



PACAC (Public Administration and Constitutional Affairs Committee)

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Dear Mr Posner,

Public Administration and Constitutional Affairs Committee

Thank you for appearing in front of the Committee to give evidence on 2nd July. I am writing to highlight particular areas, following the session, and to ask for some further information from you. I would be grateful for your further assistance.

Electoral law

1. Louise Edwards told us (Question 6) "When you come to run an election, particularly if you have more than one poll taking place on the same day, electoral administrators are finding themselves having to refer across literally hundreds of pieces of primary and secondary legislation to understand the rules and the framework that they need to apply. We do provide them with guidance and support to help them to navigate that, but it is a very complex landscape...There are more things that returning officers could do to be innovative and make better use of technology, but the legal framework currently does not allow them to do that. It really does stifle innovation from a returning officer perspective, as well as just being technical, complex and high risk, with a very high likelihood of people getting things wrong".

The Committee is dismayed by the challenges posed by electoral law itself to the efficient, secure delivery of elections as well as to innovative practice.

2. You told us (Question 11) "I hope and believe there is a consensus among everyone involved in elections that the time has come for some modernisation and consolidation...You can never find parliamentary time. It is never convenient to step aside and do this sort of thing. But we do believe that democracies, from time to time, just need to find the opportunity to modernise their law. We are almost there. The work has been by the UK Law Commission. It just needs to be brought forward now."

The Committee considers that the Law Commission's Report on Electoral Law should be translated into primary legislation and brought forward as soon as possible.

3. Ailsa Edwards said (Question 12): "challenges around the electoral registration process, managing the impact of duplicate registration applications, and addressing resilience of suppliers in the marketplace are important things; they are immediate risks, which are relevant to elections now, so it is important that these are taken forward, but these, in themselves, will not solve everything, and electoral law reform is an important part of the picture as well. It is probably unhelpful to look at them as an either/or, and I think that they are all needed if we are to be able to move forward and secure the processes moving forward."

The Committee considers that, while immediate challenges to the integrity of electoral systems must be dealt with, work should proceed in these areas in tandem with work on electoral law reform. Solutions to the challenges of electoral law will be complementary to solutions to operational matters.

The Committee would be grateful for your opinion on the barriers to progress in reforming electoral law. What is preventing the Government from bringing forward the necessary legislation?

Elections and Coronavirus

4. Ailsa Irvine told us (Question 16): "we do know that local authority resources are tight, and some areas, in particular, are finding it hard to resource electoral services. We are trying to engage with those individual local authorities to understand their set-up and to try to help them to manage the risks over the course of the year, rather than waiting until something goes wrong at an electoral event."

She also said (Question 21): "The challenge will be if there are additional costs that come in as a result of making things Covid-safe elections"; and

(Question 23): "If we find ourselves in the situation that we are in currently, then elections could be administratively delivered. If the situation were to change significantly, we may not find ourselves satisfied that voters could cast their vote safely and that campaigners could put their arguments to voters."

The Committee is concerned that some local authorities may struggle to deliver elections in 2021 in an environment which mitigates the risk of transmission of Coronavirus, given the stretched nature of electoral services and the tightness of resources at a local level. We recommend a detailed audit be carried out of the capacity of each local authority to meet the additional demands of this unprecedented situation. The Committee would like to discuss this with you at a further evidence session in the Autumn.

5. Ailsa Irvine said (Question 27): "On the point of by-elections specifically, one of the points we have raised with Government is whether there is any potential to bring forward legislation to enable by-elections to happen before next May—whether there is any potential for that to happen if they can be conducted safely."



What legislation would the Government need to bring forward to enable by-elections to take place, if necessary, before next May? What modelling has been conducted of how to hold a Covid-secure election?

Overseas voters

6. Ailsa Irvine said (Question 28): "One of the areas we hear particular challenges around is overseas voters. Once again, we heard at the December general election that postal votes are just not getting to them in enough time for them to complete them and send them back. That is an area where, absolutely, particularly if the franchise is going to be extended further for more people living overseas, that will need to be addressed. That is a practical delivery point rather than an integrity point."

What analysis has been conducted of the reasons why postal votes are not getting to overseas voters in time for them to vote? What are the proposed solutions? Is this a practical issue, or are changes required in legislation to enable the process to run more smoothly?

Voter ID

7. Ailsa Irvine said (Question 38): "We have published our evaluations of the pilots that took place in parts of England in 2018 and 2019. What that gives us is some important evidence that helps to understand how the policy could be rolled out across Great Britain. But it does not give all the answers that the Government will need to have in mind in rolling out the policy in future. What happened with the pilot is that you have tested this at, essentially, lower turnout elections. You do not have the ability with pilots at local government elections to understand what the impact might be at a parliamentary election, for example. I think we have also identified as part of the evaluation that there is more work to be done to understand the concerns around accessibility and security, to make sure that whatever model the Government does decide to implement is implemented in a way that is accessible to all voters and that the Government are really clear about the impact on voters and on the security and accessibility of whatever is taken forward."

She also said (Question 39): "What we can't quantify is whether there was anyone that was deterred from voting because of the ID requirement. That is beyond the bounds of what was possible within the research. There are some unknowns around the impact"; and

(Question 40): "there is more work to be done with, for example, representative organisations to try to understand the impact on different parts of society, so that whatever scheme they do put forward is done in a way that the impact is understood and then can be managed effectively so no one is disproportionately affected by the introduction of any scheme or any requirements."

The Minister of State told the Committee in correspondence that the Government was planning and preparing for the national roll-out of Voter ID. We are concerned by your statement that it does not have all the answers it will need to do so. What work would you recommend to test the impact of

Voter ID in a parliamentary election and better understand the accessibility and security implications of Voter ID? Has the Electoral Commission raised these issues with the Cabinet Office and, if so, what answers have you been given?

Political impartiality of commissioners

8. The Electoral Commission must not only be politically impartial, it must be perceived to be politically impartial. That principle extends to Commissioners, and above all, to the Chair of the Commission. **The Committee considers that the principle of political impartiality has been disregarded on several occasions in the recent past. On nomination, and during the period of their office, Commissioners should refrain from making comments which indicate their position on controversial political issues of the day over which the Commission has jurisdiction.**

Vote Leave and BeLeave

9. When Mr David Jones: asked about the Darren Grimes and Alan Halsall cases, Louise Edwards stated (Question 54): "I think it is fair to say there has been a fair amount of misinformation about the actions of the Commission in those investigations, and if I am able to help clear up any of that misinformation on this occasion, I am very, very happy to do so".

Could you please write to the Committee to clear up what Louise Edwards described as "misinformation about the actions of the Commission in the cases of Darren Grimes and Alan Halsall"?

Regulation and enforcement

10. Louise Edwards told us (Question 68) that: "the majority of our investigations conclude that if an offence was committed, it was committed inadvertently" and later (Question 69) that: "We aim to complete the majority of our investigations, from starting the investigation to the start of the sanction process, within about six months. In the majority of cases, we achieve that".

The Committee would be grateful for sight of the numerical data you hold on your enforcement work, such as: how many cases you consider each year, what timescales are applied to each stage of investigation and to what extent they are met, reasons for initiating investigations and outcomes of investigations.

11. Louise Edwards also told us (Question 67): "We give that person the evidence, we say what our expectations are on that person about the information that we want, how we want it, and when we want it, and we also say what that person can expect from us. We are very clear about what process we will follow, what the key decision points are, and what their opportunities will be to input into that".

The Committee has received evidence accusing the Commission of being unclear in communications, inflexible on timings and unhelpful to those being investigated. Has the Commission's processes ever been externally audited?



Does the Commission collect any evidence of the experience of those investigated and, if so, what does it do with this feedback?

12. Louise Edwards also told us that the Commission does not make mistakes "very often" and referred to the Commission's complaints system; "which gives people the chance to ask us these questions and challenge us on the decisions that we take" (Question 78).

What evidence do you have to substantiate the claim that the Commission does not make mistakes very often? What data can you provide on the number of complaints, the nature of complaints and the resolution of complaints?

13. Louise Edwards stated (Question 82) that: "we are explicit in our enforcement policy that one of the factors we take into account when we are deciding whether to investigate is whether it is in the public interest to devote resources to that investigation."

How does the Electoral Commission come to a conclusion on whether it is in the public interest to devote resources to a particular investigation?

14. You told us (Question 86): "When the civil sanctions regime came in 10 years ago, Parliament was rightly concerned how that would work in practice and how the commission would administer it. Politicians at the time expressed similar concerns to what you have just expressed. In fact, that has been a very successful regime. It has been well administered over the years, with fines applied at proportionate levels; it has been a great success, in fact. It has helped to raise compliance."

What evidence can you share with the Committee to substantiate your statement that the civil sanctions regime has been a great success?

You and your colleague stated that the Commission has powers to prosecute, under PPERA. Why are these powers not in use?

15. You mentioned that the Commission will be consulting on its use of prosecution powers (Question 83). The Committee would be grateful for early sight of the terms of the consultation, its length and those invited to submit views. We assume these will be in line with the Cabinet Office's Consultation Principles.

We would be grateful for your help with these matters and would appreciate a reply by 18th August.

Yours sincerely,

William Wragg MP

Chair, Public Administration and Constitutional Affairs Committee

