

Public Administration and Constitutional Affairs Committee

Oral evidence: [Lessons Learned from the EU Referendum](#), HC 496

Wednesday 14 December 2016

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Members present: Mr Bernard Jenkin (Chair); Ronnie Cowan; Paul Flynn; Kelvin Hopkins; Mr Andrew Turner.

Questions 260 - 374

Witnesses

I: Jenny Watson, Chair, Electoral Commission, Claire Bassett, Chief Executive, Electoral Commission, Bob Posner, Director of Party and Election Finance, Electoral Commission, and Ailsa Irvine, Head of Electoral Guidance, Electoral Commission.

Examination of Witnesses

Witnesses: Jenny Watson, Claire Bassett, Bob Posner and Ailsa Irvine.

Q260 **Chair:** Can I welcome our witnesses this morning to this last evidence session on our referendum wash-up inquiry and could I ask each of the witnesses to identify themselves for the record, please?

Jenny Watson: I am Jenny Watson and I am the Chair of the Electoral Commission.

Claire Bassett: I am Claire Bassett. I am the Chief Executive of the Electoral Commission.

Ailsa Irvine: I am Ailsa Irvine, Director of Electoral Administration at the Electoral Commission.

Bob Posner: I am Bob Posner, Director of Political Finance Regulation and Legal Counsel for the Commission.

Q261 **Chair:** First of all, Ms Watson, we are very grateful that we have



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managed to fit you in on your last day in office; thank you for that. It is also Ailsa Irvine's first appearance in front of the Committee in her new role and we welcome you to that.

We are going to ask some fairly crisp questions; if we can keep the answers fairly crisp, that always helps.

Jenny Watson: Understood, Mr Chairman.

Chair: I will perhaps pull people up if they are asking or answering for too long. Question 1, Kelvin Hopkins.

Q262 **Kelvin Hopkins:** Good morning. Can I ask first of all how satisfactory is the current regulatory framework for referendums?

Claire Bassett: Perhaps if I pick that up first. In a very broad sense we would really support the recommendations from the Law Commission for broader improvements that could be made to legislation that governs right across referendums and elections and particularly PPERA and some of the sections within that.

More specifically to the referendum and the referendum we have just had, I think there are some real opportunities to improve section 125 and also particularly around our powers and ability to enforce that and, more broadly, the fines that we are able to award. If I hand over to Bob, he can give you a bit more detail.

Bob Posner: We have done a post-referendum report on the administration of the referendum and as Claire refers to there are some recommendations around section 125 that we think are worth looking at. We have also referred to our sanctioning powers, our investigatory powers; perhaps those could be considered in relation to referendums more generally and whether they are insufficient for an event of this nature.

The only other point I would add to that, just to be brief, is that we are now getting in the campaign spending returns and so in spring next year we will be reporting on those. It may be that, as a result of that, we have some recommendations about the spending rules.

Jenny Watson: We are very happy to go into a bit more detail about section 125 now if you would like us to.

Q263 **Kelvin Hopkins:** A supplementary, first, to my first question. What, if any, regulatory issues arose during the referendum?

Claire Bassett: Again, I will allow Bob to pick up the detail of that. The first thing to say is that the approach we decided to take was very much one of a proactive regulator, where we sought to encourage people to act correctly and intervene early before things went wrong, rather than to be playing an after the event enforcement role if we could avoid it.

We did have a number of instances where we picked people up, particularly around the campaign regulations, and we were generally



really pleased with the co-operation we got—for example, where people registered very quickly as campaigners in order to be compliant with the rules. We did that. We did have a few instances where allegations were made about campaigning by particular groups and we picked those up and investigated those in a live, real-time way, so that we were able to either get people to register or prevent particular activities, or identify what had happened, how much money had really been spent and that sort of thing. So those were the main areas of activity that arose around that.

Bob Posner: Just to build on that, from the beginning we were very mindful, as everyone was, about campaigning that could take place by overseas-based organisations, be that institutions or Government or the EC or companies, so that was one aspect that was an issue, I think it is fair to say, throughout the referendum.

The other one was the UK-based institutions and the extent to which governmental, or quasi-governmental organisations—universities, the Bank of England and so forth—would get involved in campaigning. That was an issue for us as the regulator. The other one that arose during the referendum was what was termed the “Working Together Rules”: whether campaigners were or weren’t working together, how would that feed through on the spending rules, and that needed to be regulated. The other one, which I think clearly was not for us, is the whole issue of truth in campaigning. We clearly regulate the spending as opposed to the nature of campaigning.

Q264 **Kelvin Hopkins:** I should perhaps say that I had a peripheral role in this as co-chair of Labour Leave, so registration in particular I remember.

In your official report on the referendum you state that you recommended that, “Important changes which have been applied to the legal framework for recent referendums should be incorporated into PPERA to ensure that they will apply for all future referendums.” What are these changes?

Bob Posner: There have been a number of referendums, which have built on the 2000 legislation, the basic regime in the 2000 Political Parties, Elections and Referendums Act. As each referendum has happened, we have made some recommendations. Very positively, we have seen that when a referendum has come along with specific legislation, that referendum has generally picked up our recommendations for that referendum.

One area has been the designation process and the referendum period. It is important when you designate lead referendum bodies that that process is clear and also that they have sufficient time to campaign, and the original legislation was very tight on that. The original legislation has just a very brief 10-week period within which one designates, which means effectively you just get four weeks for the lead bodies to designate.



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With this referendum, for example, effectively designation took place before the 10-week period, so there was a full 10-week period for campaigners, lead campaigners in particular, to campaign, but even then I think we would say that needs thinking about and looking at whether that is sufficient, because I know some of the campaigners still found it difficult with designation being so close for people to have to start campaigning, so I think there are issues around that.

The whole issue of section 125 that you might come to is the other one I have mentioned, but basically what I would say is probably the time has come now and it is what the Law Commission has recommended, that it would be useful and I think probably right to update the rules in the legislation and have one up-to-date set of rules for referendums—perhaps a generic set of conduct rules that was there. In that way, if referendums came along, that would be there for Parliament and if any variations needed to be made they would have to be justified.

Jenny Watson: Just to be clear about that, that would mean that Parliament would be debating the need for a referendum, the content of a referendum question, the date of a referendum, and issues like that, but the rules would be set out far in advance: we would all know what they were, we would all have clarity and we would all be able to plan. That would be true on the campaign finance side of the House as well as on the electoral administration side of the House. We have had probably enough referendums now to know that that is needed and desirable and we would very much welcome the support of the Committee for such a thing.

Q265 **Kelvin Hopkins:** Just one point before I pass on. On the matter of the wording of the questions, you made recommendations before the referendum took place. You did not have a role in that? It was just left to Government?

Jenny Watson: No, that is right, and we would have that role anyway, and clearly in any process for a future referendum we would expect to make sure that a question was intelligible, which is easier to do than say, it seems, and report to Parliament on that. So it would not take away from that at all. It would simply set out the rules by which the referendum would be run.

Q266 **Kelvin Hopkins:** The question has to be relatively neutral as well?

Jenny Watson: Absolutely right. That is what our process is for.

Q267 **Ronnie Cowan:** You are talking about the timing for campaigning but this time round it so happened that we had a Scottish Government election on 5 May, which meant the campaigning time in Scotland was far shorter than it would have been elsewhere within the United Kingdom. Is that something you have taken into consideration?

Jenny Watson: Yes, we did, and when we briefed Parliament when the legislation was going through that set the date we did refer to the



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considerations that we had taken into account. One of the things that we referenced was the important elections that were taking place in Scotland, Wales, Northern Ireland, and indeed in other parts of the UK. We decided that at that point, on balance, since the planning was so well advanced it would be safe to go ahead with that referendum on 23 June.

I think that is still our view—we would certainly not have wanted to see a referendum on the same day as the elections; that would not have been possible—so we did think that could be safely delivered and indeed it was. I think it would be true to say, and Bob may want to come in, that those overlapping campaign periods meant that we had to give some pretty specific advice to campaigners in terms of their reporting, but in terms of the safe delivery of the referendum in the end our confidence was justified. Bob, do you want to come in on that?

Bob Posner: That is right. It did create an issue for all campaigners, with overlapping regulated periods and their spending limits. That is not easy for anyone and we did our best to guide and advise on that, and we were fairly pragmatic about it, but if such things can be avoided it is better, obviously.

Q268 **Chair:** Before we move on to the next question with Mr Flynn, I have two supplementaries on what you have already raised. I should declare my interest: I was a director of Vote Leave throughout the campaign and therefore I have experienced some of the anxieties that you refer to, the one being this business about who we were campaigning with, and therefore what should be included in the campaign's expenditure. I can assure you, there was complete paranoia about this in Vote Leave and I expect in the Remain campaign as well, but how do you decide whether an organisation is campaigning with, as opposed to just alongside? What are the measures that you use or the criteria you use for that? Mr Posner?

Bob Posner: The first thing to be said about the rules is that they enable campaigners to work together. There is nothing wrong with campaigners working together. The whole point of the rules is that that is fine, but the key issue, and I think the difficulty for everyone including us as regulator, is that if there is therefore campaign spending, whose campaign spending is it, and therefore whose limit does it count against? Absolutely understandably and rightly, campaigners I know were very concerned about getting that right.

There is not a lot of assistance in the legislation itself. It just talks about working together, whether there is a common plan or arrangement and what does that mean in effect. At one extreme it can be very obvious if two campaigners have a common strategy and approach but I think in practice that does not tend to happen. It is just campaigners on the same side of the argument probably just talking fairly informally about things. So somewhere in that spectrum you cross a threshold where two campaigners are working together.



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Our approach was to be available for campaigners. We very much had lead contact with the main campaigners and we very much encouraged any campaigner who was concerned about this to come and talk to us. After all, we were the regulator and if a campaigner could agree with us whether it was or wasn't working together then they would know exactly where they were on it. There is no hard and fast answer. I think it is definitely an issue we will be looking at, at this next stage, when we get the campaign spending returns in.

Q269 **Chair:** Can I press you on two aspects of this? One is there was quite strong discouragement for allowing people to organise their own public meetings or their own rallies throughout the country if they had the Vote Leave sign associated with them, because the expenses of that meeting it was felt was going to be applied to the expenditure of the Leave campaign. How much do you think that was a real fear or how much was that just being over-cautious?

Bob Posner: It is something we are going to be looking at in this next stage, when we get the spending returns in. I am sure it will feature in our report in the spring. I think, if I may say, it is absolutely right. I think campaigners were perhaps understandably very cautious because they did not want to fall foul of the rules, so it may well have erred on the side of being perhaps too cautious but I can understand why that would be.

Q270 **Chair:** We do not want rules that discourage public meetings, but that seems to be what we have.

Bob Posner: That would not be our approach.

Q271 **Chair:** The other example is when a campaign is over-funded and it cannot spend any more money, is it able to give advice to donors about where else they might give their money, or is that going to finish them up in overspending?

Jenny Watson: Before Mr Posner comes in, and he may feel this is entirely unnecessary, I just want to underline that we do not yet have the complete spending returns from every campaigner and therefore it is possible—I do not say it is likely, but it is possible—that there could be enforcement matters that may follow from those returns. I know he will not want to comment on anything that might then turn out to be a live issue. So if I can perhaps say that, because it might be easier for me to do it than him, and then he can answer as he chooses.

Bob Posner: Yes. It has to be said, as Jenny said, we are still regulating, by definition, the campaign spending returns that are coming in and therefore any matter can be looked at and will be very closely scrutinised in the campaign spending returns so I cannot be specific on any matter at all.

However, there is nothing wrong fundamentally with a campaigner saying to a donor, "We have reached our spending limit. You might want to



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donate your money elsewhere". How far that conversation goes and whether it crosses a threshold at some point is—

Q272 **Chair:** Is there any clarity in law about that?

Bob Posner: At the end of the day, sitting in legislation are criminal offences that have to be proved beyond reasonable doubt, whether they are to be criminal or we apply civil sanctions, so it is a fairly high threshold.

Q273 **Chair:** How do you define when that conversation crosses the line?

Bob Posner: There has to be a common plan or arrangement. This is a relatively new area, the working together rules. It has not been legislation for long. It is in that sense not crystal clear.

Q274 **Chair:** Is that something you think there should be better clarity on?

Bob Posner: It is something that we will be considering when we report in the spring and I am sure we will have a view on the working together rules.

Jenny Watson: We will make sure that we send this Committee a copy of that report and I am sure my colleagues will be very happy to return again if you would like to talk to them at that time.

Q275 **Chair:** The other question is about the designation process. First of all, what advantage is it to delay designation as late as it was delayed in this referendum? To whose advantage is it?

Jenny Watson: We think the period for designation should happen earlier than is set out in the legislation and indeed on this occasion it did. The process of designation was earlier, but that had to be brought into place, again as Bob said earlier on, specifically for this referendum.

Q276 **Chair:** This was a compressed timeframe referendum anyway, but is there not a case for saying that the designation should be done six months before the referendum?

Claire Bassett: We would certainly support it being earlier to allow—it just gives everyone clarity if you know who the lead campaigners are. It makes it easier for them to raise funds, particularly if you have contested lead campaigners, so I think it is something that we have certainly said in our report, that doing it earlier would be helpful for all. It certainly was not where it was as close to the beginning of the campaign period, because we wanted it close to the campaign period. We were just pleased to get it moved as far back as we did and we would encourage it to be a bit further back if it could be.

Q277 **Chair:** How fair is it if one side has certainty as to who will be conducting a campaign and the other side is in a contest and therefore has difficulty raising money, has difficulty making plans, might spend £700,000, might be allowed to spend £7 million, but does not know until 10 weeks before the referendum? How is that fair?



Jenny Watson: We have a great deal of sympathy for campaigners who would find themselves in a contest ahead of a referendum because clearly they cannot go to people and say, "I want to let a contract; I want to raise the money" because they cannot say that they are the designated lead campaigner.

I would say it is not always possible to know ahead of a referendum whether there will be a contest for a designated campaigner or not. In some referendums there has been. In others there has been nobody coming forward that could be designated, so each referendum will be different, but as Claire said to have it slightly earlier than it ended up being this time is something that we would certainly want to encourage people to think about.

Q278 **Chair:** On the question of the designation itself, I can quite see that the contestants did not make it easy for you, but how satisfied are you that the criteria are properly transparent and the way that you measure against those criteria is properly transparent?

Claire Bassett: Transparency of designation is something that we really actively sought to achieve right from the outset of this, so the criteria were published well in advance and were there and were—

Q279 **Chair:** Very subjective criteria.

Claire Bassett: I think it is quite hard when you are trying to set the criteria. It is not a quantitative thing. It is quite hard to come up with a list of things, and what we did was base that against the test that is in PPERA and try and elucidate that by setting out the criteria that made that. That is something that you would look at if you were reviewing that test in PPERA. You might want to make that more quantitative. You could, but it is quite a hard thing to do.

What we did however do, which I think people recognised as being very transparent, was publish everything including the details of our decisions almost immediately on making those decisions, so that people could see how we had assessed those different applications and how we had reached the outcomes that we did.

Q280 **Chair:** Being on the other end of it, it looks a bit mysterious and what do you think you could do to make it more transparent?

Jenny Watson: I think publishing the criteria as far in advance as we did, and making it clear to people and talking to people about those criteria, and saying, "This is what we are going to be assessing it against"—given the test that Parliament has set us we certainly learn ahead of every referendum.

We go away, we revisit what we have done, we think about it in the context of what we have learnt previously, but I think that is probably the maximum transparency that we could achieve, short of changing the process in its entirety, and I do not think any of us have seen that that



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process does not work. It may be challenging for campaigners, but I think Parliament wanted it to be challenging.

Q281 **Chair:** To what extent is there a fit and proper person test for the applicant?

Claire Bassett: That is not part of those criteria. We could certainly look at that. It is about a campaign group, not a person, applying for that.

Q282 **Chair:** It is an organisation to which public money is going to be granted.

Bob Posner: We have to act within the legislation, the parliamentary test in the legislation, which says the body that represents campaigners to the greatest extent. We have contested applicants, so our criteria are all within that confine of what the legislation says. It is effectively a procurement exercise, in effect to grant the right or privilege to be the lead designated body.

Although it is not a fit and proper person as such, our criteria does look at the nature of the body itself as to whether they are sufficiently constituted, have proper professionalism and advice, proper financial arrangements, so that we satisfy ourselves that, receiving public money, they can deliver properly and properly represent the campaigner. So one element is we do look at the nature of the body itself, and satisfy ourselves about that, and indeed that they have directors and the directors are people that we would expect and can be trusted to be directors. So we do look at that, but all within the confines of the parliamentary test.

Q283 **Chair:** But sports directors are directors. It does not necessarily suggest there is good governance. How do you satisfy yourself that you do not have a Potemkin governance structure, which looks good on paper but does not work? How do you satisfy yourself about that?

Claire Bassett: Essentially this is a paper-based exercise based on the evidence that has been provided by the applicants against the criteria that stem from the statutory framework that this is in, so we have to test against that. It is a hard job, particularly where you have effectively organisations as campaign groups are coming together perhaps from cold with a view to establishing themselves into a stronger infrastructure if they are designated, so that does make that harder.

I think what we have to do is review what is in front of us, test that, look at it, challenge it if appropriate and go back for further information, for example, which we did do on some of the applications this time, particularly challenging, for example, the underpinning governance structures that were in place and then we have to make the decision based on what is in front of us.

Q284 **Chair:** Each of the two campaigns were I think companies limited by guarantee, with directors therefore covered by company law. How do you check compliance with company law?



Bob Posner: As Claire says, in reality it is a point in time. We get paper applications, we have to assess them and come to a view as to who is going to be the designated lead body where it is contested. There is a point in time. What follows from that then is they get certain rights and privileges, one of which is public money, obviously, and the expense of that public money has to be accounted for, so we do proactively audit the proper expenditure of public money and we have, since the referendum, been in and audited the financial systems of the lead campaigners post-event.

Q285 **Chair:** Is there anything in the legislation that would prevent you from applying a fit and proper person test to the company applying for designation?

Jenny Watson: I would say that is very close to what we do.

Q286 **Chair:** Should it not be more overt? Wouldn't that encourage them?

Jenny Watson: We could certainly think about that. That is a good question and it is also possible within our process for the Commission board if it has any issues or concerns or wants to speak to campaigners directly to call campaigners in for interview and talk to them and see the whites of their eyes.

Q287 **Chair:** And talk to the non-executives?

Jenny Watson: Yes, indeed, and it was not necessary on this occasion. My colleagues did not feel that was necessary, but that is certainly something that we have the ability to do, should we feel that we needed to do so. We could build in an explicit fit and proper person test and it may be that is something that we will take away and think about for the future.

Q288 **Chair:** Wouldn't that encourage stronger corporate governance in the two campaigns?

Jenny Watson: I would hope that the governance is there and is strong in any case, but as Claire said sometimes these are people that have worked together for a very long time. Sometimes these are people that have come together quite quickly for the purposes of a short life campaign, so they will do as good a job as they can do and we have to assess against the test that is to the greatest possible extent a representing campaign or opinion.

Q289 **Paul Flynn:** Are the rules sufficiently robust to detect interference from a Government like Russia's, knowing Putin's declared policy of campaigning to weaken the European Union and the allegations made about Russia's conduct in the American presidential election?

Jenny Watson: If you are talking about the outcome of the referendum, I am confident that the declaration I made on the morning of 24 June reflects the votes that were cast by voters.



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Q290 **Paul Flynn:** That is not my question. I am asking are the rules, are the protections you have, subtle enough, clever enough, high-tech enough, to detect interference from Russia.

Jenny Watson: If you are talking about the running of the poll, then, yes, and Ailsa can provide the detail.

Q291 **Paul Flynn:** I am talking about propaganda beforehand, financing, all the allegations that have been made about the presidential election in America where it seems clear that there is a campaign using electronic means by Putin in order to get his policies through, and one of his policies is to weaken the European Union. Are you aware? This is the serious allegation being made in America now.

Jenny Watson: Yes, indeed. If you are talking about the campaign finance side I will let Bob pick that up. In terms of the general culture conduct of the referendum the Electoral Commission is not responsible for regulating the conduct of news or campaigns, and that of course is partly what is related to some of the allegations that have been made in America.

Q292 **Paul Flynn:** We are trying to learn lessons from what happened in this referendum and the Law Commission has made a certain number, but it would appear that that is a serious doubt now, a weakness in our armoury regarding the independence of it.

Jenny Watson: I just want to be very clear about the question you are asking, Mr Flynn, and I do not think I am at the moment. There is a question about, for example, allegations have been made in the United States of America about Governments being behind the leaking of various documents. That is not something that the Electoral Commission could or would regulate, so that cannot be for us.

Q293 **Paul Flynn:** Okay. Who would? This is a new threat to the independence and the integrity of referenda in Britain, where a foreign country could use dirty tricks to help one side or another.

Jenny Watson: I would imagine that those kinds of questions would be best asked of the security services, to be quite honest. They are not something that the Electoral Commission could dream of getting involved in. On the campaign finance side, we can certainly help.

Bob Posner: So the UK rules on campaign finance and transparency are certainly much stronger than in the USA, for example, and in most countries around the world. So for this referendum campaigners obviously have to report all the sources of their donations and their funding. That applies for the period of them being regulated. For this referendum that went back to 1 February as I recall this year, when there were pre-poll reports as well. So one can track back how campaigners received their funding to 1 February this year. Before then one cannot track it back.



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Q294 **Paul Flynn:** Okay. If we again look at the respect that is given to snapshot opinion on 23 June—this may not be your area but it is certainly an area that one has to detect the amount of faith we have in that poll—was it a fair reflection of the views of the British people?

We have had two witnesses who came before us who were involved as lobbyists in the referendum campaign, in the alternative vote campaign and in the campaign for devolution in the north-east of England. Is there any evidence of how the public were influenced by those campaigns? We have had half an hour from the Leave campaign. I was not in either campaign and I stated during the referendum that victory would go to the ones who told the most convincing lies, which I think was borne out by the results of those three referenda, which were organised by these very skilled lobbyists who believed in telling what I believe were outrageous lies that deceived the British people.

Is there a case where we need, if not from you then from another body such as the Office for National Statistics or the Advertising Association, to set some kind of standard to say that the propaganda on this side is outrageously untrue?

Jenny Watson: That is obviously a debate that we have heard about since the referendum and I think we indicated earlier on that we do not think the role of what has been described as a truth commission is one for us. We do not regulate content. In our system it would be more usual for arguments to be put to campaigners, to be scrutinised by other campaigners and by the media and be tested in that way, but there is clearly a debate that is going to continue about the need for a truth commission and we will play our part in that. Claire, do you want to add anything?

Claire Bassett: No, I was just going to add that we do take that seriously and part of our role is about confidence in the system, but as Jenny says we do not think it is a role that we could take. However, we have had informal meetings with other regulators to just think about this and what options there are, whether it is a full truth commission, and look at how that is done in other countries or whether it is just changes to the rules as they sit now.

It is early days, but we are not being complacent about it, even though we do not see it as our role. We are keen to play our part, as Jenny says, and we have been talking to the Committee on Standards in Public Life, the Advertising Standards Authority and a couple of other regulators and the Statistics Authority about what role we could all play, either separately or together, to try to support.

Jenny Watson: My impression from this referendum and from the independence referendum in Scotland is that voters were actively engaged in talking about and thinking about how they wanted to vote for some time ahead of those referendums. I think they were quite thoughtful about the choice that they made and voters have a number of



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sources of information there. I accept that people feel very strongly about it, but I would not want to characterise voters as not having thought these things through.

Q295 Paul Flynn: If we take the alternative vote campaign which has been conducted, we had the two people that were mainly responsible for them before the Committee and we did suggest to them that the anti-alternative vote campaign was based on the outrageous lies that people who supported the alternative vote were in favour of more of our soldiers dying in Afghanistan and more babies dying in hospital. When this was denied, an example was given of the adverts that they used. That was conducted on the basis of fear.

On the other side, the campaign was conducted on the basis of having fewer corrupt MPs if you had AV. None of the arguments on either side seemed to be out to explain to the public that this was an alternative form of democracy. In a case like that, the public are deceived by the biggest liars, by the most successful snake oil salesmen who determine the national vote and then Parliament seems to be enslaved by that snapshot of public opinion. Is this not very dangerous if we are handing over these important decisions to the lobbyists and the tabloid press?

Jenny Watson: I think our view would be that it is for campaigners to decide how they want to campaign and put those arguments across and it is for other campaigners, the media and politicians generally to scrutinise those messages, to take them apart if they feel they are wrong, and to get their own message across. As Claire said, there is a point about a future debate that we will play our part in, but—

Q296 Paul Flynn: Has there been any work done to assess what determined public opinion? Was it reading leaflets that came from organisations, from Government? I would think not. Was it something that they saw vividly on the television night after night, a red bus with the suggestion on it that there would be £350 million a week coming from the EU if we left? That was a massive at least exaggeration, almost certainly a total lie. In fact, we now know it is going to be £58 million extra we are likely to have to pay. When something like that takes place is it not right that we need to call for a truth department to say, "This is not true. This is an outrageous lie that is influencing public opinion"?

Jenny Watson: The Committee may well decide that it wants to do that. I am simply saying to you that is not a role for us and I must say, with respect, I also do not think it is a role for us to research why people voted the way that they did in any referendum. That must surely be for others, for academics, for think tanks to do. It is not for the organisation that is responsible for the conduct of the poll. The outcome of the poll and the campaigns that are run cannot be a matter for the organisation that is responsible for running the referendum.

Q297 Paul Flynn: I think we spent a great deal of time, we had the first half an hour, discussing the minutiae of what went on, which seemed to be of



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minute significance, but the main lesson from the three referenda I suggest—the north-east of England, the alternative vote and the one on Europe—is that the public were misinformed on a massive scale by huge lies that they fell for. I am not defending the other side. I believe there were wild exaggerations on both sides, but surely we need something to moderate when one vote is taken, only on one day, and that should determine public opinion or Government's decision in perpetuity, which seems to be the argument being presented now by Government.

Jenny Watson: As I say it may be that the Committee wants to call for some such body. I simply do not think it is a role for us. I would also add perhaps rather more gently that if you have such a regulator who will tell you the truth of competing political campaigns in referendums my guess is that that would quite quickly spread to elections, and if you have that then I think there is something that has been fundamentally altered in our democracy. As Claire says, we will continue to discuss that with others and we will play our part in helping to move those discussions forward if you decide that is where you want to go as a Committee.

Q298 **Paul Flynn:** It is a question of whether you present issues on a rational balanced basis. As I say, I am not taking sides in this. I was not involved in either campaign; this is about those who are—the lobbyists who are the persuaders in society, whether it is selling baked beans or whether it is selling a lie about the results. We are handing over effective power to the snake oil salesmen.

Jenny Watson: I do not think there is anything else I can say, Mr Chair.

Q299 **Chair:** The Law Commission recommends a Consolidation Act, and presumably you support that?

Jenny Watson: Very strongly. We very strongly support all the work of the Law Commission.

Q300 **Chair:** So we will finish up, ideally, with an Act, and then only regulations will be required in order to have the referendum?

Jenny Watson: Indeed.

Chair: That is very helpful. Mr Cowan?

Q301 **Ronnie Cowan:** Backing up what Mr Flynn said, there is something very wrong with a system and it is not within your gift to fix, I understand that. But Ms Watson made the point that the citizens of Scotland engaged in the referendum campaign and they certainly did, but there is something very wrong with the system when Messrs Brown, Clegg and Cameron can lie to them, blatantly lie to them through this infamous vow. The BBC can be biased and top civil servants can hand out misinformation and that is not checked by anybody.

They are in a position of power and people accept that. They tell them that, therefore it must be true, and there must be somewhere where that has to be validated before they say what they are going to say. If it is not



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your position to do that then whose is it?

Jenny Watson: We would very happily come on to the way in which section 125 of PPERA could be changed for future referendums because in relation to that area we would agree that the law could be better clarified for the future. I do not know if now is a good time to come on to that or not, but I should stress that I am doing that in the context of how that could be changed for future referendums. The broader campaigning point I would say again is for the cut and thrust of political debate and voters will see through it or not or make their choices as they choose. Bob, do you want to say a little bit about section 125 now?

Chair: I am going to come to section 125. Anything else, Mr Cowan?

Ronnie Cowan: No.

Q302 **Chair:** Before we come to section 125, what about the fairness of the funding arrangements for the two campaigns and the support for the two campaigns from political parties? Have you expressed a view about this?

Jenny Watson: I think we have said that we thought the rules that were in place in terms of political party ability to support the referendum worked quite well.

Q303 **Chair:** In this particular referendum, the Remain campaign was allowed to spend £7 million of their own, have £5.5 million of support from Labour, £3 million of support from the Liberal Democrats, giving them £15.3 million, plus the £9 million leaflet from the Government, so they were up to £24.3 million. Had the Conservative Party not been neutral, had been in favour of Remain, there would have been another £7 million of expenditure from the Conservative Party. So in theory they could have spent up to £31.3 million on the Remain campaign with the Government's support. The Leave campaign had £7 million of their own and £4 million from UKIP, a little bit from DUP but basically £11 million. How is £31.3 million versus £11 million fair?

Jenny Watson: You will remember, Mr Chairman, that I think we said to Parliament during the passage of the legislation that we thought that Government should not be able to publish any material related to the referendum for the whole of the referendum period and Parliament did not choose to accept that, so I think that perhaps gives you a view in terms of the Government spend.

Q304 **Chair:** So in the Consolidation Act you would extend the ability of the Government to produce literature and circulate it to the full 10-week period or at all?

Jenny Watson: That was the implication of what we were saying, yes.

Bob Posner: That is our recommended position, yes.

Q305 **Chair:** In fact, I think it was quite helpful to our case, but that is another matter.



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Jenny Watson: May I come back to the point about the political parties? I think when this legislation was being thought about there was a desire to give political parties, which have an important role in our political life, the ability to choose to be involved in referendums if they wanted to do so, and therefore to have a spending limit that reflected the vote share that they have in Parliament.

Q306 **Chair:** That does not necessarily militate to a fair referendum, does it?

Jenny Watson: It does depend, of course, on how the support of the political parties breaks on the issue, and there will be other referendums where that might look quite different. If we want to continue to have something that gives political parties that important role then I think we have to accept there will always be a degree of uncertainty that goes with it in terms of the money that political parties will be able to spend.

The corollary or obverse would be to say that political parties cannot spend anything at all and it will all be done through referendum campaigners, and that I think does not sit easily with the traditions of our democracy. It is a judgment call and currently I think we would be happy with continuing with political parties having spend.

Q307 **Chair:** Okay. I will come back to this question of how we mix representative and direct democracy in our system, but on purdah you supported the retention of section 125. How important do you think that was during the last 28 days of the campaign in providing fairness in the referendum?

Jenny Watson: We felt that was extremely important. We were grateful for the Committee's support for that. We briefed Parliament on that and we were very glad that it went back into the Bill. It is there for a reason. It is there to give people confidence and it is entirely right that it should have been reintroduced into the Bill.

We do think it needs changed for the future and in fact it may be that there is a better way to define the types of activity that it would be designed to catch, to make that closer to campaign activity that campaigners would undertake, and if you could do that then it may well be that it could be extended to a longer period, but I will let either Bob or Claire pick up the details on that.

Q308 **Chair:** That is interesting. Do you want to come in? I could just ask, you have argued for a longer period in the past; you did not in respect of this referendum. Why was that?

Jenny Watson: We did, in terms of the—

Bob Posner: We did. When we responded to Parliament on the provision coming back in we suggested that Government should be restricted for the whole referendum period.

Q309 **Chair:** I beg your pardon, but it was not about extending section 125,



was it?

Bob Posner: No, so our position was that the traditional provision should be in the legislation but at this point having experience of this referendum we think the section needs to be looked at more generally. There was clearly uncertainty about its interpretation. That did not help.

Q310 **Chair:** I will come to the interpretation. Just on the period, do you think that section 125 should be extended to 10 weeks as a bare minimum?

Bob Posner: Yes.

Claire Bassett: I think it needs to be in the context of reviewing the whole of the wording of section 125, so it is extended but there is clarity over what is meant, so you do not have any unintended consequences.

Q311 **Chair:** I see, so the concerns of the Cabinet Secretary that were expressed to us around section 125 and how that might create chaos in Government?

Jenny Watson: We have not seen anything in any of the referendums that we have been involved in that would suggest that that would be the case. Clearly relationships with the EU and the need to make statements—that is not activity that is intended to influence the outcome.

The additional measure that we would have preferred to have added to the legislation, although Parliament chose to reject it, was that around Governments and their ability to produce advertising material. That was where we wanted to have a longer timeframe, which would have caught the Government booklet.

Q312 **Chair:** Of course, there was some disagreement between other stakeholders about the interpretation of section 125; notably, we took some advice about the status of the Bank of England, and you gave advice to the Bank of England. Can you explain this? When did they ask you for advice?

Bob Posner: I would not say we gave advice to them. They were clearly active at a point in time and we contacted them and reminded them about the provisions of section 125 and requested or required them to consider that. Again it goes back to the drafting of section 125, which if you have a body like the Bank of England it is not very clear whether they are caught or not, but it talks about bodies that are wholly or mainly funded by public funds.

It is not very apparent that they are, but I think the important thing for us was the Bank of England after we spoke and contacted them agreed that they would comply with the rules in any event, whether they thought they strictly applied to them or not.

Q313 **Chair:** So when they said they had taken advice from you and you had confirmed to them, if I am not misrepresenting them, that section 125 did not apply to them, if I understood that from them I misunderstood



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that: that you did not tell them that section 125 does not apply to them?

Bob Posner: As far as I am concerned, we did not have to reach a concluded view because they decided they would comply in any event.

Q314 **Chair:** They gave you an assurance. Is any of this in writing?

Bob Posner: Yes, it is, and that correspondence is on our website.

Q315 **Chair:** Thank you. I presume you believe that section 125 should apply to the Bank of England so long as it does not restrict them from undertaking their primary statutory duties and functions?

Bob Posner: I think it is probably not for us to conclude a view on that. It is interesting to think of bodies like them. The UK Statistics Authority would be another body to think about that 125 probably does definitely apply to. I think it would be useful, if 125 is going to be looked at, for Parliament to consider where there are certain types of bodies that should be able to be covered—and the Bank of England may not be one—and a view has to be taken on that. When 125 was drafted those issues were not so apparent as they are now.

Jenny Watson: The most important thing for us is that clarity. That is not the only issue where debate arose about what the implications of section 125 might be. It would be helpful for people to be able to look at section 125 and understand what is caught, what is not caught and who is caught by it. That is not very grammatical, is it? But that is why we think defining some of the activity and being clear about the activity would be helpful.

Q316 **Chair:** You are recommending that Government should consult on a review of section 125. What are the key points you think need to be covered in that review?

Bob Posner: Clarity and scope but also at the moment supervision. Where the legislation requires us to oversee it, effectively to monitor and take what steps we can. There are absolutely no sanctions attached to the section for any breaches at all, so we have no investigatory powers, we have no ability to acquire information, serve notices, which as a regulator we have across all our other functions. There are no sanction sections at all, no criminal offences for breaching it, no ability for us to fine any party who breaches it. We think that all should be looked at and a view taken on whether that would be appropriate.

Q317 **Chair:** What about some of the definitions? Our Committee had a disagreement with the Cabinet Secretary about the word “publish”: he regarded all the electronic publication that goes on now as not a publication once it was on an internet site. What do you think about that?

Bob Posner: The definition of “publish”, as in the section, is very broad now. Technically it was publish but I think the difference of view was whether it came within one of the sections or not, whether by having something on the website was effectively people inquiring for information,



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which has been one of the exceptions. This is not clear. We came to a view. I think our view was right—but I would say that, wouldn't I—but others have a different view and I respect that. It is not clear and it would obviously assist everyone again if thought was given to that.

Q318 **Chair:** What would your review expect the Government to do about information on Government websites even if it is just the maintenance of an electronic copy of a leaflet that they have already circulated?

Jenny Watson: As Bob says, our view was that that did fall within one of the exceptions in PPERA. Having already put it there, there was no difficulty. That did not have to be taken down. I think where we would want to add to that review—and I am sure others would too—would be to more closely define the type of activity that a public body should not be undertaking during the referendum period. We know what campaigners do.

Q319 **Chair:** Can you give examples of that type of activity? That would apply to the Bank of England as well, presumably?

Jenny Watson: Yes. I would say advertising, billboards, leaflets, that kind of activity that is clearly intended to be campaign activity and that is where we want to spend a little bit of time thinking through what that might look like.

Q320 **Chair:** In some respects that would license, for example, the head of a public body to make a speech about their direct responsibilities in the referendum 10 days before the referendum campaign. That is not your intention, is it?

Claire Bassett: No, and that is why the whole section needs reviewing and there needs to be a debate about what the intention is of the section and then that needs to be spelt out very clearly in the wording of it. I think this illustrates that at the moment it is quite hard to read the underlying intention because that wording is ambiguous over what different words actually mean in the context of this Bill.

Jenny Watson: Our intention is to make it clearer and to help public officials understand what it is they should and should not be doing and to make clear, if Parliament so wishes, that there are sanctions associated with it. I think we all recognise that this is difficult for Governments. Governments may well have a stated policy position that they prefer but for whatever reason they need to put a question to the British public and find out what the public think about it. That is always going to be a difficult tension and what is really important is that it be clear and be thought through in good time. We are very prepared to bring our thinking and knowledge to that but I don't think it is for us to draft or define in that way the detail of the legislation.

Q321 **Chair:** Could I ask Mr Posner, how much is use of public resources a good threshold to use as a benchmark? If a public authority is using public resources in any way to advance a case or could be construed as



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advancing a case using public resources, should that be covered by section 125?

Bob Posner: That approach is consistent with the UK regime because it goes to spending by public bodies. You can measure it. You can measure are they spending, is it civil servants' resource time costing? It is a measurable approach to the issue but it needs to be very carefully defined.

Q322 **Chair:** On the question of sanctions, should they be civil sanctions or criminal sanctions?

Jenny Watson: I certainly think that civil sanction powers for us would probably be useful but there may be situations where something is so significant.

Bob Posner: To be consistent with the rest of the regime, across all the other provisions that apply, there are both. There are criminal sanctions but where civil is appropriate civil applies. Consistency would say just apply the same approach as across the rest of the regime.

Q323 **Chair:** You mentioned investigatory capacity. What investigatory capacity or powers do you require?

Bob Posner: Again, across the other provisions and legislation and offences we have the ability to serve information notices, to interview people, to acquire information if there are allegations about breaches. None of that applies to this section at all, so in a very normal way it will be consistent with the rest of the regime to give us that ability to investigate if allegations are made.

Q324 **Chair:** What kind of remedy would you offer, because it is the remedy that the other campaign would want?

Jenny Watson: I will think carefully about how I put this. I suspect that a regime with a more serious sanction and a clearer understanding of the activity that might be covered would be helpful to people in understanding what they might or might not be able to do. Therefore, you may be less likely to have matters that arise because people can look at a sanction and say, "If I do this, this is what could happen to me". We are always interested in preventing things from becoming a problem. That is how we regulate and we use the powers that we have to give advice and to flag to people the consequences that may follow from their actions.

Q325 **Mr Andrew Turner:** Can I ask a question that is not one that we thought of earlier? This referendum was different from almost all the other referendums that have been conducted in the UK in that, first, the leave people won and, second, they were people who were not the Government.

In Scotland there were two Governments and in Wales there was a marginal victory but it was fairly clear what would happen if the people



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voted leave in the Welsh referendum on whether they should have their own devolution, what would happen if they voted against it.

It is suggested that in this referendum, first, nobody knew what they were voting for, we are told, and, secondly, the people on the leave side disappeared or they will have disappeared very shortly because they ceased to exist. Could you tell me whether you think either of those cases affects the way in which you would have done the election if you had more knowledge of what would happen in the future?

Jenny Watson: Wow. In relation to the first question, that people didn't know what they were voting for, that has been put to me at a couple of public events since the referendum. We would all have experience of having heard voters—whether it is within families or within wider groups or on buses or at gyms or wherever we were—debating the merits of the question. I think voters think about how they are going to cast their vote and then they cast their vote.

In terms of the organisations being there and then not being there, I think that is a very good question and it is one that we have debated internally from time to time. The reason why I think it is relevant is that in the case of political parties there is an ongoing reputational risk. If you get something wrong in political campaign finance you are probably going to exist into the future and that is slightly hanging around you like an albatross and you don't want it to.

In the case of a referendum, you may well have groups that are coming together and coalescing for a specific one-off. What that means for the way we regulate is that we have to get in there very early, provide very good advice, have very good links, have very good campaign monitoring and be very tough on our follow-up, and we are. We have thought about those things. I don't think there is anything in that question that would make me think we should have done anything vastly different, but we do think about it and that is the context in which we think about it.

Q326 **Mr Andrew Turner:** Thank you. The Electoral Commission plays a key role in delivery and regulation of the referendum. What issues does the dual role raise for the Commission during a referendum?

Jenny Watson: I think that is another good question. The legislation means that the Chair of the Commission or someone they appoint is the chief counting officer and that is now a role that I have performed for three referendums during my term of office. The Commission board makes that decision. Before they made that decision we did explore with the regional counting officers for Great Britain and the chief electoral officer for Northern Ireland whether there was anybody else who could take that role. We thought it was sensible to explore that.

After all, in Scotland the chief counting officer had been outside the Commission. There was nobody stepping forward. There was no capacity. They are mostly chief executives in local government. They would have been the chief counting officer alongside another very full-time job. The



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support for that role would inevitably have come from within the Commission, so it would have been the Commission staff in any case that would have been supporting them. The board decided, and I think it was absolutely the right decision, I must say, to have the Chair, myself, to be the chief counting officer supported by the Commission staff.

Clearly, the tension that that could be perceived to create is around the reporting on the referendum where Parliament has also given us a responsibility, which is to report on how well the referendum was run. We sought to address that by bringing an independent review of what we had done and an independent survey of the counting officers. In relation to regulation, in any case the regulation of campaigners is delegated away from the chair and the board through the chief executive to the staff, so that was not something where I think a great tension was created. Ailsa, is there anything you want to add to that about the running of it?

Ailsa Irvine: No, I don't think so. I think you have covered it.

Jenny Watson: I hope that answers the question.

Q327 **Mr Andrew Turner:** I think so. You were the chief counting officer. Britain Stronger in Europe spoke of some occasions where there was, effectively, an accountability authority gap. What do you understand by an accountability authority gap?

Jenny Watson: I have no idea what that is referring to.

Mr Andrew Turner: No, neither have I.

Jenny Watson: I am completely unconvinced by it. My experience of my staff team—and you have two senior staff here in Bob and Claire—is that if something was raised with them that they thought needed action they would take that action. I am not aware that there are any matters that were not effectively and properly handled at the right level in the staff team. As I said, in any case if what they are thinking is that they couldn't just send an e-mail to the Chair and get some action, point 1, that is probably a good thing and, point 2, that campaign regulation is delegated away from the board to the staff. That is why we employ expert staff. Do you want to add anything?

Claire Bassett: Just to say that I think it is really important that we have the right governance structures in place for managing things like this so if someone raises an issue with us, we have clear accountability for the expert in that topic to look at that complaint or issue, review it, respond to it. We then have an appeal process for that, which again is set out.

I think that is the right thing to do particularly when we are operating in quite a contentious and difficult environment, which needs to be fast moving and needs to be transparent. What we offer is that. As Jenny said, I think it would be wrong, where you had campaigners from different sides, if some elements of that campaign felt able to pick up the



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phone to the Chair, for example, rather than follow the process. Following the process is what makes it trustworthy and transparent.

Q328 Mr Andrew Turner: Thank you. If I summarise this, you can tell me whether I have got it right. How desirable is it that the Chair of the Electoral Commission should be, in Britain Stronger in Europe's words, "effectively absent from making a key regulatory decision" during a referendum?

Jenny Watson: That is fine, but I do not know what they are referring to. If it relates to campaign finance, that is perfectly fine and completely appropriate. If it relates to the designation decision, that was something that I stepped away from with the support of the board because I felt it was very important that the chief counting officer's impartiality, my impartiality, could not be questioned by that process.

We always try to learn from referendums and we had seen that in Scotland, where the chief counting officer was the convenor of the electoral management board. There was a slightly clearer separation of roles. There were some benefits that came from that and that was one of the things that we sought to make sure that we replicated.

Q329 Mr Andrew Turner: How helpful would it be for an alternative figure to be appointed, after consultation, as the chief counting officer during referendums?

Jenny Watson: The Commission board will want to think about this for any future UK-wide referendums on a case-by-case basis and I do not want to prejudge the decision that they would make. Our experience this time would be that there simply was nobody else with the time or capacity. Do you want to say anything?

Ailsa Irvine: It is a significant co-ordinating role, trying to co-ordinate the delivery the poll across 362 local areas. It requires significant resource and expertise to be able to manage that and, as Jenny says, to be able to find anyone else that has that capacity and the ability to do that was not something that was available this time around. It would be a relevant factor in the consideration next time.

Jenny Watson: The team and I would be meeting regularly with each regional counting officer and the chief electoral officer for Northern Ireland, we would be having phone calls, Ailsa's team would be monitoring the current state of play in any particular counting area—we had a red/amber/green risk rating—and we knew what the problems were at any one time. We then went into fortnightly and weekly phone calls. This is a lot to do, on top of being a chief executive in local government, which most of them are.

When Parliament gave this role to the Commission, it had thought about who else could take it on. It was creating a new organisation and it thought this was the right place to put it. I do think, in the case of this referendum, if we could have found somebody else we would have



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seriously considered that but that would have had to be weighed against already having an experienced chief counting officer in place.

For future UK-wide referendums the Commission board may make a different decision, but I would want to underline that I think it would always be the case that the capacity that would be needed would be found from Ailsa and her team because there just is nobody else who has the ability to do that.

Q330 Chair: I have no criticism of your governance or your conduct of this aspect at all but as you take on more of a regulatory role, it sits less comfortably with the operational role. In other jurisdictions the Electoral Commission has a purely regulatory role.

What would be the objection, for example—this is a bit of blue skies thinking—to appointing a former senior local government officer for, say, the six months in the run-up to the referendum itself, to be the returning officer, the counting officer, leaving the chairman of what is becoming an increasingly significant organisation free to do all the rather complicated business of designation, supervision and all the other things that you do in the day job? What would you think of that proposal?

Jenny Watson: It is a perfectly fair proposal. Equally, you might appoint—saving her blushes—the Director of Electoral Administration to be a chief counting officer. There are different ways that you could do it within the Commission.

I would say, on the premise of your question, that most other electoral commissions in the world are delivery bodies for elections. We are the outlier in that for elections, we do not deliver. Most of our sister organisations do deliver elections and many of them also regulate political finance. I see the tension. We did take it seriously and think about it.

There are other ways to do it. That could be one. Somebody from the senior staff team could be another. It may well be, particularly in the light of changes to the chair role that I know you know about, Mr Chairman, in terms of time, that the Commission board in the future may make a different decision. I would not want to tie their hands in that regard.

Chair: It is a very significant point you make about the time commitment of the Chairman. Thank you. Moving on.

Q331 Ronnie Cowan: What were the main administrative issues that arose during the referendum?

Jenny Watson: Listen very carefully, Ailsa, and tell me if I forget anything. I will come to you in a minute.

I was able to issue directions that had the force of law. I did not issue very many of those. I think 12, in the end. Of the main administrative issues that I would flag one would obviously be the Government website,



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which perhaps did not have its finest hour just ahead of the deadline to register to vote.

One would be the issues for some small number of overseas voters in villages in particular parts of the world whose post offices did not understand the International Business Reply Licence, so they were perhaps first of all given incorrect information by somebody in a post office who possibly did not see those Business Reply Licences very often. There was no problem with them. Put them in a post box, that is fine and they got back to us.

There were a couple of issues around postal vote dispatch overseas, where three local authorities did not initially dispatch their postal votes, and one software provider had a software glitch that affected some ballot papers being sent to EU citizens. Those were all cancelled.

Did I forget anything?

Ailsa Irvine: No, that covers it all. They were affecting a proportionally small number of electors and they were all issues that we were able to work with the counting officers to be able to rectify them during the course of the referendum. There was no impact on delivery of the vote. In the case of, for example, EU citizens receiving vote cards, there was no risk to the integrity of the process. They were not able to vote. These were all cancelled. Everything was managed and handled through.

Jenny Watson: It would be very remiss of me to come here and not to thank those in local authorities and in the electoral office in Northern Ireland, who worked so hard to make sure that there were very, very few problems in the delivery of this referendum.

Q332 **Ronnie Cowan:** You say we are talking about small numbers. My numbering for non-eligible EU citizens mistakenly receiving poll cards or postal votes was 3,500. Inconvenient for each one of those people, and misleading, but a fairly small number.

The site crashed because of the number of people applying to be on the register. As it turns out, a huge number of those people were on the register already. Between the 7th and the 9th, 436,000, 46%, were already on the register. Ultimately, that is why the site crashed.

Jenny Watson: There are a number of things. Let me just try to answer those in turn. The website crash was a significant issue; there is no question about that. We have seen the report that Government has produced and if all of that is followed through, that site probably will be fine in the future. It will be you to ask them about the assurances they can give on that but certainly from that is from our perspective.

The site only provides people with the ability to apply to be registered. They cannot check to see if they already are registered. I recognise that is a very easy thing to say and slightly more difficult to deliver, but we



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need to see that change happen because otherwise people will think, "Well, I cannot check. I will register again".

The figure of duplicates will vary enormously depending on local authority areas. In fact, the number of duplicates across the country would have been 8 percentage points higher, around 38% rather than 30%, during that referendum period, but nevertheless that is by and large an automated process, in terms of working out whether those people are duplicates. I am not saying it does not create work. People will, if they see a site that tells them they can apply to register, apply to register again. Do you want to follow up on that?

Ailsa Irvine: Yes. It does certainly create an administrative burden for EROs in dealing with it as well as the inconvenience for electors making an application that they do not need to do. As Jenny says, the effect did vary considerably across local authority areas. In 26 local authority areas, more than half of the applications they received in that period were duplicates. It varies in its impact and it is largely automated, but it still does create a burden on electoral registration officers that a change to enable voters to check before they make another application would help to reduce.

Jenny Watson: We are in a world where things can spread very quickly. One of the things that did not help us was that there was, at one point, a Facebook rumour saying, "You have to re-register to make sure you can vote in this referendum". That was not true.

Q333 **Ronnie Cowan:** Going full circle, people like me had constituents coming up to us saying, "I had to reapply to register". I went on the website and, reading the wording of the website, it looked like I had to reapply and I knew I was already registered. If you read the wording that was in front of you, the only thing that gave you any confidence at all was to go right the way through to the end and re-register. Then a few days later or a week later you get a letter saying, "You are okay". That was why people on Facebook were saying, "I have just been on and you have to re-register".

Jenny Watson: That is exactly why we need the ability to check to see if you are already registered, as well as being able to register yourself.

Q334 **Ronnie Cowan:** That is going to happen?

Jenny Watson: You would have to ask Government about that. We want it to happen. We raised it in our report after the 2015 General Election and we have raised it again now.

Ailsa Irvine: Cabinet Office are looking at the wording, however, of the website. They are aware of that.

Q335 **Chair:** Sorry, I am going to press you on this. It is all very well to blame it on Facebook rumour but your own leaflet on registering, if it was your leaflet and I think it was, did encourage people to think they had to



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register specifically for the referendum.

Obviously, it was a good thing to get people to register who were not registered but I was struck by it. I did a radio interview where the interviewer thought you had to register for this referendum and I had to explain to the interviewer, from a very responsible broadcasting organisation, that that was not the case.

Jenny Watson: There is no end to the persuasive powers of a Member of Parliament. Ailsa?

Ailsa Irvine: We did seek to be very clear in the booklet that we sent out. Our booklet was clear that if you are not already on the register, then you need to register. We consciously put that wording in to make it absolutely clear.

Q336 **Chair:** How much clearer could you have made it?

Jenny Watson: To say that if you were not already on the register, you need to register?

Q337 **Chair:** It was not obvious. It really was not obvious. I think you can take the hit on this one. Come on.

Jenny Watson: Let us read it to you then.

Ailsa Irvine: We said, "If you are not already on the electoral roll, you need to register to vote by midnight on 7 June", in terms of the materials that the Commission proactively put out. There were other booklets and other information sources that were not as clear as that. We also did seek to address this through social media as well, reacting when it did become—

Q338 **Chair:** What is the lesson from this? It should be clearer.

Jenny Watson: Let me be very clear. I am not blaming Facebook for anything. We welcome the partnership we have with Facebook. Their voter registration messages are one of the most effective that we have to get out there. Saying, "If you are not already on the electoral roll, you need to register" is a factual statement.

Q339 **Chair:** I do not have the leaflet to hand.

Jenny Watson: We have the wording in front of us. That is what we said.

Q340 **Ronnie Cowan:** Is it not the case that some people will be on the electoral roll but will not be able to vote on every election that comes along? Just because you are on the electoral roll does not mean you can vote on every single election, particularly for EU citizens.

Ailsa Irvine: What we said in that instance was that if you are not registered, then you would need to apply. It was not making any direct connection, in that particular instance, with your eligibility to be able to vote.



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Jenny Watson: The booklet that went to each household set out very clearly who was and was not entitled to be able to vote in the referendum.

Q341 **Ronnie Cowan:** I think we have identified the solution here, if the Government wants to carry it forward. If I go on to a website and I say, "I want to vote in that election. Am I already authorised to do so?" a simple yes or no is all I need to know.

Claire Bassett: That is absolutely the fair solution.

Q342 **Ronnie Cowan:** That removes all doubt.

Jenny Watson: Yes. Without it people will continue to think, "I do not know so I am going to apply again".

Q343 **Chair:** How do you stop people accessing information off the electoral register? Unless you have a password to get in to your record, how do you do that?

Jenny Watson: That is precisely what would have to be worked through in getting to that solution. That is one issue. The other issue is that of course at the moment each register is held locally so there would need to be some way of having the registers speak to each other or interrogate each other. We are aware of how hard it would be to do but we do think that Cabinet Office need to pursue this. We would want to play a part in doing it but it must be for them to lead.

Q344 **Ronnie Cowan:** I am missing something. Why is it hard to do?

Claire Bassett: Essentially you have a separate register for each part of the country where they are held independently. They are held across five different IT systems and they are not joined up. The first thing you have to do is find a way of either joining them up or creating a single register so that you can, from one point, access them all to check whether someone is on there.

Then, as Mr Jenkin said, you have to identify how you do that securely. That will probably be through a system where you e-mail particular information that is pertinent to you in and get a confirmation back, for example. You put it into a system and it comes back.

There are ways you can do it. Other parts of the world do it, have systems for doing it and have systems that allow you to crosscheck registers as well to make sure people are not on multiple. There are ways of doing it but it is very difficult, having the disparate registers that we have that are not joined up in any way.

Jenny Watson: Which is why we would say that thinking around work around that would need to start now in order to get something in place for a significant set of elections in the future. It is badly needed.

Q345 **Chair:** What percentage of people registering to vote were already



registered?

Jenny Watson: About 38%. That would vary depending on the local authority area. Across the country, 38%, but it may well be that in particular local authorities—

Q346 **Chair:** If it said at the top in big red letters, “If you are already registered to vote in elections, you do not need to register”—I appreciate that lower down it does say what you said it said, but there is a lesson here. We could have discouraged more people from re-registering.

Jenny Watson: We are all committed to working very hard to minimise the unwanted work for local administrators.

Q347 **Chair:** There is no blame here. It is just a lesson to learn.

Jenny Watson: No, but I do think there is also a point at the end of it. If you are doing this late at night, you cannot pick up the phone to an ERO and say, “Am I registered?” and probably you are going to register again. We will never eliminate it.

Q348 **Ronnie Cowan:** So we got there and it crashed. Did you have a contingency plan?

Claire Bassett: It is not our system. Cabinet Office run the system. They had tested it and had plans in place. There has been an independent report on that, which they have published, and that sets out what they believe happened and how they can prevent that happening again. It is important that we have no influence over or control over that registration website.

Jenny Watson: The point we have reflected on is that that caused confusion for everybody, including for us but also for EROs, who were really up against a deadline. Ailsa, do you want to say anything on that?

Ronnie Cowan: And the Cabinet, I think we can say.

Ailsa Irvine: One of the lessons we want to learn and work with Government on is to make sure that we can communicate fully and effectively with electoral registration officers that are affected by it in the future.

While we did communicate what information we had as soon as we could, we recognise that it felt like an uncertain time for EROs and they could have done with having a more effective strategy between us and Government to give them more information earlier, to have more information to give them earlier. That is another point, one that we can take away and work with them on.

Jenny Watson: In terms of the site itself, that would be a matter for Government.

Q349 **Chair:** Is one of the lessons, in fact, that having separate registers in each local authority area is a key part of the resilience of our system



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rather than a disadvantage? Nobody could crash all the local authority areas all at one time but a central registration system was crashed.

Jenny Watson: I do not know that anybody is suggesting there should be one central register.

Q350 **Chair:** I am just making the point. Some people argue that there should be a single database for the electoral register. Is it not a source of resilience to our system that is a dispersed system?

Jenny Watson: It certainly could be.

Claire Bassett: There is a middle ground where you could have a cloud arrangement of a dispersed system of different registers with an ability to, from one place, go into them and check them all. You could do your checking whether someone was registered from all of the different registers and similarly, for example, the ability to crosscheck registers to make sure people are not wrongly registered on several.

Q351 **Chair:** Obviously, there would have to be common interfaces.

Jenny Watson: Yes, exactly.

Q352 **Chair:** Would the central registration website be better if it just directed you to your own local authority to register via your local authority?

Claire Bassett: That is effectively what it is doing. It is not a registration, it is an "application to register" website. You go on to that website and effectively you apply. That application is then funnelled to that local authority.

Q353 **Chair:** Why not let each local authority run their own application service and have the central website simply redirect you to that?

Claire Bassett: That is effectively what it is doing.

Ailsa Irvine: One of the most important elements of the individual electoral registration system is that the identity of all applicants is verified before the application can be accepted. What this system does is enable the National Insurance Number of electors to be checked against the Department for Work and Pensions database. It does exactly as Claire says but it does also have this function of enabling that checking as well, which is facilitated through that website.

Claire Bassett: That has been a very big gain. We pushed for that for a very long time. We would not want to lose that at all. Effectively, if you are now registering a simple identity check with your National Insurance Number is done and then it is pinged straight to your local authority for that application to be processed.

Q354 **Chair:** There have been these allegations that Mr Putin was interfering with this referendum. There were quite strong views in Vote Leave that the spike in this particular crash was larger than any social media activity or public media activity could have provoked. Have you made any



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enquiries with GCHQ or any other authority about whether there was any kind of cyber interference with the registration process or with the referendum process at all?

Jenny Watson: With the referendum process that is under our control, I could be confident—Ailsa can talk more about that—that the votes that were cast and counted were an accurate reflection. Do you want to talk a little bit about that?

Ailsa Irvine: The one element of the system that we employed technology to support was in relation to the collation of the totals for the local council areas and the overall calculation of the result. In developing that system we were very mindful of the focus on the event and were focused on security and resilience in that system.

Q355 **Chair:** Has the Electoral Commission enquired of GCHQ whether they picked up any activity that could be attempting to interfere with this referendum?

Jenny Watson: In relation to the registration website—

Q356 **Chair:** In relation to anything.

Jenny Watson: There has been no need for us to do so. Really, genuinely no need for us to do so. We know what happened. We were there. We could see.

Q357 **Chair:** We did have a website crash.

Jenny Watson: The registration website crash. You would have to ask Government but my understanding about that is that it relates to a TV debate.

Q358 **Chair:** I will ask the Cabinet Office. We will. Under pressure from Mr Flynn, we will.

The final thing. Who was the worst authority for over-registration?

Claire Bassett: We would have to check and tell you that. In terms of duplicates?

Q359 **Chair:** Yes.

Claire Bassett: I do not know, I am afraid.

Ailsa Irvine: There were 26 with a high number.

Q360 **Chair:** What do you think were the contributing factors?

Jenny Watson: I would almost certainly say a mobile population but I would want to get that—

Q361 **Chair:** Rather than anything they particularly did? No, okay. It would be quite useful to have a list of them. That would be very helpful.

Jenny Watson: Yes. We can write to you on that point.



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Q362 **Paul Flynn:** The role of Government. Chris Skidmore, Cabinet Office Minister, made a speech on 24 October where he lavishly praised the perfection of our electoral systems and the infallibility of those who are carrying them out. We were critical in the past of the interference by Sir Nicholas Macpherson in the Scottish referendum, where he did something that was very rare: publishing his own advice to Government. Are there any instances of Government behaviour in the European referendum that concern you, or do you agree with Mr Skidmore that the system is perfect?

Jenny Watson: It would be a disagreement with Mr Skidmore, but you would expect the Electoral Commission always to be able to see potential for change in the system. We have a very productive relationship with him to discuss that. We have indicated earlier that we briefed Parliament to say that we thought the period for public bodies to conduct advertising should have been longer. Parliament did not choose to accept that. That is where we are. That would clearly have been our preference.

Q363 **Paul Flynn:** Would you agree with Mr Skidmore that the results of the vote represent the will of the people in elections where it took 16,000 votes to elect me and 4 million votes to elect one member of UKIP? Is that a fair and representative system that represents the view of the public?

Jenny Watson: The Commission takes no view on the nature of the franchise or the voting system. I am afraid that is something you would have to discuss among ourselves.

Q364 **Paul Flynn:** You have no criticism of Government's conduct throughout this, the Welsh Government in the other referendums or the Scottish Government in referendums? They have behaved in a perfectly proper way?

Jenny Watson: We have set out in each of our referendum reports where we think there is potential for change. As we have already indicated here, we do see that section 125 needs to be clearer, that there need to be sanctions associated with it and, as I have already said, we would have preferred the period for Government to be able to carry out advertising related to the referendum to be longer.

Paul Flynn: Thank you.

Q365 **Chair:** That is it, is it? Mr Hopkins is not here. I am sure he is detained with other business in the House. He said he would come back. Can I ask a question that relates to what you have just been asking? Sometimes you give very strong advice to the Government about things and that annoys the Government. I would commend you for that. Sometimes you say, "That is a matter of Government policy. We do not have a view on that". How do you draw the line between what you say to the Government that they do not and when you defer to the Government?

Jenny Watson: I would not say we defer. I would say we have a healthy debate. There are simply some issues on which the Commission has



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traditionally not taken a view. One of those is the franchise, ie who can vote. One of them is the type of voting system that is used. It may be that in the future, under a new chairman, that may change, but I would want the board to make that decision. Historically, we have focused on the operation of the system rather than some of those fundamental issues, which we think are for Parliament to decide. Parliament, not Government.

Q366 **Chair:** I would say that the Electoral Commission is potentially in quite a vulnerable position if we have another Act of Parliament on this. What would you like to see in the Act that would shore up your ability to give independent advice to Parliament on issues the Government does not want you to advise the Government on? They would describe you as lobbying; it has been put to me.

Jenny Watson: Our entire accountability and reporting is to Parliament, indeed Parliaments and Assemblies across the UK. We are not a creature of Government, we are a creature of Parliament. We report to Parliament through Committees like this and through the Speaker's Committee and we fiercely guard that. Indeed, I said at a reception on Monday to mark my departure that that independence is exceptionally important to us. I recognise that that will sometimes make it difficult for Government but that is the way it is. We are an independent electoral commission.

Q367 **Chair:** I am very glad to hear that. You said in your first answer that this is traditionally what the Electoral Commission does.

Jenny Watson: That is a decision that we have made as a body, it is not a decision that has been put to us by anybody else.

Q368 **Chair:** Yes, I agree with that. Maybe Mr Posner would like to posit what needs to be in the legislation to protect that independence of judgment on matters that fall under your jurisdiction?

Jenny Watson: I would say our reporting structures give us that independence very clearly.

Bob Posner: Yes.

Claire Bassett: Another area where it is, and some of the legislation that is helpful, is the duty to consult with us as well. It is a distinction between trying to say what Parliament's decision should be, what policies should be made, compared to the role I think we play better, which is about saying, "These are the risks or these are the likely consequences of particular courses of action", and not being scared to point those out. That is something that we have done strongly and fiercely and we will continue to do so.

Q369 **Chair:** Certainly while I am Chairman of this Committee, you will get the protection of this Committee to say whatever you like. When we were taking evidence from you, for example, on the question of enforcement of purdah and whether the Electoral Commission should have an



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enforcement on purdah and a role on purdah, you were a bit more reticent before the referendum than you have been today. I congratulate you on that. Thank you. Do you recognise that?

Jenny Watson: I am not sure I do. I think in our briefings to Parliament we were exceptionally clear that we thought that section 125 should be there and we were very happy to give advice to Government if that were required. There is an inevitable tension. We are all aware of it. That does not mean that we would ever shy away from giving advice on something that we thought was absolutely critical. That is our role.

Chair: Thank you.

Q370 **Kelvin Hopkins:** What, if any, concerns do you have about the conduct of the Government during the referendum campaign?

Chair: I think we have done that one.

Q371 **Kelvin Hopkins:** How content were you with the quality of the information provided by the Government in the reports and the pamphlet produced during the campaign?

Jenny Watson: I do not think that is a question for us. That is just not something we could express a view on.

Q372 **Kelvin Hopkins:** It is the quality of the information. Did you judge it in any political ways? Was it appropriate?

Jenny Watson: The point that we made to Parliament at the time was that we would have preferred to see prohibition on advertising for longer. That is our role. Our role is to regulate the process, not to comment on the content.

Q373 **Kelvin Hopkins:** Okay. My second and final question. What additional controls should be placed over the activities of the Government during future referendum campaigns?

Jenny Watson: That comes back to section 125. We can go over it again but I do not think there is anything more than I would add that we have not already said. Do you want to come in, Bob?

Bob Posner: No. We have covered the ground.

Chair: Thank you very much. This being your swansong—Mr Flynn, do you want to ask a question?

Q374 **Paul Flynn:** I would say—very similar to what you are saying, I think—that Jenny Watson has been a model witness to us over the years. We are subjected to all kinds of evasions and non-answers, but you have always been direct in your answers and we are very grateful for that.

There is sympathy for you this morning: after one of these occasions, it is usual for the losers to want to shoot the referee but it is very strange having the winners wanting to shoot the referee. But we will certainly report on you fairly—give a balanced report. We are extremely grateful



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for the quality of your service over the years you have been in your position.

Jenny Watson: Thank you, Mr Flynn. I would never consider Mr Jenkin to be attacking me.

Chair: Eloquently put, Mr Flynn, and thank you for that.

On behalf of the whole Committee, Ms Watson, can we thank you for your years of service and wish you well in the future? Can you also convey to all your staff that I have remarked—and it will be reported somewhere—that I expected to receive a great deal of criticism of the Electoral Commission as we did this and I have myself formed some criticisms of my own, and these have largely been dispelled by the evidence we have taken and the confidence that others have shown in you.

I could just add another point. Electoral registration officers, local authority officers, were under an enormous amount of pressure in this referendum and maybe we all ought to think about how we could put them under less pressure in the future, with directives, showering them with bits of paper and stuff, but I am sure you would agree that in the end, whether we agreed with the result or not, the referendum was well-conducted. Congratulations to you and your staff. I would be very grateful, as a parting thought, if you could pass that back to them.

Jenny Watson: I certainly will. I would want to thank in turn those local authorities who worked so hard to deliver it and also your Committee, Mr Chairman, and other Committees that I have had the pleasure to give evidence to over the past eight years. Thank you very much.

Chair: Before we spoil it, let us end it there.