

Public Administration and Constitutional Affairs Committee

Oral evidence: The work of the Electoral Commission, HC 43

Tuesday 29 June 2021

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

Questions 64 - 160

Witnesses

I: Alan Mabbutt, Registered Treasurer and Legal Officer, Conservative Party; Scott Martin, Solicitor to the Scottish National Party; Rt Hon Lord Tyler, Spokesperson on Political and Constitutional Reform, Liberal Democrats; and Andrew Whyte, Acting Director of Governance and Legal, Labour Party.

II: Geraint Day, Deputy Chief Executive and Head of Campaigns, Plaid Cymru; Jon Nott, Treasurer, Green Party (England and Wales); Richard Tice, Leader, Reform UK; and Amy Killen, Campaigns Manager, Women's Equality Party.

Examination of Witnesses

Witnesses: Alan Mabbutt, Scott Martin, Rt Hon Lord Tyler and Andrew Whyte.

Q64 **Chair:** Good morning and welcome to the Public Administration and Constitutional Affairs Committee. This morning's evidence session will consider the Electoral Commission's remit, powers and effectiveness in regulating political finance, its role in regulating election campaign information and advertising, and its governance and accountability. Today's witnesses are representatives from eight different political parties spread across two panels. They represent the broad spectrum of political parties in the United Kingdom in their politics and their size. The Committee is very grateful to all of them for giving their time today. I am going to ask the first panel to introduce themselves for the record, please, starting with Alan Mabbutt.



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Alan Mabbutt: Good morning. I am the registered treasurer of the Conservative party, a post I have been in since 2016.

Scott Martin: I am the solicitor to the Scottish National party.

Lord Tyler: Good morning. I am the Liberal Democrat spokesperson on constitutional and political reform.

Andrew Whyte: Good morning, everyone. I am acting director of governance and legal at the Labour party, and I represent the Labour party on the Westminster political parties panel.

Q65 **Chair:** Thank you very much. In that order, I have the opening question. Multiple reviews of electoral law, including by our predecessor Committee, have highlighted its complexity, “making it difficult for even professional party compliance teams to ensure the law is adhered to.” Mr Mabbutt, how helpful is the commission’s guidance in enabling you to ensure that your party complies with the legal rules on spending, donations and loans?

Alan Mabbutt: The complication that we have with electoral law is that it is very complex, and one of the most difficult things to do with any of these things in giving guidance—because, of course, it is not just the guidance that we receive, it is how we put it out to our own political parties and the volunteers across the country—is putting it in a format that is easily understandable by volunteers. That is fairly complex, and the guidance that comes out of the Electoral Commission is not straightforward for an ordinary volunteer who does not deal with things daily.

That is where the complexity comes in, because most of the people we deal with do not deal with these matters regularly and need it to be explained in a fairly simple, straightforward way. The difficulty we have is that the guidance is not given in plain English as far as they are concerned in the way that they deal with these matters daily.

Q66 **Chair:** Is it always clear what is party election expenditure and what is candidate election expenditure?

Alan Mabbutt: That is an area that you will know the Supreme Court has made judgment on and has not necessarily agreed with the High Court or the Appeal Court. I suspect the answer there is definitely not, and it is something that changes quite a lot in the way that we explain it within our party and, I should imagine, within the other parties, too. Since 2000 and the introduction of PPERA, it has become more complex to define what is candidate spend and what is now party spend. It has only existed in legislative form since 2000, so it is not straightforward at all.

Q67 **Chair:** As a final question in this opening question, do you think that the Government’s intention to legislate to clarify the rules on notional expenditure is necessary?



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Alan Mabbutt: Yes, I think no one would disagree with that after the Supreme Court's judgment came out in a different way from how most people had been interpreting the law prior to that. Clearly, it needs redefining to take it back to where most political parties felt that it existed prior to then, including, bear in mind, where the Appeal Court felt that the law stood before the Supreme Court judgment.

Q68 **Chair:** I will go through those questions now with Mr Martin. How helpful do you find the commission's guidance in enabling you to ensure your party complies with the legal rules on spending, donations and loans?

Scott Martin: I make the same distinction as Alan does between, effectively, compliance at a national level, where we have the expertise and the legislation, and translating that into compliance that needs to take place at a more local level. The guidance is certainly helpful in trying to turn the dry statutory language into more meaningful things, but there is a constant issue with the Electoral Commission over shifting sands on its guidance over time, particularly with the code of practice it proposes to introduce if the Government let them. There are certainly things there that say you absolutely must do this, when before it said you absolutely must do something else. That is a continuing issue, but the main thing is translating it into plain language so that local election agents and others can comply.

Q69 **Chair:** Is it always clear what is party election expenditure and what is candidate election expenditure, in your experience?

Scott Martin: My position is that the law is relatively clear on that, but the Electoral Commission, through a process starting in 2001, has made that legislation very unclear. My understanding of the position, which is fairly clear in my head, is that we have the legislation on candidate spending dating back to the 19th century. It was understood what candidate spending was in a broad sense, and that was improved on in 2006.

The legislation in 2000 filled a gap created by a court case in the 1950s. The intention was to fill a gap. It was never, as far as I can see, an intention that you should decide relatively freely what is party expenditure and what is candidate expenditure. The legislation is clear that you decide first whether it is candidate expenditure and, if it is not candidate expenditure, you decide whether it is party expenditure, whereas the consistent position, and I think the wrong position, of the Electoral Commission is that you somehow balance it up and decide on an individual basis what is one and what is not the other. In my mind it is clear, but in my mind it is also clear that the Electoral Commission guidance is not clear.

Q70 **Chair:** Well, that is clear to me. Do you welcome the Government's intention to legislate to clarify rules on notional expenditure?

Scott Martin: I think it is an area that should certainly be looked at. Having been through a few briefings with the Cabinet Office prior to the



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legislation being introduced, I am not entirely clear—"clear" may be the word of this session—what the difference is going to be between the Supreme Court case and what the legislation is going to say. It seems to be more of a warm reassurance rather than much legislative change.

Q71 **Chair:** I come now to Lord Tyler. How helpful is the commission's guidance in enabling you to ensure that your party complies with the legal rules on spending, donations and loans?

Lord Tyler: As I think will already be evident, the timeliness of the inquiry by this Select Committee is warmly welcomed by ourselves. I think the other witnesses must acknowledge that this is exactly the right moment to be looking at this for the reasons that have already been evident.

We start from the basis, the simple fact, that we do not elect a Government in this country, we do not elect a president in this country, we elect individual Members of Parliament to individual constituencies. Therefore, it must follow that the key remit of the Electoral Commission is to ensure that the candidature and the agent is clearly identified as being the place where responsibility must lie for expenditure in securing the election of an individual Member of Parliament. That is the remit and it is based on the legislation, as has already been mentioned, way back to 1883.

In looking at these issues today, we are concerned that the situation may be more muddled rather than clarified. Hence, in answer to that specific question, we welcome the draft codes of practice that the commission produced, discussed and consulted on very widely. We regret that the clarity of those codes of practice now looks as if it is going to be undone again by legislation.

Q72 **Chair:** In your experience with your party, is it always clear what is party election expenditure and what is candidate election expenditure?

Lord Tyler: We thought that as a result of that consultation and those drafts that we had some clarity, but sadly they have never been presented to Parliament, as members of the Committee will know, even in their revised state after further consultation. The clarity is certainly not there at the moment, and it is very urgent that it should be there.

Q73 **Chair:** Do you think the Government's intention to legislate to clarify the rules on notional expenditure is necessary and welcome?

Lord Tyler: It is certainly necessary, it is certainly welcome, but the issue is not just the clarity of what should be on which side of the balance sheet, but who takes responsibility for recording, reporting and limiting the amounts of money that are concerned. If it is an issue that relates to the candidature and to the success of a candidate in a specific constituency, that is where that responsibility should lie.

Q74 **Chair:** I am going to put the question finally to Mr Whyte. How helpful is



the commission's guidance in enabling you to ensure that your party complies with the legal rules on spending, donations and loans?

Andrew Whyte: I share the views that colleagues have similarly expressed. We probably are not the target for the commission's guidance in a more general sense. I have enormous sympathy for the commission. Given the complexity of the legislation and the fact you have the best part of 400 political parties registered in the UK, lots and lots of independents participating in elections as well, all with different levels of experience and knowledge of the system, I think it is a necessity for the commission to make sure it is accessible to the broadest range of people possible. As experienced compliance professionals who do this with large parties, we probably are not the target.

I think the guidance is useful as far as it goes. In keeping with what the other parties have said, we tend to translate the commission's guidance on the legislation into our own format for our own volunteers rather than them using the guidance directly. One thing the commission could usefully look to do is to consider its guidance offer and whether there is scope to make more specialist guidance available to parties that need it. We like to look at proper legislative and statutory references. Proper analysis and case law would be very useful for us. I don't know whether that is suitable for a wider audience. I would say it is useful up to a point, but perhaps we are not the audience for it.

Q75 **Chair:** What are your views on the clarity between party election expenditure and candidate election expenditure and your thoughts on clarifying the notional expenditure rules?

Andrew Whyte: In common with Scott, I am relatively comfortable with the distinction. That is partially a product of the way the party's campaigns are organised. Our messaging generally cleaves into X candidate versus national party messaging. There are some difficulties in edge cases, particularly around the concept of a leader's tour. That was covered in the commission's code of practice as to how you apportion and deal with expenditure that predominantly promotes the party through the leader nationally but occurs in his or her constituency.

It is those areas that are not always particularly clear, but generally our campaigns fit neatly into one pot or another and we find it relatively easy to make that distinction. That is also partially for us making it easier for our volunteers so they know they can incur election expenditure with confidence and know where it has to go. We bear that in mind when we work with our volunteers and we design our campaigns.

Q76 **Chair:** Mr Mabbutt, you have your hand up. Do you want to come in?

Alan Mabbutt: It was just to draw the Committee's attention and remind the Committee that the legislation does not just apply to parliamentary elections. We have just had a series of local elections where the legislation applies to the thousands upon thousands of local government candidates and their agents. It is important to bear in mind that there is



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no party spend regulated period currently, unless, of course, for whatever reason there was a general election within the next 12 months, which one always has to be careful of because we did not expect them in 2017 and 2019, so we can never anticipate. Assuming that there isn't, there is that to consider in the way spend is calculated.

Chair: We will certainly be coming on to the local government aspect, we will not be neglecting that at all, but thank you for reminding us, Alan.

Q77 **John Stevenson:** I will start with Mr Mabbutt. Given what you have said already, how effective do you think the Electoral Commission is in supporting parties and candidates in addressing the ambiguities in the guidance on applying the rules?

Alan Mabbutt: From the feedback I get from candidates who have asked for it, it is never timely and that is part of the difficulty. I suspect with the number of candidates across the country who are involved, if they are all asking questions at the same time, the Electoral Commission would be overwhelmed. I know the current email response from its finance regulation team says that it expects to respond within five days but if it is more complex within 20 days, which is okay today but if you are in the middle of an election campaign, 20 days is a very long time within the election campaign to take to respond to a query. Part of the issue there is the sorts of questions that are likely to be asked and the complexity that there will be from a candidate, who in our cases mostly would not go to the Electoral Commission direct anyway, they would come via us. It is how we translate to them rather than people asking the Electoral Commission directly.

Q78 **John Stevenson:** From your perspective, though, do you have a clear point of contact within the Electoral Commission who you can go to with any queries or concerns?

Alan Mabbutt: Yes, we have someone identified directly with the commission who we deal with. He then triages it and goes to the relevant person within the commission on that, which works reasonably well.

Q79 **John Stevenson:** We will come to the smaller parties, but should there be something similar for individual candidates, that there is a point of contact?

Alan Mabbutt: I think the numbers involved would make it very difficult and, like all organisations where you are dealing with vast numbers of people, to have one person identified would delay reaction if that particular person was not in the office that day or was dealing with something else. You need to have a situation where there is a general response so there are more people who can deal with each question.

Q80 **John Stevenson:** Do you think the Electoral Commission could do more to support parties and individuals prior to launching any inquiries, investigations or enforcement action?



Alan Mabbutt: There are conversations that we have had as a party with the previous chairman of the commission and the current chairman of the commission in the way these things go. It is a continuing dialogue that we always have with the commission in the way things are dealt with. We try to have conversations before there is any enforcement action. We try to engage before it goes down there as much as possible, but at the end of the day whether it takes enforcement action or not is a decision for it to take.

Q81 **John Stevenson:** Do you think it would be better if the Electoral Commission did take that route rather than going straight to an investigation?

Alan Mabbutt: It is a very fine balance, and I can understand why it is difficult for the commission. Where it changes from something that is informal to something that is formal, it changes the timetable and what its powers are. We would always rather that it engages with us, not necessarily informally but on a non-statutory basis, to initiate the conversation to see if things can be solved in the first place before they go to enforcement.

I will give you an example. After the 2017 general election, in discussions on the party return there were certain areas where it was not happy with some of the ways we had dealt with the return. We came to an agreement with it on how these things would be dealt with in future. Rather than it going down an enforcement route and fining us, we agreed to deal with things in a particular way in reporting in future, which is more successful and is more useful going forward with transparency from everyone else's point of view.

Q82 **John Stevenson:** Mr Martin, the same set of questions to you: how effective do you think the Electoral Commission is in supporting candidates in dealing with the ambiguities in the guidance and applying the rules?

Scott Martin: I suppose slightly arrogantly, I quite often take the view that I know this stuff better than the Electoral Commission, which maybe is not the best way to deal with the regulator. I will approach it on an ambiguity if I think I need an answer from it, rather than necessarily for other reasons.

Q83 **John Stevenson:** Fair enough. I think we have asked this question in a previous meeting, but it is just to get your point. Is there a point of contact within the Electoral Commission for yourselves?

Scott Martin: I tend to put everything through Andy O'Neill, who is the head of the office in Scotland, who will then translate it into whoever needs to deal with it in the Electoral Commission. I sometimes go directly. I do not think there is ever much of a problem for the larger parties in managing to find someone. The bigger issue is managing to find someone to provide a clear answer within an acceptable timescale.



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Q84 **John Stevenson:** What about the Electoral Commission not going straight to an investigation but having a conversation first before it goes to enforcement and suchlike? Do you think that is an appropriate course of action for the Electoral Commission, and is it one you have experienced?

Scott Martin: We have not experienced very much with enforcement action and have a particularly good record as far as that is concerned. That is what it says and that is in its enforcement guidance as a regulator, being normal regulatory principles, and it certainly should be doing that.

Q85 **John Stevenson:** Can I turn to you, Lord Tyler, with the same questions? How effective do you think the Electoral Commission has been in supporting parties and candidates in dealing with the ambiguities in the guidance?

Lord Tyler: I echo what the other two witnesses have said, with one additional important point, and I think we have touched on it already, which is that the vast majority of agents are now volunteers. They are doing some other job most of their lives, and most of the day probably, and coming to this as a very important public service but as volunteers. The guidance that is given is very much more to them and is not always couched in terms that they find easy and accessible. I think that is an important fact.

When I was first a parliamentary candidate, a very long time ago now—and members of the Committee may have had this experience—the agents in all the target seats at least were professionals, full-timers and, therefore, find this extraordinary world relatively easy to navigate. That is not the case now, and I don't think the commission always recognises that.

Q86 **John Stevenson:** Interesting point. From the Liberal Democrats' perspective, do you have a point of contact within the Electoral Commission and does that work satisfactorily?

Lord Tyler: Yes, in the main it does. We have a very useful dialogue outwith the normal discussions, which we find extremely helpful. One word of complaint: on the whole we find it very easy to deal with, but our compliance team does recognise the Friday afternoon syndrome sometimes, receiving emails about important investigations at 5 pm on a Friday. I know a lot of organisations have that problem of moving things off their desks on to somebody else's desk at that time in the week, but it is not entirely helpful.

Q87 **John Stevenson:** The final point is about the Electoral Commission launching investigations informally and formally. How have you found that? Have you had any experience of it, and what do you think the Electoral Commission's process should be?



Lord Tyler: It is in some difficulty here. I think it would like to be able to have a more relaxed attitude to this, and to take a more de minimis approach when it is really a minor issue that it is having to address, but at the moment minor and major issues seem to be all wrapped up together. Unlike, for example, HMRC, where there is a degree of discretion about how to proceed on something that is clearly an unfortunate mistake, a delay or whatever may have caused it, a death or an illness or whatever, by a volunteer, it finds it difficult to adopt the more relaxed attitude that you are suggesting, Mr Stevenson.

Q88 **John Stevenson:** Mr Whyte, how effective do you think the Electoral Commission is in supporting candidates and parties in dealing with the rules and guidance?

Andrew Whyte: Largely, we have had a positive experience of working with the Electoral Commission in its advisory capacity. In keeping with the previous witnesses, as a filter between the commission and our voluntary agents, we tend to explain the rules to them and seek advice on their behalf where necessary. It is not so common for our agents to go directly to the Electoral Commission to seek advice.

I echo the sentiments on timing as well. That can be a bit of an issue. I don't know whether it is a lack of confidence in answering difficult questions or a resourcing problem, but we have encountered the same problems in that advice does come but it can come rather late, which is not so much of a problem at this point in the cycle but can be an issue in the maelstrom of a general election campaign.

Q89 **John Stevenson:** From the Labour party's perspective, do you have a point of contact within the Electoral Commission and does that work satisfactorily?

Andrew Whyte: It does. We don't have a formal designated single point of contact, but I have been around the block enough to know who I need to speak to at the commission on particular issues. I do not necessarily think other parties would be in that position. For the Committee's benefit, I worked for the commission for a number of years before joining the party so I am probably unique in seeing this from both sides of the debate. I have some personal contacts from my time there, who admittedly are beginning to leave now so I am in a similar position to other parties. We tend to know who to go to on certain things.

Q90 **John Stevenson:** The final point is about the Electoral Commission's approach to informal/formal dealings with political parties on complying with the rules. Have you had any experience of that, and what is your view?

Andrew Whyte: Like Alan, we had a similar experience with the 2017 general election spending return. There were a few things that the commission did not particularly like the way we presented on. We had a conversation about that and reached an agreement for future returns. It chose not to pursue enforcement action. Other areas in which it is



possible to have a conversation are on impermissible donations that are accepted inadvertently. The commission generally is content for us to forfeit those and does not pursue additional enforcement action on top of that, so that is all well and good.

An area in which it could perhaps pursue this approach more effectively would be where there are administrative errors that are made, particularly by voluntary treasurers. This could involve late reporting. When those things arise we proactively go to the commission and explain what has happened and report the donations at the next available opportunity. That generally does result in informal enforcement action being taken, which is appropriate in some circumstances but not necessarily so in others.

More broadly on the commission's guidance, one thing it could usefully do at the pre-enforcement stage is perhaps be a little braver in its analysis of legislation and responses to our requests for advice. Our general experience is that you will get a precis of the legislation in the commission's guidance and then you get told to make your own decision based on that. We can do that without having to go to it first. I get that there is a fine balance between a regulator that is providing advice and also has the responsibility to enforce against you further down the line, but I feel the commission could make better use of advisory opinions and could be a bit bolder in the way it provides advice to parties.

Q91 **Karin Smyth:** That is a neat segue, because we want to talk now about the enforcement role of the Electoral Commission's approach to monitoring investigations and sanctions and your experience of that. Do you think the commission has the appropriate powers, structures and expertise to monitor and enforce sometimes complex technical investigations on suspected campaign funding? Is it exercising those powers appropriately?

Alan Mabbutt: If we are just talking about campaign funding, if that is the area you are particularly looking at, and then the enforcement role in that area, it is not that complex for campaign funding. The legislation is very clear as to who can make a donation to a campaign and what we can and can't accept, so it is relatively straightforward in that particular area.

Karin Smyth: I am sorry for not being clear. It is really about the Electoral Commission's own appropriate powers, structures and expertise to be able to monitor that, in your experience.

Alan Mabbutt: As far as I can gauge, it is a fairly limited area that we are looking at there. It is not complex to look on Companies House to see if a company is registered as being able to donate. That is not an area where I have particularly had any issues.

Scott Martin: Yes, I think the complexities are probably on the spending side rather than on the other side of the equation, as far as its powers



are concerned. On the donations side, if that is what the question is focused on, I think its powers are probably adequate. I would have a whole different answer as far as the spending side is concerned.

Karin Smyth: We will come on to that.

Lord Tyler: I think the commission is in some difficulty, not of its own making but of Parliament's making. There are areas that clearly need to be looked at again. Some of the donors that have been apparent not just, of course, in elections but in referendums have been so difficult to track down that the commission has had some difficulty with that. That may become an increasing problem with the extension of the franchise overseas, if that goes through Parliament. I cannot blame the commission for that, but I think Parliament is right to take a good look at this again.

More widely on powers, and we may come on to this on other issues, I think anything that moves responsibility away from the commission to the police would be a retrograde step. I was a member of a police authority and I am only too well aware that the average police force has very limited resources and certainly a lack of expertise, thank goodness, to be able to investigate a complicated issue of electoral law.

Andrew Whyte: I probably share colleagues' views. If the question is specifically confined to party funding, I think that, broadly speaking, the powers are adequate and proportionate. I have different views on the commission's enforcement powers more generally, and that particularly relates to campaign spending. If we are going to come on to that, I will refrain from answering fully until then.

Q92 **Jackie Doyle-Price:** I would like to ask you all some questions about whether you have ever referred cases to the Electoral Commission and how effectively or otherwise you felt it handled those. Could I start with Mr Whyte, please?

Andrew Whyte: Is this us making complaints to the Electoral Commission about other parties?

Jackie Doyle-Price: That is correct.

Andrew Whyte: It is not something we have done under the PPERA framework. It has been necessary for us to make referrals to the police and the CPS under the Representation of the People Act on various things, most commonly potential false statements about the personal conduct or character of a candidate or imprint offences in particular, but I am struggling to think of an example of when we have done the same under PPERA about another political party or a campaigner. We have possibly made enquiries about potential imprint offences, but that would be the only thing.



Lord Tyler: We are in the same position as Mr Whyte. Anything that we have done would have been relatively minor. When we have done so, the commission has been very quick to respond.

Scott Martin: Some of our keen members and activists will no doubt have made quite a number of complaints of varying legal correctness to the commission over the piece on this side of the equation. Again, I am struggling to think that we have officially made complaints under PPERA, which is a bit of a contrast to the position on spending.

Alan Mabbutt: Like Scott, it tends to have been some of our campaigners who might have made complaints directly to the Electoral Commission, but we will not have made any complaints. We drew something to its attention certainly in 2017 or 2019 with large-scale poster campaigns on TfL, where it had to contact TfL to get posters removed that did not have section 143 imprints on them under PPERA. We would not normally go down that route; we are too busy concentrating on our own campaigns.

It is a bit like the situation, certainly at a local level with local campaigns, where councillors and candidates will complain to the returning officer and say, "Can you do something about it?" but it is actually not their role, generally speaking. Often the complaints people make do not relate to matters that are within the remit of the Electoral Commission anyway, or the returning officer at a local level.

Jackie Doyle-Price: In conclusion, any complaints that all of you have been involved with are under the Representation of the People Act and that regime, not under PPERA and the Electoral Commission. I think that is fair to say.

Q93 **John Stevenson:** Mr Mabbutt, once the Electoral Commission launches an investigation, do you think there should be strict time limits on the time it has for that investigation and also for enforcement action?

Alan Mabbutt: It would certainly be helpful from my point of view. When it is doing an investigation—it depends on what it is—generally most investigations are on late reporting of donations that come to light in a local association months, sometimes years, after the donation has been made. I then get an early letter from the Electoral Commission saying, "We are launching an investigation because we believe you have committed an offence," which is not the most pleasant thing to receive but I understand the legal formality of it. We are asked to respond. Generally, the letters we get say, "Can you respond within 14 days?" Sometimes you get a situation where you do everything possible to respond within the 14 days because you are reacting in a way to stay within the law, obviously. You then respond to it within the 14 days, which happens to be a Friday afternoon, to get an email back that says, "I am away from my desk for two weeks. Would you contact someone else?" which is not helpful. It may be that it takes some time to deal with a matter that is beyond what we might consider reasonable.



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John Stevenson: My point, though, is whether the Electoral Commission should have strict time limits on its investigations.

Alan Mabbutt: It would be ideal if it could, but one understands it is going to have targets in the same way as any prosecuting authority would. It is going to need to take time to look into those things, so just setting an arbitrary date might not be—

John Stevenson: Okay. Mr Whyte, what is your view?

Andrew Whyte: I have some sympathy for introducing a time limit on investigations, with some caveats. Similar to Alan's experiences, we tend to find with the commission that investigations are quite lengthy and also get picked up a long time after the fact.

To give you an example, we recently reached the conclusion of an investigation in which donations were reported late in the first quarter of 2017. The investigation itself was launched in late 2019, so it has taken the best part of two years to get to this point in the investigation for something that is really a relatively minor breach and the offences took place four years ago.

Focusing the commission's mind and probably having something analogous to the 12-month time limit for bringing prosecutions under the Representation of the People Act in most circumstances would be appropriate. I think the commission would want and we would support the ability to get an extension to that time limit in certain circumstances, particularly where evidence comes to light that there has been a serious, deliberate breach of the legislation that affects public confidence in the democratic process.

Lord Tyler: To reinforce the points made by the other two witnesses, our compliance team reports that the expectation on them to have a 14-day time limit is quite unreasonable when, as has already been indicated, the commission itself may take months and months. They report that one donation investigation had 36 queries. That meant contacting 36 volunteers in 36 local parties and entering into an exchange of emails with them. I don't think the commission always recognises just who it is going to deal with. If it is not professional in the speed with which it deals with something, it is pretty unreasonable to expect volunteers to do something much quicker than it does itself.

Q94 **John Stevenson:** Mr Martin, do you think it is fair for an individual to know that there is a time limit on any investigation of them?

Scott Martin: I am not so sure about the word "strict" time limit. I think there has to be some flexibility. Certainly, in most pieces of legislation there is a statutory time limit after which you know you are not going to be subject to further complaints and action.

The main thing as far as the commission is concerned is the long gaps. I think there needs to be more communication that something is



happening, rather than waiting six months and then being asked to produce a response within 14 days, as others have indicated.

Q95 **David Mundell:** Can I ask each of the witnesses: does and should the Electoral Commission take account of the voluntary nature of the machinery behind many political parties in its monitoring, investigation and sanctions?

Andrew Whyte: Yes, it should and, no, it doesn't always seem to. That is my assessment of it. As we have previously discussed, the majority of our engagement with the commission's enforcement process tends to be around late reporting through largely inadvertent or administrative error at a constituency Labour party level or accounting units rather than the national party, which we more closely control.

All the local officers, in keeping with the other parties I expect, are volunteers. It is not the main focus of their lives. They do it out of a commitment to the Labour party and a desire to support us, and it is not always necessarily possible for you to get a timely response. We do everything we can to mitigate that with guidance, training and support through systems. We have staff in our regions and nations and a full-time employee who works for me who supports volunteers through that process, but with the best will in the world mistakes happen.

Where the commission is not particularly proportionate is in the concept of reasonable excuse under PPERA. It feels like the only possible reasonable excuse that you can demonstrate that is to the commission's satisfaction is an act of God or being struck by lightning on the way to deliver your returns. It has specifically said to us that it does not consider administrative errors to constitute reasonable excuse in pretty much any circumstances, even when you can lay out the steps you have taken to mitigate the risks of any inadvertent breaches, which does not seem right to me.

Scott Martin: What Mr Whyte says largely, and I would add that in the case the Labour party took to court on an enforcement notice, the commission was effectively arguing, and it was accepted by the court, that the fixed penalty is in the nature of a parking ticket. I do not think that is the right approach to this stuff. No Minister has ever resigned over having too many parking tickets. It is not a reputational issue in the way that fines are.

Lord Tyler: We agree very strongly with the other two witnesses on that particular point. To illustrate a feeling of imbalance, the treatment of major operators in a referendum seems to be a great deal more lax in timeliness and so on than it is for people in relatively less professional positions in local parties in general elections. That is not the fault of the commission. That, again, is Parliament, and with hindsight we probably made a mistake in not trying to bring together more effectively the two quite separate regimes of PPERA and the RPA when we set up the commission. I think we are going to have to look at that again one day. I



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fear that is not going to be a very quick and easy job, but the fact that it has not been done and the Law Commission has strongly recommended that it should be done, and I think it would ensure a better balance.

Alan Mabbutt: I get the impression from recent interactions with the commission that it is more recognising of it than used to be the case, and it is beginning to understand it more. It is difficult, of course, because, as with the Labour party, most of our problems occur with late reporting by accounting units across the country and it is generally by volunteers, who do not get many donations over the period and so are less likely to know, because they have no experience, how they need to deal with these things in a timely manner. That is the complication that we have but, as I say, I get the impression that it is beginning to be more understanding on those things.

Q96 **Mr David Jones:** As we know, the Electoral Commission has a dual role in advising and regulating campaigners and political parties. Would you say that dual role has ever given rise to an actual or perceived conflict of interest?

Lord Tyler: No, I don't really think so. There may be occasions when we thought its judgment was somewhat off beam, but not a major problem. Again, if I may suggest it, our difficulty is that Parliament has given it this difficult role and the two different regimes side by side does cause some conflict, but not exactly in the terms that you are suggesting, Mr Jones.

Alan Mabbutt: Generally not. The complication occurs where the enforcement team or the investigation team interprets the guidance differently from its guidance team. There can be occasions where the guidance that we think we are working to is not agreed with the investigation team and they can come to a different conclusion.

Part of the issue is that an organisation like the Electoral Commission has a reasonably high turnover of staff. I suspect that creates an issue with the way individual members of staff read the law and their own guidance and come to different conclusions over different periods because you are dealing with different people relatively regularly. We have the same issue, of course, with our own accounting units in that the volunteers there change quite frequently and need updating a lot. In the centre some of us have been around a very long time and so have a better understanding, although that does not always help because if the guidance has changed we need to make sure that we are looking at what the current guidance is rather than what it was when we last read it.

Q97 **Mr David Jones:** That would suggest there is a problem in overall guidance between the investigation team on the one hand and the advisory team on the other. I would have thought that is something that could be addressed by the Electoral Commission.



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Alan Mabbutt: Yes, I think you will find the other witnesses will agree that, as has been mentioned, the guidance that is given out is not always consistent year by year and can change.

Andrew Whyte: I largely agree with Lord Tyler. I have never identified any actual or perceived conflict of interest in the commission's separation of guidance and enforcement powers, and I think that is to its credit because it is a difficult balance to walk. It is not uncommon for other regulators to have that dual function, but when it goes to the democratic process it becomes much more acute. I certainly have never felt that there has been a conflict between the two things, notwithstanding the points that the other witnesses have made about consistency over the longer term, which perhaps could be addressed.

Scott Martin: I think in the previous session I answered a slightly different question or gave a slightly different answer. There is a potential conflict between the Electoral Commission as a body that gives advice on potential future legislation and enforces the current legislation, in that it will have in mind what it thinks the legislation should be when enforcing the legislation as it is. That is certainly something that should not happen and there is potential there, particularly with the code of practice, which has effectively been incorporated into its guidance for at least the Scottish Parliament elections, even though it has not gone through any parliamentary process in either the Scottish Parliament or the UK Parliament. It has effectively become their law without the necessary statutory mechanisms.

Going back to the actual question, there is probably less scope for conflict there. I see the conflict more in one of its other roles rather than between guidance and enforcement.

Q98 **Mr David Jones:** As you know, the Government propose to maintain the status quo by providing clarity in law that the Electoral Commission should not bring criminal proceedings in England, Wales and Northern Ireland. Do you believe this is the correct course of action?

Andrew Whyte: Any potential introduction of prosecutorial powers is a complex area and would need significant consultation. The commission as it stands has a wide range of civil sanctions that it can apply under PPERA and then there is a more limited set of criminal offences that can be referred to the CPS for prosecution. I think the commission acknowledged that in most circumstances the more serious offences will continue to go down that route, regardless of whether or not it had prosecutorial powers in the way that other regulators do.

I think this is trying to fix the wrong problem. With greater enforcement powers for the commission, better resourcing and an expanded civil sanctions regime, you can deal with a lot of the issues that the commission is seeking to address through prosecutorial powers in that way, rather than giving it prosecution powers specifically.



Alan Mabbutt: I balk at the idea of expanding it into a prosecution as well as a guidance service with criminal sanctions, partly because some of the arguments that come forward for doing this are that other complex regulators have prosecution powers and, therefore, it is reasonable to extend it into this area. The big difference between the Electoral Commission and the types of people it would be prosecuting and the other regulators is that the Electoral Commission does not comprise the types of people it is regulating. For example, the banking regulators comprise people who have worked in banking all their lives and have massive experience in that field. The Electoral Commission, by its very nature, is almost prohibited from having people working there who have had experience working in a political party and with political campaigning. It is almost precluded from getting experience in the field of the people who it is looking to regulate, so that is the area where the big weakness comes.

A point about the speed of these things is that Parliament, over time, has always set a time limit for prosecutions; for example, for a parliamentary election there is a one-year prosecution limit beyond which things can't go. It is important that we do not start drifting into areas where it changes the level of how fast a prosecution is brought for the seriousness of the impact it would have on the individuals involved, so I would be very much against the idea of it going beyond the civil sanctions. If it needed to, it can refer things to the police, which is what has happened in the recent past.

Q99 **Mr David Jones:** What impact do you think the acquisition of prosecutorial powers would have on the advisory function of the commission?

Alan Mabbutt: I suspect there would be more challenge. One of the things that Andrew Whyte raised earlier was what is a reasonable excuse and the route that went, and the Labour party took that to court. A lot of the things that currently we might accept and shrug and say, "Okay, fair enough" when it is a civil sanction, and although the Electoral Commission complains and says that we just regard that as the cost of doing business and it is not strong enough for it, one of the reasons we do not contest some of the decisions that are taken is because of the cost of doing so. The cost of contesting it—not what we have done in the first place, but the cost of contesting it in court—is prohibitively expensive. I suspect that certainly the Labour party found that contesting the reasonable excuse line was massively more expensive than just saying, "Fair enough, we will pay the fine," and continue to do so.

That is one of the things that people have to bear in mind, that because we have accepted a fine or taken a fine does not necessarily mean that we have agreed with the outcome or the view that the Electoral Commission has come to. It may well mean that it would be far too prohibitively expensive for us to contest it through court.



Lord Tyler: We broadly agree with both the other witnesses but just add one other point. The statutory regulator, the commission, is the best investigating agent. We do not think the police role is appropriate here, not least because they do not have the expertise and resources in most of the police forces in the country. Unless we are going to set up a separate police organisation based with the Met or whatever that is going to deal with the quite complex issues that might be involved—and politically very controversial issues that might be involved—we would prefer, as much as possible, the whole process to lie with the commission and then, of course, to hand over the prosecution role to the CPS, where it should properly be.

Frankly, I think most candidates, agents and parties would very much regret an increase in police activity here, not least because it would elongate the process so dramatically that at that stage has tended to be the strung-out process that has already been described.

Q100 **Mr David Jones:** The proposals, of course, relate to England, Wales and Northern Ireland, but would you like to add anything from the Scottish perspective, Mr Martin?

Scott Martin: There are a few issues that come into that. As others have indicated, there needs to be a better mechanism for clarifying the law in some of these areas. I remember that one of the CSPL reports talked about some type of specialist panel that could produce opinions in a similar way to what happens in some other places internationally. That is one thing that clarifies the law.

The Electoral Commission does not have a terribly good record in court, which would perhaps indicate that it might not be the best in choosing on its own what to prosecute and what not to prosecute. The position in Scotland is that the Electoral Commission is the sole prosecutor, and the Electoral Commission is one of over 50 specialist reporting agencies. I think that is the best model. It can do an investigation but any decision on prosecution has to be taken independently of it, particularly with the Electoral Commission. As Alan indicated, there is no one in the Electoral Commission, or at least there should not be anyone in the Electoral Commission, who has ever actually filled out an election expenses return and knows the process that you have to go through and the amount of discretion that is involved in making decisions on what does and does not go into an election expenses return. The law very specifically leaves a gap, particularly as far as the misdeclaration offence. That is a decision best taken by someone removed from all of this, effectively, and that is an independent prosecutor.

Q101 **Mr David Jones:** The Electoral Commission has said it is normal and common for specialist regulators to bring prosecutions and that the Government's proposals would fetter its enforcement activities. Would you agree with that?



Scott Martin: It has not actually tried to do this, and it is not fettering to get someone else to do the job. As I say, that is the position in Scotland anyway, so you would be creating an odd position, particularly for the GB parties, where there is a different regime as far as whether the offence is focused on Scotland or elsewhere.

Alan Mabbutt: The current situation is that they do not have those powers, so I do not understand why they think it would fetter a future situation when it has not done so far. I entirely agree with Scott that having them investigate and put their case to a prosecutor, and then for an independent prosecutor to decide whether to go, is the sensible thing. The point I made earlier was that they do not have the expertise in the area we are talking about. They just do not, simply because, as Scott pointed out, they are not allowed to be involved in doing the job on the ground day to day.

Lord Tyler: I have nothing to add to what has already been said. I do not see that this is a strong argument for changing the present arrangements.

Andrew Whyte: I basically agree with the other witnesses. If you look at the examples and the justification the commission give for adopting prosecution powers, it accepts that a serious case of wrongdoing where there is recklessness or malfeasance that affects confidence in the democratic process should continue to go through the police and CPS route. The examples that it gives are things like failure to comply with a disclosure order as part of an investigation, which I think are probably vanishingly rare. It seems a disproportionate approach, and it certainly would not fetter the commission's ability in serious cases to refer to the police and CPS for prosecution.

Q102 **Tom Randall:** I want to ask some questions about the commission's civil sanctioning remit, and I think we have touched on this already. I am interested in the witnesses' views on that remit and the powers, and whether they should be extended or increased.

Alan Mabbutt: It sounds like an easy win to say we will not prosecute through the courts but we will do a civil sanction. The danger with that is lots of the voluntary people across the country—and I am thinking of local government candidates more than anything else, because that is really where this would apply—would end up with more interaction with the commission, more civil sanctions and more prosecutions under that area than is currently the case. As one of the witnesses mentioned earlier, it is not an appropriate level of response to the type of issues that currently exist. I don't think there is any great feeling across the country that there is a need for any more powers or sanctions against individual council candidates having missed something off their election return. I would rather see that either so low in importance that it is not worth doing anything or it is important enough to go to court and to go down that route. The idea of this middle ground doesn't help anyone.



Q103 **Tom Randall:** Would you say, for example, that the level of fines that are issued are sufficient at the moment, if not too high?

Alan Mabbutt: I cannot remember where it was pointed out, but £20,000 per offence is quite a large fine and probably in the 2015 election we were fined in separate fines up to £70,000. I think it is all a matter of how you read what level of fine would ever be acceptable. As I say, the point with many of these things is it would be very expensive, but I think it would happen more if it was widened. More would end up in court because more people would contest the level of fine that they received as being unreasonable, in the same way as Darren Grimes did, and we saw what happened as a result of that appeal.

Andrew Whyte: I think broadly we agree that there is a case for expanding the civil sanctions regime, particularly into the realms of the candidate rules and the Representation of the People Act. It fixes potentially a number of issues, and I am thinking more of the administrative and technical offences in the RPA, particularly the invoice, receipt and payment deadlines. I think we want to see criminal sanctions reserved for more serious offences, and we talked about this before, that go to integrity and public confidence in the electoral process but there is a case for expanding the civil sanction regime in a number of areas. That alone will not fix the wider problems with electoral law, and I think you would need to look at it as a package of reforms, particularly the interaction between the current process for challenging election results, for instance, through petitions and so on. As a matter of principle, there is benefit to considering an expansion of the civil sanctions regime.

Lord Tyler: I broadly agree with Mr Whyte. Frankly, the current £20,000 sanction limit is inadequate in certain circumstances. We have not touched at all on infringement of PPERA in referendums. Clearly £20,000 is nothing to a big campaign operation, and it was described as a business expense earlier in our discussions this morning. That clearly would be the case if literally hundreds of thousands of pounds had been misspent during a referendum campaign.

There is a real problem about de minimis here. For example, we see that a late donation of £501 has to follow the same painful process with the commission as a late donation of £495,000. There must be more discretion given to the commission to differentiate big operational failures of that sort. I wonder if there cannot be some way in which the discretion can be comparable to that of HMRC, as I mentioned earlier, so at least that painful process, which wastes time on both sides for the commission and for those against whom a complaint has been made—there must be a quicker way to deal with small issues that may be simple mistakes, compared with deliberate attempts to get round the law.

Scott Martin: I think £20,000 is, frankly, a laughable figure in elections where you have £15 million-odd as a spending limit. Certainly you have had a previous manifesto commitment that, effectively, £1.5 million should be the figure, which is basically 10% of £15 million. For



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referendums, the Referendums (Scotland) Act introduced a potential £500,000 penalty, which is one third of the usual spending limits in referendums. I think the civil sanction regime could usefully be introduced for low-level offences under the Representation of the People Act and associated regulations. There should still definitely be a place for the criminal courts, and where that currently sits for what is currently excluded from the civil sanction regime is about right.

We need to go back to try to implement some of the recommendations from the Law Commission's report to simplify some of these processes. On spending returns, particularly party spending returns, you basically have a deadline, and that is the deadline at which your return is supposed to be perfect. If there are any issues with that, including an invoice that has not been scanned very well, it goes straight into civil sanctioning mode. Some countries have a period after you put in your return where you can revise it and have more of a conversation. The Electoral Commission could get back to you and say, "We can't make out that invoice" or "that number does not seem to correspond" and that sort of thing. There could be a period of that. When we are viewing this in the larger reforms that are needed, you could get to a place where some of these things do not end up as civil sanctions and just end up in a process where you end up with properly understood returns.

Q104 Ronnie Cowan: The issue of online campaigning and information has been raised in a significant number of written submissions to this inquiry. Digital campaigning has revolutionised the way in which parties and campaigners engage with voters and has made it harder to track how much has been spent on what, where and by whom. The Electoral Reform Society has described this as a "wild west" of campaigning. What impact has the rapid development of online social media information and digital campaigning had on how your party conducts its campaigns?

Alan Mabbutt: Obviously we take note of the fact that digital campaigning is there, and we deal with it in the same way as we do with any other campaigning. We go through the process; we pay companies for space and we advertise through Facebook and through Google, as some of you will have seen during the elections. That is paid for in the normal way. It goes through our receipts and is recorded in the same way as any other campaign that we do. From a regulation point of view, we do things in a straightforward way.

It is less the way political parties as such deal with it. It is more how other campaigners interact with it, because it makes campaigning more accessible to different organisations and the cost of digital campaigning is relatively low. You can do an awful lot of campaigning for considerably less money than was previously the case. I am not sure we should complain about the fact that more citizens can take part directly in influencing their fellow citizens on which way they should vote.

Q105 Ronnie Cowan: There are a couple of issues here. There is influence from outside the country and who is trying to influence the voters of the



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United Kingdom. Mr Mabbutt, as the legal officer for the Conservative and Unionist party, do you have any control over the Behavioural Insights Team within the Cabinet Office, the nudge unit.

Alan Mabbutt: No, I have no relationship with Government Departments in any way whatsoever.

Q106 **Ronnie Cowan:** You do not see them as a campaign force within the Conservative and Unionist party?

Alan Mabbutt: Certainly not.

Ronnie Cowan: That is good to know. Thank you very much. Mr Martin?

Scott Martin: I do not think there is much that is different from other types of campaigning, from the purely spending perspective. There are sometimes issues as far as whether something should properly end up on a candidate return or on a party return, with some of the Facebook targeting techniques. The issue is probably more about certain issues with data protection in some techniques that are used, which is not really an Electoral Commission matter.

Q107 **Ronnie Cowan:** Has it changed the way in which your party campaigns?

Scott Martin: Yes, particularly during the last Scottish Parliament election. With the Covid regulations in place, it was certainly seen as an easy way to campaign. We sent a lot of our candidate election returns, unsolicited communications with electors or advertising consisting of lots of lines with the word "Facebook" in it.

Lord Tyler: We say very much the same as the other two witnesses, but again I want to emphasise that I think the big change of course has not been so much on elections but on the political communication between elections and, indeed, on referendum campaigns. We may be coming on to the issue of transparency in a moment, but that is the absolute key to all of this. This is all acceptable if it is clear to the voter, the elector, the member of the public exactly where the message is coming from.

Those of us who have stood for Parliament over many years have been absolutely obsessive about the imprint on all printed information. It is a peculiar anomaly that we have left it so late to deal with the issue of transparency on these messages.

Q108 **Ronnie Cowan:** That is twice you have mentioned referendum campaigns. Why has it been an issue in referendum campaigns?

Lord Tyler: To give an example, in the last few days before polling day in June 2016, five years ago, more was spent by completely unknown organisations than by any of the political parties, or indeed by the official campaign organisations, in trying to influence the decision on the referendum. There was a lack of transparency about who these organisations were, what they were doing, why they were spending all that money, where the money was coming from. Was it coming from



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foreign sources that would be ineligible for most political donations? I think it is a big issue that we still do not know the answer to.

Given the fact those organisations, in some cases, disappeared as soon as the referendum polling day had taken place, so there was no way in which you could find an audit trail, is a much bigger issue than anything we are addressing this morning about the political parties.

Ronnie Cowan: I agree with you.

Andrew Whyte: I broadly echo what the other witnesses have said. Clearly digital is a very large part of our campaigning and is increasingly becoming so. I looked at our spending return in the 2019 general election. It was the first time as a party that we declared greater costs in advertising than we did on unsolicited material, so things we put through people's doors, and a large proportion of that will have constituted digital campaign spending. It is natural that the parties and candidates will seek to reach new audiences and use the latest techniques, whether digital or otherwise, to transmit their message and have those conversations with voters.

There are obvious concerns and improvements we can make on transparency, but I suspect we may be coming on to that in a separate question, so I will confine my remarks to that, for now.

Chair: As ever, if we can have brief questions and brief answers there are bonus points for all.

Q109 **Rachel Hopkins:** Building on the comments around online campaigning, to everyone, what role should the Electoral Commission play in regulating political campaign information and advertising in that online sphere, so that voters can make an informed decision? Do you think changes in legislation are necessary, what should they be and does the Electoral Commission have sufficient powers to regulate digital spending and campaigning at the moment?

Lord Tyler: To add to what I have just said on this issue, I think there is a major problem here and I do not think we have caught up as a Parliament with this problem, and indeed Government have been very slow even to deal with the issue of digital imprints. There is a contrast, too, here between the role of the Electoral Commission and the role of the Information Commissioner's Office where, as you will know, the sanctions are much more effective than are available to the Electoral Commission, financial and legal. Working those two regulators together is of critical importance here, and I hope we are going to see a more effective legislative framework for them to work together in future. It is very urgent and I am sorry it has been delayed for so long.

Andrew Whyte: I broadly agree with Lord Tyler. The Electoral Commission is only as good as the legislation that it regulates. It is probably clear to everyone that there is a pretty significant time lag between the reality of campaigning now and what the legislation says.



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We completely support the introduction of digital imprints. Probably in common with most of the other witnesses, we have been asking our agents and regions, nations and party teams to put imprints on digital material as best practice for some time anyway. In some way, the law is just catching up with practice in that area.

The other areas that could usefully be considered might be whether we need to look again at the categories of expenditure that need to be declared in the schedules of PPERA to see if we can perhaps drill down a bit more into different types of campaign expenditure, particularly on the digital side, with the caveat that it would need to be adequately future proofed. We do not want to find ourselves in the position that we are in now in 10 or 15 years. That needs to be taken into account, given the rapidity of advancement in the digital sphere.

Scott Martin: Digital imprints were introduced at the Scottish Parliament elections. The regulations were not well framed, but for once I give credit to the Electoral Commission, as it managed to take the regulations and turn the proverbial sow's ear into a silk purse because the guidance made more sense than the regulations ever could.

As far as disinformation is concerned, I am waiting for the magic wand that lets us sort that out in elections. It is clearly something that is going to feature more and more in the social media age, and any work this Committee and others can do to try to solve that issue would be very much appreciated, particularly with the prospect of another potential referendum coming on.

Alan Mabbutt: I echo what Mr Whyte said. As a political party, we put imprints on everything we produce, be it digital or not, in some form or another. We even add it on to our Twitter feeds so it is clear that we have published anything in a particular way. I would not necessarily agree with Lord Tyler that the ICO is a more effective organisation. It may issue far more fines, and bigger fines, but it has not stopped the things it is meant to stop happening. I would not say it was particularly effective in that regard.

I am certainly concerned about the concept of the Electoral Commission deciding what messages are and are not allowed to be used in political campaigning. That then creates a level of investment and views of political messages that would not necessarily be the case. As we know, all political parties will accentuate the particular points of their opponents' policy platform that will be least popular and the most positive of their own platforms that are most popular.

One of the confusions that people have about the way people react to these things is that a straightforward printed advertisement, for example in a newspaper, that is promoted by a political party will have the imprint on the bottom, and people can choose to take a newspaper or not. They can choose to believe any adverts that they read in it or not, and if they see that it is a political advert from a particular party they will know that



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it will be slanted in a particular way. To an extent, we need to educate the electorate as much as we can that that is true of anything they see in the digital sphere, and that just because it is in their Facebook feed it does not make it truthful. More and more people are aware of that, and the same is even more true of Twitter. I liken Twitter to listening to the man in the corner of the pub chuntering away on politics. You know what his views are going to be and you know his alcohol intake is fairly high, so his views are going to be edgy, shall we say? Yet, if that same person puts it on Twitter it seems to me that occasionally the BBC will take that and put it as a quote on its news website as though it is some tablet from above. We need to get people into the habit of being more sceptical about where they get their news stories from.

Q110 John McDonnell: You have answered the question I was going to raise on imprints. I am taking it as a basis that all of you support the introduction of imprints, the use of imprints on social media. I am also taking it that none of you thinks it is sufficient. What else is needed? For example, third-party campaigning, that is the first issue, and what more needs to be done there?

The second is the trolling that is taking place, certainly on Twitter and elsewhere. Should the paid trolls be identified in some form? In addition to that, I raise the point with you, Mr Mabbutt, that it is not just about issues of free speech. There is such a thing as disguise as well: fact checks, social media interventions that purport to be fact checks when they are party sponsored or Labour manifestos when in fact it is the Conservative website that has been put up there. In addition to that, what other ideas do you have about how we can ensure the use of data is protected in a way that does not undermine the credibility of the electoral process and also intervene on people's individual freedoms?

Lord Tyler: These are huge questions, and if we have another hour we could all develop some ideas about this. Transparency is critical to this, and therefore just putting an imprint on the initial message in the Twittersphere is not enough. I think others will recognise the repetition of that message. Do you see where it has come from? What are the origins of that? It is quite a tricky thing.

The whole issue of where money is coming from is still not satisfied by the present legislation, the fact that unincorporated associations seem to fall completely through the net. They will be foreign organisations, foreign Governments, for goodness' sake, that may be cheerfully adding to the donations of political parties without our being able to see where it is.

In defence of the Electoral Commission, we can only give it credit and blame for work that it does within the remit that we as parliamentarians give it. The time is right, not just for some tinkering on the role of the commission but for looking more carefully at the way in which PPERA and RPA do or do not come together. Are there gaps between them?



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I am afraid, Mr McDonnell, I am not going down your track, beyond saying this is still a hugely open area. The jury is out. You as members of this Committee are looking at a particular set of circumstances, but I am afraid there are wider circumstances. The threat to democracy and to a well-informed electorate are still very firmly there, but they are not necessarily ones that the Electoral Commission on its own can cure.

Scott Martin: Similarly, I do not think this is an issue that we can deal with at the end of a Committee session. There are piles and piles of reports from the House of Commons and other places on these issues. There has been a lot of work done by organisations internationally, and a lot of stuff needs to be directed not necessarily through legislation but through the big social media companies. There is a lot of work that needs to be done there.

There probably needs to be some legislative time carved out to deal with a lot of this, rather than this continual process of small pieces of legislation to deal with things like the Mackinlay case and whatever as we go along. We need to look to Government to find the time and to start developing some of the bigger solutions.

Alan Mabbutt: The imprint on digital things is perfectly useful, as it does identify who has produced something, whoever it happens to be and however much of a spoof it might be. Cartoons and spoofing are quite common in UK elections, so that is worth bearing in mind.

I would not go down the route Lord Tyler was talking about, an unincorporated association, in that that is the type of organisation. Every single one of the Conservative party associations, and I suspect most constituency Labour organisations and Liberal organisations, at a local level are unincorporated associations. We should not assume that donations from unincorporated associations are in any way necessarily a bad thing, although I take the point that some people could use them in a particular way.

That is part of the consideration that Parliament needs to think about, that the main political parties are fairly well structured. They try desperately hard not to break any rules, because the political damage that is done to them if they are found not to be following the rules is enormous, and the press coverage that we get for such things is very large and very wide. We try to follow the rules for all sorts of reasons, not just because it is the right thing to do and we always want to stay within the law, but because of the political damage that it would cause us if we did not. It is third-party organisations that are a bigger issue, I suspect, in the way they act upon it and we need to think about it. I would not be convinced that the Electoral Commission, as it is currently composed or designed to act, would be the best body to do it.

Q111 **John McDonnell:** We are not talking about spoofing, though, are we? We are talking about deliberate distortion and disguise. With third-party organisations, the concern is how much they are co-ordinated by a



political party.

Andrew Whyte: They are very big questions. I will confine myself to some practical suggestions on what I think we can do to improve transparency in the digital sphere. That is the key thing, shining a light on practice and allowing voters to access information and allowing them to make their own decisions.

Digital imprints are obviously useful in so far as it goes, but more can be done on mandating information that is required in ad libraries for social media companies, for instance, or having a minimum amount of information that we must include on our invoices for digital advertising. I talked briefly about looking again at the categories of expenditure in the legislation and seeing if there is more we can do to fillet out the digital aspects of campaigning and how we report information, so it is there in a more meaningful way for the public, journalists and so on to analyse.

I think third parties are underregulated, and we are particularly seeing increasing evidence of it at a local level, under the Representation of the People Act provisions. The provisions there, the control of activity, are not particularly well understood by campaigners, the police and the CPS that are charged to investigate the problems. There are areas of potential reform there through legislation, and perhaps it is time to look again at the national third-party rules as well. The difficulty you always have with this is that organisations, unlike political parties or, for instance, trade unions or campaign groups that need to register, can often pop up just before an election and then shut down again afterwards. It is difficult, when the legislation is retrospective, to hold third parties to account in that way. Perhaps more can be done on how we regulate third parties during campaigns in general.

Chair: I am going to make myself very unpopular with colleagues. Can they try to take two or three minutes per question? It is going to be record time, if they can, before our next panel comes on.

Q112 **David Mundell:** How important do the panellists regard the role of party panels in advising the commission of issues and influencing guidance in the application of rules? Is the membership of the panels right, or do they need to be expanded?

Alan Mabbutt: Two of my fellow witnesses are on the UK parliamentary parties panel with me, and it is fair to say that we have a reasonable exchange of views. It is a constructive method of moving things forward. It might be useful for the Electoral Commission to take more note or to raise more issues with it. Certainly when I was first on the parliamentary parties panel 15-odd years ago the commissioners themselves interacted with the panel more than has been the case in recent times. It might be sensible if the commissioners took the opportunity for meeting the PPP more often than they have done in recent times.

Andrew Whyte: I broadly agree. It is useful to have the regular meetings, and for the most part I feel consulted and that the Electoral



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Commission takes them seriously. Also from the party point of view it is, as ever with these things, often the pre-meeting with the parties that you get the most value from, so it is also quite useful in that respect.

The political commissioners in particular could perhaps attend more, and that might be helpful for the commission getting a bit more insight into how the parties operate and think. Save for the Labour commissioner on the commission's board, I have not met any other of them in any capacity since I have been on the PPP, which is since January 2017.

Scott Martin: I am similarly on the panel and agree with everything that my two fellow panel members have said. I also agree that having the commissioners on more might be helpful.

Lord Tyler: I do not sit on the panel, although I work closely with those from our party who do. One tiny word of warning. Those who run national political parties tend to want life to be easier for national political parties. There is a bit of a tendency even now from the Cabinet Office to want to nationalise local constituency campaigns to a greater extent. I think that should be resisted on the best possible democratic grounds. Therefore I do not think the PPP should have the last word, as of course it does not.

Q113 **Karin Smyth:** A similar vein about the politically nominated commissioners on the board of the Electoral Commission. Do you think board members should change in the light of previous discussions about impartiality, or should they remain?

Alan Mabbutt: They were introduced as a reaction to the feeling that the commission itself did not have experience in the field, and it was sensible to have political commissioners who did have experience in the field. I think it was the right move to do that. I am not sure that the commission itself makes best use of it, in that the way it works at the moment is that they are expected to be impartial even though they are political appointments. It would help if the rules were changed to allow them to fly their own flags, because everybody knows what their political background is and that is why they have been put there. It is meant to create a balance, and I think there would be more value to the commission if that were the case.

Scott Martin: We, as a party, opposed the introduction of political commissioners or nominated commissioners when the legislation was passed in 2009. We have had one continuously since. Because we do not speak to the board as a whole at any point in the process, it is probably a question for the nominated commissioners and the other commissioners to form a view on whether it works for the commission.

Lord Tyler: I agree with Mr Mabbutt, despite the fact that at the moment there is not a Liberal Democrat-nominated commissioner, which I think is extraordinary, but in due course there will be again, I have no doubt.



Andrew Whyte: I agree essentially. The commission probably makes better use of its political commissioners in understanding political parties better. That is what it is there for. As we have mentioned in previous responses that we do not have an awful lot of access to the commissioners, I wonder whether that is a wider governance question for the commission on how it operationalises the wisdom of its board and commissioners. I know it is a difficult balance for it to strike. It has to be impartial and above the fray, but we often feel there is perhaps a lack of understanding of the nuts and bolts of how political parties operate and how campaigns are run. That is an obvious bit of value that the commissioners can add at a corporate level.

Q114 **Ronnie Cowan:** Whose job is it to hold the Electoral Commission to account? Who is best placed to do this? Is it Committees like this? Is it the Speaker's Committee? Is it the Government? How do we make the Electoral Commission do what it is supposed to be doing? The Government on 17 June brought forward a statement in which they said they would introduce a strategy and policy statement that sets out guidance, so I imagine that is going to put the fear of God into the Electoral Commission. Who is responsible for holding the Electoral Commission to account and how do we best do it, in the opinion of our four witnesses?

Alan Mabbutt: You will not be surprised that I agree with the Government's statement in June. It is probably sensible to go down the Speaker's Committee route of doing it, and I agree with the policy statement, the Speaker's Committee being responsible to Parliament.

Q115 **Ronnie Cowan:** I am being a bit flippant about this, but it is a strategy and policy statement that sets out "guidance and principles which must be given regard", so basically it can be ignored at any given time. Should there not be something stronger to hold the Electoral Commission to account?

Alan Mabbutt: It is one of those difficult areas. If you are starting to suggest that Parliament or the Government should set out exactly what the Electoral Commission should do and demand that it does it, that takes the independence away. It is a matter of the Speaker's Committee deciding whether it is happy with what is happening or not, or going down the route of it becoming overly directed. I do not think I am—

Ronnie Cowan: Democracy getting in the road of good government.

Scott Martin: The Speaker's Committee is a mystery to most people, including myself, in what it does. We see the minutes. It clearly does appointments, it does pay and rations as far as the Electoral Commission estimates are concerned. My understanding is that it will currently have a majority of Government members in it, and it does not seem appropriate for a committee with that type of composition to be giving directions, albeit they are only "have regard to" directions from the Electoral Commission. That seems to me to be a political reaction to things that



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have been happening with the Electoral Commission that some parties have not liked, rather than a properly thought-out proposal that underpins democracy.

Going back to the nominated commissioners question, which is probably relevant to all of that, I am not clear whether nominated commissioners have any role in enforcement decisions. Again, that is one of those mysteries of the commission.

Lord Tyler: I share some of the concerns that Mr Martin has just expressed. It is a rather curious anomaly that the Speaker's Committee is only made up of MPs. There is a bit of marking your own homework there. It is essential to emphasise that this is a statutory body set up by Parliament. It is accountable to Parliament, not to the Government, and at the very least it should be a Joint Committee set up by the two Speakers of both Houses of Parliament, while we still have the House of Lords. I worked jolly hard to change that and make it an elected body, but while it is there I think the statutory body should be, under statute, responsible to the whole of Parliament.

If the Speaker's Committee is limited in the way it presently is, fair enough. If it starts to approve the statement of priorities to which the Minister referred in the statement you mentioned, Mr Cowan, I hope it will be the commission that will adopt its statement at the end and it will not be a Government, Cabinet Office or even a Speaker's Committee that approves it. Effectively endorsing the rules of political finance or election spending is far too important to leave to any political party or Government.

Andrew Whyte: We have deep reservations about the notion of a Government-proposed or agreed policy statement for the regulator of political finance and democracy in the UK. It gives rise to fairly obvious concerns. I think Parliament is the right avenue of accountability for the Electoral Commission, but I share Mr Martin's views on the current composition of it perhaps not being completely the right set-up for proper scrutiny of the commission's work, given its inbuilt Government majority.

Chair: I thank the four witnesses who made up our first panel for their contributions this morning. We are very grateful to have benefited from your expertise and insight. Thank you to all.

Examination of Witnesses

Witnesses: Geraint Day, Jon Nott, Richard Tice and Amy Killen.

Q116 **Chair:** Now, with the aid of technology, a seamless transfer to our second panel, who no doubt will be reflecting on how the larger parties have dominated proceedings so far. I can give our next panel the assurance that we are looking forward to hearing from them as much as



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we were from the first panel. Can each of you introduce yourselves for the record, please?

Geraint Day: I am the deputy chief executive of Plaid Cymru.

Amy Killen: I am a campaigns manager at the Women's Equality party.

Jon Nott: I am the registered treasurer of the Green party.

Richard Tice: I am leader of Reform UK.

Q117 **Chair:** Thank you very much. An opening question from me to Geraint Day first. How helpful is the commission in its guidance enabling you to ensure that your party complies with legal rules on spending, donations and loans?

Geraint Day: On the whole, the Welsh office of the Electoral Commission is very helpful and we primarily deal through it. When we have queries it is very quick to respond and the delays that tend to occur are when it has to get sign off or advice from London. I am not going to repeat most of what was said by your first panel, because I agree with 90% of what they were saying. There are two elements to the advice that it gives. One is the verbal, when we pick up a phone and talk to them, which is very good. The more confusing advice is what you find online and the advice that is published on its website.

I have some sympathy with the commission at times in that the law itself is very complicated, and the commission is trying to interpret a very complicated sphere of law. I have some sympathy with it, but as someone who is trying to make it work, I would like a response a lot quicker than I get.

Q118 **Chair:** Is it always clear what is party election expenditure and what is candidate election expenditure, in your experience?

Geraint Day: Yes and no. I deal with a lot of different elections and, unlike the larger parties but I am sure like all the people on this panel, we do many jobs. As well as looking after candidates, I design a leaflet for a council by-election. We do not have the same depth of expertise as the larger parties in our resource, but on the whole I am quite happy with it.

Q119 **Chair:** Do you welcome the Government's intention to legislate to clarify rules on notional expenditure?

Geraint Day: Any clarity is always welcome. I think it was Lord Tyler who mentioned electoral law. Electoral law goes back to 1883 through the RPA and through to PPERA. My concern is that any tinkering with law is just adding further complexity to it. If the law is clarified, that is useful. My fear is that it would just become more complex and I think there is a case, as made by the Law Commission, to relook at the law in its wider context rather than its specific elements.



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Q120 **Chair:** Amy Killen, what is your overall impression of how helpful the commission's guidance is in enabling you to ensure your party complies with legal rules on spending, donations and loans?

Amy Killen: I find the guidance helpful. It is certainly useful for us as a newer party to have something we can consistently refer to. I tend to find I can usually, occasionally with chasing, get a timely response to queries. The answers are usually comprehensive and we find that incredibly helpful. There probably could be more to the guidance, perhaps a more hands-on approach to delivering support and training, especially to volunteer agents in local government elections who are not coming at this from perhaps the same angle that I and other witnesses have been today.

I think there are issues with the guidance, but those issues are from the fact that the things it does not cover are not covered by legislation and it is more difficult, therefore, for the Electoral Commission to offer that guidance. For example, in the very early days of our party in 2015 we enquired about whether giving candidates childcare vouchers would constitute campaign spending, and we were told that no one had ever asked before. Certainly for women and minority groups, there are gaps in the legislation and in the guidance.

Q121 **Chair:** In your experience, has it always been clear what is party election expenditure and what is candidate election expenditure?

Amy Killen: It is not something that I have had particular difficulty navigating. I find the guidance for that to be quite good, particularly the expert papers on split spending. I do not think there is necessarily a distinction for voters between whether something is promoting the party or a candidate, because they may not make that distinction in their decision-making.

Q122 **Chair:** That is an interesting point. Do you welcome the Government's intention to clarify rules on notional expenditure?

Amy Killen: We welcome any and all increased clarity, but the law is very complex already. It is certainly a challenge for us, and no doubt for other newer movements and smaller parties, with our comparative resources to make sure that we fully understand and fully comply with the law. My work with electoral compliance is one of many hats that I have to wear and one of many aspects of my role. I am quite sure that is not the case for some of the bigger parties. Increased clarity is good, but if that means it becomes increasingly complex, it is increasingly a barrier to new parties forming, to new movements making headway, if they are completely bogged down resource-wise in making sure they are compliant with this. It is diminishing for democracy if new movements and new parties cannot form and cannot breach these practical barriers.

Q123 **Chair:** The same questions to Jon Nott. How helpful is the commission in its guidance on spending, donations and loans?



Jon Nott: We have found the commission to be very helpful within the constraint of its own resources, as has been mentioned earlier. Sometimes it is not able to respond quite as promptly as we might like, but the most important point here is that it is only able to advise and give guidance on the legislation as it exists. There is a huge degree of complexity, and for us it is a massively unlevel playing field. The interplay between the PPERA legislation and the RPA legislation means that—the point was just made about how voters might perceive the difference between a leaflet from a party and a leaflet from a candidate, and I am sure we will come on to talk about digital—with the ability of the larger parties to channel significant amounts of notional expenditure into a particular geographical area, it is incredibly difficult for smaller parties and independent candidates, however well they are advised, to compete on a level playing field. That is much more of an issue. It is the fundamentals of the law and the quality of the advice that are key concerns.

Q124 **Chair:** You neatly tied together two questions there. Any thought on notional expenditure?

Jon Nott: It is very much the same question. It is about whether we have a level playing field. I am sure the parties on this panel, but perhaps not the parties on the earlier panel, might agree that the playing field is not particularly level at the moment. Clarifying the law as it is currently stated will probably not help to level that playing field.

Q125 **Chair:** Richard Tice, what is the overall helpfulness of the commission in its guidance on the legal rules on spending, donations and loans in your experience at Reform UK?

Richard Tice: Generally the guidance is okay. Probably the use of more case study examples would be helpful to everybody, particularly newer, younger parties. As a previous comment was made, where you have a new issue that comes up, a new question, it would be helpful to have a sort of standing rulings committee that can make a ruling on an issue that is clear and needed rather than defer it and leaving parties to make their own best judgment. Frankly, for smaller parties where we are mainly dealing with volunteers it can be quite scary dealing with some of this guidance, some of these regulations. I think a rulings committee would be quite helpful.

Q126 **Chair:** Do you have any observations to make on national election expenditure and candidate election expenditure?

Richard Tice: This is really grey. In our experience, the issue where you have party leaders touring constituencies, holding rallies, is a very grey area. For example, in the general election campaign we used best endeavours, but then it gets pored over with a fine-tooth comb for a very long period of time. Much greater clarity here would help everybody. It would reduce time being wasted and reduce the risk of errors being made, even with best efforts.



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Q127 **Chair:** From that I take it you support the clarification on notional expenditure?

Richard Tice: Absolutely, yes. The greater clarity we can see on all of these issues, and I think the use of case studies based on previous examples, would help everybody.

Q128 **John Stevenson:** Mr Day, in your experience, how effective is the Electoral Commission in supporting parties, your party and also candidates, in dealing with ambiguities in the application of the rules?

Geraint Day: I thought this was answered to a certain degree by the larger parties in that they provide their own guidance to their own agents and activists. We all try to do that. This is where the smaller parties have an unfair playing field, in that we do not have the same resource to provide that same party advice to our activists as the larger parties do, so we rely much more on the Electoral Commission advice. Most of our activists query something direct to us, and we then query it with the Welsh office of the Electoral Commission, which is very good at getting back to us. Where we find there is a slower response is when we have to go to the London office of the Electoral Commission and that tends to get much more bogged down in process, whereas to use a business term the Welsh office is much more customer focused. It takes the query and will do its best to come back to you within 24 hours. There seems to be a difference in the way the two are managed and operate, in my experience of using both.

Q129 **John Stevenson:** From your party's perspective, do you have a direct contact in the Welsh office of the Electoral Commission?

Geraint Day: There is a party liaison officer who deals with all parties in Wales, so all parties go to the same person and that person then triages queries. It is very effective in the way it operates.

Q130 **John Stevenson:** You heard the question earlier about investigations by the Electoral Commission. Have you had any, and are they formal or informal? What do you think would be the best approach from the Electoral Commission?

Geraint Day: We have had inquiries. My impression is they take a long time to come through. I heard Mr Martin's comments earlier that there needs to be some middle ground, in election terms, between being signed off and then being examined so there can be some coming and going with questions like, "Do you realise you made a mistake on this one? The PDF is not correct." That has happened to us. Human error, someone has attached the wrong thing to an email and that leads to an investigation, but this is obviously human error. A simple phone call would have sorted those things out.

That would be good for democracy and it would be good for the Electoral Commission, but there needs to be some middle ground and I think it was a very sensible comment.



Q131 **John Stevenson:** Ms Killen, how effective is the Electoral Commission in supporting your candidates and your party in dealing with the ambiguities in the guidance?

Amy Killen: I have a generally positive impression of the support. We can call or email to get answers. As with other parties, mostly what happens with our candidates and agents in our local parties is that they will come to me or to someone else in our team for support. I will sometimes contact the Electoral Commission myself or direct them to. We deliver our own training.

The guidance is reasonably clear, but most of the people using it, especially for local government elections, are volunteers doing this in their spare time and free time. They can be quite time poor. The guidance we get is good. There is an argument for a more hands-on approach, perhaps with webinars and training, especially for volunteer agents before elections. HMRC does webinars and training for self-employed people. It is certainly not without precedent for that to happen.

Having an approach that is more tilted towards preventing mistakes would be incredibly helpful, especially for newer and smaller parties that perhaps lack the institutional knowledge of parties that have existed for hundreds of years in comparison to our six, for example. It is a different ballgame for us. Yes, we would find that helpful.

Q132 **John Stevenson:** Do you have a specific contact within the Electoral Commission for your party?

Amy Killen: We do not, but I will be pursuing one following this Committee meeting.

Q133 **John Stevenson:** Would it be useful?

Amy Killen: It would be incredibly helpful, yes.

Q134 **John Stevenson:** Have you any experience of a formal or informal investigation by the Electoral Commission?

Amy Killen: We were investigated in 2017 following the general election, which was our first general election. It was also slightly before my time working for the party. We were investigated over missing pre-poll reporting, I believe, and fined. I think it took quite a long time, but I am not 100% sure of the timescale.

Q135 **John Stevenson:** Mr Nott, what are your experiences of the effectiveness of the Electoral Commission in supporting your party and candidates with the guidance?

Jon Nott: As with others in this session and before, we provide most of the advice to candidates within our own resources and then refer to the Electoral Commission when there are more complex or technical queries. Within the constraints of the law they are required to advise on, as I



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mentioned earlier—I will not repeat myself—they do a good job, so I have no particular concerns there.

Q136 **John Stevenson:** Okay. Do you and your party have a particular point of contact within the Electoral Commission?

Jon Nott: We used to, but we do not at the moment. Again, that would be incredibly helpful.

Q137 **John Stevenson:** Going back to the point about investigations and the approach that the Electoral Commission takes, whether it is formal or informal, what is your experience of that, and what is your judgment on the best way forward for the Electoral Commission?

Jon Nott: We echo some of the comments that were made earlier. We have experience of that and the question of proportionality is key here. As was mentioned in some of the earlier witness statements, the majority of experience we have is of relatively technical things like an invoice being formatted wrongly or a form not being submitted by a volunteer treasurer on time. A mechanism to resolve those things, to clarify and ensure that the due diligence and reporting is done, rather than moving straight to investigation and sanction, would be helpful for the parties and also for the transparency of the system. That is the distinction between those relatively technical and often human error types of things and the perhaps rarer but much more significant breaches where parties or third parties are operating in a way that is intended to break the rules and to gain an advantage by doing so.

Q138 **John Stevenson:** Mr Tice, what are your impressions of the Electoral Commission when it comes to giving advice and support to candidates and your party on the rules?

Richard Tice: I wish we were dealt with by the Welsh office, because I am afraid our experience is that the responses are generally too slow, too process-oriented and too bureaucratic.

If I give you one example, when we wanted to change the name of the party at the back end of last year, the guidance says it might take six weeks. There is no requirement on the commission to decide by a certain time. It was 10 weeks later, only when we resorted to sending a draft lawyer's letter to the chief executive, that we got any form of proper engagement. There was an incredibly unhelpful lack of advice and lack of reasoning. Our experience overall on a matter such as that, frankly, has been pretty poor.

We do not have a direct party contact. There could be significant improvements in the responsiveness of the commission. Ultimately, yes, it is a regulator, of course, but it would be helpful and more business-like if it treated us like a customer.

Q139 **John Stevenson:** From your perspective, like some of the others, would you like to see a direct contact for your party into the Electoral



Commission?

Richard Tice: I would, yes. I come back to the earlier point I made. Where there is a difference of opinion, some form of rulings committee that can make a ruling quickly and promptly would be helpful for everybody and much more efficient.

Q140 **John Stevenson:** My final question is about investigations and the formal or informal approach that the Electoral Commission takes. What is your view on what it should do and any experiences you have had?

Richard Tice: We had a significant and difficult experience when we first set up in the middle of the European election campaign. Without going too much over old ground, we think that, unfortunately, the bias within the Electoral Commission against Brexit campaigners heavily influenced what it did at the time, which was wholly inappropriate. The commission needs to be far more independent. We will talk later about the commissioners, but there is a real issue about bias.

Other witnesses made good comments about the severity or otherwise of a technical breach and what does or does not require an investigation. We need sensible materiality about tiny, minor or major breaches and that they get dealt with accordingly. It is perfectly reasonable for personnel working within parties to make decisions, to make judgments and then to have some explanatory notes as to why they have taken a decision, and that the commission properly and fairly takes that into account when it looks at potential breaches during investigations. If you had minor as opposed to major investigations, things would move much quicker, much more smoothly and with less confrontation.

Q141 **Karin Smyth:** That is the nature of the next set of questions on the enforcement role of the Electoral Commission and its approach to monitoring, investigations and sanctions. We are interested in your views.

First, can you outline your experience of the commission's monitoring, investigatory and sanctioning powers? Secondly, do you think the Electoral Commission has the appropriate powers and structures to carry out those investigations, for example on campaign funding and spending breaches?

Geraint Day: That is a wide subject, of course. I will start by looking at where the law comes from. There is some confusion about who is in charge of what, in the public's view at least. Some of the RPA offences are obsolete. Possibly the most useful report I have seen on this area is by the Law Commission in 2020. That proposed a number of simplifications and clarifications to existing law, as well as proposing some deeper changes to electoral law. Some of those could be introduced straightaway.

Some of the RPA offences should probably be transferred to the Electoral Commission and taken away from the police. Lord Tyler mentioned that



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the police have better things to do than police some of the RPA offences, and all of us agree with that. It is noticeable during election campaigns that quite often the parties talk to each other to try to avoid something getting to the point where there has to be a complaint under the RPA, because we acknowledge that these are mostly human error and it is a waste of time to get prosecutions.

The size of fines needs to be proportionate to the size of the organisation. Plaid Cymru is a middling-sized party, to be honest. Some political parties are small and a fine of £20,000 would bankrupt them entirely, whereas, as was mentioned previously, it is a cost of doing business for the large parties, Labour and the Conservatives especially. £20,000 even to us as a middling-sized party is a substantial amount. That would dramatically affect us. The size of fine needs to be proportionate to the organisation.

Whether you move stuff away from criminal to civic offences in certain cases should be welcomed. However, we need space for the most serious electoral offences, where someone is fundamentally trying to undermine democracy, to remain as criminal offences, with the CPS and the police involved as well.

Q142 Karin Smyth: Ms Killen, what is your experience of enforcement, and what is your view of the Electoral Commission's powers?

Amy Killen: I mentioned the 2017 general election in my previous answer. The point I most want to make here has been mentioned already by other witnesses. Having a proportionate response is most important. Of course, it is important for faith in the democratic process for the Electoral Commission to be empowered to fine parties that do not comply with the law. We certainly do our best at all times to comply with the law, and I am sure that attitude is not different in any other party.

I agree with Mr Day about the size of the fines, but the impact is not only about the size of the sanction; it is also about the burden of complying with an investigation. The demand on the resources of a smaller party is much greater. I imagine that some of the previous witnesses work with whole teams on their compliance with electoral law. We are a much smaller operation, and it would take a significant amount of senior staff time. That also needs to be accounted for.

There is space for the impact of anything that has gone wrong unintentionally. It is quite different when someone has broken the law on purpose, but we are mostly talking about mistakes made in political parties and mistakes made by volunteer agents. In a lot of cases, of course they should be investigated and there should be a process for that, but the impact needs to be considered. If you find a missed invoice six months down the line and you realise you made a mistake and you say, "We are sorry. This is the invoice. This is what happened," lots of smaller parties would still probably be quite a long way from their spending limit. The impact on the results of having missed that will not be great. Of course it should be addressed, but the proportion of the



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impact needs to be considered as well. If you are hundreds of thousands of pounds over your spending return, it is a different problem.

Q143 **Karin Smyth:** Mr Nott, what is your experience of enforcement and your view of the Electoral Commission's powers?

Jon Nott: I echo the comments of the previous two witnesses about proportionality. Our experience is that in some areas we are spending up to the limit in certain constituencies and, none the less, being massively outspent by other parties using their national expenditure. Where there are relatively small infractions, the lack of an informal process to focus on transparency rather than focusing instead on a sanction is not helpful to the democratic process.

Sorry, I have completely lost my train of thought. Do you want to go to the next person and come back to me, rather than me taking up time?

Q144 **Karin Smyth:** That is fine. It happens to us all. Mr Tice, what is your experience of enforcement and your view of whether the Electoral Commission's powers are suitable to do that?

Richard Tice: I echo what the previous witnesses have said about materiality. Maybe it is in the language. There is a big difference between technical breaches—you have an invoice wrong, you have missed it, you have put it in the wrong place—as opposed to committing an offence that needs investigating. If the language were changed, it would be much less worrying and anxious for volunteers, particularly for smaller parties. It is so important to get them involved in this democratic process. Sometimes when the commission is looking at expenditure reports, we can be 18 months down the track and they are still trying to check that a small invoice for £20 or £30 is allocated in the right place. Is that really a good use of resource, time and effort on both sides?

Q145 **Karin Smyth:** Mr Nott, have you had a lightbulb moment?

Jon Nott: Yes. It was similar to that point on the timeliness question and the uncertainty it causes. For example, we are currently waiting for the outcome of an Electoral Commission investigation into the European election of 2019, which relates to a number of misreported invoices or the fact that Facebook invoices do not come in a format that enables you to report them in the way the Electoral Commission likes. Really technical things should not still be hanging around two years after the event, with us having to guess about how much the fine might be and having to have that uncertainty and work go on. Timeliness is key.

Karin Smyth: The election seems like a long time ago.

Q146 **Jackie Doyle-Price:** Have you made any representations to the Electoral Commission about breaches? What is your experience of how they were investigated and of the feedback you had?

Geraint Day: We have not, to my knowledge, made any allegations against any other political party through the Electoral Commission. We



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have raised items through the Representation of the People Act but not through PPERA, similar to the other parties who spoke earlier.

We have had to make complaints more against the Electoral Commission. At the end of last year it registered a political party with the English translation of our name and only acted when we started legal proceedings as a party. It was a specific point, but it would have been avoided if it had been decided by someone from the Cardiff office rather than the London office. I know some consultation takes place, but there is a different depth of knowledge about Welsh political history, political parties and so on. We instructed barristers and had to get to that point before it appeared that the commission took our complaint seriously. That was not the best way forward for us.

There needs to be a better conversation between parties over those types of issues so that you do not have to resort to employing lawyers in the first instance. That is the only time we have made a direct complaint, but it was not against any of the other parties.

Jackie Doyle-Price: That is an interesting point. The ethos is that it is policing political parties but, equally, it has a role in maintaining the political process. Protecting established parties from wilful misrepresentation by others is an important part, it would seem. We have seen other examples of that with "Literal Democrats" and such things.

Amy Killen: I am not aware that we have made any representations to the Electoral Commission about other parties or candidates.

Jon Nott: I have the same answer.

Richard Tice: I have the same answer.

Q147 **David Mundell:** Does and should the Electoral Commission consider the voluntary nature of the machinery behind many political parties in its monitoring, investigations and sanctions?

Amy Killen: Yes, it could. To go over things that I have already said, an awful lot of our agents, especially in local government, are volunteers. There could be a much more hands-on approach to supporting them to get it right, rather than dealing with it when things go wrong. That would be a positive step. There could be more consideration for the burden that is placed on us when things do go wrong. It is perfectly reasonable for there to be timeframes like 14 days to respond to something. While organisations can redirect their resource and staff time to work on something, it is a different question when you are asking volunteers to look into things. There could certainly be a bit more breathing room there.

Richard Tice: I entirely endorse those comments. We are dealing mainly with volunteers. You can make a judgment, and as long as people explain why they have made that judgment, whether it is writing it in some notes, if they have asked for guidance and it is still unclear, we are



having to make the best judgment. It can be, as I said earlier, quite an anxious moment because, if you get it wrong, all of a sudden it is an offence and you are being investigated. I reiterate the point I made earlier. If the language is changed, if you are addressing a technical breach based on a reasonable judgment, it is a much fairer way of trying to get to the right answer than using a sledgehammer to crack a nut, so to speak.

Jon Nott: The answer is yes and no. Huge amounts of effort go into writing guidance documents by the Electoral Commission with the intended audience of volunteers, but there is a limit to what one can do. Other regulators have a lot of experience. HMRC has been mentioned. My experience professionally is more with the Charity Commission and the use of case studies, which has also been mentioned. The commission could definitely think about how the information can be portrayed in a different way to make the guidance more accessible.

As mentioned in the earlier session, it is not just the number of volunteers but also the turnover. We, like everyone else I am sure, have hundreds of local parties. It only takes a small number of them to change their treasurer every month and you have a continual churn of people who are new to the job, doing it for the first time, needing induction, support and training. If those resources were available from the commission, rather than each party producing their own versions of them, it would particularly help smaller parties and independents, but I am sure the larger parties would benefit from it as well.

Q148 **David Mundell:** That is an important point, which we need to draw out, about volunteer turnover. In fact, some of the party organisation structures require that people are not able to remain in a particular position in an association or body for a lengthy period of time.

Geraint Day: I certainly echo the points about the turnover of volunteers. That is crucial. If you think of the number of elections that have taken place over the last 10 years, probably tens of thousands of people have interacted in some way with the commission. To provide training for that many people is a big task.

The commission revamped its website a couple of years ago so that, when you go on the website, you can say, "I am a candidate and I am interested in this election", and it takes you through steps into the election process. That is a good approach. The difficulty then is that you read one document and there is another link for further resources, which links into more complex guidance and then there will be another link through to a piece of legislation and so on. It has to do this to a degree because of the complexity of the law. If it were to provide guidance that did not cover that, it would not be doing its job. It has tried to simplify it and to make it user friendly to a degree. The issue is that underlying this is the complexity of the law itself. The responsibility for that lies not with the Electoral Commission but with Parliament.



Q149 **Mr David Jones:** As we know, the commission has a dual role in both giving advice and regulating parties and campaigners. Does that dual role, or might it be perceived to, give rise to a conflict of interest?

Richard Tice: That is a good question. There are examples where it is possibly the case. Generally, though, some of the guidance can be so ambiguous. That can be difficult for people. I come back to my earlier observation. Where we have guidance and we are not clear, a rulings committee would give much greater clarity on what we should do on issues we are not certain about. The City of London has a takeover panel that can investigate and prosecute. That might possibly be a better way forward than, all of a sudden, reverting cases to the police for further investigation, which sometimes seems a bit heavy-handed.

It is a difficult area, but there is considerable room for improvement. It is unreasonable to expect the police to have the expertise and the specialism to deal with a complicated area. If the main parties find it difficult, it is not surprising if small parties and the police find it hard when they have to try to look at issues, offences and potential prosecutions.

Geraint Day: The short answer is that there is not a conflict of interest. Many other regulators hold both aspects of this power. I would prefer the Electoral Commission to retain that power, rather than put more call on the police and the CPS. There is no conflict of interest to any great degree.

Amy Killen: I have not experienced any conflict of interest, and I have not noticed a perception that there is one, especially when public confidence in the running of elections is so high. It is perfectly reasonable for an expert regulator to carry out both functions and roles and to manage that separation effectively, which, largely speaking, the Electoral Commission does.

Were there to be problems, or the perception of problems, there are ways around that. For example, the Electoral Commission could publish its responses to non-specific queries. If a party questions something—whether something is allowed within the regulations, whether it is or is not campaign spending, whether it is or is not a donation—as long as it is not using any personal data or for any other reason is not appropriate to be published, it could publish a database of its responses to queries that other parties could then look at in order to maintain consistency in its advice, if that were to become an issue.

Jon Nott: The short answer is no. My sense is that it is the nature of the regulator and certainly the ones I am most familiar with—HMRC, the Information Commissioner's Office, the Charity Commission—all have that dual role of advice and enforcement and seem to manage that balance. It is the nature of a regulator. No, I do not have any concerns in this area.



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Q150 **Mr David Jones:** As you know, the Government intend to introduce clarity in law so that the Electoral Commission should not bring criminal prosecutions in England, Wales and Northern Ireland. Do you agree with that course of action on the part of the Government?

Jon Nott: The earlier witnesses answered this well. The Scottish model that was outlined sounded like a helpful model.

Amy Killen: I am not sure. That is my truthful answer. Given that the Electoral Commission is the expert, and given that expertise does not lie in the CPS or in the police, it is important that it has that role and that the Government's decisions about this do not have any negative impact on the independence of the Electoral Commission or the perception of the independence of the Electoral Commission for voters, especially when public confidence in the Government and in politicians is low and confidence in the running of elections is high. I could foresee that having a negative impact, which is important to consider.

Geraint Day: The point made by Ms Killen is well made. The public perception is possibly as important, if not the most important thing, when considering this. I would look to make some small changes. Some offences under the RPA could be treated as civil offences and moved over to the Electoral Commission, like imprint offences. There are quite small elements, to be honest. That seems to be a good tidying-up job. But as a general rule, the balance is correct at the moment.

Richard Tice: It would be completely wrong for the commission to have prosecutorial powers, based on what we have seen over the years regarding their bias, in particular with regard to the Brexit referendum, so absolutely not.

I reiterate that there is a better route where you could have not necessarily the police but a takeover panel type of specialist investigative body that could look at these issues, make judgments and determine whether people had done things with malintent or through genuine honest mistake. Darren Grimes is a good case in point. No, the Government are right that the commission should not be able to prosecute.

Q151 **Mr David Jones:** The commission has said that the Government's proposals would fetter its enforcement activities. Is that right?

Richard Tice: No, not at all. The commission looks at things closely at the moment. A halfway house between the commission and the police, a specialist that can deal with these issues and look at them quickly and promptly, will give much greater confidence to everybody, the parties, the commission and the public at large. Speed is important here, but we must make sure people have confidence that there is no element of bias within such a crucial process.

Geraint Day: My understanding is that if there were a substantial attempt to try to undermine democracy, it would go through the CPS



anyway. That is the right route for it to take. Civil offences should remain in the hands of the Electoral Commission, but criminal offences should still go via the CPS.

Amy Killen: No. It is important that we have, especially in such an age of disinformation and misinformation, a regulator with strong independence that has the perception of that independence and is empowered to act, whether that is with the CPS or not.

Jon Nott: In the interest of time, I echo what Mr Day and the witnesses in the earlier session said.

Q152 **Tom Randall:** Looking at the commission's civil sanctioning regime, what is the panel's view on its remit and powers? Should the civil sanctioning regime be extended or increased?

Geraint Day: I touched on this previously. Some of the current offences under the RPA should be transferred into the hands of the Electoral Commission, and some of them should be scrapped entirely. The Law Commission report was very clear about where it believed the powers should lie in this area.

Again, proportionality is important. We can take a fine of £20,000 as an organisation. It hurts us, but we can take it. That is probably the right sort of level for us as a middling-size party. But when we look to some of the smaller parties—and there are 400 or so registered political parties in the United Kingdom—a fine of even a quarter of that would end them as organisations. Democracy has to be about more than just the large parties that have Members of Parliament. It also has to care for the smaller groups, the independent groups of councillors and so on. That is a duty on us all. Proportionality should be written into the rules that govern the Electoral Commission offences.

Amy Killen: I agree with Mr Day and his point on proportionality. It is important to note that a large fine for a small party could be seriously damaging and could be a real strain on resources and, equally, for independent candidates. But a fine of £20,000 may not even be a deterrent for a larger party with sufficient resources to bear that cost.

Like much of what we have already mentioned today, this represents a barrier to people accessing politics, being involved in the political process and playing the role they might want to play in our democracy. It is damaging to our democracy if the system is so disproportionate and the burdens are so much greater for smaller parties and independent candidates that it is off-putting for people getting involved, whether we are talking about women—who, of course, are of interest to us—or any other minoritised group that we know is excluded from politics and has less representation. It does not matter what political body we are talking about, whether in Westminster or in local government. We know about those barriers.



The Electoral Commission needs to be empowered to consider those factors in its decision-making. If it does not and cannot, it could end a smaller party or seriously damage a smaller party. We have to think about the knock-on impact of that on our democratic process. If it is not possible for a smaller party to break through because of something like this and because these barriers are too great, we do not have a successful democracy.

Jon Nott: I echo those comments. It is critical not just for the ability of people to stand but also for the trust in our democracy. It is also worth reflecting on the point made earlier about the distinction between the technical offences that often lead to multiple fines and the more serious offences that are capped at the same level but for only one incident. Some of the largest fines, from looking at the Electoral Commission's reporting, are for multiple instances of relatively small infractions against some serious offences that had disproportionately small fines. It was mentioned in the earlier session that some larger parties regard this as a cost of doing business. That attitude undermines our politics.

Richard Tice: I endorse the three previous statements, which set it out clearly. Perhaps also look at the intent of the party that may have committed an offence: was it a genuine mistake, a misinterpretation, or was it done with malintent at heart? Proportionality is important.

Q153 **Ronnie Cowan:** We talked earlier about the issue of online campaigning and information, which was raised in a significant number of written submissions to this inquiry. With that in mind, what impact has the rapid development of online social media information and digital campaigning had on how your party conducts its campaigns?

Richard Tice: It is significant. The major parties made some good observations on this. Rapid decisions need to be made. We need imprints on all our adverts. There is a real question mark about fake identities, impersonation of political parties, candidates and online campaigning, which will need some rapid, close work with the social media platforms. We have started to see it, but it could be just the tip of the iceberg. The issue of impersonation and fake things is a real problem. We are seeing it this week in the Batley and Spenningsdale by-election, with fake leaflets going out and false use of other political parties' logos. Some important things need addressing quickly here.

Jon Nott: Yes, it has had a significant impact. It increases the situation I addressed earlier on the level playing field. In the brief window between the PPERA coming in and the widespread use of digital campaigning, it was possible for a larger party to make use of party materials and target them on a geographical constituency and effectively overspend the constituency limit under RPA. With digital campaigning, it is even easier to do that targeting and outspend either a smaller party or an independent candidate.



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We are far from the American system where it is almost essential to have a large amount of money to have any chance of electoral success. But our system at the moment over-advantages those who have the financial resources, which is to the detriment of the voters and the system as a whole.

Amy Killen: Our party has used online campaigning for its entire history since 2015, and of course we have seen an increase in that, especially over the last 15 or 16 months and in the last few years as use of online campaigning has increased, and not just for us.

The issue here is about not Electoral Commission regulation but the inadequacy of the law to set out what is allowed and what is appropriate. It is not just in the sense of what is okay, what constitutes spending and what is a person saying what they reckon on Twitter, but also the burdens of complying with electoral law on invoices and working with major international corporations like Facebook and Google. We are certainly not empowered to implore Google to send us invoices on time. I do not imagine any of the other smaller parties feel that they are. We faced this challenge in the London elections, and I am sure we will face this challenge again.

The law is out of date because, from the beginning, compared with 2000, campaigning looks incredibly different now. It is a totally different field. As far as I am aware, the deadlines for invoices have not changed, for example, but the realities have changed quite a lot. The Electoral Commission, campaigners and parties are doing their best with something that is inadequate.

Geraint Day: I agree with the points made and would add only one extra point. Digital campaigning moves so fast that whatever legislation is put down must not take account of the specific forum that has been used, whether it is Facebook, Twitter or whatever, but needs to talk at a higher level to say, "These things must be needed." The obvious one, the Facebook ads library, is useful but it only covers Facebook. It does not cover Google or the other online adverts. Co-ordinating that and creating some form of political ads library across all digital fields may be a way forward.

The legislation needs to be written at a higher level rather than looking at what exists at the moment. This is a big challenge for Governments and Parliaments around the world. We need to get to grips with this big question.

Q154 **Ronnie Cowan:** Interestingly, you said that the digital age is moving so quickly. We have analogue legislation for a digital age. It will move so quickly that we will always be trying to keep up with legislation.

Geraint Day: You have hit the nail on the head. This is why the legislation, when it is being written and drafted, needs to take account of campaigning in its wider sense, and these principles must apply no



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matter what the forum. These principles apply to the individual example, whether it is a leaflet, digital or whatever.

Q155 **Ronnie Cowan:** In Finland, citizens are being educated to cross-reference information and not to take things at face value. Should the Government be looking at that?

Geraint Day: Absolutely. Education plays a key role in this. People who are involved with advertising or any form of professional use of social media are probably the biggest users of fact checkers, I imagine, because they are just so aware that what you see is often lies.

This is not so much by the political parties, to be honest. Most political parties try to keep to the essence of what they believe, but non-regulated people on the periphery put stuff out there, quite often not via Facebook but through WhatsApp messages and other forums. It is a big challenge, and education must play a big part in that.

Q156 **Rachel Hopkins:** We have moved into the realm of digital campaigning and online advertising. I will wrap up a couple of points. This is an opportunity to expand on any of those points in the interests of time. What role should the Electoral Commission play so that people can make informed choices? Are changes in legislation necessary? Does it have sufficient powers to regulate digital spending and campaigning at the moment?

Amy Killen: Changes in legislation are necessary. My fear and concern with those changes is that they need to come from a place not of trying to replicate the system we have for imprints, for example, for leaflets when they are different mediums. They work in different ways and voters interact with them in different ways than perhaps they would with leaflets they get through the letterbox. I hope we do not try to get to a point where every online ad has an address on it. That is not helpful or necessary.

A better idea is something that we already know technology can do, which is to have a banner across the bottom of an ad about further accurate information. It could point to who set up this ad, who paid for it, what other ads they have running, who it was microtargeted to, who the other ads were targeted to and, potentially, how to find accurate information about the content of the ad if that would be helpful. We know this is possible. We already see it now on Facebook, Instagram and TikTok with banners for information about Covid vaccines. It is already possible, and the legislation is behind the times.

Geraint Day: I do not have a lot more to add. The area needs regulating and the current law is insufficient to do it. PPERA was written before this existed, to a large extent. It definitely needs looking at. The danger is that we look to write legislation for today and, by the time the legislation is passed, technology has moved on. Getting that balance right and writing that legislation is a big challenge. There has been a lot of research



into this, not just in the UK but throughout Europe and beyond. America and Australia have a huge amount of research and studies on this. Take time and make sure it is done correctly.

Richard Tice: As the previous witness said, legislation will never catch up. Therefore we need a relatively fast-moving oversight committee to look at all the online digital activity and where technology is going. That committee or that body will have to work with the social media companies, because the platforms are intrinsic to this. In the interests of democracy, the Government have to make it clear to the social media platforms that they have to work with the Government and the Electoral Commission in this process. It is fast moving. Legislation will never be able to catch up.

Jon Nott: We could have an entire session on this question. The Facebook ad library has been mentioned, which is a positive development, and the fact you can see who is behind a certain advert and look at what else they are doing is great, but the challenge is it is effectively a private company trying to regulate itself to avoid genuine regulation. Different private companies are implementing different versions of that, so you do not have that consistency and it is quite difficult to see what is happening across the spectrum as a whole. The real challenge for any regulation is to frame it in a way that talks about the principles and ensures that companies—which are broadly, if we are fair to them, willing to try to comply and be helpful—are helped to do that, but to make sure that ultimately the decision about the boundary of the regulation is with the lawmakers and not with the private companies.

Q157 **John McDonnell:** You have covered most of my questions on transparency. You have put forward some interesting ideas, especially about establishing principles and mechanisms. Finally, do you have anything to say about the regulation of data collection for use for electoral purposes?

Richard Tice: That is a good question, but nothing instantly occurs to me. I have been more focused on the other issues around online campaigning. I repeat the point from earlier about impersonation and deliberate ill-intent online, which is one of the key issues to focus on.

Amy Killen: I do not have any specific ideas. My thought around it would be ensuring it is not to the detriment of campaigning. Of course we want to preserve privacy and data protection for individuals, but I would not want anything that is introduced to limit movements on campaigning. We all collect data already, and it is important to inform us about how our campaigning is done and to inform our strategic decision-making. It would be prohibitive for smaller movements, newer movements and emerging movements that have not become political parties yet to engage in democracy and run successful campaigns if they are prohibited from doing something when larger established parties have years of data already.



Jon Nott: This is probably more for the ICO than the Electoral Commission, but our party was one of the many that were pushing, when the original data protection regulation was agreed at an EU-wide level, to ensure it was very much focused on the rights of individuals, citizens and consumers. That applies as much to political parties as it does to charities and commercial organisations.

I am particularly concerned about the suggestion that those protections might be watered down in the interests of multinational trade and enabling corporations to have a lower standard in the UK than in the EU, which was a positive development in that area. It would be a shame if we were to lose that.

Geraint Day: The point that Jon Nott just raised is interesting, especially around the ICO's role in ensuring compliance with GDPR. Maybe the Electoral Commission should work more closely with the ICO to ensure that political parties do comply with GDPR. It is complex law to comply with. Every time we look at any dataset, we have to do a data protection impact assessment and so on. That adds complexity to it. The protection it gives to the electorate is substantial. Maybe a closer working relationship between the Electoral Commission and the ICO, so they both fully understand what is happening in each other's realms, would be a progressive move.

Q158 **Chair:** We touched on the situation with the party panels advising the commission with the other parties on the previous panel. It is probably a leading question for some of you, but is the membership of those panels right or does it need to be expanded?

Richard Tice: That was a new one on me. Clearly, the smaller parties need some representation to help the Electoral Commission. That is my observation.

Geraint Day: I am in a unique position. I sit on the Westminster PPP and on the Senedd PPP. As I see the differences, they operate slightly different models. The Senedd one tends to include members of political parties represented in Westminster and the equivalent members of the Senedd in Wales, but it also includes representatives from the Association of Electoral Administrators and is regularly attended by police officers and by representatives of the returning officers and the Royal Mail. It draws together lots of different strands of people involved with elections.

That gives a different dynamic from the way the Westminster one operates, which tends to operate more for legislation, problems and changes that are needed. The Senedd one is much more geared towards delivering fair and open elections. That strikes me as a better model, although there is still a need for the legislative advice that comes from parties when the Electoral Commission is looking to advise the Government on new legislation. The Westminster PPP also has the Cabinet Office in attendance on a regular basis.



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There are different models. It would be interesting to hear from members of the Scottish political panel on that as well.

Jon Nott: The key point is that, although it is the parliamentary parties panel, it is about regulation of elections. Not all parties that stand in elections end up in Parliament. Large numbers of smaller or regionally or locally specific political parties, particularly at local authority level—which in my understanding these panels also cover—and lots of independent candidates never end up in Parliament but do have a key interest in the regulation of elections. The inclusion of a representative of independents and of smaller parties would be key, and perhaps some measure of the percentage of seats parties stand in rather than necessarily how many they win, given that the health of democracy is not just about who wins but also about who takes part.

Amy Killen: I agree with everything Mr Nott just said, and I would like to add to his point. We have not been included in this, and I do not have direct experience of it because we do not have any seats, but the system as it stands reinforces power with the establishment and the status quo. All of this is designed by parliamentarians who have won their elections from mostly big and established parties. There is a missing voice in this of people who have not yet been successful in their election to Parliament or who have been successful but just not in parliamentary elections.

Q159 **Ronnie Cowan:** This is an opportunity for the witnesses to tell us what we are doing wrong. How should the Speaker's Committee, this Committee and the Government themselves be holding the Electoral Commission to account without impinging on its ability to operate as an independent statutory body?

Geraint Day: The Electoral Commission is not just responsible or answerable to the UK Parliament; it is also answerable separately to the Welsh Parliament and the Scottish Parliament. I share the concerns expressed by the other parties earlier about the proposals to move more responsibility to the Speaker's Committee. To put that responsibility to a committee that has a majority of one party risks undermining the independence of the Electoral Commission and would be a retrograde step. There are many issues with the Electoral Commission and there are many ways it can be improved, but that is not a way to improve it.

Q160 **Ronnie Cowan:** How do we improve it? Here is your chance. What do we do?

Geraint Day: If I can talk about Wales, obviously I am more interested in Wales than the UK as a whole. Since April, the Welsh Parliament has been paying independently and directly the Electoral Commission, and the Scottish Parliament is doing the same. There is only one commissioner for the whole of Wales and yet, if we were to mimic the model of the Electoral Commission for Wales, there should be more than one commissioner. There should be half a dozen and maybe a panel established for that level to be responsible for all elections to the Welsh



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Parliament and local government elections in Wales. That is a big chunk of responsibility. To have only one commissioner to oversee that, from the Electoral Commission's governance point of view, needs to be redressed. That change has taken place, but the model of the Electoral Commission has not changed. I suggest that needs to be looked at.

Amy Killen: I do not have huge experience with the committee scrutinising the Electoral Commission. Of course scrutiny from Parliament is incredibly important. It is hugely important that any change does not undermine the independence and integrity of the Electoral Commission. We are living in a time of huge misinformation—or at the very least the perception of huge misinformation—and in a time when public confidence in the Government and politicians is low but it is high in the running of elections. To damage that could undermine our democratic process. The knock-on effects of that are incredibly worrying. This is the basis on which everything else that goes on in Parliament and elsewhere in other governing bodies happens.

The responsibility lies in Parliament making it possible for the Electoral Commission to do its job well. The big area for me and for our party is inadequate legislation that does not reflect the realities of campaigning and does not tackle the barriers we know there are in politics for women and minoritised groups. We know that because their representation is so poor.

We can see that today in this Committee. You have heard from eight witnesses from eight different political parties. I am the only woman, and I am from the Women's Equality Party. It would have been irregular and unexpected for us not to have had a woman as a witness when we were invited. That matters. This demonstrates the impact of the barriers to politics. Parliament needs to enable the Electoral Commission to do its job. The Electoral Commission is not empowered to do that currently.

Jon Nott: I would very much like to echo that. It is an important point that has just been made. As we touched on earlier, the law is the issue. The Electoral Commission regulates the law that currently exists. Until that law is fit for purpose, it is hard for the Electoral Commission to be so.

The second issue is resourcing. I well remember my first meeting with the Electoral Commission when I became party treasurer, and the first thing it did was to apologise for the state of the online reporting system we would have to use. That has not changed in the last three years. It knows it does not have the resources. We have talked about its inability to respond to queries in a timely fashion. The resourcing it needs to do its job properly, to ensure trust in our system and to ensure that participation in politics is supported and enabled is critical.

Without wishing to sound like a suck-up, I would like to thank the Committee for taking this evidence today. It is important that you have heard from the four of us as well as the four panellists you heard earlier.



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I encourage you to look at the parallel report that all of us here also fed into from the Committee on Standards in Public Life, which also had a number of representatives from independents and more local representative parties. Those voices need to be heard in this conversation, too.

Richard Tice: Independence and confidence in the integrity of our democratic system is so vital that there should not be any political commissioners on the Electoral Commission. Board members must be totally independent and be seen to be so. I raised my concerns about bias before, and I still have those concerns.

Likewise, the Speaker's Committee is probably a greater opportunity to show independence and to show more oversight. Therefore, that committee should definitely not have a majority from any of the main political parties but should bring in real expertise and independence from outside to improve this process and to make it respond faster and more effectively.

Chair: Thank you very much indeed. I thank the four witnesses on this, our second panel, for their contribution and for giving us the benefit of their experience and expertise. It has been a fascinating session. I am grateful to everybody who has taken part, particularly the broadcasting staff here and colleagues and everybody else. It has been a mammoth session. Now it is only fair that I let you all go and have your lunch.