

Exiting the European Union Committee

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 372

Tuesday 23 July 2019

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Members present: Hilary Benn (Chair); Joanna Cherry; Stephen Crabb; Peter Grant; Andrea Jenkyns; Stephen Kinnock; Jeremy Lefroy; Mr Pat McFadden; Craig Mackinlay; Seema Malhotra; Mr Jacob Rees-Mogg; Stephen Timms; Hywel Williams; Sammy Wilson.

Questions 4807 - 4876

Witnesses

I: Bob Posner, Chief Executive, Electoral Commission; Craig Westwood, Director of Communications, Policy and Research, Electoral Commission.

Examination of witnesses

Witnesses: Bob Posner and Craig Westwood.

Q4807 **Chair:** On behalf of the Committee, can I welcome our witnesses for this afternoon's session? We have Bob Posner, the chief executive of the Electoral Commission, and Craig Westwood, director of communications, policy and research. We are very grateful to you for coming this afternoon, and particularly grateful as you have already done another Select Committee this morning. We have a lot of ground to cover, as I am sure you can imagine, and therefore we would be extremely grateful if you can keep your answers as succinct as possible while giving us your views and informing us.

Can I begin by just asking you to set this out for us? If Parliament was to decide that it wanted to hold another referendum on the matter of Europe, how long would the process take? How long, in your view, would be required from a Prime Minister announcing that, to a Bill to hold such a referendum getting a Second Reading and then to polling day?

Bob Posner: I will lead off. Craig is the master of detail on referendums—he leads for us on referendums—but I will just give a couple of principles. For any electoral event, whether it is an election or referendum, what is key is that the rules are clear to everyone in advance, including to campaigners, electoral administrators who run it and to voters. One of the key principles is absolutely that there are clear rules sufficiently in advance.

The second fundamental principle is that voters are sufficiently informed—we have a lead-in period where voters are sufficiently informed. Those are two guiding principles that underpin what we talk about when we talk about the lead-in into electoral events. I will hand over to Craig.

Craig Westwood: There are a lot of variables within the process, so I would work on the basis that the referendum was being taken forward as a PPERA referendum. Obviously, Parliament would have the opportunity to change any aspects of that in taking through the Bill that was necessary to set up the referendum. That is one of the variables here when contrasting it with another national poll—that there is a piece of primary legislation that is required. Parliamentarians have the capacity to vary any aspects of the process.

The legislative period would obviously be in your hands, but an important part of the work that we would have to do during that process is to assess the question. We have a statutory responsibility to assess the intelligibility of the question and then report back to you and the Government on the detail of what we have found on that. On a binary referendum question, our recommendation is that that would take us



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approximately 10 to 12 weeks. That is on the basis of some of the previous question assessments we have done and the kind of research that we need to undertake in order to provide you with a thorough and detailed assessment of what we think the intelligibility of the question is.

Clearly, if the legislative period was going to be shorter, there is an interaction between those two time periods. Parliament or Government would have the option to publish the question before the Bill. In previous experience for the UK, the question has been on the face of the Bill, but there are ways in which the question could be published beforehand so that we could begin that work. That is one of the examples of where there is fluidity in timing.

After Royal Assent, within the legislation as it currently exists, there is a period of 10 weeks that is specified. Six of those weeks are for the designation of campaigners and four of those weeks are for the formal campaigning period at the end. Again, that is something that, in taking a Bill through the House, parliamentarians can look at changing if it was felt that that was required.

As Bob has alluded to, in all of the aspects of a referendum, as with any other election, there is a balance and trade-off between the time taken and the risks associated with it. In all of the aspects that I suspect we will touch on in many of the answers to you today, there is flexibility on the timing of various aspects of the work that we and others would do, but, by shortening the periods, you create risks. Some of those will be tolerable risks, but some of them will not be tolerable risks.

Q4808 Chair: If there is some flexibility, what is the shortest period from the Government announcing that they intend to bring in a Bill? What would that be?

Bob Posner: By definition, there is a period of time for the Bill to go through Parliament, and that is in Parliament's gift. That can be quite quick or not, as the case may be. That can be done quickly, but it is not just a case of taking previous referendum legislation. There has been learning from previous referendums, and one would want to update the legislation. One would hope that most of that would be non-controversial, but it would need to be done.

Then, under the legislation—the 2000 Act, or PPERA, as it is referred to—there is this period of time where campaigners apply to be registered with us, to be registered campaigners. There is then a period of time for the two lead designated bodies. There is a four-week window for registration applications. The commission currently decides in two weeks who the two lead bodies are, and then there are four weeks left for campaigning, so you have that 10-week period. Theoretically, one could go from Royal Assent straight into that 10-week period to take it to polling day. It has to be said that that is not what has happened in recent referendums and it is not felt to be practical for many reasons.



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Q4809 Chair: The answer to the question is however long the legislative period takes, and at the end of that add 10 weeks and you could get to polling day—bearing in mind the point that Mr Westwood made about the question, because that would assume that the Government had published the draft question before and that you were doing your 10 to 12 weeks of focus groups and so on in parallel with the passage of the Bill. That would be the shortest. What would be ideal? Are we basically talking about six months from start to finish?

Bob Posner: It is a general principle that the best practice for elections is for the law to be clear so that everyone knows the rules a clear six months before the electoral event, particularly if the rules have changed in any way. That is generally regarded in democracies across the world as being good practice. That is what is adopted in the UK. It is not always achievable, for many reasons, but in a perfect world one would say that there is an electoral event coming up and, a clear six months before that, everyone understands the rules, including the campaigners and the administrators, and there is a good lead-in time, particularly when there is a change in the rules. That is the absolute optimum best practice.

Q4810 Chair: That would be six months plus however long it took to pass the Bill.

Bob Posner: Yes. If one looks at the recent referendums, that is not inconsistent. There have been quite long run-in periods for referendums to happen from when they are first announced.

Q4811 Chair: That is quite a range, but that is extremely helpful. You referred to the question of the question. To help us understand what it is you do in talking to people, if the Government say that one of the options will be that we should leave the European Union without an agreement—and it might or might not add, “i.e. a no-deal Brexit”—what exactly is your role as the Electoral Commission in trying to assess the intelligibility of that question? It could be argued that it begs a lot of questions as to what this thing called a “no-deal Brexit” is, which is leaving the European Union without a deal.

Craig Westwood: Based on our experience of the EU referendum, the process that we would follow is effectively to go out and seek views from all stakeholders who are involved in the referendum in one way or another, including political parties, campaigners and other organisations who might have a bearing on it. For example, we would speak to the Welsh Language Commissioner because the question would need to be in both languages and be intelligible in both languages. We would also talk to the Plain English Campaign, for example, as an organisation that is able to talk to us about how questions can be made more intelligible.

Also, importantly, as you alluded to, we would undertake extensive public opinion work through focus groups and detailed interviews, to really understand what people understood from the question. Some of that is about any preamble that leads up to the question itself. Some of it is



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about the wording of the question. There has been discussion about whether one would have something other than a binary referendum, and clearly the structure of more than one question would fall into the remit of this in terms of whether people understood how two or more questions interrelated. We would also be looking at what people understood as the outcome of the specific question, specifically to your point.

Chair: That is what I am trying to get at.

Craig Westwood: From the last referendum, as part of our feedback to the Government and to Parliament, we drew forward evidence that people did not sufficiently understand what “leave” meant, for example. That is something that we bring forward as evidence as part of the whole process, and we effectively passed that evidence back to Government and to Parliament. It is not a requirement to accept the recommendations that we put forward or indeed to take into account all of the evidence that we have put forward, but it is a responsibility for us to make sure that we are feeding up to you and to the Government all of the information that has come forward to us as part of that process.

Q4812 **Chair:** You make recommendations. Last time, you did suggest that the question be phrased in a slightly different way, which was adopted. I take the example of a no-deal Brexit because, if you listen to the current public debate, it means a multitude of different things to different people. Therefore, I was just trying to get clear what your role is in advising the Government. If people said to you, when you were consulting them in focus groups and so on, “What is this thing?” and you said, “It is not our job to tell you what it is,” and then someone says, “But I have seen loads of people saying different things from, ‘The worst thing ever,’ to, ‘It won’t be a problem’ and all points in between,” your role would simply be to report that back to the Government and say, “We should just tell you that this is what we have found. We may or may not make a recommendation about how the question should be phrased, but we are handing this back to you because ultimately it is your decision as to what the question is going to be on that option.” Is that a fair summary?

Craig Westwood: There are other recommendations that we can make beyond just the question itself and the phrasing of the question. We can make a recommendation, for example, that particular elements of public awareness activity need to happen going into the process. Some of that might be around campaigners, and clearly we take a role in designating a lead campaigner for each outcome of a referendum, and it is their role specifically to make sure that people understand those outcomes, but there might be wider recommendations around public awareness that we can make. Some of those might actually fall back on the commission itself, because we would undertake public awareness activity around the process—so the structure of a question, for example. If a multi-optional referendum was using a different voting system and people were not understanding that, we would actually recognise that fact and want to make recommendations that a proper public information campaign was properly funded, for example.



Bob Posner: Can I add to that? Our role is to stand back and, objectively, on an evidence basis, advise Parliament, politicians and anyone what our research shows and, as Craig says, make recommendations. Just to exemplify that, in the Scottish independence referendum, we found that people understood the concept of independence from the UK, so a “yes/no” question was appropriate, but what people did not grasp and understand was what would actually happen after the referendum if there was independence.

Part of our recommendation, which was accepted by both the Scottish Government and the UK Government, was for both Governments to make a joint agreed statement that would set out the process afterwards in the case of a “yes” vote, and they did that.

That is the sort of thing that can flow, and indeed that was why, in the EU referendum, where not all people were clear that, actually, the UK was already a member of the European Union, a “yes/no” answer was not appropriate, and the word “remain” came in because that made the point to the voter, “Do you want to remain in something, or do you want to leave something?” Different nuances arise, which is why we always make the point that it is really important for every referendum not to assume that the research done to date is sufficient but to do current and up-to-date research to make sure voters are clear.

Q4813 **Chair:** Have there been any referenda in the UK where there have been three options?

Bob Posner: No.

Q4814 **Chair:** Are you familiar with that happening in other parts of the world?

Bob Posner: Yes, it has happened. There is good academic research and articles and analysis of three options. Three options is doable. It raises implications and complications, but you certainly can do referendums with options or with steps of questions that lead you to the next stage, as it were. Obviously, by definition, the more complicated you make it for voters, the greater the risk that they will not understand, so you need to really focus on public awareness work and make sure that people do understand.

Q4815 **Chair:** If there was a choice between putting three questions on a ballot paper—as you alluded to, depending on the voting system, it could be first past the post or an AV choice—and having two referenda on two subsequent Sundays on this versus that, and then this and this, is that something you might offer advice on, having taken soundings from the public, as to the form of the referendum?

Bob Posner: We have to be careful to stay within the brief that Parliament gives us. That is absolutely key. We are there to meet Parliament’s needs. Under the legislation currently, it talks about testing intelligibility, and we interpret that in a broad way to help inform the debate. We would look to be as helpful and as informative as possible.



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What assists us, when we are requested to do something, is for Parliament to be very clear about what we are being asked to do.

Q4816 **Chair:** In the last year, have any civil servants asked you for advice on the possibility of a second referendum on the EU?

Bob Posner: I cannot think of a specific occasion.

Q4817 **Chair:** I would suspect that you would remember if somebody did. When you say “not on a specific occasion”, that means no one in Government has contacted you and said, “Just in case, can you give us some advice?”

Bob Posner: No. What I would say is that we work very closely with Government officials and the Cabinet Office all the time on possible electoral events, particularly with returning officers. Of course, the potential of an unscheduled event—another referendum—is always on the table, and we are always telling returning officers to be prepared. We do a lot of contingency preparation work, which Craig can talk about, to always be prepared for snap elections or unexpected elections. That is always a rolling piece of work that goes on, and Government officials are obviously aware of that and feed in appropriately, because they have key roles as well.

Q4818 **Chair:** You have continuous dialogue on a whole range of things, as one would expect.

Bob Posner: Yes.

Chair: This is a final question from me, and it is a specific one about digital campaigning and control of spending. We will cover this in more detail when colleagues pitch in. You have obviously reviewed what happened in 2016. The Select Committee has done a review, and this is a very big and a very live issue. Can I put a specific instance to you to aid understanding? Say someone went on Twitter—this is a totally random example, and I cannot think why I am choosing it today—and posted a tweet that says, “EU bureaucrat rules demand ice pillows for kippers. I have had enough of this. Time to leave,” and then they choose to use the facility that Twitter has to pay money to boost it—as I understand it, there is the facility to boost it in particular locations in terms of postcode. Would all the recommendations you have made about trying to control this enormous, burgeoning amount of campaigning activity in a place where it is hard to see—because it is not a billboard that we drive by in the street or advertising in newspapers and so on—capture that? Where is the dividing line between that and something that is more organised—in other words, sponsored by an approved campaigning organisation under the terms of any referendum legislation?

Bob Posner: It is really important to say that, in everything we do—I am sure Parliament takes the same view—we do not want to stand in the way of political discourse, political debate and people talking about things. That is fundamental. When one talks about regulation and extending the remit into the digital world, we must be really careful about



that, which is what you are alluding to. You very obviously have paid-for campaigning and people trying to influence voters in a very campaigning way—and indeed those are the legal definitions of what campaigning is—as opposed to people expressing their views, which the digital world allows you to amplify in certain ways, but it is just people exchanging views. There is a dividing line somewhere.

Q4819 **Chair:** If it is a very wealthy person, in my example, who is able to buy a lot of whatever the term is for boosting your tweet and who spends a lot of money, and they are not a registered campaigner, would you, under the current rules or what you would like to see, say, “Hang on a minute. If someone spends £10 to do that to promote it in their postcode hoping that their friends will read it, that is one thing, but if someone buys a million retweets, that is something else again”? Would you wish that to be captured within the regulation of spending around the time of a referendum?

Bob Posner: The first thing that is really important is transparency in campaigning, so that voters understand who is trying to influence them. That is the first key regulatory defence and the first key tool: people having that transparency and seeing who is trying to influence them, whether it is just their view or they are campaigning. One of our absolute key recommendations is that, as with traditional electoral material, there should be an imprint so that the voter can very easily see who has paid for this and who is trying to influence them, so that they can reach their own judgment. Again, raising awareness amongst people about the importance of thinking who is trying to do things to influence them is part of that.

Once one does that, the next question is: where does one put the line for regulatory rules? One of the reasons one has a regulator is to enable the regulator to inquire and investigate and to hopefully do so as speedily and as quickly as possible in real time.

One of our other recommendations, apart from the importance of transparent digital campaigning and imprints, is to enable us to have the same reach in the digital world as you would expect us to have, and as Parliament has given us, in the analogue world. In your example, that would be the reach to look at a particular type of campaigning or influencing that takes place, to look at who is paying for it and what it is, and for the regulator, within the law, to say, “Actually, that is something that falls within the regulatory rules. There are limits on expenditure and this is what you can and cannot do,” as opposed to someone who is perfectly validly exchanging their views.

Q4820 **Chair:** The cut-off would depend upon the amount of money the person was spending in an attempt to clearly influence other people.

Bob Posner: Yes, because our system is one of spending limits. That is part of the control. The third strand of that is the regulatory periods. Traditionally, in the UK, we have lead-in times before elections or



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referendums when a regulatory period applies, the rules apply and, therefore, for campaigners, the spending limits apply. However, we know in today's digital world, with the speed of campaigning and the pace of things, that this sort of activity you are talking about is going on potentially for much longer periods. The third strand, which is a policy strand for Parliament to think about, is whether the current regulatory periods are set at the right length. If they are not, should you have, if not an enforcement of spending limits before, then greater transparency?

Q4821 Chair: That is a very fair point, but how would you know whether an individual had paid for £100,000 or £500,000-worth of tweet-boosting?

Bob Posner: We now work actively with the main social media platforms, such as Twitter, Google and Facebook. They have been on a journey; it has to be said that there have been achievements. We now have political advert libraries that have been published. They are a good and really important first step, but they are not where they should be at the moment because they are not really accessible to the individual voter. It takes organisations like us to understand how to use them to find out what is going on.

Q4822 Chair: Are you saying that you would rely on them to flag up to you that someone has paid a lot of money for that kind of tweet?

Bob Posner: It is about requiring social media platforms, in a consistent way, to provide transparency for what we would define as campaigning or seeking to influence voters across the different platforms—there will be different answers for different platforms—with imprints. Then, if one has that happening, one wants some regulatory rules on top of that to require it to happen and one wants to give the regulator—that may not just be us; it would probably be the Information Commissioner as well, for example, with data—the ability to reach into and acquire information in real time for social media platforms as to what is happening. That is certainly absolutely doable from their side of the table, but one wants those rules. This is, of course, an international debate. A number of democracies are discussing it, and it is a very active debate here.

Q4823 Chair: You are saying that they are willing to co-operate in helping to enforce rules that, in this case, the UK Parliament, the UK Government and the UK Electoral Commission have set out for governing the conduct of campaigns.

Bob Posner: What has currently been said by them is that, if there are regulatory rules, they will comply with them. They might have a view on some of those, but the principle of regulation, as Mark Zuckerberg has said in terms, is now out there. It is a question for individual democracies as to what is suitable for their particular area.

Just to exemplify that in a slightly different way, in terms of elections, Sweden have recently really focused on educating the public to be aware of who is trying to influence them. It has been a major programme in Sweden for all their elections now, to actually really get loads of



information out so that people really think about who is influencing them. That is where they are focusing. They will have other tools as well.

A federal election has just been held in Australia. The Australian Electoral Commission ran, for the first time, a major digital literacy campaign. They were saying to people, "Think about the source," which was really well received by the Australian public and very successful. They said, "These elections are happening. You are going to be influenced digitally. Really think about this." We are actually looking at that very closely and, going forward, it is something that we might well want to do in the UK.

There are different ways to approach this apart from what I would call pure regulation. There are other means as well, and a combination of responses that democracies are thinking about.

Chair: That is really helpful. Thank you very much indeed.

Q4824 **Mr McFadden:** I would like to ask you a couple of questions about spending, and questions following on from the Chairman's questions. You fined the remain campaign £1,250 for not providing three invoices, as I understand it, and you fined the Vote Leave campaign £61,000, which is a much larger sum. The Electoral Commission, from 29 March 2019, says, "Vote Leave has today...dropped its appeal and related proceedings against the Electoral Commission's finding of multiple offences under electoral law committed during the 2016 EU referendum campaign. Vote Leave was the designated lead campaigner for the leave outcome at the referendum. We found that it broke the electoral rules set out by Parliament to ensure fairness, confidence and legitimacy...Serious offences such as these undermine public confidence in our system and it is vital, therefore, that they are properly investigated and sanctioned". Why did it take the Electoral Commission two years from reports of Vote Leave's spending irregularities to come to a conclusion?

Bob Posner: If we step back and think of elections as a whole, what underpins the system—this applies to challenging election results and election petitions and so forth—is that one gets a result that people can rely on and that any challenges are dealt with quickly. That is a fundamental principle; you are absolutely right.

One of the difficulties we have in the UK, which partly goes to what I would say about our data system, is that challenging an election result through an election petition is a slow and cumbersome procedure; it can take one or two years to go through the election courts, and it does. It is an expensive procedure. There are political finance rules, quite rightly, and when they are breached, we have to investigate them fully and we have to be fair to the people investigating. One of the facets of the UK system on the political finance rules is that the returns from campaigners, political parties and designated bodies such as Vote Leave do not come in until many months after the event. For Vote Leave, as a major designated campaigner, it was not until six months after the referendum



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that anyone saw their spending details and their returns. You are therefore already building in a long delay where nothing can happen.

Q4825 **Mr McFadden:** Excuse me. You were informed during the campaign, before the vote, that there were irregularities in Vote Leave spending, because I wrote the letter. It was not six months after. It was before polling day.

Bob Posner: Yes, but there was a delay in the availability of information for things to be investigated. We are very keen to investigate as quickly as possible in the public interest. In a digital world, it is very achievable to have more speedily available financial information from campaigners, perhaps virtually in real time, that everyone can see. It requires a regulator that can reach out and require information. We have limitations on what information we can currently require. I make no complaint because, when Parliament gave us investigatory powers, it thought about it and gave us a good toolbox of powers.

However, like the Information Commissioner and other regulators, in the modern digital world those powers are not sufficient. One of our recommendations is to give us greater ability to get information from third-party organisations, be they social media platforms or other organisations. That is part of our recommendations. We are very keen to speed up the process but there are currently fetters on that.

I am confident that the investigatory work done by the commission was done as quickly as it could have been done in all the circumstances.

Q4826 **Mr McFadden:** Do you think two years before reaching a conclusion is sufficient incentive for campaign organisations to stick within the rules?

Bob Posner: In the UK, with our regulatory rules, we should not lose sight of the fact that it is a success story. We have high levels of compliance across elections and referendums. In very large part, the commission, in working with campaigners and bodies, sees a desire to comply and high levels of compliance, and that underpins our system. Equally, you need to have sufficient deterrents in the system to put people off wanting to break the rules.

Q4827 **Mr McFadden:** Is two years to reach a conclusion sufficient incentive to abide by the rules, in your view, or not?

Bob Posner: What we have specifically commented on so far is that the deterrents are not sufficient. We have used the phrase that, for those who want to break the rules, they could look at it as a "cost of business", particularly as our ability to fine is very low, with a £20,000 maximum fine per offence, and indeed given your point that it takes a long time.

Mr McFadden: I am going to try a third time.

Bob Posner: Sorry, I thought I had answered.

Q4828 **Mr McFadden:** Are you saying to us—I do not want to put words in your



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mouth—that your powers are insufficient and that it takes too long? Is that what you are saying to us?

Bob Posner: Yes, it is what I am saying on behalf of the commission, because we want the ability to deal more quickly on behalf of the public.

Q4829 **Mr McFadden:** What lessons have you drawn from the 2016 experience of investigating these campaigns and imposing these fines?

Bob Posner: There are a number of strands. One of the difficulties is obviously the impact of digital campaigning, which is now a major part in any election campaign—it happened in the referendum—which is why we have already spoken about the need for transparency in digital campaigning. One of the lessons we have learned, which is one of our key recommendations, is about imprints and the ability to get to the information quickly.

Another lesson we have learned, which we have just spoken about, is to give the regulator, as well as other regulators that we work with, the right investigatory and sanctioning tools that enable quicker solutions and greater deterrents. That would be fairly standard in a regulatory approach.

There are other aspects. When you look at the rules themselves, other issues arose around the referendum that affected people's confidence. There was no clarity on what I phrase as "joint campaigning", where campaigns on one side of the argument campaign together. Those rules are fairly new and, seen in practice, they can be improved to give greater clarity to people as to what is acceptable in joint campaigning and what is not. That is important.

It was also very apparent—and this is about modern campaigning as opposed to traditional campaigning—that, under the current rules, staff costs of campaigns are excluded from the spending limits. When you think of the use of people, be they on telephone lines or digital campaigning, and those costs being excluded, there is not the transparency that there should be. We made a specific recommendation to sort that. It is an anomaly. I do not think it would particularly adversely affect campaigns, but it should be transparent.

When we look back at the EU referendum—and you may touch on this as we go forward—there was a lot of debate and concern about section 125 of PPERA, which is the provision about what Government can and cannot do in the lead-up to a referendum when purdah applies. We have recommended that that needs to be looked at and that there needs to be greater clarity going forward, in everyone's interest.

There has been concern about the designation of lead campaigners. There has been a debate—and I make no criticism of lead campaigners in this—about lead campaigners, who have to set themselves up fairly quickly, having suitable, proper and robust governance arrangements to deliver and properly represent a good governance approach. People use



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the phrase “fitness for purpose”. It is an interesting area, and there would be scope. I would imagine that Parliament would want to improve that for everyone.

The other lesson I have alluded to, which has happened since the referendum and the election, is this whole agenda of digital campaigning and allegations of interference in our elections from overseas or whatever. That debate is happening with social media companies. We work much more closely now with other regulators and with the National Cyber Security Centre, and that has been a really positive step.

Q4830 Mr McFadden: Can I just take you back to this issue of timescale? You said in one of your answers to me a couple of minutes ago that, in the current system, returns do not come in until some time after the polling day. Are you saying that, if someone reports an irregularity before polling day, you have no real way of investigating whether it is valid or not?

Bob Posner: We do. Clearly, the system works on people reporting concerns to us, and hopefully those are substance-based and evidence-based. It also works on us bringing up our own intelligence and information, as all regulators do. For us to investigate a matter, quite rightly, because anyone can make allegations, it has to get above a threshold of it being reasonable to investigate the matter, and then it depends. If we are directly investigating a campaigner who is registered with us, we can require information quite quickly. We do not have the power to get information from other people or other organisations, so there is immediately a restriction on the investigation. There is a protection threshold, as there should be, as to when investigations get launched and, once they are launched—I think this is your point—there is the question of how quickly an investigator in any regulatory field can move, which is about our ability to get information quickly.

Q4831 Mr McFadden: Was it right to do nothing in response to a complaint before polling day, or certainly to take no action but then to end up fining the organisation £61,000 two years later?

Bob Posner: It is difficult for me, sitting here, to remember the specific details of your complaint. What I can say is that the commission has acted as a regulator and has investigated. Its findings on the leave and remain sides, in terms of numbers of fines, are very similar. It has investigated both sides of the argument and different campaigners at different time periods, and we have done it as quickly as possible within the system and our powers.

Mr McFadden: Okay, I will leave it there.

Q4832 Craig Mackinlay: There are a few things I would like to go through with you. I would like to reflect back on the 2016 referendum. I do not know if you pointed this out to the Government beforehand. It is perhaps something that needs solving for the future. Donors to the campaigns found themselves hit with an inheritance tax charge under the chargeable



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lifetime transfer rules, whereas donations to established political parties—parties with two MPS or however many votes—are exempt from inheritance tax. Those donors to the official designated bodies, either BSE or Vote Leave, found themselves hit with charges. Did you anticipate that? That was not something that I had seen beforehand, but I wonder if you had.

Bob Posner: I will stand corrected, but I do not think we did. I do not think anyone really did. We have not had that many referendums, and you are absolutely right that that issue arose. When it arose, HMRC came to speak to us to understand election law, and we made the point, which you just made, that in other areas of donations there is the tax protection. It is a matter for the tax office and Government.

Q4833 Craig Mackinlay: Are you making recommendations that that part of the Inheritance Tax Act, which would only require another line, be solved so that official designated bodies in whatever referendum in the future—there is bound to be one at some point in due course—should be treated like a political party and donations to them are exempt from inheritance tax, as we had all understood and thought would be the case in this referendum?

The problem, as I am sure you will be aware, was that there were more individual donors to Vote Leave than there were to BSE. The type of donors that tended to be financing BSE were more corporate donors, to whom none of that worry applies. It seemed to me, looking at the figures, that the Vote Leave donors seemed to get hit rather harder with this unexpected tax charge than the BSE donors, of which there were a few, obviously.

Bob Posner: I do not know the answer to that, but I will trust your summary. I do not know if that is the case. As a matter of fact, we have not made that recommendation.

Q4834 Craig Mackinlay: What would be your recommendation?

Bob Posner: As an organisation, we have not made that recommendation to date. When the issue arose, we wanted to make sure that the tax authorities understood how electoral law worked, and we made that crystal clear as a matter of fact. We have certainly taken the view to date that it is a matter of tax law, but I do take the point away. We are quite happy to think further about that.

Q4835 Craig Mackinlay: I rebelled during the referendum Bill on the issue of purdah, because the Government were trying to suspend purdah, as I am sure you are aware. The rebels, of which I was one, defeated the Government on that one, so we ended up with the purdah rules broadly as we thought they might be. Did the Government come to you and say, "What should we do about the £9.3 million expenditure on the leaflet that we want to put out to every household?" Did you give them a view on whether that was good, bad, indifferent, wise, fair or anything like that?



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Bob Posner: Once the legislation was through and the rules were in the legislation through Parliament, as it were, we were very proactive in giving advice to Government—I think I recall writing to the Cabinet Secretary—and to local authorities, other public sector bodies, the Bank of England and all sorts of other bodies on the rules. We drew their attention to the rules and how the rules worked before the referendum. We thought it was part of our role to raise awareness as to how these rules applied. We were not specifically asked by the bodies about what they were and were not doing, so there was no dialogue with the Government about what they intended to do.

Q4836 **Craig Mackinlay:** They did not ask you, and you did not give a response.

Bob Posner: No, not to my recollection. It is right to say that they spent that money before the 28-day purdah period. I am sure they thought about that, so they probably heeded our advice and spent it beforehand. You will recall that there was the complex issue of the Government website still being up and the implications of that and how that worked. What all that made clear is that Section 125, as drafted in the late 1990s when the legislation was put together, was not really working with clarity for everyone in the current world we operate in, which is why we made a firm recommendation after the referendum that the Government should look at this section of the Act and modernise it.

We have spoken about the 10-week period for campaigners—the four/two/four weeks, as it were—for the referendum, after legislation, so all the regulatory rules apply for 10 weeks for the campaigners. For the Government, you have this shorter period of four weeks—28 days. I make no comment as to whether or not that is right from the perspective of the workings of Government, but you have that anomaly going on, and it needs to be thought about.

Q4837 **Craig Mackinlay:** Do you have a corporate view of whether that was the right thing to do? For all of us—I am a Brexiteer—it seemed to be very much at the sharp end of practices, and it was not well received. It seemed like the Government were playing rather fast and loose with a loophole in the law. Did the commission have a view? Do you have a view? Does it sound right, or does it sound a bit sharp to use Section 125 for something it really should not have been used for?

Bob Posner: It is not for the commission, in that sense, to opine on what happened because what happened was within the law. There was nothing unlawful that happened. At the time during the referendum, as some may recall, I appeared with a colleague or two before the Public Administration and Constitutional Affairs Select Committee, and we had quite a detailed session. They took evidence from a number of people, including the Government Minister at the time, so there was a public session. I recall very clearly setting out the rules and how they worked. The concern that everyone had came across in that session, I would have thought.



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Q4838 Craig Mackinlay: It might be that that will never happen again, hopefully. I know Mr McFadden made some complaints about the level of fines for Vote Leave compared to the remain supporting group, BSE. You will be aware—I am sure you must have read the paperwork—that, when the right honourable Priti Patel aired her concerns about the close network working with the remain groups, which she raised to you in some detail, there was immediately a decision not to take that any further. That was right, was it not? This is January last year.

Bob Posner: I recall her writing and the complaint, but I do not recall the detail. I probably would not, as Chief Executive. We did investigate some of those strands, and I think I recall finding one or two breaches of the rules. Do you know more about that?

Craig Westwood: Some of the confusion around such cases arises from the nomenclature that we operate by but that others sometimes do not necessarily understand in terms of what is and is not an investigation. An investigation for us is a very formal process, a lot of which is specified in law and covered by our formal enforcement policy. Before that process, there is a lot of work that goes on in our regulatory teams on what we refer to as assessments, which is where we go in and scrutinise what has gone on, we ask for information, we look at what we can see in the wider world, whether it is on advertising or other activity, and we seek other evidence. It is only when we have found whether there is or is not sufficient evidence to launch an investigation, where we suspect that wrongdoing may have occurred, that we then go into an investigation.

Sometimes, where we have said that we have not investigated an issue, that has been interpreted—

Craig Mackinlay: It does not mean you have done nothing.

Craig Westwood: Exactly. That is possibly our fault, and we should be a bit clearer on what we have done. We might have actually done an awful lot of assessment work on those cases.

Q4839 Craig Mackinlay: In that example, a Privy Councillor raised concerns to you in some detail. Yet you then went and pursued a 22-year-old, about whom we had that court case last week in the county court in the City. Who gave you the advice that this was worth pursuing? It must be someone very senior, and I would have thought it would be in one of your offices.

Bob Posner: You are referring to Mr Grimes. We made findings of offences against Vote Leave, which related to a common plan and working together over the spending limit, which Mr Grimes is part of, though he did not personally commit an offence. As you correctly allude to, we also took the view that the way Mr Grimes registered, or did not register, created some offences. The county court have found in favour of Mr Grimes on that at this stage. I should be clear that those proceedings are not complete. We are waiting for the judge's written judgment.



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Everyone will want to read that carefully and understand what he has said. I want to make that clear, not particularly in the sense of Mr Grimes personally—I have great empathy for anyone who is investigated—but in the sense of what it does to the law and whether that works for the law or whether the Appeal Court should look at that. We need to be cautious about those proceedings because they are not, in that sense, completed.

The Vote Leave findings, the offences and Mr Grimes were one thing. Vote Leave, as has been said, for their own reasons withdrew their appeal and paid their fines in relation to the overspending breaches. These were the things that, as it were, were left over with Mr Grimes—that is a bad way of putting it—which was what the county court case was about. We are waiting to read the judgment.

Q4840 Craig Mackinlay: What did that cost you? You have a budget of about £16 million a year as an organisation. It might have cost £500,000, which is quite a lump of your annual budget just to pursue a 22-year-old. It seemed a bizarre amount of money.

Bob Posner: I will come back to what it costs. Let us be clear. He was campaigning in a referendum, which is a major public event. He spent a lot of money on campaigning. Under the current county court ruling, he did not break the law, and I respect that fully, but, whether you are a 22-year-old or whatever, you are participating and you must respect the rules. The county court was satisfied he did.

Craig Mackinlay: Yes, he was over the age of majority. I understand that, yes.

Bob Posner: It would not be a reason for us not to properly investigate if we had concerns about a 22-year-old. We must investigate fairly and properly, and we must reach the right decisions.

There has been misreporting on the legal cost spend. The figure of £400,000, roughly, which I have seen in the media, relates to the spending on the Vote Leave matter, which Mr Grimes' case was part of because his appeal was joined with theirs. That is the figure that was spent there. Of course, we have already got back costs of about £200,000 because they withdrew and they have to pay our costs in those proceedings. There may be a bit more to come yet. What one is left with is what the costs were that we spent on the element of that relating to Mr Grimes. That is currently being considered by the judge. He has asked for both parties—you may know this, Mr Mackinlay—to give details. We are looking at what we have spent, and he is looking at what his costs are, so we will know that in due course.

Q4841 Craig Mackinlay: You say that it is not at an end yet because we are waiting for the written judgment. Will you, this afternoon, perhaps put an end to the taxpayers' suffering and say that you will not be appealing that?

Bob Posner: No. Whether you win or lose a case, it is very important for regulatory bodies to look at the judgment carefully and think about the



implications. That is in the public interest and the voters' interest. In the court system there are court judgments, and we all know that sometimes a higher court says that a lower court got it wrong. One should not take things to appeal unless there is a good reason, particularly when one is spending public money. We absolutely respect that, so we will read the judgment when the judge issues it and we will think on it carefully. We will be looking at whether it raises implications, in the wider sense, for campaigners, about how the rules work. If we come to a view that it would help everyone for a higher court to consider that before the matter is concluded, we would appeal it; if not, we will not.

Q4842 Craig Mackinlay: Mr Posner, you said earlier that any participant in a referendum would need a period of time to understand the rules. After Mr McFadden's comments, you also said that your powers are insufficient and you would like more. Do you think that it is fair to say that, having lost that court case last week and having never published guidance on which you had to go to the Supreme Court in my case last year, that you should have more powers? My view is that you should perhaps be having rather less. I have heard the comment many times by many people that the Electoral Commission is not fit for purpose, and I am really starting to think that that has some truth to it. I am sorry.

Bob Posner: If I may comment, the important thing is to step back and look at the system as a whole. The Electoral Commission's role is around having fair elections, and our elections in the UK are run well, and that is a story that we should all celebrate. That applies to a number of factors—players, campaigners and parties, and their compliance with the Electoral Commission's rules—as well as good guidance, which I think we do issue. Then there are the other aspects, which are the political finance rules, and the rules and regulations where it is the police's responsibility on criminal matters, which is what you are referring to in the South Thanet case—it is not the commission's responsibility. And we have a regulatory civil sanctions regime.

On the civil sanctions regime, it is important to remember that, by and large, there is major compliance. We have carried out 450 investigations over the last two or three years. In virtually every case, the fine has been paid and the result accepted. Some of them have led not so much to a fine but to getting people to comply, which is what the rules are about. Mr Grimes's case is the first case we have had with any of our fines being overturned in court. It is never the case with any regulator that you win every case and get everything right. That is how you learn, and that is a positive thing. We must put it into perspective: one case does not present the sort of problem that perhaps some people, because they hold strong views and because they are investigated, are talking about.

Q4843 Peter Grant: Good afternoon, gentlemen. Can I go back to one of the points raised earlier about the different status of registered political parties and other campaign organisations? If a member of the public gets campaigned by a political party, whether by canvassing somebody or putting a leaflet through the door, that member of the public can go to



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your website and find out who is behind that political party, who makes the donations, who is in charge of it and where the money comes from. If they are contacted on social media by a think-tank, there is no public right to know who funds think-tanks, which are effectively campaigning organisations, and I do not think it is a coincidence that so many think tanks have been set up since political parties were required to become more transparent about their funding. Do you have a concern that a lot of the pre-election or pre-referendum-period campaigning is now being done by organisations whose sources of funding and whose key movers and shakers are not open to any kind of public scrutiny and that, very often, the public do not have a right to know who these people are?

Bob Posner: The growth of organisations other than mainstream political parties campaigning was an issue that was of concern to Parliament, quite rightly so, a few years ago, and they introduced what have been termed as rules on non-party campaigners or third-party campaigners. It is a challenge for those rules to not have a chilling effect on organisations that have causes and that want someone to promote certain things. It is about freedom of expression, so one has to get the right balance between that and regulation. Equally, where an organisation sets out to influence voters—there is nothing wrong with that on the face of it—before an election or a referendum, one wants that spending to be transparent so that people understand who is influencing them, and one potentially wants rules on limits of spending so that there cannot be undue influence. That is what those rules seek to do.

In practice, the issues that we have seen arise from that over recent years include that the regulatory periods are limited, so you get spend outside the regulatory period in the lead-up. Is that acceptable or not? Should there be more transparency about that? Should there be control on that, whilst equally respecting freedom from suppression of speech?

The other policy question is around how you get transparency when it is happening, which is a particular challenge in the digital world and digital campaigning that we are now very aware of. Digital campaigning is a good thing because it is a means of communication between the political world and voters and of engaging voters, but it needs to be fair and transparent. That is why we have made recommendations. It was a longstanding recommendation of the Electoral Commission, before my time, that there need to be non-party campaigning rules, and Parliament has put some in place. It has been a standing recommendation of the commission since 2003 that there need to be imprints on digital material so that the source of funding is clear, and we now have recommendations that accompany that. It is not about the commission having more powers for the sake of more powers; it is about enabling UK regulators to do what is necessary in the interest of voters. That is not just about the commission; it is about other regulators as well.

Q4844 **Peter Grant:** In the report you published after the 2016 referendum, you made the point that a democratic political process is about people



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disagreeing and that sometimes the disagreements will become quite passionate. I can understand that neither you nor any other regulator can intervene in a disagreement about predictions as to what might happen. Where there are cases where there have been very clear factual inaccuracies used during an election or referendum campaign, is the current legislation sufficient to make sure that the democratic process cannot be corrupted by either deliberate or reckless lies or misstatements on matters of fact, as opposed to matters of opinion or matters of judgment?

Bob Posner: This is about truth in campaigning. I do not think you want the Electoral Commission as an organisation, or anyone else, to decide what the truth is or is not. That is a very impossible task. I do not think you want to ask anyone to do that, but what is right is that you want to enable voters to make judgments. Campaigning has always been about claims. Digital campaigning brings far reach, and modern campaigning brings all sorts of claims. It is about voters understanding who is influencing them. The rules can help there. That is where regulatory rules can help to give transparency to voters about who is trying to influence them and what money has been spent on that. Truth in campaigning is about voters understanding what is happening, and that is why issues about greater education of voters in schools or at election time to think about who is trying to influence them and to raise awareness is a very powerful tool to help the electorate.

Q4845 **Peter Grant:** At the end of the day, if somebody decides that they have a very substantial financial interest in a particular result of a referendum, for example, they can, at the moment, either work within the law or they can take a calculated decision to work beyond the law, knowing that nobody has any sanction to impose on them that will make any difference at all. There are people, for example, who stood to make or lose tens of millions of pounds on the result of the European referendum. Is it fair to say that, at the moment, we do not have a legislative process that is robust enough to act as an effective deterrent to people who want to corrupt a democratic process by putting out blatant lies in order to persuade people to vote in a particular way?

Bob Posner: One has to decide what it is that one is going to make laws about, what one is going to allow people to say or not say, whether it is true or not, in any democracy, and where one draws that line. One could choose to make laws. The Electoral Commission's view, because we act in the interest of voters, is to have an informed electorate so that voters have the best possible understanding of what is happening and understand that people are trying to influence them.

To exemplify that, we do a lot of survey work with voters, which we publish. There seems to be a high awareness amongst voters when they see what might be termed a "political advert", whatever claims may be in it. They recognise, "That is a political advert. I believe that," or, "I do not believe it." What is more difficult for voters currently to identify, particularly with the speed of the digital world, are issues-based matters,



where issues are thrown at them, particularly digitally and so forth. At the moment, it is quite difficult for people to recognise that, "Actually, that is trying to influence my vote in a more indirect way, but I am being influenced." With time, people will become more and more aware of that, by definition, but it is an interesting advent of the speed, the power and the reach of digital campaigning.

Q4846 Peter Grant: In an election campaign where somebody gets elected and other people do not get elected, if it is found out afterwards that the winner cheated to a severe extent, they can be disqualified and be expelled from office, and they may or may not be allowed to stand again in a by-election. I saw recently that Chris Froome has been awarded first place in the 2011 Vuelta a España because the authorities have caught up with the guy who won it and have discovered that he cheated—you cannot rewrite history in 10 years' time and change who won an election.

But there is no equivalent sanction on a referendum because, in a referendum, you are not putting somebody into office, with at least the possibility of removing them from office if it turns out that they cheated. Does that not suggest that the financial or possibly criminal penalties on individuals who are found to have corrupted the democratic process should arguably be put on the same kind of footing as the penalties for those who corrupt the judicial process? If I go into court under oath and tell lies, and I am caught, I will go to jail, and the person who was convicted on my false evidence may get out of jail or at the very least get a retrial. If I get elected to public office by telling lies and I am found out, I get expelled from public office. If I win a referendum by telling lies, nothing happens apart from a fine that is possibly loose change to the business that I run.

Do we need to regard the corruption of the democratic process as seriously as we have always regarded the corruption or prejudicing of the judicial process? Do we need the corruption of an election to be seen as serious a matter as contempt of court? After all, the courts have no legitimate authority unless it comes from people who have been elected.

Bob Posner: I am a lawyer, but I do not pretend to have that level of expertise about criminal law and how practical it would be to have that sort of criminal law offence. What I would say is that part of the armoury of deterrents on behaviour is to have suitable sanctions and fines. Data protection from the Information Commissioner is a very good example. We all really care about people's personal data these days and should protect it. Parliament quite rightly addressed that and increased the powers of the Information Commissioner in terms of levels of fines—some might say the fines are too high—and we have recently seen the Information Commissioner acting under her brief. That acts as a deterrent and a warning to people that they need to respect people's data and so forth.

If you took that into the democratic world and asked, "How do you deter people from being tempted to break the rules?" I am not quite sure it



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goes to your point about something that is absolutely not true, but as a deterrent what you need are suitable sanctions that make people think, "I do not want to do that." One does not want to have to impose the fines, but one wants the possibility that one can do that in the most egregious cases.

Our response, which you see in our recommendations to Parliament in our reports, has been to enable regulators—to enable us—to act swiftly, to get hold of information swiftly and to impose the sorts of fines that act as deterrents, although we would hope that the deterrent is enough and that we do not need to do that.

Our other response is in relation to people's awareness and digital literacy, as the phrase is, in terms of their understanding of the world we live in, and helping people understand that people will say things that may not be true to try to influence them. That is not to be dismissive, because people are quite aware of that in some ways, but, in other ways, in a world where there are subtle ways of influencing people, we need to help people to understand that.

Q4847 Sammy Wilson: Can I first of all ask about donations? Northern Ireland is the only part of the United Kingdom where donations from foreign countries can be used in the political system. Ironically, the money that is raised by parties that are organised in the Republic as well cannot be used in the Republic but can be used for elections in Northern Ireland, as a result of a legal loophole. Does the Electoral Commission have any concern about this? Have they done any investigation as to whether this benefits only one party in Northern Ireland, and have any concerns been raised with the Government?

Bob Posner: It is our statutory responsibility across the UK, including Northern Ireland, to monitor and to take all reasonable steps to make sure that the rules are followed. You are absolutely right that there is a different set of rules that apply in this sense to Northern Ireland. That, as I am sure you know, is in the context of the Good Friday agreement and the gradual aim to normalise Northern Ireland and make it more in line with Great Britain. The donation rules are different in that sense in Northern Ireland.

Our policy line and our approach is to support Government and political parties and the political world in Northern Ireland to achieve normalisation and standardisation of the rules. Currently, the donation rules are different. One of our main policy planks for Northern Ireland has been to press for publication of all donations in Northern Ireland, so that there is transparency about where money is coming from. That has recently been achieved whereby, from July last year going forward, all donations in Northern Ireland have to be published so that people can see the source of them. In fact, the original aim of the legislation behind that was that transparency should go back to 2014, and we still think it should. That is very important because there were a number of major elections between 2014 and 2018, and the people of Northern Ireland



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deserve to see where the money has come from during that period. At least it is transparent going forward in Northern Ireland. That is a massive step forward, and it seems to be working well.

The sort of thing you are questioning now is, "What next?" as it were, about where money comes from. The first thing is transparency in Northern Ireland, which is now happening, and then, from a policy perspective, parliamentarians and all of us can begin to take a view of how it works in practice.

I just want to link one other point to this, which is a general point for the whole of the UK, which is another key recommendation on donations across the UK. Clearly, our system, rightly, is about stopping overseas influence and money coming in. It is a UK-based system for UK electors and UK-based companies. However, our rules on company donations, including in Northern Ireland, make it not that difficult, in the international world we live in, for money to come in through company structures from overseas into UK politics. We have made recommendations, which we hope the Government—or a Government of some sort one day—will put in place, that will tighten up the rules on the ability of companies to give donations into UK politics. That is not to restrict company donations in the sense that, if they are trading in the UK and are generating money and profits in the UK, they should of course be able to donate—it applies to Northern Ireland as well—but it is actually to get better control, because there seems to be a vulnerability in the system. That is one of our recommendations.

I have to say that what you are hearing from me, in a number of my answers, is the commission saying, "We have made a recommendation on this and we have made a recommendation on that." There is a consistency between a lot of the recommendations we make and those that others, such as academics, electoral administrators, the Law Commission and election judges, make as well. There is a consistency across the UK that a number of things can be done to the electoral administration rules, referendum rules and political finance rules. We all fully respect that Parliament needs the time and the space to address it, but we are at a period of time in the UK where Parliaments—in the plural because it includes Scotland and Wales as well—need to look at our excellent electoral laws and think about how they can be maintained, modernised and rationalised to create the sort of basic framework that will enable us all to move forward on the issues that are of concern to us, including issues about innovation, modernisation and tightening up some of the rules.

Q4848 Sammy Wilson: Mr Posner, this is usually everyone's opt-out when they talk about differences in Northern Ireland: that it is about the Good Friday agreement. This is not about the Good Friday agreement because, of course, the money that Sinn Féin raises outside Northern Ireland cannot be used in the Irish Republic but can be used for electoral purposes in Northern Ireland. Because of the definition of an Irish citizen,



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an Irish citizen living in New York can raise money that can then be used in elections in Northern Ireland. All I want to ask is this: first, the Electoral Commission is aware of the money that individual parties raise outside the United Kingdom, so have you looked at the disparity between foreign donations for Sinn Féin as compared to every other party in Northern Ireland? On the basis of that, have you raised any concerns about the need for change in legislation to ensure that that disparity is no longer allowed to continue and that foreign funds cannot be available to one party in Northern Ireland while not in the same quantities to other parties?

Bob Posner: Forgive me if I am not quite answering your question, but I think I am. The first and most important step is that there be transparency around donations in Northern Ireland so that everyone can see how money is coming into Northern Ireland politics. That is a really important step that is now in place and happening in Northern Ireland.

The second strand is what laws one has in place in Northern Ireland, which is for the Westminster Parliament currently—it is not devolved—in terms of elections and what laws are appropriate in Northern Ireland in its current context that control donations coming in. The current law, as set by Parliament, allows the system you are describing. I appreciate your views on it. A number of people have views on it. The question, going forward, is whether that is appropriate. We are alive to the debate, and we are very active in transparency in Northern Ireland. You are right that the policy issue has become more transparent and will need consideration.

Q4849 **Sammy Wilson:** Has there been no representation by the Electoral Commission so far on this issue?

Bob Posner: Not directly.

Q4850 **Sammy Wilson:** It is maybe something that should be investigated more fully.

Can I come to the second issue? There are questions now being raised about this right across the United Kingdom, but, again, this is particularly apparent in the referendum and continually in elections in Northern Ireland, and it is the issue of proxy voting and postal votes. Proxy votes in Northern Ireland, on average in Sinn Féin constituencies, are two and a half times higher than the average for Great Britain. In some cases, proxy votes in two of the seats that Sinn Féin targeted last time, not from Unionist parties but from the SDLP, increased by 300%, probably making a difference in both South Down and Foyle. Again, has the Electoral Commission raised any questions with the Electoral Office of Northern Ireland about the monitoring of proxy vote applications or any follow-up that is done when applications are made to ensure that they are genuine and about the way in which proxy votes are lodged? In some cases, they are lodged in batches—sometimes over 100—by political parties.



Bob Posner: I am not abrogating responsibility, but these are offences—if they are offences—of the Representation of the People Act. They are not within the commission's remit. These are matters for the police. We have no powers to investigate in these areas. If there are offences, these are matters for the police in Northern Ireland to investigate. You are absolutely right that there is a chief electoral officer in Northern Ireland. It is her job currently to run elections in Northern Ireland directly, and if there is evidence of potential offences, people should report them to the police. I am sure she would work closely with the police, as the Electoral Commission would. These are not matters within the commission's direct remit, control or powers.

We do oversee elections and we report on elections. Proxy voting and postal voting are very relevant, and there are issues that we regularly report on. They are both alternative ways of voting to going into the polling station—effectively advance voting. There is no doubt that the most secure form of voting is voting at a polling station. It is a safe and secure environment, with the secrecy of the ballot. There are genuine reasons why you need to have postal and proxy voting, and why postal voting is popular in many ways for genuine people who need advance voting, but those systems are one step back.

I do not want to, in any way, question those systems, because, by and large, they are secure, but in any area of law, if people seek to break the law, you cannot always control that, and that will always be the case. What is important is that the administration of the law is robust, which I think is what you are referring to.

Q4851 **Sammy Wilson:** That is an important point. If people choose to break the law, that is an issue for the police. However, if the administration of law is carried out in such a way as to make it easier to break the law, is that not an issue for you?

Let me paint a scenario: you get the marked registers at the end of an election, and you see that, in certain areas, looking at that over a number of elections, especially when they are close together, there are people who consistently do not vote. You go to their door and make an application on their behalf for a proxy vote. A proxy vote is only meant to be given if a person cannot present themselves to the polling station. Those applications are put in in bulk by a particular political party and the electoral office will know, because they know the individuals who very often come in with them, and those votes, especially when they are in the quantities that they have been in—in some constituencies up to 2,500 votes—are capable of swinging a marginal seat.

At that stage, would the Electoral Commission not think of asking, "Has it been checked that those votes are genuine votes? If Sammy Wilson says that he is on his holiday that week and that is why he is applying for a proxy vote, has any contact been made with Sammy Wilson to ensure that he is going to be on holiday? Has he even made the application in the first place?" If there appears to be this huge jump of 300% in proxy



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votes in marginal constituencies, which will make a huge difference, is it not the job of the Electoral Commission to ensure that, if there are allegations of fraud—indeed, especially since people make these allegations—whilst the police must investigate the fraud, there should be steps taken to ensure that the fraud is harder to undertake?

Bob Posner: You clearly have a specific concern that relates to something very specific in Northern Ireland, and—

Q4852 **Sammy Wilson:** It relates to an election and, if the same pattern becomes known in other parts of the United Kingdom, the same abuse can take place.

Bob Posner: Yes, I was about to say that. You are talking about specific elections in Northern Ireland, and I am not aware of the detail. We can look into your specific concern, we can talk to you directly about that and we can make sure that that is looked into, or perhaps it has been looked into. We can do that.

I agree with you that it is the same system across the UK. I want to be absolutely reassuring and confident about this: across the UK, electoral administrators, local police forces, the Electoral Commission and political parties work really hard to make sure that there is no proxy voting fraud or postal voting fraud. Parliament strengthened the laws in these areas to make the system much safer a few years ago. There are now a number of safeguards in there. No one can sit and say that there will never be postal voting fraud or proxy voting fraud, but it is much harder now and it is a system that is well regulated. Where electoral administrators, local police, campaigners or ourselves see a disparity in expected levels or a bulk handing-in and so forth, those are triggers where all our advice and guidance says that that needs to be looked into; we would expect it to be looked into. There is a robust system—I will sit here confidently and say that—across the UK, and people should be confident of that system if they want to cast their vote by postal voting or proxy voting.

Q4853 **Sammy Wilson:** I just have one final question. I do not know if you are aware of the details here, but the Secretary of State for Northern Ireland has been made aware of all of these issues. I do not know if they were raised directly with the Electoral Commission as well. Could you inform us as to whether or not the Secretary of State for Northern Ireland, having been in receipt of detailed information about the abuse of proxy votes, has conveyed that to the Electoral Commission?

Bob Posner: I will follow that up.

Chair: If you could check, that would be really helpful.

Q4854 **Hywel Williams:** Mr Westwood, you referred earlier on to sending the Welsh-medium stuff forward to the Welsh Language Commissioner. Is that a statutory duty placed upon you, is it a matter of your Welsh language scheme or is it just a matter of good practice?



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Craig Westwood: No, it is a statutory responsibility on us as a public body operating across the UK to make sure that we are complying with the rules in place that the Welsh Language Commissioner oversees. We always make sure that we go to the gold standard on that wherever possible. It is very important to us to make sure that we are engaging with Welsh voters and Welsh language-speaking voters in exactly the same way that we would with English language-speaking ones.

Q4855 Hywel Williams: Are there similar duties on you in respect of other languages, such as Scots Gaelic, Scots or perhaps Irish even, or languages that are widely spoken, such as French, Urdu, Mandarin or whatever?

Craig Westwood: There are not the same levels of requirements on us, but we do, in terms of our public awareness activity specifically, work in other languages. Where we are working with local authorities to provide the kind of forms that are needed, for example, to go out to voters or potential voters, we do look at other language provision and make sure that, at a local level, they are able to provide the support to people that do not have English as their first language.

Q4856 Hywel Williams: How do you decide which languages you use? For example, the Chinese community in Wales is quite prominent, whereas perhaps it is less prominent elsewhere. Do you have regional variation? What is the cut-off point?

Craig Westwood: We look at national data on languages spoken across the country. There is existing information that we use as our base for that. We also work very closely with the returning officers and their teams across the country to make sure that we understand what they need at a local level. We have a piece of work coming up in the next couple of years where the Government are taking forward important reforms to the canvass process by which the electoral registers are formally updated. As part of that, as a knock-on piece of work, we have to update all the forms that we provide. One of the pieces of work that we are going to do there is make sure we are currently providing the right update on languages for our existing communities now, rather than relying on previous information. We do try to keep that as fresh as possible.

Q4857 Hywel Williams: I have always been very satisfied with the provision in Welsh, I have to say. Do you take design advice, for example by putting things side by side rather than back to front and upside down, as you see in some forms?

Craig Westwood: Yes, we do. One thing that you will see in the next week or so is that we are going to be launching a new corporate website. As part of that piece of work, we have worked very closely with designers and, again, with advisers on plain English and on Welsh language provision, to make sure that we are not only meeting the standard but



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that we are going beyond. You will see that that website actually allows us to toggle immediately on every page between English and Welsh.

Q4858 Hywel Williams: That was going to be my next question. Can I just go on to another unrelated question? We are, quite properly, looking at the referendum in 2016 this afternoon, but there has been another electoral event since then, which is the EU election. I did read your piece in *The Guardian*, Mr Posner, with interest, entitled, for other members of the Committee, "Yes, these EU elections weren't good enough. This is why". One of the reasons you identified, of course, is that it was a very rushed process. Apart from the lessons that one might learn from the 2016 referendum, what lessons are you taking from the 2019 election, in case we have a very rushed referendum again? Who knows what might happen very shortly?

Bob Posner: None of us want people who are entitled to vote finding it difficult or not possible to vote. It is one of the fundamentals of our system. Those European elections were not confirmed until late. One understands in the circumstances why that happened, but there are consequences of only being clear very late in the day that elections are going to happen, as it were. Normally, in terms of electoral registration, at a local level, they would have been doing voter awareness work from December last year for these elections. Those elections were not confirmed until 7 May when it was absolutely said they were happening; it was only in April that the local authorities and returning officers got any funding for them. That causes problems. It is a case example.

In fact, those elections were run well and, by and large, they happened. That is a great success, but there are two obvious categories of voters who struggled, one being non-UK EU citizens resident in the UK, who had this rather cumbersome procedure. Although they registered, there was another form they had to fill in. I slightly generalise, but across the rest of Europe, since the last election in 2014, most of the countries had tidied that up and basically made the registration system smoother. That would have happened for these elections in the UK had we not been leaving the EU. That would have happened naturally. It did not happen. It is one of the consequences, where there are things that need to be done for elections—recommendations—of there being a delay in putting them into place. The sooner they are put into place, in a sensible way, the less chance there is of unforeseen circumstances. That is very unfortunate and unacceptable. We will be reporting on that in the autumn.

The other category of voter who struggled was the overseas voter: the UK citizens overseas. That was not about the European elections; it is about every election we have. It is unsatisfactory. There was a day when postal voting for overseas voters worked with postal systems and it could happen, but now it is a real struggle. Timetables are tight. The local returning officer cannot do anything until the nominations are closed and they can print the ballot papers. That takes a number of days. However quick they are at getting those ballot papers in an envelope to an



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overseas voter, it has to get out to where it has to get out to in the world, and they somehow have to get it back by post. Obviously, that is going to cause problems.

Is that acceptable going forward? Are we going to continue to accept it for overseas voters, for those who are allowed to vote from overseas, whatever the rules are, that UK citizens should be disenfranchised in that way? I do not think we should. We have made some recommendations and asked Government to consider them. There are options now, options that a number of democracies have used for a number of years—Australia might be an example, with overseas embassies and consulates of Australia. In the recent Australian elections, Australians in London went to Australia House on the Strand and voted. Australia waited for those votes to get back to Australia before they finalised the absolute results. It meant that no one got disenfranchised. That is admirable, that is good and that is doable.

Another way one could look at it is through technology. New Zealand is an interesting example. For their last elections, they emailed out an authentication procedure to their overseas voters. They emailed the overseas packs. The voters overseas downloaded it, filled out their ballot paper, uploaded it again, sent it back and the returning officer in New Zealand then printed it out like a ballot paper and put it in the box, as it were. That is a fairly secure system. It is very secure in New Zealand. Do we want to look at systems like that? Do we want to change our system in the UK? Those are the sorts of innovations we can do. We need to consider it, but we should not be standing still. When I wrote the article, I was reflecting the commission's viewpoints, but there are opportunities to innovate, pilot and assist the voter.

Q4859 Hywel Williams: Your recommendation would be to look at systems, but, on the whole, do not rush it.

Bob Posner: Yes. Whenever you make a change to our precious electoral system and our democracy, you have to be confident that you are not going to have unintended consequences; you have to do it carefully—you have to do it understanding the context and how the whole system within it works. It has to be done well. We can look overseas. We can learn from experience there. We might need to adapt it here. We may have different choices.

Q4860 Seema Malhotra: I just have two very brief questions. Thank you for coming to give evidence to us today. If I could ask, first, without going over the ground that was covered, and further to the response that you gave to my colleague Mr McFadden, about the number of fines to remain or leave-related campaigns, would it be possible for you to provide a breakdown of those fines that you were referring to when you said that there were maybe a similar amount on each side? Can you send that schedule to the Committee?



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Bob Posner: We can do that. We publish all our information on our website, but perhaps it is not quite so accessible all the time.

Q4861 **Seema Malhotra:** I did go through the database, and it was just hard to see.

Bob Posner: I appreciate that. I can say, because I came armed today, that of closed investigations where a fine was imposed—this is an interesting statistic, though statistics are statistics—there were 32 arising out of the referendum. 18 of those investigations with a fine were against leave campaigners and 14 were against remain campaigners. We do not investigate on the basis that there has to be an equality; we investigate on an evidence base when we should investigate. It can turn out to be very imbalanced in any electoral event. As it happens, in the referendum it does appear reasonably balanced from both sides of the argument. Reflect, also, not on those figures, but on what that means in terms of the number of campaigners on both sides of the argument who fully complied with the rules.

Q4862 **Seema Malhotra:** It would be helpful if you could provide, from the closed cases you have, the number of cases, but also the total number of fines, because some were relatively small and others were larger. That would be helpful.

Bob Posner: Yes, they differed. That information is all factual. It is all available.

Q4863 **Seema Malhotra:** Thank you very much. If I could ask a separate question, there has been increasing momentum around the idea of a citizens' assembly. We know from the experience in Ireland that an assembly has been used to deliberate on a number of political questions and produce reports that are formally responded to. This is really just the start of a debate in the UK about a citizens' assembly in relation to some of the complex questions that have led to some of the deadlock in Parliament. If there were to be a move towards a citizens' assembly within the UK, would you see the Electoral Commission being expected to play a role?

Bob Posner: It is a new concept if we do it for the UK. It is not part of the current way we administer our democracy. Certainly, we see the emergence of citizens' assemblies in some other countries. Currently, it is not part of our functions and our role. Why would it be when it does not exist as a concept or has not to date in the UK? To be clear, we stand ready to assist that debate. If Parliament thinks there should be a role for us, we will do it.

Like you, we are aware of where it has been used overseas. It is interesting to think about the sorts of issues it has been used on to date, which are social policy-type political issues—climate change, abortion and things like that. They are the bigger policy and citizen-type issues. The Scottish Government are starting a citizens' assembly on what the future of Scotland should look like. The Scottish Government have started a



citizens' assembly there with a broad remit. They are not quick vehicles. They take their time, quite rightly, to gather evidence. They are not a quick process in any way. They are a longer process than we are used to in the UK, because they take their time to look at a subject carefully and then deliver reports. One would not think, if we introduce them, that they are something that will fit in to some speedy part of our system. They would happen side by side, to open up a future policy debate, probably, for Government and Parliament. It is an interesting idea, and we see it close to home in Ireland as well. They use citizens' assemblies.

Q4864 Seema Malhotra: You are correct. It is not uncommon for it to be around 18 months that you would expect an assembly to run. It is also true that there have been big policies but also some constitutional questions that have been addressed. Certainly, there is an increasing debate now about either risks to the Union or future of the Union, and reviewing where we are and who we are.

In terms of how this debate moves forward, if it does, and we see a citizens' assembly emerging as part of the response to some of the deadlock that we have experienced and a way in which the country might come back together, there would be questions about what it should debate and how it would ensure impartiality and fairness of those debates. Is there anything that a body overseeing a citizens' assembly could learn from the Electoral Commission?

Bob Posner: As you say, it is a fairly new concept. I am not going to pretend that the Electoral Commission has given a lot of thought to a citizens' assembly so far. It is fair to say that the commission board—the 10 electoral commissioners—are beginning to talk about it with us, the directors, and quite rightly so. Our position will emerge as the debate emerges. I really do not have a commission inside track or position on these issues at the moment.

Craig Westwood: There might be two areas, from an early consideration, of where our experience could be brought to bear. I have talked about the question assessment process in the lead-up to a referendum. Where we have experience of doing the kind of public engagement that I outlined earlier to make sure that something is intelligible, you could apply some of that process to developing what the framework for a citizens' assembly might be, in terms of the kind of issues it needs to cover and how to ensure balance. We would have something to bring to that side of the work.

Interestingly, there would be a question, depending on the scale of the citizens' assembly and who the individuals were and the practical details around how it was run, about whether there was a potential for those individuals to be influenced externally. Clearly we spend a lot of time looking at how campaigners are influencing voters. We have been looking at a much smaller group of people here; it might be as few as 100 citizens who were selected. There is a potential in that process for them to be influenced. It would be interesting, when Parliament was



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considering what the rules around it were, to consider how it felt about that and whether that was just part of the process that people needed to deal with, or whether they wanted rules in place that created transparency or prevented individuals from being influenced. Those are two areas from our existing work.

Q4865 Jeremy Lefroy: I wondered if you had ever been asked or given advice on the day of the week on which a referendum or an election is held.

Bob Posner: It is a perennial question, is it not? We have a tradition of the UK of holding them on a Thursday. There are various theories as to why that has emerged, as it is just the case in the UK. You see in other countries that their traditions might be on a different day of the week. It seems democracies have a tradition in that, in a given country, they always hold it on this day; it seems that emerges.

There is a difference now in the UK to some other democracies that we compare ourselves with, in that although we have postal voting as a means of voting in the UK in advance, a number of countries have moved to opening polling stations in advance of polling day in certain areas as another means of voting. If one thinks in the context of what day of the week people vote on, in Canada and Australia, for example, people are voting not just on polling day in a polling station—I know there is postal voting—but they are also going to polling stations in town centres the week before. When they are in town, they are going, “I will go and vote as well.” That has a good impact on voter turnout and gives more choice to voters.

Of course, what it does change when you get increasing amounts of people voting in advance of polling day is the nature of political campaigning, in a sense—in terms of campaigns and people being aware of the issues. We have seen that develop in Australia and Canada. In Australia, in the federal elections they just held, between 30% and 40% of people voted in advance polling stations. They expect that to keep increasing because of the convenience and choice. That moves one away from the tradition of everything turning on the polling day, a Thursday, or whatever day of the week.

Q4866 Jeremy Lefroy: In that case, there is no real reason why we should not have elections on a Saturday or a Sunday, which would certainly help a lot of my schools that had to close and, this year, had to close twice within a month. There is no legal reason at all.

Bob Posner: Only because the law currently says polling day is a Thursday, but that could be changed. One would have to think of the implications and the pros and cons of another day of the week.

Q4867 Jeremy Lefroy: When was the last general election that was not on a Thursday? There was one in the last 50 years, I believe.

Bob Posner: You are probably right, if you say so.



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Q4868 Jeremy Lefroy: Of course, the biggest example is India, where it is a rolling six-week period for a general election.

The second question goes back to what you said about postal votes and proxy votes. Following on from what Sammy Wilson was describing, where I very much agree there are some real risks, you effectively said that the most secure form of voting is a voter turning up and, I would add, showing some kind of ID at the same time, because that avoids personation. Postal votes and proxy votes do not have that security at all.

Bob Posner: Postal voting and proxy voting are a different form of voting. They do not take place in the polling station. The polling station should always be the prime and, by definition, most secure environment, with secrecy of the ballot and so forth. It is important that voters have increasing amounts of choices in terms of how they can vote. Postal voting is popular in the UK. It is very important for people. It is highly used in some areas, but as Craig was alluding to earlier, everything has a risk to it and a safety element to it. The postal voting system has been well looked at under the legislation by Parliament and is a fairly secure system, but there are still risks inherent in it. If you go into a polling station, most people would say that is more secure. There are risks about that as well, but most people say that is more secure. I think that is fair to say.

Q4869 Jeremy Lefroy: What is approximately the level of postal votes at the moment across the country?

Bob Posner: It varies. If you took an average across the country as a whole, as a percentage, it would be in the low 20s. It does vary hugely in areas. You may have one area that is down as low as 5% and another area where it is up at 40%. There are historical reasons why, in some areas, it is much higher than in other areas. It has been growing. You may have some more details, Craig.

Craig Westwood: Given we were talking about the referendum, in 2016 the number of postal votes issued was 8.5 million, which represented 18.3% of the electorate, and 7.4 million were returned, if that is helpful.

Q4870 Jeremy Lefroy: Would it not be safer to restrict postal voting and proxy voting on an election-by-election basis and not roll it over automatically, to have people give a valid reason for needing a postal vote and a proxy vote, and, at the same time, to possibly move the day of an election to one that is more convenient for most people? Many people have postal votes because they are out at work on a Thursday.

Bob Posner: There are a number of questions there. I can pick them all up. Currently, if you elect to have a postal vote, that rolls on, as you say, unless you change your mind. In his fairly recent report on electoral fraud, Lord Pickles recommended a three-year renewal period so it does not always roll on. At the Electoral Commission we think there is sense in that. It would be good to have a system where, every now and then,



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whatever period one chooses, a voter has to renew that choice. That is a good thing to remind the voter—

Jeremy Lefroy: That is not the case at the moment.

Bob Posner: That is not the case at the moment. In the sense of postal voting on demand, as it were, as a right, that did not used to be the case in the UK. It became the case. It is quite a popular and convenient means of voting for many people. They like doing it, and it is popular. For many people, they are quite content with it. They understand the risks and so forth, but they are content to vote by post. For the vast majority of people it is perfectly secure and safe, as it should be.

If one was to reduce it to a system that was no longer as of right, and have certain categories, one would create a bit of a gap in the system. It would be right to think of other means, which is why I mentioned earlier about advanced voting at polling stations. It is interesting to think about that and how to do those sorts of innovations. We have a system in the UK where we have 371 separate electoral registers managed by 371 local authorities. That does seem a bit archaic. If we could get our registers to join up, however we did that—one system, or they all talk to each other—that opens up all sorts of possibilities on innovation.

It opens up the possibility that, wherever you happen to be working in the UK, you could go into the polling station nearest you, instead of having to go back close to your home to vote. Although we have long polling hours—7 am to 10 pm—to take into account people who might be at work and who can vote first thing in the morning before they go to work or before they finish work, it is still the case that you could be working somewhere in the country quite a distance from your polling station. If you join up the electoral registers and begin to open up those sorts of innovations for the convenience of people where you can vote at any polling station, you can begin to address some of these issues. People might say, “I do not need a postal vote. I can just go where my work is and vote.” There are options and possibilities, but we need to modernise our system to enable these innovations.

Q4871 **Jeremy Lefroy:** Given that most elections these days seem to be pretty close, both at constituency and national level, the percentage of postal votes that you are talking about, and to a lesser extent proxy votes, is enormous. It is far greater than the margin of victory in the vast majority of seats. I am not saying that there is a great deal of fraud going on right across the country. However, there are concerns that there is undue influence from time to time in certain places at certain times. Do you think there is a need now for a wholesale look at how we can improve the security of voting, taking into account things the Australians, New Zealanders and others have done? Would you recommend that to the Government?

Bob Posner: The Electoral Commission has not specifically said this in terms of postal voting. What we have said very clearly is that when we



look at our electoral system at a whole, it has been a long time since it has been looked at, it feels outdated and it is in lots of different bits of legislation overlaid with each other. What it is saying to Parliament, as well as the Scottish and Welsh Parliaments for their elections, is that the time has really come. Lots of good thoughts have gone into how to modernise or rationalise it. Do that. Create a really good, strong base of a modern electoral framework and, from that, these sorts of policy issues, through politicians in Parliament, can be addressed sensibly. That is one aspect—routes for people to vote, how they vote and what the best way is in the modern world to do that. That would probably encompass the debate you are picking up on.

Chair: According to that reliable source of information, Wikipedia, the last time a by-election was not held on a Thursday was on Wednesday 31 May 1978. The reason, apparently, was that the following day, the Thursday, coincided with the opening game of the World Cup. It also reports that the 1918 general election was not held on a Thursday. It is tradition, according to the source of information I have in front of me, but not actually the law.

Peter Grant: Could you not talk about the 1978 World Cup, please?

Chair: I promise I did not do that deliberately, Peter.

Q4872 **Stephen Timms:** You referred earlier to problems with postal voting from outside the UK. Can I raise with you another problem that arose in the European elections, when quite a significant number of EU citizens in the UK were on the electoral register and turned up to vote? Only when they got to the polling station, did they discover they should have filled in another form and submitted it sometime before the election in order to be allowed to vote in those European elections. Can you just tell us a little bit about the background to this—what the problem was and your reflections on it?

Bob Posner: One of the benefits of an independent Electoral Commission, along with doing our job well, is that we do not get caught in the politics of whether the UK is going to leave the EU and so forth. We have no view on that. We just look ahead and say, "There are some elections coming up, and they could still happen." That was the case with the European elections. We took a lot of flak and criticism. We had money in our budget in case they were going to happen. But, despite that, that proved to be a wise thing that we did.

As early as March this year, we issued guidance to campaigners, because the regulated period starts four months before. We said, "We are going to issue all our guidance to you. It is up to you how much you prepare for these elections, but beware." I wrote to Government, reminding them that these elections could still happen and that returning officers needed funding so that they could get on and book polling stations just in case, so they could do their job. They could not do anything to prepare for these elections unless they were funded.



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We also wrote in April to all the returning officers and electoral registration officers across the country and said, "You need to remind EU citizens that they have this extra form to fill in. Look how many you have on your registers and write out to them." I hope, and I believe, that most returning officers did that to remind EU citizens. That was a clumsy system—that EU citizens have this extra form to fill in. It is not surprising that they were confused. If you were an EU citizen here and you had registered to vote previously, you would think you could then go along and vote, if you had not picked up that you need an extra form. I should say that we did a lot of public awareness work as well, through Craig and his team, to try to raise people's awareness of that.

Whilst I hope many—I believe there were sufficient EU citizens living here who did want to vote—did pick up all this to get the extra form, did see the public awareness work and were able to go out and vote, not surprisingly there were a number who turned up on the day, and it must have been very upsetting for them—I know it was; a lot have written to us. You think you can vote, you go along and you are turned away. It is embarrassing. It is upsetting. Polling station staff, by and large, are incredibly sympathetic and supportive, but they could not let them vote. That was very difficult, with the best will in the world. It is an example of where, if things that can be done to improve the system are left until too close to the election, then it is too late to sort them. It was too late to sort the law. It is an example of forward planning, but it is a consequence of all of that.

Q4873 Stephen Timms: The purpose of the form was to make sure that these citizens were not voting somewhere else, was it not? That meant it had to be completed some time before the election. Is that right? What was the period that was required?

Craig Westwood: That is a specification in EU law. I think, from memory, that the figure is 12 days, but I will confirm that afterwards.

Q4874 Stephen Timms: Do you know how many of those forms were actually completed?

Bob Posner: We report post all major elections. We will report on the European elections. One major strand of this report, which we have highlighted, will be to look at this very aspect. It will be a major strand of our post-election report, which we will be publishing as early as we can in the autumn. We are in the evidence-gathering stage at the moment. We are gathering factual evidence—the sort of things you are alluding to—in terms of what facts we can gain about who was on the register and who turned up, as it were. We are also gaining evidence from staff in polling stations, from returning officers, from people we can talk to, from EU citizens who have written to us and so forth, which will be their story of what happened. We are gathering as much evidence as we can.

Q4875 Stephen Timms: In due course, you would expect to publish that figure.



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Bob Posner: We will publish. What I must say clearly is that it will be an impossibility to work out how many people wanted to vote and could not vote, by definition.

Q4876 **Stephen Timms:** You will have seen the report suggesting that it might have been a million that were denied their opportunity to vote. What would your comment be on that estimate?

Bob Posner: Our comment would be that one person who wanted to vote but could not vote is one too many. The point of an electoral system is that the people who are entitled to vote can reasonably easily and readily vote.

Chair: On behalf of the Committee, can I thank you very much for coming this afternoon? Your evidence has been extremely helpful and informative.