

Public Administration and Constitutional Affairs Committee

Oral evidence: [The work of the Electoral Commission, HC 43](#)

Tuesday 25 May 2021

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

Questions 1 - 63

Witnesses

I: Paul Comer, Former Compliance Director, Britain Stronger in Europe; Alan Halsall, Former Responsible Person, Vote Leave Ltd; and Scott Martin, Solicitor to the SNP and former Responsible Person, Yes Scotland Ltd.

II: The Rt Hon Dominic Grieve QC, former member of the Independent Commission on Referendums; The Rt Hon Baroness Stuart of Edgbaston, former member of the Independent Commission on Referendums; Dr Alan Renwick, Deputy Director of the Constitution Unit; and Barry Ryan, Principal Officer, Franchise Unit, Department of Housing, Local Government and Heritage of the Republic of Ireland.

Examination of Witnesses

Witnesses: Paul Comer, Alan Halsall and Scott Martin.

Q1 **Chair:** Good morning and welcome to a hybrid public meeting of the Public Administration and Constitutional Affairs Committee. I am here in the Grimond Room in Portcullis House with a small number of staff required to facilitate the meeting, along with a couple of colleagues, and other colleagues and witnesses join us from their homes and offices across the UK.

This evidence session will consider the Electoral Commission's role and reputation in regulating the conduct of referendums, with a particular focus on the regulation of designated lead campaigners. The Committee is very grateful indeed to all of our witnesses this morning for giving their



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time today and notes that unfortunately, Kate Watson, the former responsible person of the Better Together campaign, is unable to appear before the Committee for very understandable reasons, and we thank her for providing us with written evidence.

The first panel of witnesses comprises the former responsible person or compliance director of each of the official campaigns for both the 2014 Scottish independence referendum and the 2016 EU referendum. It will cover the quality and responsiveness of the advice and guidance they received from the Electoral Commission over the course of the campaign and their experience of the Electoral Commission's approach to investigations and enforcement. It is not intended to revisit the merits of the referendum campaigns but rather focus on the procedural aspects.

Our second panel includes former members of the Independent Commission on Referendums and the head of the Franchise Unit in Ireland and will explore recent reviews governing the conduct of referendums and lessons for the Electoral Commission.

Could I ask the first panel of witnesses to introduce themselves for the record, please, starting with Paul Comer?

Paul Comer: Mōrena, kia ora koutou from New Zealand. My name is Paul Comer. I was the compliance director for the Remain campaign. I was not the responsible person. That was held by Will Straw, our executive director.

Alan Halsall: Good morning, I am Alan Halsall and I was the responsible person for the Vote Leave campaign.

Scott Martin: Good morning all. I am Scott Martin. I am the solicitor to the Scottish National Party and I have been on the Electoral Commission's Political Parties Panel since 2008. I was also a director of Yes Scotland Ltd for the Scottish independence referendum in 2014, and I was the responsible person for that organisation.

Q2 **Chair:** Thank you, all. The Electoral Commission, as we know, has a wide variety of responsibilities in administering referendums and regulating their conduct. Its guidance to campaigners states that it is here to help campaigners comply with the rules and that, while most campaigners do not have to follow its guidance, doing so will "normally be doing enough to comply with the law". Could I ask each of our witnesses in turn, starting with Mr Martin, how helpful was the Commission's guidance in enabling you to ensure that your campaign organisation complied with the legal rules on spending, donations and loans?

Scott Martin: My perspective of the Electoral Commission guidance is probably different than that of an organisation that has been set up just before a referendum has begun. As indicated, I am the solicitor for the Scottish National Party and through that have had direct contacts with the Electoral Commission over a considerable period. That in effect meant that there was a much longer lead-in to the independence referendum in 2014 legislatively than there was to the EU referendum. That meant that



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I was involved and watched the process of the legislation going through the Parliament, so I had a very good idea of what the legislation was before I had seen any guidance on it. I had that familiarity there that others might not have. Indeed, the Commission shared draft guidance with us all in advance, so I probably have a different perspective on that than others.

It was helpful. A lot of help was confirming what I already understood myself from the legislation and that my understanding aligned with the Commission's thinking on that. Some of the guidance was also useful in changing some of the dry statutory language into phrases, like changing "designated organisation" into "lead organisation", which made it easier to communicate some of the requirements to other people involved in the campaign.

Q3 Chair: Did you find any particular challenges in accounting for loans, donations and spending accurately, particularly given the rise of online spending and campaigning? If so, how did you mitigate those challenges, and how effectively do you think the Electoral Commission supported campaigners in addressing any ambiguities or issues?

Scott Martin: On the basic reporting, we did not have any loans to report. We tried to report a credit facility informally, which was the fact that, remarkably, we had a credit card. That is not news to anyone, I do not think. On the donations side, I basically ran it all from a spreadsheet and did not have any particular difficulties, in that there were reporting mechanisms so that I knew when any donation over £500 had been received.

Spending was more difficult, particularly when it went to things like working out which parts of staff expenses fell within the definition of referendum expenses, but I suppose I probably had the advantage that I was not, as in some organisations, the compliance officer as one of the people in a large boardroom. I was also the person who paid out all of the referendum expenses through our online banking facilities, so I knew things were coming before there was any requirement to spend in the spending return. I was thinking ahead in terms of what things were properly accountable for as referendum expenses and what items of expenditure were not. We were pretty there, and it did not cause any noticeable difficulties.

Q4 Chair: Thank you very much indeed for that, Mr Martin. I will pose my first question again to Paul Comer. How helpful was the Commission's guidance in enabling you to ensure that your campaign organisation complied with the legal rules on spending, donations and loans?

Paul Comer: Broadly, we found it very helpful. It covers the quite complex and wide range of legislation and brought that together into a stable form, probably more so for making sure that those rules were understood across our campaign. I am sure our finance directors would



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have reference to primary legislation as well, but the guidance was very helpful in doing that.

Mr Martin touched on a couple of things that were importantly different for the referendum for Brexit than Scotland. The pace of arriving between the legislation and the referendum itself was much shorter and, therefore, getting all the ducks in a row and your procedures in place was more challenging, but also because of the special purpose vehicle nature of the Brexit referendum campaigning bodies. That long duration of compliance relationship with the Electoral Commission did not exist, but we found it relatively easy to build that in quick time.

Q5 Chair: What sorts of challenges did you face in accounting for loans, donation and spending, particularly given the rise of online spend in campaigning, and how did you mitigate against those challenges?

Paul Comer: We made a decision very early on for online campaigning to simply restrict all donations to credit cards registered in the UK and below the reportable threshold. Anyone wishing to donate above that had to come through to us and make contact so that we could go through proper procedures. We felt that that was safer.

The loans was one area where we had a bit of trickiness at the start as the vehicles were starting up. Some suppliers were requiring guarantees, so in terms of whether they were treated as loans and so on, we got into a bit of a debate with the Electoral Commission, but that all got resolved. There was some trickiness around the edges, but in general we found our way through those quite quickly and found the Commission reasonably responsive at that early stage.

Q6 Chair: Would you describe the Commission as reasonably responsive with reference to supporting campaigners and addressing any ambiguities or issues?

Paul Comer: Yes, in general, certainly early on in the campaign. Once the heat started through into the regulated period, it could take longer to get some responses on issues that were, shall we put it, at the edges of the guidance. Where it was not clearly covered by the guidance, it might take longer to get a response from them. At times that could present some challenges, but that tended to be more on the side of donations than spending.

Q7 Chair: Do you recall any of those particular issues, as you say, at the edges of guidance and any that you might recall memorably?

Paul Comer: I know a lot of evidence has been received on this already and I am sure it will come up. Getting any clarity on the working together arrangements and what was or was not allowable to do with other organisations took time sometimes.

Q8 Chair: Thank you. Mr Halsall, I will pose that first question to you. How helpful was the Commission's guidance in enabling you to ensure that



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your campaign organisation complied with legal rules on spending, donations and loans?

Alan Halsall: We found that the guidance that we got before the control period was probably the best we could get in the fact that there was a lot of new law. There were no court judgments to back up the statutes. Before the control period there was quite good workings.

The difficulty we had was in the regulated 60-day period. That was where we had problems. The responses from the Electoral Commission were genuinely quite disappointing in the time that was taken. You have a very fast-moving referendum, and you have a completely new team working on both sides. These are not political parties that have been established, so everything was new and everything was set up. To be honest, it was very disappointing when you asked for some guidance from the Electoral Commission during the regulated period of 60 days and it took 20 days and a reminder to get a response. Virtually a third of the way through the control period only did we get some responses from the Electoral Commission on a working together issue and other issues.

That was quite disappointing, and I would suggest that for future referendums it would be much better to have a panel of experts available 18 or 12 hours a day during the 60-day period to give advice within a number of hours. Twenty days was not acceptable.

Q9 Chair: Could you describe the sorts of challenges you faced in accounting for loans, donations and spending activity, particularly given the rise of online spending and campaigning, and how did you mitigate against those challenges?

Alan Halsall: Like the other campaigns, we did not have many issues on the donations. We had the spreadsheets and we understood the rules. To be honest, it went pretty smoothly.

Spending was a bit different. We did look for clarity, for instance on depreciating capital assets that we bought, like office furniture. We wanted to understand how that would be treated, and unfortunately the Electoral Commission did not or could not advise us. Staff costs was another areas that we struggled on. But the actual income and donations was not a problem for us.

Q10 Chair: How might you characterise how the Electoral Commission supported campaigners in addressing any of those ambiguities and issues you have alluded to?

Alan Halsall: That was my point earlier—it did not happen quickly enough. We did not get answers quickly enough. It seemed to not always go to the top of the tree as far as the Electoral Commission was concerned. We were given answers by people who I am sure were very well meaning, but they took too long and often they were not succinct enough, like in the capital expenditure point I made to you.



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Q11 **Chair:** Were there more ambiguities in those replies than they were trying to solve, if that makes sense?

Alan Halsall: Exactly. You are right; that would be a good way of putting it. The main issue was the delay. We needed speedy responses. If we had had a speedy response, we could then get back with a supplementary question to get to the bottom of it. We never got that. We had to chase. In a 60-day control period, we at Vote Leave had to chase the Electoral Commission for responses to our questions some 10 days after we had written it, and this is only a period of 60 days.

Q12 **John Stevenson:** This is a question for each of you, but I will start with Mr Halsall, because you have partially alluded to your answer already. During the campaign, was there a clear point of contact within the Electoral Commission that you could go to directly with queries and concerns? If there was, was it successful? If there was not, should there have been, and how could we improve that?

Alan Halsall: There were points of contact, to be fair, but they were not high enough up the tree, probably. That was the issue, probably because they had to go higher up their structure to get the answers, and in some cases even the answers that came back, as I said earlier, were not always that clear.

Q13 **John Stevenson:** Do you think it would have been better to have somebody designated as a point of contact for your operations?

Alan Halsall: I think there should have been a panel. I would have liked to have seen a panel. They should have been there from 8.00 am until 10.00 pm every day for the 60 days. We are only talking about 60 days—two months. They should have been there every day, and they should have been responding within a certain number of hours. The panel could consist of three experts from the Electoral Commission who covered different parts of the campaign. That would have been incredibly helpful for us.

John Stevenson: Mr Martin, what was your experience?

Scott Martin: On the question of having a single point of contact, it was a good experience in the sense that I always have an ongoing relationship with the Electoral Commission office in Edinburgh anyway, and it had a special referendum officer appointed as well for the duration of the campaign.

Could I go back a little bit to the question to Mr Halsall about ambiguities in Electoral Commission advice? The point is worth making that the quality and clarity of the Electoral Commission advice is largely dependent on the clarity of the legislation that you pass as parliamentarians. People will often reference Electoral Commission rules. There is effectively no such thing as Electoral Commission rules. There are rules set by Parliament, and if there are issues that appear through campaigns, which they will be reflected in the Electoral Commission



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reports about ambiguities, that is fundamentally first a question for Parliament to answer. If there is a need for clarity, that is for Parliament. On the question of having a single point of contact, that certainly worked as far as the independence referendum was concerned.

Paul Comer: On the question of clarity, at times, as Mr Halsall alluded to, the answers you got back were slow and could have been clearer. We had a single point of contact but, as Mr Halsall said, it felt at times that they had to go quite some way up the tree from themselves to get an answer clarifying something that you wanted. I would not go as far in solutionising as Mr Halsall has, but I agree with the overall thrust, which is that a referendum has a scale and pace that is quite different from many other elections that I have been involved in. Certainly it felt that the Commission could have done with some additional capacity to help navigate that scale and pace.

Q14 **John Stevenson:** Do you think it needs more than one individual to be your point of contact? Does it need some sort of team, whether it is a panel or something different?

Paul Comer: Whether it is a panel, as I said, I do not know that I would jump to solutionising myself. The single point of contact worked well for us and they clearly were triaging off within the organisation. I suspect things got lodged at times and it was difficult to get timely responses back through, but certainly I found our single point of contact was pretty good.

Q15 **John Stevenson:** The chair of the Electoral Commission, as chief counting officer of the referendum, excuses themselves from giving guidance. Was that an issue?

Paul Comer: I must confess that at times I found it odd that the chair of the body and the person who could maintain those sorts of decision-making powers or navigate the sorts of relationships they needed was absent from the field. It would have felt more logical to me that the deputy, for example, recused themselves to deal with the electoral administration side rather than the chair.

Q16 **John Stevenson:** Mr Halsall, did you see that as odd?

Alan Halsall: To be honest, no, I did not. I felt that the expertise required was probably over a number of people, with the chief executive having a rather different role in the organisation. Of course, if there are major issues and major problems, they have to be involved, I agree, but I would not have expected the chief executive to be involved day to day during the control period.

John Stevenson: Mr Martin, any observations?

Scott Martin: My observation is that these things are probably normally staff matters rather than necessarily at the level of a chief counting officer. Certainly my experience is that it is deputy returning officers who



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know how to run elections rather than returning officers. There was a difference in the Scottish independence referendum in terms of the administration of the referendum; the chief counting officer was a convener of the Electoral Management Board for Scotland, which was separate from the Electoral Commission, so there was a clearer distinction between the two bodies.

There is a general conflict in the Electoral Commission between its duties as far as keeping electoral referendum law under review and its enforcement, because there is an inherent conflict between having to enforce the law as it is and making recommendations about the law as it should be. I think sometimes that they enforce with a "law as it should be" hat on rather than law as it is.

Q17 **Ronnie Cowan:** I want to look at the Electoral Commission's approach to monitoring and enforcement and ask this question of all three witnesses. In oral evidence to our predecessor Committee, William Norton, the former legal director of Vote Leave, thought that the Electoral Commission was "more of an auditor than a referee", reporting months after the event rather than calling out breaches in real time "where there is a clear and present danger". Would you agree with this statement?

Paul Comer: Would I call it an auditor? I am not sure I would agree with that. As I have alluded to, the scale and pace of referenda is quite condensed, and certainly was so for Brexit, and it felt that the Electoral Commission struggled to respond in real time, especially around potential breach issues.

Q18 **Ronnie Cowan:** More of an auditor than a referee?

Paul Comer: If what he is alluding to by "auditor" is that it takes time and it is so long after the event as to be not affecting play, then yes.

Q19 **Ronnie Cowan:** I take that to mean more somebody who was pointing out the disparity of things than actually taking action to change them.

Paul Comer: Yes. For instance, a couple of times we perceived breaches from other parties in the referendum and made notifications to the Commission about that. It certainly felt that it was slow to pick up on those. As I say, in the very condensed timescale that the Brexit referendum was under, the potential for that to affect the outcome is large. Slowness is a real issue.

Ronnie Cowan: Mr Halsall, you have touched on this already, but do you want to come in on that?

Alan Halsall: The only thing I would say on what William Norton suggested is that it is quite difficult for the Electoral Commission in such a short time. I know what you are alluding to, and I think what he is alluding to as the referee is to almost issue injunctions overnight. You have a 60-day period, and by the time it picked up the facts and has given it to the lawyers to see if it can serve an injunction, probably five or



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10 days have gone by and already the campaign has moved on. I am not convinced it is realistic to be anything other than giving the guidance rather than being a referee.

Q20 **Ronnie Cowan:** Does that not fly in the face of what you said earlier about wanting somebody to make decisions? We are all politicians taking evidence here, and I have found myself during campaigns having to ask a question of somebody, "Can we do that? Is that allowed?" I wanted that answered there and then. As you say, a 10 or 20-day delay is no good to anybody.

Alan Halsall: Yes, I am differentiating between giving the guidance and issuing injunctions. Presumably you are implying that if you are a referee, you have to issue an injunction against the campaign to stop them doing something, and I am not quite sure how realistic that would be. What I am saying is that we need guidance much, much, much quicker from the Electoral Commission. Any campaigner in a referendum needs that guidance.

Scott Martin: The Electoral Commission is able to do the referee part during the course of the campaign, but it is only when it is dealing with organisations that are clearly spending but have not notified themselves as permitted participants in the referendum. That can be done, and that has been done. That happened, for instance, to CBI Scotland in the course of the Scottish independence referendum, where it was identified that it was going to hold an event and the Electoral Commission made sure that the spending at that event was within the limits before it needed to register.

On the auditor functions and dealing with the spending returns you receive afterwards, the difficulty is the complexity of the rules and what you do and do not have to account for as expenses. In dealing with spending of the Leave campaigners in the referendum, it would be quite difficult to calculate whether there had been overspend during the course of the referendum unless it is egregious overspend. You would have to capture all the expenditure and work out how much of that was permitted. It would be difficult to act as a referee with some of these issues. Things like whether someone could be registered can be done and has been done in previous referendums.

Q21 **Ronnie Cowan:** Mr Comer, someone touched on this, but could you be a bit more specific? Did you ever make representations to the Commission about potential breaches and, importantly, how effectively were those handled procedurally?

Paul Comer: Yes, we did. During the early part of the regulated period—it is five years ago, so I may be slightly slippery on dates—we made representations about the numerous Leave EU subsidiaries that sprang up all at once and made representations to the Commission that this looked like a concerted plan to breach the working together arrangements and asked them to take a look at it. It did, and at the end, through its



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investigations, it established that quite a few of those were not properly constituted.

However, as Mr Halsall said, that took 15 or 20 days. Fortunately they did not get their act together and did not spend a large sum of money in that period, but had they done so, it could have been extremely problematic. That would be an example where you would be looking for a bit of refereeing.

Alan Halsall: We reported certain breaches with regard to advertising, and certainly after the referendum we reported numerous breaches from the Remain side in setting up four, five or six campaigns within the last few days of the control period to put donations straight into them. But it was so late on in the campaign, and we did not find out about it until way after the referendum.

Scott Martin: For Yes Scotland we only made one complaint, which was after the referendum. It was after the publication of Joe Pike's book on the referendum, *Project Fear*, which revealed that after the referendum there were six-figure sums that Alistair Darling had elicited out of donors to cover the Better Together overspend. I put a complaint in about that, and despite it being clear that the spending was not just on staff, the Electoral Commission, presumably after speaking to Better Together, came back to me with an e-mail saying that it had all been spent on staffing expenses and was therefore exempt. That seems to me to be fairly remarkable. As it happened, we did not have a chance to put in any appeal by the time it came back, so that was just left on the books.

Q22 **Ronnie Cowan:** Finally, what could the Electoral Commission do better to support campaigners in ensuring compliance with the rules before considering enforcement action, or is it just poor legislation that it is trying to implement in the first place?

Paul Comer: Certainly, as Mr Halsall has said, having faster advice is absolutely critical. The reality is that all campaigners, while wishing to push the envelope for their campaign as far as they can, in campaign terms are all trying to comply with the law, so getting that advice back through as quickly as possible. For the scale and pace of referenda, it needs to put those additional resources into the liaison space and make sure that it has senior people available to give that.

It all comes back to the advice. Very often when you ask a specific question, all you get back is, "The guidance or the regulation says X and it is up to you to make a decision as to whether the thing you are doing complies and make a judgment call. If you are not complying we will find out later and you will be fined". What we often want is a black and white, "Yes, you can do it" or, "No, you cannot", within the bounds of legislation. Finding some way to bridge that gap between advice and yes and noes would be advantageous if it is possible to do that.



Alan Halsall: I agree with what Mr Comer has just said. We need a constantly rolling programme from the EC, not just before the referendum but all the time, of published guidance, court decisions and so on, like the HMRC does, so that we can get much better and clearer guidance for the next referendum and the referendum after that. We need an ongoing, rolling guidance programme. That would be very helpful.

Scott Martin: Paul has hit it on the head in terms of the general response—this has been my experience over a number of years—that you get from the Electoral Commission to very specific bits of advice. It is, “Here is the section”—and it is often the section that you quoted to the Electoral Commission in the first place anyway—and, “Here is a bit of guidance”. “The reason I am asking the question is because I have read the guidance and I have not come up with an answer from having read your guidance”. It does not advance things very far. To be honest, I probably ask a lot fewer questions of the Electoral Commission than I might have asked in the past, and I may ask my question effectively so that I have what I think is going to be the answer on my file for future reference.

Alan is also right in alluding to the fact that the issue here in some sense is that this stuff is not litigated enough. Speaking as someone who, in a past life in private practice, did a lot of petitions on behalf of homeless people to secure their rights, it is a piece of legislation originally dated from 1977 in various guises which has been legislated to death, so we absolutely know from the case law very precisely what it all means. You then pick up PPERA, and probably 0.5% of the sections have ever been referred to in any case at all. In the absence of that, some of it is going to be finger in the air stuff and gut instinct as far as compliance is concerned and what seems to you to be the right thing to do, which is my guiding principle in a lot of these things.

Q23 **Mr David Jones:** In the first instance I would like to declare an interest, as a former member of the compliance committee of Vote Leave. I have a number of questions that I would like to put to each of the witnesses. The first one is: does the Electoral Commission take sufficient account of the temporary nature of referendum campaigns in monitoring and regulating campaign groups? If not, should it be doing so?

Alan Halsall: Obviously it is very, very, very difficult. It was such a fast-moving campaign on both the Remain and the Leave sides by new organisations. I think the Electoral Commission did its very best to give us as much information as it could before the referendum. It was when the referendum started that we had the issues.

After the referendum I do not think it had any concern about the fact that there were four of us left out of the whole Vote Leave campaign to try to deal with its inquiries and questions. We had no office, no support team and no money. I had two years of unceasing questions, questions that needed to be answered in 28 days and so on. I do not think it



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understood—maybe it did understand, but maybe it was not too bothered by the fact that we did not have any resource or any function to deal with the Electoral Commission after the campaign.

Before the campaign started, just before Vote Leave was designated, it was quite helpful to us, understanding that we were not the Conservative Party or the Labour Party. We were not a specific party, we were a brand new organisation.

Paul Comer: As I touched on earlier, referendums are different in terms of regulatory need than regulating other elections that are contested by political parties that exist before and after those elections. Referendums are a different beast because of the short timeframe and the special purpose vehicle.

My answers are no and yes respectively to your questions. No, I do not think it paid sufficient attention to that difference. Yes, I think that it should. I jump to solutionising on this, and I wonder whether there is a role for the Electoral Commission being able to go inside especially those Leave campaigns during the course of the referendum and to ask some questions and stick its head under the bonnet as things are going along. Unlike a political party—which, if it is in breach, you can seek to bring towards compliance in future elections; it is a learning exercise for both sides—that simply does not exist for referenda. The special purpose vehicle is likely to not exist later on.

Q24 **Mr David Jones:** Essentially what you have just remarked echoes Mr Norton’s comments about being an auditor rather than a referee, does it not?

Paul Comer: I guess it is the inference you take. I have not seen the broader context of Mr Norton’s comments. Yes, I think there is a scope, because of the different nature of referenda, that it should be able to be inside the Leave campaigns, especially during the course of that campaign because afterwards it is too late. That is different from political parties.

Scott Martin: There is a fairly large number of members of political parties and staff of political parties who know how these rules work. The simple solution for any new referendum organisation is to make sure that they secure the services of the people who know what they are doing. When you have committees with boards of people who are members of political parties and high-up representatives of political parties, it should not be difficult for them to secure the services of someone who knows what they are doing. If anyone is wanting names of people in the political parties, go to the people on the Political Parties Panel of the Electoral Commission and they will tell you who knows their onions, and there are quite a few of them out there. That is the solution, rather than hiding behind issues of temporary vehicles, because there are a lot of people out there who know this stuff.



Q25 **Mr David Jones:** What would you say needs to change to ensure that the Commission's monitoring and enforcement actions and fines are prompt, transparent and consistent?

Alan Halsall: Having had my experience, I hear what Scott said about perhaps getting people from political parties involved in referendums, but one of the bits of guidance that we got from the Electoral Commission was that it was very happy—I got this impression—to have people who were not necessarily political animals involved in referendums. I am certainly not a political animal. I was not a member of any party when I got involved in the campaign to support and volunteer to help out.

I do not think the Electoral Commission should be involved in enforcement at all. I had four years of pretty well a terrible time, and I felt that it had an agenda-based approach to evidence gathering, which worries me considerably. I can point to numerous pieces of specific evidence to that effect, including from judges and the judiciary. Judge Dight in his judgment in July 2019 and Lord Justice Leggatt in his judgment in 2018 were both very critical of the evidence gathering or the way that the Electoral Commission looked at the test of "beyond reasonable doubt".

When I was reported to the police, I went to give an interview to the police and was advised that they had had a lot of pressure from MPs—Caroline Lucas, Ben Bradshaw and others—to speed up what they were doing against me and Mr Grimes, to speed up the procedures and basically charge us. They pointed out that the evidence that was gathered and exposed by the Electoral Commission did not even comply with the Criminal Procedure and Investigations Act, which is a bit of a worry.

Another worry for me was the Electoral Commission being involved in enforcement. Perhaps again it is a further agenda-based approach to evidence gathering. Dominic Cummings, who had offered to give evidence—he was the campaign chairman; me as responsible person who offered to give evidence and offered to be interviewed; Lord Parkinson, who was the national organiser; Cleo Watson; and Vicky Woodcock, who was director of operations, all contacted the Electoral Commission via their lawyers to say that they would like to give evidence to the Electoral Commission about this issue of working together and the enforcement against Vote Leave. None of those people, including me, were interviewed.

There were three, I think, whistle-blowers. There were meetings to discuss press releases that would go to *The New York Times*, *The Guardian* and Channel 4. There was an awful lot done on one side but not necessarily on the other.

The EC also incorrectly conflated the guidance with the statutory test, which, as Scott pointed out earlier, was a danger. It conflated what corporate and individual persons ought to have known. It failed to undertake any sort of analysis of the fact. Finally—and, from my point of



view, this is a real concern—when we were fined, we wanted to appeal. Bear in mind that there were four of us, and we had no money, no resources, no offices and no staff, but we wanted to appeal because we felt it was wrong, so we asked for a cost-capping exercise. It was Mr Posner in front of your Committee who said, “We always like to ensure that anybody who has legal actions will not have to bear a lot of costs in this sort of area”. Well, the EC refused. It opposed our cost-capping application, which meant that we could not possibly appeal against its fines. It could have cost up to £1 million, and we just did not have that money.

For all these reasons, I feel that the police should be doing enforcement. I was very impressed with the way the police special department dealt with me. As I say, I gave an interview under caution and I felt that they dealt with it very well and very fairly. I feel that they should be carrying out the enforcement action and not the Electoral Commission.

Paul Comer: I will revisit my earlier comments. A lot of the job around making sure that the enforcement actions are timely is about trying to make sure that they are happening in flight rather than after the event. A lot of the trouble for both sides after the campaign, where there were investigations into perceived breaches, could have been resolved if those yes or no answers had been delivered in flight as to whether the relationship in Leave’s case was all right or not, with BeLeave, and it got a yes or no answer rather than pointing to the guidance. Certainly that applies to some of the things that we responded to after the events as well—not to the extreme nature of the other side, but certainly that impacted on us.

Q26 **Mr David Jones:** How much delay did you experience?

Paul Comer: I touched on an example where early in the campaign we made reference to some Leave EU secondary vehicles, and it took a good two to three weeks until they were investigated and the Commission responded to those.

We were dealing with queries from the Electoral Commission for approximately a year after the event. I was a paid staff member, unlike Mr Halsall, but that stopped three months after the referendum. I am sure this is the same for someone who deals with compliance for any election experiences, but certainly the tail is long. The more that can be done up front, the better.

Scott Martin: I doubt that anyone comes out smelling of roses from the EU referendum, and that includes campaigners as well as the Electoral Commission. There is a lot to learn, and that includes whether the Electoral Commission should have an enforcement role as far as it is looking at upholding the law, which does not apply in Scotland but would potentially give it powers to prosecute. I suspect, after the Post Office scandal, that that might be less near the top of the pile than it might



otherwise have been, but certainly I share some of the concerns over the enforcement.

On the monitoring aspect, the Electoral Commission has very few resources at its disposal for monitoring, and that is something that should be better resourced. Going back to 2007, I am told that the Electoral Commission in Scotland had people counting the number of lamppost posters that campaigners were putting up, to get some independent indication of what people were spending. Its monitoring now effectively consists of a couple of people sitting in the office watching what is happening on the internet or on Facebook and whatever else and dealing with complaints. Most of the stuff the Electoral Commission deals with is reactive, and it should have wider funding to do that monitoring properly.

Q27 Mr David Jones: Mr Halsall, in your case enforcement action occurred two years after the alleged breach. Do you believe that real-time reporting of donations and spending, using some sort of reporting portal, would be of assistance?

Alan Halsall: In our case we had to report by the end of the December, so we had six months to report. Maybe a portal would be a good idea, but in the case where this working together arose—do not forget that we were investigated four times by the Electoral Commission, and the first two investigations said there was not a problem. Perhaps I would be sitting here very differently today if, when it had investigated in the first case a couple of months after the referendum and found that there was no problem with the way that we dealt with the working together issue, probably we would be saying, “Yes, you’re right”. Things could have been dealt with very quickly, very swiftly and moved on.

But it was not just working together. There were a lot of other issues on spending that came up after the referendum, which seemed to take many months. One issue in particular is that it took something like a year after it started an investigation into a number of expenses relating to the campaign. It took 12 months for it to decide on a penalty—12 months waiting. That really is unacceptable.

Paul Comer: Sorry, could you get me back on track with the specific nature of the question? I do apologise.

Q28 Mr David Jones: Certainly. Given that enforcement frequently occurs months if not years after the alleged breach, do you believe that a real-time reporting system of donations and spending, using some sort of reporting portal, would be helpful?

Paul Comer: I do not think it would hurt, but I do not think it would get to much of a solution. The keys are getting advice in a timely manner and possibly the Commission having the power to be inside campaigns. Portal reporting would not deal with the working together issue, which is, for our side as well, where a lot of the contentions and the lack of clarity sat.



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Scott Martin: What Alan said is correct about not dealing with what the Electoral Commission refers to as working together. I prefer co-ordinated spending because that is what the rules are trying to capture. A portal is quite difficult for working through some of the detail on that. It sounds like a good idea. Certainly on the donations side, it seems more doable, particularly with referendum campaigns as opposed to political parties, because political parties receive donations through their branches and whatever else, whereas a referendum organisation receives it through its central entity.

On spending, that is more difficult because it would involve some perverse options. For instance, someone who has good credit terms with their supplier may well find that the spending that they are reporting is all post-referendum and no one gets to see it in real time unless it is an invoicing system. Some of the detail would need to be worked through, but in principle it is something that is doable.

One of the things that we could replicate is that some countries in the world force all spending on election campaigns and referendums when they are regulated through designated bank accounts. That makes it easier for compliance and would certainly pave the way for some type of real-time reporting as well.

Q29 **Mr David Jones:** Mr Halsall, would you say that the essential problem is the complexity of the rules, or are there other factors, such as the expertise or the capacity of the Electoral Commission itself?

Alan Halsall: I think both. As has been said by Scott and Paul, the rules are complex and there is no case law, so it is not easy. It is not easy at all for the Electoral Commission to necessarily give the guidance that we all need and we all ask for. Yes, it is complex. As I said earlier on enforcement, I am not sure that it is a good idea to be judged during an execution.

Q30 **Mr David Jones:** As a matter of interest, if asked again, would you take on the role of responsible person?

Alan Halsall: It took four years out of my life, and it cost me thousands and thousands of pounds out of my pocket to volunteer to do something because I believed in the cause, rightly or wrongly. I believed also in democracy. We were given a referendum by the Prime Minister, and you need volunteers. You do not always want professional people to be involved. I volunteered. I did what I thought was right for Vote Leave and for what I thought was right for the country. Four years and a lot of heartache, with my name being put out on the *Today* programme as being reported for criminal matters, which the police said it would never have done, is not probably something that I would recommend to anybody. Why would anybody want to take on this role while that is a possibility that could happen to them?

Q31 **Mr David Jones:** Mr Comer, would you say that the essential issue is the



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complexity of the rules, or is it an issue of the expertise of the Electoral Commission itself and its capacity? Would you take on the same role again?

Paul Comer: I would certainly think twice, to your last question, and I did not have half of the difficulties and follow-ons that Mr Halsall has experienced. But, as I say, there is a very long tail to these roles.

On your first question, like Mr Halsall, I think there is a combination here. The rules are complex and they are spread over multiple pieces of legislation, not just PPERA but when you start to factor in complications about data in modern campaigning and how to deal with that. In among the spend and the donations and all of those crossovers, it becomes a very complex area.

As Mr Martin has alluded to, it is the untested nature of a lot of the guidance as well and the legislation that makes it difficult for the Electoral Commission as well as for campaigners. Certainly, as I say, resource and quick response is the key to solving this for future referenda.

Scott Martin: If asked at some point during the currency of the Scottish Parliament, I would accept.

Q32 **Mr David Jones:** If there is an issue or a problem, is it the complexity of the rules or capacity within the Electoral Commission?

Scott Martin: A combination. There is an inherent ambiguity in much of this. The Electoral Commission is effectively no better than the next person, necessarily, to advise on that. It can draw on a certain amount of expertise in house but does not always use it to the best effect and certainly sometimes has a view that electoral law did not exist before the Electoral Commission existed, which disadvantages the Commission in its analysis of some of the provisions of the legislation.

Q33 **Mr David Jones:** Can I just stop you there? Could you explain a bit more electoral legislation not existing before the Electoral Commission?

Scott Martin: It is probably less on the referendum side but more on the spending side. There are rules about what expenses should be attributed to your candidate and what expenses can be attributable to the party. The Electoral Commission takes a view that it is just a matter of which particular bucket you want to put the expenses in, when in fact the law says that you first ask whether it is a candidate's expenditure.

Candidate expenditure has a body of case law that pre-dates the Electoral Commission, but the Electoral Commission does not look to that at all when giving advice on spending. For instance, there are codes of conduct which the Commission is trying to make into statutory code. Part of that is certain advice about how to count a leaflet that has your party leader's name on it and is distributed nationally but sent out in the constituency. There is a clear case from 1965 involving Alec Douglas-Home and Hugh MacDiarmid, which tells you how that should be dealt with, but that is



entirely ignored because the Electoral Commission takes a year-zero view of electoral law—that nothing existed before it existed itself.

Mr David Jones: Thank you very much for that.

Chair: We have a couple of supplementary questions, one from Lloyd Russell-Moyle and one from John Stevenson.

Q34 **Lloyd Russell-Moyle:** I beg your forgiveness, but I have two questions. The first is to Mr Halsall. I thought your suggestion that the Electoral Commission might not be the best body to investigate this was interesting. What you have reported about how you have been treated sounds very bad on the face of it. My sympathies are with you. However, is there a conflict in asking the police to investigate both criminal and civil matters, because a lot of electoral law—the fines you talk about—is about civil issues, not criminal issues? While they might not meet the police standard, they do, of course, have to be enforced. Is there a case for finding a third body or creating a better body within the Electoral Commission, or do you have examples of where the police enforce civil issues like this?

Alan Halsall: It was, of course, the civil enforcement that led to the criminal matter, so one follows the other. I do not know. Sometimes I look at the people who are prosecuting. The Electoral Commission asked for further powers on the prosecution side—on the enforcement side—which I do not think it has been given. When I looked at the way it was enforcing these criminal/civil matters—it can fine up to £20,000 and is asking for much bigger fines, saying that these figures are not significant, and that is quite an imposition.

Q35 **Lloyd Russell-Moyle:** I will try to tease out the idea of what I was trying to get at. The germ of it, from you, was good. Is the police the right body, or would you be happy with another body that would investigate and prosecute? I buy your point that to have the same body that deliberates, prosecutes and investigates is a recipe for disaster. That is the very reason we split the Crown Prosecution Service from the police many years ago. Maybe there is an argument for that. Is the police the right body?

Alan Halsall: The reason I suggested the police was my concern that we are a highly litigious society, throwing judicial reviews at the police, as they did in my case. There was a lot of pressure on the Electoral Commission from the losing side after the result of the Brexit referendum, and I think that is generally accepted. There was a lot of media pressure and political pressure. You need a very strong body to look after this most vital part of the law. My thinking was that the police is the right body.

Q36 **Lloyd Russell-Moyle:** I appreciate that. I have a question for all three of you. You have talked about the transitory nature of the campaign organisations; they are set up and then shut down pretty quickly. That does not happen with political parties. Is there an argument for the



Electoral Commission to not appoint a transitory body but for the lead body, not necessarily some of the other bodies, to be an organisation that either pre-exists or will exist for a good period in future, so that the relationship is already built up with the Electoral Commission and there is some ability to follow corporately, rather than focus on individuals who have taken on roles for the corporate body from time to time, just like they would do with political parties?

Scott Martin: Yes Scotland Ltd still exists, although it exists largely so that nobody nicks the name, rather than for any idea that it is going to come back in the event of there being another independence referendum.

The difficulty of these things is that they will involve things other than political parties. They involve an amalgam of different interests. It is difficult to dictate in any way the shape of what a body would look like. Certainly in the history of referendums in this country and elsewhere, all sorts of different types of organisations have appeared. Only in recent years has the corporate vehicle been used, and there are issues with corporate vehicles. They do not necessarily work for some aspects of the donations regime. I would encourage anyone in any organisation to follow my advice and bring in the expertise, and the expertise for compliance is with the political parties or people who have worked for a political party. I am not talking about bringing in strategic knowledge but simply the compliance knowledge. I did not have any strategic role in Yes Scotland's messaging. I was there purely to make sure that it complied with the law and nothing else.

Q37 **Lloyd Russell-Moyle:** Mr Comer, you have a political party background but you also said that there was a tail to your involvement that started a number of years ago. Is it right that that tail is associated with you, or should there be a longer-term association with a corporate body, or to a group of parties maybe, that takes some liability onwards rather than with individuals?

Paul Comer: I am very attracted to the idea that you suggest—that we pin lead campaign/referendum status on to existing political parties. I just cannot see how we could make it work. That is my problem. Herding different contending forces together, even within one side, for a referendum to form a lead campaign is difficult enough as it is, without the pre-existing pride of political parties to navigate into one corral. I cannot see that that is a tenable solution, but finding a solution to the problem—that these short-term vehicles do not hang around and are not encouraged into compliance over time, which is what happens with political parties—needs to be resolved. I have spoken to suggestions about in-flight—being able to get their heads under the bonnet while things are going on and give yes or no answers, which is not the tradition around political parties but is something that needs to be looked at.

To your question about the police, which was not directed at me, my experience from all my involvement with elections in the UK and my current work with the police here in New Zealand is that the police pride



themselves on their independence from the political process. Bringing the police in to fill a void that you are taking off the Electoral Commission would, I am sure, cause as many unintended consequences as it might solve.

Q38 **Lloyd Russell-Moyle:** Mr Halsall, do you have anything to add on that last question about the longevity of an organisation? How do you ensure that an organisation continues to exist to protect beyond the individuals?

Alan Halsall: I might be wrong, but I thought there was a limited period for investigations and enforcement actions to take place, like a statute of limitations. That is all you need—ensure that things are dealt with much more speedily. Perhaps instead of waiting six months for the signing off of the spending declaration and then another six months afterwards, it would be 12 months and that would be it, and by then, everything has to be decided. If that was the case, the long tail could be a much shorter tail and could be dealt with by the current campaigns, which would know that they would have to keep some money and some resource aside for 12 months to deal with the issue.

Lloyd Russell-Moyle: Thank you.

Q39 **John Stevenson:** I have a question on the very point that was raised at the end of the last answer. The Electoral Commission imposes time limits to comply with their rules. Some of them, I accept, are statute. You have to have time limits for donations and reporting. Should a similar imposition be placed on the Electoral Commission to have time limits on the length of their investigations and the time for imposing sanctions?

Paul Comer: There is some attractiveness to the simplicity of that. I guess there is a trade-off between whether you want the Electoral Commission to be able to get to the truth, whenever that is, or whether the emphasis is more on closing things off and giving finality. For referenda, there is probably an argument for a time limit. I might suggest slightly longer than 12 months, but there comes a point where it is done, it is over and it will not affect the results. It will not encourage longer-term compliance unless case law is lost that will teach future referenda campaigners which side of decisions to sit on. Overall, I am not sure that it is a perfect solution, but it is a possible one, and I would suggest more than 12 months.

Scott Martin: There is definitely an argument for having another look at time limits. Time limits for challenging an election to the House of Commons or other Parliaments are a matter of weeks rather than protracted months. So, yes, it is worth looking at, and potentially the return is something that we need to get in more quickly, and also perhaps an opportunity to review the return once it is in. It is very much that you get the return in and it has to be right, whereas there should probably be a period where you can raise concerns, provide clearer invoices and whatever else.



Alan Halsall: I agree with your suggestion. There should be a limitation on investigations. I accept what Paul Comer says, that perhaps there is a trade-off, but there were four investigations of Vote Leave over two years for the same issue. It was almost, “We can’t get there with the first one, we can’t get there with the second one—third one, oh, we’ve got there now” and that was two years later. That does not seem to me to be a very sensible way of dealing with matters after a referendum.

Chair: I thank the three witnesses in our first panel most sincerely for sharing their expertise and experience. We are immensely grateful for that insight. Thank you very much indeed for your time.

Examination of Witnesses

Witnesses: Rt Hon Dominic Grieve QC, Rt Hon Baroness Stuart of Edgbaston, Dr Alan Renwick and Barry Ryan.

Q40 **Chair:** By wonders of modern technology, we are going to move seamlessly to our second panel, who I can see arriving on the screen in front of me. I welcome the members of our second panel, who have been most patient. Can I ask our four witnesses to introduce themselves for the record, beginning with Dominic Grieve?

Dominic Grieve: Good morning. I was the Member of Parliament for Beaconsfield from 1997 to 2019, and I was a member in the latter period—I suppose between about 2017 to 2018—of the Independent Commission on Referendums, along with a number of others, including three who are here today, when we did an inquiry into referendums and how they might be improved.

Baroness Stuart of Edgbaston: Hello. I apologise for the people outside on the road having decided to start drilling just as this evidence session starts. Ignore the background noise. I am Gisela Stuart. I was a Member of Parliament from 1997 to 2017. I was the chair of Vote Leave—I took up that position in March 2016—until the end of referendum. Like Dominic Grieve, I joined the Independent Commission on Referendums, and I now sit in the House of Lords as an unaffiliated peer.

Dr Renwick: I am the Deputy Director of the Constitution Unit at University College London, and I was the research director for the Independent Commission on Referendums, which the Constitution Unit ran, as Dominic and Gisela have said, between 2017 and 2018.

Barry Ryan: Good morning. I am delighted to be with you this morning. I am head of the Franchise Unit in the Government Department responsible for electoral law, leading on the electoral reform legislation that is currently before Parliament. Wearing my other hat, I was the referendum returning officer for the last three referendums held in Ireland, two in 2018 and one in 2019, and also the returning officer at the presidential election held in 2018.



Q41 **Chair:** Thank you very much. My first question is directed to Baroness Stuart, Mr Grieve and Dr Renwick, in that order, as you have mentioned you were all part of the Independent Commission on Referendums, which conducted an extensive review of referendum rules and practice in the UK. We are delighted you can join us this morning.

The commission's recommendations on the conduct of referendums were aimed at ensuring that alternatives could compete on a level playing field and that voters are able to find the information they want, from a source they can trust, and have confidence in the results. Nearly three years since its publication, and taking into account development in the interim, which of its recommendations on the conduct of referendums do you think requires urgent implementation and why?

Baroness Stuart of Edgbaston: It is worth reflecting on why that report came about. All of us, who were on different sides of a very divisive referendum, acknowledged that referendums would continue to be part of our political landscape and that simply we would have to find ways of conducting those referendums in a way that would not add to the divisions afterwards. Therefore, you will find a lot of that report is almost like a list of what people have to consider, because the key thing, at the end of this, is a piece of legislation that Parliament passes to enable the referendum to happen. You heard that from your earlier witnesses when they talked about the clarity of the rules and the guidance.

Therefore, it is worth looking at the things that went well—designing the questions and those things—but for me, the most important thing that requires to be done is for this report to guide whatever legislation Parliament decides to pass for future referendums, on whatever it is. I urge one thing. At the moment, we are all stuck with constitutional referendums, but the Irish experience tells us that we may well face a referendum on what people regard to be a moral issue. Let's assume you had a referendum on whether you supported assisted dying. Then I think the debate would be a very different one.

I am openly fudging your question in the sense of saying that the recommendations you find in the report have been agreed by just about the widest spectrum of people you could find in the wake of a very divisive referendum, but I hope every MP is made to read the whole report before they pass any legislation on a future referendum.

Dominic Grieve: Perhaps I can preface my remarks, because I am very conscious of the earlier witnesses, by making clear what our inquiry was not about. It was not specifically about the Electoral Commission, although obviously the Electoral Commission may or may not be the right vehicle for delivering the changes that we were advocating.

I should also explain that, perhaps alone of the members of the commission, I also had the fortune, or misfortune, to be the Opposition spokesman when the PPERA was originally passed. I had seen it go through Parliament in 2000. Indeed, I had registered some concerns at the time, because it brought about a massive change in the way political



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parties organised themselves, and particularly with reference to money, putting on political parties very significant burdens that had not existed previously. However, the intention behind it—and no one has suggested that it should be repealed—was to create transparency and level the playing field.

The absolute key thing that we were concerned about in the inquiry was how to get a level playing field. It was one of the key things, should we ever have a referendum in future, and we were very critical of the fact that there were elements of the Brexit referendum that were not a level playing field. I was critical at the time, as a Government Back Bencher, of the fact that the Government spent £9.3 million on their mail shots, even if I was a Remain campaigner, in the referendum. The sorts of things we were looking at were absolutely clear about where we thought there needed to be rule changes to make sure that level playing fields could operate.

If you look at our report, particularly with reference to that, you will see that we wanted to make sure that section 125 of the PPERA was properly operated to extend the time limits for referendums, to prevent Government, or for that matter anybody else, spending money in large amounts outside the periods and that that was properly audited and properly included. I would describe that as one of the absolutely key elements in what we recommended. We were completely collective in our view, irrespective of what attitude we may have had to the Brexit referendum in 2016. Gisela and I, I think, agreed 100%, as indeed did Cheryl Gillan, who was a good friend and colleague and was on this commission as well. I think we were all in complete agreement about that.

In the course of that, and I think this does lap over to your inquiry, there were questions about whether a body—the Electoral Commission—needed more powers, including, for example, the power to get an injunction in respect of the enforcement of section 125 to discharge its functions completely. Clearly, if you are going to have level playing fields, and if you are going to have a regulated environment to try to ensure that people are satisfied that what is taking place is fair, somebody has to enforce it. The person who has to enforce it has to have the power to enforce it and the independence to enforce it in a way that does not call it into question.

Dr Renwick: I agree with everything that Gisela and Dominic have said. I will not repeat it.

It is crucial to remember a number of features that have developed over the last three years. One is that we have become increasingly conscious of the dangers of misinformation and disinformation in democracies. The DCMS Committee has done some excellent work on that. The Lords Committee on Democracy and Digital Technologies has done a very



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important report on it, and of course Dominic's Committee did its report on Russia, which addresses part of this.

That first point is about the negatives and the difficulties facing democracy at present. We have also seen some positives about democracy and the possibilities of doing referendums well in other countries. We have not had a referendum in the UK since 2016 but we have seen, for example, increasing use of citizens' assemblies in the context of referendums in Ireland, and we have seen other mechanisms for trying to engage people in thoughtful and considered discussion of matters in the context of referendum campaigns in a number of countries. That context gives us reason to be hopeful about the direction that democracy is going in.

Thirdly, Gisela pointed out that a future referendum might be on a very different subject. It is very unlikely to be on the question of EU membership again. It is quite likely that the next referendum in the UK will be on either Scottish independence or on the question of Irish unification. Over the last 18 months or so, since working on the Independent Commission on Referendums, I have been chairing a working group on unification referendums in the island of Ireland, which is looking into how a referendum on that issue would be conducted. It happens that we are publishing our final report on that tomorrow. There are big questions that it is important for this Committee to deal with. If that is the sort of topic that is being put to a referendum, how do you ensure that there is proper regulation?

With that context in mind, as Gisela indicated, the whole of our report published in 2018 to my mind very much still stands up. I would just quickly highlight that we emphasised the need for greater transparency in campaign spending, which largely requires legislation. We also emphasised the need for greater transparency in digital campaigning. The legislation, which of course is more than 20 years old now, still does not adequately reflect the shift to digital campaigning. There is a little bit in the Electoral Integrity Bill that is planned but not very much.

I had on my list also, as Dominic did, our recommendations around extending the prohibition on state-financed campaigning on one side as one of our key recommendations. We also recommended that lead campaigners should be designated as early as possible. There was clear disadvantage in 2016 for the Leave campaign in the fact that it was designated quite late on, because the designation was contested, unlike on the Remain side. If you are going to have a level playing field, that needs to be addressed.

Finally, a lot could be done to improve the information provision in the context of a referendum campaign. The role of the Electoral Commission in that is fairly small, but I think a lot could be done.

Chair: Thank you to the three of you. I will pass over to my colleague, Karin Smyth.



Q42 **Karin Smyth:** My question is to Mr Ryan. Mr Ryan, you are very welcome. We very much appreciate you—not a politician—coming to us with the experience in Ireland. There are two parts to my question, looking back on some learning and then looking forward at legislation. Given the experience of a number of referendums that you have informed us about, what is your experience of the general conduct of referendums in Ireland so far?

Barry Ryan: The first thing to say is that we have vast experience in holding referendums in Ireland. At the latest count, north of 40 constitutional referendums have been held since the constitution in 1927, and the bulk of those have been held in recent years. We have held 19 referendums since 2000, so you could say that on average we hold a referendum every year.

More recently, things have evolved. One of the most significant initiatives in 1998 saw the establishment of a referendum commission on a statutory basis when a referendum is being held. It is discretionary for the Minister to establish a referendum commission when a referendum is called, but the reality is that since 1998, for every referendum that has been held, a commission has been established.

Dr Renwick mentioned the role of the provision of information. That is probably an essential role of a referendum commission in Ireland today. Commissions have specific functions under the legislation, and one of the most important is to prepare a statement containing a general explanation of the subject matter. They prepare that statement and distribute it to all households, typically, and then make it available online and so on. Referendum commissions also have a very important role in encouraging people to come out and vote—voter participation.

Those are the two key roles of a commission. The role has evolved somewhat in recent years in that the chairperson of the commission plays a very active role in national and local media, explaining the subject matter to the electorate. It is fair to say that the commissions are well regarded and their statements and public information campaigns are well received by voters.

Q43 **Karin Smyth:** I am exhausted by the idea of all those referendums, having just come through a couple. Is learning from the last referendum also undertaken by the commission? Is there a feedback loop to inform the next one?

Barry Ryan: Yes. There is a requirement after each commission. Once a constitutional amendment Bill is passed by Parliament, the commission is established and commences its work at that point. It continues that work until the referendum is finished, and it reports back to the Minister—to the Oireachtas. That report sets out the nature of the campaign and how the commission fulfilled its functions, and makes recommendations for the conduct of future campaigns. That reporting piece is important.



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One of the recommendations that commissions have made over the years is about the lack of time they have because they are only established at the point that a Bill has passed Parliament. They are established on the publication of constitutional amendment Bill, but in essence their information campaign can only start when the Bill passes both Houses. That triggers a referendum that must be held within between 30 and 90 days. They have a very short window to conduct their business, and they are often critical of that short timeframe.

That brings me to point out that in our electoral reform agenda at the moment, and the Electoral Reform Bill that is currently before Parliament, is the proposal to establish on a permanent statutory basis an electoral commission that would take on the functions of the current referendum commissions. It would be a permanent, standing commission.

Q44 Karin Smyth: Could you elaborate on the impact of that proposal on the regulation of campaigners in Ireland and the information to voters?

Barry Ryan: One of the key benefits of it will be that we have a permanent, independent, statutory electoral commission. That is what was recommended by a report of the Oireachtas a number of years ago. The recommendation was to establish a permanent, independent, statutory electoral body that would have responsibility generally in this area and a number of different lateral functions, to establish initially and to build up those functions over time.

The fact that it is a permanent, standing body should assist, one would think, particularly in encouraging voter participation. It would have that ongoing role, not just at referendum time, and it would be across all electoral events. One would expect that it would have a longer lead-in time. Referendums are very often on the horizon for a long time before they happen, so a commission could play a role in that regard, being prepared for referendums that are flagged and coming down the road.

The regulation of campaign groups currently falls to our Standards in Public Office Commission—that is the spending and donations piece. The spending and donations regime is not transferring across in the current proposals in the Electoral Reform Bill. Those functions do not transfer initially to an electoral commission, but the intention has been flagged that the commission would be asked in its early days to review fully the spending and donations regime that is set out in the 1997 legislation with a view to making recommendations on it and, ultimately, with a view to the regulatory functions under that legislation coming across to the electoral commission.

Karin Smyth: Thank you.

Q45 Mr David Jones: I want to ask our witnesses about the designation process of lead campaigners. How could transparency in that process be improved? Should the Electoral Commission be applying a fit-and-proper test to those who are applying for designation or be given powers to



require one?

Dominic Grieve: The key thing for me is that the designation process needs to take place much earlier. We certainly saw a problem with the Brexit referendum. That designation ultimately—there were two groups competing over designation for Leave—took place at a late stage, and that was unfortunate. It is unfair on the campaign. In my mind, you need to get your designation sorted out at an earlier point than happened then. That is one improvement.

We did consider, clearly, that a choice had to be made on designation between the two lead campaigns. With hindsight, I am not sure that people were particularly critical with the decisions taken by the Electoral Commission as to who should be designated. I think it was done on the basis of their own assessment as to which of the two groups appeared to be attracting the most support as a campaign group.

Clearly there are big implications to being designated. It is about the money that you will get, and another thing is that although we have not yet had such occasion, we might have an occasion when you end up with no campaign coming forward to be designated for one side, in which case, should the other side get designated? The general view that we came to was that the practice would be that nobody gets designation, but we think that may be wrong. We think that if there is a campaign that wishes to be designated, it probably ought to be. It might provide the proper incentive to other people who are going to object to put together a campaign themselves.

I see the fit-and-proper person test as very similar to a test you would apply in the world of commerce or trusteeships. Somebody should be a person who does not have convictions for serious criminal offences, is not bankrupt, has not been disqualified as a company director and does not have a history of making hate speech. Those are the basic qualifications that I think I would put down. We are entitled to expect a campaign to be conducted properly, for the returns to be carried out properly, for the financial auditing and accountability to be done properly, and for the campaign to be conducted in the spirit of democracy, which is why I put in hate speech as my suggestion. As long as you confined a fit-and-proper-person test to that, they are the sorts of disqualifications you would expect for somebody getting involved in public life. I certainly would not wish to extend disqualification beyond that, but there are grounds for having a fit-and-proper-person test if people are going to run a campaign that is going to receive, on the face of it, quite large amounts of public money.

Baroness Stuart of Edgbaston: I agree with Dominic. Let me start with designation—it should be much earlier. We make provisions. What if there is no group coming forward? As a practical politician, I ask myself, what kind of national referendum is this if the other side cannot even get someone who wants to campaign for it? Problems with designating lead



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campaigns go across party political divides and, in a sense, cease to exist after the one question has been answered.

We should not lose sight of two very significant problems. One is that usually in general elections, the winning side is responsible to implement the outcome of a referendum and the lead campaign does not have such a responsibility. This is partly why 2016 was such an odd event. The very group that campaigned for the other argument was left holding the baby, saying, "Now you have to implement it". We need to remember those difficulties.

The second difficulty is that at the end of general elections, we have a winner that forms the Government and then we have Her Majesty's Loyal Opposition. That is an acknowledgment that one side has succeeded and the one that has not succeeded takes on a certain responsibility in its relationships. For a country like Ireland that has had its 40 referendums, referendums become part of the drumbeat of your daily conduct. We do not have that, and it is arguable whether that is desirable, so the lead campaigns have to have a broad spectrum of background. That is why I think the decision was right that, when Vote Leave was designated, we could demonstrate the broadest of buy-in, but it has to be much earlier.

I thought your earlier witness, Scott Martin, was very interesting when he commented on the relationship between the Electoral Commission and the advice. If you have regular contact with them, you have a different relationship.

I have some difficulties with political parties designating themselves as campaigning for particular outcomes. With that comes access to party political data, which is really very significant. We ought to look at that.

On the proper person test, our report draws analogies with the way Ofcom operates. Of course Ofcom has continued expertise in doing this kind of thing, whereas if it were to be for an electoral commission to do that, Dominic's short, sharp and clearly defined test would be sufficient for me.

Dr Renwick: I have very little to add—just two quick points. The first is on the clarity of the designation process. I have read some things by people who were deeply involved in the designation on the Leave side in 2016, expressing concern about lack of transparency about the criteria. For someone who was watching from the outside, given the criteria that the Electoral Commission had specified, there was no surprise about who got the designation. I do not think anyone was particularly surprised at who got the designation there. Even if there are problems with transparency in the detail of the criteria—they are very much in the detail—essentially that system works pretty well.

On the point that Dominic and Gisela raised about the designation of one campaigner only, this issue arose—as you will be well aware, Mr Jones, I am sure—in the Welsh devolution referendum in 2011, when no group



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came forward for designation on the “no” side. As a result of that, because the current rules say that you designate on both sides or neither, there was no designation on the “yes” side either. The feeling that arose, as I understand, as a result of that was that the lack of designated lead campaigners contributed to a lack of information generally about that vote and, therefore, less voter engagement with the vote. In the legislation permitting subsequent referendums, provision has been allowing a kind of limited designation to take place on one side if there is not a suitable group on the other side. We concluded in our commission that that should be maintained.

Q46 **Mr David Jones:** As I understand it, in the circumstances recommended, the designated lead group would have less access to public finances and so on. Is that right?

Dr Renwick: Yes, exactly so. There would be limited provision to ensure access to minimal funds. I forget now the exact detail of what we recommended, but it is in the report. You would not want a scenario where there was very great inequality introduced between the two sides as a result of the lack of designation on one side.

Mr David Jones: Thank you very much.

Q47 **Lloyd Russell-Moyle:** I am struck, Baroness Edgbaston, by your suggestion that part of the problem is that lead campaigns do not have any responsibility to implement the outcome. It is easier, isn't it, when it is just a legislative tweak of words in a constitution? When it is to implement something a bit more significant, it seems much harder. Particularly in referendums that are not just about, “Do you approve this wording change?” but are more substantive, such as the EU one, or even on setting up Parliaments, is there a case to require the lead campaigns to last for longer and be involved in the implementation one way or another— either through some advisory committee or through some implementing body—rather than it just going back to the Government or the authority, which might have been hostile to the proposition in the first place?

Baroness Stuart of Edgbaston: You are putting your finger on the problems when referendums are called to deal with situations that have more to do with party management and those kinds of things rather than trying to arrive at a new constitutional settlement. You can compare three moments in history, if we go on fighting the last war and think about Europe. In the referendum campaign under Harold Wilson, the Government sent out two leaflets of equal size and prominence. To this day, I think nobody is entirely clear how Harold Wilson voted and Cabinet responsibility was lifted. You had one with those kinds of positions.

I really wanted a referendum on the EU in 2005 in the wake of the Lisbon treaty, where you had a significant piece of legislation that would have redefined our relationship—that did redefine our relationship—with the European Union. A referendum in those circumstances would have been



about, "Do you want the future, which is described and defined here, or do you want to stick with the status quo, which is also defined and described here?"

With the 2016 referendum, the problem of implementation was so specific to the circumstances of a Government that was so convinced they would win that they had made no preparation. Not only was the civil service not instructed to prepare for the possibility of a Leave victory but, as I understand it, it was forbidden from doing so. Rather than trying to create new bodies, it comes back to thoughtful legislation, how you prepare for outcomes and how you deal with them.

Q48 Lloyd Russell-Moyle: The reason I ask is that if you look at the referendum on constitutional change in Chile, the outcome was yes, but what happened was that a special constitutive assembly was established, with all the respective campaigners but in proportion to the vote that they had just received. It is that body's responsibility to implement the constitutional change referendum. That is an example we can see playing out at the moment. It might be a disaster. Let's see what happens at the end of that process, but I wonder if there is a place for that here, or is it just that 2016 was a one-off and we probably should not create rules for that one-off mess that we got ourselves into?

Baroness Stuart of Edgbaston: I think you are looking at a much wider question here. Are we a society that is moving incrementally away from a first-past-the-post representative parliamentary democracy towards one that increasingly becomes a participatory democracy where the elected representatives are no longer parliamentary sufficiency for the democratic process and therefore we want to add other processes? That is perfectly possible, but we then have to think through the consequences of that, rather than just tacking it on because something has not worked in a particular instance.

Lloyd Russell-Moyle: I agree. Dominic, you wanted to come back on that.

Dominic Grieve: I agree with Gisela about this. Unfortunately, I am not sure that the referendum of 2016 is necessarily a one-off. It may be a one-off in the sense that a question was asked that required very complex and detailed implementation, in the course of which some of the original ideas that were being floated at the time of the referendum never materialised and disappeared, leading to polarisation and people arguing that the original referendum question, and the answer given by the electorate, could no longer be seen as completely relevant because we were in a completely new world.

It could happen again. Let's take an example. It could happen with the Scottish referendum. If there is a referendum on independence, and there is no mechanism subsequently for a further review of whether people approve the package by which Scotland were to become independent, it could have exactly the same problem arise, ending up



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with detailed negotiations post-referendum, if it was a referendum for independence, which takes you to a place that is entirely different from where some people thought they might be when they voted. The risk is there.

I agree with Gisela. The real change that I see about referendums is that if you are going to have them, they have to have proper preparation, and there you need to start looking outside of Parliament in considering whether you are to have citizens' assemblies and discussions about what people will be voting on, and a national conversation on the subject that otherwise widens the scope of that conversation well outside Parliament. Is that reconcilable with our current parliamentary system? With some difficulty, because Parliament has the monopoly of those discussions at the moment and sheds it with some reluctance, as we have seen. But that is what you need.

Indeed, as you were hearing from Barry Ryan, it seems to me that Ireland, for example, in its referendum on abortion, had that conversation before the choice was made by the electorate. We are lacking something there in the process. I agree with Gisela that it would need a very considerable change in our political culture.

Q49 **Lloyd Russell-Moyle:** Thank you. I asked the question particularly because I worry that a lot of the enforcement post the 2016 referendum by the Electoral Commission, by people pushing the Electoral Commission and so on was about people not very happy with the process by which the referendum took place, not necessarily enforcement, and they were trying to do something that the rules were not designated for. Are there other relief valves that we can achieve, rather than trying to get the Electoral Commission to worry about every "t" being crossed and every "i" being dotted, when that is not what the public really are concerned about?

Dominic Grieve: I understand the point, and it is a valid point. There are some things that could be looked at, and our inquiry looked at them. For example, the current rules allow for easy circumvention of limits on spending by multiple registration of smaller groups. These things are readily curable, but they do exist.

You were talking in the earlier panel about speeding up expenses registration and audited accounts. All those things feature in our report, and we would be very much in favour of not letting this thing drag out afterwards, so that everybody knows what they are supposed to be doing. Yes, those are things you can do, but I also agree with Gisela about some of the basic underlying issues.

Dr Renwick: I have a couple of other points in our report on this. Dominic has absolutely rightly emphasised the importance of preparing for a referendum. If you have a referendum that is well prepared for and people have thought about the options on the ballot paper, that helps. The Irish experience shows that citizens' assemblies can assist



Parliament. Citizens' assemblies are not an alternative to Parliament. They do not subvert the role of Parliament. They can assist Parliament in dealing with these complex issues.

Secondly, we explored the idea in our report of double referendum processes. If you have a case where you need to put a proposal to voters that is very much a framework—a vote on a principle—rather than a detailed worked-out option, there may be circumstances in which it is desirable to have a second referendum at the end of working out the details.

Lloyd Russell-Moyle: The New Zealand flag kind of option.

Dr Renwick: That was a slightly different case, where there were firstly six options, if I remember, on the ballot paper and they were whittled down to two. What we are talking about here is a process where you have the two basic principles on the ballot paper, and then you work out the detail of the proposal. We were very clear that this was not about a campaign for having a second Brexit referendum. We were very clear that if you are going to have two referendums, you need to set out that process before the first referendum, not suddenly surprise people with a second referendum halfway through. Something like that might be desirable in some circumstances.

Chair: Thank you all very much. We will now move at almost a canter pace to Tom Randall.

Q50 **Tom Randall:** I will ask some questions on the Electoral Commission's role in the regulation of referendum campaign finance. I will come first to Dr Renwick and then to Mr Grieve and Baroness Stuart. How could the transparency of campaign funding and spending in referendums be improved, particularly given the rise of digital campaigning? Do you think that any changes would require legislative changes or changes in the conduct of the Electoral Commission?

Dr Renwick: Let me say four things, very quickly, in the spirit of cantering. The first is better transparency for donations. At present, PPERA requires weekly donation reporting during general elections. There is no reason not to have reporting every week in referendums, as in general elections.

Secondly is tighter deadlines for reporting spending. Reporting is currently three months after the referendum for smaller campaign groups and six months for larger campaign groups. Our report suggested going down to three months for all groups. There was discussion earlier about whether it would be possible to go further and have real-time reporting of spending, just as there is already real-time reporting of donations. I was interested to hear that the three witnesses earlier did not instantly say, "You can't possibly do that, it is impractical", which I thought they might. That possibility certainly deserves further attention. The only reason not to do it that I can see is that it would be practically difficult and would impose problematic burdens on campaign groups.



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Thirdly is better transparency, particularly in online spending. At the moment the requirements in the legislation for how spending is reported make it difficult for the Electoral Commission to see exactly what has been spent online and how it has been spent. Improving the rules on that would be important.

Finally, as has been mentioned quite a lot, clearly the rules on joint spending are not clear enough. Although they are not actually in PPERA, they have been in the ad hoc legislation for particular referendums, and clearly there is a need for better, clearer rules on that. All of those points require fresh legislation, not just action by the Electoral Commission.

Q51 **Tom Randall:** To pick up on that last point on joint spending, do you think changes need to be made in legislation or otherwise to clarify that point?

Dr Renwick: Changes are required in legislation. The rules should be in PPERA, not merely in the ad hoc legislation for a particular referendum. They should be clear as such that the Electoral Commission is able to give the sort of guidance that we heard earlier it was not able to give before the 2016 referendum.

Dominic Grieve: We are at a canter. I agree with everything that Dr Renwick has just said, and I am not sure there is a huge amount to add. Clearly some of these things do need new legislation because they are not in PPERA. I entirely agree, and this is the key point. It should not be something that has to be done when you bring through the legislation for the particular referendum. You need to have it in the background already with a structure there, and you need to have very good reasons then to depart from it. Provided you do that, you can get round some of the problems that undoubtedly arose in 2016 and caused so much difficulty to the campaigns. Quite apart from that, it is in everybody's interest that that should happen.

There are some issues on data acquisition that perhaps need to be looked at, and that is something that needs a link-up between the Electoral Commission and the ICO.

Baroness Stuart of Edgbaston: I absolutely agree with what Alan Renwick and Dominic Grieve have said. I want to stress one of the points Dominic made. When referendums are called, there is always a political edge to them, and you know the Government will have a view on this and Parliament will have a view on this. It is really important to have the legislation as standard legislation that is already in place and applies to elections and referendums equally, and departure would have to be justified for the specific legislation. I would also go back to the earlier discussion we had about section 125 and when spending by state actors, as I like to call them, is problematic. The key points: quicker reporting is perfectly possible, and have a standard framework.

Tom Randall: Thank you all.



Q52 **Ronnie Cowan:** I am curious on the last point there. I still have an issue with an individual maverick who wants to spend money on a campaign, whatever side they are on, and they are not affiliated to a party and not part of an official campaign. What is there to stop an individual spending their own money to say, "I support this campaign" or "I am opposed to this campaign", and how can they be held to account by anybody?

Baroness Stuart of Edgbaston: Mr Cowan, what would you wish them to be held accountable for?

Ronnie Cowan: That is the question. We are trying to say to campaigns, "Here is your spending limit, this is how you can spend it". As an individual, if I am some sort of maverick billionaire, which I am not, I can buy television adverts, newspaper adverts and billboards and influence the mindset of the population for whatever my political belief was. There is nothing to stop me doing that. At the same time, we are being pernicious in our controls of political parties on how much money they can spend, or if I have an organisation and I register that organisation, as I have to do, I will then be limited in what I can spend and how I spend that money.

Dr Renwick: I would need to go back and reread PPERA, but my recollection is that the requirement that you register if you spend more than £10,000 applies to an individual just as it does to an organisation.

Dominic Grieve: I think it does too. I do not think an individual can just go and spend £5 million of their own money to say whatever they like in the course of a campaign. I am sure they have to register.

Ronnie Cowan: In that case, I will keep my money in my pocket.

Baroness Stuart of Edgbaston: The closest we have had is probably when Jimmy Goldsmith started the Referendum Party. He spent a massive amount of money, but he had to register as a political party. There is a process, and the history of people trying to purchase their views in liberal democracies is actually not a very successful one.

Q53 **Rachel Hopkins:** This is to add further to the discussion, first to Baroness Stuart, Dominic Grieve and Alan Renwick. Do you think the Electoral Commission has the appropriate power structures and expertise to monitor and enforce complex technical investigations on suspected campaign funding and spending breaches? Is it exercising them appropriately?

Baroness Stuart of Edgbaston: I was very struck by Alan Halsall's evidence and his suggestion that, once you move into the criminal sphere, this notion of being a prosecutor is not right. I think it was Scott Martin who reminded us of the current postmaster scandal where the use of the private prosecutions by the Post Office has created a massive, enormous injustice. We should take on board that sometimes the Electoral Commission is hampered by the lack of clarity in the legislation it has to deal with.



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I thought the criticism of the Electoral Commission regards year zero and does not go back to that was a valid one. I also thought it was a valid observation that, particularly for referendums, there is very little case law that is followed up to confirm that. There has to be a robustness that demonstrates its impartiality, and the last years have not served it well.

Dominic Grieve: I agree with Gisela completely on her last comment. In my view the Electoral Commission in the 2016 referendum was overtaken by the magnitude of the problems and the task that was placed upon it. Perhaps the next stage is to say, "What is the remedy?" It was not necessarily some inefficiency or ineffectiveness on the Commission's part but about the fact that it has been structured in a way that did not enable it to deal with this type of problem as it arose. The interesting question is—and it may be a rather key question to this Committee if I understand what it is looking at—is it better to keep the Electoral Commission as a regulator but to leave any enforcement to some other body, or is it the regulator that should be doing the enforcing?

I have some mixed feelings on this. Let me explain the background. Before I went into Parliament I did a lot of prosecuting for a very good regulator-prosecutor, which was the Health and Safety Executive. History showed that where there were attempts sometimes by the police to interfere in HSE decision-making and second guessing to bring prosecutions of their own, which they were capable of doing, it usually went wrong. It was a trend that I did not think was very satisfactory. The HSE was able to combine being a regulator, advising, bringing civil proceedings, because it could do that in certain circumstances, imposing penalties and prosecuting. I do not think it is impossible for a regulator to do those things, although I accept that the area of elections and referendums is politically very controversial. It is bound to give rise, if there is enforcement, to political agitation, because there would be some people who would be upset and concerned about what happened. We have seen this happen with prosecutions brought as a result of elections.

I am not sure of the best way with which this should be dealt. All I am quite sure about is that the current position is not satisfactory, because it seems to me that the regulator has to have powers and teeth if it is going to bring its own prosecution. Then, of course, you also have to bear in mind that the rules have to be right and the laws in the PPERA have to be right. Without that, everybody is going to be floundering around and the regulator will have as much trouble as anybody else. To my mind there were certainly things that went on in the referendum in 2016 that were profoundly unsatisfactory and I never wish to see them happen again. They ought to be capable of being prohibited, and if the rules are broken, there have to be sanctions.

Dr Renwick: I do not have expertise on the enforcement question that is being discussed, so I am not going to comment on that, but I think it is vital that the powers are not only exercised fairly and impartially but are also seen as being exercised fairly and impartially. For that, there is an



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important question around the governance of the Electoral Commission. There was a period when there were a number of vacancies among commissioners, and that has now largely been resolved. It is undesirable to get into that situation.

A second important governance point is that oversight of the Commission needs to be both cross-party and non-party. Cross-party oversight is provided, at least in part, through the Speaker's Committee on the Electoral Commission. As I commented in my written submission to the Committee, it is very regrettable that for the first time ever at present there is a one-party majority on the Speaker's Committee on the Electoral Commission—specifically the governing party. That has never happened before. In the 2005 Parliament, when the Government majority was similar to the current Government majority, there were three Government members and five Opposition members. That seems to be a much healthier form of governing arrangement that protects the impartiality of the Electoral Commission. I hope that this Committee will encourage the Speaker, who is primarily responsible for the Speaker's Committee, to ensure that the current situation should not arise again.

Q54 Rachel Hopkins: You have touched on part of the supplementary, but I will ask it in case anyone wants to add anything about any changes in law or practice that may be necessary to ensure the Commission's monitoring and sanctioning functions are rigorously impartial and to ensure a level playing field between the different sides in a referendum. We have touched on it but if anyone has anything specific to add, please do.

Dominic Grieve: No, I think we have covered that point.

Q55 Rachel Hopkins: Great, okay. The final question is about other regulators. Should the Electoral Commission work with other regulators in regulating spending and the use of personal data in political campaigning?

Dr Renwick: Dominic made the point about the Information Commissioner's Office, and that is the key connection there. There needs to be a strong interaction between the Electoral Commission and the ICO.

Dominic Grieve: That was exactly the point I made. There is clearly the need—in fairness, we did this report in 2018, and I am conscious that that is something that might be happening already and we just do not know about it. It is something you might like to check up on.

Baroness Stuart of Edgbaston: During this pandemic, in terms of the public view on the use of their own data, there has been much greater awareness but also of the pros and cons. It is worth having a very close look, because the emergence and evolution of the use of data is a key aspect where legislation has not yet caught up with it, and the Information Commissioner is key in that relationship.

Rachel Hopkins: Thank you, everybody.



Q56 **Karin Smyth:** Mr Ryan, can you highlight for us what changes are envisaged by Irish Ministers in the general scheme to improve the transparency and accountability on referendum campaign funding?

Barry Ryan: As I explained earlier, the reform Bill that is currently being progressed has a number of key elements. The first is obviously the establishment of an independent statutory electoral commission. Secondly is the oversight of the electoral register, which is being modernised as well; there is a modernisation process being legislated for in the Bill. The third key element is, for the first time, regulation of online political advertising. The political and donations spending regime that is governed by the 1997 legislation is not now encompassed by the Electoral Reform Bill.

The intention is that the commission, when up and running, would undertake a full review of the 1997 legislation. It is a complex piece of legislation, there since 1997, and it has been heavily amended over the years. There are probably 20 amending pieces of legislation to it. The commission would be asked to review it and make recommendations back and then ultimately to transfer the responsibility for the regulation of the spending and donations regime to the electoral commission when it is established.

Q57 **Karin Smyth:** Why was that not included the first time?

Barry Ryan: The proposals that are being advanced at this stage really emanate from a report by a parliamentary committee back in 2016, which looked at the establishment of an electoral commission, among other things. The recommendations at that time were to establish the commission on a statutory basis initially, with an initial set of functions, with a view to building on those functions over time, and the transfer of other statutory functions to the commission.

I suppose it has highlighted that the approach should not be a “big bang approach”, as they call it—that the electoral commission from day one would have full responsibility for everything. Somebody likened it at one stage to trying to change the wheels on the car as the car continues on down the motorway. A stepped approach was favoured, and that was reinforced. A public consultation took place at the back end of 2018 and into 2019 on a regulatory impact analysis that had been conducted on the proposals. The consultation favoured an approach that would see the establishment of the body on a statutory basis with an initial set of functions, with other functions to transfer in over time when the commission becomes established and builds capacity.

Q58 **Karin Smyth:** There is no date on that, is there?

Barry Ryan: No, there is no specific date on it, but the provisions in the 1997 legislation are earmarked as one of the early pieces of research and advice that a commission would be asked to report back on.

Karin Smyth: Thank you.



Q59 **Lloyd Russell-Moyle:** Alan, Dominic and Gisela, what role should the Electoral Commission play in disseminating and regulating campaign information, particularly in light of the rise of online campaigning, so that voters feel confident in the decisions they make? I was taken by the idea that you put forward about an online registry or library of some of the campaigns. Should the Electoral Commission get involved in the actual content of any of that, and how do they regulate it online particularly?

Dr Renwick: There are many types of information. One sort of information is about when the referendum is taking place, how you can vote, who can vote, where you can vote, what is the question on the ballot paper—all that kind of thing. The Electoral Commission already has the role of providing that kind of information, and it is entirely appropriate that it should continue to do so.

There is also information on explaining the choice available to voters—explaining what the two options are. The Electoral Commission was given that power in the 2011 referendum on the alternative voting system when it provided information explaining what is the alternative vote and what is first past the post, basically explaining those two options. Barry Ryan has referred to the referendum commissions in Ireland, and they perform a similar kind of function, to a somewhat greater extent. Something like that could certainly be done by the Electoral Commission.

Then you can get braver still in providing further information about what are the sorts of arguments for and against the options on the ballot paper and what is the evidence around these arguments. This is done in a number of places. New Zealand, for some of its referendums at least, has set up a body that has been responsible for working out what are the main claims and what are the arguments that people are interested in. When it had a referendum on the voting system, as we did in 2011, it had a commission that looked at the issues that matter to people in this referendum, questions about the proportionality of the system, representativeness of different groups in society, the effectiveness of government and things like that. It looked at the evidence on how the different systems perform against different criteria for evaluating them, essentially. That worked very well in New Zealand.

Something kind of similar operates in some American states where, rather than an expert body doing that, you have a citizens' assembly or a similar body to a citizens' assembly that provides an informed public view on which arguments that people are making make sense during the campaign, where they want more information and what they are satisfied with in the campaign.

Here I am going a bit beyond what the Independent Commission on Referendums said; this is more based on my own research. Information provisions such as that would be an excellent development in our referendum practice in the UK, but I would not give that function to the Electoral Commission. It potentially is quite a controversial function, particularly on a polarised issue, and clearly the Electoral Commission



already has potentially controversial functions. You do not want a body that has multiple difficult jobs potentially contaminating each other in the degree to which the institution is trusted. The Lords Democracy and Digital Technologies Committee report that I mentioned earlier developed some very interesting proposals around how you might be able to do this. That would be very welcome.

Finally, stepping back a little bit from referendums specifically, we see a great deal of distrust of politicians and politics and the whole political system. That partly reflects a public sense of disengagement and a lack of understanding. It is really important to think about how we could counter that through many things, but in part better education—better education in schools and better education around how the political system operates—so that people can understand what roles referendums play within the system and other parts of the system. Potentially the Electoral Commission has a part in the role of providing that, particularly for elections and referendums. It would be important for others to be involved in that provision as well.

Dominic Grieve: It seems to me that Dr Renwick has set out very clearly the options. The one thing I am absolutely clear about is that you cannot have the Electoral Commission or another body fact-checking campaign groups and telling them that they can or cannot say something. That is the one thing that I am absolutely clear about in my own mind. On that, you have to rely on the fact that there are now, within respectable media, quite a few organisations that run that fact-checking process, which people tend to refer to and find quite helpful. It cannot be done by the Electoral Commission, tempting as it might sound.

Q60 Lloyd Russell-Moyle: There are guidelines for the general election where each person standing for Parliament is allowed to give a free post address by Royal Mail. Royal Mail reviews the content of that, and if it finds that the content goes beyond just positive promotion of your side, beyond its guidelines, it does not allow you to send it out. I am not saying that it fact-checks it, but it has a role there. Is there a role in referendums for something similar to that, which candidates have to abide by in a general election at least?

Dominic Grieve: That raises a very interesting question. You are absolutely right about that, and that is because ultimately libel laws apply during the course of general elections, and you are referring to a particular candidate. Indeed, under some circumstances, you might be able to get an election result overturned if you put out something that was suggesting that your opponent was a criminal, for example, and it was not true. It is harder with referendums because you are dealing with concepts and ideas, but my instinct tells me that we are going to get into very hot water if we—I know that other places do it, but that is not what the role of the Electoral Commission should be.

Dr Renwick has spoken about other possibilities of the Electoral Commission or an organisation, if not the Electoral Commission, putting



out factual information on an almost statutory footing during the course of the referendum. That could be contemplated, although it does then raise risks that one party or other to the referendum will say that it is inaccurate. Who then adjudicates upon that? That is where the problem lies.

Q61 **Lloyd Russell-Moyle:** Gisela, one of your final recommendations of the report is that a searchable repository for online political advertising should be developed, including information on where the advertisement was posted, to who it was targeted and how much was spent on it. Was that recommendation around real-time reporting, or is that just post reporting? If it is post reporting, is there not the same problem that we have discussed with the finances of this—that the horse has already bolted?

Baroness Stuart of Edgbaston: Unless Alan and Dominic's recollection is different, when it came to that bit, which was dealing with online, we were struggling, or we knew that this was a fast-moving field that went well beyond just the referendum; it also applied to general elections and to other sites.

The irony does not escape me that, at a time when information—and you can check information—is so much more readily available for those who wish to find it, we have got ourselves in a position where you hardly ever in political discourse get someone to say, "I disagree with you". They say, "You are lying". We have got to a position where contestable propositions have morphed into truth and lies. That is a very sad place to be in. It is probably a reflection that we have a more adversarial political culture than electoral systems that have proportional representation and consensus seeking coalitions afterwards. I do not know what the reason is, but for the purposes of your inquiry, if you wish to destroy the Electoral Commission, you would give it that task.

Dr Renwick: Since we published our report, the various tech companies have established ad libraries for digital advertising, which is a very welcome development. These are in real time, being updated all the time. The difficulty is that they give very little information on how much is being spent, how the money is being targeted and who is being targeted. For voters to be able to see what is happening in the campaign and for the regulator to be able to monitor that, it is important for there to be more information provided on this advertising. Again, the DCMS Committee has set out proposals on that.

Q62 **Lloyd Russell-Moyle:** It seems like it is technically possible; it is just that we need to get the standardisation and regulation right for the information to be provided.

Dominic Grieve: Yes. To make it clear, there ought to be an imprint on all digital advertising in exactly the same way as it has to appear on print.



Lloyd Russell-Moyle: Thank you very much. I suspect, Gisela, your point about truth might also link to the nature of truth in a more post-modernistic world. We could probably have a whole lecture and discussion on that, which is beyond the realms of this Committee but would be fascinating. Thank you.

Barry Ryan: If I may come in on that, just to highlight the proposal that I outlined in our Electoral Reform Bill, which includes the regulation of online political advertising. It is very much along the lines that have been suggested here, with the transparency notice on each political advert and the creation of ad libraries on the platforms.

Chair: Thank you. Mr McDonnell has been waiting very patiently and has our concluding questions. I think you touched on one of his potential questions.

Q63 **John McDonnell:** I think a contestable truth becomes a lie when it is knowingly falsely promoted, but we will come back to that debate time and time again, I am sure.

Barry, the Chair has asked us to go at a canter, so this is the last fence. You have made the point very clear about the importance of provision of public information and education on referenda in Ireland. One of the questions that we want to ask is about this proposed move of the electoral commission in regulating political advertising. Could you fill us in a bit about what prompted that and what that move will mean in effect?

Barry Ryan: Sure I will, and we will try not to fall at the last fence. The background to this was an interdepartmental group that, which was established back in 2017 and chaired by the Department of the Taoiseach and which brought together a number of different stakeholders to look at Ireland's electoral processes, and particularly disinformation.

That group produced two reports and, in a risk analysis, found our processes to be relatively robust. But ultimately we recommended that our proposals be brought forward in this space specifically for regulating online political advertising during electoral events. They are the proposals that are currently being brought forward. The proposals attempt to ensure that there is a transparency notice attached to each political advertisement that appears online and very much mirrors what is there in the offline space, highlighting who sponsors the ads and who is being targeted, and that information is to be provided in real time.

I should say that it is not a silver bullet to all of the issues of activity that happens online, but alongside our legislation there is also being progressed at the moment, by colleagues in the Department of Justice, an Online Safety and Media Regulation Bill, which will see the creation of an online safety commissioner and the establishment separately of a media commission that deals more broadly with issues of online material. The proposals in the legislation that I am working on specifically are targeted towards political advertising during electoral events.



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John McDonnell: I think you safely got over that fence, Barry. Thank you.

Chair: Thank you very much. On that note, I thank our four witnesses of this panel, in addition to the three witnesses in the first, for an extremely enlightening session, conducted very well indeed, given the sometimes contentious nature of these particular issues. It was conducted extremely well, and my thanks go to you all.