ireland—is the digital space. Effectively, electoral legislation and electoral administration has been somewhat moribund in Ireland and it has not been brought into the 21st century. That takes on an additional dimension in the case of Ireland because the European headquarters of many of the online platforms are located in Dublin, so the Government are concerned about treading very carefully and with European partners in terms of progressing legislation in that area, particularly as it intersects with elections.

The third thing that has been important is that there are now important electoral reforms that the Government would like to proceed with, but it is not possible because of the limitations of the current electoral administration system. Giving voting rights to emigrants abroad is one of the crucial ones, and that requires an extremely efficient voter registration process and greatly enhanced postal voting. The evaluation is that the current system simply is not capable of delivering those.

When you take these things together it has propelled electoral reform much higher up the agenda. It has been essentially sitting there for 20 years. Interestingly it has cross-party support, and there has been a lot of low-level campaigning with lots of civil society groups supporting this, but it is not until these things came together—the need to deliver on these other reforms and the digital issues—that the Government were propelled to act and to move forward with this proposal.

Q160 **Chair:** What models or experiences from other countries did the Irish Government draw upon in putting forward this proposal?

Dr Reidy: Front and centre has been the UK Electoral Commission, particularly because our existing model so closely reflects the model that you have in the United Kingdom. Like the UK, a lot of the election administration work in relation to electoral registration processes but also in the actual conduct of elections, the recruitment of a returning officer, management of polling, all of this is conducted at local level by local authorities on the ground. As a consequence, a lot of the proposal has been informed by the UK experience.

But also more broadly the anglophone world, as Professor Norris has mentioned, the comparative evaluations carried out by the franchise section, which looked specifically at Australia, New Zealand, Canada and the United Kingdom. It gives you a very clear sense of where the Government Departments were looking.

To a much lesser extent, some experiences from other continental European countries were considered because Ireland does have a



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proportional electoral system, but I would have to say the UK model was very much front and centre in terms of informing some of the provisions, particularly in relation to what the Electoral Commission itself would look like in its governance arrangements.

Q161 John Stevenson: Professor Norris, given what you have already said, what are the main challenges that you see facing international electoral regulators in ensuring electoral integrity, and what powers do you think a modern electoral regulator needs to tackle these challenges?

Professor Norris: That is a very good question. In particular, what is worth emphasising is that just as the capacity and the professionalism of EMBs has been really expanding in the last few decades, so the challenges have been getting even greater. In particular more frequent elections, for example, and more complex rules. The body of law in the United Kingdom, as in many other countries, is often added on as we have more demands nowadays, so that is a real issue. Elections under Covid, of course, and difficult conditions there. How do we run elections, especially since there are continuing to be outbreaks around the world? We think about India and Brazil right now.

Party polarisation is a major challenge. Again, 20 or 30 years ago the idea of electoral administration was thought of as a rather dusty area of public administration—not that interesting, not very high profile, not in the headlines. Nowadays it is the No. 1 issue in many countries when an election has become so controversial. I am living through the United States experience of 2020, and once public trust disappears in elections and once politicians raise so many issues on both sides there is no agreement; there is no basis for compromise. Once that is lost and nobody in opposition believes the legitimacy of the process then it is very difficult to get other things done—normal legislation on the economy, on infrastructure, and so on.

Other challenges: let me quickly go through a few other things. Obviously, social media. Again an issue where we have advertising on digital spaces. It is very difficult to think about how we regulate that in appropriate ways in every country, because we know how to regulate money when it is being spent on television and advertising and in print, but when it gets to the world of the internet it is so much more complicated to do—and yet so vital nowadays, given what we know about the role of the internet and spreading information and misinformation and disinformation.

Then we had the role of dark money. Elections are becoming far more expensive. I just read that in the United States, for example, it was \$14 billion for the 2020 election. That is an enormous amount of money and the financial regulators in the United States have not kept up with the new role of dark money, which is uncontrollable from a variety of groups.

Foreign meddling and cybersecurity: a great problem in terms of Russian interference, not just in the United States but also in Germany, France



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and a number of other European countries. The European Union has been very concerned about cybersecurity.

Another issue on the agenda, increasingly in many countries worldwide but also in the United Kingdom, is violence against candidates, against politicians, against voters, and particularly against women, and threats and intimidation through the internet. That is an issue that the United Nations has taken up very seriously now. Worst in countries like Afghanistan obviously but, as we know, unfortunately threats have increased against politicians at home, in the United Kingdom and the United States, and that is a fundamental issue if you cannot campaign.

Lastly, public confidence and trust. Again if we look at the United Kingdom, the public opinion winter tracker, which the Electoral Commission conducts, it looks as though the public in the UK have considerable confidence in the Electoral Commission and in elections. 71% of UK adults were confident the elections are well run in 2020, which is good. The problem is, as we can see, that in many countries a small incident or a fundamental issue that arises can lose public trust. Then it is very difficult to regain it. Even in the best run elections, in Australia for example, there were problems. In Canada there have been problems not that long ago. So every country is vulnerable and if there are issues, how you restore trust in the legitimacy of elections is important, and that is why you really need to have risk management built in. All of this makes running elections --

Q162 **John Stevenson:** I am sorry to interrupt, Professor Norris. You have given quite a list there, to say the least. In your view, what sort of powers would you give a modern electoral regulator to tackle these challenges?

Professor Norris: We need to think about it comprehensively, but obviously each of these has different sorts of solutions. Campaign funding is a major issue. I know that the Electoral Commission is thinking about digital advertising and how the control of financial regulation over print should be extended to the digital world.

But there are not any easy solutions because every country is encountering these issues. We can certainly look at things like Facebook and other common mechanisms like Twitter and think about what can be the role that is appropriate for regulating, but these are private companies, very large companies, and they have changed quite a bit in terms of how they are regulating political advertising. But it is very controversial, given that we also want to preserve freedom of speech and party competition.

Similarly, if we take issues of cybersecurity, foreign meddling, misinformation, all of these are challenges. There have been some very good research reports looking at the impact. For example, from Oxford some very good work has been done. In the European Union a new report has looked at misinformation and its distribution.



The first step is clear: it is to recognise the problems, and the UK Electoral Commission is very good at commissioning special research. It has always had that role and bringing information to bear that could be useful to the Commons and could be useful to other bodies who are overseeing the work of the commission to think on a continuing basis of how to encounter these challenges before they metastasise and become so problematic that public confidence reduces. I can give you a much longer written comment but that is enough for now.

Q163 John Stevenson: Dr Garnett, we have had a list of the challenges; what powers do you think a modern regulator should have?

Dr Garnett: I will just home in on two of the things that Dr Norris mentioned. The first is this issue of information legitimacy and making sure that the citizens have a very clear line of communication between a centralised body that can provide information about elections. This is one place where having a centralised election commission is quite important and having one that has the independence and capacity in order to instil in the population that confidence that when they are getting information about their elections they know where it is coming from. Having that clear central body can be very key to ensuring information legitimacy about what is going on in an election.

The other issue that Dr Norris mentioned a little bit, one of the key things that we are starting to notice, especially in more developed democracies, is that we still have key gaps in terms of access for marginalised population groups. There has been this idea for a long time that if we build an election they will come, and increasingly we are starting to realise that the people who are coming are the people who would have come anyway.

An electoral regulator needs to have the ability to innovate in terms of ways to bring marginalised population groups into participation, be that by making voting and registration easier, by making it less the onus on the individual, more the onus on the state to provide assistance to make those things happen, and to be able to innovate with different ways that they might be able to better work with communities that have been traditionally underrepresented at the polls.

Those would be the two things that I would say would be key for an electoral regulator to be effective in managing these two major challenges.

Q164 John Stevenson: Dr Reidy, obviously Ireland is starting to look at this big issue. You have seen the challenges that have just been mentioned there. What powers are being prioritised for the proposed new Electoral Commission in Ireland, and why would they be picking on these particular ones?

Dr Reidy: This is a very live debate in Ireland, obviously, because the legislation is being scrutinised at the moment. Front and centre for us is



the electoral register, but that is because there are such problems with the electoral register in Ireland. It is based on a very nice vision of the 1960s where you live with your parents, then you get married, you set up your own home and you live there for ever more. Voter registration practices are simply informed by that. There is a lot of debate about moving to a continuous registration system, engaging with digital opportunities.

Just to pick up on what Dr Garnett said, there is a lot of engagement and discussion around how you engage with marginalised communities, how you provide services for homeless persons, for example. A lot of the debate is there and is specifically around that. But there are two other crucial areas that are worth highlighting. First is the provision of voter information. We have an interesting scenario where we have a Referendum Commission that provides information at referendums and has a function in relation to mobilisation at referendums. Research over a long period of time has demonstrated that is quite effective.

But then we have often parallel elections that take place where there is no body with responsibility for providing information on elections, so we have natural experiments where we can see the effect of impartial and independent information on one type of electoral contest and its absence in another. One of the aspirations of this work is to try to bridge that gap so that you have the provision of effective and impartial independent information at both referendums and elections.

The third area is in relation to the digital space, but here there is very cautious movement. The provisions that are currently being looked at are focused on transparency in relation to political advertising but they have been very heavily criticised already, even before they have been enacted, because of course they raise questions about personal privacy rights. Much more importantly, they are a very static model in a dynamic environment. They are very focused on platforms that we have right now, even though in parallel we know that some of these platforms are already fading in terms of their importance and they are not able to adapt to—for example, one of the things that has been highlighted here is influencers. The legislation we have at the moment takes no account of influencers, who we know are becoming more and more important in terms of their capacity to contribute and shape debates and conversations. The digital space is a priority but I would say it is much more complicated than the other two, where there is a clear support and body of evidence to move things forward. They want to do things on the online space but it is difficult to progress with that aspect.

Q165 **John Stevenson:** As I think you are all aware, the UK Electoral Commission does not run elections but oversees them. We have a different approach in many respects to Australia, Canada and New Zealand where it is far more centralised. Dr Garnett, what do you perceive as being the merits of us—or Ireland for that matter—following the Canadian example? You have already touched upon this but I would



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be interested in how you see Canada overseeing voter registration and the delivery of federal elections, and how you go about doing that from a centralised perspective.

Dr Garnett: Canada's election management is very centralised through Elections Canada. I see some of the benefits of that being improving that democratic ideal of equality of participation nationwide. In some other cases, like our neighbours to the south, you can have different types of laws regarding registration and voting procedures and it means that there is not an equal basis on which everyone is participating in the election in the same sort of way. That can be pretty problematic in terms of which population groups are able to access the polls, who is most easily able to vote, the security of the ballot. All that type of variation can be very disconcerting for public trust in the election and also the quality of participation.

Another way that centralisation can be of benefit is that it can allow for some streamlined use and investment in resources, such as procurement and training, so that all poll workers are being trained in exactly the same way, to ensure a consistent experience across the country. It can also enhance accessibility of information and the transparency of information. When election finance returns, for example, are submitted to Elections Canada they are all put on to a centralised website that anyone can then look up to see who has been spending money and how. Those are some of the benefits of that centralised model.

Considering that Canada is such a large and diverse country, the fact that we can make a centralised model work is a testament to its perhaps being one of the best practices in terms of electoral management.

Q166 **John Stevenson:** Professor Norris, obviously you are familiar with the US system, which is highly decentralised in contrast to that of Canada. What impact does that have on electoral integrity and accountability from your perspective in the US?

Professor Norris: In the United States we have 18,000 units that are responsible for elections, so it is one of the most decentralised you could imagine, and so many issues are determined by local officials in each different area. Then, of course, the officials are actually appointed on a partisan basis. The idea of impartial civil servants, or public service, running elections is really very alien to the United States.

One problem—there are so many problems—is simply that different areas determine so many different aspects: simple things like when do the polls open will be different in parts of Massachusetts to what they are in California or New York. Issues of who should vote, issues of how we should use voter registration IDs, differ from Republican to Democratic State Houses. The State Houses at local areas are the ones that will set the law and then the courts in each of the different states also will adjudicate on that. So we are ending up with totally different systems.



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There are currently about 250 Bills going through State Houses proposing to reform the law. You can look at the Brennan Centre in New York, if you want to look at the most recent passage of the legislation. The problem is that the Republicans are going very much towards much more restriction on many, many basic issues of human rights and election rights—on issues, for example, of how long the polls should be open, issues of how far you should be able to vote in advance of the election. Many of the facilities that have been expanded under Covid they are now saying need to be reduced on the grounds of claims of electoral fraud. On the other hand, the Democratic-run states are expanding all of these things; whether it is voters, for example, who have a past felony record that is expunged, whether it is the ability to vote in advance or through the post without giving any reason, or other aspects of elections. So we are getting two different types of elections, depending on where you live.

Obviously in any democracy that is a problem, not only for the lack of information about what your rights are but for the inconsistency that it gives, particularly for minority communities. As Dr Garnett mentioned, African Americans and communities of colour are the ones that are often most affected by these developments, particularly the more restrictive aspects. If you look at, for example, the most recent reforms just passed in Georgia—highly controversial. Again, Georgia has sought to roll back many basic aspects of efficient elections that reach the people and this is causing tremendous partisan debate about what should be the law.

Going right down to that level I think is a fundamental problem and, indeed, right now Congress is thinking about HR1, For the People Act. It is a brand new reform. It has now gone through the House of Representatives twice and is going to be considered by the Senate at some stage, although it is going to face major hurdles there because of the Republican party. However, if that was passed, one of the core proposals is to have a stronger central body. We only really have two in America at present, the Federal Election Commission—which is meant to be controlling money and has been stymied and gridlocked for many, many years now—and then the Election Assistance Commission—which was set up in 2002 after many problems in Florida—but that in itself only provides rather minimal advice, not regulation, and it never basically can have any control over what local areas do. So it has been proposed that there should be a more centralised body, with oversight, to be able to share the information, as Dr Garnett says, but whether it is going to get passed is a good question.

Of course, other countries do not necessarily follow a centralised model. For example, Australia is run at a state level with the Commission of New South Wales, of Queensland and so on. In Norway it is run at local administrative level, local government level. So there are many different models.

I will finish by saying there are some advantages to having at least some level of non-centralisation, which is that if something goes wrong at least



the control of the problem is more limited. So when an election goes wrong in New South Wales it does not affect the whole of Australia and it can be rectified at a local level. In a complex society, in a multicultural and multinational country like the United Kingdom, having autonomy—or at least some level of flexibility in Scotland, Wales, Northern Ireland as well as in England—obviously has a number of advantages as well. So there are different models around the world and they each have certain pros and cons.

Q167 **John Stevenson:** That is very interesting. My final question is to Dr Reidy. Given the fact that Ireland is looking to change its system, what do you perceive as being the merits of a more centralised system as against a more decentralised system? Do you think that the direction of travel that Ireland is taking is the correct one?

Dr Reidy: The direction of travel in Ireland is very much to hold steady in relation to the decentralised approach. As I said at the start, there are generally very high levels of public trust in the Irish system and there is quite a high level of support for the impartiality of the system. There would therefore be a great deal of reluctance to move away from the system as it works right now.

The context in Ireland is a little bit different as well. You are talking about a very small state. It remains a relatively homogeneous state. It is also probably the most centralised state in Europe, after Malta. So even what we refer to as the decentralised model actually has quite a high amount of standard-setting and a quite clear regulatory framework. There is very little capacity for authorities at local level to deviate from those standards. The question and the impetus behind the movement on electoral reform is whether enough attention is being paid to electoral administration at the central level and why certain things have been allowed, if you want, to be moribund and there has been such sclerosis around it.

Efficiency deliveries and efficiency concerns are often put forward as an argument for progressing to a more centralised system. All of these have been teased out in the Irish case and the general consensus is that, given the size of the state and the existing structures, efficiency considerations would not be realised and because of the high degree of public trust it is very much a case of supporting the current decentralised model.

Q168 **Tom Randall:** Dr Garnett, the Committee has been taking evidence on the challenges of regulating political finance and digital campaigning. I wondered if we could explore the Canadian experience in that sphere a little bit. You mentioned, a couple of questions ago, the reporting of political finance to Elections Canada. I wondered if you could tell us in a little more detail about how that finance is regulated and reported, and what timeframes are involved for candidates and parties when reporting to Elections Canada.



Dr Garnett: In Canada campaigns are financed by individual donations up to a specific cap for each type of body that you are giving to—a candidate or riding association or what not. Then there are also caps on how much a candidate, or a riding, or a campaign can spend. It is the responsibility then of this candidate or this riding association to then report what has been donated and what has been spent to Elections Canada. It provides specific deadlines by which they have to provide this report. The longest window is within four months for the electoral campaign returns. This is then reviewed by Elections Canada and posted online on a searchable database. Usually a couple of months later—there is no firm timeline, from what I have seen at least—that will be posted online. It is a searchable database.

The idea behind this system is that there are limits in terms of how much funds can be spent and how much can be donated in order to promote the equality of participation and undue influence of money in politics. There is also this component of transparency, that a variety of actors are then able to scrutinise what has happened during the campaign and where money has been spent.

Q169 **Tom Randall:** That is interesting. How is online campaigning regulated and what sort of responsibilities are involved for the various actors involved in online campaigning?

Dr Garnett: That is one area that I think has not reached its fruition quite yet. There were changes in the 2018 amendments to Canada's Elections Act that did define online platforms. The big thing that was required was digital ad registries. It is the requirement of the platform to keep an ad registry of all the ads and the name of the person who authorised that ad. The challenge with that, of course, is that we are then relying on the platform to provide that registry.

Some other bodies are involved with this as well. Traditionally in Canada the CRTC, the Canadian Radio-television and Telecommunications Commission, would have dealt with issues relating to campaign media, television and radio advertising. But it does not regulate digital media so the Commissioner of Elections, which is an arbiter more of elections, is responsible for regulating digital media at the moment. Really what ends up happening is that the platforms themselves are relied upon quite a bit in order to provide, again, transparency in terms of what is being advertised and what kind of content is found online.

The other issue is that we then end up relying a lot on platforms in terms of harmful speech online or pieces of disinformation. We end up relying on the platform to make decisions about whether to take those sorts of things down or not, often because perhaps traditional journalism is not able to address these in a way that the public is going to be aware that they are getting misleading, for example, information.

So the Canadian experience has been definitely a move in the direction of at least understanding and defining that online platforms and online



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advertising is now a component of modern elections. That is in a way that largely uses an existing framework for campaign finance and then requires those platforms to co-operate in providing the transparency there.

Q170 Tom Randall: Certainly in the UK, and I am sure across the world, we have seen more third-party advocacy groups sprouting up generally but particularly at election time. How does Canada regulate both their campaigning and also the amount of money they might be spending during a campaign?

Dr Garnett: Third parties are defined in Canadian election law as bodies that are conducting partisan activities, election surveys, election advertising. They have to be registered with Elections Canada when they incur costs of \$500 or more in spending on election-related campaigning. When they meet a certain threshold they not only need to register but then also need to report on their spending, just like a campaign would.

There are some other regulations involved for third parties. They must put their name on advertisements, they cannot use foreign funds and they must separate out the pre-electoral and the electoral activities. That is tricky because you want to have a clear sense of what has been done in the campaign time period but recognising that their activities before the campaign might influence the election as well.

Once again, it is that issue of providing limits to what can be done and then transparency so we can scrutinise what has been done.

Q171 Tom Randall: All election campaigns rely on volunteers to make them happen. Does the Canadian system take account of the voluntary aspect of campaigning, both in terms of expenditure and the activity and so on? What allowance is made for those?

Dr Garnett: The political parties do rely on local volunteers who are financial agents and official agents for campaigns. My dad actually was one of them so I had a great chat with him leading up to this about what his job was and what kind of support he was able to get. Elections Canada does provide resources, which include optional training sessions, handbooks and a computer programme that is used to complete these returns so they can then file those returns to Elections Canada.

The other thing is that Elections Canada does pay, it reimburses, for an audit. If the amount that has been spent on that particular campaign reaches a certain threshold then it pays for an audit of those financial returns. That is to check and make sure that everything has been done correctly because, you are right, it is local volunteers.

So they are provided with a variety of resources from Elections Canada to make that process work. Elections Canada then, on its side, does end up going through them. My dad has had calls from them saying, "Hey, are you sure about this particular thing?" making sure that all the i's are dotted and the t's are crossed. It does provide some investment in



providing these volunteers the resources that they need in order to provide these accurate and transparent returns.

Tom Randall: That was interesting.

Q172 **Ronnie Cowan:** Professor Norris, you have published extensive research on different election management body models and you have examined a range of Government agencies and mixed approaches. Earlier on you touched upon what were termed the digital space and the complexities within that. With your vast experience—I know I am setting up for a fall here—which electoral management body do you think is most effectively overseeing or regulating digital campaigning and why?

Professor Norris: It is a good question. The problem is that in this area you have conflicting values. On the one hand we know how much there are media bubbles and how much misinformation is fundamentally a problem because people are getting different views about even basic facts, on things like, for example, safety of vaccinations right now or on a range of other issues during an election campaign. On the other hand, we also need to have the value of freedom of information and the amendment, which is basically the First Amendment, in terms of journalistic independence. Controlling it we have to have a light hand from Government. It is not so much how the management body is structured or how it is organised, but we have to think about a range of actors who can be involved in this process.

I believe it is really important to have NGOs and civic groups that are basically trained in campaign watching, which monitor election money and make it very transparent. The Electoral Commission does a good job but often those records are published a long way after the election. If we have groups that are engaged in that, advocating and providing ways in which the public can understand the money in elections and the money in politics more generally, it is helpful.

Working with corporate partners is really important because, again, Twitter and Facebook are international, global, enterprises and have each taken different perspectives on how to intervene in elections. Therefore we need to have a dialogue, if you like, between each of the different partners that are going to be given this information and, again, they are going to protect their freedom. Talking to them about the role of digital media in a democracy, they are very aware of their civic responsibilities. They have done something already through trying to control foreign misinformation, they are very amenable to that, and also even domestic misinformation. However, again, it is a matter of the private corporations, in terms of their freedom of information, so we have to have a light hand. It is a matter of dialogue and discussion and making things transparent with a variety of partners.

Then, of course, we also have to take into account the broadcasters. A lot of the problems are not really about digital at all. In America it is all about Fox, and those who are to the right of Fox, who are creating a lot



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of the misinformation right now. For example, the idea that the election was stolen is still being put forward on mainstream television which is watched by 40% of Americans. So we cannot ignore them. We often exaggerate social media because we are all on Twitter and we see what is going on there, but what newspapers are doing—

To give you another quick example, *The Daily Mail* in the United Kingdom said that in President Biden's latest proposals on funding and on the environment there were going to be all sorts of limits on how much meat people could eat; something like 90% of red meat was going to be banned by the environmental regulations. Total myth; not at all. That was never any part of his proposal. But it went mainstream because everybody took up a message from *The Daily Mail*, it was broadcast on Fox and then every single Republican is now giving that message, that environmental controls mean the end of cows. It is not going to happen.

These myths, these conspiracies, originate from many different places. It is rather like a Whac-A-Mole game—you try to plug one but it turns up in another. Increasingly they are all interconnected because it is politics, basically; that is what is behind a lot of these issues.

Q173 **Ronnie Cowan:** Is there anybody who is doing this well? Is there any place we can look to and say, "That is a good example we can follow"? Any country, any electoral body?

Professor Norris: I worked a bit with UNESCO on some of these issues. We looked at patterns around the world. They are responsible, as an international body, to try to make sure that there is a plurality of information—many different media sources. That is the first principle; you do not want to simply have one source or one party that dominates. Then there are other initiatives that are going on with a number of different NGOs that are doing some very good work in this field. BBC Worldwide has done some work on some of this research and Oxford has done some work. There are other agencies in the European Union in terms of broadcasting standards that should be followed.

We are going to have to live with misinformation and disinformation essentially because we have to have freedom of expression as well, which is another basic fundamental human right.

Q174 **Ronnie Cowan:** Could we educate ourselves out of this problem? In Finland people are taught to be able to disseminate between fake news and real news.

Professor Norris: We can certainly bring in critical media education in schools. That is a step that is often seen as very important. We have done quite a bit of work on that as well. People, when they are watching television or reading something online, can learn to understand another level of the analysis, can really work out what the motivation is or what the message is and can stand back much more critically. If you do that among schoolchildren then ultimately that will affect the whole of society as well as people become more critical. On the other hand, they are likely



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to become more critical of trustworthy information as well, so it is a double-edged sword.

I am afraid, again, we are going to have to live in this complex information environment rather than regulating it in any direct way.

Q175 **Ronnie Cowan:** Are any organisations dealing particularly well with the influence from overseas actors?

Professor Norris: This is an area that I think has gone more centrally, particularly the role of Russia and the way in which they intervened directly. As we say, it happened in the Bundestag election in Germany, it was in the French Chamber of Deputies and there have been questions in the UK election about the role of Russia. Foreign money being spent in elections is something that can be regulated quite well. Most countries nowadays do have some limits on foreign campaign contributions to politicians and to other sources as well.

However, the information of course comes through many different channels. So it might look as though it comes from Russia or from a foreign power. Iran has been engaged as well. China has played a much quieter role, but still an important role, in digital media. There I think there can be an effective role for legislation. However, often these things are post hoc; in other words we find out about these things six months or 10 months down the road and often when there has been intervention there is still political pushback.

The Republicans still refuse to believe that Russia was engaged, or that there was a direct role for misinformation that originated from Putin, in the 2020 and 2016 elections. That is still the mainstream view, when I looked at opinion polls, among Republican voters as well. We see things through a partisan lens, and what is information and what is not information, or disinformation or misinformation, comes through that filter.

Q176 **Karin Smyth:** Dr Reidy, we come to you. The new Electoral Commission for Ireland, as we understand it, will be responsible for regulating political advertising but the Standards in Public Office Commission remains responsible for the regulation of finance. We are interested in your view about whether a new Electoral Commission really can regulate political advertising in the digital age without having the power to regulate political financing. Is that division a sensible one?

Dr Reidy: Thank you. That is a very good question. I suppose the first thing to say is that the current General Scheme envisages that political financing will in due course actually move into the Electoral Commission. At present the Standards in Public Office Commission has oversight and responsibility for regulating political finance. It does that reasonably effectively and, in fact, many of the principles that Dr Garnett outlined are quite similar in the Irish case.



The way the Electoral Commission will work is that at commencement it will take over functions in relation to voter registration, digital advertising and other items. Then there will be a second phase of evolution in which some of the functions of the Standards in Public Office Commission will then move to the Electoral Commission. Over time it is expected that there will be a consolidated view. I think from that we can take it that the considered view is that it is better to have these powers located together, but for practical reasons this will be done in an evolutionary process.

Q177 Karin Smyth: Is that in the legislation or is that an aspiration? Can we see dates associated with that?

Dr Reidy: There are no dates associated but it is in the General Scheme. It is actually set out that this will be a two-stage development process, so it is there. If I look back into some of the documents that preceded the General Scheme, there has been a sense that there will be a first stage and then an evolution of the role of the Electoral Commission.

In relation to political advertising in Ireland, you don't have broadcast political advertising but you do have online political advertising. That is one of the issues that has emerged in the Irish case—that you have a very heavily regulated space in the form of broadcast media and then an entirely unregulated space in the form of online. Then, of course, because we have hybrid platforms—newspapers that are both in print and online—this has become even more complex.

In terms of the thrust of the legislation that we have, the focus is very much on transparency—who paid for the ad, how long it will be visible. There are very strict rules around foreign donations in the Irish case and those will also apply in relation to online advertising. It is actually provisions from money laundering Acts that are going to be used in terms of tracking and tracing the money.

To cover all of that as well, we need to be aware that there are spending limits at elections, for all types of elections, and that spending on online advertising will be part of your overall election spending. That election spending varies from election to election and also varies depending on the size of your constituency. If you are in a three-seat constituency your spending cap is €30,000; if you are in a five-seat constituency it is €45,000. It is very heavily controlled. In general, the view in relation to SIPO is that it has performed very effectively in terms of monitoring expenditure by candidates, and it reports fairly quickly and compliance is reasonably high in relation to this.

Q178 Karin Smyth: That is very helpful. To be clear, you identified it as an issue but is it envisaged that the Electoral Commission will have the power to regulate social media companies in relation to campaigning—or is it just recognised as a problem at the moment?

Dr Reidy: I do not think it would be right to say that it will regulate social media companies. I think it will regulate online advertising, in the



sense that it will have requirements for online ads. Those are very much focused around transparency obligations and also obligations, I suppose, which will be put on social media platforms in relation to ensuring the identity of the buyers of those ads and that particularly ensuring that the regulations on no foreign donations are adhered to. There are some exemptions under the foreign regulations because of, say, pan-European political parties that are outside of the state that will be contributing in European Parliament elections. It is not a clear-cut scenario that there should be absolutely no foreign donations but it is, broadly speaking, a prohibition on foreign donations and foreign advertising.

Picking up on the points in the earlier conversation, of course it is elections that are controversial in many countries but actually in Ireland it is referendums that have been controversial in relation to foreign involvement. There were concerns, particularly during the most recent referendum on abortion, that there was money coming in from outside of the state, particularly from the conservative right in the United States.

This is a very live consideration because, of course, there are questions about the organisation of these two islands and the potential for referendums down the road in relation to questions of independence and territorial organisation. Those potential referendums down the road are very much informing the debates and discussions that are taking place here.

Q179 **Karin Smyth:** A final point on that, you currently do have parties that operate within different jurisdictions and across the island of Ireland as well as individuals and some parties that might be seeking to organise across the island of Ireland, as well as—as you have alluded to—potential referendums over years. What is the relationship for the new commission taking on some of these roles in this new area, particularly around digital campaigning? It is in the inbox, is what I think I am hearing. What are the discussions that go on, or are recognised should go on, between the UK and Irish bodies?

Dr Reidy: This is a very difficult question. At present you have two separate jurisdictions and two separate sets of regulations. Parties operating in either jurisdiction are required to adhere to the regulations of the jurisdiction in which they are operating. There are ongoing controversies—particularly in relation to Sinn Féin, which is obviously the largest of the cross-border parties—in relation to scrutiny of their finances. Because of course foreign donations and other rules are quite different in the UK jurisdiction whereas they are specifically prohibited in the Irish case. I would say there is additional scrutiny of their contributions as a consequence.

The Standards in Public Office Commission requires that all political parties submit their statements of account, and their donations must be recorded and their expenditure activities. There are clear rules and requirements in place there but I would say this is not without controversy.



Q180 **Karin Smyth:** Do they meet? Are there formal meetings or provisions within the role of the Irish Electoral Commission to do that, do you know?

Dr Reidy: No, this is not part of the conversation. At present electoral administration is obviously a very sensitive area and it is inevitably dealt with by the state Government. For example, across the European Union there is some degree of co-operation, but electoral administration is a function of the member state itself. So at present there is no plan to have cross-border co-operation on this particular issue. But, as I say, there is an awareness of the complications and the sensitivities around this particular issue.

Q181 **Jackie Doyle-Price:** Professor Norris, I would like to pick your brain now on the matter of enforcement. Could you perhaps share with us any lessons that other bodies have that we can learn from in terms of ensuring compliance with political finance and other electoral rules?

Professor Norris: This is a really important issue, obviously. I edited a book a few years ago, called "Chequebook Elections". We took eight different countries, very diverse, and looked at how they regulated campaign funding and what effect it might have on electoral integrity. We did some research on this. We found that there are four different methods.

Some have very little regulation. That is not that common nowadays; nearly every country has instituted campaign funding laws.

There is a way in which we can have transparency but without accountability, which was quite common. Quite a lot did insist on things like labels on electoral advertising, the publication of party funding costs, the publication of candidate costs and so on. That was a very popular idea but it was kind of a light touch because there was very little accountability when things went wrong.

Then there were those that regulated the amount of money for donors or the amount of money for spending; the United Kingdom has gone down that road. We found that there were some problems. In some places—like India, for example—they imposed limits that looked good on paper but were too minimal to actually be able to campaign in such a large country with such a large population. Therefore every party and every candidate seemed to break the rules, even though they were on paper, so you have to be very careful when you have donor rules. In the United States, again, we have rules on paper with the FEC but in practice dark money is everywhere in American campaigns.

Then we have those countries that provide public funding, which is another major resource of course. Again, the United Kingdom has gone down that road but that varies a lot. That is increasingly common and is also positive in some ways. It means you are not reliant upon donors and it also means that the incentive for parties and candidates to raise voluntary contributions—the question that was mentioned earlier—goes



down. With the decline in party membership, parties hollow out. Then there are those that try to do everything.

The broad lesson from our book was very paradoxical. Some countries where elections work really well, such as Sweden, had a very light touch because the culture was one of transparency and honesty and because the parties—the civil service is very impartial, elections were well run and there were very few controversies—did not see a need until quite recently to pass a campaign funding law. Other countries—including Russia, which was part of our case, and Brazil—had very strong laws on the books *de jure*, but in principle everything was on the table, money was everywhere in the system, none of it worked and the courts were corrupt, often partisan, and so the cases were just thrown out.

It is a complex matter. I will finish with the idea that when we looked in principle in PEI at all the different types of problems in an election, we looked at each stage—right the way from election management, campaign registration and voter registration all the way round to the results—and found that the weakest areas in nearly every country were money and the media. These are the areas where there is very little in the way of international standards because there is no agreement—Europe has one set of practices, the United States and North America has another, Latin America has another—and because they are the most difficult issues to think about. We want at the same time to have freedom so that people can contribute, volunteer their time, volunteer their resources, donate and be engaged in politics, but at the same time we know the dangers where dark money can come in and where it can corrode public trust and distort politics in really important ways. Therefore for money and the media, there are no simple answers at all. Certainly there are models around the world which we can look at to try to learn some lessons.

Q182 Jackie Doyle-Price: You are right: there are no simple answers to money. You mentioned Scandinavia and the political culture there. I would like to think that Britain has a broadly transparent and honest culture. To what extent is there more mass participation in political parties in Scandinavian countries? I certainly feel that as our political parties as membership movements are in decline, the natural check on behaviour is diminished.

Professor Norris: Yes, internal accountability within the party is really important. If you have local constituencies with active volunteers engaged in fundraising and campaigning, in knocking on doors and everything else, it is obviously healthy. Britain's membership, of course, has gone up and down over the years, especially in recent years. Parties have responded by trying to give party members a more active role and participation, for example through the selection of leaders. That in itself has negative consequences. For example, it greatly expands the amount of time it takes to have a leadership election, which means that if you have a sudden crisis it is very difficult to overcome that.



In Scandinavia there has always been a mass membership party, those have been standard. If you look at the social democratic parties and the conservative parties, the Christian democrats, they are also losing membership and they are very concerned about that. In nearly every liberal democracy energies have increasingly gone away from parties and away from formal interest groups, like trade unions, towards all the other range of activities that you can do, whether it is environmental issues and climate change, whether it is Black Lives Matter in America, whether it is issues of gender equality and gay rights. All those other social movements have been expanding activism. Protest, of course, is very strong and very healthy and mass demonstrations are very healthy in nearly every country. It is amazing the number of people who have been turning out at that level. Political parties do not have quite the same cachet or loyalists that they used to have in the 1960s and 1970s, basically. It is difficult to replace that culture, no matter what parties do.

Public funding is another way of trying to compensate for that; if you cannot get money from volunteers then we can think about the state. Then it is: how is the money allocated? In particular for new and challenging parties, if they want to establish themselves, will they have access to public resources? That is an issue in many places where essentially there has been a cartel: parties that are in Parliament get the resources and parties outside of Parliament find it very difficult.

Q183 Jackie Doyle-Price: The other question is that obviously the ideal is the more democratic the better, but what does that actually mean? What we have also seen in this country is that in a political culture that has not really welcomed referendums or had them as commonplace, all of a sudden we have quite a few. In a way, that has made our politics more binary. I do not think it has a massively healthy impact on our politics.

The interesting thing about how we enforce the rules through the Electoral Commission is that probably the most difficult issues have come about as a result of those referendums. It feels like the Electoral Commission tends to be more activist where there is a narrow result. When you take the EU referendum, which was 52:48, it was ripe for investigation by the Electoral Commission. We had some quite deep investigations into funds. Individuals particularly faced the burden, often at great cost to their reputations and great financial cost to them. There is a view abroad that actually the Electoral Commission was not behaving entirely impartially in that. Do you have any observations about that?

Professor Norris: Referendums are a fascinating area. When it comes to party funding you know how you can allocate public funds—because you have parties that have a share of the vote, a share of the seats or there are other criteria—so we can do that in a fairly fair way. Also, they are regular, we know that they are going to happen so we can plan ahead and it is institutionalised. When it comes to referendums, particularly in the United Kingdom unlike in Switzerland, it has been much more ad hoc.



With the Brexit referendum, if we had thought about the rules of the game and had said there had to be, for example, a supermajority for any constitutional issue like Brexit—it has to be a 60% vote rather than 50% vote—then I think a lot of the polarisation could have been avoided. It could have been that one side or the other had 60%, but that is not really the question. The point is that you get legitimacy if you do not get a tight, close, result. When you get 52:48 everybody thinks, “We really were the one that almost won” or, “There wasn’t sufficient on the other side.” A 60% or supermajority, which is quite common in constitutional referendums, would have had a very different outcome. It would have been seen as more legitimate, whichever side got through.

We need to think quite hard about how referendums are run and how we think them through. That is particularly when there are more than two sides, as there often are in a referendum with very complex issues—think about the referendum that we had in the United Kingdom on the alternative vote. The process that was done in New Zealand was very different from the process that we followed in the United Kingdom. In New Zealand, when they came up for electoral reform, the first referendum was whether there should be reform to the existing system and the second one gave them a range of different choices—which included mixed-member systems, alternative voting and so on—so there was more than one choice on the ballot. We could have learnt about that when we came to the United Kingdom with the alternative vote referendum and said that maybe it is not just a choice of, “Either you take it or you don’t,” it was not binary politics, it was not simply a black and white choice, but there were more options given to the general public, along with information campaigns that are very important on each side on any debate like that.

Looking into the rules of referendum for future referendums—especially if there are ones, for example, on Scotland coming up or other constitutional issues in particular—is an important task. I would love to see the commission do a good comparative referendum best practice look around Switzerland and look around at countries that have many more referendums than Britain does and ask, “How do they run them? What are the rules? How do they fund them? How do they make sure the publicity and the information is fair and open and everybody gets a platform?” and really think beyond the practice of what we have had so far.

Q184 **Jackie Doyle-Price:** In that sense it is easy for the Electoral Commission to establish the rules of the game, if you like, and expect everyone to conform. However, inevitably—particularly where there is a binary choice but where you can see you could have close results in other circumstances too—is it inevitable that the regulator will be politicised in the event of a close result?

Professor Norris: I think the electoral commission in many countries has become more politicised in recent years, in general. It has taken a



much more visible role, partly because we are trying to regulate more. We are having more elections and party polarisation into different camps has obviously been occurring in many countries as well, because we have had growth of those particularly on the authoritarian populist far right who have pulled politics in that direction, and then a response from progressive movements as well.

I have documented that with some very good data to look at the degree of polarisation in America, where the Republicans have moved very much towards the right over successive elections, well before Trump, and the Democrats have remained somewhat towards the left and gone further to the left.

Party polarisation makes the job of the umpire, which is the role of the electoral commission, more controversial in any sport or contest. It has become more visible and transparency is a wonderful thing, of course, but it also means that any mistakes that occur are also much more visible and we have higher public standards, so I think it is inevitable that these are issues where the public trust has to be established but it is more difficult, for all the challenges we mentioned earlier, to establish that.

Jackie Doyle-Price: Dr Garnett, do you have any observations on those issues?

Dr Garnett: I don't think I have much to add after Professor Norris's good explanation, so I think I will leave it there.

Q185 **Jackie Doyle-Price:** Dr Reidy, what is the perspective in Ireland? You raised the issue of referendums and of course you have recent experience of a referendum question that is very emotive and again very binary. Do you feel that in those circumstances the regulator becomes very politicised?

Dr Reidy: I would start by saying that the regulation of referendums is split among a number of agencies in the case of Ireland. We do have a body called the Referendum Commission, which is established at each referendum, but it is a voter-facing body and it is primarily given responsibilities in relation to providing information on the referendum question and also has a role in relation to mobilisation of voters, so encouraging participation.

We have done a lot of research over time. This body is not politicised and there are very high levels of trust in the information that is provided by the Referendum Commission. It has generally been seen as a successful body. The other aspects of the referendum organisation—the polling aspects—are managed through the local authorities and then there are some financial aspects. These, interestingly, are quite light-touch in the Irish case. Political donation limits apply and there are transparency requirements for anybody who has been involved in the referendum. They are required to register with SIPO and they are required to make declarations of donations, but they don't have to say what they have



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done in terms of spending, so they are generally light-touch in that sense.

I would draw two separate lines from that. One is very similar to what Professor Norris has said. We did research on the regulation of referendum campaigns. What we found was that countries that tended to have quite a lot of referendums—like Switzerland, or even Ireland—tended to have low to medium levels of campaign regulation; whereas countries that tended to have quite infrequent referendums tended to have quite highly regulated environments when it came to the management of referendums. The UK was actually one of the more regulated countries in relation to referendums. I would put Ireland in the middle of the spectrum in terms of campaign regulation.

To pick up on your more specific question around the effect of referendums, the intersection of representative democracy and direct democracy is a very complex area, but our experience over a very long period of time is that referendums have moderated polarisation; because really complex issues have been sent for direct decision by referendums, that has allowed the political parties, in a way, to take a step back and not be sucked into these intense debates.

The obvious one is the one you mention. We have had five separate referendum questions on abortion. These were very intense debates, but in a way the political parties were able to avoid becoming directly involved in these by putting issues to a referendum division. So I do not think it is automatic that a referendum necessarily leads to greater polarisation. I think that the context matters.

You also have to keep in mind that referendums in Ireland happen in very specific instances where you need to make a change to the constitution, so there is a very clear reason why you have a referendum. The referendum outcome is binding and the process involved in it is very clear-cut.

One last thing to say about the referendum experience in Ireland is that, in the last decade, there have been increasing experiments involving or adding on deliberative-type stages to the process. Specifically, where we have had controversial questions on social issues, the referendums have been preceded by a deliberative stage, usually a citizens' assembly or a constitutional convention, where the issue is discussed in this neutral space.

The research we have done shows that, where that has been the case, it has had a positive impact on the information environment in particular. Voters tend to be better informed. That is because the deliberative fora are constructed according to a set prescriptive format. There is a requirement for information from both sides, lots of objective information. Then you have the fact that the addition of these stages elongates the debate and discussion phase by its very nature. Often something that might take place in a campaign of three months is taking



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place over 12 months. Our research would suggest that all of this has contributed to voters being better informed at the end.

Certainly, from the abortion referendum—the most recent one—we were able to show that there was much clearer alignment between the voters' personal values and their voting decision than what we would have seen in earlier referendums maybe a decade or 15 years previously. The early evidence from Ireland is that that has been a very beneficial development. I would not say it has been institutionalised now, but there is a sense that it is good practice, and I think Governments are leaning much more towards that model when it comes to referendums.

Chair: Thank you very much. Conscious of time, if we can up the pace slightly with the next set of questions we would be very grateful.

Q186 **Rachel Hopkins:** I want to ask an overarching question, starting with Professor Norris, if I may. Which electoral management bodies do you think have been the most effective in maintaining trust and confidence in elections and referendums, and why do you think that is?

Professor Norris: I think that electoral commissions can play a big role in this, particularly if they follow the basic principles that we talked about earlier—transparency, efficiency, impartiality and so on.

Obviously, the countries that come to mind where there is the highest levels of trust are those that often have high levels of trust in Parliament, in politicians and in the political system and in liberal democracy as well. So they are, often, the Scandinavian countries, the Swedens, the Norways, the Denmarks, Germany and those countries that are seen essentially as meeting the principles of good governance, of which the electoral commission is one.

The electoral commission normally is not seen separately, unless something goes wrong, in which case the body can get the blame for a particular administrative error or an error that is seen as basically destabilising the election results and people lose confidence in the electoral commissioner or in a particular controversy that emerges and so on.

So I don't think you can clearly say that it is one type of election organisation or that it is a particular characteristic of the contest. Instead, what you can find is that there are different issues that affect trust in Government and trust in elections in different places. What you really want is a sceptical public who know something about the elections, know something about how it works and are reasonably well informed but one that is also feeling that the election is legitimate.

For example, we can get a very efficient body but partisan politicians say that the election wasn't fair or they complain about the conduct or there are particular regions or states that have had a problem in that election, and immediately the confidence can disappear. It was a bit like an escalator. You can see confidence decline in elections in many countries



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around the world. We monitor that quite a lot. Restoring confidence—making it go the other way once an error has been occurring—is very difficult indeed. That means that it damages liberal democracy in many ways.

Q187 **Rachel Hopkins:** Dr Garnett, do you have anything to add?

Dr Garnett: I would echo the point that trust and confidence in elections comes from a variety of factors—the individual-level factors, like engagement and familiarity with the systems, even whether they voted for the winner of that election. Then also the institutional factors, like public financing of the electoral system and then, yes, some electoral management variables.

The research that I have done, trying to parse out what specific electoral management variables are going to improve trust, has been largely a discovery that electoral management works within a broader system and cannot necessarily always be that single variable that you can change to improve trust, so I would echo what Professor Norris said there.

Rachel Hopkins: Dr Reidy, have you anything to add to that?

Dr Reidy: No, I defer to my two other colleagues there. They are much more expert on that matter.

Q188 **Rachel Hopkins:** How do other electoral management bodies ensure that their guidance is clear, accessible and understood by voters and by those who they regulate?

Professor Norris: I have been very impressed by the transparency that is there in the UK Electoral Commission. Even things I noticed in the annual report, like salaries, are published in a way that is quite rare, and a range of other sorts of details, which are now available.

If we think back 20 years ago before the Electoral Commission was created and how elections were run, it was very much a localised affair. Local government had the responsibility, along with the Home Office and some Government Ministers. One of the big impacts of the Electoral Commission has been to expand the information, with expert information that is available through its research and then public information that is easily available.

For example, when you go to the Electoral Commission website it immediately says, “Are you interested as a voter? Are you interested as a party? Are you interested as a candidate? Are you interested as a donor?” It is really well designed to be user-friendly and to make sure that, whatever your needs are as a citizen or as a potential candidate, you can immediately find the legal information on how you can vote. You can immediately find information about the law and the regulations, about campaign funding and so on. I think it has done a really good job at improving that in the last few years.



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When I look around the world at different electoral management bodies, some of them are much more obscure. You do not get a very clear analysis of the results. There is very little auditing available. There is very little information about the commissioners and their role and responsibilities and so on.

I think all credit to the United Kingdom for doing a very good job on that. Elections Canada is also particularly good and the Electoral Commission in Australia and so on. Many countries around the world have been improving transparency, but you have to have accountability as well as transparency. Information is not enough. If something goes wrong you also need to know where the buck stops and who is responsible and what is going to be done about it. That is very much the job of the oversight bodies and the oversight role of the commission in general.

Dr Garnett: The only thing that I would add to that is that it does seem that having some centralised body, like an electoral commission, is one good way for the public to be better able to understand where they can access clear, impartial and accurate information. When things get very decentralised it can be very difficult to know, "Which Secretary of State should I be looking at for which particular process in which particular area?" That is one area where an Electoral Commission can fill a very key role to ensure that there is clear and consistent information and, when there might be misinformation out there, a clear and consistent place to find out what is accurate.

Q189 **Rachel Hopkins:** Dr Reidy, Ministers in Ireland envisage the new Electoral Commission in Ireland playing a key role in voter education and in encouraging voters to turn out. How important is the regulator's role in terms of voter engagement and education in that respect?

Dr Reidy: We have an unusual scenario where we have a very effective body in relation to referendums but no agency with responsibility in relation to elections. We have done some research that compares elections and referendums but it is very imperfect. I think we can say that our referendum voters tend to be quite informed and they do have high levels of trust in the information that they get.

In relation to elections, there is a great deal of reliance on the mainstream media to provide functions in relation to information on the electoral system and mobilisation of voters. That can work more or less effectively, depending on what type of election it can be. In particular, one of the reasons that there is concern in the Republic is because we have a fairly complicated electoral system. It is a preferential electoral system and we have a lot of evidence to show that there are people going into the polling station who don't know how to vote, and we have no body that has the responsibility for doing that. I think that has informed why the voter education piece has been identified as such an important function to be prioritised by the Electoral Commission.



We do have the good model of the Referendum Commission and how it does that. It does that very effectively in terms of communicating through the mainstream media. It is very visible more and more now in social media. It runs very effective ad campaigns. There is also a lot of background work in relation to the provision of information for very specific communities. All of its documents are produced in Braille. It is very attuned to questions of literacy, both digital literacy and actual literacy, and it provides a lot of documents taking those considerations into account. As a consequence, we view it as a model of good practice.

Dr Garnett: We know that not all voters are starting at the same starting point, so voter education and outreach has not always been central to every election management body's mandate. I think that, especially as we begin to understand more that not everyone participates in the same way that others do, we need to focus in on the electoral management body as being a key player in providing voter education and outreach.

To give a little example from Canada, in 2014 the new Fair Elections Act sought to remove the power of the Chief Electoral Officer to do public engagement, public education and democratic outreach. There was a very large outcry against that, especially from academics and from civil society organisations, so that was reversed in 2018 with amendments to the Elections Act. There was an attempt to limit an electoral management body's role in that education and outreach and it was really seen as not a good practice and not to the benefit of the democratic quality of our country.

Q190 **Lloyd Russell-Moyle:** Dr Garnett, where do voters, candidates or party campaigners go when they want to complain about an election?

Dr Garnett: Thank you for that question. It depends. There are a few different places. If there is something about the service that the voter received or the way the election was run, they can complain to Elections Canada. If it is about media and what they saw on TV, for example, the CRTC would be the place to go to. For a lot of the major issues, major complaints especially regarding the Elections Act, that would be the Commissioner of Canada Elections. That is more like the enforcement arm. It is independent from the Chief Electoral Officer in the sense that Elections Canada is investigating its own show, type of thing, so it is a separate person there.

As Professor Norris has mentioned, you can have transparency but you also need to have that accountability. If you go to the Commissioner of Canada Elections website you can see a list of all the times that there have been either minor violations, which have resulted in, say, monetary fines, or high-profile cases where people have been charged—where a Member of Parliament was charged and put in prison for having covered up overspending. That is the example of how in Canada there has to be the transparency but also that enforcement when those laws have been violated.



Q191 **Lloyd Russell-Moyle:** If I was a voter, is it clear where I go to complain or do I have to work it out myself?

Dr Garnett: The Elections Canada website does a pretty good job in terms of, "If you have a complaint here is where you go. Here is the web form." Also, the website for the Commissioner of Canada Elections is very comprehensive and provides excellent information. Whether or not an individual Canadian would know that from the get-go is a question that I really don't have an answer to. Somebody who studies elections would know for sure.

I am not entirely sure if an individual voter would know right from the get-go but Elections Canada is pretty high-profile, so they would probably try Elections Canada first and there you can get the information of where you can go to launch a complaint.

Q192 **Lloyd Russell-Moyle:** If someone sent a complaint to the wrong body is there any internal co-ordination to make sure it ends up at the right body, or will it be rejected and they will have to try somewhere else?

Dr Garnett: I don't know that off the top of my head.

Q193 **Lloyd Russell-Moyle:** Are there particularly high-profile cases that might help the Committee understand Canada's approach to enforcement?

Dr Garnett: Yes. As I mentioned, there have been small violations of campaign finance laws and then more serious cases when there is deliberate activity to overspend and then trying to cover that up. In that case, the individual Member of Parliament was charged. That was sent over to public prosecution and it went through the court system and ultimately he did serve jail time and was barred from holding office, so effectively he lost his seat because of that.

So, yes, there have been examples where the system worked as intended. Where, if you do violate the Elections Act, there are consequences. In this particular Member of Parliament's case it was actually jail time and being barred from holding office.

Q194 **Jackie Doyle-Price:** I want to ask a few questions about governance. Clearly there is a role for lay members, which might inspire more public confidence. There is a role for experts in delivering and administering elections, but also there is a role for representatives of political parties. Professor Norris, what do you think is the best model?

Professor Norris: The role of political parties in particular has often been a controversial issue. In many Latin American countries they make sure that the commissioner is based on nominations from all the political parties. They have had tremendous controversies in all sorts of elections: Lula da Silva's corruption in Brazil, issues of corruption and vote-buying in Mexico and other sorts of controversies. For example, think about Venezuela and even more difficult elections.



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They often have representatives who are part of the commission and then they often have an electoral tribunal or court, which is a dedicated body made up of judges and other independents, to evaluate these sorts of issues after the election. That is seen as an effective way to try to bring conciliation and legitimacy to problems in any particular contest.

Other countries do use other bodies. If we think about the incredible contention after the United States elections, that has gone through so many different agencies, it has been very much a political football in many ways and it is still going on today. In the case of the 2020 elections in November, there is currently a recount being conducted in Arizona by a private company because many Republicans in that state still believe that there are problems.

You do not want a process that is just going on and on and on. That is not an effective way of dealing with it. The United States has been much more ad hoc, whereas in Europe we are relying much more upon the standard forms of courts rather than a dedicated election court to resolve any disputes.

The other thing that is really important to bring to national bodies is to make sure that an election is an informal mechanism, whereby people can talk at the time of an election about any problem that arises. You really do not want to end up in the courts three months after the election, when nothing can be changed. If you know that there is an issue, for example, about a pamphlet that seems to contain misinformation or you think that there is overspending in a particular constituency or a particular area, you want that mechanism to be able to meet during an election in real time with different representatives from parties to try to sort it out.

You can think of this as a little bit like divorce mediation. At the end everybody goes to court but before that there are many processes that try to bring people together to sort things out informally. That is a much better process if you can implement that and everybody knows how to implement that early on and during the campaign. NGOs can bring a complaint, particular interest groups or movements. It could be watchdog organisations. It could be journalists who are observing the election. It could be citizens who observe the election as well. Anybody should have that mechanism to try to resolve any difficulties and then, if necessary, go through the legal process after the election as well.

Q195 **Jackie Doyle-Price:** That is a very behavioural thing. It would require the regulator to be very fleet of foot, which is not our experience. Dr Garnett, what do you think about that?

Dr Garnett: The only thing I could add is that there was a component of that question asked about the partisan nature of election management boards. We know that in other aspects of public life having multi-partisan committees can be one way to improve stakeholder confidence, especially in divided societies, by giving everyone a seat at the table. On the other



hand, just keeping parties out of it, so having a clearly independent in terms of a non-partisan election management body, can be seen as much more impartial, as has been the case in Canada.

Unfortunately, I do not know of any research that has very clearly stated that one or the other is always going to be better in improving the quality of electoral management. There are pros and cons on both sides to including parties within that process. I don't know if Professor Norris wanted to add anything on that.

Professor Norris: That is absolutely right—that there is different research in different countries but there is no universal model. International bodies when they go into a country to help and advise on how to set up an electoral commission never try to give them one model; they give them different examples of best practice.

Q196 **Jackie Doyle-Price:** So, what is going to happen in Ireland, Dr Reidy?

Dr Reidy: In Ireland we have had this conversation about how you balance the need for expertise, but also we have a traditional administrative model that has tended to rely on having existing office holders serve on important Committees. That has been to deliver impartiality.

So our Equality and Human Rights Commission and our Policing Authority are chaired by a member of the judiciary. Then you have the Clerk of the Parliament, possibly both Houses of Parliament, and the Ombudsman and a couple of other people who automatically sit on the Committee. That has been the kind of model that we have tended to take off the shelf and use for all agencies that we want to be impartial.

The conversation has broadened out a little bit more in relation to the Electoral Commission, because there is a sense that quite a number of those people don't necessarily communicate with the voting public as part of their roles every day, and that that is a really important aspect of what we want the Electoral Commission to do. As a consequence, the current model is that there will be a member of the judiciary who will chair the Electoral Commission, then there will be two ex officio members who are the Clerk of the Parliament and the Ombudsman, and then four people who will be appointed through a public appointments commission.

Transparency is really the crucial thing here. The positions will be advertised, and there are a number of areas of expertise that have been outlined, but it is non-prescriptive and it is a transparent and non-partisan Committee that will make the appointments. That is currently the plan set out. There will also be a chief executive of the agency as well, but that is the model as it is currently set out.

Q197 **Lloyd Russell-Moyle:** Professor Norris, and maybe then Dr Garnett: how are the Electoral Commissions in Canada, New Zealand and Australia held to account? What role do Parliaments play? Is there a specific



Committee or Committees that they report to, or is it completely independent of accountability mechanisms?

Professor Norris: There are different accountability mechanisms in each of those cases. Clearly, Parliament has a major role. How direct that is—for example, whether it is about the appointment and the nomination of the commissioner and the commissioner's committees as well, the main roles of the staff—how far it is about the budgets, and how far, for example, there is a fixed budget that goes on over a series of years or how far there is an annual budget. There are other issues as well when it comes to particular contests, in terms of the oversight, for example, of any complaints, where the judiciary will have a major role and the police, of course, will have a major role in investigating problems and so on.

So there is no one source of accountability or oversight—quite rightly—because there are different functions that are being put forward there. The general lesson when you do comparative work is that you don't want so much oversight, such that there is essentially political meddling on a daily basis or that the commissioners are not sufficiently independent to be able to run for their term of office. For example, they should not be vulnerable to political pressures from any politicians or any parties or the Executive.

There needs to be some level of arm's length relationship with any political party or Parliament. At the same time, Parliament is obviously responsible for the overall administration of the budget and the efficiency of the election and for investigating any problems that arise with the commission. I think regular periodic reviews—very much like the work that you are doing today—are an essential function, but not going too far because the commission has to be able to use its best judgment during its time—

Q198 **Lloyd Russell-Moyle:** Do Canada, New Zealand and Australia all have Committees that hold periodic reviews?

Professor Norris: Yes. In a parliamentary democracy that is the normal way that you would run this. Where parties have a claim in elections then Parliament is the best body to evaluate the work of the commission. I think it is different in countries where the commission is based within the Government, as it used to be in the United Kingdom when it was in the Home Office.

For example, in Germany and in France, you still find that the elections are run from the central Ministry and there are different forms of accountability, less of an independent commissioner and more an accountability through the Minister who is responsible for that particular Department. That works quite well in those countries because in large part they can assume that the civil service is very impartial, things are fairly transparent and open and there haven't been high controversies.



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The real danger and the lack of accountability comes if you have too much Government interference and there is very little trust in that system in a divided country. In that context, you have a recipe for disaster because there can clearly be too much political influence over the role of the commission and too much partisanship can get involved as well.

Q199 Lloyd Russell-Moyle: Dr Garnett, is there anything from Canada? What could be done more effectively for accountability and transparency mechanisms?

Dr Garnett: I have very little to add beyond what Professor Norris has said. Our Chief Electoral Officer, as the head of Elections Canada, reports only to Parliament itself and so the Chief Electoral Office is scrutinised by Parliament, but it will also be informally scrutinised by the public, by media, by political parties, and the removal mechanism is only for cause and by the Governor General after a joint request following a majority vote in the House of Commons and Senate. So it is quite serious. You cannot just get rid of the Chief Electoral Officer the minute something goes—

Q200 Lloyd Russell-Moyle: So in Canada it is effectively a Crown appointment and the Governor General can remove, but that is not at the request of the Prime Minister; it has to be by vote. Is that a supermajority vote or is it just a simple majority vote in the Parliament?

Dr Garnett: Just a majority vote in the Parliament.

Q201 Lloyd Russell-Moyle: Is that advisory or is it required that then the Governor General will act on that?

Dr Garnett: Well, everything is advisory, but—

Q202 Lloyd Russell-Moyle: It is actually advisory or it is—as we know in the Westminster-based systems—advisory but they will follow it?

Dr Garnett: I would expect that it would be followed.

Lloyd Russell-Moyle: Good. Thank you very much. That is much appreciated.

Q203 Chair: If I could just end with the concluding question, which always is appropriate, and pose a question, first of all, to Professor Norris. In your experience, what different roles do electoral management bodies hold in recommending change, or indeed consolidation, to a country's electoral law?

Professor Norris: The role of commissions has been very much one of advice and providing expertise, and gathering expertise from a broader research community and from other sorts of consultations. Whenever any Government wants to think about changing, whether it is the electoral law itself or all these other aspects that we have talked about—campaign funding, voting facilities, how to run an election under Covid conditions, how to work with cybersecurity—then I think the Electoral Commission



can play a very good role as a consolidating mechanism to provide expert sources of information, consulting the public, consulting those who have done research on the area and, of course, consulting other countries as well from their experience.

The electoral commissions have very much talked to each other. When I visited, for example, the Australian Electoral Commission they said they always looked at New Zealand, Canada and the United Kingdom, and on a fairly regular basis they picked up the phone and talked to people about how they could improve the elections and learn from best practice in comparable liberal democracies. I think that there is a real role for all sorts of ways to get further information and then to give that, of course, to Parliament with a number of options, so that we can think about the most appropriate ways to run elections in effective ways.

There are other sources that I will emphasise. One that might be of interest to the Committee is International IDEA. It is an excellent think-tank, a multilateral organisation based in Stockholm, Sweden. It had an election management design database and it collects a lot of the information you may be interested in, such as the terms of the Electoral Commission, who gets appointed, how electoral disputes are managed, how funding is managed, how budgets are worked through and so on, how laws are changed. International IDEA's electoral database might give you some very useful information, again, for best practice for how these things work in other countries on a systematic basis.

Q204 **Chair:** Thank you. Dr Garnett, have you any thoughts on that?

Dr Garnett: Yes. There is always a balancing act between providing the electoral commission or the electoral management body the freedom to innovate and to deal with new issues as they come up, while also remembering that they are ultimately accountable to Parliament and their role is to implement election law. We have had debates about that here in Canada, trying to figure out where that balance lies. For example, whether it was within the scope of Elections Canada to innovate and to test electronic voting—whether that was something it could do. Whether it could be tested as a pilot and having that put into the electoral law, which they could test as a pilot but with the approval of a parliamentary Committee.

There has to be a collaborative balance between the local needs and the ability for innovation, the inside knowledge of the ENB on the ground and then the ability of the policymakers to represent constituencies and ultimately have the final say in how elections are run.

Q205 **Chair:** Finally, Dr Reidy, what role is envisaged for the new Electoral Commission in Ireland, in terms of advising Government and Parliament about reform of electoral law?

Dr Reidy: It is set out in the General Scheme of the Bill that it will have a role. I think probably the most important role is that it will be able to



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conduct research on these issues, because at present that is particularly lacking in the Irish context. It is a very fragmented system and, as a consequence, there are real gaps in our information. The first thing is that it will be empowered to conduct research, and that research function is going to be quite extensive, and then it will also have the power to specifically advise the Minister with responsibility on particular changes that are required to the electoral laws. It is not envisaged that it will have any role in developing those. There will continue to be a franchise, a much smaller franchise section within the responsible Government Department that will be involved in any legislative developments.

Chair: Thank you. May I thank all three of our witnesses for their time today, and for sharing their expertise with us? We are particularly grateful for that. Also, again, thank you to our witnesses across the Atlantic, who got up extraordinarily early to take part in this session. We are very grateful indeed for that as well. If there is anything further you wish to furnish us with, please do write to the Committee. It will be gratefully received; but, for the moment, thank you very much.