

Public Administration and Constitutional Affairs Committee

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

Tuesday 23 July 2019

Ordered by the House of Commons to be published on 23 July 2019.

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

Questions 202-302

Witnesses

[I](#): Louise Edwards, Director of Regulation, Electoral Commission, and Bob Posner, Chief Executive, Electoral Commission.

Written evidence from witnesses:

– [Electoral Commission](#)

Examination of witnesses

Witnesses: Louise Edwards and Bob Posner.

Q202 **Chair:** Welcome to this final evidence session on the review of electoral law. Welcome to our final panel of witnesses. Could you identify yourselves for the record, please?

Bob Posner: I am Bob Posner, chief executive of the Electoral Commission.

Louise Edwards: I am Louise Edwards, director of regulation at the Electoral Commission.

Q203 **Chair:** Thank you both for being with us. We have a number of questions to get through, and we will be as crisp as possible. If you can avoid going on for too long, that would be helpful. I will pull you up if I feel you are getting bogged down. Can I just ask a very basic question at the beginning? How urgent is it for us to sort out the complexity of electoral law?

Bob Posner: I am going to tell you some things I am sure you are aware of already, including that electoral law is very voluminous and complex and many will say aspects of it are very outdated. That has increased over



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the years as more laws have been added on top of existing laws. There is a fundamental issue here of complexity and a need to update the law. While that raises technical and administrative problems, it also raises real cost implications, which I can touch on. Those issues explain why the Commission—we are not alone in this—is saying that the time has come.

It happens from time to time for Parliaments, but there is a need to look at electoral law in a broader and more holistic way and to do a general update of the basic framework of electoral law—a modernisation and a rationalisation.

Some of the principles of electoral law—they are good principles—date back to Victorian times and the Ballot Act of 1872. They go back a long way. The Representation of the People Act 1983 was Parliament looking at the law back then. It did some rationalisation, but it took a lot of existing law and, in a sense, dropped it into the Act without having the opportunity to do more work on it.

We have complex law. In the UK we have, at our count, and we should know, over 50 Acts—primary legislation that cuts across elections—and approaching 200 pieces of secondary legislation. That is unusual and exceptional. When I talk to my counterparts in countries with Westminster-based systems—Canada, Australia and New Zealand—they have done the task. They were in a not dissimilar situation to what we are seeing in the UK now. They rationalised their law and basically have one electoral law Act with some other things off it. It is doable; they have done it. There was a time when those countries would look at our law, but now they look at us and say, “We’ve done that.”

It goes to voter trust and confidence. Without going on about it for too long, one of the real fetters of the problem that we have, apart from the difficulties of running elections for electoral administrators and the difficulties for campaigners and voters, is that if you do not sort out the framework—the basis underneath—and get it organised, it is very difficult to innovate and to move forward.

We have 371 separate electoral registers in the country. To amalgamate that into one, we need to sort out the framework of the law. Whenever Government/Parliament wants to change the law it has to pass multiple statutory instruments. For example, when it wanted to prohibit addresses of candidates being on the nomination papers and the ballot papers for elections, it could not just make one piece of legislation; there were four separate pieces of legislation to make.

Another example is the recent combined authority mayoral elections. Multiple pieces of legislation came into play—about 12 different pieces of primary legislation and secondary legislation. There are vast complexities that come in. It increases the risk of unforeseen consequences and mistakes happening. There is a whole range of reasons that play into that. Is that a useful context?

Q204 **Chair:** Yes. Vastly complex and creates risks of people making mistakes.



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What do you think are the most significant risks?

Bob Posner: Most significant—you would have to say this is the bottom line—is voter confidence in elections, and voter trust in the legitimacy of elections. If we get to a situation in the UK, and we are beginning to see it, where, however hard administrators try and however well elections are run by everyone involved, it becomes inevitable that in any set of elections an increasing number of errors will happen because of pressures, that goes to voter confidence.

If people wonder whether people could vote more than once in different places because we do not have joined-up electoral registers, or if people are worried about electoral fraud because we have not modernised the system, you begin to lose trust. I don't for one moment suggest that that is the case because our survey work with voters shows that there is a very high level of trust in elections still, but what we and, I think, others see is that we are reaching that point where there is real risk.

Q205 **Chair:** Your 2015 general election report identified 30 returning officers who were deemed not to have met their performance standards. To what extent did the complexity of election law contribute to that?

Bob Posner: I think it is important that I say upfront that returning officers and electoral administrators do an amazing job. They have had to run elections at very short notice recently. They deliver elections, and that is down to dedication, skills and expertise at a local level. I think there are two pressures. One is the pressure on local authorities generally, and on their resources and ability to respond quickly and effectively. They will have talked to you—I think you had evidence in a session with electoral administrators about that.

The other pressure is the sheer complexity of law. For all of us, when one has to run an election or if one is campaigning in an election, the first thing that one wants to do is understand the basis of the rules of the game. If you are always worried and looking over your shoulder—you think you have looked at everything that you need to look at, but you are worried that there is something else that you may have missed, not looked at or not quite grasped—that is undermining. I think it is the two: there is a resourcing issue and a complexity issue.

Q206 **Mr Jones:** The only means of challenging the outcome of an election, as you know, is by an election petition. This is a complicated procedure, but it is also potentially expensive. In the Tower Hamlets case, the petitioners faced losing their homes if they lost the case. Do you believe that the system of election petitions is fit for challenging the results of elections in this day and age?

Bob Posner: We have reservations about that. We think the time has come, and we have recommended change—we have said so publicly. It comes from a historical system and it creates election courts. That is an effective means of challenge, but it is very onerous and has very strict rules. It is not very accessible. The point you make is right. There is huge risk on people wanting to challenge, where they could face personal risk



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on costs. That should not be the case. We have recommended that election courts should be moved into the normal civil courts system as part of the mainstream courts. A number of judges have said that as well.

The benefit of that is twofold. The first is that in the civil court system—the civil practice system—which was modernised in the late 1990s, you have the protection that, if cases are brought forward that are not worthy of being heard by the courts because they are frivolous or vexatious or they are just thin, the judges very quickly say that they are not going to proceed. The other protection you have is for those who are bringing cases is that if you are an individual litigant, the courts can make what are called cost-capping orders, which limit the risk and the liability. Those sorts of things just do not fit in with the election petitions system, which is a very dated, strict system.

Q207 Mr Jones: Would it not be possible to make those changes? You mentioned cost capping. Do you not think it would be possible to make a partial change and to apply a cost cap in the case of election petitions?

Bob Posner: One could look to improve the current election petitions system, but I think the better answer is to mainstream it along with all sorts of other challenges. In a way, back in the late 1990s when that was done across civil procedure rules, a number of things were mainstreamed at the time. I am sure there was a good reason at the time that election courts were not looked at for that purpose, but it should probably now be done.

Q208 Mr Jones: Do you think it is right that there should be some risk of costs, so as to deter vexatious or frivolous petitions—it would not be petitions, but whatever system replaced it?

Bob Posner: Yes, I think that is right. You have to have protection. One of the key things, and one of the principles of election challenges, is that one wants certainty of election results fairly quickly, and a legitimacy of results, so that people are holding office legitimately and properly. One does not want challenges to go on for a long time after elections. One of the difficulties with the petitions system is that they have tended sometimes to go on a long time. We have had people at local government level who have held office as councillor for up to two years while a challenge has gone on, for example. That cannot be right. There is a balance between wanting to decide these things quickly and properly, which is why you need to have protections so that a challenge can be brought, but, equally, the courts need to deal with them quickly.

Q209 Mr Jones: What about individuals who might not necessarily want to overturn the result of an election, but nevertheless wish to register a complaint about the way it had been conducted—for example, if they have had difficulty in voting? Do you think it is a good idea to have some sort of central mechanism whereby those complaints could be logged?

Bob Posner: You have taken evidence from the Law Commission, as I know. When we worked with it and it was doing its work, it was something we and others discussed with it in detail: what do you do about errors that



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do not go to the root of the election itself, but were errors—oversights and mistakes? At the moment, no one is doing anything about that. They are sort of below the level and, in a sense, no one is addressing them. Do you have something akin to an ombudsman-type system, however one frames that, where you have the ability for people to complain and say, “Actually, this thing wasn’t quite right procedurally”, or do you have the Electoral Commission look into it? It wouldn’t necessarily result in a sanction, but it is a means of getting to the bottom of something that had happened and reaching a finding on it. It is a way to drive continuous improvement, basically, and we have not got that at the moment. I think it would be welcomed by returning officers and administrators, and probably by campaigners. Could one have a type of ombudsman process? For voters who are aggrieved, it would give them the ability to have an outlet and a finding.

Q210 Mr Jones: Do you think it would have an extra benefit, in that it would be easier for people with oversight of elections to see the extent to which there had been satisfaction or dissatisfaction with a particular process?

Bob Posner: Yes, that would be the aim of it. The aim would be that people could be satisfied that something had happened—it had been looked into and a finding had been reached. I do not see it as a sanctions-based thing to punish anyone. It is to put things right.

Q211 Kelvin Hopkins: Presumably, after we have had legislation to give all electoral law some modern coherent sense, it has been suggested that a deliberative group will be set up to keep electoral law under periodic review. Do you think such a group would be helpful?

Bob Posner: First, Parliament has already given us the statutory duty to do that. One of our responsibilities is to keep electoral law under review and report on that. We discharge that responsibility in evidence to Select Committees such as this, and after every election we write reports, review the election and publish that. We make recommendations to Government and Parliament. There is an existing process of review, and we take evidence from other people about what happened at the election. That process exists.

There are also reports from time to time, and work by committees—there was Lord Pickles’ recent report on electoral fraud, and work by the Committee on Standards in Public Life and academics. There are lots of routes by which electoral law is reviewed. The Law Commission did a major piece of work recently on a blueprint for reform. The Commission does not identify a problem with a lack of review of electoral law; there are lots of good recommendations for change and a lot of blueprints for change. Most of those are fairly consistent, and people have pretty similar ideas about what needs to be done. The problem has been about opportunity and space in our UK parliamentary system in recent times for Government and Parliament to consider the issue and implement some of those reforms.

Q212 Kelvin Hopkins: The implication of that is that consideration of electoral



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law for possible reform should be taken away from the Electoral Commission and dealt with by an objective outside group. The Electoral Commission would have the job of continuing to ensure that elections are run properly.

Bob Posner: In democracies that have electoral commissions I do not think it is realistic to expect those commissions not to have a view on electoral law—that is very natural and is what you would expect from an independent electoral commission anywhere, and that is what happens in the UK. I think that system works well. We look at it and publish recommendations, which people can see. Parliaments in the past have acted on some; others are to be acted on. I do not think there is an issue there. Plenty of other people look at this issue as well. I do not see the benefit—if you create another group to consider this issue, it will just be another group looking at the same thing.

Q213 **Kelvin Hopkins:** No doubt that deliberative group would take advice and representations from the Electoral Commission, but it would be a separate body. If such a panel were to be set up, who should be represented on it? Who should it report to?

Bob Posner: It is difficult to think that it would add value. I do not want to be dismissive of a hypothetical group, but electoral law judges already hear cases and give their view of the law, and the courts generally say what it is. The Electoral Commission does the same, and we pool that together and do reports. For example, the London University Constitution Unit recently wrote a report on the recent referendum. There are lots of reports and views by eminent people—I don't think anyone does not get the opportunity to have their say. One striking theme in recent years has been the consistency of recommendations—whether you look at the Law Commission, Lord Pickles' report, or at what academics or judges are saying, there is a consistent theme along the lines of what I said in my opening remarks about what needs to be done. There is great support for the work by the Law Commissioners, and its blueprint for what needs to be done still has universal support.

Kelvin Hopkins: We could develop that theme quite a lot, but I will leave it there.

Q214 **Eleanor Smith:** Do you have any evidence or information about the effect of personal liabilities on people's willingness to act as candidates or agents?

Louise Edwards: The bottom line is no, we do not have any evidence on that or whether it has been looked at. We have evidence on the attitudes of agents in particular. Some survey work was carried out by Brunel University after the 2017 general election. It contacted around 3,000 agents across a number of parties, with more than 600 constituencies represented. What that said was that about 80% of the agents thought that the rules on election spending, and donations in particular, were very clear, and that nearly 70% of them had used and highly rated our guidance and advice to help agents know what they need to report. We think agents play a hugely important role in the electoral system. They

have an important role in terms of candidate decisions and spending on campaigning. We think that they need to have proper resources to support them in that role.

One of the things that we have done very recently, in fact yesterday, is to publish codes of practice to set out how parties and candidates report their spending after elections. They are drafted by us but require parliamentary approval before they come into force. What they try to do is to set out very clearly, with examples that set out the principles, exactly what needs to be reported by parties and candidates to give consistent information across the board. We sent those to the Minister yesterday. We have asked him to lay them before Parliament for approval. If that happens, that provides an additional important resource for agents.

Q215 Eleanor Smith: Is the guidance that you are talking about training? Would there be training for people wishing to stand as candidates or act as agents?

Louise Edwards: At the moment, most training would be carried out by parties directly. We know that they use our guidance, which is available on our website, and that they ask us for more bespoke advice on their training. Indeed, we have even worked with some parties to review training and guidance manuals that they send out to agents. There is another angle to training as well that covers those candidates and agents who are not part of political parties. Quite often, returning officers will run sessions before elections. Again, we input into those and ask them to flag our advice and guidance, so it is directly linked into the whole system.

Q216 Eleanor Smith: So you give support to independent candidates, other than the ones who are in the parties?

Louise Edwards: Yes, they have full access to all our guidance and we make sure that returning officers flag it to them as well. If they want advice, they can absolutely give us a call.

Q217 Eleanor Smith: Should there be mandatory training for candidates and agents?

Louise Edwards: That is an interesting idea. Mandatory training says to me that what you are saying is that there should be a standard for agents—a level of information or knowledge that agents should have. I can see massive benefits, in terms of the consistent application of the rules and making sure that agents know how important their role is and what decisions they need to take.

There is a flipside to that, however, which is, what happens if a prospective agent does not meet that required standard? At the moment, agents are volunteers. Volunteers have a hugely important role; it is a very healthy sign for our democracy that so many people want to get involved. We would need to think carefully about what the consequences of mandatory training could be for people willing to take on that role and, as I say, what happens if they fall below the standard that is expected. At

the moment, that research and testing would need to be done before we could work out whether the benefits outweighed any of the negatives.

Q218 **Eleanor Smith:** Who do you think should provide that training?

Louise Edwards: That would have to be part of the research. I can see an argument that, for the majority of agents, the party would be the natural person to run it. I can see that you might want an independent body to run it. A lot would depend on exactly what you were trying to achieve with that training and whether you were almost introducing a sort of fit and proper test for agents. If that were the case, you would need some sort of consistent approach to what meets that test. Again, that is something that would probably require a bit of testing and thought, so that you get the right body that actually achieves the aims you are trying to meet.

Q219 **Dr Huq:** You said in your evidence that you would welcome greater alignment between the laws for candidates and the legal framework for party and non-party campaigners. Obviously, the biggest fine in electoral history was for Vote Leave or Leave.EU, or both of them. Even Momentum has had a fine as well—a smaller one than that. In an age of these non-party vehicles, what changes do you have in mind?

Louise Edwards: At the moment, the party and non-party campaigner regimes are broadly the same in that they all fall under the Political Parties, Elections and Referendums Act. That means that our civil sanctions regime, which Parliament gave us, comes into play. That means that if we find offences, we can impose a fine between £200 and £20,000 for an offence. The gap that we see is on the candidate side, where there is not a civil sanctions regime. There is effectively a very blunt cliff edge. You either prosecute or there is no kind of penalty whatsoever for something going wrong. Let me give you an example of what that could mean. We know from data we have collected from police forces during 2018 that during 2018 there were 49 cases of potential missing imprints on election materials at local elections. Imprints are hugely important. They are the way that voters know who produced the material—who is trying to influence their vote. Of those 49, 20 were dropped for lack of evidence; fair enough—but of the remaining 29 there was not a single prosecution taken forward, because in not one of those cases did the police decide it was in the public interest. Compare that to the party regime that we administer, where we may well have said a £200 fine is a good incentive not to miss an imprint again.

I will just very briefly mention another example that I think is quite interesting. That is a situation where a candidate does not deliver a return at all after an election. It happens, but, particularly if it is an unsuccessful candidate, very rarely is any action taken—and no prosecutions for that at all. Again, contrast that with the party regime: in this year alone, so far, we fined 27 parties for failing to deliver financial information to us on time. It is not that normal for us to fine a party twice, so it clearly has an impact to have those small penalties imposed, rather than no kind of penalty at all. So because of that we have recommended a solution, which is to



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introduce a civil sanctions regime for candidate offences. Then we would be able to regulate that, consistent with how we do it for parties and non-party campaigners.

Q220 Dr Huq: It does feel like prosecutions and convictions are rare. People think it is a bit of a toothless regulator—you get a slap on the wrist and a bit of a fine. Also, my own agent was voluntary; most election agents are volunteers. This thing about having the short campaign period and the long campaign period—it feels like we are in an age where people are constantly in election mode because it might be any minute. Would extending the regulated period for constituency-level spending to 365 days, to align with the regulated period for national campaigns—would that be a thing? Or would that place an unreasonable liability on people that are essentially volunteers?

Louise Edwards: I think that would be difficult to regulate. While we absolutely agree, and have said many times, that a fine of £20,000 is sometimes too low for the more serious offences that occur, I think sometimes a fine can be a big disincentive if people know that they might get fined and their name will be put on our website as somebody who has been fined for an offence. I think the civil sanctions regime is an important deterrent on offences being committed. I think the challenge with extending to year-round regulated periods, if you like, is, similar to the idea of mandatory training, what are the knock-on consequences of that? What happens to the spending limit if you do that? There are very prescriptive rules at the moment about who can incur spending—how it needs to be recorded and reported. I think what you would need to do is work through, again, whether the benefits of doing that outweigh the increased restrictions that would result from having year-round regulated periods.

Q221 Dr Huq: Something I always found complicated is when things are chargeable in kind—if someone volunteered making a video, but it looks too professional to have been done on an iPhone—how you cost that in.

Louise Edwards: Yes, that is hard, and if somebody has that scenario my first reaction would be, “Why don’t you give us a call? Ring our advice service, tell us exactly what’s happened, and we will be able to give that advice on that unique situation.”

Q222 Dr Huq: It is difficult to know the origin of some of these things, and I think there is a question coming later on about things that spew out on the web. It is unclear where it came from, to do an imprint, but there are other things such as the battle bus scenario—I had this in 2015. A bus rocked up from HQ, I think. It was a pink women’s bus, which we did not ask for, but then it was in “Guido Fawkes” that I should have had to pay for that from my local spend. What reforms would you suggest to local campaign finances? Again, it is difficult to know what came from what.

Louise Edwards: I will touch on that example in just a moment; but what that raises is the idea of notional spending—so spending effectively by somebody else: is that reportable by the candidate or not? The Supreme Court looked at this last year and confirmed the view that we held of the



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law, which is essentially that if you have something that is candidate campaigning and falls completely within that category, and that is effectively notional spending—it is not something you are spending directly yourself—the crucial thing to look at is whether the candidate has made use of it as part of their campaign or whether it is a thing that has happened, from which they may well get some kind of boost and benefit with the voters, but that they have not made use of in any way.

In that scenario, you could imagine a bus turning up in your constituency. Perhaps you know it is coming, but you do not make use of it. It is nothing to do with you; it is just a thing that happens in your constituency, perhaps done by a party or somebody else. You have not decided to make use of that as part of your campaign, so it is not your spending. The converse would be that you knew the bus was coming and you decided to use it as a hook for a campaign event—you decided to do something around it that used the bus and the people.

Q223 Dr Huq: Commonly, shadow Ministers are taken on a tour around different constituencies—they might do mine and then go to Hammersmith and wherever—so it is not our petrol expenditure, and the bus is not from the local minibus company we know.

Bob Posner: If I can add to that, if one steps back and thinks about the increase we have seen in the UK over recent years in campaigning by other organisations and third-party campaigners, and remembers that the concept of national party campaigns is, in electoral terms, fairly new—the candidate laws go back a long time—and that there has been an increase in national spend, targeting and so forth, one can see that this goes back to what we were discussing a few minutes ago about how the role of the candidate and the agent at local level has, in a sense, been squeezed. I think there is a consensus emerging that we need to reassert the role of the agent in particular—the agent protects the candidate—and to empower the agent to deal with things at local level.

That links partly to the work Louise referred to on the draft codes on spending we have sent to the Minister. We discussed with the main political parties and with agents whether it would help everyone if we suggested to Parliament statutory codes, and we have been working with the main parties on those. That is another means: it all goes towards asserting the agent's role and the protection of the candidate through the agent. I can see that is difficult at local level.

Q224 Chair: I want to reflect on that. Where has this consensus emerged from that the role of the candidate's agent should be asserted? To what extent do prosecutions assert the role of the agent?

Bob Posner: The battle bus is an emotive subject in itself, but it was interesting. At local level, in some cases the candidate and the agent said to the national party, "Actually, no, don't come to my patch, please"; in other instances, they distanced themselves; and in other instances, they were deliberately or inadvertently pulled in. You got those different reactions. It is an interesting example. Given the relatively low spending



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limits at local level that candidates and agents have to grapple with, they can get into difficulty very easily. One can see the pressure as national campaigning rises. There is a whole other factor in this, which is digital campaigning. We might come to that; it is a different thing again.

Q225 **Chair:** Who decided to assert the role of the candidate's agent? Whose decision was that?

Bob Posner: I am not sure it was anyone's decision. Do you mean the codes I was referring to?

Q226 **Chair:** Well, you advanced the idea that a decision was taken to assert the role of the candidate's agent.

Bob Posner: After major elections there are parliamentary parties panels, which are established in legislation, in Scotland, Wales and Northern Ireland, and for the UK. There is a Westminster parliamentary parties panel, on which the main parties are represented, and we meet them regularly. After every election, we discuss and post-mortem what happened in that election. One of the things that emerged from those discussions was the option of statutory codes, which is in the legislation. Traditionally, that has not been picked up in the UK; we have always worked on non-binding guidance issued by the Electoral Commission, and indeed the political parties issue their own guidance to their candidates. There is the possibility of doing something that has statutory force. If you are a candidate, an agent or, indeed, a political party and you act within the codes, you have protection. If the courts see you have acted within the statutory code, you cannot be prosecuted, basically. That is different from guidance. You might follow guidance, but you are never quite sure what view the police or the CPS might take.

Q227 **Mr Jones:** These issues, of course, were ventilated extensively in the Thanet case relatively recently. How clear is the law now in the wake of that case? Has the position been clarified, or would you say that it has simply been reasserted and that it was already well understood?

Bob Posner: The Thanet case, just to remind ourselves, was a prosecution brought by the police and the CPS against the candidate, the agent and a senior party official. In the course of the case, the defendants' lawyers—the various QCs representing them—wanted a ruling on the law. They took that to the courts before the Crown Court judge would hear the criminal case, and that ruling on the law found its way up to the Supreme Court, which is what you are referring to around the spending laws.

What the Supreme Court did—and its ruling is ultimately the position—was say that as it is interpreted currently, the law is what it is, basically. That is what Louise was referring to about the difference between “making use of” and not. Clearly, from the point of view of the defendants' lawyers, they were defending and looking to protect their interests of their clients who were being prosecuted.

I do not think that the Supreme Court judgment changes the existing law at all. I do not want to go into the details, but one must remember that



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the Thanet case was about someone deliberately breaking the law in a criminal way and being convicted of that. One must also remember that the judge said that that led to the candidate and the agent signing their returns in good faith, not knowing that criminal action had gone on.

That was a case of someone taking criminal action—a criminal offence—and it having a really adverse effect, but electoral law can never deal with that and address that. If someone is going to break the law in a criminal way, that will always be an issue.

Q228 Mr Jones: You said in your written evidence that much of the concern that had been raised about the judgment was founded on a misunderstanding of the rules. Could you explain that further?

Bob Posner: The initial reaction was that the Supreme Court had changed the law. That is partly understandable, because at the stage before that, the Court of Appeal gave a different interpretation of the law.

The High Court judge at the first stage said, “The law is as we understand it.” The Court of Appeal then looked at it and said, “No, actually we interpret this differently”; it was in favour of the arguments put forward by the lawyers for the defendants that if the agent has not authorised it, it cannot be the agent or candidate’s spending. But the Supreme Court reinstated the position and said that it is about “making use of”. Otherwise, you create a gap in the law on the level playing field, where if someone does not authorise something, they can still be spending.

That is partly why initially people said, “Oh, the law’s changed,” but it seems to have settled down now. I think people across the legal world seem to have agreed that what the Supreme Court did was just to confirm things.

It does raise the question whether the existing laws are clear enough and work effectively at a local level. That brings it back to the debate about what one can do—even if the laws are as Parliament made them and are being implemented that way—to help candidates and agents. I think what one can do is give as clear assistance as possible through the codes of practice that we have spoken about and so forth, but what one can never address is deliberate criminal action.

Q229 Kelvin Hopkins: I have a supplementary question about a matter that I have raised before. What about spending, not during election campaigns, but between elections? We know that parties put out leaflets and that kind of thing, but there has been at least one example where an immensely wealthy person paid vast sums of money, on a regular basis and over a period of years, to swing a particular marginal seat at the general election. That makes it look more like an American campaign, where vast sums of money are spent. Has the commission looked at any of those examples?

Bob Posner: Yes. The system is predicated on regulated periods in the lead-up to elections or electoral events. Spending before or outside those regulated periods is not regulated and is therefore not reported to us and



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is not transparent; it might be picked up by journalists and so forth, but it is not something that we oversee.

I think it is fair to say that in our modern, 21st-century world, a lot of campaigning takes place all the time, and you sometimes see large spending outside the regulated periods. It is a policy question for Parliament—Louise touched on it earlier—whether that sort of spending should be reported so that the public can see it. If it were reportable to us, we could publish it and then at least it would be transparent. The second question on top of that is whether or not you limit it in some way. There are two different questions.

Q230 Kelvin Hopkins: If it was required to report the spending and there were limits on spending in this way, that might address the problem.

Bob Posner: It would be one way. If the view of Parliament was that this all needed regulation and they needed some spending limits outside the cap-related period, then one can do that. But in a sense there is a step down from that, which is to enable it to be transparent, so people understand what is going on. That is one of the fundamental principles—that the voter is informed and is aware of who is trying to influence him, and in what way. Whether you then, in a UK context, say we need to cap the overspend is a separate debate, but it's a valid debate.

Q231 Mr Jones: Reverting to Dr Huq's point about senior members of the party during election campaigns, do you understand why agents or candidates might be a bit reticent now about entertaining such visits?

Bob Posner: Yes, I do understand it. Partly it's about agents being happy to be an agent, because they know the law is clear, they know the situation and they know they have the support of their political party and there is a good source of advice in the Electoral Commission. This is all part of being an agent and being content to do it.

It is important to remember that no agent has been convicted. In the South Thanet case, the agent was absolutely clear, as was the candidate, that it was a third party who was doing things wrong. I don't want to comment on those circumstances in any way at all, but from the candidate and the agent's point of view they were completely cleared. There was nothing for them to fear from what happened in South Thanet.

In a sense, one could say that the fact the South Thanet case happened—these cases are rare—is a reassurance for candidates and agents that those individuals are not convicted. The court says, "No, it's not you."

Q232 Mr Jones: So candidates still have to put up with visits from Cabinet members during an election campaign—that was a joke.

Bob Posner: The concept of a leader or a shadow leader's tour is part of our politics. It is a good thing; they go around and it is part of a national campaign. I don't think we would want to lose that.

Q233 Mr Jones: It does add to the occasion. It would be regrettable if that were to disappear.



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Bob Posner: Absolutely. We would agree with that. We would not look to fetter that, but as Louise was saying we would look to help there be clear rules around that.

Q234 **Chair:** In retrospect, you were wrong to prosecute the candidate and the candidate's agent.

Bob Posner: We did not prosecute anyone, I have to say. You have to remember that our role is not that. We investigated the party return and that was wrong, in the circumstances.

Chair: You were wrong to pass the file to the public prosecutor and suggest that the candidate and the candidate's agent were both breaking the law.

Bob Posner: In those instances—both South Thanet and the battle buses—the police had complaints from all sorts of quarters. We weren't the complainant. The complaints came from all sorts of people. In those actions, if the police want our assistance or advice we provide it. It is our job to support the police in their work.

Q235 **Chair:** But the Electoral Commission provided the prosecuting authorities with a case.

Bob Posner: No, I don't think it is fair to say that. We were independent of the prosecution. We made our files on our investigation into the party available. Indeed, we chose to appear as an interested party in the Supreme Court case, because that was between the CPS and the defendants, but we chose to appear only at the Supreme Court stage, as we thought it was important that there was a third, independent view for the Supreme Court judges. We had nothing to do with the CPS case at any stage.

Q236 **Chair:** Okay. Were you represented at any of these proceedings?

Bob Posner: Just the Supreme Court stage.

Q237 **Chair:** Okay. Perhaps you can answer this question more dispassionately and objectively, and with an open mind? How appropriate is it for a Member of Parliament to be subjected to months and months of attritional warfare in the courts, to protect his reputation on a criminal charge, then to be exonerated? Is that how an elected representative should be treated or is there a better way of regulating the behaviour of candidates and agents? This is a state of the law question.

Bob Posner: I am objective about it. It is the job of the police and CPS to decide whether to bring criminal prosecutions of this nature; it is not our role. In the case you are referring to, there were three defendants. My observation is that there was a difficulty for the prosecution to know who to bring the case against, where they had the three defendants to an extent looking to each other.

Chair: I am asking whether the criminal law—

Bob Posner: What I am saying is that, in criminal cases, it is often



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inevitable that there are multiple defendants.

Q238 **Chair:** The point is, is it appropriate to have the criminal law brought to bear on what are essentially regulatory issues, in the modern parlance?

Bob Posner: Yes. I think you're right. That brings it back to Louise's comments about the potential for a civil sanctions regime for candidates, which we support. Currently, candidates have a cliff face—and agents. They may have done something wrong or not done something wrong, but nothing happens, or they end up in the criminal law system. That is harsh. That was the system with political parties prior to 2010, when Parliament created a civil sanctions regime which we ran for political parties and non-party campaigners, which removed that cliff face for them. Civil sanction regimes work well with high levels of compliance. It seems unfair to candidates and agents if they do not have that protection. For them, potentially just criminal action can apply. There will always be the risk of criminal action, but civil sanctions are an option.

Q239 **Chair:** I want to ask about prosecution of the party agent. It is quite obvious to outside observers that the prosecution of the third party, in other words Conservative party headquarters, was really a prosecution where it would be appropriate for it to be a corporate liability rather than an individual liability. Why should the consequences of such a failure fall on one individual as opposed to the body as a whole? It seems incredibly unfair.

Bob Posner: I note that comment—

Q240 **Chair:** I appreciate that that is the state of the law. I am asking you, as the adviser to the Government on electoral law, is this a fair way of regulating political parties? Is it an effective way, given that the people who benefit from what individuals do may be in a position to influence what they do, because they are the employer? Then they benefit from what they do, because they win the election; but they are not the ones who finish up in the dock. Is that equitable?

Q241 **Bob Posner:** I can be helpful there. If one looks across at company law, one sometimes sees corporate responsibility for the organisation as opposed to, necessarily, the company secretary or director—although, equally, those options exist in company law. In electoral law, a lot of it comes down to an individual, such as a treasurer. Although there are options in the civil sanctions regime, we do nearly always fine the party, not the individual. It is an interesting contrast to draw. I would just be cautious. I make no comment on that particular case, because sometimes it is an individual who has done something that is culpable, but I see your point.

Q242 **Chair:** You see my point. I am asking again: how appropriate, in retrospect, in this case—how fair do you think it was on the individual, when that individual took all the blame for the mistake that was made, or whatever you want to call it, and the organisation appears not to suffer? Okay, the organisation conducted and paid for that person's defence, and that was expensive enough. Is this the right way to regulate the behaviour of a political party, or is there a better way?



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Bob Posner: I do not want to be drawn to the facts of the case—because the individual was heavily criticised by the judge for what she did, including creating some false documents, but I take your point that individuals can be influenced by the party, who is the employer, and it is very difficult. I understand all of that. I do not want to take the South Thanet case as a case example. If you are speaking about a generality, should political parties carry more responsibility, in instances—I can see the force of that. That would be an option.

Q243 **Mr Jones:** Of course, a case in which the Commission was itself a party was the recent Darren Grimes case. May I ask what the status of that is? The report indicates that you may possibly be considering an appeal against that decision.

Bob Posner: In a very normal way, at the moment the judge has not issued his written judgement. That is a key document for all of us to look at. We will wait for that, look at it and then consider our criteria—we can appeal at the upper level of court, if we thought it was in the public interest. There may be wider points of interpretation of the law. We would appeal if we thought it was important that a higher court look at some aspects of it.

Q244 **Mr Jones:** The judge was critical of your interpretation of the law in that case, wasn't he?

Bob Posner: I think it would be wrong to be drawn into the details of that case because, as you have alluded to, it is still a current case in the process. It could continue to go through the courts, so I don't want to be drawn into it in detail. It is fair to say that it was the first ruling on a particular piece of the law. The judge came to a view that how we had approached it was setting too high a threshold, and he set a lower threshold. I don't want to go into the details of the case. No one has seen the written judgment yet, and it could yet be proceeding through the courts, so I want to be cautious about that.

Q245 **Mr Jones:** I think it is fair to say that the commission has been fairly heavily criticised by commentators in the press since the judgment was delivered. That's right, isn't it?

Bob Posner: Well, we live in times when strongly held views and public institutions quickly come under criticism. We refute that.

Q246 **Mr Jones:** Have you read Mr Madsen Pirie's article in *The Times* today?

Bob Posner: Yes, I have read his opinion piece.

Q247 **Mr Jones:** Do you accept the criticisms that he makes?

Bob Posner: No. All organisations can improve—we can all improve. The Electoral Commission oversees elections. Elections in the UK are highly respected and run well, although there is a need to look at electoral reform. It is a great success story. If you look at our role on regulation, as Louise will tell you in more detail than I can, we have very high levels of compliance in the UK across the political world. That is a success story. It means that the regulatory system is working. You will always get



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instances in any regulatory field where something is looked at and there is a different view of it, and the vast bulk of the work is successful and works well. One case does not affect that.

Q248 Mr Jones: Mr Pirie suggests that the Electoral Commission should be wound up altogether and replaced with a completely different body. Would you welcome an inquiry by this Committee into the wider role of the Electoral Commission?

Bob Posner: The Electoral Commission has always been subject to oversight by this Committee and Parliament. We are a body of Parliament; we report to Parliament. We absolutely respect that. Our job is to meet the needs of Parliament and to reflect what Parliament wants of us. We do that. I am confident of that. Does that answer your question?

Q249 Mr Jones: So you accept that that is something that this Committee may wish to consider?

Bob Posner: I don't think there is a particular need for it now, if you are suggesting that. If you are suggesting that something has happened that is a trigger for that, I would suggest otherwise. If you are suggesting that, in the general oversight of the commission, Parliament should always have oversight of us, of course you should.

Q250 Chair: We are contemplating such an inquiry. I want to emphasise that it would be to look at the next stage of the evolution of the Electoral Commission and what you do. It would be to try to learn from the first 18 years of your existence, from which there is surely much to learn.

Bob Posner: Absolutely.

Chair: It would be the natural corollary of this electoral law review to look at the role of the Electoral Commission. The criticism is so often with regulators of all kinds that there are inherent conflicts between your role as adviser to the Government on matters of policy and issuers of advice. Indeed, you have executive responsibilities in elections and referendums, and then you have a regulatory function, and even a prosecuting and fining function—that can be described as judge, jury and executioner in your own case. It is not uncommon in the regulatory field, but it is what is giving rise to concern about these matters. You might like to reflect on that. We are asking you these questions as we reflect on how we frame the terms of reference of our inquiry, and we would like to engage with you on that.

Bob Posner: I absolutely respect that. That is absolutely right. The commission was created almost 20 years ago, and it would be absolutely natural to be considering the role and how it is working. It would be absolutely positive, and we would welcome that. "Judge, jury and executioner" is this catchy phrase that I have heard in the last few days. I think that is unfair—actually, I think it is nonsense. If we think about it—this applies across all regulators—Parliament makes the law, the regulator enforces or applies it and the courts adjudicate. That is absolutely as it should be. The three parts are working as they should be. That is absolutely sound; that is not judge, jury and executioner.



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Q251 **Chair:** Could you confirm how much you spent on the Darren Grimes case? It was reported to be £463,000.

Louise Edwards: That figure is wrong. That figure was our estimate of the amount that we anticipated spending on Vote Leave's appeal as well as Darren Grimes's appeal. As you may know, Vote Leave decided to discontinue its appeal. It has paid its fine and accepted that offences were committed. It has also paid us £180,000 in costs, towards the elements of the appeal that we had to spend on it. There is a process that the judge has ordered that we go through, with costs on Mr Grimes, that involves us working out exactly what we have spent and him working out exactly what he has spent, and we are in the middle of that process at the moment.

Q252 **Chair:** I should put my interest on the table: I was a director of Vote Leave. But I think it should also be clarified that the present directors have made it very clear to me that they don't accept that an offence was committed; they just have no money to carry on contesting the case. If the Darren Grimes case stands, does that have a bearing on Vote Leave's position?

Louise Edwards: No, they are completely separate offences and completely separate matters.

Q253 **Dr Huq:** When we have the Vote Leave case and all these other things going on, it does seem—well, one of our witnesses told us that personation at the polling booth is vanishingly rare, yet that's the one that the Government are having all these pilots on and are making efforts to stamp on. What arguments are there in favour of introducing voter ID in the first place? For ages, we have gone around saying, "You don't need your polling card," trying to make it easy for people, and now there is all of this.

Bob Posner: You are absolutely right. Currently, we go into polling stations, we say who we are and we can vote; it is a trust-based system. If we go back a few years on the postal voting system, which is the other main means of voting, there was a lot of concern early in its introduction—there were a lot of difficulties about the security of postal voting. Then Parliament significantly tightened up the laws on that and closed a lot of the vulnerabilities. I am not saying that postal voting is perfect, but it is much more secure and it is a very popular system now—advance voting. So on postal voting, the law has been modernised and updated and it's been made secure.

The question is on polling station voting—whether it should stay as it is or whether there is a need for change. That is really the debate that is alluded to. One could look at it and say that in a sense it is a vulnerability in the system because it is totally trust-based. One could look at it and say, "Well, actually, that's OK. In the UK, there isn't an issue." We do know, from our survey work with voters, that people worry about voter fraud. There are high levels of concern about that. So one thinks of it that way, in terms of voter confidence and trust. It is interesting to think about voting at polling stations, because perception matters.



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The commission's position on voter ID in polling stations is this. In 2014 we took the view that UK Governments, whatever persuasion they might be, should look at it and develop an accessible and proportionate scheme for voters. Our criterion was that it should happen only if the scheme was accessible and proportionate. There have been a number of pilots since, and in the report we have just published on the most recent pilots, earlier this year, we have made three key points, which have built on our policy and which are these.

If we have an ID requirement in polling stations, it should demonstrate clear improvements to current security levels; it needs to be demonstrated that it does create more security improvements. It must be accessible and ensure accessibility for all voters—that is absolutely fundamental—in our elections. And it should be realistically deliverable, taking into account the resources required to administer the practical side. So we have set those thresholds. It is for Parliament—for politicians—to decide whether that should proceed.

Q254 Dr Huq: But the figures—and they were not in yesterday's *Times*, but in yesterday's *Mirror*—show that it seems to have been disproportionate; it seems to have been heavy-handed, overbearing, and turning away certain categories of people. It was the case that 1,968 people were initially refused and 740 did not come back. That is more than half, so it is having a deterrent effect. We know that there are certain categories of people, such as older people, BME people, disabled people and transgender people—lots of people—who don't have a passport or a photocard driving licence. There are 3.5 million people in this country who wouldn't have any voter ID. We know that from the Windrush scandal. Do you think that the £20 million spent on rolling this out has been good value for money, given that there has been such a small number of cases? I think there were eight last year.

Bob Posner: The Commission's decision is clear: we want all voters who are entitled to vote to be able to do so if they want. We made that very clear about EU citizens in the recent European parliamentary elections. You would expect us to say that, and it is our driver. In the recent pilots, and last year, we have explored different ways of doing it. One of the values of the Electoral Commission is that we look at it totally independently of the Government's political views, and we have reported that objectively in a facts-based evaluation.

You are absolutely right that certain people on particular types of pilots had difficulties. If it is the right thing to happen, the challenge is therefore to have a system that does not make it impossible or very difficult to vote. It should be easy and readily accessible. It is important to remember in this context that we already have a voter ID system in Northern Ireland—we have had it for many years—and it works well. There is a part of the UK that does it, but I appreciate that that is different from the rest of GB. It was introduced in Northern Ireland for different reasons.

On cost, because we are the Electoral Commission, we do not think that it is a case of, "Well, you could spend that money elsewhere." If something



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is needed to improve the electoral system for voters and democracy, that is money well spent. We do not think it is a choice—you can spend it here or there, if something needs to happen. These are reasonably large sums of money, but they are not astronomical. We think that it is money well spent on our democracy, if indeed Parliament comes to the view that these things should happen. I think £20 million is probably an upper limit, but that is probably detail.

Q255 Dr Huq: The Electoral Reform Society told us that voter ID is near the bottom of voter priorities for electoral integrity. There was an 87-year-old pensioner in Pendle, Lancashire, who has voted in every election all her life but was turned away because she thought photo ID meant bringing a photo. There is misinformation about these requirements. I think two local authorities provided their own system, but people just do not know about this. I dispute the idea that introducing voter ID would increase public confidence. I do not know what your findings are.

Bob Posner: You make a very important point. Voters have concerns about various things. For any change you make to the system, public awareness and education is absolutely key. Public awareness is one of the really important functions of the Electoral Commission. Ultimately, if there is to be a change to electoral law, we would expect to be enabled by Parliament to do major public awareness and education work as part of that. It would be absolutely fundamental if it were to happen. I absolutely have empathy with that particular case. We are aware of it—you can really understand why people were confused, and that is not where we want to be in the UK.

Q256 Dr Huq: It just looks like an American restrictive requirement that Trump has used to such effect. It has been put to us that voters are more concerned about things such as having more balanced media coverage, being better informed or even having up-to-date registers. There are a lot of dead people on the register. With individual registration, it has meant that lots of people have fallen off. Why don't those have greater priority than voter ID?

Bob Posner: I think they should have priority as well or instead, depending on what Parliament wants to do about voter ID. It is what I alluded to at the beginning. You have to get the framework for electoral law updated. People are frustrated about electoral registration. We have all these different registers and they do not communicate with each other. We have now introduced online registration, which is great. It is a Government system. If I go to register online on the current system, however, I cannot tell whether I am already registered. Lots of people think, "I might not be registered—I'll go online and register," but they are already registered. It creates a massive amount of work for local electoral administrators and confuses the voters.

There is a lot to be done. Join up the registers—you can have all sorts of innovations. People will be able to vote not just in their own polling place, but in other polling places. It opens all sorts of possibilities that would raise voter confidence. There is plenty that should be done. I do not



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necessarily hold up Canada, Australia and New Zealand as beacons, because in some areas we are well ahead of what they do, and they look at us. In countries that have single electoral registers, people can go into multiple polling stations to vote, and they have different choices on advance voting. We have some catching up to do. To do that—a lot of people say it is urgent—we need to sort out our basic framework for electoral law.

One point that I did not make earlier, and that just occurred to me, is that it is important in the context of devolution, now that the Scottish Parliament and the Welsh Assembly can control their own elections and will understandably and rightly probably want to diverge on matters of policy, franchise and so forth. But there is no reason why the underlying law across the UK should not be a consistent framework, to underpin our system. We need to do this work and get it in place in the UK.

Q257 Chair: Why did Woking produce a much more positive return than everybody else on the pilot?

Bob Posner: I am afraid that I don't have the detail to hand.

Chair: I understand that Woking Borough Council issued its own photo ID to people who needed it.

Bob Posner: Because people would not necessarily have photo ID, one of the pilots tested the ability of the local authority to assure a free identification card on demand, which is exactly what happens in Northern Ireland, where it is extremely popular. In Northern Ireland that fills a gap for people who just have not got the right ID. Instead, they get the electoral card from Northern Ireland's chief electoral officer. Woking was one of the pilots that tested that option. Certainly, we have said that if voter ID was to proceed, that is one of the important tools that one would expect to see.

Q258 Chair: It meant that of those who initially turned up to vote, only 0.1% then failed to vote. In Mid Sussex it was 0.03%. Were they doing the same thing?

Bob Posner: No, they weren't. I was observing in Mid Sussex during that day. Although it went fairly smoothly, you could see that some people turned up without identification, and did they come back or not? They did not have the option of electoral card there, as I recall.

Q259 Mr Jones: May I follow up on that point? What procedure do voters have to undergo when they apply for the voter ID card from, in this case, Woking? Presumably they then have to provide some evidence of identity. Is that right?

Bob Posner: It is just who you are; it is not proving address. It is who you are and whether you are on the electoral roll.

Q260 Mr Jones: I am just wondering what ID you would take with you to the council offices to obtain your voter ID card. That is another issue.



Bob Posner: Personally, I don't hold that kind of detail, but it is deliberately set at a level that everyone should be able to meet. When I think about Northern Ireland, I know that they are particularly conscious of that being a means for homeless people and so on. It is really just establishing that you are there in the area. It is very low level. It just makes something available, so as long as you are on the electoral register, when you turn up to vote at the polling station, you will be fine.

Q261 **Kelvin Hopkins:** Presumably you were required to do your trial because of the Pickles report, which was concerned with voter ID and impersonation. On the other hand, the Labour party has said that something like 2.5 million people would be excluded from voting if the voter ID system was put in place. When we interviewed the Law Commission and I raised this question, it was less exercised about it than Sir Eric Pickles. Without being party political, it seemed to agree with my view that it is something that we should not be pursuing, because there are other, more important things. Yesterday you published the results of your ID trials. What are the main takeaways from your evaluation so far?

Bob Posner: The important thing to remember is that the pilots are a Government initiative. It is a Government-led policy to hold pilots. Our role on the legislation—as a body independent from politics, being impartial—is to evaluate those on the facts. That is what we have done. That is why we published our report for everyone to see across all political persuasions and all interested people. It is totally independent of Government.

I alluded to the main takeaway points earlier. Our policy is that if voter ID is to happen, it needs to be accessible and proportionate. If you expand that, it needs to address something. It needs to improve security levels—the risks of personation in polling stations or the perception of it. It needs to raise voter confidence. It must be accessible to all voters. It is totally unacceptable if it is not. There must not be any disenfranchisement. It must be a practical and deliverable system, which might be the least problematic part, but there might be a cost to it. But the first two principles are fundamental.

Q262 **Kelvin Hopkins:** In your results, which I have seen for the first time this morning, it is interesting that in a strongly urban area, which might even be considered strongly Labour—Derby—514 people were initially refused a ballot paper and almost exactly half did not come back. That is a rather different place from somewhere such as Woking, where we would expect that a much higher proportion of people would initially have had ID and most of them would have come back. The figures seem to report that. Does that not suggest that voter ID would have a serious political impact across the country, as the Labour party is suggesting?

Bob Posner: The location of the pilots was Government policy—a Government choice. We did not choose where the pilots were. The Government spoke to various local authorities and some local authorities chose to participate in the pilots across the country. We had pilots last year in some areas. One of the outcomes of that report was that we said



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to the Government, "Pilots need to be held in more areas and more varied areas." The pilots this year were the Government responding with 10 pilots in a broader selection of areas than the year before, which is good. The point still stands, however—this is a point we make in the report we published yesterday—that if you roll out nationally what you have tested in some local areas, you have to really understand the implications of that and be confident that it is going to work.

Q263 Kelvin Hopkins: It is early days yet, but how robust is your evidence so far? Will it have an impact on policy?

Bob Posner: Our evaluation is facts-based and survey-based. We had observers out in force across all the areas that were pilots, observing directly ourselves. We got factual information from electoral administrators and returning officers. We have published all our evidence, so people can see it, but it is very much to the highest research principles and standards. We are confident that what we have published can be trusted and informs properly on a fact basis. We have set out criteria that will need to be addressed if this policy is to happen. They are addressable, but they would need to be addressed if it were to happen.

Q264 Kelvin Hopkins: What effect did voter ID have on voter confidence in the integrity of the 2019 local elections? What was the voter view?

Bob Posner: It is like all things. In terms of the process itself, across the pilots voters did not have any difficulty—I am broadly generalising here, you understand—with the process of turning up and giving identification. That was the general theme, and it was the same theme last year. After all, we all have to give identification for all sorts of things we do these days—picking up a parcel in the post office or whatever—so it is not a surprise when you are asked to show your identity. The understanding of the process of going somewhere and showing your identity was pretty high.

There was a lot of work done at a local level by the local authorities to raise awareness in the local area that people needed to do this. That does not take away from the fact that some people did not turn up with identification and either went away and came back, or did not, or could not, or chose not to, so the different pilots showed us different things.

We spoke about it a bit earlier—in our view, it is really important that there is a range of evidence that is sufficient for voters so that we do not have people who cannot vote. The electoral card—the local issue electoral card—or a national electoral issuance scheme, similar to Northern Ireland, which is shown to work, is a very powerful tool to help that.

Q265 Kelvin Hopkins: Is not the reality that impersonation is a minor problem in our electoral system? Voters are not concerned about impersonation; many more people are concerned about bias in the media, incomplete registers and other factors that might affect elections.



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Bob Posner: There are other serious matters that people are worried about. I completely agree with that. People are worried about voter fraud. Impersonation, thankfully, from what we know, is a low-level problem in this country with a limited number of cases, but one would say that one case is one case too many. One has also to think about it another way as well. I am not promoting the policy or not. We introduced the postal vote in the UK, which caused problems initially before the law was tightened up.

Chair: We will come to that.

Bob Posner: The parallel I would draw is that one can either wait for a problem to arrive, and then address it, or see a vulnerability in the system and say, "Let's address that vulnerability before it arrives." That is very much a policy decision for politicians. One might take the view—a very valid view if one takes it—that there is not a sufficient problem that needs to be addressed at the moment, and there might never be, or one can take the view that if there is a vulnerability in the system, we should address it.

Q266 **Chair:** If we want more people to be able to vote at different places and we want a single register, does not voter ID probably come as a package of all that to safeguard against impersonation if you have got a much more open and flexible system?

Bob Posner: As you modernise and give people more choices, a joined-up register is where they can vote anywhere. Potentially you might have advance voting at polling stations in advance of polling days, something that is hugely successful in other countries such as Canada, Australia, New Zealand. You need to address the issue of people going to different places and how you are confident of the register. You need to address that. It does not absolutely flow out of voter ID, but it is one of the tools.

Q267 **Chair:** Are you in a position to evaluate the Labour party's fear that 2.5 million people would be deterred from voting by voter ID on the basis of the pilots that you have just reported on? That would suggest that 7% of the electorate will turn up at the polling station then not return, whereas these figures suggest that the fraction not returning is absolutely minute compared with that.

Bob Posner: Based on the pilots at a local level, and taking small percentages, if you multiply them up to a national election, they become reasonably large numbers, but not anywhere in the order of what has been said—nothing like that. However, you have to recognise that if you take some local pilots and project them on to national major elections, you want to be confident that that will not cause a major problem with people not being able to vote. If it is to happen, it needs to be done well and right. We have done evaluation work and we are ready to assist on any system that might be introduced.

Q268 **Kelvin Hopkins:** The 256 voters not returning could be crucial in a marginal parliamentary seat if half a dozen of those could swing a general election.

Bob Posner: Despite what people say, we are truly politically blind on the consequences of that. We just deal with what we deal with. For us, any voter wanting to vote at a polling station and not being able to vote is not what we want, and, I am sure, not what any of you would want.

Q269 **Chair:** Are you able to evaluate whether introducing voter ID is in any way indirectly discriminatory against different ethnic groups?

Dr Huq: After you finish, Chair, I would like to say something.

Chair: Are you cheering me on, or what?

Dr Huq: There is actual evidence of this.

Q270 **Chair:** Are you in a position to suggest that?

Bob Posner: It is why we make one of our points. It should be accessible to all voters. The ability is one of the considerations of different types of voters in different communities. In themselves, the pilots do not directly show an issue, but in any change in electoral law it is absolutely vital that one considers all types of voters and all consequences.

Q271 **Mr Jones:** Turning to postal voting, how significant is the risk of postal voting fraud?

Bob Posner: Parliament has addressed this. It has significantly tied up the system with the registration of postal votes, with postal votes being checked and signatures cross-checked, so there are very robust systems in place. That gives much greater confidence than was previously the case. We have had this new system in place for a number of years now. Local authorities are good at implementing it. However, it has to be recognised that postal voting is a vote that takes place outside the security of and all the rules of a polling station. That is a fact. One cannot get away from that. It is a different way of voting in a remote way, and therefore, potentially, there are different vulnerabilities that come with it.

Q272 **Mr Jones:** You argued in your written evidence that the laws relating to the secrecy of the ballot should be extended to postal voting. How would that work in practice?

Bob Posner: The first anomaly—a consequence of rather complex law—is that in the laws around postal voting, the secrecy of the ballot has not been addressed and therefore the offence is not recognised in that context. I do not underestimate the practical issues that would arise from it, but it seems odd that when it comes to our most fundamental principle, the secrecy of the ballot, which we protect so much and so well, on postal voting we make no attempt to have offences around it. Because there will be cases and circumstances where someone has overtly influenced someone in their postal vote, and has breached those rules. There will be other cases where it is people filling in their votes around the kitchen table; that is a different, more relaxed situation; there is nothing wrong going on. That is entirely in the home and one would not want to regulate. Not to have any protection at all seems odd to us. It would be another tool, to give confidence in the system.

I would mention something else that is connected to confidence in postal voting. We do a lot of work now, and you may have seen it, on campaigns to the public about protecting their vote. We do campaigns around that, with the postal vote particularly in mind, but also about voting generally in communities. We are very much raising awareness and people's understanding of the importance that their vote is their vote, and protecting it.

Education is really important. If you linked that to there being offences, we, the police, CrimeStoppers and other organisations and community groups can talk about that as well: "The vote is your vote and must be protected. There are offences if you do not do it around the ballot." You are all doing positive things to protect and make the postal vote system secure, remembering that, as a means of voting, it is very popular with voters. A lot of voters value it, particularly as it is the only means in the UK at the moment of advance voting.

Q273 Mr Jones: Given the practical difficulties you have outlined, how is it really possible to ensure more secrecy in a postal ballot?

Bob Posner: Ultimately, I go back to the fact that you are enabling voting away from a polling station, so there is a balance between the convenience and the need for voters to have that other route of voting in advance, as compared with not being as secure as in a polling station. But one wants to give tools with a deterrence that help to educate people and give confidence that it is their vote, and support for people. There will be instances where there will be evidence but, hopefully, not many. Compliance is the key.

Q274 Mr Jones: Should political campaigners be allowed to handle postal votes?

Bob Posner: Our position is that the fewer people who handle someone's postal vote, the better. The more people who handle it, the more risk. Basically, it should be a transaction between the voter and the returning officer. Clearly, Royal Mail need to handle it in between as well, but it should be the fewest possible people.

Q275 Mr Jones: Should it be banned?

Bob Posner: We published a voluntary code for political parties, and the code, which some parties have signed up to, says just that. It says that campaigners will not handle postal votes. We think that is best practice. Lord Pickles, in his report, recommends that it should be made law that campaigners cannot handle it.

One can see a force of argument in that. In principle, we would certainly see the force, because that is what our voluntary code says, that they should not handle it. If one introduced that law, one would need to discuss with police, prosecutors, with us, what is the best way to frame that law, about how to define a campaigner. The basic principle is that campaigners should not be handling postal votes.

Q276 Mr Jones: What is your assessment of the extent of postal voting fraud in this country?



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Bob Posner: We have seen significant drops in what were quite awful cases initially in Slough and various places in the country, where there was postal voting fraud. When all the safeguards were brought in a number of years ago, we saw a significant drop in such cases. Tower Hamlets is not that long ago. There were lots of issues around what was going on in Tower Hamlets. That election petition was successful and those people did ever so well to bring that petition at their own risk.

One difficulty facing the police at the time, whatever view one has on how well they did or did not do their job, was that they were dealing with really old electoral offences that were difficult for them and the CPS to run through the courts.

For things you are talking about—postal votes and other offences—I would say, modernise electoral offences and modernise the petition system as well, so that we give our police authorities, regulators, campaigners and everyone clear law—if the law is broken it can be dealt with. That was one of the real difficulties in the Tower Hamlets scenario for the police and the CPS.

Q277 **Chair:** What has changed to reassure people that Tower Hamlets could not happen again, and what in particular still needs to change?

Bob Posner: A lot of work has been done in Tower Hamlets. We worked very closely with all the authorities involved —the political parties, campaigners and the local authority. The local authority, I think, are very good at running elections now, if I may say. They have put a huge amount of resource and thought in, and recent elections at Tower Hamlets have been well run. They are under massive scrutiny. The police there are now very much on the case for elections in Tower Hamlets, so that is good, and everyone is very aware. There is greater awareness—among voters as well.

The one thing that has not happened—in the best possible way, I say it to politicians—and the missing piece of the jigsaw is the sorting of the law, which was one of the obvious recommendations to come out of Tower Hamlets. The law on challenging—petition challenges and offences—is the missing piece, not just for Tower Hamlets, but in the Tower Hamlets context. It would be better if that were sorted so that we do not have another Tower Hamlets.

Q278 **Chair:** So you think it is possible for there to be another Tower Hamlets.

Bob Posner: It is probably less likely in Tower Hamlets, I think, but you are absolutely right: it is possible that somewhere else there could be. It would be a combination of things—perhaps the police force not quite being on the case, the local authority not quite being on the case, and the law still not being up to date. It is not impossible.

Q279 **Chair:** How much could we use voter ID and much more flexible voting-in-person arrangements, so that it is much easier and more flexible for people to vote in person, to reduce the exposure of risk to widespread postal voting, which has become, in my rather traditional mind, an



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uncomfortable reality about modern elections? Many people vote by post; I am afraid that I expect most MPs do, because it is just too convenient. If it were easier to vote in person and more people could be encouraged to vote in person, how much would it reduce the risk, if we re-restricted postal voting in exchange for flexibility for voting in person?

Bob Posner: There are two strands for me. One is that we can look across to other democracies that we respect. We see that they have introduced polling stations being open in advance of polling day in certain areas for certain periods of time, which is very popular with voters. That gives voters another choice, instead of using postal voting. That would be doable in the UK. It would be much more doable if we had joined-up electoral registers, and much more practical, whether one retains postal voting or not. If one retains it, it gives voters another choice. If one does not retain it, they must have a means of advance voting. It is an alternative—a different answer.

The other strand is this: with respect, you are drawing me, Chair, into certain possible specific reforms. The board of the Electoral Commission has taken the view that there are times when clearly the electoral law needs to be reformed and things need to be done. That will always be the case, but as we keep laying more and more changes on top of it what is much more important, which is what you are looking at, is the comprehensive update of the framework—not to cherry-pick particular reforms but to get the framework up to date.

We have the Law Commission's blueprint. There are other things to do on top of that—the Pickles recommendation and some of ours. One might put voter ID in that package; one might not. It depends on one's political viewpoint, probably. It is about not cherry-picking or doing single things, but saying, "Let's look at this across the board and do a comprehensive update. From there, we can innovate and build with electoral law in the UK."

Q280 **Mr Jones:** There have been experiments with online voting. How concerned would you be if the ballot system were to extend to online voting, given your experience of the concerns about postal voting?

Bob Posner: It is not apparent to us at the moment that that is a sufficiently secure system—there are some trials around the world and options—that actually works well enough that we would want it in the UK, but it is probably coming at some point.

It is interesting to think about difficulties for certain types of voters. If you take overseas voters, we currently have the postal system for them to vote. The postal system around the world in some countries is not the same as it was. In any event, the timelines are incredibly short and difficult for overseas voters, even if they get on with it quickly.

It is interesting to see examples of a sort of online voting. For example, there were recently elections in New Zealand. They email out the postal vote pack to the overseas voter who is on the register. There is an authentication process. Then the voter downloads it, prints it off, fills in



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their vote, scans it back up, and emails it back to the authority—no one else is handling it—in a secure system that they have all sorts of security around. Then in New Zealand the returning officer downloads it, prints it out—it becomes a hard copy of a ballot paper—and puts it in the box so it is just like any other vote.

That is working in New Zealand. Voters like it and feel pretty confident. It is fairly new, but they have had it working for a bit now. So we could in the UK look at certain types of voters where people want to vote but there is genuine difficulty and they cannot, and that is an example of where we could consider, “Should we pilot there?” We could also do that for service votes. There are those sorts of things that one could consider, which I think would be a stepping stone, but I think it is probably too soon to do anything more significant.

Q281 Chair: There was an issue with overseas voters in the recent—rather odd—European elections. What did we learn from that?

Bob Posner: We learned, as we have in recent elections, that it is very difficult, because the returning officers cannot print the ballot papers until nominations are closed. Then they get them printed as quickly as possible, but that, by definition, takes a few days, and then they have got to put them in envelopes and out to the overseas voter. So, with the best will in the world, time is already looking tight under our system. Then the voter, wherever they are, doesn’t necessarily get it quickly; it depends on the postal system and where they are. Then they have got to get it back by post.

That is an inconsistent system. Sometimes it works for some overseas voters, and sometimes it does not. That was not a peculiarity of those most recent European parliamentary elections. Unless you do something about it, exactly that same problem will be with us in our next elections, the one after and the one after. One option is the New Zealand option. Another option is, for example, Australia opens up its embassies and consulates around the world, as in London, and at its recent elections you saw Australians going to Australia House and voting. So they vote here personally. That is the way the votes get back to Australia, and they do not declare the absolute final results until they know they have got all the postal votes back from their embassies and consulates around the world. Then they do their absolute final results. Some countries do that; that is another way. But what they do is, I have to say, work harder than we do at the moment on looking after their overseas voters.

Q282 Chair: So if there was to be an introduction of online voting, it might be a priority for overseas voters.

Bob Posner: It is interesting to think about it as an area for putting one’s toe in the water and piloting.

Q283 Kelvin Hopkins: Like the Chair, I am somewhat uncomfortable about the extent of postal voting now. I wonder if there might be a case for restricting the criteria somewhat, to make postal voting for people who genuinely need postal votes. I have a postal vote, and it is simple



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laziness on my part. I am 200 yards from my polling station. It would take me five minutes to walk up there, and it would be good for my health, but I have a postal vote.

Bob Posner: Postal voting has different levels of take-up in different parts of the country, but on average the percentage is in the low-20s. You are right that for some it is about convenience and some need it. You need to have some ability for people who cannot make it to a polling station. Postal voting is how we have addressed it in the UK.

You have to make it fairly easy. You cannot have too high a test, because elections come up on you quickly, so returning officers have to make quick decisions. You can understand we have an on-demand system. You could have other streams and other options—other ways people can vote in advance—and the obvious way, which is used around the world now in democracies, is to have polling stations open in some town centres or town halls a week before polling day. To your point, once you have created other options, you could then begin to open the debate on “Does postal voting—currently the only option—need to be on demand, or do you limit it?” It is that thing about modernising the framework underneath so that we can all innovate.

It can be done relatively quickly. It is not as if no work has been done on this. You have heard evidence. A lot of work has been done by a lot of people. We have the Law Commission’s work and we have reviews and reports. It can all be pulled together fairly quickly to update our basic law. Then one can look at innovation.

Q284 **Kelvin Hopkins:** If postal votes were genuinely postal votes, which had to go through the post and you had to take it personally to the town hall as an individual, you would not get these blocks turning up on election day handed in by somebody, all in the same handwriting, the same coloured ink and whatever.

Bob Posner: What I would say is, if that happens how, returning officers are highly suspicious of that sort of thing and they immediately involve the police. However, I take your point.

Q285 **Chair:** When someone reports to you an election where there may be one or two wards that have a suspiciously high level of postal voting, what do you deduce from that? What action would you take or expect to be taken?

Bob Posner: Prevention is always better than cure. There is a national network. We work very closely with all the returning officers, as you would expect, and with all the police forces nationally. That is on an ongoing basis. We do training on electoral fraud with the City of London police and police forces, so there is a big prevention network.

Q286 **Chair:** We have got the prevention point—you have emphasised that. When it happens, what do you do?

Bob Posner: What returning officers are getting is early indicators. They are getting lots of postal vote returns that seem out of normal in their



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area as they come in. They are immediately on notice, talking to the police locally, and trying to find out what is happening if they get a disproportionate number of postal votes coming back. Triggers should be seen not after the event but during the election process. Then you involve the police, and if there are things to investigate they get investigated.

Q287 **Chair:** But it is a matter for the returning officers, not the Electoral Commission.

Bob Posner: If we become aware of it in an election, on a daily basis we are talking to the police.

Q288 **Chair:** When the results come in and you see in one ward a much higher incidence of postal voting compared with the other wards, what do you deduce from that?

Bob Posner: If it happens, we are not the only people to see it. It gets seen by a lot of people—people quickly pick that up, as you would expect, and that is a good thing in our system. The question is then whether there is a problem that the police should investigate. These are potentially criminal offences, and they are for the police to investigate—we do not have powers to investigate such things, although we always make ourselves available to support the police in their investigatory work, and to advise them and the returning officer in any way possible.

Q289 **Chair:** Would you be suspicious, or is it something that happens naturally?

Bob Posner: If we saw something that was not being picked up and addressed, I would expect us to draw that to the attention of the local police force.

Q290 **Dr Huq:** We are a country that does not usually have UN observers coming to witness our elections, as sometimes we are asked to do elsewhere. We have trained electoral officers and a judiciary that people trust. Does it bother you that last year a group of 40 charities and academics condemned these personation pilots as being excessively heavy handed, because although a handful of people might want to undermine the result, more than 1,000 people have been turned away since the pilots were introduced? Those included people from the Royal National Institute of Blind People, Age UK, and Operation Black Vote. It has been said that there are low levels of public awareness about these trials, and that they are very unpopular. Does it bother you that that has dented people's normal confidence?

Bob Posner: I will address that directly, but as way of reassurance, our elections are absolutely properly internationally observed, as much as any other election across the world, which is a great reassurance. There are always post-election reports on UK elections from international organisations, which is a healthy robust thing.

Q291 **Dr Huq:** Yes, but we do not see the same dodgy accusations at the end.

Bob Posner: One hopes not. When one looks at international reports, one sees a theme of an electoral system that looks outdated compared with other countries—more than a theme; it is quite open. Other organisations observe elections. That is enabled by us and part of a duty to Parliament. We publish an observer scheme in the UK to allow other organisations to observe our elections. We have refreshed that scheme recently, and we register electoral observers—those organisations you are talking about—in the UK. That gives them the access they need to do the things they want to do in an independent way.

One of our roles is to enable those reports. It is important that such organisations can have their say, and that it is heard. Those concerns about personation and voter ID are respectable and understandable, and they must be considered. That comes back to the point that all our elections should be accessible, and we must be careful not to unintentionally disenfranchise people or make it difficult for them to vote.

Q292 **Dr Huq:** What general information do you have about levels of public confidence in UK elections?

Bob Posner: Our survey work shows a high level of confidence in elections. If you ask about electoral fraud, last year about 37% of people said that they were worried either a little or a lot about that issue in local elections in England. If you ask whether fraud took place at the June 2017 UK parliamentary general election, 34% of people in Scotland thought or perceived that it did, and 45% of people in Northern Ireland. There are high levels of concern flowing through. If you look at funding of political parties and campaigning, you ask people: is the spending on funding political party candidates open and transparent? We have a fantastically open and transparent system in the UK, but despite that, earlier this year only 42% of people thought it was. Considering that on transparency and political finance, our system in the UK is the most transparent anywhere, that is disappointing, but that is because of perception.

When asked whether, if a political party or campaign is caught breaking the rules, they think the authorities will take appropriate action, in January and February this year only 19% of people were confident that action is taken when the laws are broken. That is something people are worried about. There were lots of other things going on earlier this year, which impinge on the figures about confidence in politicians. There are all sorts of factors that play into that, but it is interesting to think that high confidence elections are well run, yet when you drill down, you have these other factors in play.

Q293 **Chair:** Is this published data?

Bob Posner: Yes, it is all published data.

Q294 **Chair:** And it is all on your website, is it?

Bob Posner: Absolutely.

Q295 **Dr Huq:** And it does it break down different types of elections, such as referendums? We have seen manipulation of a narrow result with



overspending, bots and potential foreign interference.

Bob Posner: We do a lot of survey work post-elections, with voters, campaigns and political parties, but voters in particular. In any event, we do annual survey work, which we call tracker work with voters. We publish all that.

The good trend is that voters still have confidence in elections; there is a high level of satisfaction about how elections are run; they go into polling stations and they are very satisfied, they say the process was fine and they got their votes, generally speaking. That does not necessarily apply to the EU parliamentary elections recently for a number of people. When you drill down, you see these concerns about the perception of fraud and the worrying lack of confidence that when the rules are broken, action is being taken. That plays into people's wider feelings about politics and confidence and we are asking very specific questions, but it is interesting to see that.

There is an underlying concern that if those figures got worse, what would that do to confidence and legitimacy? We try to talk positively about elections in the UK. With the best will in the world, we think it is important that politicians and people in public life speak positively about our system and about public institutions, because that rightly is what gives people confidence, and not to undermine the system.

Q296 **Chair:** I have one supplementary question about how long it takes to hold an election now. The combination of regulated periods means that a snap election now takes seven or eight weeks, whereas in the old days it would have taken three, four or five weeks. In the legal review we could do, what could we do to make snap elections easier, quicker and snappier?

Bob Posner: There is a time period in which it is practical to run an election, because of the sheer practical administration of printing ballot papers, people being able to campaign and leaflets—there is a practicality that goes to the interest of voters and their being informed and understanding. For general elections, the parliamentary timetable was increased—you are absolutely right—on the back of the long and short period for candidates being increased, so it is slightly longer than it used to be. When Prime Ministers used to have the power just to call elections, there was a slightly shorter timetable than now. It is slightly longer.

We would say with electoral events that the principles are that the rules should be sufficiently clear for everyone—voters, campaigners, electoral administrators and the Electoral Commission—so everyone knows the rules sufficiently in advance. There needs to be a sufficient period for people to be informed and for the campaign to happen properly. Then you can have your polling. There is a natural lead-in time. That does not mean one cannot have slightly snappier elections. It is the job of the Electoral Commission and electoral administrators to deliver, and we do deliver whatever is Parliament's will. But clearly, one has to be careful not to make it too tight.

Q297 **Chair:** You speak as if the Fixed-Term Parliaments Act 2010 has needed



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snap elections, but obviously it has not. In the end, it is always in the power of the Prime Minister to set the election date. I take the point about ensuring that the voters are properly informed, but I don't think they were any less well informed in years gone by, when we had shorter election campaigns. Is there any evidence of that? Moving on to the Law Commission's recommendation that undue influence should be reformed into offences of intimidation, deception and improper pressure, do you support that proposal?

Bob Posner: We do. We think the undue influence offences need to be modernised. The concept of having those sorts of offences is absolutely right. I know that Lord Pickles, in his report, recommended retaining the offence of spiritual injury, and I understand why he did that, because it was relevant in the Tower Hamlets context—though in fact very difficult to take through the courts—and it was not. Our view is that the concept of undue influence as a modernised offence needs to be wide enough to deal with such circumstances, but we agree with the Law Commission. We need an offence that is in modern criminal law language so that the courts know how to deal with it and prosecutors can take it forward in that way.

Q298 **Mr Jones:** On digital campaigning, which of course is becoming increasingly prevalent, I think your recommendation was that digital materials should also carry an imprint, which I think the Government have now accepted. In practical terms, how will it be possible to police that?

Louise Edwards: I will step back first and say why we want an imprint, because it goes to answering that question. The idea of an imprint is that it gives that immediate information that the voter needs; it says who it is promoting and who is paying for it; and it has a contact address on it. That is important for the voter, who can look at the advert—if it is online, hopefully they can look at the advert with the imprint embedded within it—and see very quickly, "Do I want this ad to influence my vote, now that I have some information to make a choice with?"

In terms of enforcing it, the principles are quite similar to those for the imprints on offline materials—paper leaflets and so on. You could have a scenario where there is enough information to work out who the ad is by, even though there is no imprint, and therefore it is easy to go to that person and find out what has happened, or you could have a scenario where there is an advert, be it online or on paper, and you cannot tell from that who has produced it. The route we would usually take is to talk to the printing company, who will always have something on the leaflet, to work out who their client was, and it is exactly the same with digital campaigning.

We would want to take the route in through the digital or social media platform, whatever that is, to find out who has placed that advert. Some of the social media platforms have given us a bit of a short cut, by producing political ad libraries that we can look at. That is a great step in the right direction, but it is not a solution in and of itself. I will briefly mention a few reasons for that.



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First, that is not an imprint and it is not on the ad itself; you need to go to a library to find out the same information. There is somebody on my team who does that quite routinely, but I assume that most voters do not have somebody working for them who can check that out. You want something that is really obvious on the face of the ad. Secondly, there is a huge problem with the definitions of political advertising that social media platforms use, because they are all different and none of them align with the statutory definition of election campaigning. Thirdly, there is an issue about the granularity of information that you get on those ads.

What is important, in terms of enforcing imprints, is being able to get behind the leaflet or advert and find out who has placed it. The fundamental problem we have is that, outside of an investigation—it may well be that we have reason to open an investigation—we do not have the power to compel social media companies to tell us who placed the ad. That is quite a big gap, and if we want to ensure that we can effectively enforce in this area, it is a gap that needs to be filled.

Q299 Mr Jones: It is not always possible to tell whether an item that appears on the internet is advertising material for a candidate. For example, on Twitter, it is quite possible to bombard the public with tweets that do not necessarily look like campaigning material. How do you distinguish? I think Twitter has 280 characters. It would be very difficult to put an imprint on such a small campaigning piece.

Louise Edwards: Yes, a lot of it comes down to the definition that you use. There is a definition in law at the moment of election material or referendum material, and it is quite carefully cast, because what you do not want to do is capture people who are just expressing their personal opinion. You do not want to stifle political debate by requiring this imprint to be on there. There is a definition in law, which works quite effectively offline and would work quite effectively online.

One of the challenges that we would need to work through is how every individual platform would probably need to come up with their own mechanism for getting an imprint added. Some already do this; they will say that an advert is paid for, for example, and then you can go through to the ad library. With others, they might have a banner around the ad, which will show you who has paid for it. It comes back to what I said before, which is, if the social media platform is not using the same definition of political campaigning as the law, that is going to be only half as effective, because it will not capture every scenario that we would say is election campaigning.

Q300 Mr Jones: Getting back to Twitter, it would be quite possible for a candidate to set up a little factory that pumped out tweets, probably automated. It is very hard to tell whether that is a piece of campaigning material. Ostensibly, it could just be the opinion of an individual. Is this not a new world that we are entering where we are going to have to revisit what campaign material is? I take your point that, if you have an advert that appears in a box on Facebook, that is clearly an advert, but a stream of tweets is not that identifiable, is it?



Louise Edwards: That is exactly why we need the power to get behind that. We may see that—we may look at a string of tweets and say, “If you put that together, actually, it looks to me like that is advertising or campaigning”—and it will not have been picked up by the ad library, because it is not in the definition that Twitter, for example, is using. We need to be able to get behind that to get the evidence of who is setting up each of these individual accounts, whether there are links between them and whether we have intelligence that we could bring to bear on the situation that says something that Twitter could not know. We can do that, however, only if we can get that basic information in the first place about whose accounts they are coming from.

Q301 **Mr Jones:** What are your principal concerns about the threats that online campaigning poses to the integrity of elections in this country?

Louise Edwards: One of the main concerns we have is echoed in research we have done with voters, which is about the fact that we know that digital advertising has a great impact on voters. Let us not forget that it is essentially a good thing; it is a good way for parties and campaigners to get their messages to voters, which is what we want them to do.

We know that people are concerned, however, about the source of digital advertising and who is funding it. There is a concern among people we have worked with in research that digital online advertising allows different sources to start to disseminate information that is not credible or true. Voters need to be able to take an informed view about whether they will let that advert influence them or not—do they have a doubt about that advert or is it actually a message that they want to listen to? The most basic piece of information that will help them with that is knowing whose advert it is.

Really, it seems so basic. It is something that we have been saying for 15 or 16 years now. That basic piece of information would hugely help to address that massive risk of the voter not knowing who is targeting them.

Bob Posner: We are talking about the voter. There is another strand to this, which is the voter thinking about who is trying to influence them. This is not a problem that is unique to the UK; obviously, it is an international problem for elections. It is interesting to look at other countries.

The reaction in Sweden has been a massive education programme for the public for their elections to educate the public, through schools and all sorts of communities, when elections happen, to think about who is trying to influence them. They have focused on that as well as these other regulatory protections.

I saw in the recent Australian federal elections, which were just held, that the Australian Electoral Commission ran a voter awareness campaign for the public, which they call “Check the source”. It was about really thinking about who is trying to influence you. It was raising voters’ awareness, which is Louise’s point about getting people to think, “I’m getting all these



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tweets. Why am I getting these tweets? What's going on here?" That is one of the tools to respond to this changed agenda.

Q302 **Mr Jones:** Is that a campaign that you think we should be pursuing in this country?

Bob Posner: We have been talking to Australia. It was a hugely successful campaign that they just ran for the federal elections. We are very keen to run that campaign in the next major elections here.

Chair: Thank you very much. We do not have any further questions. We are very grateful to you. You are a body that gets a lot of public criticism. Keep going. However critical we might be, we depend on you. Please take our best wishes and our thanks back to all your staff.