

Written Evidence from Dr Alan Renwick¹ (TEC 37)

Public Administration and Constitutional Affairs Committee The Work of the Electoral Commission inquiry

Summary

- *An independent Electoral Commission is an essential part of the democratic system.*
- *The Electoral Commission's current roles in overseeing elections and referendums, regulating national political finance, and giving expert policy advice are essential and should be retained.*
- *The Commission should gain responsibility for enforcing candidate campaign spending and a clear remit to provide basic information on elections and referendums.*
- *The Commission's investigatory powers and capacities should be enhanced and the maximum fine it can levy should be increased.*
- *The Speaker's Committee on the Electoral Commission should never have a one-party majority. A formal role for the Scottish Parliament and Senedd in oversight of the Commission should be considered.*

Introduction

1. Dr Alan Renwick leads the UCL Constitution Unit's research on elections, referendums, and citizens' assemblies. He has published three books on processes of electoral reform around the world. He has recently conducted research into ways of improving the conduct of election and referendum campaigns: he was Research Director for the Independent Commission on Referendums in 2017–18,² and was co-author in 2019 of a detailed report on improving information available to voters during campaigns.³ He currently chairs the Working Group on Unification Referendums on the Island of Ireland, which published its interim report in November 2020.⁴

1a. What roles and functions within the UK electoral system should the Commission perform?

2. Independent administration of elections and campaigning is a fundamental requisite of democracy.⁵ In the UK, that is provided partly through local authorities and partly through the Electoral Commission. A national body is a necessary component of this system. Much electoral and campaign activity is national in its nature. Even where

¹ Dr Alan Renwick, Associate Professor in British Politics and Deputy Director of the Constitution Unit, Department of Political Science, University College London.

² [Independent Commission on Referendums](#) (Constitution Unit, 2018).

³ Alan Renwick and Michela Palese, [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) (Constitution Unit, 2019).

⁴ [Working Group on Unification Referendums on the Island of Ireland](#) (Constitution Unit, 2020).

⁵ See, e.g., Venice Commission, [Report on Electoral Law and Electoral Administration in Europe: Synthesis Study on Recurrent Challenges and Problematic Issues](#) (2006), para. 21–22.

activities are local, consistency in the application of the rules is essential for clarity and fairness. Thus, an Electoral Commission is indispensable.

3. The Electoral Commission currently provides oversight of elections and referendums and it acts as the regulator for national political finance. It also offers expert policy advice relating to the conduct of elections and referendums. These functions are essential and should be retained.
4. The Commission might additionally be given three additional functions: an additional role in the administration of elections and referendums; a role in regulating candidates' election spending; and a role in political education. My expertise does not extend to the first of these, but I shall comment on the second and third.
5. National and candidate spending are difficult to separate from each other. Sometimes, one leaflet may be attributed partly to national spending and partly to local spending. Online campaigning has opened up great scope for nationally organized but locally targeted campaigning. In these circumstances, having two wholly separate systems for the regulation of national and candidate spending makes no sense; it is a legacy of the era before the Political Parties, Elections, and Referendums Act 2000 (PPERA), when national spending was unregulated. Candidate spending should therefore be added to the functions of the Commission. It should be noted that this view was strongly endorsed by the Metropolitan Police Service in its recent evidence to the Committee on Standards in Public Life, which said:

Having the Electoral Commission's regulatory powers expanded to include the enforcement of the candidate finance laws (which are currently under RPA) would have considerable benefits in terms of simplicity, coherence and public confidence. There would be one election finance regulator for both candidates and parties/campaigns and it would have a range of civil and criminal investigatory powers at its disposal.⁶

6. The Electoral Commission originally had more of an educational role than it has today. The move away from that was a mistake. There is a fundamentally important role for an independent body in helping voters access basic information on how elections work. At present, no body is responsible for providing readily accessible information for voters on what elections are taking place in their area, who is entitled to vote, what voting system is being used, how and where a ballot can be cast, or who the candidates are. The elections due in May 2021 will present unprecedented complexity on most of these dimensions, with elections to different offices in different parts of the country, using different franchises and voting systems, and potentially with many more people than normal seeking to vote by post or proxy. While the Electoral Commission does provide some information on these matters, its remit should be clarified and strengthened. It should have a core function in ensuring that such information is collated and made readily accessible for all voters. It should also be encouraged to work with a wide range of media and social media outlets to spread such information as widely as possible.

⁶ Metropolitan Police Service, '[Response to the Committee on Standards in Public Life Consultation on the Review of the Regulation of Election Finance in the UK](#)', 2020, para. 34.

1b. Should the remit of the Electoral Commission be changed?

7. In line with the preceding comments, the remit of the Electoral Commission should be extended in two ways:
 - to cover candidate campaign spending
 - to provide a strong, explicit remit for the provision and dissemination of basic information relating to elections and referendums, including, at least, information on what elections or referendums are taking place, what voting system is being used; who is entitled to vote; how to register to vote; how and where people can cast a ballot in person or by post or proxy; and who the election candidates are or what the referendum options are.

1c. What powers should the Electoral Commission have? Should the existing powers of the Electoral Commission be changed?

8. In addition to the points above, the powers of the Electoral Commission within the area of regulation of national political finance: the Commission's investigatory powers and capacities should be enhanced; and the maximum fine that the Electoral Commission can levy should be increased above the current limit of £20,000.
9. Where allegations of improper campaign finance arise, prompt investigation is essential to maintain public confidence. That requires that evidence should be submitted by parties promptly, that the Commission should be able readily to obtain the evidence that it needs, and that the Commission should have the capacity to conduct inquiries expeditiously.
10. The fining power should be such as to generate a genuine deterrent effect. Where the general election spending limit for the largest parties is close to £20 million, it is all too easy to see that a maximum fine of just 0.1% of that may fail to meet this criterion.

2. The governance of the Electoral Commission

11. The governance of the Electoral Commission must satisfy the twin requirements of independence and accountability. There is clearly a potential tension between these. There have been some suggestions in recent months that the Commission should be subject to greater ministerial oversight. But that is unconscionable: it would violate the basic democratic principle that electoral administration should be demonstrably impartial. This idea should be firmly rejected.
12. Accountability can be achieved while also preserving independence and impartiality through two mechanisms: cross-party oversight; and non-party oversight. The Electoral Commission is currently highly accountable through a mixture of both mechanisms. The work of Commission officials is overseen by ten Electoral Commissioners; four of these are nominated by four political parties with seats in the House of Commons, while the remainder may have no party links. The appointment of the Commissioners and the Commission's overall strategy are, in turn, overseen by the Speaker's Committee on the Electoral Commission, which is a cross-party committee of MPs. Senior staff at the Electoral Commission are also frequently quizzed on their work by cross-party select committees.
13. In essence, these arrangements are sound. But there are, at present, two problems.
14. First, the Speaker's Committee established after the 2019 general election includes a majority of MPs from one party (the governing party). This is the first time that has ever happened. Even when it was established in 2001—when Labour had a Commons majority of 179 seats—the Speaker's Committee comprised four members from the government benches, four from the opposition, and the Speaker. In the 2005 parliament, when the government majority was comparable to today's, the Committee had three members from the government side and five from the opposition.
15. The Speaker's Committee is not a select committee. Its functions are not those of a select committee, and they can be properly exercised only if the Committee operates on a cross-party basis. For the Committee to have a one-party majority clearly violates the principle of cross-party oversight. Under PPERA section 2(4), the majority of the Committee's members are appointed by the Speaker. The Speaker should in future operate the principle that the majority of the Committee's members will not be appointed from one party.
16. Second, the Speaker's Committee is a body solely of the UK Parliament, but the Electoral Commission has functions in respect of elections in Scotland and Wales that are now devolved matters. Potential difficulties could arise if the Scottish Parliament or the Senedd instructed the Commission to perform functions that the UK Parliament opposed. Even in the absence of genuine tensions, public trust in the work of the Commission in Scotland and Wales could be undermined by the current governance arrangements.
17. I do not see a straightforward solution to this difficulty. It should be clear that the value of having a single Electoral Commission for the UK as a whole remains strong, particularly when responsibility is devolved for some elections taking place in Scotland and Wales but not for all. But some mechanism should be sought for bringing the

Scottish Parliament and the Senedd into the formal governance structure for overseeing the Commission's work.

3. Public and political confidence in the impartiality and ability of the Electoral Commission

18. Public and political confidence in the Electoral Commission matter. That means that all of us, but especially politicians and campaigners, have a duty to act with integrity when discussing the Electoral Commission. Seeking political advantage by unjustifiably impugning the Commission's reputation should be regarded as wholly unacceptable. It is of course entirely proper for elected representatives to raise questions and highlight concerns. But the greatest care must be taken in doing so.

4. The international reputation of and comparators for the UK Electoral Commission

19. International comparisons on this matter are best made at the level of principles rather than precise institutional details: given different legal contexts and political norms, different mechanisms are likely to be needed to give effect to the same principles in different countries. That is recognized by the Venice Commission, for example, which acknowledges that the principle of independent electoral administration can be given effect by different means depending on whether a country has a well-established tradition of administrative impartiality.⁷ Even a country that has such a tradition needs protections, however, especially if the tradition is undermined.
20. The key principles are:
 - *independence*: elections should be administered and campaigns and political finance regulated independently of undue influence from any party, campaign group, or interest
 - *accountability*: election administrators should be accountable through mechanisms that are cross-partisan and/or non-partisan
 - *efficacy*: systems should ensure that elections are conducted fairly and in a manner that enables all citizens to participate fully and to access the information they want from sources they trust before deciding how to vote.
21. The UK's electoral arrangements, including specifically the Electoral Commission, generally perform well against these principles. But the points set out above need further attention.

5. What, if any, reforms of the Electoral Commission should be considered?

22. Regulation of candidate campaign spending should come within the Commission's remit.

⁷ Venice Commission, [*Report on Electoral Law and Electoral Administration in Europe: Synthesis Study on Recurrent Challenges and Problematic Issues*](#) (2006), para. 21–22.

23. The Commission should have a clear remit to provide and disseminate basic information about elections and referendums, as set out in paragraph 7, above.
24. The Commission's investigatory powers and capacities should be strengthened, and the maximum fine that it can levy should be increased, as per paragraph 8.
25. The clear principle should be established that the majority of the members of the Speaker's Committee on the Electoral Commission should never come from one political party.
26. Consideration should be given to ways of bringing the Scottish Parliament and the Senedd into the formal oversight structure for the Commission.

December 2020