



# Public Administration and Constitutional Affairs Committee

## Oral evidence: The Elections Bill, HC 597

Tuesday 7 September 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; John Stevenson.

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### Witnesses

**I:** Dr Jess Garland, Director of Policy and Research, Electoral Reform Society; Professor Toby James, Professor of Politics & Public Policy, University of East Anglia; Angela Kitching, Head of External Affairs, Age UK; Helen Mountfield QC, Matrix Chambers; and Peter Stanyon, Chief Executive, Association of Electoral Administrators.

**II:** Louise Edwards, Director of Regulation, Electoral Commission; Lord Evans of Weardale, Chair, Committee on Standards in Public Life (CSPL); Professor Justin Fisher, Professor of Political Science and Director of Brunel Public Policy, Brunel University London; Pete O'Doherty, Assistant Chief Constable, Thames Valley Police; and Dr Sam Power, Lecturer, University of Sussex.

Written evidence from witnesses:

- [Electoral Reform Society](#)
- [Age UK](#)
- [Association of Electoral Administrators](#)
- [Electoral Commission](#)
- [Committee on Standards in Public Life](#)
- [Professor Justin Fisher](#)
- [Dr Sam Power](#)



## Examination of witnesses

Witnesses: Dr Jess Garland, Professor Toby James, Angela Kitching, Helen Mountfield QC and Peter Stanyon.

Q1 **Chair:** Good morning and welcome to the Public Administration and Constitutional Affairs Committee. Today we are taking evidence on the Elections Bill, which will receive its second reading this afternoon in the Commons. The Bill is wide ranging in its ambition and proposes changes to the way that elections take place in our democracy. Our witnesses today are in two panels, and the Committee is very grateful for them giving of their time and expertise to us. I ask the members of the first panel to introduce themselves for the record, please, starting with Dr Jess Garland.

**Dr Garland:** Good morning. I am Director of Policy and Research at the Electoral Reform Society.

**Professor James:** Good morning. I am Professor of Politics & Public Policy at the University of East Anglia and Deputy Director of the Electoral Integrity Project.

**Angela Kitching:** Good morning. I am the Head of External Affairs at Age UK, the older people's charity.

**Helen Mountfield:** I am a barrister at Matrix Chambers, and I am the Principal of Mansfield College in Oxford. I have practised in election law over a number of years and I was a legal adviser on Lord Hodgson's report into third-party funding.

**Peter Stanyon:** Good morning. I am Chief Executive of the Association of Electoral Administrators.

Q2 **Chair:** Thank you. The first question is from me. Various reviews and reports have called for urgent reform and consolidation of electoral law. To what extent does this Bill address these concerns?

**Helen Mountfield:** I am afraid I don't think it gets to the heart of the matters that have been identified. There are genuine problems and they have been picked up in a number of reports. The Law Commission has emphasised the lack of clarity in the archaic structure of election law and the lack of transparency in the mechanisms for challenging elections through petitions. There are concerns, including those identified in Lord Hodgson's 2016 report and by the Committee on Standards in Public Life, of lack of transparency in election funding, inadequacy of sanctions and a lack of teeth for the Electoral Commission. The Information Commissioner's Office has also expressed concerns about data driven and digital campaigning, and lack of clarity on use of databases and called for cross-party work and a statutory code of practice on that. But unfortunately—I think this is a very important and urgent issue because here, as in other places, faith in democracy is waning and we need to shore it up—this Bill does not really address those central questions. It



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does not identify those dangerous and destructive problems that have been identified, although it does address some issues that need to be addressed, for example multiple proxies. It is uncontroversially a good thing to stamp down on that.

But there are at least three respects in which this Bill will seriously undermine trust in democracy, and I know we will discuss them later and other people will discuss them in the other session. It seems to me that the real problems are, first, that on the pretext of solving the problem of voter personation, which is a tiny and insignificant issue, it risks making the electoral process less accountable by suppressing millions of votes in ways that may be politically significant. Secondly, the Bill introduces new restrictions and bureaucratic barriers to making smaller donations and links between political parties and organisations without addressing the real problems caused by very large external donations and the lack of sanctions. Of course, the elephant in the room is that the really big example of that is the funnelling of £675,000 just before the EU referendum to a tiny organisation called BeLeave and a fine that arose from that of £61,000. So that is a real problem.

The third very serious problem with this Bill is the proposals for effectively curbing a supposedly politically independent Electoral Commission by suggesting that it will have to have regard to a statement of electoral priorities set by the Government of the day, which is a player in the game. That is going to be subject to ratification by Parliament and the Speaker's Committee, but that none the less brings in the players to part of the referee mechanism, removes the Electoral Commission's power to prosecute and does not bring in adequate powers to investigate, which is one of the suggestions that has been made. I think it is very dangerous to the actual and the perceived political independence of the regulator, which is intended to uphold the integrity of elections and our parliamentary process, if one player—and it may be a different player depending on who has won the election—gets to inform the basis upon which that is done. It corrodes trust in democracy, which is already fragile and I think it does that in two ways: first, by creating the impression that electoral fraud is a widespread problem even though our system of casting votes is one of the safest in the world and creating doubts where there need be none; and, secondly, by undermining the independence of the regulator in circumstances where this looks particularly like an attempt to clip its wings.

**Q3 Chair:** Thank you very much indeed. I will pose the same question about the extent to which you feel these concerns are addressed by the Bill to Jess Garland.

**Dr Garland:** I don't have a great deal to add, other than to say that one of the reasons for simplifying and rationalising the law, as the Law Commission has recommended, was that those who are taking part in running elections know where they stand and I don't see that simplicity or dealing with the complexity here. In many way I think this Bill adds to



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the complexity for those taking part in elections, particularly, as Helen said, around the voter ID proposals. Of course, part 4 around third-party campaigning has caused some concern among charities and campaigners that this could be like the Lobbying Act causing confusion around election time, which could be any time now, around what they are allowed to do and what they can't do. I don't see those aims of rationalisation and streamlining here.

Q4 **Chair:** Thank you. The same question to Toby James, if you have anything to add?

**Professor James:** I very much agree with the earlier comments. The Bill does not focus on the main areas that are flags of concern. The Electoral Integrity Project runs evaluations of elections worldwide, and has done since 2012, showing the areas of strengths and weaknesses and the Bill in many respects misfires in that way. It focuses on the wrong areas such as voter fraud where that is not a problem. It will worsen the problem with fragmented, convoluted electoral law. It is going to make elections harder to deliver because of these complexities and much more difficult to understand for citizens as well. On top of this you have issues such as people possibly not being able to cast their votes because of voter ID restrictions and the Government taking greater control over the electoral authorities and the electoral process, which is very much the wrong direction at a time where globally we are seeing an age of democratic backsliding. There are grave concerns here.

The main thing I would stress is that despite this, there are some positive aspects and there is a very strong opportunity to make some amendments to this Bill to address some of those problems, and I know it is to the Committee to do that.

Q5 **Chair:** Thank you. I will go to Angela Kitching next. Has the Government's consultation process been sufficient in the length of time and the levels of engagement from your organisation's perspective?

**Angela Kitching:** We have had the opportunity to engage with the Cabinet Office and with Cabinet Ministers over proposals around particularly the presentation of ID and the running of elections for some years now. We feel organisationally that they have been very open to speaking to us about these issues. Unfortunately we have not really seen them change their proposals as a result of that consultation. We have been raising very consistently problems that older people will have engaging with elections when they have to present particular forms of ID. Throughout the pilots of the proposals that have happened, we have found that there has been patchy engagement on the ground and very little demographic information collected to say who is affected by these proposals. Our concerns are that they don't have the evidence to understand the impact of the proposals that they are making here rather than that they are not open to talking to people.

Q6 **Chair:** Thank you. Helen Mountfield.



**Helen Mountfield:** My real concern is that this is very constitutionally and democratically significant legislation and it is being put through without a White Paper, without a process of cross-party deliberation in the course of a pandemic, when there is a background and a context of the Minister who has been proposed to be put in charge of the Electoral Commission is somebody who recently feels very strongly that he has been unfairly treated by the Electoral Commission as a director of Vote Leave. I think it is inexplicable that this is being rushed through without the opportunity for proper debate or an attempt to build cross-party consensus. That feeds a perception—and it may be a wrong perception; this may be a sticking plaster solution to some problems and not others—that it is being done for narrow and short-sighted reasons of perceived political advantage. We have to ask for trust in the political process and what does that look like.

Surveys across the democratic world show that trust in democracy is in a weaker state than it has ever been for decades and there is a danger of weakening respect and trust in the democratic process if this is seen as cunning wheezes. If parliamentarians are treating democracy as cunning wheezes they should not be surprised if citizens disengage from the democratic process and its players. I think it is extraordinarily important in this context to go by the rules of the parliamentary game in setting out what the proposals are, why they are being proposed and why recommendations by independent regulators like the ICO and the Electoral Commission are not being advanced by the Government of the day in an attempt to be seen to be fair.

Q7 **Chair:** Thank you. Toby James, do you have something to add on this topic?

**Professor James:** Yes. There is a longstanding tradition within Westminster to hold a Speaker's Commission when you have a major piece of electoral legislation being proposed. This convention goes back throughout much of the 20th century. The idea is that the Prime Minister of the day calls a Speaker's Commission, you have cross-party talks about the composition of the Bill and other actors such as Age UK and other third-sector organisations are able to have their input into this. Transparency International wrote to the Speaker and encouraged the Speaker to undertake that approach but the response was because the Prime Minister of the day had not called a Speaker's Commission it was not possible to do so. I think this is problematic on the basis that, as we have heard, it can risk confidence in the democratic process and it could lead to a Government either making changes that could advantage itself or at least giving a perception of that. Going back to January and the events we saw at the Capitol building, the unthinkable was happening in American democracy, so we have to be really careful with the electoral process. Something like a cross-party approach to a Speaker's Commission is absolutely the way forward today.

Q8 **Ronnie Cowan:** We have covered this to a degree, but looking at the



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administration and conduct of elections—and this is really to Dr Garland and Professor James—is there any good reason at all why we should introduce voter ID?

**Dr Garland:** There is no evidence of widespread personation fraud. The Government have yet to provide a justification on the basis of it being a problem and that is something that the Joint Committee on Human Rights also concluded last week. No, the evidence on personation is not there, so it is hard to see something in the data that could justify it.

**Professor James:** Absolutely, I agree with that. If you look at all the academic evidence that is available, the number of cases, the number of prosecutions that we see are absolutely minimal. In the poll worker studies that I have done with my colleague Alistair Clark at Newcastle University, where we have asked people inside polling stations whether they perceive electoral fraud or personation to have taken place, they are clear that it has not. The surveys of experts come from the same direction, as do studies from other countries where they operate similar systems. Personation is not a problem. It makes little sense for someone to try to commit electoral fraud in that way, given the risks and the marginal gain that one vote could bring them.

Q9 **Ronnie Cowan:** If voter ID is only in this Bill to address the problem of personation and we do not believe that problem exists, why do this Government want to bring in voter ID? What do they gain from this?

**Professor James:** It is difficult to perceive what they would gain. It is not really for me to speak about why they are intending to do this. Maybe they think that this is going to increase security in the electoral process but there is not a threat—that has been shown. To be fair to the Government, we have had two overseas international observation reports that suggest this is best practice and it is the case that voter ID is run in other countries. But, and this is important, it tends to be the case that it is run in countries where there is a national identity card and a civil population register where presenting voter ID is much easier for citizens. That is not the case in the UK. People are unfamiliar with having to present this form of identity and the pilots for voter ID show that many people were unable to present identification or refused to present voter ID because they thought that it infringed their civil liberties.

I don't think it is necessary to be part of the Bill and I think it should be withdrawn, but I am happy to also talk about ways in which it could be improved if the Government insist.

Q10 **Ronnie Cowan:** Will voter ID shrink the franchise?

**Professor James:** I can't see how it would in any way strengthen the franchise. It may undermine the franchise. It does not change who is eligible to vote but it may introduce practical challenges that may prevent people from casting their ballot.



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**Dr Garland:** It could also undermine electoral integrity in many ways. Electoral integrity is a very broad concept. It is not just about policing who is turning up to vote. It is about how elections are run and people's faith in the process and in the outcomes. An ID scheme, particularly a poorly run ID scheme, could really shake people's faith in the result of the election. If legitimate voters are prevented from voting, that in itself is an electoral integrity issue. If we are looking at electoral integrity in the broad way that we should be, I can see that voter ID could affect that.

**Helen Mountfield:** We have a big issue in society that lots of people are talking about those whose voices are not heard in society and the lack of trust and integration in our society as a result of that. There is really clear evidence that there are differential demographic impacts on who has easy access to ID. There is a 24% difference, I think, between black and ethnic minority people with driving licences and white people; older people are less likely to have ID; poorer people are less likely to have ID. There may be unintended or unknown demographic effects of introducing this measure and it is complicated and complex—it makes it harder to vote. Why would we make it harder to vote when what we want is a proper democratic national conversation where we all join in, everyone's voices are heard and we debate with one another?

Q11 **Mr Jones:** I would like to declare an interest as a former member of the compliance committee of Vote Leave. My question is to Dr Garland and then to Professor James. The Government have relied on the example of the apparent success of voter ID in Northern Ireland as a good reason for introducing a similar system in the rest of the UK. Do you believe that the position in Northern Ireland is comparable in any way to the position in the rest of the UK at the moment?

**Dr Garland:** Other than the proximity, I can't see a comparison here. There was a problem with personation in Northern Ireland. In the 1983 election nearly 1,000 people turned up at the polling station to find that someone else had cast their vote. There were over 100 prosecutions on the back of that, so clearly bringing in an ID requirement was a response to a problem that was right there in front of people, but even then the ID that was brought in straightaway was not a full photographic model. That was brought in at a much later stage, so I don't think that is a fair comparison to make to the situation we have in the rest of the UK at the moment.

**Professor James:** I think one part is important, which is that photographic identification was introduced in the early 2000s for the first time in Northern Ireland and you saw during the first election where it was required people saying that they did not participate in the election because they did not have the form of identification. It is estimated that this was around 25,000 voters, about 2.3% of the electorate. If we are going to draw a lesson from Northern Ireland that is one that could be drawn but, as Dr Garland has absolutely rightly pointed out, in Northern



Ireland there was a gradual introduction of identity requirements. It was non-photographic ID to begin with and then it was photographic identification. What the Government seem to be doing here is proposing nought to 60 miles an hour in a very short period. There is no gradual implementation apart from some very small pilots. It is going to a very extreme form of identification requirements in many senses much too quickly. I think this will provide more evidence that people may not take part in the election as a result of that, so it will be damaging to electoral integrity.

Q12 **Mr Jones:** Dr Garland, do you have any observations to make on the issue of the impact on voter turnout in Northern Ireland as a consequence of the introduction of voter ID?

**Dr Garland:** There was certainly a drop in turnout after the introduction of ID, but of course there are many factors influencing turnout in an election, so I would hesitate to draw a straight comparison. But I think a more relevant statistic is that that Professor James has just offered about the number of voters who said that they did not vote because they did not have the ID. We saw that also in the pilots in the local elections. A significant number of people said in the subsequent surveys that they did not vote because of the ID requirement. Of course we know that in the two sets of pilots over 1,000 people were unable to cast their vote. I think if we are looking for evidence of the impact, let's look at those pilots with more people turned away from voting than have ever been accused of personation in this period.

**Professor James:** It is often said that things are working very well in Northern Ireland, but as far as I am aware there has not been a detailed systematic evaluation of the situation since the initial introduction of photographic ID. I said earlier on that, with a colleague, I have done poll worker studies where we asked people in polling stations what happened, what type of problems have occurred, how many people were unable to vote for some reason. That has not been undertaken in Northern Ireland as far as I am aware, so we don't know the extent to which people are not voting because of the photo ID requirement. I think it is a poor lesson to draw in support of this Bill.

Q13 **Mr Jones:** There has been no evaluation at all? Of course there have been several elections since the introduction of photo ID there.

**Professor James:** Not of the sort I am talking about where the best form of evidence is where you calculate within a polling station and you ask someone to tabulate how many people came in and said, "I would like to vote," but you found their name was not on the electoral register so you have to turn them away, or how many people perhaps were misbehaving within a polling station and they had to call for a senior person to come in. That type of evaluation has not been undertaken in Northern Ireland as far as I am aware, but I am happy to be corrected.

Q14 **Mr Jones:** Perhaps Mr Stanyon could comment on that. Mr Stanyon, are





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you aware of any such evaluation having taken place?

**Peter Stanyon:** No. I concur with what Professor James said. I am not aware of any detailed analysis that has been done in Northern Ireland since the photo ID came in.

Q15 **Ronnie Cowan:** Angela Kitching, in your capacity as Head of External Affairs at Age UK, you have said that a significant number of older people may be disenfranchised by the voter ID requirement. Could you expand on what your concerns are?

**Angela Kitching:** Yes, absolutely. We are very concerned that any kind of introduction of specific identification has an impact on older people's ability to participate in everyday community life. If you look at the Government's own research on this, which excluded the 500,000 people who live in institutional care such as care homes or sheltered accommodation, the Government found that 2% of people did not hold the forms of ID that would be required to vote under the Elections Bill. For the over-70s, that is around 180,000 people, meaning 6% of over-70s would have problems presenting the right kind of ID. They may hold it, but they may feel it is not up to date, it is not accurate or they couldn't find it easily. That is 500,000 people over 70, and about 4% of people aged over 70 said that it would make them less likely to vote, which is about 360,000 people aged over 70.

These are not marginal figures. They are really significant numbers of older people and, to be honest, it is already not particularly easy for a lot of older people to get out to vote. They have mobility problems, problems with transport and problems accessing the ability to vote because of sensory loss issues. They may also have problems if they are in multigenerational households, managing to get to and from the polling station if they needed to go back to collect another form of ID. They might not have the support of their family members to do it or, for example, if they are a carer of somebody who cannot be left alone, the idea that they could go out to a town hall, collect a free piece of electoral ID and then go on to a polling station is just absolutely for the fairies. It is not a feasible way of encouraging older people to exercise their rights to vote in person. Anecdotally, although there was no demographic data collected, some of the people who were turned away at the pilot sites were older people who then failed to return to vote because the process of getting out to vote is difficult for them.

I want to mention one other thing. The pandemic at the moment also has a significant impact on people's willingness to leave the house, so this proposal coming right at the moment is a huge issue for a lot of older people who would not be comfortable using public transport, going to a crowded place to have a close interaction with somebody so that they could collect some photo ID. The ONS says that about a quarter of over-70s are either uncomfortable or very uncomfortable leaving the house at the moment. Now is not the time to bring in this kind of restriction for older people. I know that there are similar concerns about the availability



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of ID for younger disabled adults who are very heavily impacted and tend not to hold forms of independent ID themselves.

Q16 **Ronnie Cowan:** You have given a lot of stats there and my calculator is not up to this role. Do you have one figure that tells me what number, what percentage of a specific elderly age group you believe would be turned away or put off from voting because of this?

**Angela Kitching:** We think the Government's numbers are an underestimate, for the reason I mentioned about excluding care populations, but the Government's own estimate says that 2% of people do not hold any of the forms of identification. In figures for over-70s that is 180,000 over-70s. I would say the kind of confidence measure is somewhere between 180,000 and around 500,000 people who said that they would find it harder to vote as a result of having to present a particular form of ID. As I say, we have good reason to believe that those figures are a strong underestimate. If you compare them to previous statistics from the census, which obviously is a very old set of statistics, around half of older people don't hold a passport or a driving licence, and those numbers increase as you get to the older age group.

Q17 **Tom Randall:** To follow up on Ronnie's point, and as was mentioned there, the Government have proposed a free voter ID card for those who might not otherwise have any identification. What do the panellists think about how that might address the concern regarding older people? I think you touched on that, Angela Kitching. Do you want to make any further remarks on that?

**Angela Kitching:** I suppose just that it should not be regarded as an assurance because the people who are affected by this are by their very nature difficult to reach. They tend not to be online; they are unlikely to be able to see advertisements in local areas; they are less likely to be out and about at the moment; often they have caring responsibilities; and some people will live in households where, for example, they don't run their own utility bills, other people manage them for them. Normal forms of ID that identify that you are who you say you are and you live where you say you live are often not available for people who don't hold these forms of photo ID. I can't see a practical arrangement that will allow local election officials to get out to reach some of these very hard-to-reach communities, for example care home populations who may be in and out of hospital, or have significant infection control concerns and could not reasonably travel to a town hall to have a photograph taken. They won't hold the right kind of ID. I can't really see how this is going to be the solution to that problem for a group of people who are quite difficult to access.

**Helen Mountfield:** Another issue is that if you have your photo ID it imposes an onus on the people at polling stations to decide if they think the photo is you. That is an invidious position to put them in and may create problems for some people who are nervous about that sense of being challenged: dark skin photographing less easily, trans people, all



sorts of people who may feel, “I don’t want to go and be judged in that way”. It may be a perceptual barrier to participating in the democratic process in a way that we can’t really evaluate.

**Q18 Tom Randall:** I have a quick supplementary on personation. In the opening comments the panellists said that there was very little evidence base for personation. If I was going to go and commit electoral fraud, I would probably go and check the register to see who doesn’t habitually vote, which is a lot of people in council elections, and I would probably have a lot of people there who I could impersonate knowing that they would not know that they are the victim of electoral fraud. Unlike banking fraud, you don’t know that you haven’t voted if you think you haven’t voted. Are the panellists confident that the evidence base for issues like personation is a reliable one?

**Professor James:** I am happy to speak to that. We are always looking for new forms of evidence and trying to challenge existing assumptions and are always open to new evidence coming in, but the evidence at the moment very clearly shows that there have been very few bases and the types of evidence there varies. The poll worker studies, asking people within polling stations their perceptions of people—and poll workers are often drawn locally so they may know people in their local community. They have the ability to report people and the fines, the consequences are very serious. If you were to try to get hold of an electoral register and you were then to identify people who you thought would not go and vote, the margin gain would be relatively small for potentially huge consequences. You would need a massive organised effort to rig an election of that sort.

You talk about fraud and people not deciding the result of the election, but there are other areas where there is a bigger risk, things like social media misinformation and information that is posted online and so on. They are the other areas that are much more important. The Government have also introduced changes to make the voter registration process much more secure in recent years, which they have succeeded in doing and I think that step has achieved the goal in combatting opportunity for fraud.

**Q19 Rachel Hopkins:** First to Professor James and then Jess Garland and any others who want to come in. Other minority groups have expressed concerns to us regarding potential disenfranchisement and prevention of being able to vote. What level of disenfranchisement is likely with the Government’s proposals in this Bill across a range of groups?

**Professor James:** That is a great question. The terminology “disenfranchisement” is often used. I think it is clear from the case of Northern Ireland that 2.3% of the population had additional things they had to do to go and cast their ballot, which meant that they did not take part in that election. Scaled up for a UK parliamentary election, that is something in the order of 1.1 million people. As we have heard already, the Government’s own research points to how it does not fall evenly



across the population. We have already heard about the elderly. The Government's own research points to unemployed citizens, those with severe disability and those without qualifications being less likely to have identification. I think that trans and gender non-conforming individuals is a particularly vulnerable group in this process and the Government's research is that they are much less likely to have a form of ID. There are multiple groups that could be adversely affected, but broadly speaking 2.3% sounds like a reasonable expectation.

**Dr Garland:** There are the groups that Toby mentioned and the Electoral Commission research backs that up. It is people who are unemployed, people who are renting from their council, people who have a disability who are more likely not to have the ID. We also know from the Government's research that 42% of those people who don't have ID say they would not apply for the free elector card, so that is clearly not going to solve the problems here. It is not just whether people have ID. Other people have said it is whether this has a chilling effect. People who are already hesitant to take part in the system might feel like this is just one step too far and might not feel welcome and that is a real concern.

I want to pick up on the point from the Government research about 2% of people not having any form of ID. That includes unrecognisable ID, if you just have that is out of date and unrecognisable ID is allowed. If you say ID has to be recognisable that increases to 4% of people don't have the right ID, which is a huge number of people across the population. I think a legitimate question right now is are we saying the scheme includes unrecognisable photos as well and just picking up on the point made earlier about the pressure put on staff in the polling stations.

Q20 **Rachel Hopkins:** We have talked about the free ID card but what else could be done to reduce this likelihood of disenfranchisement?

**Professor James:** I am happy to kick this off and I set out some ideas in my written evidence. It is worth saying that ID cards seen to have been enforced in Northern Ireland potentially has lessened the impact this has. One crucial one is looking at introducing a Canadian style vouching system. What you can do in a polling station in Canada is that if someone does not have a form of ID and their name is on the register, they can ask someone else who is an eligible elector and their name is on the register to vouch for them. What that means is that the person who does have the form of identification can sign an affidavit so you have a kind of trail of evidence to ensure that bogus voters are not added to the rolls. This has been very effective in Canada. They tried removing it, found that it was really important and, therefore, reinstated it. This is a very simple way, it would be very cost effective to do, it would lessen the impact of voter ID and I encourage the Committee to look at that.

Ways that other countries do this include provisional ballots. This involves somebody who is not on the electoral register or perhaps does not have a form of ID still being able to cast a vote but they have to come back at a later stage to present the necessary evidence or maybe that vote is



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allowed to stand unless someone contests it. There are different ways in which you could vary that to make it work. This leads to delays in the results. People wonder why the American presidential results take so long to be published, what is the delay, and this is part of the process. If people cast provisional ballots, they need to get the necessary evidence and it creates extra work for the administrators.

The third thing is to broaden out the form of evidence and identification that citizens could present. Allowing non-photographic identification would be a simple way forward, potentially just allow people to present their poll cards. People already have their poll cards, so these are options.

The fourth thing that is really important, irrespective of this, is to legally require some kind of systematic monitoring of what happens in polling stations. If voter ID is introduced, for example, each polling station captures data on how many people asked to vote but could not present forms of identification, how many people wanted to vote but did not have their name on the electoral register. There could be a requirement set up to capture that information so that we can see the impacts if we have this evidence.

Those are four things. The most obvious and really simple one to do I think is the Canadian vouching system. That would be quite simple to introduce, although obviously we would prefer not to go down the voter ID route altogether.

**Angela Kitching:** When I speak to groups locally and when I spoke to people on the pilot sites, their view was that very good local engagement with different groups of people made a huge difference as well. I checked that with Mencap and with RNIB and they felt similarly that if this were to go ahead it would need significant local resources to allow people to reach into communities to explain the requirements to them and to enable them to have access to either their own ID or a locally produced form of ID. The only thing to mention is if we are going to allow government-mandated travel passes, they look very different from place to place and quite legitimately somebody may be on the electoral register in one place and hold a travel pass that covers a much wider area or from a neighbouring place or an expired travel pass from where they lived last year. There is going to need to be an awful lot of training if you are going to use the bus pass as a good example of somebody's identification because they look radically different from place to place.

Q21 **Rachel Hopkins:** Thank you and that is a lovely segue into my next question for Peter Stanyon. What are the practical cost implications for electoral administrators of implementing voter ID proposals?

**Peter Stanyon:** Effectively unquantifiable in many respects. As has been mentioned by my fellow witnesses, we don't know the full figures of the numbers that will come forward. We know or expect there to be a spike ahead of a general election, for example, but we also must remember



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that certainly in England it will be local elections and regional elections that take place as well. An election drive for registration will, therefore, drive the need for individuals if they don't have access to other forms of photo ID and it will be a local authority responsibility. Even though it is an electoral registration officer providing that service, they are funded by the local authority, so resources will need to be provided in the appropriate ways. Certainly the Bill is quite rightly light on the practicalities because that will come in secondary legislation down the line, but on the timescales, in the pilots that were run photo ID was being issued right up to the day before the actual poll itself. We question whether that is practicable in the runup to a parliamentary general election where we could have hundreds coming through the door at the last minute.

As has been mentioned by others on the panel, what will the process be, what evidence will be required and what will the card look like? Going back to Angela's point about travel cards, what will the actual ID card look like? It is those geographical considerations as well. If it is a requirement to attend in person, that is reasonably practical in a small district but in places like Wiltshire, Northumberland and more rural areas it becomes a real challenge for individuals whether they are from a more elderly population or others in society. We don't have the idea of numbers.

The other fact to bring into this is the pressure it will bring—it has been alluded to—on polling station staff. We are already struggling to staff polling stations, to recruit because of the complexity and other things are being layered into the process itself. The questions about what is an appropriate ID—we already have quite a large range. It is almost a manual so we check that to make sure it is the right one: is that a permissible type of ID on its face? We also have the issue about face coverings and through the pilots that have taken place they were more successfully or superbly administered where they were small, low scale and the face coverings issue was not something that really raised a challenge in those elections. Yes, provisions within the legislation will be there as a process but has that been tested in how does it stop the flows through polling stations at that time?

It will come down to resource and timescales, and I certainly echo Angela's point about the need to have local campaigning, local information to make sure people are applying early so that we are not disenfranchising people by putting a barrier in their way when they can legitimately be on the electoral register, they have been through that process but they simply don't have the access to the ID because the system has not been able to produce the ID for them.

That is a bit of a non-answer in some respects because there are no figures I can put to that other than the fact that we don't know the numbers, as Jess, Toby and Angela have mentioned. Is it 2%, 4%, 5%? What will that mean for individual local authorities where there could be



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pockets of huge pressure whereas elsewhere there could be limited pressure? It will depend on the demographics of individual areas.

**Professor James:** I will add that the academic research shows that there has been increasing strain on electoral officials for funding. They are finding it increasingly difficult to get funding and this leads to challenges for extra services that are often provided such as voter outreach activities. That tends to be drawn back, so we should be very protective of funding for electoral services. Also the pandemic, as Peter alluded to, has made elections much more difficult to run. One thing is the recruitment of poll workers who don't want to be on the front line of administering elections, especially when the workforce tends to be older voters. Face masks are really challenging. Some countries that have voter ID requirements but also requirements for citizens to wear face masks in small spaces have this complex and difficult issue. In many cases they have asked citizens to remove their masks, so there are health issues there to bear in mind too, but I think the funding point is really central to this.

**Peter Stanyon:** If I can come back to reinforce the point about complexity. At this stage we are concentrating on voter ID. That is not the only thing in the Bill that will have significant effects on the administration by returning officers, registration officers and administrators, but also the pressures being put on to the staff in polling stations, handling of postal ballot papers being the classic example. They are the sort of issues that we have concerns about that will need to be worked through if the Bill goes through as it stands at the moment.

Q22 **Rachel Hopkins:** Thank you. I was talking very much about the administration and there seems a heck of a lot that you will need to do in the absence of any firm figures of how much, but the part about the enforcement of any voter ID at the polling station was referred to as well. Do you have any further comments on the level of support that might be needed at that point?

**Peter Stanyon:** I think the key element, depending on what the Bill says about the detail, is that it will very much come down to the advice and guidance being given by bodies such as the Electoral Commission as to the sensible approach to be taken. It was alluded to by one of my fellow panel members a second ago: it will come down to the individual in the station as to whether they agree that is a photo of that individual or not, and that becomes a judgment call. That can only be trained. There will be a need to resource up and make sure the correct training is given, but ultimately it is still a judgment call made by that individual on the day with that piece of information and there will be differences of opinion. All we can do is make sure that the training, the guidance, the back office support given to everybody involved in the process is as rounded and complete as possible in the circumstances.

Q23 **Mr Jones:** Ms Mountfield, in your view, is the voter ID scheme as outlined in the Bill compliant with the ECHR?



**Helen Mountfield:** I think there are two relevant provisions in the ECHR. One is the right in article 3 of the protocol to free and fair elections, so that is a duty on the state to create the structure for free and fair elections and an individual right to participate in them. The other one is article 14, the duty on the United Kingdom to ensure equal enjoyment of the other right, so to ensure equal enjoyment of access to the right to vote.

As to safeguards on free and fair elections, I think it is probably too soon to say whether there is a breach of international law. As other witnesses have said, other countries have different systems and there is, properly, a margin of appreciation that an international court will respect the way that an individual system does things. I think there is a Supreme Court challenge underway. I am not sure whether or not there would be said to be a breach of the right to create free and fair elections, but I think there is a real concern about the equal enjoyment provision in view of the statistics that have been introduced about the chilling effect of voter ID on older voters, poorer voters and ethnic minorities. In the absence of any analysis suggesting that there is a real risk of threat to the integrity of elections because of personation offences, there is a serious risk that this provision might be found to have a disproportionate effect on access to elections and the purported purpose of the measure.

I will add, and I know this is not the subject of this session, that I think the removal of the independence of the Electoral Commission is potentially legally problematic too. Arguably there are breaches of international law but I think it is very clear that there are breaches of the standards of constitutional propriety and perceived fair play that are part of the electoral game as a result of our own unwritten constitutional standards.

Q24 **Mr Jones:** As you know, the Joint Committee on Human Rights recently reported on this and, like you, they did not come to any firm conclusion as to whether or not it would be in breach of the ECHR. They said that the Government should make clear how they plan to mitigate any discriminatory impact upon individual groups. What do you suggest could be done to amend it to put the issue of whether or not it was ECHR compliant beyond doubt?

**Helen Mountfield:** Professor James has given some suggestions. My view would be that this should be time limited in the first instance and there should be proper provision to analyse the demographic effect of the provisions: who is coming in to vote and then finding that they can't, and are they returning; and is there a differential effect on the rich, the poor, the northern, the southern, the black and the white? If there is, there really is a serious legal problem. We have a duty to advance equality of opportunity and participation in public life under the Equality Act 2010. I would suggest that some kind of monitoring provisions are built in with an opportunity for Parliament to reconsider. That is what happened in the





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Transparency of Lobbying Act in 2014, when the Hodgson report a year later reviewed the operation of the Act.

**Q25 Rachel Hopkins:** Peter, the Bill replaces the requirement to have tactile voting devices for voters with sight loss with the wider requirement to provide such equipment as is to enable or make it easier for disabled voters. Concern has been expressed that this new language does not require equipment to be provided to allow disabled people to vote independently. Can you elaborate a bit on what are the implications of this new requirement for electoral administrators? Do you think there is a risk that some disabled people will not be provided with the facilities to vote independently?

**Peter Stanyon:** The tactile voting device, the TVD, is prescribed currently in law. It does work but equally it has its limits. It is argued that it does not allow individuals to vote independently because there still needs to be the assistance of the staff in the station who are under secrecy provisions. We welcome that flexibility because one of the challenges presented by the current legislation is that it limits it to that one option and things have moved on. There are lots of things available and in the Accessibility of Elections Working Group that the Cabinet Office runs technology is moving on all the time. As a result of the court case that took place a couple of years, the judgment laid down was the advice given by Cabinet Office and the Electoral Commission to returning officers was to use the best forms possible in local circumstances. I think that is more helpful in is it using a smartphone, is it using some other form that is more suitable for that individual, whether that is someone with vision impairment or any other disability that will help them. The risk is that standards might drop and they would be different between different areas.

Although welcoming the flexibility that that brings in, I think there need to be slightly more requirements laid by the Electoral Commission for performance standards and the like to make absolutely certain that the best technology—the most appropriate technology solutions for whatever group of electors need assistance—is available and presented by returning officers to those individuals, depending on the needs in their individual areas. That goes back to one of the points that I think Angela mentioned about liaison between third-sector groups to make sure that there is an understanding of the pressures that need to be addressed in polling stations themselves.

We welcome it because the restriction is exactly that: it restricts it to one that has proven to be pretty good, but not perfect. Are there better ways? Lessening that restriction makes it slightly easier with the risk that comes alongside that.

**Q26 Rachel Hopkins:** Thank you. To clarify, you welcome the flexibility because, I agree, technology and everything has moved forward since the previous legislation, but are you saying there needs to be a little bit more clarity around enabling a range of electors, some of whom may be



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disabled, to vote independently? You would like to see more clarity on that within the flexibility you have been given?

**Peter Stanyon:** Absolutely. It comes down to through bodies such as the Accessibility of Elections Working Group and the third sector has better knowledge of the progress that is being made in certain areas. By restricting it you are not able to use that. It is using their advice and then through the Electoral Commission's guidance and I would suggest performance standards in many respects, requiring returning officers to take account of that in the delivery and provide as appropriate to their individual areas for the individual election. I hope that confirms our position.

**Angela Kitching:** I think we need to be extremely careful about removing the specific provision for the tactile voting device. I don't understand why it could not be a "both/and" situation. There are 1.7 million older people with sight loss who are expecting and understanding how they vote at the moment. The only reason the court case that challenged the access to elections for blind people was able to be brought was because of the specificity that currently exists within the law. We absolutely agree that it is a great idea to be looking at what additional devices or additional provision could be made to enable people with specific disabilities to vote independently, but there are real concerns about the staffing provision of removing a very specific tool that is currently there and the legal precision that there currently is about the understanding of that provision. As Mr Stanyon said, the risk is that it becomes patchy, you get different provision in different areas and that the law, frankly, allows for that in a way that prevents disabled people challenging it.

Q27 **John Stevenson:** I have a question to Helen Mountfield. We touched on it when you answered my colleague David Jones's questions about rights and so on. Should the Bill distinguish between emergency and non-urgent proxy votes to protect an individual's right?

**Helen Mountfield:** As long as the safeguards around proxy voting are strong enough, I don't see a particular reason to do that. In the light of an election petition that I was involved in for a number of years, I welcome the proposal in the Bill to limit the number of proxies that any one person can have. I think that is an important safeguard against abuse, but I don't immediately see a reason to distinguish between emergency and non-emergency proxies.

Q28 **John Stevenson:** If a family member had two domestic proxy votes and for whatever reason a third member of the family suddenly needed help, you don't think there needs to be an emergency procedure for that?

**Helen Mountfield:** I suppose there could be or you could slightly expand the number of proxy votes that one could have. It is a marginal situation, I suppose. You could have, but I think the most important thing is to have a reasonable limit on the number of proxy votes. It could be five or



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six before you start to create problems of abuse. The Bordesley Green example was hundreds of votes being harvested, so that is a very different situation.

**Q29 Mr Jones:** Dr Garland, the Electoral Reform Society has welcomed the removal of the 15-year limit on overseas resident voters but it has raised concerns about “allowing foreign political donations to flood our system”. Could you please expand on those concerns?

**Dr Garland:** Extension of the franchise is often welcome and we would have liked to see consideration given to extending it to 16 and 17 year-olds as well. But in the case of removing limits on overseas voting, we have to consider that that also extends to the amount someone can donate to a political party and you need to be registered in the UK to donate. There is a link there with how parties are funded. The Government have stated in this Bill an intention to stop foreign intervention in elections and that surely must include political foreign donations. The Committee on Standards in Public Life has drafted some excellent recommendations in this area. I am sure we will get on to talking about them later. If we are serious about dealing with political interference, where money comes from in our system has to be a consideration and we do not see those measures in here. That is just to flag part of the picture in extending the overseas vote.

**Q30 Mr Jones:** I find it hard to see how extending the vote to persons who were previously resident in the UK and who are currently resident overseas could have the sort of consequence that you have just outlined because they would be registered UK voters entitled to vote in UK elections. Why would that risk exist in those circumstances?

**Dr Garland:** It is just to flag that that means that there is a different group of people able to donate money into the UK system.

**Q31 Mr Jones:** But they would be registered UK voters. They would be legitimately casting their vote in UK elections. That surely would not have any effect on donations because if they are able to vote, they are surely able to support individual political parties.

**Dr Garland:** I am not saying that it is necessarily wrong or illegitimate. I am saying it is part of the picture of political finance and I do not see that the bigger picture of where money is coming from in our politics is addressed in this Bill.

**Q32 Mr Jones:** Ms Mountfield, if electoral offences, for example for donations or whatever, are carried out by overseas voters, what power do the UK authorities have to detect infringements and then prosecute them?

**Helen Mountfield:** I am not an expert on extradition and transnational criminal law, but I would have thought it would be rather little. It would be difficult to investigate and difficult to police and I think that reinforces the point that Dr Garland was making a moment ago that we do not have, in the Bill, clear provisions for investigating or pursuing where the



money is coming from through the electoral system. Then Electoral Commission's powers of investigation are limited. It does not help. I agree that if somebody can vote, they can donate and we can decide whether or not there is a limitation.

**Q33 Mr Jones:** Would it be fair to say that the difficulty in prosecution is a problem that exists now for those overseas voters who are entitled to vote in UK elections?

**Helen Mountfield:** Yes, and indeed part of the problem is that pursuing the source of money as opposed to the recipient of it is difficult anyway, which is why many people, including the Committee on Standards in Public Life, have called for closer safeguards on being able to identify where money comes from in our electoral system. It is not specifically a problem about overseas voters, in my view.

**Mr Jones:** Thank you very much.

**Q34 Jackie Doyle-Price:** Questions now for Peter Stanyon on the subject of overseas voters still.

If the removal of the 15-year limit led to a significant increase in overseas voters, how would that impact electoral administrators?

**Peter Stanyon:** One of the things that we welcome in the Bill is the extension for three-years renewal, which will take some of the pressures off the renewals process. Inevitably overseas electors' registration is driven by the calling of a general election or a bye-election in a particular constituency. There will always be those pinch points running towards an election. The removal of the 15-year rule will mean potentially more applications coming into the process and more resources needed to administer them. It currently takes disproportionately much longer to register overseas voters because of having to check if they have been on the register for the last 15 years. Even after the removal of the 15-year deadline, there is still a first check to check if applicants were on a register. Then it would be down to taking documentary proof, so a second step. Finally, the attestation route that has been proposed for those who cannot demonstrate registration of residence, those who do not have the evidence that they were there, but can confirm it through a third source.

The removal of the deadline has the potential to increase significantly the pressures in the run-up to significant electoral events because of the checking that needs to go on behind the scenes. It does raise the question of whether that is possible within the current electoral timetable. Is it the same for a UK elector having the same deadline as an overseas elector? Then it comes down to the situation where we can get individuals registered but the key point is then how we can ensure that they can cast their ballot in that particular poll because if people are not on the register 12 days before the poll, postal votes will not get to the individual and back in time. There are lots of questions, not just about the registration side but about how individuals can participate in an election. It comes



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down to resources and the additional pressures the potential for additional electors coming will create as a result of the 15 years going.

- Q35 **Jackie Doyle-Price:** Are there any particular changes, which perhaps are not on the face of the Bill, that you would like to see with respect to handling overseas voters? You conflate registration with participation, which is the crux of this. For some of us, there is a tension between having an electoral timetable that deals with those concerns but yet sustains the public's interest in it. In accommodating overseas voters, we do not want to be letting that tail wag the dog for an efficient system but I would welcome any practical suggestion as to how we could deal with that.

**Peter Stanyon:** There are number of possibly radical solutions, elements for the Committee and the Department to determine. Should the deadline for overseas electors be sooner, should individuals wish to vote by post, for the chance for the ballot paper to get to them and back? It has been suggested that an overseas elector, when making application, confirms the method by which they are going to vote. At the moment, we get applications that do not indicate whether the vote is to be in person, by proxy, or by post. Is it time to consider different ways of allowing overseas electors to cast their ballots? There are a couple of things in some of the questions that we have seen around whether it is time for electronic voting, or something different, to allow a group to participate. One of our big frustrations with the current system is that after every single general election, as I am sure you will see in your constituency mailbags, there are complaints that an individual is on the register but has not received their ballot paper in time to cast the ballot. That is frustrating because the timetables that we are currently working to do not, in some instances, permit us to get the ballot papers out in time. It comes down even to proxy voters, with the understanding, the education about the system, how an individual may appoint somebody in Cambridge but they live in Oxford, which means they would have to get to that polling station in Oxford to vote. There are lots of things around the edges as well as the practical things of looking at timetables and the implications for individuals as a result of the changes.

- Q36 **Jackie Doyle-Price:** Is the nub of this issue that we are just grafting new demands on to a system that is very old and pre-dates a lot of change that could accelerate things more quickly?

**Peter Stanyon:** I did interject earlier when the first question about the complexity of the electoral process was raised. I concur with the comments that were made by my colleagues. Yes, quite simply our current law is based on 1872 law and a lot of things have been grafted on top of it. We believe that the system should be reviewed for modern elections. Current proposals will add greater complexity and we must make sure that the greater complexity does not result in weaknesses elsewhere. So, yes, there is another element of complexity coming in.

**Jackie Doyle-Price:** Toby James?



**Professor James:** Briefly, and in support of Peter Stanyon's comments, with Alistair Clark at Newcastle University, we ran an evaluation of the administration of the EU Referendum. One of the things we consistently found was that overseas voters were experiencing just this problem, that the parliamentary timetable for a referendum was so short that there was not sufficient time for the ballot to be sent out, for instance to Australia, and be returned in time for a person to be able to cast their vote. Without some meaningful thought about the process and the ways in which this is going to work, extending the 15-year limit will impose particular challenges.

People often suggest electronic voting. I think there are many concerns about security but maybe, for this particular group, electronic voting could be considered in the long term. It would take a lot of planning and careful thinking-through to make such a system functionable. At the moment, electronic voting is under a lot of strain.

**Chair:** The final questions for this panel all come from David Mundell, who has been waiting patiently.

Q37 **David Mundell:** Helen Mountfield, could I ask you about the voting and candidacy rights of EU citizens?

As currently drafted, the Bill would create two different categories of EU citizen for local elections in England and Northern Ireland—EU citizens with retained rights or EU citizens. Can you explain the distinction between those two categories for the benefit of the Committee?

**Helen Mountfield:** The explanation given by the Government is that now that we are no longer members of the EU, there is no reason for EU citizens who do not have retained rights, who did not acquire the right to remain here, before the end of the transitional period, to be able to vote any more than any other nationals who live in local areas. However, there is an enormous level of complexity because Irish nationals, Maltese nationals, and some other EU nationals where we have reciprocal voting arrangements—I think Poland and a couple of other countries—will still retain rights to vote. It is very complex and does not achieve the objective of simplifying election law, which was one of the things that the independent expert bodies looking at the problems of election law have all called for. There is a rationale and it is a rationale around Brexit.

Q38 **David Mundell:** Do you think the approach that the Scottish Government and the Welsh Assembly have pursued, which is a residency-based approach, would have more simple and straightforward in the circumstance?

**Helen Mountfield:** That is probably a question for Peter Stanyon rather than me, but it would undoubtedly be easier. Yes. First you are going to have to ask which EU national you are. Then you are going to have to ask when did you arrive, what is the nature of your right, as opposed to your residence. We have just been talking about the complexity of establishing when overseas voters moved away and were they resident in a particular



electoral area at some point in the past. This is also an element of administrative complexity. Obviously there are overseas nationals who cannot vote in even local elections in our system and that seems to me to be a question of political judgment but there is a level of complexity here, which seems to be unfortunate.

**David Mundell:** I will go to Professor James before I come to you, Peter Stanyon, because I have another question for you as well.

**Professor James:** It is worth stressing that the franchise—who is entitled to participate in our elections across the United Kingdom—is the result of lots of historic agreements rather than a rationalised system. Certainly a system based on residency—meaning people who are affected by the outcome of that election, people who pay the taxes, people who receive public services—would be much clearer. There are two particular issues. One is that is going to be increasingly the case that for different types of elections, different voters will be eligible or ineligible. That will be complicated for administrators and especially confusing for the voters. From our surveys about what goes on in polling stations on election days, we have already seen examples of someone perhaps from an EU country trying to vote in a general election but getting confused about whether or not they are eligible, whether or not they should be on the register, because they could take part in local elections. Another thing is that if we move to a situation where reciprocal agreements with other countries are going to play a key role in who is entitled to vote, there is a potential problem because the Government of the day could undertake reciprocal arrangements with other countries to pick countries that may be more like to vote in a particular direction. We have to be very careful about how we define the franchise and residency is a much clearer and cleaner way of doing that.

Q39 **David Mundell:** Could I put the same question to you, Mr Stanyon and perhaps combine it with the question of do you anticipate that having these different eligibility categories will add extra burdens on those administering elections?

**Peter Stanyon:** Following up first on the point that has already been made, we do not have a view on whether residency is a more appropriate determinant than nationality. Scotland and Wales have that system and it works successfully. In some respects, it would be slightly easier at some levels. One thing to flag, which I think Toby James alluded to, is that there are different franchises for different polls. If the Bill as written goes through, there will be even greater complexity for colleagues in Scotland and Wales because of the fact that we will have residency for local government elections in those areas but not for the parliamentary elections, a double-tier system, effectively. You would have various things going on at different levels. The key point to all this is that the complexity comes about not so much with the different categories of identifier but from their application. The key points are making sure that administrators know which nationality is entitled to register to vote in the



UK, that there is plenty of time to be able to communicate with those individuals either to invite them to register and to understand the process or to remove them from the register.

There would be a big task at the beginning about notifying individuals of the fact that they have to be removed from a register because of non-reciprocal rights or whatever the case may be at that stage. It is essential that early information is given to allow for electoral management software systems to update, because everything is driven now through the software, polling station registrations and so on, and that communication points, particular to electors who have previously voted in a local election in England, for example, not now being entitled to because reciprocal arrangements have changed or they have not got settled status in time. A lot of that is about communication. The system itself is reasonably straightforward to manage as long as there is enough lead-in time to make sure system changes are in place and communication can be had with those directly affected by the changes.

**Q40 David Mundell:** Difficulties are not insurmountable. Certainly in Scotland we have significant differences to the franchise for the Scottish Parliament elections—not least 16 and 17 year-olds able to vote and EU citizens, as was—compared with the UK election franchise and it does not seem to have caused any serious difficulties in my experience.

**Peter Stanyon:** A lot of developments have taken place. The electoral registers you will see in polling station will strike through those who cannot vote whereas previously it was very much a look at the indicator to determine whether someone could vote or not. It is a much easier factual record for the staff on duty in polling stations, so yes, difficulties are not insurmountable in that respect.

I will add one thing. Candidacy is also important. We have people being elected for a four-year term of office. If there is a change to a settled status, or whatever the case may be for reciprocal arrangements, there needs to be a very clear decision if a nation is taken on or removed from that particular list, about whether those who have been elected when a nationality was eligible to vote are able to serve their full time of office or is their term truncated. There needs to be a very clear decision made early in the process that is not just to do with the electorate itself.

**Chair:** I thank members of our first panel for their insight and sharing their experience and expertise. If there is anything further that you wish to draw our attention to, please write to the Committee following this session. For the meantime, however, I thank you all very much indeed for your virtual attendance this morning.

## Examination of witnesses

Witnesses: Louise Edwards, Lord Evans of Weardale, Professor Justin Fisher, Pete O'Doherty and Dr Sam Power.





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Q41 **Chair:** With the aid of modern technology, we can now see our second panel populating the screens in front of us here in the committee room. As before, I invite each member of the second panel to introduce themselves for the record but first, for this session of meeting, can I declare my current membership of the Speaker's Committee, which I know is a topic of questioning later on. I have that role by virtue of chairing this Committee.

Without further ado, I will begin by asking you to introduce yourselves, starting with Louise Edwards, please.

**Louise Edwards:** I am the Director of Regulation at the Electoral Commission.

**Lord Evans of Weardale:** I am the Chair of the Committee on Standards in Public Life. We recently published a report on electoral financial regulation.

**Professor Fisher:** I am Professor of Political Science for Brunel University London.

**Pete O'Doherty:** I am the Assistant Chief Constable at Thames Valley Police.

**Dr Power:** I am a lecturer in corruption analysis at the University of Sussex.

Q42 **Chair:** I will begin with a question to Louise Edwards. We mentioned earlier a lack of meaningful consultation on this Bill. From the perspective of the Electoral Commission, how was your organisation consulted and how did it feed into the development of this Bill?

**Louise Edwards:** The Bill touches on a number of issues that have been subject to consultation over many years. I am thinking about consultations such as on protecting debate and indeed the Pickles report, as well. As an organisation, we have had a chance to make our views on some of these issues known for some time.

When it comes more to the detailed drafting of this particular Bill, we have been talking to Cabinet Office officials for some time about what the detailed provisions might look like. One observation I offer is that it was very much the case that the policy intent behind those provisions was pretty much settled before the discussions and what we were talking about was the implementation and that is, of course, going to be a key role for the commission to play in the Bill when it does become law.

For a lot of provisions in the Bill, it will be very important to see the secondary legislation to properly understand how they are going to work and indeed in some cases, judge the principle in the first place. We are keen to see the secondary legislation or at least an outline of what it is going to look like and what time it is going to come in so that we can comment on it and feed into it directly.



Two last brief comments on consultation. The first is that some of the provisions in the Bill are quite technical and will have an impact on particular groups, such as for example, third-party campaigners or indeed registered political parties. Of course as the Bill goes through Parliament, we will continue to offer our data and our advice to parliamentarians. We are using our website to make sure that we are very open and transparent about what our views are on every provision.

Q43 **Chair:** Lord Evans, what input did the Committee on Standards in Public Life have in shaping this Bill?

**Lord Evans of Weardale:** It did not have a lot of input into the shaping of this Bill. We were informed of the direction of travel that the Government were taking. The review that we were undertaking on the regulation of electoral finance, by coincidence rather than by design, happened to be taking place in the same period but we were not a formal consultee on the Government's proposals.

Q44 **Chair:** Peter O'Doherty, are you aware of what consultation was done with the police, with you or others?

**Pete O'Doherty:** We had very good consultation on the development of the Bill, both between the Cabinet Office and the policy unit of the Home Office. One aspect of the Bill on which we felt there could have been more consultation was digital imprints.

Q45 **Chair:** Could you elaborate on that? We will come on to it later on but was there anything in particular?

**Pete O'Doherty:** The length of time that we were afforded to give our views and debate the aspect of the Bill on imprints that would impact policing.

Q46 **Chair:** Could I ask Lord Evans, given that you are a parliamentarian as well, for your view and indeed the view of the Committee that you chair, on the length of time allowed for parliamentary scrutiny and so on?

**Lord Evans of Weardale:** I do not think that as a committee, the CSPL has the remit to comment on parliamentary arrangements. We would very much support as a general principle the greater accountability you get from consultation and scrutiny. Given that this is a potentially controversial and certainly very significant Bill, it is likely to come out as better legislation if there is proper scrutiny of it and there is an opportunity for the Government to take on board other views.

**Chair:** Thank you.

Q47 **Rachel Hopkins:** I go back to Lord Evans. Various reviews and reports have called for urgent reform and consolidation of electoral law. Is lack of consolidation of outdated, complex electoral law a missed opportunity or do Government have the balance right in the measures they are prioritising?



**Lord Evans of Weardale:** We do welcome a number of the measures that the Government have put forward in this Bill although we do also think that there is a missed opportunity. It is very clear from the extensive evidence that we took that it is difficult to navigate through the complexity of electoral law and therefore I think consolidation would be highly desirable. We suggested that the Law Commission should be invited to do this and therefore I think there is a missed opportunity here to make it easier for people to engage in the democratic process.

Q48 **Rachel Hopkins:** Are there any comments from the other witnesses? No? Okay. A final question to you, Lord Evans. Are there any proposals or measures that should be included in the Bill as a priority and why?

**Lord Evans of Weardale:** We made a number of recommendations in respect of the funding and finance arrangements. We think those should be included in the Bill. We laid those out in the report that we made recently. They cover issues such as company donations, where at the moment there are quite loose rules around company donations which do not stop foreign companies donating money if they are determined to do so. We think there are gaps in regard, for instance, to donations from unincorporated associations, which would help people if they so chose to get round the rules. We recommended that donations above £500 should go through the banking system so that there is an audit trail and some degree of check. There are a number of recommendations, particularly in regard to the financing of elections that we think should be incorporated in this Bill and this is a good opportunity to do so.

Q49 **Jackie Doyle-Price:** Some questions now on the Electoral Commission. Could I start by addressing this question to you, Lord Evans, regarding the evidence from the Committee, which said that a strong and independent Electoral Commission at arm's length from the Government is a critical component of our democracy. On the basis of that very clear statement of belief, what implications do you think the Government's proposed strategy and policy statement have for the legal and de facto independence of the commission?

**Lord Evans of Weardale:** We were very struck by the need for public confidence in the independence of the Electoral Commission and I do not think that we should assume that our parliamentary and democratic system will be able to thrive unless there is such an independent body and therefore, in our view, it needs to be supported and it needs to be demonstrated that this is entirely independent. We therefore have serious misgivings about the Government laying down guidance for the strategy and policy of the Electoral Commission. An analogy is drawn with other regulatory policy statements that the Government put down for other regulators but we think that is a completely false analogy. This is not a regulator that is there for implementing Government policy. This is an Electoral Commission that needs to be independent of Government and this is not a party-political point; this is a point to do with the overall integrity of our electoral system. We are therefore extremely concerned about this proposal, particularly since at present the Speaker's



Committee has a majority of the governing party on it and some of the proposals in this legislation would increase that one-party majority of the Speaker's Committee. This is a bit like giving a toddler a gun. It may not immediately lead to disaster but it is an extremely dangerous thing to do and we do not think that the current proposals go far enough in protecting the independence of the Electoral Commission. We hope that in the process of the Bill going through Parliament, that could be strengthened. I understand there is a written ministerial statement likely to be presented to Parliament today and we hope that that goes further, but the safeguards for the independence of the Electoral Commission need to be on the face of the Bill.

**Q50 Jackie Doyle-Price:** Thank you. That was a very clear statement, and I could see the other witnesses nodding furiously in agreement. The analogy of a toddler with a gun is probably one that we will take away.

Could I ask Louise Edwards for her reflections on that, in particular, this angle about are we comparing apples and pears when we rely on the Government's statement that it is normal for a policy statement to give direction to other regulators?

**Louise Edwards:** First, the commission as a body, as a board, as an independent regulator, does not shy away from scrutiny. We very much welcome scrutiny and we are, of course, accountable to the UK Parliament through the Speaker's Committee but also to the Scottish and Welsh Parliaments. To the extent that any measure in this Bill increases the opportunity for scrutiny and for us to be held accountable, we completely understand the reason and we are very happy to do it.

There are two particular concerns, very related concerns, with this policy statement. The first thing is to look at the rather unique regulatory framework that we are talking about here. Unlike, for example, the situation where a regulator is regulating energy, utility companies, and so on, you have a situation here where the same people who decide the regulatory framework are also regulated by it and, quite crucially, the people who decide the framework are a very small subset of those who are regulated by it. There are 400 registered political parties. Only a very small number of them sit in the UK Parliament or indeed any of the UK's Parliaments and that is before we start to think about the party campaigners, candidates, and others who are brought with the regime.

The question here is one of confidence and there is an inevitability that players within the system are also those who design the system and that is, from our point of view, why it is so important to have an operationally and strategically independent regulator to give oversight to that system. That is how some of the confidence and some of the safeguards can come in, that the system will be fair and impartial to everyone who operates within it, whether or not they are in a position to be part of designing the system. That does also make a difference between this particular statement and statements that pertain to other regulators.



One of the other areas where there is a difference between this statement and the sorts of statements that we have uncovered in our research is that that this statement allows the Government to provide us with operational advice on the performance of our functions. That does go to a power that can give us operational guidance on how we work on a day-to-day basis. That could be, for example, guidance that tells us how we should be targeting our voter registration campaigns, or it could be guidance that tells us what factors to take into account before we decide to open an investigation or to impose a sanction. These are areas that go to the heart of confidence in the fairness of the system so at the very least I think there needs to be consideration around much stronger safeguards for our independence at strategic and operational levels.

We have heard from the Minister that she does value our independence and recognises the importance of it, and that of course is very welcome but meaning her absolutely no disrespect, Ministers change and Governments change and for us it is very important that if Parliament decides to bring in this statement, the safeguards are built into the legislation from the outset.

**Q51 Jackie Doyle-Price:** That is a nice way to end that because as well as Ministers changing, so do challenges within the political system, and they tend to change much more quickly than the legislative underpinning of the structures we have to deal with them. In that sense, is it not absolutely appropriate that Ministers should have the ability to give some degree of direction because we are constantly having to respond to changes in our political culture? Should this not be seen not as a challenge to the independence of the Electoral Commission, but more of a collaborative approach to maintaining the integrity of our electoral system?

**Louise Edwards:** It is absolutely right that the UK Government can set out what they think their strategic priorities for us should be. It is also absolutely right for either of the other two Governments in the UK to do the same, or indeed any of our stakeholders, including this Commission. What is fundamental is that we have an independent commission board that can look across all those interests, and the interests for example of the voter, the interests of the wider regulated community, the electoral community at its widest. Our board can then look at all those interests and develop a strategy that seeks to address them and to perform our role as best as we can. We have been quite clear in every corporate plan, in every business plan, pretty much since we were set up, that supporting the government agenda, making electoral law work as best as it can, has always been a very high priority for our commission board. There is absolutely an opportunity for that collaborative discussion and approach to take place. The difference with this statement, though, is that this statement puts a duty of the commission board that is driven by one party, one player within the system, and that we could ultimately be taken to court if there is an argument that we have not had due regard to



it. This would put this particular party in a position of having privileged control and influence over the strategic direction of the commission.

Q52 **Jackie Doyle-Price:** Dr Power, could I ask for your reflections on that?

**Dr Power:** It is hard to disagree with evidence from Louise and Lord Evans. It is just a shame that I cannot quite match Lord Evans' toddler-with-a-gun analogy, I am afraid.

My position is that the reforms are a retrograde step in the independence of the Electoral Commission and that we should think about the Electoral Commission as performing three functions. If we want a good Electoral Commission, we should want it to perform three functions incredibly well. It should be able to investigate; it should be able to educate; it should be able to sanction in a number of ways. To do these things, it needs two elements. It needs adequate resourcing but, most importantly, it needs independence. Therefore, retaining the independence of the Electoral Commission, the operational independence, should be the guiding principle that underpins any reforms in this aspect.

To return to Lord Evans' toddler-with-a-gun analogy, when we talk about democratic backsliding, we are not saying is that this is happening right now, or right now in the United Kingdom. What we are saying is that these things are more likely to happen if we weaken the supporting institutions of our democracy. Professor Jones, in the earlier session, mentioned for example the riots on Capitol Hill in January. They ultimately failed because of strong supporting institutions; because of strong supporting democratic institutions. If we impinge on these strong institutions, it is a dangerous precedent to set and we are playing with fire, to some extent. Therefore it is most important to underpin any of these changes and think about these reforms as do they impinge on the independence of the Electoral Commission. If the answer to that question is yes, they should be seriously questioned.

**Jackie Doyle-Price:** Professor Fisher, you had your hand up.

**Professor Fisher:** Yes. I concur with all the points that have been made but also draw your attention to a couple more.

First, in addition to the Speaker's Committee, there are party-nominated commissioners to give further links between Parliament and the commission. Secondly, and I think this is an answer or a solution to a problem that does not exist. If we look at the responses of those whom the Electoral Commission guides and indeed regulates at the time of elections, the view of the commission is overwhelmingly positive and has been repeatedly positive over many, many elections. We have surveyed election agents at every election since 2005 and we have seen that confidence in the commission has grown over this period and that it is seen as a vital cog in the machinery of ensuring that elections work effectively. It seems to me that if there is a desire to have some input from the parties, it already exists and has existed since the 2009 Act. In



addition, there is no particular problem with those that the commission regulates.

- Q53 **Jackie Doyle-Price:** Finally, I will come back to Lord Evans. In answer to my question, Louise Edwards—and I think it was also part of your own comments—spoke about the policy statement perhaps giving undue weight to one particular actor that is regulated in this system. Are we overstating this, because essentially Ministers acting as agents of the Government are filling a very different role than as representatives of their political parties. Fundamentally, our system does separate the Executive from the political nature of this. Are we in danger of perhaps overstating the issue surrounding this policy statement?

**Lord Evans of Weardale:** I don't think we are. I am not of the view that this will immediately lead to the end of democracy. All I am saying is that we should not be implementing a system that can be, or could be, abused in future. Although I accept that the role of a Minister as part of the Executive is to some extent separate from their specific party role, nevertheless, Ministers are politically committed and acting on behalf of their parties and that is as it should be. Therefore, there needs to be a system that ensures that there is cross-party approval of these arrangements. At the moment, we have a Speaker's Committee, which has a majority from one party and that seems to me to be a dangerous precedent. This is not a party-political point because it would apply whichever party was in power. The electoral process, as the referee of the political selection in our democracy needs to be independent and needs to be seen to be independent, and we should not be putting down a system that is potentially open to abuse in future circumstances.

- Q54 **Ronnie Cowan:** In light of some of the answers we have had, there should be some fairly short answers to this question. I am particularly looking to Lord Evans, Dr Power and Professor Fisher. Chloe Smith, Minister of State for the Cabinet Office has noted that some across the House have lost confidence in the work of the commission and argues that the Bill will improve the Electoral Commission's accountability arrangements through the introduction of Government's Strategy and Policy Statement and increase political confidence in the Electoral Commission and that it is a necessary and proportionate measure.

**Lord Evans of Weardale:** I think my previous evidence suggests that I do not think that it is a necessary and proportionate measure. There are clearly those who have concerns about some of the ways in which the Electoral Commission has performed its duties in recent years and we heard very clearly from some individuals who felt that they had suffered injustice. We made recommendations to try to time-limit, for instance, Electoral Commission investigations. We do not, as a matter of conclusion, believe that the Electoral Commission should have the power, should be using the power, to prosecute, but nevertheless, we did not find that there was an overwhelming lack of confidence in the Electoral Commission and, even if there were, I do not think that the current



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proposal is necessarily the fairest way of ensuring cross-party and public support for the independence of the Electoral Commission in future.

**Dr Power:** I will be brief because I think we have already covered it in a relative amount of detail.

Justin Fisher's report about his research on the confidence in the Electoral Commission of electoral agents and others involved in elections is a pretty key point to make here, that the Electoral Commission does enjoy confidence in a lot of areas and indeed in many of areas of people that it regulates and educates.

I suspect that the role that the Electoral Commission plays means that it will at various points face people who are pretty annoyed with a decision that it has made. We often use the analogy, and it has been used a number of times both in this session and in previous sessions, that the Electoral Commission is the referee and 50% of the fans at a football game are going to be annoyed with decision that the referee makes 50% of the time because it necessarily goes against their team. We might expect that the Electoral Commission comes under fire, and indeed we do see that the Electoral Commission comes under fire, from all sides. I think a good barometer here is the confidence in the Electoral Commission of others and as Professor Fisher's research shows, the Electoral Commission does hold confidence in those areas, which is very important.

**Professor Fisher:** Many in the House may express concerns but that does not mean to say that they are correct in doing so. As Sam Power says, it is one thing to be concerned; it is another thing to be at the sharp end of regulation, particularly if one is a volunteer, and most of our electoral agents are volunteers and see great merit in the work that the commission does.

Q55 **Ronnie Cowan:** Is this Bill going to increase the public's confidence in the integrity of the elections and the system of political donations?

**Dr Power:** I doubt it, largely because in many respects the public may well not notice until there is a problem. One of the things that I think we are going to discuss later is the possibility or probability that the measures that are introduced in other aspects of the Bill are likely to lead to more confusion and potentially more cases ending up in court, which has greater potential to damage public confidence. I have not seen any work that suggests that the public has a view on the Electoral Commission and its work over the last 20 years.

**Ronnie Cowan:** Maybe there is a 20-year notice period. Ms Edwards, do you want to add to that?

**Louise Edwards:** We do public opinion research every year, looking at public opinion on a range of different matters, including ourselves, and have been pleased that for many years the word "independent" is very high up.





I would like to make the point that we are not complacent about our reputation. It is very nice to hear people say that we are respected. We also, as Dr Power says, acknowledge that as a regulator, we are not going to be universally loved all the time but we are an organisation that is committed to continuous learning to ensuring that whether we have done something well or done something that could have been done better, we are seeking to learn from it. That is why where there are parliamentarians or others who express concerns about us, we proactively reach out to try to understand those concerns and address them and that is something that we will continue to do.

**Q56** **Ronnie Cowan:** To five of you—I will spare the assistant chief constable the embarrassment of answering this question if he does not feel fit to—do you consider the Government’s proposed measures will increase parliamentary accountability as the Government maintain? Yes, or no? Who wants to go first? Who is brave?

**Lord Evans of Weardale:** I will not give a yes/no answer. The arrangements need to have cross-party support and that is where I think there is a risk in the current model as proposed

**Louise Edwards:** I am afraid I am not going to say yes or no either. I think we need the accountability to Parliament. We need to be scrutinised by the Speaker’s Committee and we are very determined that we will continue to be accountable to this Parliament and to the UK’s other Parliaments. To the extent that any of the provisions in the Bill improve that accountability or are considered to do so, we think that is a very good thing. We have some concerns about for example the statement, whether that really is about scrutiny and accountability or whether it is an opportunity to perhaps damage trust and confidence in the system.

**Professor Fisher:** I don’t think it will; no. I have nothing to add to what Lord Evans and Louise Edwards have said.

**Dr Power:** I have little to add beyond saying that while accountability is important, I think the main word here, as I suggested in my initial evidence, is independence and the proposed measures certainly do not increase that. That is the main thing to consider.

**Q57** **John Stevenson:** Lord Evans, you were quite forthright in your views about the composition of the Speaker’s Committee in the proposals. I am curious about what would be your perfect composition?

**Lord Evans of Weardale:** What you are trying to achieve here is ensuring that to maintain cross-party support for the work of the Electoral Commission, no single party has a dominant or majority position. That either means that you have to structure it in a way that the parties are balanced or alternatively, and this is something that I think is worth considering, you could go for some lay membership, for instance, to ensure that no single party has a majority. Other ethics-related Committees of the House do have lay membership and I think that does



not undermine parliamentary democracy or sovereignty but it does ensure a range of views, which I think has worked well in other Committees. I think it is at least worth considering that for the Speaker's Committee, although that is not something that we as a Committee on Standards in Public Life have been advocating or looked at.

**Q58 John Stevenson:** Dr Power, do you have any views on a perfect composition?

**Dr Power:** My views are very similar to Lord Evans'. In my written evidence to the Committee, I suggested, and Dr Alistair Clark of the University of Newcastle, has also suggested this, that having lay members, between three and five, makes good sense, and indeed there is precedence in other sorts of ethics-related bodies, as long as those lay members might outlay any political party holding a majority or even polarity on the Speaker's Committee. That seems to make a lot of sense to me.

**Q59 Mr Jones:** Ms Edwards, the Bill precludes the commission from developing prosecution capabilities in Wales, England and Northern Ireland. Why was the commission seeking to develop those prosecution functions? Do you think that it should retain its power to prosecute?

**Louise Edwards:** The Political Parties, Elections and Referendums Act has within it around 100 criminal offences. Situations, for example, where a party does not do something without reasonable excuse; that could be an offence. Or where a party does something recklessly, or deliberately, that could be an offence. There are around 100 of them and they are all criminal offences, so they are all offences that could be investigated by us or by the police and could be prosecuted and brought before a court.

Back in 2009, Parliament decided to layer on top of that a civil sanctions regime that covered a proportion of those offences. I am not sure of the exact proportion but let's say about 50% or so. For the civil sanctions regime, Parliament was looking at those offences that did not involve some sort of element of deliberate, reckless intent. Where there was evidence of deliberate, reckless intent, it was still a matter that you would ask the police to consider investigating and potentially a prosecution would be brought. Over the 10 years since then, and I make no sort of judgment or observation here, we have been a specialist regulator with specialist teams set up to run civil investigations and that is where we have exclusively put our focus. The police, however, have a very wide remit and like any organisation have limited resources and it is simply a fact that no prosecutions have been brought under PPERA. The first one that we were aware of was about three weeks ago and was brought as part of a larger case. A few years ago, the commission board looked at that situation and was concerned about confidence in the enforcement of the regime as a whole. So the board asked that we consider building up a prosecution capability that would effectively test out whether or not us bringing prosecutions in certain cases would have a positive impact on compliance with the law. In practice, the civil and



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criminal investigation regimes are different. There are different policies, different infrastructures, different procedures, and obviously one goes to court in the end. You cannot decide to have a prosecution capability one day and suddenly do it the next. You have to have a programme of work to build up the capability and that is what we were starting to do.

The sorts of cases that we might have tested out, and it is very much dependent on whether or not they had actually occurred over the time, would have been things that were deliberate, that were serious, but were relatively straightforward. For example, one area might be a situation where an organisation deliberately fails to comply with a statutory request for evidence, which would also go to the heart of concerns that have been raised sometimes about our investigations taking a long time. So, we were part way through developing that programme of work and indeed we were ready to consult on a prosecution policy statement, when there was some media reporting about it and became clear that there was not full stakeholder consensus that this was a route that we should take, but that is what we were planning to do. It was to build that capability, test it out if any appropriate cases came up over a reasonable period of time, and then take a view about whether not to build it into our enforcement toolkit going forward. It would only ever have been a small element of that toolkit because we are fundamentally a civil regulator and that is where our primary enforcement activity is based.

To come on the second part of your question, us deciding to develop this prosecutions capability has only ever been about ensuring that the regime is enforced across it all and that there is confidence that all offences are being looked at. It has never been about us particularly wanting to put people in court. It has been about the system and whether or not we can ensure that it is enforced correctly. If Parliament decides that it is not right for the commission to play that role, the question then becomes how do you make sure that role is played and that may be, for example, looking at the capacity within the police to pick up some of these offences. Or it may well be some combination of options. I am very much alert to the recommendations that Lord Evans's committee made around decriminalising some of the offences in the regime and there could be well be something interesting to explore there about whether you decriminalise certain of the offences. We are the civil regulator who would work with those decriminalised offences and then there is a smaller subset of the deliberate, reckless, intentional matters for which perhaps you then look at the capacity within the police to pick up. There are other options, if our building a prosecution capability is not the preferred option, but it all has to be around ensuring that the regime is properly enforced and that there is confidence that that is happening.

**Q60 John Stevenson:** Do I infer from that, that you do not think that the commission should retain its power to prosecute but that you feel that there should be a sufficient capacity in some other institution to do so?



**Louise Edwards:** We think that if we are not going to be in a position to bring prosecutions because the power is taken away from us, there needs to be an alternative route to ensure proper enforcement of the regime. It remains the position of the commission board that if we do have that power and we can build stakeholder consensus around it, we consider that to be an appropriate thing to test out, but those are two very important conditions.

Q61 **Tom Randall:** Can I come to Mr O'Doherty? How are the proposed changes likely to affect the police and also the successful prosecution of electoral offences under the Political Parties, Elections and Referendums Act and the Representation of the People Act?

**Pete O'Doherty:** In the main, the proposed changes in the Bill we think will better help the police to better detect, better deter and better prevent offences. They could be offences under the Political Parties, Elections and Referendums Act or the Representation of the People Act 1983, which is the main legislation using policing. We think the recommendations in the Bill will positively influence the ability of the police to investigate alleged criminal offences and bring prosecutions to bear.

In setting out that context, it is important to explain why. We can reflect on that in 2019 there were 595 cases of alleged electoral fraud investigated by the police and of those in 64% there were no further actions, with only four cases leading to a conviction. Most of these offences related to campaigning and then voting, nomination, registration and administration. The low number of prosecutions relates to a number of reasons, including a lack of independent and third-party evidence substantiating the claims being made, proving the threshold of dishonesty being met, which is always difficult to achieve in these types of offences, and, of course, proving that beyond all reasonable doubt in a court of law, or indeed when the CPS does not think it is in the public interest to proceed.

Considering what the aspects of the Bill we think positively influence police work, we think most specifically the recommendations in the Bill relating to identification and most notably the use of photo ID at polling stations, will help reduce impersonation offences but the recommended approach to the voter card needs to prevent opportunities for accessing fake or counterfeit the cards or obtaining them fraudulently.

We recognise that nearly one quarter of recorded offences relate to campaigning and voting. Within voting, some of the offences relate to impersonation, so we think voter cards will go some way to prevent that but we also recognise all the points made before about engaging Article 3 and Article 14 of the ECHR and ensuring acceptability for all. We know that approximately 3.5 million people in this country do not have access to photo ID cards.



Secondly, the recommendations in the Bill relating to postal votes, and most notably the proposal to ban political campaigners, we think are good. We only receive a small number of those complaints but when we do get those complaints, the investigations are resource intensive and invariably do not lead to successful prosecutions.

Last, the recommendations in the Bill relating to undue influence: we know the language in the legislation is dated and we have long supported clarity in this area so that it covers physical, psychological, economic and emotional influence and therefore enables any investigation to take a much wider look at alleged wrongdoing. The additional sanction in this area of a five-year disqualification period we think is suitable to deter that behaviour.

In summary, from a policing point of view, we think this Bill will help prevent and deter potential offending but we do have some concerns around balancing legislative reform, which we do not think the Bill is going to achieve.

**Q62 Tom Randall:** Do you think that another factor might be police understanding of electoral law? As we have explored this morning, electoral law is complex, and I appreciate that it is very different from your usual bread and butter work. I have heard instances, for example, of where when a policeman has been investigating an allegation, the campaigners have had to explain electoral law to the police officer because of that lack of understanding. Do you think police forces are geared up to be looking at this?

**Pete O'Doherty:** I certainly think that that would have been a true statement some years ago. In recent years, the national policing portfolio, working very closely through the commission and the Cabinet Office and the Association of Electoral Administrators, has developed both capacity and capability in this area. For example, we have in every police force in the country a specialist electoral fraud and malpractice SPOC—or single point of contact—who is able to advise investigators and front-line policing on this law and legislation and in fact how to bring to bear a successful prosecution. So albeit not our main area of expertise, we have definitely improved our capability in this area.

In actual fact, the main reason for the low number of convictions at court is not about police capability and more about the complexity of navigating the legislation and making a case that proves clear dishonesty beyond all reasonable doubt that will lead to a successful conclusion at court.

**Q63 Tom Randall:** Do you think there might be scope for exploring, for example, particularly for a complex matter, taking it out of the hands of the county force and putting it in the hands of a specialist unit within a national organisation?

**Pete O'Doherty:** I think there are benefits in having a police force that effectively leads the policing response in this area. You only have to look



at economic crime where the City of London Police is the national lead force on fraud, which means it consolidates reporting to one hub called Action Fraud. It has a specialist academy helping to build capacity for policing and has specialist investigators. It is a balance of, yes, a lead force could bring value. It would co-ordinate the policing response and it would make our response more effective, but equally I think it is a capability that every police force should have because, as we know, alleged offences take place all over the country.

Q64 **Tom Randall:** That doesn't happen at the moment?

**Pete O'Doherty:** Of course we have the national policing lead portfolio, which leads on the strategic response to electoral fraud for policing and the Met Police is normally the first point of contact for the commission, where offences spill into a criminal threshold. But at the moment, there is no real lead force established to co-ordinate the national response.

Q65 **Mr Jones:** Lord Evans, as I think you have already mentioned, the Committee on Standards in Public Life did not recommend that the Electoral Commission should develop a prosecutions capability, but advocated enhancing the civil sanctions regime. Do you believe that the balance between criminal and civil sanctions are adequately reflected in the Bill? Is it possible to consider one without the other?

**Lord Evans of Weardale:** I think you need to think of it as a whole because those people who are involved in the process themselves are having to navigate the system at the same time. That is one of the complexities that we heard a lot about in the evidence that we took. Therefore, there are a number of infringements, which currently are criminal offences within the legislation, for instance, late return of your spending report and so on. That felt to us to be more of an appropriate thing to be handled by a regulator rather than by a criminal prosecution. That would also tend to ease the pressure or the suggestion that the Electoral Commission needed to have its own prosecution capability.

We think that there is an opportunity here to look at the very many offences in PPERA and decide which of those would be better handled as civil infringements and treated by the regulator as such. I think there is a rebalancing that could be done that would probably make it easier to enforce, would make it realistic for the police, who have a difficult job if they are having to undertake those sort of investigations, and probably increase public confidence.

Q66 **Mr Jones:** Do you believe that that rebalancing should be reflected in the Bill?

**Lord Evans of Weardale:** I think it is a good opportunity to do so. It is unlikely that the Government will come forward with another elections-related Bill for a considerable period, so now is the opportunity that presents itself.

**Mr Jones:** Ms Edwards, I think you wanted to say something.



**Louise Edwards:** Thank you. Very briefly, as I mentioned earlier, I think there is a real merit in exploring this option of decriminalisation of certain of the offences in the Act. As the Committee on Standards in Public Life did though, I think you have to look at it as a package of measures and not as an isolated thing in itself. That includes, for example, looking at whether the current level of sanction is sufficient to deter wrongdoing when it is an administrative matter rather than a potential in theory prosecution. We think it is the package that you need to look at on the civil and indeed the criminal side to make sure that you are still ensuring comprehensive confidence in enforcement of the regime overall.

**Pete O'Doherty:** We know the commission has powers to investigate and sanction offences and contraventions and of course has an enforcement policy to help ensure that rules on party and election finance are complied with. Of course, meanwhile the police work mostly within the RPA investigated individuals for suspected criminal wrongdoings, which as I have said before may end up in a criminal prosecution with a criminal record. Having this dual civil and criminal approach in protecting the integrity of elections feels right and proper. For example, we know that criminal prosecutions are low due to that burden of proof I alluded to before, but I think there are three issues.

First of all, the current state of legislation has created a two-tier system with parties and non-parties being investigated and regulated by the commission with civil penalties imposed, while of course candidates and individuals by the police, who will end up with much more severe sentences and even criminal records. Also the relationship between the police and the commission is very strong, and having organisations that apply two very different pieces of legislation is not ideal. For example, it can cause issues in deciding what should be classed as party and what should be classed as candidate expenses, to give you an example.

Lastly, there are no legislative arrangements for sharing information, so we have to rely on the Data Protection Act, which is always open to subjective interpretation or, if necessary and the situation requires it, warrants. In conclusion, from a policing point of view, I definitely think there is an opportunity for the Bill to better address this imbalance through legislative reform and we should not consider one regime without the other.

Q67 **Jackie Doyle-Price:** Lord Evans, your committee reviewed the electoral finance regulation and made some very practical suggestions, I might add, as well as more fundamental ones. Given the Government's stated aim of making UK elections more secure, more modern, inclusive and transparent, which of your recommendations could you reasonably expect the Government to bring forward as part of this Bill?

**Lord Evans of Weardale:** As you would expect, as the chair of the committee, I would like all my recommendations to be included in the Bill.



**Jackie Doyle-Price:** Yes, quite.

**Lord Evans of Weardale:** Nevertheless, particularly on transparency, this is a very practical thing. At the moment the spending returns from individual constituencies have to be returned to the local council, to the officer responsible for that, who then has to deposit them at the local town hall. That means it is very difficult to get an overview of spending across the country, because you would need to go around to every town hall in turn and have a look. It would be much more sensible to have an online method of making your returns and then to have those visible to anybody who wants to have a look, so if you are a journalist investigating or if you are a member of the public who is interested you can find out, and that would greatly increase transparency.

The current system is designed for a predigital world and there is no good reason why we should not update it to a modern world. It would be quicker and more efficient and I think would get support from many of the returning officers as well, who do not quite understand why they are having to do this weird thing. There are some very practical sensible things that could be done there.

There are some issues to do with ensuring that it is only permissible donations that are reaching the electoral process. We have recommended that, for instance, companies should only be able to make donations out of profits earned in this country, so that if you are not a proper British company earning money here, but are created for other purposes, you would find it harder to donate. I think that is practical and straightforward and that should be implemented. There is an issue around unincorporated associations because it is very difficult to understand where their money comes from, but it can be then passed into the electoral system, so better rules that say unincorporated associations have to demonstrate that they are getting permissible donations. I would just highlight those three things as practical, sensible measures that would safeguard our system and make it more transparent to the public.

Q68 **Jackie Doyle-Price:** Thank you. We keep coming back to this point that we are just grafting new requirements on to what are very historic legislative underpinnings. Do you think it is a reticence about overhauling these things that is perhaps more endemic in the machinery of government in Whitehall than it is in political parties?

**Lord Evans of Weardale:** It is difficult for me to say why it is. Obviously it is quite a big process if you are going to bring together the various bodies of law and practice, so that would be complicated, but it needs to be done at some point because it is likely that the bits of the system that look old fashioned are going to get more old fashioned, so at some time we are going to have to grasp the nettle. I would suggest that this would be an opportunity to do that.





I don't have any reason to think that there is some sinister kind of conspiracy to maintain old legislation. I suspect it is just sort of inertia in the system, quite a lot of it, but we need to recognise that the threats to the system change with opportunity and technology. We therefore need to protect the system against emerging threats. The expectations of transparency have increased since the 19th century and our legislation and our arrangements should also reflect that increased public demand.

**Q69 Jackie Doyle-Price:** Thank you, that is extremely helpful. Justin Fisher, do you think the proposed changes to notional expenditure should be welcomed and will they provide clarity and certainty for candidates and agents?

**Professor Fisher:** The area of notional expenditure is an extraordinarily difficult area to regulate and it is one that has exercised parties and candidates since before PPERA was introduced. On balance, I think the measures outlined in the Bill are sensible because they reflect the real state of affairs and don't create an artificial barrier between the national party and the candidates of that party, so I am positive about that. In previous evidence to this Committee I outlined a number of options where reform could be considered and came to the conclusion that the current state of affairs was probably the best available option, given that we have the system that we do.

However, I have some concerns in respect of some of the wording in the Bill, particularly around the notion of something being encouraged by the candidate or the candidate's electoral agent, because it seems to me that there is a risk there that there is no proper paper trail and it could lead to blame being apportioned incorrectly, therefore creating the kinds of problems that we saw certainly in the 1990s but also around the 2015 election. I welcome the clarity in the Bill on this, but I think it is very important that there is a clear paper trail. Just as there is a clear responsible person of the agent and the candidate, it needs to be crystal clear who the responsible person in the national party is in respect of authorising this expenditure.

I agree with the principles, but it is important to de-risk them so that it doesn't become a question of blame being passed either from the candidate to the national party or within the national party to different officials.

**Jackie Doyle-Price:** Thank you. Dr Power?

**Dr Power:** Yes, precisely around those questions, the language needs to be sorted, but generally I think this reform should be, in the round, welcomed. That relates to a lot of evidence that we have just heard, that electoral law is incredibly complex, it is fragmented, all of these things, which means that genuinely it is quite hard to understand and there are genuine accidental loopholes that get created.



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I always think of this as being a rule of thumb: anything that moves towards encouraging democratic activity rather than discouraging it and simplifying the electoral law, rather than making it more complex—and there are elements of this Bill than do the inverse, but in this instance it does this—should be welcomed.

**Jackie Doyle-Price:** Thank you. Louise Edwards, you wanted to come in.

**Louise Edwards:** Thank you, yes. I want to emphasise that this is one of the areas where we think it is very important that the Government go and speak to the practitioners who will be using this legislation going forward to make sure that it does have that clarity of purpose, that it can be used in the heat of the campaign, not just by the larger parties who might have access to more infrastructure and support to take these decisions but by the smaller parties as well, who may just be one volunteer trying to navigate very complicated law.

The last point I very quickly wanted to make was the provisions include the ability of the commission to draft a code of practice on notional spending. We would take an approach there of seeking to use examples and scenarios to help those who are going to use these laws to understand them. Of course codes can't go further than the law itself, so we need to have good sound law here that practitioners think works for them so that the codes that we draft can then support proper compliance going forward.

Q70 **Jackie Doyle-Price:** Thank you, that is very helpful. Dr Power, many of the changes in this Bill also relate to third-party campaigners and certainly the Committee was struck by some of the complications that they face with regard to this. Do you think that what we have here strikes the right balance between increasing transparency and accountability while not excluding participation?

**Dr Power:** I think there are elements of the third-party legislation that are to be welcomed and there are elements in which I have concerns, one of which is in the aforementioned issue of adding layers of complexity. It is in the creation of this lower tier of registration because it strikes me that you are effectively creating a two-tier layer of registration for certain third parties, which could cause great confusion among these third parties about what tier they fall into. The logic behind it, as I understand it, is that this was a recommendation by the House of Lords Democracy and Digital Technologies Committee, and it suggested a baseline level of transparency that many people would have to adhere to.

I suppose my question with regards to that is if this lower tier of £10,000 is to be welcomed and doesn't necessarily increase the administrative burden in any meaningful way, is it really that much, rather than create two tiers, to completely move the threshold to £10,000? As Louise said, these questions are often best answered by the practitioners themselves and I know that there are significant concerns about some of these issues with third-party campaigners and indeed trade unions.



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Broadly, some of the changes are to be welcomed, but in adding to the complexity of electoral law, this might be one of those areas in which that is happening, with very little return on the investment of adding to that complexity, so creating complexity rather than taking away from it. That is something that I would highlight: instead of creating two tiers, why not keep one tier and just move it all the way down?

**Jackie Doyle-Price:** Interesting. Professor Fisher, what is your view on that?

**Professor Fisher:** Like Dr Power, I think much of the Bill's points about third parties are to be welcomed, but there are two areas in particular where they seem logical at first sight but under greater examination seem to be problematic. The first of those is the banning on registering as both a political party and a third-party campaigner. This is a logical step if we are not to see campaign spending limits being abused, but it does seem to me to be something of a sledgehammer to crack a very small nut, given that there has only been one instance of a third party also registering as a political party. In the end, that organisation only recorded spending against the party political limit, so it is a very isolated incident. But my concern is that this would adversely affect campaigns who may stand candidates in isolated seats.

In my written evidence I have given an example where you might have a campaign, for example, against hospital closures, but wish to stand candidates in seats where there is a particular hospital at threat of closure, Kidderminster, for example. In that circumstance, you might find that the third party and the so-called political party were effectively having to campaign in an artificially separate manner, so I think great care needs to be taken there and to perhaps look at maybe limiting the number of candidates rather than outlawing it altogether.

The other area where I have particular concern is around co-ordinated spending between political parties and third parties. This is not concern about the principle itself but concern that the existing regulation patently does not work. I conducted analysis of the permitted participants following the 2016 referendum, where there is an analogy between political parties and third parties, so-called designated participants and permitted ones and what was very clear is that the existing rules are not fit for purpose. There was immense confusion among both experienced campaigners and less experienced ones and it resulted in people withdrawing from activity.

I go back to Dr Power's point: you want to avoid legislation that is restricting people's democratic rights. If we also look at the evidence that third parties gave to this Committee in the review of the Electoral Commission, they highlight similar problems with the legislation. My concern here is not with the principle behind this but the possibility that we are piling uncertainty on existing uncertainty. Given the regularity of elections, there is a real danger that these difficulties could be amplified.



To return to a question that was asked earlier about public confidence in elections, what has the real potential to damage confidence is if we have constant recourse to the courts and campaigners finding themselves on the end of investigations because of poorly drafted legislation, not because they are seeking to rig the election in any way.

I welcome the intention in the Bill, but certainly in two respects it needs thinking through a lot more and certainly on co-ordination. Unless there is a very thorough review of this, I think it would be safer at this stage to drop this section from the Bill altogether.

**Jackie Doyle-Price:** Thank you, that is very helpful.

Q71 **John Stevenson:** Can I start with Dr Power, please? I think everybody accepts that digital imprints are positive and are generally across the board accepted and supported, but question marks will obviously remain about how these measures will be implemented and enforced. I am interested in your views on how you have a distinction between paid and unpaid content, how that can be clear, and secondly, how does the Government future proof changes in technology?

**Dr Power:** Yes, I think it is very important, and I submitted evidence to the Cabinet Office consultation on this. It is incredibly important to have a distinction between paid and unpaid material and that that is regulated in some way. This is an area in which the Bill has the balance about right. You don't want to have unpaid material completely regulated and leaving it to certain actors such as registered parties, registered third parties and the like makes a lot of sense, because this is an area where if you don't get the balance right, it can perform that function that Professor Fisher and I have talked about of dampening democratic debate in many ways.

But organic and unpaid material is a very important part of the online political landscape. Online campaigning is incredibly cheap in many ways because you can rely on this unpaid material and organic material, so it does need to be regulated in some way, especially as it relates to these registered parties, so broadly I think that is right.

On future proofing, what is very important to keep in mind here—and I mentioned this in my written evidence—is that this is a new area. Although we have been debating and saying we need digital imprints for a long time now, regulating online activity is new and thinking about how to regulate a political activity online is a new concern. To future proof the legislation, we need to keep an open mind about how this legislation works and almost build in periods of systematic review, such that we can reflect on the ways in which this legislation is working for campaigners and for stakeholders and to involve academics and indeed the online platforms themselves in this discussion.

The final point about future proofing the legislation is that what we need perhaps is a more fundamental collaboration with the online platforms themselves. If there are areas in which the legislation does not allow for



that, perhaps that should be looked at. I know that perhaps inter-regulator discussions, for example with the Electoral Commission but also with Ofcom, the ASA, the ICO and all these different regulators might be hampered by a lack of capability of sharing data, and indeed the same with Facebook or these online platforms.

If we can build in a more fundamental collaborative network such that we can reflect on what does and doesn't work, I think that will help to future proof the legislation and help to keep it ticking over, such that it works now but it continues to work, as the pace of change will undoubtedly stay the same with regards to trends in this area.

**Q72 John Stevenson:** Thank you for that. Leading on then to—dare I say it—foreign intervention, do you think that the introduction of the digital imprint will improve that and try to create some transparency and prevent interference from overseas?

**Dr Power:** My position on digital imprints is that they are necessary, but they are not sufficient to improve transparency in this area. There are many things that they do achieve but there are many things that they don't achieve. They don't provide a fundamental archive of all the political adverts that are running that we can analyse or more granular detail on targeting. There are other reforms that we might consider. Indeed, I and Dr Katharine Dommett from the University of Sheffield released a report with the Electoral Reform Society last year where we mentioned some of these reforms that we might consider, along with the provision of more granular detail about targeting, perhaps more detailed invoices being required to be submitted to the Electoral Commission for the way in which political parties spent money online.

Finally, on foreign interference, I did some work on this as a part of the CSPL review into electoral regulation, in which I looked at 12 democracies which had in some ways implemented reforms into foreign interference or trying to combat foreign interference. I must admit, digital imprints did not necessarily come up as a key tool in that fight. The main lesson that was to be taken away from that is that to combat foreign interference, you need two very important things—a top-down but also a bottom-up approach.

Those countries that just focused on legislation were pretty unsuccessful in combating foreign interference but those countries that buttressed this legislation with civic education drives, with ways in which they got citizens, students and journalists working together to think about how foreign interference might be working online, how to think about what material might be attempts at disinformation from these actors, were places that worked very well.

If you are looking for examples of best practice in this area, what I uncovered was Finland in particular seemed to have the balance right here, but also France and Sweden had certain reforms and ways of thinking about both the top-down but also the bottom-up civic education



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drives, which had been welcomed not just within their own country but by those that looked internationally as well and comparatively.

**John Stevenson:** Thank you. I would be interested in Louise Edwards's views on this.

**Louise Edwards:** Thank you. There is much that Dr Power said that I agree with, but there is one bit of what he said that I disagree with, I am afraid. This comes down to the distinction between paid and unpaid advertising. The reason I say that is because in pretty much every other part of electoral law, it is the whole cost of a campaign material that is considered when you are thinking about financial thresholds, whether an organisation is within the regime at all, for example. It seems to us that the production costs of online material could be quite substantial, while something could then have no distribution costs because it is not through paid advertising. We think there is an argument to look at all the costs that contribute towards a piece of campaign material online rather than singling out the distribution costs via a social media network as the defining feature of whether something is within the regime.

That said, there is a huge amount in these provisions that we think will be very important for voters. We know that voters want to know who is targeting them online. We know that imprints are a very clear and obvious and transparent way of supporting voters to understand whether to let a particular bit of material influence their vote or not. There is a huge amount here that we think will improve confidence in online campaigning.

There are challenges around some of this. There are challenges around how to spot fake imprints, for example. It would be fairly obvious if there is no imprint at all, but whether an imprint is telling the truth or not is an important challenge. But there are also some very strong positives to be taken, for example, from the experience we had at the Scottish parliamentary elections earlier this year, where digital imprint rules were in place, where there was overwhelmingly broad compliance with those laws. Where people were non-compliant with it, it was usually because they were unaware and therefore needed to be brought into compliance by ourselves on the party and the campaigner side. There is no reason to think that at a national level also campaigners won't be broadly compliant with these rules and the situations where we might need to resort to enforcement on some of the challenges would hopefully be a significant minority.

If I can touch very briefly on future proofing, there is value in what the law or proposed laws do in setting certain principles around it, particularly things like the principle that the imprint should be reasonably accessible from the material itself. A lot of this goes back to what I said about notional spending. It needs to be very clear for the practitioners what the expectations are on them and then there needs to be the ability and the flexibility for that then for different platforms as they come through in the



future. This is an area again where the Government are considering that they might give us the ability to write codes of practice for campaigners, which is great. Codes of practice can't go further than the law, so the sorts of reviews that Dr Power was talking about I think will be very important in making sure that we are updating scenarios for new platforms and giving campaigners everything they need to comply in a very quick and easy way.

**Q73 John Stevenson:** Thank you. Do any of the other witnesses have any additional comments to make? Mr O'Doherty.

**Pete O'Doherty:** I have some general observations around the practicalities of the proposal around digital imprints on policing and our ability to prosecute effectively. I can give those now or perhaps wait for a later question, as you prefer.

**Chair:** Yes, we are going to go David Jones, I think.

**Q74 Mr Jones:** Yes, and conveniently it will lead to that point, because the measures on digital campaigning clearly will require to be enforced. I would like to ask Mr O'Doherty first and then Ms Edwards what implications this has for the police and for the Electoral Commission.

**Pete O'Doherty:** Thank you, and forgive me for pre-empting the question. I wanted to make sure that I gave a view on this one, so forgive me. It is no surprise that I think in modern society we have seen a massive increase in social media platforms, so we definitely support the principle of better regulation of digital material, mostly to maximise transparency for voters, which this is all about, and also for us to prevent, disrupt and even enforce against any kind of civil or criminal wrongdoing. We also like the idea of aligning the existing legislation with imprints into this new recommendation.

There are definitely some concerns with the current proposal and we feel in policing that more clarity is needed in a number of areas. By way of some examples, particularly challenges around how we are going to 'police' this, we know that many digital media platforms—for example, that might be Instagram or Facebook—are all based and hosted outside the UK, which limits our powers to remove content and access account information, which we would need to do as part of that investigation, effectively having to navigate international legislation in doing so and, even more importantly, having to reach different and varied levels of thresholds to even be able to access that information.

The second bit is the level of resource intensiveness in these investigations. If you have an image that has been forwarded on Twitter or copied 100 or 200 times, the ability and requirement to navigate that journey, to try to work out where the source and originator was is going to be very resource intensive. We feel there is more thinking and more detail required in that regard. We also think there are risks if the approach to digital imprintation is not secure, it is vulnerable to hacking,



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for example. Up until now, we don't think—to the best of my knowledge—we have had any cases and certainly no convictions where we have seen an agency or individual outside the UK interfering criminally with an election, but this may open up a new vector of attack. This may present an opportunity for a person or agency overseas who can interfere or influence negatively an election and therefore impact our democracy and the integrity that we are trying to achieve.

The other thing of course is many actors overseas are incredibly advanced when it comes to all things cyber and could potentially interfere, but make it look like they are operating from within the UK, for example through use of what we call a proxy server, which effectively codes and hides originator information. These are some risks that we feel need to be addressed and some questions we have. For example, we know that digital material will surely be used in foreign languages for those voters who do not speak English as their first language. Will the legislation provide clarity that the imprint needs to be in either the same language as the digital material or indeed in English to assist with enforcement? Those are just some of many questions we have around the detail of this proposal, to fully understand the impact this would have on policing and our role in investigating and indeed enforcing criminality.

**Louise Edwards:** I echo many of the practical challenges that Mr O'Doherty has mentioned there. The commission too in its enforcement role is required to prove offences beyond a reasonable doubt. That is a high threshold and the level of evidence that is required for it is understandably high. First I would say though, as I mentioned before, we have a broadly compliant campaigner community in the UK, which we should take some pride in, and hopefully the examples of instances where enforcement is needed will be few and far between, but where it is needed, there will undoubtedly be some challenges. There are challenges around how to gather evidence from organisations that are not based in the UK, how to find out what is behind a social media account when it does not have anything telling you its name. If there is no imprint, it is hard to find out who should have put an imprint on it. There are obviously ways around that in seeking to gather evidence, but they will be limited by resources, by the public interest and also by territorial jurisdiction as well.

One of the other things I would flag at this point is the need to consider the takedown notices that are included in the Bill from a very practical point of view. There is a lot of attraction to the idea of saying that if something does not have an imprint we could order a social media company to take it down, but it is worth being very clear that, first of all, the social media company needs to be within a jurisdiction where we can serve an order on it, but also that, quite rightly, the decision that a voter should not see a particular message—assuming that they have not already done so—is quite a serious one and needs to follow due process.





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Therefore, the provisions are very clear that we would need to have conducted an investigation and formed a view on an offence before we could serve a notice, and indeed for the police, there would need to be a conviction first. It is right and proper that there is due process, but that does mean that a takedown notice is not going to be a quick fix. If material without an imprint came up in the last three or four months of a campaign, there is very little likelihood of it being taken down before the poll.

There are challenges on the enforcement side. I don't think that counterbalances the significant benefits of these provisions, however, but there are questions to be clarified about how we can enforce these.

Q75 **Mr Jones:** Thank you. Mr O'Doherty, will the police and the Crown Prosecution Service have sufficient resources to investigate and prosecute potential criminal offences in this sphere, given the huge scale of the challenge we are talking about?

**Pete O'Doherty:** I am always very proud of what policing can achieve but, to be honest, looking at the detail in the recommendations and the unanswered questions we have, my answer to that is no. Based upon the reasons I gave before, and indeed what Louise just gave, absolutely not.

Q76 **Mr Jones:** Ms Edwards, what resourcing implications will this have for the Electoral Commission?

**Louise Edwards:** The team there, the people who will be enforcing the legislation around digital imprints, will also be enforcing all the other legislation that the commission is responsible for regulating, so we have to look at the Bill and indeed our current duties as a whole to understand that. I think the prospect of the range of new legal requirements that are imposed by this Bill, the complexity that has been talked about in some areas and the need to act proportionately to balance considerations of what enforcement action is going to have the greatest impact mean that it will be challenging to effectively enforce across all these measures with our current resources.

That said, we have not worked out yet exactly what sort of additional resources we would require in this area because we need to see a lot more of the detail to do that. I suppose what I am doing here is effectively putting down a marker.

**Pete O'Doherty:** In policing, we absolutely invest the resource in an area of business that would lead to an effective outcome. The concern here is that spending time disrupting online entities or taking down content just gives people an opportunity to present that information from a different website or a different domain. The other bit, as Louise said before, is trying to prove a threshold, of spending all the time investigating this material and potentially working overseas and then not being able to prosecute. It is not just a question of do we have the resource; it is where we invest public money in trying to bring to bear



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successful prosecutions. I suspect, based upon what I read in the Bill, there is a low likelihood of us achieving those outcomes with the proposals currently made.

**Chair:** Thank you. I thank all five members of our second panel for your contributions this morning and sharing your expertise with us. As ever, if there is anything that you wish to add, please write to us following this session, but in the meantime, thank you very much indeed for your time.