

William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee
House of Commons
SW1A 0AA

18 August 2020

Dear Mr Wragg

The work of the Electoral Commission

Thank you for your letter of 21 July, setting out the Committee's additional questions further to the Commission's evidence session on 2 July.

I am pleased to provide detail below, in response to your questions and request for further information.

Electoral law

We welcome the Committee's continued support for electoral law reform, and its recognition of the challenges posed by the current complex and outdated legal framework. We share the view that this could be addressed by implementing the comprehensive and well-supported recommendations from the Law Commissions' report.

The Commission is not aware of any specific barriers to taking forward this kind of fundamental reform. Governments across the UK must, of course, allocate available resources between policy priorities and this would be a substantial piece of work requiring significant legislative time and resource. We are persuaded of the merits of prioritising the implementation of these changes; to address the growing risks that can be mitigated, but also to support the consequent efficiency, innovation and confidence that would also be delivered for voters, campaigners and local authorities. We trust that these reforms to the legal framework will in due course at an appropriate time be brought forward by government.

Elections and coronavirus

In order to enable us to target our support and challenge for local authorities most effectively, we maintain risk profiles which help us to understand where the risks are greatest to the delivery of well-run elections and electoral registration services. These risk profiles take into account a range of factors, including resourcing, experience levels of staff and Returning Officers, and the complexity of forthcoming elections in that area.

As we move towards the May 2021 elections, we will continue to keep these risk profiles under review and use them to inform our engagement with local authorities, working more

closely with those facing the greatest challenges to delivery. We also continue to monitor how the public health situation and associated restrictions are evolving, including how they vary at a local level, which will help to ensure that targeted support can be provided where it is most needed.

Since the beginning of the Covid-19 pandemic, we have been working with colleagues across the electoral community - including the Association of Electoral Administrators (AEA) and the Society of Local Authority Chief Executives (Solace), as well as the UK, Scottish and Welsh governments - to consider its potential impact on the delivery of the polls in May 2021. Areas of discussion have included the various public health scenarios we could be facing, the potential for legislative change and the deadlines for any such decisions, the funding implications arising from any policy or legislative changes, and what information voters will need to help them participate in the polls.

We are working to ensure that electoral administrators, campaigners and voters have what they need to help ensure the polls are delivered safely and effectively. In this, we are working closely with the electoral community to ensure that we are focussing on the areas that are of most concern and can prioritise our guidance and support accordingly. This includes confirming what additional products are required to support the successful delivery of the polls in light of the complexity of combination many areas will be facing, as well as to help manage the impact of coronavirus.

We are working with relevant public health bodies to ensure our guidance and support is as useful as possible and reflects the latest public health advice. And we are also closely monitoring the delivery of elections overseas in comparable democracies, liaising with their electoral commissions and international elections-related organisations to gain insight about potential measures that could be relevant in a UK context.

The successful delivery of elections in the UK at a time of heightened risk to public health will rely on continued close and effective working by governments, the Commission, electoral administrators and, as appropriate, campaigners. We note and welcome the Committee's intention for a further evidence session on this important topic.

To enable by-elections to be held in England before May 2021, the UK Government would need to bring forward regulations made by statutory instrument pursuant to Section 61 of the Coronavirus Act 2020.

Overseas voters

The timetable set by the current legal framework creates challenges for the delivery and return of postal ballot packs by overseas electors. Postal ballot packs cannot be sent until after close of nominations and ballot papers have been printed. This leaves less than four weeks to print and issue postal ballot packs, and for overseas electors to receive, complete and return their ballot papers before polling day. Within this, there is a dependence on the reliability of global postal services for this to work as well as it can.

This already limited timeframe is further shortened for new voters, or those who change their registration details close to the electoral registration deadline, which is 12 working

days before the poll. This gives very little time for new applications to be processed and for postal ballots to be sent overseas and returned in time to be included in the count.

The Cabinet Office and Royal Mail put in place a system to support the faster delivery of postal ballot packs to overseas electors at the 2019 UK general election. While this does appear to have improved the experience for some electors, there was still not enough time for those in some countries to receive and return their votes before the close of poll.

As part of our research at the 2019 UK Parliamentary general election, we received feedback from overseas voters about the issues they faced when voting at the election. The most frequent problem experienced was not receiving a postal vote in time to vote. Also, just over half of electoral administrators who responded to our survey after the election also said that they had spent significant time dealing with queries from overseas voters who were experiencing issues with postal or proxy votes during the election.

We have recommended that the UK Government consider new approaches to voting for overseas electors, using evidence from other countries. This could include enabling postal voting packs to be sent out online (with security measures) so only return by post is required, or using consulates and embassies in the voting process. Changing the law to enable improvements in overseas voting will be particularly important at future elections, given the UK Government's plans to increase the number of British citizens living abroad who are eligible to vote, by removing the current time limit of 15 years. The Commission stands ready to support such consideration.

Voter ID

Our evaluation of the UK Government's 2019 pilots identified three key areas to inform further consideration of the introduction of a voter identification requirement for elections in Great Britain:

- Any ID requirement should deliver clear improvements to current security levels: a photo ID requirement would provide the greatest level of security, but each of the models that were piloted in 2018 and 2019 would provide some level of improved security compared with the current rules. Government and Parliament should consider what level of security is proportionate to the risk of personation fraud in polling stations.
- Any ID requirement should ensure accessibility for all voters: while a large majority of people already have access to an acceptable form of photo ID, allowing only existing forms of officially issued photo ID would not be accessible for everyone. To make sure voting at polling stations remains accessible, there would need to be other options for people who do not already have an acceptable form of photo ID. This could involve providing free of charge locally issued photo ID, as currently provided for electors in Northern Ireland. Alternatively, it could involve allowing voters to use their poll card – either following the model trialled in the pilots, or a different model – as the primary or secondary route to proving identity, depending on the level of security required.

- Any ID requirement should be realistically deliverable, taking into account the resources required to administer it.

The evaluation findings raised questions about the effects of an ID requirement at future elections where turnout may be higher and where previous research suggests that the demographic profile of likely voters is different (e.g. local election voters tend to be, on average, older). Current legislation does not allow for piloting at parliamentary elections (including by-elections) and further piloting at local elections would be unlikely to provide significant new evidence in addition to the 2018 and 2019 pilot schemes.

The Government is now developing its proposals for how to take forward this policy, as part of its electoral integrity programme. We continue to engage with Cabinet Office officials working on this.

In order to assess the likely impact of an ID requirement in a parliamentary election we would expect to see further analysis of data about access to different forms of identification across a range of demographic groups, and engagement with organisations representing those people who may be less likely to have access to current forms of identification. This would help to ensure that the potential impact of the policy if it were to be implemented at higher turnout elections, such as a UK Parliamentary election, has been properly considered.

Once legislation has been brought forward, we will provide advice to parliamentarians ahead of their consideration, including on how the policy would be implemented. If such a requirement were passed into law, the Commission would play a significant role in ensuring that it can be taken forward effectively by electoral administrators, and that the public know what they need to do to be able to vote with confidence within the new guidelines.

Political impartiality of Commissioners

We agree with the Committee that the perception of political impartiality is an important element in commanding the trust and confidence of the public and of Parliament. We will continue to work to ensure there are no reasons to question this.

Vote Leave and BeLeave

The Commission published a detailed report on its investigation in respect of Vote Leave, BeLeave, Mr Grimes and Veterans for Britain, outlining [the investigation and our findings](#). Nevertheless, we have seen persistent misinformation about the investigation shared by individuals and in the media. For example:

- We have seen claims that the Commission investigated Vote Leave and BeLeave multiple times over unreported joint spending. This is not correct. We looked at these issues in late 2016 and early 2017, but the evidence we had at those points did not justify an investigation. We opened our only investigation into this matter in November 2017, after getting new evidence, and concluded it in July 2018. We found that Vote Leave broke the law by: failing to report joint spending incurred by Mr Grimes on behalf of BeLeave; failing to report further spending; failing to provide

all required supporting documentation; and exceeding its spending limit. Vote Leave was fined for these offences and has paid its fines.

- We have seen claims that the Commission refused to interview Mr Halsall, the statutory responsible person for Vote Leave, during our investigation. On the contrary, we made multiple attempts to interview him, including arranging a time and date. We also offered to interview others from Vote Leave who could talk to the issues under investigation. It was Vote Leave`s decision not to put Mr Halsall, or anyone else, forward to be interviewed.
- We have seen claims that Vote Leave did not in fact break the law, because the police closed its investigation into Mr Halsall. This is not the case. The Commission`s investigation found that Vote Leave broke the law, for a number of offences as noted above. While investigating those offences, we found evidence that another might have been committed, relating to the declaration delivered alongside Vote Leave`s spending return. We asked the police to investigate this as it was a matter to which our civil sanctions did not apply. The police agreed that an investigation was warranted. The closure of the police investigation does not alter the offences found by the Commission.
- We have seen claims that the offences committed were `technical`, implying they were not significant, but were pursued for the purposes of a concerted campaign against leave campaigners. The reality is that Vote Leave committed statutory offences, as defined by Parliament, which are rightly considered serious in the context of democratic events.

Regulation and enforcement

To put our regulatory work in context, in 2019- 2020 we considered 289 applications to register political parties; non-party campaigners; and to change existing registrations. We received, reviewed, redacted and published 1,743 financial returns from parties and campaigners, and 769 annual statements of accounts for political parties and accounting units, and completed 83 investigations. We [publish the outcomes of all investigations on our website](#), along with the reason each was opened. This is regularly updated to reflect payments made of penalties, and any appeals.

Our enforcement casework has two stages. In order to decide whether to open an investigation we conduct an assessment, the purpose of which is to establish whether we have reasonable grounds to suspect an offence under PPERA may have been committed, and also whether it is proportionate and in the public interest to investigate. In some cases we consider it more proportionate to issue advice, or a caution, rather than proceed to an investigation.

We aim to complete 90% of our investigations within 180 days of it being opened. Over the last four years, our performance against this target has been as follows:

2019-20: 84%

2018-19: 88%

2017-18: 96%

2016-17: 86%

Within this overall figure a significant number of less-complex cases are completed in fewer than 90 days, whilst a small number of more complex cases are typically those which exceed 180 days. We are moving towards performance measures that recognise and reflect the different types of cases we conduct, rather than a single measure covering significantly different types of case.

Our approach to regulation

Our internal investigation processes are regularly reviewed and updated, including our published [Enforcement Policy](#) which we consult on publicly. Our processes have been reviewed by our internal auditors in the past. We are, however in the process of considering whether specific audits, or benchmarking with other regulators, would be a helpful addition to our existing quality assurance measures. Our processes have also been subject to scrutiny by the courts in appeals and have been found to be robust and proper. We also have plans to introduce feedback from the subjects of our investigations.

Within our procedures, we make judgements on how best to ensure those involved in investigations receive clear communications from us and have the information they need to provide evidence. It is highly unusual for us to be inflexible on timing where someone has a reasonable basis for requesting additional time. We are committed to ensuring we provide the appropriate support and assistance, where possible.

Complaints

Our regulatory decisions can, of course, be challenged by appeal or judicial review. Over the last four years there have been a small number of legal challenges about our power to publish information about investigations as well as statutory returns from campaigners; about registration decisions; and about our interpretation of the laws on referendum donations and spending. We have been successful in every case. In relation to challenges of our investigatory decisions, of the circa 500 investigations we have concluded in the last four years, only five instances have been challenged in the courts and only a single legal challenge was upheld. And only two of our registration decisions have been challenged in the courts; neither challenge was successful.

The Commission's own complaints procedure looks at any issues with the customer service we provide, including by our regulatory teams. In 2019/20 we recorded 74 complaints under our complaints procedure. Of those received about the service provided by our regulatory teams, one was upheld and two were partially upheld.

Public interest

Our published [Enforcement Policy](#) (paragraphs 6.8 and 6.9) sets out how we consider the public interest in deciding whether to open investigations.

We will only open an investigation where the evidential threshold is met and we consider that investigating the suspected offence or contravention is in the public interest and

justifies the use of our resources in this way. This public interest test depends on a number of factors, which may be different and/or differently weighted depending on the circumstances. We will also review the continued relevance of the factors during an investigation. A non-exhaustive list is below:

- *our enforcement aims, objectives and approach*
- *effective and efficient prioritisation in the use of our resources,*
- *the seriousness of the suspected offence or contravention, including the magnitude and potential harm caused by it*
- *the strength of the evidence*
- *the frequency or duration of the suspected offence or contravention*
- *the impact, including the deterrence effect, of an investigation and/or any sanction that might be imposed*
- *the compliance history of the person(s) who may have committed the suspected offence or contravention*
- *any steps already taken to rectify the breach*
- *any relevant circumstances of the individuals involved*

Civil sanctions

The civil sanctions regime exists to provide a proportionate way to deal with offences under PPERA that do not warrant being considered for criminal prosecution. Prior to it coming into force, most offences in PPERA were subject only to criminal investigation and prosecution and very few investigations and no prosecutions took place. There was no effective deterrent to failures, or incentive to improve compliance. Nor did it indicate to voters that the regime was effectively enforced.

The last five years has seen five major polls across the UK, all with reporting requirements attached. Parties must also comply with quarterly reporting deadlines and the need to deliver annual accounts. The levels of compliance with these requirements are high, regularly over 90%.

In addition, voters have seen us provide transparency and enforce the rules. We have published the outcomes of investigations and we have shown that where parties or campaigners make significant or repeated failings, we will impose our maximum fine. While we remain of the view that this maximum, at £20,000, is increasingly inadequate given the value of donations and spending associated with the larger parties and campaigners in particular, we are confident that this regime has brought significant additional transparency, fairness and accountability which did not previously exist.

Prosecutions

The approach to enforcement has evolved over time. From 2000 until 2010 PPERA enforcement largely consisted of providing advice and guidance. In the view of parliament (and more generally), this was considered unsatisfactory. Parliament enabled the civil sanctions regime from 2010 and we embedded this into our enforcement activities. Our regulated community has a clear understanding of how we apply that regime in a fair and proportionate way, both through the publication of our Enforcement Policy, and our sanctions decisions. We have gradually enhanced our enforcement activity, recognising

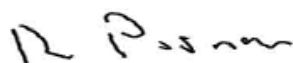
that sudden changes or escalations of enforcement action are not consistent with proportionate regulation. That enhancement is an ongoing process.

While compliance levels are high, it is increasingly apparent that the civil and criminal regimes created by PPERA do not integrate effectively. They have in practice become separate. To our knowledge, in 20 years of the PPERA regime there have been no prosecutions brought by the police and public prosecutions services. This creates the situation where, when the apparent risk of being prosecuted for a PPERA offence is considered to be negligible, in practice the biggest deterrence facing a party or its treasurer for inadvertently breaking the PPERA rules is a £20,000 fine. For intentionally breaking the rules, there is even less to deter you: non-compliance due to incompetence has a greater likelihood of being sanctioned than deliberate evasion of the rules has of being prosecuted.

One aspect of enhancing our enforcement capability is through bringing prosecutions in lower complexity cases. We will consult on the factors we will take into account when deciding whether to prosecute a case. This will be a public consultation rather than by invitation, and it will be in line with Cabinet Office Consultation Principles. As undertaken during our evidence session, we will notify you when the consultation is launched.

I hope that you find this information helpful. If you would find it useful to have further information, or have any questions, we would be pleased to assist.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bob Posner'.

Bob Posner
Chief Executive



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21st July 2020

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

