

Securing the ballot

Report of Sir Eric Pickles' review into electoral fraud

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FOREWORD

“When asked by the (then) Prime Minister to take on the role of Anti-Corruption Champion, I specifically asked for electoral fraud to be made part of that work.

My work in the Department for Communities and Local Government during the previous Parliament highlighted some shocking issues and revelations: our well-respected democracy is at threat from unscrupulous people intent on subverting the will of the electorate to put their own candidates into power, and in turn, manipulate local authority policy and funding to their own self-centred ends. That is something that we must do our utmost to guard against and to have measures in place to discourage and prevent.

International organisations such as the Office of Democratic Institutions and Human Rights within the Organisation for Security and Co-operation in Europe which observe elections across the world have raised concerns about trust-based electoral systems and the vulnerabilities to fraud they have seen in the UK’s systems. We need to recognise and respond to such assessments.

The events and judgment in the Tower Hamlets case loom large in this review with significant evidence being related to that case. Indeed, the judgment of Richard Mawrey QC was one of the reference points for this review.

The abuse there was facilitated by weaknesses in the system that is employed throughout Great Britain. We take our democratic institution for granted. We need to make sure that people trust the system and that perceptions can play as big a part in undermining the system as well as actual proof of fraud.

Electoral fraud and corruption is intertwined with other forms of crime as well. Local authorities have a large procurement role. A group of people who cheat their way to power are unlikely to hold a higher moral standard when handing out public contracts, or when making quasi-judicial decision on planning and licensing. Electoral registration fraud is connected with financial crime and illegal immigration.

Therefore we need to be both comprehensive and robust in our approach to tackling fraud and the opportunity for it. I believe that the series of measures put forward in this report for the Government to consider take that approach. They also recognise the need to support engagement and not create undue barriers to democratic participation by legitimate electors.

I hope the new Prime Minister will take forward this work: for the best interests of the British public and to ensure a democracy of which we should all rightly be proud.”



Sir Eric Pickles MP

Government Anti-Corruption Champion

Acknowledgements

This review has been informed by a range of people with varying angles of interest in the issues involved: Academics and policy-makers with an interest in ensuring a fair and workable system; those who run elections; those who compete in them; and people who have found themselves impacted by real examples of fraud.

I am grateful to all of the people that have taken the time to provide evidence, to meet with me and colleagues to answer questions on the issues and to those who participated in the seminar in December 2015 which enabled a sharing of issues and concerns and discussion of the varying views around them.

SUMMARY OF RECOMMENDATIONS

- R1. Greater powers should be given to Returning Officers and the police to take action to address unwanted behaviour in and around polling stations (e.g. to be able to set up Cordons Sanitaire and to ensure that the police have the powers they need to disperse and deal with people who are 'causing a nuisance' or 'leading people to feel intimidated' outside a polling station). Guidance should indicate where such a power could or should be used.
- R2. A lower test of 'intimidation' than the one currently set in the Representation of the People Act 1983 should be introduced.
- R3. The taking of pictures and use of cameras (including camera phones) in polling stations should be made illegal in order to prevent voters being intimidated into recording how they voted and to preserve the secrecy of the ballot.
- R4. The use of English (and Welsh, where appropriate) in polling stations should be required at all times, including any assistance given to electors by electoral staff.
- R5. Guidance and training should be strengthened to ensure that staff in polling stations enforce the rule that voters go to the booth individually.
- R6. Guidance should be produced on layout of polling stations and actions to minimise scope for people to be able to take a ballot paper out of a polling station.
- R7. Completed postal ballot packs should only be handed in at a polling station by the voter or a family member / designated carer acting on their behalf – a limit of two should be applied for any one person handing in completed ballots and require an explanation as to why they are being handed in and signature provided.
- R8. The Government should consider the options for electors to have to produce personal identification before voting at polling stations. There is no need to be over elaborate; measures should enhance public confidence and be proportional. A driving licence, passport or utility bills would not seem unreasonable to establish identity. The Government may wish to pilot different methods. But the present system is unsatisfactory; perfection must not get in the way of a practical solution.
- R9. Clearer guidance should be provided on the circumstances in which Electoral Registration Officers should seek further evidence as to an applicant's address.
- R10. The Government should consider how residence can be defined in law and what factors should be taken into consideration by Electoral Registration Officers in making that determination.
- R11. The Government should produce statutory (if necessary) guidance for Electoral Registration Officers which ensures a consistent UK wide approach to determining residence.
- R12. Legislation should be amended to strengthen the requirement to provide a previous address, by requiring a reason for non-supply of a previous address by applicants.
- R13. The Government should take action to address the clear vulnerability to the registration system as a result of the lack of systematic checks on nationality.

R14. Registration application forms should be amended to contain warnings that nationality information may be checked against Government records and to re-iterate the existing warnings on the criminal penalty for provision of false information.

R15. The Government should consider the feasibility of an automated approach to checking nationality, to work as part of the existing individual electoral registration infrastructure.

R16. To protect the integrity of the electoral register and assist integration, the Government should work with councils to introduce a separate, voluntary municipal register for those who do not have voting rights, but do have permission to reside in the UK.

R17. The Government should investigate the development of a facility in the IER Digital Service to retain the IP address used to make applications. This should be subject to a rigorous cost/benefit analysis to ensure that such an approach would be of genuine value to law enforcement.

R18. The offences contained in Section 66 of the Representation of the People Act 1983 which protect the secrecy of the ballot in relation to in person voting should be extended to postal ballots.

R19. Political campaigners/activists should be banned from handling completed postal votes and postal vote envelopes. The provisions should not apply to family members and designated carers (subject to a limit of two, as per Recommendation 7).

R20. In order to achieve a balance between preventing unscrupulous behaviour and permitting legitimate campaigners to provide assistance to help people participate, the Code of Conduct should reflect legislation. If a particular behaviour is unacceptable, it should be prohibited across the board in legislation, and the legislation then enforced equally across all parties/candidates.

R21. Requests for a waiver of the need to provide a signature should for a postal vote should require attestation, and the restrictions on people who can attest the waiver application should be the same as for proxy voters on the grounds of blindness or other disability.

R22. The option to permanently request a postal vote should be removed, and the option to apply for a postal vote for a specified period should be subject to a 3 year limit. After this period, the applicant should be required to submit a new postal vote application (with identifiers), and the Electoral Registration Officer should be required to review the application to satisfy themselves that the individual is currently resident at the address.

R23. It should be standard practice for local authorities to provide guidance in postal ballot packs on the secrecy of the vote and how to report electoral fraud.

R24. The provisions on an ID requirement in polling stations should apply to those casting a vote as a proxy on behalf of a voter.

R25. A power of enquiry should be available to Returning Officers to question applications for an emergency proxy.

R26. Consideration should be given to changing the deadline – to 5pm on the day before polling day – for emergency proxies (other than those for medical reasons or administrative failure by the Returning Officer) – so that Returning Officers have sufficient time to exercise the power of enquiry.

R27. The legislation on offences relating to proxy voting should be clarified around compelling/preventing someone applying for a proxy vote and altering someone's completed application.

R28. The limit on the number of close relatives for whom a person can act as a proxy should be reduced to two.

R29. Given the concerns raised in Tower Hamlets and elsewhere regarding the running of election counts, there should be clearer and robust guidance for Returning Officers and electoral administrators to ensure best practice in all election counts.

R30. The system for challenging elections should be brought into the ordinary civil procedure and a single right of appeal should be available on both points of law and fact.

R31. A single elector should be able to challenge the outcome of any election.

R32. Returning Officers should have standing to bring election petitions. This should be limited to breaches of electoral law relating to the administration of the election or registration of electors and the Returning Officer should be able to test the effect on the result before proceeding.

R33. Political parties should be able to bring election petitions in the name of the party.

R34. The Government should change the law if necessary to remove all doubt as to the court's ability to make protective costs or expenses orders.

R35. Where an election court finds evidence implicating non-named individuals as beneficiaries of electoral fraud, it should be possible for a petition or process to be raised against them within the usual timeframe, starting however from the date of the election court's judgment rather than the date of the election.

R36. It should be possible to apply to extend the maximum time limit for an election petition to be lodged, and to amend the grounds of an election petition once it has been submitted. Consideration should be given to the length of the extension period and the circumstances where it should be available.

R37. The criminal standard of proof should be retained for election petitions.

R38. In conjunction with the devolved administrations, the Government should consider implementing a process for electors' complaints about the administration of elections (which do not aim to overturn the result) to be investigated by the Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales, and the Northern Ireland Ombudsman as a means of providing an appropriate and accessible channel for considering complaints of a less serious nature.

R39. The procedures around candidate nominations should be reviewed to consider the prevention of sham nominations and ensuring that nominations are validly made.

R40. The Government should consider increasing the maximum sentences for electoral fraud relating to postal voting, personation and registration.

R41. The offence of undue influence should retain a reference to spiritual / religious influence.

R42. The learning from the work undertaken by local authorities in 17 areas at higher risk of electoral fraud ahead of the May 2015 polls should be utilised to inform guidance and practices that can assist areas in dealing with electoral fraud.

R43. The role of the Electoral Commission should be revisited to identify how the Commission may best operate in providing guidance, training and support with relation to the administration of electoral events. The Electoral Commission should also more narrowly focus on its core functions – of party finance and overseeing national campaign expenditure.

R44. The Government should consider how the performance management regime should be reformed and focus more clearly on key outcomes. Such a system of benchmarks would be better undertaken by the Cabinet Office, subject to the statutory framework being approved by Parliament.

R45. Work should be undertaken by Government to link with the Association of Police and Crime Commissioners, the College of Policing, the National Police Chiefs' Council and the National Crime Agency to ensure that electoral fraud is seen as a significant issue, and that there is a consistency of approach / response across police forces to dealing with allegations of electoral fraud and impropriety.

R46. The Government could consider how the National Crime Agency, which has a remit to look at organised, economic and cyber-crime, might play a greater role in investigating and co-ordinating complex cases of electoral fraud, especially where it interacts with other financial or benefit fraud.

R47. Officers at the most senior level in a local authority, such as Chief Executives and Heads of Paid Service, should be appointed as Electoral Registration Officers and Returning Officers and should undertake relevant training to ensure that they have the skills required for the roles.

R48. That the position of Electoral Registration Officers and Returning Officers is clarified with respect to Freedom of Information rules and they are made subject to the relevant provisions to release information.

R49. A protocol for reporting within a local authority on issues relating to electoral fraud should be developed and guidance given by the Electoral Commission in conjunction with the National Police Chiefs Council and other relevant bodies.

R50. The Government should undertake a review of how democratic checks and balances can be increased in local government executive structures where power is concentrated.

POLLING STATIONS

1. Evidence submitted to the review on polling stations focused on both the potential for committing fraud inside and recent instances of harassment of electors outside. This was particularly evident in Tower Hamlets.
2. The concept that people present in a polling station – staff, polling agents and other electors – will know the local populace and so be able to act as an integrity check against attempts at impersonation is no longer viable with a comparatively more dense and peripatetic population.
3. With a growing populace and an increase in the number of polling stations (to over 40,000 in May 2015), many parties are no longer able to resource polling agents for all polling stations and their knowledge is similarly depleted.

Outside the polling station

4. The tradition of ‘telling’ at polling stations is long-standing and based on sound principles of assisting political parties and candidates to ‘get the vote out’. Parties identify who has and has not yet voted, so their resources can be targeted during polling day towards those yet to vote. This is generally perceived as a benign activity of recording electors as they arrive to vote (although the AEA identified issues with inappropriate behaviour by tellers and called for their role to be set out formally in legislation).
5. Evidence identified that in recent years a less welcome form of activity has been exhibited outside polling stations in some areas, with groups of people seeking to influence or intimidate electors on their way in to vote. One interviewee referred to a ‘war of numbers’ of activists for opposing parties and at the extreme this has been reflected in evidence to the review of people being surrounded by such activists– including in one instance, the Returning Officer for a London Borough – or of people being too intimidated to go in and vote.
6. Such activity has no place in a modern democracy and steps need to be taken to ensure that it cannot continue. Those steps could be better guidance that addresses the issue and promulgates good practice, rather than legislation. But it would rely on Returning Officers and the police and those engaged in competing elections – candidates and parties and their supporters – playing their roles effectively.
7. In some instances, Returning Officers have taken steps to address issues which, whilst not set out within electoral legislation, were both practical and sensible to assist electors and reduce the scope for intimidation. In Tower Hamlets in 2015, after the DCLG-appointed Commissioners were in place, *Cordons Sanitaire* were put in place to provide a space for electors to enter the polling station without being subject to being harangued by activists. This had been a problem in the 2014 Mayoral elections. The ability to undertake such action and adopt a flexible response to the issues that arise in any area should be clearly set out so that Returning Officers can utilise them.
8. As with many aspects of this report, this point links with issues on the nature of offences and the response of the police to instances of such activity. A number of respondents pointed to a reluctance (maybe because of a supposed fear of claims of ‘discrimination’) or uncertainty of the police to engage with groups of activists or supporters; the police were unsure whether any offence was being committed and were looking for evidence of

more 'traditional' public order offences. As is discussed later, greater clarity around electoral offences or allying them with more standard offences or terminology coupled with better guidance for the police plays in here also.

9. Despite clear evidence of intimidatory behaviour during the Tower Hamlets election court case, Richard Mawrey QC noted that the bar was just too high to meet the test in criminal law. He noted: "The court appreciates that many in Tower Hamlets will be disappointed, even horrified, that the 1983 Act does not penalise thuggish conduct at polling stations of the sort that occurred in 2014."

R1. Greater powers should be given to Returning Officers and the police to take action to address unwanted behaviour in and around polling stations (e.g. to be able to set up *Cordons Sanitaire* and to ensure that the Police have the powers they need to disperse and deal with people who are 'causing a nuisance' or 'leading people to feel intimidated' outside a polling station). Guidance should indicate where such a power could or should be used.

R2. A lower test of 'intimidation' than the one currently set in the Representation of the People Act 1983 should be introduced.

Inside the polling station

10. The polling station is generally regarded as a place in which a ballot can be cast in secrecy and free of any influence. Regardless of what anyone has said to an elector outside, it is assumed that they have an opportunity in this environment to cast their vote as they please without anyone knowing how they have voted.
11. However, even here fraud can still be committed, despite it being a public location in front of independent staff, and with the opportunity for party polling agents and accredited observers to monitor what is happening.
12. The secrecy of the ballot was established in 1872. The *London Gazette* today notes: "Prior to the Ballot Act 1872, voters would give a show of hands, stating their choice out loud, or mark their paper in public, while onlookers and candidates' agents cheered or jeered. The name and choice would be noted down in a public poll book, which newspapers could publish. As a consequence of open voting, men who rented their homes, or relied on a local employer for work, had to vote as the property owner or employer wished them to vote. If they didn't, they would risk losing their home and the job that fed their family. Bribery with money and liquor, drunken fights and threats from candidates, were also common." Yet changing technology in the 21st Century threatens to undermine the long-standing rights to privacy established in the 19th Century.
13. People accompanying others into polling booths to assist them has mostly been seen as benign – with spouses or friends helping others who have low literacy or language skills. There is also a need to assist the disabled and those with poor sight.
14. Yet there are practices that can compromise the integrity of voting, such as someone accompanying the voter to the polling booth to influence them, or someone being compelled to take a picture of their completed ballot paper to show how they have voted. The 21st Century phenomenon of 'selfies' highlight how growing use of IT and communication could support abuses of the voting process.

15. Photography is not completely banned by legislation (distribution of photographs of completed ballot papers is technically illegal; this does not apply to postal ballot papers). Whilst signs are used to deter photography in polling stations, there is insufficient legal sanction against such activity.
16. The languages spoken in polling stations (and other places such as the count) has recently become an issue with concerns that promoting the use of non-English languages could disguise coercion or influence within the polling station. This has not been helped by the Electoral Commission facilitating what it calls “community languages”¹. Such an approach undermines integration and leaves the door open to fraud. These are not ‘community languages’ – they are foreign languages. In the last Parliament, DCLG changed guidance to councils to stop expensive and counter-productive translation into foreign languages, but some councils have chosen to ignore it. Ballot papers already feature political party logos which helps voters with poorer reading skills to cast their ballot.
17. In this Parliament, the Government has recently legislated to ensure that public-facing workers in the public sector can speak fluent English (or within Wales, English or Welsh). There is no excuse for voting in polling stations not being concluded in English as well. This will ensure that polling agents, the police, polling clerks and nearby members of the public are able to witness potentially illegal activity.
18. A concerning development has arisen in relation to trust placed in the officials running elections; a case in Derby (from May 2012) found that a poll clerk had covered up for relatives who personated other people on the register. Other contributors to the review raised concerns about the potential for inappropriate actions by polling stations staff, such as at the end of the day marking off electors on the register who had not voted and putting in ballot papers for them, or even the potential for ballots marked with pencils to be amended. Clearly effective selection and monitoring processes need to be used when selecting and supervising staff employed at polling stations and this is an area on which guidance could be strengthened.
19. Handing in of ballot papers at polling stations has long been a source of concern. The law allows this in order to assist voters who, for whatever reason, fail to commit their completed postal ballot pack to the postal service in time for it to be received and counted by the Returning Officer. Handing it in at a polling station before it closes ensures that the ballot is with an ‘agent’ of the Returning Officer and the papers can be included in the count. However, handing in numbers of completed postal ballot packs can indicate that someone has been gathering them up, whether with innocent intent or not. To do so and not pass them to the Returning Officer in good time, leaves scope for suspicion that the ballots have been tampered with; or opens up that they are being put forward in bulk at the last moment, in the hope that they will not be so stringently checked by the Returning Officers and their staff, who will be subject to the most pressurised time of the elections process at close of poll and when preparing for the count.
20. Removing the opportunity to hand completed postal ballot packs in at polling stations would not be helpful to voters in general. But political parties and activists should not be ‘harvesting’ postal ballot papers and postal ballot envelopes. Handling should be restricted to immediate families or designated carers. (Postal voting and protecting the secrecy of postal ballots is covered in more detail later in this document).

¹ As evident by the Parliamentary answers of *Hansard*, 3 March 2014, Col. 695W.

21. Provision of police at polling stations as a matter of course was also suggested, or expected, in some responses. Whilst this has been the position in some areas where issues have been predicted, it would prove unnecessary and expensive if made the norm and therefore should be retained as a matter for the Returning Officers to agree with the police where needed. However, a more assertive policing approach should be adopted to protect the rights of voters in polling stations where there is a risk of intimidation by campaigners.

R3. The taking of pictures and use of cameras (including camera phones) in polling stations should be made illegal in order to prevent voters being intimidated into recording how they voted and to preserve the secrecy of the ballot.

R4. The use of English (and Welsh, where appropriate) in polling stations should be required at all times, including any assistance given to electors by electoral staff.

R5. Guidance and training should be strengthened to ensure that staff in polling stations enforce the rule that people go to the booth individually.

R6. Guidance should be produced on layout of polling stations and actions to minimise scope for people to be able to take a ballot paper out of a polling station.

R7. Completed postal ballot packs should only be handed in at a polling station by the voter or a family member / designated carer acting on their behalf – a limit of two should be applied for any one person handing in completed ballots and require an explanation as to why they are being handed in and signature provided.

Identification in polling stations

22. The most significant issue in relation to polling stations though is whether electors should be required to provide identification before being allowed to vote. Trust has been an enduring factor in British elections for many decades. But a number of commentators now point to the potential for significant abuse if people can commit personation at polling stations with little risk of detection. It is harder to take out a municipal library book than it is to vote in a polling station administered by the same council.
23. At present the only way to seek to establish identity through the use of the 'statutory questions' set out in legislation, asking someone to confirm or deny they are the person registered at an address and whether they have already voted or not. The use of the 'statutory questions' is both very basic and optional and thus they are used rarely or not at all in many polling stations. In any event 'coaching' of people being used to commit personation could overcome that check.
24. More flexible questioning is an option but then leaves the process itself open to being used, or accusations of it being used, in a discriminatory fashion and with the possibility of it being used as a basis to challenge the effective running of the poll. Guidance may assist here – maybe with some secondary questions to be asked, of everyone, in areas where fraud has previously been identified or is suspected.

25. Both the Organisation for Security and Co-operation in Europe's (OSCE) Office of Democratic Institutions and Human Rights (ODIHR)² and the Electoral Commission³ have recommended the introduction of use of ID in polling stations in the UK in recent years. They see the lack of verification as too trusting and open to abuse. Both organisations point to the system in Northern Ireland where a list of acceptable documents is supported by the availability of a specific (voluntary) elector ID card for people, who may not have something on the list of documents.
26. This system has had a positive effect in Northern Ireland where electoral abuse was evident on a significant scale before its introduction. Producing identification at the polling stations in Northern Ireland has now been the 'norm' for 30 years – with photo ID required from 2003 after fraud was evident in the use of non-photo ID. Anecdotally, in recent elections, the numbers of people who do not vote because they cannot produce the acceptable ID or forgot ID is extremely small.
27. There was much argument about whether the existing guidelines were sufficient. Research undertaken at the May 2015 polls reported very few polling station staff had suspected that any personation had taken place where they had worked (11 out of 1289 poll workers surveyed); the researchers argued that people being turned away because they were not actually registered was a much more significant issue.
28. There is a clear tension between accessibility and security here, as there is in other voting channels and in the registration process, but a proportionate response may be possible.
29. Despite the low numbers of allegations and rare cases of personation being prosecuted, there is a concern that the absence of evidence does not mean this practice is not taking place. And even if it is not, there is a precautionary principle that comes into play in terms of the potential for it to happen. As noted above, the absence of some form of verification at the polling station has been identified by a number of expert organisations as a significant vulnerability. Given that over 80% of the registered electorate are essentially registered to vote at polling stations (under 20% have a 'remote' vote – i.e. a postal or proxy vote), this presents a risk that needs to be addressed in the short term.
30. There are a variety of potential means of verifying the identity of voters – from the use of specific photographic ID to lighter touch options of voters confirming who they are through data they 'carry with them' as a matter of course which could be physical (such as a bank card or travel pass) or just a piece of information such as date of birth or signature.
31. Evidence and views in favour of providing some form of ID included the major organisations engaged in the delivery of elections such as the Electoral Commission, the Association of Electoral Administrators, SOLACE (council chief executives) and the support of the National Police Chiefs' Council. All believe that an ID requirement is necessary and refer to photographic ID whilst recognising the need for a scheme that ensures all electors can be included.
32. Some respondents raised challenges such as why ID was required to collect a parcel from Royal Mail but was not required to obtain a ballot paper. Others recited anecdotal

² <http://www.osce.org/odihr/elections/uk/115663> and <http://www.osce.org/odihr/elections/uk/147996>

³ <http://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud>

evidence of people attending police stations complaining of not being paid for their poll cards and of polling station staff reporting a noticeable number of people reading the elector details from poll cards as though unfamiliar with them. Others felt that personation could be happening but undetected.

33. Those in favour suggested a variety of options as well as photo ID such as providing a signature, or even use of indelible ink on voters' fingers to avoid them voting twice. These responses reflected a concern that the current process is out of step with other 'formal' processes where signatures or ID are required to complete transaction or receive a benefit.
34. Reforms in this area could actually *increase* turnout: some electors may (wrongly) think that bringing their polling card is a requirement to vote; they mislay their polling card and therefore believe they cannot vote on election day. Requiring some form of identification instead may actually reassure voters that a polling card is not a necessary requirement, encouraging more to vote on the day.

Options for ID in polling stations

35. There are a number of options that could be considered:

A. Date of Birth

This has the benefit of being something that the vast majority of people hold in their memory and can readily recite. It would provide a simple test of the elector's identity without adding any inconvenience. Save for exceptional circumstances, electors are unlikely to be adversely affected by such a requirement.

However, dates of birth are not uniquely known to the elector and could be abused by people who know them for relatives, friends and acquaintances or who gather them illicitly from online sources (though the latter is a broader risk with identity fraud, and the public should be made aware of risks of revealing too much personal information online).

An ability to check dates of birth at a polling station would also require some significant work to produce a record for all electors to be checked against. Whilst the information is held for new registrants, dates of birth were not collected before the introduction of individual electoral registration and the majority of entries transferred across from the household-registration registers do not have the data on the records. That said, a process of collecting the gaps via the annual canvas could be undertaken.

B. National Insurance Number

A National Insurance Number is held by most adults in the UK and is already used as part of the registration process to verify the existence of people applying to go onto the register. Using it to ascertain identity in the polling station would be a more robust form of check than dates of birth, given National Insurance numbers are less likely to be known by other people.

The downside is that whilst some people do commit their National Insurance number to memory, others do not and the likelihood of people not being able to recite it are increased. As with dates of birth, National Insurance numbers have not previously been held on the register and it would take a change to registration processes and a data collection exercise to gather them in to be used as a polling station check.

C. Signature

Use of a signature to confirm identity is used in a number of countries and was trialed in England in 2006 and 2007. Like date of birth, it is something people carry innately and can be readily utilised but the giving of a signature can imply a more formal 'contract' type transaction which some commentators thought appropriate for voting.

The OSCE / ODIHR saw signatures as a viable option in its report on the 2010 General Election: *"OSCE/ODIHR reiterates its recommendation that serious consideration should be given to introducing a more robust mechanism for identification of voters. Existing national and local government-issued cards could be considered for this purpose and voters could be obligated to sign the voters list before being issued a ballot paper."*

As with the above options, there is not an existing database of electors' signatures (except for those expressly given for postal voting) that could be used for checking against at the time of voting. Signatures could provide an opportunity for post-election checking in the event of allegations of impropriety as they are not purely data which could be replicated. However, as evident from historic experiences with credit card signature verification in shops, signatures can be difficult to verify accurately.

D. Production of a bank card (or similar) with a signature

Production of some form of commonly carried ID is another option, and could be combined with the giving of a signature. The majority of people carry some form of card that includes a signature (bank card, credit card, etc.) that could be produced and used to verify a signature given before receiving a ballot. That would preclude the need for a data collection exercise for signatures to be held by the Returning Officer and made available for checking against at the polling station.

It is likely though that some people will not carry a card or document with them on a consistent basis; there may unforeseen consequences (such as issues over use of cards belonging to other people to appear to 'legitimise' a fraudulent vote) that need to be considered in detail in looking at this option.

E. Production of other ID – bus pass, etc.

Other cards and documents that people carry habitually could be an option – and potentially in conjunction with the use of cards with signatures if they expanded that option to cover significantly more electors.

A more eclectic range of documentation with no common factor (e.g. a signature or photograph) would be harder to mandate and to ensure provided sufficient rigour.

F. Production of specific Photo ID – passport, driver's licence or electoral card

Use of specified ID with photographs was the most cited option and is the option most clearly defined in responses. It provides certainty of the provenance of the ID if limited to passports, driving licences and some form of dedicated photo ID produced for electors who do not have either of the other options.

It should also be noted that the Government has ruled out the introduction of National Identity Cards. The downside for this policy option is the certainty that a number of people will not have either of the regular forms of ID, and there is a cost of providing a dedicated (voluntary) 'electoral ID card' as already exists in Northern Ireland.

The Electoral Commission has recently examined⁴ this possibility and the attendant costs for a variety of approaches. The Commission has assessed this would cost between £1.8 million and £10.8 million per annum. The Government will need to consider whether one of the models put forward by the Commission provides a proportionate cost if minded to take this route.

Either way, the Government may wish to consider piloting one of more of the potential options. Such pilots could be initially located in local elections in local authority areas which have previously experienced electoral fraud, given they are clearly 'high risk' areas. Section 10 of the Representation of the People Act 2000 could allow for such pilot schemes to be introduced.

R8. The Government should consider the options for electors to have to produce personal identification before voting at polling stations. There is no need to be over elaborate; measures should enhance public confidence and be proportional. A driving licence, passport or utility bills would not seem unreasonable to establish identity. The Government may wish to pilot different methods. But the present system is unsatisfactory; perfection must not get in the way of a practical solution.

REGISTRATION

The long-delayed introduction of individual electoral registration in Great Britain has made a significant improvement to the security of electoral registration. It is a shame that it was not until December 2015 that the full transition was completed. It has been proven in Northern Ireland over a decade to make a real difference to the scope for electoral fraud.

However, whilst individual electoral registration addressed a key vulnerability in terms of verifying the identity of applicants, the evidence provided as part of this review has highlighted a number of other issues with the processes for electoral registration which were not resolved by individual electoral registration. Allied to that is a need to ensure that local authorities are providing sufficient focus on electoral registration and that there is a consistency of approach.

Verification of registered address

36. Several electoral administrators suggested that applicants be required to prove their residency at an address in the local authority area, either where this cannot be established by other means or in response to a match not being made against Department for Work and Pensions data.
37. The automated checking processes conducted under individual electoral registration provides Electoral Registration Officers with an indication of the validity of an applicant's identity but does not check whether the applicant appears on the DWP database at the address they have given in their application. The primary function of the database is not to validate electoral registration applications – its role is to administer the functions of DWP; as a result, up to date address information is unlikely to be held unless an individual has a direct, transactional, relationship with DWP (such as benefit claimants or recipients of the state pension). This means that any attempt at address verification on a national scale against DWP data is likely to be counter-productive with match failures or false positive results returned on a large scale.

⁴ Electoral Commission, *Delivering and costing a proof of identity scheme for polling station voters in Great Britain*, December 2015.

38. Whilst there are other national data sources which hold address information, it would require significant investment to create a matching environment which made checks across multiple, national, data sets. Work was undertaken by the Government during the introduction of individual electoral registration, which was evaluated by the Electoral Commission⁵, on data mining for purposes of identifying potential new electors and those who should be removed from the register. Whilst the list of datasets used for these pilots is not exhaustive, it did highlight some specific issues with these datasets which may be indicative of some of the problems which could be encountered by national data matching:
- Department for Education – whilst currency and completeness of address were good, education data would only cover a small subset of the totality of registrations.
 - Welsh Department for Education and Skills – in addition to the lack of coverage issue identified for DfE data, this data set does not hold complete address data making it unsuitable for this purpose
 - Royal Mail – whilst address data appears to be more complete than other national datasets, the currency of information is an issue with out of date residency information held on individuals
 - Student Loans Company – Piloting in 2013 found that there were issues with completeness of address data which made matching against address difficult. As with other forms of education data, matching against this source would only cover a small proportion of the total number of registrations
39. There are other datasets, notably DVLA and HMRC data, which were not included in this evaluation work and they may prove more suitable for this purpose. However, the most important factor when considering the efficacy of data for purposes of combating registration fraud is the extent to which address information submitted by individuals is validated by the data holder; without checks being made against the address provided to a national dataset, it would be possible to provide false address information when applying, for example, for a driver's license. Subsequent checks made against this dataset during the registration process would have little effect other than to confirm already fraudulent information.
40. Given the potential complexity of a national matching approach, a better solution to this issue would seem to lie at a local level; Electoral Registration Officers already have powers to require applicants to supply information about their qualification to register (including residency) and a more consistent and thorough approach to the use of these powers is recommended. This would not require legislative change to effect and could be achieved through improvements to guidance to Electoral Registration Officers.

R9. Clearer guidance should be provided on the circumstances in which Electoral Registration Officers should seek further evidence as to an applicant's address.

Registrations at more than one address

41. The Association of Electoral Administrators' (AEA) submission to the review asked that there should be greater clarity in legislation as to the factors to be considered by Electoral Registration Officers when registering an elector at a second residence.

⁵ Electoral Commission, *Data Mining Pilot - Evaluation Report*, July 2013. ,

42. It is certainly the case that legislation as currently drafted is ambiguous in relation to determining whether an applicant can be deemed to be resident at more than one address. Whilst case law does exist, in reference to specific examples such as students, which does provide an element of definition in this regard, there are no hard and fast rules which Electoral Registration Officers may apply to the generality of electors.
43. This lack of definition, and resulting inconsistencies in how individual Electoral Registration Officers apply their understanding of the law, presents opportunities for fraud. An application may be made, for example, to register someone who owns a property but who does not reside there – an officer making checks against that application may find evidence of ownership and therefore assume residence; a fraudulent application would have been allowed as a result
44. The Government should consider how residence could be defined, what the appropriate mechanism for this would be (primary or secondary legislation), and what additional guidance should be provided to Electoral Registration Officers to ensure a consistent national approach.
45. This necessarily involves a policy decision in relation to second home owners and local elections. An elector with more than one residence can only vote once in any election to a single assembly (e.g. only once in a Parliamentary election). However, I would suggest that the electoral registration rules should expressly ensure that UK citizens who are liable for council tax (in occupied properties, in which they are at least partially resident) have a say in how their council is run and how their council tax bills are set. Local taxation must go hand in hand with local representation.

R10. The Government should consider how residence can be defined in law and what factors should be taken into consideration by Electoral Registration Officers in making that determination.

R11. The Government should produce statutory (if necessary) guidance for Electoral Registration Officers which ensures a consistent UK wide approach to determining residence.

Provision of previous address

46. Electoral administrators expressed concerns that applications were being made, and accepted, which did not contain the previous address of the person making the application. Whilst it is the case that there may occasionally be legitimate reasons for not supplying this information (the applicant may have moved to the UK from abroad, for example), the vast majority of applicants will have already been registered at a UK address and should be supplying this information in their application.
47. Where this information is not supplied, it is not possible for Electoral Registration Officers to identify the applicant's previous local authority area and send a notification to their previous Electoral Registration Officer that the applicant should be removed from the register at their old address. There is the possibility that this previous registration could then be used by another person to vote in a poll (an offence known as personation), presenting a potential fraud risk.
48. The provision of previous address is a mandatory requirement of a registration application, however where this information is absent, Electoral Registration Officers are not in a position to judge whether this is for legitimate reasons. Legislation should therefore be amended to require either; the applicant's previous address to be supplied,

or; a reason why this has not been given. It would then be for Electoral Registration Officers to determine whether the reason given for non-provision is a valid one and to use their existing powers to require the supply of this information where it is not.

R12. Legislation should be amended to strengthen the requirement to provide a previous address, by requiring a reason for non-supply of a previous address by applicants.

Verification of nationality

49. Of the responses received by the review in relation to electoral registration, concerns about the verification of an applicant's nationality represented the issue which generated the most commentary. Respondents were of the view that greater checks should be made against the nationality, and eligibility of foreign nationals (Irish, EU, and qualifying Commonwealth citizens) making registration applications whilst living in the UK.
50. It is the case that, whilst Electoral Registration Officers have powers to require any applicant to prove their nationality and immigration status, these powers are not applied systematically and, aside of a minority of cases where the officer has grounds for suspicion that the nationality information provided is false, they are required to accept an applicant's declared nationality at face value. This presents a clear risk for both organised and opportunistic fraud. Ineligible persons may give a false nationality in order to appear on the electoral register and, similarly, EU nationals who hold a limited franchise may give a false nationality in order to gain access to voting in UK Parliamentary elections.⁶ Moreover, Commonwealth nationals do not have a blanket right to vote in elections – it is conditional on being a *qualified* elector.⁷

R13. The Government should take action to address the clear vulnerability to the registration system as a result of the lack of systematic checks on nationality.

51. There are three broad approaches which could be taken forward to address this issue:

Stronger deterrents on registration applications

52. This could be achieved by means of minor amendments to existing secondary legislation and would prove to be an effective deterrent to casual fraudsters. It would, however, not in itself prevent or detect organised, large scale, fraud.

R14. Registration application forms should be amended to contain warnings that nationality information may be checked against Government records and to re-iterate the existing warnings on the criminal penalty for provision of false information.

Targeted checking of applications from foreign nationals

53. The respondents who raised this issue all suggested that all foreign national applicants should have their nationality/immigration status checked against Home Office data (both

⁶ The decision of the United Kingdom to leave the European Union will obviously have implications for the participation of EU citizens in local elections. This is beyond the scope of this report.

⁷ To qualify, Commonwealth citizens must be resident in the UK and either have leave to enter or remain in the UK or not require such leave. The definition of a 'Commonwealth citizen' includes citizens of British Crown Dependencies and British Overseas Territories.

Passport Office and UK Visas & Immigration). There are existing mechanisms in place which would facilitate this for Commonwealth nationals, and the Cabinet Office is currently conducting pilots with Electoral Registration Officers and the Home Office into an automated checking system that would streamline this process. Whilst it may be technically feasible, to extend this approach beyond Commonwealth nationals would raise the following issues:

- Current legislation allows for checking of the immigration status and nationality of Commonwealth nationals as their eligibility to register is dependent on their having leave to enter or remain in the UK, or otherwise having a right of abode. Electoral Registration Officers also have powers to ask for documentary proof of the nationality of EU and Irish citizens. **In both cases Electoral Registration Officers can only conduct these checks where they have doubts about the information given in an application** – making such checks on all foreign nationals would require legislative change.
- There is a specific issue with applying these checks to those holding Irish nationality since this would include those born in Northern Ireland who have the right to identify themselves as British or Irish, or both. Checking nationality information for a specific section of the UK population, rather than the whole, is intrinsically weak since all a fraudster would have to do to avoid the check is to give their nationality as British.
- Any check applied to any part of the registration process which only affects a subset of applicants based on their nationality may incur claims that the policy is discriminatory and unlawful

54. Given these issues, the development of any systematic checks on nationality should be applied to all applicants to register to vote rather than a subset.

Checking nationality for all applicants

55. The systematic checking of nationality information on all applications to register to vote represents a substantial challenge for government. Given the proven benefits of online registration in terms of ease of access for applicants and efficiencies in the registration process, a requirement to provide paper documentary evidence (such as passports, visas, or birth certificates) to establish nationality would undermine those benefits and create a substantial and costly bureaucracy.
56. Any approach to addressing this issue should therefore attempt to automate checks on nationality, using existing government data sets, and should be integrated into the existing infrastructure created by individual electoral registration. Such a system would require legislation to create the powers/requirement to undertake such checks, the legal gateways to enable the transfer of data, and requirements on Electoral Registration Officers to be guided by the results of checks in determining applications. Whilst much of the infrastructure for these checks is already in place, there would be parallels with individual electoral registration in terms of complexity and cost.
57. Whilst these present significant challenges, the introduction of individual electoral registration has demonstrated that these can be overcome – provided that an implementation programme is well resourced, with challenging but realistic deadlines, and has full support from across both central and local government.
58. Whilst detailed evaluation would be needed to explore this area in depth, an outline set of considerations can be recommended at this stage:

- a systematic approach to nationality checking would require data for matching purposes that is both comprehensive and accurate; as with individual electoral registration, extensive piloting and investigative work would be required to establish the most suitable data source(s) for this purpose.
 - matching algorithms to support systematic checking would need a high degree of confidence that the person named in an application is the same person as identified in the data set, to avoid giving inaccurate responses and disenfranchising eligible citizens.
59. These are initial considerations which should shape the delivery of a system of systematic checking, more detailed work will be required to establish the scope and objectives for any programme tasked with delivering a solution to this issue.

R15. The Government should consider the feasibility of an automated approach to checking nationality, to work as part of the existing individual electoral registration infrastructure.

Other reasons for nationality fraud

60. Evidence from electoral administrators and the police suggests that there is a link between registration fraud and financial fraud. If a primary motivating factor in registration fraud is to gain access to financial services and/or commit financial fraud (either on an organised or opportunistic basis), then additional measures to address this issue may lie outside the registration process.
61. In their evidence to the review, the National Police Chief's Council noted that expert analysis of the Metropolitan Police Fraud database (known as Operation Amberhill) had linked false electoral registrations with fraudulent applications for credit, benefits and other financial products; the fraudulent electoral roll entry was the means of creating a false identity footprint. The London Electoral Management Board (representing London returning officers) also warned that phantom registrations are made to facilitate fraudulent access to credit, services and benefits, as the electoral register becomes *de facto* evidence of residence. They explained that the high level of "residential churn" in London – with 400,000 Londoners moving each year – creates particular risks for the capital from phantom entries on the electoral roll.
62. Some registration fraud may be low-level and simply be motivated to help an individual get (otherwise legitimate) credit, utilities or a mobile phone. Improving credit referencing for eligible foreign nationals could have the potential to mitigate a motivating factor behind registration fraud and, as a result, have the effect of reducing such fraud.
63. The Government should therefore work with local authorities to set up a voluntary register for foreign residents, who do not have voting rights, but do have leave to enter or remain. As with the current electoral roll, this data could be provided to credit agencies for a fee, which would help fund the administrative costs. The register would provide a mechanism for people (who pay council tax and have leave to enter or remain) to be recognised as local residents, and thus have access to credit, but still not vote. Local authorities would check that the applicant had valid leave to enter or remain, and could check that status once that leave had expired or was due to do so. A decision would need to be taken on whether to make such a facility only open to those with indefinite leave to enter or remain, or to open up as well to long-term visitors such as students.

64. Such a policy would complement action on illegal immigration. It would assist integration for those law-abiding foreign nationals who paid their council tax and followed immigration rules.

R16. To protect the integrity of the electoral register and assist integration, the Government should work with councils to introduce a separate, voluntary municipal register for those who do not have voting rights, but do have permission to reside in the UK.

Provision of registration information to law enforcement

65. One police respondent suggested that Internet Protocol (IP) addresses should be retained by the IER Digital Service (the digital transaction service which enables the transmission of registration applications and the matching of application data to DWP records), so that this information could be interrogated by law enforcement in order to establish an evidence trail when seeking to prosecute potential fraudulent applications. Whilst this information is passed to Electoral Registration Officers currently, it was the respondent's view that this would be inadmissible in court.
66. Whilst this change may be technically possible, it is unclear as to the potential costs to creating and maintaining a secure data storage environment to facilitate its use, as well as providing some form of interrogation interface which would allow law enforcement to access this information.
67. In addition, concerns regarding data privacy and the creation of new national databases will need to be addressed. The IER Digital Service was specifically designed not to retain application data once matching is complete, in order to mitigate concerns raised by the Information Commissioner and others during the development of individual electoral registration. Appropriate legal and physical safeguards would need to be put in place to ensure that the use of this information was proportionate and could not be abused.
68. Finally, further investigation would be necessary to determine the effectiveness of the IP address in establishing a link between a given individual and a potentially fraudulent application; for example, the IP addresses of computers located in multi-use locations, such as public libraries or workplaces, would not, in themselves, establish that link. In addition, it would also be worth considering whether, particularly in cases of organised fraud, fraudsters would be able to find ways of masking an IP address or giving a false trail.
69. With these points in mind, there would still be value to investigating the development of such a facility further – but with a clear understanding that this measure should be subject to a rigorous cost/benefit analysis to ensure there is genuine value to what may be a costly, and potentially controversial, change to the digital infrastructure of electoral registration.

R17. The Government should investigate the development of a facility in the IER Digital Service to retain the IP address used to make applications. This should be subject to a rigorous cost/benefit analysis to ensure that that such an approach would be of genuine value to law enforcement.

POSTAL VOTING

70. Postal voting on demand attracted the greatest degree of comment from respondents. It was considered by some to be the UK's main electoral vulnerability and to provide the 'best' opportunity for electoral fraud.
71. Abuses of postal voting on demand were noted too often be carried out in communities where an individual's right to vote in secret and exercise free choice may not be fully valued. Evidence was presented of pressure being put on vulnerable members of some ethnic minority communities, particularly women and young people, to vote according to the will of the elders, especially in communities of Pakistani and Bangladeshi background. There were concerns that influence and intimidation within households may not be reported, and that state institutions had turned a blind eye to such behaviour because of 'politically correct' over-sensitivities about ethnicity and religion.
72. Richard Mawrey QC noted that postal votes were the most significant problem and that, whilst the introduction of 'postal vote identifiers' (signature and date of birth) in 2007 had been a step in the right direction, the possibilities of undue influence, theft of postal votes and tampering with them after completion were all still risks. In summary, he saw the system as effectively just being policed by political parties watching each other with not enough rigour in the systems themselves.

Postal voting on demand

73. Some considered that postal voting should be restricted to those unable to get to a polling station to vote in person for reasons of health or disability. It was argued that unrestricted postal voting undermines the fundamental secrecy of the ballot and that despite existing safeguards can never guarantee that the voter has not been influenced in some way.
74. One respondent who argued against unrestricted postal voting considered it to go against British political tradition and to be an infringement of the central principles of international human rights treaties. They suggested that a new Electoral Act should contain in its first part an unequivocal right for British citizens to vote in secret, and that primary legislation should set out the right and obligation to vote in a solitary fashion, with secondary legislation / guidance used to facilitate this practice.
75. Suggestions were made to mitigate the effects of abolishing postal voting on demand (which many electors find to be a convenient way to vote) by facilitating voting in person. One idea was for those with 'less serious' reasons for being unable to vote in person (e.g. holiday) to be able to vote in person in the local authority's offices for up to 3 weeks before the poll.
76. Overall though, there was a recognition that postal voting on demand is very likely to be a continuing feature of the electoral system and that the availability of postal voting encourages many legitimate electors to use their vote effectively and engage with the democratic process. For this reason, it is considered that abolishing postal voting on demand would be a disproportionate step and that strengthening the system is what is required.

Postal vote applications

77. It was suggested in evidence to the review that postal voting on demand has encouraged political parties to target voters and get them to apply for postal votes, and

that this was observable in the pattern of postal votes secured within some wards. Canvassers appeared to operate in groups and in areas where there is a high concentration of people who do not speak, read or write English. One method suggested by the Electoral Commission to improve the security of postal voting processes was for the legislation to more clearly define offences of compelling someone to apply to vote by post and of altering an elector's completed absent vote application form.

78. Political parties' issuing of party branded postal vote application forms was considered by some respondents to be inappropriate.
79. The ability of voters to request that their postal vote be directed to a different address from the one they were registered at to another within the same electoral area was considered unnecessary by one respondent who observed that this tended to be a marker for electoral fraud, since it could be a sign that the voter's postal vote had been 'intercepted' – falsely applied for or re-directed to someone else to complete.
80. However, these concerns need to be balanced by the fact that it is entirely legitimate for political parties to encourage electors to vote, be it in person or by post. Allowing political parties to handle application forms drives up election turnout.
81. An applicant for a postal vote who is unable to provide a signature may request a signature waiver (and must provide reasons for doing so), which Electoral Registration Officers may grant if they are satisfied that this is due to the voter's disability or inability to read or write. How they should ascertain this is a local decision and not specified in legislation. The lack of formal checks leaves the process vulnerable to electoral fraud. Views were received in support of a requirement for waiver requests to be attested in the same way as proxy applications (for definite and indefinite periods). The AEA supported this measure and believes that the list of providers of attestation should extend to health professionals, including carers. The Law Commission⁸ consulted on the proposal and found a majority of consultees (29 out of 36) who responded to it agreed with it.

Postal ballot packs

82. Some parties were said to use the ploy of canvassing or answering enquiries about completing postal votes to 'harvest' them following their delivery by Royal Mail. The postal vote might be completed fraudulently by party activists, or voters might be forced to sign and put their date of birth on the postal vote statement, and hand it with their unmarked ballot paper to campaigners to be taken away and filled in elsewhere. Postal votes already completed by the voter and handed over to activists might furthermore be checked, and if found not to have been cast in support of the activists' party, be discarded. It was suggested by the Electoral Commission that legislation should create an offence of taking an elector's uncompleted postal ballot pack from them, and should more clearly define an existing offence of opening or altering the contents of a completed postal ballot pack.
83. People who appeared as recipients of postal votes on the electoral roll were said to be targeted by continual visits, with some voters reporting feelings of harassment and a belief that party activists' knowledge of their choice to vote by post could increase vulnerabilities to electoral fraud. It was suggested that restricting postal votes to being provided on a one-off basis to those who request them could prevent postal votes becoming a target for interception and coercion by fraudsters.

⁸ There are three Law Commissions in the United Kingdom, covering England & Wales, Scotland and Northern Ireland. This was a joint project.

84. In some cases completed postal ballots were placed in polling station ballot boxes (where they are indistinguishable from those of electors who vote in person), often close to 10.00 pm or were handed in to officials at polling stations. It was suggested that the person handing in the postal ballot papers should be made to sign a form on doing so, and that the postal ballot papers themselves should be printed in a distinguishing colour so they could be more easily identified at the count.

Campaigner behaviour

85. Although the Electoral Commission has published a Code of Conduct covering campaigner behaviour, it is voluntary. The Electoral Commission considered that political parties should take a more active role in setting high expectations for supporters and communicating them to electors, and for declared candidates for elections to endorse personally the Code of Conduct and take responsibility for the behaviour of their supporters.
86. Yet the Code diverges from the letter of electoral law. Moreover, even though national parties may incorporate the Code of Conduct into their internal codes and disciplinary processes for their members and candidates, independent candidates do not have a party machinery to which inappropriate behaviour can be referred. The National Police Chiefs' Council evidence to this review noted any breaches of the Code cannot be upheld by the police. It would make more sense if the guidelines reflected the actual law. At present, the Code has no real status and is ineffectual in dealing with the problem.
87. The voluntary status of the Code of Conduct⁹ was considered inadequate by a significant number of respondents, including organisations which represent electoral administrators, Returning Officers from areas at higher risk of electoral fraud, and electoral services departments in local authorities. They supported a statutory Code of Conduct and criminal offences attached to unacceptable behaviours described in such a code.
88. The Law Commission consulted on whether the law should create offences to prohibit the involvement of campaigners in a number of activities listed as follows, of which numbers (3) – (7) are similar to behaviours advised against in the voluntary Code of Conduct:
- 1) assisting in the completion of postal vote applications
 - 2) handling completed postal vote applications
 - 3) handling another person's ballot paper
 - 4) observing a voter marking a postal ballot paper
 - 5) asking or encouraging a voter to give them any completed ballot paper, postal voting statement or ballot paper envelope.
 - 6) if asked by a voter to take a completed postal voting pack on their behalf, failing to post it or take it directly to the office of the Returning Officer or to a polling station immediately
 - 7) handling completed postal voting packs at all
89. The Law Commission noted that there was strong support for increased regulation of campaigner behaviour but concluded that the measures would criminalise helpful and otherwise unavailable assistance to those voters who need it. They also considered that

⁹ <http://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/code-of-conduct-for-campaigners>

the measures would be difficult to enforce and any breaches hard to detect and would be an overreaction in light of the available data on fraud.

Recommendations on postal voting

90. Options to reduce the risk of electoral fraud in relation to postal voting broadly fall into the following categories:
- measures to clarify existing legislation in relation to unacceptable campaigner behaviour.
 - measures to increase regulation of campaigners via statute and the creation of new offences.
 - measures to prevent postal voters being inappropriately targeted by political parties.

Strengthening secrecy of the ballot

91. Secrecy of postal voting was seen by respondents to the review as central to concerns about undue influence. Current legislation (in section 66 of the Representation of the People Act 1983) requires persons attending polling stations to maintain and aid in the secrecy of voting and prohibits information about how an elector has voted in a polling station being obtained or communicated. Although, as previous discussed, the legislation does need tightening with regards to photography in polling stations.
92. The Law Commission has pointed out that there are no equivalent provisions applicable to postal ballots marked outside a polling station, i.e. postal votes. Although legislation requires those attending proceedings in connection with the postal voting process to maintain the secrecy of voting, the public in general is not subject to such a requirement.
93. The secrecy of the ballot is fundamental to the ability of voters to cast their vote freely without pressure to vote a certain way. Extending the secrecy provisions to postal votes will help to prevent undue influence, and assist in the prosecution of cases where it occurs. This would require clear guidance being included with postal vote packs for voters not to publish photos of their completed ballot papers on social media. This should not however prevent individuals' expressing support for a political party on social media, including saying how they had personally voted. This would be a reasonable balance between the important British liberties of both freedom of expression and freedom to vote.

R18. The offences contained in section 66 of the Representation of the People Act 1983 which protect the secrecy of the ballot in relation to in person voting should be extended to postal ballots.

Clearer guidance on campaigner behaviour

94. This review, like the Law Commission's work, found significant support for a statutory Code of Conduct. Banning campaigners' from carrying out *all* of the activities described in the current, voluntary Code however would reduce their ability to respond flexibly to voters' individual circumstances when encouraging them to engage with the electoral process. The disadvantages would likely outweigh any benefit gained in preventing electoral fraud.
95. The majority of campaigners act responsibly in their interactions with voters, and provide valuable advice and encouragement to the electorate about using their vote. Indeed, in

circumstances such as a voter's lack of mobility where there is no alternative option and where the Returning Officer agrees to it, the voluntary Code of Conduct allows campaigners to deliver a voter's completed postal ballot pack to the relevant office or polling station.

96. Nevertheless the Code of Conduct has been ignored in some areas by unscrupulous campaigners, even whilst notionally signing up to it. In Tower Hamlets, there were instances of campaigners asking people to hand over their postal votes. There is a case for banning those behaviours which have the greatest impact on electoral integrity, while allowing political parties to take a responsible approach to other behaviours so that flexible campaigning practices may continue.
97. The Code's restrictions on handling or taking completed postal votes would be suitable for putting into statute. Currently the lack of any ban in legislation may facilitate the act of forcing the voter to complete their ballot paper and hand it over. It may also provide an incentive for campaigners to interfere with a person's application for a postal vote (e.g. by photocopying the person's legitimate identifiers) in order that the postal vote can be completed fraudulently. While there have been concerns in the past about how campaigners might be defined for the purpose of drafting offences to address their behaviour, the Law Commission did not consider this difficulty to be insuperable. Excluding family members and designated carers from the ban would allow legitimate assistance from these groups to continue to be provided without restriction.

R19. Political campaigners/activists should be banned from handling completed postal votes and postal vote envelopes. The provisions should not apply to family members and designated carers (subject to a limit of two, as per Recommendation 7).

R20. In order to achieve a balance between preventing unscrupulous behaviour and permitting legitimate campaigners to provide assistance to help people participate, the Code of Conduct should reflect legislation. If a particular behaviour is unacceptable, it should be prohibited across the board in legislation, and the legislation then enforced equally across all parties/candidates.

Checks on waivers

98. The lack of formal checks concerning an application for a waiver of the signature requirement in relation to a postal vote application may allow a person to avoid providing information that would verify that they are the genuine voter. As a result it provides a means to request a postal vote in someone else's name and to intercept and complete it fraudulently. Requiring an authorised person who is in a position to confirm the identity of the voter, and whether they are genuinely in need of a waiver of the signature to attest the application, would reduce the scope for fraudulent applications. The list of people authorised to provide the attestation should be wide to balance the need for security against that of accessibility of elections.
99. This should maintain voting accessibility for electors who cannot provide a signature, but reduce the ability for a person to commit fraud. Extending attestation more widely to include carers (as the AEA suggested) could expose vulnerable voters to pressure from family members who carry out the role of carer.

R21. Requests for a waiver of the need to provide a signature for a postal vote should require attestation, and the restrictions on people who can attest the waiver application should be the same as for proxy voters on the grounds of blindness or other disability.

Greater checks on applications for postal votes

100. One method of making postal voting more secure would be to require some form of confirmation of identity and the personal identifiers given at the time of requesting a postal vote or when renewing personal identifiers. Without any means of doing this from pre-existing data would mean electors either having the identifiers certified by someone (in France, for example, proxy vote applications have to be certified at a police station or court) or having to attend the elections office to provide evidence at the time of application / renewal. That would prove to be impracticable for a number of local authorities where postal vote rates are high and would prove to be a significant burden in the run up to a poll with 'late' postal vote applications being made up to the deadline of 11 working days before the poll.
101. A more practicable approach may be to remove the 'indefinite' option in relation to holding a postal vote and to require not just a re-refresh of identifiers, but a re-application to be made on a more regular basis. At present those holding a 'permanent' postal vote have to re-refresh their personal identifiers every five years. Moving to a system of re-application – which could be on a five year basis or could be shorter, say three years – would provide an opportunity for up-to-date checking of the application against other data at the local authority, and it would help to reduce scope for redundant postal votes to continue to go to an address which the elector has left. Perhaps more importantly, it also provides anyone with a postal vote who feels they are subject to coercion or undue influence with an opportunity to cease having a remote vote.
102. Allied to that, some respondents – and as raised as a concern by the OSCE / ODIHR in their reports – raised the issue of postal votes being rejected because of mismatched identifiers, including those that change over time. A shorter period of use for the identifiers could go some way towards addressing that problem.
103. Putting in place a tighter regime may have benefits to both integrity and electors and, given that the proposal is to tighten up all channels of voting, this could be a proportionate solution.
104. A further change to allow better checking of postal vote applications made in the run up to a poll – as noted above, a time seen by most electoral administrators as being a period of opportunity for fraudsters to try to get illegitimate applications through whilst elections staff are at their busiest – could be to set the deadline to apply for a postal vote earlier than the current 11 working days before the poll. Moving the deadline to 19 working days for postal vote applications would give administrators more time to check other data to see if the applicant was genuinely resident within their area.
105. The downside of this would be that people have less time to apply for a postal vote and the issue of a Notice of Election which is seen by some as a spur to people to get registered would be closer to the cut-off date. Currently, the registration deadline is 12 working days before date of poll and the deadline for applying for a postal vote is 11 working days before polling day.
106. The requirement for the voter to submit new identifiers will ensure that the voter's sample signature is kept up to date, and reduce the chance of the voter's postal vote

being rejected due to a failure of the signature submitted with the postal vote to match that held on record.

R22. The option to permanently request a postal vote should be removed, and the option to apply for a postal vote for a specified period should be subject to a 3 year limit. After this period, the applicant should be required to submit a new postal vote application (with identifiers), and the Electoral Registration Officer should be required to review the application to satisfy themselves that the individual is currently resident at the address.

Voter information

107. Additional guidance in postal vote packs was provided by a number of local authorities at higher risk of electoral fraud in the May 2015 polls, by including leaflets explaining the secrecy and personal nature of the vote. The local authorities evaluated this measure as having reduced the number of queries and reports of malpractice. They pointed out that messages needed to be clear and concise and provide any links to whistleblowing sites and details of how to report concerns about potential electoral fraud. As mentioned above, this should include practical guidance for voters on not photographing completed ballot papers.

R23. It should be standard practice for local authorities to provide guidance in postal ballot packs on the secrecy of the vote and how to report electoral fraud.

Recommendations not proposed

Electoral roll

108. The review considered evidence of voters in Pakistani and Bangladeshi communities reporting concerns that the secrecy of the ballot was undermined by party activists' knowledge about their choice to vote by post. The electoral roll holds details of all registered electors, including details of whether they have requested a postal vote. It was suggested that some political parties were overstepping their remit in collecting and recording information on whether voters had chosen to vote by post. Elected representatives, candidates, registered political parties and local constituency parties may request that the Electoral Registration Officers provide copies from the electoral roll of the absent voting records and lists used in elections. They are only permitted to use the information for research or electoral purposes and for any purposes compatible with the restrictions applicable to the full use of the electoral register by that recipient.¹⁰
109. The review has considered whether it should be possible to restrict access to absent voting records and lists in order to reduce the risk of postal vote fraud. This would however curb political parties' legitimate work in encouraging people to use their vote and increasing turnout. Having information about the person's voting method enables them to canvass postal voters earlier in the campaign, before they have returned their postal vote ahead of polling day. Parties can then canvass voters who are only able to vote in person at a later stage of the campaign, up to polling day. The recommendation to ban parties from handling postal ballot papers is preferred as a better means of addressing postal vote fraud. Parties' access to voting data may also help expose electoral fraud in relation to fraudulent postal voting or impersonation.

¹⁰ See chapter 6 of Electoral Commission guidance on access and supply of the electoral register: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/57931/Part-H-Access-and-supply-November-2012.pdf

Temporary suspension of postal voting should apply in areas vulnerable to electoral fraud.

110. Several respondents wrote in support of this measure. It was suggested that it should apply in areas which have previously had a proven court case or election petition for a specified period of time. An alternative suggestion was for the measure to apply to any area designated by the Electoral Commission as particularly vulnerable to electoral fraud, and continue until the heightened risk was assessed to have passed.
111. It would be difficult to apply this suggestion without unfairly penalising voters by removing choices over voting methods, due to the actions (usually) of certain campaigners in limited areas.

Prohibiting the collection of completed registration and absent vote application forms

112. The review has considered whether more regulation is needed in relation to campaigners receiving completed registration and absent vote application forms handed to them by voters. The voluntary Code of Conduct permits this activity and asks that the forms should be sent to the relevant Electoral Registration Officer at the earliest opportunity. This puts campaigners in a position of some responsibility whereby they must be entrusted not to access and make copies of the personal identifiers of voters and to hand the forms in before the relevant deadline so that the voter will not be disenfranchised.
113. Although there is a risk that the forms may not be handed in or miss the deadline, the risk is not significant since political parties would potentially lose votes in their favour in doing so. The receipt of forms by political parties provides them with feedback as to who is or is not registered, and who is expected to vote by post, which can assist them with their work in encouraging the public to participate in the electoral process.

PROXY VOTING

114. Several respondents to the review considered proxy voting to offer scope for electoral fraud. One respondent pointed out that it is “far less regulated than postal voting...there are indications that proxy voting is becoming more popular nationally and it may be that it is seen by the unscrupulous as a way of getting round the checks that have been put in place to ensure the integrity of postal voting.”

Ordinary proxy votes

115. Different types of (ordinary) proxy vote are available to individually registered electors depending on the reason why they need it: it can be for either a definite period, an indefinite period, or for a particular election, and the elector must apply for it no later than 5pm six working days before the poll. Concerns were received by the review relating to proxy votes for a particular election. Applicants for this type of proxy vote must give a reason, however it does not have to be specific, nor is an attestation required. By comparison, applications for proxies for definite or indefinite periods require a specific reason (such as blindness or other disability, employment, or being registered as an overseas voter) and attestation (except if the applicant is an overseas / service voter or other limited category of voter).
116. The reason given by an elector in relation to a proxy application for a particular election must be accepted at face value by the Returning Officer even if it appears to them to be

unsatisfactory (although guidance recommends that they should report any concerns or suspicions to their local police Single Point of Contact for electoral fraud). A respondent commented: “it is seemingly enough for the voter to say ‘going on holiday’ on the proxy form, without giving dates or providing any other proof.” The Electoral Commission supported consideration of whether proxy vote applications for particular elections should be attested.

117. Applicants for proxy votes for definite periods, indefinite periods or particular elections must supply their personal identifiers (signature and date of birth). However the person they name as their appointed proxy (who must be individually registered) is not required to provide personal identifiers except if they vote by post on behalf of the elector. A respondent viewed this as a weakness since it means the identity of the proxy is not checked when they vote at a polling station. Requiring it would provide a level of assurance that the person casting the vote is the correct person similar to that required for postal voting. Any further requirement (such as attestation or provision of evidence) would be disproportionate for a particular election.

R24. The provisions on an ID requirement in polling stations should apply to those casting a vote as a proxy on behalf of a voter.

Emergency proxy votes

118. A further type of proxy – an emergency proxy – is available to registered electors after 5pm on the sixth working day before the poll due to a medical condition, illness, or disability arising after the deadline for ordinary proxy applications, or for reasons of occupation, service or employment which the person becomes aware of only after the deadline for ordinary proxy applications has passed. These applications must be attested (for example by a medical practitioner or employer). There was concern amongst electoral administrators that widening of the right to an emergency proxy would increase a risk of fraud when introduced.
119. The AEA report ‘*Elections and Individual Registration – the challenge of 2015*’¹¹ noted that political parties and campaigners had become more aware of the availability of emergency proxies for business reasons and not just medical emergencies as witnessed by the significant volume of emergency proxy applications issued for occupation, service or employment at the Scottish Referendum in September 2014, with the trend continuing for the polls on 7 May 2015. Electoral administrators reported pressure from political parties to allow applications, doubts about large numbers of applications from electors purporting to be self-employed (which are subject to less strict attestation requirements than other categories of emergency proxy) and questioned whether applicants were genuinely unaware of the need for the absent vote until after the deadline for ordinary proxy votes had passed. The AEA recommended that the circumstances for emergency proxy applications should be considered and reviewed, including the deadline for receiving such applications. On the other hand, emergency proxies can of course play a vital role in enabling access to the poll and they were able to be used in a London Borough in the 2016 London elections when the council made serious administrative errors when setting up polling stations which otherwise may have prevented people from voting.

R25. A power of enquiry should be available to Returning Officers to question applications for an emergency proxy.

¹¹ <http://www.aea-elections.co.uk/wp-content/uploads/2015/07/aea-report-elections-and-ier-challenge-of-2015.pdf>

R26. Consideration should be given to changing the deadline – to 5pm on the day before polling day – for emergency proxies (other than those for medical reasons or administrative failure by the Returning Officer) – so that Returning Officers have sufficient time to exercise the power of enquiry.

120. In considering how a power of enquiry would work, the measures set out by one respondent, a Returning Officer, are helpful. In order to address concerns about whether the decision to appoint a proxy vote was freely taken, they stated that the local authority carried out spot checks on samples of applications for proxies, and contacted voters to confirm the accuracy of the information given on the form. The authority also wrote to all those who had appointed a proxy to notify them of that fact and of the name of the proxy, and advise them of their right to vote in person at the polling station if able to do so before the proxy. The Returning Officer acknowledged that the checks had no legal status, so where applications were received near the deadline and did not allow time for checks they did not have the power to refuse the appointment of the proxy.

General concerns

121. Some further general concerns were received by the review which are applicable to all categories of proxy vote, concerning the limits on the number of people for whom a person may act as a proxy, and the involvement of campaigners in proxy vote applications.
122. The involvement of campaigners in assisting in either the completion of proxy vote applications or the handling of completed proxy vote applications was considered inappropriate. Another respondent believed that candidates and agents' appointment as proxies should also be reconsidered.
123. The Law Commission, in its consultation to their review of electoral law, sought views on whether the law should create offences to prohibit the involvement of campaigners in -
1. assisting in the completion of proxy voting applications
 2. handling completed proxy voting applications.
124. It concluded that creating offences to prohibit campaigners' involvement in absent voting activities would criminalise helpful behaviour, be difficult to enforce and would be an overreaction in light of the available data on fraud; it agreed with the Electoral Commission's suggestion to more clearly define offences of compelling someone to apply to appoint a proxy (or to prevent them from doing so) against their will and of altering an elector's completed proxy vote application form.

R27. The legislation on offences relating to proxy voting should be clarified around compelling/preventing someone applying for a proxy vote and altering someone's completed application.

125. Currently a person may act as a proxy for an unlimited number of close relatives and up to two other people, at the same election. One respondent questioned whether the number of close relatives should be limited to two. Another noted that a person could claim they are related to others in order to increase the number of people they could act as a proxy for and the Electoral Registration Officer would not be able to check this. Given the potential for the use of coercion to appoint proxies in areas where fraud is already an issue, limiting the provision to one person holding a maximum of two proxy

appointments regardless of relationship could provide a proportionate response to concerns about abuse of proxies.

126. Overseas voters are the group most likely to be affected by this measure, since they may depend on the ability to use a proxy vote in order to avoid the delays that are possible with returning a postal vote from abroad. Consideration has been given to whether an exception should be made to allow an appointed proxy to act on behalf of more than two close relatives where they are overseas voters, but on balance it is believed that a limit of two strikes the correct balance between accessibility of elections and integrity.

R28. The limit on the number of close relatives for whom a person can act as a proxy should be reduced to two.

Balance of change across voting methods

127. The balance between security and access is highlighted in all the arguments about changes to strengthen the integrity of voting channels. In its reports on UK polls in 2010 and 2015, OSCE / ODIHR both recommended use of ID in polling stations but also considered the impact of introducing postal vote Identifier checking, which has in some cases resulted in genuine electors having the votes discarded due to simple errors like putting the date they signed the postal vote statement rather than their date of birth.
128. The balance may be hard to achieve effectively in any given voting method and is likely to change over time as usage of a channel, perception of fraud and actual instances of attempted fraud vary. Changes like individual registration will 'bed in' over time.
129. A balance also needs to be achieved across the range of voting methods. Strengthening some channels and not others mean fraudsters will look to the 'weaker' processes. Thus this report makes recommendations for strengthening the process in all three channels of voting: polling stations, postal voting and proxy voting. The aim must be to strengthen the whole system, not move the balance of vulnerabilities around it?
130. Seeking routes to tackle postal voting issues through limiting party handling and using stronger offences focuses the sanctions and tests on those who are causing the issues, rather than on the majority of voters who are quite able to vote effectively and have no concern about fraud or coercion in respect of their own votes.
131. However it is not possible to guarantee significant improvement without also addressing the systems, hence the recommendation to make changes to the postal voting system in terms of limiting the length of the period an application covers for electors. That also fits with limiting the number of proxies and requiring some form of ID in polling stations (with a preference towards a light-touch regime) in order to limit the impact on the vast majority of electors whilst still providing a level of rigour that will have an impact on perceptions and behaviours.
132. These seem proportionate steps to deal with problems that are known to be localised but could spread. If they fail to tackle them effectively then more stringent measures can be looked at. But, as this report has pointed out on a number of occasions in its considerations, blunt measures are highly likely to have unwanted consequences in also impacting legitimate electors. This balance is aimed at providing a viable response to the vulnerabilities across the three voting options and strengthening the system *in toto* not pushing the balance of risk from one option to another.

ELECTION COUNTS

133. The election count process is not generally a cause for concern in the majority of responses but evidence elicited some particular issues at some recent counts that reflect behaviour that is mirrored in some of the issues seen in and around polling stations. In particular the large numbers of people present and how they interacted with staff raised concerns in Tower Hamlets; there was a serious concern that impropriety could be taking place unseen through the crush of people present and with staff being influenced by, or exhibiting favouritism towards and being over- familiar with candidates and their representatives.
134. Use of languages other than English raised concerns in terms of effective oversight and observation. Alloyed with candidates and their supporters leaning over tables and even handling ballot papers, this raised cause for concern as to impropriety which then starts to shape the view of the process and the result in a negative fashion. Ensuring a clear process and avoiding scope for doubt need to be part of the planning for all counts. Again, as mentioned in relation to polling stations, all the proceedings should only be conducted in English, and/or Welsh where appropriate.
135. Whilst this kind of behaviour is rare, it is clear that a Returning Officer needs to ensure an effective count and needs to ensure that measures are in place to take account of the possibility of disruptive behaviour. Effective planning to ensure counts are not overly full, but enough people are there for proper scrutiny, and having desks and barriers that preclude any improper activity such as leaning over to touch papers are easy to implement.
136. Additionally a couple of respondents raised issues about a lack of transparency of the process and had observed counts where reasons for the movement of ballot papers was not clear nor was where they were placed (with no signs indicating what was on a particular table for example). Similarly two councillors raised concerns about processes they had witnessed including lack of explanation for actions, inability to see what was happening with some papers in the Returning Officer's area and a concern that staff could have strong party affiliations thus driving a need to ensure transparency. As was seen in the Scottish independence referendum, a lack of clarity and understanding can lead to people unfamiliar with processes making negative assumptions and assertions that can then be swiftly spread via social media and take some time and effort to address.
137. This is not an area that needs legislation but clear guidance and effective promulgation of good practice amongst Returning Officers is essential to ensure they think ahead and can respond to this kind of activity should it become evident.

R29. Given the concerns raised in Tower Hamlets and elsewhere regarding the running of election counts, there should be clearer and robust guidance for Returning Officers and electoral administrators to ensure best practice in all election counts.

ELECTION PETITIONS

138. The law governing election petitions is largely unchanged since 1868, and as such has not kept pace with developments in the electoral system nor international principles of good practice developed by the International Institute for Democracy and Electoral Assistance (IDEA), the Council of Europe's Venice Commission, and the Organisation

for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (the OSCE / ODIHR).

139. The international principles are based on international law and were outlined in the Electoral Commission's '*Challenging Elections in the UK*' report (September 2012), produced in order to encourage debate in the context of the Law Commission's review of electoral law. The report identified numerous instances in which the UK's petition process was inconsistent with the principles. This review has considered which of these may be limiting access to the petition system and thereby preventing fraud or irregularities from being considered. It has identified obstacles relating to the restrictiveness, complexity and currency of the rules, and the costs and time limitations for challenges.
140. The petitioners involved in the Tower Hamlets case provided evidence to the review and raised strong views about the process they had felt obliged to follow and the risks they had undertaken in order to push for a review of the outcome of the election. Their experience reflected that the system, whilst not unsuitable as a means of ensuring challenges are not brought for spurious or malicious reasons, did not work to support legitimate challenges to disputed electoral event outcomes. Their concerns were echoed by many other respondents who felt that the barriers within the present petition system are too high, that it was not accessible by parties that had an interest in using the process, and that it acted as a disincentive to challenge rather than operating effectively as a means of ensuring challenge was possible.

System for hearing election petitions

141. Election courts are distinct from the mainstream legal system and retain features which originated prior to 1868, when the jurisdiction was transferred from committees of the House of Commons. The Law Commission recommended that the system for challenging elections should be brought into the ordinary court structure of the UK: i.e. for parliamentary elections hearings in the High Courts of England and Wales and Northern Ireland respectively and the Court of Session in Scotland; for local elections hearings in the High Courts in England and Wales and Northern Ireland respectively, and by Sheriffs Principal in Scotland. The change would recognise that election petitions are in reality private civil proceedings. The ordinary procedure of the courts would apply, bringing benefits of accessibility through the use of simpler, less formal and more up to date rules. The proposal is supported the Electoral Commission and AEA and by a majority of those who provided responses to the Law Commission on the proposal.
142. The ordinary procedure of the courts provides a general power for a party to apply to the court for an order to strike out a claim or part of it for disclosing no reasonable grounds for bringing the claim. The Law Commission considered that this would be adequate to filter out unmeritorious claims, subject to the provision being given specific expression for election petitions in the procedural rules for each jurisdiction of the UK. This would represent an improvement upon the current system which limits respondents to applying for petitions to be struck out for informality, i.e. procedural flaws, potentially allowing petitions without merit to proceed, which also has costs implications for the parties to the petition.
143. Judicial review would not be available under the ordinary court system as it does not extend to High Court decisions. The ordinary court system does however normally provide a right of appeal. The Law Commission recommended a single right of appeal to the Court of Appeal in England and Wales, and Northern Ireland, and the Inner House of the Court of Session in Scotland. This is supported by the AEA and Electoral

Commission. The Law Commission originally proposed that the right of appeal should be allowed on points of law alone but finally recommended it should be on both points of law and fact. This was in response to the Electoral Commission which argued that although currently, election courts are held to establish the facts with finality, allowing appeal on points of fact protects the losing party given the severe consequences of losing, and ensures the election result is correct and commands public trust.

144. Although allowing a right of appeal on the facts would potentially prolong the time taken for a decision on the appeal, this appears justified in order to maximise confidence in the election outcome, and avoid the risk of an unsafe judgment not being open to challenge due to a technical reason.

R30. The system for challenging elections should be brought into the ordinary civil procedure and a single right of appeal should be available on both points of law and fact.

Who should be able to bring election petitions?

145. One respondent to the review questioned why a minimum of four electors should be required to initiate a petition for a local election (only one is required in relation to Parliamentary elections). The Law Commission recommended removing the minimum limit. The stricter requirement at local elections appears to be aimed at screening out unmeritorious cases by ensuring that any individual petitioner has to persuade three others of the merits of the challenge. This requirement could be considered a somewhat arbitrary and inconsistent barrier to challenging elections (the costs involved already provide a check), and may introduce unnecessary delay to a legitimate challenge being initiated.

R31. A single elector should be able to challenge the outcome of any election.

146. A joint academic response to the review provided evidence of an analysis of the available records of election petitions issued in England and Wales between 2000-07. Just over half (21 out of 39) primarily alleged errors on the part of an election official, mostly relating to errors / defects of procedure concerning the count. Returning Officers are however unable to initiate election petitions to correct known errors on the part of their staff that have affected the result. The only recourse is for a candidate or elector to lodge an election petition. If they do not then the result will be left to stand.
147. It was suggested to the review that Returning Officers should have standing to bring election petitions. Such a change would increase assurances in relation to the results of elections. The idea is supported by the AEA and was also recommended by the Law Commission. The latter recommended that Returning Officers should be able to bring a preliminary application to test whether a putative breach affected the result. This would ensure that the case has merit before it proceeds to a full trial. To extend the right to breaches by candidates or their agents could compromise the Returning Officer's political neutrality and independence.

R32. Returning Officers should have standing to bring election petitions. This should be limited to breaches of electoral law relating to the administration of the election or registration of electors and the Returning Officer should be able to test the effect on the result before proceeding.

148. Political parties are unable to bring election petitions, although in practice they may provide legal and financial backing to candidates who initiate them. The Electoral

Commission pointed out in its report '*Challenging Elections*' that the absence of a right for political parties to initiate election petitions goes against an international principle. It should not be incumbent on individual party candidates or members to put themselves forward. Extending the right to bring petitions to the political parties would increase the likelihood of a challenge being brought in the event that individuals do not wish to commit time and personal resources to doing so.

R33. Political parties should be able to bring election petitions in the name of the party.

Costs of petitions

149. The costs associated with an election petition have long been a concern, and are widely considered to present a significant barrier to access to justice. A petitioner involved in the Tower Hamlets case made the point that it was wrong that individuals should have to risk financial ruin to get an election investigated properly.
150. A fee of £535 is charged for an application for an election petition; it was suggested by a joint respondent to the review that this should be reduced to be in line with other countries such as New Zealand (£440) and Australia (£240). The security for costs were also considered to be high, particularly when compared to those for other countries. The maximum security is £5,000 for a UK or European Parliamentary election, £2,500 for a local government election, and £1,500 for a parish council election.¹² The legal costs of taking an election petition to court typically run into six figures.
151. The fee chargeable for the election petition covers the costs of issuing it, while the security for costs covers the amount a court may order a petitioner to pay later, and which the petitioner usually gets back if they win the case. The sums offer a degree of assurance that the petitioner has genuine reasons for bringing the petition which they believe they can substantiate, and hence can recover their costs. Petitioners can apply for a remission of the fee, which the court decides by taking into account the petitioner's financial resources. The sums payable as security for costs are maximums, and the court may set a lesser amount. The present arrangements, which contain safeguards to reduce financial burdens on petitioners if needed, should continue. They strike the correct balance between accessibility and ensuring frivolous challenges are deterred, providing that the courts take account of the means of petitioners in setting the security for costs.
152. Currently the power of an election court to make costs orders against non-parties to the election petition are limited and only available in prescribed circumstances. A benefit of bringing the system for legal challenges into the ordinary court system is that it would grant a wider power for the court to make costs orders against a non-party to the petition, for example against a respondent's political party, which would be at the discretion of the court, where that was justified (i.e. the non-party would have to have been at fault). The wider power would continue to be available to the court after it had made its final declaration and report, as a consequence of the application of the ordinary civil procedure, in contrast to the present system.
153. Protective costs orders (or protective expenses orders in Scotland) would provide further protection to a petitioner, where the circumstances warrant it, by ensuring that even if they lose the election petition, they would either not be liable to pay the defendant's

¹² <https://www.gov.uk/challenge-election-result/pay-security-costs>.

costs, or would only be liable to pay a fixed proportion of them. The defendant would cover their own costs, either in part or full. The petitioner would be entitled however to recover part or all of their costs from the defendant if successful. The Law Commission considered that the availability of protective costs orders in election petitions was uncertain.

154. Protective costs orders are granted on the basis of governing principles of the Court of Appeal, which include consideration of the public importance of the issues and public interest that they should be resolved, and the financial resources of the applicant and respondent. The availability of such orders would therefore allow petitions of public interest to proceed where the petitioner(s) have little funding or are using pro bono legal representation.¹³

R34. The Government should change the law if necessary to remove all doubt as to the court's ability to make protective costs or expenses orders.

Public interest petitioner

155. Some respondents supported the introduction of a public interest petitioner. Two suggested that a reformed Electoral Commission would be suitable for this role. A public interest petitioner would be expected to investigate from the point of view of the public interest whether the election was conducted lawfully. The process presently relies on the actions of motivated and public spirited private individuals, who receive no public assistance. One respondent pointed out that electoral cheating is not a private matter in which the losing candidate(s) is/are cheated – it is the electorate which is cheated.
156. Richard Mawrey QC, in his judgment relating to the mayoral election in Tower Hamlets, considered it “wholly unreasonable to leave it to defeated candidates or concerned electors... to undertake the arduous and extremely expensive task of bringing proceedings and pursuing them to a conclusion entirely at their own expense and with the risk of bankruptcy... Furthermore if they do win and are awarded costs against the respondent, the latter, who is turned out of office and frequently then prosecuted to conviction, is unlikely to be able to pay those costs.”
157. The Law Commission consulted on how the arrangements for a public interest petitioner might work. They suggested making its intervention subject to a threshold requirement, which would have regard to the nature and credibility of the allegations and the risk of loss of public confidence. Applications for public interest petitions would be assessed against the threshold requirement either by the public interest petitioner itself under one option, or by a statutory independent expert panel appointed by it under another option. Subject to the threshold being met the public interest commissioner would be required to initiate proceedings. The proposed arrangements were directed at ensuring election petitions were not funded unnecessarily by the public purse, and (under the second option) avoiding allegations of political motives on the part of the public interest petitioner if this role were to be undertaken by a neutral body, such as the Electoral Commission.
158. Responses to the Law Commission raised concerns that questions could still be raised about the independence of any panel from the public interest petitioner, that the process of assessing allegations against the threshold would introduce delays, and that a public authority could become a first port of call rather than a last resort. Additionally there

¹³ <http://www.1cor.com/1155/records/1212/PH%20public%20law%20handout.pdf>

could be an equality of arms issue if the respondent did not have adequate sources of funding.

159. These concerns would be addressed by the suggestion of one respondent to this review who proposed that two judges should consider the merits of election petitions which had already been commenced by private individuals at an early stage in the proceedings. If a case was found to have merit the public interest petitioner would take it over, similar to the way in which the CPS takes over a private prosecution. The respondent pointed out that criminal prosecutions address equality of arms issues by providing access to proper lawyers for the respondent.
160. The Law Commission's interim report nonetheless noted the lack of consensus from respondents to its review over who would perform the role of the public interest petitioner. There are also questions of whether a public interest petitioner's decisions would be susceptible to judicial review (which would protract proceedings) and there would continue to be risks that its political neutrality would be called into question when making decisions that have political outcomes. Because of these difficulties, the idea should not be taken forward.

Ability to raise a petition against people not named in an original petition

161. In the Tower Hamlets case, the election court concluded that the corrupt and illegal practices found to have been committed had benefited the election of councillors of the Tower Hamlets First party; however as they were not named in the petition the court was unable to consider the validity of their elections. Furthermore the deadline for lodging petitions to challenge the elections had also passed, so they were entitled to retain their seats until the next election. Indeed, the election court's disqualification of the corrupt mayor from office resulted in the acting mayoral position being filled by a councillor from the Tower Hamlets First party who had been elected in the same, tainted elections.
162. Petitioners work within the constraints of a relatively short deadline for lodging the petition, a requirement to prove their case to a high standard (i.e. the criminal standard), and the high cost of preparing their case which increases for each person named in the petition. These factors may limit petitioners' ability to identify all the individuals who have benefitted from electoral fraud at the outset. In order to address this, it should be possible for an election petition to be commenced (by others if necessary) against people implicated in an election court judgment but who were not named in the original petition.

R35. Where an election court finds evidence implicating non-named individuals as beneficiaries of electoral fraud, it should be possible for a petition or process to be raised against them within the usual timeframe, starting however from the date of the election court's judgment rather than the date of the election.

Time limits

163. Several respondents commented on the timescales relating to the election petition process. It was argued that the normal time limit of 21 calendar days after the date of the election within which an election petition must be lodged was inadequate, when not all potential data may be available. Extensions of up to 28 days are allowed only for election petitions which concern corrupt or illegal practice involving the payment of money or other reward or in connection with election expenses (which reflects the fact that election expenses do not have to be submitted for 35 calendar days after the declaration of the result).

164. The normal time limit was considered inconsistent with the time normally allowed for the police to take up a criminal prosecution, which is one year from the date of commission of the offence. A petitioner in the Tower Hamlets case suggested that the 21 day limit should be removed altogether since if serious concerns could be raised, it should be possible to raise them at any time.
165. The Law Commission in their consultation to their review of electoral law suggested that the present time limit of 21 days should be maintained, except in some limited circumstances, in order to provide certainty about the outcome of elections. The need for certainty is an important concept which ensures elected representatives have authority to proceed to implement their policies and decisions.
166. The need for petitioners to operate to a time constraint avoids unnecessarily prolonging doubt over the election outcome. The 21 day time limit is likely to allow adequate time for lodging the election petitions where the allegations are specific in nature. However, in cases such as Tower Hamlets, which concerned multiple and wide ranging allegations, the time limit may place unrealistic constraints on the ability of petitioners to be sure of the evidence available to support their allegations and to make an effective case. There needs to be greater flexibility for the system to respond to these types of cases.
167. One option would be a generally available power for petitions to be lodged after the normal 21 calendar day limit up to a maximum time limit where there are exceptional circumstances. Those circumstances could include information coming to light which previously was unavailable or to which access had been impeded, or the scale of the task needed to examine evidence and set out the grounds of a challenge. It would however make all elections subject to doubt until the time period had passed.
168. Another approach would be for prospective petitioners to be allowed to give notice within the 21 days of a wish to initiate an election petition and apply, with reasons, for extra time in which to lodge it. A refundable payment towards the security that would be needed in the event the person lodges the petition could be required in order to deter frivolous or groundless allegations. This would not deal with situations where information comes to light after the 21 days (except where existing legislation makes specific provisions relating to expenses), so it would be important for anyone holding significant information to come forward in the timeframe. However it should be possible for the grounds of the petition once submitted to be amended to take account of any new evidence. The approach would have the advantage that only specific elections would be subject to doubt about their validity after the 21 day limit had expired, rather than all elections.

R36. It should be possible to apply to extend the maximum time limit for an election petition to be lodged, and to amend the grounds of an election petition once it has been submitted. Consideration should be given to the length of the extension period and the circumstances where it should be available.

Outcomes

169. One respondent drew attention to the difference of outcome in cases of electoral fraud that are subject to an election petition, and those which are subject to a criminal prosecution under the Representation of the People Act 1983. An election court which finds evidence of electoral fraud may (where certain grounds are met) annul or correct the result of the election. That outcome is not available in cases of electoral fraud which are subject to criminal prosecution, and it was argued that this should be changed. The

only way that the election result could 'change' as a result of a criminal prosecution would be if it resulted the winner of the election was convicted and found personally guilty of a corrupt or illegal practice, which would result in their disqualification and vacation of their office resulting in a by-election.

170. The criminal court system therefore allows office holders potentially to continue in post even where it makes findings of electoral fraud that may have affected the result of the election; yet to allow the court to annul or correct the result would allow create an unacceptably long period of uncertainty in the election outcome since the time allowed for police to take up a criminal prosecution is one year. For this reason it would not be feasible to take the proposal forward.
171. However, there are issues with the decision of election courts not being followed up by the authorities with criminal prosecutions. This is considered later in this report.

Standard of proof

172. It was pointed out by a respondent that the threshold for avoiding an election for general corruption is very high, because it requires corrupt and /or illegal practices to be proved to the criminal standard (i.e. beyond reasonable doubt), and in addition for those practices to be shown to have so extensively prevailed that they may be reasonably supposed to have affected the result. This was considered to discourage election petitions, which already present barriers to petitioners such as cost and risk, from being brought.
173. It was argued that the present corrupt and illegal practices in the Representation of the People Act 1983 should be re-enacted in a form which provides that if the election court finds on the balance of probabilities that they have occurred so as to benefit the winning candidate, the election should be set aside. This would facilitate the hearing of election petitions and by making wrongdoers more likely to be held liable increase the deterrent effect of the law; wrongdoers could subsequently be prosecuted for crimes related to these practices and if convicted using the criminal standard of proof, punished accordingly.
174. Although the standard of proof required for a successful election petition is high, this is justifiable on the grounds that politicians and those who elect them have a right to expect a high degree of certainty in the grounds for overturning any result.

R37. The criminal standard of proof should be retained for election petitions.

Informal mechanisms for bringing complaints about the administration of elections

175. It was suggested by a respondent to the review that the test which has to be satisfied for a petition to be successful in the case of procedural errors (i.e. the election was not conducted as to be substantially in accordance with the law as to elections; and the act or omission affected its result) is hard to achieve and prevents many cases of electoral fraud or lesser misconduct from being examined. The respondent supported the Law Commission's suggested options for dealing with such complaints: either escalation to the local government ombudsman; a scheme whereby adjacent Returning Officers consider complaints (or the directing officer at European Parliamentary elections where the complaint is not against their service) or consideration by the Electoral Commission. This would allow practices and procedures to be improved and so avoid a repetition of errors that could affect the result of an election in future.

176. This has been a long-standing issue for many involved in electoral administration and is a proposal that has been suggested previously when changes to legislation have been proposed but has not so far been taken forward. Any changes to the petition process provide an opportunity for this proposal to be examined and implemented, if appropriate.

R38. The Government should consider implementing (in conjunction with the devolved administrations as appropriate) a process for electors' complaints about the administration of elections (which do not aim to overturn the result) to be investigated by the Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales, and the Northern Ireland Ombudsman as a means of providing an appropriate and accessible channel for considering complaints of a less serious nature. The Government's planned legislation on wider Ombudsman reform could provide a legislative vehicle for such a change.

NOMINATIONS

177. A joint academic response to the review reported the result of research that showed that since 2012 there had been a notable rise in the number of convictions for offences concerned with the nomination of candidates, notably the forging of signatures on nomination forms and failures to declare criminal convictions in candidacy documents. Suggestions were received from another respondent (a returning officer) in support of the nominations form template providing more detail and clarity, including guidance notes in layperson's terms on what is required, for example in relation to the specifics of the ineligibility criteria and asking the candidate to confirm none apply to him / her, the consequences of giving false information, and the term 'home' address.
178. Currently, for example, disqualifying legislation is reproduced in the local government election 'consent to nomination' form without further guidance, and only a reference to the relevant legislation appears in this form for the Parliamentary election. A clear statement concerning the penalty for making a false declaration appears on the UK Parliamentary election 'consent to nomination' form but not that for local government elections. Although the Electoral Commission produces separate '*Guidance for candidates and agents*' on standing for election, which candidates are directed to read in the checklist included in the nomination pack, a more direct means of providing the information may help to ensure that fewer candidates submit invalid nomination papers.
179. Currently Returning Officers must accept nominations at face value, except in very limited circumstances, which include where an application is manifestly false i.e. a sham nomination. Case law otherwise makes clear that Returning Officers must not undertake any investigation or research into any candidate, even if they have personal knowledge of them. This avoids the Returning Officer being drawn into judgments which could call into question their impartiality. The power to reject sham nomination papers would arise where a person stands for election under a fake name impersonating a real candidate, or as a fictitious person, however the Law Commission pointed out that the case law on which it is largely based gives little guidance to Returning Officers on how to deal with these examples. They recommended the creation of an express power to reject sham nominations which are designed to confuse or mislead electors, or to obstruct the exercise of the franchise.
180. Respondents identified a number of other areas where the nomination system was open to abuse. In one example provided, people found themselves named as subscribers without their consent. The person responsible for this, a candidate, stepped down after the matter was passed to the police. However by this point the ballot papers had already

been sent to print and postal ballots had been despatched. The incident generated significant disruption and additional work for the Returning Officer and their staff. To prevent such an incident occurring in future the respondent suggested that:

- the candidate should be required to declare on the nomination paper that the contents of their paper are correct.
- the candidate should be required to confirm that they have obtained the consent of each subscriber (either in writing or verbally when the nomination papers are submitted).

181. In relation to the second suggestion, each subscriber is required to assent the nomination by signing the nomination paper, so an additional confirmation could seem unnecessary. However as the respondent pointed out these suggestions would provide a deterrent and help build a case for prosecution in the event of a fraudulent nomination being submitted. They noted that it would be impractical for the Returning Officer to conduct checks of subscribers in the short timeframe allowed for nominations even if the law allowed it.

182. Another respondent provided examples of abuses where a person found themselves nominated as a candidate without their knowledge, and a case where a person's nomination paper was altered by someone entrusted to submit it. The respondent suggested that some form of ID process should be implemented with an authentication process by the local authority before the candidate is accepted (this would also help to deter sham nominations), and that candidates should be solely responsible for the completion and submission of nomination papers.

R39. The procedures around candidate nominations should be reviewed to consider the prevention of sham nominations and ensuring that nominations are validly made.

OFFENCES

183. Deliberate interference in the democratic process is a serious matter which is always aimed at depriving the electorate of its freely chosen candidate. Candidates who secure office as a result of electoral fraud exercise powers which are not legitimately theirs, enabling them to make decisions which affect the public in fundamental ways – in relation to housing, transport, public services, et al. The legacies of those decisions may not be reversible even when the candidate is removed from office. The penalties for electoral fraud need to provide a level of deterrence appropriate to the seriousness of its effect on society.

184. As with the petition process, electoral offences have come in for scrutiny in recent years on the basis of their specific nature and a lack of understanding in terms of application by law enforcement agencies. A number of the offences are unique (e.g. treating) and unclear to both the police and those participating in elections which leads to confusion and uncertainty about their application which means they are rarely employed. There is a need to review the offences that apply to elections and identify if a simpler and more 'general' approach to applying offences can be identified.

Maximum offences

185. Elections are often fiercely contested, and a minority of candidates and campaigners may resort to unlawful methods in order to win them, denying the electorate an honest election in which it can be confident of the result. Candidates who succeed through

unlawful methods are likely to behave unscrupulously once in office, as in Tower Hamlets where the mayor presided over failures by the council to deliver on its best value duty. The effect on the electorate is a loss of trust in the electoral system and in the democratic process.

186. Currently the maximum penalties upon conviction on indictment for corrupt categories of electoral fraud offences in the Representation of the People Act 1983 are two years' imprisonment and / or a fine. The penalties apply to personation and postal / proxy voting offences (sections 60 and 62A, respectively). The behaviours to which these offences relate may allow candidates and supporters to commit fraud on a significant scale, which may suggest a case for considering whether the maximum penalties should be increased. The Law Commission has pointed out that in England and Wales the maximum penalties have been thought insufficient to address the level of criminality involved, leading to resort to offences under the general law such as conspiracy to defraud, which carries a maximum sentence of ten years' imprisonment. A majority of respondents to its review supported an increased sentence of ten years' custody in cases of serious electoral fraud.
187. The provision of false registration information (section 13D(1)), is a summary only offence and attracts a maximum penalty upon conviction of six months' imprisonment and / or an unlimited fine. Although not a corrupt practice like the offences of personation and postal voting offences, the provision of false registration information may also allow widespread electoral fraud to be committed. It could additionally facilitate other types of crime such as financial fraud. As such the offence may warrant an increased maximum penalty.

R40. The Government should consider increasing the maximum sentences for electoral fraud relating to postal voting, personation and registration (including making the latter an indictable offence).

Undue influence

188. Undue influence (as set out in section 115 of the Representation of the People Act 1983) is considered to be an area of law that is incredibly difficult to prove to the criminal standard. The police have in the past advised their officers to consider using non-election specific powers to tackle undue influence outside polling stations, such as a breach of the Public Order Act 1986 or a common law power of arrest in relation to breach of the peace. Police officers are naturally more knowledgeable about these powers and more comfortable with using them as they form part of their day to day policing. Richard Mawrey QC, in the Tower Hamlets judgment noted that the use of non-election specific powers may have been part of a cautious approach by police officers in that case to avoid possible accusations of bias but he observed that "In policing the polling stations, [the police's] primary concern was not the provisions of the 1983 Act: their primary concern was the possible commission of public order offences."
189. The requirements for proving an offence of undue influence are themselves high. In his discussion of intimidatory behaviour outside polling stations in the Tower Hamlets judgment, Mawrey stated "...s115 demands quite a serious level of violence before it will permit an election to be avoided....the court cannot be satisfied that the violence or duress reached the level required by the section." He went on to state that, "In the view of this court, s 115(2) sets the bar much too high for dealing with intimidatory behaviour during the conduct of the poll."

190. The Law Commission's report recommends a more clearly detailed offence of undue influence to deter the use of voter intimidation as a campaign tactic, restated to involve two components: pressure and duress, and deception. Their suggested revision stops short of lowering the bar on dealing with intimidatory behaviour because "it would crucially have to avoid penalising mere political fervour and the desirable promotion of participation and canvassing of voters."
191. The recommended provision may not capture the intimidatory behaviour considered by the election court in the Tower Hamlets case, however the point about avoiding penalising benign behaviour is an important one. The recommendation in this report for Returning Officers to have the ability to establish a *cordon sanitaire* outside polling stations will provide a more clear-cut way to reduce the likelihood of intimidation of voters.
192. The ability to prove undue influence within households is hampered by the reluctance of individuals to report it. Evidence to the review maintained the reasons were considered similar to those which prevent sufferers of domestic abuse from coming forward. One respondent, a councillor, related how she had been contacted by individuals concerned about being pressured into having postal votes. Despite her encouragement they would not report it to the police, nor provide her with information to pass to the police.
193. Joint academic respondents to the review stated that they heard evidence in their studies of voting in some ethnically-diverse communities that Asian candidates do not believe they will be selected except with the support from Asian areas, and so the communities perceive the need to influence voting to mobilise voters. Such communities reportedly felt abandoned by the political parties, since they perceived that they did not receive as much contact with them as white British communities, and the community elder would be the 'only person that knocked on the door'. Conversely, a representative from a political party stated that community elders may hold activists from outside the community at bay, on the grounds that they were better placed to go into the community because they understood it better.
194. A cultural component of undue influence was said to be that of 'vote selling', which is typical of patronage politics in some less developed countries where it is normal for a person to show how they have voted and this comes with the expectation of help in return. This can influence voters in communities with certain ethnic backgrounds in their expectations of how the democratic system works in the UK. This observation was echoed by another respondent who believed that it was necessary to consider the importation of political (i.e. corrupt electoral) practices from a country of origin.
195. To address the issues with undue influence the proposals for clearer offences in relation to campaigning activities will deter some of the inappropriate campaigner behaviour that generates pressures on communities to vote in a certain way. This needs to be tied to the recommendations on voter education to improve the public's understanding of the voting process. Some evidence of the efficacy of such measures was provided by 17 areas at higher risk of electoral fraud who received additional Government funding for the polls on May 2015 to assist them with addressing electoral integrity concerns. Areas which undertook group engagement with higher risk groups of people influential within the community (which included the distribution of guidance and information on secure voting), found that it promoted understanding and built relationships and trust, and so had legacy beyond a single election. Areas which deployed staff to carry out doorstep registration and make checks, and provide support and advice, found that it reduced queries in the lead up to the election. Leaflets were also distributed with postal ballot

packs to explain the secrecy of the vote, which were found to be effective and provide an opportunity to inform voters how to report incidents.

Spiritual influence

196. The law on undue spiritual influence dates from the late 19th Century and cases mainly relate to the influence of the Roman Catholic clergy in Ireland during that period. In modern society, there continues to be the potential for spiritual leaders to abuse their influence and authority among those with deep religious convictions in order to secure votes for a particular candidate, as seen in *Tower Hamlets*. Richard Mawrey QC who presided over the *Tower Hamlets* case suggested that the offence needed to be more clearly articulated, and if thought appropriate, re-stated for a 21st Century environment.
197. The Law Commission considered that the offence of undue influence sought to proscribe “improper pressure” with a view to preventing the improper use of religious or other influence or authority so as to manipulate voting. They recommended that it should be restated to cover “intimidation”, “deception” and “other improper pressure”, and proposed that it should include a test of “pressure which a reasonable person would regard as improperly impeding the free exercise of the franchise”. They argued that this test would enable campaigners, the police, prosecutors and courts to distinguish proper campaigning from improper infringements on the exercise of the franchise.
198. Although the Law Commission’s aim in redrafting undue influence is intended to promote better understanding of the offence, the loss of a specific reference to religious / spiritual influence could reduce understanding by those in positions of religious authority of the need to express political views in a responsible way (so as not to distort the will of voters), and could increase reluctance on the part of those who police electoral fraud to act on abuses. The potential for spiritual leaders, through their pronouncements, to abuse the convictions of religious voters is unique and does not exist in relation to statements by other authorities such as the media, business or other special interest groups whose statements seek to persuade people to vote for a particular candidate. The latter’s statements can be readily dismissed by any voter as opinion, whereas those of spiritual leaders may cause religious voters to believe they have no real choice in how they should vote. In the *Tower Hamlets* case, the Election Court heard how a voter was seen crying outside a polling station after allegedly being told by a supporter of Lutfur Rahman that it was “un-Islamic” not to vote for Rahman, and that you were “not a good Muslim” if you did not vote for him. The court found that Muslim clerics had participated in Lutfur Rahman’s campaign to persuade Muslim voters that it was their religious duty to vote for him.
199. The potential for spiritual influence to be exercised in society may be increasing, and it is important that the legislation unambiguously protects voters of any faith from having their religious beliefs manipulated in order to prevent them freely exercising their vote. Bullying a voter by asserting that they will ‘burn in hell’ for not supporting a candidate is ultimately no different from threatening physical violence or from an employer threatening to sack a worker. Freedom of worship and the right to vote are important and hard-fought British liberties. Britons should be able to exercise both those liberties without injury or intimidation.

R41. The offence of undue influence should retain a reference to spiritual / religious influence.

Bribery and treating

200. The Law Commission recommend simplifying the offence of bribery to capture that it is an offence concerned with buying a vote or an abstention from voting, with its mental element stated as intention to procure or prevent the casting of a vote at an election.
201. The offence of treating is similar to bribery but connotes an intention to procure votes (or abstention from voting) of gathered groups rather than individuals. In his judgment on the Tower Hamlets petition, Richard Mawrey QC stated that serious consideration should be given “to amalgamating treating – surely an obsolescent if not obsolete concept in the modern world – with the overall offence of bribery.” The Law Commission also recommend abolishing the offence of treating, and prosecuting the behaviour that it captures as bribery.
202. The 2015 general election saw some irreverent press coverage about a candidate being warned about giving out free sausage rolls. Yet, treating and bribery is a serious issue and a potential risk of corruption. It is crucial that any such consolidation or amalgamation does not weaken the unambiguous principle that candidates and their supporters should not be providing free food, drink or entertainment to voters to try and influence an election. (And I suspect that most candidates and their agents actually welcome the clear protection that this provides from undue pressure on them during election time to open their wallets to entertain their voters).

HIGHER RISK AREAS

203. Some respondents to the review argued that additional funding should be made available to local authority areas identified as being at higher risk of electoral fraud, to assist them in addressing integrity concerns. One respondent considered that there was a strong case for providing additional grants to local authorities in some areas to undertake outreach work in communities where poor literacy or weak command of English may make some electors more vulnerable to being deprived of their vote by fraudsters. Another academic respondent stated that evidence from their research has consistently shown that there is a direct link between additional resources for election administrators and the delivery of higher quality elections. They suggested that further resources could improve their ability to investigate cases of electoral fraud and take action. Of course, any call for more funding for a particular local authority service needs to be balanced with the competing demands from other service, as well as the cost to (council) taxpayers who ultimately foot the bill.
204. In the run up to the polls in May 2015, the Cabinet Office made £500,000 of additional funding available to the 17 areas that the Electoral Commission had identified at being most at risk of allegations of electoral fraud. This was a one-off payment made as part of a package of funding for elections including improving the accuracy of the electoral register ahead of those elections. The Cabinet Office sought feedback on the measures which the areas implemented and their evaluations were used to produce a good practice guide, which has been distributed to local authorities to assist them in addressing electoral integrity concerns in the future.
205. Some of the measures taken forward using the funding were scale-able and the local authorities which initiated them are planning to make them available to other local authorities – e.g. a system for the checking of different data streams held by a local authority in order to identify higher risk properties (such as those where there are people with three or more differing surnames living there). The guide also included measures which were low cost or did not require funds. These included working methods such as

having a 'link' individual from one team acting as a point of contact / secondee in another team (e.g. a council employee in the police's silver command control on polling day, which increased the council's ability to respond to issues requiring police involvement) or training of one team by another (such as police training of neighbourhood officers).

R42. The learning from the work undertaken by local authorities in 17 areas at higher risk of electoral fraud ahead of the May 2015 polls should be utilised to inform guidance and practices that can assist areas in dealing with electoral fraud.

Education and Awareness

206. A common theme throughout the evidence was that of a lack of knowledge of the electoral process, the importance of secrecy and the dangers of influence.
207. A number of respondents suggested that greater voter education and awareness would be a significant step forward in tackling the opportunity for fraud. This was not just due to undue influence and coercion, but also people taking away the votes of others because they were not aware they did not have to hand them over, or thought / were told that the system operated in a certain way that suited the fraudster.
208. This obviously has resonance in communities which are not fully integrated or for individuals who are vulnerable. Research undertaken on behalf of the Electoral Commission in January 2015 within Pakistani and Bangladeshi communities in Britain revealed a lack of understanding of the voting process and how electoral fraud could be committed. This was allied in some communities to a concept of 'kinship' which meant that individuals felt obliged to operate as part of a collective community and not have individual choices. This can be exacerbated where there is a feeling that only by acting in concert will a community get its voice heard.
209. Suggestions included a specific responsibility on the Electoral Commission to educate electors and address lack of knowledge of the electoral process and a minority ethnic campaigning group within one party felt that materials produced by the Commission focused towards candidates and parties rather than electors.
210. On a similar line, suggestions were made for a more formal approach to voter education in vulnerable communities with a joint programme by the Electoral Commission, local authorities and Government. Targeting specific groups that included the young as well as vulnerable people were common suggestions and the experience in Scotland at the referendum highlighted a lack of understanding of basic principles of secrecy. Including information on 'democracy' in school curriculums was suggested but with a recognition that such curriculums are already over-burdened.
211. The Commission responded to the January 2015 findings by engaging with Crimestoppers and, in particular, to promote an anonymous route for reporting allegations and incidents. That is a positive step forward but more needs to be done and a number of respondents suggested that additional funding to local authorities to undertake outreach work and roll out some of the activities that were utilised by the 17 'higher risk' authorities, particularly where poor literacy or weak command of English may make some electors more vulnerable to electoral fraud.
212. The Electoral Commission has previously undertaken outreach work with sections of the community but cut this back when refocusing its activities after the Committee on

Standards in Public Life report in 2007¹⁴ and this may be an area to be revisited as to how such work is best undertaken and by whom.

213. This is another area where increased activity rather than more stringent legislation would be a positive means of addressing the issues. It is recognised that such activity would require funding but work by national bodies like the Cabinet Office along with local authorities and community groups could help to identify mechanisms and programmes to educate those most in need. Certainly feeding in through schools, colleges and universities to catch people ahead of being able to vote and prepare them to do so when they reach 18 would be valuable.

GOVERNANCE & OVERSIGHT

Role of the Electoral Commission

214. Since 2007, the Commission has taken a lead in co-ordinating information from the police on allegations and cases of electoral impropriety and has taken a role in providing support and training for the police on electoral matters. It also works with local authorities to provide advice on processes where fraud is alleged or is a risk, oversees a (voluntary) Code of Conduct for Campaigners, undertakes research into electoral fraud issues and, as noted earlier, has recently started work with CrimeStoppers to promote a means for the public to report allegations of electoral fraud anonymously.
215. A number of respondents felt that the Electoral Commission, as the ‘electoral watchdog’, could and should play a more significant role in investigating and tackling fraud, although the Commission itself points out that it currently has no statutory duty or powers to do so in relation to local campaigning under the Representation of the People Act 1983.
216. One academic suggested that the Electoral Commission should be limited in its role to purely electoral administration, whilst others thought it should be more widely engaged than now. The latter raises questions of how the Electoral Commission would retain its impartiality (if acting as a ‘public interest petitioner’ for example – see above) as well as where responsibilities for regulating parties would sit if that role was deemed to be incompatible with being an impartial regulator. The concept of the Commission being both a giver of advice and a regulator creates a tension.
217. Overall, a number of respondents who had direct experience of being engaged in contact with the Electoral Commission felt that there was not a strong response to fraud allegations, or that they focused on granular points rather than the bigger picture. It is clear from the experience of Tower Hamlets that reports of electoral malpractice – particularly from 2012 onwards – were not dealt with in a way that recognised or tackled the development of an institutional culture of corruption at the heart of the local authority.
218. The Commission’s core regulatory role is overseeing reporting and compliance with legislation on party finances and national campaign spending. It also has a statutory role in relation to the performance management of local authorities’ electoral services. At present, some see the performance standards regime as not robust enough to achieve its goals.
219. Despite years of warnings on misconduct in Tower Hamlets, the Electoral Commission gave the Borough’s electoral system a gold-star rating for electoral integrity in its

¹⁴ <https://www.gov.uk/government/publications/review-of-the-electoral-commission-eleventh-report-of-the-committee-on-standards-in-public-life>

inspection reports.¹⁵ We still have a series of tick-box inspections of town hall electoral registration departments that are as ineffectual as those once practiced by the now-abolished Audit Commission.

220. Indeed, after the February to April 2015 Tower Hamlets election court hearing and judgment, both the Electoral Commission's backward-looking annual report and the forward-looking corporate plan made no substantive reference to the Tower Hamlets case or learning the lessons from it.¹⁶ One can only conclude there was an attitude of denial.
221. The Commission's role has expanded since its establishment in 2001. The Committee on Standards in Public Life recommended in 2007 that policy responsibility for elections should sit with the Government and that the Commission should not seek to promote a policy agenda itself. The Committee found that, in summary:

"...the outcomes in the period since the Commission's formation, highlighted in evidence during its inquiry, point to substantive matters of concern:

- *a reduction in the confidence of the integrity of the electoral administration process. This has been caused, in part, by the introduction of postal voting on demand and subsequent incidents of electoral fraud and perceptions that this may be increasing. Added to this are concerns about the accuracy and comprehensiveness of the electoral register, and the significant variations in standards of electoral administration across the country; and*
- *a reduction of confidence in the framework for the regulation of political party funding and campaign expenditure."*

And that whilst this was not solely down to the actions of the Electoral Commission, the evidence received during the Committee's inquiry suggested that:

- *"the very wide breadth of the Commission's mandate has led to a concentration on issues such as policy development and voter participation work at the expense of a more contentious proactive regulatory and advisory role;*
- *that this breadth of mandate introduced potential conflicts between a clear focus on ensuring the integrity and effectiveness of the electoral process and encouraging voter participation...The Committee's recommendations have been made to ensure that the Electoral Commission will operate as a tightly focused, independent, strategic regulator with the necessary leadership, governance, skills and experience to enhance the integrity and effectiveness of our electoral processes."*

¹⁵ Parliamentary answers note: "The Commission monitors the performance of electoral registration officers (EROs) in Great Britain, including their plans for preventing and detecting electoral malpractice. The most recent report of performance against the standards set by the Commission found that the ERO for Tower Hamlets exceeded this standard in 2010" (*Hansard*, 27 February 2012, Column 29W) and "Between 2008 and 2013, the ERO for Tower Hamlets was assessed as 'meeting' or 'above' all the ERO standards (including the integrity standards) each year" (*Hansard*, 15 July 2015, PQ 5938).

¹⁶ Electoral Commission, *Annual Report & Accounts 2014–15*, HC 261, July 2015 and Electoral Commission, *Corporate Plan 2015-16 to 2019-20*, HC106, June 2015.

222. The Committee concluded: *“We therefore recommend that its statutory mandate should be amended and refocused so that the Commission’s two principal statutory duties are as regulator of political party funding and campaign expenditure; and as a regulator of electoral administration; with the stated aim of ensuring integrity and public confidence in both.”*
223. The current system of oversight of the Electoral Commission – by the Speaker’s Committee on the Electoral Commission – does not provide an effective third-party check on its performance.
224. There is a conflict of interest between the Electoral Commission drawing up policy guidance, and then the Electoral Commission being the arbiter of whether such ‘rules’ were clear, whether there were deficiencies and whether the rules were breached (as was apparent in the ambiguity of the Commission’s advice on loans to political parties prior to the 2005 general election).¹⁷
225. The Electoral Commission continues act to as a commentator and lobbyist on both policy and law. Yet government should not be lobbying government. It would be clearer for electoral law and electoral policy to be determined by the Cabinet Office, subject to Parliamentary scrutiny and approval. The structuring of the performance management regime of local government should be determined by Government, again subject to Parliamentary approval (with appropriate arrangements to reflect devolution)
226. The expertise within the Commission is respected and can contribute through the medium of providing advice to Ministers and Government. But that should not be a main strand of the work it does. It should concentrate on the outcomes of ensuring the effective delivery of registration, electoral events and oversight of party funding and national campaign expenditure.

R43. The role of the Electoral Commission should be revisited to identify how the Commission may best operate in providing guidance, training and support with relation to the administration of electoral events. The Electoral Commission should also more narrowly focus on its core functions – of party finance and overseeing national campaign expenditure.

R44. The Government should consider how the performance management regime should be reformed and focus more clearly on key outcomes. Such a system of benchmarks would be better undertaken by the Cabinet Office, subject to the statutory framework being approved by Parliament.

Role of the Police

227. There were mixed views on police force responses to allegations of electoral fraud – administrators mostly think that the police respond positively, but the public does not. In particular, respondents raising issues related to Tower Hamlets were critical of the police and what was perceived as a failure to engage.
228. Following the Tower Hamlets election court case, it is astonishing that no criminal prosecution has been brought by the Metropolitan Police. No further action has been

¹⁷ There are also ongoing investigations into allegations of election spending by political parties in the 2015 general election, and a debate whether election law is clear, and the role of the Electoral Commission is providing guidance on the divide within local and national spend. Since this matter is still live and disputed, I have not included it in scope of this review.

taken against the disqualified individuals or the (now-disbanded) political party. The Met has maintained there was "insufficient evidence that criminal offences had been committed". This is a surprising statement. The election court disqualified Lutfur Rahman and his agent for a litany of corrupt and illegal practices. He was found guilty beyond reasonable doubt – to a criminal standard of proof – on a series of grounds. There was extensive oral and written evidence tested in hearings held at the Royal Courts of Justice. The damning body of evidence was lucidly laid out in the Election Commissioner's ruling.¹⁸

229. The repeated inaction by the Met Police over electoral fraud prior to the 2014 mayoral elections, and after the 2015 election court case, sends a worrying signal that the police are 'soft' on tackling and prosecuting electoral fraud, when faced with competing operational demands. As Richard Mawrey QC remarked on the inaction of the police against intimidation outside polling stations: "an unkind person might remark that the policemen and polling staff had appeared to take as their role models the legendary Three Wise Monkeys." A similar observation could regrettably be made about the attitude of the Metropolitan Police following the election court judgment.
230. A number of respondents think there should be some central 'electoral fraud squad' – maybe based within the National Crime Agency – with specialist knowledge to tackle complex electoral fraud issues. This reflected the position in some other countries and was in some cases seen as a means of addressing lack of experience and knowledge within the police about electoral matters and how to respond to actions which did not fit with familiar breaches of the law.
231. One suggestion to address this lack of knowledge was for the creation of a new offence of 'electoral interference' to be introduced to enable the police to immediately respond to malpractice with greater ease and less reliance on more traditional forms of evidence or breach of statute. Where the police did respond, there were concerns that this was not done quickly enough to either 'nip the activity in the bud' and stop it spreading or prevent the fraudsters from developing a defence.
232. Regardless of approach, a consistent issue was a lack of evidence to support allegations or to underpin investigations. This is largely credited to the view that communities close ranks and that there is an implied or explicit culture of influence that causes people not to respond to requests for information from the police.
233. Other respondents, including the National Police Chiefs' Council, have made the case that many allegations are for campaigning and partisan reasons, with local media primed to report on the subsequent police enquiry, and are withdrawn or wither for lack of evidence after a poll has taken place. In extreme cases this seems to have resulted in the arrest of a candidate in the days before a poll and the police are cautious about being used in that way.
234. The National Police Chiefs' Council pointed out that police forces now take an approach which is akin to the most serious forms of crime when dealing with electoral fraud allegations given the importance of the issues at stake. This is costly and resource intensive but often results in no action due to lack of evidence.
235. Some respondents felt that the police could be too closely associated with a local authority and individual politicians or were concerned about being pro-active on some

¹⁸ Erlam & Anor v Rahman & Anor [2015] EWHC 1215 (QB), 23 April 2015.

issues because of potential allegations of discrimination. In some responses, this was expressed as the police actively not responding to issues raised with them and not keeping them updated on progress with complaints.

236. As highlighted earlier in this report, there are clear links between electoral fraud and associated financial or immigration fraud. There are clear synergies between addressing the former to tackle the latter two types.
237. Changes to powers and offences mentioned throughout this report would clearly support a more effective involvement by the police, especially in relation to stopping intimidatory behaviour outside polling stations.
238. At a more strategic level, there are a number of agencies that are in a position to work towards improving the awareness of the importance of preventative and remedial action in relation to electoral fraud including Association of Police and Crime Commissioners, the College of Policing, the National Police Chiefs' Council and the National Crime Agency. It may also help for such bodies to meet the Parliamentary Parties Panel (the pan-party forum which discusses issues with the Electoral Commission) from time to time to discuss such matters, building on the existing engagement with the police and local authorities.
239. The College of Policing has been engaged by the National Police Chiefs' Council to promulgate security and other guidance relating to elections; its aim to professionalise the police service may also provide opportunities for additional training and promulgation of good practice in a manner that is additional to what is already provided or is specific to particular police forces.

R45. Work should be undertaken by Government to link with the Association of Police and Crime Commissioners, the College of Policing, the National Police Chiefs' Council and the National Crime Agency to ensure that electoral fraud is seen as a significant issue, and that there is a consistency of approach / response across police forces to dealing with allegations of electoral fraud and impropriety.

R46. The Government could consider how the National Crime Agency, which has a remit to look at organised, economic and cyber-crime, might play a greater role in investigating and co-ordinating complex cases of electoral fraud, especially where it interacts with other financial or benefit fraud.

Role of Returning Officers and Electoral Registration Officers

240. The role of the Returning Officer, and to a lesser degree that of Electoral Registration Officer, are not well understood in general. In particular the Returning Officer's independence from the local authority is not clear to many people – although it is based on the sound principle of them acting in an independent statutory capacity in order to be free of any influence from the council and councillors who are clearly politically aligned.
241. However some respondents felt that the role of the Returning Officer needed to be re-evaluated in the context of the relationship with the Electoral Commission. One local authority chief executive felt that the role of the Returning Officer was 'antiquated' and, with recent loss of resources from local authorities, a change of responsibilities or a 'shared-management' position for the running of elections may be more appropriate. Another chief executive however felt that the independence of the Returning Officer should be made clearer and more strongly asserted.

242. Another respondent asserted that the role of Returning Officer should only be undertaken either by the Chief Executive/Head of Paid Service or the Monitoring Officer, other than on an exceptional basis in order to reduce the possibility of political pressure being applied to officers over discretionary matters in the conduct of an election. This point is important in the context of Tower Hamlets where there had been a concern that the role sat with someone who did not have sufficient status or backing to stand up to internal political pressures of the corrupt mayor.
243. Allied to this is a general concern that the role (and that of Electoral Registration Officer) could be 'downgraded', leading to tensions between senior staff in an authority over making resource available, decision-taking and the necessary focus being given to the important work of electoral registration and the running of polls (as noted earlier in this report in respect of registration). That possibility needs specific attention and it should be that such responsibilities lie with someone who has the necessary professional and personal qualities to be able to ensure effective operation of electoral processes in any authority.
244. With regard to tackling fraud directly, it was suggested that Returning Officers should play an initial role in investigating allegations of fraud, as they have access to information on nominations and a general awareness of what is happening locally with respect to the poll. Some invariably do make initial enquiries or check out allegations made to them before referring the matter to the police whereas others refer immediately. Given allegations are almost exclusively made around the time of a poll, it is no surprise that many Returning Officers feel they do not have the capability or resource to undertake this activity.
245. Some respondents made the recommendation that Returning Officers (and Electoral Registration Officers) should be subject to Freedom of Information requirements due to negative experiences when asking for information. Currently, they technically stand outside the Freedom of Information framework.

R47. Officers at the most senior level in a local authority, such as Chief Executives and Heads of Paid Service, should be appointed as Electoral Registration Officers and Returning Officers and should undertake relevant training to ensure that they have the skills required for the roles.

R48. That the position of Electoral Registration Officers and Returning Officers is clarified with respect to Freedom of Information rules and they are made subject to the relevant provisions to release information.

R49. A protocol for reporting within a local authority on issues relating to electoral fraud should be developed and guidance provided in conjunction with the National Police Chiefs Council and other relevant bodies.

Role of Government Ministers

246. As Secretary of State for Communities and Local Government, I intervened in Tower Hamlets to place Commissioners in control following various allegations of impropriety in the running of the council and investigations into activities undertaken by elected officials including the elected Mayor. This followed an independent investigation by appointed auditors, using powers under the Local Audit and Accountability Act 2014.
247. Whilst there is a power for Government Ministers to direct Electoral Registration Officers to certain action (on the basis of a recommendation from the Electoral Commission),

there is no power to a Secretary of State or other Minister to intervene in an electoral event such as a poll. Sensibly, the Secretary of State's role is restricted to the appointment of Commissioners who in turn can appoint a Returning Officer. It is right that those with a political interest should not be involved in the running of elections and that the independent officials who are responsible are held accountable through the courts.

248. This strikes me as a reasonable balance to prevent undue political influence on elections. Any such intervention decisions are also challengeable by judicial review – and spurious attempts by the then mayor in Tower Hamlets were quickly thrown out by the High Court. However, the Tower Hamlets intervention happened only after a complete breakdown in democratic processes and after there had been manifest and systematic evidence of corruption.
249. The Tower Hamlets case illustrates how electoral corruption went hand in hand with broader financial irregularities and impropriety, as evident from the PwC forensic audit into the council which I commissioned as Secretary of State. The PwC report¹⁹ was not a comprehensive assessment of all the potential corruption – in some areas, the absence or potential destruction of documents hindered further investigation. There were also clear links between such corruption and the endorsement and funding of extremist causes. Electoral malpractice – such as the bribery offences – were able to flourish because of the broader breakdown of democratic checks.
250. More generally with regard to local authority staff, a number of responses to the review asserted that internal 'whistle-blowing' within local authorities on electoral matters was not positively received and that people had been gagged or paid off and there was not a clear framework for whistleblowers to access.
251. The Government should undertake a broader review of councils' executive structures to ensure that robust scrutiny and powers of challenge by the press, public *and* councillors exist in local government structures where power is concentrated in 'strong leadership' models. Mayoral systems, in particular, provide strong governance and accountability: but they also present greater risks of corruption, and require stronger checks and balances to maintain a robust democratic system.
252. This should include reviewing transparency requirements, rights of access to documents by the press and public, decisions by 'unofficial' committees or working groups, official meetings going *in camera*, whistleblowing protections for both staff and councillors, powers of scrutiny committees, rights of councillors to information, scrutiny of delegated decisions, powers of Full Council to question and review, retention of archives and records, and independent or cross-party chairing of audit bodies. This is not solely to protect against electoral fraud, but to protect local government from the broader culture of corruption and financial fraud that goes hand in hand with it.

R50. The Government should undertake a review of how democratic checks and balances can be increased in local government executive structures where power is concentrated.

¹⁹ <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>

CONCLUSION

Having undertaken this review, I have conflicting responses – I am both dismayed and heartened.

The former because of the evidence that has been adduced that shows the kind of tricks unscrupulous people will play to get candidates elected; and the latter because, despite that evidence, we still have a democracy and an electoral system that, in other than cases like that of Tower Hamlets, generally provides free and fair elections based on a system of trust and openness and inclusion.

The review threw up many disparate points – some contradictory. It also adduced evidence and views on a granular and strategic scale. It is not possible to recite all of those views and I have stuck to the main points about the vulnerabilities of the existing system and how we address them. We are still in the dark on what is actually taking place and, as has been cited in the evidence, significant numbers of interested and informed people are concerned of what has happened and what could easily happen in the future.

My fear now is that such a trust-based system is becoming no longer tenable. To retain the integrity of our democracy, we need to introduce more rigour into the processes we use, to see more clarity and proactivity from institutions such as the police in upholding the system. We need to act now to avoid further major instances of fraud taking place.

Further steps are necessary to stamp out electoral corruption – across voter registration fraud and error, postal voting fraud, impersonation, bribery, treating, undue influence and intimidation.

There are sometimes challenging issues over divisive community politics and ethnic-religious polarisation, but this is no excuse for failing to enforce British law and protect the integrity of our democratic process. The law must be applied equally and fairly to everyone. Integration and good community relations are undermined by the failure to uphold the rule of law and ensure fair play.

Our nation has a proud heritage as the ‘mother of Parliaments’, yet the worrying and covert spread of electoral fraud and state of denial by some bodies threatens that good reputation. It is time to take action to take on the electoral crooks and defend Britain’s free and fair elections.

ANNEX: RESPONSES

Written responses to Electoral Fraud Review

A total of 66 written submissions were received from the following people / organisations:

- Electoral Commission
- National Police Chiefs' Council (NPCC)
- Society of Local Authority Chief Executives (SOLACE)
- Association of Electoral Administrators (AEA)
- Association of Electoral Administrators' Southern Branch
- Law Commission
- District Councils Network (DCN)
- Electoral Management Board for Scotland
- Police Scotland
- Greater London Authority Conservatives
- Liberal Democrat Party
- Mayor of Tower Hamlets
- Foundation for Information Policy Research
- 1 election technology provider (Smartmatic)
- 1 Electoral Commissioner (Timothy Straker QC)
- 2 election petitioners (former and current)
 - Andy Erlam (Tower Hamlets)
 - Shamsur Rehman (Birmingham)
- 5 MPs (including former):
 - Chris Philp (Conservative) MP for Croydon South
 - Stewart Jackson (Conservative) MP for Peterborough
 - Jeremy Lefroy (Conservative) MP for Stafford
 - Adam Afriyie (Conservative) MP for Windsor
 - Dame Marion Roe – former Conservative MP
- 8 Returning Officers (including deputy)
 - Mick Cartledge, RO for Burnley Borough Council
 - Jane Ellis, RO for Hyndburn Borough Council
 - Adrian Lythgo, RO for Kirklees Council
 - Barry Quirk, RO for London Borough of Lewisham

- Mark Heath, RO for Southampton City Council and Regional RO for the South East
- John S Williams, RO for London Borough of Tower Hamlets
- Robin Pellow, RO for Waverley Borough Council
- Ray Morgan, RO for Woking Borough Council
- 1 Deputy ERO
 - Liz Fatcher, Deputy ERO for Arun District Council
- 1 Presiding Officer (William Read)
- 3 LAs
 - Electoral Services, Coventry and Birmingham City Council (and contribution from Walsall Council)
 - Electoral Services, Kettering Borough Council
 - Electoral Services, Wycombe District Council
- 8 councillors (including former)
- 6 council employees (electoral administrators, Deputy Monitoring Officer etc)
- 3 police officers (including former)
 - Bob Eastwood, formerly with Lancashire Constabulary, (also a Conservative candidate at the General Election for Blackburn in 2015).
 - Detective Sergeant Michael Wood, Economic Crime Unit, Humberside.
 - Dianne Knight, Electoral SPOC for West Mercia and Warwickshire Police.
- 3 academic submissions
 - Dr. Stuart Wilks-Heeg (Senior Lecturer in Politics and Head of Politics, University of Liverpool) and Maria Sobolewska (Senior Lecturer in Politics, University of Manchester)
 - Dr. Toby S. James (Senior Lecturer in British and Comparative Politics, University of East Anglia) and Dr. Alistair Clark (Senior Lecturer in Politics, University of Newcastle)
 - Prof R.A Watt, BA, BCL, PhD (Professor of Law, School of Law, University of Buckingham).
- 11 members of the public (presumed)

ANNEX: CONVICTIONS & ALLEGATIONS

Table 1: Significant convictions for electoral fraud 2005 – 2015

<i>Local authority area / Parliamentary constituency</i>	<i>Police force</i>	<i>Year of election</i>	<i>Offence</i>	<i>Outcome</i>	<i>Political party affiliation of defendant (if any)</i>
Bradford West UK Parliamentary constituency	West Yorkshire Police	2005	Personation offences False applications to vote by post.	Defendant pleaded guilty to personation sentenced to 11 months imprisonment. Four defendants each found guilty at first instance and given sentences of 21 months imprisonment. Convictions overturned on appeal.	Conservative candidates and two local government councillors.
Coleraine Borough Council	Police Service of Northern Ireland	2005	Four counts of personation, two of fraudulently stopping free exercise of a proxy vote	Custodial sentence: 4 months.	DUP candidate.
Coventry City Council	West Midlands Police	2007	Personation offences	Custodial sentence: guilty on 2 charges. Sentenced to 8 months for each, to run concurrently.	Conservative candidate's cousin.
Slough Borough Council	Thames Valley Police	2007	False applications to register to vote. False applications to vote by post. Personation offence.	Offender 1: 3 ½ years imprisonment (including perjury). Offender 2: 18 months imprisonment. Offender 3: 6 months imprisonment. Offender 4: 8 months imprisonment. Offender 5: 4 ½ years imprisonment (including perjury). Offender 6: 4 months imprisonment.	Offender 1: Conservative candidate; remaining offenders worked for the candidate.
Walsall Council	West Midlands Police	2008	False applications to vote by proxy.	Custodial sentence: two sentences of six weeks, each to run consecutively.	Conservative candidate's son.
Calderdale Council	West Yorkshire Police	2008	False applications to vote by proxy.	Suspended sentence: 12 months.	Conservative candidate.
Staffordshire County Council / West Midlands	Staffordshire Police	2009	Personation offences.	Custodial sentence: guilty on 2 charges, sentenced to 4 months for each, to run concurrently.	British National Party member.

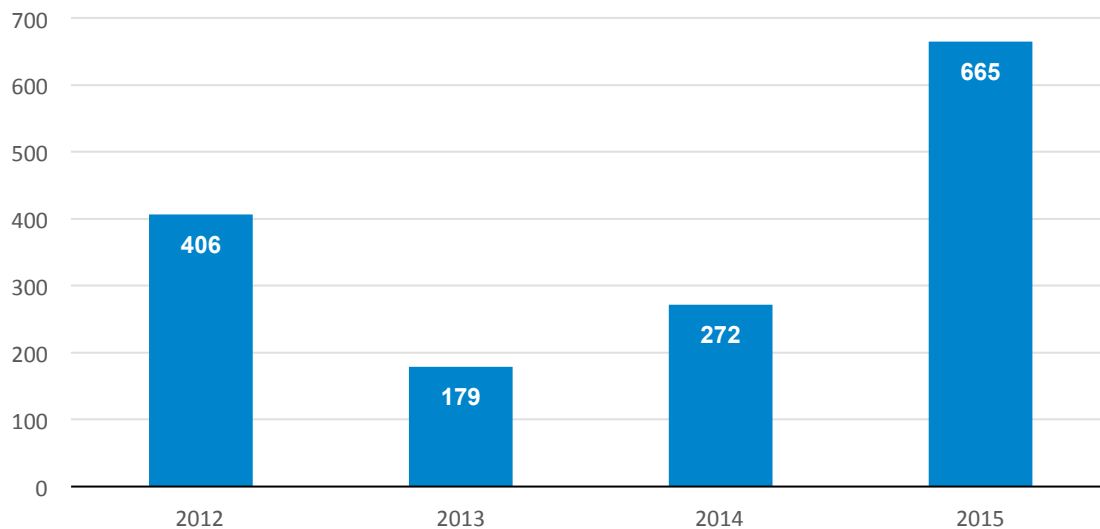
<i>Local authority area / Parliamentary constituency</i>	<i>Police force</i>	<i>Year of election</i>	<i>Offence</i>	<i>Outcome</i>	<i>Political party affiliation of defendant (if any)</i>
European Parliamentary electoral region					
Burnley Council	Lancashire Constabulary	2010	Conspiring to defraud the Returning Officer (by stealing a book of unused ballot papers at a polling station, marking a number of them in favour of the Liberal Democrat candidate and putting them in the ballot box).	Custodial sentence: 18 months.	Liberal Democrat polling agent.
Ashford Borough Council	Kent Police	2011	False applications to vote by post, and false signatures on a nomination paper.	Custodial sentence: 12 months.	Conservative candidate.
Derby Council	Derbyshire Constabulary	2012	Personation, intention to pervert the course of justice; poll clerk issued ballot paper to her two nieces to allow them to vote in wrong polling station.	Custodial sentence: 14 months for poll clerk; nieces and two others each received 8 months sentences (suspended for 18 months) and 250 hours community service.	No evidence of relationship with any candidate.
Wolverhampton City Council	West Midlands Police	2012	False statement in nomination form and false application for a postal vote.	Custodial sentence: 6 months (suspended for 18 months).	Labour.
Woking Borough Council	Surrey Police	2012	False voter registration forms, applications to vote by post and postal voting statements by family relating to property where they did not reside.	Custodial sentences – candidate's brother-in-law sentenced to 15 months, his wife and daughter each sentenced to 9 months, son sentenced to 6 months and daughter's husband sentenced to 6 months (this last sentence suspended for 18 months).	Liberal Democrat
Great Yarmouth	Norfolk Police	2013	False statement on a nomination paper – party candidate allowed forged signatures on his nomination paper.	Sentenced to 200 hours community service and disqualified as councillor.	UK Independence Party.
London Borough of Enfield	Metropolitan Police Service	2014	False statement on a nomination paper – candidate failed to disclose a suspended sentence on their nomination paper.	Custodial sentence: six months	Conservative.
Waverley Borough	Surrey Police	2015	False statement on a nomination paper –	Custodial sentence: 16 weeks, suspended for 12 months, 200	Liberal Democrat.

<i>Local authority area / Parliamentary constituency</i>	<i>Police force</i>	<i>Year of election</i>	<i>Offence</i>	<i>Outcome</i>	<i>Political party affiliation of defendant (if any)</i>
Council			candidate forged 8 signatures on his nomination form.	hours community service.	
Bassetlaw District Council	Nottinghamshire Police	2015	False statement on a nomination paper – candidate forged 10 signatures on his nomination form.	Custodial sentence: 12 weeks, suspended for 12 months, 180 hours community service.	UKIP
Brentwood Borough Council	Essex Police	2015	False statement on a nomination paper – defendant forged 3 signatures on the nomination form submitted by his wife.	Sentenced to 160 hours community service and fined £145.	Husband of Liberal Democrat candidate

Source: Electoral Commission

Chart: Number of alleged fraud offences

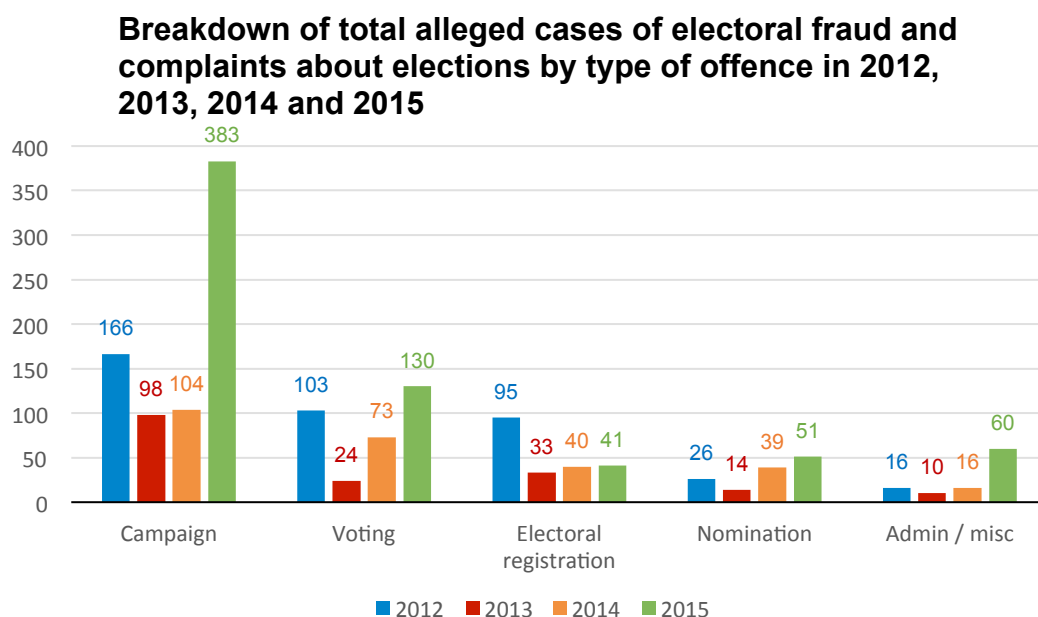
Total number of alleged cases of electoral fraud and complaints about elections in 2012, 2013, 2014 and 2015



Note: A total of 18.5 million votes were cast in 2012, 5.7 million in 2013, 29.1 million in 2014 and 51.4 million in 2015 (in all electoral contests held).

Source: Electoral Commission

Chart: Breakdown of alleged fraud offences



Guide to types of offence:

Campaign offences: imprint, false statements about candidates, return of campaign expenses.

Voting offences: personation (polling station and postal/proxy), breaches of the secrecy requirements, tampering with ballot papers, bribery or treating, undue influence.

Electoral registration offences: false information on an application form to register to vote or to apply for a postal / proxy vote.

Nomination offences: false statements on nomination forms, candidate ineligible or disqualified from standing for election.

Administrative / miscellaneous: other.

Source: Electoral Commission

Table 2: Cases of alleged electoral fraud relating to voting/registration offences

<i>Offence</i>	<i>Relating</i>	<i>Number of Alleged Cases</i>			
		2012	2013	2014	2015*
• VOTING					
Personation relating to –	Polling station	25	4	21	26
	Postal vote	46	5	19	27
	Proxy vote	9	4	2	11
Requirement of secrecy	-	n/a	n/a	3	9
Tampering with ballot papers	-	n/a	n/a	14	8
Bribery	-	n/a	n/a	2	3
Treating	-	n/a	n/a	4	14
Undue influence	-	n/a	n/a	6	25
Other	-	n/a	n/a	2	0
• REGISTRATION					
False info on application relating to -	Registration	75	29	28	28
	Postal vote	17	3	6	3
	Proxy vote	n/a	1	1	3
Other	-	n/a	1	5	4

*Data for 2015 excludes complaints about elections

Source: Electoral Commission

Table 3: Significant election court cases since 2004

<i>Local authority area / Parliamentary constituency</i>	<i>Year of election</i>	<i>Allegation</i>	<i>Outcome</i>	<i>Political party affiliation of the respondent(s) to the petition (if any)</i>
Bordesley Green and Aston wards Birmingham City Council	2004	The three successful candidates and their agents in each ward had engaged in postal vote fraud in the local elections.	The elections for both wards were declared void because of the corrupt and illegal practices on the part of the respondents (but see below). The court found there was extensive personation by the fraudulent alteration of postal ballot papers improperly obtained from voters. One of the councillors found guilty of corrupt and illegal practices in relation to the election in Bordesley Green ward, Mr Afzal, subsequently appealed against the Court's findings. The Court of Appeal quashed that part of the Election Court's decision which found Muhammed Afzal guilty.	Labour Party
Central Borough ward Slough Borough Council	2007	It was alleged that the successful candidate had been elected as a result of corrupt or illegal practices, which related to applications for registration and postal voting.	The election court found the candidate guilty of corrupt and illegal practices and the election was declared void. The court found that the respondent had used postal ballots in the names of 'ghost voters'. Subsequently, in 2009, the respondent and 5 other defendants were convicted of postal vote fraud and sentenced to terms of imprisonment (see entry for Slough in table above).	Conservative Party
Oldham East and Saddleworth UK Parliamentary constituency	2010	Alleged that the successful candidate, Phil Woolas, was guilty of illegal practices by making false statements in breach of Section 106 of the Representation of the People Act 1983 about the Liberal Democrat candidate in his election leaflets.	The respondent was found guilty of making three false statements, the election was declared void and the respondent forced to vacate his seat in the House of Commons. The respondent subsequently sought to judicially review the election court's decision. Permission was granted and the Administrative Court held that two of the three statements had been correctly decided as in breach of Section 106.	Labour Party

<i>Local authority area / Parliamentary constituency</i>	<i>Year of election</i>	<i>Allegation</i>	<i>Outcome</i>	<i>Political party affiliation of the respondent(s) to the petition (if any)</i>
Mayoral Election, Tower Hamlets London Borough Council	2014	Alleged that the elected candidate, Lutfur Rahman, and/or his agents were guilty of corrupt or illegal practices at the mayoral election.	<p>Defendant found guilty of illegal and corrupt practices personally and/or by his agents (specifically (contrary to relevant provisions of the Representation of the People Act 1983), personation, postal vote fraud, illegal provision of false information, illegal voting, making false statements about candidates, illegal employment of paid canvassers, bribery and undue spiritual influence). Allegations of treating and intimidation at the polling station were not upheld.</p> <p>Election declared void by corrupt and illegal practices and on the ground of general corruption contrary to s.164 Representation of the People Act 1983. Defendant incapable of being elected as mayor.</p>	<p>Tower Hamlets First</p> <p>(the party was subsequently removed from the register of political parties maintained by the Electoral Commission on grounds that the court's judgment had disclosed that the party no longer had in effect an approved financial scheme and therefore it was no longer eligible for registration.)</p>

Source: Electoral Commission, House of Commons Library