

## Written evidence from Professor Toby S. James<sup>1</sup> (TEC 41)

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

1. I am the current Deputy Director of the Electoral Integrity Project and my research expertise focusses on the administration and management of elections. I gave earlier written oral evidence to the committee but am writing to provide further written evidence because there was insufficient time within the oral session. My recent volume *Comparative Electoral Management*<sup>2</sup> is the first full research monograph on electoral commissions around the world, which has some further recommendations for improving the work of the Electoral Commission.

#### What do independent electoral authorities do worldwide?

2. There are four areas where independent electoral bodies are needed. Firstly, independent authorities are required to regulate, monitor and report on campaign finance. Democracy should provide a level playing field for all candidates and parties irrespective of their so that money is not being inappropriately used. Independent bodies are needed to:

- a) monitor income and spending
- B) impose sanctions for those actors who do not meet them
- C) regulate their wider conduct in the electoral process

3. Secondly, independent electoral authorities are needed to ensure the strong professional management of elections. This includes, but is not limited to:

- The delivery of polls
- Counting of votes
- Training of staff
- Provision of resources for running the election

4. Thirdly, independent electoral authorities are needed to encourage develop an understanding of the electoral process amongst the public and key stakeholders. They should also identify and proscribe measures to address low turnout amongst particular groups such as the young, lower socio-economic or under-represented ethnicities.<sup>3</sup> It is common for electoral authorities to have the promotion of political participation as part of their remit. For example, Elections Canada's remit includes the provision of public information campaigns for voters and candidates. They also carry out studies on alternative voting methods to identify areas for improvement in the electoral process.<sup>4</sup> Broadly speaking, electoral authorities should therefore:

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<sup>2</sup> Toby S. James. 2020. *Comparative Electoral Management: Performance, Networks and Instruments*. Routledge: London and New York.

<sup>3</sup> Toby S. James and Holly Ann Garnett. 2020. *Building Inclusive Elections*. London: Routledge.

<sup>4</sup> <https://www.elections.ca/content.aspx?section=abo&dir=mis&document=index&lang=e>

- Undertake informational campaigns for citizens and key stakeholders about how the electoral process functions
- Identify and propose measures to redress turnout gaps and other defects in the electoral process
- Develop wider political literacy

5. Fourthly, independent electoral authorities are needed to bring about electoral justice. They are needed to adjudicate and resolve disputes, provide redress for problems, and also examine and detect errors.

### **Overall criteria and methods for evaluation**

6. The Electoral Integrity Project has produced an index of electoral integrity worldwide based on expert perceptions 2012-8. Earlier reports from the Electoral Integrity Project has ranked the UK on the 23<sup>rd</sup> percentile for electoral integrity, overall when comparing the UK against international standards. This picture, however, is shaped by a range of factors such as the design of the electoral system and does not provide a more focussed analysis of the core functions that the Electoral Commission is partly or wholly responsible for.

7. Table 2 identifies the areas where the Commission is partly or directly involved. This shows that the areas where the UK Electoral Commission has had sole responsibility, the UK performs well. The UK is ranked highly for the impartiality of election authorities and the transparency of financial accounts. There are significant issues, however, relating to whether ‘rich people can buy elections’ and the completeness of the voter register. This suggests that the caps for campaigning may need to be lowered and/or greater regulation introduced for party spending on social media.

8. It also suggests that urgent action is needed to address the completeness of the electoral register. A Joseph Rowntree Trust Report which I recently co-authored explains how targeted automatic voter registration could be introduced to improve the completeness of the register.<sup>5</sup> Proposals would involve:

- The automatic registration of citizens when they receive their National Insurance Number.
- Prompting citizens to register to vote when they access other public services.

If there is a move towards a single electoral register, rather than a patchwork of localised registers, then the Electoral Commission could play an expanded role here too.

<b>Question</b>	<b>Percentile Rank</b>
The election authorities were impartial	8
Parties/candidates publish transparent financial accounts	9
Elections were conducted in accordance with the law	12
Voting was easy	13
Electoral officials are fair	14

<sup>5</sup> Toby S. James and Paul Bernal. 2020. [Is it time for automatic voter registration in the UK?](#) York: Joseph Rowntree Reform Trust.

Votes were counted fairly	16
Ballot boxes were safe	21
Elections are well managed	22
Electoral fraud is a problem	30
Voter register accuracy	34
Rich people buy elections	36
Voter register completeness	69

Table 2: UK indicators of electoral management quality. Source: author, based on data published by the Electoral Integrity Project 2012-8.

### Criteria for delivering elections

9. In my recent book *Comparative Electoral Management*, I set out the criteria for one key task the delivery of the election, which are summarised in Table 1. These include whether elections had inclusive decision making, the use of resources, the quality of service for the voter and the satisfaction levels of stakeholders.

10. A evaluation was undertaken comparing the quality of the delivery of elections in the UK against Canada over the period 2013-2018. The study revealed:

- Similarities in performance in many areas.
  - Both had experienced problems with the completeness of the electoral register – with a similar proportion of voters missing from the electoral roll.
- The Canadian system was stronger in providing:
  - More convenient services to citizens such as election day registration.
  - A clearer complaints process with three organisations responsible for processing voters’ concerns in Canada, whereas there are a myriad of local organisations involved in the UK (Returning/Registration Officers). UK transparency was also undermined by the fact that Returning and Registration Officers were exempt from Freedom of Information Requests because they are often not considered a public authority under the Freedom of Information Act 2000.
  - Financial transparency – with regular reports issued by Elections Canada. In contrast, UK Returning/Registration Officers do not routinely report spending and there is less transparency.
- The UK system was stronger in:
  - Delivery economic efficiency – with much less spent on elections
  - Fewer rejected ballots.
  - Has had fewer issues with accuracy in the counting process.

11. Measures to improve the delivery of elections in the UK based on this comparison therefore include requiring the Electoral Commission to publish spending by Returning/Registration Officers and the administration of a complaints system (see below). Returning/Registration Officers could be placed under the Freedom of Information Act.

Dimension of performance	Focus
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Process Design	Public participation	The involvement of citizens and groups in the design of electoral management processes
	Probity and Impartiality	The proper use of public funds and the absence of fraud by electoral administrators
	Accountability	Redress for errors such as miscounting, rejection of paper or long polling queues. Provision of key information on services such as availability of key performance data, financial information etc.
Resource Investment	Transparency	There is transparency in the income and expenditure of EMBs with open access to data.
	Sustainability	The electoral processes have stable and sustainable funding arrangements
	Legitimacy	The funding of the electoral process is seen as legitimate by actors
	Contingency	Preparations are made for unexpected events
Service Quality	Convenience	The easy by which citizens can register and vote
	Accuracy	Whether elections are delivered with precision and without error
	Enforcement	Rules are enforced
	Efficiency	Cost per unit of production
Service Outcomes	Formal effectiveness	Voter turnout; registration accuracy and completeness; cases of electoral fraud; rejected ballot papers; service denial; violence
	Equity	The distribution of registration and turnout rates by gender, age, race, income, geographical area and other dichotomies.
	Diffuse impact	The broader positive and negative side-effects such as levels of civic engagement, creation of databases of useful for providing other government services
	Cost per unit of service production	Cost per registration and vote cast
Stakeholder Satisfaction	Citizen satisfaction	Citizen satisfaction with the services provided and confidence in the electoral process
	Staff	Levels of staff satisfaction

a	satisfaction	
	Stakeholder satisfaction	Satisfaction from parties, media and wider civil society in the electoral process

Table 1: Principles for measuring the quality of the delivery of the election. Source: James (2020: 65).<sup>6</sup>

### The Commission should retain it's current role

12. In some countries, such as India and Mexico, a single electoral management body may undertake the key tasks necessary for running elections. However, it is also common for there to be several electoral management bodies involved in running elections. There is no best practice or research identifying whether the number of bodies improves elections. There are also both advantages in centralised and decentralised bodies. There is clear evidence, however, that these bodies should be *independent from the government* of the day for three reasons:

- International best practices have long prescribed that electoral management bodies have independence from the government of the day. Following the fall of the Berlin Wall and the collapse of the Soviet Union there was a clear steer from the international community that electoral authorities should be independent from governments to preserve democracy.
- Research shows independent bodies create better elections. It is true that many countries have operated using a system where governments have control over the electoral process. However, research shows that when all factors are considered the quality of elections improves when authorities are independent.<sup>7</sup>
- The principal of the separation of powers means that independence electoral management bodies provide a check and balance within the system.

The abolition of the Electoral Commission would undermine democracy constitute democratic backsliding since it would move the UK away from international standards for elections and the evidence as to 'work works' when trying to deliver fair and free elections. The UK's capacity to act as a beacon for democracy would therefore be undermined and it's ability to criticise other states, such as when elections are undermined in Hong Kong, would be affected. It was therefore extremely troubling that other submissions of evidence to the committee, recommend that the Commission should be abolished and essential that the Electoral Commission retains it's current role.

13. The Committee on Standards in Public Life has previously recommended that the Commission has a more narrow role claiming that that it is 'too broad, diffuse and potentially conflicts with the core tasks' (p.3).<sup>8</sup> It has also suggested that 'the very wide breadth of the Commission's mandate has led to a concentration on issues such as policy development and

<sup>6</sup> The appropriate chapter is freely downloadable from the publisher's website here: [https://tandfbis.s3-us-west-2.amazonaws.com/rt-files/docs/Open+Access+Chapters/9781138682412\\_oachapter04.pdf](https://tandfbis.s3-us-west-2.amazonaws.com/rt-files/docs/Open+Access+Chapters/9781138682412_oachapter04.pdf)

<sup>7</sup> Toby S. James. 2020. *Comparative Electoral Management: Performance, Networks and Instruments*. Routledge: London and New York. Toby S. James, Holly Ann Garnett, Leontine Loeber and Carolien van Ham 'Electoral Management and the Organisational Determinants of Electoral Integrity', *International Political Science Review*, with, 40 (3) 295-312.

<sup>8</sup> The Committee on Standards in Public Life. 2007. *Review of The Electoral Commission* (HMSO: London).

voter participation work at the expense of a more contentious proactive regulatory and advisory role’.

14. The breadth of functions that the UK Electoral Commission undertakes is no wider than many other electoral management bodies, however. In fact, many play a key role in ‘policy development and voter participation work’. It is very common for electoral management bodies to make recommendations for how elections can be improved, and since they have expertise in this area they are indispensable contributors.

15. The UK also still has low and very uneven levels of voter registration and participation. There is also currently no political literacy provided to young people within schools as part of their education. Given these recurring problems, reducing the role of the Electoral Commission would undermine the democratic and electoral process.

### **The Electoral Commission and power of direction and performance standards**

16. My previous evidence reported research with Alistair Clark showing that the Electoral Commission successfully discharged its functions running the EU referendum, after over-using its power of directions in previous referendums.<sup>9</sup> The Commission can issue instructions at a referendum to the electoral officials who are usually the Returning/Registration Officers.

17. The Commission does not run elections but it can set performance standards for Electoral Registration Officers and Returning Officers. A system of ‘name and shame’ has been very effective at setting some target areas for officials to improve in their practices.<sup>10</sup> This has been a sufficient tool until now, provided that there are ample funds available, to help improve the delivery of elections. There has been no appetite or need for the Electoral Commission to have power of direction in running elections.

18. The covid-19 pandemic, however, does shine a different light on this. The pandemic has placed unprecedented challenges on electoral officials with common problems such as the unavailability of staff and premises thought to be causing problems. The performance standards scheme only allows retrospective action from the Commission to improve the delivery of the election. In contrast, the power of direction would enable a central organisation to compel local areas to report on their preparations and give instructions. This would be a very useful tool for identifying possible problems across the UK and taking action. This power should be used very sparingly, but the pandemic has shown that emergency situations can and do occur.

### **The Electoral Commission and electoral justice**

19. There is a petitions systems in the UK that aims to provide electoral justice for candidates and electors where they think that there has been an error or an electoral offence. The system is deeply problematic, however, because it places the burden on the candidate for footing the bill, if they wish to contest the outcome of the election and seek justice.

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<sup>9</sup> Toby S. James. 2017. ‘The Effects of Centralising Electoral Management Board Design,’ *Policy Studies*, 38(2), pp.130-148; Toby S. James. 2020, *Comparative Electoral Management: Performance, Networks and Instruments* Routledge: London and New York; Alistair Clark and Toby S. James. 2016. ‘[An Evaluation of Electoral Administration at the EU Referendum](#),’ Electoral Commission, September 2016.

<sup>10</sup> Toby S. James. 2013. ‘Fixing UK Failures of Electoral Management’, *Electoral Studies*, 32, 597-608.

20. There has been some discussion about whether the Electoral Commission should have the power to act as a public interest petitioner, capable of raising cases on behalf of claimants where they have strong grounds. This would overcome the problem of accessibility to electoral justice. However, the Law Commission rightly argued against this suggesting that the Returning Officers should be able to raise cases instead.<sup>11</sup> The law should therefore be changed to enable Returning Officers to raise cases as the Law Commission suggests.

21. Electoral justice, however, has been discussed assuming that disputes are sufficiently large to alter the outcome of the election. There should be an informal way for electors and candidates to raise a complaint of a much smaller nature. There are a huge range of other issues which might arise from the perspective of the voter where they may wish to complain, for example, a long wait time or their name missing from the electoral register. The current practice is that they are encouraged to write to their Returning Officer and Electoral Registration Officer. Any such complaints are not aggregated for analysis and are not thought to be subject to Freedom of Information meaning that it is not possible to identify patterns in complaints. This would enable an improvement of practice or identify the actions that had been taken.

22. It is therefore recommended that a centralised complaints system is run by the Electoral Commission for voters. Information about the number and nature of complaints by ERO/RO should be published regularly to improve quality of service and hold officials to account. A simple webform would enable citizens to register their problem and this is common for many public services. I previously recommended this to the Committee's inquiry on Election Law and it was supported by the Committee.<sup>12</sup>

### **Electoral Commission governance and accountability**

23. Concerns about the Speaker's Committee were raised because it now has a majority single party control. The Committee has so far acted on a bipartisan basis, to the best of my knowledge, but there is a risk that could change in the future. A simple mechanism to ensure cross-party consensus in legislatures is to require decisions to be made on a two-thirds majority basis. This should be adopted.

### **Recommendations**

24. In summary, it is recommended that:

- **R1:** The Electoral Commission should retain its current functions, including for policy development and the promotion of political participation.
- **R2:** Returning/Registration Officers should be required to provide information about their spending to the Electoral Commission, who in turn could publish a regular and timely report.
- **R3:** Returning/Registration Officers should be placed under Freedom of Information requirements.
- **R4:** The Electoral Commission should be given the power of direction for elections in emergency situations.

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<sup>11</sup> Law Commissions. 2016. *Electoral Law: An Interim Report*. London: Law Commissions.

<sup>12</sup> PACAC. 2020. *Electoral Law: The Urgent Need for Review*. London: Public Administration and Constitutional Affairs Committee (PACAC).

- **R5:** The Electoral Commission should be responsible for delivering a UK wide centralised complaint system.
- **R6:** The Speakers Committee should be required to make decisions relating to the Electoral Commission on the basis of a two-thirds majority.

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