Joint Committee on Human Rights

Oral evidence: <u>Legislative Scrutiny: Electoral Integrity</u> Bill, HC 223

Wednesday 26 May 2021

Watch the meeting

Members present: Ms Harriet Harman (Chair); Lord Brabazon of Tara; Joanna Cherry; Lord Dubs; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; Lord Singh of Wimbledon.

Questions 1 - 8

Witnesses

I: Professor Toby James, Deputy Director, Electoral Integrity Project; Dr Jessica Garland, Director of Policy and Research, Electoral Reform Society; Lord Woolley of Woodford, Director, Operation Black Vote.

Examination of witnesses

Professor Toby James, Dr Jessica Garland and Lord Woolley of Woodford.

Q1 **Chair:** Good afternoon, everybody. Welcome to this session of the Joint Committee on Human Rights. One of our functions is to scrutinise proposed legislation, and this afternoon we are conducting an evidence session looking at the Electoral Integrity Bill.

We are very grateful to our two panels of witnesses. The first panel includes Professor Toby James, professor of politics and public policy at the University of East Anglia; Dr Jessica Garland, director of policy and research at the Electoral Reform Society, which campaigns for democratic rights; and Lord Woolley—Simon Woolley—who is a founder of Operation Black Vote. Thank you all very much for joining us.

The right to vote is protected under Article 3 of Protocol 1 of the European Convention on Human Rights and we are looking at the Bill in that context. We are looking at the question of registration and voting. Voting can be either in person or by proxy. All of us want everybody to have the right to vote and none of us wants anybody to commit any act that undermines the democratic process by fraud.

The Bill sets out more requirements for those seeking to cast their vote. The question is whether those requirements are justified and necessary. They are justified only if they are necessary to deal with a current or anticipated problem, and that is my initial question to the first panel. There are very few reports of fraud at polling stations by people who purport to be somebody they are not when they vote. Is this because it is not happening or because it is hard to detect? What are the current methods to prevent people engaging in fraud at the polling station? We have to look at the problem before we turn to questions about whether or not the proposed solution in the Bill is the right response. Could I ask our panel that first question about the prevalence of voter fraud in the UK, starting with Toby James?

Professor Toby James: Thank you very much for the kind invitation to be with you this afternoon.

To be clear, the academic evidence here is unanimous that personation is exceptionally rare. The Electoral Commission can perhaps speak about the frequency of allegations and prosecutions, which, as we know, tends to be very low. With a colleague at the University of Newcastle, we have conducted poll worker studies, which involve surveys inside polling stations to work out the types of problems that may occur on election day. They are all unanimous that personation is very rare.

The Electoral Integrity Project undertakes international surveys of experts. They, too, point to the UK not having a current problem with voter fraud. We have evidence from cross-national studies from countries such as the US that have a similar type of system in polling stations, and that too points to voter fraud being exceptionally rare. Of course, we should be open-minded about potential new evidence because the world

changes, but as it stands there is no evidence that this is a prevalent problem. Some mechanisms can be undertaken in polling stations to prevent it; for example, officials being able to report a potential case to the police and gather information in polling stations. As they stand, the measures, certainly photographic identification, are not warranted on the basis of the evidence.

Chair: Thank you. Can we hear from Jessica and then Simon Woolley?

Dr Jessica Garland: I echo what Toby says and will not go over it again for the purposes of time, but as well as the question whether it is possible that it is happening we should add the question whether it is plausible. What is the motive for this crime?

One presumes that it would be to change an election result. To change an election result by personation would require a huge operation, identifying which constituencies would be marginal enough to make a difference. That is difficult for political scientists, let alone anyone else. On top of that, a lot of people would have to be involved. You would have to know who was not going to vote in order for that not to be detected, and presumably the candidate would have to be aware. We are talking about a large-scale operation. It is implausible that it could be going on undetected.

Chair: You are saying that it is not just that we do not have evidence as to whether or not it is happening; it is implausible that it would be happening because the structure of our system is such that you would need a big operation to effect a change in the result. Therefore, there is no point in anybody doing it under our current system.

Dr Jessica Garland: That is a summary of what I am saying, in the sense of the plausibility as to why someone would risk a criminal offence in order to do it, plus the scale would make it very noticeable.

Chair: Simon, could you say something about the context of voter registration fraud as well?

Lord Woolley of Woodford: I think context is really important in this. Often, in some Asian communities, there have been charges of fraud, but when it has been investigated thoroughly it is shown not to be the case, or not substantive in any way. I do not like it when people like me say to communities, "We need to register to vote and we need to vote", and then, when they do in great numbers, people call foul. When that occurs, it is deeply unfair. As Dr Garland outlines, first, it is not plausible; secondly, as Professor Toby James outlined, the evidence clearly shows that there is no fraud on any scale, let alone on a large scale, that we can see.

Chair: Can I ask for a quick answer from each of you? You do not feel that in any sense the additional requirements for voting under the Bill are necessary, and the Bill could be characterised as voter suppression rather than voter protection.

Lord Woolley of Woodford: I know that those accusations have been made. What you have to do is look at whether or not it is proportionate. What is the scale of fraud, if there is any? If you can count on one hand the number of fraudulent people coming to the ballot box, you can see the proportion. If, on the other hand, tens of thousands, if not hundreds of thousands, might be impeded by this imposition, clearly it is not proportionate and could actually have a monstrous negative effect, which some have characterised as voter suppression.

The Chair: Thank you.

Q2 **Joanna Cherry:** Good afternoon, panel. I am Member of Parliament for Edinburgh South West.

Unlike most countries that have voter ID, the United Kingdom does not require its citizens to carry ID cards. How would that complicate voter ID proposals? Perhaps I can start with Dr Garland.

Dr Jessica Garland: It complicates them significantly. In European countries where ID is required, people have a card that they are required to carry around with them, so it is already about their person when they walk into the polling station. They do not have to apply for it separately or pay for it. The cost option is particularly worrying because we know that you have to pay for the most common photo IDs. We also know that it is not equally distributed across society, which suggests that this will affect particular groups. The closest parallel is the United States where we have seen that such measures have been hugely discriminatory against particular groups. That is where the comparison is particularly worrying.

Joanna Cherry: The woman in the street might say, "But, surely, most people have a driving licence or a passport". Is that the case?

Dr Jessica Garland: No, not at all. The majority of people do, but Cabinet Office research that came out a couple of weeks ago suggests that 9% of people do not have in-date recognisable photo ID. If you expand it a bit to out-of-date but still recognisable ID, 4% of people still do not have that ID. It might seem small in percentage terms, but if you look at it across voters in general, it extends to millions of people.

Joanna Cherry: I think that Cabinet Office research also showed that close to half of the people without photo ID said they were unlikely or very unlikely to apply for voter ID. In an electorate of 46 million, about 2 million people would be unlikely to apply for a voter ID. Is that right?

Dr Jessica Garland: Yes; 42% of those who did not have ID said they were highly unlikely or unlikely to apply, so the very group we are most concerned about being excluded from elections is the one that is highly unlikely to apply for that card, so that is really worrying.

Joanna Cherry: Lord Woolley, the Equality and Human Rights Commission said that a requirement to produce photo ID would have a disproportionate impact on voters with protected characteristics such as

age, gender reassignment, disability and ethnic minority. I see that other third-sector organisations like the Runnymede Trust have backed it up. Can you comment on that?

Lord Woolley of Woodford: I can. I have run Operation Black Vote for 25 years. Our starting point is voting and getting people registered to vote. It has always been an uphill battle, first because people are distrustful of authorities and what they might do with their information. They have been reluctant and we have had to take them on a journey and say, "This is how we engage in civic society. We need to register to vote and we need to vote".

I am deeply afraid that if there is another layer of bureaucracy it will be another impediment for a group that is already hesitant about fully engaging in the democratic process. Part of that mistrust is real. We have seen it with vaccinations. There is mistrust in the Government and mistrust in institutions. That has cost lives and made us all a little unsafe, so that hesitancy is extremely real.

There is another layer. Quite a few people in black, Asian and minority ethnic communities feel that a Government who do not have their best interests at heart may want to find a route for these ID cards as Big Brother to watch over them. That adds further to the distrust. For someone like me, that is heartbreaking, because my role for the past quarter of a century has been to encourage our communities to engage in democratic processes as never before.

Joanna Cherry: Thank you. Professor James, is there further evidence or research that shows how the lack of mandated photo ID cards in the United Kingdom might complicate voter ID proposals?

Professor Toby James: Yes, absolutely. We can look at the pilots, to go back to an earlier question, and the lack of uniform ID availability. One thing that came through was that lots of people did not vote in those pilots, not because they did not necessarily have the form of ID but because philosophically they declined to provide that form of ID, which led to a significant proportion of people not being able to cast their vote.

It is important to note that voter ID requirements are much more common in countries that have national ID cards, as in Europe. In the Anglosphere we do not have national ID cards; for instance, in New Zealand, Australia and still parts of the US, voter ID is much less likely to be required. That is quite important.

I stress the importance of the potential impact on trans and gender-non-conforming communities as well. The Cabinet Office recently published a survey of individuals asking who had the available forms of ID that we have already heard about. It is not in the overall narrative, but in the data tables it is very clear that there is a differential impact as regards sexuality, gender and people who specify "Other" in response to those questions. They are much less likely to have access to those forms of ID.

There are some real questions about whether, given that they are protected groups, that would be in line with the Equalities Act.

Joanna Cherry: That very much supports what the Equality and Human Rights Commission said about the potential impact on people with a protected characteristic.

Chair: Thank you for those answers. Could we turn to Lord Dubs for the next question? He has an issue to raise about Northern Ireland.

Q3 **Lord Dubs:** I am a Labour Member of the Lords. We have already referred to Article 3 of Protocol 1 of the ECHR whereby any interference with the right to vote must be proportionate. You have all stated your views about the merits of the proposal. Assuming it goes ahead—an assumption we could challenge—what measures could be adopted to ensure that the voter ID requirement does not disproportionately interfere with the right to vote while also achieving the aim of preventing voter fraud?

Lord Woolley of Woodford: It is impossible to guarantee that. In many ways, we are putting the cart before the horse. One of the big factors in registration and engagement is political education comprehensive citizenship education in schools and communities. That is where our efforts should be, not in this cul-de-sac debate about voter ID that can be clearly seen to be used for other means. If we want a robust democracy, we should be saying, "What is the nature of our citizenship education not just in primary and secondary schools but in communities?" We need to educate people on why it is important to engage. In any national election, we rarely get over 55% or 60%, so there are huge swathes of our public not engaging in the most important civic role we can all play.

The answer to your question, Lord Dubs, about what we can do is that we can do little or nothing to confront the hesitancy or to confront the fact that people will not have the right information to exercise their democratic franchise. We will have to expect a monstrous drop-off of people engaging in the democratic process if this measure goes ahead.

Lord Dubs: Jessica, do you want to add anything?

Dr Jessica Garland: I agree entirely with what Lord Woolley says. Assuming that it will be implemented, there is no way that it can be implemented without having an impact. We have already been over the disproportionality. If it is implemented, some things would have to be the case, such as free ID being available.

In the US, in a lot of cases people can sign something on the day; they can do something in the polling station that enables them to carry on voting. That would be something to look at. In certain cases in the States, non-photo ID is available. If we move towards a purely photographic ID requirement, we are looking at a proposal that is stricter than in many US states where we have seen such proposals have a

dramatic impact on equality. That is a very dangerous road and we want to avoid it at all costs.

Lord Dubs: Toby, do you have anything to add?

Professor Toby James: I entirely agree with the former speakers that ideally no action is the best course. There is also a huge opportunity cost to fix problems with voter registration. In reality, if this is to proceed, I would suggest three things. The first is non-photographic identification. One of the pilots was simply to allow people to bring in their poll card. Everyone who is registered will have a poll card. That seems like a very non-discriminatory, simple, cheap and free way of doing it.

The second thing is the use of a system known as provisional ballots in the US, sometimes known as tendered ballots in the UK. If for some reason, someone's name is not on the register on the day of the election, or they have forgotten their ID and do not have it to hand, they are still able to cast a vote. It is put aside and they are given a period of time to present their ID, have their status checked or for it to be resolved through other means.

The third system is related to something called a vouching system, which is in place in Canada. If you go to a polling station with your family and one member has forgotten their ID and does not have it to hand, you can sign to say that that individual is your brother, sister, grandmother or neighbour—whoever it is—and that is kept on record as evidence of who the person is. That provides another mechanism for making sure that people are not prevented from casting their vote. The Bill has not been published, but, unfortunately, I cannot see any of that in the Government's proposals so far. I think those are really important fixes that the committee could recommend.

Lord Dubs: Thank you. Some of the people who support these proposals say that they work perfectly well in Northern Ireland. Do you have any comment on that, Simon?

Lord Woolley of Woodford: I have no comment.

Chair: What about our other two witnesses?

Professor Toby James: I do not think it has been thoroughly evaluated in Northern Ireland. It was introduced some time ago, in 2003 I think, and there was some evidence that a small proportion of the electorate did not have access to ID, or did not present it on the day of the election. It is worth going back to those original reports.

Since then, it has often been said, "Well, it works fine in Northern Ireland", but, to the best of my knowledge, we have not had a thorough study, such as the collection of data in polling stations in Northern Ireland to see how many people are not able to provide the requisite form of ID, or how many people did not even make it to the polling station because they did not have it to hand in any case. We should not be too quick to assume that everything works perfectly in Northern Ireland.

Lord Dubs: Jessica, do you have anything to add?

Dr Jessica Garland: No.

Lord Dubs: Thank you.

Q4 **Baroness Ludford:** I am a Liberal Democrat Member of the House of Lords. Before I direct my question, initially to Lord Woolley, I think Professor James's suggestion about having to show your poll card is interesting. I spent decades of involvement in political campaigning telling people they did not need their poll card to vote in a polling station. Perhaps there would be an effect on people who live in multi-occupied blocks where things are perhaps not quite as organised as they would be in a single household. But I digress.

Lord Woolley, Article 14 of ECHR requires that legislation must not interfere with human rights in a discriminatory way. In our report, *Black People, Racism and Human Rights,* we highlighted the issue of low voter registration among black communities. You covered this in earlier remarks, but in your opinion would the introduction of voter ID further discourage members of those communities from registering to vote and hence from voting? If so, what, if anything, could be done about it?

Lord Woolley of Woodford: I think it would add a further discriminatory layer and put people off to such a level that we have taken the exceptional step of challenging the Government in court. Along with the Runnymede Trust and Voice4Change, we have instigated a judicial review that is going through the courts as we speak. Central to that is that the Government have not undertaken an equalities impact assessment of the process. I can tell you that it will have an impact, but unless that impact assessment has been done, I cannot prove it.

As you say, this is so important—it strikes at the heart of who we are as a society—that we felt we had no option but to challenge the Government in the courts. I do not know whether they will get it through before we get our challenge, because it is still pending, but it is that serious.

Baroness Ludford: Your focus is particularly on Operation Black Vote, an admirable organisation, if I may say so, but are you aware of any other groups that could be disproportionately affected by the voter ID requirement?

Lord Woolley of Woodford: This will go right across the board. It will go to the elderly. It will go to those in temporary accommodation. It will go to young people. A whole plethora of people will be caught up.

One often hears the mantra that the elderly will vote. There is a plethora of other people, particularly black, Asian and minority ethnic communities, who in the past have predominantly voted Labour. That has changed significantly in the past few years. Nevertheless, it is still a majority. People feel that if we are targeted perhaps there is something else at play in making the obstacles larger than they should be.

It is not just our communities I am particularly concerned about. There is a plethora of people who will be caught up in this. At the heart of it is an obstacle for people to exercise their franchise. That is the biggest problem.

Baroness Ludford: Dr Garland or Professor James, do you have anything to add?

Professor Toby James: The Government's research on who has access to the appropriate forms of identification also shows lower take-up rates among unemployed citizens and those with fewer qualifications, so clearly there is an economic and educational dimension. Irrespective of whether particular groups are affected—I think they will be—4% not having photographic identification in which they are recognisable in an electorate of 47 million means that 1.9 million people could be affected in an election. That is an enormous number of people.

Chair: Thank you very much. What Lord Woolley said about understanding the lessons of vaccine hesitancy, reading across to voting hesitancy, is a really important point. The next question is from Lord Brabazon.

Q5 **Lord Brabazon of Tara:** Good afternoon. I am a Conservative Member of the House of Lords.

I want to turn to registration. We have called on the Government to consider introducing automatic voter registration. What do you think the current obstacles are that prevent people from registering to vote? Could automatic registration mitigate any effects of a voter ID requirement?

Lord Woolley of Woodford: I wholeheartedly agree with automatic voter registration. I think it could be done. We have the technology to do it. We would see many more people engage in the democratic process, which everybody in this committee wants to see, but it is not a silver bullet for precisely this reason: you could get many more people automatically registered, but you still would not get everybody to the polls.

You will get many more people to the polls once you engage in comprehensive citizenship education to understand institutions, how they work and how they can be successfully accessed, and move the dial. After my 30 years of activism, I am tired of going to communities and saying, "We must engage", and them saying it makes no difference, even though you and I know, and this Zoom meeting knows, that elections are won and lost in the margins and a few votes here or there can make all the difference. Whether or not people are in a marginal seat, if they do not feel empowered to make a difference, we can register everyone to vote but we still will not get them to the polls. For me, it is an holistic approach; it is for everyone to help in an inclusive democracy, so we do the education, we tear down the barriers, not erect them, and we engage in a way that makes people feel that if they vote they will be listened to.

Chair: Thank you. While it is not a silver bullet for actually participating

in the vote by post or in person, automatic registration is a silver bullet to deal with underregistration, in so far as it affects the boundaries and the ways constituencies are drawn up. I know that is a point you have made in the past, Lord Woolley.

Lord Woolley of Woodford: One hundred per cent. It is not beyond us to get that over the line. I am frustrated about why it does not happen.

The Chair: Thank you. Could we turn to Baroness Massey for the next question?

Q6 **Baroness Massey of Darwen:** I am a Labour Peer in the House of Lords. You have touched on some of the issues in my question, but there may be elements that have not been covered.

From the evidence from pilots conducted at local elections, did you find that the introduction of a voter ID requirement might have dissuaded individuals or certain groups of individuals from voting? In some of the trials, individuals who forgot to bring ID to the polling station did not then return with the required ID to vote. How could that be mitigated? I think Lord Woolley has answered this in part already.

Lord Woolley of Woodford: I was astonished. You are creating another layer that people have to think about. They think, "I've got to take my ID", and then, when they have the wrong ID, they go back home and say, "Forget it". The numbers were really shocking, but are we surprised that people in some quarters have such negativity towards our democratic process? You leave your house and say, "I'm going to exercise my franchise", and then you are told you cannot and you say, "This is why I am not bothering". For people like me, who have seen voter engagement as our north star for a decent society, I have to say that it is heartbreaking.

Baroness Massey of Darwen: Jessica, do you have any comments on that, particularly on the points you brought up earlier about the introduction of voter ID?

Dr Jessica Garland: It is very difficult to know how the chilling effect that Lord Woolley mentioned earlier for people who might be feeling distrustful of authority might be an extra barrier in access to the polling station. We know from the surveys that the Electoral Commission and the Cabinet Office did after the pilots of the policy that about 2% of people said that they did not turn out to vote because of the ID requirement. It is a small percentage, but that is still very damaging and completely out of proportion to the incidence of fraud.

The Cabinet Office's recent research revealed that 27% of those without any form of ID said that it would make them less likely to vote if they were asked to present ID. We are getting a picture of a potential chilling effect on people turning out. As Lord Woolley said, it would be wonderful if everyone was so committed to voting that they would go to the polling station, go back home and then come back again, but the reality of the

situation is that people are voting among the other responsibilities in their lives.

Baroness Massey of Darwen: Toby James, do you have any comments?

Professor Toby James: From our poll worker studies, one of the most frequent problems is people turning up wanting to vote, and not being able to because their name is not on the electoral register. That is the most common way in which people are not able to vote.

The pilots of voter ID tend to show that it would be a much greater problem than that; it would lead to more people being turned away than through the most significant existing problem. Among the different pilots we experimented with, although the poll card ID model led to people being turned away, the impact was much less, so non-photographic ID is clearly better than photographic ID.

Chair: That is if any ID is actually even necessary in the first place. Like Baroness Ludford, when I am encouraging people to vote, and they say, "I've lost my polling card", I say, "Don't worry. Just go down there".

Q7 **Lord Singh of Wimbledon:** I am a Cross-Bench Member of the House of Lords. There are three parts to this question. In your view, if a voter ID requirement is introduced, what would be an acceptable form of ID? The Government propose introducing an electoral identity card that would be issued by local authorities, as is currently done in Northern Ireland. What needs to be done to ensure that these IDs are easy to obtain so as to ensure that voters who would otherwise have no acceptable photographic ID are still able to vote?

Do you think a photo ID requirement would affect turnout? How do you think the Government and local authorities can ensure that voters who otherwise would not have an acceptable form of ID take up the offer of an electoral identity card?

Professor Toby James: To reiterate, the key things I would stress are the use of the poll card as one form of ID; making provisional ballots possible; and having a vouching system. They are really important. I am very sceptical about the idea of an electoral identity card. I know that is the model in Northern Ireland, and some framework is better than no framework in some ways, but if we think about the amount of extra effort it will take for a citizen to apply for it ahead of the election and however long it might take for them to receive the card, it could be very problematic.

There is a real threat to local authorities in thinking about who is to administer this and pay for it. Our research shows that local authorities have been under increasing pressure over the last few years because of the additional burdens introduced by individual electoral registration and the cuts that have been made at local authority level. It places real pressure on them, so asking them to provide those forms of ID looks like a very difficult and challenging situation; Dr Stuart Wilks-Heeg of

Liverpool University estimated that millions of forms of ID would need to be created. Although it helps, in some ways it could cause other problems, so avoiding it would be much better.

Lord Singh of Wimbledon: Lord Woolley, would you like to comment?

Lord Woolley of Woodford: I would put the question back to you and others on the committee. What would be an acceptable democratic price in regard to people falling off and being unable to vote? Is it 1,000, 10,000, 50,000, 100,000, 500,000? What would be acceptable? I do not want to see 10 people come off, much less tens or hundreds of thousands. I think this is a question we all have to ask ourselves.

Lord Singh of Wimbledon: That is good food for thought. Dr Jessica Garland, would you like to comment?

Dr Jessica Garland: There are cautions around the free elector card. It is not a silver bullet such that you can just go and pick up a free elector card if you do not have ID. When we look at the evidence from the States, most marginalised communities who need free ID struggle to get it. For instance, the issuing office is a long way from their home; they have to pay for transport to get to the issuing office; or the office is open only at hours when they are working. There are lots of other barriers. A free elector card is not a simple or straightforward idea. As Professor James said, it puts pressures on councils both in advertising its availability and making it available.

Chair: Thank you. Could we have the final question to this panel from Lord Henley about non-photographic ID that might be acceptable?

Q8 **Lord Henley:** I am a Conservative Member of the House of Lords. Professor James talked about the Canadian experience, particularly the use of vouching, which I presume is getting a person to assist in your identification. Could you expand a little on that and look again at Canada where I gather that you are permitted to present two pieces of non-photographic ID at polling stations to prove your identity and residence? The list of permitted documents includes bank statements, birth certificates and voter information cards. What is your view about that? Do you think those would be an acceptable form of ID, or do you think they just do not work?

Professor Toby James: It is worth saying that vouching has been in place in Canada for a long period. They then removed it but realised that that was a mistake and reintroduced it. It is a really important part of their system.

In general, I agree with everyone else that no ID is the best solution. In some ways, allowing other forms of identification would be a positive way forward—bank statements, birth certificates, voter identification cards or whatever else is good—but you have to think about it from the perspective of the administrator. Although not as many people vote as we would like, it is still the case that at some polling stations you get queues. Where you get queues, it leads to a situation where people see the queue

and turn away and think, "Maybe I don't want to vote after all". You have to make the system as simple as possible. Although the polling card option is important to include, and allowing other mechanisms like bank statements is good, the simpler you can make the system for the voter, putting the voter first, the better.

Lord Henley: Lord Woolley or Dr Garland, would you like to come in?

Lord Woolley of Woodford: I think it would make a negligible difference. Imagine for a second that you are reluctant to vote and then you think, "Now I've got to look through the drawers and get some bills". It is another layer. The difference it would make would be hardly noticeable, particularly with a group that is already reluctant to engage.

I do not know what your remit is, but if you are on the front foot and you have a blank sheet, you could say that we should be putting more energy into political education. When people go to the booth, we have to make it easier, not more restrictive. What we are doing at the moment is the complete opposite.

Chair: Thank you very much indeed to our first panel of three witnesses. I think Lord Woolley's final point sets us up very well for our next panel.