



House of Commons
Justice Committee

Work of the Electoral Commission

Oral Evidence

23 February 2010

Jenny Watson, Chair,
Peter Wardle, Chief Executive, and
Andrew Scallan, Director of Administration,
Electoral Commission

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The Justice Committee

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Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk

Oral evidence

Taken before the Justice Committee on Tuesday 23 February 2010

Members present

Sir Alan Beith, in the Chair

Mr David Heath
Alun Michael
Julie Morgan

Mrs Linda Riordan
Dr Alan Whitehead

Witnesses: **Jenny Watson**, Chair, **Peter Wardle**, Chief Executive, and **Andrew Scallan**, Director of Administration, Electoral Commission, gave evidence.

Chairman: Ms Watson, Mr Wardle and Mr Scallan, welcome. We are glad to have you with us again. Various members around the table have what are not really interests in the normal sense of the word, but you will know, I think, that Mr Heath and Dr Whitehead are members of the panel of people advising you. Is that right?

Dr Whitehead: The parliamentary panel of advisers, electoral.

Q1 Mr Heath: We cannot remember the name.

Jenny Watson: The parliamentary advisory group.

Q2 Chairman: Mr Michael is a member of the Committee on Standards in Public Life which inquired into you, and of course I am, by virtue of being Chairman of this Committee, a member of the Speaker's Committee on the Electoral Commission, which gets to the point, amongst others, so we are very glad to see you today. The electoral law of the United Kingdom is now scattered across an enormous number of statutes. Is that a bad idea and ought it to be consolidated, and is it worth the effort to do so?

Jenny Watson: The short answer to that would be yes. I hope you will forgive me, since it is the first opportunity that I have come before you, if I just make a couple of general remarks to put the rest of what I am going to say into context because I have not had the chance to do this before.

Q3 Chairman: Yes, by all means.

Jenny Watson: The Commission takes as its starting point that democratic politics is not an optional extra, it is a public good, and we see the need to tackle that question head-on. We need democratic politics because, as I think everybody in this room recognises, we disagree about how we might tackle the big questions that face us as a country and we see the parties' competing manifestos and programmes that we choose from as voters, indeed will choose from before too long, as not at all part of the problem, but part of a solution and part of a foundation for democratic politics in this country. Our approach to politics in this country is founded on having strong political parties, and that is a good thing. We are conscious that all of you, as political parties, are dependent on volunteers and we try to

remember that in everything we do and make the rules as easy as we can. That brings me to your question. I think we would consider that a review of electoral law is certainly overdue. Indeed, in the last 10 years, we have had around 38 new pieces of legislation and many of those are things that are welcome.

Q4 Chairman: Thirty-eight?

Jenny Watson: Yes, it is obviously a significant amount. What I would stress to you is that we are running elections on a system that can cope, but it is coping. We are running 21st-Century elections on, effectively, a 19th-Century electoral administration system and that is beginning to show its age and it is not designed to support mass participation, and of course we now expect and anticipate that there will be mass participation with around 46 million people on the electoral register, so we would certainly want to see a debate about the future of electoral administration coming pretty soon actually after the General Election. I hope that whoever forms the Government after the General Election will be able to bring forward such a debate, and we could discuss in a bit more detail what that might need to look at.

Q5 Chairman: How far have you got with your review because, following the Gould Report, you instituted a review of administration of elections, did you not?

Jenny Watson: Yes, indeed, and we have published proposals, looking at reforming electoral administration, which suggested that we could build on what is already in place, taking into account the very strong local-level delivery, with electoral management boards which would, broadly speaking, build on the regional returning officer structures, and Andrew may want to say a little bit more about that, so we published those proposals some time ago and we are now waiting for that broader debate to emerge. Is there anything you would like to add to that, Andrew?

Andrew Scallan: Just that the model that we suggested of electoral management boards builds on, as Jenny has said, the infrastructure that currently exists and has been now tested over a number of elections and preserves local identity, which we think is also very important, around

elections and electoral registration, but gives a framework which is better than having 370-odd individuals operating individually without any co-ordination or control.

Jenny Watson: But we might want to range more broadly than that to also think about things like giving voters a greater choice in the way that they cast their vote. Now that we have the advent of individual electoral registration, that gives us the possibility to move forward and think about e-voting, advance voting and those kinds of things.

Q6 Alun Michael: I am just intrigued that you made this sort of pre-emptive strike in saying that we want a reform of the system where, and it will come out in later questioning, there are issues about the way in which the Electoral Commission has, over a number of years, failed to operate in a clear way as a regulator, particularly at the regional level within England, so calling for a debate is always very easy, but are there not two issues: one, using the powers and exercising the responsibilities that the Commission has; and, secondly, being clear what ought to be happening in order to inform a debate?

Jenny Watson: Well, perhaps I am being loose in my language, so let me be clearer for your benefit. The proposals that we have put forward suggest that there should be electoral management boards introduced, and clearly that needs a response from Government in order to move that debate forward and, as yet—

Q7 Alun Michael: At what level?

Jenny Watson: Well, it would require—

Q8 Alun Michael: No, I mean at what level would you want electoral management boards?

Jenny Watson: As we just described, to sit based on the regional returning officer structure, so you would have a board which brought together at a regional level, or at a national level in terms of Scotland and Wales, a structure of returning officers and registration officers who might be better equipped not to reinvent the wheel.

Q9 Alun Michael: Yes, but would that not be more convincing if you had done in the regions of England what has actually been very successful in Wales, but which the Commission failed to do?

Jenny Watson: We do have regional offices in England and we have a regional lead, and again Andrew might want to say more about how that management is organised. I do not recognise the picture that you paint which suggests that we do not have strong links in the regions of England; we do. We have a performance standards framework which monitors the work of returning officers and registration officers, and both Andrew and Peter can talk in more detail operationally about how that is delivered and perhaps I should give them a chance to do so to make sure that the Committee is clear about how that works.

Andrew Scallan: Just to deal with England, we do have regional leads, as Jenny has said, and they are responsible for liaising with the local authorities in their area and, as you know, the regions of England

vary in size from about 12 authorities in the smallest region to 63, I think, in the largest, but we have very close links in those areas and we understand how they work. I would draw the distinction between the English regions and Wales and Scotland where the nature of our offices in Wales and Scotland is significantly different because they are dealing with different legislatures and dealing with different political parties, so there is a significantly different role for our offices—

Alun Michael: Forgive me, but the issue of making sure there is equality of—

Q10 Chairman: We are going to return to performance standards and I think Dr Whitehead wants to deal with that a little later, so I think I am going to park that performance standards issue.

Peter Wardle: Perhaps I can just remind the Committee of an answer I gave in fact to Mr Michael the last time we appeared in 2008 before the Committee where I think I tried to say that the approach we take in England, which Andrew was just describing, was very much an attempt to reproduce all that was good about the experience we had had in Scotland, Wales and Northern Ireland, but not, as Andrew also says, with the need to interact with an elected legislature in those parts of the country, so all the things that the Wales Office does in relation to guidance, advice, co-ordination of the work of the returning officers and the Electoral Registration Office in Wales is exactly what we are now asking of people in our English offices and have been doing since we set them up two or three years ago.

Q11 Alun Michael: So you are doing that on an English regional basis?

Peter Wardle: Yes.

Q12 Alun Michael: Regions as they are understood by everybody else?

Peter Wardle: The Government Office regions, the European Parliament regions. We have been talking about the regional returning officers and they are the European parliamentary officers. Those regional returning officers, it is worth remembering, are not appointed simply for the period of a European election, but they are a permanent appointment, and what we are trying to do is build on that, so actually in Wales we have seen a much stronger co-ordination from the regional returning officer in Wales, but that is not the only place it is happening. In Scotland, there is a very strong move since 2007 and the Gould Report to have co-ordination at a national level across Scotland. Also, in some parts of England, and the South East springs to mind, we have got regional returning officers who were the regional returning officers in the European elections, but are continuing in that role to co-ordinate the work of returning officers in areas across their region very much with support from our regional offices as well.

Q13 Chairman: If I can claim the floor for the moment and ask you a very broad question: how do you measure public confidence in the integrity of the system?

23 February 2010 Jenny Watson, Peter Wardle and Andrew Scallan

Jenny Watson: We have a number of different ways of doing that. Specifically looking at different elections, we would generally produce a report post-election looking at the events of that election and that would include finding out views from voters, members of the public, as well as indeed from those who had sought election.

Q14 Chairman: By surveys?

Jenny Watson: Yes, opinion polling-type surveys and through that, for example, we know that at last year's European elections many people who did not vote, I think around a third, told us that they might have been more likely to vote if there had been some form of advance voting available to them, so at a polling station, say, the weekend before polling day itself, but we also do year on year something which we internally describe as our "winter tracker" which is again opinion polling which looks at a whole range of issues and assesses voters' confidence with those, so, for example, through that we know that the most important thing for people when casting their vote is that it is secure, but that is very closely followed by the fact that voting needs to be easy to do or convenient, so that is around a third each. We look at a whole range of issues like that and then from time to time we would do broader work on a specific project which engaged with voters.

Q15 Chairman: I want to deal with a couple of specific questions, one of which arises from the Constitutional Reform and Governance Bill where an amendment was passed without debate, which requires returning officers to start the count within four hours of the close of the poll, unless there are exceptional circumstances. The Secretary of State has to prepare draft guidance, yes, "The Secretary of State shall, after consulting the Electoral Commission, prepare draft guidance on the definition of 'exceptional circumstances' for this purpose". Do you think that exceptional circumstances, in your view when you are consulted, will include the circumstances of at least those authorities which currently count on the following day?

Jenny Watson: Well, if I can, I will start that answer in a slightly different place. I think I understand the frustrations around the nature of a very fragmented system with some lack of co-ordination in terms of the delivery of elections, and I think there is some degree of a lack of accountability for returning officers which led to some of these concerns being raised, but we said at the time that we have real concerns about the workability of the amendment that was passed. I would think it would be extremely difficult to define a set of exceptional circumstances that could realistically stand and I think we would also have concerns about the timing of the amendment that has been passed in that it could possibly push people who have already had plans in place for some time to unpick those, which could put the delivery of the election in that area in a slightly higher risk category than it currently is. Now, we are talking to all parties about the workability of that amendment, and again Andrew may want to say

more, but I think the broader point I would want to make which feeds into the conversation that I tried to start at the beginning is the need for a debate led by Government on how we organise electoral administration because the fundamental problem—

Q16 Chairman: We have got to resolve this very specific one very quickly, have we not?

Jenny Watson: We have.

Q17 Chairman: Otherwise, as you say, they will be unpicking the arrangements they have already made.

Andrew Scallan: But beyond that, after this election—

Q18 Chairman: No, I do want you to clarify what is going to happen over this.

Jenny Watson: Well, I do not think at this stage we know because, as I understand it, those discussions are still going on. We have concerns about the workability of that amendment. I think it would be completely reasonable for Government to ask returning officers to justify, with reasons, the decisions that they took about when they would count, and Peter may want to say more about what we did from last autumn to now in order to prepare to be at this place in the right way.

Q19 Chairman: I think what is going to happen, you are doing your best to help with that, but of course the Bill could fall. We are very close to the end of the session and all sorts of arrangements to hire helicopters and so forth might be made and the amendment might never pass into law.

Jenny Watson: That is true and I am genuinely trying to answer the question, but I think the answer from our side of the table at this point is that we do not yet know what will happen because with that amendment we have significant concerns about the workability, about its impact on the independence of returning officers and about how we would define "exceptional circumstances" in any way that would be workable. Andrew, do you want to say anything more about that specifically?

Andrew Scallan: I think the only thing to say is it seems to me that the concern is not when a count starts, but when it finishes, and that is one of the flaws, I think, in the way the amendment is currently drafted because any count would probably start within four hours, but it is the length of time it takes to do the count and the resources that are put into it, so there are other issues as well around the drafting of the amendment.

Q20 Chairman: Presumably, the returning officer has the power to adjourn the count if he decides it is going to go on for too long?

Andrew Scallan: He or she has the power to adjourn, but with the consent of the agents present at the count.

Jenny Watson: Our concern all the way through this has been to have a result that is delivered as soon as practicable and a result that is accurate, and there are particular circumstances at this election which

may put additional difficulties in the way of that, which is why I was asking Peter if he wanted to say more about the letter that he wrote to returning officers back in the autumn on this issue.

Peter Wardle: Simply to say that, when all this started to become an issue back in the autumn, in September we wrote to all the returning officers in the country, saying that they were going to be under pressure and under scrutiny this time round to explain the decisions they were taking. We reminded them of the sorts of issues that we would expect them to take into account and we reminded them of the need to explain those issues to their candidates' and parties' satisfaction locally. Some have done that well, some have done that not so well, and I think that was the point that Jenny was referring to in terms of some questions about the ability of the returning officers perhaps to take the accountability that goes with the responsibility of independence. Just to come back to your first point, it is true that on a practical level one of the most difficult things will be for those returning officers who have taken decisions for good reasons and explained them, why they are going to count on a Friday morning, who may now feel under pressure to change their position, and I would certainly hope that that is one of the key things the Government is looking at.

Q21 Chairman: So is it your advice that they should wait while your further discussions go on before making drastic changes to their plans?

Jenny Watson: Some of them have not yet decided when they intend to count, and I suspect that they will be waiting. We have just been trying to collect in as much more information as we can from people, from those who are currently undecided, but I think it is inevitably the case that there will be people who are starting to rethink their arrangements on the basis of this debate. Do you have any more intelligence on that, Andrew?

Andrew Scallan: We published today on our website the details of the latest position and the decisions which have been made, and there are still 127 constituencies that are undecided and some are still waiting to see whether the election is combined on 6 May.

Q22 Mr Heath: Not directly related to this, but just a very quick observation: I am a member of the Parliamentary Assembly of the Organisation of Security and Co-operation in Europe, I have done election-monitoring all over Europe and America and nobody has ever done an international observation in this country because it was against the law, but it is not now against the law, and I wonder whether the Commission has issued invitations yet to the international organisations to invite them to observe the next General Election?

Andrew Scallan: We certainly have a list, working with the Foreign and Commonwealth Office, of organisations that would be invited, but I think one of the key features of the observer scheme is that it is open to anybody to apply to be an observer, whether invited by Government or not, and it is an essential underpinning principle of the observer scheme. We

have recently simplified our observer scheme in terms of the application process and that was laid before the House a matter of weeks ago, but the principle is there and we will be inviting a range of organisations and have currently plans to have a system for briefing them on the process here.

Peter Wardle: And the OSCE are already making plans to come.

Q23 Mr Heath: The OSCE are probably the prime candidates, are they not?

Peter Wardle: Yes, and they are already on their way.

Jenny Watson: It is going to be a long journey!

Q24 Chairman: One further point, before I move on to Mr Michael, is that this report yesterday in the Glasgow North by-election sort of gave you the opportunity—and I ask you as I have a personal interest in it—to clarify whether you are seeking fresh agreement or understanding between the parties or some other provision to limit the time that can elapse before a by-election takes place. I think the observation was made that the three-month convention has been in force for 35 years and that is because I was elected 36 years ago in a by-election which took six months to be brought into effect and the convention was devised in the immediate aftermath of the criticisms of that. Would you just like to clarify what you said in that report?

Jenny Watson: Yes, I think what we were trying to do in that report was to draw attention to the fact that four and a half months had gone, partly because Parliament was in recess, without the ability for voters to go to the polls and elect a new MP, simply to draw that to the attention of Parliament to see if Parliament wants to revisit this issue again. Parliament can decide that it does not, but we felt that, in the interests of the voters, we should flag that issue and say, "This is longer than it has taken in the past and this may be time for Parliament to think about this again". Of course, I think we are all very sanguine of the fact that anybody would want to make sure that an election avoids obvious periods when people may not be around, like school holidays and things like that, which was the case in part in relation to Glasgow, but there is a broader point which is that this has not been, as you say, revisited for some time and it may be time to do so.

Q25 Chairman: The Scottish school holidays are over by mid-August.

Jenny Watson: Indeed.

Q26 Alun Michael: Just on this whole business of the timing of the count, it is all very well to say that there is a flaw in the amendment that was put forward, but would you not accept that that amendment was one that had cross-party support and was, in many ways, a gesture of frustration that the issue had not been sorted out earlier?

Jenny Watson: I share the frustration about the nature of the fragmented system. Returning officers in this country are independent and they are independent for a reason. We have no power to direct them, the Secretary of State has the power to

23 February 2010 Jenny Watson, Peter Wardle and Andrew Scallan

direct them, and I would question, and I think the Secretary of State would probably question, the degree to which that is the right place for that power to sit. I can see the frustration that was there in Parliament with MPs feeling, “We would like to get the result as soon as possible”, and of course volunteer activists have been busy, people have put their lives on hold to stand for a candidacy, of course we all understand that and, goodness knows, we all understand the excitement of it, but our concern is about the accuracy of the result, and I think it is legitimate for us to raise concerns about the workability of the amendment because we are now at the timeframe where to change existing plans that have been in place for some time may pose a risk.

Q27 Alun Michael: I accept that there is that risk and one of the things about legislation generally is that it should be the last avenue that one takes on the grounds that unintended consequences follow from legislation, and that is a generalisation not just in this field, but things like the Dangerous Dogs Act and equivalents in other fields of legislation largely arise when there is a feeling, “Well, it hasn’t been sorted”. I accept your point that the power of direction lies with the Secretary of State and I also, by the way, think that your query about whether that is the right place is a very legitimate question to be asking. If we are going to learn lessons for the future though, does there not have to be a much more proactive way of getting to a sensible outcome than appears to have happened on this occasion?

Jenny Watson: I think that is precisely what we were trying to do when we wrote to returning officers, when Peter wrote to them back in the autumn to say, “These are the circumstances, these are the factors you’ll have to consider and you should be prepared to account for the decision at a local and at a national level”.

Q28 Alun Michael: Turning to another aspect, the mandate of the Commission essentially, until a couple of years ago, had three elements within it: the regulation of electoral administration; the regulation of party funding and campaign expenditure; and the other, if you like, softer elements of public education and engagement. We had the agreement a couple of years ago that the work of the Commission should focus very much on the first two of those. Has that actually happened and has the change in the way that you organise yourselves and the administrative changes and all of that worked their way through now completely?

Jenny Watson: Yes, and I would say it is working well, and Peter may also want to comment, but, as I think you know, we are now very much more focused on seeing our part of the picture, if you like, in the broader sphere of democracy being about making sure that people know how to vote and know what they must do in order to be able to vote, so getting people on the register is something which we take very seriously and we then pass the baton to all of you to say that it is for you to inspire them to actually go and turn out to vote. We do take that very seriously indeed, and that has enabled us to focus

our spending and focus how we deliver our public awareness campaigns, I think, very effectively and we get a pretty good bang for our buck. If you look across Government, we are one of the most effective use of resources in terms of those campaigns, so that has delivered, and our objectives for this year have gone down to only two, so regulating party finance, transparency and integrity of party finance, and well-run elections, referendums and registrations. Peter do you want to add anything to that?

Peter Wardle: Just that, as an indication of that, as Sir Alan will know from his work on the Speaker’s Committee, we have managed to keep our overall budget reasonably flat since I have been at the Commission, but, if you look at how much we spent on public awareness in my first year in the Commission, 2005–06, we spent around £7 million on the campaign around the General Election in 2005, and we are planning to spend only about £4½ million in the 2010 election and that is because it is all focused on registration and we are no longer doing any work on simply, “Isn’t it a good thing to vote?” and so on because, as we discussed at the CSPL hearings and elsewhere, I think we share the view of many others that what gets people out to vote is actually the issues and the candidates, not an independent body saying that it is a good idea.

Q29 Alun Michael: So, given that focus of your expenditure, have you got the resources that are necessary? Tied to that, we know that we are going to be in a very difficult public expenditure environment over the next couple of years, so how are you planning to cope with that, whether it is in terms of efficiency savings or the focus of your resources?

Jenny Watson: Well, again I am going to let Peter pick up most of that question. I will say that the Board are acutely conscious of the nature of the current public spending cycle. I think we currently cost around 52p per elector, which I think actually is not bad in terms of what we deliver and, if we can deliver that more efficiently, then we will of course do so. Peter, do you want to say a little bit more about the process by which we get those resources?

Peter Wardle: There is not a great deal more to say, but we are expecting next year, as in previous years, to keep our spending down, in fact to do that and also to fund from within the overall envelope the cost of spinning off the Boundary Committee, which was one of the recommendations of CSPL, which will now happen on 1 April and they will have to be established as an independent body and that will have some initial set-up costs, but we are still managing to do that. Next year, we will be continuing to keep our budget around the same as it has been in previous years. It is very clear from the discussions we have had or the Treasury advice that has gone into the Speaker’s Committee in that process that, when we are looking beyond next year, all bets will be off, and that is no great surprise to us and we are obviously looking at what our options will be and listening to what various politicians of various political parties seem to think might be the

environment, but I do not think we can expect to be exempt from the general pressure on public expenditure.

Q30 Alun Michael: Can we focus in on that question of registration now. I have always been very clear that registration is a means to an end, it is not an end in itself. The fact is that the right is the right to vote and, unless people are registered, they cannot exercise that right. How do you think that you are doing in improving both the level of registration and the consistency of a high level of registration across, particularly, England and Wales?

Jenny Watson: Well, there are a number of ways in which we would do that. Some of that would be through our public awareness campaigns. For example, in the run-up to this parliamentary General Election, we will be running a multi-media public awareness campaign which is heavily targeted at those people who are less likely to be registered to vote, so I would ask all of you to bear with us: if you do not see it, that is because you are not the target and it does not mean it is not happening. The campaign that we ran in the run-up to the European elections had a very successful strike rate, if you like, and I think we had 150,000 voter registration forms downloaded. Of course, the other side of what we do, and this must be right because the responsibility for getting people on to the register broadly rests with registration officers, is through our performance standards and driving up the standards there.

Q31 Alun Michael: That is the part I was most concerned about, going back to the comments earlier about driving up the standard at a regional level and the lessons to be learned for Wales which was not anything to do with the Assembly, but was to do with the fact that there was a Welsh Office, a regional office and a Commission very, very clearly focused on building a higher performance of quality.

Jenny Watson: Absolutely.

Q32 Alun Michael: But there still are inconsistencies, are there not?

Jenny Watson: There are, and I will ask Andrew to say a bit more about it. What I would say is that we are just about to publish in fact our second year of performance standards monitoring for registration officers in the next few weeks, so we will send you a copy of that.

Andrew Scallan: On the work that we have been doing with electoral registration officers, we have a huge range of material for them to look at for practice, we give them a lot of detailed advice and we remind them of precisely what the law is that they are required to follow, and at the end of this week, by the way, the ONS will be publishing the details for last year's register, the 1 December register, so we produce a range of material. It is very clear from the work that we have been doing on performance that people understand the need to have plans in place because one of the problems, as you will know, in some of the smaller authorities is that they are very dependent on very few human resources to run their

electoral registration, so we have a range of material and, for those people who have not been performing on performance standards, we have revisited all the electoral registration officers and agreed an action plan for improvement.

Jenny Watson: Again, that has been done through regional offices.

Q33 Alun Michael: You focused the comments though on providing material enabling support. Obviously, you are about to publish a report which may answer the question that I am asking, but I think there is a lot of frustration among some colleagues about the fact that there has not been a success in driving up the level of registration in their areas and a feeling that perhaps not enough is being done to really insist, require and push electoral registration officers and the local authorities that employ them, by the way, because of course particularly on the resource issue there is quite a bit of variation there between authorities, that this is not an optional extra, this is an absolutely basic responsibility of local authorities, yet there still seems to be a soft edge to it. As I say, your report may answer some of that.

Jenny Watson: It will answer some of those questions and you will forgive me for not going into more detail about it now, but there are still some finishing touches being put to it. Andrew is absolutely right to say that 58 electoral registration officers who did not meet the standard got a one-to-one visit and were told, I would say, to pull their socks up, though my colleagues might be more polite, so that is happening. Some of that is in the context of, "Is there more help we can give you because we have got all this material here and this is what's expected and look, you're really going to need to do a bit more to get there". Peter, do you want to add anything to that?

Peter Wardle: Just to say that the first year, last year, established a baseline, and we have talked about this in a number of contexts, but we did not know their level of performance. It looked very much at the level where people were doing the things they ought to be doing as an absolute minimum and also the extent to which they were following the good practice that we recommend, and there were some areas where people were really falling down and they were particularly in relation to work around the integrity of the register and work about promoting participation, so, if you like, the two classic sides of registration. We have made it very clear to them in the conversations we have been having that we expect to see an improvement in year two, and that is what this report will be about. We have still got no powers to insist or require, as you suggest, but we have certainly got powers to persuade and name and shame, and I think in year two, if there has not been the progress that we want to see, we would be much less reticent about drawing that to people's attention, including local politicians and council leaders.

Jenny Watson: We have had discussions with the Local Government Association and with local authority leaders, taking in mind your point about

23 February 2010 Jenny Watson, Peter Wardle and Andrew Scallan

the resources, because they do need to be, I think, more aware of what is going on, and I know that these are statutorily independent officers, but certainly they do need to be more aware.

Q34 Alun Michael: Certainly, there is a lot of feeling that there is a need for the Commission to feel confident and to be robust and push the limits on this.

Jenny Watson: Indeed.

Q35 Alun Michael: One of the elements where again there is cross-party agreement is on a move towards individual voter registration. Now, as I said, it is the right to vote which is the essential right, not the right of registration which is merely a mechanism, but, on the other hand, if we want to move to individual voter registration, there has to be a really robust and dependable register on which to make that move, and that is one of the things which drives the urgency. How close do you think you are to the quality of the register being sufficient to take the risk of making that move, because there is a risk that people get lost, as we saw in Northern Ireland, numbers do get lost off the register in that changeover, but nevertheless, there is a will to do it which, as I understand it, the Commission shares?

Jenny Watson: Indeed, and we now have, through the Political Parties and Elections Act, a timetable set out to move to individual electoral registration with, I think, an important role for us in monitoring the progress towards that. We have often talked about this in terms of both completeness and accuracy, which I think comes back to the point that you are referring to.

Q36 Alun Michael: Absolutely.

Jenny Watson: A complete register has to be accurate and it cannot be accurate unless it is complete, so those two things are often set up as polar opposites and actually they are not, they are very similar.

Alun Michael: I agree with you entirely on that.

Q37 Julie Morgan: I wanted to ask you about the proposed referendum on electoral reform, which has recently been agreed on in the House of Commons, and really to ask you what will be the key considerations that you will look at when you are deciding to form the question?

Jenny Watson: Well, strictly speaking, I should say of course that we do not form the question, that what we do is comment on the question that is put to us, but I think what we would do, and we have recently set this out clearly for people to see, is to conduct a process that really engages with voters because actually it is voters that are going to have to understand the question and be able to make an informed judgment about the question. What we would seek to be doing, I suspect, and I know it is a fairly unpopular term, is a fairly substantial amount of focus group research of engaging the voters and seeing how they approach that question and seeing if they thought, when they had gone through the process, they would cast their vote in the way they

had intended to at the beginning of it. We would anticipate that that process would take us about 10 weeks from start to finish. We would also of course want to engage with any nascent campaign groups that would be out there and with political parties and others who were interested, but the bulk of the evidence that would inform our view would be from that voter testing.

Q38 Julie Morgan: So, with focus groups, would you present a possible question and then have feedback from the focus groups?

Jenny Watson: Well, the question will be put, so it will not be us coming up with a question to put to voters, but the question would be put by the Government and we would then test that question and make sure that we gave comments on it, and we would also want to make sure, I think, that it was in plain English.

Q39 Julie Morgan: So the Government would come forward with a proposed question and you would then test that out on the focus groups?

Jenny Watson: Yes.

Q40 Julie Morgan: So it is for the Government to choose the question?

Jenny Watson: Exactly, and then we would give our views publicly and in a very transparent way on that question. Now, it may be at the end of the process that we say, "This is a very fine question and voters understood every word of it", or it may be that we say, as indeed we did in the question around the North East referendum, that there were some things that needed to be changed to make that process as comprehensible as it could be.

Q41 Julie Morgan: And the fact that this may not divide on party lines, does that cause any additional complications?

Jenny Watson: Not from the perspective of the testing of the question, but it is the case that, in order to register as a permitted participant for the purpose of a referendum campaign itself, if a political party wanted to do that, it would have to tell us the outcome for which it was campaigning. If it could not do that, then it could not register as a permitted participant, so that is a stage further down the track, if you like.

Q42 Julie Morgan: And you have to establish the lead campaign organisations?

Jenny Watson: We have to designate the organisations who would form the "yes" and "no" campaigns, yes, and our proposition for doing that would be that we would look for umbrella organisations that could command a breadth of public support, I think, in the first instance.

Q43 Julie Morgan: So the leading organisations would be the biggest ones or?

Jenny Watson: They would be the designated "yes" and "no" campaigns. We have to designate both or neither, so we cannot just say, "Oh yes, there's a great 'yes' campaign, but there isn't a 'no' campaign".

Other people who would want to spend more than £10,000 in the campaign would have to register with us as a permitted participant in order to do that. Do you want to add anything else to that?

Andrew Scallan: Not to that, but I think I would just say that in terms of the framing of the question we would hope that any Government would look at the guidelines that we have published to help frame the question.

Q44 Julie Morgan: I think that you have also the duty of promoting public awareness about the referendum. Is that one of the duties that have been given to you?

Peter Wardle: Strictly speaking, we would hope so, but that has to be legislated for on a referendum-by-referendum basis, so we had that duty for the North East referendum and we will have it for the referendum that is currently being discussed in Wales on the powers of the Assembly, and we have made it very clear that we would want to have a similar power in the event of a UK-wide referendum.

Q45 Julie Morgan: Do you have the resources to do that effectively?

Jenny Watson: Well, we would have to go to the Speaker's Committee and set out to them the fact that there was a planned referendum and ask for additional resources. Again, Peter may want to say more about the process by which we do that, but in our current budget we would not be able to tackle an issue of a UK-wide referendum, but I think the Speaker's Committee understands that we will come back on a case-by-case basis.

Q46 Julie Morgan: The amendment also says that you may take whatever steps you think are appropriate to provide information about each of the two voting systems, so how do you interpret that provision?

Jenny Watson: Well, I think we would want to look at that against the context of whether or not we had designated "yes" and "no" campaigns to run referendum campaigns beyond that, so I do not want to seem to be avoiding the question, but everything will be considered in the specific context. We may well decide that it would be useful for us for there to be another source of advice and information beyond the "yes" and "no" campaigns which looks at the different systems and says to people, "This is how they work" and which is a very objective provision of information, but I think we would want to look at that in that context.

Q47 Julie Morgan: Would you see yourselves as collecting misleading information?

Jenny Watson: Put out by the "yes" or "no" campaigns?

Q48 Julie Morgan: Yes.

Jenny Watson: Well, again I think we would have to look at that during the course of a referendum campaign, but the principle would be that those "yes" and "no" campaigns would be out there mobilising support for the outcomes that they would

want to see and that more objective information might be there to try and fill in some of the gaps or to present a different view.

Q49 Julie Morgan: Do you welcome the challenge of this referendum?

Jenny Watson: I always welcome the challenge of a referendum! I think we are preparing for it, and we are also, as Peter already alluded to, preparing for a potential referendum in Wales. There are big differences in our role in a referendum than there are in our role in an election. We have a very different role; we are the chief counting officer in a referendum and we do provide direct advice and guidance. There are other powers that we would like to see come to us during the course of the legislation that brings the referendum legislation to reality, but it is a very different role and it is a much less fragmented role than that which exists within an election. Of course, it is just as important during a referendum period that people are on the electoral register because, just as they cannot vote in an election unless they are on the register, they cannot vote in a referendum unless they are on the register, so yes, we welcome the challenge and we are up for it.

Q50 Julie Morgan: You have mentioned the two referendums, the possible Welsh one and the national reform one. With those two different sorts of subjects, do you approach it in a different way?

Jenny Watson: The basic premise would be the same, that the question needs to be understood by the voters because they are the people who are going to engage with the question. That is the absolutely key thing.

Q51 Mrs Riordan: Without wishing to prejudice the forthcoming debate, what responsibility does the Commission have to make an assessment of the potential and likely impacts of a switch to, for instance, an alternative vote system on voter awareness, electoral registration, turnout and the proportion of valid votes as opposed to those who are confused with the new system and spoiled ballot papers?

Jenny Watson: Well, there is a question! I should make it very clear that, whilst we welcome the challenge of running a referendum, we would not come down on one side or other of the debate. Andrew, you have been giving some thought to, if there were to be a "yes" vote, what that outcome might entail for those who run elections.

Andrew Scallan: If there were to be a "yes" vote in the referendum and the change were to be brought in, I think we need to remember that we have already got five voting systems, electoral systems, operating in the UK on which we give advice and guidance to returning officers and public awareness to the voter, so I think what we would then have is a sixth and for us then the task is essentially one of public awareness to make sure the voters understood what they were doing. From an administrative point of view for returning officers, there would again clearly need to be a range of material and guidance produced, but we are used to having different electoral systems, I

23 February 2010 Jenny Watson, Peter Wardle and Andrew Scallan

have to say. Sometimes, there have been issues when the electoral systems have been combined, but we are used to providing suites of guidance to the staff who are there to administer them.

Q52 Mrs Riordan: And the turnout—any comments on that?

Jenny Watson: I do not think we could begin to comment.

Peter Wardle: There is no particular evidence, I think, that we have seen that turnout is particularly driven by different electoral systems. If you look around the country at the same elections to the same assemblies held under different electoral systems, I am not aware of any very conclusive evidence that says that people are more likely to turn out using one electoral system than another, but that is an ongoing subject of debate and the difficulty is that turnout is such a combination of different factors that it is very hard to isolate the impact of an electoral system. Some people would argue that the electoral system has an impact and some would say it absolutely does not and is completely dwarfed by other factors.

Q53 Mrs Riordan: So what lessons are there from previous elections within the UK, say, for the London Mayor, or elsewhere on the impact of a switch to an AV system on voter participation and the number of spoiled ballot papers? Are there any lessons?

Andrew Scallan: The numbers are not significant. I cannot remember the figures, but, if they had been significant, I am sure I would have remembered them. The task is a clear explanation both in the build-up to the election and within the polling station itself to make sure that the staff fully understand what they are saying to voters when they vote, but there are not, I think, significant issues around spoiled ballot papers.

Q54 Mr Heath: Can I move on to party funding. Are you on top of it and are the parties on top of it?

Jenny Watson: That is another good question. I think we have a good and effective system of regulating it. We are starting to deal with this and are very busy at the moment. I think in the last quarter we answered around 500 queries and requests for information, so I am tempted to say, “There must be an election coming along”! We do take it very seriously and we publish regular information. I think what will immeasurably help us, when we finally get them, is the new powers and sanctions that are bestowed on us through the PPE Act. I understand that the Statutory Instrument that was laid before the House has been withdrawn due to a legal drafting problem and that will not now be tabled before the election. Now, we are working to an implementation date for the majority of those powers and sanctions of 1 July and it would be really important to us that that comes through quickly after the election because of course all political parties will need clarity and we are providing guidance for people on what they should be doing under the new system and how we intend to enforce, but without the powers.

Q55 Mr Heath: And it is daft, is it not, not having the powers before the election, yet alone delay it even further beyond July?

Jenny Watson: Well, I think I would take issue with you on that because I think one of the things we have said very clearly in the past is that there should be at least a six-month gap in terms of anything electoral between legislation and implementation, and that applies to powers we would like to use just as much as it applies to anything else, so I am happy with 1 July, but that is the date to which we are now working and it does make it rather tight post-election. I think that new suite of civil sanctions and civil powers, including things like compliance notices to say to parties, “Can you put in place a better system than currently exists?” and stop notices, will be really important potentially during a referendum campaign when you perhaps have organisations that are not like parties with a long tradition of wanting to keep their reputations squeaky clean and they may be less tempted to comply with legislation, we need that kind of power.

Q56 Mr Heath: Is there not a problem at the moment that, without the new suite of civil sanctions, effectively you can only really hit hard some poor honorary treasurer in a little branch of a political party who is desperately trying to comply and cannot because he cannot get his figures in the right order? Does that not give a real problem actually to helping them, and I am not talking about the professional people in the party headquarters, I am talking about the voluntary parties?

Jenny Watson: I do not think any of us would try and pretend that the powers that we have now are ideal; that is why we wanted the new powers and we made that argument very strongly. One of the things that our enforcement policy consultation, which is the process we ran indeed in consultation with volunteer treasurers, enabled us to say is, “With this new suite of civil sanctions, this is how we will use them” and, by the way, we have never come down like a tonne of bricks on a poor voluntary treasurer anyway, so it did enable us to get that message out.

Q57 Mr Heath: But they are frightened that you will, are they not, still?

Jenny Watson: I am sure they are and this will be better. The fact that we have been able to share the way that we will approach it with them and be reassured that they now understand our approach and will continue to issue that guidance, I think that is very helpful. We would like the powers by 1 July and, if there is anything you can do to raise those points, we would be most grateful to you.

Q58 Mr Heath: I would love to do that. Are there any glaring holes that you see at the moment in the regulation either on the donations side or the expenditure side where the parties, I know perfectly well, have a talent for finding these holes and using them? Is there something you would like us to be doing to close a loophole?

Jenny Watson: I think at the moment perhaps I could leave it that the new powers are most welcome. We always keep the legislation under review and it may be that we have more to say about that in due course.

Q59 Dr Whitehead: Could I ask some questions on integrity and also the role of returning officers in preparation for elections and standards. You published a report in June 2009 on electoral malpractice, particularly relating to the 2009 elections. I think there were two convictions eventually out of something like 107 allegations of malpractice which arose in 2009. What sort of malpractices were both alleged and convicted?

Jenny Watson: My memory from the European elections is that it was rather fewer than that actually. I thought it was around 48.

Q60 Dr Whitehead: Sorry, it is 48 cases out of 107 allegations.

Jenny Watson: We use that very broadly, and I am going to ask Andrew to pick that up. This is an area where we remain vigilant, so we might also, if you have the time, take the opportunity to talk to you about what we are doing with returning officers and the police.

Andrew Scallan: There was a range of offence types and they are all spelt out in the report in some detail. A large number of them were to do with electoral malpractice, but might have included, for example, the imprint on documents which, if we go back many years, is one of the least serious of electoral crimes. Of the 107 figure, 23 of those allegations related to a ballot paper that someone had photocopied in Aylesbury, so it is simply a very crude attempt to manipulate the system where a ballot paper had literally been photocopied and sent in, but, because it was taken seriously, it appears in the statistics. There was a range of issues and with a number of them no further action was taken by the police and there have been some convictions, and again they are all spelt out in the report. There is not anything more that we can update on the report that we actually published in January this year. In our June report on the European elections, we put the headline figures in, and the report that we published in January sets out in detail what happened with all the cases and also updates our report from 2008 on the offences that had been reported during elections then.

Q61 Dr Whitehead: To what extent would you say that those electoral malpractices particularly focused on postal voting? Obviously, that relates to the claim that postal voting is vulnerable to fraud, but to what extent did you find in those particular prosecutions and claims that that was indeed a focus of fraud?

Andrew Scallan: There were very few that related to postal voting. The postal voting system is so much more secure than it was before the 2006 Act gave provisions, so now it is very difficult for anyone to steal someone else's postal vote in the way that they had been previously because the signature and date of birth are required. One of the things that we have talked about is that there are some vulnerabilities in

the system, and individual electoral registration will close that particular vulnerability, so it should ensure better integrity of the whole system.

Jenny Watson: But, having said that, I think we would all recognise that the European election is a different type of election with a very much larger constituency and possibly less temptation to those who might commit fraud, and we will be vigilant in the run-up to this election which could be combined with local elections, which is a slightly different animal, and Peter may want to say a little more about what we are doing with the police in relation to that area.

Peter Wardle: Yes, very briefly just to say that we are getting very good co-operation these days from the police. If you think back five years or so, the police were very afraid to tread in a lot of areas on something that they saw as political. Nowadays, every police force has got an expert within the force who will take responsibility for that. ACPO have appointed a lead, as have ACPO Scotland, and we have seen some very good examples of returning officers and local police forces working together to risk-assess their elections in the same way as they would risk-assess anything else. Actually, the police are bringing some very useful skills to that process which returning officers perhaps were not so used to, so I think we are seeing much more vigilance, and certainly in the areas where people have seen concerns and risks they are acting very visibly to try to prevent it. One of the things the police have learnt literally to their cost is that prevention is very much better than cure when it comes to dealing with electoral offences.

Jenny Watson: Certainly, it is very welcome that the Ministry of Justice will provide funding in this election for 100% of absent voter identifier checking. We would still like them to mandate that, but the funding is very welcome.

Q62 Dr Whitehead: Turning to returning officers themselves, you also published a report on the extent to which returning officers were meeting performance standards, and I think the April 2009 report was the first assessment of that, and you mentioned that in your written evidence to us, but in that written evidence you also referred to failures in some places, particularly in terms of plans for public awareness and participation, and also indeed to some gaps in the identification of electoral malpractice among returning officers. What assessment have you made, particularly relating to the previous issues of electoral malpractice, of what are the genuine risks to the integrity of the system in those areas?

Jenny Watson: I am going to ask Andrew to pick that up, but, before I do, I am going to take the opportunity to correct something that I said earlier where I have been looking for an opportunity and have not had, which is of course that the Secretary of State cannot direct returning officers, but can only direct electoral registration officers, so that gives me the opportunity to put that on the record. Andrew, would you like to pick up the question.

Andrew Scallan: In terms of returning officers, the approach we have taken to their performance standards has been very similar to the one we have with electoral registration officers that, where there

23 February 2010 Jenny Watson, Peter Wardle and Andrew Scallan

have been failures, there have been personal interviews with the returning officers. A lot of our performance standards are actually about making sure there is an infrastructure in place within local authorities, so it has been about having plans in place for all the activities that form part of the performance standards and integrity has been one, and it applies to others as well, that because a plan is not in place does not mean that work is not going on, but it is just that it is not well-documented and there is not a clear plan of action. For those who have not had plans in place, we have visited them and, I have to say, they have typically been areas where they have not felt impacted by electoral malpractice in the past, which of course is a very complacent way to react to that. The message that Peter has said, that prevention is better than prosecution, as we describe it in the report, is because you never know when it is going to happen and, when it does happen, it takes up a huge amount of resource both from the local authority and from the police force, so we have visited all the returning officers. We doubled our efforts with ACPO and with local police forces to make sure that they were working very closely with local authorities to make sure that they had their plans in place and that they were able to respond and, very importantly, the police are attending candidates' and agents' meetings and making sure that people understand that the police forces are aware of electoral malpractice in a way that historically they have not.

Q63 Dr Whitehead: When you say you have visited, you state in your evidence that you contacted all 58 EROs who did not meet the standards for completeness and accuracy in 2009. Would they have been the subject of a visit, those 58?

Jenny Watson: Of the EROs, yes. As we were saying earlier on, yes, each one of those will have had a visit, but we have also followed up with returning officers who did not meet the standards.

Q64 Dr Whitehead: Were those visits made public? Is there a public record of what was said in those visits and what transpired, or were they, shall we say, under cover?

Jenny Watson: Well, they were not secret visits, to put it like that. The information about who meets the performance standards and who does not is available on our website, so it is there, and I think what you will see when we publish the next report on performance standards for electoral registration officers is any change against that, let us say, and we are writing to local authority leaders to make sure that they know in their authority how the electoral registration officers and returning officers are performing, and sometimes that is an uneasy relationship, but they should know.

Q65 Dr Whitehead: The implication of the 58 EROs who did not meet the standards is that there are 58 registers that are incomplete and inaccurate, by turning your statement in your evidence around, and

I presume that, should there be 58 incomplete and inaccurate registers, that would be a matter of some considerable concern.

Jenny Watson: I think if you took the point more broadly, which we have made before, that we estimate that there are 3.5 million people, 8% to 9%, who are not on the electoral register, I am afraid I think it is a rather larger number of registers than that that we know and could say, hand on heart, are not complete and accurate. That is the system with which we are working, and again individual registration, to refer to Mr Michael's question earlier on, will help with that because it will give, for example, the ability to do some greater data-matching to try and see if there are better ways of working out and other ways of working out other people that could be on your register that are not. What we will do as we develop the performance standards, bearing in mind they are only in year two this year, is look at outcomes as well as outputs in terms of plans, and that is part of the development work.

Peter Wardle: There are, very broadly and very simplistically, two reasons why a register is incomplete and inaccurate. One is because the electors do not do something and the other is because the electoral registration officers do not do something, and our focus on the performance standards is very much on making sure the EROs are doing everything they can so that problems with the register cannot be put down to their inactivity and lack of attempts to do things. However, as Jenny says, we need also then to look at those areas where, even though the ERO is doing everything they should be, we have still got very low levels of registration and that is where we need to start looking much more imaginatively at whether there are other things, including potentially legislative changes, that would make their task easier. If you have got an ERO who really is trying their hardest, is well-resourced and yet is still achieving low levels of registration, and we have never known that with any certainty until we have had the performance standards and we have started to do this manual tracking, but I am sure that it is going to be an ongoing process. We are not simply going to rest on our laurels when everybody is meeting the basic standards and say, "Everything must be fine now; there is nothing more we can do", but I see it very much as saying that, as long as we have got them up to standard doing everything they should, then we need to look at what other factors are contributing to the fact that their register is not where it should be.

Jenny Watson: And I would expect us to be raising the bar as we move forward, and I would also expect, as we go through the voluntary phases of individual electoral registration, that our monitoring and the way we present that would be sufficient to make sure that we can give a picture in different local areas rather than a very generalised wash across the country because it will not look like that and it will be particular areas where we will need to focus.

Chairman: At which point we must move on to another session, so thank you very much.

Written evidence

Memorandum submitted by The Electoral Commission

THE ROLE OF THE ELECTORAL COMMISSION

The Electoral Commission's focus is on effective regulation of party and election finance and on well-run elections, referendums and electoral registration. We are also currently responsible for fair local government boundary arrangements in England.¹

The Commission has a critical role in rebuilding and maintaining public confidence in democracy, and in defending politics itself. Political parties and free and fair elections are vital to democracy. Political parties allow competing views to be debated peacefully. This, together with our ability to choose between those views securely and in private through safe elections, forms part of the foundations that underpin our democracy.

Political parties need to be able to raise money in order to communicate with voters. People need to be confident that political parties are funded transparently because our democracy is threatened if that confidence does not exist. We help to provide that transparency, and make sure politicians and political parties understand and follow the rules on party and election finance.

We encourage people to register to vote and set standards for well-run electoral registration services. We also set standards for elections management—so people know how to vote, that their vote will be safe, and that it will be counted. In referendums our role is significantly wider, as we have the additional responsibility for the conduct of the referendum. In all that we do, we put the interests of voters first.

Our evidence sets out the Commission's priorities for the next 12 months. It also identifies some of the longer term challenges and questions facing the Commission on which we hope to hear the Committee's views. As an independent body, accountable to Parliament, the Commission welcomes the opportunity to have its work scrutinised by the Justice Committee.

1. MAKING SURE ELECTORAL REGISTERS ARE COMPLETE AND ACCURATE

1. Electoral registration provides the foundation of the electoral process, and it is important that electoral registers are as complete and accurate as possible so that everyone who is entitled to vote can do so and no-one is registered who should not be.

2. No-one should be denied their right to vote because they are either unaware of the importance of registering, or because they find the process of registering too difficult.

UNDERSTANDING ELECTORAL REGISTRATION

Previous research

3. In September 2005 we published research on levels of electoral registration in England and Wales, which suggested that the best estimate for non-registration in 2000 was between 8% and 9%.² This meant that approximately 3.5 million people were eligible to be registered but were missing from the electoral register in 2000. This research was based on data derived from the 2001 census.

4. In 2007 we commissioned a pilot study³ to determine the most effective methodology for measuring the completeness and accuracy of the electoral registers without the aid of recent census data. Greater London—the only place in Great Britain without scheduled elections in 2007—was chosen as the testing ground. The three sampling strategies tested did not prove to be robust in reporting on the accuracy of the registers.

Current research programme

5. In early March 2010, we will be publishing the findings from case study research into the completeness and accuracy of eight local authority electoral registers. The case study research will enable the Commission to begin to:

- provide an overview of the accuracy and completeness of Great Britain's electoral registers;
- assist with the identification of types of authorities whose registers need to be improved, in order to complement the Commission's Performance Standards work;
- be used to inform the Commission's guidance for Electoral Registration; and

¹ From 1 April 2010, a new body, the Local Government Boundary Commission for England (LGBCE), will take over this work as provided for in the Local Democracy, Economic Development and Construction Act 2009.

² Electoral Commission, *Understanding Electoral Registration*, September 2005, available at www.electoralcommission.org.uk/_data/assets/pdf_file/0020/47252/Undreg-FINAL_18366-13545__E__N__S__W__pdf

³ GfK NOP Social Research (2007a) *Completeness and Accuracy of the Electoral Registers in Greater London—A Pilot Study: Findings*, London: The Electoral Commission.

- provide up to date information on those groups which are more likely to be under-registered and thereby inform the Commission’s campaigns approach and material

6. The report will set out the findings from house to house surveys in each of the eight local authority areas; a check for certain types of anomalies on the registers (using a “data mining” of the registers, plus follow up interviews); and interviews with electoral administrators. The report will also draw on published research and available data sources. An interim report was published in December 2009⁴ which covered research into apparent anomalies on the register in all eight local authority areas and showed that anomalies related to repeated names accounted for between 0.33% and 1.83% of entries on the registers we examined; and anomalies related to a higher than average number of entries at the same address formed between 0.8% and 4.56% of the register.

FUTURE WORK

7. We are reviewing our approach to reporting on completeness and accuracy in light of the findings from the case study research set out above and the new requirements on us, set out in the Political Parties and Elections Act 2009, to report on the move from household registration to individual electoral registration.

8. Future research may include:

- Reporting on national levels of completeness and accuracy, using findings from the 2011 census and other national data sources.
- Case studies that use house to house surveys and “data mining” to report on the completeness and accuracy of local electoral registers.
- Data received from local authorities on the take up of individual electoral registration and the provision of personal identifiers.
- Public opinion research (focus groups and surveys) to monitor responses to individual electoral registration.

Individual electoral registration

9. The right to register to vote is of fundamental importance in our democracy. Great Britain is one of the only places in the world where the system of electoral registration is still based on registration by household; that is, where one individual registers everyone living in that address who is eligible. In 2003 the Electoral Commission recommended that a system of individual electoral registration should be introduced in Great Britain to lead to a more accurate and secure electoral register. There has been wide support for this change.

10. We welcome the Political Parties and Elections Act 2009, which paves the way to move from household registration to individual registration in Great Britain. This will mean that individuals will register themselves, and to make the system more secure, people will need to provide personal identifiers (signature, date of birth and national insurance number) in addition to their name, address and nationality. At first, the provision of this information will be voluntary. Any permanent move to individual registration—which would mean that people would be required to supply the identifying information in order to be registered to vote—would need to be approved by the UK Parliament, following a recommendation by the Electoral Commission.

11. The introduction of individual electoral registration is a major change to the registration system and cannot be made overnight. Proper planning is essential to minimise the likelihood of people “dropping off” the electoral register. In particular, electoral registration officers need time to prepare for the introduction of individual registration; for example, updating their systems to ensure security of personal data and to enable them to check the information provided.

12. We share and understand concerns about the possible impact on levels of registration. We will have a key role to play in evaluating the success of the move from the current system of electoral registration by household to individual electoral registration. We will report annually from 2011 on the implementation of individual electoral registration and in 2014 make recommendations about whether the provision of personal identifiers should be compulsory for everyone who wants to be included in the electoral register in Great Britain.

13. It is possible that the total number of entries on electoral registers in Great Britain may fall during the introduction of individual electoral registration. This does not necessarily mean that the number of eligible individuals registered to vote has gone down by the same number but rather redundant or incorrect entries are removed from the register. The Commission will monitor registration rates to ascertain the reasons behind any drop.

14. We want to make sure that no-one is removed from the electoral register because they might find the new process difficult or inaccessible. We will support Government, Electoral Returning Officers (EROs) and others to ensure that a clear and robust plan is developed for implementing individual registration. As part

⁴ Electoral Commission, *Interim report on case study research into the electoral register Great Britain* (2009) available at http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/83305/Interim-report-on-case-study-research-into-the-electoral-registers-of-Great-Britain.pdf

of this, we want to see proper planning, resources and support in place for electoral registration officers. We will provide guidance and support to help electoral registration officers collect personal identifiers and develop and coordinate a programme of public awareness activity to ensure electors understand what they need to do under the new registration system.

Improving the completeness and accuracy of Electoral Registers

15. Regardless of the system of registration which is in place, it is important that electoral registers are as complete and accurate as possible. Responsibility for compiling and maintaining electoral registers lies with the EROs appointed by local authorities in Great Britain and with the Chief Electoral Officer in Northern Ireland.

16. In April 2009 we published the first assessment of the performance of EROs in Great Britain⁵ against a set of common standards which target the main areas that EROs should be focusing on to achieve complete and accurate electoral registers.

17. We were pleased that EROs for local authorities covering 85% of electors in Great Britain met or exceeded the three performance standards relating to the accuracy and completeness of electoral registers, which represent their central statutory responsibilities. We were disappointed, though, that nearly one in five EROs failed to meet one or more of those standards.

18. Our performance standards assessments meant that we know where performance needs to improve to ensure complete and accurate electoral registers. We contacted all 58 EROs who did not meet the standards for completeness and accuracy in 2009, in order to agree performance improvement plans.

19. Our assessment also identified a general weakness in the quality of planning and management procedures and highlighted concerns about performance in other areas including the role of EROs in promoting participation and ensuring integrity in the registration process. We want to see improvements in these areas too and, in August 2009, we provided a range of resources to support EROs further, including revised guidance and planning templates.

20. The autumn 2009 canvass was the last before the forthcoming UK Parliament general election. We will publish our assessment of the performance of EROs at the 2009 canvass in early March 2010. Following the action taken on the results of our first performance assessment, we expect at least three quarters of those EROs who did not meet the standards on completeness and accuracy of electoral registers to have shown improvement this year.

21. We will continue to make public our assessments of performance, and we especially welcome the potential role for the Commission in reporting annually on the progress of EROs in implementing individual electoral registration.

22. Alongside our assessments of performance of EROs, which focus on the processes they follow and seek to bring consistency of approach across Great Britain, we will also publish new research on the state of electoral registers in eight local authorities as mentioned above. In our first report on ERO performance standards, published in 2009, we drew attention to the limited data that was available on electoral registration rates and on the changes to numbers of people registered to vote. In light of our new research, in 2010 we will develop our performance standards further to make assessments using suitable data. We will look at both sides of the equation, that is, the steps that EROs carry out (based primarily on self-assessment against our detailed standards) and the outcomes they achieved (based on hard evidence from our research programme).

Registration public awareness campaigns

23. We have a role, at a national level, in making sure electors know how and when to register to vote. We target our public awareness activity towards groups that we know are less likely to be registered to vote, including people who have recently moved home, young people, members of the Armed Forces, British citizens living abroad and some minority ethnic communities.

24. We will launch a multi-media campaign on 1 April to encourage voter registration ahead of the UK Parliamentary General Election (assuming the election is not held prior to this). The campaign will include television, radio, press and online advertising, along with media relations work. The campaign will use the same advertising as our successful campaign ahead of the 2009 European Parliamentary Elections. We will expand our media strategy for the campaign to include a stronger presence on social networking sites and on satellite television channels popular with our target audiences.

25. The campaign will build upon the smaller campaigns we have run throughout the year targeting groups such as recent home movers, members of the Armed Forces and British citizens living overseas. We will also work closely with local authorities, providing them with resources they can use for local campaigns ahead of the UK Parliamentary general election.

⁵ Electoral Commission, *Performance Standards of Electoral Registration Officers*, April 2009, (2009) available at www.electoralcommission.org.uk/_data/assets/pdf_file/0018/74034/ERO-REPORT-FINAL1.pdf

Election reporting

26. The Commission's work reporting on how well elections are run—most recently in relation to the June 2009 elections to the European Parliament and to local authorities in England—has highlighted many important lessons for the next UK Parliamentary general election.

27. Our report on the European Parliamentary elections, published in October 2009,⁶ found that, overall, those elections were well-run. There were problems with the production of ballot papers and postal votes which affected voters in a relatively small number of areas. There were high levels of confidence and satisfaction among voters with the process of registering to vote and voting itself.

28. Regional and Local Returning Officers across the UK generally performed well in delivering the elections, but there were areas where improvements were needed. Arrangements for national and regional coordination provided effective support for Returning Officers.

29. Standards for the management of elections for Returning Officers in Great Britain were published in March 2009 and we reported on the performance against these standards for the 2009 European and English local elections. The headline findings are in the election report on the June 2009 elections and our further analysis was published in January 2010.⁷

30. Just over 90% of Local Returning Officers in Great Britain met all three of the performance standards relating to the planning and organisation of the European Parliamentary elections. Three quarters met all three performance standards relating to supporting public awareness and participation; the remainder failed to meet one or more of the three standards. A significant number did not have plans for public awareness activities. One in five, that is 73 in total, did not meet the performance standard relating to identifying and managing the risk of electoral malpractice. In the majority of instances, this was because formally documented plans were not in place to identify and manage the risk of malpractice.

31. A UK Parliamentary general election presents challenges of a different order to those of the European Parliamentary election. Turnout will be higher than at other elections, and there are likely to be more people voting by post than ever before. There will be several thousand candidates, some of whom will be inexperienced or new to the electoral process. Processes for checking identifiers on returned postal votes will have to be coordinated across local authority boundaries for the first time on a Great Britain-wide scale. And of course, given that a UK Parliamentary general election can be called with as few as 17 working days' notice before polling day, all of those involved—electoral administrators, candidates, political parties and voters—will have only limited time to make sure they are able to play their part.

32. We have made a particular effort to make sure these challenges do not create problems which affect the smooth running of the elections. Our report on the European Parliamentary elections highlighted what we thought Returning Officers and others should do to ensure the levels of public confidence and satisfaction that were achieved in 2009 at the forthcoming general election. We wrote to all Returning Officers (ROs) and Electoral Returning Officers (EROs) in August 2009 to make sure they were clear on the actions which they needed to take to be properly prepared for the general election. We have almost completed contacting all Returning Officers failing to meet key performance standards for elections to provide targeted support, in addition to the advice, guidance and group briefing sessions that we normally provide ahead of an election. We are also contacting all new or inexperienced Returning Officers and electoral services teams, to provide any necessary guidance and resources.

33. We look forward to hearing the views and observations of the Justice Select Committee members so that these can be fed into the final stages of preparing for the general election.

3. IMPROVING THE WAY ELECTIONS ARE RUN

Improving structures for delivering elections

34. We want to see better engagement between Returning Officers and Electoral Registration Officers within and across regions. There also needs to be more clarity about who is responsible for delivering key tasks such as planning, monitoring performance and ensuring the availability of staff and resources. This would help to ensure, for example, that problems associated with poor quality printing of postal vote materials could be identified and addressed collectively rather than being dealt with in isolation by individual Returning Officers. We also believe that in future there will need to be powers to require action by local officers to ensure consistent and effective performance particularly in light of the introduction of individual electoral registration.

35. We recommended that one way to achieve this would be through the establishment of Electoral Management Boards (EMBs) to include Returning Officers and Electoral Registration Officers across Great Britain. Although the establishment of EMBs is one possible solution, we did not wish to impose any particular structure. Rather, we have challenged Returning Officers and Electoral Registration Officers to develop improved structures that work best for their regions or nations.

⁶ Electoral Commission, *Report on the 4 June 2009 European Parliamentary and English local elections*, (2009) available at http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/81483/2009-elections-report-final-web.pdf

⁷ Electoral Commission, *Report on Performance Standards for Returning Officers in Great Britain, European Parliamentary elections* (2009) available at http://www.electoralcommission.org.uk/_data/assets/pdf_file/0007/83887/Analysis-of-RO-Performance-2009-final.pdf

36. In Scotland, for example, an interim EMB has been established, with an initial focus on supporting the Regional Returning Officer in the delivery of the 2009 European Parliamentary elections. We have been pleased that the Board has made significant progress in bringing greater coordination and consistency of performance to electoral administration in Scotland, and we expect that it will continue to support and monitor the delivery of electoral administration in Scotland over the coming years.

Electoral Integrity

37. The Electoral Commission provides support to police forces, Electoral Registration Officers and Returning Officers in the delivery of their operational responsibilities and reports on levels of malpractice at elections. We take electoral malpractice very seriously—one fraudulent vote is one too many, but cases of electoral malpractice are relatively rare.

38. Our report on allegations of electoral malpractice at the June 2009 elections found that there was no evidence of widespread or large-scale attempts to commit electoral fraud.⁸ In elections where more than 22 million votes were cast, there were only 48 cases involving 107 allegations of malpractice relating to the elections. More than half of these cases required no further action, because there was no evidence to support the allegation, for example. Two cases have resulted in prosecution and convictions, including custodial sentences for three people. We are working with police forces across the UK to repeat this monitoring throughout 2010, and we will publish a further report of data and our analysis on cases and allegations of electoral malpractice by the end of this year.

39. We are working hard to tackle electoral malpractice and recognise that the elections which will take place in 2010 are very different from the 2009 elections. We will continue to work with Returning Officers, political parties, police and prosecutors to promote electoral integrity and tackle fraud including:

- pocket guides produced for police officers, parties and postal workers in Great Britain to help them deal with electoral fraud;
- regional events with police and returning officers across the country to improve the understanding of electoral malpractice and improve prevention and detection of fraud; and
- an officer in every police force in GB who provides a “single point of contact” for dealing with electoral fraud.

40. The introduction of new security checks on postal votes (signature and date of birth when you apply and then when you cast your vote) has led to a reduction in the scale and volume of allegations of postal vote fraud. However, we recognise that further changes are vital to ensure vulnerabilities in the system are tackled, which is why we have welcomed legislation in 2009 which provides for a move from the current system of household registration to a system of individual registration in Great Britain. A move to individual registration is essential to make the electoral register—the bedrock of the electoral process—much more secure.

4. OUR ROLE IN FUTURE REFERENDUMS

41. There is potential for a referendum in Wales on law-making powers of the National Assembly and, at UK-wide level, there has been considerable recent speculation about the possibility of referendums on topics including electoral reform. There is also the possibility of a referendum in Scotland on independence, though based on current information that would be a non-PPERA referendum, for which we would have no statutory responsibility under existing legislation.

42. We have therefore recently reviewed our referendum planning and our approach to managing a referendum, which includes the Chair of the Commission or a nominee being the Chief Counting Officer for a referendum. In doing so, we have in particular sought to take account of our UK-wide responsibilities operating in the context of devolution.

43. This review has included looking at how we assess the intelligibility of the question and our preferred approach is published on our website, as are our *Referendum question assessment guidelines*.⁹ We would assess the question using our guidelines, taking account of evidence from research with voters, and discussions with key stakeholders and plain language and accessibility experts.

44. In respect of referendum campaign spending and funding, our responsibilities include:

- making recommendations to Government on campaign spending limits for sub-UK referendums (spending limits for UK-wide referendums are specified in the 2000 Act);
- registering those who want to spend significant amounts on campaigning in the referendum as “permitted participants”;
- where appropriate, appointing lead campaign groups (“designated organisations”) for each outcome;

⁸ Electoral Commission, *Analysis of allegations of electoral malpractice at the June 2009 elections* (2010) available at www.electoralcommission.org.uk/publications-and-research/electionreports.

⁹ We first published our question assessment guidelines in 2002 and have recently updated them (November 2009). These documents are available on our website at www.electoralcommission.org.uk/elections/referendums/legislation.

- ensuring that designated organisations have access to certain assistance, including grants that we determine within statutory limits; and
- monitoring and reporting on campaign spending.

45. In our evidence to the House of Lords Constitution Committee¹⁰ we set out our objectives for the conduct of referendums and the principles underlying our approach. We also discussed how we would expect to carry out some of our key statutory roles, including commenting on question intelligibility, making recommendations on spending limits in sub-UK elections, and setting the level of grants to be made available to designated organisations. We intend shortly to publish a paper for wider circulation setting out the principles that we intend to apply when carrying out our duties in relation to referendums, and inviting our stakeholders to give us their views. We would welcome the Committee's views on our proposed approach as set out in our evidence to the Constitution Committee. We will also review and report on the role of the Chief Counting Officer and on the lessons that can be learned from that model of managing an election.

5. BUILDING PUBLIC CONFIDENCE IN TRANSPARENCY OF PARTY FUNDING

Increased transparency

46. Since the 2000 Act came into effect, the Commission has published details of: over 25,000 donations to political parties with an overall value of almost £364 million; and almost 2,600 donations to individual politicians and groups involved with political parties, worth almost £21 million.

47. Since 2006, when borrowing by those we regulate began to be covered by the law, we have published details of close to £76 million of borrowing including:

- nearly £58 million of loans;
- almost £17 million of overdrafts and other credit facilities; and
- over £1 million of securities connected to loans.¹¹

48. Political parties have steadily improved their reporting performance over this time, partly because we have used statutory penalties to encourage compliance. The proportion of parties delivering their donation returns on time has risen from 63% in 2005 to 97% in the first three quarters of 2009. We aim to continue this improvement.

49. The Commission has established strict time targets for key phases of its enforcement work. In 2009, the Commission met its targets of conducting 90% of initial case assessments within five working days, and 90% of case reviews within 90 days. The Commission also aims to complete 90% of its investigations within six months and following questions from the Speaker's Committee, has set a target from 2010–11 of completing all its investigations within one year. The Commission has instituted enhanced case planning and supervision to ensure that these targets are met.

50. There are 392 registered parties in the UK: 44 on the Northern Ireland register and 348 on the GB register (as at 27 January 2010). This is compared to 371 registered parties in 2008 and 382 parties in 2009.¹²

51. The forthcoming UK Parliamentary general election will bring greater public scrutiny of party fundraising and spending. We are committed to helping those we regulate to understand and follow the rules. We have updated our guidance on donations and campaign spending for candidates and agents, political parties and "third party" campaigning organisations.

52. We offer tailored advice on specific issues and are providing training to parties, and their candidates, including on the new rules introduced by the Political Parties and Elections Act 2009 which cover candidate spending between 1 January 2010 and the dissolution of Parliament. We will monitor campaigning activity in the run-up to the poll and publish weekly donation reports from parties. After the election we will publish the spending returns of parties and campaigning organisations, and report on emerging trends.

CHANGES ARISING FROM THE POLITICAL PARTIES AND ELECTIONS ACT

Changes to enforcement and sanctions regime

53. The regulatory regime governing political parties must be flexible and proportionate, reflecting the fact that many of those with statutory responsibility are volunteers. Wherever possible we aim to use advice and guidance, rather than enforcement, to encourage compliance with the rules. At the same time, the Commission must have the power to be an effective regulator and to enforce the rules when necessary, as recommended in the First Report of the Constitutional Affairs Select Committee in 2006–07.¹³

¹⁰ Electoral Commission written submission to the Lords Constitution Committee January 2010, available at <http://www.parliament.uk/documents/upload/constrefTheElectoralCommission.pdf>

¹¹ Note: all these figures relate only to Great Britain. In Northern Ireland information on donations and loans to political parties is currently held by the Commission on a confidential basis. The Northern Ireland Office (NIO) will be consulting on the future of the confidentiality arrangements in 2009–10.

¹² Figures for 2008–09 are the total number of registered parties at 31 December (2008–09) minus the total deregistered during this period.

¹³ House of Commons Constitutional Affairs Committee, First Report 13 December 2006, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/163/16302.htm>

54. The Political Parties and Elections Act 2009 provides for new investigatory powers and sanctions which will significantly improve our ability to regulate in an effective and proportionate way. When these provisions are commenced we will have access to flexible civil sanctions as an alternative to referral for criminal prosecution in many cases, enabling us to apply sanctions that are appropriate to the nature of each contravention. We will also be able to use new and constructive approaches to secure compliance with the law where appropriate, rather than imposing a traditional penalty. For instance, we could issue a legal notice requiring a non-compliant body to take specified steps, such as amending systems or training party officers in how to fulfil their legal obligations. This will enable us to take a proactive approach to regulation, aimed at preventing future breaches of the law as well as punishing past breaches. We will use a combination of advice, guidance and sanctions to improve transparency, to help people understand how to follow the rules, and—when things do go wrong—to move those who break the law into future compliance.

55. The Government said in November 2009¹⁴ that subject to the will of Parliament it intends to commence the Commission's new investigatory sanctions and powers on 1 July 2010. The detail of the new sanctions is set out in a statutory instrument which the Government tabled in late January. We welcome the contents of the statutory instrument, which are informed by and consistent with the responses to our recent consultation on our future enforcement policy (see below). We understand that the secondary legislation commands broad cross-party support. However, we are concerned and disappointed that dates for its debate in Parliament have not yet been set. A delay in making this secondary legislation will create uncertainty both for the Commission and for those we regulate. We would welcome the Committee's support for prompt Parliamentary scrutiny of the statutory instrument, which would allow the new powers and sanctions to be commenced this summer.

Enforcement policy consultation

56. In line with the principles of better regulation, the PPE Act requires us to consult on and publish guidance on how we will operate the new sanctions before we can begin to use them. We therefore launched a full public consultation in July 2009, soon after the Act received Royal Assent. The consultation ran for 15 weeks and included meetings with elected representatives, party compliance staff, regional officers and front-line volunteer treasurers as well as other stakeholders. We also commissioned independent research involving focus groups and interviews with members of the public and volunteer treasurers. We are grateful to the parties for their assistance in engaging volunteers in the consultation process.

57. Both the consultation responses and the findings of the research indicated broad support for the new sanctions and for our proposed future approach to enforcement. We will publish a report on the consultation and a near-final draft of our future enforcement policy to assist Parliament's consideration of the statutory instrument giving effect to the sanctions, and will publish the final enforcement policy before our new powers and sanctions come into force. We will also publish the findings of the research.

Other changes to the regulatory regime

58. The PPE Act introduces a number of other changes to the regime established by the 2000 Act. These include the new rules on candidate spending mentioned above, higher permissibility and reporting thresholds for donations and loans, and changes to the rules relating to members' associations, unincorporated associations and holders of elective office. Most of these changes came into force in January 2010, and we have produced guidance and other materials to help those we regulate to understand and comply with the changes.

STATEMENTS OF ACCOUNTS

59. The 2000 Act requires political parties and their larger accounting units to provide us with their accounts for publication. However, as the First Report of the Constitutional Affairs Select Committee in 2006–07¹⁵ recognised, a lack of common accounting practices makes it difficult to compile a comparative account of the income profiles of political parties.

60. In 2008 we consulted on proposals to introduce standard reporting requirements for statements of accounts. The two largest parties raised significant concerns about the potential administrative burden of some aspects of the proposals. We have worked with the parties to address these concerns and identify those aspects of party accounting where standardisation is most important (primarily income and expenditure categories).

61. We are now about to enter into direct discussions with the major Westminster parties in order to work together on defining an appropriate set of income categories and definitions. Their input will be of great value in producing meaningful and useful information with which to engage the remaining parties in a second discussion stage. The target remains to provide guidance in relation to standardised income categories for 2011, and expenditure in 2012.

¹⁴ The Secretary of State for Justice and Lord Chancellor (Mr Jack Straw), Written Ministerial Statement on the Political Parties and Elections Act 2009 (Commencement) available at *Hansard*: http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091124/wmstext/91124m00_11.htm#09112472000011

¹⁵ House of Commons Constitutional Affairs Committee, First Report 13 December 2006, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/163/16302.htm>

62. To conclude, we hope this memorandum has helped to set out the role and responsibilities of the Commission and our priorities for the coming year and welcome the opportunity to discuss in more detail at the oral evidence session on 23 February 2010.

February 2010
