



Political and Constitutional Reform Committee

Oral evidence: [The Government's lobbying bill: follow up](#), HC 891

Thursday 19 December 2013

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Members present: Mr Graham Allen (Chair); Mr Christopher Chope; Tracey Crouch; Mark Durkan; Paul Flynn; Fabian Hamilton; Robert Neill; Mr Andrew Turner

Questions 1-73

Witnesses: **Jenny Watson**, Chair, **Peter Horne**, Director of Party and Election Finance, and **Tony Stafford**, Head of Policy (Party and Election Finance), Electoral Commission, gave evidence.

Q1 Chair: Jenny, would you like to remind us about the main concerns of the commission? I won't do a little opening statement, but just to set the scene, the Lobbying Bill has left the House of Commons and there were a number of bruising but non-productive encounters in the House of Commons. It is now in the second Chamber, where there appears to be a little bit more play, and the Government appear to be trying to reach a slightly more consensual arrangement, particularly around part 2.

We understand that Report stage, when the Government will table amendments, will be on 13 January and 15 January, and that Third Reading in the Lords will be on 21 January. It could literally come to us five minutes after the Lords Third Reading is done, so members of the Committee are alerted to be ready to be on the Floor if they wish to put forward whatever the Committee view is of the outcome of that process. Jenny, are there things that you would like to get on the record right now that could help in that consideration?

Jenny Watson: Yes, there are. Thank you for that summary, and thank you for the opportunity to come and give evidence to you again on this Bill. We said to you in the summer that we think it is important that significant campaigning should be transparently regulated but that it is equally important that the controls should be proportionate. Since the Bill left the Commons, we have continued to speak to the Government and to campaigners about it and we have also had the benefit of seeing the work done by Lord Harries's commission on civil society and democratic engagement, which has covered a lot of ground in a short space of time.

There have of course been some welcome changes to the Bill, some of which are a direct result of the work of this Committee in the Commons, including moving the definition of third-party campaigning closer to the one that already exists in PPERA. We think that was important given the problems with the original definition presented in the Bill. But we think that there is more that can be done and I want to focus on the significant amendments that we would like to see.

The first is increasing the registration thresholds and reconsidering the spending limits. Secondly, we would like to see changes to the reporting requirements imposed by the Bill, especially changes to make them more proportionate for campaigners that spend smaller amounts. We also welcome the debate that has been held on shortening the regulated period for the next general election only, so that it begins in November 2014 rather than May 2014. We think that that is an important change that needs to be made: campaigners will need time not just to read our guidance but to understand it and to test their plans against it, and to ask us for specific advice tailored to their own situation. They will then need to adapt their plans so that they comply with the regulatory regime.

In November, Lord Wallace made it clear that the Government were consulting on all parts of the Bill, and the Government wrote to all peers before Committee in the Lords to say that they were still in listening mode and would not be tabling amendments until Report. Given the lack of pre-legislative scrutiny, that extra time for consideration is important, but if you are a campaigner planning events for the coming summer, you may well have had to commit expenditure, secure venues and prepare material, yet you now have no clarity on the regulatory regime to which you will be subject or the types of activity that will count towards your spending limit. So for the next general election only, a shorter, six-month regulated period for the new regime would seem proportionate and would give campaigners time properly to prepare and update their plans.

We also still have concerns about the new constituency provisions and how they could be effectively enforced by us in real time across the 650 constituencies in the four parts of the UK during an election period. As you will know, where there are currently constituency level limits, those are in the Representation of the People Act and are tied to campaigning against individual candidates where there is obviously a clear link with the constituency. Those rules are governed by the police. The PPERA regime that we would be responsible for, however, regulates campaigning on issues, not against individuals, and issues are far harder to define in constituency terms. For example, does a billboard on a high-profile issue at Clapham Junction constitute campaigning against a constituency or a national spending limit? What about leaflets being given out in a shopping centre used by many people from different constituencies?

Yesterday was the first opportunity that either House has had to debate that provision, and the absence of any pre-legislative scrutiny on the new area of regulation causes us concern. We would still welcome clarity from Parliament on how it envisages those rules working in practice.

Finally, in the absence of any strong arguments otherwise—we have not heard those—we would welcome the changes to our remit being removed from the Bill.

I hope that is a helpful starting point and I am happy to answer any questions that you have.

Chair: That is excellent, Jenny—a really clear and helpful summary of things we ought to be looking at.

Q2 Tracey Crouch: That was indeed a helpful opening statement, and in part has answered many questions we may have had. I want to drill down into some of the issues that you raised. On the first one, about how the Government have gone about consulting the Electoral Commission during the

pause in the Bill's consideration in the Lords, do you feel that your concerns have been adequately taken into account?

Jenny Watson: I think it is a little hard, honestly, to answer that question without seeing Government amendments. We have had the opportunity to have conversations with Ministers, and the staff team, including Peter and Tony, have had the opportunity to talk to officials on many occasions, but until we see what the Government amendments look like, it will be a little difficult to know whether the views we have been expressing have been taken into account.

Q3 Tracey Crouch: Are you content with the number of meetings you have had and the level of civil servants you have met? Have you been adequately consulted during this process?

Peter Horne: I think we have had opportunities to make our views known in our evidence, which comes from the discussions we have had and from our experience as a regulator. I would go back to where Jenny is, which is that the Government have said they will be bringing forward amendments in January. It will be on sight of those amendments that we will understand whether the consultation has resulted in the Government listening to the evidence we have brought forward.

Q4 Chair: Have you had lots of charities and voluntary organisations phoning you asking for clarification in this period?

Jenny Watson: We have continued to be in dialogue with campaigners. Peter or Tony may want to say a little more about that.

Peter Horne: I think the point to make is that we have worked with charities in the past. As to the set of rules that currently apply, we are outside the regulated period, so we do not get an enormous amount of queries about those. As to questions about how the new regime would apply, we have had discussions with organisations. We had a significant number of discussions in August with campaigners, including charities. We have recently dealt with questions from the Harries commission and other organisations. But our view is that the testing as to what the clauses in the Bill will mean is that which has gone on in the House and in the discussions on Monday and Wednesday.

Q5 Chair: I am thinking less of the formal interaction, although that was a very helpful reply to that part of the question, and more about whether you have had casual phone calls from individual charities saying, "My God, what do we do? I've heard about this." Is that a trickle? Are you inundated? Is there a measure of concern?

Tony Stafford: I don't think we've been inundated; there has been a steady stream of people who are keen to understand what the Bill might mean for them. We have been happy to talk to people whenever resources permit. A lot of what we have been doing is explaining how the current rules work and then saying that the Bill will make changes, although it is not yet entirely clear what the changes are. Apart from anything else, we are keen to start engaging with people who might be affected, because, clearly, we will soon be in the mode of trying to explain to people what the Bill, as enacted, means for them. It is turning into part of our work to reach out to the regulated community.

Jenny Watson: I think it would be fair to say that we might have had more people coming to us directly with those questions had they not been putting their resources into engaging with Lord

Harries's work. There has been a considerable effort on the part of many of them to focus on that work.

Chair: I am sorry to interrupt, Tracey.

Q6 Tracey Crouch: No, it is helpful, because I wanted to ask about charities. One thing Lord Wallace indicated earlier this week was that the Government were giving further consideration to the idea of exempting charities altogether from part 2 of the Bill. What would be the risks in exempting charities from part 2?

Jenny Watson: That is one of the parts of the debate that means that I could not say how our views have been listened to. I was concerned to see that consideration might still be given to exempting charities. We would not want to see charities exempted. It is relatively easy to set up a charity, and the risk in exempting charities would be that you leave a loophole, and people could set up charitable organisations. This has partly become a debate about charities when in fact, it is a debate about electoral law. In electoral law, in terms of regulating non-party campaigning, it is the activity that needs to be regulated, not the actor. The regulated community will be wide: it will be faith groups, trade unions, trade bodies, umbrella bodies, think-tanks and charities. It is the activity that needs to be regulated if we are to deliver transparency for voters.

Peter Horne: I think I might add two points. The first thing to say is that, under the current position, it is entirely legitimate for charities to register with the Electoral Commission and to campaign on issues around elections. We have held discussions with and worked with the Charity Commission to produce guidance, and we plan to do that in the future.

I would also say that the questions being raised by the charity sector are similarly being raised by other campaigners. The question of the level of controls and constraints placed on campaigners that charities are concerned about applies across the board. If there is a question as to how one would address those problems, our view is that it comes back to what the thresholds are at which organisations would need to register with us and to a clear question for Parliament: what is the limit that we as a country think is appropriate for the level of campaigning for organisations that are not political parties around the time of an election? Both those issues are brought into stark focus when charities ask the question, but I do not believe that the solution is the exemption of charities: it is merely to look at what you think those levels should be.

Q7 Tracey Crouch: That is really helpful; those are really clear answers. Thank you.

Jenny, one of the things you talked about in your opening statement was the starting date for the regulatory period for spending. You said that it should not start until November 2014. Can you outline what risks you think are associated with proceeding, as the Government currently propose, in May 2014?

Jenny Watson: Yes. My concern is that the community that we will need to regulate—I am afraid that is jargon—the regulated community, need to understand what is required of them in order to comply. To do that, they will need to be aware of our guidance—to read our guidance—but more importantly, that is the start of a process. Our experience is that there is then a great deal of to-ing and fro-ing, and giving tailored advice specific to the needs of particular organisations, given the specific plans that they have, in order for them to understand what they need to do to come into compliance. I was glad that Lord Wallace recognised that in the debate on Monday night. It seems to us that asking organisations that we will need to regulate with a new regime—different types of

activity, potentially lower spending limits and potentially lower thresholds—to make those changes very quickly following Royal Assent is a risk, and we should be giving them more time to prepare and to engage in that dialogue with us to get the advice and guidance they need.

We have to remember that at the moment, so much of the Bill is unclear and none of us—neither we nor the regulated community—yet has clarity about what will be covered in the spending limits or even what the spending limits will be. We have clarity on the definition, and that is helpful. I think the only alternative to pushing the regulated period forward to November 2014 for this election only would have been for us to be in a position whereby we felt we could perhaps publish guidance earlier, in draft. I actually don't think it would be responsible of us to do that, because we would simply be adding to the uncertainty that currently exists around the legislation. There is a risk that we would be publishing draft guidance and having to take it back, rewrite it and republish it, which would just make the whole thing—

Q8 Tracey Crouch: So you are saying that if the date was May 2014, it would be almost impossible for you to have the required guidance in place for third parties.

Jenny Watson: It is not about us having the guidance in place. The guidance is the first part of a process, and I might ask Peter in a second to say a little more about that process. It is about the organisations that will need to comply having the time to adapt, to understand what is required of them and to engage in a dialogue with us, as the regulator, to get the advice they need. The publication of our guidance, which can be done relatively quickly after Royal Assent, is only the first part of that, and that is the risk.

Q9 Tracey Crouch: So you guys would be ready to have that in place by May 2014.

Peter Horne: We are doing what we can to be out of the blocks as quickly as possible following Royal Assent with guidance for organisations. We have already recruited individuals to help us develop that guidance and to ensure that we have clarity on our policy positions and are able to explain that to organisations.

Let me put this in context in terms of our regulatory approach, which we take across our statutory responsibilities. We start from the basis that we help organisations to comply with the regime. Our concern here is that a large number of organisations that will be seeking to remain within the law will reasonably be able to say, “Actually, we're not able to understand the regime that is starting in a month or so's time. What do we need to do? We've already made commitments and plans for our activities, which go several months or perhaps even a year out.” I think we said when we were before the Committee in September that it is entirely appropriate that significant campaigning around the time of a general election be controlled. Our concern is that a large group of organisations will want to be compliant with the regime, but in reality, if the Bill were to receive Royal Assent in early February, we would have guidance out sometime within the four weeks after that. That gives people only a couple of months to digest the guidance before going back to the question—we have discussed that with the Committee. The definition of “activities” depends on what a specific organisation is doing at a particular time. Those circumstances will mean that organisations will need to come to us for guidance. They will need to be able to listen to that guidance and take it back. They will then, as an organisation, need to make a decision. We think that the regulated community's need to be able to make decisions on what they do is the constraint on the start of the regulated period.

Q10 Tracey Crouch: There is an argument that shortening the regulated period by six months might actually enable those third parties to have some sort of undue influence on the election campaign during the May to November period. Do you agree with that?

Jenny Watson: You have to remember that they will still be regulated. A regulatory regime is currently in place for non-party campaigners. It covers a range of different activity, and it has different lengths, but they are already regulated. We judge the greater risk to be moving too quickly to a regulated period in a new regime, rather than carrying on with the existing regime for a little longer and giving organisations time to bring themselves into compliance. Activity from November 2014 to May 2015 is closer to the poll and might be particularly likely to fall into your category of having greater influence.

Q11 Tracey Crouch: Presumably, if the Government accept the suggestion of moving the date to November, there is no need for us to rush the Bill through Parliament and for it to receive Royal Assent as early as possible. We can, therefore, discuss these matters in more detail.

Jenny Watson: I will give a very careful answer. The reason why we have suggested having a regulated period that begins in November is so that the regulated community has time to prepare.

Q12 Tracey Crouch: So you would still like the Bill to be completed as quickly as possible?

Jenny Watson: I think it is for Parliament to decide how it wants to debate and discuss this legislation. That is not for me to say, but I am conscious that the reason for our proposal is so that people have time to prepare.

Q13 Fabian Hamilton: Jenny, your briefing published on 13 December states that “in the remaining time available for scrutiny of Part 2 of the Bill, we do not think that the definition of controlled spending can be improved without other unforeseen or unintended consequences.” Does that mean that you think that the definition of controlled spending could be improved, given more time?

Jenny Watson: We are happy with the definition itself. A number of amendments have been suggested in the House of Lords on the activity that would fall under that definition, and I might ask Peter and Tony to say a little more about that, but we are happy with the definition as it stands.

Q14 Fabian Hamilton: Everybody happy?

Tony Stafford: The definition, following the changes that were made in the Commons, is much more similar to the definition that we have at the moment. We can make that work in regulatory terms. A lot of the debate that was going on in the Lords on Monday was on very specific changes to the scope, especially of some of the new activities that are covered. That is a very helpful debate, and it may well be that there are sensible changes that can be made to some of the detail. In terms of the overall scope of the coverage, we think that where the definition is at the moment is the best solution for 2015 because it is familiar. Some of the changes that have been suggested, such as trying to focus on the principal purpose of activities, would be very difficult, and they are certainly not things to be introduced in a hurry. Clearly part of the debate on the Bill has been to focus attention on what the current rules do for regulating campaigning on policy issues, which can be

perceived as being intended to promote electoral success. That is one of the things that, if and when the effect of the Bill is reviewed in the next Parliament, people will want to look at.

Q15 Fabian Hamilton: I was going to ask you about that. Would you like to see the definition of controlled spending revised after the 2015 general election?

Jenny Watson: We will look at the legislation, assuming that it passes, as part of our post-election review. We would want to do that in any case, and I think we would want to assess at that time all the implications of the change legislation.

Q16 Fabian Hamilton: In your briefing on the amendments that were tabled on Report in the House of Commons, you said that you welcomed the Government's attempt to tighten the definitions of the regulated activities in schedule 3, but you added that the changes need "to be considered carefully and tested with campaigners to ensure that they are fit for purpose." Have you had the chance to test the revised wording in schedule 3 with the campaigners? If so, to what extent are you content that the Government's changes provide the necessary clarity?

Peter Horne: In our briefing in October, we said we were pleased. I believe the previous time we were in front of this Committee, we talked about the previous definition having the potential for a wide range of interpretations and, as such, leaving a lot of discretion to us as an organisation at risk of challenge.

We were pleased that the tightened definition led to the point where we felt there was a workable regime in place. When we indicated that testing was appropriate, that was on the basis that, as a regulator, we had considered a particular range of activities in the past, and that broadened this range of activity. We hoped that campaigners would have the opportunity to speak to us, Government and the Harries Commission around the implications of the regime as it was tabled in October.

In our view, the discussion in the House of Lords on Monday night provided several opportunities, and probing amendments through which organisations and individuals tested what was happening and the implications. From what we have seen to date, we still think that the terms in the Bill, as it is now, are as good as they are going to get. It may be that other evidence comes up as we go through Third Reading in the Lords, but at this point we are reasonably comfortable with the definitions, in the time we have had available.

Jenny Watson: I should make clear, with regard to testing and being satisfied with it, that each time a new amendment is put to change the scope of the activity covered, we have to go round that testing loop again. When people come up with amendments, we have to rethink that each time, and we are carrying on doing that. So far, we have not found anything, in terms of the activity, that is a showstopper.

Q17 Fabian Hamilton: Thank you, that is very helpful. Moving on to clause 27, Lord Wallace told the House of Lords on 16 December, just three days ago, that the Government will "bring forward on Report amendments to increase the registration thresholds in England, Scotland, Wales and Northern Ireland". Have you any view on the level at which thresholds should be set?

Jenny Watson: We have said to you before that we think they are too low, and that they will catch very small fry that are not spending large sums of money on campaigning. We would certainly

want to see them raised. Beyond that, it would be for Parliament to decide an appropriate level of registration threshold. That comes to the obvious point for you all to consider about when it is appropriate for spending to be regulated.

Q18 Fabian Hamilton: But the Bill lowers the limits for maximum expenditure by third parties during the regulatory period. Have you at the Electoral Commission seen any evidence from the Government to back up their decision to choose those particular spending limits?

Jenny Watson: We have not seen any new evidence on that since we last spoke to you. I think you will be aware that in our regulatory review, which we published when we looked at and suggested widening the range of activity, we said that that needed to be thought through carefully. We said it would be important for spending limits to be considered by parliamentarians, to ensure that they strike an appropriate balance between the ability to express views freely and the ability to restrain spending that could have undue influence. There was nothing in our regulatory review that suggested or implied that, if you widened the range of activity covered, the spending limits would be lowered. It is properly for parliamentarians to assess where those spending limits should fit.

Q19 Fabian Hamilton: But would the Electoral Commission support restoring spending limits to their current levels?

Jenny Watson: That is a question for parliamentarians.

Q20 Fabian Hamilton: You do not have a view on that?

Jenny Watson: I want to make it clear that we were not suggesting in our regulatory review that, if you widened the range of activity covered, the limits should also be brought down. That was not a suggestion that we made.

Q21 Paul Flynn: In your original written evidence to the Committee, you said that the limits on expenditure by constituency in clause 28 “may be unenforceable in practice”. Is that still your view?

Jenny Watson: Yes; I need to be clear about precisely what we mean by that, and then I will ask Peter and Tony to say a little bit more. Our concern is that they would be unenforceable by us in real time during a general election period. The background and context to that is that it is traditional—and has been ever since the late 1800s, when candidate spending controls were brought in—that enforcement activity is after an election period. There is not an expectation that we are intervening. In that case, it would not be for us anyway, but there is not an expectation that people are intervening in real time to stop behaviour during an election campaign. Our concern around that is that parliamentarians understand the role that we would be playing during a general election period.

When we gave evidence to you before, it may even have been you, Mr Chairman, who asked whether an expectation would be created that we would be going into church halls up and down the country and taking down the bunting. We want to make sure you understand that, apart from in truly egregious cases, that would not be happening. Peter, do you want to say a little more about our approach to that? That might help to answer the question.

Peter Horne: It may be worth considering our general enforcement approach. We start from the basis that we need to be reasonable and proportionate. We need to look at the evidence, and to recognise that within the cut and thrust of an election, it could be possible for people to start to turn to the Electoral Commission and use a referral to us as a way of neutering a legitimate campaign by either a political opponent or, potentially, a third-party organisation. As such, that means that we would take an approach of having to look at things on the evidence.

The specific question about constituency limits concerns the activities that are being covered. As the chair said earlier, campaigning around issues is not the same as campaigning around candidates. Candidates are constituency specific; issues might be located in a particular locality, but that locality is unlikely to match the boundaries of a particular constituency. The test for us, in looking at enforcement, will be very much around what sort of activities we can observe as being specifically limited to a particular area.

We will also need to consider that to a criminal standard of proof, because those are the sorts of tests that we need to apply. In such circumstances, what we would expect is that—as we stated at the beginning—where significant campaigning does occur by organisations, and it is seeking to have undue influence around an election and would be breaching the limits, we would obviously seek to take action. Under certain circumstances, we could intervene with a stop notice, but the test before we can do that is fairly high, because the alternative is that if we were to intervene too frequently, there would be a risk that general public confidence would be undermined, so there is a balance to be struck.

Our view is that yes, we would be able to enforce it, but improvements could be made to the Bill around what sort of activities are constrained at a constituency level, so that we are able to look at evidence that has a yes or no answer, as opposed to being very much a matter of opinion.

Q22 Paul Flynn: The suggested limits are something like £9,000 before an election and £6,000 during the election period. If there were examples of constituencies where somebody spent, say, £250,000, which happened last time and the time before, what are your powers? If the person was elected, and you came in and said, “This was improper behaviour,” could you then unseat the MP?

Tony Stafford: On the powers that we have on breaches of the spending limits, to take that example, a breach of the spending limits is a criminal offence. We have some civil sanctions that we can impose where we can establish clear evidence that that offence has been committed. Peter mentioned a stop notice, which is a power that we can use to tell people to stop doing what they are doing, and as Peter was saying, the threshold for being able to use that is quite high, and rightly so, because if we are going around intervening in people’s campaigning, we must be satisfied that there is a serious risk of loss of confidence in the controls. That aside, the sanctions are to do with penalties, fines or notices telling people to take certain steps to come into compliance. There is no power related to the criminal offences to unseat an MP or to otherwise affect the result of the election.

Jenny Watson: At first blush, a lot of it would depend on the circumstances—I do have to say that—but our sense is that that looks like potentially quite an egregious example where we might want to move more swiftly.

Q23 Paul Flynn: This Committee has “Reform” in its title, and one of the areas where there is need for reform is the practice of certain organisations, of both left and right, of concentrating spending to a huge extent. That figure is real—£250,000 was spent in, I believe, Pendle last time, and

a large sum was spent in Somerset against a Liberal Democrat. In each case, it is targeted at a particular MP because of their courageous behaviour against individuals, organisations or, in one case, hunting. In Pendle, the MP said, “Pendle is not for sale.” He said that even if £250,000 is spent it will not alter the views of the people of Pendle. Unfortunately, apparently it did, because he lost his seat. That seems to be grossly unfair. The limits of £9,000 and £6,000—I have been elected in six general elections, and I have never spent £6,000—would allow spending by an organisation to be above the total spending of a party.

Jenny Watson: Can I just be clear? Are you talking about spending against a particular candidate in that situation?

Q24 Paul Flynn: Yes. Well, it is per constituency.

Tony Stafford: On the examples of spending either by people funding candidates or by people campaigning directly for or against a named candidate, in the 2010 election the rules on what candidates can spend were extended, so there was a longer regulated period, which ran from January to May. The rules on what any other person or organisation can spend on campaigning for or against a named candidate only kick in from the dissolution of Parliament. That is not changed by the Bill, so all the new constituency controls in the Bill will only apply for people campaigning for or against a political party or a group of candidates that are united by a similar characteristic. The level of spending for or against individuals does not get changed; however, the spending limit that people can spend after dissolution increases from £500 to £700.

Q25 Paul Flynn: That reinforces the view that this is not a reforming Bill. It does not deal with the two major scandals in elections, which are the lack of control of national spending by parties and the concentration of spending that can be used to unseat a particular MP. They remain untouched.

Jenny Watson: It would not tackle those issues. I had assumed you were asking about a third party campaigning on an issue. If you are talking specifically about spending against a candidate, it would not make changes to that.

Q26 Paul Flynn: Have you any ideas about how clause 28 could be improved? Are you putting forward proposals?

Jenny Watson: No, I think our concern around this issue is about Parliament’s understanding of the way in which we enforce the regime that is proposed in the Bill. Recently, there have been debates about reform of the system of campaign financing in this country, and I think that debate belongs in that kind of discussion, rather than something that we would propose in relation to this Bill.

Q27 Paul Flynn: You described the reporting and accounting requirements in clauses 32 and 33 as “onerous”. Is that still your view? Will they impose new regulations and new unnecessary bureaucracy on a large number of organisations?

Jenny Watson: Yes, we still want to see changes. I will ask Tony to explain.

Tony Stafford: There are two main sets of new reporting requirements for registered campaigners. First, there are additional reporting requirements on donations towards their campaigning. At the moment, they have to be reported only after the poll, but under the Bill they will have to be

reported periodically before the election. Secondly, there are some new requirements on campaigners to produce statements of accounts, similar to the way that political parties do. For both those sets of requirements, we think there is a lot of scope to simplify and to reduce administrative burdens. The rules on donations have essentially been taken across from the current rules on political parties. In the report that we published in June this year, we recommended a series of changes to reduce the burdens on political party reporting, which could quite easily be applied to the new rules in the Bill.

The rules on statements of accounts are different. Political parties have to report statements of accounts annually on a regular cycle, which is relatively straightforward. The Bill requires campaigners, if they find that they have to register with us, to produce statements of accounts that would cover the regulated period, not the standard financial year, within as little as three months from the date of the election, which we think is likely to be extremely challenging. Compare it with the nine months that companies have to submit accounts to Companies House. We have given detailed recommendations to the Government about how to reduce the burdens in those areas.

Q28 Paul Flynn: You have no idea how they have responded to them?

Tony Stafford: As Jenny said, we are waiting to see if they are covered in the amendments.

Q29 Paul Flynn: You told us that the changes in the Electoral Commission's regulatory remit in clause 35 had no clear rationale. Are you any nearer to understanding the rationale of the changes now? You might help us to understand what goes on in the mind of the Government.

Jenny Watson: I am afraid I am not going to be able to do that. I am not, actually. We continue to think that the change to our remit should be removed. The point we made to you before was that giving us a duty to take all reasonable steps, which is what is proposed in the legislation, changes our remit. As a regulator, we think quite often about concepts such as proportionality and the public interest. The fear that we have about this change to our remit, which incidentally will affect our work with political parties as well as our work with non-party campaigners, is that it could lead to an increased risk of legal challenge from people who think that we have not taken all reasonable steps, and that will create uncertainty in the regime, which is not helpful to anybody, so we would still like to see it removed.

Q30 Paul Flynn: "No clear rationale" is a polite way to say that there is no basis for it.

Jenny Watson: I have not seen any evidence that would persuade me that it needs to change.

Q31 Paul Flynn: You are beginning to destroy our faith in this Government, I am afraid, with this, but we wish you success in changing their mind. If your worst fears are realised, would you be able to work effectively under the new system that they are proposing?

Jenny Watson: Regarding the change to our remit specifically?

Paul Flynn: Yes.

Jenny Watson: Well, if it changes, it changes, and it will be on the statute book. We will have to wait and see what happens. As I say, the risk that we have identified is the increased risk of legal challenge, which creates uncertainty in the regime, and that is not good for public confidence.

Q32 Paul Flynn: It creates lots of nice work for lawyers.

Jenny Watson: Well, public confidence is more our concern.

Paul Flynn: I would have thought so. Thank you very much. I am grateful to you.

Q33 Chair: Jenny, the rules on spending by coalitions of third parties have been causing controversy, I guess, but they are rules that currently exist under PPERA. In your opinion, are the existing rules on spending by coalitions of third parties working well?

Jenny Watson: I think it is important to distinguish between the rules on working in coalition with the spending limits that currently exist and the range of activity that currently exists. What has been thrown into sharper focus is the combination of much lower registration thresholds and much lower spending limits. From our perspective, they are a very important anti-avoidance tactic. Peter might want to say more about that.

I do understand that you can look at this from the other side of the table, not from us as a regulator. A very small charity might be working in coalition with others and might find themselves pulled into our regulatory regime. Even though they have spent a very small amount, because they are in coalition with others they then have to register and report their spending, and it might be that there is a way we can see through that particular challenge. We are working through what was suggested in Lord Harries' commission to see whether that would be workable. Peter, do you want to say a little more about that?

Peter Horne: It is worth going back to the principles behind the regime, which start from the concept of both transparency around campaigning activity and constraining that activity at a certain limit. The reason for having the working together rules is that, should they not be in place, it would be entirely possible for an individual in an organisation to set up multiple organisations that they channelled funds through and be the controlling mind sitting behind them. The limits that we have discussed would no longer apply, because you would only be constrained by the funds that you were able to channel to those organisations.

We are looking at the rules, and we have looked at them with a very important focus around the Scottish referendum. We have worked there to try and make some improvements that enable smaller campaigners to comply with the regime more easily. We can take those lessons across and see how they apply to PPERA in general, because a different Parliament has made that law. The underlying question for us—I think it goes with all of these areas that we have heard about—is that there are ways of addressing the concerns. The theme behind the concern is levels of bureaucracy for lower levels of campaigning activity, and the answer to that for us is to look at the level of threshold at which people come into the regime, rather than a specific intervention that exempts groups, or, alternatively, removing one of the foundations of it.

Robert Neill: I am sorry I missed the beginning of this session, Chair. I blame Southeastern trains.

Fabian Hamilton: Leaves on the line?

Robert Neill: It is the wrong type of leaves at the moment.

Chair: You all told me you wanted to get away by 12 o'clock.

Q34 Robert Neill: I have a quick question. Are you aware of the fact that the UK, like all member states of the Council of Europe, is part of an organisation called GRECO, a group of member states against corruption? I happen to be the representative on the Council of Europe's parliamentary body, which is why I am interested. Are you aware of the work that they are doing around the transparency of funding political parties and lobbying, and the various evaluation reports that they are currently undertaking? I wondered to what extent you were involved in any of that and to what extent you were in contact with them to see what lessons could be learned in either direction there.

Jenny Watson: We are certainly aware of their work and we keep a watching brief on what they are doing. Is there anything else you want to say on that, Peter, as it applies to this piece of legislation?

Peter Horne: On the underlying question of transparency, I would relate an anecdote from my chief executive. He was at a recent meeting of European regulators where on multiple occasions he went into a room where they were demonstrating our online system that was giving transparency around donations to political parties and to the spending that can be visible. It is something that we are involved with.

I am not sure that we have seen specific lessons that can be applied to this particular bit of legislation, but we will continue to work with those organisations to make sure that where there are lessons that can be learned we put them forward. I was speaking to a group of Algerians earlier this week—they are outside Europe, obviously—who were looking to the UK because the rules that we have in place are those that they look towards and see as an exemplar of best practice.

Q35 Robert Neill: There was a conference at Belgrade where there was some British representation. Is that the sort of thing?

Jenny Watson: We attend international conferences from time to time. How would I put this? There is always learning that can be done and often that can be done without going on international conference trips. So we tend to try to do it and make the links.

Tony Stafford: It might be worth adding that from the contacts we have had with people operating similar regimes in other countries, the regulation of third-party campaigning is always one of the most difficult areas. By definition, as we were saying earlier, what you are trying to regulate is particular activities rather than particular types of organisation. Deciding where you draw the line will always be potentially complex, controversial or both.

Robert Neill: That is exactly the point I was seeking to make.

Q36 Mark Durkan: To come back to the constituency spending issue and possibly also the Commission's remit here, if it comes to a group or cluster of constituencies—I am not talking about Northern Ireland in this instance—say in West London with people feeling strongly about what will happen at Heathrow, have you thought about how you would manage that situation? There might be a

lot of spending by a campaign group in that area affecting a number of constituencies, and candidates of different parties might feel that they were being adversely affected.

Jenny Watson: We have. I will let Tony respond to that.

Tony Stafford: It is one of the examples that we have been using to kick ideas around about how the constituency limits might work. The rules in the Bill work so that if campaigning is seen to be targeted at or having a particular effect in some constituencies, you have to work out which ones and divide the spending between them.

In the case of campaigning about major changes to airport infrastructure, you could have a campaign that is very narrowly focused in one constituency, which would be relatively straightforward and the level of spending might not be that significant and so it might be quite difficult to work out whether a limit was being breached. You could have spending that is going on in every constituency that is potentially affected by airport expansion in the South-East. You could have a campaign that is saying, “This is a matter of national relevance because it is about UK infrastructure and is much wider.” This goes back to what we were saying earlier about finding evidence; especially to demonstrate that, potentially, a spending level has been breached to the criminal standard of proof in quick time is likely to be extremely complex.

Jenny Watson: I am grateful for your question because it reminds me that one of the things that I wanted to say in answer to Mr Flynn, and did not because I was diverted by the RPA, is that because it is a challenge to find that evidence and to do so quickly, we were attracted to the amendment suggested in the House of Lords that would limit what was covered by the constituency spending provisions to something that might be more geographic in scope. We thought that needed to be thought through quite carefully to make sure that it did not throw up any workability issues, but we were attracted to that because it would make the task in hand slightly easier. Peter, did you want to say anything else?

Peter Horne: One of the things that I hear from the question is, what is the level of legitimate campaigning that could be occurring that we would be expecting in those circumstances, and at what level would the constituency limits stop that sort of activity. One question that we are hoping is answered in the ongoing discussions in Parliament is: in considering constituency limits, for example, and in considering those sorts of activities, be they activities around major infrastructure, public services or whatever else, there is a current level of campaigning activity that occurs, so do we think that the limits that are being set—for example, £9,000 or so in a constituency over the course of a calendar year—would stop certain of those activities that people would see as appropriate to continue?

Behind that is a question about public confidence in the regime in the longer term. We, as a regulator, will enforce whatever regime Parliament gives us, but there is a question as to Parliament determining setting those limits at the point at which it is clearly viewed that the public will see that the intervention is appropriate because, actually, the campaigning is at the point where it is exerting undue influence.

Q37 Chair: Jenny, when you are dealing with Government in future, do you think it would be helpful to remind them to involve the Electoral Commission and the relevant Select Committee in pre-legislative discussion, and that that may end up creating a better Bill—on future occasions, of course?

Jenny Watson: We have said on a number of occasions that we would have liked to have seen greater pre-legislative scrutiny and we would have liked more consultation ahead of the publication of this Bill. That would still stand.

Chair: Jenny, Tony, Peter, thank you so much. That was incredibly helpful. As this situation is in flux, please do not hesitate to let us know of any further thoughts before we come to consider our Report, which we will circulate to all Members to inform the debate when it is back on the Floor.

Jenny Watson: Happy Christmas.

Chair: The same to you, Jenny, and your colleagues.

Witnesses: **Karl Wilding**, Director of Public Policy, and **Elizabeth Chamberlain**, Policy Manager, National Council for Voluntary Organisations, gave evidence.

Q38 Chair: Welcome. Would you like to say anything by way of kicking off, Karl, in terms of where we are on the Bill, or do you want to go straight into questions?

Karl Wilding: Our starting point, as you would expect, is the same as when I last appeared before the Committee, Chair: campaigning is a public good and participation in democracy is a good thing. One might think from the tone of some of the discussions that have been going on that campaigning is a bad thing. That should frame the passage of this Bill.

Since we last appeared, the timing of the Bill and the consultation that has been going on are still a matter of concern to us, and we think that the length of the pause has been proof of that. We have listened to what has happened in the Lords over this week and we still think that the Bill as it stands represents a significant restriction on campaigning activity during election periods, and it will prevent charities and voluntary organisations from engaging in public policy issues.

I cannot emphasise enough that voluntary organisations self-police in these areas. Nobody who is involved in a voluntary organisation wants to fall foul of the law. The uncertainty and fear that this creates will crowd out campaigning that is a public good that I think all Members of Parliament will want to save.

I think it came across from the evidence that you have just had from the Electoral Commission that the Bill is still very broad in scope and it gives substantial discretion to the Electoral Commission, so there is what you might call an unbearable amount of uncertainty about whether or when the rules apply in particular circumstances. Our members are still telling us that the Bill has not got the right balance between transparency, which we fully support as an organisation, and a proportionate regime that makes sure that there is not undue influence on the political process. On that note, we continue to note with concern, and our legal advice is that the Bill has implications for rights in terms of freedom of association and freedom of speech. So it has, I think, substantive consequences for the right to campaign and also for the independence of the voluntary sector.

I am still of the opinion that the first thing that voluntary organisations should be able to do is speak truth to power. Independence is what enables us to speak truth to power. It is what makes us special and different, and I think it is in the public interest.

Q39 Mr Chope: How many of the points you just raised have you been able to put across to the Government in the six-week period for further consultation?

Karl Wilding: We have put forward a large number of points. We have moved beyond initially saying that we think campaigning is a public good, and we have put forward a series of specific proposals to Government that we think will significantly improve the Bill during this pause.

I am exasperated by the fact that Government is not listening to us. The feedback that I am getting from all our members is that Government is not listening to us. This pause is not any sort of listening exercise, from what we can see; it is a rebuttal exercise. The feedback from our members is that every meeting that they have with someone from Government begins with, “This is not a problem. NCVO and other organisations are whipping you up into a hysterical state, and you really do not need to worry.”

Q40Mr Chope: Have you had a discussion like the one we are having now with a Government Minister or senior official in that six-week period?

Karl Wilding: We have been in regular contact with officials and the Bill team. We have had contact with Ministers. We have had a number of discussions with the Electoral Commission. We have discussed a range of amendments around registration thresholds, the regulated period, what activities are covered under the definition, and the burden of administration on issues such as reporting. The only substantive response that we have had is that the Government is prepared to substantially raise the registration thresholds, but even then it is very non-specific, and “substantial”, from what we understand, will still be below the PPERA threshold for registration, so it has been deeply unsatisfactory.

Q41Mr Chope: So do you accept the arguments put forward by the Electoral Commission, among others, that it would not be appropriate to exempt charities altogether?

Karl Wilding: We are a membership body of almost 11,000 organisations, and most of them are charities. Superficially, it seems quite attractive to exempt charities from this legislation, but we also have members that are voluntary organisations that do not have charitable status. We think we have a role in terms of representing wider civil society, so on the balance of arguments, we have come to the view that we cannot support an amendment to exempt charities. There are specific legal issues as well, if you want to add something, Elizabeth.

Elizabeth Chamberlain: Yes, if it is helpful.

Chair: Welcome, Elizabeth. Forgive me for not welcoming you.

Elizabeth Chamberlain: Thank you. From a slightly more technical point of view, some strong arguments have been put forward to us. First of all, both the key regulators, the Electoral Commission and the Charity Commission, have been very clear that charities can come within the scope of the rules, so obviously that makes arguing for an exemption a bit problematic. Also, in the Bill, as the Electoral Commission clarified earlier, the rules are about activities that are carried out. To try to carve out a specific type of organisation from the regulatory remit is quite difficult from a legal point of view.

Q42Mr Chope: Can I ask you about clause 26? During Report stage in the Commons, the Government tabled an amendment to revert to the previous definition of “controlled expenditure”, or very similar terms, but you have said you do not think that is adequate. Why is that?

Karl Wilding: It is true that the Government has reverted to a definition that is much closer to the existing one under PPERA. I have probably mentioned in passing that the PPERA definition itself was not unproblematic, as we found at the time—the problem being the definition of being reasonably regarded to promote or procure electoral success. The legal advice that we are receiving is that you do not have to name a specific candidate or a specific party to be captured under the definition. From what we can see, it is still a relatively vague definition.

Elizabeth Chamberlain: Again, the PPERA wording is a slight improvement on what the Government initially proposed in the Bill. Reversing to the previous situation is certainly better than where we started from, but it is still a very vague and very broad definition that can easily catch activities that are not intentionally or deliberately promoting a particular party or candidate. The advice to us from the Electoral Commission is that if in the public's mind or the public's view a particular activity is associated with a candidate or party, the activity comes into the regulatory remit. That element of uncertainty is why it becomes so much more important to look at the slightly more technical things, such as registration thresholds, spending limits and the range of activities—a whole package of things.

Q43 Mr Chope: But if you are going to have definitions, is it not better to have a definition that has been tried and tested in at least two general elections?

Elizabeth Chamberlain: I think having a definition that we have already had to manage with is helpful. I think the feedback that we have had from Members is that in the previous elections they just about managed having a certain margin of error with the higher registration thresholds. That difficulty becomes so much more unbearable with the changes brought by the Bill.

Q44 Mr Chope: Can I ask you about the definition of controlled expenditure. In the House of Lords earlier this week, there seemed to quite a lot of strong criticism of introducing a subjective, rather than an objective test. Do you accept those arguments against a subjective test?

Elizabeth Chamberlain: I think the Electoral Commission has made a reasonable point. It is very difficult to come to a definition that provides absolute certainty for non-party campaigners and at the same time allows the regulator to intervene where necessary. That is obviously a case where you are looking at things from two different sides of the table. Through the Commons, we did try to slightly define the definition a little further, but that has not been possible. It could be that, as the Commission on Civil Society and Democratic Engagement recommends, this requires further consultation and analysis, because these are complex issues. I expect that with more time and more consultation, a better definition could be reached.

Q45 Mr Turner: Let us take an example—it is always easier when we take examples—of a county with three Conservative seats, one Labour party seat and one “balanced” seat, where either Labour or the Conservatives might win. In that seat, there is quite a lot of support, not only from within the constituency but from people coming from other constituencies to canvass with them, for hunting. First, how would you feel about the people in favour of hunting engaging in the battle that is going on?

Karl Wilding: First, voluntary organisations campaign on issues; they do not campaign for specific political parties. Charity law, and specifically the guidance under CC9, says that it is perfectly legitimate for charities to campaign on issues. Should it be the case that specific candidates or parties agree with these issues, charities and voluntary organisations have to make strenuous efforts

to dissociate themselves from those specific candidates. So I think if those organisations are campaigning on issues, that is part of the democratic process.

Q46Mr Turner: Yes, but what I want to know is how do we know whether that group is detached or attached to candidates who support their way of thinking?

Karl Wilding: CC9 is clear that there is an onus upon those organisations strenuously to dissociate themselves from those candidates and to do so publicly.

Q47 Mr Turner: Do you think that that will be sufficient? Would you be happy with that? You seem to be quoting the law without saying what you think should be the law.

Karl Wilding: We think public trust and confidence in charity is one of the most important things that we need to keep a watch over. We think that if it became the case that charities were somehow seen as annexes of political parties, that would damage trust and confidence, so yes, they should be strenuously distinct from specific candidates or political parties.

Q48 Mr Turner: I see. The Bill would lower the threshold at which third parties had to register with the Electoral Commission. The Commission on Civil Society and Democratic Engagement has recommended that the threshold be not only restored, but increased. What is your view on that?

Karl Wilding: This is where we come back to Elizabeth's earlier point that there are a range of different measures in the Bill that have cumulative impact. First, we must remember that we are shifting from controlled activities that are purely around election material to a much broader range of activities, so even if the threshold had stayed the same, you are potentially including spending on a much wider range of activities. Even before we change the thresholds, or indeed the spending caps overall, you have de facto lowered them by widening the range of activities that are captured.

We do not agree with the proposals to halve the threshold for registration. If anything, we actually think that they should be increased. We have proposed that it should be at least £20,000 in England and at least £15,000 in the devolved countries. The Commission on Civil Society and Democratic Engagement has very similar proposals, but we differ slightly on the proposals for the devolved countries. Our sister councils in Scotland, Wales and Northern Ireland agree with us that those thresholds need to be raised.

Elizabeth Chamberlain: There is overall agreement within the charity sector, broader civil society and the Electoral Commission that the registration thresholds proposed in the Bill are disproportionately low and do not match with the policy intent of preventing big money, big spending in politics. If you want to catch the big spending, you do not lower the registration thresholds, because that brings the smaller groups into the scope of the Bill, which is a concern that the NCVO has raised from the start. In terms of the recommendations to increase the thresholds, there are tiny differences on amounts, but the spirit behind the amendments is to ensure that small community groups and small campaigning are not caught.

Q49 Mr Turner: It obviously depends on how you define big and small. It seems that small means up to £20,000 in your view. Am I correct?

Karl Wilding: Yes.

Q50 Mr Turner: Going back to the hunting dispute, would groups be able to put a lot of money in from other areas and spend it in your constituency?

Karl Wilding: There are two issues here. One is about registration thresholds and the other is about constituency limits. My understanding is that the constituency limits are going to be more like £9,000.

Elizabeth Chamberlain: They are much lower, yes.

Karl Wilding: Significantly lower. To have a £9,000 limit on spending in a constituency over a 12-month period, where you are counting spending not just on election materials, but on a wider range of activities such as staff costs—presumably including the burden of submitting returns, to the regulator in this case—rallies, events and so on, it strikes me that if you are in one of those constituencies and you hire a village hall and a PA, so that you can speak to the people in the hall, it is not difficult to breach the constituency limit over the 12-month period in the run-up to an election. There may of course be overlapping periods in terms of different elections.

Q51 Mr Turner: I am sorry, but I am not clear. Are these for the period of the election or the period before the election?

Karl Wilding: One year before an election, the constituency limit of about £9,000 is the cap that applies.

Q52 Mr Turner: But for what?

Karl Wilding: For controlled expenditure.

Q53 Mr Turner: Go on. Which means?

Karl Wilding: Controlled expenditure in this case is the production of election materials, market research and staff costs; it potentially includes policy work. One of the big issues here is the uncertainty about what is included and what is excluded. The response that we get from the Electoral Commission is that you almost need to look at this on a case-by-case basis, so there is a lack of clarity as well. We would ideally have a longer period for discussion of what activities should be included or excluded, which can help with, I would hope, a much more informed discussion about what constituency limits should be, if indeed they should apply, or what the registration threshold should be.

Q54 Mr Turner: So you are suggesting that the limit on individual constituencies should be higher—both the short and the long.

Karl Wilding: We do not think that there should be constituency limits. We think that they should be removed. We think that they are a regulatory burden. My understanding is that the Electoral

Commission says that trying to police those constituency limits will be difficult at best, and quite probably unworkable.

Q55 Mr Turner: In other words, you do not believe there should be any limit at all.

Karl Wilding: We do not think that there should be constituency limits, that is right.

Q56 Mr Turner: Right, so you are happy for the hunting people to get together a year before and start hammering home the election fight at that point, and go on right through until the election?

Karl Wilding: I would almost answer the question in a different way. Where is this sort of activity going on? The vast majority of—

Mr Turner: I realise that you were not here, but we heard Paul Flynn give an example.

Karl Wilding: Okay.

Q57 Paul Flynn: There was a book written by one of our colleagues about the question of what happens in individual constituencies. Peter Bradley wrote a book on that and suggested that concentrating spending on particular constituencies had a profound effect on the result and unseated people. One MP was campaigning against an individual who spent £250,000 in his constituency and unseated him.

Elizabeth Chamberlain: If that was the amount spent, they would have to register.

Q58 Paul Flynn: It was spent outside the election period generally, but the figure is a genuine one. It is possible for somebody to put huge sums of money into a constituency and concentrate it there outside the election period.

Elizabeth Chamberlain: If it is outside the election period, I presume none of these rules would apply anyway, because if it is outside the election period, it is a different issue. Even if it were in the election period, with those amounts of money, even if only targeted on a specific constituency, you would still have to register because of the overall registration thresholds.

Paul Flynn: These are the problems: there are limited controls on national spending and on individual spending outside the election period which distort the results.

Chair: What I suggest we do here, rather than make reference to a particular event, is ask Karl and Elizabeth to take the question away and have a little think about it and drop us a note, and we will circulate that to Members.

Karl, Elizabeth, this has been very helpful. Is there anything left unsaid? Either take the opportunity to put it on record, or you can of course always drop us a line, because this is a rather fluid situation and we are waiting for their lordships to send the Bill back.

Karl Wilding: The final point that we would make is that underneath some of these bigger picture issues, there is a huge amount of regulatory red tape in terms of new accounting and reporting requirements for organisations, which would appear to be contrary to everything that all parties

have been saying for the last 15 to 20 years about freeing voluntary organisations from red tape and encouraging voluntary action. We can put those in a note to you later.

Chair: Karl, Elizabeth, thank you for time this morning. The Committee will stay very engaged in this, as you have no doubt discovered in the previous month or two. We look forward to welcoming the Bill back from their lordships' House.

Witness: **Georgette Mulheir**, Commission on Civil Society and Democratic Engagement, gave evidence.

Q59 Chair: Georgette, welcome. Thank you for joining us. As you know, we are in the middle of our efforts to discuss the lobbying Bill, which is currently in the Lords. We understand that you have been quite busy during the pause. Is there anything you would like to say to start us off?

Georgette Mulheir: There are three key brief points; I am sure that we will come back to them. First, I am sure you have heard this many times, but I want to reiterate on behalf of the commission what we think is wrong, what the problem is with the Bill and why we are so concerned about it.

When I was first asked to join the commission, I did not actually know much about this law at all. Although I am a charity chief executive, I did not know about the law, and I did not fully understand the problems. Because of that, I took the role on in, I believe, a genuinely neutral way and I took very seriously, as did my commission colleagues, the responsibility to look at evidence and to be as objective as we possibly could. Having done that and having been involved in the evidence gathering and the writing of these two reports, I am, as are all my colleagues on the commission, deeply concerned about the Bill and the impact that it will have.

There are a number of key problems with the Bill that we certainly have not been able to solve in six weeks. The first is the ambiguity of the definition. Given the extremely hurried timetable that we are all dealing with here, few of us think that will be put right before the next general election. That definition is already in place and it has not caused too much trouble in the past, but what is causing us trouble now is the myriad different restrictions—draconian restrictions—that the Bill will impose if it goes through in its current form. We do believe, from all the evidence that we have gathered, that this will have a very strong chilling effect—I will come back to that later.

We do believe that charities—I speak as a charity chief executive—and other non-governmental organisations will self-censor. We will be too concerned about the potential risks of legal bills and so on, and about being on the wrong side of a law that is not clear, so we will be much more cautious about what kind of campaigning activities we are involved in during the 12 months up to a general election. As a chief executive it is my responsibility to report to and advise my board about potential risks, and that would be one of them.

We also feel that this is starting to define campaigning, which of course is a normal part of any democracy, as in some way dirty, questionable, or subversive. Whether we agree or disagree with people's politics, their right to express their opinion and to protest peacefully is a fundamental part of democracy and we feel that that is a big part of what is under threat with the Bill as it currently stands.

The second point, very briefly, is simply about our dismay, really, at the process by which the Bill is being pushed through. I am not an expert, but having watched different legislative reform in this country in the past, I understand, as do we all, that it would have been normal for there to be a

White Paper and a consultation process, neither of which took place in this case. The extraordinary speed with which the Bill is being pushed through the Commons and the Lords is quite shocking. We managed—I believe the commission had a part to play in this—to persuade the Government to undertake a pause, but six weeks is nowhere near long enough, as we have all found, to solve the problem.

There are two points I would like to make on that. The first is that the problem should have been dealt with much earlier by the Government: if there was such a serious perceived problem, it should have been dealt with much, much earlier, in order for there to be a proper consultation process. The second is that, given that the Government did not deal with this much earlier, we believe that a practical solution is to shorten the regulated period to six months before the next general election to give proper time now for real consultation, dialogue, scrutiny and amending of the Bill, in an attempt to minimise the harm that it could cause. Underlying that, we still do not quite understand what the problem is, but I think we will come back to that in discussion.

My third and final point is that this is package of problems and it requires a package of solutions. I would strongly advise that the recommendations we have put in our second report cannot be cherry-picked. We know that the Government are talking about looking at thresholds of registration, but the problem is not only thresholds of registration; it is also the broadening of the types of activity that are covered and a series of other problems that we have raised, including constituency limits, coalition working and so on. Unless we find a package of solutions, just solving one of those problems will not actually solve the overall problems that the Bill is likely to cause. Those are my three brief points to start with.

Chair: Georgette, that is very helpful, and bells were ringing as you were speaking.

Q60 Mark Durkan: What you have said reinforces all the points that we knew before about the problems with part 2 of the Bill as originally presented. Having won that pause, how has it been for the commission, particularly in terms of your engagement with the Government?

Georgette Mulheir: Speaking personally, the pause has meant an enormous amount of extra work during what is a really busy period for charities anyway. We have taken it very seriously—you can see that from both the reports that we have produced. We have put a lot of effort into genuine consultation with as many NGOs and others—the Electoral Commission, the Charity Commission, parliamentarians and Government—as we possibly could, and we are trying to be as constructive as possible: we are not just saying what is wrong with the Bill, but have tried to make some helpful recommendations for taking it forward and minimising the worst of the potential damage.

During that period we have managed to have two meetings with Ministers and I am very pleased that we had those meetings and that they made the time to see us. That said, the Ministers told us that they were only in listening mode, and so what we have not had is a dialogue. We have had no feedback from them at all on what they actually think about the specific problems we raised in our first report, and we have had no feedback from the Government on their own consultation processes. So it has been quite a dry process where essentially we talk about the problems and our suggested solutions, but we are getting no real responses.

The only response that we have received, which has been consistent, is that we are worrying about something that we should not be worrying about, that someone has whipped it up into a frenzy, that we have not quite understood the Bill, and that really there is nothing to worry about.

Clearly, from the evidence that we have gathered, there is a great deal to worry about. We are, I think, a bunch of quite intelligent people and we have been able to look at the specific campaigning

activities of NGOs, charities and so on and test those against the specific examples that we were given by the Electoral Commission as examples that would be caught by the Bill and would have to be regulated. From that, it is very clear to us—I think we presented quite a lot of evidence in our second report—that some excellent campaigning activities that most people would see as a social good, whether or not you agree with the politics behind them, would be seriously curtailed by the Bill, according to the Electoral Commission’s guidance.

This again has been a challenge for us, because while the Electoral Commission’s guidance is telling us one thing, Ministers are saying to us, “No, this wouldn’t be affected, that wouldn’t be affected and wouldn’t be regulated.” So we are very concerned, and it has heightened our concerns that the ambiguities in the Bill are still there for everybody. Even if the Government’s intention is not to restrict normal, everyday campaigning activities, it looks like the effect will be exactly that.

The Government is putting forward a Bill where it is saying, “Don’t worry too much about ambiguities, because the Electoral Commission will provide guidance.” But the Electoral Commission are saying to us—and publicly, as I am sure you have heard—that certain aspects of the Bill proposed are unworkable and the time scale that they would need to get guidance together and share that with charities and NGOs for them to understand what is going on is very tight. They have also said, I believe, that they think it could be quite positive to shorten the regulated period as a result.

In summary, we are glad that the Government is listening and we are glad that there is a pause. The pause has not been long enough to solve the problems, particularly around the definition, which remains problematic. We do not feel that we are getting engagement or dialogue with Government so much. We are being listened to, yet told that our concerns are unfounded.

The final two things I would say about that are that still we have not been given any evidence of a specific problem by Ministers. While we have come up with as much evidence as we possibly could of the harm that the Bill would cause, we have received no evidence at all from the Government on the harm it would prevent.

When the Government talks to us about its particular concerns, because we have asked for specific concerns, only one or two examples have been provided: one by Lord Tyler and then one by Lord Gardiner in our meeting recently. Those were examples that relate to a campaign being used to target a specific candidate, to get that candidate either elected or not, which, as I understand it—I am not a lawyer, so I am sure that you will know better than I do—is the purview of the Representation of the People Act.

So we feel that there is even perhaps—I apologise for saying this—a lack of clarity and understanding among some of the Ministers about where the RPA ends and the PPRA begins. I think a lot of work is needed on that. That is my understanding.

Q61 Mark Durkan: If Government were not giving much back by way of engagement, we do have, from the House of Lords on Monday, Lord Wallace indicating that one possible adjustment that the Government might be about to make is to give further consideration to the idea of exempting charities from part 2 of the Bill altogether. Why doesn’t the commission support exempting charities from the Bill?

Georgette Mulheir: Yes, and as a charity CEO it would be great from my perspective for the problem just to go away. But simple solutions are not always what they seem to be, in my experience. If something looks too good to be true, it usually is too good to be true.

We believe that there are many complexities about the rules. If we look, for example, at coalition working, charities and other organisations—non-charities—will often work together in coalition. So if charities get involved in a coalition, even if they are exempted from the rules, will their expenditure count towards that coalition's expenditure? If not, are we not then potentially distorting what charities are capable of doing, because they could simply spend as much as they liked? It would be to the advantage of a non-charity organisation to find a charity to link up with to be able to get around the coalition rules. That is just one example of where I see this as problematic.

Secondly, we all agree about, and believe in, having transparency around campaigning to ensure that it does not have any undue influence on the outcome of a general election. We believe in that. I work with children a lot, and you treat the behaviour, not the child, if you see what I mean. In the same way, it is the actual campaigning activity that matters, and it is the activity that should be regulated, not the group carrying it out.

The third reason this is important is that many groups have not yet registered as charities. People come together in campaigns locally to save their hospital or to fight against HS2 or whatever. They come together because they are citizens, and they say, "We don't like what is being done in our community, and we want to do something about it." They are not yet a charity or a registered organisation in any way, but they all fall foul of the regulations. So the proposal does not help in many respects.

The fourth and final thing I would like to say is that I think there is the risk of unscrupulous groups registering as charities to try to avoid regulation. As a result, they could potentially have a negative influence on the outcome of a general election, which would, in the medium to longer term, have a very negative impact on the reputation of charities. As a charity director, I know how important our individual reputation and the reputation of the charitable community are. Those are the key reasons why we think charities should remain under regulation.

Q62 Mark Durkan: Also on Monday in the Lords, Lord Wallace committed the Government to reviewing the legislation after the general election, and he said the Government would introduce an amendment to that effect. Does that satisfy the commission's call for a review?

Georgette Mulheir: I have not seen the amendment, so it is hard to say for sure until we see it. The key things about a review are that it needs to take place in the period immediately after the general election so that we do not get into a situation where everyone puts it on the long finger and then, all of a sudden, just a year and a half before the next election, goes, "Oh God, we didn't sort that legislation out. Let's rush something through again." We all have these habits: when something is not an emergency, it goes to the bottom of our list, so it is important that it gets built into some kind of formal timetable that the review follows the general election.

The evidence-gathering process for that review also needs to happen in the regulated period before the general election. The review needs to be planned now, and there needs to be clarity about what evidence will be collected and who will be responsible for that. I would also mention the issue of what resources will be available to make sure it is done properly, because I know what resources we have all had to try to get together with the commission to make some kind of consultation happen over the last couple of months.

I have heard the idea of having a sunset clause in the Bill, and I think that would help. If there was a sunset clause, it would mean the Government had to review to get the legislation in place for the next general election.

Q63 Mark Durkan: The commission report stated: “The potential to do harm in Northern Ireland with hastily adopted legislation is likely to be of a different order to that in Scotland, Wales and England.” I will not advertise my views about that, but can you explain what informs that belief on the part of the commission?

Georgette Mulheir: I had the privilege to take both the evidence sessions in Belfast—the one before our first report and the one just two weeks ago, although it feels an awful lot longer. We talked in general about a chilling effect for charities and campaigning organisations and I have explained from my perspective as a chief executive what that means.

In Northern Ireland—I apologise if I say anything inappropriate here. I have done some work previously in Northern Ireland so I think I understand the politics fairly well for someone who isn’t from Northern Ireland. I also have quite an understanding of the role of civil society in Northern Ireland. When we talk about the problems with this Bill being an attack on our fundamental rights to freedom of speech and freedom of assembly, I think in Britain that feels very different, because in Britain most of us grow up automatically believing we have this right to freedom of speech and freedom of assembly and we don’t worry about it particularly. We are not afraid. We will speak out and say, “I think this is right” or “I think this is wrong” without fear.

That is not the case in emerging democracies and in post-conflict societies. The charity I work for, Lumos, is an international charity. We work in predominantly central and eastern European countries, but over the last 20 years I have worked in 23 countries that are emerging democracies and post-conflict societies, so I am speaking from that perspective. My sense spending time in Northern Ireland to gather evidence and my sense speaking to and listening to representatives of civil society, is that Northern Ireland is both obviously a post-conflict society, but also an emerging democracy. Local democracy in Northern Ireland, or rather the Assembly, is a new beast that is trying to find its way. It is a mandatory coalition—that is a very odd sort of democracy—but it is developing.

As many of our colleagues in Northern Ireland stated, civil society plays a very strong role in supporting that democracy. They provide quite often the secretariat for all-party groups. They engage on a whole series of issues and they do this in a very careful way, because these people are afraid of speaking out. We know just from the events of the last few weeks that there have been bombings, shootings and so on. We know, as our colleagues stated, that there are still many people who have another way of protesting—a violent way of protesting—and of making their voices heard.

Civil society has been a way for people to come together and make their voices heard in a constructive and a peaceful way. We were given evidence of a campaign in Northern Ireland that took place in the lead-up to the last general election which, I believe, is a very good example of what is wrong with the Bill. The Human Rights Consortium in Northern Ireland is a group of more than 180 small community groups who work together in coalition. There is a whole range of different community, religious and disability groups. There is also the Disabled Police Officers Association of Northern Ireland, the Irish Republican Prisoners Welfare Association, and one for ex-loyalist prisoners. They all came together on one single campaign. These people voluntarily worked together on something, and I would imagine that it is unprecedented in Northern Ireland for all of these groups to come together.

They worked on a campaign for a Bill of Rights for Northern Ireland. The Labour Government, just the year before the last election, was trying to push through recommendations that the people of Northern Ireland were deeply unhappy with in relation to this Bill of Rights. The Human Rights

Consortium undertook a massive campaign against these recommendations being pushed through and they won. That campaign was so successful that it was really encouraging for all the groups involved and they all felt, “This is the first time we have been able to work together, make our voices heard and find common ground.”

That campaign cost £100,000. Because it was specifically campaigning against a very clearly stated Government policy, it could be interpreted, according to the Electoral Commission guidance, as trying to influence the outcome of a general election. With that in mind, it would be caught by this Bill. The spending limit for Northern Ireland is £10,800. This campaign would have had to stop once a tenth of it had been implemented. We can all imagine how community groups in Northern Ireland would feel if they are told that next year they cannot campaign to defend the Human Rights Act, which is a big campaign they are planning, because this Bill will not allow it. It is a clearly stated policy of the Conservative party to get rid of the Human Rights Act. It is a stated policy of the Liberal Democrats and Labour to maintain it. It would be seen as party political, and as a result, if the Bill goes through that group of organisations will be sorely disappointed and we would be very concerned about the impact that might have.

Q64 Mark Durkan: On that basis then, what about the proposition that Northern Ireland would just be exempted from part 2 of the Bill?

Georgette Mulheir: The commission as a group has not supported that. I can see the logic for not including Northern Ireland, in the sense that political parties have different rules in Northern Ireland at the moment. Work is being done to try to improve that. If a workable solution cannot be found in time for the next general election there is potentially a logic for saying, “Because of the particular concerns about Northern Ireland we are going to have a special regime for them as we do for political parties for the next general election.” Having said that, if we can find a workable solution that works for Northern Ireland, where there are the greatest sensitivities, then it will certainly work for everybody else in terms of reducing the chilling effect. If I can make a recommendation—it is a personal one rather than the commission’s—the better course of action would be to shorten the regulatory period for the next election to six months and give everybody proper time to really sort this out, bottom it out and ensure that whatever legislation goes through for the next general election will work for the whole of the United Kingdom.

Q65 Robert Neill: May I take you back to clause 27 and the thresholds? There was criticism that the original reduction in the thresholds that was proposed—perhaps after the pause we may revert to where we are—was arbitrary. The Committee was not unsympathetic and said there was not much evidence to support it. You want to go the other way; you want to increase it. Where is your evidence?

Georgette Mulheir: Our evidence about increasing is that there are two parts. One is inflation. We think that is fairly reasonable. Since the legislation was put in place with the original thresholds there has been significant inflation. So in order to be reasonable, that should be looked at. But the second area is that the scope of types of activity to be regulated is being broadened out significantly. Because of that there will be increased costs for NGOs and campaigning organisations.

We also appreciate that the thresholds that we have suggested might be considered—arbitrary is the wrong word, but if we had had more time to develop more evidence and really look at campaigns in detail and people’s budgets in detail, we might have been able to come up with something that had an even stronger evidence base. However, what is clear is that if you are going to broaden out

the scope of activities then just leaving the thresholds as they are will still restrict campaigns much further than they would have been under PPERA currently.

Q66 Robert Neill: So it is a judgment call?

Georgette Mulheir: It is, yes. I accept that a judgment call is always involved in this, but our judgment call is related to that broadening out of activities.

Q67 Robert Neill: Taking you on to clause 28, what is your objection to the principle of regulation of spending limits at constituency level? Why do you want remove any constraint out of constituencies?

Georgette Mulheir: It is not there at the moment.

Robert Neill: Perhaps it should be.

Georgette Mulheir: Well, where is the evidence? First of all, it would be very helpful for us to know from the Government's perspective where the evidence is that there is a specific problem at constituency level that is not dealt with by the Representation of the People Act and needs to be dealt with by PPERA. We need evidence for this, because all the NGOs that work at constituency level or across a number of constituencies—most don't work on just one constituency—are saying that it is completely unworkable for them to apportion their spending according to, "Which constituency did we do which bit of a campaign in, and how much was that?"—particularly if they are having to apportion staff time.

The second issue about the constituency limits is that the Electoral Commission, in its latest guidance, has suggested that it may well be unworkable. We are hearing that the campaigning organisations believe it is unworkable and that the Electoral Commission believes it may be unenforceable, and no one has given us any evidence as to why it is necessary. I do think that—again, this is why more time is needed—it is the responsibility of the Government to come up with the specific problems at constituency level that they are worried about and the evidence for those problems, and to clarify why they are in the purview of PPERA and not the Representation of the People Act.

Q68 Robert Neill: The Electoral Commission does not actually quite say that. It says that it is unworkable, but also that it might be amendable in order to make it workable. Is that not a realistic proposition to look at?

Georgette Mulheir: Well, we would love to see the amendments.

Q69 Robert Neill: Are you going to suggest some, perhaps?

Georgette Mulheir: We have done a huge amount of work in the past six weeks, in a very short space of time. We have not been able to resolve every problem, but it is not our job to do that. We have entered into dialogue and I think that we have been as reasonable about this as we possibly could. We have put an inordinate amount of extra work in and come up with what we feel is a very helpful package of amendments. If the Government come up with something that will work for everybody, I am sure we will be completely happy with that, but we are not seeing anything. No

one has yet heard what amendments the Government are going to come up with, so it is very difficult for us to comment on that.

Q70 Robert Neill: A final thought. Baroness Williams gave a very interesting lecture last night at the Speaker's house about American politics. She made the point that one of the real vices in American politics is the lack of any regulation of lobbying or funding at constituency level. In fact, groups that in the UK we would regard as voluntary—some of the “moral right”: anti-abortion groups, gun control people—specifically target individual congressional districts and put in a huge amount of money that can actually, in her phrase, not mine, “distort the electoral outcome.” If we adopt your principle of no regulation at constituency level, does that not raise exactly the same risks? Is that not something you ought to reflect on?

Georgette Mulheir: If you are looking at the constituency level and at a campaign having a massive impact at that level, what is it having an impact on? Is it having an impact on whether or not a candidate is elected? If so, is that not in the purview of the Representation of the People Act and is it not therefore already regulated and legislated for in the UK? That is different from the American system.

Q71 Robert Neill: Or is your problem that you are dogmatic on the principle, rather than the thresholds?

Georgette Mulheir: I don't think I'm dogmatic on the principle at all. We have a very worrying definition within PPERA that everybody has recognised, and that I believe the Government have also recognised, is imperfect. Because of that, we have many organisations that may fall into a net that is not intended for them. On constituency limits, if the Government come up with a workable amendment, we would be perfectly happy with that.

Robert Neill: Okay. That is helpful. Thanks.

Q72 Mr Chope: Your commission has been campaigning to improve the transparency of the lobbying Bill. In the interests of transparency, can you tell us how much you have spent on your campaign so far and how it has been funded?

Georgette Mulheir: I would not say that we have been campaigning. I would say that we took evidence and we have been working on this. There is a separate NGO campaign that commissioners are not involved in—I am certainly not involved in that. I cannot speak for that campaign. I have no idea what they have spent, so you would have to ask them. In terms of the commission, I saw a financial report just last week and understand that the figure is just over £20,000. However, that does not include the time of commissioners, which obviously has been given for free. By the way, that £20,000 has predominantly been to cover paying for a secretariat and the production of the reports, and also for travel for the consultation sessions.

Q73 Paul Flynn: I cannot recall any public outrage at the conduct of your charity or against the British Legion, Save the Children or Oxfam, but I can remember serious concerns about the activities of “Mega-Greed Plc”—people who are buying influence and access to Government. We are talking about nothing but part 2 of the Bill: do you think the Government might be raising a cloud of indignation from the charity organisations to obscure the fact that the real problem with the Bill is its

total failure to attack the real problem, which is corporate lobbying by big business? Charities are just a hidden afterthought to distract attention.

Georgette Mulheir: I cannot speak for what was the Government's intention, open or hidden, behind the Bill. I really can only speak on part 2, which is the part with which we are most concerned.

Paul Flynn: And the only thing that has been discussed is happening. It has been a very successful piece of Machiavellian legislation—

Chair: Thank you, Paul. I think you have made your point. We get it.

Georgette, thank you very much for your time this morning, and thank you for the work that the commission has done. I hope you will pass on our best wishes to Lord Harries, who has filled in some of the gaps left by the very hasty process accompanying the presentation of the Bill. We thank you so much for this morning. Because we are all running very fast to catch up on this, if there are further things that you want to say to us before the Bill returns to the House, please feel free to drop us a note. We would love to hear from you.

Georgette Mulheir: We will.

Chair: Thank you so much.

Colleagues, before you go, may I give you a pat on the back, because we moved incredibly quickly to try to put right the whole concept of inadequate pre-legislative scrutiny. Members have gone more than the extra mile. Colleagues who were with the Committee at that point came back early from recess and produced a unanimous report on the Lobbying Bill. I think you should take some pride in the fact that the Government have begun to move on this question. It shows that Select Committees do not have to grandstand—they can get stuck in and do the nitty-gritty. Governments perhaps do not listen as much as we would all like but they certainly have listened—I would not say in an unprecedented way—to the detailed work we put in on the Bill. Therefore, as they say at primary school, give yourself a pat on the back because it was a job well done.

Finally, colleagues, a merry Christmas to all of you, particularly our very hard-working staff, who keep us at it but are always producing very high-quality stuff for us to put forward.