PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ELECTIONS BILL

Fourth Sitting

Thursday 16 September 2021

(Afternoon)

CONTENTS

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Monday 20 September 2021

The Committee consisted of the following Members:

Chairs: †Christina Rees, Sir Edward Leigh

† Anderson, Fleur *(Putney)* (Lab)
Bell, Aaron *(Newcastle-under-Lyme)* (Con)
† Bristow, Paul *(Peterborough)* (Con)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
Furniss, Gill *(Sheffield, Brightside and Hillsborough)* (Lab)
Gibson, Peter *(Darlington)* (Con)
† Grady, Patrick *(Glasgow North)* (SNP)
† Hollern, Kate *(Blackburn)* (Lab)
† Hunt, Jane *(Loughborough)* (Con)
† Mayhew, Jerome *(Broadland)* (Con)
† O'Hara, Brendan *(Argyll and Bute)* (SNP)
† Randall, Tom *(Gedling)* (Con)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Shelbrooke, Alec *(Elmet and Rothwell)* (Con)
† Smith, Cat *(Lancaster and Fleetwood)* (Lab)
† Smith, Chloe *(Minister for the Constitution and Devolution)*
Smith, Nick *(Blaenau Gwent)* (Lab)

Adam Mellows-Facer, Chris Stanton, *Committee Clerks*

† attended the Committee

Witnesses

Gavin Millar QC, Matrix Chambers

Fazilet Hadi, Head of Policy, Disability Rights UK

Dr Alan Renwick, Deputy Director, Constitution Unit, University College London

Public Bill Committee

Thursday 16 September 2021

(Afternoon)

[Christina Rees *in the Chair*]

Elections Bill

Examination of Witness

Gavin Millar QC gave evidence.

2 pm

Q159 The Chair: We are now sitting in public and the proceedings are being broadcast. I remind Members about the public health guidance and that electronic devices should be switched to silent.

We will now hear oral evidence from Gavin Millar QC of Matrix Chambers. Thank you very much for joining us. Before we begin, I remind Members that questions should be limited to matters within the scope of the Bill and that we must stick to the timings in the programme order that the Committee has agreed. For this session, we have until 2.45 pm. Would the witness please introduce himself for the record?

Gavin Millar: I am Gavin Millar. I am a QC at Matrix Chambers. I specialise in election law and have done for 35 years.

The Chair: Thank you. Minister, would you like to open the questioning?

The Minister for the Constitution and Devolution (Chloe Smith): I think it is Cat Smith's turn to go first.

The Chair: It looks like an empty chair.

Chloe Smith: Indeed.

The Chair: Shall I bring in other members of the Committee? Patrick Grady, would you like to ask a question? *[Interruption.]* Oh, hang on.

Q160 Cat Smith (Lancaster and Fleetwood) (Lab): I apologise to our witness. I am afraid I had some lift troubles, trying to get down to the first floor. I thank you for your time before the Committee. Will you outline anything that you feel could have been included in the legislation, or that could be amended, to strengthen the integrity of the ballot?

Gavin Millar: I am sorry—I am having trouble hearing.

Cat Smith: I will try repeating my question. Is there anything that you feel is missing from the legislation that would strengthen elections, or anything that is amendable that needs to be tightened up?

Gavin Millar: As the Committee probably knows, there is a widely held view that what we have at the moment is a complicated mass of disparate election law provisions in statutes that have been enacted over many years, often containing historical provisions that have just stayed in them down the decades. The mass of that legislative material is difficult and confusing for election administrators—lawyers, judges, candidates and agents.

Accordingly, there is a widely held view that the way to tackle election law now would be to sweep that current body of law aside and modernise it, applying appropriate consolidating provisions in the existing law, into a single, simpler set of statutory rules. The Law Commission said this a few years ago, I have said it and others have said it often. It is disappointing that, in approaching the legislation, the Government have chosen to introduce another rather ad hoc set of disparate provisions that are unrelated, rather than the whole amazing, simplifying rewrite that is required. I suppose that is the first point, in terms of where we are. There is a case—*[Inaudible]*—to tackle the urgent problems in the electoral system, but with the exception of part 6 of the Bill, which deals with information to be included with electronic material, nothing that it tackles could conceivably be regarded as an urgent problem of the sort that ought to take priority.

The Bill ignores the other most urgent problem in our system, which is the lack of an effective regulatory and enforcement regime to ensure that foreign money and dark money do not enter our political system through donations to political parties. I would say that that is now an election law issue, because in reality there is non-stop campaigning by political parties between the short and long election campaigns, which can be funded by large and inadequately regulated donations. There is the risk not only of money coming into the system that should not be there, but of the level playing field that we have always striven to achieve in our election law during the narrower periods of elections being lost in the intervening periods. It is disappointing that nothing in the legislation addresses those problems.

Q161 Cat Smith: Thank you. I have one follow-up question. The legislation impacts on third-party campaigners, and you have already said that the regulations for elections run across many different pieces of legislation. We do not have that single set of rules for participation. Do you think that the changes to third-party campaigners strike the right balance between engaging third-party campaigners in the democratic process and transparency in terms of the source of political money?

Gavin Millar: There is no doubt that once you have got into the process of regulating non-party expenditure in elections, some very difficult questions arise. Traditionally, those difficult questions have arisen in our system in relation to non-candidate expenditure in constituencies or local government wards—whatever it is—during the election campaign. Local campaigners, non-governmental organisations and so on and so forth can spend some money to campaign, but it is heavily capped. Of course, we are now into the territory where national campaigning is capped and regulated, and the current laws in relation to that are incredibly complicated, very difficult to follow and understand, and very difficult to apply, even for the courts.

I suppose the broad considerations are that we should, in a democracy, encourage and facilitate non-party campaigning of either form, but including national campaigns, to the extent that we can, if it does not unbalance the level playing field across the piece, because that contributes to the democratic process. There are a great many NGOs, charities and third-party campaigners that are not directly party political or campaigning on a range of issues, but may be campaigning on just one issue. It enhances our democracy to enable them to

participate, which is going to cost money—they will have to spend money on that—provided that it does not cross the line of unbalancing a level playing field. It is a difficult balance to strike.

One of the features of the legislation that is very difficult is clause 25. It tackles third-party campaigning where it crosses a particular line, which is what is known in the legislation as a joint campaigning arrangement, where the third party or third parties can be shown, as a matter of fact, to have a plan or an arrangement to campaign together. That is an incredibly difficult concept. There have been a couple of cases where the courts have struggled with this, and I do not find the drafting in the Bill very easy, particularly clause 25.

It will be very difficult for campaigners, who might be caught by a suggestion that that is what they are doing, to know whether they are on the right or the wrong side of the line. If they are deemed to be on the wrong side of the line, and a court or a commission says that there is planned co-ordinated expenditure involving more than one non-party campaigner and a political party, that will dramatically reduce the amount that they will be able to spend. They will have to go through the whole process of declaring all the participants in that arrangement, and their available spend will be reduced accordingly. It may be that there are cases where it is justified in having that end result, but you should not have unclear law that leaves people in doubt as to what they can and cannot do and what is and is not a joint campaigning arrangement.

At the moment, that is very unclear in our law and has not been properly resolved by the courts. I would not suggest rushing into the provisions of clause 25. If that part of the Bill is going to go through Parliament, there should be very careful scrutiny of exactly what it is intended to catch and what it is not intended to catch, and of what the consequences are for third-party campaigners who engage in that sort joint campaigning with a political party. I am just not sure that that is there at the moment. That is the problem. Therefore it will tend to risk encouraging that active participation that I said was so important in a democracy.

Q162 Cat Smith: Under clause 25, the Minister would also have the power to add or remove categories of campaigners from being permitted to campaign in elections. Do you have some concern about that?

Gavin Millar: Yes, I am concerned that this part of a strand in our law that is developing, which gives powers to Government and to the Executive to fill in gaps in legislation and take legally binding decisions outwith the legislation. It is very undesirable. It means that nobody knows in advance what the law is going to achieve and how it will work. It reduces parliamentary scrutiny.

Everything that is going to be there that will affect non-party campaigning should be in the primary legislation. It should be simple, clear and easy to understand, and it should be justified in terms of what it is trying to achieve in preventing the skewing of the level playing field. It should be absolutely clear what the consequences are for third-party campaigners, many of whom I advise at election time and in between elections. They are very confused by this. They find it very difficult to know what they can and cannot do, what crosses a particular line and what does not cross it, and what their maxima are for spending. You do not need to be a lawyer to realise that that is undesirable in a democracy, with an activity of such importance.

The Chair: Minister?

Chloe Smith: I have no further questions but I am very grateful to Mr Millar for giving his time.

The Chair: Thank you. Jerome Mayhew.

Q163 Jerome Mayhew (Broadland) (Con): May I ask a question of clarification on the evidence that we have just heard? First, thank you very much for coming to give evidence, Mr Millar. It is a great pleasure to have someone of your expertise and experience assisting the Committee.

You expressed a concern a moment ago that the Minister, under clause 25, would have the ability to add to the list of categories. There is a rationale for that, which I hope we can agree on: as the sector develops, there will potentially be a need for the legislation to respond to growth in the sector, and it would be beneficial were the legislation able to satisfy that need. In those circumstances, is it not reasonable for the legislation to allow for an affirmative procedure in both Houses to give Parliament's consent to the decision of the Minister? I am really challenging the rather bold assertion that it is the Minister who decides. It is not, is it? It is Parliament that will decide, and not just by the negative procedure; it is by the affirmative procedure in both Houses. Is that correct?

Gavin Millar: I concede that point. There is a form of parliamentary procedure that will enable scrutiny of how the power is being exercised. Members of the Committee and parliamentarians will know better than I do as a lawyer how effective that is likely to be. The main thing is to avoid unconstrained powers. The premise of your question was that there would be a legitimate concern that needed to be addressed through subordinate legislation and the Minister's decision. That is fine, but the question is what sort of things we are talking about, and in what circumstances such a power will be exercised. I get very anxious about provisions—perhaps I am too old, or too old-fashioned, because they are a rather more contemporary thing—that are in very broad terms. When the primary legislation is enacted, it is difficult to anticipate for what purposes they will be used and what would be regarded as a justifiable change in the law, but I take the point that if it is the affirmative procedure there is parliamentary scrutiny.

Jerome Mayhew: I am very grateful. That is the only thing I wanted to clarify.

Q164 Patrick Grady (Glasgow North) (SNP): On the provision for the Minister to set a statement for the Electoral Commission, the Government argue, I think, that it is not uncommon for the Government to set a policy framework approved by Parliament for independent regulators. However, I wonder whether you agree that the Electoral Commission is strictly comparable to Ofgem, Ofsted or some other independent regulators, given that it regulates the candidates and the people who are elected to make these laws in the first place. Do you have any reflections on that?

Could you also say a little more on the value or otherwise of a more comprehensive effort to consolidate electoral law? We have a lot of Representation of the People Acts. This is not a representation of the people Bill; it has been called the Elections Bill. I do not know whether there is any legislative or theological difference between the titling of these different Bills and Acts, or the things that they have done over the years. Where do you see the merit in perhaps a stronger effort to consolidate the different pieces of legislation that govern the electoral framework?

Gavin Millar: In relation to the Electoral Commission, we need to start at the beginning, as it were. The Political Parties, Elections and Referendums Act 2000, known in the trade as PPERA, created the Electoral Commission for the first time—it was the first time we had had one in this country—but *[Inaudible]* an Electoral Commission that does not actually have a role in administering, overseeing and running elections in real time, and that does not have powers to investigate conduct and outcomes, and still less overturn those outcomes. It is important to understand that other countries have equivalent entities with much stronger roles in each of those areas. We are starting from a pretty low base in terms of what the Electoral Commission has been created to do.

As far as I can see, there is no case here for any of the three main changes proposed in the legislation in relation to the Electoral Commission. First, there is the strategy and policy statement, which, as I understand it, is going to tell the regulator what it should and should not be doing. Secondly, the Electoral Commission's willingness to do what it is told, and its success or otherwise in doing what it is told, will be overseen—one might cynically say "marked"—by the Speaker's Committee. Thirdly, clause 15 takes away from the Electoral Commission the power to prosecute. I can see no case or justification for any of those measures.

An Electoral Commission should be independent of Government; it should be free from Government influence as a matter of principle, because of its role in a democracy. It should be rather akin to the police or the Crown Prosecution Service in that respect. Its decision making, and indeed its powers to investigate and act, should be framed and guided solely by the public interest and the merits of the evidence before it. Does this need to be investigated? To what extent does it need to be investigated? What has gone wrong? What needs to be done? It should be answerable to Parliament as a whole rather than to a single Committee or a small group of politicians. That seems to me a key and obvious point of principle.

My own view is that the Electoral Commission should have more powers and resources—hopefully under the codified and modernised statutory regime that I have suggested—rather than less, which is what seems to be the aim at the moment, particularly in relation to the removal of the power to prosecute. Why? Well, because it is the only player in the game. It is the only possible resource for dealing with breaches of election law, in its limited area, other than through criminal prosecution and civil litigation.

As far as the former is concerned, the police and prosecutors frankly do not have the resources or expertise to tackle offending under the RPA or PPERA, and I am absolutely certain that much goes uninvestigated and unprosecuted at the moment. That is extremely undesirable in our system. Civil litigation—by candidates, judicial review, election petitions and so on—is costly, cumbersome, time-consuming and very difficult to undertake. All those factors indicate that we need an empowered and funded Electoral Commission to tackle problems as they come up. They are experts and specialists; that is why they are there and should be there.

On the second point you asked about—I will try not to become boring, because I could wax lyrical about this for hours—as you probably know, essentially we have two strands to our election law. We have the Representation of the People Act 1983, which is the primary statute regulating three things: the exercise of the franchise, the conduct of elections and challenges to elections after the event. There are various problems with it, but the main one is that it is the most recent of a long succession of Acts with the same name in the 20th century, and indeed there were earlier equivalents going back into the 19th century. They have often been a political compromise in Parliament, simply enacted by way of consolidation with only minor amendments. What we have ended up with is really an awful lot of 19th-century provisions that have hardly changed in their wording.

On top of that, in that strand of the law—the actual regulation of the administration of elections—there have been many, many more pieces of primary and secondary legislation relating to those three areas of our law since 1983. They either come in statutory instruments or they go into amendments to the RPA, so you get these long lists of amended sections with ZA numbers after the primary number, and it becomes wholly unwieldy and unmanageable.

The Law Commission's report, where it recommended this, alluded to a problem that surfaced in the 2010 general election. I am sure you all remember that there were queues at polling stations and people were unable to get in and vote when they closed at 10 pm. That is an unresolved issue in our election law. The Law Commission make the point that when Parliament had to correct that to make sure people queuing at that point could get in, 10 different pieces of legislation had to be amended to achieve that one single result. That is how bad it is.

In addition, the second strand is the PPERA strand, which came into play in 2000 with completely new and different areas of election law. In particular, as we know, it included the regulation of national campaign expenditure by political parties and third-party campaigners, as well as permissible donations. Again, accretions and additions to that legislation over the years have made it incredibly complicated.

So what is election law? Well, it is ill-defined, but essentially it is everything surrounding those two huge pieces of legislation and the case law they have thrown up. One of the advantages of consolidation would be to be clear about what needs to be regulated in elections. As I have said, it seems to me that the whole issue of campaigning between long and short campaign periods is now election law. That is just the reality of it in the modern world, just as we have accepted that what goes on on the internet is election law, which we never did before. Modernising and consolidating would give us a much broader definition of election law.

As you point out, in this Bill we have bits relating to each. We have bits relating to PPERA and bits relating to the RPA regime, and it is now simply called the Elections Bill, which is a sort of combination of two

strands of our law, and it is a bit of a rag-bag really. I am not saying that some of the things are not desirable—clearly they are—but they are not urgent and they should not be given priority over this much more fundamental issue that needs to be resolved, which is a consolidated and complete electoral code.

Patrick Grady: Thank you. That is really helpful.

Q165 Fleur Anderson (Putney) (Lab): Thank you, Mr Millar. It is a pleasure to see you this afternoon, and thank you for your evidence. Can I just ask about the relationship between this Bill and the European convention on human rights, particular the right to vote, obviously? Concerns have been expressed, for example by the Gypsy, Roma and Traveller community, among others, that the Bill will reduce the ability to vote and will therefore contravene article 3 of the first protocol, which states that conditions imposed by the state must not curtail the rights in question in any way. Do you think that the voter ID scheme set out in the Bill is compatible with the European convention on human rights? Does it risk not being compatible? You have said that the law is unclear in some ways—is it unclear? If someone went to a polling station on election day without voter ID and was unable to get it, because the council was swamped by other such requests, and so they could not vote, could they then return to the European convention on human rights and say that their right to vote had been curtailed? Is that possible under the Bill? If there should be changes, what changes would you make?

Gavin Millar: This strand of convention law—by which I mean, whether a piece of domestic legislation is incompatible with the provisions of the convention—does not work on an individual case-by-case basis. It works on the basis that if you have to look at compatibility in a court case, it is at the impact of the domestic rule of law—here, the voter ID provision—across the piece and the whole of the electoral system in the contracting party.

Is the impact of that legislative provision one that can be justified as being compatible with the convention? The convention—Strasbourg—has its own internal set of rules for saying what is and is not compatible. Very few rights are absolute, which is why you can have laws that prevent certain people—criminals and so on—from voting for a period, but to be compatible with the convention they have to be justifiable, in the sense of achieving a legitimate aim, one that is legitimate in that country for that political system and that voting system. It has to be a proportionate means of achieving that aim.

The question here—I accept that it would be assessed by the impact on individual groups of people, such as the Roma, whom you mentioned, but it would be much broader than that—is, if you try to justify what the Government are proposing to do across the electoral system as a whole, can it be justified as meeting a legitimate aim? Is there a problem that is so bad that it needs addressing in this system in this way? Is this a crude or a proportionate way of addressing it? The problem I have with clause 1 is that I cannot see the problem and, even if there is a problem, I cannot see that this is a targeted and proportionate way of addressing it, because it would just sweep out of the franchise somebody who did not happen to have a card or voter ID but was properly on the electoral register and entitled to vote when they turned up.

Why do I say that there is not a problem? You are all politicians, you have been elected and you know how this works, but you may not have looked at this from the point of view of an election lawyer, a criminal lawyer or someone looking at election fraud, which for my sins I have spent a lot of time doing for the past 20 years. The sort of fraud we are talking about here is called "personation" under the RPA. It is an electoral offence—it is impersonation, but misses off the "im" in the statutory historical categorisation. Personation is A turning up at the polling station pretending to be B, who is validly on the register.

It is not a problem of any great consequence in our system, and I speak from experience. Personation cases are almost non-existent. There are reasons why it is not a problem. First of all, it is extremely risky for anyone to try that. You are liable to be caught because somebody spots you and knows you are not that person. It is also ineffective because there is the alternative possibility that that person turns up and votes later, or indeed has already voted and is marked off the register when you try to impersonate them. If you are going to do it, you have to be absolutely certain that the person is dead or is not going to come and vote, and that you will not be found out that way. It is also hugely inefficient compared with other forms of fraud that have been perpetrated, particularly since postal voting on demand. You have to get a range of people, or yourself, to go around different polling stations at different times in the day, and all you get out of each criminal offence you commit is one vote. It is just not efficient or effective as a fraud, so it does not happen.

As I understand it, this came from the 2014 Tower Hamlets mayoral election. There were a whole range of election offences pleaded in that case and looked at by the court. One of them involved some personation at polling stations, but it was not the core problem. If that were the reason we had got to this point, this would be an example of a hard case making very bad law, and I would counsel against that. The fraud that exists in our system, or has existed since 2000, that everybody has read about and knows about, is a very different type of election fraud. One possibility is what is called roll-stuffing in Australia, where you put additional voters on the register who are not entitled to vote in a concerted fraud before the election, and then vote in their name. You normally apply for a postal vote for those non-existent voters at a particular address, and you pick up the postal vote papers and you vote.

There are various other postal vote frauds that were recounted in the cases that have been cited. That form of fraud has been made much more difficult by Parliament and by the administrators because of the cases over the past 20 years, and there are less cases even of that form of fraud, but it is not a form of fraud that would be addressed by this piece of legislation, so what is the problem? What is it achieving? Why is this a proportionate way of addressing it? I have no answers to any of those questions, and of course in a situation where, by common estimates, we have something like 17% of eligible voters not on the register, one wonders why our efforts are not being concentrated on voter registration measures—getting more people on to the register and facilitating them in voting—rather than making it more difficult for them to do it by imposing this requirement, which we have never had.

I appreciate that advocates of the Bill will say, "It is not a lot to do, to get a piece of photo ID or have a piece of photo ID and bring it along to the polling station," but we need only look at the Windrush scandal to see how many poor people and ordinary people in our society have difficulties with that sort of thing, not to mention disabled people and other discriminated-against groups who do not want to engage with obtaining this sort of identification, for fear that it will open them up to other scrutiny and investigation of an unjustifiable kind. It is wrong on every count, really.

To answer the question, yes, there will inevitably be challenges to this as incompatible with the European convention on human rights if it is introduced, and it seems to me that there is a strong case for doing that. The impact would be considerable, by all accounts—although somewhat unquantifiable—but I just have not seen the evidence that you would be required to produce at a judicial review or at a case in Strasbourg to justify this as an appropriate state interference with the right to vote.

Fleur Anderson: That is very concerning. Thank you.

The Chair: If there are no further questions from Members, I thank our witness for his evidence.

Examination of Witness

Fazilet Hadi gave evidence.

2.40 pm

Q166 The Chair: Thank you very much for joining us this afternoon, Ms Hadi. Would you please introduce yourself for the record?

Fazilet Hadi: I am Fazilet Hadi, head of policy at Disability Rights UK. Just so you know, I am blind, although it should not affect anything today.

The Chair: We have until 3.30 pm for this panel. Minister, would you like to start with the first question?

Q167 Chloe Smith: Thank you so much for joining us today, Ms Hadi; it is great to have you with us. An important element of the Bill deals with accessibility, which is obviously an area of expertise for your organisation. The Bill introduces a new statutory duty on returning officers to support all voters with disabilities—the widest possible range—and that duty is to be supported by guidance from the Electoral Commission. What would you like to see reflected in that guidance, and what are your biggest concerns about the current process of voting for people with disabilities.

Fazilet Hadi: I will briefly give a bit of context before answering that question. Some 14 million people in the UK are disabled, or one in five of the population, so we are a very big group and very diverse. About 45% of older people and 19% of working-age adults have a disability. As you and colleagues will know, that can range from sensory impairment to learning disability, mental health and mobility issues, so we face a wide set of challenges.

There are some real challenges in voting, so it would be good to see rigorous standards applied and enforced by Government, because voting should not be a postcode lottery; it should be equal wherever we are in the country. A couple of issues in the Bill concern me, particularly photo identification and the provisions on equipment, which seem to be turning the clock back a little, particularly for blind and partially sighted voters.

Coming back to your question on standards, the standards start even before the electoral officers—for example, in the way that local authorities produce information on elections and whether reasonable adjustments need to be considered for electors who have disabilities. Even for those first letters, people should already be thinking, "Can this person read the letter? Do they need an easy-read, audio or electronic version?" I think it starts very early, and it then moves through all the stages of postal voting, through to the actual physical buildings in which elections are held, the devices we are given to enable us to vote independently, the height of the desks where we cast our vote and wheelchair accessibility. It is almost like walking through the customer journey from beginning to end, ensuring that reasonable adjustments are made at every point, because I am sure the Government want to ensure that those 14 million people have a voice in the same way as everyone else.

Q168 Chloe Smith: Absolutely right, Ms Hadi. I am really grateful to you for laying that out, because I could not agree more about the need for that thinking at every stage of registration and onwards through to voting. Indeed, for what it is worth, I am sure that also applies to many other services from local authorities, so I hope there is good working across councils that can be shared.

As you rightly say, we all want to see disabled voters, or voters with any condition or extra accessibility need, able to take part fully. What do you think ought to be focused on in communicating the changes encapsulated in this Bill? How could that be done with your members, for example, or others?

Fazilet Hadi: The provisions on photo ID will need a lot of communication, but they should not be communicated in isolation. Going back to what I said before, if we take something out of context, it presupposes that the electorate get everything else and know all the other things that are in place, and disabled people may not know about the other adjustments that are available. On photo ID, that does pose particular issues, and when there were trials, my recollection from colleagues at Mencap is that it took quite a lot of education, face to face, as well as written information, to communicate to people with learning disabilities what the change meant.

There will be an education imperative for the whole public, of course, but for particular groups of disabled people, some of us maybe do not access information so easily—British Sign Language users, people who access through audio or braille, people who need easy read, and people whose literacy skills are low. There is quite a communication challenge in actually getting across that photo ID is required, and that has to start well in advance of it being required.

Q169 Chloe Smith: I agree, and the plans published alongside the Bill put money and time towards doing that, which we would all agree is the right thing to do.

May I draw on your experience of voting as a blind person—as a person with a visual impairment? I would guess that you have used the tactile voting device. Could you describe to the Committee what it has been like using that device? What are its drawbacks and advantages?

Fazilet Hadi: I have not actually used it. I have voted through the post, and I have voted with the assistance of the electoral staff—

Chloe Smith: I apologise for making an assumption.

Fazilet Hadi: Not at all. I should have tried the template. My understanding is that it does not allow completely independent voting. If people can imagine, it is like laying a template over a piece of paper. You would probably have to memorise what was on the paper, which could be tricky. I suppose you would not have complete confidence, because you cannot check back. I think it was a device of its time. As I understand it, a judicial review said that it did not allow a completely secret ballot.

What the device should be is not a straightforward issue, but I worry about the provision in the Bill taking away the wording of the Representation of the People Act 1983, which says that the device should be prescribed by the Government. Whatever the device is, and whatever its limitations—hopefully we can improve on the current device—it should be available without question and without any decision making being needed from local electoral staff. It should just be made available because the Government says that it should be. Under the Bill as it is framed at the moment, there is a danger with that kind of wording being removed and a much looser wording about reasonableness being inserted instead.

Q170 Chloe Smith: When in your experience a thing goes out of date or could be superseded by innovation and new ideas, how do you think that could be accommodated in law? Having listened to your words, I think we have got a really good example here of one of the core issues; as you say, the device was of its time some decades ago now, but it is prescribed in law. We have a problem of it being out of date, yet prescribed. How do you think innovation, which you may have used elsewhere in your life—maybe you can share your insight—can be provided for in law?

Fazilet Hadi: In this particular instance, I am not sure whether the Act envisaged a tactile template, but I think the wording means that the Government can prescribe "it" and update what the "it" is in guidance. The thing is to get to the principle that it is set down and must be provided. That would be the way to do it, not saying exactly what the "it" is. Indeed, the "it" will change as digital technology changes, with things like 3D printing. I am not a great technologist, but I think that the Act can get across the mandatory nature of the equipment that must be used. For people across the country who are registered blind, any sense that you could go to a polling station in one local authority area and get one device, and go to another elsewhere and get another device, would be a retrograde step.

Q171 Chloe Smith: Thank you. This is my last question, just to complete the set, if you like. I understand your point that there could be difference across the country, but clause 8 seeks to make support mandatory. Do you think clause 8 and making it mandatory is sufficient?

Fazilet Hadi: No. I am not an expert on the Elections Bill, but it seems very much to put it down to the individual electoral officer to decide what is reasonable. I accept that we could be talking in a much wider sense about what is reasonable for any disabled person. As I said earlier, some people might need a slightly higher or lower table in the polling station, depending on whether they are standing up or in a wheelchair. Some people might need a fatter pen because they have dexterity issues, and some people might need some sort of tactile device. In that sense, it is good that the Act tries to cover a broader range of equipment. Nevertheless, I still think that the Government need to specify those types of equipment in guidance and standards. As I said, voters would expect that consistency across the piece. At the moment, the language needs hardening. If the Government's intention is to make this mandatory, I do not think that that comes across.

Chloe Smith: It is very helpful that you close with the point that it must be specified through guidance, because that is indeed what the intention is. It is also what one of our witnesses yesterday agreed was where much of the work should be done.

Q172 Cat Smith: Fazilet, welcome to the Committee and thank you very much for the contributions you have made so far. I have a couple of questions.

You opened your remarks by describing how you felt that the legislation is turning back the clock, particularly for voters who are blind or partially sighted. If I understood correctly, that is because the 1983 Act wording would be rescinded and there would be much more flexibility for local authorities to have potentially quite different ways of supporting blind and partially sighted voters. That would create something of a postcode lottery. What would the challenges then be for voters with a disability or impairment who have perhaps moved house to a different local authority area and might then get a different level of service or a different system to facilitate their needs? Would that be an additional barrier to voting for disabled people?

Fazilet Hadi: I like the words in the Representation of the People Act 1983, "prescribed equipment". Obviously, guidance can say at any point what that prescribed equipment is for. There might be prescribed equipment for people with other impairments. It is not just tactile devices; it could be adjustable tables or pens that people can grip.

The Government signed up to the UN convention on the rights of persons with disabilities, which says that there must be full participation in political and public life for disabled people. It specifies that there must be materials, facilities and procedures that are fully accessible and appropriate. It specifies that there must be a secret ballot. It specifies that there must be assistance from whoever the disabled person chooses. The Human Rights Act 1998 talks about the right to vote and how we all need to have the ability to express our opinion through voting. The Equality Act 2010 puts a public sector equality duty on the Government and local government—any government—to think about what they are doing to promote the interests of, and make reasonable adjustments for, disabled people and others. We have all these laws and a stated intention that this Bill should make things better for participation by disabled people, but it cannot be better for the equipment to be different in different polling stations. For me as an elector, it is about not knowing exactly what I am entitled to, so that I can try to enforce it if I do not get it. Leaving arrangements to the 152 local authorities in England, and I do not know how many in Scotland, Wales and Northern Ireland, is totally unacceptable.

Q173 Cat Smith: I have heard representations from various different disability charities and advocacy groups representing disabled people about the accessibility challenges of local authority buildings. Part of this legislation relates to voter ID. You have mentioned that you have some concerns about that. Putting those concerns slightly to one side, do you have any concerns about the barriers that would be faced by disabled voters in trying to access the free voter ID that would be administered by local authorities—not the polling stations, but the free ID cards?

Fazilet Hadi: Huge concerns. If we think about who does not have a driving licence or a passport, who does not have a blue badge or a bus pass or a railcard, we are asking those people who have obviously found it unsurmountable for various reasons—those reasons could be cognitive, sensory, digital exclusion; all sorts of reasons—to apply for a card. We are asking the most disadvantaged people in our community, who have not got one of those other cards, to go and apply for a card. It just does not make any sense. These are the people who are least likely to apply for a card. If they could apply for cards and that was easy for them, they would have one of these other cards. I just feel the proposal is completely impracticable.

If we really want the people who are really struggling to vote to come and vote—the people who do not have any of these cards—you can imagine how many challenges that section of the community has, and applying for a voting card would not come anywhere near the top of their to-do list.

Cat Smith: Thank you.

Q174 Patrick Grady: Thank you, Fazilet, that is really very helpful. I have quite a technical question about the wording in the legislation and what the Government propose. What they propose to do is to take out the wording that currently exists about prescribing devices for eligible voters who are blind or partially sighted, and to replace it with a more general paragraph about supplying, as you already mentioned,

"such equipment as it is reasonable…for the purposes of enabling or making it easier for, relevant persons".

Relevant persons would include blind or partially sighted people, but also people with other disabilities or impairments or difficulties.

Is there any reason why you could not just have both? You could keep the specific provisions, perhaps updating them so we are not limiting this to one specific piece of advice, and making a bit of a tweak so that we talk more generally about equipment that might change over time with technology, but keep those provisions and add in the extra requirement for a wider group of voters who might have difficulty accessing the polling stations. Do you see any incompatibility with that approach?

Fazilet Hadi: No, there is no incompatibility. My main point would be that if there is prescribed equipment—that is not just for blind people; if there is prescribed equipment for wheelchair users or people with dexterity problems—let that be prescribed, so that we get consistency across the board, but let us have an additional provision about how all reasonable adjustments should be made, which is actually just repeating the duty in the Equality Act, because electoral officers are discharging a public function anyway. I do not mind that being repeated, but I do not think we should be confusing prescribing equipment for whichever impairment group needs it with the duty to make reasonable adjustments. They can live together quite harmoniously—I agree.

Patrick Grady: Thank you. That is very helpful.

The Chair: If there are no further questions from Members, I thank the witness for giving evidence today. It is much appreciated.

Examination of Witness

Dr Alan Renwick gave evidence.

3.17 pm

The Chair: We will now hear oral evidence.

Cat Smith: On a point of order, Ms Rees. A motion to approve an instruction has been laid by the Government and will be heard on the Floor of the House on Monday, regarding expanding the Elections Bill to include electoral voting systems, specifically in terms of mayoralties within England and police and crime commissioners. Would it be in order to ask questions of Dr Renwick about electoral systems, given that they are not currently in the scope of the Bill?

The Chair: My understanding is that matter is not currently in the scope of the Bill. I am aware that the motion is on the Order Paper for Monday.

Cat Smith: Further to that point of order, is it possible for the Committee to take evidence on electoral systems at any future scheduled evidence sessions that would take place after Monday, when such systems presumably would become part of the Bill?

The Chair: If it is possible to have a supplementary programme motion, then that could be added, but that is not a matter for me. That is usually done through the usual channels.

Cat Smith: Thank you, Ms Rees.

Q175 The Chair: I welcome Dr Alan Renwick, deputy director of the constitution unit at University College London. Thank you very much for joining us. We have until 4.15 pm for this session. Please could you introduce yourself?

Dr Renwick: I am Alan Renwick from the constitution unit at University College London and I lead our work on elections and referendums, and some of our recent work on the structure and functioning of the Union.

Q176 Cat Smith: Dr Renwick, thank you so much for your time this afternoon. May I begin by asking you about the Electoral Commission? The legislation proposes some changes to the way the Electoral Commission is managed, in terms of the Government setting out a strategic document to direct the work of the commission. It also proposes slight changes to the Speaker's Committee on the Electoral Commission by adding a new Minister to a committee that already has a Government bias. Do you have any examples of how electoral commissions work in other democracies and the level of Government interference over regulators?

Dr Renwick: The principle for a good electoral commission is that it should be independent from the Government. The details of how that works in countries around the world depend a great deal on political culture; it is not just a matter of institutions. I would not attempt to draw a tight parallel between how things work in other countries and how things should work in this country. For example, some countries might have a procedure for appointing members of an electoral commission that might look quite political on the surface, but in practice, given the conventions in that country, it may be properly neutral and protect the commission's independence. The key thing is how to ensure the independence of the Electoral Commission, alongside the appropriate accountability, in the context of the UK. I am afraid that the Bill's proposals seem wholly contrary to the principle of independence of the commission.

Independence and accountability matter. It is absolutely right that there should be parliamentary accountability, and there is already a great deal of it. The Electoral Commission is, of course, accountable to the Speaker's Committee; the Public Administration and Constitutional Affairs Committee scrutinises the commission's work a great deal; and it is also accountable to the Scottish Parliament and the Senedd. I do not think that there is a deficit of accountability of the commission at present.

As for independence, I think that it requires, quite simply, that Parliament lay out the remit of the Electoral Commission, and that must happen through primary legislation, so that Parliament can properly scrutinise and amend that remit. It is not a matter that is written in Government and subject to much more limited parliamentary scrutiny or opportunity for amendment. Parliament should lay down the remit for the commission, which should then get on with delivering that—subject to appropriate scrutiny, as already exists. The idea of having an additional strategy and policy statement written by Ministers, without the appropriate degree of scrutiny, flies in the face of the principle of independence, and therefore seems to be wholly inappropriate.

Q177 Cat Smith: You said that the Electoral Commission is also accountable to the Welsh Senedd and the Scottish Parliament; it is also funded by both those Parliaments. Could you say what consideration the Committee should give to any change due to a strategy and policy statement driven by a UK Parliament, and what tensions that could potentially create within the Union?

Dr Renwick: It could potentially create very great tensions. The proposal would clearly require a legislative consent motion in order to be compatible with the Sewel convention. The Counsel General—the Minister in the Welsh Government—has already indicated that he does not recommend that a legislative consent motion be passed on this matter, and I presume the Scottish Parliament will do the same.

This part of the Bill envisages that Ministers in the UK Government, subject to affirmative procedure, would be able to specify guidelines for devolved matters and that Scottish and Welsh Ministers would only be consulted—and, indeed, would only potentially be notified—in the case of amendments to the statement. That seems wholly contrary to the principles of devolution that have been established, and I cannot see any justification for it. The Sewel convention indicates that Westminster will normally not legislate in matters that have been devolved. There is nothing abnormal here, there is nothing unusual and nothing has changed since these matters were devolved to Scotland and Wales—those devolution changes did not take place very long ago—so it seems very problematic.

That also heightens an issue that already exists with the governance of the Electoral Commission: the commissioners themselves are all appointed on the recommendation of the House of Commons, and that on the recommendation of the Speaker's Committee. The Speaker's Committee has, in recent appointments of commissioners with responsibility for Scotland and Wales, either consulted the Presiding Officer or the Llywydd, or included a representative of those people in the committee responsible for shortlisting, but that has been entirely at its discretion.

There is a need to review the arrangements for governance of the Electoral Commission in light of the recent devolutions of electoral matters in those areas. The last serious review of this question, conducted by the Committee on Standards in Public Life in 2007, said at that time that the current governance arrangements were appropriate because those matters were not devolved. These matters have been devolved now, and therefore there is a need for a review.

My impression is that this point has not been thought about terribly much. I do not detect that either the Scottish Government or the Welsh Government have done much detailed thinking on this, but some consideration is needed of how to ensure that the Scottish Parliament and the Senedd are properly represented in these processes.

One final point I should make in this area is one that has been made by others: the fact that the Speaker's Committee has a majority from a single party is simply indefensible against the principle of independence of electoral processes. That has never happened before—it did not happen when there were large majorities for Governments in the early 2000s; at that time there was no majority for that party in the Speaker's Committee—but it has been allowed to happen now, which suggests that conventional constraints on the improper exercise of power are not working, to be honest. Legislative action is needed to ensure that there is never a single party majority on the Speaker's Committee.

Q178 Chloe Smith: Thank you very much for joining us, Dr Renwick; it is very good to have your expertise. May I make use of that expertise with a relatively simple starting question? Clause 14 deals with membership of the Speaker's Committee, and every so often we hear a misrepresentation—I think I just heard the hon. Lady from the Opposition doing this—suggesting that there will be an extra Minister of the Crown added to the Speaker's Committee. Could you help us to confirm that concurrent powers, which is what clause 14 contains and which, as you will recall, comes in the history of having made a transfer of functions order before, mean that this will be a question of a substitute Minister—essentially a junior when the senior is too busy?

Dr Renwick: I am not a lawyer, so I wondered when I looked at those words exactly what they meant, but if they mean what you have described them as meaning, they do not trouble me. It was always the intent of the PPERA legislation passed in 2000 that the Minister with responsibility for elections and the Minister with responsibility for local government should be members

of the Speaker's Committee, and if the change is simply intended to ensure that the Minister who has responsibility for elections can participate, but there are only two Ministers participating, then that change does not seem to me problematic.

Q179 Chloe Smith: Thank you. It is really helpful to get that on the record. It is worth noting that, as well as Ministers, there are shadow Ministers on the Speaker's Committee—there is Front-Bench involvement on both sides. Going to the Back-Bench members of the committee, can you confirm that under existing law, which is not changed by this Bill, the Speaker may appoint the five Back-Bench members of the committee—that is his power to do?

Dr Renwick: That is absolutely correct. I do not know what went wrong in this case. I cannot see an argument against the view that something has gone wrong in the current composition of the Speaker's Committee; it is wrong that it has its current composition. If you look at the 2007 Committee on Standards in Public Life report, there is a quotation from evidence provided by the Speaker's Committee saying that the convention has been applied and that the Speaker's appointments will be made such that there is no single party majority. That convention was understood in 2007, and the CSPL at the time recommended that it should be formalised. This has not taken place. Somehow, things went awry at the start of the present Parliament, and I do not know what happened or what went wrong. However, given that it has gone wrong, legislative change is now needed to ensure that it does not go wrong again.

Q180 Chloe Smith: How would you change what is, therefore, extant in legislation: that the Speaker would have the ability to appoint five Back-Bench members?

Dr Renwick: I would suggest simply a stipulation that that power be exercised subject to the constraint that there shall never be a majority of MPs from any one party within the membership of the committee.

Q181 Chloe Smith: Thank you. That has given us some food for thought, and a very helpful historical recap, as well.

Your points about the Sewel convention were interesting. I wanted to have your written evidence in front of us, as well as what you have just said. In your written evidence you say the proposed strategy and policy statement violates the Sewel convention. Your words just now were accurate in saying that the Sewel convention says that this House will not normally legislate for affairs that are devolved without consent. You have clarified in your words here today that it is the existence or otherwise of an LCM that would violate the Sewel convention. For absolute clarity, can you confirm that the strategy and policy statement does not, in its own right, violate the Sewel convention, but instead, the behaviour and procedure around it is where you direct those comments?

Dr Renwick: I intentionally changed my comments because what I wrote in my evidence was somewhat inaccurate. What I should have said was, if there is no legislative consent motion on this aspect of the Bill, then the inclusion of the strategy and policy statement as currently set out would violate the Sewel convention. It seems very likely that there will not be a legislative consent motion; that was the presumption I was making, but it was a presumption that I should not have made without clarification.

Q182 Chloe Smith: It is really helpful to have been able to do that today. From your experience monitoring many of these Bills and exchanges, I am sure you would say that it takes a little time for that position to emerge, both in terms of what the intention of the Executive is in any one of those legislatures, and then what the intention of the legislature is. It takes some time. There is not yet necessarily a moment in this Bill where you could have made a statement saying this violates the Sewel convention.

Dr Renwick: Absolutely. The Welsh Minister in his legislative consent memorandum indicates that he is in conversation with you, which I am very glad to hear, and I hope you will take your normal constructive approach in seeking a solution to this issue.

Q183 Chloe Smith: That is good to have confirmed. My final question is about the strategy and policy statement and its procedure in Parliament. You gave the view that it would be wrong for the Government to produce that statement, and I think I am quoting you, "without the appropriate degree of scrutiny." Can you explain what is not appropriate about the statement being approved by both Houses of Parliament?

Dr Renwick: It would be subject to much less scrutiny than primary legislation and it would not be amendable. As far as possible in this area, the principle should be applied that the rules are made in a reasonably consensual cross-party manner. I realise that is very difficult and it is not guaranteed by the primary legislative process, but at least there is a process for proper scrutiny and discussion of the proposals in a cross-party forum. The procedures around the strategies, policies and statements that are indicated in the Bill do not enable that degree of scrutiny, which I think is simply not appropriate.

Q184 Chloe Smith: But Parliament—in the Chamber twice—does provide for a debate as you have described.

Dr Renwick: There is the kind of detailed scrutiny that we are having today, for example, in which there is an opportunity for detailed discussion of the proposals to take place. Also, of course, part of what we are doing here today is bringing in the views of a variety of people from beyond Parliament as well. It is essential that the processes of accountability for the Electoral Commission should be both cross-party and non-party. Those two features are essential for ensuring that electoral integrity is maintained for the simple reason that, as a member of the Committee alluded to earlier this afternoon, however wonderful MPs are—I have great respect for MPs; I know some of you on the Committee and I genuinely think you are great people—you have a vested interest in these issues. We are talking about a body that regulates some of the activities of MPs. In that context, it is essential to ensure there is a process that brings in voices from outside Parliament, and the primary legislative process allows that to a much greater degree than does a simple affirmative resolution.

Q185 Chloe Smith: Thank you for that very helpful perspective. Essentially you argue that this measure ought to be subject to the full primary procedure. May I ask one last clarifying question, and then I will get the

Executive to shut up and hand over to the Back Benchers, which is, I am sure, a principle you agree with, Alan. Can you confirm that the Bill's measures leave in place, do not affect, and take nothing away from the governance structure and statutory provisions for the Electoral Commission's board and commissioners, which include party figures, cross-party figures and non-party figures, as you desire?

Dr Renwick: Yes. The changes introduced in 2009 with the introduction of party members of the Electoral Commission was a desirable step in ensuring that all voices are properly represented in the governance of the Electoral Commission, and those structures are not changed. As I have indicated, in some respects the governance structures need to be changed, particularly regarding the composition of the Speaker's Committee and the question of how we reflect the devolved arrangements, but yes, I agree that the arrangements you mentioned are not changed.

Chloe Smith: Thank you, Alan. As always, it is good to debate with you and really good to have your expertise.

Q186 Brendan O'Hara (Argyll and Bute) (SNP): We have spoken to various witnesses, including a former electoral commissioner, over the last couple of days about the statutory policy statement. No one seems to have been aware that this proposal was coming. Were you aware of it being trailed or discussed privately with either the devolved Administrations or in academic circles, to see whether the changes would enhance and improve the independence and the working of the Electoral Commission?

Dr Renwick: No, I was not. I would not expect to have been aware necessarily of all the consultations that might have taken place, but I do not recall being aware of the proposals before they were announced by the Minister in June. To be honest, that is problematic. I have expressed concerns about the substance of the proposals, but procedurally there is a difficulty here as well because of the point that I have already alluded to. With the best will in the world, and with full respect to you as MPs, the fact that you have a vested interest in this issue means that it is incumbent upon you to proceed with particular care when you are thinking about electoral matters generally, and particularly the governance of the Electoral Commission.

I think the procedure that ought to be followed in such a case is that there is an independent review before any recommendation such as those that have been introduced here are put forward. That was the case in 2000; the introduction of the Electoral Commission stemmed, if I remember correctly, from the Fifth Report of the Committee on Standards in Public Life. The changes in 2009, introducing, among other things, the partisan commissioners, reflected recommendations made in, if I remember correctly, the Eleventh Report of the Committee on Standards in Public Life. There has been no comparable process in this case. I do not think that that is an appropriate way to introduce significant changes in the governance of the Electoral Commission.

Q187 Brendan O'Hara: Can I ask you then to speculate on why it has not been done as you would have expected and as it has been done in the past? Why do you think it has been done in this way?

Dr Renwick: I do not think it is for me to speculate on that to be honest. I regret that it has happened in this way. I have great respect for the Minister, and I hope that there may be scope for reconsideration of some of these aspects. For example, as you will all be aware, the CSPL published a report just two days after the Bill was published on the regulation of election finance, which of course is part of what the Bill covers. I would very much hope that the Government have been considering the recommendations made in that report, and might introduce amendments to take account of many of them. I thought it was an excellent report. I hope that there is scope to change elements of the Bill in order to reflect the views that have been heard since its publication, because I do think that steps up to that point were too hasty.

Q188 Brendan O'Hara: Finally, increasing public trust in electoral systems and the institutions that support them has been a recurring theme throughout this evidence session. Do you think that the proposal from the Government will increase or decrease public trust in the independence of the Electoral Commission?

Dr Renwick: The main point is that the governance of the Electoral Commission should stand up to proper scrutiny, and should be appropriately independent. Frankly, I am not sure whether it has much impact on public perceptions. I suspect that most people have higher priorities in mind. Certainly, the measures diminish the integrity of the electoral process, or will do if introduced, and that ought to be regretted. Quite what effect that has on public opinion as such, who knows?

The Chair: If there are no further questions from Members, thank you, Dr Renwick, for your evidence. It is much appreciated. The Committee will next meet at 9.25 am on Wednesday 22 September to begin clause-by-clause consideration of the Bill.

Ordered, That further consideration be now adjourned.—*(David Rutley.)*

3.44 pm

Adjourned till Wednesday 22 September at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

EB03 Law Society of Scotland