

Public Administration and Constitutional Affairs Committee

Oral evidence: Electoral Law, HC 2005

Tuesday 16 July 2019

Ordered by the House of Commons to be published on 16 July 2019.

[Watch the meeting](#)

Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Mr Marcus Fysh; Dame Cheryl Gillan; Dr Rupa Huq; Mr David Jones; Eleanor Smith.

Questions 109-201

Witnesses

I: Dr Toby James, Head of Politics, University of East Anglia; and Dr Alistair Clark, Reader in Politics, Newcastle University.

II: Dr Jessica Garland, Director of Policy and Research, Electoral Reform Society; Professor Maria Sobolewska, Professor of Political Science, University of Manchester; and Dr Stuart Wilks-Heeg, Reader in Politics, University of Liverpool.

Written evidence from witnesses:

- [Dr Toby James](#)
- [Dr Alistair Clark](#)
- [Professor Maria Sobolewska and Dr Stuart Wilks-Heeg](#)
- [Electoral Reform Society](#)

Examination of witnesses

Witnesses: Dr Toby James, Head of Politics, University of East Anglia; and Dr Alistair Clark, Reader in Politics, Newcastle University

Q109 **Chair:** Welcome to this further evidence session on our inquiry into the state of electoral law. Please identify yourselves for the records.

Dr Clark: I am Dr Alistair Clark. I am a reader in politics at Newcastle University.

Dr James: I am Toby James. I am the head of politics at the University of East Anglia.

Q110 Chair: Thank you for being with us. We have two panels this morning and we have quite a lot of questions, so we will ask quick questions and if you can keep your answers to less than 55 minutes each, we would be grateful.

How urgent is the need to update and consolidate electoral law?

Dr James: We probably both agree that it is very urgent. It is increasingly urgent and important, especially as we are seeing increasing divergence across the United Kingdom in terms of the writing of electoral law.

I was an adviser to the original Law Commission inquiry. At that moment in time, I was able to submit evidence about the types of challenges electoral officials were facing. They would often say that the law—amendment after amendment and Act after Act—is not understandable to a vast number of administrators. They describe situations in which they are arguing black and white over the law. That is a serious problem and anything that could be done to alleviate that pressure from electoral officials will make elections all the better.

Q111 Chair: Dr Clark, do you have anything to add to that? What do you think are the significant risks that exist under the present body of electoral law?

Dr Clark: I agree with Toby. There are significant risks. There are a number of costs to the current approach. In electoral services departments we have very dedicated people holding the system together, but they are being pushed to the limit. The fragmentation of electoral law does not help in that regard. As well as that, the speed of events and the uncertainty around some events puts them under considerable pressure.

There is a cost to continuing things as they are. Over the past decade we have seen plenty of examples of piecemeal reform, as well as examples of people being denied the vote and administration problems. The system is under considerable pressure.

I will give you three examples. First, at the close of poll in the 2010 general election, queues were built up in polling stations. There was a lack of clarity among polling station staff about how to deal with those queues. Some people were allowed to vote but others were not. That kind of thing could easily happen again. In our research on polling station workers we found that 15% to 19% were unclear about electoral law. You only need one polling station with polling station workers unclear about these sorts of things to get that kind of issue.

The crash of the Government registration website for the EU referendum is another example. That led to emergency legislation, which had knock-on effects on the running of that poll. Finally, there was the issue of EU citizens in the 2019 European elections.

In all those examples, people were denied the vote who were entitled to it and there were additional pressures on electoral administrators, largely because the law was not clear or had not been a priority for reform. A

continuation of those sorts of things is most likely a cost if reform is not undertaken.

Q112 **Chair:** What about the possibility of inconsistent application of the law? Do you have examples you could give us?

Dr James: The Electoral Commission report on the 2015 general election identified 30 returning officers who were deemed not to have met the performance standards. The issues flagged included issues such as ballot papers being issued to voters who were not entitled to receive them, and ballot papers missing from polling stations and lost at verification of the count. Issues at the count included results announced before all the ballot papers were collected.

In some ways it is very difficult to say that the nature of the law was the sole cause of those problems, but it is certainly the case that it was a contributing factor. Research shows that electoral officials are increasingly under stress and under pressure, so the Government could act. Alistair is absolutely right to flag the most recent electoral event—the European elections—as one of those. Recommendation 4.14 of the Law Commission report pointed to how there should be a change in terms of EU citizens’ declaration. It only lasts for one year and they are asking for that to change. You saw at that election, very visibly, the “Denied My Vote” campaign as a result of people unable to cast their vote. A simplified process would make a major difference, and there are concrete examples that the Committee can flag.

Q113 **Mr Jones:** Do you think the system of election petitions as a means of challenging the results of elections is fit for purpose?

Dr Clark: Probably not. I think it needs reform for a number of reasons. First, it effectively goes back to being a Victorian process to some degree. The cost of this is borne by the petitioner, and it is not an inconsiderable cost. They are liable as well, should they lose, for cost, so you need to be fairly sure before you take an election petition further. There is also an issue of the period of time within which such a petition can be lodged. It is only 21 days, with another seven days for particular offences, so it is 28 days in total which, to collect evidence, is a fairly tight period with election petitions.

That really is the only way of challenging an election result in the UK and I think it needs to be thought about such as proposals for parties to be able to put forward petitions—only individuals can put forward election petitions at the moment. That is one suggestion, but I think it needs to be looked at.

Dr James: I echo everything Alistair is saying. From the perspective of the voter, it is a very confusing item. Perhaps you don’t want to overturn the whole election, but you want to register a complaint because perhaps you had turned out at a polling station and been told you can’t vote. How does an elector deal with that? Obviously, they will not want to go down a petitions route. One route for them is to write to their returning officer, but what we do not have—what the Law Commission recommended and

what the Committee could endorse—is a simplified, centralised way in which a voter can make a complaint about their voice or their vote not being cast.

Q114 Mr Jones: Would that stop short of overturning the election result?

Dr James: Yes, it is a separate issue. If you want to go and vote, and you or a family member or someone else is not able to do so, you want to complain. In the same way, we want to complain about our insurance or whatever else—an online system where we can see what is happening and we can count the number of problems. There are two impediments. One is that everyone is being pushed to individual returning officers rather than having one central location—an ombudsman or whatever else—to apply to.

The second is that the returning officers and electoral registration officers are exempt from freedom of information requirements, so we cannot ask returning officers, “How many complaints did you have? What were the nature of those complaints?” We do not know how widespread problems are, and we are therefore not able to solve them, so the Committee could certainly strongly recommend that simplified system from the perspective of the voter.

Q115 Mr Jones: Dr Clark, returning to your point about costs, if an individual is seeking to overturn the result of an election, is it not right that that should be regarded as a very serious matter, and there should be some means of deterring people from taking capricious actions to try to overturn elections? Therefore, is it not right that there should potentially be a liability and costs if the applicant fails?

Dr Clark: There is a tension there, because you do not want frivolous challenges to elections. That is undoubtedly right, because that would then lead into potentially undermining the results of the elections and so on. However, I am not sure costs are the right way of doing that, because this involves considerable challenges for the individuals involved. We heard with the petition in Tower Hamlets serious concerns about those taking the petitions forward potentially having their homes at risk and things of that sort. Do we want to go down that road? I am not so sure, but you are absolutely right that there is a tension. We do not necessarily want to be increasing frivolous complaints, but we do want to be dealing with issues, and I think we need to do that.

Q116 Mr Jones: Are you suggesting that there should be a cap on costs?

Dr Clark: Perhaps a cap on costs, or perhaps another way of dealing with some of these more administrative issues beyond the petitions system, and the petitions just become something far more serious. A cap on costs may be one way of doing so.

Q117 Mr Fysh: What points were not raised in the Law Commission interim report that you think should be considered as a priority for reform?

Dr Clark: A number of things—I listed four in my written evidence. One that I know has been the subject of debate, and that we found in our research certainly needs reform, is overseas voting. The deadlines for that



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are typically very short. There are typically problems with getting votes out to voters overseas and then getting them back in time, so some form of reform of that system is fairly urgent. The issue of EU citizens post Brexit is not going to go away. I do not think that could have been foreseen by the Law Commission report, but it is going to need dealing with fairly urgently.

There also needs to be a bit more clarity around the funding of electoral administration. One thing I have found in my research is that the funding of electoral administration buys the capacity to do the things that we are essentially talking about: providing well-trained polling station staff, and so on and so forth. What is often not realised is just how small electoral services departments are. Sometimes, in some councils, there are only maybe two or three people, so a legal problem can actually make a big difference to the workload of those groups when they are dealing with a complex administrative process. The funding of electoral administration needs to be given some thought.

Finally—I think this is under-appreciated in relation to electoral law—there needs to be some consideration of the implications of local government outsourcing of staff when it comes to election time. Returning officers seem to be finding that, during elections, if there is a crisis of some sort, they cannot necessarily just go and shift staff from one function to another because they are no longer actually contracted by the local authority but by a subcontractor to deliver services. It is not directly an electoral law issue, but it does have an impact on the delivery of electoral administration, so I would argue those four things need looking at. I don't think the Law Commission could have known about some of those things, particularly the post-Brexit EU citizens issue.

Q118 Mr Fysh: Do you have any other thoughts, Dr James?

Dr James: Yes, I flag electoral registration in general as being a major issue. The Law Commission report was conservative in so far as the idea was to consolidate existing legislation and bring a consensus around that. Since then, there has been a growing problem with electoral registration in the light of the move to individual electoral registration and the option for voters to register online. It is estimated that roughly 8 million eligible voters are not correctly registered. We know from our collaborative research that the biggest problem at polling stations is people turning up wanting to vote and not being able to. That was present in local elections in almost half of polling stations.

That is a change to the Law Commission's priorities, but issues such as automatically registering 16-year-olds or having a single electoral register so that the process is simplified can help deal with under-registration and some of the funding problems that Alistair and I have been working on.

Q119 Mr Fysh: Is there a risk that if electoral law is consolidated, it becomes fragmented again in the future? How do you stop that happening?

Dr Clark: There is. Assuming consolidation happens, the risk is that it gets put away for another—I think you heard in the last evidence session



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that it is four decades since it has been looked at comprehensively. The risk is that that then happens again: "It's fixed therefore we'll leave it." The important thing would be to keep it under review because, quite simply, with the internet and so on, we are in a faster moving environment now than we were four decades ago. Some form of keeping it under review with a standing committee or something of that sort to look at various aspects at the time would be very important.

Q120 Mr Fysh: How would such a proposal for a deliberative panel or a standing committee work in practice?

Dr Clark: I have been struck not just by how long it has been since electoral law has been looked at, but also that some committees have been trying to innovate around various issues by introducing many public and deliberative processes. My idea here was for a standing group, led and moderated by a neutral or trusted figure and comprising stakeholders with expertise that would meet two or three times a year to review particular aspects of electoral law—in other words, not electoral law in the round but various aspects that would be identified at the beginning of the year and then to come back and make recommendations.

Where would this be responsible to? It is important that it is responsible to Parliament, for the simple reason that this is where electoral law is made. In that regard, reporting to this Committee would be the appropriate place, through an annual evidence session and an annual report of progress on whatever aspect of electoral law was being discussed. The explicit function would be just to review and recommend updates to electoral law. Such a committee would be involved in trying to build a consensus around areas that could be reformed, such as avoiding the perception of partisan influence. That is how I see it working—meeting two or three times a year and being responsible to Parliament and probably this Committee.

Q121 Dame Cheryl Gillan: We have had conflicting evidence on agents and particularly the liability of agents for campaigns. Some say they would not encourage people to act as agents because of the liabilities. Others say it tends to be the same agents who pop up every time. Do you have any evidence or research that means we can take firm views on the effect of personal liability on people's willingness to act as agents?

Dr Clark: I do not think there is any research. I think one of your written submissions from Professor Justin Fisher talks about a survey of agents he has done. He points to the fact that effectively agents have gone from being more professional to being fundamentally volunteer agents, but ultimately I am not aware of any real research into the effects of potential liability on them. I think you heard from the AEA in your last evidence session that they did not think there had been a problem but, on the other hand, if you have volunteer agents, it may well be that that is quite a big responsibility, and some will balk. It is a responsibility over time, not just for the short period of an election.



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Dr James: It is not directly on agents per se, but some of the research we did for the Electoral Commission on the Brexit referendum was about the types of problems that are experienced at polling stations, counts and so on. One of the themes that came through was that we were living through new times, with new political forces, new agents and new campaigners getting involved in politics. As a result of those changes, some officials were less familiar with the electoral rules. They were not trying necessarily to break the rules or do anything that they should not be doing, but perhaps they had parked a car near a polling station that had campaign material in, or perhaps they had been in an inappropriate area within the counting place. It was not people trying to break rules. I guess there is this theme about information, education, signing up to codes of conduct—that pressure.

Q122 **Dame Cheryl Gillan:** Would you say there has been a diminution in the professionalism of agents?

Dr Clark: I think the evidence from Professor Fisher's surveys in that regard would suggest that there has been. Certainly, the parties' employment of professional agents is less now than it was, and quite starkly so, but we are in different times. What is important is that there is some renewal of party activism going on. Parties seem to have had various membership surges. In fact, most parties have now experienced those. Whether that brings a new cadre of people into acting as agents remains to be seen, but those professional agents are no more in the way they used to be.

Q123 **Dame Cheryl Gillan:** I have to declare an interest, because I have a professional agent, and have had for some time. Do you think there should be compulsory training—this goes to Dr James particularly, as you mentioned education and training—for people serving as agents?

Dr James: Yes. That is an area I have directly conducted research on, but intuitively it makes sense that training should be provided and perhaps audited. That seems sensible.

Q124 **Dame Cheryl Gillan:** Who would provide that?

Dr James: There are different options. Obviously the Electoral Commission already provides detailed guidance and information for candidates and agents—that is published on its website and is freely available. The changes and changing times that happen periodically in politics mean that it is about educating them and ensuring that they are taken to those resources.

Q125 **Dame Cheryl Gillan:** Lastly, because of the complexity of the law, would there be room for a senior agent to be responsible, say, for several candidates for several constituencies, with a level of junior agents? Is there something revolutionary structure-wise that we could look at that would enable the enhancement of the professionalism without putting the cost up? That would perhaps encourage people to come in, because there would be a junior or supported level, with a senior agent acting in a multiple position in multiple constituencies.



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Dr Clark: I would add to what Dr James said, in that I think it is the responsibility of political parties to be training their agents. I know the party headquarters do have compliance staff and so on, and use the support of the Electoral Commission.

In terms of a regional agent, if you like, I think, intuitively, that that makes sense. I do not think there is anything to stop political parties from running such a structure as it is. There is an analogy with how returning officers and the Electoral Commission have run referendums, for instance. In the EU referendum, for instance, they appointed regional counting officers who were responsible for supporting and leading the regional teams. I think, intuitively, that something of that sort could work, but it is down to political parties, and I do not think that should supersede the liability of agents at constituency level.

Q126 **Mr Jones:** To what extent do you think that candidates and their agents should be liable for the actions and spending of third parties?

Dr Clark: The third party issue is a very difficult one. It is difficult to get to grips with who actually are third parties, to some degree. My gut feeling is that candidates and agents should still be liable for their own actions, but, for third parties, there needs to be some way of working out who they actually are campaigning for and so on. It is not clear to me that that is evident in the law as it stands, and that is something that needs further reform.

Dr James: I don't wish to add to that.

Q127 **Mr Jones:** Do you think it is right that candidates or agents should be liable for notional spending that they have never authorised?

Dr Clark: One difficulty with the current system is that it is largely an archetype of the first-past-the-post system. It is often forgotten in general elections that all that people are doing when they go to the polling station is casting a vote for a local candidate—not for a Government, but for a local candidate.

There are plausible arguments for potentially changing the amount that can be spent at local level, or things of that sort. Because of the fact that, essentially, campaigning under first past the post is local, it is right that there are these localised limits. If people want to argue for alternative, increased spending on it, that is fair enough.

Q128 **Mr Jones:** That question was thrown into focus, of course, by the Thanet case.

Dr Clark: Indeed.

Q129 **Mr Jones:** What would you say are the implications, long term, of the decision in the Thanet case?

Dr Clark: To my mind, there are two implications. One is that it was fairly clear from what the CPS and the Electoral Commission said that the party involved had been trying to push loopholes between the national and the



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local campaign. Those distinctions between the national and local campaign possibly need to be clearer. What happened in Thanet and all the other investigations that went on has focused minds in that regard, hopefully within political parties and within regulators. To my mind, that is the main issue. Where is that line drawn between the local and the national campaign? That is something to be argued out.

At the moment, if it is for the candidate—it is effectively local. If it is for the party, it is effectively national. That could probably be more explicitly set out in electoral law. That is perhaps one of the confusions that we have. It was well known that there was a loophole there, and it was exploited.

Q130 Mr Jones: Elections frequently have high-profile visits to individual constituencies from the party leader or senior Cabinet or shadow Cabinet members. Those are not always entirely welcomed by the local candidate because it means he cannot get on with his canvassing. That, of course, frequently comes at considerable expense. Would you say that it is right, in cases such as that, that the local candidate should have a liability to account for the additional spending that might have been incurred?

Dr Clark: I am not sure anyone is arguing that. What was different about the Thanet case was the fact that this was sustained time in that constituency. Typically, when a leader visits a constituency on one of their tours, they are there for an hour or two—an hour or two if you're lucky, sometimes—and then move on. In that sense, it is difficult to suggest that that is anything other than part of a national campaign, even if the local candidate is involved. It is fairly clearly part of a leader's national tour.

Q131 Mr Jones: Did the Thanet case change the law, or did it simply clarify the law?

Dr Clark: I think it probably focused minds around this issue.

Q132 Ronnie Cowan: You mentioned first past the post. The Scottish Government is not first past the post, and therefore the funds to promote candidates can be done differently. Given the difference between the elections to the Scottish Parliament, the UK Parliament and the Welsh Assembly and hopefully, some day soon, in Northern Ireland, how can we update and consolidate electoral law in a way that respects devolution?

Dr Clark: The idea of consolidation obviously suggests bringing all this together. In my written evidence, I argued that devolution should be respected in this regard and that any consolidation should not preclude giving further electoral rights to the Scottish Parliament or Welsh Assembly.

Q133 Ronnie Cowan: That doesn't sound like consolidation, to me; it sounds like the opposite.

Dr Clark: Indeed. My argument would be that consolidation is perhaps the wrong way of looking at this. My argument would be that simplification and transparency is how some of these things should be looked at. By definition, that would lead to some degree of consolidation. The electoral



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rights given to the Scottish Parliament and Welsh Assembly should be respected. Should they want to go and change things for their elections, I see no reason why not, but that is obviously contrary to the point—the question is about consolidation. What is important is that areas that could be consolidated relate to House of Commons elections, where there is overlap as it stands at the moment for European elections. There are probably commonalities with electoral law that is made here and those parts of the Scottish and Welsh electoral systems that have not yet been changed by the devolved Administrations, which could potentially be consolidated.

Q134 **Ronnie Cowan:** So you don't see any scope for the Scottish Parliament, in an EU election, to say, "We want to have this set of guidelines and a separate set of guidelines for elsewhere in the UK?"

Dr Clark: No. It is a reserved matter.

Q135 **Ronnie Cowan:** But that's what we're looking to change.

Dr Clark: Yes, but it's currently a reserved matter. That would be an argument between the Scottish Parliament and Westminster—to have powers in those areas. You could certainly make the case. Whether that would be granted or not, I am not so sure.

Dr James: I echo everything that Alistair is saying. Obviously, devolution should be respected, and there are areas of policy divergence that are increasingly happening—16-year-olds are being given the right to vote—but we can distinguish between those issues and issues such as the timetable, which is perhaps less important from a point of principle. Within Wales, for example, there have been attempts to try to implement the Law Commission's proposals. They are now considering the Senedd and Elections (Wales) Bill. As part of that, one of the measures was to try to give Ministers responsibility to simplify electoral law in line with the Law Commission proposals. The challenge they are then facing, of course, is that there is only very limited scope over elections. Therefore, this really needs a UK-wide focus to set out a clear framework.

Q136 **Ronnie Cowan:** Dr James, you mentioned being respected. Is that not the crux of the matter—that if two parties sit down and respect each other, they can make progress, but if one—dare I say it—lords it over the other, we are going to get absolutely nowhere? Not just in this matter, but in others, that seems to be the situation we have found ourselves in recently.

Dr James: Sure. It is clearly a sensitive issue. Cross-party and collaborative working will have to be the key to try to work out a way forward as part of this. There are communities within Scotland and across the UK, within England and Wales. In some ways, it goes back to Alistair's earlier point about trying to have some kind of body that brings everybody in to consider these matters in a more systematic and inclusive way. There is an electoral community, which is something that has grown from the 1990s onwards, and which we previously had not had, but it is very



broken. Trying to find a way—perhaps a body—to work through these issues would be a good recommendation for the Committee to consider.

Dr Clark: Can I just come back on one thing? You are absolutely right that respect between the institutions would be important in this regard. That is probably not at its highest level at the moment. However, I would also suggest that many of the problems each of the institutions is facing are very similar. For instance, there is the issue of how you campaign on the internet and how you regulate campaigning on the internet. That is an issue that I know this Committee has been considering, and the DCMS Committee has been considering it. It is also a part of the Referendums (Scotland) Bill that is before the Scottish Parliament at the moment, on which—I should say in brackets—I am currently advising.

So some of the challenges are the same. I do not think any tensions between the institutions should preclude any consensus in dealing with some of these issues from being sought and arising. With some of them—things like the internet—we are probably better off working together to resolve them.

Q137 Dr Huq: What evidence is there about the most commonly committed types of electoral fraud in the UK?

Dr James: The key thing to be clear on is that electoral fraud is exceptionally rare. There is always the issue of how you measure electoral fraud—we cannot see successful electoral fraud, of course. In terms of prosecutions, the 2018 Electoral Commission report pointed to one case in 2017—2017 being a year in which there was a general election, so you saw millions of votes being cast, and there was just that one single case put through.

Q138 Dr Huq: What type of electoral fraud was that?

Dr James: If you forgive me, I will just confirm that.

Dr Huq: It was personation, I think.

Dr James: That sounds right. That is correct, yes. It was just one case of personation. You do see a considerably higher number of allegations being made, but, still, proportionate to the number of votes being cast, these are very rare. The prosecution data is one way of looking at this problem.

Alistair and I, as I think he has already said, have looked at doing studies in polling stations to ask the poll workers—the people who hand out the ballots—what their experience is of suspicious behaviour or electoral fraud within polling stations. In all our studies, they continuously point to this being exceptionally rare: less than 1% of polling officials were suspicious and said there was something in their polling stations they were worried about. In most cases, the types of problems they pointed to were, in their own words, not necessarily about people trying to deliberately conduct electoral fraud; it was about people perhaps not quite understanding who was eligible and who was ineligible to vote. So in terms of cases and suspicions in polling stations, it is a very low problem.



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Q139 Dr Huq: The figures I've seen this year from the Electoral Commission show that 266 cases of electoral fraud were investigated, and not brought as far as a final prosecution. Last year, 140 were campaign offences, and only eight were personation fraud. As you pointed out, in the 2017 general election only one got as far as prosecution. Do you not think that all this publicity around personation fraud looks like a sledgehammer to crack a nut, when we hear of Vote Leave misdemeanours and all those other things? It is only a tiny proportion, as you say.

Dr James: Yes. We have limited time to pass legislation to try to reform parts of the system. Personation is not a problem; it is a sledgehammer to crack a nut, as you put it. Problems are elsewhere, and this should not be the focus of policy at the moment.

Dr Clark: The only thing I would add to this is that electoral fraud gets used as a catch-all term. One of the things I would say, implicit in what you just asked, is that there are different offences involved here, and campaign offences are not necessarily the same as something being committed by a voter in the casting of a ballot. We need more precision in what we are talking about here. A candidate forging signatures, for instance, is very different from a voter having someone impersonating them or something of that sort, so I would make an argument for that level of precision in reporting some of this.

Q140 Dr Huq: What evidence would you say there is for the national roll-out of voter ID? We know from the pilots that 800 people were deemed ineligible to vote, so it sounds a bit like the American Republican voter suppression thing to rig the system. We know from the Windrush scandal that there are some communities that are less likely to have ID—to have documentation for every year of their life—than others. Some 3.5 million citizens, 7.5% of the electorate, do not possess any voter ID. Isn't it a dangerous policy to penalise innocent people?

Dr James: There is no real evidence to support the need for it; that is reasonably clear. There are also two potential side effects. One is that, as you say, people may not be able to vote as a result of the proposal, on the one hand, because they do not have the form of ID, or, secondly, just because of the convenience aspect—they go out for the day and they don't have something to hand.

Also, what seems to be clear is that there is a philosophical angle to this as well. Other countries that do have voter ID requirements have a national form of ID that people can present, and perhaps there is a culture where that is more expected. It is not the case in the UK; we do not have that single form of identification, and so we do not have a system that is well fitted to voter ID requirements.

The other thing to flag there is the expense of a system as well. The Cabinet Office's evaluation was talking about a figure of something around £20 million in order to roll this out nationally, and obviously there are opportunities for other reforms to be brought in—such as a single national electoral register—that would simplify some of these problems here. We



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are moving to a situation where individual electoral registration has been very expensive, and it has put a very high cost burden on local authorities. The additional funding that the Government have provided in the short term is due to end, so this is going to provide more of a burden on local authorities as a result. The effect on voters, the effect on the public purse and the effect on local authorities all need to be considered here.

Q141 Dr Huq: Dr James, you were part of the coalition of 40 different pressure groups—Age UK, Stonewall, the NUS—showing that this is about BME people, older people, trans people, and people with disabilities. It was an unprecedented coalition of, I think, 40 different groups calling for the whole thing to be called off.

Dr James: That's right. There is a large variety of actors looking to not continue this.

Q142 Dr Huq: So the money could be spent better elsewhere.

Dr Clark: Undoubtedly. What is often seen in this debate is voter identification, on the one hand, put against voter registration, but that is not necessarily the same thing. The two things are complementary to one another, and working on improving the registration system would help in this regard. We have found from the work we have done with polling station workers that, as we have said, people being turned away at polling stations is a bigger problem because they are not properly registered. The fundamental thing I would argue for is dealing with the register.

Q143 Dr Huq: Would you say that that would increase public confidence, rather than tinkering around with making it more difficult and pulling up the drawbridge with the ID requirement?

Dr James: Absolutely. If you go on to Twitter on election day, as we do, you will always see those cases of people saying, "I turned up to vote, but I was not able to, because my name was not on the electoral register." We have shown that this is a systematic process.

At the 2015 general election, two-thirds of polling stations were turning away at least one voter because their name did not appear. In the Brexit referendum, we saw people turned away because their name had been crossed off the electoral register as a result of the move to individual electoral registration.

All kinds of mechanisms could be put in there. There could be a single electoral register. There could be an "Am I registered?" website, so that people can check this themselves. That was ruled out by the Government based on cost. Voter ID does not seem to be in any way the right priority.

Q144 Dr Huq: Do you have any comment on the non-UK European nationals—we have all had constituents in this situation—who were not able to vote last time round?

Dr James: Sure. It was a problem, which we have both written on publicly. There were plenty of warnings that this would occur. The Law Commission recommended a reform that would have pre-empted this.

Local authorities flagged it as a problem. It was an entirely avoidable situation that affected a particular group within the United Kingdom.

Dr Huq: It seems at odds with the Cabinet Office's democratic engagement plan to constrict access in this way.

Q145 **Eleanor Smith:** How serious are the risks from postal voting under the current system?

Dr Clark: The main difficulty with postal voting relates to issues around ballot secrecy. When postal voting began, electoral administrators were only sampling a proportion of the personal identifiers from postal votes. I think 20%—that is the figure that has stuck in my mind—of postal votes were being checked for signatures, dates of birth and so on. That is now effectively 100%. These things are being checked at the administrative level.

However, there are problems. People's signatures change. I know I have changed my signature, and I guess everyone around the table has changed their signature. I don't think some of that gets back to the voters in time for them to do anything about it. That is why it is more of a practical administrative issue than a fraud issue, to ensure that people can vote.

My main concern is with the secrecy of the ballot. That needs to be stressed beyond postal voting as well, not least because of the trend of people taking photographs in and around polling stations—that is not permitted but you still see them appearing at election time. I would argue that ballot secrecy in postal voting should be discussed more widely.

Dr James: The main problem we have both identified through our research is more to do with the volume of postal votes. It has become extremely popular since it was first envisaged as part of the Representation of the People Act. People increasingly want to vote this way. The volume is increasing at a time when resources for local authorities are decreasing. As I said before, local authorities are increasingly over budget.

The net effect of this is electors receiving their postal votes late or not on time, as happened during the Brexit referendum, when lots of postal votes were going overseas. People in Australia, for example, received them on the day they were supposed to have sent it back.

We have had debates about online voting in the UK. There is a case for looking at that type of system for remote voters, because getting postal votes around the world is going to be a bigger issue over time, particularly as the Government seem to wish to extend the right to vote to all overseas electors, reducing the 15-year limit. Resources and volume are bigger issues than any evidence of fraud.

Q146 **Eleanor Smith:** Should it be made illegal for campaigners to handle the complete postal votes and postal voting envelopes?



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Dr Clark: There is a case to be made for that—the Pickles report made it. It would certainly remove one level of suspicion around postal voting. Anything that can be done to remove that level of suspicion would probably be helpful. Many of the problems around postal voting are administrative, to do with timetables and things of that sort, and the pressure of those tight timetables to begin with. But certainly if that would help remove an issue with postal voting, then why not?

Dr James: The one difficulty is: what is a campaigner? If somebody is helpfully collecting people's post in a care home—people who have the ability to go and post them—at what point do they become somebody helping and aiding the democratic process or someone who comes under suspicion because they could potentially be infiltrating people's votes? It is a tricky area, but if there is scope for assuring confidence, that is one vulnerability that could be dealt with.

Q147 **Dame Cheryl Gillan:** Do either of you ever look at the Venice Commission recommendations, and do you have anything to say about those?

Dr Clark: On what precisely?

Q148 **Dame Cheryl Gillan:** On electoral procedures and practices.

Dr James: Yes. We have collaborated with colleagues overseas and the Venice Commission on a project that surveyed electoral officials across Europe and other states that fall within the Venice Commission remit.

The UK has not been very central to these international communities historically. A variety of different networks take place around the world. Africa has developed strong networks through the African Union. The Venice Commission has very important conferences there. There has been a formation of best practice through these codes. They do not all point in exactly the same direction, but there is certainly an opportunity for the UK to be more involved. I understand that UK officials are increasingly collaborating more with Australia and Canada. There is a huge wealth of knowledge and expertise that we could learn from.

Q149 **Dame Cheryl Gillan:** I should perhaps declare an interest. I am the rapporteur on referenda in the Council of Europe and I have been working with the Venice Commission, which is why I asked you the question. I want to know about the evidence for the current level of public confidence in elections in the UK. It appears that, over the time I have been a parliamentarian that that has diminished. That is anecdotal, but is there empirical evidence?

Dr Clark: Not necessarily that it has diminished. The Electoral Commission, for instance, conduct an annual survey and I have been struck by how consistent it is. It varies from year to year, but most of that can be put down to sampling errors or being within margins of error and so on. Satisfaction with registering and voting processes is in the high 70s or low 80s. It is fairly consistent across time, with occasional fluctuations. Confidence in the electoral process is probably a broader area than just



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necessarily what we are talking about here in relation to electoral law. It is also about the pushing of the loopholes that we were talking about in campaigns and how that ends up being publicised, and about the conduct of MPs and candidates and so on and so forth. In the public mind it is probably a broader issue around those kinds of things, whereas the evidence that we have seen is fairly consistent on levels of trust and confidence in the electoral process. Of course, it can always be better and we should all be trying to build better elections. That is what we are engaged in in this discussion. Stability is what I would point to.

Dr James: According to the Electoral Commission's Winter Tracker surveys, the biggest problems they tended to identify were bias in the media or people pointing out low turnout and how this is a problem. Those top the list, as opposed to problems to do with the polling process or voter registration process. In the previous study, I looked at comparing the UK with Canada. We are broadly similar to Canada in many respects. Satisfaction with the voting process was slightly lower than the Canadian system. They have a different system: you can register to vote on the day so you do not have this experience of being turned away. You can go along and have your name added to the electoral register. It takes a little bit longer, but at least you can do that. This points to electoral registration being an issue to look at.

Q150 **Dame Cheryl Gillan:** Are there any other steps we can take to improve public confidence or is it pretty much there still?

Dr James: I think it is pretty strong. We live in an era when content shared online can often cause us to question confidence in public institutions. It is worth considering how we regulate and monitor online campaigning. I know that is something the Committee has looked at in other areas. That has shifted since the Law Commission report. I think we both flagged those issues with electoral registration as well.

Q151 **Dame Cheryl Gillan:** One thing I have noticed when I have been on election observer missions abroad is that, often because of the complexity of the electoral system in whatever country, you end up with several elections for several institutions being conducted on the same day, which are often very confusing. Do you think our system of conducting elections on the same day for two or three different bodies, including police and crime commissioners, is confusing? Would you prefer to see those separated out or do you think that the public have confidence in the way in which we produce the ballot papers?

Dr Clark: I can give you research evidence in this regard because I have looked at this question. Typically, when elections have been run concurrently—local elections with a parliamentary or European election—the quality of the delivery of those elections tends to be a bit lower for the simple reason that there seem to be more pressures on the people delivering them. I would argue that that talks to potentially thinking about separating out electoral processes.



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We have a successful example within the UK where that has happened, which is Scotland. In 2007, there was an issue when the local elections were run together with the Scottish Parliament election. Due to a change to the Scottish Parliament ballot paper, there ended up being a lot of confusion around who was being asked to do what. Since then, Scotland has run its various electoral processes separately on different cycles. I found in my research that, typically, when you compare Scotland with the rest of the UK, Scotland performs to a slightly higher level than electoral administration in the rest of the UK, largely because that has put in train a support structure—a body called the Electoral Management Board—that has a different role to that of the Electoral Commission. My research and that experience and what has happened in Scotland point towards separating them out.

Q152 Dame Cheryl Gillan: Would you agree with that, Dr James, and do you think that should be a recommendation from this Committee?

Dr James: Yes. One factor to bear in mind is turnout. Where you combine general elections with other elections, people will vote there anyway, since they are in the same location. However, it becomes very difficult for the media and parties to send out messages about all these different types of elections at the same moment in time. Certainly, if we were to continue to hold elections simultaneously, then simplifying electoral law would make a difference and might help to ease some of these problems that Alistair has just described.

Q153 Dame Cheryl Gillan: Lastly, Dr James, referring to your earlier answer about the perceived media bias, one of the things that has always struck me when observing elections abroad, and that I found really frightening, was the lack of access for the press and the lack of freedom of the press. Even though you say that people raise bias in the press as something that does not give them confidence in the elections, we actually have a free press. With your remark, would you make any recommendations as to how we change any of the rules and regulations surrounding the press?

Dr James: Again, I would need to think about that in a little more detail, and could do so in further evidence.

Dame Cheryl Gillan: Appreciating that my colleague is now going to go on to the digital and social media questions, I would be really interested to see whether you have any recommendations on that.

Dr James: My other colleagues at UEA who focus on media law may have. Perhaps I could consult with them and submit further evidence.

Dame Cheryl Gillan: I'd be most grateful.

Q154 Mr Jones: You have both mentioned online campaigning, which of course is becoming increasingly prevalent. Frequently, it is difficult to tell whether a posting on the internet is part of a campaign or is something an individual is putting out. Do you believe the requirement to put an imprint on the electoral material should extend to the internet?



Dr Clark: There are plenty of arguments around this suggesting “yes”. I would agree with those, but with a couple of tweaks. One important thing would be the size of any imprint—I am sure we have all seen electoral literature where it is a very small font at the bottom of the back page and very difficult to discern. I would argue that any imprint needs to be a decent size and needs to be at least legible and fairly accessible.

In that regard, I would suggest that perhaps it needs to be on the landing page of whatever it is that is being viewed. If you think of party political broadcasts, for instance, they begin with an announcement: “This is a party political broadcast on behalf of so on and so forth.” I see no reason why something of that sort could not be involved with these kinds of online campaigning issues. We also see that with advertising: you initially get an advert, then you get five seconds of that advert before you can skip it. There is no reason why this cannot be done for online campaigning.

There is possibly another way. I must say that I am no web developer, but if we think of the introduction of GDPR to the internet and how that has changed how we interact, we now have to click to say we agree to the number of cookies and so on that our computers have downloaded. Why not have something similar that pops up to the voter or whoever is reading it that says, “This is a campaign message on behalf of whoever it is. Click to say you understand.” That may well be a way beyond just the passive viewing of something; okay, people may passively click, but at least they have had to click to say they do actually understand.

Yes on imprints, but I would push it further and think about other ways in which the internet has been developing. I would suggest going down that route.

Dr James: I think there should be regulation. We live in the era of fake news and disinformation, so making it clear who is providing this information would be a really important step forward, and Dr Clark’s recommendations there seem to be sensible ones.

Q155 **Mr Jones:** I am just wondering, though, how practicable it would be. Twitter is frequently used as a campaign tool during elections, and I think you can have 280 characters in a tweet. If you had to have an imprint on every tweet, you would be taking up half the message. Is this really practicable, do you think?

Dr Clark: You would probably be taking up more than half the message, I would guess. I don’t think it is practicable for Twitter. What most people are using Twitter for is to link to something else—some broadcast or something of that sort. It is that ultimate source page I am thinking of rather than Twitter itself.

Q156 **Mr Jones:** Yes, I understand, but campaigns make heavy use of Twitter. For example, lots of supporters of campaigns and activists will be sending out tweets saying, “Vote for Jones” in the general election, I hope. How do we know that is just a member of the public as opposed to someone who is spending every working day during the campaign pumping out the



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message to "Vote for Jones"?

Dr Clark: I don't think we do. We don't know whether they are Russian bots or anything of that sort either.

Mr Jones: There was a famous Russian bot called "David Jones" by the way, which was closed down.

Dr Clark: It is a serious point, and it is difficult. I don't think we know how to deal with this. The DCMS Committee has been looking at some of the issues, but with Twitter ultimately we should be looking at the end link. We should be trying, at least initially, to regulate that, and then we can think about Twitter after that.

Q157 **Mr Jones:** Of course, the difficulty is that these digital tools develop so quickly. Many new ones are introduced all the time. It seems to me that you are trying to hit a moving target if you are trying to legislate for every form of online campaign.

Dr Clark: You are, but that would also be one argument for keeping the issues under review on a regular basis, rather than what has happened of late, which is that electoral law has not been looked at for ages, and then in the past two or three years there has been activity around it. Given the speed of developments, it is important that things are kept under review. My suggestion is that a deliberative panel could be one forum that starts to do that.

Q158 **Mr Jones:** Are there any other reforms you think could usefully be adopted to keep an eye on the changing pattern of campaigning?

Dr Clark: It is difficult to say, because we don't know what is going to hit us coming around the corner. There is an argument out there for an online repository of advertising on the internet. I am not so sure how practical that is because it will require voluntary submission of those things to it. It is unclear how it would be resourced and maintained and who would keep it, but it is certainly an interesting idea. Those are the main ideas doing the rounds at the moment.

Q159 **Dame Cheryl Gillan:** Can I just ask a quick supplementary? One of the things I am concerned by are things that happen away from election times, but that will have an effect at elections. It is something that is affecting all my colleagues here. We have seen the advance of 38 Degrees, Do Gooder and all these websites. We do not know who is controlling them, how they are making their money, how they are growing and how they are reaching our constituents. They then think they are participating in democracy by sending us 300 emails—everyone is laughing, because we all suffer from this—all identically addressed. I happen to try to respond to every single one every single time. If you go back and interrogate your constituent about it, they actually do not know in some instances what they have sent you, or the implications of it, or understand it. Do you see that as a danger in distorting our electoral processes and our democracy, or am I just seeing a problem where there is none?



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Dr Clark: I would hate to be on the receiving end of that and have sympathy. I am not so sure, and I am not so sure it is necessarily a problem for the electoral process itself. It is perhaps one for the representative process more broadly, but there is another way of interpreting it, which is that at least it is good that some people are starting to be interested, even if that is leading to a workload of that sort. The truth is somewhere in the middle. I am not so sure quite how you regulate these things. One thing you could try to push is the parliamentary petitions site, but that also gets lots of strange requests.

Dame Cheryl Gillan: But you don't know the motivation of the organisation that is then effectively manipulating their database, to send you—

Dr Clark: The issue then becomes one of data protection rather than necessarily electoral law. In that regard, it is probably best looked at by the data regulator, in line with GDPR and things of that sort.

Dr James: To echo Alistair's point, it is a terrible problem for you but it is also positive in some senses for the voters—the electors, because they spend their lives online and, therefore, there is this involvement in politics that is positive. I don't necessarily have the answer to this but, with respect to the administration of elections, it reinforces the point that we really need a centralised complaints system.

In the 2019 European parliamentary elections, the 3million, which does fantastic work in raising awareness of that group, focused on encouraging people to write to the Electoral Commission when they had those problems at polling stations. Of course, the Electoral Commission is not actually responsible for those problems—it is returning officers—so it misdirected traffic of people's complaints in the wrong direction. Some kind of centralised system for dealing with this problem is something the Committee could certainly recommend.

Q160 **Dame Cheryl Gillan:** Can I just try to be a bit more explicit? I do try to reply to all these emails and I have a member of staff dedicated to doing that, but I know that other MPs just do not have the resource and are not able to organise themselves. Because we are in a procrustean bed created by IPSA that we can have only so much for our staffing budgets.

If you have a constituency that has a particularly heavy caseload, you may not be able to devote that time within this procrustean bed to respond to those emails. Come election time, an MP standing for election, could be quite wrongly accused of not replying to all their correspondence, which would affect the electoral process, but is actually not the fault of the MP themselves. That is really what I am getting at.

I feel that cross-party; this is not a party political point at all. Therefore, I worry that the electoral process could be affected long term by these organisations, through no fault of the person who was standing.



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Dr Clark: I think it is a fair worry but I would suggest that those worries had been there even before the internet. "My MP hasn't paid attention to what I've said when I've sent him a letter," and so on.

Q161 **Dame Cheryl Gillan:** Not to the level or degree; we are talking thousands.

Dr Clark: What may be different may be the numbers and the direct nature of this. That may be what the difference is. The actual difficulty may not be so different from what went before.

Q162 **Mr Jones:** If I may weigh in here, it is very interesting that so many of these 38 Degrees messages tend to arrive very late at night. I will leave you to draw your own conclusions from that. I think that the worry is that these organisations are effectively harvesting people, using them for the organisation's own political purposes, rather than facilitating campaigning by individuals. I agree with Dame Cheryl that ultimately it could have a very negative impact on the electoral process if you are perceived not to have replied to the 1,500 emails you had from someone at 11.30 at night on a Friday.

Dame Cheryl Gillan: The step change is the quantity. I would agree that you would always have that with correspondence. It is the mass quantity now—we are talking thousands.

Dr Clark: Absolutely. All I would suggest is that this is probably a different area of law from electoral law. This is probably more data protection law than necessarily electoral law.

Chair: I think we are finished. Thank you very much indeed for your evidence. We will move on to the next panel.

Examination of witnesses

Witnesses: Dr Jessica Garland, Director of Policy and Research, Electoral Reform Society; Professor Maria Sobolewska, Professor of Political Science, University of Manchester, and Dr Wilks-Heeg gave evidence; and Dr Stuart Wilks-Heeg, Reader in Politics, University of Liverpool.

Chair: We are under a bit of time pressure I'm afraid. I have to give evidence to another select committee at 12.30 pm. Having heard much of what has been said already, thank you for sitting in and do not feel the need to repeat at length, but if you wish to endorse what somebody else has said that would save us a little time.

Dr Huq: Sorry, are we doing declarations of interest? Dr Wilks-Heeg and I have written together before on the politics of the suburbs.

Q163 **Chair:** Thank you for that transparency. Welcome to this session about the state of electoral law. Do you have anything to add about the urgency of how necessary it is necessary to update electoral law?



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Professor Sobolewska: Can I start by saying that, only last week, I participated in a workshop organised for the House of Lords, which is intending to review the recent changes to registration law. In the process of trying to look at evaluations of that reform and the impact it has had, it has become very clear that there is now, in my view, an imbalance with the electoral reform looking at integrity over other aspects such as completeness of registers, equality of access and ease of access to the voting process. One of the urgent tasks is to try to take a holistic view of the electoral law.

Dr Garland: I am sure you heard that a lot of pressure comes from this fragmentation across the law. We have probably heard that that is pressure for those running elections, but it is also a problem for citizens. If electoral professionals are struggling to understand this fragmentation, then what hope is there for the average citizen, who also needs to understand what they can and cannot do and how to participate, particularly in terms of registration deadlines and the like?

Dr Wilks-Heeg: This task was urgent a decade ago. The Electoral Commission first urged that the electoral law be simplified and consolidated in 2003. The Electoral Administration Act 2006 was meant to pave the way. We then had the Law Commission process. It is still urgent. The dynamics that created that urgency—adding new types of election, devolution, the way that it leads to divergence of electoral arrangements across the UK—have continued apace. The urgency has not gone away.

Q164 **Chair:** Would you highlight any particular significant risks from the present system?

Dr Wilks-Heeg: Yes. I think we are seeing growing numbers of instances in which the administration of elections is becoming more complex because of the legal complexities. We heard this in the evidence session previously. Sometimes it is difficult to work out when there are problems, and whether a problem is an administrative or a legal issue.

One example is from 2017. A series of issues in Plymouth had been documented by the Electoral Commission. Polling cards had been sent to 300-odd voters there, who were then removed from the electoral register without their knowledge. Technically that was the correct thing to do legally, and the staff who did that thought they were implementing the law as it stood. Some of those voters then turned up at the polling station—around 30 of them—and were reinstated on the day on to the electoral register, and they voted. That definitely was not the correct thing to do legally. Thankfully, there was no challenge to the election in Plymouth and no election petition—nobody contested that election. Clearly, had that been a close outcome, what went wrong could have resulted in that election being challenged. There are lots of cases like that. I could list many more.

Q165 **Chair:** Do you have any evidence of inconsistent application of electoral law? You have given one. Perhaps the other two witnesses would consider that question.



Professor Sobolewska: I know Stuart has a list so he could go down the list.

Dr Wilks-Heeg: There are numerous instances where we see the law failing. In terms of inconsistent application, one of the issues is where cases come to the attention of the police and are investigated. We do not always get equivalent outcomes for very similar cases. Cases of personation sometimes result in a police caution, and sometimes it goes to conviction. Some cases are just resolved informally with a bit of advice locally, sometimes they go to caution, and sometimes they go to conviction.

There is a whole series of wider issues about the framework of law that should concern us. If I can give one more example—this is a current issue—the Electoral Registration and Administration Act 2013 tried to deal with the problem of the polling station queues in 2010 by requiring local authorities to undertake reviews of polling places every five years. The assumption was that that would happen with the timetable for fixed-term Parliaments, so that process would be complete in time for a general election every time. What was not foreseen was that the Fixed-term Parliaments Act could be not quite as robust as we had expected and we might get elections in between. We have had one already and—who knows?—we might have another one, heaven forbid. If an election happened now, it would come in the middle of those reviews of polling places taking place in a lot of local authorities. Given the volatility of the electoral registers with population movement and so on, we could easily see a repeat of the 2010 problems as a result of legislation that was meant to fix them.

Professor Sobolewska: We also have evidence from public opinion polling about the confusion among voters themselves about the application of electoral law. About half of our population who are eligible to vote believe they have to take their polling card to the polling station, which is false. About a third believe they need a voter ID already, which I am pretty sure isn't helped by the fact that we are having ongoing voter ID trials, which are covered by the media—sometimes they are on the news. We also saw that the percentage of people who say they are confident about how to register to vote fell following reform of the registration system. That fall was larger for ethnic minorities, who are already a severely under-registered group. Certain risks are particularly significant and urgent for groups that are already marginalised in our society.

Q166 **Mr Jones:** Do you consider the system of election petitions as a means of challenging the results of elections to be fit for purpose? If you do not, what do you suggest should be put in its place?

Dr Wilks-Heeg: I have done a fair bit of work on this, and it is definitely not fit for purpose. It goes right back to the 13th century, but I will not go there. It is essentially a Victorian mechanism. It was really designed to deal with corruption in parliamentary elections at that time. It places the onus on either unsuccessful candidates or electors to challenge an



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election, as we heard earlier, at considerable cost, and there is a great deal of legal complexity.

A lot of people thought the petition mechanism was essentially dead. It is not. It is still being used, but its primary effective use—by which I mean the cases in which election results are actually overturned—is where there have been cases of maladministration. Some of those are quite bizarre, like a returning officer mixing up two names and declaring the wrong one the winner at the count. The only way to fix that is a very expensive, very time-consuming and complex process of an election petition.

In cases where there really are serious allegations of corrupt and illegal practices, there is a risk that the petition will never be brought. You heard earlier—absolutely correctly—that there was a very real risk in Tower Hamlets in 2014 that those local electors would not have been prepared to bear that risk and those costs, and no political party was willing to underwrite that process.

There needs to be another process for challenging elections. Perhaps returning officers should be able to instigate it, or political parties. Perhaps legal aid should be available. Certainly, what we have at the moment really is not working and is being used for some quite unusual purposes.

Professor Sobolewska: I guess it is worth adding that all the research on electoral fraud shows that the victims of fraud are normally the marginalised—people living in conditions of social deprivation and marginalisation—so obviously they cannot have access to all this complex legal advice and they cannot bear the huge costs.

Q167 **Mr Jones:** Should the returning officer have the power not to make a declaration in cases where he or she suspects there may have been malpractice?

Dr Wilks-Heeg: Potentially. I am thinking of the returning officer being able to bring a petition mostly in cases where they recognise a mistake has been made in the administration of the election. There have been multiple cases where it is very clear to everybody that a silly mistake was made in the counting, the adding up of vote totals, mixing up columns or whatever. The only way to overturn that is through the court. The returning officer should be able to hold their hand up and said “My mistake”. If a returning officer has concerns about voter fraud or corrupt and illegal practices, the appropriate thing is still for them to refer that to the police and for the police to investigate. Potentially, there might be cases where, if the problems are so severe, as they were in Tower Hamlets in 2014, there should be that mechanism. I have not thought about that beyond the returning officer being able to bring petitions in administrative cases.

Q168 **Mr Fysh:** I just want to follow on from that. There are increasing numbers of cases where things get said during election times in writing and leaflets and so on that are not true or are arguably not true, and some are withdrawn from circulation and some are not. We also see an increasing



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amount of defacement and damage to election advertisements of one kind or another. There have even been cases in my constituency of leaflets being altered by the opposition to try and make out that they have not had an imprint on them. All sorts of shenanigans go on and I think it is increasing, yet the police are completely unwilling to get involved if a complaint is made. Do you think that the petition system, which is a pretty big sledgehammer to crack quite a pernicious set of nuts, is at all fit for purpose? How would you recommend we go about altering things so this culture of abuse of our democratic processes is addressed?

Dr Wilks-Heeg: I think you are talking about two things. Some of what you are describing are just criminal offences; some of them are offences under the Representation of the People Act 1983; and some of them are broader criminal offences. Those matters, clearly, should be referred to the police. I can imagine the situation in which the police do not necessarily take those seriously, but I would argue they should. When it comes to petitions, the difficulty is that a petition case is only ever going to be successful if you can demonstrate that the result of the election was affected. With campaign offences, it is terribly difficult. How would you say that a defaced poster or leaflet changed the result of the election? That is very difficult. If you have x votes that you know were fraudulent and you know the result, you can show that the result of the election was affected. As it stands, I don't think the petition mechanism would be effective. Where parties have tried to bring those cases via petitions—again in Tower Hamlets, back in the 1990s—they got absolutely nowhere.

Q169 **Mr Fysh:** Which priorities were not raised in the Law Commission report? What are your priorities if they were not mentioned by the other panel? What other things do you think we should be addressing?

Professor Sobolewska: I missed that session so I don't know whether the handling of postal votes was mentioned. It was recommended as a change by us as a result of our large-scale qualitative research into electoral fraud in Bangladeshi and Pakistani origin communities. We felt that the handling of postal votes was the predominant form of voter fraud encountered by these communities and they really felt disenfranchised by the manipulation of the postal votes. That was the one reform where we felt this could have been quite an effective way to put a stop to a sickened, fraudulent culture around those postal votes. The Electoral Commission has raised the issue of legitimate helping of elderly or disabled voters delivering the postal vote to the polling station. Our belief, though, was that the law could easily differentiate those benign acts of neighbourly or family help from the descriptions we had of bags of votes being handled, political parties routinely collecting votes as they go canvassing and actions like that, which disenfranchise and increase the likelihood of fraud, if not fraud itself.

Dr Garland: Although the previous panel mentioned addressing the online angle and, obviously, the Law Commission could not have seen how much growth in online campaigning we would have, appreciating that



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campaigning is not just leaflets through doors is an important part of modernising the legislation.

Dr Wilks-Heeg: The Law Commission was not quite sure what to do about the handling of postal votes and we need to look at it again. The other thing mentioned in the written evidence is the subscriber system—that is, the process through which you need a certain number of nominations to stand in an election. That is causing quite a lot of trouble: most of the convictions for electoral offences now are in relation to that subscriber system, where you have candidates and their agents forging signatures. Of course, they should not be doing that and it is a criminal offence under the law. However, in other jurisdictions in the UK—the Scottish Parliament and Welsh Assembly elections—you don't need that many signatures. In fact, sometimes you only need your own and a witness. Perhaps we need to look at that system again, because it is obviously creating a lot of problems for smaller parties and those caught up in it.

If we are looking at the nominations process, another piece of work that Maria and myself have done recently for the Equality and Human Rights Commission identifies that we have a major gap in our knowledge about the diversity of election candidates and elected representatives. The best way of capturing that information is through the nomination process. We think that we probably need yet another form—we would need something, at the nomination stage, to capture that information about people if we want to fill that gap. We would argue that that should be looked at because it is a pretty major hole.

Q170 **Dame Cheryl Gillan:** Do I understand your drift in that last answer? Do you think we should not require a large number of signatures to stand for office?

Dr Wilks-Heeg: I am not necessarily arguing that we should just ditch it, no. All I am saying is that the practice varies across the UK. It is increasingly the thing that results in court cases and convictions. For a period, it was mostly parties such as UKIP, Respect, BNP and so on being caught out, but more recently it is candidates from the larger parties as well. In our age, sometimes people standing for election struggle to find that many people who are prepared publicly to declare support for that candidacy. You might say, "Then why are they standing in an election?" The point is that there are jurisdictions where we do not have that requirement, and it works smoothly. At the moment, it is the primary thing where we are convicting people of electoral offences.

Q171 **Dame Cheryl Gillan:** Thank you. It is just that, being one half of the returning officers for an election that is currently going on, when we were looking at the rules we made a decision that you need to have more than just two people standing on nomination papers, and we increased that level. I was hoping that you were not going to be criticising what we had done—we thought it was sensible.

Dr Wilks-Heeg: I understand that.



Q172 **Dame Cheryl Gillan:** Moving on to the agent's role, you will have heard my question to the preceding panel about the liability of agents for campaigns. Do you think this increased liability is having an effect on finding agents? What is your view on the professionalism of agents and the willingness of people to come forward as agents?

Q173 **Dr Wilks-Heeg:** I know why this has come up, and I heard the previous evidence. It is important to realise that the foundations of our system of electoral law are Victorian. One of the key principles is that candidates and agents are responsible for compliance with the law, and we have carried over all those sections of Victorian law into the modern day. We have then grafted on to that a whole series of other laws, particularly since 2000 and in particular the Political Parties, Elections and Referendums Act, which have created this problem about how that old law and that old set of legal principles mesh with these new sets. That is what we saw after 2015 with the cases in Thanet and elsewhere.

I can see why people would be concerned about becoming agents after they saw what happened in those cases. My reading of it—I might be wrong—is that the Thanet case in particular clarified that if a candidate and agent do not know that spending has been committed on their behalf by a national party, that is not their legal responsibility and they clearly cannot be convicted. That is my reading of what we got from that legal process, but I agree with the earlier evidence: we still have a lack of clarity about the rules around national spend and local spend, and I can see why it is causing concerns for agents. I have never spoken to many agents about their work—whether they want to give up the role, and whether others want to take it on—but I can understand where the concerns are coming from.

Dr Garland: Echoing that, the lack of clarity around national and local rules is also reflected here in the sense that the consolidation we are looking at does not cover things in PPERA, which is slightly problematic.

The earlier conversation was about training for agents. In the last local election, we saw a huge increase in independent candidates. That should be factored into the discussions and thinking, because of course if you are having training, who is going to pay for that if it is not a political party? The growth in independents at the last election means that we should be thinking about whether it is possible for ordinary citizens without that party support to put themselves forward for election and have all the training and confidence to go forward.

Professor Sobolewska: It is not really my area, but I am not sure if the evidence from Professor Justin Fisher has already been looked at. He conducts surveys of agents at every election, so he would probably be better placed.

Q174 **Mr Jones:** Pursuing the discussion about the Thanet case, I think you were all present during the evidence of the previous panel. Were you, Professor Sobolewska?



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Professor Sobolewska: Sorry, I came from Manchester this morning, so I only arrived—

Mr Jones: So you didn't hear that evidence?

Professor Sobolewska: I didn't hear any of the previous evidence.

Q175 **Mr Jones:** There was a discussion about the implications of the Thanet case. I am just wondering what reforms you think might be appropriate in the wake of the Thanet case to clarify the issue of liability by agents and candidates for expenditure or other actions that may have been carried out by others—notably, of course, national campaigns.

Dr Wilks-Heeg: It is very difficult for me to pinpoint precise reforms but it is very easy to identify the problem. Justin Fisher's evidence, which has just been mentioned, sets out the problems very clearly, and then ends up with the conclusion that none of the potential reforms make it better and it is best to leave it as it is. I would hope we could do a bit better than that and find ways of clarifying what is national spend, what is local spend, where the liability rests, and so on.

We still have a fundamental problem in this mismatch between how breaches of local candidate spending rules are handled and how breaches of national spending rules are handled. In the case of local candidates, they are criminal offences and they can end up in the courts. For the national cases, it largely comes down to the Electoral Commission to levy fines, and of course it has been levying some record fines in recent years. It just seems to me that those are two very contrasting legal approaches, and we need to look at this in the round and try to find a way of making those distinctions clearer, and the application of legal principles more consistent, across the two.

Q176 **Mr Jones:** We have had evidence that people are not being put off from becoming agents; that they are still quite happy to do so. However, I really do wonder whether, if more potential agents were aware of the implications of Thanet, for example, they would be so keen on incurring the personal liability that they do. Do you have any observations on that?

Dr Wilks-Heeg: As I said previously, I can see why it would concern people who either are currently agents or might be considering it. My reading—I might be wrong—is that the Thanet case, and the cases referred to the CPS, which did not ultimately proceed to prosecution, do clarify matters. Clearly, those candidates and agents in those constituencies were not deemed to be legally responsible for spending on their behalf, which they did not and could not know about. My feeling is that that has been established.

Q177 **Mr Jones:** But that is the case—it was established after a very lengthy trial, which was no doubt harrowing for everybody concerned.

Dr Wilks-Heeg: It must have been. A case like that was a long time coming, because we have had this tension between national spend and local spend for a long time. As Alistair Clark indicated earlier, political parties are good at pushing on the boundaries of the law, trying to find

loopholes and so on. Any number of cases over the years could have led to this situation. Of course, it was an investigation by "Channel 4 News", which exposed lots of the detail in relation to that case. Ultimately, it was going to happen. It must have been harrowing for everyone involved.

Mr Jones: Thank you.

Q178 **Ronnie Cowan:** When we talk about consolidating electoral law and respecting the devolved Administrations in the UK, when is it beneficial to consolidate and when is it beneficial to devolve?

Dr Garland: Clearly, on electoral law Scotland and Wales have introduced more innovations in recent years around the franchise and electoral system. It is important that that is not lost in consolidation. The Law Commission seems to think that it is possible to find a shared framework around mechanics while leaving those policy differences outside of it. That would be hugely important.

Ideally, we would consolidate to make those changes easier, but that is a difficult conversation. Even the mechanics, for instance with local government elections in Scotland, can be quite different where there are different systems being used. We need to have caution on those things and not prevent those innovations in nations which are much further ahead in introducing changes.

Q179 **Ronnie Cowan:** If Scotland develops the franchise further, should that remain under the control of the Scottish Government?

Dr Wilks-Heeg: As I understand it, the Scottish Parliament has a Bill before it to expand the franchise to prisoners and to anybody living in Scotland, to vote in Scottish local government and Scottish Parliament elections. Clearly, those are the areas within the jurisdiction of the Scottish Parliament. You could not have Scotland having a different set of franchise arrangements for a UK general election than the rest of the UK. That principle is clear. It is clear where we are headed with devolution.

Q180 **Ronnie Cowan:** It is an interesting question. If the Scottish Government believe that if you live in Scotland, and if you are 16 or a prisoner, you have a right to vote in Scotland, why would you not want to extend that to a UK general election?

Professor Sobolewska: We have differential eligibility for different elections anyway. That is something that people are used to already. Different groups of people can vote for national and local elections. Devolved elections fit into a schema that makes sense from our point of view.

However, we must remember that Britain has been a liberal country in terms of extending the franchise to people of other nationalities, historically speaking. Britain has been a first mover on this, and Scotland is now pushing that boundary further, but it is not a boundary that hasn't been pushed here either, because we extended the franchise to Irish citizens and citizens of Commonwealth countries. There is a principle, which we could share with devolved Governments, but as Dr Jessica

Garland said, we could let them innovate first and then follow suit, if the assessment of that reform is positive.

Q181 Ronnie Cowan: You can understand the situation: if you are a 16 or 17-year-old, an EU citizen or a prisoner, you can vote in some elections in Scotland, but when it comes to a general election, you are told, "No. You have now lost your right to vote." Why should that be the case?

Dr Garland: We think that 16-year-olds should be able to vote across all the nations.

Q182 Ronnie Cowan: Why narrow it down to some elections? Surely, they are either in the electorate and perfectly engaged or they are not. We are trying to encourage them to be engaged.

Professor Sobolewska: Technically speaking, as I said, this is already the case. One of the things that needs mentioning here is that, in England, it is easier to manage the process for different eligibilities to vote in different elections because we have separate registers: we have one for national elections and separate ones for local elections. In Scotland, there is only one election register, so, for them, it is harder—it would be—to manage the different levels of eligibility for different elections.

Q183 Ronnie Cowan: Are there areas where we should be consolidating across the United Kingdom?

Dr Wilks-Heeg: Not necessarily, no. As I said, the direction is towards diversification. We need to know how to handle this.

The individual Law Commissions for the constituent parts of the UK work very well on this process. There is currently a review of the role of the annual canvass across the UK, and the different constituent Governments of the UK are co-operating on that. Where we need to have co-ordination, that is possible.

Q184 Ronnie Cowan: You say that the trend is to devolve, but the Law Commission's proposal is that the current laws governing elections should be rationalised in a single consistent legislative framework governing all elections. That seems to me like power being pulled into Westminster.

Dr Wilks-Heeg: The Law Commission's proposals were written and published at a particular moment in time, and devolution has moved on since then. From my reading, they are very much aware of the impact of devolution. I am sure if they were looking at it again, they would not necessarily frame it in that way.

There would be some advantages to having a consistent single set of rules for elections, but you clearly cannot impose that on Scotland if Scotland has decided to do some things differently.

Q185 Ronnie Cowan: Does that extend to referendums?

Dr Wilks-Heeg: In what way—a UK-wide referendum?

Ronnie Cowan: A referendum either in Scotland or in the UK.



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Dr Wilks-Heeg: Clearly, some particular arrangements were made—about the franchise, for example—for the Scottish independence referendum in 2014. That is right and proper. It was an election in Scotland, and the rules for that election were specific to it.

Q186 **Ronnie Cowan:** The powers are in section 30, which have to be asked for, and granted by the UK Government. That, to me, sounds like control is retained here in Westminster over the Scottish electorate.

Dr Wilks-Heeg: I think we are getting to wider issues there and to the relationship between the UK and the Scottish Government.

Chair: We are getting into wider issues.

Ronnie Cowan: I can hear hollering coming from the Chair. Thank you.

Q187 **Dr Huq:** Shall I start with the people who were not here for the previous session? I have the same question as I did then: what evidence is there for the most commonly committed types of electoral fraud in the UK?

Professor Sobolewska: The evidence from accusations and convictions is very sparse, and you can see why. A lot of the forms of electoral fraud are types that you would not pick up. Because we do not have a national register, for example, we cannot check for double voting. And we do not require a form of identity at polling stations, so you cannot really discover personation until it is called to your attention.

But we have done extensive qualitative research in this area, and other academics have looked into it. This is the best evidence we have in terms of what forms are more common and what kind of problems there are around fraud vulnerability. All evidence points to the fact that a postal vote is the most vulnerable area. It makes the freedom to vote as you wish, on your own, without anyone interfering, impossible to police effectively and impossible to track. Often, you have to vote in your home, so you are surrounded by family. You might be surrounded by people or individuals who might exert some kind of influence on how you vote.

We have also had evidence of people giving away their postal votes. They signed a declaration and gave away their unfilled-out postal votes either to signal to the candidate that they can choose, or because they do not feel confident to choose, so they go back to the hierarchical social structures in which they live and ask either their husbands or community elders to do it for them.

Having said all that, this is still a vanishingly rare form of fraud. It is limited to certain communities, but it is almost impossible to police, because it is very similar and akin to domestic violence situations, where the crime takes place within a small social circle, among people very close to each other, so these things are almost impossible to police, and it is almost impossible to find out. Victims, even though they speak to researchers about it, often say they would not go to the police or that they would be afraid of the consequences if they report that kind of fraud.



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Other sorts of fraud that we have heard mentioned in research quite a lot include registration fraud, but the opportunity for that has been pretty much taken away, with individual-level registration and the additional documentation needed. We have also had some evidence about intimidation at the polling station or in the areas around the polling station. As I said, personation gets mentioned, but extremely rarely in the qualitative pieces of work.

Q188 **Dr Huq:** Do you agree?

Dr Garland: Absolutely, particularly on personation. We have already heard how few cases there have been—just one last year that was resolved locally, and one the year before. There were a lot of elections that year, so there were a lot of voters. More broadly, when we talk about electoral integrity, it is not just postal vote fraud. It is also about citizens' access to democracy, which is an important part of electoral integrity as well, so it is a shame that the focus is on the voter rather than the broader issues.

Dr Wilks-Heeg: It was raised in the previous session that, in terms of what gets termed electoral fraud, there is an incredibly wide net. If you look at the Electoral Commission reports on electoral fraud allegations, those are any allegations of any offences under the Representation of the People Act 1983. In the period since 2010, probably about half of them are something to do with leaflets in one way or another, so a whole load of them are imprint offences that are alleged. A load more are false statements in local elections, which will generally be leaflets as well. So, while you can point out hundreds of allegations every year, a lot of them are about campaign issues that come to absolutely nothing.

The numbers of allegations of voting offences have been very small, and the numbers that translate into either police cautions or police convictions for voting irregularities can easily be counted on two hands since 2010. We have not had a major electoral fraud case involving personation in any form since Tower Hamlets, in 2014. All of the cases of personation since then that have actually come to court or resulted in a police caution have just been an individual who has cast two votes. Often, they think they are doing a family member or a neighbour a favour by voting in their name, because they knew how they wanted to vote. That is very small scale, but postal voting, and also proxy voting, looks vulnerable in a small number of areas and is usually linked to a single ward in a very small number of local authorities.

Q189 **Dr Huq:** In the 2016 referendum, there were multiple counts of proven electoral fraud, misuse of personal data, the biggest fine ever, and the illegality of potential interference by foreign powers. What evidence do you have for the national roll-out of the ID pilots, given there are other, bigger things going on?

Professor Sobolewska: I think the only piece of evidence that could be constructively used is the issue of public confidence. When the Electoral Commission asks people in the winter trackers once a year what they



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think would increase the integrity of elections in Britain, they normally name the identity cards. As I said at the beginning, a lot of people already believe that they need some form of identification to vote, but in terms of actual fraud committed because of the lack of voter ID, it is nearly zero.

Dr Garland: Could I just build on that? With the Electoral Commission's tracker, even personation features very low down, and twice as many people say that low turnout is a problem, compared to fraud in the broad sense. Our own research looked at a range of electoral integrity measures, and we find that it is these larger, more visible issues, like money and politics, that concern people. We recently reran our poll on that, and identity checks at the polling station is right at the bottom in terms of people's concerns about a range of electoral integrity measures.

Professor Sobolewska: The Government's own Sir Eric Pickles review made 50 recommendations. The introduction of voter proof of identity was only one of them, and yet all of the money and all of the pilots are focusing on just that one. That is not warranted, in my view.

Q190 **Dr Huq:** Is it a worry that certain categories of vulnerable voters, as you mentioned yourself, are more likely to be disfranchised with this sort of system? The different pressure groups that have opposed rolling out the pilots include the Royal National Institute for the Blind and Age UK, which are not politically radical organisations. We have seen from the Windrush scandal that certain categories of people are less likely to possess photo ID anyway.

Professor Sobolewska: Absolutely. I think the way in which British society functions is very different from the kind of societies and countries that have routine requirements of voter ID. A lot of continental European countries do require voter ID at the polling station, but those are countries in which a national identity card is issued to all citizens turning 18. Those citizens normally carry that identity card everywhere with them. They need it for everything, from the post office to checking into a hotel. We are not like that. We do not have easy access to cheap forms of identification. Of the two forms that usually get mentioned, the passport is very expensive for many people, and the driving licence requires investing in learning how to drive and passing the test. We do have a huge issue with this.

This is how we have advised the Cabinet Office before. In our recommendations to the Electoral Commission, we always said that, if there were any introduction of voter ID, it should be a very wide range of IDs—the sort of thing that people would have on them, such as a credit or debit card used at the post office, or something with address and name on it, such as a utility or credit card bill. That is if there were this introduction.

In the British context, we often look at America, wondering what could happen. This is one area where you can really look at the negativity that surrounds those voter ID laws in the US. It is an extremely controversial

area of law. It is a very politicised issue, routinely very partisan and very divisive. I would very much like to stay clear of that kind of politics.

Q191 **Dr Huq:** So there is a danger that we are following the American voter suppression model.

Professor Sobolewska: Some people call it voter suppression; some people say it is increasing the integrity of elections. There are constant arguments, which are very ideological. The evidence in America from academic research is that increasing the difficulty of voting will almost inevitably result in lower registration and turnout for minorities, but also other groups—anyone in a marginalised area of society. Those are people who move often, who don't possess a house, who rely on benefits and who have to move homes often. All sorts of vulnerable groups will suffer.

Dr Huq: Out of 45 million votes cast at the last general election, there was only one prosecution for personation. If we are saying that it is overstated, what other things could be introduced to improve public confidence?

Dr Garland: The things that are in people's minds are online, digital and money in politics. We know there are some quite clear loopholes in terms of money coming in to our politics. The Electoral Commission outlined them all in their transparency report last year.

It is again a shame that items under the Political Parties, Elections and Referendums Act 2000 in our current legislation are not being looked at. I won't go on about them any more because I appreciate that they are outside the scope of this inquiry. A lot could be done there for public confidence.

Dr Wilks-Heeg: Voter ID has been recommended by the Electoral Commission and by the Pickles review. It is right that it is being piloted but we need to be very cautious. I don't understand why it is the sole electoral integrity measure we are looking at. I don't understand why we are talking about photo ID a lot when the Pickles report only ever suggested some form of ID. Very importantly, we need much more evidence before we go any further with this, because we have not been piloting in the right sorts of areas: no big city areas, metropolitan areas, very few ethnically diverse areas, and so on. If we are going ahead, we need to proceed much more cautiously than we are at the moment.

Professor Sobolewska: Certain counterbalancing measures could be implemented alongside the introduction of voter ID laws to counterbalance the impact on certain communities. For example, introducing easier or even automatic registration of voters would be a balancing-out of this reform.

Q192 **Eleanor Smith:** You touched on this in regard to postal voting fraud. Are there any specific areas of the country that are more vulnerable to electoral frauds?



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Professor Sobolewska: The Electoral Commission research, identified around 16 areas, and they were predominantly where we have large concentrations of people from a fairly recent immigrant background—from south Asian backgrounds. We have done research in eight of those areas, and other academics have covered other areas.

What we have heard is indicative that a lot of electoral fraud could be contextualised with a cultural background and, very importantly, that recent immigrant background. We found almost no evidence that British-born minorities were supportive of any of these practices—in fact, they were often very angry and felt victims of those practices. We think that a lot of these forms of fraud are limited, especially around that postal voting fraud, because we are looking at communities that are much more hierarchical and much more patriarchal than your average British community. I think that is very important to remember.

Q193 **Eleanor Smith:** How should postal voting fraud be addressed, then?

Professor Sobolewska: We have already mentioned the handling of postal votes by parties. Even though this reform springs from our research into those minority communities, there have been allegations of old people's homes being targeted, for example. The postal votes being collected by party activists as part of the usual canvassing process does seem to be something that might be easy to eradicate, and would have a positive impact.

Q194 **Eleanor Smith:** Are you basically saying that it should be made illegal for campaigners to complete, but also handle, those postal votes?

Professor Sobolewska: I think "handling multiple postal votes" should be the wording, because I can imagine that it would be almost impossible—especially in small neighbourhoods, for example—for a person who is normally your friend or maybe a member of your family, but is also a party member, to never take a single postal ballot to the polling station or the post office. However, I think there should be an expectation that it is not part of politics as usual for the political parties to first encourage masses of voters to sign up for postal voting on demand, and then collect those votes as a matter of course.

Q195 **Eleanor Smith:** So you would be against postal voting increasing?

Professor Sobolewska: I appreciate that postal voting does make voting easier for many people, so I would absolutely be against a ban on postal voting, but there are some measures, such as trying to ask people to renew or ask for a postal vote more often. There have been positive changes. For example, the electoral officers now have to inform the voters when their postal votes are rejected, which I think is a huge improvement. I do not have a very strict idea of exactly how to do this. I am not against increasing them, but I think we should look at them properly and investigate more carefully.

Dr Wilks-Heeg: Just on postal voting, obviously, at the moment it is on demand in Great Britain, although not in Northern Ireland—it is still



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restricted there. We could consider going back to the old system, where you had to provide a reason why you wanted a postal vote. I know that would not be universally popular, but it is an option.

Some people have postal votes because they find voting in a polling station very difficult because of a disability or perhaps literacy issues, poor English or so on. Where we have literacy issues and poor English and people have a postal vote, I have concerns, because I do not see how they could fill that in themselves very readily. The cases of potential undue influence we are seeing could be because of that. We might want to look at ways we can support voters more readily in the polling station environment, so we can do that in a controlled and supervised way.

Q196 Chair: What about the fact that an increasing number of people have voted before the campaigns have reached their conclusion? Obviously, the participants in campaigns adjust for that, but there might be decisive moments that occur after people have already cast their vote.

Dr Wilks-Heeg: Absolutely. It completely changes the rhythm of campaigns. In some cases, in by-elections in particular, we have seen huge proportions of the final votes cast by post. There are some electoral wards in local elections where 80% of the votes are cast by post. This is a very radical shift and it creates problems, of course, for electoral administration because of the verification process. People have been concerned about people without ID being turned away from polling stations, but we know the rejection rates for postal ballots in some areas when the personal identifiers are verified can be 8% or 10%, so people are being disenfranchised by not filling in their postal ballots correctly.

Q197 Chair: How serious is the concern that candidates or their agents or supporters, are having undue influence over the use of postal votes, even if they are complying with all the guidance about not handling ballot papers and all that sort of thing?

Dr Wilks-Heeg: There have been documented cases of enormous concern in a small number of locations. We know from legal cases and from research that that is happening.

Q198 Chair: Without referring to current legal cases, is there a legal remedy to address that concern apart from enforcement?

Dr Wilks-Heeg: I think a ban on any party representatives handling a certain number of postal ballots would certainly have made it clear in Birmingham in 2004 that you cannot take 1,500 blank postal votes to a warehouse and fill them in.

Q199 Mr Jones: You heard the discussion of the previous panel about whether or not an imprint system should be extended to online campaigning. Do you share the view that some form of imprint should be readily apparent on online material?

Dr Garland: Yes, absolutely, as a starting point. It is not going to solve everything, but as a starting point it would bring the requirements that we have for offline campaigning into online campaigning, so that we know the



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very basics of who is promoting this, and who is paying for it. I would like to extend that to who it is being targeted at as well, because that is a really important development. We have seen the micro-targeting of campaigners. The issue of what is national spend and what is constituency spend can be considerably blurred with online targeted adverts. To stick to those principles, what we expect from a leaflet through the door we should also expect on something on a tablet or iPhone. Just keep it as simple as that. That is what we need to see as a starting point. I would then go on to say that ad databases are another really important innovation that we should be seeing as well.

Q200 Mr Jones: Anything to add?

Dr Wilks-Heeg: I agree with the principle, absolutely, of digital imprints in some form. I would also agree with all the reservations that you raised earlier about the practicality, particularly with social media and the way that things are spread. It is not just links to website, but videos and photographs and so on. Everything you mentioned earlier about bogus accounts, bots and so on is very difficult to control. It is very fast-moving, but that is not a reason just to throw in the towel and give up. It clearly needs looking at, and is an area where the law is just going to have to try to develop a viable framework to keep up with technological developments.

Q201 Mr Jones: To that extent, do you share the view that there should be regular reviews of the legislation and the sort of campaigning that people are actually engaging in as technology develops?

Dr Wilks-Heeg: Yes. Things are moving very fast, not just in terms of technology, but in terms of how campaigning is conducted more generally. There does need to be a review mechanism. I quite like Alistair Clark's proposal for some kind of independent mechanism. One slight reservation is that we have had a few decades of shunting things that are politically difficult off to independent bodies, and then we sometimes find that the political parties attack those independent bodies, so we also need a mechanism that can generate political will and political consensus for change.

Historically, electoral reform was done in the round, with a whole load of issues taken together by a Speaker's Commission, generating cross-party consensus on reform across everything from the franchise to boundary reviews, to electoral law reform and so on. I think we also need to look at whether a mechanism like that is needed because, fundamentally, there is no use having an independent mechanism if it is just not going to get through Parliament.

Chair: Thank you. The three of you have rattled through very efficiently and given us very informative answers. Thank you to both our panels today.