

Public Administration and Constitutional Affairs Committee

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

Monday 21 October 2019

Ordered by the House of Commons to be published on 21 October 2019.

[Watch the meeting](#)

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

Questions 303 - 393

Witnesses

I: Kevin Foster MP, Interim Minister for the Constitution.

Examination of witness

Witness: Kevin Foster MP

Q303 **Chair:** Can I welcome our witness for this last session on the state of electoral law? We are already drafting our report but we are extremely grateful that you are with us to give some definitive answers about the Government's attitude to these matters. Could I ask you to identify yourself for the record, please?

Kevin Foster: I am Kevin Foster. I am the Interim Minister for the Constitution.

Q304 **Chair:** Can we thank you for stepping into this role while Chloe has been on maternity leave? I am glad you have this opportunity to appear before the Select Committee before you step back again out of this role.

Kevin Foster: I am very pleased to have the opportunity. Also, as Minister for the Constitution, it is very interesting that in fact this in itself is a bit of a constitutional innovation of recent years to make the ability to be a Minister more open to those who wish to have a family as well. It is an interesting one just from that perspective as well.

Q305 **Chair:** Can we jump straight in? We want to move through as quickly as possible and I will pull people up if they are going on for too long.



HOUSE OF COMMONS

In your view, how urgent is the update and consolidation of electoral law?

Kevin Foster: Certainly, the Government remain committed to ensuring our electoral law is fit for purpose. There are areas that we believe need to be updated. We have already announced things like putting digital imprint requirements to reflect the fact that more campaigning is moving online, and also tackling things like intimidation as well. On top of that, we look forward to the Law Commission's report next year, which will hopefully set out in some detail further steps that could be taken to consolidate and reform electoral law.

Q306 **Chair:** Will the Law Commission actually be asked to draft a Bill?

Kevin Foster: I think what we will do is we will see what it comes out with as its recommendations. Then the Government can look at it and respond appropriately at the time. It is likely that some of its recommendations would involve primary legislation, but we will see what the recommendations are.

Q307 **Chair:** That is rather a long process to deal with some very urgent matters. Are there any particular matters that come to mind that need to be dealt with more urgently?

Kevin Foster: There are a few areas. We should not just wait until we do everything to not tackle items, particularly items where there is broad cross-party consensus. I have just touched on the requirements for digital imprints. There is a broad consensus that we should look to bring in legislation to tackle that. There are areas like canvass reform, where we are working very productively with the Scottish and Welsh Governments to reform the annual canvass to make it more effective. We have areas like anonymous registration, which we dealt with earlier this year with a change in the law to make that a more simple process particularly for those who have been victims of domestic violence.

So there are areas that we can carry on tackling usefully while waiting for the Law Commission's full assessment, and then potentially doing a piece of consolidation legislation in future.

Q308 **Dr Rupa Huq:** You said in your written evidence that you are working with stakeholders on appropriate and achievable electoral law reforms, focusing on particular policy areas. Who is it you have been consulting with and what progress has been made on that work?

Kevin Foster: If we go through the range of stakeholders we have, I would probably say canvass reform is a good example of one where we have worked very strongly with the devolved administrations to ensure a consistent canvass reform.

We are also working with the Electoral Commission around areas such as voter ID where we have been doing pilots, both this year and last year in the local election, and also wider—for example, in groups like St Mungo's—looking at those who may be less likely to be on the electoral



register, such as those who are homeless, and looking at ways that we can work with local authorities and the Electoral Commission and ourselves to try to ensure that there is more effort and more targeted work, and that it is appropriate work. It is not necessarily purely legislative work. In that one it was about making sure there was good guidance and some good strategies adopted.

Q309 Dr Rupa Huq: On voter ID the Electoral Reform Society has said that the enhanced ID requirements are a sledgehammer to crack a nut. There are 40 different charities, those under-represented groups you talked about. Operation Black Vote, Age UK, Stonewall and the NUS have all said that it is going to turn away vulnerable voters and it looks like it is straight from the Trump playbook.

Kevin Foster: I would certainly disagree with the idea that it is straight from the Trump playbook, not least given that for the last 16 years Northern Ireland has operated a very similar system to what we are proposing. That was passed under a previous administration. It was also quite useful to meet with the Chief Electoral Officer of Northern Ireland—who for obvious reasons is an independent figure—and to hear her views about the operation. I said, “Do you see any specific communities that are excluded by this?” and the answer was, “No”.

I would also strongly recommend members read the Electoral Commission assessment—again, an independent body—of the voter ID pilots. In particular, I think it was something like 99.6% of voters in one of them turned up perfectly able to vote and others returned later in the day. There will be a range of engagements with stakeholders, but I would just gently say that this is something that the Electoral Commission has recommended, other international bodies have suggested the UK should adopt and it is one where, as I say, Members of this House are already elected under a very similar system without any particular difficulties and it improves voter confidence.

Q310 Mr David Jones: The only means of challenging the outcome of an election at the moment is via the election petition system. That obviously has cost implications and in the Tower Hamlets case the petitioners if they had lost could easily have lost their own home. How fit for purpose would you say the petition system is for challenging elections?

Kevin Foster: There obviously needs to be a system available to challenge via the courts where bad practice exists. I am aware that the Pickles’ report made some suggestions for change and, again, we will look forward to seeing what the Law Commission itself proposes early next year.

It is right that we have a system where people can take on bad practice or be open to suggestions, particularly around the issue of costs and perhaps what happens where someone who has had an award for costs in their favour but then cannot actually get the costs out of the person it



HOUSE OF COMMONS

has been awarded again. Again, it will be interesting to see what the Law Commission suggests.

The one caveat I would put on this is that we must make sure that election petitions are about bad practice and not about bad loser; that we do not engage in changes that may sound very sensible in abstract but then produce a position where those who have lost an election fair and square, but who are well resourced, could use the petitions process to try to undermine the electoral system.

Q311 Mr David Jones: On that basis, would you say that it is fair that petitioners should be at risk of some costs so as to deter vexatious petitions?

Kevin Foster: There will always be a balance between making sure the bar isn't so high that someone who has genuinely been wronged cannot go to the courts, but there will always need to be a process in place and some—I would not say "disadvantage"—barrier that would slightly discourage someone who has a totally vexatious claim using the petition process to just challenge and throw mud at a legitimate result.

What we do not want to see is Lawfare coming into our elections process. We do need certainty that when elections happen and someone has been fairly elected, they can take on their office and get on with their job not worrying that, if the person who was closest to them happens to be quite wealthy and able to use the courts, they will spend most of their time tied up in legal battles.

Q312 Mr David Jones: By the same token, I do not suppose the Government want to deter proper petitions and, on that basis, how receptive would you be to the suggestion that perhaps legal aid should be made available for petitioners if in fact they could make out, *prima facie*, the grounds of the petition?

Kevin Foster: We will consider what the Law Commission brings in. In many cases we would say that, where petitions have been pursued, many people are quite well resourced. Many of them have been dealt with by political parties, for example, who have pushed them up. We would be interested to see what the Law Commission and the Electoral Commission may wish to say about that rather than making commitments because, again, there does need to be a process that is there genuinely for bad practice and people do not see it as a free way to try to refight an election.

Q313 Mr David Jones: Again, by the same token, you would not want to discourage people from bringing petitions forward in cases such as, for example, the Tower Hamlets case?

Kevin Foster: No, Mr Jones, we would certainly wish to see that it is an accessible system. I am conscious that the Pickles' review made some suggested changes. We are interested to see what the Law Commission suggests further and to consider that in some depth, but it is a system



HOUSE OF COMMONS

where we do need to tread carefully in altering it to make sure we do not have unintended consequences from something that sounded good, we thought would open up but then changes it quite radically. Again, it would probably be something that to make significant change you would need to have primary legislation for.

Q314 Mr David Jones: It has been suggested that there should be a mechanism available for people who want to register a complaint about an election but who do not want to go to the extent of seeking to challenge it through the courts so as to overturn it. How receptive would you be to that proposal?

Kevin Foster: I think, in principle, reasonably receptive. We would have to see how it worked and that there was a fair way of responding to it. We can look at some of the arguments as following on from the referendum in 2016, so that any complaints system needs to be one that cannot just become another forum for rearguing what voters have settled, but certainly we would be receptive to considering it. Again, we would have to see—and certainly if I was looking at it in the future, and I am sure the House would as well—how that would work in practice. It is about bad practice. It is about people being able to feel a sense of justice. It is not about people throwing mud at an election result and trying to undermine it.

Q315 Chair: I should just add that we have just agreed this morning to publish evidence from Andy Erlam who had first experience of the Tower Hamlets case. I would invite you to consider his evidence—I make no comment on it—while you are advising the Law Commission on what they should look at.

Kevin Foster: Mr Chairman, we are aware of the Tower Hamlets case and the circumstances there. Obviously we will see what the Law Commission says but, certainly, the experience of that is something that will be considered by Ministers.

Q316 Dame Cheryl Gillan: Just before I get to my question, notwithstanding the question about legal aid and so on, has the Department looked at the implications of this novel approach of crowd funding actions?

Kevin Foster: I would be clear that most of the famous crowd funded legal cases we have had recently have not actually been election petitions, which is perhaps what we are looking at more narrowly here. Ultimately it is about: is the court system effective? Is the process effective? How people seek to raise the money to engage is something that has traditionally been for them. It will potentially be either a trade union that has a particular fund or a political party that has raised donations and then funds a particular challenge. It could be crowd funding. The priority for us would always be that the funds raised were appropriate, that any donations to political parties or political entities are declared appropriately and the law is complied with.

Q317 Dame Cheryl Gillan: In deterring vexatious petitions, which is obviously



what we would want to do, allowing genuine ones through, crowd funding must be taken into consideration, surely?

Kevin Foster: Again, it depends on the nature. The fact that someone has crowd funded a legal challenge does not inherently mean that it is going to be one that is less or more effective. As I said, my potential concern would be a wealthy defeated candidate who potentially uses a badly modified petitions process basically to throw mud at a fair election result. I think that is where the most likely concern comes necessarily if someone has been beaten fair and square rather than someone going out and trying to raise money via a crowd fund.

Ultimately, it is about making sure the process is effective. The Law Commission is considering it. It is one that we do need to go into with careful consideration because it has to still remain bad practice not bad loser, but I accept that we also need to make sure there isn't too high a bar in a costs sense, so that someone who has genuinely been wronged would not wish to engage in it.

Q318 Dame Cheryl Gillan: Dr Alistair Clark has suggested to us that we should have a deliberative panel to look at issues and problems. In fact, it has been suggested that such a panel should report to this Select Committee. What is your view about setting up a deliberative group to keep electoral law under periodic review or look at specific problems?

Kevin Foster: I would have to be convinced that it added something to what we already have. We already have the Electoral Commission that, on an independent basis, makes reports and reviews elections and suggests to the Government and Parliament changes that should be made. We have the Law Commission that keeps the law under review, ensuring it is effective and useable. We have the Parliamentary Parties Panel, which the Government regularly engage with, and we have various other stakeholders that engage with the Government directly. We also have the benefit of the wise counsel of this Committee directly.

As Interim Minister for the Constitution, I do not think I am short of people giving me views and opinions and quite considered advice from various different angles about where our electoral law should be, so it would have to be what it would add to the many engagements we already have, including the parliamentary engagement we have through this Committee and through the forum of the House itself.

Q319 Dame Cheryl Gillan: The bottom line is you do not think it would be particularly helpful?

Kevin Foster: I would have to be convinced that it would add to what we already have. We have two very independent bodies, the Electoral Commission and the Law Commission looking at this area. We have the Committees of this House looking at this area, and the range of general engagement we have as well. I would have to be convinced it would actually add something to that.



HOUSE OF COMMONS

Q320 **Dame Cheryl Gillan:** Qualitatively, do you think that both the Electoral Commission and the Law Commission carry out those responsibilities effectively?

Kevin Foster: The Law Commission is certainly doing a very good piece of work, and we are looking forward to receiving its final reports early next year. It is a body that seems to command the confidence of many across the House when it makes suggestions about how a law can be modified.

The Electoral Commission itself is ultimately accountable to Parliament. It is not a body that I can direct as to what it does, and neither should it be a body that the Government can direct exactly what it does on a day to day basis. That would undermine the—

Q321 **Dame Cheryl Gillan:** I am asking you if you have formed an opinion as to their effectiveness.

Kevin Foster: With every area of it, I suspect there would be areas that we would all have where we felt that the Electoral Commission might be able to change its approach to work together but, again, part of it being an independent body is it will at times annoy Government. It will at times annoy a particular party. It has to be able to do its work. From what I have seen, certainly with the work we have done around things like canvass reform and voter ID it has been an effective body.

Q322 **Dame Cheryl Gillan:** Can you give me examples where you think it is not quite so effective? I know I am leading you down a path but it would be helpful to this Committee because it gives us an indication of what we should be looking at.

Kevin Foster: What you may wish to look at—or where I might suggest in terms of it has been well discussed—is around when guidance comes out after the event and candidates are then asked to be held to something. For me, that has to be the idea that you are held to what you could have known about at the time and not something that is produced after the event.

Q323 **Dame Cheryl Gillan:** Retrospective application of guidelines is something—

Kevin Foster: That would probably be one where I would cite that: I want elections to be open to as many citizens as possible who want to stand for their community. I do not want to get to a position where someone thinks, "I want to stand. I want to be involved but sadly I don't have a fleet of lawyers and accountants to help me comply with the raft of complex legislation". I suspect that is not a place that any of this Committee wants to get to either.

Dame Cheryl Gillan: That is very helpful. Thank you.

Q324 **Eleanor Smith:** The Electoral Commission argued that the lack of civil sanctions regime for candidate offences created criminal offences classed



as a “cliff-edge” in enforcement. To what extent would you support introducing a civil sanctions regime for candidate offences?

Kevin Foster: To be honest, I would need some persuading that this would be a positive move. The Electoral Commission has discussed it with me, and the idea is that it would say, for example, that a member of this Committee has made some sort of error and it is going to fine you for it but that is all right because it is not a criminal conviction. Yet I think all of us around this table, and more publicly, would realise that that would be on every bit of social media, in every bit of media, that you had been fined and in your next election campaign or if you stood again people would say, “You were fined”.

To apply that personal labelling it needs a very high standard. For me, perhaps from my old criminal defence lawyer days, if we are going to label someone like that it should be done at the criminal standard of beyond reasonable doubt. This isn’t just saying that a party—for example, the Labour Party, the Conservative Party or a referendum group—did something wrong. This is saying that someone individually did something. While in aspect, yes, it would be different to a criminal conviction, partly the reason why those sorts of labels are only applied to those with criminal convictions is because of the much higher evidence standards as well, the beyond reasonable doubt and the ability to plead your case before a court or potentially a jury in some instances.

That is where I would have some concern about this. Again, it might sound good in theory but the actual practical effect for an individual is they go around with that or then face having to go through lengthy appeal processes in the civil courts to try to overturn it. If you are labelling someone personally, I would take a lot of persuasion that it should not be done at the criminal standard of proof, and if there is a case of someone having committed a criminal offence they should be in the criminal courts with criminal sanctions available.

Q325 **Ronnie Cowan:** The Leave campaign was fined £20,000 for breaking electoral law and nobody was prosecuted.

Kevin Foster: We could go through the list of organisations that have been fined. The Liberal Democrats were fined for their campaign during the referendum. I cannot imagine they were campaigning for leave while doing so and, as the member will know, there were two organisations who argued for an independence vote back in 2014 that were also fined.

Q326 **Ronnie Cowan:** I am not defending them. I am saying they broke the law and nobody was prosecuted. I am not trying to politicise this, but you can see there are plenty of examples of this so what is the point of the law if they are not going to be prosecuted?

Kevin Foster: Mr Cowan, again, it is about: if there is evidence to a criminal level people can be referred to the courts and are referred to enforcement authorities. The Electoral Commission already do that and has referred a number of people to them.



HOUSE OF COMMONS

Q327 **Chair:** Are you saying there isn't a cliff edge? There might be similar offences or there might be criminal offences but you are saying there isn't a cliff edge?

Kevin Foster: If there is evidence of criminal offences those matters are referred to the police—

Q328 **Chair:** The problem is the nature of the offences. In electoral law it is either a criminal offence or there is no offence. Is that the situation you are happy with?

Kevin Foster: The Commission is there in terms of organisations, but for me to label individuals on the civil standard it is like in many other parts of life we would not go and label people as potential criminals without giving them the ability to defend themselves in the courts to the criminal standard of proof.

Q329 **Chair:** You think the cliff edge is a kind of protection for vexatious fines on the grounds of probability rather than beyond a reasonable doubt?

Kevin Foster: For me, Sir Bernard, it is having a clear line if we are going to label people in a particular way as individuals. The Electoral Commission regulating a body, if there are criminal offences people can be referred. If people are concerned about how the lines are drawn in electoral finance law that is something slightly different. I think to label individuals is the reason why we have those protections in place and why, when the Electoral Commission was set up, it was set up in the way that it was.

Q330 **Mr David Jones:** I would like to talk about the implications of the Thanet case. To what extent is it right that candidates and agents should be liable for the spending of third parties?

Kevin Foster: Yes, I do have some concerns. Obviously, we have to respect the court's judgment but, again, we need to make sure we get to a position where electoral law is clear and understandable. That people know the responsibilities and liabilities they are taking on and you do not find yourself being held for something that you had no genuine knowledge of. Clearly, if someone has deliberately sought to evade electoral law, that would be a different matter.

I am aware that there is some disquiet—not just among our political party but also more generally—about the exact implications and does this take us to bizarre outcomes, like, for example, a leader of a political party only visiting constituencies where the local campaign is happy not to do a lot to allow that to be added to their expenses.

For me, yes, the electoral law is there, I know the judgment but I think there is a discussion about whether the law could be clarified to make clearer what the actual liability of an agent is. I will be clear: the Government only look to do that with broad consensus.

Q331 **Mr David Jones:** You do think that electoral law does need clarification



HOUSE OF COMMONS

in the wake of the Thanet case?

Kevin Foster: My personal preference would be to look at doing some clarification, but the Government would seek to achieve some clear consensus in taking that forward.

Q332 **Chair:** We all have experiences, candidates in elections. Are there any particular experiences of your own that you think that the Committee should be aware of?

Kevin Foster: In terms of this we can look at: national parties will be running a campaign over the top where we get into some quite complex examples about the idea of area names. Whether that might start clicking into expenses if it was an area and it was also part of a constituency. That poses some quite interesting examples. For example, my constituency is called Torbay but the area of Torbay as a council area is much bigger, so my neighbouring constituency could be busy arguing about things happening in Torbay. On a strict interpretation, does that start becoming an election expense for me?

Similarly, for the sake of argument, if the general election was on the first day in May 2020, there are going to be a lot of candidates and parties talking about London. On a strict interpretation, does that start becoming an expense for candidates in the cities of London and Westminster constituency, even though we would all accept that the London we would be talking about is very, very different to the London that is the square mile just down the road?

Again, that is where we end up getting to a position where electoral law forces parties to use quite odd descriptions, and to put out literature that seems almost meaningless, to try to avoid being caught in relation to this judgment.

Q333 **Mr David Jones:** You seem to acknowledge that there is a lack of clarity here. What plans do the Government have to address that to make the whole area a lot clearer, and how much urgency do you think this requires?

Kevin Foster: There is engagement going on, certainly with the Parliamentary Parties Panel. There has been some significant engagement there and there is work being done. I have raised with the Electoral Commission the Government's views on this area, and we are considering what we can do, but we would need to look, Mr Jones, for some consensus in taking this forward rather than just the Government present something to Parliament.

Q334 **Mr David Jones:** The Electoral Commission does not seem to think that the problem is as great as many other commentators do. Presumably, you have been having fairly robust conversations with the Electoral Commission.



HOUSE OF COMMONS

Kevin Foster: I had a very productive conversation with the chief executive of the Electoral Commission about this point. The Electoral Commission's view is there isn't a problem, but it accepted that there were some widespread concerns and it would again consider anything we decided to take forward rather than inherently object to it.

As I say, given the numbers of different parties bring this up it does say to me that there is a genuine concern. It is not just, for example, one political party making a point about this. We have had it from a number of different sources.

Q335 **Mr David Jones:** Have you also heard—as in fact we have—that agents and candidates are extremely concerned about their personal positions in the wake of the South Thanet case?

Kevin Foster: Yes. When I met with representatives of different political parties there has been some concern. It means that someone who is totally innocent then ends up getting ascribed some spending that they had no reasonable knowledge about or—as the example I gave—if someone put something out talking about Torbay as a council area rather than Torbay as a constituency area and then I find myself having to get into quite lengthy legal argument about whether that was something that was promoting me, even if it had never been delivered in my constituency.

Q336 **Mr David Jones:** This of course is a particular burden for election agents who frequently—in fact usually—are not remunerated to any great extent but whose personal liberty and reputation may be on the line as a consequence of this.

Kevin Foster: Absolutely, Mr Jones. I accept that there is a clear issue. Agents want to know what they are taking on. Also, what we do not want to do is get to a position where, for example, a group of independents, perhaps standing under a particular banner in a local area because they want to campaign on a local issue, find themselves having to spend more time encamped with lawyers and accountants to work out exactly what should be on a potential election spending return, rather than being able to see a clear piece of legislation that says what they would be liable for that maintains a good principle.

Take it from me that if you are aware of something being done and you do not either make an effort to stop it or if you don't, that you are being held for stuff you could have had no knowledge of, or where actually it is naming an area that covers a number of areas and is clearly not intended to elect just one candidate.

Q337 **Chair:** If I can underline how struck I was, in a private seminar we had with the most senior party agents, that one even said that he was so concerned about the personal risk to him and his family, of being subjected to the kind of litigation we have seen some of, that he no longer wishes to carry on doing that job. What kind of comment do you



think that reflects on the state of confidence in our democratic systems?

Kevin Foster: It is concerning. I would say it relates to this particular judgment and the fact that the judgment, as has been explained to me by a number of stakeholders, people who have been agents for particular different political parties, is it changes the basis of the liability you are taking on. Traditionally you were liable for things you authorised, things you ordered or things that were clearly being done on your behalf. You were not liable for things you did not have any idea about. That is where this changes that basis, so you suddenly find you could be asked to put a whole load of notional expenditure on that you did not personally authorise as an agent or could not reasonably be expected to know about.

Q338 **Chair:** The other thing that is striking about the Thanet case is that individual culpability was attached to the prosecution, when it seemed more like a corporate decision by the Conservative Party to pursue certain policies with regard to expenditure and take certain risks. How fair is it that decisions taken corporately, now that parties are incorporated bodies—that never used to be so—that individuals carrying out those functions should be made personally liable for those decisions?

Kevin Foster: There will always be a bar that we will have to set around, if you are engaged in certain practices, whether you are part of a political party or not, that there may be individual liability as well as a form of corporate liability. Again, that is where we can look at—with the Law Commission doing its report—where the balance should be. That would be more about whether there should be an ability for a criminal liability to apply to a corporation rather than, for example—as we touched on earlier—the issues there might be if we applied civil penalties to individuals.

Q339 **Chair:** What role does the board of the Conservative Party, or the equivalent body in other political parties, have in holding responsibility for what is done in the name of the Conservative Party?

Kevin Foster: Mr Chairman, ultimately there could be a sensible discussion as part of a future piece of legislation about whether you wish to create a type of corporate liability in terms of certain offences that applies it in other circumstances. For example, in health and safety legislation, it is quite common that a corporate body will be prosecuted and individuals who had particular culpability for certain behaviour may face prosecution as well.

Q340 **Chair:** We are very interested in this Committee in proper governance of any organisation, particularly public bodies and, in this case, political parties. How can you make sure that the reforms brought forward by the Government on this actually strengthen the proper governance of political parties, which tends to get a bit lost in the wash in the political milieu?

Kevin Foster: There is always a balance to be struck between the fact that the Government should not be looking to run particular political



parties and should set a framework that allows political parties to work, operate and campaign independently. I would be interested to see what both the Law Commission and the Electoral Commission say—following the Law Commission's report next year—about how we tackle this balance. Ultimately, it is not for me as a Minister to determine exactly how the Labour Party's NEC wishes to work.

However, it is about making sure that we have clear and understandable legislation, a clear and understandable system and that people can engage with it, whether they are very complex political party with a compliance unit, a governance board or whether they are a group of independents who want to campaign to get people's votes on the basis of disagreeing with a planning application in their local community.

Q341 **Kelvin Hopkins:** We have touched on voter ID earlier but I would pursue that in more detail. One witness has told us that personation at the polling booth is vanishingly rare and we know from the Electoral Reform Society that voter ID is near the bottom of voter priorities for electoral integrity. What arguments are there in favour of introducing voter ID and what evidence is there that voter ID would substantially improve public confidence in the elections?

Kevin Foster: Certainly, I would suggest members can read the superb review of the pilots—both this year and last year—that were done by the Electoral Commission. It is clear that photo ID was the one that saw the greatest increase in public confidence in elections. Again, personation is a difficult one to deal with after the event. It involves having potentially to get court orders to open up ballot papers, to fingerprint them. It is something that for me is a requirement that is basic in life.

For 16 years we have had Members of this House being elected under a system of voter ID in Northern Ireland. I am very clear that some of the claims of how many people have a passport or a driver's licence is irrelevant. Those are the two most popular items to be shown. The third was a pensioner's bus pass. There is a range of easily available ID that people can present, and it is something that many voters are used to doing in many walks of life. It is something that gives extra confidence, there is a minimal barrier and the Electoral Commission's review sets out quite clearly why it feels it is an appropriate move forward.

Q342 **Kelvin Hopkins:** As you may know, the Labour Party has criticised the introduction of voter ID stating that charities, civil society figure and campaign groups have warned that mandatory voter ID, if rolled out nationally, could "pull up the drawbridge for millions of voters". They suggest 3.5 million citizens do not have access to photo ID. I have to say I was in my bank on Friday. There was an older person in front of me who was being asked for either a passport or a driving licence to show voter ID, and she did not have either and was obviously at a loss as to how to demonstrate who she was. She had with her bills and various other things. She would be one of the 3.5 million citizens no doubt who would suffer if this was introduced.



HOUSE OF COMMONS

The Electoral Reform Society suggests four times more voters are concerned about financial donations; four times more voters are concerned about inaccurate voting registers and three times more voters are concerned about media coverage than voter ID. Are we making too much of something that is not a big problem, which could have serious political implications?

Kevin Foster: First, I would say it is not about an either/or. As the quote from the ERS would suggest, we are looking at bringing forward a consultation on reforming that for finance law. We are also working very proactively with the Welsh and Scottish Governments around canvass reform, specifically to target resources at getting those who may be less likely to end up on the register and make sure the EROs can focus their time rather than the routine and unduly prescriptive process as the current canvass is.

I hear the comment about the Labour Party. My understanding is ID has to be shown at Labour Party parliamentary selection meetings, so interesting to contrast that with what their view on at the polling station. Let's be clear, I could go through a whole list of documents. It is not just passport and driver's licence. For example, in London the 60+ Oystercard applies. The parking permit, as part of the Blue Badge scheme, is another one. Any identity card issued in the European Economic Area, immigration documents, the Electoral Identity Card that is already issued in Northern Ireland. Is there anyone who does not have one of the many listed forms of photo ID?

There are quite a number that will be able to get a free of charge Electoral Identity Card issued from their local area or their local council. If the next question is: who will pay for the cost of that? The Government will fund local authorities to do that. Having spoken to the Chief Electoral Officer in Northern Ireland, this is a process that is used by many and one of the most popular uses of the Electoral Identity Card in Northern Ireland, other than using it to go and vote, is as proof of age for an alcohol purchase if you are 18, 19 or 20 or, for those with more chaotic lifestyles—if I may put it that way—it does give something that proves who they are if they are accessing public services.

I do not see it as any barrier and it works well in many other democracies. The idea that we are going to carry on with an ID system that originates from the 19th century, when a small percentage of men voted who the clerk might be very likely to know personally, I think is something that does undermine voter confidence in our democracy.

Q343 **Kelvin Hopkins:** The numbers I think speak for themselves: 3.5 million citizens. Whatever you say, and I am very interested in what you have had to say, 3.5 million citizens could be in difficulty. There could be a social component in that: the less affluent could be more likely to be in that position. The less affluent might have a particular political preference, so it could have a significant voter impact on a general election.



HOUSE OF COMMONS

If I can move on: the cost of national photographic ID requirements. Have you made an estimate of the cost?

Kevin Foster: We will obviously work with stakeholders as to what will be the final cost of it. We can certainly write with details to the Committee when that is available.

Q344 **Kelvin Hopkins:** It has been suggested £20 million would be the cost.

Kevin Foster: It is not a figure I recognise.

Q345 **Kelvin Hopkins:** That is what has been suggested to us. One final point I would make is: as an alternative to voter ID, if we were just required to take our polling card to the polling stations would that not be sufficient?

Kevin Foster: One of the models trialled in the voter ID model was a technical one around the polling card. It was found to be less accessible. While a polling card may be sent out, it is the sort of thing people might forget. It had the most cost, and it is one where—if people are concerned about those with different lifestyles—someone who has registered via a local connection it means that they do not necessarily have a permanent address for their polling card to be happily sent to.

Those who are concerned about voter ID, if they think that is an alternative, I would suggest they have a good read of the Electoral Commission report and see that actually voters find it far easier to comply with the other two models than with this one, and also the issues at the polling station as well.

Q346 **Kelvin Hopkins:** It may be controversial to say so but may I suggest that introducing photo ID could and probably would have significant political advantages to one party as against another, and that is one of the reasons why the present Government is actually rather keen on it and why the Opposition is against it.

Kevin Foster: I would just say that the independent Electoral Commission—who regularly has arguments with the governing party much as it does with the opposition party—has recommended its adoption. Many other democracies use this, and the main opposition party was the party that, while in government, introduced the system for elections in Northern Ireland so I do think it is rather odd. After speaking with the Chief Electoral Officer from Northern Ireland, I would certainly urge members of the Committee to go and see how that system operates in Northern Ireland. Northern Ireland is hardly a place where people do not regularly argue like mad over election rules. It is an accepted part of their electoral landscape, as it is in many other countries.

Q347 **Kelvin Hopkins:** Northern Ireland is a special case as we know. It was a deeply divided community, which we hope has come together in recent time. It is a very special case. I suspect that the Electoral Commission recommending it, if it had not recommended it would have seemed to be taking a party political view against what the Government has—



HOUSE OF COMMONS

Kevin Foster: I do not think the Electoral Commission worries about annoying the current Government and, to be fair, neither should they.

Kelvin Hopkins: I have made my point.

Chair: There are two supplementaries.

Q348 **Mr David Jones:** Just briefly, many people actually confirm their registration online these days. Have you given any consideration to suggesting that people might be invited to upload a photograph of themselves at the same time as confirming that registration?

Kevin Foster: Once we get more into the detail with the Electoral Commission and others around this, but we need to bring it through Parliament first, there is certainly a range of options that could be looked at. One option that could be looked at would be, as part of the user journey—excuse the tacky pun—as you have gone through and you register to vote you then potentially have an information page that advises you of this requirement for the UK elections and then potentially an opportunity to apply if you need to. I suspect that where we may need to do the most work will be more with EROs around targeting registration in particular communities where they may be more likely to be paper based, and then advise them of the requirement of that process. There is no reason why it could not be a more seamless process to do that.

Q349 **Mr David Jones:** It would increase the database of photographs, though. You would have fewer people to pester about it.

Kevin Foster: What I would not want to do is collect a lot of data without a good reason for doing so. For example, those who have a driving licence, a passport, a pensioner's bus pass, a military identity card or a Blue Badge do not need to get another form of ID to register. We would not want to give people the impression they needed to do that to vote, but I think there would be an argument of: we could look at whether the process of registering included a reminder about this requirement at the end and an opportunity to then make contact with your local council if you needed to to register.

Q350 **Ronnie Cowan:** It is worth noting that the Northern Ireland turnout in the last three general elections has been the lowest of the four home nations that make up the United Kingdom. Is that something you have taken into consideration? Within that figure there has been the lowest number. Do you know what the breakdown is in terms of the social demographics?

Kevin Foster: My understanding, Mr Cowan, is I think the difference between the turnout in your own constituency and Northern Ireland is about 1%, if that. I must say it is very similar, and certainly having talked with the Chief Electoral—

Q351 **Ronnie Cowan:** Which election was that?

Kevin Foster: This was at the last one.



Q352 **Ronnie Cowan:** The one before?

Kevin Foster: Again, we see is that the turnouts are very similar. The Chief Electoral Officer in Northern Ireland is a wholly independent person. I have to say the idea that people do not argue about things in Northern Ireland, election-wise, is I think rather naive and that the communities there have accepted it as a way of increasing confidence in the outcomes of elections. We have seen the evidence of the Electoral Commission, so I see no reason not to do the same. Again, it is interesting that some people are very keen to quote the Electoral Commission's recommendations in some cases but not this one.

Q353 **Ronnie Cowan:** We want to increase citizens' rights and their confidence to go and vote. All I am saying is, from the picture you have painted, I would have expected Northern Ireland to be at the top of that list and it is not. It is at the bottom of that list. Whether it is by 1% or 8% as it was in 2015, it is still at the bottom of the list. If you are so confident in what you are predicting, why is it not at the top?

Kevin Foster: I look at the pilots that we conducted and I think in one case the turnout went up compared to the previous local election. We have seen the pilots, they work well. It is a requirement in many other countries. That does not impact on the effective administration of their elections and it increases security. It is no coincidence that one of the most vocal advocates of this system is not actually a member of the Conservative Party. It is actually a member of the Labour Party who represents Tower Hamlets and has seen firsthand what happens to a community when their electoral rights are stolen.

Q354 **Chair:** There is one major political party in Northern Ireland that refuses to take their House of Commons seats. What effect do you think that has on the turnout of voting in Northern Ireland?

Kevin Foster: I would probably not want to get drawn, but there are clearly people in Northern Ireland who object to participation in a UK general election, in a way that isn't generally present on the mainland of Great Britain, for pretty obvious historical reasons.

Q355 **Chair:** Actually, it would be wrong to draw conclusions of that nature. What conclusions do you draw from the lower turnout in Northern Ireland, albeit that it is marginal? Why do you think that is the case?

Kevin Foster: Looking at Northern Ireland, and let's remember it has a set system of registration. It does not have an annual canvass in the way that we do on mainland Great Britain. To build confidence they have a separate system. They have very different rules around postal voting as well, which again probably has an impact on overall turnout. In fact, very restrictive rules on postal voting, again to build confidence in the electoral process because of the difference.

That again may have impacts on turnout in a way that we should not then use to draw other conclusions elsewhere. As I would say,



HOUSE OF COMMONS

fundamentally Members of the House are successfully elected under a system of voter ID and have been for a number of years. That was a system introduced not by a Conservative Government but by a government of another political colour.

Q356 Ronnie Cowan: While Sinn Féin has not taken up their seats, it is worth noting that its vote as to the number of seats increased. They stand on a manifesto of not taking up their seats and that is why people turn out and vote for them. It is their right to do so if that is what they want to do.

Chair: I do not want to get into but I think drawing conclusions from coincidences in data is not a sound way of making policy.

Kevin Foster: I suspect postal voting restrictions have a different impact.

Q357 Dr Rupa Huq: The cases of electoral fraud last year, 266 total, 140 were campaign offences and only eight were personation offences. Do you really think you are going for the right target here? Is this the correct priority?

Kevin Foster: As we touched on, this is not an either/or. There is a broad sweep of measures we are taking to improve public confidence in our electoral system, including—as we have touched on several times—the Law Commission producing a report next year.

As I say, for me, it is securing our election. We did not say, “Let’s not do anonymous registration because we should do something else. Let’s not do digital imprints because we should do something else. Let’s not look at reforming the canvass to make sure it is the most effective way possible, getting out to communities who are less likely to register, rather than focusing resources on a bureaucratic process that dates from an era of a male head of household writing down who is in their family”. It is not an either/or securing up our electoral system. The Electoral Commission has given the report it has.

The initial reaction of many in the public, some of the initial polling we have seen is that many voters do see this as a perfectly reasonable and proportionate requirement. I have yet to receive a letter from anyone saying that the Royal Mail should just hand out parcels merely because their son has given their name and address. As Michael Crick—who is not normally known as a big conservative supporter—put it, no one is accusing the Royal Mail of postal suppression.

Q358 Dr Rupa Huq: Those 3.5 million voters, which Mr Hopkins referred to, that is 7.5% of the electorate. That is not an insubstantial number. Those people do not have any type of photo ID. In fact, 11 million people do not have a passport or a driver’s licence—

Kevin Foster: We are not making that the requirement.

Q359 Dr Rupa Huq: Are you going to introduce something free for those people?



HOUSE OF COMMONS

Kevin Foster: Yes. I can repeat it again. As we have said earlier, we will make available, free of charge, an electoral ID from your local electorate, basically your local council, and that will be available. That is on top of all the other things.

Why do people want to keep on talking about how many people do not have a passport and a driver's licence? That totally ignores the fact that there are a raft of other ID available and the third most popular form of identity presented in the pilots, which were mixed or photo ID pilots, was a pensioner's bus pass to put it simply. That is for a reason. It is something people carry. It is something they have. Not only do you get it free from your local council, you can also get the bus to and from the polling station for nothing with it as well.

Q360 **Dr Rupa Huq:** We know from the Windrush scandal that there are people that do not have these photo IDs, and we know from your own pilots that 1,000 people over two years did not come back when they were told, "You have to bring this extra thing". That is people who were potentially innocent voters that did not have photo ID who were disenfranchised. The Equality and Human Rights Commission—which again is a government body, it is an independent thing—it has warned against this draconian path. It is little wonder that people think it is, taking voter suppression—

Kevin Foster: Dr Huq, it signed a letter last year. It did not sign the same letter this year, there having been some engagement made with the EHRC. In Woking the second year of the requirement the number of people attending the polling station went down even more. We are talking well over 99.6% and then a higher percentage the year later.

Let's be blunt about this, because it was localised pilots we were not able to use some of the sort of national campaigns through national media that we would do for the rollout of a national system. The Electoral Commission could then promote the requirement as part of its general national campaigning. That was not done for May because, for obvious reasons, that would then potentially create electoral confusion to be running adverts with major things in national media.

The fact is that the vast majority of people easily complied with this. The fact that it improved voter confidence and that every person who does not have a photo ID can easily go and apply to their local council for free for a form of electoral identity, will make a real difference. To draw analogies to the Windrush situation, which was in relation to the fact that landing cards and items like that had been destroyed some years ago, which would have proved the status of the individuals concerned, is wholly erroneous.

Q361 **Dr Rupa Huq:** You interrupted me, so I was not able to finish what I was saying. What I would have said is: we know from the Windrush scandal that there are people with no photo ID, because it is when they have gone to use NHS services and they have been asked to produce that that



HOUSE OF COMMONS

it has come to light. Not all people travel. Not everyone has a passport.

It may be said that I was interrupted. I was not allowed to finish what I was saying, which is that the Equality and Human Rights Commission has identified trans people, BME people and people with disabilities. It just looks like the Government are trying to silence the voices of these communities, many of which are already marginalised. We know from your own pilots last year that 800 people did not come back, and people at the polling stations were not mandated to collect demographic data. Do you know the characteristics of those people who did not come back that were denied their voice in our democratic process just last year?

Kevin Foster: Let's be clear, some people also say it might have had the impact that it was intended to have in ensuring that people are who they say they are at polling stations. In terms of this, we have the Electoral Commission report. We can look at how we can ensure there are mitigation measures and how we get out there and deal with it. As I say, this is a requirement in many other walks of life. It is relatively easily complied with. We have given examples: opening bank accounts to collecting a parcel from the post office, to getting on a bus. Even at a Sadiq event recently—and I know the London Mayor will be keen to engage with all communities—where you could register and had to show some ID when you turned up to the event.

For me, I look at the Electoral Commission, I look at the analysis done by the local returning officers, all of whom are independent, and it tells me that this is a way of improving voter confidence and once the system is in place and people clearly understand it, there will be measures put in place to ensure that everyone can take part in our elections and feel confident in doing so.

Q362 **Ronnie Cowan:** I like hearing that I can use my bus pass to go and vote. That is very good. It is free in Scotland at the age of 60.

Kevin Foster: To reassure Mr Cowan, the ones we would look to include in the national system would be a concessionary travel pass funded by the Scottish Government and, also, the ones under Northern Ireland as well and an anonymous elector's document. Yes, concessionary travel passes funded by HM Government, as well as the English ones and the Scottish ones could be used. I just did not realise you were old enough.

Chair: I am so pleased that all gave us so much pleasure.

Q363 **Dame Cheryl Gillan:** It is such a giveaway because I thought Mr Cowan was under 60, but now he has confessed to his age I am not confessing to mine.

I am appalled at the way that this is being politicised and I do not think it should be about politics at all. However, I am on record as having expressed some concern about these proposals. First of all, it is the cost. The evaluation that was published in July the Government said they would update the publication when cost information was available. When is that update going to be published and when is that actual cost going to



HOUSE OF COMMONS

be available?

Kevin Foster: I am happy to come back in writing to the Committee.

Q364 **Dame Cheryl Gillan:** I am grateful because I know you have plans to introduce this, but on what timescale, for what election, when and how rapidly? How much are you going to spend on a public relations campaign that you have alluded to? How are you going to reach the most vulnerable people in our society, so that they do not feel threatened by this?

Kevin Foster: First, given primary legislation, time for electoral return officers, and also time for people to apply for a piece of ID if they wish to, I do not see this being used for an election before May 2022 at the earliest. We can probably all guess that it is highly likely the next general election will be before that date. That is the earliest I think we will see it, if we consider parliamentary passage and then an appropriate time to work with Electoral Returning Officers.

In terms of promoting it, we would expect it to be done as part of the Electoral Commission's work around promoting elections. As we touched on already with one of Mr Jones's questions, when people are registering there is no reason why you could not have on the Government website and the Electoral Commission website information that advises you about that when you register. The vast majority of people register online rather than in a paper form, so again that gets out to a lot of people. If people are registering in a paper form, there is no reason why, for example, in the communication that comes back from a returning officer, information could not be included there about the requirement. That is things the Electoral Commission and the EROs can look at in detail.

Our evidence from the pilots was that the vast and overwhelming majority of people got the message, if I can put it that way. That was without a national campaign over the top.

Q365 **Dame Cheryl Gillan:** Do you have plans in place and scoped further pilots for the next general election that we hope will come sooner rather than later?

Kevin Foster: It would certainly be inappropriate to run a pilot in a general election because that would mean that one constituency was using this and another wasn't. For example, there was originally a plan to do a pilot in Peterborough in May. That was removed when it looked like there was a chance of a by-election taking place on the same day. We have had two sets of pilots and we would not look to pilot this on the same day as a general election.

That would also create an element of confusion where there wasn't a clear message that in the local elections you have to show this and in a general election you didn't. I do not think that would be a helpful way.

Q366 **Dame Cheryl Gillan:** Are we moving again to a national ID card?



Kevin Foster: No. Again, there is certainly evidence in Northern Ireland that the vast majority of people do not need to apply for an electoral identity card. It is only those who do not have one of the large numbers of ID already. If we did just go to a national identity card we would just be duplicating identification that people already have.

The difference is that this is about asking people to show it when they go and vote. This is not about someone walking around in the street and being asked, "Do you have something on you that proves exactly who you are?" Similar to what Parliament has done on many other occasions, this is about requiring you to prove who you are to do certain things. While it is not a strict legal requirement to ask for identification when someone 18 is buying alcohol, the vast majority of places do and the pass that many 18 or 19 year-olds have would also count as voter ID.

Dame Cheryl Gillan: I monitor elections internationally. It is a matter of course to produce IDs but it is usually in countries where they have ID cards, and where they do not have the choice to live off grid effectively. I am worried about us disenfranchising individuals that do want to live off grid and that do not particularly want to be carrying what is the equivalent to an ID card, even if in fact it isn't. What consideration have you given to that? We are now no longer giving citizens a choice.

Okay, so it happens in Greece, France, Germany, the Netherlands, Italy, Norway, Sweden and everywhere else, but one of the strengths of our system when people interrogate me about it internationally, is that we have trusted people and there is a huge element of trust in our society. Aren't you finally now admitting that we cannot trust our fellow citizens?

Kevin Foster: I would say, if we knew we could inherently trust every person who presents themselves as someone we would not have any of the ID requirements we currently have. We would just say someone could get on a bus and say, "I am over 60" or over 65 in many cases outside of London, and then just given them a free fare. There are reasons why we have put this in place.

Let's be clear, no one is going to need to carry this around. This is something that you use, in most cases, once a year at most and that can then happily sit in the drawer at home.

Q367 **Dame Cheryl Gillan:** You are going to spend millions of pounds in taxpayers' money on something that people are only going to use once. That is if they want to go and vote after all the shenanigans that have been going on recently.

Kevin Foster: We talk about all the shenanigans but you can look at Tower Hamlets and see what was the cost there of a community having its electoral rights stolen from it, not just on that community but on the communities around who then find it is a protracted process to try to get those democratic rights back. Again, we could argue about a lot of the areas around here. For those living off-grid, first, you have to register to vote anyway. You cannot just show up and say, "I am someone who



HOUSE OF COMMONS

would like to vote, please.” There is that element. They have already registered to vote. If someone wants to live completely off-grid, they would probably argue with that requirement to register in the first place.

In terms of the requirement, certainly the evidence in Northern Ireland, speaking with the Chief Electoral Officer there, was that it helped some people who could not access other forms of identification, ie they are not a driver and they do not have a permanent home, to get something that proved who they were. That proved useful in other contexts. It is very limited, through. I would not want to extrapolate too much from the pilots because of it being a smaller number of people in a lesser period of time but there is similarly a little bit of evidence there that some people who led chaotic lifestyles, this was a way to be able to access something that then meant they could access other items. You have to show ID for claiming benefits, for example.

Q368 **Chair:** We are repeating ourselves now.

Kevin Foster: I am conscious we are because it is a very similar—

Q369 **Dame Cheryl Gillan:** I need some reassurance that you have adequate if not better arrangements for those people who are vulnerable in our society. We have already talked about people with disabilities but I am concerned that there are vulnerable people in our society who will find this very difficult. What arrangements have you made to deal with those people who have disabilities or even hidden disabilities?

Kevin Foster: In the pilots we saw the local returning officers work very closely where they thought there was—I think the canvass reform will also allow it more generally, in terms of people getting onto the register in the first place, to be a more focused effort; rather than lots of time spent processing paper forms from people who have not moved home in 20 years, who have had no change to their household and who live very stable and settled lives, to move to more focus on those who are the most likely, potentially, to miss out on registration, which is the first challenge.

Then as part of that engagement we want to see, like Plymouth did, returning officers going out to a homeless shelter, proactively going out, not sitting at the town hall firing out bits of paper and following up if they do not get a reply. What we want to see is returning officers out there in the communities engaging the stakeholders. There is no reason why stakeholders should not be part of this. In any system that we take forward it is absolutely being able to say, “There is your registration. Now, do you have this as well?” and it being for a user a thing they do together, not being something they find out about after they have registered.

Q370 **Dame Cheryl Gillan:** Can I stress that it is also essential, as the legislation goes through, that you put in the resources to enable that proactive engagement with individuals? Unless that resource is there



available I can see the corners being cut and the very people who should be being registered and should have the ability to vote missing out.

Kevin Foster: Dame Cheryl, I would agree, and that is partly why we want to do canvass reform, to ensure the resources of the ROs are going into the most likely to be excluded rather than the current system, where we are sending out bits of paper to every household, following them all up. In many cases it is wasted effort where people have not moved, the roll has not changed and the annual canvass board no longer puts you on the register so you have to register individually. That is why we are looking at that step of reform as well. Our key concern is getting them on the register in the first place because there are plenty of people for whom the barrier is not whether they are going to have a form of electoral ID, it is the fact that they do not register to vote.

Q371 **Dame Cheryl Gillan:** Lastly, if you are going to bring this in, in 2022, as in your proposal—

Kevin Foster: I can say it will not be before.

Q372 **Dame Cheryl Gillan:** It will not be before. That is the earliest possible date?

Kevin Foster: The earliest possible, yes.

Q373 **Chair:** Could you ensure that there is a campaign in all our schools for our young voters coming up so that they are aware of this?

Kevin Foster: One of the interesting things is, again, looking at schools and looking at engagement, certainly when speaking with those who voted in Northern Ireland one of the common things they used to get would be a visit like we do already—many schools get it, in that case from the electoral office in Northern Ireland but in a lot of cases from local returning officers—to explain voting, getting registered and being on the roll. This requirement plays into it.

There was a lot of speculation when our individual electoral registration came in that this would make it difficult for students or others to vote because they would no longer be listed in block at university. The evidence we saw at the last general election was very large numbers going online, getting themselves registered and finding it a very easy and very convenient way of doing so, making sure that they could vote where they were living now and not wherever they happened to be living when the form was filled in by their parents.

Q374 **Mr David Jones:** Could we turn to the offence of undue influence? The Law Commission has recommended that these should be reformed into offences of intimidation, deception and improper pressure. The Pickles' review recommended that there should also be an offence of applying improper religious or spiritual influence and that recommendation, I think, has been accepted by the Government. Why is that?



Kevin Foster: While we are obviously interested to hear the thoughts of the Law Commission in its final report, we have also said we will look to deal with things like intimidation around polling stations, both inside and outside, where again there may be undue pressure being put on. We want to make sure that every voter can freely express their thought when they go into a polling station and that they do not feel that they are under particular pressures that are nothing to do with the political choice they wish to make. It ultimately undermines our electoral system. People sometimes wonder why taking photos of your ballot paper is banned. It is to deal with this issue of potential intimidation going on that is not state-sanctioned but is by particular individuals.

We are looking at intimidation and the electoral offence as well of abusing or intimidating campaigners, applying an electoral penalty to the criminal offence.

Q375 **Mr David Jones:** Yes, but why retain a specific reference to religious or spiritual undue influence?

Kevin Foster: Again, it is not really for me to speak for Lord Pickles as such but there are potentially suggestions that certain individuals may apply pressure that is beyond just giving an opinion on whether they should vote or how they should vote, but in terms of a level of pressure. Certainly we will be interested to see what the Law Commission's final report is like and how we codify that from an intention to prevent undue intimidation into a piece of law that is workable, usable and does not have unintended consequences.

Q376 **Mr David Jones:** Nicholas Paines QC of the Law Commission has said that improper religious or spiritual pressure could be subsumed or quartered under the proposed offence of improper pressure. Why do you need to focus on religious and spiritual—

Kevin Foster: Again, it is something that has been put forward. It will be interesting to see what the Law Commission's final recommendations are next year and we would be interested in hearing anyone's representations on that. If it is clear it could be dealt with in that, I would be open to being persuaded that is the better way forward in terms of drafting up a piece of legislation.

Q377 **Mr David Jones:** So that I fully understand it, is it the case that the Government has not yet accepted the recommendation of the Pickles' review that spiritual pressure should be a specific standalone element of the offence?

Kevin Foster: We want to make sure that we have an effective piece of legislation. We will see what the Law Commission comes forward with next year.

Q378 **Mr David Jones:** Yes, I understand but you have not actually accepted the Pickles recommendation, is that right?



HOUSE OF COMMONS

Kevin Foster: In terms of that I am certainly happy to write back to the Honourable Member. We will look at what the Law Commission comes through about making—in terms of a criminal offence is specific and is there.

Q379 **Mr David Jones:** Yes. So, you have not accepted the Pickles recommendation?

Kevin Foster: I do not want to give a commitment off the top of my head in terms of a particular aspect that may be an offence but where there is inappropriate influence on a voter from any source we would look to make sure that the law covers it.

Q380 **Dame Cheryl Gillan:** It is 19 years since PPERA came in and in that time social media has been having a significant impact on elections and campaigning. What plans does the Government have to update electoral laws to take into account the influence of social media and digital campaigning?

Kevin Foster: In the short term, imprints for digital campaigning in the same way as we have for paper publications so that voters are aware of who is targeting them. I would say some social media platforms have already started to implement that of their own volition anyway, for example, Facebook. If you are now advertising on social or political, you are required to ID who you are and to put an imprint that appears on the advert. That is something in the short term. We are working on the technical legislation currently to make sure it is effective and hopefully we can achieve broad cross-party consensus to take that forward.

Q381 **Dame Cheryl Gillan:** When will that come in?

Kevin Foster: We would hope to bring it in as soon as we possibly can, but—

Q382 **Dame Cheryl Gillan:** I am going to press you. What is “as soon as we possibly can”?

Kevin Foster: Again, I do not want to be tied to a particular date.

Q383 **Dame Cheryl Gillan:** This recommendation has been coming for an awfully long time.

Kevin Foster: It has, and it is one that we wish to do. The issue is that it one of those ones where it is very easy to say we should do it but if, for example, we said, “Right, if you publish on Facebook, Snapchat and Twitter you need to put an imprint on”, that would be fine for today but tomorrow morning someone launches another style of Facebook or another style of social media that becomes very popular within six months. Then in six months we are back here saying that the legislation is out of date. It is an area that is moving so quickly.

It is making sure it is a piece of legislation that is effective. There is little point putting it up targeting one platform, which might be the simple



HOUSE OF COMMONS

thing to do, but then finding we do not have others. The other side of that is then looking at election finance reform as well.

Q384 Dame Cheryl Gillan: Is that not the argument for the organisation that I suggested to you earlier on that you turned down, instead relying on the Law Commission and the Electoral Commission? Is there not an argument for having a specific commission to keep up-to-date with technological advances because they are happening so rapidly?

Kevin Foster: Again, that is part of role of the Electoral Commission and the Law Commission, and part of this Committee and Parliament's role.

Q385 Chair: They are not doing a very good job.

Dame Cheryl Gillan: Exactly.

Kevin Foster: Well, I know. The Committee is superb. Again, here we are reflecting on it with people who would say are relatively expert when it comes to fighting an election campaign and complying with election law, with decades of experience of doing that around the table. For me, it is more a drafting challenge, how we make sure it is effective law and how it goes through, rather than having a reflective symposium of whether we need to do it. That is my view.

Q386 Dame Cheryl Gillan: Can you make it wide enough? For example, how practical would the enforcement in fact be? We have seen all sorts of platforms develop. For example, 38 Degrees is a huge campaigning platform these days, is highly politically charged and is collecting data all the time. How would you envisage an organisation like that being taken in under the umbrella? If organisations like that are not regulated and not taken in under the umbrella, you have potentially sources of foreign-financed organisations interfering in our electoral matters.

Kevin Foster: Something like 38 Degrees operates on platforms other than just social media platforms. Where the concern comes is the idea of lots of adverts being targeted at particular voters or particular demographics, more likely, in the United Kingdom, where it is not instantly obvious to the person seeing it who is targeting them.

Q387 Dame Cheryl Gillan: That is right. That is what happens with it.

Kevin Foster: That is where the digital imprint comes in. To be fair to 38 Degrees, certainly all of us, from looking at our own e-mail inboxes, will know when 38 Degrees is wanting to send us a message because we will get quite a few emails where it is very obvious who they come from. Most websites already put imprints on.

It is slightly separate to how we make sure we are regulating campaign groups so that people cannot sidestep election law. For example, we always remember Swift Boat Veterans for Truth in US elections famously campaigning against one particular candidate, John Kerry. It is that type of activity versus candidates, campaigners and political parties going online, putting a large amount of material out and it not being as obvious



to voters who is targeting them with this as it would be if they had walked to their letterbox, picked up a leaflet and seen “Printed and promoted by”.

Q388 Dame Cheryl Gillan: Basically, you are going to look at organisations like 38 Degrees, Do Gooder and the others that are doing this mass campaigning—

Kevin Foster: We would look to see that those for engaging in political campaigning online, there are imprint requirements. Again, I do not want to get into unintended consequences where a small community group that just wanted to oppose a planning application in their local area suddenly finds themselves having to sit down with their lawyers to work out how they comply with imprint legislation. It is those directly campaigning for an election outcome or directly campaigning on particular issues and how we make sure they are covered, so voters know who is targeting them online in exactly the same way as they would know if they picked up a piece of literature that had come through their letterbox.

It is very easy to say that. As has just been touched on, with changing platforms and different things, we cannot just say—in the old days we could have said, “Letters sent by Royal Mail” and that will have dealt with what was going out to voters.

Q389 Dame Cheryl Gillan: Basically this area, as far as digital campaigning is concerned, needs a huge amount of attention. That is what you are saying.

Kevin Foster: It is. As I say, we wish to deal with imprints to start with. One of the reasons why we are looking at launching a wider consultation around campaign finance rules as well—hopefully we want that to be as cross-party as it can be—is that, similarly, there are opportunities to do things online that would not have been so easy to do physically, for example, to send out widespread messages or to sit at a computer and have effects elsewhere in a way that is harder to detect than leaflets dropping out of people’s letterboxes, people seeing them and being able to judge whether spending limits have been kept and other things.

It presents other challenges. We touched on the McKinley case earlier. It is very hard to target a ward. It is very hard to target a particular area. Adverts will be being seen by people across a widespread area and it how you make sure the law appreciates that as well, so you do not have people being held liable when they innocently using a platform in the only way they could legitimately use it.

Q390 Kelvin Hopkins: My question follows on quite well from what Dame Cheryl has been saying. The major concern of voters in the Reform Society poll was very large financial donations. There have been cases where immensely wealthy individuals have targeted marginal seats over a period of years and seen a significant change in voting in those



constituencies. Whether it would be easy to regulate those heavy, massively financed campaigns going on for periods of years with the objective of swinging those seats—while at the same time leaving on one side party political leaflets, which happen all the time and are very innocuous—that is something that the Government and the electoral reformers should be concerned about.

Kevin Foster: Certainly, we have been clear that any campaigning needs to meet the rules that are put out there and of course the Electoral Commission with the innovation of fixed-term parliaments then brought in the long campaign periods, in terms of the 2015 election, when it became very obvious when a general election would be happening. In the past, what militated against that was of course that you could have a sudden general election, even if it was becoming rather predictable as we approached the end of a Parliament when an election was going to take place.

We are open to what comes forward as part of modernising reforms. Again, in terms of trying to achieve consensus on this, I would say that I think we would also see certain organisations that put large amounts of money into particular constituencies and particular areas over a long period of time in the form of trade unions hoping to potentially achieve certain outcomes, or writing to members in particular areas. Electoral law has to be effective.

What I would say is that this is not an either/or. It is not that if you are dealing with anonymous voters, you cannot deal with finance. As I say, we will launch a consultation and we will genuinely hope to achieve a broad consensus on what we can take forward.

Q391 **Kelvin Hopkins:** We do not want to drift towards an American system, where billions are spent on elections on a regular basis.

Kevin Foster: I would also say, Mr Hopkins, we do not want to drift towards an American system where they put intended restrictions on how much campaigns could spend to try to deal with the idea that elections were costing billions or hundreds of millions of dollars, and what actually then happened was a lot of groups were set up that treat voters to a ton of negative campaigning. If you cannot spend to promote who they should vote for, you can spend a very large amount of money promoting who they should not vote for. We do not want that unintended consequence either.

We can have restrictions that stop people promoting themselves but another organisation could spend half its life running down particular political parties or particular groupings. I would say the campaign finance reforms probably damaged even further people's views of American politics by treating them to an absolute slew of negative TV attack ads, rather than them hearing at least something half-positive about what candidates wanted to offer them.



Q392 **Chair:** Thank you very much. I just have one final question, which is about the Electoral Commission. You may be aware that we have already floated the possibility of this Committee conducting an inquiry into the role and purpose of the Electoral Commission and the fitness of purpose of the current concept of operation of the Electoral Commission. How pleased or displeased are you with the regime we have at the moment? To some extent the Electoral Commission is the body we all love to hate and they get it a bit in the neck, fairly and unfairly, but there is a body of evidence and experience that suggests it is time for a review.

Kevin Foster: Obviously if the Committee decides it wishes to conduct a review we would be very interested in hearing what the Committee has to say, not least given the experience of Members on the Committee and the constructive thoughts you could bring to that type of review.

I think, Mr Chairman, you have just summed it up very well. It is probably the body we all love to hate. We all have some times when we are very pleased with the recommendations they make and other times we are not, but ultimately they are an independent body and the one thing I would say is that it is absolutely right that they maintain that independence. They engage with me as the Minister for the Constitution but the chief executive, Bob Posner, has every right to tell me, if I tell him to do something, to say, "Get lost." He is ultimately an independent figure who can say, "This is where we are." We answer via Parliament, not via the Government, and in any review that is the one absolute golden thread we need to have, that they maintain their independence. That will mean they will do things that at times will not please all of us.

It would certainly be interesting to hear what the thoughts are, particularly around their role coming into the future.

Q393 **Chair:** It has become a fashion for regulators to become what some people describe as "judge and jury in their own case". They make the law, effectively, they give out the guidance and then they adjudicate on cases in front of them, which result in fines or even prosecutions, but the one thing you can always be sure of with any regulator is that whatever has gone wrong, it is never the regulator's fault. Is it not time for us to have a look at this model to see if it is the best model?

Kevin Foster: It is always right that we have an active debate about how best we—like we have had this afternoon. There will always be some contrasting opinions on particular areas that we need to go down. With the Electoral Commission, I must say my engagement with them over the last six months has been fully constructive. There are matters where we agree and matters where we perhaps slightly disagree but it has been constructive and it has been welcome.

I would say, around your comments, Chairman, about acting as judge as jury, that is why we do have a view that particularly if we are labelling individual candidates, there is a legitimate reason why it is the courts, with the rules of evidence and the criminal burden of proof, that do that.



HOUSE OF COMMONS

Chair: Would you take a message from this Committee back to your officials and to the Electoral Commission? We recognise that a huge amount of extraordinarily hard work goes into making sure that we have free and fair elections and free and fair referenda in this country, and I am absolutely certain that the vast majority of people involved in that are making their best and most sincere efforts. Our review will not be about criticising individuals or their conduct. It will be about looking at systems, structures and law. Thank you very much for being with us.