

Public Administration and Constitutional Affairs Committee

Oral evidence: [Electoral Law](#), HC 2055

Tuesday 2 July 2019

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Members present: Sir Bernard Jenkin (Chair); Dame Cheryl Gillan; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones; David Morris; Eleanor Smith.

Questions 1-108

Witnesses

[I](#): Nicholas Paines QC, Commissioner for public law, The Law Commission, and Henni Ouahes, Lawyer, Public Law Team, The Law Commission.

[II](#): Peter Stanyon, Association of Electoral Administrators, and Louise Round, Solace Spokesperson for Elections and Democratic Renewal.

Examination of witnesses

Witnesses: Nicholas Paines QC and Henni Ouahes.

Q1 **Chair:** Can I welcome the first of two panels we have in this morning on the state of electoral law, which is the subject of our current inquiry? Our first panel is representing the Law Commission for England and Wales. Could I ask you to introduce yourselves for the record, please?

Nicholas Paines: Yes, I am Nicholas Paines. I am the Law Commissioner with internal responsibility for this project in the Law Commission here in London. Henni Ouahes was the project leader working on the project for many years. He was promoted last year to manage all of the public law projects, but he retains an encyclopaedic knowledge of electoral law and will, I hope, correct me if I get anything wrong.

Q2 **Chair:** Very good. Thank you very much. Can I publicly thank you for the informal briefing you gave the Committee with your colleagues last month, which has been very valuable? It enables us to concentrate today on the key questions that we want to surface in public, so that we can use your answers in evidence to our inquiry. Can I ask you to give as short and concise answers as you can, and we will reciprocate by trying to ask sensible and short questions?



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To start with, how urgent is the need to update and consolidate electoral law? By the way, if you want to make some kind of introduction about your work, now is the moment to do it.

Nicholas Paines: Yes. Just for the record, people will know that the Law Commission is a statutory body set up by Act of Parliament with the task of reviewing the law of England and Wales and making proposals for its systematic development and reform—in particular, its simplification and modernisation. Our method of operation is to conduct reform projects in various areas of the law. They vary in size and length. This has been a major one. We are conducting it in tandem with the Scottish and Northern Irish Law Commissions and, of course, we published an interim report in February 2016.

Q3 **Chair:** How urgent is the need to update and consolidate the existing law?

Nicholas Paines: We think it is urgent, and we said so in our report. It is not that it is impossible to conduct an election under the current legislation, but I have seen the written evidence that the Electoral Commission and the Association of Electoral Administrators, in particular, have given you about the problems that the members of the AEA currently face.

We look at this issue from the stance of a law reform agency. On the basis of our assessment of the quality of the present law, we think it suffers from two main problems, one being that it is antiquated, and the other being that it is, as we have called it, fragmented and spread around too many different pieces of legislation. I can develop that further if you wish.

Q4 **Chair:** What do you think the significant risks are arising from the present state of the law?

Nicholas Paines: There is a risk of error in the application of the law, simply because it is confusingly presented. There have been some well-known instances of quite egregious error, and I mentioned a couple of them when I spoke to the Committee last time.

Q5 **Chair:** Such as?

Nicholas Paines: Because of our habit of creating a new set of legislation every time a new elected body is created, the wheel has to be reinvented, and sometimes bits of the mechanics get left off. There was an egregious instance of this when the police and crime commissioner electoral legislation was written and they forgot to include provision for Welsh language ballot papers and other materials, which are standard in elections in England and Wales, and that oversight had to be remedied at the 11th hour to avoid obvious embarrassment.

Another embarrassment was when it was appreciated two or three years ago that people had been miscalculating the deadline for getting on to



the register in advance of an election and being entitled to vote at it. The calculation was unnecessarily complicated because you had to add two periods of time together drawn from different pieces of legislation. A mistake had been made by everybody for years, and the day had been regarded as one day later than it really was according to the law. That means that a lot of people will have voted in elections that were not strictly entitled to. Think how much worse it would have been had the mistake gone the other way and people had been wrongly prevented from voting at an election.

Another one was when counsel's opinion was taken, two or three years ago again, and leading counsel advised that, contrary to what everybody believed, it was not lawful to submit your nomination paper in a local government election by post. No doubt there have been a lot of local government councillors who did so and, strictly speaking, should never have been elected, because they did not validly file their nomination paper. It does not matter, in the sense that no harm has been done, but the law simply should not be in doubt in the way it currently is.

Q6 **Chair:** I would describe these as mainly technical risks, rather than real political risks.

Nicholas Paines: Yes.

Henni Ouahes: If I may add to what Nick has said, there are a number of technical risks that have added up year after year. What we have from consultation from ongoing engagement with stakeholders is that—to add another metaphor—the system is full of sticking plasters, and everybody's risk appetite, if you like, is getting lower and lower. We have managed to bolt on a number of new provisions to the 1983 Act—namely, the Representation of the People Act 1983—but the main view is not that things have gone drastically wrong. There have been the odd errors and the odd legal challenge, and, like with the Welsh ballot papers and PCC elections, there have been the near misses, but the feeling is that the risks are only getting greater, and now is the time to reduce those risks or eliminate them entirely by doing proper law reform.

Q7 **Chair:** What is the effect on public confidence of these uncertainties?

Nicholas Paines: It can only be damaging. One knows from the recent set of elections that, with modern social media, people who are dissatisfied publicise their dissatisfaction, grievances become widely known about, and confidence in the electoral process is inevitably damaged.

Q8 **David Morris:** Your interim report was published in February 2016. What plans do you have to publish a final report, and when do we expect that?

Nicholas Paines: Since 2016 we have been continuing work on the project. We were told after inquiries had been made within Government that there was no prospect of our main recommendation, namely new legislation, being implemented any time soon, so we have done further



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work on partial implementation of our recommendations, in particular recasting the elections rules, which are in a statutory instrument and the primary legislation. We have done a substantial amount of work on that and are now in a review point—it is our second review point; our terms of reference stipulated review point when we published this interim report—and the message back was, “No, don’t draft primary legislation now.” We started this rules project. We are now in a review point on it, and the question is whether we continue that work. We have already done a considerable amount, and we now have a template for new rules.

We need to do more work, for irritating technical reasons, to produce a second statutory instrument to cover the whole field of local elections. The question that we and the Cabinet Office are discussing is whether it in fact is a good use of our limited human resources and the taxpayers’ money for us to do that. It is looking likely that we shall do very limited further work on the statutory instrument and, having done that, will move smartly to producing our final report, which will be a formal document that will need to be laid in Parliament under the statute. It will contain our recommendations, as in the document I have here, but updated to reflect the various developments that have happened since February 2016 in the electoral field, insofar as they are within our terms of reference.

Q9 David Morris: Are there any specific parts of the interim report that you would plan to update before the final report, and parts that you think would need to be reworked quite substantially?

Nicholas Paines: There have been various developments and various issues of contention, some of which are within our terms of reference and some of which are not. We will certainly take note of all of them. We are following keenly the developments in relation to Sir Eric Pickles’s proposals and recommendations and the aftermath of those, and the issues of intimidation and the issues of pressure—in particular, the issues of misuse of the internet. Of course, there is a wider issue of online harm—which one of my colleagues in the criminal field is doing work on—as well as taking notice of it in this present context. All of these things will be noted in our final report, and to the extent that they impact on our recommendations, we will modify them as appropriate.

Q10 Mr David Jones: Could you tell us who is accountable for the conduct of elections in the United Kingdom?

Nicholas Paines: It depends which part of the United Kingdom you are in. The answer in England and Wales is, as in Victorian times, the local returning officer. The traditional legislation, most of which, as I mentioned last week, is reproduced word for word in the 1983 Act, was enacted in a day, as I mentioned, predating the telephone. You could not supervise local returning officers. You had to repose the duties in them and possibly come down on them afterwards if something had gone wrong and was their fault.



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In Northern Ireland, the position is very different because of the creation of the Chief Electoral Officer, who I think is the returning officer for the whole Province and supervises all elections there. Scotland has an Electoral Management Board that supervises local government elections, and the Scottish Government is consulting on extending that board's remit to Scottish Parliament elections as well.

We have, of course, the Electoral Commission, which has a guidance and monitoring function but no powers, as far as I am aware, of direction. The short answer to your question is the local returning officer.

Q11 **Mr David Jones:** Does he or she have sole responsibility?

Nicholas Paines: Yes.

Henni Ouahes: As a matter of law, the returning officer is responsible for the lawful conduct of the election. If you are looking at wider governance concerns, you have to bring in the Electoral Commission. Even though it is only issuing guidance and advising, it does have a wider governance function. It reports on elections and makes recommendations if there are problems. I think the Association of Electoral Administrators, which has no formal remit, has to be considered also as part of this. It is almost a representative group of the caucus of returning officers or electoral administrators, and it issues reports after each major election as well.

Q12 **Mr David Jones:** Who has the responsibility for deciding if an election is safe or unsafe?

Nicholas Paines: The election court.

Q13 **Mr David Jones:** How is a reference to the election court made?

Nicholas Paines: I think a petition is the formal term for the document that initiates the proceedings. It is a funny court, if I may say, without disrespect. It is a pop-up court, in modern jargon. It has no standing existence but is created each time a petition is filed. For a parliamentary election, it consists of High Court judges, but while they are sitting in it, they are not sitting in the High Court. For local elections, it is staffed by commissioners who, in practice, are deputy High Court judges as well. It is not a formal rule, but it happens that the sort of people who get appointed to the one tend to have been appointed to the other.

The procedure is very antiquated. The statutory framework is supplemented by procedural rules, which in England at least are very antiquated. There is mandatory security for costs, which is unusual. There is no procedure for filtering out frivolous or unmeritorious petitions. They have to go to full trial. We recommended that the petitions be brought into the High Court in England and Wales and the Court of Session in Scotland. That recommendation was enthusiastically supported by the judiciary of England and Wales; it was not supported by the judiciary of Scotland, but I think it is fair to say that what matters more



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is that the procedures are modern, up-to-date and adequate, rather than where exactly the judges are housed in the system.

Q14 **Mr David Jones:** Who would have the locus to petition the election court?

Nicholas Paines: Henni will remind me. Is it the unsuccessful candidates?

Henni Ouahes: It is the unsuccessful candidate, or an elector at a parliamentary election, or four electors at local government elections.

Q15 **Mr David Jones:** So any elector?

Henni Ouahes: Any elector can challenge a parliamentary election. The risk is that if an elector has had a bad experience, or was wrongly denied their vote, their only remedy is to question the entire election, which would result in its nullity. In the vast majority of cases, if your vote has not been counted, or something has gone wrong with your vote, you just want that grievance addressed. You have no prospect of successfully saying to the judge, "This election was wrong," because it is just one vote. That is your only remedy in law.

Q16 **Mr David Jones:** The absence of a process of filtering petitions to the court presumably allows space for vexatious or frivolous petitions to be made. Presumably the only deterrent would be costs, which I suppose would be extremely heavy.

Henni Ouahes: That is right. Exposure to costs at an election petition is rather high. There is no filter. It is a binary process: either your election petition is formally good, in which case it proceeds to full trial, often going on over many days, or it is formally wrong, in which case it falls away. Modern civil procedural rules allow a judge to exercise his or her professional judgment to say, "This claim is without merit, and I will stop it at an early stage after due procedure," or, "This claim is meritorious, or certain elements of the claim are meritorious, and warrant a day or two in court." That is a more proportionate use of the court's time, and it saves parties' costs.

Q17 **Mr David Jones:** Presumably your report recommends that such a process should be adopted in future to such claims?

Henni Ouahes: Yes.

Nicholas Paines: Yes.

Henni Ouahes: Do you want to hear about our proposal? In short, our proposal is that the modern court system should be used by the election court, so the High Court should hear parliamentary election petitions in England and Wales, and a deputy judge could be appointed to hear local election petitions.



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Nicholas Paines: The modern set of Civil Procedure Rules would simply apply, and it contains all the modern mechanisms that you need.

Henni Ouahes: For example, if you do have a meritorious claim, as the petitioners in the Tower Hamlets case had, that would reduce their exposure to costs. The big scandal at the time was that, although they won, they had to, essentially, face losing their homes if they had lost, because of the costs of the other side, which they would be liable to pay.

Q18 **Eleanor Smith:** Coming on to that, how fit for purpose is the current petition system for challenging the results of the election?

Nicholas Paines: It is not very fit for purpose, in the respects we have been talking about, as Henni has just said. The Civil Procedure Rules enable cost protection orders to be made limiting the exposure to costs of a claimant if they are eventually unsuccessful. That is another mechanism that would have comforted the applicants in Tower Hamlets and that would be available if the Civil Procedure Rules applied.

Henni Ouahes: I agree with Nick; it is not fit for purpose. I will give you one example. Under the statute—the 1983 Act—it was sought to preserve the practice of the old House of Commons Committee, because the House of Commons had the exclusive privilege of adjudicating upon its own election. In due course, it gave that away to the election court because it was felt that its adjudication was too partisan. But you are still meant, under section 157(2) of the Representation of the People Act, to go back to the House of Commons practice in the 1860s. At the time when I was looking at it, I thought the only way to do that was to find Erskine May—the edition live in the 1860s—and find out what the law is. Of course, now you have books that will possibly tell you the answer, but, as a matter of law, this is what we are expecting a citizen to do. It is simply out of reach of almost everybody in the UK.

Q19 **Dr Rupa Huq:** Talking of things not fit for purpose, election court judge Richard Mawrey QC described that 1983 Representation of the People Act, which is a consolidation of lots of other things—the 1971 legislation that lowered the age of the franchise and all that—as a “disorganised bag”, and it does appear to be a bit of a ragbag. Is that a fair description?

Nicholas Paines: I have not tried to mark the 1983 drafters’ homework and work out whether they could have done better. A major deficiency of the 1983 Act, which is not the drafters’ fault in this instance, is that it is a mere consolidation. As I say, these 1870s provisions are just re-enacted.

If I can go off on a slight tangent, David Jones may be interested to know that we advised the Welsh Government on how they should approach legislation in the future. We said, “When you bring things on to the Cardiff statute book, do not just reproduce them; reform them as necessary as well”. Unfortunately, the Westminster system does not



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admit of that, and in the case of the 1983 Act, we have had a further 40-something years of 1870s law.

Q20 **David Morris:** Do you think that was something that was missed out, as you were saying about the Welsh Language Act, when it was reconfigured in 1983? Do you think that is what happened?

Nicholas Paines: The Welsh language ballot papers?

Q21 **David Morris:** No, what you were saying in the previous question. Do you think there is some sort of slippage there?

Nicholas Paines: I do not know how this was approached in 1983. All I know is that it was a mere consolidation without any updating of what was already more than century-old legislation, to a certain extent. I cannot pass judgment on why more was not done, but 45 years later, the time is certainly right now.

Q22 **Dr Rupa Huq:** It is not 45 years, surely?

Nicholas Paines: No, it is 35 years.

Dr Rupa Huq: I was not born in that year. Anyway, it is old. It is an eternity ago. Henni?

Henni Ouahes: I will echo what Nick has said about the 1983 Act. It was largely a consolidation, so that is quite limiting. There was simply no scope for doing modernisation of, say, the election petition system, but I want to stress that, since 1983, a lot has happened. Our analysis in chapter 2 of our consultation paper and the report is that, overwhelmingly, stakeholders—everybody who knows about elections and is concerned about elections, including party compliance officers from across the spectrum, so there is cross-party agreement—believe that the process that got us in trouble was that the 1983 Act has scope only for parliamentary and local elections. Then, on the statute book, there emerged a number of new elections, and they were not brought within the scope of the 1983 Act. Not only is the 1983 Act out of date, but it does not govern the field.

On top of that, it has been successively amended, and you can see that there are different drafting styles. If you look at the 1983 Act as original, unamended, it is a coherent Act. It is technical, and it is a consolidation, but it is more or less coherent. Since then, as we have innovated in policy terms to introduce rolling registration and individual electoral registration to improve policy and modernise policy, it has become a bit more of a portmanteau.

Q23 **Dr Rupa Huq:** Is it time for an update to take into account those things? How can a new consolidation Act avoid similar criticism, or would it require more than just consolidation?

Nicholas Paines: We recommended a lot of technical-type reforms in our report. If we were given the green light to draft a Bill, we would



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instruct parliamentary counsel to draft a Bill that included these reforms as well as bringing the law together into a coherent whole.

Q24 **Dr Rupa Huq:** What are the pitfalls that should be avoided this time?

Henni Ouahes: What we said is that this institutional discipline is valuable to keep the code or a consolidation Act fit for purpose. Under the constitution of the UK, Parliament is supreme. At any point, it could legislate in a separate, bespoke, discrete Act of Parliament after the great consolidation. The key thing for Government and Parliament to keep in mind is that it would be more useful to assimilate that new measure into the consolidation Act. That is code discipline, when we are talking about codes. It is a question of institutional discipline. There is no constitutional or legal mechanism to ensure that a new consolidation remains in place for 20, 30 or 40 years. It is simply up to Parliament.

Q25 **Eleanor Smith:** Can I ask a question about electoral reform in regards to the trade union movement? Do these things carry into that area, or is that separate altogether?

Nicholas Paines: Elections within the trade union movement are not governed by this legislation at all. It purely governs elections for the Parliaments, the local authorities, Mayors, police and crime commissioners, and those sorts of things.

Q26 **Kelvin Hopkins:** Is there a risk that, even if the electoral law was consolidated now in line with your proposals, it would become fragmented again in the future?

Nicholas Paines: There is always a risk of law becoming fragmented again in the future. That is why we, the Law Commission, exist. The removal of anomalies is one of our statutory tasks. Having said that, I think that, should our recommendations be implemented, there would be less risk of fragmentation in the future than we have at the moment.

As I mentioned last week, we have 11 different rulebooks for different types of elections at the moment. Each one of those has to be amended if there is a change in policy. If a new elected body is created, a new rulebook and set of legislation is written for it; at least that is what has been done up until now.

If our recommendations are accepted, there will be, in each part of the United Kingdom, a single piece of legislation governing elections generally, containing differences, of course, where the character of the election requires a difference—a different method of voting, for example. It will contain differences where different legislatures want to implement different policies on things like the age of voting, which we know is under discussion at the moment. It will basically be, in each jurisdiction, a single framework for the elections within the legislative competence of each of the Parliaments. If a new elected body is created, it can just be slipped into the framework. If a policy changes, you amend one provision, whereas, at the moment, you need an Act of Parliament to



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amend the Westminster parliamentary election rules, because they are in the 1983 Act. Then you need statutory instruments to amend about a dozen other statutory instruments that govern the local and other elections. There would be one amendment per change of policy under our scheme.

Q27 Kelvin Hopkins: It has been suggested to us that a panel should be set up to keep electoral law under periodic review. Do you believe this would be helpful?

Nicholas Paines: It is not something that we considered or have discussed as the Law Commission. I certainly read the professor's evidence to you for that. It is a very interesting idea, and I noted his reasons for advancing it. I am not qualified to comment in any authoritative way on that, but I can understand that it is something that you will be thinking about.

Q28 Kelvin Hopkins: Do you think that keeping electoral law under periodic review is a role that sits well with the Electoral Commission? I say this because it is possible that changes to electoral law might become politically fraught and rather sensitive, whereas the Electoral Commission wants to steer clear of that kind of political involvement. Is that not the case?

Nicholas Paines: Certainly, our experience of them is that they want to keep out of the fray, for understandable reasons. When we suggested that there should be what we call the public interest petitioner, who could petition where an election appeared to have gone wrong and who knows none of the candidates or electors who was petitioning, they did not want that role. I think you would need to ask them, rather than us, whether they would want the sort of role that you are now talking about.

Henni Ouahes: Certainly, for the role you are envisaging, which would be a role to bring a challenge in the public interest in an election, I think the risks are at a higher degree than making recommendations for reviewing the law and improving. So I think you would have to ask the Electoral Commission itself, but it does keep the law under review. It publishes several policy papers, many of which have led to changes in the law.

Q29 Kelvin Hopkins: We have had recent changes in terms of elections and whatever, which have become very politically contentious and challenged between the parties. A panel, separate from a Royal Commission, would avoid the Electoral Commission becoming embroiled in that kind of controversy.

Henni Ouahes: Yes. That is something that we considered in the context of public interest petitioners—having a body at arm's length from the corporate Electoral Commission to help with the decision to bring a petition.

Q30 Kelvin Hopkins: A standing body that would be permanent, rather than



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the occasional Royal Commission, committee of inquiry or whatever. It would be more sensible. Is that possible?

Henni Ouahes: Yes. It is a matter for you, but it sounds plausible to me.

Q31 **Mr David Jones:** Did your report come to any conclusion about the lack of personal liability faced by agents for a candidate at elections?

Nicholas Paines: No, I do not believe we did. I know, particularly from hearing those who addressed you after us the other day, that this is now a source of anxiety to agents. My understanding is that it revolves around the demarcation between local and national campaign expenditure, which is a matter that lay outside our terms of reference, to the extent that national campaigning was firmly excluded from our terms of reference, so we were not in a position to address that issue of demarcation.

Q32 **Mr David Jones:** This is not something you could possibly stray into before you complete the publication of your final report?

Nicholas Paines: We are always open to being given work, where it is valuable. We would need to consider whether it was a matter that we, as unelected people, have a mandate to decide upon. We take the view that we can make common-sense proposals based on understanding of the way the law works. We cannot make pure value judgments or political with a capital "P" judgments. We would need to discuss with stakeholders and the Cabinet Office to ensure that this work fell on the right side of that line. If it were thought to do so, then I am sure we would be prepared to do it. The issue is whether we should hold up moving to the final report, because, clearly, further consultation would be involved, and it would add several months. It might be better for us to polish off the final report and then be given that task, if it were thought appropriate.

Q33 **Mr David Jones:** Given that, as you have said, you have heard informally that there is a degree of concern about the personal position of agents, is this something that you would be prepared to raise with the Cabinet Office?

Nicholas Paines: We are certainly prepared to raise it with them.

Henni Ouahes: As we are looking towards wrapping up our work in our final report, we will be having discussions with all stakeholders, including the Cabinet Office and the Electoral Commission, just to gauge what has changed since February 2016. As you have noted, quite a lot has changed. What I can say about our work so far is that it has looked at the law on the regulation of the campaign at a local level, but not with an intensity that extends to the rejigging of the system. We have made recommendations, for example, that such expenditure limits as are currently very difficult to determine—lots of people have to use a formula to find out what the precise limit is—should be made easier, and that should be declared.



What we have not done is question the orthodox orientation of the regulation of local campaigns, which is to channel everything through the agent and the candidate and place personal liability on them. That has been the law since 1883. We did not recommend that that should be disturbed. We want to be clear that our work so far has not looked at the personal liability of the agent, but we will have discussions with officials.

Q34 **Eleanor Smith:** Why do you think there has not been substantial progress by the Government in taking your recommendation forward?

Nicholas Paines: I think it comes down to pressure on parliamentary time and issues of what is nowadays described as parliamentary arithmetic. I am not sure I need say much more than that.

Q35 **Mr David Jones:** In your submission you said that, in the absence of primary legislation, you were looking at what could be achieved through secondary legislation. What progress has been made on this?

Nicholas Paines: We have done as much work as we can on producing a statutory instrument that, if it were made, would contain the rules for quite a number of elections. As I mentioned briefly earlier, we have this slightly frustrating situation where the rules for ordinary or traditional local government elections are made under rule-making power that involves the negative resolution procedure in your House, and the rule-making power for other elections involves the affirmative resolution procedure. It is not possible to make one statutory instrument containing material that requires different procedures. As the statute book currently lies, we would need to produce two statutory instruments, largely mirroring each other. We have done one of them. The question is, do we go on and do the second? It is very labour-intensive. The devil inhabits the detail throughout, and we think it is probably a better use of our resources and the taxpayers' money for us to move on to other areas of work.

Q36 **Mr David Jones:** To give us a flavour of the work involved, how big, physically, would these statutory instruments be?

Nicholas Paines: It has got to 40 pages already. It involves the laborious task of opening all the existing rulebooks for these different types of elections, trying to copy them into one rulebook, continually coming up with the niggling inconsistencies that I have mentioned earlier, deciding, to the extent that we can, which form of wording should prevail, and leaving it to others to direct us, where a political judgment has to be made as to which of the different systems is the better.

We were allowed to use the parliamentary counsel, a parliamentary drafter, to do most of this work, and that was extremely valuable. It was certainly regarded within that office as a task worthy of a parliamentary drafter. I hope that what we have done will be useful in the future, but there does not look to be much prospect of a statutory instrument being made in the near future, even on the basis of the work that we have already done.



Q37 **Chair:** Moving on to the standardisation of electoral law and devolution, constitutional matters are, in principle, reserved, and therefore your recommendation that we should have a consolidated elections Act for the whole of the United Kingdom should be quite straightforward, but are there any proposals in your mind's eye that would require legislative consent from the Scottish, Welsh or Northern Ireland Parliaments?

Nicholas Paines: In broad terms, legislative competence over elections to this place is in this place. The United Kingdom Parliament makes the law for United Kingdom parliamentary elections, but under the Scotland and Wales Acts, competence in respect of the devolved Parliament elections and local elections in those two countries has been devolved. Our recommendations would need to be implemented by a piece of Westminster legislation governing this Parliament and pieces of Holyrood and Welsh Assembly legislation governing elections in those countries.

Q38 **Chair:** Does that mean there is a certain amount of duplication involved, or does that mean that they are encouraged to do something different?

Nicholas Paines: We would encourage them, so far as possible, to do the same thing. We did not think it was for us to speculate on whether they would agree to give legislative consent motions or not, so we have operated on the assumption that they will enact their own legislation. Insofar as it concerns the mechanics of running an election, we recommend consistency, because returning officers in those countries will be not infrequently conducting elections to this Parliament alongside either elections to those Parliaments or, more probably, local government elections in those countries.

It would be unfortunate if more inconsistencies were created by virtue of the Parliaments legislating differently for the mechanics of elections being conducted simultaneously in those countries. We are optimistic it will not happen, in view of the considerable work that has been done in reaching a joint position on the canvass—you will be aware of a joint publication by the three Governments on that front. When one is talking about the mechanics of work in an election, it seems unlikely that the devolved Parliaments will want to differ; on matters like the voting age and other matters of policy, they are entitled to—it is their right.

Q39 **Chair:** The SNP submission suggests that policy divergence is an inevitable consequence of devolution and must be respected. How do you work with your Scottish counterpart in order to bring about that consistency in the mechanics that you want, and are there areas where you think there will be differences?

Nicholas Paines: Just thinking of the Scottish and Welsh Governments, if we and the Scottish commission were tasked with preparing Bills for our respective Parliaments, for Westminster in our case, but also for Cardiff in our case, and for Holyrood in the case of the Scottish commission—legislative competence for Northern Ireland is held in Westminster, as it happens, in my understanding—we would, consistent



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with our recommendations, exhort them to adopt the same rules on matters of pure mechanics, while respecting their constitutional freedom to depart from each other on matters of policy.

Q40 **Chair:** What would be the effect of legislative consent being withheld by Scotland and Wales? I suppose that is difficult—

Nicholas Paines: Well, it is not controversial. Both the Scotland Act and the Government of Wales Act recite the Sewel convention. You will not normally do so.

Q41 **Chair:** Are you saying, therefore that there should be a UK elections Act, a Scottish elections Act and a Welsh Elections Act, and that, somehow, we hope that they will all dovetail neatly together and provide a consistent application of mechanical principles?

Nicholas Paines: As I have said, we do not think it is our business to recommend to the Scots or the Welsh that they give legislative consent motions. That is entirely a matter for them.

Q42 **Chair:** In the end, you would accept that there has to be a separate Scottish elections Act?

Nicholas Paines: Absent an LCM, yes.

Henni Ouahes: Can I just say a little bit about that? When we published the interim report, some devolved powers in Scotland existed for local elections, and we knew that they were on the way for Scottish parliamentary elections. We also knew there was going to be greater devolution in Wales. That is why we made our recommendations subject to the devolutionary framework.

Some divergence is an inevitable consequence of devolution; that is just a constitutional fact that we accept. The thing that we stress is that, in the past, for example, for the Scottish local government elections, there has not been a radical departure from the way elections are conducted and administered. The reason is that Scottish electoral administrators have to conduct elections according to both governance frameworks—the UK statute book and the Holyrood statute book.

The thing to bear in mind, as the experience of the voter diverges, is that they are informed. In Bromley, for the European parliamentary election, my election communications stressed that I did not need voter ID. Because it had been a test area—it had been a pilot area for voter ID for the European parliamentary election—they knew that they had to tell their voters for this election, “You do not need voter ID.” That is just to use one example of possible divergence in future between England and Scotland and Wales. Voter education is the key.

Q43 **Dr Rupa Huq:** I wanted to ask about the residency test as another aspect of potential electoral fraud. In your interim report, you say that there is no guidance in primary or secondary legislation for electoral registration officers, and I think the Pickles review said that there should



be some definition in law of what is a second residence. Do you have evidence of inconsistent treatment by different registration officers because there is no agreed definition of what is a second home?

Nicholas Paines: We have anecdotal evidence, probably hearsay, but from sources we trust, that in some areas where there are a number of second homes, registration officers do take different attitudes, from not questioning the residency status of the homeowner, to requiring a lot of proof. We did not think it was for us to opine on whether people should be entitled to vote at a second residence. Different interests are at play there. I remember from my undergraduate days that students have long been registered to vote in their university towns. The other main category of course is second home owners.

All the law says is that if you are a resident, you can be registered to vote. It does not give any guidance on what being a resident means, and, of course, there is a grey area between what is genuinely a second home and what is an occasional holiday place, albeit owned by the owner. We suggested that there should be some statutory factors to be taken into account, such as frequency of visits, length of occupation, number of nights of occupation in the year and that sort of thing, which we thought would assist registration officers in being a bit more consistent than it appears, anecdotally, that they are.

Q44 **Dr Rupa Huq:** When I worked in academia at the University of Manchester, students would often be registered in blocks, but then you could only vote once. If it is held in term time, it makes a difference.

Nicholas Paines: You can only vote once in the same election, and it is a crime to vote twice, so if you have two residences, you cannot vote in both constituencies in the same election. You can vote in the local government elections in both places because, obviously, they are separate elections.

Q45 **Dr Rupa Huq:** What difference has individual registration made, and do you have examples of that inconsistency? You said that different officers interpret it differently.

Nicholas Paines: As I say, all we have is sources we trust telling us that these inconsistencies in practice exist. Individual registration has not made any particular difference to this aspect of things, but I ought to mention—

Henni Ouahes: Sorry, could I just come in? There was a concern when IR was introduced.

Dr Rupa Huq: Yes, there must have been.

Henni Ouahes: Essentially, the registrar in the university was block registering all students. My understanding is that has been addressed. I do not know how it has been addressed, but you can ask the Electoral



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Commission or the AEA about that. That is no longer a concern. Universities have found a way to get students on the register.

Q46 **Dr Rupa Huq:** I have heard it is something like a button on the thing when you register to get your student ID in the beginning. That is what I have heard anecdotally.

Henni Ouahes: There are a number of ways, on top of which there is the online registration system. Sorry, Nick.

Nicholas Paines: I was only going to say for completeness that the one recommendation we did make is that a person who is registered in two different parliamentary constituencies should be required to say which one he or she will vote in in a parliamentary election. They can change that option from time to time, but the end result is that they only get one set of voting papers in one place and they are prevented from, whether by inadvertence or design, voting twice in a parliamentary election, if our recommendation is implemented.

Chair: That is something MPs are very familiar with—receiving ballot papers for two addresses.

Dr Rupa Huq: Not all of us. Some only have one house.

Chair: Some only have one house.

Q47 **Dame Cheryl Gillan:** I was interested in your comment that you think that there should be some residency test of the number of nights spent in whichever property. How could you see that working? That seems to me like a fairly heavy-handed invasion of privacy.

Nicholas Paines: We did not suggest a test in terms of a set number of nights. We suggest the law refer to those factors, which are a matter of common sense, in helping to decide whether somebody's occupation of a place amounts to being a resident or not. Frequency of visiting the place, portion of the year as a whole spent in the place, and all those things are relevant, but, of course, it has to be a loose test rather than a rigid tick-box approach.

Q48 **Dame Cheryl Gillan:** How would you envisage making those inquiries of the citizen?

Henni Ouahes: It would be at the stage they apply to register. What we recommended was that they would be asked to state whether this was in respect of a second residence. As per the current law, there would then be scope for writing to them or talking to them. There is currently scope for it; it is just that it never happens. Essentially, all we sought to do was to direct the mind of registration officers. The law is not that you can never be a second resident in respect of another place, and it is not, "You can be a resident of anywhere. We do not need to check."

Q49 **Dame Cheryl Gillan:** How far would you take this? What about people who work abroad or do not know where they are going to be working at any one time? You seem as if you are opening a Pandora's box.



Nicholas Paines: What we were trying to do was assist in a situation where the law admits of you being resident in two places and where there is evidence that this was causing problems of inconsistent application. It is open to parliamentarians, but not to us, to say that a second voting place should be verboten or to say ownership of two properties automatically carries two votes. The current law is somewhere in the middle, imposing this test of, "Are you a resident in both of the places?" We were simply trying to assist registration officers in answering that question.

Q50 **Kelvin Hopkins:** Lord Pickles's review argued that the law on undue influence needed to retain a reference to spiritual injury. Your proposed offences of intimidation, deception and improper pressure do not include such a specific reference. How should the question of spiritual injury be addressed?

Nicholas Paines: We preferred the general formulation of "improper pressure", which can include religious pressure, spiritual pressure or however one likes to put it. It did not seem to us to be necessary to itemise different types of improper pressure, but rather better to leave it that improper pressure is an offence and it is for the court to decide. Invoking hellfire is what the provision was originally a response to. This dates back to Catholic clergy in Ireland before 1933. That was what it was targeted against. It came to prominence again in *Tower Hamlets*, of course, in 2014.

We do not suggest that there should be carte blanche for people to impose improper pressure of any sort, including that based on religious authority, but we did not see any need for singling out religious pressure for explicit mention in our new legislation.

One does also have to be careful of article 9 of the human rights convention, on freedom of belief. At the moment, it is perfectly open to somebody to suggest that a particular candidate's policies are contrary to some ethical standard or other, and it is debateable whether religious leaders should be in any different position as regards debate at that level. If improper pressure in the sense of abuse of religious authority is involved, then, under our provision, it will, like any other form of improper pressure, be potentially criminal.

Q51 **Kelvin Hopkins:** Might it not be sensible to have some reference to spiritual injury or that kind of influence, just as a token warning to religious leaders not to abuse their position in this way?

I take an example from some 50 years ago. It is well past, and incidentally not now controversial, but there was a particular case—I was told about this personally—of a religious leader in a particular area in a local ward where there was a concentration of people from that faith. The religious leader used to say, "Vote for the people of our faith first and then for a particular political party after." We saw dramatic results, where one person from one party with that religious faith got several hundred



votes more than the other members of that same party. He was elected, and the other party had two elected. So it worked in that case.

This may not be significant now, but the Tower Hamlets case certainly suggests that religious leaders ought to be informed that putting undue pressure on their constituency in that way is inappropriate in a democracy, where these things are an individual choice. You can choose for whom you vote based on their policies, and you should not be intimidated or pressurised because of religious belief.

Nicholas Paines: Yes. Of course, the original—well, the still-existing—provision criminalises threat of spiritual or temporal injury. Just saying, “Vote for so-and-so because he is a good churchgoer” would not be criminal, but threatening hellfire or damnation was plainly what the draughtsman had in mind. One does have to be very careful with the extent to which one limits debate with criminal sanctions.

Kelvin Hopkins: I have some personal experience with this. In 1983 I stood as a candidate for Parliament. I lost by several thousand votes, so marginal votes would not have made a difference, but I was challenged publicly about my views on abortion, and I said I believed absolutely in a woman’s right to choose. I was told very strongly that people did not agree with me. I said, “We live in a free country. One can vote against me.” I have always said that: “If you do not agree with me, vote for someone else.” Amusingly, I was told later by somebody from this community, “I do not agree with your views, but I am still going to vote for you.” That is just one experience.

Chair: I think we have finished our questions. Thank you very much indeed. We will move on to the next panel.

Nicholas Paines: Thank you. We are very pleased to have been able to come along and hope we have been of some assistance. If you need anything more of us, I hope you will not hesitate to ask.

Q52 **Chair:** Thank you very much. I think we would be particularly interested in you looking at the question of the degree of exposure agents now face financially and legally, which is potentially going to discourage participation and the proper conduct of elections. It seems to me that that is a technical legal issue as much as a policy question, and I would hope that you would address it.

Henni Ouahes: Can I apologise? I have made a mistake, and I want to draw attention to it. I was asked, “Who can challenge an election?” I believe I said, “Four electors can challenge a local election, and one elector can challenge a parliamentary election.” It is the other way around. I am very sorry about that.¹

Q53 **Chair:** It is open of you to correct it so promptly. I hope that is not to

¹ The witness clarified after the session that the correct position is as follows: It requires four electors in relation to a local government election and one elector in relation to a Parliamentary election.



distract from the other point I was making. I think the Committee is seized that it is a very serious detriment to confidence in our democratic system if people are discouraged from taking responsible roles. We would be grateful if you looked at it.

Nicholas Paines: Yes, we have noted that. Thank you.

Chair: Thank you very much indeed.

Examination of witnesses

Witnesses: Peter Stanyon and Louise Round.

Q54 **Chair:** Welcome to our second panel. Could I ask each of you to identify yourselves for the record, please?

Louise Round: I am Louise Round. I am the chief executive of Tandridge District Council, and I am also the elections spokesperson for Solace, which is the Society of Local Authority Chief Executives.

Peter Stanyon: I am Peter Stanyon, the chief executive of the Association of Electoral Administrators.

Q55 **Chair:** Thank you for being with us. Can I ask first of all how urgent you think it is to update and consolidate electoral law?

Louise Round: Pretty urgent. I echo everything you heard from your speakers earlier on in terms of the sheer complexity of trying to navigate your way through elections legislation, particularly as it is usually a fairly heightened atmosphere you are trying to do that within and often at fairly short order.

Peter Stanyon: I would echo that and everything that was said in the earlier session. It is getting more complicated. I first came into this profession 30-odd years ago, and since about the year 2000 there has been constant change all the time. It is legislation made in 1872 that we are still bolting things on to. I think the point was made earlier in regards to, "Is there a catastrophic thing that will go wrong?" Elections will always work; it is the fact that there are lots of little technical things that bring that risk into the process and make the need for change more urgent by the day.

Q56 **Chair:** What do you think are the most practical and immediate risks that we could use as examples in our report to amplify the point?

Peter Stanyon: The AEA has consistently made the point that we are dealing with, as I think Nick and Henni mentioned, 11 different sorts of statute books that we do for different elections. A lot of the process is the same regardless of the type of poll that is being run, but with the changes introduced by things such as individual electoral registration, rolling registration, postal votes on demand, the future proposals for overseas electors and the like, a lot of the issues are around the timetabling of how it all comes together—how all the constituent parts play out.



Certainly, in England and Wales, the people who are running the electoral registration process are the same people delivering the election. What has now happened is that electoral registration has seeped into the elections process. Many of the issues that have been experienced over the last few years have been registration issues occurring during the elections timetable. It is about trying to stand back and have the process in place that means that each of the constituent parts can work side by side to take the risk out of the election as it works its way down the line.

Louise Round: Many of them will be technical errors and will go unnoticed, and probably would not go to the validity of the election, but in terms of confidence in the system, if one is being challenged by agents or party compliance officers, and it is a bit wrong, it may not be the end of the world, but "a bit wrong" is not good enough when people then begin to worry about what else might have gone wrong behind the scenes. It will probably be nothing, but it is just not good for public confidence in the system if people are having to say, "I will come back to you. I will look it up. I looked in the wrong bits of legislation," or, "It is out of date," not to mention the pressure it puts individual officers under when that is happening to them at the same time as they are dealing with late deadlines for registration and so on.

Q57 **Dr Rupa Huq:** Those little technical things you were talking about include referenda, which we have had many times in recent years, and the internet, which was not anticipated in 1872 or even 1983. How difficult is it to administer electoral law in its present state?

Peter Stanyon: A very wide question. It is understanding the changes that have taken place and what the impact is on the process. Taking individual electoral registration as a good example, access to the system, it cannot be doubted, has been a real positive. I can sit there at my desk in the council offices at 10.05 am after a leader debate, and you will see the spike in registrations going up at that particular point because people have switched to their smartphone—"I am not sure if I am registered. I will go online and register again." If they are registered, that is fine, but the process takes time for the administrator to make sure that it is the same person and that they are already on or not. The access is very good for the citizen, and no one can knock that particular process, but it is adding in the pressure very late in the day.

The best example of it was in the run-up to the EU referendum, where the Government portal crashed literally an hour before the midnight deadline. The decision was taken to extend that deadline by two days. It was absolutely valid in terms of ensuring that citizens could register, but the implications were knocking on significantly to the election because poll cards could not be sent out, postal votes had to be delayed—you are knocking into the elections process. Every time a change takes place to the system, the key point is the implications elsewhere in the system, because it is the same people basically running both parts of that.



Louise Round: Just linking to that, most local authorities now are thinking in terms of the legal support and the lawyer's interpretation of what a piece of legislation might mean at short notice. There are not people sitting there with the sort of expertise that Mr Paines QC has. They have to go and look it up, and if they do not know where to look, it is not immediately obvious which piece of legislation, which piece of secondary legislation or which schedule as amended to go to. It is a bit better now that you can do legal research online, because in the old days you had to just hope that the Encyclopaedia of Law, which was a physical document, had been updated in time and someone had put the right pages in the right place, which they did not always manage to do. But, anecdotally, even some of the online legal research providers cannot keep up with legislation. There is always a risk that, even if you find the right bit, it has not been updated properly.

Q58 **Dr Rupa Huq:** Do you think the sanctions are enough when electoral law is broken? There is the fine for Vote Leave, which they were going to appeal. They have now dropped that, which is almost admitting—

Louise Round: It is probably not for us to comment on that.

Peter Stanyon: No, unfortunately. I would just add to what Louise mentioned in terms of the complexity. Looking ahead to May of next year, with the elections taking place, you have the police and crime commissioner elections, the combined authority mayoral elections, district council elections and parish council elections. They all have different returning officers, but nowhere in law does it say who is the one who has the overall control over the whole election. Because the PCC and combined authority in certain areas are regional elections, they may well be deemed to be more important than the districts, but if you ask the districts, they are more important than the combined authority mayoral. That is not codified. It will be sorted in terms of returning officers talking to each other, but there is also the potential for there to be, "I am sorry, I am counting my votes here," rather than bowing to a different view. It is those sorts of things. The different streams are not obvious, but they will have to be played out between now and May of next year.

Q59 **Dr Rupa Huq:** On snap elections, this last European one was not anticipated until quite recently. Do they put pressure on the system even more?

Peter Stanyon: Absolutely. In fact, talking to colleagues, it was a 27-day election for the European on a regional basis, and that was harder to arrange than the unscheduled parliamentary election because all of the work and communications for the parliamentary is done through the wider media. For the European, there was confusion. It adds complexity.

Louise Round: In some places in districts, we were still running the district elections. We were running two elections at an overlapping time with slightly different timetables and slightly different rules, with a core team of about three or four staff.



Q60 Chair: How much do you, as an electoral administrator, dread elections coming around? How much do you feel personally, either reputationally or even financially, exposed to perhaps making the wrong decision or failing to spot in time something that was going wrong? How onerous is the responsibility?

Louise Round: It is both an honour and onerous, in the sense that it is fundamental to our democracy that these elections run properly, and to do it right is incredibly satisfying, but at the same time you are acutely conscious that if you get it wrong you may disenfranchise someone.

There is the risk of electoral petitions, with the consequent costs. We are personally financially liable as returning officers, so there is always that quick check with our insurance policies that they will cover us for the election that is coming up. The quicker they come up, the more likely you might be to forget to do that. Our local government insurance policies have an excess of around £75,000, which might be all right for the councils, but is probably not great as an individual.

Absolutely, we feel the pressure. We are glad to do it, but certainly in the three or four weeks running up to the election, and particularly at the count, when it all comes together and you will know whether it has gone right or wrong, the pressure is huge.

Chair: Anything to add?

Peter Stanyon: I would just echo those thoughts, and say it is easier to plan when you know the election is coming six months out than it is when it is 25 days away.

Q61 Mr David Jones: I think you were both present when the first panel gave evidence, and you will have heard them say that returning officers are exclusively accountable for the conduct of elections in this country. You agree with that analysis, I take it, and you have just indicated the extent to which returning officers can feel vulnerable and exposed. What support do returning officers have from other organisations, whether before the election or in the heat of the election itself on election day?

Louise Round: Generally, we work closely with our colleagues in the AEA. Part of my role in Solace is to try to improve the degree of support we give each other. There are a few of us who have been around the block a few times who will always be on the end of a phone if people need some technical emergency support, but we need to think about how we refresh our training for returning officers. They are not always chief executives of councils, but probably a majority are. They may come through the ranks of local government and become a chief executive, having been responsible for social care or something in the past, so it might be that the first time they have had to be a returning officer is within a few weeks of the election coming forward. We need to make sure that the training, induction and support given by Solace in conjunction with the AEA, the Electoral Commission and the Cabinet Office is proper



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and coherent. It is about both good training and then someone to call on the day when it is not going as well as you would hope.

- Q62 **Mr David Jones:** Who is available, Mr Stanyon, at the AEA to respond on the day if there is a query from a returning officer in distress somewhere in the country?

Peter Stanyon: There will be myself, with the experience I am able to give. I have probably two or three colleagues who would be on the end of a phone. We are a very small organisation. The crucial bit to it is that the AEA, the Electoral Commission and Solace cannot tell a returning officer what the answer is, because there is personal liability to that answer. It generally tends to be, "These are the options you have available to you to resolve the issue you are facing, but ultimately it is your choice." The reason elections work generally very well is because of the peer support around from colleagues at returning officer level and electoral administrator level, with the Electoral Commission being able to provide support and guidance as well. But, ultimately, it will rest in the laps of people like Louise in terms of which is the right decision to take at the right moment.

Louise Round: The Electoral Commission do have a duty system. They do have a regional support officer whose mobile number you have for the 24 hours through the electoral period, but, as Peter says, it is advice rather than direction.

- Q63 **Mr David Jones:** Is that 24-hour number heavily used at election time?

Peter Stanyon: I cannot comment on the Electoral Commission's. For myself, in the run-up to the locals and Europeans, I would anticipate four, five, six, seven calls a day. It just depends on what the issues are. A quieter election, I will get fewer calls.

- Q64 **Mr David Jones:** We have heard that election courts are responsible for adjudicating as to whether an election result is safe or unsafe. What is the role of the returning officer before then if the returning officer had a concern that there had maybe been malpractice in the context of an election? What would be the returning officer's role in those circumstances?

Louise Round: We would have no role in the electoral petition process.

- Q65 **Mr David Jones:** No, but prior to that. If you, as a returning officer, suspected that there was large-scale abuse of the system, to what extent would you intervene?

Louise Round: If it was something within my own control, obviously that would be something I would have the responsibility to sort out. If it were a fraud issue, then it would be a matter of contacting the police.

- Q66 **Mr David Jones:** You would refer it to the police?



Louise Round: If I believed there was electoral fraud being committed, I would contact the police. We often get queries on the day or in the run-up to the election about other electoral offences. There is some confusion about who is responsible for those, and we also refer those to the police or up to the commission, although they would refer back to the police. I have to say the police sometimes are very good. They appoint a single point of contact. They are not always fully aware of what the actual law is themselves, because it is so complicated, but if it is a criminal offence, it is the police's jurisdiction.

Q67 **Mr David Jones:** If the returning officer has sufficient concern, can he or she refuse to make a declaration in an election?

Louise Round: It is not my understanding that we can, no.

Peter Stanyon: No, I do not believe the returning officer can. We follow the process. I speak from experience, where there was an allegation of an incorrectly completed consent nomination at a local government election, which we passed to the police. It subsequently went through to a conviction. It was one where we had our brain cells ticking over. Would we allow that person to be elected to the local authority if they received the most votes? The view we came to was that we would have to, because that is what the process is. Fortunately, they did not get enough votes to get elected and we did not have to cross that line, but Louise's position or the returning officer's position is very much to comply with exactly what the book says. Then it is for the process, which may be a petition, to confirm whether that action is correct or not.

Q68 **Mr David Jones:** Even if you have suspicions of large-scale fraud in a particular election, all that you can do is to make the declaration and then refer the matter to the police for investigation?

Peter Stanyon: Yes.

Q69 **Chair:** To what extent are the police an appropriate resource for adjudicating on whether to prosecute on an electoral offence? You say that they appoint an officer who might gain a bit of expertise, but it does seem odd that we are preoccupying the police in such a technical area.

Louise Round: That is a very valid point. Last year I had a case around a complaint that there was no imprint on a leaflet, and I referred it to the SPOC, assuming that it would wend its way through the process.

Q70 **Chair:** The SPOC?

Louise Round: Sorry, single point of contact—the police contact appointed for our area. The local sergeant called the agent in and gave them a ticking off, which was quite entertaining. I would have thought that the process would have gone much more up the ranks of the police in Surrey, but it did not. On the spur of the moment, you probably have to resort to that kind of activity. In the longer run, if it went to



prosecution, obviously that would be a CPS issue and would need detailed legal advice from those that know.

- Q71 **Dame Cheryl Gillan:** I suppose I ought to declare an interest as I am one of the returning officers for a fairly low-profile election that is going on at the moment, but I just wondered, Mr Stanyon, how wide your advice is offered to returning officers. Do the political parties ever approach you about the elections, for example, that are going on for the leader of the Liberal Democrats and the leader of my own party?

Peter Stanyon: I have been approached once by a political party when postal voting on demand came in, and they wanted to understand the handling aspects of postal votes and the like. That was to a local constituency party. Generally, no, we do not have regular contact with political parties. It is something I think it would be helpful to do, to be honest.

In terms of the advice, the way that the process works, I would guess, is that there are a number of routes through Solace and ourselves. There are also those who are delivering it, which is where we are able to provide that guidance as to what you might consider doing. A lot of that will come through the training that we deliver directly. We have a qualification that is now widely held as being required by electoral administrators.

When the AEA was set up 31 years ago, it was basically because there was nothing in place at all. The reason it has developed into the body it is is because it is about the sharing of good practice. We work alongside the Electoral Commission, Solace and so on to do those things. There is no right or wrong way, because the issues in Birmingham will be completely different to the issues in a smaller local authority just outside London, for example.

- Q72 **Dame Cheryl Gillan:** I take it from your answer that you would be very willing to provide training to individuals like me or within any political party that found themselves as the returning officers for any election?

Peter Stanyon: Absolutely. A lot of it comes down to what is process. It works the other way as well. The 650 local authority or constituency returning officers will, effectively, all be individually undertaking briefings with parties, agents, candidates and prospective candidates before elections. One of the big frustrations is to make sure that the nomination paper that comes through is exactly right, because we do not want to have that debate.

We want to understand the process about postal voting. We want to understand the deadlines about registration. Anything that will mean that the local activists and the national parties fully understand what is on the other side of the fence—that returning officers and registration officers are not trying to be difficult, and are just working to the rules that are set—would probably be very helpful.



Dame Cheryl Gillan: I probably need your phone number. Thank you.

Q73 **Eleanor Smith:** What is your opinion of the Law Commissioner's report?

Louise Round: It is very long. The fundamental tenet underneath it—that the law needs reform and consolidation—I think everybody in the business, as it were, would agree with, for all the reasons we have just explored. It is very thorough. Not all of the recommendations everybody will agree with, but the vast majority of what they are recommending was supported more or less unanimously by their stakeholders. It is a very thorough and commendable piece of work.

Peter Stanyon: I absolutely agree. It goes to the technical. It is not, in many respects, the high-level sort of stuff. The memorandum they were working to was slightly constricted in terms of consolidation of the existing law. Maybe we have reached the point now where we need to start to look at, "What is the law for the 21st century?" Since they did their report, I have already talked about the fact that individual registration has kicked in, and the whole focus of registration is different now. Other elections have since come in on top of that as well. There are some brave decisions in terms of changes.

Q74 **Eleanor Smith:** Do you think that there are points of the law that they did not consider that you would regard as a priority for the reform?

Louise Round: No. As Peter says, for the time it was written, it covered everything I would have expected it to. We are now moving in London to electronic counting and what is going to be the position around electronic voting, if ever, but those were probably not sufficiently close to people's thinking when the report was written.

Peter Stanyon: The other one that was specifically not considered was boundaries and boundary maintenance. We have polling places boundary reviews going on at the moment, run by local authorities. We have the local government boundary reviews and the parliamentaries in the offing, for example. At the moment, there is a disconnect between all of them. That was not looked at, but may be something in the future that ought to be considered in the round.

Louise Round: Going back to the urgency point, what we would not want to see is this consolidation waiting for all those new things to come onstream. It would be better to have a clean sheet with one piece of legislation that embodied everything and then to amend that rather than wait and wait.

Q75 **Eleanor Smith:** It has been suggested to us that there should be a panel set up to continually review electoral law to keep it updated. Would you welcome such a proposal?

Louise Round: Yes. I think, as in the previous answer, that that is the Law Commission's role. That certainly needs to be kept an eye on, otherwise we will be where we are again in 50 years.



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Peter Stanyon: I absolutely agree. I was quite taken by Dr Clark's proposal because it then does not become huge change every 35 years; it becomes more of a gradual change that is appropriate, and a lot of the unexpected consequences can be removed by further thought on, "What is the implication over here on the other side of the coin?"

Q76 **Mr David Jones:** You heard the discussion in the first panel about the level of personal liability of election agents. Is it your experience that people are being put off becoming election agents because of that level of personal responsibility?

Louise Round: I have not particularly noticed that. It tends to be the same agents that pop up every year, but that is to be expected, I suppose. In my own area, there has been a huge increase recently in independent candidates or candidates from residents' associations rather than the main political parties. I do think that is another argument for making the law clearer, because they do not have the backing of the political party machinery at all to give them advice. I could not say I have noticed people being put off being agents one way or the other.

Peter Stanyon: No, I think it has become more complicated recently. Certainly, one of the advantages to the electoral community is the fact that if there is a query in relation to a number of the agent responsibilities around expenses, in particular, you liaise with the Electoral Commission because they are the arbiter on whether that is right or not. In some ways—defensively—it is, "Talk to them," but it has certainly become more complicated with the changes to party political rules, donations and the like. I would not necessarily say I have seen people be put off, but, equally, you can see the faces dropping when they see the paperwork and the responsibilities that lie with them now as a result of their roles.

Q77 **Mr David Jones:** Did the Thanet case change anything at all, do you think?

Peter Stanyon: It raised awareness of the risks between that national and that local. I am not sure anybody had really worked that through. I have not seen any perceptible knock-on effect from that particular case, other than that it is something that everyone now is aware of—the need to be very clear as to where accountability lies.

Q78 **Mr David Jones:** It is of course a very recent case.

Peter Stanyon: Absolutely.

Q79 **Mr David Jones:** I suppose you do speak regularly to election agents about their responsibility. You have not noticed a change since the Thanet case?

Louise Round: No.

Mr David Jones: No? All right.



Q80 **Kelvin Hopkins:** For in-person voting, how big a risk is impersonation?

Louise Round: I do not think it is a huge risk. You have to be very brave to turn up at a polling station and pretend you are someone else knowingly. I guess this question is aimed at the voter ID proposals that have been piloted over the last two sets of elections. The view of Solace is that it is a disproportionate response to a relatively small risk.

Q81 **Kelvin Hopkins:** Thank you. The public seems to agree with you, because they put as their major risks or concerns, first, the influence of large financial donations, secondly, the accuracy of the voting register, and thirdly, media coverage. Way below those opinions are concerns about impersonation. You do not have any evidence that there is a big risk, but if, as has been suggested, there was a national roll-out of voter ID, it has been suggested that this will pull up the drawbridge and make it impossible for some 3.5 million voters to vote, which would be damaging to our democracy and might even have political implications favouring one party or another. What is your reaction or your view in terms of compulsory voter ID?

Louise Round: The different techniques that have been trialled in the pilots do not all rely on someone having a pre-existing identity card like a passport or a driving licence. There are ways around for people who would not have the right documentation. My understanding for the evaluation of the first round last year—we have not seen this year's yet—is that very few people were turned away from the polling stations being unable to vote. What that does not capture is people who did not go in the first place because they were put off from voting. It would be difficult to use turnout figures as a benchmark for that because they do vary from election to election.

I suppose what would worry me the most, if 2022 is going to be the next general election and if voter ID is going to be rolled out across the country then, is that it would be combined, for instance, with all our London elections that year. You are talking about a huge increase in turnout and much more complexity around the sheer volume. Therefore, I think the risk of disenfranchising people will increase. If it stops being a pilot or becomes a universal provision, I think there is a risk that people will not turn up or not be able to vote when they do.

Peter Stanyon: The pilot demonstrated on the lower turnouts that it was capable. The returning officers and their teams did very well in each of the pilot areas for the two elections. We await the outcome of the evaluations for the last round of pilots, but the big concern the AEA has is the fact that the first full trial will be at the 2022 parliamentary elections, which, as Louise says, will not be just that one election. It is combined with others. Effectively, that will be with local authorities who have not put themselves forward to trial it. It will be with everybody on that basis. We are slightly into the unknown when it comes to that.

Q82 **Kelvin Hopkins:** I mentioned earlier the likelihood of 3.5 million people



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being denied the vote if a system of voter ID with photo ID review was introduced, but the Pickles review suggests that voter identification should be brought in for precautionary reasons. To what extent do you agree with that?

Louise Round: I do not.

Q83 **Kelvin Hopkins:** That is a helpful answer, but on the other hand the voters must have confidence that the elections are legitimate and law-abiding. Finally, what voter ID requirements do other countries have?

Peter Stanyon: Estonia is the best example, with their all-electronic voting with the ID cards. There are various countries across Europe, but it all links back in all of those instances—in Switzerland, for example, where they have some degree of voter ID—to where they have a citizen ID requirement anyway that it is easier to link to. Probably the biggest challenge for the proposal on voter ID here is that that card is not available. That system is already in place in Northern Ireland, but the Electoral Office for Northern Ireland issues a voter ID card where an individual does not have another form of photo ID. It has been dealt with in a certain way in Northern Ireland, which is not the way it is being looked at for the rest of the UK.

Q84 **Kelvin Hopkins:** We understand that Northern Ireland has been a special case in the past. You are suggesting that only in those countries with ID cards in general use would it be required to show photo ID but that in other countries, like Britain, that do not have ID cards, it would not be required?

Peter Stanyon: Not that we are aware of, no.

Q85 **Dame Cheryl Gillan:** Doesn't the production of ID and photo ID increase public confidence in the process of elections? I have just led the Council of Europe election monitoring team in Bosnia and Herzegovina, and I was part of the Turkish monitoring team. It seemed to me that the production of ID in those instances made people have much more confidence in areas where perhaps they have some reason to have less confidence in the electoral process. Wouldn't it be a good thing for increasing public confidence, first of all?

Peter Stanyon: The British electoral system is based on trust and has always been based on trust. Interestingly, the only questions that can be asked in a polling station are, "Are you the person shown as X on the register? Have you previously voted?" If it is a yes and a no, that is the process. There is no evidence of there being significant voter fraud taking place. I think that is recognised. Equally, the key point to the process is exactly what you said at the beginning: it comes down to what is the trust in the system.

Any returning officer or electoral administrator purely wants the results to be trusted as the correct result, and free and fair access. If that engenders additional steps being taken, if that is the view, that needs to



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be manageable in the polling station or in postal voting and so on. We believe the system is still trusted. Is there enough evidence to show that it is being less trusted that would engender that to come through?

Q86 Dame Cheryl Gillan: Surely that diminution in trust is going to be gradual over time, so you are going to have to make a judgment at some time about when you should step in. Isn't it better to try to make those adjustments at a time when there is still trust in the system, before trust in the system fades?

Peter Stanyon: I think, from any administrator's aspect, it is not so much about the bigger picture of something like voter ID. It is more about what are the implications to the voter in the polling station. One of the concerns that we have is that, assuming it rolls out in 2022, will there be queues at stations, will there be a disproportionate delay? There could be or couldn't be, because it has not been tested for that scale of turnout at the moment. We would always argue for the point that any change to electoral law should be tested to see whether there are knock-on implications. If there are knock-on implications that can be dealt with, that is the right way to go. If they cannot be, we need to think again.

Q87 Dame Cheryl Gillan: A lot of colleagues in the Council of Europe express surprise that the UK is still based on a system of trust. How often do you talk to the Venice Commission about changes to electoral law and the administration of elections?

Peter Stanyon: We do not. We haven't, no. I think it would be the Electoral Commission that would have those conversations rather than us.

Dame Cheryl Gillan: That is quite proper. I thought that you might too, because there are a lot of proposals. The Council of Europe has just finished a report—I was the rapporteur—on changes to electoral regulations that we are recommending across the 47 countries for the rules on referenda. Likewise, the Constitution Unit has done a piece of work on that here, which I was part of. I wondered whether you had engaged with those as pieces of work, because I think you would probably have quite a lot to offer from the practical, on-the-ground perspective.

Q88 David Morris: How serious is the risk of postal voting fraud under the current system?

Louise Round: The risk is clearly there. There is probably a much greater risk of postal vote fraud than there is of fraud in the polling station. I think it is impossible to quantify the extent to which it happens, but even despite setting up the software that we have to detect fake signatures and all those things, I imagine that it is not fool-proof. People can fake signatures, and there is no oversight of that when it is going on in people's homes. There is a risk, counterbalanced by the ability to allow people to vote who cannot get to the polling station. We take all



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precautions through the postal vote process and have software to make it as tight as we possibly can, but it is a risk.

Peter Stanyon: The application process with the changes that were brought in after the Birmingham cases in 2007—the signature, date of birth and even the checks that Louise referred to—has certainly tightened it up. I think the actual administration of it is reasonably robust. However, with any absentee ballot, as soon as it leaves the grasp of a returning officer, we don't know who fills in the actual ballot paper. It comes back in an envelope, sealed, and we just check the signature and date of birth. We cannot control what is out of sight.

Q89 **David Morris:** I know you were saying about the software, and there is verification in certain counts. Do you think that postal votes that go in on the day itself and cannot be verified should be allowed, or is it up to the returning officers?

Louise Round: We do still verify them. If you remember, there is a table over in the corner with people ploughing through the postal votes that have come in, either handed in at the polling stations or into the council offices that day. We bring our electronic scanner and we verify them in the same way as we would do before the day of poll.

Q90 **David Morris:** In my area of Lancaster, I think there were 1,314 votes put in on the actual day at the count itself. That is a hell of a lot of votes to scan. I have been to the postal vote openings that they do over a period of a couple of hours, and it takes a long time with a team doing it. How can that be robustly tested if it is just being done with a scanner on the day at the count?

Peter Stanyon: It is the same process. Exactly the same process has to be followed, from a postal vote that arrives one minute after they have been delivered through the doors, to anything that arrives at the polling station that you are still dealing with at 1 o'clock or 2 o'clock in the morning. There was a change in the law. When it was first brought in, only 20% of postal votes needed to be checked. It is now 100%, so every one has to be checked. I have to say that that sometimes causes frustrations at counts that are going on overnight, because you are waiting for the postal votes to be verified. The same level of scrutiny will be done on the first one as there will be on the last one.

Louise Round: I can echo that as a returning officer—"Have you finished doing those postal votes yet? We have been here for two hours."

Q91 **David Morris:** How do we know how large the risk of postal voting fraud is? How should postal vote fraud be tackled?

Louise Round: I think the answer is that we do not. We don't know what we don't know. As Peter said, the system is based on trust, and we have to trust that most people do the right thing. We do not know how many people would be doing the wrong thing.



Q92 **David Morris:** Do you think campaigners should be banned from handling postal votes?

Louise Round: I think that is right. Keeping the distinction between the administration of the process and the campaigning is important, and that is what we are here to do. If political agents want postal votes to be issued, they should contact us and let us do it.

Peter Stanyon: That is one of our recommendations and has been for a while, on the basis that it comes down to transparency and trust, making absolutely certain that individuals cannot be coerced into providing votes very easily in that sort of way. How that can be proscribed is quite difficult. Who can handle them, and who is a campaigner and who is not, is very difficult to define in law, but ultimately that is a straightforward, very transparent check to put in place to show to the public that everything is being done above board.

Q93 **David Morris:** Is it normal procedure to tell someone if a postal vote has been rejected and, if so, how long does it normally take for the person to know about it?

Louise Round: We are legally required to write to everybody after the poll to explain that their vote was rejected and why. I think it is three months to get the—

Peter Stanyon: It is within three months of the date of the poll.

Louise Round: Interestingly, the first time we had to do that, I imagined there would be a whole tsunami of complaints, but nobody responded the first time we did it. We are talking tens of people—it might be 70, 80, 90 people—and no one wrote back to say they were outraged.

David Morris: I was one of them in one election a long time ago.

Q94 **Chair:** Can I ask what may seem a slightly loaded question, but it is a genuine inquiry? Tandridge is a very different place from, say, Tower Hamlets. To what extent do you think the evidence we are hearing from you both today is a reflection of the real hotspots of concern—like Northern Ireland was a hotspot of concern and was addressed in a different legislative framework? Talk to me about the experience we have had in Tower Hamlets and in other cities, which I will not name, but where we know that there have been much more acute problems.

Louise Round: Obviously, the risk is far greater in places where there has been malfeasance reported previously. The regime needs to be the same, and I guess you need to make sure that you are training electoral administrators and your agents much more closely and keenly to look out for risk factors: huge numbers of late applications for postal votes, and lots of postal votes coming from the same address, all coming in on the same day or being handed in together at polling stations. All those things might set alarm bells ringing, and you need to be doubly sure that your



administrators in those areas where there can be risks are aware of them.

Woking in Surrey has had a similar situation, not very far away from me, and I think they had a couple of petitions in the last few years, so they keep us up to date with what the risks are. I agree that different parts of the country pose different risks, but the legislative framework needs to be the same. It is a question of having training for the people administering the system in the relevant places.

Peter Stanyon: I think one of the positive effects of the issues in Tower Hamlets, which were very well documented, as we know, was exactly as Louise mentioned. It raised awareness, in the sleepier suburbs, if you will forgive the terminology, where you would not expect there to be quite the same issues, of the risk factors that have been identified—there are too many applications coming from one address, or there are too many names looking the same that are flagged up—and the fact that electoral fraud can take place anywhere. In the areas where it has been well documented, there will be a lot of resource and time spent looking at that, but, equally, the good practice that has come out of that has meant that, in the areas where you would not traditionally expect it, the same sorts of checks are being done through software systems and the like to make sure that the public can trust the system.

Q95 **Kelvin Hopkins:** One problem that arose in the past, I understand—it may not be so much now—was that care home managers would often fill in postal vote forms for residents, some of whom might suffer from dementia, for example. That could be a sort of fraud. In other areas, of course, you could find large numbers of postal votes handed in, all in the same hand and all with the same colour ink or whatever, but there are ways of checking on these sorts of problems. I am not suggesting that some of them are massive now, but they ought to be stopped if they happen.

Peter Stanyon: They are exactly the sort of things where the red flags will say, “Something doesn’t look right. We need to investigate.” That could be through internal investigation directly with a care home, for example, or if there was a perception that there was genuine fraud being perpetuated, that is when the police will be called in because they have the expertise to do those sorts of things. There are things that possibly may have gone under the radar in the past, but the very high profile in certain places across the UK has raised them for us to be aware of as standard practice.

Q96 **Eleanor Smith:** Do you have concerns with other aspects of the absent voting, such as emergency proxies?

Louise Round: I don’t particularly, but it is probably something that our administrator colleagues have to wrestle with more frequently.



Peter Stanyon: It is "wrestle". There is the lateness of the applications very sensibly brought in for, as things stand, medical emergency and working away at the last minute. As it needs to be countersigned, it is the old system of absent voting, which means there is that level. When you ask if we have any concerns about it, it is more the fact that quite a limited number of individuals can use that route. It can sometimes get very frustrating when somebody has been called away to care for an elderly relative or because someone has passed away, and they have to go to another part of the country and they cannot register in that way. They are being denied a vote because of circumstances changing late in the day, whereas if you are posted for work or had fallen ill yourself, you can vote. The system itself works, but it is whether it does everything it needs to do to allow access to those who genuinely need it in an emergency situation.

Q97 **Kelvin Hopkins:** My question is to Peter Stanyon specifically. Your evidence said that it is not possible to identify how many people have voted twice in a general election by voting in different areas and that that this is a concern that should be tackled. How should this issue be tackled?

Peter Stanyon: This came about because of the last parliamentary election that was unscheduled, where there were a number of assertions on social media that students had voted in two locations. How can it be checked? Each individual electoral register, each individual returning officer, works independently, so there is no joined-up method of doing so. It does beg the question whether there should be some degree of centralised register of voting or something like that, if this is perceived to be a real risk to the process. It goes to the residency issue that our colleagues in the Law Commission were talking about earlier. As things stand, you can register in more than one location, but the check is not in place. We are working on that trust system that someone has voted only once at a parliamentary election in the one location. The only way you can do that is to have a central register.

Q98 **Kelvin Hopkins:** It would suggest that, rather like personation, it is a minor problem in terms of the numbers. It is a question of voter confidence in the integrity of the electoral system. Is it still appropriate for people to be able to register in a secondary residence, given that we now have postal voting and the problem is not sufficiently serious to warrant a major input of resource to deal with it?

Peter Stanyon: I would echo what the Law Commission said—I think it was Henni—that the discussion probably needs to be had now because of the nature of why people are able to register twice. There is case law to do with students, which reinforces that right. There are arguments for it in the sense that, "I have a tie to the local community, so I should have a say in the way that I am represented nationally and locally." Equally, somebody who has more than one property gets a greater say over the people who govern them, effectively. All that we would ask for is the certainty.



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The bigger issues tend to be—and I was talking to a colleague just the other week about this—with regard to, for example, holiday homes, where, for nine months of the year, the park will be open, and for three months of the year it is not. There will be different views taken by different park owners as to whether they will allow people to register at the caravan. Are they demonstrating residence? As we know, residence has not been defined strictly. It is, “Do you consider that that person lives there?” You can argue that nine months of the year they do and three months they don’t. Is that enough to give them the right to vote in that particular local authority area? Some registration officer will say yes, others will say, “No, they are not really living there. They are there for a shorter period.”

Certainty as to those sorts of things is probably needed more than the issue with regard to voting twice. It is about what rules the registration officer can work to to say, “Yes, I can legitimately say that person should be registered there.” Should it be a default that they are, rather than it being left to the discretion of the registration officer? There are lots of questions thrown back because it is not an easy answer to get to the bottom of.

Q99 Kelvin Hopkins: I would suggest they are small numbers, and the big question is about students, because we could get thousands, if not a million or two, students. Individuals can choose where they register if there is just one registration statement of residence for their electoral purpose, and then they get a postal vote, which I would suggest solves the problem. Are we not making too much about having two residences and the right to vote in two different places? If we just got rid of that, people could choose. Even if they were politically involved, as I would be, I would choose to vote possibly in the one where the seat was more marginal, but, even then, it is the voter’s right to choose.

Peter Stanyon: I think you are absolutely right, but we would still be working on the basis of trust in terms of the applications being made to which local authority you are working to. Without that central co-ordination of the fact that I own one, two, three or four properties, which one am I choosing? I think the Law Commission talked about demonstrating it in terms of if you stayed with two residences, but, “I am going to cast my vote from this particular residence.” That might be the way forward, but it ultimately comes down to trust because there is not a national database of where everybody is residing.

Q100 Kelvin Hopkins: How strongly has the case been made that people should have just one electoral residence? Has that case been made, and is it made strongly, so that people could have only one base where they can register to vote and not more than one?

Louise Round: I think there are a number of arguments to be made, as Peter said, but apart from students, if people are paying council tax in two parts of the country, there is a reasonable argument that they ought to be able to have a say in who is elected to the council for that part of



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the country. I think it is different in a parliamentary framework because you would not want people who happen to have more money and more houses having perhaps more say on who comes to this House. I think it is one of those wicked questions, to be honest with you, but also it is the practicality that no one is required to tell us they have a second residence, so we would not know. If we did know, and people are registering, in my relatively small case of 67,000 people, on the register every year, how much of the time of my three election staff is going to have to be used to put people through some test of how many days they live in one place or how long they stay? I am not sure it is a problem that is so broken that we need to fix it, or to prioritise fixing it anyway.

Kelvin Hopkins: It is just one register. Anyway, I have made my point, thank you.

Q101 **David Morris:** On the point about park homes, I have lots of park homes in my area, and it is about, do you pay council tax on that park home, and they don't. You were saying about, do people pay council tax in two areas of the country? I know that, in my area of Lancaster, we had activists going around asking if there was any junk to be thrown away, and they would take it away. They were after the white cards, and we knew this went on. Those students were not paying council tax in that area, but they were still entitled to a vote because the rolling registration was not updated in real time. Do you not feel there is an anomaly there in that the council tax is not being paid by the students, and it is not being paid by the park home either?

Louise Round: Students might be a different case from someone who just happens to have two houses.

Peter Stanyon: The crucial rule that registration officers have to abide by is: is the person resident? Residency has not been defined, other than the fact that there is the case law with the students in Exeter and Cambridge, which demonstrates where they spent a significant proportion of their time. That is the rule that we are still working to, and that case was back in the early 1970s, from memory. That is the difficulty in defining exactly that.

Q102 **Dr Rupa Huq:** In an age where we live more of our lives online, and not just offline, isn't it time that imprint rules applied to digital material as well?

Peter Stanyon: I think we both agree that any political campaigning ought to be clearly identifiable to the candidate or the parties who are involved. How that can be administered is a completely different ball game, and I am not sure we are experts in how that could possibly be the case.

Louise Round: I think that is right. If it is the party's or the candidate's Facebook page or Twitter account with an imprint on the landing page or the home page, it becomes more difficult for individual tweets and all



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those things to have imprints on them. I think that would be virtually impossible to administer or police.

- Q103 **Dr Rupa Huq:** We have all heard of Cambridge Analytica and the illegal data targeting, harvesting, influence, dark money and all that stuff. Don't you think also that, as you mentioned, platforms should be more responsible? They seem completely unregulatable. How practical would it be to enforce rules on platforms—Twitter, Facebook, the lot?

Louise Round: About as practical as it is to enforce any other rules on them at the moment.

- Q104 **Dr Rupa Huq:** They do not turn up to these meetings when they are subpoenaed. It is like the wild west, isn't it?

Peter Stanyon: I think we will plead the sixth amendment at this particular point. The good news for returning officers, as I said earlier, is that, for anything to do with that type of campaigning, the standard response is that it is an Electoral Commission responsibility. I know that they are very actively engaged in trying to work out what are the right routes for the management of that side of the process, but it is hard.

- Q105 **Dame Cheryl Gillan:** The Constitution Unit, in its report on updating the rules on referendums, looked at this area, and we were very concerned, first of all, because there are varying different restrictions on different media and advertising for different elections. How much of a problem do you think that is for the system?

Peter Stanyon: Sorry, in terms of—

Dame Cheryl Gillan: You have different restrictions on media at the moment, and, of course, social media has now exploded. The rules that govern that are now completely outdated. Do you think that that is a problem that needs looking into?

Peter Stanyon: I would suggest that it is a problem that needs looking into, but it goes back to the root cause, in that the word "broadcasting" is in the Representation of the People Act 1983. I think it is very much based on what it was in 1872. Has the law kept pace with change? It clearly has not, because the change has moved so quickly more recently. I think it very much depends on the type of platform and whether it can be deemed that a political party or a candidate is getting a greater advantage over others. It is all about consistency of message to the electorate. That is the whole point behind this. If somebody has a Twitter feed, everybody can have a Twitter feed, but if one of the providers is providing greater access to landing pages, for example, I would suggest that is a slightly different story. But, at the moment it is not provided for within the electoral legislation.

- Q106 **Dame Cheryl Gillan:** One of the Constitution Unit's recommendations was to have a publicly available and searchable online repository of political advertising, for example. That was not just as simple as it



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sounds, but also included when items were posted on electronic platforms, what groups they were targeted at, and the level of the spend. Is that the sort of thing that you would support or think would be a good way forward?

Peter Stanyon: It is difficult to say.

Louise Round: The risk is that everything moves so quickly, so by the time we come up with a solution for this problem, the problem will be a completely different one. I wonder whether, at some point, we have to strike the balance between not undue influence on elections and just accepting that that is the way the world is now and that we can't clamp down on it and regulate it. It is just not possible; the cat is already out of the bag. But that is just a personal opinion. I am not saying we should not try.

Q107 **Dame Cheryl Gillan:** You are moving towards having a standing committee looking at this all the time and constantly updating it. That is possibly the only way that we will be able to keep pace with the technological changes, particularly over this last period of time.

Peter Stanyon: I think much of it comes down to the public trust in elections. From a returning officer's perspective, the election will be run according to law, and a lot of the debate that is going on extraneously is not directly influencing the actual delivery of the election in terms of the administration. It is to do with the engagement with the electorate, and that then becomes something outside the remit of a returning officer in taking that forward.

Q108 **Dame Cheryl Gillan:** What Dr Huq was referring to is definitely undermining the trust and the confidence in elections. It needs to be addressed, and it can only be addressed by institutions like this one that we are sitting in at the moment, and by constantly monitoring it, presumably. Do you have any other ideas on that?

Peter Stanyon: Ban social media?

Dame Cheryl Gillan: Now, there is a really good idea.

Chair: Thank you very much for your time and for the care you have given in answering these questions. It has been very interesting and informative from our point of view. If you have any other further comments that you want to contribute to our report, do send them in and we would be very grateful to have them.