

# Public Administration and Constitutional Affairs Committee

## Oral evidence: [The work of the Electoral Commission, HC 488](#)

Thursday 2 July 2020

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

Questions 1 - 92

### Witnesses

I: Bob Posner, Chief Executive, Electoral Commission, Louise Edwards, Director of Regulation, Electoral Commission and Ailsa Irvine, Director of Electoral Administration and Guidance, Electoral Commission.

### Examination of witnesses

Witnesses: Bob Posner, Louise Edwards and Ailsa Irvine.

Q1 **Chair:** Good morning and welcome to another virtual session of the Public Administration and Constitutional Affairs Select Committee. I am here in a Committee Room in Portcullis House with a small number of staff required to facilitate this meeting, obviously suitably socially distanced from one another. My colleagues and our witnesses join us from their homes and offices across the country. The Committee is very grateful to all the witnesses today from the Electoral Commission for making time to appear before us.

Could I ask the witnesses to introduce themselves for the record, please, starting with Bob Posner?

**Bob Posner:** Good morning, Chair. Good morning, Committee, everyone. My name is Bob Posner. I am the Chief Executive of the commission, and I have been in that role for just over a year.

**Louise Edwards:** Good morning, thank you. My name is Louise Edwards. I am the Director of Regulation at the Electoral Commission.



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**Ailsa Irvine:** Morning. I am Ailsa Irvine. I am the Director of Electoral Administration and Guidance at the Electoral Commission.

Q2 **Chair:** Thank you very much indeed. As it is extremely topical, could I ask Bob Posner, please, to outline the effects of the Covid-19 situation on the work of the commission?

**Bob Posner:** Just let me put that into the context of the commission, so that you can see how Covid has affected us. Where we are now as an organisation is that we have just agreed with the Speaker and the Speaker's Committee a corporate plan to take us forward. If you think of our work and how Covid affects us, the plan has four strands to it. One is working with UK Governments on the electoral law agendas. Another is working with local authorities and returning officers to strengthen their resilience in elections. The third strand of our work is with political parties and campaigners to provide more support to them on the compliance with the law. Fourth is voter education—helping voters in terms of engagement with elections and better understanding of topical digital campaigning, and protecting democracy from fraud. If you think of those strands of our work, within what is the UK's robust democracy and electoral processes—its regulation of that is admired around the world—our job as the commission is to be as effective as possible within that legal framework as set by Parliament.

On Covid-19, there are two strands to that if you think of our work. One is the ability of the organisation in terms of its staff and its wellbeing to operate—to keep on working—and the other is the delivery of the work that I have just outlined to you. I am pleased to say, on our ability to carry on working as an organisation, that because we were already diverse across the UK—not London based, but a UK-wide organisation—and people across the commission were already working remotely, it was not a massive step for us and our staff, who were already quite used to working remotely at times, to move to working completely remotely. We have the technology in place; we did not have to spend extra public money or anything like that. We were able to move really swiftly, adapt our procedures and keep going, as it were, which I think, in a time of crisis and uncertainty in the UK, is really important. We are delighted to have kept going, delivering democratic services.

On the work itself, we have kept up. I spoke about the corporate plan; it is an ambitious agenda, and we have really kept on track. We are within budget, and we have kept moving forward. There are one or two things. Obviously, we have had to slightly adapt and slow down, but we are really working closely and well—a good example of that is that we are working closely and well with Governments across the UK on their agendas. We are also obviously focusing very much on looking forward. There will be elections in May 2021—a big set of elections, because the elections from May this year were deferred—and we are working really closely with all partners, conscious of the impact that Covid-19 will likely have on those



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elections, to make sure the UK can have a really successful delivery of them. I hope that is helpful.

**Chair:** Thank you, Mr Posner. We will go to my colleague, David Mundell.

Q3 **David Mundell:** My questions are for Ailsa Irvine. I want to begin by asking what you think are the main factors that are undermining public trust in elections. Do you accept that public trust in elections is undermined?

**Ailsa Irvine:** It is interesting. What we saw at the December general election was a slight fall—down to 69%—in public confidence in whether the elections were well run, but that has to be considered in the context that there are still high levels of public satisfaction with the voting process and with the registration process. What we did find this time around is that there is a significant minority of people—around a fifth of people—who are not confident that elections are well run. Clearly, that is something that we are concerned about. What we found from our research is that that is not concerns about the administration of the process itself; it is more that there are concerns around the role of the media and around transparency of campaigning. Clearly, the public do have concerns about the electoral process, which we want to work to address.

We have made a range of recommendations for improvements to the electoral framework, such as through the reform of electoral law, and for changes around the electoral registration process and around the digital campaigning framework. What we are also doing, as Bob mentioned, is looking at what we can do ourselves within the current legal framework to try to enhance our activities—the support that we provide to others—to try to strike directly at these challenges that have the potential to impact on public confidence in the process.

Q4 **David Mundell:** To what extent did that lack of confidence go to lack of confidence in the outcome? Was there a proportion of people telling you that they were not confident that the outcome of the election or the individual elections was valid?

**Ailsa Irvine:** That was not something that came through at all. We found that over 90% of people had confidence in the voting process itself, so it was not a reason that was coming through strongly in our research. As I say, around 50% of people were raising concerns around the role of the media, and around transparency in campaigning, so it tended to be some of these wider issues around democracy, rather than necessarily around the delivery of the process itself.

I think we did see an election that was generally well run. There were some challenges around the edge, with local authority staff telling us they were pushed to the limit in what they could deliver. We did some instances where voters didn't have the level of service that we would all want them to have, but, actually, these were limited in their nature and in their scale. So there weren't really significant concerns expressed about the process itself.

Q5 **David Mundell:** Just to go back into that then, what were people's



principal concerns?

**Ailsa Irvine:** Perhaps pass to Louise, who can talk a bit more about the concerns with the transparency and other aspects of campaigning.

**Louise Edwards:** Thanks, Ailsa. Yes, as Ailsa says, a vast majority of people thought the election was well run. Of those who did not think it was well run, the majority said they had concerns around trust and confidence in campaigning and in the way that campaigning is portrayed in the media. We looked at all types of campaigning but particularly at digital campaigning, which is, as I am sure you know, a massively increasing trend among parties and campaigners at the moment. There, our survey after the election found that around two thirds of people thought that the information they saw about politics online was not trustworthy, and about 50% of people said that they could not find out who was campaigning—who was delivering that campaign material to them in their social media feed or whatever it was. Those are areas where we have made recommendations that would change that and that would require transparency about whose campaigning it is, for example.

On the fundamental point around the content of campaigning, that is a trickier one. We hear the phrase “truth in campaigning” a lot. Well, politics is a discourse, and, within the bounds of fact, politicians will have different views on what impact their policies will have going forwards after the election. But that does not take away from the fact that people need to be able to take a decision when they see a campaign post online. Are they going to believe it? Are they going to let it influence their vote? That is the choice that voters make. We think there are some really basic, fundamental bits of information that will help them make that choice. One is, whose campaign ad is it? Another is who has paid for that campaign ad? That is where we think that the regime could be tightened up. Maybe we could change this group of people who view things as difficult at the moment and get back to the point where digital campaigning really is a force for good, which it really should and can be.

Q6 **Chair:** Sorry, to interrupt you there, David, but could I just come in at that juncture? You mentioned something quite interesting, Louise, with regard to people verifying the source of campaign materials, and you drifted there into the electronic sphere, which is incredibly important. We will discuss that further on in the session, but we are talking specifically about the general election just gone and the survey from it. A party called Advance, for example, stood in several seats. It did not seem to do any—if I can call it this—positive campaigning on the merits and virtues of its candidates, but, rather, spent a considerable amount of money in trashing other candidates standing at that election, with no apparent purpose at all, and there were suggestions that it could, in fact, have been a front for another political party. How would you respond to that?

**Louise Edwards:** In terms of the specific party that you refer to, we are aware of that, we have dealt with that party and there weren't any regulatory concerns arising from it. I think what you have really hit on



there is exactly how complicated this regime is. If you think about an individual constituency-level campaign, there are a number of different actors who can campaign in that constituency. You have a candidate themselves running their campaign, and you will have other candidates. It is entirely legitimate for those candidates both to promote themselves as the best candidate, but also, as you say, to trash other candidates and say, "Don't vote for them." That is fine, so long as they report their spending properly.

But then you also have political parties, who will be running their nationwide campaigns. Given that the entire nation is broken up into constituencies, that, by definition, will take place within constituencies as well. Then, you layer on top of that the non-party campaigner rules, where you might have a non-party campaigner at a local level campaigning for or against particular candidates in a constituency. You might have a non-party campaigner operating at a national level who also will, by definition, be campaigning in individual constituencies. So you find a very large number of actors, all within one constituency, all running different positive or negative campaigns for the people or the categories of people they think the voters should vote for, all subject to slightly different regimes, all subject to slightly different spending limits, and all subject to slightly different enforcement as well. That is very, very difficult.

**Chair:** Thank you, Louise. Sorry to interrupt you, David.

Q7 **David Mundell:** Finally, was there any national or regional variation in the feedback you got? Were there any significant demographic differences in terms of people of different ages or backgrounds?

**Ailsa Irvine:** I don't have anything in front of me about the December general election. I don't think we do have breakdowns by different characteristics. We have done that around electoral registration work, where we know that there are variations in terms of registration and satisfaction with the process, but I don't have the information broken down by nation or by demographic for the December general election on the public confidence aspect.

**David Mundell:** Okay. Thank you.

**Chair:** Thank you. That takes us neatly on to Karin Smyth.

Q8 **Karin Smyth:** We want to move on to the issue of electoral law, which, Ailsa, I think is back to you. Do you think it makes sense still for the Government to consider the consolidation of electoral law as a long-term project?

**Ailsa Irvine:** We continue to support electoral law reform and the consolidation and modernisation of electoral law. It is something that we want to see taken forward, and we would like to see action taken forward on that soon. It is something that continues to be important. It presents a challenge for all those involved in the electoral process, whether it be those running elections, those standing for election or even voters themselves.



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It is something that we continue to think is important and continue to support being taken forward.

**Q9 Karin Smyth:** Can you expand a little for us, on the record, in terms of the administration for those people who are trying to run the elections under all these different primary and secondary legislations? What sort of difficulty does that present? I know we have looked at this before, but, just in summary, where do you think people are now on that?

**Ailsa Irvine:** When you come to run an election, particularly if you have more than one poll taking place on the same day, electoral administrators are finding themselves having to refer across literally hundreds of pieces of primary and secondary legislation to understand the rules and the framework that they need to apply. We do provide them with guidance and support to help them to navigate that, but it is a very complex landscape. Regularly through the process—from the tight prescription around the nomination process, such as what the forms must look like and how they must be delivered, to the design of postal voting stationery, to exactly how the polling process works—there is really tight prescription and very little margin for error. That does not give returning officers any flexibility.

For example, in terms of a voter with disabilities in the polling station, if you have voter who is blind or partially sighted, there are very prescribed procedures and assistances set out in legislation that must be provided. Now, we know that these are widely welcomed and supported by people who need to use them. There are more things that returning officers could do to be innovative and make better use of technology, but the legal framework currently does not allow them to do that. It really does stifle innovation from a returning officer perspective, as well as just being technical, complex and high risk, with a very high likelihood of people getting things wrong.

**Q10 Karin Smyth:** That is helpful, thank you. Can you expand on the other sorts of risks? You have talked about lack of innovation and some things going wrong. Can you expand a little for us on what the risks are of continuing not to do that reform and of carrying on as we are?

**Ailsa Irvine:** When you look at things in the round, one of the things that we are seeing is local authorities with ever-decreasing resources that they can devote to the administration of elections. We are seeing a high volume of skilled elections professionals leaving the profession. When we see that lack of experience, it is even more obvious, when you have a technical, complex legal framework for new people coming in and trying to get across that and to be able to run the services in the way that they need to, that that is incredibly challenging for them. There are risks there of errors from inexperience in the process, which are exacerbated because of the complexity of the rules people need to follow.

We also see that there is a limited pool of software and print suppliers who provide support to local authorities and electoral services. Because of the tight, prescribed nature of the rules and the timetable, again, there is a



limit to how many people are in the marketplace that local authorities can rely on to deliver the services. So there is a range of factors. Perhaps Bob might want to add something to that, if that is okay?

**Q11 Chair:** Just before Bob gives a further answer to that question, you mentioned the complexity of the law and the risk of error, if I paraphrase you correctly, for individuals and actors, as it were, taking an active part in the election process and also for local authorities. Do you feel, as an organisation, Bob, that the complexity of the law is also disadvantageous to your administration of it?

**Bob Posner:** Yes, absolutely. That is correct. I hope and believe there is a consensus among everyone involved in elections that the time has come for some modernisation and consolidation. I think it was really good that, a few years ago, the Government did commission the UK Law Commission to carry out the work that they have carried out. Actually, in the UK, we are in a really good position. They have written a blueprint as to how to modernise and consolidate our law, and we now all wait that being brought forward by Governments across the UK to respective Parliaments in legislation. That does not mean that, when what the Law Commission says is considered by Parliament, every bit would be implemented, but there is a really good blueprint as a whole, and that will make a significant difference. Complexity of the law does not help anyone at all, and an aged law does not help anyone.

If you think about it and you look at the concerns about double voting and things like that, the Law Commission came forward with a very good recommendation about where people would elect where they vote. That would enable the person to be checked, and we could deal with that concern. There may not, in reality, be a concern there, but we could deal with it, and it would be transparent.

If you think about people challenging elections, the petition system as it is called, is very old, very awkward and really unfair to people. Look at the Tower Hamlet case; we all knew how unfair it was that residents—local people—had to find the money and challenge that. We can modernise that system. The Law Commission basically recommended that that is easily done by bringing it into the mainstream court system. Then, it will be a system where, for those who want to challenge, there could be cost protection orders, and they could bring proceedings properly and fairly, or maybe there would be other ways of doing it, where a public body brought proceedings.

If you think about the offences in electoral law, which are complex and aged, the only people that that helps is people who break the law; it does not help the rest of us—the people who comply with the law. For the police, and for everyone who wants to enforce the law, aged, complex offences make it really difficult to bring prosecutions, and I think Tower Hamlets is a good example of that. Again, if there were offences, the police had to deal with really difficult offences to bring.



There is a whole range of examples, as Ailsa was alluding to, where, if one brings forward a sensible package—the last time the UK Parliament got an opportunity to do that was back in 1983, when there was some consolidation and modernisation done—we have a really good opportunity. It is always difficult. You can never find parliamentary time. It is never convenient to step aside and do this sort of thing. But we do believe that democracies, from time to time, just need to find the opportunity to modernise their law. We are almost there. The work has been by the UK Law Commission. It just needs to be brought forward now.

**Chair:** Thank you. Sorry for interrupting you, Karin.

Q12 **Karin Smyth:** No, that is helpful. Thank you, Chair. I think we have covered it, but just so we are clear, the Government have said that there are more immediate challenges for you to deal with around resilience, fraud, confidence and some of the things we have talked about. Do you agree with that, or is your preference to allow the reform in order for you to deal with some of those challenges? Are they interlinked in that sense?

**Ailsa Irvine:** It is quite interesting, and it is probably not particularly helpful to look at them as either/or solution, because some of the more immediate challenges around capacity and resilience are important and do need to be tackled. For example, challenges around the electoral registration process, managing the impact of duplicate registration applications, and addressing resilience of suppliers in the marketplace are important things; they are immediate risks, which are relevant to elections now, so it is important that these are taken forward, but these, in themselves, will not solve everything, and electoral law reform is an important part of the picture as well. It is probably unhelpful to look at them as an either/or, and I think that they are all needed if we are to be able to move forward and secure the processes moving forward.

Q13 **Tom Randall:** Again, this is a question to Ailsa Irvine. Could you tell me what steps are being taking to move towards automated and connected registration? Are you content with the pace of change in that area?

**Ailsa Irvine:** This is an area we have done quite a bit of work in, to look at reforms to the registration process, and we feel very strongly that there is more that could be done to improve our registration process. I mentioned some of the immediate work that is going on about addressing challenges around duplicate registration applications, which will have an immediate impact in helping to relieve some of the pressures during the election process that we have seen following the introduction of online registration, which in itself is a great thing, in that it has opened up access to the process. There is absolutely more that we think needs to be done to address the wider challenges of accuracy and completeness of the electoral register and to try to move away from the need for there to be applications made close to an election, by keeping the register more accurate and up to date using available data throughout the whole year.



We are seeing some really positive changes, such as those that are being implemented this summer to the annual canvass process, which enables better use of data to help electoral registration officers to target their attention and their focus on households where the data tells them there is likely to have been a change in who lives there. But we think there is more that does need to be done that has not been picked up as yet to explore some of the wider uses of public data, such as, for example, integrating electoral registration applications into other public sector transactions. For example, if you are updating your address on your driver's licence, how could that be tied into updating your electoral registration detail? Or, for young electors, when we know that young people are less likely to be registered to vote, is there a way young people could be automatically registered when they are issued with their national insurance number?

There are absolutely lots of areas we would like to see explored. We are not underestimating the complexity and the challenges that would lie behind implementing those things, but we would very much like to see them taken forward and picked up by Governments across the UK.

**Q14 Tom Randall:** Will there be any information in the Cabinet Office's registration volumes project that will provide information that is not already known?

**Ailsa Irvine:** What that will do is look primarily at short-term solutions to the event-led registration—to the high levels of duplicate applications. That will be focused, as I understand it, on trying, first, to limit the number of duplicate applications and, secondly, to make them easier to process when they do come in, so that there is less of an impact on the process. It is an important piece of work, and one that we welcome being taken forward, but I think it is quite constrained to addressing a particular risk in the registration process.

**Tom Randall:** Thank you.

**Q15 Chair:** Just to come in briefly with a quick supplementary, you mentioned the annual canvass. I may have received representations from my own local authority. Referring back to my opening question about the impact of the Covid situation, do you perceive a problem with that annual canvass this year at all? Who is best placed to answer that question?

**Ailsa Irvine:** Probably me. I think it does add to the complexity of the process. What we are seeing with the reforms to the canvass process is that there is already more flexibility for registration officers and how they manage it so that there is less need for household visits. There is more use of data that can allow them to target their activities. The parts of the processes that are affected or could be affected by Covid are more limited than they would have been had this happened 12 months ago.

But it is a concern for local authorities. They do still need to, at points in the process, recruit canvassers to be able to go knock on doors if, ultimately, they do not get responses from other mechanisms. We are hearing very mixed feedback from local authorities. Some are not finding



it difficult to attract the canvassers, and they are finding that they are able to get staff to do it, but we are hearing reports of areas that are struggling as well. I think we are just going to continue to work very closely with the local authorities to understand the scale of the challenge and to try to provide support as much as we can to help them through that.

**Chair:** Thank you very much indeed. Next we have Rachel Hopkins.

Q16 **Rachel Hopkins:** I suppose I should declare an interest, talking about local authorities. I am a sitting councillor as well as a MP.

Just building on that, Ailsa, how significant is the variation between the local authorities in their management of electoral services, and what are the reasons for this variation?

**Ailsa Irvine:** There is a variation, first, in terms of the challenge that they face. When we look particularly at electoral registration, you can't simply run the same process and take the same approach in every local authority area. If you are trying to deal with a small rural district authority, as opposed to a London borough with high levels of population churn, it would not be right to try to roll out the same processes. There is a degree of justified variations in terms of how things are approached.

One of the roles that we play, and one of the contributions we make to the administration process, is through the provision of comprehensive written guidance and supporting resources. We help local authorities to navigate the legal landscape and understand what good practice looks like so they can then implement and deliver a consistent experience for those involved in the process across the UK. I think some of the work we do does help to give that kind of level playing field and a consistency of experience across the board.

But we do know that local authority resources are tight, and some areas, in particular, are finding it hard to resource electoral services. We are trying to engage with those individual local authorities to understand their set-up and to try to help them to manage the risks over the course of the year, rather than waiting until something goes wrong at an electoral event.

Q17 **Rachel Hopkins:** I understand, as you rightly pointed out, that some variation is expected, but what sort of action are you taking to help smooth out those areas of variation and promote best practice?

**Ailsa Irvine:** There are a few things we do. In addition to the comprehensive written guidance that we produce, one of the areas we have identified in our new corporate plan that we want to do more of is identifying and sharing good-practice examples. We know at the moment that there can be 370 different ways of training polling station staff, so if there is an example that one local authority has of something that has worked well, we want to be able to gather that, celebrate that and share that across the electoral community so that other local authorities are not having to use their valuable resources in developing something that



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already exists and is of good quality. That will also help with consistency of experience.

I also mentioned the work throughout the year with local authorities. One thing we are trying to do is not just to focus in on electoral events, on the registration canvass, but to work with local authorities throughout the year to help them understand how their electoral services function is set up and whether it is fit for purpose. We are trying to develop a tool kit that we can use through our regional teams and our teams in Scotland and Wales to go out and work with local authorities to help them to apply that in practice.

**Q18 Chair:** Would you be able to help us with an item of terminology that the Minister referred to in her response to our predecessor Committee's, report, namely, "resilience of suppliers" to electoral administrators? You are electoral administrators. What do you understand by the resilience of your suppliers?

**Ailsa Irvine:** I think this would be aiming at the software suppliers. There are software suppliers who provide electoral registration officers with systems to manage their electoral registration applications and their electoral registers. There are also print suppliers, particularly for the production of poll cards and postal voting stationery. It is about that limited marketplace that exists to provide those services.

**Q19 Chair:** And that is sufficient, in your view?

**Ailsa Irvine:** We think this is an area that does need to be looked at. We have raised it since our report on, I think, the 2017 general election as something that is an ongoing challenge. There is a small marketplace, and that does mean that local authorities are constrained as to who they can have delivering the services for them. It also means that, with the limited capacity available, postal votes, for example, may not be able to printed and sent out as quickly as we all might like. So there is a capacity challenge there that we would like to see addressed. Government, with the funding for elections, hold some of the levers that can help to advance that.

**Q20 Rachel Hopkins:** Given the combination and number of polls planned for next year, 2021, how confident are you that they are deliverable?

**Ailsa Irvine:** It is undoubtedly a challenging landscape. As you say, we know that there is a range of polls taking place across Great Britain, and some areas in England will be facing five different polls taking place on the same day. We do have a complex landscape there, which local authorities are well used to delivering within, but that is not to undermine the challenge that they are facing, particularly when you then layer in the current public health context and the uncertainties around what situation you might be facing in relation to coronavirus by that stage.

It is good, in that context, that we are working now with electoral administrators, with political parties, and with Governments, to try to understand what the landscape looks like for next May and to identify if there are any changes that need to be made to the electoral framework to



help things to be delivered by that time. Are there some immediate changes that could help to make the elections run more smoothly in a Covid context? Once we get clarity on the scope and timing of any legislative change from Governments and on what funding is going to be available to local authorities to run the polls, that will enable us to put in place our guidance and resources for those running elections, to try to minimise the risks, and it will allow local authorities to pick up the pace of their planning and to put arrangements into place. There is also, of course, the work we do in public awareness to help voters to understand what it is they need to do to make sure that they can participate.

There are challenges. Work is already well under way to try to address those. We saw the system running under strain last year, with three major sets of electoral events, so it will be a challenge, and we are asking a lot of local authorities to deliver that, but they have consistently stepped up, despite the challenges they face.

**Q21 Rachel Hopkins:** If I may just push slightly, have you had any indications specifically around funding from local authorities, because many of them are being impacted by Covid-19 and are having to make in-year changes to their budgets already that are impacting on frontline services as much as their important statutory responsibilities, such as elections? Anything coming through already?

**Ailsa Irvine:** One of the factors about the polls that are taking place next year, with the police and crime commissioner elections, is that they are centrally funded by Government, so that will take some of the pressure off local authorities in any case. Local authorities will already have budgeted to run a normal set of elections in 2021. The challenge will be if there are additional costs that come in as a result of making things Covid-safe elections. That is where we are trying to work with Governments to understand what the landscape may look like there.

**Q22 David Mundell:** To follow that up, public health considerations are obviously paramount, but we do not know what they are going to be one year from now. If I heard your evidence correctly, Ms Irvine, you were saying that, despite the challenges, there is no reason, administratively, why those scheduled elections—such as the Scottish Parliament elections, which are already scheduled for next May, and then other elections across the rest of the UK, which have been moved—cannot take place?

**Ailsa Irvine:** It is difficult to say that definitively at this stage, when we don't know what scenarios we are going to be dealing with. What we have now is the benefit of time that we did not have in March, when we recommended that the May elections were postponed. Clearly, any decisions to postpone elections when they are due is significant and not one that should be taken lightly. What we have in the time we have available now is the opportunity to learn from other international examples of how elections can be run in a way that allows people to participate. Fundamentally, it is going to be a decision that we need to keep looking at



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through the perspective of whether voters can cast their vote safely and campaigners can put their arguments to voters.

If we were to find ourselves in a situation where that was not the case, then I think there are questions to be asked, but the important thing is to maximise the planning and the scenario planning that we do now, so that do as much as we can to make sure that the elections can take place and take place safely.

**Q23 David Mundell:** What would be your test, then, in those scenarios?

**Ailsa Irvine:** It is difficult to sit here now and have a hard and fast test as to whether elections can take place or not. If we find ourselves in the situation that we are in currently, then elections could be administratively delivered. If the situation were to change significantly, we may not find ourselves satisfied that voters could cast their vote safely and that campaigners could put their arguments to voters. Keeping those fundamental principles in mind would underpin any advice that we would give to Governments and Parliaments, who would ultimately be responsible for making those decisions.

**Q24 David Mundell:** So you think that if it was the situation currently prevailing, we would be able to proceed with elections?

**Ailsa Irvine:** At this stage, not to undermine the challenge, arrangements are being made and plans are being put in place to try to ensure that that can be the case and that they can be delivered well.

**Q25 David Mundell:** I noted today that there is to be an election in New Zealand in September, which is a broadly similar democracy to our own. Presumably that would be a good comparator to how elections could take place.

**Ailsa Irvine:** There are absolutely to be learned. It is almost inevitable that postal voting will play a role in ensuring that all voters are able to access the process. It is about making sure that the security, accessibility and capacity exists to be able to deliver that effectively and about learning the lessons about how polling stations would need to be managed and how counts would need to be managed. It may be, for example, that counts take longer and that we need to manage the expectations around that. There absolutely will be lots of challenges for local authorities, who are already grappling with the whole range of functions they need to deliver in the Covid landscape. There will be challenges for them. There are concerns about the ability to secure staff and to secure venues for polling stations, so we absolutely cannot push those aside. There are big issues that do need to be tackled, but the planning is under way now to try to make sure that we are as well placed as we can be to address them.

**Q26 David Mundell:** That is throughout the United Kingdom?

**Ailsa Irvine:** Yes, absolutely. Different conversations to the same end are happening across the three jurisdictions.



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**David Mundell:** Chair, if you would just indulge me—I didn't catch your eye—I have a small supplementary in relation to the wider issues we are discussing. I was interested in the witnesses' views on the balance between fixed rules and discretion in terms of elections and the individual returning officers. My experience over the period that I have been a candidate is that the discretion of the returning officer has become reduced. One scenario that I always find very galling is that if you, in a postal vote, fill in your date of birth but wrote 2020, which people commonly mistakenly do, that vote is still invalid because there is no discretion for the returning officer to conclude that, despite having got the day and the month correct, the person had made a mistake. That is just one example. I would be interested in where the commission sees the balance between fixed rules and discretion going forward. That is for whoever is most appropriate to answer.

**Bob Posner:** I will lead off, and then Ailsa may want to add to that. It is a really interesting question. From everyone's point of view, we want returning officers to administer rules that are very clear and straightforward, and the more discretion you introduce into the system, the more risk you have that people will say the returning officer has been biased or unfair in some way, so you have to be really careful.

Then again, where you have clear typographical errors, oversight and things like that, you do want those obvious things to be corrected by the returning officer and not to have to go through long processes and possibly a court getting involved to correct something that is absolutely straightforward and obvious. It has to be right that there is an element of discretion when something absolutely should be corrected.

I am not sure about the exact example about the postal vote and change of date. That is an interesting one to think about, but in terms of where a returning officer announces the declaration of a result and gets it slightly wrong and things like that, we have had cases that have had to go to court to put that right. That is nonsense. Everyone knows it is wrong, the figures are there, and the returning officer should be able to correct that.

I think that, because some election law is quite old and we look at things now, you would want returning officers to be able to correct some of those things. Again, the Law Commission report picks up some of that.

On the fundamental principle of whether returning officers need a little more discretion where things are obviously factual errors, I think we, as a commission, would probably say that that is, in principle, a good thing, but we are cautious about it. I don't know if Ailsa wants to add to that.

**Ailsa Irvine:** Fundamentally, it is a balance to be struck. There are aspects of the process where you would want to ensure that voters and campaigners are being treated in exactly the same way, and there are aspects where that prescription is very important. If you look at, for example, the prescription of the notice that must go up in the polling booth, you can't even change the layout or the typeface, and you are very much



constrained about how you can do it, that does not feel to be particularly helpful, when there could be more flexibility for forms and materials to be produced in more accessible formats, for example. So there is a balance to be struck, but it is probably too much too much in favour of prescription currently.

**David Mundell:** Thank you for your indulgence, Chair.

Q27 **Jackie Doyle-Price:** Ailsa Irvine, I want to come back on some of the things you said. Obviously, we have postponed this year's elections for very good reasons, but we are going to be living with Covid-19 for some time. One of the difficulties that postponing the elections has caused, particularly in local authorities where there is not overall control, and where you might have individual elected members who plan to see out their term and then step aside and not contest the next elections, is that you have some people who are not being properly represented. There is, of course, no provision for by-elections in those contexts if people fall foul of the rules and do not attend meetings for six months. It seems to me that there is a real problem, therefore, in ensuring that people continue to be represented and that councils can get on with their business. What thought has been given, given that we will be living with this for some time, to making provision for universal postal voting? That might not be in the context of an entire election when we have them in the normal cycle of things, but I do think it is important that people who feel that they are not being represented can have the opportunity to call a by-election.

**Ailsa Irvine:** I think any decision to postpone democracy when it is due is a significant one and not one that should be taken lightly. On the point of by-elections specifically, one of the points we have raised with Government is whether there is any potential to bring forward legislation to enable by-elections to happen before next May—whether there is any potential for that to happen if they can be conducted safely. That is a point that we recognise that it would be good to look at.

On the point of all postal voting specifically, I think it would be incredibly challenging to enable that to be provided at an election. Around 17% of the public voted by post at the last general election. We do know that it is a popular method of voting, and people welcome the choice that is available. But what we would find if we were to roll out postal voting to the whole electorate would be that we would then have some challenges around accessibility and security that would need to be addressed. For example, currently within the postal voting process we have the safeguards that everyone who applies to vote by post has to provide their signature and date of birth, which are then checked when the postal vote is returned. If you were to require postal voting to be used by the whole electorate, you would either have the decision of having to get those identifiers from the whole electorate, which is a significant logistical exercise and would be difficult to carry out quickly, and which could also be essentially disenfranchising people before the election if they do not respond, or you would be in a position of taking out some of those safeguards and



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protections to the systems and making the system more vulnerable, which is clearly not desirable either.

It is unquestionable that postal voting will play a more significant role as we move forward, but with these challenges and the challenges around capacity in the supplier industry, it is difficult to see at this stage that a leap to all postal voting would be particularly effective.

**Q28 Jackie Doyle-Price:** That is an interesting point because you are right that one of the checks to make sure that voting is robust is checking against the signature, date of birth and so on. Certainly, I have seen examples where people have been very aggrieved that their ballot has been rejected on that basis. Have you any intelligence as to whether there have been more complaints or concerns raised about how postal votes operate in practice? Is there a common pattern as to how it is operating, or do you get complaints from specific areas? I am thinking about Tower Hamlets and places like that, when people are trying to manipulate elections and they do go out and try to find as many votes as they can, using whatever tools they can. Clearly postal voting is a process that could potentially be abused.

**Ailsa Irvine:** What we see are high levels of public confidence by those who vote by post in the security of the postal voting process and slightly lower levels of confidence across the wider electorate. What we don't see are significant levels of reported issues of fraud around postal voting, which has dropped off dramatically since the introduction of the personal identifiers, where people did have to provide their signature and date of birth. There has been a shoring up and securing of the process, which has increased public confidence in the main across postal voting. It is something that people are using and are using with a good degree of confidence, but there are still challenges.

One of the areas we hear particular challenges around is overseas voters. Once again, we heard at the December general election that postal votes are just not getting to them in enough time for them to complete them and send them back. That is an area where, absolutely, particularly if the franchise is going to be extended further for more people living overseas, that will need to be addressed. That is a practical delivery point rather than an integrity point.

**Q29 Jackie Doyle-Price:** Do you monitor how many postal votes are rejected by individual returning officers?

**Ailsa Irvine:** We do collect and publish that information, and we do use that information as part of our discussions with local authorities. Using our performance standards framework, we talk to local authorities about the different risk factors that could be in play in impacting elections in their area. One of the things that plays into that is, if there are any wards or pockets that we see where it looks like there are higher levels of rejection than there are elsewhere, we try to help them to look at that data and understand if there are any issues that they can be concerned about and



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any steps that should be taken. It is something that we do look at and do factor into the work with local authorities. They themselves are looking at that and are conscious of that at a local level.

**Chair:** Thank you, Jackie. Just a quick question from Karin Smyth before we go to Ronnie.

Q30 **Karin Smyth:** On issues about by-elections, which we have just touched on there, affecting us—*[Inaudible]*—for next May with by-elections where people are disenfranchised midway through the year.

**Ailsa Irvine:** It is something that the UK Government are considering. We have a different position in Scotland and Wales. The legislation enables local by-elections in Scotland to take place more quickly; indeed; we understand that some might take place in October or November, and in Wales there is provision for local by-elections to take place between February and April. So there are already some by-elections in parts of the country taking place that will provide us with really important learning as we get to the important elections in May across the whole of Great Britain. I think it is something that the UK Government are very much alive to. They are hearing that this is a concern, both from a representation perspective and from a practical delivery perspective.

Q31 **Karin Smyth:** For clarity, is that an English problem?

**Ailsa Irvine:** It is English local government that is affected, because the devolved aspects are being handled in the individual Governments.

**Karin Smyth:** Thank you.

Q32 **Ronnie Cowan:** This is to Louise Edwards. You mentioned earlier on, if I recall your answer, that two thirds of the public did not trust digital campaigning or were sceptical about who was behind the information provided. What have you done in terms of digital stamping and digital imprints on social media or for digital advertising? We have had the paper process for a number of years, but when it is coming through a computer screen, who is behind that information and can we track it, particularly during the periods leading up to elections?

**Louise Edwards:** That is a really interesting question about how digital imprints, if you like, would work in practice. First of all, you have to take a step back and say that at the moment they are not required at all. I would say that the majority of the more well-established parties and campaigners do voluntarily make it clear that that advert is for them. There is some level of transparency that parties and campaigners themselves bring, because they want people to know, "This is my advert. Please listen to it. Please vote accordingly."

But what we are really looking at there is the requirement that, as you mentioned, is there on leaflets or paper campaigning at the moment but is not there in the digital world. There are two aspects to it. The first aspect is, how do you frame that requirement and how do you make it a requirement that captures election material, as currently defined in law?



That, incidentally, is one area where the current social media ad library, or the things that Facebook, Google and others already have in place to try to bring a bit of transparency—quite reasonably because they are all independent companies—differ slightly. Each of them brings their own definition to what they think is political campaigning on their platform. None of those are exactly the same, and none of those are exactly the same as the legal framework either, which creates a really high risk of gaps—of things not being in the ad libraries that would be election material.

The second side, as you rightly point out, is the technical side of it. How, on a technical basis, do you make sure that there is space on a digital advert or indeed a non-paid-for piece of campaign literature online that actually includes an imprint on it? The Government have said they will bring out their technical specifications for consultation, and we look forward to that because we can see that there will need to be discussions on a very technical level about how you do it. Do you put it in the frame of the advert or the campaign piece itself? Do you ask social media companies to provide a frame around the advert or the piece of campaign literature so it can be in there, for example?

The one thing we would say is we think it is really important that however that imprint is available, it is available on the face of the ad somewhere. The ad libraries are very much a step in the right direction, but one of the challenges is that you need to click through in order to find an advert in the ad library, if indeed it falls within the definition to be in there. The value of the imprint on a leaflet, a placard or whatever it is, is that it is right there literally in your face and you can see it without having to take any other steps. We think it is quite important that gets followed through into the digital sphere as well.

Q33 **Ronnie Cowan:** An ad library? Can you explain that to me?

**Louise Edwards:** Sure, sorry. So a number of the social media companies have set up what they are calling online libraries of political adverts. It varies from platform to platform, but what it will be is something you can click through, usually from the ad itself, although sometimes you can find it another way. It will list all the political adverts that have been shown on that platform, and you can search, for example, by entity. There is also some data around how it has been targeted as well, although it is not terribly granular. None of them, for example, go down to constituency level. That is what the ad library is. We use it in our own monitoring. It is definitely a step in the right direction, but, for the reasons I have mentioned, I do not think it is the whole answer to this problem.

Q34 **Ronnie Cowan:** You mentioned that social media companies bring their own definitions. Is it your job or is it our job to say, “This is the definition by which you must all comply”?

**Louise Edwards:** There is a definition in law for election material, and that is what we apply when we are talking about, for example, the reporting of spending. Whether or not you as parliamentarians want to put that on a



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statutory footing for the social media companies, that will be a decision for you. Our position would be that we think it is necessary to have some sort of statutory position or statutory definition. As I say, the risk is that, otherwise, things fall through the gaps.

**Q35 Ronnie Cowan:** Are you having ongoing discussions with social media companies and digital advertising providers?

**Louise Edwards:** With a number of them, yes, and with the big household names, as you would expect. They have been forthcoming with us about plans for the UK platforms about ideas and plans that they have to try to improve transparency. We have welcomed those discussions; we feel like we have added value to them as well, because we know our framework very well and we can provide them with that support and expertise. That is not a substitute, though, for there being really clear changes to the regime in his area.

**Q36 Ronnie Cowan:** I have seen adverts in the past, where you could put an imprint on top of that, so that if you scroll up and down a website the advert imprint just stays there permanently. It seems a neat solution that has not been very well adopted. Rather than looking for the advert, it is there front and centre, and it stays there no matter what you do on that page.

**Louise Edwards:** Those are the sorts of technical solutions that we are hoping that the Government will include in its consultation. We think there are probably technical ways of doing this, but it has to be, as I say, from our point of view, something that is obvious and visible, much like it is on paper leaflets.

**Q37 Ronnie Cowan:** Again, in terms of who is behind the adverts, is that part and parcel of the same solution?

**Louise Edwards:** Yes. When we talk about an imprint, we are talking about who the advert is on behalf of. Again, that might be really obvious; it might say, "Vote for candidate X" and then it is quite clear it is probably by candidate X, but not always. You have to have the "on behalf of" as well. The other thing that we would really like to see on there is who has paid for it, because that is not always the same person.

**Q38 Ronnie Cowan:** Thank you very much. Moving on slightly, Ailsa Irvine, could you enlighten me about the photo ID pilots? Have we established enough information to underpin the success or establishment of a nationwide scheme or a four-nation scheme?

**Ailsa Irvine:** We have published our evaluations of the pilots that took place in parts of England in 2018 and 2019. What that gives us is some important evidence that helps to understand how the policy could be rolled out across Great Britain. But it does not give all the answers that the Government will need to have in mind in rolling out the policy in future. What happened with the pilot is that you have tested this at, essentially, lower turnout elections. You do not have the ability with pilots at local



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government elections to understand what the impact might be at a parliamentary election, for example.

I think we have also identified as part of the evaluation that there is more work to be done to understand the concerns around accessibility and security, to make sure that whatever model the Government does decide to implement is implemented in a way that is accessible to all voters and that the Government are really clear about the impact on voters and on the security and accessibility of whatever is taken forward.

**Q39 Ronnie Cowan:** In the pilots, did photo ID have an effect on the turnouts?

**Ailsa Irvine:** We didn't find any direct impact on turnout. Turnout is always difficult, especially when you are comparing local elections in different years, because there are so many other variables that could impact on turnout. We did find that the vast majority of people who did turn out to vote had their ID and were able to do so. What we can't quantify is whether there was anyone that was deterred from voting because of the ID requirement. That is beyond the bounds of what was possible within the research. There are some unknowns around the impact.

**Q40 Ronnie Cowan:** Could there be more pilots progressing this argument? Everything is being dominated by Covid now, and we are talking about postal votes. So with voters IDs being presented at polling stations and postal votes, we seem to be running two different horses here.

**Ailsa Irvine:** There is a challenge for Government to determine what additional information they think they need to decide whether to move forward with the policy. I think there is a question as to whether pilots would actually give them anything beyond what they have already, but there is more work to be done with, for example, representative organisations to try to understand the impact on different parts of society, so that whatever scheme they do put forward is done in a way that the impact is understood and then can be managed effectively so no one is disproportionately affected by the introduction of any scheme or any requirements.

**Q41 Ronnie Cowan:** In terms of the level of voter ID we were looking for, was that photographic evidence, a passport, a driver's licence or something akin to that?

**Ailsa Irvine:** The pilots trialled a range of different options, from simply turning up with your poll card and using that as a form of ID, to it being a required form of photo ID such as those you have outlined. I think it will be for the Government to decide which model they go forward with, but we have said that, if there is a model that is reliant on photo ID, such as a passport or a driver's licence, a critical aspect of that model would need to be the provision of a voter ID card at local level, such as is already used in Northern Ireland, where they have this scheme in place, so it would be accessible for everyone and everyone would be able to go and get a formal ID if they do not already hold one of the prescribed forms.



**Ronnie Cowan:** Thank you very much.

Q42 **Mr David Jones:** Could I, in the first instance, declare an interest as a former member of the compliance committee of Vote Leave?

Mr Posner, I am sure you would agree that political impartiality, not just party political impartiality, is a necessary characteristic of both commissioners and staff of the Electoral Commission. Is that right?

**Bob Posner:** Absolutely.

Q43 **Mr David Jones:** Are you, in the first instance, comfortable that all your staff are politically impartial?

**Bob Posner:** I think what you have to look at is how the commission was set up by Parliament itself. Parliament, in the legislation, has a range of restrictions both on commissioners and staff, which precludes people being either electoral commissioners appointed by Parliament or employed staff of the commission who are effectively connected with, as you have just declared, a campaign or a political party or so forth. That is a really important protection that sits at the heart of the commission—that people who work at the commission come, as it were, not directly connected, or certainly not in any recent years at all, with political parties or campaigners. Commissioners, of course, go through an incredibly rigorous process about that.

Whether you are a commissioner or a member of staff of the commission, you also have to sign up to either a commissioner or staff code of conduct. That is absolutely strict and puts further layers of control on that. There is a constant process of regularly having to declare that you are still complying with the code if you are a commissioner or member of staff. When we recruit people, they have to fill in declarations and sign declarations about if they have any political connections and so forth. So I think Parliament has put in place a really rigorous process, which is absolutely right in an independent organisation.

On top of that, when our work takes place, whether you are a commissioner or a member of staff if there is any possibility you have a conflict of interest, you have to declare it—as you, Mr Jones, have just done, absolutely rightly—and withdraw from the matter, which is what you would expect. It is standard in public life, isn't it? There is that as well.

Then there are occasions where people will say, and they will say it, perhaps because they come from a particular stance, or whatever, that the commission has been biased. We are the regulator, and people may feel we are being unfair to them and more fair to another party, group or campaigner. If there is sufficient concern, the commission will, and it has done this, appoint someone independent of the commission entirely to look into it and report to Parliament. There was a recent example of that in the referendum, when there was an independent report—a report direct to Parliament—by Elizabeth Butler, and there was no bias.



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I have one final point to make—this is a full answer, but it is really important to see the whole picture, if you will forgive me. You sometimes get that the commission has been biased, and there are appeal processes. The commission's work—our decisions—have to be lawful. Cases can go to court, and so forth. There have been allegations occasionally, and where that has happened, the court has always found there has been no bias or prejudice.

So I do feel it is a pretty robust situation. One can never guarantee 100%—we are dealing with people—but it is a pretty robust protection, and the commission, as an organisation, is well organised to make sure there is no bias.

**Q44 Mr David Jones:** The code of conduct for the commission states: "Commissioners are expected to act at all times to further the commission's aims and objectives, and uphold its impartiality." It goes on to say that the highest standards of integrity, honesty, impartiality and objectivity are integral to your role. That is a fairly clear statement of what is expected from commissioners. If you personally were concerned that commissioners had made statements that tended to show that they were not as impartial as the code of conduct would expect, would you take action?

**Bob Posner:** Commissioners themselves apply the highest standards. There is absolute transparency and scrutiny of the commission by everyone. It is very difficult for any commissioner to act contrary to the code without a lot of people saying, "That is wrong." I do not think it is as though that can happen.

**Q45 Mr David Jones:** Can I give you an example where people have said that statements have been made that were wrong? Take, for example, the Chair of the commission, Sir John Holmes. After the referendum, and he was speaking some months after he was nominated, Sir John said in a speech, and I am quoting again, that he regretted the result of the referendum, and he complained about the "panoply of Eurosceptic nonsense" about the EU that was heard during the campaign. He then spoke of an alternative scenario in which Remain had prevailed and said, "the campaign for another referendum would not have taken...long to start again". David Howarth asked how we could be allowed to "bind the young"—that is, the outcome of the referendum—given that "Leave's majority will have been reversed merely by the process of Leave voters dying and new Remain voters reaching the age of 18". Lord Horam made a speech in which he said there was great logic in what another peer had said about the possibility of a second referendum and that, "I agree there is a logical case for that". These all look like very partial statements. These do not seem to me to be displaying the level of impartiality that is expected from the code of conduct. In fact, these were all reported in *The Sunday Telegraph* newspaper. First, do you think that those statements do demonstrate a lack of impartiality? Secondly, what action has the commission taken in respect of those statements of those commissioners?



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**Bob Posner:** Clearly, John Holmes had a long career in public life before he was appointed Chair of the commission. People have views, obviously, on referendums and so forth; that is perfectly proper. Before he was appointed by Parliament, he gave a public speech, you are absolutely right, and he offered those views.

Q46 **Mr David Jones:** That was after he had been nominated.

**Bob Posner:** Yes, that is right, but before he was appointed by Parliament. Parliament proceeded to appoint him. I am sure that is perfectly proper. He has acted assiduously and properly, and there are no allegations that he has ever done anything wrong while he has been Chair of the commission or, indeed, that he has breached the code after he signed it as Chair of the commission. If I may say, that is unfair.

Q47 **Chair:** Mr Posner, could I briefly interrupt you? Do you have a view that Parliament perhaps should have rejected him then?

**Bob Posner:** No. These are matters for Parliament. It is not for me to have a view on that. It is inevitable that people will have views on things in life. The question is, when they do their job, do they do it properly and fairly? He offered a viewpoint in a particular speech at a particular time. I personally do not think there is anything wrong in that. It is quite transparent and open.

Q48 **Mr David Jones:** You do not think it was wrong, even though he knew he had been nominated to the position?

**Bob Posner:** Please let me complete my answer to all the points you made. That is the context. He was appointed as Chair. On the face of it, he has done that job entirely properly.

David Howarth was a politically nominated commissioner, as was Lord Horam. David Howarth from the Lib Dems; Lord Horam from the Conservative party. Of course they come with their political background. Of course they come with the views they have that they bring with that. It would be odd if they did not. Parliament's original intent with politically nominated commissioners—and four of a board of 10 are politically nominated commissioners, I should make clear—was that they would bring their political background and experience to the commission, and that would come with them, inevitably. They cannot pretend that they do not have their views. What is important, if I may say, is what you have just done, Mr Jones—that, where they have those views, where there is a history and it is a fact, they declare that and they are open about it. What is important is that, when decisions are made—decisions that affect things, they do not participate in matters, in a standard public law way, where they should not participate because of that background.

Q49 **Chair:** Excuse me, Mr Posner. There is a distinction there. Forgive me for interrupting you; I am loth to do so. Mr Jones is not a commissioner of the Electoral Commission, and I am assuming that those commissioners are bound by that code of conduct, are they not?



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**Bob Posner:** Yes, absolutely right. It is a fair comment. I was about to say, therefore, that when any decision is taken by the commission where anyone would reasonably say, in terms of perception or reality, that someone should not be involved, they have always stepped back.

I think it is also important to understand what the commissioners do at the commission. This is a non-executive board of commissioners, who do not get involved in the daily decisions of the commission. They set the overall strategy and direction of the commission. The work of the commission is delegated away from them. That was Parliament's intent, and that is how it works. You have to look at people like me, Louise and Ailsa for the actual work of the commission to make sure that that is delivered in the way you are requesting. All the regulatory work of the commission, the regulatory decisions and so forth are not made by the commission board. I am sure Louise can explain how the regulatory procedures work, if that would help you.

Q50 **Mr David Jones:** Yes, but before we do that, and we will get into that, it seems to me that when one is talking about the EU referendum, which is arguably the most contentious political process that this country has engaged in in many years, commissioners, if they are sensible, should adopt a self-denying ordinance of silence. Yet those commissioners did not. Those commissioners, and I am thinking particularly of the two political appointments, did not observe that ordinance, but in fact went out of their way to, in Professor Howarth's case, lament the outcome of the referendum and suggest that it would be better if we had another referendum, because Leave voters will have died.

**Bob Posner:** The fact remains that, just as you declared that you have a context in this as well, and you are here participating and discussing things about the referendum, they too, in their lives, will have views and say things. What is important is that, in their work as commissioners, they act and talk at all times impartially and properly, and they do not get involved in any matters or any decisions in which it could be said they should not have done. No one has been able to point at anything the three people you have named have done that breaches those principles.

Q51 **Mr David Jones:** When the *Telegraph* article appeared, were the commissioners investigated?

**Bob Posner:** During the course of the referendum there was a stage, you are absolutely right, where there were allegations that our commissioners had been biased and said things—that covers some things you are saying. The commission, as I alluded to, immediately appointed an independent person to inquire into that and report to Parliament. That report is published; you can see it on our website—I am sure it is available somewhere in parliamentary documents. That report found no breaches of the rules and no bias. I was part of the instigation to make sure that happened. I do not think there can be any question that the commission as an organisation acted properly in response to allegations. That has been looked into. I am not going to persuade you about your concerns,



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obviously—I can see that—but I think it is unfair to suggest these people acted improperly.

Q52 **Chair:** Let me briefly follow up on something there with Mr Posner. If they did not act improperly in terms of their work, is there not an argument that there should be a self-denying ordinance, or indeed such an ordinance imposed upon them, that they should keep quiet generally on electoral matters as commissioners?

**Bob Posner:** In principle, I am not going to disagree with that. I am not going to disagree with the broad principle that electoral commissioners need to be conscious of their duties and responsibilities, and be conscious of people's perceptions—perceptions are the issue here—that maybe they have not acted properly. But the facts, when they are looked at, as to how they work as commissioners, what they get involved in and what they do not get involved in, do not show any breach of the rules in any case at all.

Q53 **Mr David Jones:** Ms Edwards, how do you assure yourselves of the high standards of your investigation processes?

**Louise Edwards:** Yes. That is a very important question. We strive for high standards, and I believe that we achieve them.

I would probably break the answer down into three areas. One is about the procedures that we use in our investigations, another is about the training that we give our investigators and staff more broadly who may have an input into investigations, and the other, which I will come to last, is about the commission's culture as a regulator and as an enforcer of the regime.

To start off with the procedures, these procedures are very transparent. You can see our enforcement policy on our website, and that goes further than required by law, because what we do in that policy is explain the stages of our investigative process. In common with many of the regulators and law enforcement bodies, we have a series of stages that we go through. There is a triage stage, if you like, to say, "Is this for us at all?" There is what we call an assessment stage, which is where we look at the evidence and take an evidence and public-interest decision on whether to investigate. Then there is an investigation, with procedures, again, published, about how we gather evidence and what is the best way to gather evidence, interview, give statutory notice, ask people and all those sorts of things. Then there is a stage beyond that where we take an initial decision on whether or not we think an offence has been committed. Then you are into the sanctions process, and we are very transparent in that enforcement policy about the factors that we take into account when we are determining whether to sanction anybody and, if we are going to sanction, how we make sure that is a reasonable and proportionate sanction for the circumstances.

Embedded in that, as I say, very industry-standard approach is a lot of independent review. Key decision makers about offences and sanctions are separate from the investigators who work on the case. There is scope for



legal input when it is needed. There is scope for input from other policy subject-matter experts on particular areas of the regime, for example.

Moving on to the training side of it, our investigators are trained not only in investigative techniques, and a full range of them, but also matters such as human rights law and other legislation as it pertains to public law decisions, as you would expect in investigations. Training is not just a one-off; it is embedded right from the induction process for new investigators, through to the training being continually refreshed throughout their time with the commission.

Thirdly, you come to the culture. We have a culture where what we want to do is help parties and campaigners to comply in the first place. We have an enforcement function, and it is very important that voters, parties and campaigners know that the law will be enforced, but ultimately I would like not to use it very much and for there to be even higher rates of compliance than there already are. We do have a culture of compliance generally across the regulated community, I have to say. Our investigations are very much focused on establishing the facts of what has happened in a given situation. Has there been an offence? Has there not been an offence? If there has, how did that happen and why did it happen? Very importantly, what learning can we take from that? Because that learning is important for us—we reflect on our investigations, and we learn from them—but it is also important for our regulated community. There may be learnings there about particular risk factors, so we can put that into guidance or advice, and we can help the regulated community further.

The very last point I would make in terms of high standards is about openness to scrutiny. We consult on our enforcement policy. We welcome input on our enforcement policy, both on the approach that we set out in it, but also on the language, the specifics and the sorts of facts taken into account. In fact, we will be consulting on that enforcement policy again later this year; it has been five years since the last consultation. When that comes out, we will very much welcome people's input to it. We have also had scrutiny in the courts, of course. There has been a small handful of cases that have gone through to the courts. When the courts have reflected on our investigation processes, they have always found in our favour.

**Q54 Mr David Jones:** How would you say your high standards were reflected in the Darren Grimes and Alan Halsall cases?

**Louise Edwards:** I would say we followed exactly that process that I have just set out. I think it is fair to say there has been a fair amount of misinformation about the actions of the commission in those investigations, and if I am able to help clear up any of that misinformation on this occasion, I am very, very happy to do so. What I have just described to you is exactly the process that we followed in that investigation.

**Q55 Mr David Jones:** Do you think that the Darren Grimes case reflects well upon the commission?



**Louise Edwards:** There are two sides to that. In terms of the process, as I say, we followed our process to the letter. We followed the process which I have just outlined to you. In terms of the conclusion that we drew, we made a mistake. When it came to the question of, “What is an unincorporated association?”—and forgive me for getting a bit technical, but that was the key definition that we were talking about—we took a view on what an unincorporated association under the regime was. His Honour Judge Dight told us that we had that wrong and that we should have applied a different view on what that is. So we did get that wrong.

Q56 **Mr David Jones:** What about Alan Halsall?

**Louise Edwards:** Mr Halsall was the responsible person for Vote Leave, including the name. He was responsible and he had a degree of responsibility and political obligations upon him when he took that role. He did not meet all those obligations, and offences were committed.

Q57 **Mr David Jones:** That was not the conclusion of the police, was it?

**Louise Edwards:** The police were looking at different offences. We were looking at very specific offences around the almost £500,000 spending limit breach that occurred, for example, and around the contents of the spending report, where things were missing. Those offences have been determined; they were offences, and Vote Leave has paid the fine.

Where it comes to different offences that we made a report on to the police to ask them to look at, the police quite properly investigated, and we are very pleased to see they did this. They will have obtained their own evidence and spoken to Mr Halsall, I am sure, and they will have drawn their own conclusions with the CPS on those different matters that they were looking at.

Q58 **Mr David Jones:** Is it not the case that the police were frustrated by the lack of co-operation from the Electoral Commission, the lack of documentation that was produced, and the poor quality of the documentation that was produced as well?

**Louise Edwards:** No, that is not the case. The police had full access to our full file. We had a number of discussions with them, as you would expect, to help them understand what the file said. We also provided them with a witness statement and talked them through the electoral law implications that we had concluded.

I think I know what you are referring to. I think what you are referring to is the fact that there was some misunderstanding at the police end, where they thought that they were getting from us a criminal investigation file. That is not the case. We are a civil regulator. It was the police who were responsible for drawing up their own criminal investigation file, which I am sure they did.

Q59 **Mr David Jones:** In the end, the police gave up in despair. Is that not right?



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**Louise Edwards:** I understand the police decided to take no further action. I have never heard the word “despair” used by them.

Q60 **Mr David Jones:** What were the costs to the Electoral Commission in the Darren Grimes case?

**Louise Edwards:** Off the top of my head, I am not sure. I might have to pass that to Bob at this point.

**Bob Posner:** In the Darren Grimes case, as Louise said, we made a mistake; we lost. It is an interesting case. I will comment on the costs and the case, and about why the costs. We spent about £230,000, here or there, on legal fees. Grimes and his lawyers spent three times that amount, about £750,000. I find the cost of this case very worrying. I find it worrying because Parliament put in place procedure, absolutely rightly, that, as regulator, you make the laws, we apply the laws and the courts adjudicate. They put in place procedure when the legislation came in that if someone did not like how we had applied the law, they could appeal to the courts. That is absolutely right; that is how regulation works in this country.

But I remember the debates in Parliament at the time; I remember the discussion. The idea was there should be a cheap, accessible appeal process for everyone. That is why the cases go to the county courts. The debate at the time was whether they should go to the county courts or the tribunals, which are even more cost effective. The appeals we have had so far to the county courts—and there have only been a few, a handful—have not cost anyone much money. They have involved political parties, and the legal costs have been very low. This seems an outlier. For some reason, this particular appeal around referendum campaigning cost everyone a lot of money in legal fees. When I step back from it, I think the concern we should all have is that does not become the norm. That should not be the case.

Q61 **Mr David Jones:** I am sure everybody would agree with that. We were talking about a £20,000 fine, and the costs were wholly disproportionate. On the other hand, we were dealing with a very young, inexperienced man, who had no means of his own, who, unaided, would have been unable to resist the strength of the Electoral Commission. You spent almost £250,000, and it was only through crowdfunding that he was able to raise the necessary resources to defend himself. This is a lamentable state of affairs, is it not, Mr Posner?

**Bob Posner:** I do not know what crowdfunding raised, but I doubt it raised £750,000. Clearly, he had good legal support, and he is absolutely entitled to that. What is of concern about the case is why it cost that amount, why the commission was able to do it for £250,000 and it cost him £750,000. But I do not decry that. He was a young man, and he is absolutely right to be legally represented—it was absolutely proper, and there is nothing wrong with that. What I want to see is the system work as it has been working, and how we have always operated it, in that we have not needed



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to lawyer-up much, as it were, for these appeals, because that is not what has happened. We can only respond to how the appellant handles the case.

I would like to put it into context. It is important to remember that this is a procedure that is working. This is the due process of law. Parliament put in place a process where we would apply the law, we would apply a fine, and people could apply to the courts. That system has been in place for 10 years. So far, this is the only time the commission has lost a case on appeal. It needs to be put into that context. That does not help Mr Grimes, I appreciate. We got that wrong. We absolutely acknowledge that for Mr Grimes. However, it is the due process of law, and it is just one case.

**Q62 Mr David Jones:** It is right to say, is it not, Mr Posner, that the judge observed in his judgment that, although he was not asked to consider the point, he would have been sympathetic to a reduction in the amount of the penalty that the commission imposed? It would appear that the penalty itself was over the top.

**Bob Posner:** I am going to let Louise comment on that, but there is one comment I must make, just to be fair. The judge also made it clear in the judgment that one of the grounds of challenge was an abuse of process by the commission—this whole process—and he also said he rejected that. I will just let Louise comment on the fine.

**Louise Edwards:** Happy to. Twenty thousand pounds for an individual sounds like a lot of money. It sounds like a lot of money to me. What we have here is a young person, yes, but a person who decided he would be the responsible officer for a campaign group. What happened with that campaign group—and again, this is in the context that we did get it wrong, but when we were imposing the fine this was the position as it was—was that he, on behalf of that campaign group, exceeded the spending limit that was in place for that campaign group by £665,000. In that context, which I accept, on appeal, turned out to be wrong, we would think that a £20,000 fine was entirely proportionate.

**Q63 Mr David Jones:** The first point, clearly, is that you were wrong as to whether or not there was an offence. Secondly, the judge disagrees with that point of view, does he not?

**Louise Edwards:** I understand the position that the judge came to, but we are clear on the factors that we take into account. As you say, and as I have said, we were wrong, but in the context of believing there to be an overspend—a breach of the spending limit by £665,000—a £20,000 fine was proportionate.

**Q64 Mr David Jones:** Yes. But, of course, he did not breach that limit. That was the whole point of the case, was it not?

**Louise Edwards:** As we have acknowledged, yes.

**Chair:** Thank you. Before bringing in John Stevenson, could I ask Jackie Doyle-Price for a supplementary, please?



Q65 **Jackie Doyle-Price:** I appreciate you are obviously working with statutes that Parliament has set up for you, but what was really brought home to me in the case that Mr Jones has just been referring to, and also the one that affected our colleague Craig Mackinlay, is that you find individuals are being held to account for activities that are part of a broader campaign. Although we are talking in these examples of people who are taking a very active part in politics, and perhaps ought to be expected to look out for themselves, my concern now is that the regime you have for regulating political parties, particularly when they are operating at a very local level, is that we are talking about people who are volunteers. They strive to comply with the laws and the rules that are given to them, but it is not something that they do full time. They are doing it out of motives of public service. It is not something that they expect their own reputation to be put at risk for, but they can find themselves dragged into things purely by accident.

If you look at the whole gamut of cases, taking the association treasurer, who perhaps fails to report something on time, all the way up to Craig Mackinlay, being a parliamentary candidate working with the Conservative party to secure election, to Darren Grimes, working with a broader Vote Leave referendum, what is your observation as to where the responsibility lies? Have we got that right, and how can we make sure that individuals are not put in quite such a difficult position in terms of protecting their own reputations?

**Louise Edwards:** Perhaps I will start, and Bob may want to come in afterwards. It is fairly unusual for us, as in the commission, to end up fining an individual. You mentioned, for example, local association treasurers. We have cases involving them, but it is extremely unusual for us to fine them. The reason for that is that most of the offences that sit within the party regime are attached to individual officers, who are people—quite often volunteers, as you say—who have decided to take up a particular role. About 10 years ago, when the civil sanctions regime was first being considered by Parliament, we put forward, and Parliament agreed, that we should be able to fine organisations for offences by individuals within them where the facts show that this was a broader thing than one individual's culpability. It does happen—clearly it does happen—but it is unusual for us to fine individuals. It is more often the organisation itself.

But there is something broader there about the two different regimes that you mentioned. There is the regime on the party and campaigner side that we deal with, and then there is regime as it applies to candidates and agents—to the individuals who sign up to very individual responsibilities under candidate and agent spending regimes. There what we see is what I would describe as a bit of a cliff edge on the candidate side, because there is no civil sanctions regime on the candidate side; there is no prospect of a token 200 quid fine for not putting your candidate spending return in, or anything like that. There is an individual responsibility, and the only way to enforce that responsibility is to take somebody to court and prosecute them. That does not seem right to us. We think what is probably more



important is that there is some sort of civil sanctions regime that means that very proportionate fines, maybe £200 or £300, can be imposed on that candidate side as well.

The one caveat I would put on that is, obviously, that in the South Thanet case, which you are referring to with Mr Mackinlay—Mr Mackinlay was fully acquitted in that, of course—there was an individual who deliberately broke the law. That is what the court concluded. We can put out all the guidance and all the advice that we want, we can work with parties and campaigners, and we can support candidates and agents in every way that we do already, and more, as we would like to do over future years, but if an individual chooses to break the law, there has to be an appropriate deterrent, and there has to be an appropriate sanction. That is why it is so important that, while, ideally, I would like to give all my enforcement staff a long holiday, they are there. They are there so that people know if they choose to break the law, there will be consequences.

**Chair:** Thank you, Jackie. Do you have anything else?

Q66 **Jackie Doyle-Price:** Was Mr Posner going to speak?

**Bob Posner:** That was a very comprehensive answer. Just to clarify, so everyone is clear, it is important to remember that the offences Louise is talking about around candidates and agents is a police responsibility. We have no remit over that. The South Thanet/Mackinlay case was a prosecution brought by the police and the Crown Prosecution Service. The commission's role in that was limited, and this is always our role: where they ask for assistance or advice from us, we would always provide it to the police and CPS. But it was their prosecution.

To further add to that, where there are major cases—and I think the South Thanet case was a major case in our election history in recent years—I personally, and the commission, always look to engage with the people, or the party, involved. Mr Mackinlay has very kindly engaged with us about it. We have met, we have spoken about the case and we have exchanged views about it, although we might not agree on everything. We are very supportive of candidates and agents, as we are of political parties. We do everything possible. I would like to reassure the Committee on that.

Q67 **John Stevenson:** Following on this same theme, I would like to ask Louise: do you accept that the Electoral Commission does owe a duty of care to individuals who are being investigated? If you do accept that, what measures does the Electoral Commission put in place to fulfil that obligation?

**Louise Edwards:** On a very common sense level, I would say yes. It goes back to the purpose of what an investigation is. Why are we investigating a person in the first place? We are investigating them because we have some level of evidence—and we require a reasonable standard of evidence—to suggest that that person has done something wrong. Why are we investigating them? To establish the facts. We are not investigating them because we are desperate to find an offence. It is just as valid and



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important an outcome to conclude that that person did not commit an offence; that is why you always look for the evidence for or against whether an offence has been committed. When we have opened an investigation and we are investigating an individual, I would say there are very important steps that we take to make sure that we are respecting that person and giving them the opportunity to put forward their side and to give us the best evidence that they have, whether or not an offence has been committed.

The first element that I would pick up is about making sure that we are showing that we are professionals. We are professional investigators. We did not pick this guy's name out of a hat, whoever it is, and decide to have a go at them. We have evidence. We give that person the evidence, we say what our expectations are on that person about the information that we want, how we want it, and when we want it, and we also say what that person can expect from us. We are very clear about what process we will follow, what the key decision points are, and what their opportunities will be to input into that.

The second area I will talk about is making sure that we are adaptable. Our investigators are trained in a range of different evidence-gathering techniques, and that is important, because every investigation is going to go off on its own route, following the evidence, depending on what the people concerned say. Being adaptable could be something as straightforward as, as has happened to me, where somebody rang me up and said, "Somebody in your team has given me this deadline to provide this information. I am a carer for my father, who is ill, and I cannot make that deadline. Can you extend it?" To which my response was, "Yes, of course we can." Or people want to come and be interviewed, but they need reasonable adaptations made, or they need an interpreter present, for example.

What we are really looking for in investigation—and this goes back to the point I made about trying to establish the facts—is we are trying to get the best evidence. The best evidence comes from helping the person who can give us that evidence to give it to us, and that includes the individual who may be suspected of having committed an offence. Then you go into the sanctions process. Let us assume we follow this through, let us assume we decide an offence has been committed, and let us assume that we are at the point where we are considering a sanction. Then what is really important is, first, that we are very clear to the person concerned why we are considering this—they get the evidence, they get the analysis, they get the law that we are resting it on, and they get a period of time to make representations to us as well; and, secondly, that the sanction that we are proposing is proportionate to the offence that we are talking about. Our sanctions range from £200 to £20,000, so at the moment it will be somewhere within that range. That comes back to what I was saying about our published enforcement policy; it sets out the factors that we consider when we decide whether or not to sanction somebody, and if we decide to,



how much as well. That person has a really clear opportunity to be able to make meaningful representations to us that we can then take into account.

**Q68 John Stevenson:** Quite often, you will accept, I would have thought, an awful lot of people who may come to be subject to your investigations have done something inadvertently. They are volunteers in many respects, and they have little knowledge of some of the things that you might be investigating. Therefore, they will be concerned about what is happening. Do you communicate with them as you are going through the process? Or are you silent while you are carrying out an investigation?

**Louise Edwards:** You are entirely right; the majority of our investigations conclude that if an offence was committed, it was committed inadvertently. The law in this area—the law that we can apply civil sanctions for—is essentially strict liability. If it happened, it happened; if there is no reasonable excuse, there is no reasonable excuse. It then goes back to whether it is proportionate to open an investigation in the first place, and we may not; if it is inadvertent, we may decide to work with the party or campaigner concerned to put them on the right footing going forwards. If we do open an investigation and we do sanction, one of the factors that we consider is exactly that: how did this happen? That is why it is so important to establish those facts. In terms of communicating during an investigation, it will vary on the facts of the case. Sometimes our investigations only take a couple of weeks, and there will be one interaction where somebody will explain what happened and say whether or not they think they have a reasonable excuse. Sometimes our investigations will take a lot longer. There will be a number of different parties involved, a number of different witnesses involved, and then our interaction with them may cycle through each of those, depending on where the evidence is taking us.

**Q69 John Stevenson:** Again, if you were being investigated by the Electoral Commission and you were a volunteer in a political party, it could be quite stressful for you. What about timescales? For example, you start an investigation, you get the evidence and the individual knows you have the evidence. What would be an acceptable timescale to come back to them and say either, “You are clear. You have not done anything” or, “There is something that you have to answer for”? Would two or three months be an acceptable timescale?

**Louise Edwards:** We aim to do that as quickly as possible. We aim to complete the majority of our investigations, from starting the investigation to the start of the sanction process, within about six months. In the majority of cases, we achieve that. Sometimes it could only take a couple of weeks; sometimes, for very complex cases, it takes a lot longer than that. You are entirely right that it is very important for those people who are under investigation that they know what stage they are at and what is happening. That is what we endeavour to do, but I cannot sit here and promise you that it has never taken too long. We have limited resources, and those resources sometimes get diverted. What we endeavour to do is to make sure that we are dealing with our cases in a timely fashion.



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Q70 **John Stevenson:** On that point of a timely fashion, you have come to a conclusion on an investigation and you believe there could be a sanction. You have said to us that you would divide the responsibility; you have the investigators, and you have those who decide what the sanction should be, which seems eminently sensible. What should be the timescale between informing somebody that they may have breached the rules and their being sanctioned? Again, when somebody is notified that they may be in breach, it could be incredibly stressful for them. What sort of timescale do you think is acceptable?

**Louise Edwards:** There is a statutory timescale there. There is a requirement for us to give people 28 days between telling them that we intend to sanction them, or proposing a sanction, and then taking a final decision on it, so that they have those 28 days in order to make representations.

**John Stevenson:** Thank you very much.

**Chair:** Thank you, John. Karin Smyth at this point, please. Karin.

**Karin Smyth:** I think Mr Stevenson has covered the questions that I was going to pick up on. We can go on to the next one.

**Chair:** In which case we are back to David Jones.

Q71 **Mr David Jones:** Thank you, Chairman. Ms Edwards, what effect would you say the outcome of the Darren Grimes case has had on public confidence in the Electoral Commission?

**Louise Edwards:** I do not have any research specifically on that issue, I am afraid. The latest research on public confidence in the commission, I think, showed that people who had heard of us and were aware of what we were doing were broadly confident in us.

Q72 **Mr David Jones:** Are you concerned that it may have had an adverse impact?

**Louise Edwards:** I am concerned about anything that may have an adverse impact on confidence in us. An independent regulator—an independent electoral commission in a democracy such as the UK—is hugely important.

Q73 **Mr David Jones:** The Darren Grimes case, of course, was very highly publicised. There was considerable criticism of the Electoral Commission made by the judge. We have had evidence from Mr Timothy Straker QC, who was counsel for Darren Grimes, who outlined that the commission had made a very straightforward and fundamental error that led to enormous stress for various people, and huge costs, of course, both for the commission and for Mr Grimes. He said: "The error was that the Commission supposed that participation in the EU referendum depended on registration with it as to which it contended it had a discretion. However, as the judge made clear...all that was required was notification", and you were notified. That was a very fundamental, straightforward error, and I



would have thought that you would be concerned that such a basic error would cause huge lack of confidence on the part of the public in the competence of the Electoral Commission.

**Louise Edwards:** If that was what had happened, I could see that, indeed, being a consequence. However, that is not what happened. The commission has always been clear that, permitted participants—for referendum campaigners—provide us with a notification. However, what His Honour Judge Dight also made very clear was that it was hugely important, and we had the role to check that notification to make sure, that the entity or the individual making it was eligible to make that notification and had made a valid notification.

Q74 **Mr David Jones:** In concluding his judgment, the judge said in his penultimate paragraph: “Yesterday Mr Straker posed the question, ‘Where did it all go wrong?’ His suggested answer was in the failure to deal carefully with the application to register. I respectfully agree.” That is a damning condemnation of the processes of the Electoral Commission in dealing with a very straightforward application that was made by Mr Grimes to notify the participation of Vote Leave, was it not?

**Louise Edwards:** I think Bob might want to come in at this point.

**Bob Posner:** I will come in. I think, if I may say, that you and others are reading too much into that county court judgment by one judge. You say it is heavily critical. I think if you read any judgment in a case where there is a winner and a loser, you can always pick things out of the judgment and say the other side got it wrong, and that is right. It does not mean there is a fundamental problem or issue there. Indeed, on those same registration notification questions that you are talking about, I can point you to a different court judgment from another judge who absolutely says the commission’s processes are robust and strong, and has dismissed claims against them. It is horses for courses. It is a case. We got it wrong in that case. We accept that. We very much regret what happened to Mr Grimes as a consequence.

It has to be said when you talk about wide publicity, a lot of that publicity comes from people, perhaps understandably, who are sympathetic to the cause of Mr Grimes and the Leave cause. That is perfectly respectable. It comes from a direction of travel that does not in any way indicate what the public think. As Louise said, current, up-to-date public survey work about the commission shows that the public’s view of the commission is that it is—and there are three prevalent words here—important, independent and professional. That is right.

What I will say to you is, “Thank God we do not live in a country that is not a pluralist democracy.” How strange it would be if every time a regulator, or indeed the police, took a matter to court, it was always successful. Those are the sort of states and nations we do not want to be. It is a robust system, where there is an appeal process, and things get taken to court. Sometimes defendants win, and that is a good thing—there is nothing



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wrong with that. It is important to recognise that, learn from that and move forward.

So I think you are reading too much into one case. It is topical; it is very personal to Mr Grimes. We certainly all understand that. But I would suggest that, to build a bigger agenda on it, is not the right thing to do.

**Q75 Mr David Jones:** You surely agree that the Grimes case was not the Electoral Commission's finest hour.

**Bob Posner:** Those are catchy phrases—"Not the finest hour". It was a case. Today, up and down the country—

**Q76 Mr David Jones:** Let me put it another way.

**Bob Posner:** No, let me finish my answer, please. Today, up and down the country, there will be cases regulators will win and lose. Local authorities are bringing cases; they are won and lost every day of the week. It is not the drama of stuff. Of course one does not want to lose cases; I am not complacent about that. In fact, to the contrary, because this is the only case the commission has lost going back 10 or 15 years, actually, in a sense, I see what you are saying. It is unusual. It is exceptional. It is that that says, "You had better learn from it. You had better not let that happen again." But it is exceptional, and there is a good story here. The good story is that the statutory regulator set up by Parliament is a success story; that the system is working, and is working well; and that the referendum you are referring to was run well, was regulated well, with legitimate results, and that has been acted upon. That is a good story.

Now, within that there will always be cases. If we think about politics in the last few years, of course it has fractious politics in the UK. We have had unscheduled general elections, and we have had major referendums and so forth—Scotland's as well—so of course there is lots of regulation that has taken place, and of course people have strong feelings and feel aggrieved, particularly those regulated against and those who were found to have broken the law. That is understandable. What is important is that people accept that and move on from it. That includes us, because we will not get everything right, and we need to learn as well.

**Chair:** Thank you, both. I beg your pardon, Mr Jones. Do you have a final supplementary there, sorry?

**Mr David Jones:** Sorry, I was going to go to question 14.

**Chair:** I have a supplementary before that from Karin Smyth and possibly John Stevenson as well.

**Q77 Karin Smyth:** Thank you, Chair. On that point, and on the point previously raised by Jackie Doyle-Price about the volunteers within political parties, I have been an election agent since 1987. Perhaps the learning over the years, and since the commission has existed, with regards to the nature of political parties and how political parties need to take responsibility for



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volunteers and govern themselves, is something that the commission has worked on a long time. Do you want to add anything around some new politics we are seeing? For example, I personally hope we do not have any more referendums, but in terms of different forms and different people being involved in the electoral process who are perhaps not under the normal aegis of political parties, what does that do in terms of the reputation of the commission. Perhaps there is something you want to add on both those questions for our report.

**Louise Edwards:** I will start off on that. There are a number of different actors getting involved in our democracy, from referendum campaigners to non-party campaigners. The general election at the back end of last year had the highest number of registered non-party campaigners that we have seen in a recent election. There will be a number of people involved who did not reach the spending thresholds for registering as well. Participation in democracy is a good thing. It has to be a good thing. It has to be important that people, whether they are volunteers, or whether they have a structure and organisation behind them, feel that they can participate in our democracy. That is hugely important as well because it goes to the sustainability of the democratic system. You need that multiplicity of different voices talking to voters and helping them make their minds up about whether or not they are going to vote and how they are going to vote.

I mentioned quite close to the start of the session about how complex some of the areas of the regime are at the moment and about how there are different spending limits, even in the same constituency, and different types of campaigning. Interestingly, just before the general election, we did a lot of work on new guidance around election pacts, for example. There was a lot of talk about, and some of the political parties raised with us, the prospect of election pacts between parties and non-party campaigners. We produced a new guidance document on that that went through a number of scenarios, but at the end of all those scenarios we basically said, "Please contact us, because this is really complicated, and we need to give you some bespoke advice in order for you to get it right." That is whether you are a volunteer or somebody who has been working in democracy for your whole life. It is really complicated. This is why there needs to be a sense of consolidation; a sense of bringing together some of this complexity.

I talk from a regulatory point of view. I would like to see the regime changed so that there are not so many differences in regulations between non-party campaigners, campaigners, political parties and candidates. Ailsa has spoken about the importance on the administration side of making it really straightforward. We will do what we can, and we have funding to do more, to support local authorities and to support those who want to participate in our democracy. But there are fundamentals about the regime here that would make a huge difference, and indeed, your predecessor Committee spoke about a number of these. We think it is really, really important that that agenda is taken forward.



**Chair:** Thank you. John Stevenson, did you have a supplementary question as well?

Q78 **John Stevenson:** I have just a very quick question about mistakes. The commission clearly makes mistakes. All organisations do, and that can have an impact on an individual. What steps do you take to deal with that when there is some negative impact on a particular individual due to a mistake by the commission? That is to Louise.

**Louise Edwards:** It does not happen very often. That sounds like me being arrogant and complacent, but it is not. As Bob says, it does not happen very often. Part of that goes back to what I was saying about our high standards and the way that we try to take in all the evidence before we take a decision. If we do make a mistake, and we identify that, and we identify it in our own processes, we will work with the individual concerned to try to understand how that happened and then recycle that learning into our own processes so it does not happen again. We have a complaints policy within the commission as well, which gives people the chance to ask us these questions and challenge us on the decisions that we take.

Q79 **John Stevenson:** I am conscious of time, but would you give a letter of apology to the individual? Have you given letters of apology? Would you pay compensation in any way to that individual?

**Louise Edwards:** We have not reached a point of needing to do those things at this point in time. Sorry, I can see that Bob wants to talk, but I was just very briefly going to say that, if we have published something, like an investigation outcome, for example, and then it transpires that there is a mistake in it, we will change the publications and make sure it is very clear that the facts have changed.

**Bob Posner:** I was just going to add that we are not reluctant to apologise. I do not want you to think that for one moment. We certainly recognise the due process of law as it affected Mr Grimes; we made a mistake, and the judge found against us. We are not in any way reluctant to apologise. However, I would make the comment that you cannot go around apologising for every case you win, or shouting from the rooftop when you win a case. It is the due process of law that is happening. It has to be something that requires an apology. There is no objection in principle if it helps. Indeed, to take it further, I am always keen when people have concerns about the commission, or have had a bad experience—although it can be hard to listen to—to try to meet them and talk things through. That would extend to anyone.

Q80 **Chair:** Interestingly enough, I was not really thinking about Mr Grimes here. I was thinking about the average volunteer who may have been investigated by yourselves and mistakes have been made by the commission. I cannot believe you would not say you would turn around and apologise. I would have thought that an apology would be one of the first steps you would take if the commission had made a mistake with an individual. That is just common decency.



**Louise Edwards:** I think Bob was saying that we would apologise in appropriate circumstances, and we would also seek to engage with that person, have a discussion with them, and try to learn from it and from what went wrong to make sure it does not happen again.

Q81 **Tom Randall:** On the broader question of political finance, you have said in your recent plan that you have robust and effective enforcement of finance laws. But what we saw in the Tower Hamlets election petition, which was not so long ago, was that there was a political party registered with the Electoral Commission that did not have a bank account. It had no responsible financial scheme whatsoever. Since then, have you done work to ascertain that the parties registered with the Electoral Commission do have bank accounts? The commission said that the inquiries into the structure of the Tower Hamlets First party cannot have been excessively rigorous. Have you reformed the way that you are looking at the structures of political parties when they register with the Electoral Commission?

**Louise Edwards:** The short answer is yes. This is a good example of us learning from things that happen. I think it is fair to say, if we are being completely candid, that we underestimated the importance of the point of registration—the point where somebody entered into our regulated community and took on the responsibilities that the regime requires them to take on.

Back some years ago now—you are probably talking four, five, or maybe more years ago—we changed the way that we look at our registration processes. We put a lot more emphasis on making sure that, before we register a political party, it is properly set up as a political party. After all, you cannot register something that does not exist. That means, for example, putting out more guidance about how a constitution should look, and then checking through constitutions to make sure that they actually meet those minimum standards. It means putting out more guidance about what a financial scheme, which is a document that a party could adopt or they can register, means in practice. It includes meeting parties, for example, who are applying to register, and sitting down and going through exactly these points with them, and working with the party to satisfy ourselves, and them, frankly, for their own benefit, that they can meaningfully comply with the regime before they are able to register with us.

Q82 **Tom Randall:** Thank you. Can I ask, again, a broad question? You have spoken a lot about evidence, investigation and enforcement, but operating within the limited resources. To go back to Tower Hamlets as an example, because that was obviously a big case at the time, there was a candidate there who, in six weeks, had contested two wards using two different names and two different false addresses, and the police and the Electoral Commission took no action. There was no investigation there. Is that the sort of case where you think, perhaps on reflection, or now, that it should have been investigated by the Electoral Commission, and would be were it to happen today?



**Louise Edwards:** We cannot investigate offences under the candidate regime. We do not have that authority. It is not open to us to investigate them. I will come back to candidates in a moment, but on the party side, for example, we are explicit in our enforcement policy that one of the factors we take into account when we are deciding whether to investigate is whether it is in the public interest to devote resources to that investigation. Resources are a very clear and public part of our decision-making process.

Specific instances on the candidate side, as I say, we cannot enforce. I spoke before about the importance of perhaps thinking about a civil sanctions regime for candidate offences. If a civil sanctions regime was in place, you would be able to think very carefully about the factors that you take into account when deciding whether or not to open an investigation where that is the ultimate outcome. That might be slightly different from the factors that you take into account where ultimately a prosecution is the only outcome, for example.

Q83 **Chair:** Thank you, Tom. Mr Posner, why are you as an organisation seeking powers to bring about prosecutions yourself?

**Bob Posner:** This has been in discussion quite openly in political parties and other organisations—the police and the Crown Prosecution Service—for a couple of years now. What we have under the political parties regime are roughly about 100 criminal offences that have sat there in the legislation for the last 20 years or so, and a civil sanction regime that sits on top of that, which we regulate; the police and the Crown Prosecution Service are responsible for the criminal offences there. There have been no prosecutions brought for any of those criminal offences for the last 20 years. You could say that nothing has happened to warrant that, and that is possible in 20 years, but it does seem unlikely.

Q84 **Chair:** Are you suggesting that the police and the Crown Prosecution Service are not up to enforcing the law.

**Bob Posner:** No, to the contrary. I am going to explain that. Your reaction is, “Good heavens. Why are they not doing their jobs?” I do not believe that for one moment. What I think we have here is a set of offences that sits there, which is an important deterrent in the system, because if you are someone who is going to breach the law and you can see that criminal offences are never taken forward, there is no deterrent there, so it is important that that part of the system works well. I do not think that is the case with the police and the Crown Prosecution Service. I think they generally engage well in all of this.

However, I do think that, understandably, the way the police force and the CPS work, their resources and their priorities are, rightly, directed at victim crime and serious crime—the things that have a real impact on society all the time—and those are stretched resources. This is also not their core expertise. The reality is that if you look at other areas of regulation, it is absolutely normal that the statutory regulator does this sort of work, not



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the police and Crown Prosecution Service, save where there are very, very major cases. It does seem an anomaly, and the discussion that has been going around for a few a years now is about what to do about this missing deterrent in the system. Louise may want to comment on that.

What we are saying, basically, is that there needs to be a little bit of bringing our regulation in line with other regulators, and that would be good for politics. We are not talking about the big cases; we are talking about something that the police and Crown Prosecution Service believe we should be doing and should not sit with them. What we think we can do to help—it is a contribution only—is very lower-order stuff. We are not talking about trials with juries and so forth in the Crown court. We are talking about lower order criminal stuff that goes through the Magistrates courts and is dealt with very quickly and easily, but involves criminal matters, which would enable us to keep things moving forward on investigations and so forth.

We talked earlier about how long it takes investigations to happen. I will let Louise explain that, but one of the reasons for that is the criminal side of it is not being taken forward. That is a bit about the why we are trying to help. What I am talking about is not quite as dramatic as it sounds, because the police and Crown Prosecution Service will still do the big stuff and carry it on, if indeed they do engage, or can engage and find resources. But we do think we can contribute and help. I will let Louise pick up the how, and then you will have a picture.

Q85 **Chair:** If you could be quite brief, Louise, I would be grateful.

**Louise Edwards:** Very happy to be. In terms of the how, what you do is you change our processes to have a decision point very early on, where you say, "Is this something that warrants a criminal investigation at this point?" Key to that is whether or not there is any evidence of something being done deliberately. We talked about inadvertence before. Inadvertent actions do not end up in the Magistrates court; deliberate actions may well do. You have a decision point quite early on. If something goes to a criminal investigation, you have slightly different procedures that comply with the relevant legislation, and then you have a decision point about whether to bring prosecution. If you do wish to bring a prosecution, you move a writ in the Magistrates court, and it goes before the court at that point.

I mentioned we are consulting later this year on our enforcement policy. Part of that consultation will include the factors that we will take into account at all those decision points, and we would very much welcome views on them.

**Chair:** Thank you. I am conscious of time. I will go to David Jones.

Q86 **Mr David Jones:** Mr Posner, surely if you seek powers of prosecution it is necessary to demonstrate that you have a thorough understanding of the law in this area. Again, the Darren Grimes case tends to indicate that you did not even have the most basic grasp of the law. Frankly, that whole



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issue could have been avoided had it not been for the fact that you completely misinterpreted the law as it applied to referenda and registration for referenda. Is it not rather premature to seek powers of prosecution when you clearly have such a loose grasp of the law?

**Bob Posner:** Obviously, I do not agree with that. We are back to the Darren Grimes case. It was a point of law that had been untested in the courts. It was argued—it was argued very reasonably on both sides—and the judge came down on one side. It does not mean that there was something fundamentally wrong, and it is one case on one detailed point of law. I do not think you can draw that conclusion. You are better off to step back and look at the bigger picture. When the civil sanctions regime came in 10 years ago, Parliament was rightly concerned how that would work in practice and how the commission would administer it. Politicians at the time expressed similar concerns to what you have just expressed. In fact, that has been a very successful regime. It has been well administered over the years, with fines applied at proportionate levels; it has been a great success, in fact. It has helped to raise compliance.

Louise referred to the difficulty for candidates and agents. We think something could be done there as well, and, equally, to help investigations move forward effectively and swiftly, which we all want, with people who are not co-operating. We think that will help the system. It will be done hand in hand with the police and Crown Prosecution Service. I do not think there is any risk or threat. It seems to be a very sensible step, in line with other regulators.

Q87 **Mr David Jones:** Again, in a case that did involve the criminal law, where you forwarded a file to the police, the police decided there was no offence and decided not to prosecute. Clearly, had you been the prosecutor you would have gone ahead with it. The professional investigators of the police decided there was no offence and did not proceed with it.

**Bob Posner:** It is wrong to draw a conclusion that we would have gone ahead with anything. We did not investigate those claims. I will let Louise answer that.

**Louise Edwards:** Yes. Sorry, but I think, with respect, that that is a misunderstanding of how the system works. The police were not investigating the same offences as us. We made a report to the police saying, "We think there is evidence of an offence. Can you please investigate?" The police investigated. We did not investigate those offences. I do not know what evidence they obtained, because that is not my investigation.

Q88 **Mr David Jones:** You thought there was evidence of an offence, and the police disagreed.

**Louise Edwards:** We had evidence to give us a reasonable ground to suspect an offence. We made a report to the police, and the police then investigated and drew their conclusions from it. That is entirely how



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Parliament decided the system should work, and that is entirely what we were doing.

Q89 **Mr David Jones:** You would not agree then that your lamentable conduct in both the Grimes and Halsall cases tends to lead to the conclusion that not only should you not have prosecution powers, but that it would be manifestly contrary to the public interest if you were to have such powers?

**Louise Edwards:** As Bob has explained, it is very important that we have these powers in order to move investigations forward as quickly as possible. We have the experience, and we have the evidence of that experience from our conduct at the civil sanctions regime. This is a completely normal thing for regulators to do. That is why we are taking it forward, and that is why we are consulting on the factors that we take forward as well, so that we make sure people have a chance to input into that.

Q90 **Chair:** At that juncture, could I ask when that consultation opened and for how long it remains open?

**Louise Edwards:** It will open later this year—the back end of summer, I would imagine. I cannot remember whether it is a two or a three-month consultation, but it will be open for that period. We will let you know when that has opened.

Q91 **Chair:** Would such change require primary or secondary legislation?

**Louise Edwards:** It would require neither. Parliament gave us the power to bring prosecutions under the Political Parties, Elections and Referendums Act.

Q92 **Chair:** Would it require ministerial direction or Order in Council?

**Louise Edwards:** No, neither. We have those powers already.

**Chair:** Right.

**Bob Posner:** Can I come in there? Again, that is the normal situation. There is nothing special about political regulation here. Statute regulators have the ability to go before the courts in this way.

**Chair:** Okay. Thank you very much. That concludes this morning's session. Thank you to our three witnesses for their time, and to members for their participation.