

Public Administration and Constitutional Affairs Committee

Oral evidence: [Independent Commission on Referendums](#), HC 1143

Tuesday 24 July 2018

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Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Mr Marcus Fysh; Dame Cheryl Gillan; Kelvin Hopkins; Mr David Jones; Sandy Martin; David Morris.

Questions 1-57

Witnesses

I: Professor Meg Russell, Director of the Constitution Unit, Professor of British and Comparative Politics, and Dr Alan Renwick, Deputy Director of the Constitution Unit.

Examination of witnesses

Witnesses: Professor Meg Russell and Dr Alan Renwick.

Q1 **Chair:** I welcome the representatives of the Independent Commission on Referendums before us today. This is just an exploratory public evidence session. Could each of you identify yourselves for the record, please?

Professor Russell: I am Professor Meg Russell, the director of the Constitution Unit, University College London. I would like to thank you for giving us the opportunity to come to speak you today.

Dr Renwick: I am Alan Renwick, deputy director of the Constitution Unit and was the research director for the Independent Commission on Referendums.

Chair: Thank you for coming before us. Before we start our questions, one or two of us want to put some potential conflicts of interest on the table. I was a director of Vote Leave until just after the referendum.

Mr Jones: I was a member of the compliance committee of Vote Leave.

Kelvin Hopkins: I was co-chair of Labour Leave.

Dame Cheryl Gillan: I have been a member of this Commission, working

alongside Professor Russell and Dr Renwick.

- Q2 **Chair:** We would like to get this done within an hour, so if we could we have short questions and short answers, that would help very much. Can I start by asking why you thought it was necessary to set up this Commission? Dr Renwick.

Dr Renwick: There were two reasons. One is that referendums have become an important part of our democracy; they are used to make important decisions. The other is that it is nearly 20 years since there has been a thorough review of the rules around referendums.

The current legislation was set out in PPERA in 2000, based on reports done in the 1990s. A great deal has happened since then. We have had five referendums under the PPERA framework. We have seen lots of development in referendum practice around the world. The nature of political campaigning has also changed greatly, particularly as a result of the rise of digital campaigning. For all those reasons, we felt there was much experience to learn from and much change to consider carefully.

- Q3 **Chair:** How did you decide who should be on the Commission and who should chair it?

Dr Renwick: We sought to ensure that there was diverse expertise in and experience of referendums, so we ensured that there were people who had been involved as campaigners, regulators, journalists. We also ensured that there were academics present. There was cross-party representation, with people from both sides of the Brexit referendum and both sides of the Scottish independence referendum. We sought a diverse sample of people with expertise and experience.

- Q4 **Chair:** To what extent did all the members of the Commission engage? Or did some engage more intensely than others?

Dr Renwick: All members of the Commission attended the meetings. Naturally, some were not able to attend every meeting, but all attended the meetings and all also participated in our online discussions, and all the recommendations were agreed unanimously by the entire Commission.

Professor Russell: I would say that, considering the seniority of members of the Commission, the level of engagement was surprisingly high. It was higher than I would have anticipated, having set the thing up. Our meetings were long and intense. We met for five hours, once a month, for eight months, and there was nobody who was an absentee member, by any means.

Chair: Let us look at the place of referendums in our democracy. David Jones.

- Q5 **Mr Jones:** Could you explain the constitutional functions of referendums in the United Kingdom?

Professor Russell: That is a difficult question. It is one of the questions that, in a way, we sought to answer with the report. Of course, the UK is



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well known for not having a written constitution. In many countries the role of referendums would be specified in a written document, but in the absence of one, our practice has to develop more organically. We do not have a long tradition of referendums. As you know, the first UK-wide referendum was held in 1975, so practice has developed in a rather pragmatic way. Referendums such as the one in 1975 have often been rather ad hoc devices to resolve political disputes, sometimes inside political parties, and the pattern has been that once a referendum has been held on a topic, a convention is seen to develop that that topic should in future be decided by a referendum. We have now established traditions that on issues of sovereignty, and on some major issues of constitutional importance, referendums are sort of expected. But the list is not complete—for example, House of Lords reform has been a major constitutional issue in the UK going back decades, but we don't have any convention of holding referendums on House of Lords reform.

The developments have been a bit patchy, but conventions are evolving. One of the constitutional functions that referendums serve is that—again, we go back to the absence of a written constitution—some of the referendums that have worked well in the UK, and which we might come back to, have served as a kind of entrenchment mechanism. In many constitutions, when there is a written constitution you have to go through a special process to amend that constitution, which sometimes involves a referendum, super majorities in Parliament—those kinds of things. We do not have that, but referendums can be used as a form of political entrenchment to settle an issue and to make it harder for Parliament to reverse the decision. For example, in the establishment of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, entrenchment through referendums makes it clear that there is public support, and that makes it harder potentially to overturn the decision by legislation alone.

- Q6 **Mr Jones:** Is there sufficient consistency in the ground rules surrounding referendums? You will recall that the first Scottish and Welsh referendums in 1979 required a 40% threshold to be passed, and as a consequence, both referendums were found to have failed so far as the proposition was concerned. That wasn't the case in the referendums held in 1997. Is there a case for trying to establish some consistency in the patterns that surround the formulation of referendums and their rules?

Professor Russell: Absolutely. That is one of the things that we were seeking to do in the report—you are nodding. Do you want to say more?

Dr Renwick: Yes. One of the key, overarching recommendations of the Commission is that as far as possible the rules on referendums should be set out in standing legislation and should not be decided for individual referendums. Thresholds are an example of that. Another one would be the franchise. The franchise is not set for referendums in standing legislation, and the view of the Commission was clearly that it should be.

- Q7 **Mr Jones:** How clearly is the constitutional function of referendums



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understood both by politicians and by the wider public? I am thinking in particular of the Brexit referendum. More or less immediately after the result there was a hot debate as to whether the referendum was advisory or binding. It seemed to me that that issue should perhaps have been established before the referendum, rather than argued about afterwards.

Professor Russell: Well, it seems inevitable that if the constitutional role of referendums is unclear, politicians and the public will find the constitutional role of referendums difficult to understand. We need clarity, which is what we were trying to work towards. One of the things that the report is quite emphatic about, and which echoes something that this Committee has said in the past in its report on the 2016 referendum, is that we need to think about how referendums fit into the broader process of democracy. We should not see them as quick-fix solutions to immediate political problems. You made reference to bluff-call referendums in your report on the 2016 referendum, and we very much back that up: that politicians should think—and I suspect they will in future, with or without our report—very seriously about the potential consequences of calling a referendum. You could say the same to some extent about the 2011 referendum on the alternative vote—that that was a referendum called by a Government that wasn't convinced about the outcome, so it is slightly unfair to the people to throw them difficult questions that the politicians don't know how to resolve. That seems likely to lead to difficulties.

Q8 **Mr Jones:** So you would say it was fair to say that there was an imperfect understanding of their function at all levels within the democracy.

Professor Russell: Yes, and these are very difficult questions and you have to take into account the political environment, the political realities as they are and the traditions that have built up, as I have indicated, but we have tried in the report, as far as possible, to go back to first principles and ask, "What should the role of this mechanism be? In what circumstances should they be used?" Our answer is: with caution. When they are used, there should be very careful preparation and very careful thinking through about how they fit in a bigger process of democratic decision making, particularly sitting alongside parliamentary decision making, but also thinking about other means of involving the public in decision making outside of referendums. Referendums are not the only way that you can involve the public in decision making.

Q9 **Chair:** Can I just chip in at that point? The whole bluff-call aspect of the 2016 referendum was on the basis that the Government were supremely confident that they were going to win the referendum and they didn't really need to consider the consequences of losing the referendum. It could be said it was similar in the Scottish referendum—that they would not have called the referendum unless they were confident of winning it. They were right, marginally, on one case and wrong on the other. One of the most coherent arguments in favour of a second EU referendum has been made by Justine Greening. She made the point that the reason to have a second referendum is because Parliament was logjammed. You are saying that that is not a good reason to have a referendum; have I understood you correctly? Because I think in the case of the 2016



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referendum Parliament felt obliged to have that referendum because there was a logjam in Parliament over the issue. To what extent is a logjam in Parliament a good basis for holding a referendum?

Professor Russell: Do you want to say something?

Dr Renwick: Meg used the word “unfair” there, and as Meg said the best referendum processes are ones in which there is a clear decision and voters are able to choose very clearly between two alternatives and there are clear campaigns on each side. It is certainly the case that there are some circumstances where it is difficult to do a referendum in that way, but the Commission was very keen to emphasise that there are other ways of working through political difficulties—there are other ways of engaging the public—besides just holding a big polarising referendum. The sorts of deliberative processes of citizen involvement that Meg was hinting at—citizens assemblies, for example—may be better ways of working through more complex multifaceted debates, rather than simply going first to the referendum stage. Now, what happens in the current context with Brexit is not something that the Commission took a view on. The Commission took the view, I think, that if its recommendations were followed, we would not be in the current situation. So the Commission did not have a view on that.

Q10 **Chair:** Can you explain what you mean by that?

Dr Renwick: The Commission argued that wherever possible referendums should be post-legislative. So a referendum should take place where there is a concrete proposal that is set out in law, and it is for voters simply to choose whether to accept that or not. Clearly, in some circumstances—Brexit is one of those—you cannot simply have a post-legislative referendum, because it was necessary to have a referendum on whether to open the negotiations, but in those circumstances the Commission said there should be a clear plan set out and a clear understanding of what will happen in the event that people vote for the change option on the ballot paper—what the Government will do and what the Government expect to get. If that is not fulfilled, then Parliament would need to consider whether the circumstances require a further referendum. But that process should be set out before the first referendum. You should not be deciding the rules as you go along.

Q11 **Chair:** Suppose the Government issued a leaflet saying that voting leave meant leaving the single market, and then proposed an arrangement where we stay in the single market and accept its rules in respect of part of the economy. Would that be the basis for a second referendum, in your view?

Dr Renwick: The Commission said that there should be more than just a leaflet, there should be a White Paper, and it should be subject to careful scrutiny and debate in Parliament. But yes, if there is clear deviation from what is set out in that White Paper, then there ought to be a further referendum.

Q12 **Chair:** What about a leaflet that was sent to every household, which said



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that voting leave meant leaving the single market? What could be clearer to the voters than that?

Professor Russell: In terms of the report, it is very difficult to separate the two matters, in the political environment we are in.

Q13 **Chair:** There was no White Paper, but there was a leaflet.

Professor Russell: It is important to emphasise that the report is not all about the Brexit referendum. It is looking back at practice over referendums over the last 20 years. The kind of communication you are describing is very different from the kind of communication we are describing—

Q14 **Chair:** I appreciate that, but the substance of what it said is what matters.

Professor Russell: I think the difficulty is, and this is a point that has been made by this Committee, that the Government made no attempt to elaborate what the leave outcome meant. Indeed, as we understand it, civil servants were actually barred from considering what a leave outcome would mean. Therefore, a detailed prospectus for leave was not put in front of the people by the Government, which is what we are proposing should happen.

You mentioned the Scottish referendum as a bluff-call referendum, and that case helps to illustrate the point, because it is slightly different. The position you described is true from the UK Government perspective, in that maybe the Prime Minister saw it as a bluff call, but there was another Government involved, the Government in Edinburgh, which wanted a change. They published a long and detailed White Paper setting out what they thought independence meant. There you have a slightly more level playing field, where you have two Governments fighting it out over why the two outcomes are attractive, which at least gives people as voters a little bit more to get to grips with. In the Scottish case, if that exercise were repeated again, our proposals would suggest that if the White Paper presented by the Scottish Government for change was not followed through in the negotiations following a vote for change, there would need to be a return to the people.

Q15 **Sandy Martin:** I just want to come in on the point Dr Renwick was making, which seems to suggest that you believe that in certain circumstances it makes sense, right at the very start, to propose two referendums—one at the start of the process and one at the end of the process—and that, in the particular case of the European Union referendum, it would have been sensible for the Government to propose right at the start of the process that there should be two referendums, one to decide whether to enter into negotiations and another at the end to vote on whether the British people accepted the final deal.

Dr Renwick: Yes. You do not necessarily need to have a second referendum if there is a clear prospectus set out and that is subsequently delivered, when voters have been able to vote on something clear and then they have got what they voted for, but if a Government wished to set



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out a two-stage referendum process, that would potentially work well. We set out a process in the report where there may be a second referendum if what is proposed at the first referendum is not delivered; that could also work well. We make clear in the report that it is for the Parliament that calls the referendum to make that determination about whether the second referendum is required or not. It is clearly a political matter: you cannot have the courts making that decision.

- Q16 **Chair:** How legitimate is it for anybody, or the Government, to decide to have a second referendum if, at the outset, the Government said that there wouldn't be a second referendum?

Dr Renwick: Wouldn't be?

Chair: If, at the outset, they said there would be only one referendum, how legitimate is it for the Government to say, "We have decided to have another one"? That happens quite a lot in the European Union, and it seems to disillusion people quite a lot.

Dr Renwick: The Commission did not take a view on exactly that question. The Commission's view was that we should not get into a scenario in which we are trying to work out the answer to that question after the first referendum.

Chair: Fair enough.

- Q17 **Mr Fysh:** Professor Russell, you said that there had not been a detailed prospectus, but would you accept that the Treasury did extensive work on supposed scenarios of different outcomes of the referendum, one of which being a vote to leave?

Professor Russell: There were claims about what the financial consequences of a vote to leave would be. What there wasn't, though, was anything set out, either about the process—for example, Alan actually published a post on the Constitution Unit blog immediately before the referendum, asking about the consequences of a vote to leave. We held a series of events. We were almost the only people looking at that in an objective manner during the referendum, asking the difficult questions about the Northern Ireland border, and so on. We invited academics and commentators from different sides to explore those issues. On our blog Alan had a piece asking what the process would be where we started talking about how the article 50 trigger would work, and those kinds of things. But those things were not really being discussed: the Government was not setting out either the process or the likely arrangement, so on the questions—as the Chair was saying—about membership of the single market, the customs union and those things, they may have been saying how scary they thought the outcome would be, but they were not saying what that new set-up would be.

Chair: Mr Fysh, we will come back to that on question 5, if we may.

- Q18 **Mr Fysh:** I would just make the point that, as the Chair said, they were very clear about what leaving the single market would mean. They spent



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a lot of money educating the public in their minds as to what that was about.

Do you think our use of referendums has had an impact on public confidence in our representative institutions?

Professor Russell: I do not think it has had a uniform effect. To go back to the other cases, we say in the report that we think there are some referendums that have happened that have been very successful experiences—where a referendum does have a place in a multi-stage process, and isn't seen as a quick fix. With cases such as the vote on the Good Friday agreement in Northern Ireland and the vote to establish a Scottish Parliament in 1997, those issues have been under discussion for a long time. They have been considered on a cross-party basis and there has been a lot of public involvement in those discussions. A decision had been taken by people on a cross-party basis that there should be a change and then the question was put to the people about whether they wanted to accept that change, and they did. In that way, they kind of seal and, as I said before, entrench the decision—not legally, but at least politically. They reinforce and legitimise the decision that has been taken, proposed by the politicians: it is accepted.

In those cases, I think that that can boost confidence in representative democracy. In other cases, however, such as some of those that we have been talking about, where the public is not given a clear prospectus for change, where perhaps the Government put something in front of the people that it does not itself support and is not prepared to elaborate properly—the difficulty is that if, as the Chair said, a proposal is put in front of the people that the Government is seeking to see defeated but the people choose otherwise, then the Government has no plan. That creates a very difficult situation for Parliament, for the Government and the relationship between Parliament, the Government and the people.

Q19 **Mr Fysh:** Is that the only type of incompatibility with a representative, democratic process that you have identified that referendums have? Or are there other types of incompatibility that we should be aware of?

Dr Renwick: I think it is clear, if you look internationally as well, that the greatest difficulties arise where you have a pre-legislative referendum; a referendum on a broad principle rather than a precise piece of legislation, particularly where that doesn't have Government support. If you look around the world, there are many places where referendums do work quite well and do sit effectively alongside the representative democratic process.

Ireland recently had its referendum on abortion, for example, and that was a post-legislative referendum, so it was very clear what the constitutional change being proposed was. Furthermore, it was a proposal that had gone through a great deal of development before the referendum. It went through a citizens assembly, which considered in great depth the issues and drew up recommendations. Those then went to a parliamentary committee that also considered them in great depth. That



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meant that all parts of the democratic process were working together towards a clear, well thought through, legitimate outcome, which, although it was a very polarising issue, people accept as being valid.

- Q20 **Mr Fysh:** What would be the advantages and disadvantages for us in the UK potentially of extending referendums to moral questions, such as the one that you just mentioned? Obviously, that is a settled issue in most of the UK.

Dr Renwick: The Commission recommended against the extension of referendums to moral issues. In Ireland, that issue is in the constitution and all constitutional amendments require a referendum, so that is slightly different. The Commission saw that referendums are very big events, potentially highly polarising. If people's human rights are at stake in a referendum, it can be very difficult for people who may be vulnerable in those sorts of debates to have their human rights contested in the way that is typical of a referendum.

Professor Russell: So, you are thinking of topics such as same-sex marriage, assisted dying, other moral topics.

Dr Renwick: Yes. There are big dangers in having a referendum on those sorts of issues. In addition, in the UK at the UK-wide level, but also certainly in Scotland and Wales, there are traditions in Parliaments of dealing with these issues through free votes. There is an established process that works well for having careful consideration of those sorts of issues. We did not feel it was appropriate to recommend an extension.

Professor Russell: It is a striking difference between the UK and Ireland in particular, that Ireland has no tradition of free votes in its Parliament on moral issues. You come from our culture and just assume that this is a natural thing to do. I was quite astonished when I went to Ireland, not only, as Alan says, that the abortion question was in the constitution and, therefore, required a referendum, but they actually whip in the Irish Parliament on the issue of abortion, which seems pretty unthinkable in the UK context.

I would support the use of free votes, as a person who is a supporter of Parliament. Generally, they are accepted and work well. There are cases where Parliament has not been able to resolve issues, which are frustrating the public. Assisted dying, for example, is a current moral issue, about which there is quite a lot of frictions, and Parliament is not resolving that, and people keep trying to throw it to the courts. You could say, "Put that to a referendum," but I would say that would be a very nice case for putting to a citizens assembly.

Because one of the difficulties that parliamentarians face is that they have to face the electorate; they don't want to do things that are going to be unpopular; they need guidance from the electorate on what people are prepared to accept. I think on a complicated issue, such as assisted dying, you are more likely to get thoughtful guidance from the public by holding an official citizens assembly, which maybe comes up with some



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recommendations, which will then be debated. Parliamentarians will hear that debate and get a sense of whether the broader public accept the proposals of the assembly, and that may give them the confidence to act on a free vote to make a change. That is much less divisive than holding a referendum.

Chair: That is straying into question 4. Mr Martin?

- Q21 **Sandy Martin:** It is interesting that you talk about public assemblies, because you also mentioned in your report the use of deliberative assemblies to determine the question that is put to a referendum. Of course, that raises the question of who decides who goes on these assemblies, and of how you direct an assembly to address a particular question.

Dr Renwick: There are now established procedures around citizens assemblies. They have been held in Ireland, with the first leading to the referendum on same-sex marriage and the second leading to the referendum on abortion. Within the UK, we convened a citizens assembly on Brexit last year, looking at the form of Brexit that people wanted to see after the referendum. The first official citizens assembly in the UK was held in April on social care; it was convened by the Health and Social Care Committee and the Housing, Communities and Local Government Committee. There is experience of doing these things.

In terms of how you run them, the membership needs to be as representative as possible of the wider electorate. The way we did that was to employ a reputable public opinion company, ICM, to conduct a large-scale survey, in which we ended up by asking people whether they would be interested in participating in this event. We then selected from the 1,100-and-something people who said that they would be interested and were available on the dates we gave them, in order to ensure that they were representative of the electorate in terms of where they lived, gender, age, how they voted in the referendum and various other things. There are other ways you can do that. If you were doing a major, official citizens assembly you would want to employ someone; we did not have the resources to do that, but you can do that well.

- Q22 **Chair:** It sounds pretty geeky to me.

Dr Renwick: Geeky?

Chair: It sounds like the antithesis of popular democracy.

Dr Renwick: No, it is about ensuring that you can have quality public discussion of major public issues. The citizens assemblies that we have held have taken place over two weekends, so there is opportunity for the members of the citizens assembly to hear from a wide range of different experts and people with experience of the relevant questions, to discuss among themselves and to come up with recommendations. No one is suggesting that that should replace the existing processes of decision making, but it is valuable for members of the public, commentators and politicians to have a greater understanding of informed public opinion.



- Q23 **Kelvin Hopkins:** Was there any hostility to the idea of deliberative assemblies? It strikes me that they would be self-selecting middle-class people, or focus groups writ large, which became a disgrace under the new Labour Government.

Dr Renwick: No, they are very much not that. In creating an assembly such as this, you work very, very hard to ensure that you have a representative group of people. When we selected, class was one of the criteria we selected on. We slightly over-represented C2DEs relative to the wider population. You work very hard to ensure that that does not happen. It is also not at all like a focus group. In a focus group, essentially, you are trying to work out what people's immediate reactions are to something. What you are trying to do in a citizens assembly is to find out what they think once they have had the time really to think about their own priorities and preferences, to hear about the priorities and preferences of other members and to learn about the issues from people with a wide variety of perspectives.

These things have taken place in a number of countries; I mentioned Ireland, but they have also taken place in Canada and the Netherlands. It is clear that voters who have seen the process and understand how the proposals coming from a citizens assembly have been developed respect it and see those proposals as having greater weight than proposals that they see as simply having come from politicians or campaigners—people they do not necessarily trust.

- Q24 **Ronnie Cowan:** Citizens assemblies, or whatever we want to call them, have been a part of democracies since ancient Greece, where they were very common events. It is wrong of us to assume that only elected Members have the kudos to sit and deliberate over important matters of the day. What sort of guidance are people on citizens assemblies given? There is the danger that the people who are there to inform and instruct them also have skin in the game.

Dr Renwick: You have to design it very carefully. We worked with a charity called Involve, which is very experienced in running these things and is practised in being impartial. We also had an advisory board comprising people from the remain and leave sides, and also Clerks of the Brexit Committee and the EU Committee in the Lords—people well versed in maintaining balance. It is important to design it carefully and to constantly check yourself to make sure that you are not introducing any unintentional bias into the process.

Professor Russell: You are right to draw the parallel with deliberation. That is the key word. Those of us who believe in Parliament believe in deliberation. Deliberation takes place in Parliament, but there is sometimes a disconnect—rightly or wrongly—between the people outside and what is going on inside; they may not trust the deliberation that goes on in here. They are perfectly capable, when given adequate support, of deliberating complex issues themselves. If they get the chance to do that, and to then put that to politicians as part of the process, you may help to

increase trust in the process of decision making by politicians, because the wider public can then see that there has been some public input.

- Q25 **Ronnie Cowan:** Just to top and tail that, we do that day in, day out in the jury system. We bring in people from all sorts of walks of life and put them in charge of very important decisions—sometimes on whether people are incarcerated or not. We trust the public to do that, so I don't see why we shouldn't trust the public to be capable of legislation as well.

Professor Russell: One striking thing about the jury system is that studies of people who have served on juries show that the process of serving on a jury greatly enhances their trust in the judicial process in the UK. If we could do the same for politics, that could only be a good thing.

- Q26 **Sandy Martin:** Clearly, in the absence of a written constitution, it is quite difficult for anybody to work out how any decision is granted legitimacy anyway. There would have to be some way of granting legal legitimacy to any decisions taken by a citizens assembly, and indeed to who actually goes on that citizens assembly. If you give a deliberative assembly responsibility for, for instance, drawing up the wording for a referendum, presumably you will need some way to sign off the membership of that assembly, in order to give it the legitimacy to make that decision.

Dr Renwick: I would never recommend giving a citizens assembly legal powers; it would always have an advisory role. That is partly because of concerns about whether you can achieve a fully representative group, and also partly because you want to ensure that you invigorate the representative democratic process, not circumvent it by doing something like this. You can only do something like this on occasional issues.

Professor Russell: It is rather different, but you could perhaps draw a parallel with the Electoral Commission's role in setting the question in referendums, for example. We say in the report that we think that is a good process as it is, in that the Electoral Commission has a role advising on the question, but ultimately Parliament decides what the question should be.

Sandy Martin: Right. Thank you.

- Q27 **Mr Jones:** A brief question, Dr Renwick. In response to Mr Hopkins, you said that the assemblies had a higher proportion of C2DEs relative to the general population. I am struggling to see how that makes them truly representative.

Dr Renwick: It was a slightly higher proportion; it wasn't a big difference. We were seeking to ensure that traditionally under-represented groups in politics were not under-represented in the citizens assembly. We were seeking to ensure that they would either be perfectly represented in numerical terms, or very slightly over-represented. Because there is always a little bit of uncertainty as to exactly who will turn up on the day, we slightly over-sampled in the C2DE category.

- Q28 **Mr Jones:** So this was by accident, not design in that case?



Dr Renwick: Well, what we ended up with was within the boundaries of what we thought appropriate. Having slight over-representation of groups whose voices traditionally are not heard very effectively is not problematic, we thought.

Professor Russell: This isn't a hearing on the citizens assembly on Brexit, but the truth is that we slightly over-recruited in general because often there is a drop-out rate for these things. People say they will come but, you know, they are under no obligation; they are just ordinary citizens and some of them do not turn up on the day. We were actually astonished that everybody who we recruited turned up. That showed the degree of interest in the topic. It was a wonderful thing but it resulted in some groups being ever so slightly over-represented.

Q29 **Dame Cheryl Gillan:** I was going to ask you to clarify the section on legislating for a referendum, but I think we have covered that in some of our earlier discussions. Could you make clear that the Commission was not taking a view on whether there should be a further referendum on Brexit, but rather that the conclusions that the Commission drew on legislating for a referendum were that if you considered a standalone pre-legislative referendum, there would be problems from that? Therefore the criticism was mainly about the lack of preparation, and full and detailed preparation, for the Brexit referendum by the Government.

Professor Russell: Yes. It is a different case, but to some extent you can bring in some similar arguments with respect to the AV referendum in 2011. The AV referendum was an example of a post-legislative referendum, which is what the Commission suggested should be the norm. The legislation had gone through Parliament. It was perfectly clear what form of AV would be implemented. It was in the legislation that if the referendum went through it would be enacted—all that was perfectly clear. What had not happened was a prior debate on the issue. There had been very little public engagement with the issue, and of those campaigning for electoral reform, very few were arguing for AV. It is a very low salience issue.

The post-legislative part was in place, but other elements of what the Commission thinks is necessary to hold a successful referendum were not in place. For example, if there had been citizens assemblies, or if there had just been a longer process of deliberation among the public, there might have been greater engagement with the issue. I am not suggesting that the outcome would have been any different, but it would have been a better informed and rather more satisfactory referendum process, rather than another kind of bluff call. But yes, of course you are right. I was thinking as we were getting into that rather tangled discussion about the rights and wrongs of second referendums and so on, that we need to go back to the first principle in the report, which is that pre-legislative referendums are undesirable. The words in the report are that standalone pre-legislative referendums are "highly problematic". Where they can be avoided, they should be, and referendums should be post-legislative. However, we accept that there are some cases where that isn't possible.



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Chair: We must press on. It is fascinating stuff, but can we have shorter answers, please?

- Q30 **Dame Cheryl Gillan:** Having sat on the Commission with both of you, one thing that became obvious is the huge tension between a representative democracy and the outcome of a referendum. Would you say that that became more apparent during the deliberations, given the difficulties that individual Members of Parliament get put under—for example when a Member's constituency voted one way and the Member announced their support for something else? Is that a real problem for individuals as well?

Professor Russell: I think so. The debates on article 50 were pretty agonised debates, but in a sense the article 50 choice was, as was the referendum, a yes/no question. People had to deal with their conscience and grapple with how their constituents voted and how the country voted and so on. It was a yes/no vote. We are now in a territory where this is very far from a yes/no issue, and that seems more difficult.

- Q31 **Chair:** I come back to the point that somehow the leave vote, we are arguing, would have had more credibility if the Government had spent more time explaining what they would do in the event of a leave vote. On the other hand, they chose not to do that, regarding it as advantageous to their side of the campaign to just paint lurid pictures and leave a void; and despite the lurid pictures and the void, people voted for the void and the uncertainty. To what extent does that make the leave vote more credible rather than less credible, in that if the Government had explained properly what they would do in the event of a leave vote, it might have attracted even more support?

Professor Russell: That is a very interesting philosophical question that goes somewhat beyond the bounds of our report. What is clear is that when people vote for, if you wish to describe it that way, a void, somebody has to decide how to interpret that void. Those people are people in Parliament, and that puts people in Parliament in a very difficult position.

Chair: It does. I think we can all agree with that. I should just declare another interest, perhaps—that I helped set up NOtoAV and advised NOtoAV throughout, and helped raise money for NOtoAV.

- Q32 **Sandy Martin:** Sorry, Chair, I couldn't resist coming in on this. I wonder whether, Professor Russell, you have actually slightly missed the point here, which is that there is a purpose to a referendum, which is not necessarily the purpose that the voters think it is. In the case of AV, for instance, the clear purpose, from the point of view of the Conservative part of the coalition Government, was to squash any further arguments about proportional representation, and the purpose from the Liberal Democrat side of it was in order to legitimise their remaining within a coalition Government. In both parties' cases, the purpose was actually fulfilled by holding the referendum, irrespective of the fact that most people who voted didn't actually vote on the issue at all. The purpose was

actually fulfilled.

Chair: Was that a question?

Sandy Martin: I just wondered if that was part of your consideration of the role of referendums.

Professor Russell: I think I said at the start that the Commission recognised and argues that referendums have sometimes been used as quick political fixes, and that that is not the best use of referendums. I would also say that sometimes the voters, as you say, don't vote on what is put in front of them; and that is one of the dangers. If, for example, the voters choose to use a referendum to kick the Prime Minister or to kick the Deputy Prime Minister, it is not a very good form of political engagement or, perhaps, a very good form of spending public money.

Q33 **Kelvin Hopkins:** Can you explain the Commission's recommendations about increasing the accountability for and transparency of campaign spending?

Dr Renwick: The Commission made a number of recommendations in that area. Partly it recommended that the rules on campaign spending should be clarified. For example, the rules on working together by different campaign groups are, the Electoral Commission has said, not always entirely clear, nor are they actually in PPERA. So they are not in the standing legislation; they have just been introduced for a number of recent referendums. The Commission also recommends much greater transparency around spending. There should be requirements for more detailed information on spending returns. At the moment it is not clear what has been spent, particularly on digital campaigning, which is the area that has caused particular concern. Thirdly, the Commission recommends that in order to ensure speedy accountability, it should be necessary for the large campaign groups to submit their spending returns more quickly after a referendum. At the moment six months are allowed, and I think the Commission picked up a general view that that is an unnecessarily long time period and delays the start of any investigations in a way that does not promote public confidence.

Q34 **Kelvin Hopkins:** A quick supplementary: a yes or no answer, if I may. I was heavily involved in the 1975 referendum, when there was a grotesque imbalance in spending, and no effective control. Do you think we have moved on since then, even though we have a long way to go to make it very strict, disciplined and open in future?

Dr Renwick: The Commission felt that a lot of the existing framework is good, so it did not recommend any changes to the spending limits, to example. It felt that the provisions for balance are appropriate, while also ensuring that a plurality of voices can be heard within each side of the debate, as well as between the two sides. It did think that there are significant issues that arise, particularly from the development of digital campaigning and the transparency of that, which need to be addressed.

Q35 **Chair:** You came down against the idea of the Government, independently



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of the two campaigns, circulating their own household leaflet. Is that correct?

Dr Renwick: Yes, very much. At the moment, the PPERA rules limit Government only in the last 28 days, which, famously, allowed the Government to spend £9.3 million on a leaflet just before that. That clearly creates an imbalance that is inappropriate.

Q36 **Chair:** I am very grateful that you supported us and the Electoral Commission in the extension of the purdah period. Do you want the purdah period narrowed in some way?

Dr Renwick: Section 125 of PPERA defines the activities that are limited very broadly, including anything to do with the topic of the referendum. The concern from Governments—not just the UK Government, but the Scottish Government in 2014—has been that that has the potential to limit their ability to govern. We think it would be sensible—the Electoral Commission has also said this—to limit the provision simply to campaigning activity. It would be possible to limit the provision to the sort of activity that is captured in the activity that campaigners have to declare their spending for—that is, that which is clearly campaigning activity. That ensures that you can have section 125 applying across the whole of the referendum period, without major concerns.

Q37 **Chair:** Does that mean, therefore, that it would be legal for the Government to announce an extra £1 billion for the NHS the day before a general election or a referendum? The purdah period is designed to prevent the Government using the normal process of government to favour one side of an argument.

Dr Renwick: If you are dealing with an issue such as Scottish independence or Brexit, just about any of the activities of government—Scottish independence is the extreme form of this—could be thought to be relevant. If you want governance to continue during that period, you have to take a reasonably pragmatic perspective.

Q38 **Chair:** I am bound to say that we took counsel's opinion on that and we found that the Government's concerns were groundless. During the purdah period, there was no instance of Government being unable to function, because the provisions of section 125 are carefully drafted and open to reasonable interpretation. You could try to tie it down, but the thing is, we all know what campaigning looks like and nobody wants to frustrate what a Government does in the normal course of business. It is rather like trying to define other undefinable things, such as charity. We know what charity is, but it is very difficult to define. Why don't we just leave that? It might need to be updated and extended, but aren't there some disadvantages involved in trying to tie down too tight a definition?

Professor Russell: I think that we are saying that there is a trade-off between the regulated activity and the length of the period. If you found the Government in a situation where they could not make a new announcement on spending on the NHS for three or four months, you might argue that governability was being impacted.



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Chair: It is an interesting idea to have a period of qualified purdah or section 125 and then fully-fledged section 125 for the last four weeks.

Dr Renwick: That is not an idea that we have considered before, but I agree that it is an interesting one.

Chair: Moving on.

- Q39 **David Morris:** The report describes increasing convergence between the regulation of data and the regulation of spending. What do you mean by that and why do you feel it is an issue?

Dr Renwick: People increasingly refer to data as an alternative currency in campaigns. For example, it used to be the case that, in order to reach voters, you would need to spend money on advertising or on leaflets, or you would need to spend the resource of your volunteer labour in knocking on doors, whereas now you can simply use your database. In a way, that does not cost anything in the moment—or an insignificant amount—and you can access a large number of people. That data resource therefore needs to be thought of as one of the key resources available to campaigners.

At the moment, the regulation of data is done by the Information Commissioner and the regulation of money is done by the Electoral Commission, and they increasingly engage with each other on these matters. The Electoral Commission published a report on these matters last month. The Information Commissioner will publish a report later this year. My impression is that both increasingly seek to co-operate.

- Q40 **David Morris:** To harmonise in some way?

Dr Renwick: Yes. The Commission didn't take a view on exactly how that harmonisation should take place. That is something for those two bodies to reflect on further once they have both reported.

- Q41 **David Morris:** Could you see some kind of intermediary body being set up to interface those two bodies?

Dr Renwick: The Commission didn't see that as necessary, at least at this stage. At this stage, the Commission's recommendation was simply that those two bodies should work together more. I think that they are both at an exploratory stage in this area and are working out exactly the best way of doing it.

- Q42 **Mr Jones:** Could you outline the changes that the Commission considers should be made in order to ensure the proper regulation of online campaigning?

Dr Renwick: The Commission made a number of specific recommendations in that area. One that the Government have endorsed, at least in principle, is that imprints should be required on online advertisements, just as they are on printed advertisements. Another was that there should be a repository of digital advertising. At the moment,

there is concern about so-called dark ads—advertisements visible to those to whom they are targeted but nobody else.

Mr Jones: Including the Leader of the Opposition.

Dr Renwick: I wouldn't know. Facebook in particular has already developed a repository that it will use for the mid-term elections in the United States this year. It intends to have something for the local elections here in 2019. The Commission was concerned that if it is just the social media companies on their own, essentially doing what they want, that gives them a lot of power to decide an important aspect of the transparency of campaigning in our democracy. In addition, it is not as transparent as it could be if there are lots of different repositories in different social media companies that people have to access. There were those particular recommendations.

In addition, the Commission recommends that the Government and social media companies should increasingly work together. We recognise that this is an area of rapid change, in which legislation is always likely to be catching up. To some extent, it is necessary for the Government and social media companies to work together more informally, in order to work out how to deal with arising issues.

The Commission also recommended an overarching investigation, conducted by one or more parliamentary Committees, into the regulation of political advertising. At the moment we have strict regulation in broadcasting but very limited regulation in the press, in print and online. We didn't get a sense that there was any public desire to suddenly have lots of American-style attack ads on our television screens. Nevertheless, we think it is appropriate that there should be a review of the regulation in this area across the board.

Q43 **Mr Jones:** What particular things should that investigation or review consider?

Dr Renwick: It would consider whether the existing differences in regulation between those different sectors remain appropriate. If they are appropriate, it would consider what exactly that means, given that there is increasing convergence between the different media sectors, and it would consider those converging approaches to regulation.

Q44 **Mr Jones:** Especially at a time when people are frequently taking their media not from broadcast but narrowcast, when people are actually choosing what they want to view.

Dr Renwick: Absolutely. These are difficult issues that need to be subject to proper review. In addition, there are some more detailed issues, such as those we got into on repositories and imprints, and so on, and potentially other detailed issues that such a review might also get into.

Q45 **Mr Jones:** Returning to the searchable repository, what benefit do you think there would be for an ordinary member of the public to have access to a searchable repository of that sort?



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Dr Renwick: There are two benefits. One is that it eases the regulatory process. Hopefully, everyone benefits from having a properly regulated process, so the Electoral Commission can more easily see what is happening. Secondly, there is transparency. There are thousands and thousands of ads that would go on there. It is going to be difficult for any individual to keep abreast of all that material.

Presumably, there would be journalists who would be looking at this in detail and there would be civil society organisations. In the recent Irish referendum, there were a number of organisations that spent all their time looking at these advertisements and looking at whether there were any problems, in terms, for example, of different messages being put out to different people, incompatible messages being put out by the same organisation to different people.

Professor Russell: The campaigners would keep a close eye on each other as well.

Q46 **Mr Jones:** You have outlined that, at the moment, online advertising is frequently opaque. It may be targeted, it may not. I think you used the expression "dark advertising". What are the disbenefits to the public of such dark advertising?

Dr Renwick: I think there is particular concern around the possibility that very different messages are being put out by the same groups to different people.

Q47 **Mr Jones:** Potentially even contradictory.

Dr Renwick: Yes, exactly. That clearly undermines the democratic process, if people are voting on very different bases, and are therefore expecting very different things after the referendum or election. Clearly, this applies to elections as well.

Q48 **Dame Cheryl Gillan:** It is now the \$1 million question. What changes to legislation does implementing the recommendations require? As a supplementary, what actions would you like Select Committees to take, following your report?

Dr Renwick: Shall I do the first bit and Meg can do the second? In terms of changing legislation, as we said earlier, we think that the rules around referendums should be in standing legislation, as far as possible. That means, from the UK perspective, changing PPERA. There is also a recommendation that the devolved legislatures should consider introducing their own standing legislation.

For changes to PPERA, there are six main areas, which I have here. One, as I mentioned, is that the franchise for referendums should be in the standing legislation. Secondly, there are the various changes to section 125 on the role of Government that we mentioned. Thirdly, we recommend several changes to the designation of lead campaigners. As several of you will know, Vote Leave faced a disadvantage in the 2016 referendum because it did not know as early as the remain campaign that

it was going to be the designated campaigner, so we recommend earlier designation and a number of other changes in that area.

Fourthly, there are changes to the rules around spending, which we have already discussed. Fifthly, there are some changes to the rules on campaign materials. For example, it should be very clear on the leaflets that are put out at public expense that those are materials from the campaign organisations. In the 2016 referendum, both leaflets portrayed themselves as being official communications when they were not. So that should be clear.

Finally, as we have mentioned, paramount in any referendum is that there should be a clear proposal and that, wherever possible, the referendum should be post-legislative. Where that is not possible, a process should be set out for there to be a White Paper for there to be detailed consultation and, if necessary, for there to be a further referendum. Ideally, that process should be set out in legislation as well.

- Q49 **Dame Cheryl Gillan:** And a timeline for that legislation. Would I be fair in saying that the current legislative position that we work on in the UK in reference to referendums is actually not fit for purpose at the moment?

Dr Renwick: Yes, I think that's fair, and you can see that from the fact that every time we have a referendum we have deviations in order to patch up the existing referendum framework. We have already patched in the referendums that we've had, and the referendums that we've had have exposed the need for further changes. It is really important, and the Venice Commission, which offers guidelines on referendums across the Council of Europe, makes it very clear that the rules on referendums should be in place before any particular referendum. They should be designed for referendums in general, not for any particular vote.

- Q50 **Dame Cheryl Gillan:** I need to declare another interest. I am the rapporteur for the Political Affairs and Democracy Committee of the Council of Europe, on recommended changes for rules for referendums across the Council of Europe members. Sorry, I should have said that at the beginning.

Chair: It makes us a very well-informed focus group.

Professor Russell: Shall we come on to Committees? Are you done? There are two specific actions for parliamentary Committees in the report, one of which has been touched on, while the other has not. One is the review into the future of paid political advertising, which would probably most naturally be taken up by the Digital, Culture, Media and Sport Committee. It is a very big issue—big and complex, but a nice meaty issue for a Committee to explore.

The other one is a bit narrower. Going back to section 125, we make a recommendation—recommendation 37—that we ought to look again at which other public bodies beyond Government itself are covered by section 125, because there has been some debate about whether some publicly funded bodies are prevented from carrying out their duties by the



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restrictions in there, but it is a rather complex issue that we couldn't really fully explore as a Commission and it deserves careful consideration and maybe the taking of evidence from some of those kinds of bodies. That issue could perhaps be picked up by this Committee, or perhaps by the Constitution Committee in the House of Lords.

More broadly, of course, what we would like from Committees is engagement with our recommendations—ideally endorsement of our recommendations and ideally trying to put them on the parliamentary agenda through things such as questions, debates and encouraging Ministers to act on them. Also, individuals should work inside political parties to try to encourage them to pay attention to the report and take on board the recommendations, particularly with respect to culture change.

- Q51 Dame Cheryl Gillan:** I have just another question on this. Fighting for legislative time over the next few years is going to be critical, as we start—indeed, I think there will be a statement today on the White Paper on the implementation of the withdrawal Bill, for example, and there will be huge ramifications for parliamentary time for legislating. How important would you rate putting our framework for referendums on a better legislative footing? Would you say that it was urgent that we did it urgently, or is it something that could wait for a couple of years, or is it something that will just gradually be taken in by the system?

Professor Russell: Of course you can look at any sector and find people who will say that legislation in their area is urgent. Legislative time is always precious and it is particularly precious at the moment, given the Brexit context.

We are very enthusiastic that these recommendations should be taken up before another referendum is held. Ideally they should be legislated for, not within the context of any particular referendum, but on the basis of generic principles that ought to be followed for all referendums.

I suppose minimally we can't ignore the fact that the "potential" second referendum has been mentioned. It is conceivable that there could be referendum legislation on that, or on something else, and at a minimum I suppose we would recommend that the changes we suggest would be included in that legislation, to apply for all future referendums, rather than simply being applied to whatever the next referendum is.

- Q52 Dame Cheryl Gillan:** It would be fair to say, reflecting on the work that the Commission has done and that I was part of, that it was really very amicable and cross-party. There is no reason why the legislation should become contentious. We could produce legislation coming out of this House that might be agreed to across the board by all parties.

Professor Russell: But finding time will always be difficult. There are obviously cross-party opportunities that could be taken up through Backbench Business Committee debates and that kind of thing, but this is a bit big for private Member's legislation. Although some aspects of it could perhaps be implemented that way, some of them are quite significant changes.



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- Q53 **Dame Cheryl Gillan:** But it would be an advantage to the system to do it in one legislative vehicle, as opposed to piecemeal, because they are quite fundamental issues that, as technology has advanced, for example, we need to address urgently.

Professor Russell: Absolutely.

- Q54 **Sandy Martin:** You mentioned culture change in respect of political parties, Select Committees and Parliament. What mechanism could there be to enable culture change within the electorate on the role of referendums? We have discussed some of the referendums where people were clearly voting on things other than the question of the referendum.

Professor Russell: Alan might want to comment on that as a greater expert on overseas referendums than me. I think it might be unrealistic to expect too much from the public. If you look around the world, it is widespread that referendums are used to kick the Government and that people often do not vote on the issue that is put in front of them. I think that is part of the caution that Parliament and Government need to apply, rather than anything that you can necessarily manipulate.

The culture change that we are primarily suggesting is important is about the big questions that we were talking about at the beginning: the role that referendums should play in our democracy, the circumstances in which they are held and called, the kinds of topics on which they are called, the necessary preparations that are done in advance of putting something to a referendum by thinking through the alternative means of engaging citizens in a topic, and so on.

That culture change is needed among politicians in Government and in the Opposition parties, and among campaigners who might too readily call for referendums. We include a checklist in the report of issues to be considered before you call for a referendum, including things such as whether there has been careful preparation, whether there is genuine engagement by the public in the issue, whether turnout will be high enough, whether the alternatives are clear, and so on.

In terms of promoting that culture change, all we can do is have conversations like this. We have done a lot of work with the media; we have had various articles in the newspapers in the last couple of weeks since the report came out and we have talked on radio programmes. We need to talk about this stuff and try to reinforce the message that people need to think very carefully about what referendums are for and use them carefully in a way that helps to bolster trust in our representative institutions of democracy, rather than undermining them.

- Q55 **Sandy Martin:** Leah Trueblood from Oxford University seemed to suggest that your Commission's report put too much emphasis on culture change and not enough on legislative change. Is that a fair analysis?

Dr Renwick: I thought she did a very interesting review and a very worthwhile piece. She was suggesting in particular that we might go further in legislating for the topics on which referendums should be

required. The Commission's view was essentially that you cannot really do that unless there is also the culture change.

At the moment, we have legislation requiring referendums on a small number of topics, such as abolishing the Scottish Parliament or the Welsh Assembly, but that legislation essentially embodies a convention that had already developed. Even for something like the EU Referendum Act, which requires a referendum on any further transfer of sovereignty to the EU, there was growing recognition that that was really necessary before it was passed.

Trying to pass legislation that says there should be referendums on House of Lords reform, however, when there is no consensus on whether there should be referendums on House of Lords reform, would just be a bit pointless. We felt that it would not achieve anything and that Parliament would still do what it felt was best when the time came. On some of those issues, the culture change needs to come first, and you potentially reinforce that with legislation later.

Q56 Chair: So have you had the opportunity to discuss any of this with Ministers yet, or people in the Government?

Dr Renwick: We have spoken with officials in the Cabinet Office, and we have sent a copy of the report to the Minister for the Constitution, expressing the hope that she might want to speak with us. We have also spoken with the Welsh Government and the Scottish Government, both of whom are interested in these issues, and as we are doing here, we are engaging with parliamentary Committees in both those legislatures. We would be keen to do more of that. We are grateful to Dame Cheryl, who asked a question to the Minister for the Constitution in the House last week, and as Meg said, we would be grateful for your further support.

Q57 Chair: Are there particular actions that you are going to pursue on behalf of the Commission, other than what you have just outlined?

Dr Renwick: Those are the actions that we can take at this stage. Going further requires others to pick up the ball a bit.

Professor Russell: There are a series of letters out there, which we are hoping for responses to, and we are hoping we might have meetings and so on. We also hope that there will be continued media interest in this topic, and that we will be able to talk to a wider public. The question is what can be picked up in the autumn. By autumn we will know whether we have had a meeting with the Minister. There will be opportunities in all the legislatures for people to ask questions about the Government's response to the report, and perhaps to sponsor debates and so on. Here we are on the last day. There is not much we can do tomorrow, but we can come back to this in September and October, and I hope there will be continued interest. The reception so far, it is fair to say, has been very positive. The report has been welcomed by the Committee on Standards in Public Life, the Electoral Commission, and Chloe Smith's words were warm. There was a debate in the House of Lords last week on the place of referendums in democracy, and several of the speakers cited the report



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with approval. It is percolating through, but it takes a bit more time. I think the autumn would be a good time to review it.

Chair: Thank you very much indeed for coming before us today, and thank you for the report. On behalf of the Committee, I thank you and all those who served on the Commission for contributing to the report.

Professor Russell: Thank you for the opportunity.

Chair: We will continue to take a close interest in your follow-up work, and we would be very grateful if you wrote to us periodically to keep us informed. We will, if appropriate, publish your letters on our website to show that we are continuing to take an interest in your work and the subject matter. I feel that this was something of a joint enterprise. We got our report on the aftermath of the referendum and lessons to be learned out about a year ago, and there seems to be a lot of common ground among people who gave us evidence, and the work that you have done. It should be possible to advance that work in a sensible, consensual way, at least in some areas, and we would like to play our part in supporting that work.

Professor Russell: That is excellent news. Thank you.

Chair: Thank you very much indeed.