

# Law Commission Review of Electoral Law – Consultation Paper (2014)

## Second Electoral Commission Response

August 2015

### 1. Executive summary

1.1. This paper sets out the Electoral Commission's further views on four of the proposals / questions included in the UK Law Commissions' review of electoral law.

1.2. In summary, these views are:

- We are of the view that we are the best-placed body to determine appeals relating to reviews of polling districts and places as we have the necessary expertise and UK-wide remit to ensure that voters' interests are properly served in these reviews.
- We think it is important to clarify some of the offences relating to postal voting. Doing so should, alongside some of the Law Commissions' other proposed reforms, be sufficient to address the concerns raised by the Law Commissions about campaigner behaviour in relation to postal voting.
- We consider that the best option for addressing the need to ensure that the public interest is represented in the law governing election challenges is to split the current petition process into two:
  - A civil process for the quick and effective determination of allegations that there has been an administrative error that affected the result or that the winning candidate was disqualified. The public interest would be represented by the returning officer bringing petitions. Electors and candidates should also remain able to bring petitions under a more accessible system, subject to complaints without merit being filtered out.
  - Allegations that a candidate, agent or supporter has committed an electoral offence should be for the police to investigate and prosecutors to prosecute, and should not be grounds for a petition. Police and prosecutors would represent the public interest.

We would welcome confirmation that the Commission should not have a role in investigating alleged electoral criminal offences of this nature (which is properly for police forces).

We consider that there should be a strong presumption in favour of prosecution where the evidential test is met in respect of allegations made against a candidate or agent. We also consider that the Electoral Commission should have a more formal role in ensuring that the public interest in free and fair elections, and trust in outcomes, is properly represented in law enforcement.

In respect of both petitions and criminal trials we would support the Commission being given a role in intervening to assist the court, at its request, on any matter of law or practice.

- We consider that complaints that do not go to the result of the election would be best dealt with by the relevant UK Ombudsmen.

## **2. Background**

2.1. The Law Commissions of England and Wales, Scotland and Northern Ireland published a consultation paper on their review of electoral law in December 2014<sup>1</sup>. The Law Commissions' review was established in 2011, in response to proposals we submitted for inclusion in their Eleventh Programme of Law Reform.

2.2. We responded to the consultation on 26 March 2015<sup>2</sup>. Our response highlighted that we had not reached a firm view in relation to a small number of proposals, and that we would consider the issues further, especially in light of evidence from the May 2015 polls. These proposals were:

- The question of whether the Electoral Commission should continue to be the appeal body for polling district and place reviews (paragraphs 3.15 to 3.23)
- The question of whether campaigners should be prohibited from handling postal ballot packs (paragraphs 6.16-6.21 of our response)
- The question of whether there should be a 'public interest' petitioner which could challenge the result of elections (paragraphs 13.25-13.42 of our response)
- The proposal that there should be a means of reviewing complaints about elections which do not aim to overturn the result. Review could

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<sup>1</sup> Available on the Law Commission website at:  
<http://www.lawcom.gov.uk/project/electoral-law/>

<sup>2</sup> Published on our website at:  
<http://www.electoralcommission.org.uk/our-work/our-views/law-commission-review-of-electoral-law>

be carried out by the Ombudsman, another Returning Officer or the Electoral Commission (paragraphs 13.43-13.44 of our response)

2.3. Following the May 2015 polls, our further analysis of these questions and proposals is set out below.

### **3. The question of whether the Electoral Commission should continue to be the appeal body for polling district and place reviews**

3.1. We have reflected further on the Law Commissions' question as to whether we should remain the body that determines appeals against reviews of polling districts and places or whether this function should be given to others, for example to the UK Local Government Boundary Commissions. In our consultation response we stated that we were content for us to remain the body that hears these appeals. We have the necessary expertise to carry out this function effectively and we have demonstrated this in the appeals that we have determined (although we welcomed the Law Commissions consulting on this question).

3.2. In our view we are the best-placed body to determine appeals relating to polling districts and places as we have the necessary expertise and UK-wide remit to ensure that voters' interests are properly served, which is what the appeal process seeks to achieve.

3.3. Separately from the question of which body hears appeals, we have found that this area of law raises a number of issues and for this reason we are currently reviewing the law to identify areas requiring clarification and further consideration. We will share the results of this review with the Law Commissions in due course.

### **4. The question of whether campaigners should be prohibited from handling postal ballot packs (set out in paragraphs 6.16-6.21 of our response)**

4.1. The Law Commissions' consultation sought views on the following specific questions, within a chapter about the administration of current postal voting legislation:

“Question 6-7: Should electoral law prohibit, by making it an offence, the involvement by campaigners in any of the following:

- (1) assisting in the completion of postal or proxy voting applications;
- (2) handling completed postal or proxy voting 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?"

4.2. Our consultation response recognised the concerns which had been raised by some electors, returning officers and campaigners about what they felt could be inappropriate involvement by campaigners in the postal voting process (particularly pressuring electors to apply for a postal vote, and the potential for coercion of postal voters in their homes by campaigners). We also highlighted two of our own concerns about the Law Commissions' specific proposals:

- First, consideration would need to be given to how 'campaigners' would be defined for the purpose of formulating and applying new offences to ensure that the offences extend to those persons they are intended to cover (and not others accidentally). There may be some risk that workable definitions would still leave a wider range of less formal campaign participants comparatively unregulated.
- Second, while new offences may succeed in deterring what some people see as inappropriate activity by unscrupulous campaigners, they may also have the effect of deterring the provision of legitimate support and help to voters.

4.3. In an earlier section of our response we also supported the proposal to extend the secrecy provisions to make it an offence to obtain and communicate information about how a voter has marked a postal ballot paper:

We support the principle behind the proposal to extend the secrecy requirements under section 66 RPA 1983 to cover information obtained when a person completes their postal vote; there should be greater consistency and equivalency between offences which may be committed in a polling station or at a count, and elsewhere, including in a voter's home.

4.4. We said that it would be useful to reflect on the behaviour of campaigners at the May 2015 elections, when we would be better placed to assess whether campaigner behaviour remains a significant vulnerability which would more appropriately be addressed by new offences rather than the current voluntary Code of Conduct for Campaigners.

4.5. We also discussed the experience of the revised provisions of the voluntary Code of Conduct for Campaigners at the Electoral Integrity Roundtable meeting at the beginning of June. Electoral administrators remain generally concerned about campaigners handling absent vote application forms and postal ballot packs, and one specific example highlighted at the meeting

involved large numbers of application forms which were delivered to the electoral registration officer by a local election candidate very close to the deadline. This kind of activity is not currently unlawful, and does not necessarily indicate electoral fraud, but could mean that electoral registration officers have less time to check and verify the applications before the election.

4.6. Political parties, on the other hand, pointed out that such examples were relatively rare, and that the vast majority of campaigners aim to assist electors rather than defraud them. Parties have also noted that non-campaigners, including family members, could potentially be caught by these offences.

4.7. **Having considered other responses to the consultation, together with the comments about the operation of the Code of Conduct at the May 2015 polls, we think it is important to clarify some of the offences relating to postal voting.**

4.8. **We therefore suggest that the Law Commissions should consider amending or clarifying the law to more clearly specify that the following activities (regardless of who carries them out) are offences under electoral law:**

- **It should be an offence to compel someone to apply to vote by post or appoint a proxy (or to prevent them from doing so) against their will.**
- **It should be an offence for anyone to alter an elector's completed absent vote application form.**
- **It should be an offence for anyone to take an elector's uncompleted postal ballot pack from them.**
- **It should be an offence for anyone to open (except for a lawful purpose e.g. for the Royal Mail to direct the envelope to the correct returning officer) or alter the contents of a completed postal ballot pack, including either the ballot paper or the postal voting statement, before it has been received by the returning officer.**

4.9. **These offences would apply equally to campaigners and others (including family members, for example) and it would be for the courts to determine the appropriate type and level of punishment, taking into account the specific circumstances of each individual case. We expect that this would mean, for example, that campaigners, agents or candidates would receive more significant penalties including, if appropriate, being barred from standing for election for a period, reflecting the position of responsibility that campaigners hold.**

4.10. Taken together with existing offences, amending the law on secrecy to cover postal voting and a better drafted undue influence offence, we suggest that these should be sufficient to address the concerns raised about campaigner behaviour in relation to postal voting.

4.11. We will also continue to work with electoral registration officers and returning officers to support them in their administration of the postal vote process. Further, we will continue to support returning officers and political parties to identify when campaigners have breached the agreed Code of Conduct for Campaigners and to take action to prevent repeated breaches – including encouraging political parties to take disciplinary action themselves against any of their members who have breached the Code.

4.12. We suggest that this approach would allow campaigners to continue to provide genuine assistance to voters where requested, but would also encourage them to take particular care to avoid committing an offence. It would also allow for further distinction to be drawn by prosecutors and the courts between people acting as campaigners and those acting as friends, carers or family members.

## **5. The question of whether there should be a ‘public interest’ petitioner which could challenge the result of elections (set out in paragraphs 13.25-13.42 of our response)**

### **5.1. The election petition system**

5.1.1. Currently only a candidate or elector can challenge an election result by way of an ‘election petition’. The grounds of challenge include an error by those administering the election, the disqualification of the elected candidate or breaches of electoral law by the elected candidate or supporters<sup>3</sup>. An election petition is considered by a specially convened ‘election court’.

5.1.2. There are numerous problems with the existing law, which has changed little since 1868. In particular it relies on individuals to challenge elections despite the public interest in an invalid election being overturned, whilst at the same time it makes it difficult for individuals to do so because of the expense, length and complexity of the process. This results in well-founded challenges to an election not being brought, undermining confidence in the electoral process.

5.1.3. There is also the unusual position that the election court, which is a civil court, is able to report that a person is guilty of breaching electoral law, by committing what is referred to in electoral law as a corrupt or

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<sup>3</sup> We use the word ‘supporter’ in the remainder of this paper to cover agents of the candidates and others, where the current law would result in an election outcome being overturned for the commission of offences by such persons.

illegal practice<sup>4</sup>, without following the procedures of a criminal court in deciding whether someone has committed an offence. This also creates an overlap between the role of petitioners and prosecutors in respect of the same allegations as a breach of electoral law (for example engaging in an act of bribery) is both a corrupt or illegal practice that can be dealt with under the civil election petition process and an offence that can be dealt with by way of a police investigation, prosecution and conviction. There is also a significant gap in the current electoral law, which does not allow for any action to be taken in respect of a candidate or the validity of an election where someone other than the candidate is convicted of an electoral offence (as opposed to being found guilty under the election petition system).

## 5.2. What we want reform to achieve

5.2.1. In our view the objective for reforming this area of law should be to ensure that well-founded allegations that go to the validity of elections are brought forward, carefully considered and effectively resolved as quickly as possible.

## 5.3. The Law Commissions' consultation position on proposed reforms

5.3.1. The Law Commissions' reform proposals include giving us<sup>5</sup> (either on our own initiative or following a decision by an independent panel appointed by us) a power to challenge election results as a 'public interest' petitioner and also allowing returning officers to do so. The Law Commissions also propose clarifying and modernising the law (including incorporating the petition system into the ordinary civil court system) but are not proposing reducing the costs of bringing a petition, changing the position that a civil court determines whether persons are guilty of corrupt or illegal practices, resolving the overlap between petitions and prosecutions or addressing the gap in the law relating to convictions of persons other than the candidate.

## 5.4. Our views

5.4.1. We agree with the Law Commissions' analysis in paragraphs 13.174 to 13.177 of their consultation paper that there is an important flaw in the current petition system. The Law Commissions rightly enquire how the public interest in free and fair elections, and trust in outcomes, is to be maintained if the only persons able to bring a challenge are private individuals, who may or may not be willing and able to bring and fund a

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<sup>4</sup> We state in our first consultation response that our view is that the classification of some matters as corrupt or illegal practices should be removed, so that breaches of electoral law are simply described offences (page 48).

<sup>5</sup> Although the Law Commissions do not state that they would intend us to be the public interest petitioner, they do state that we are the only candidate to take on this role (paragraph 13.178 of the consultation paper).

petition. We also identified this flaw when we reviewed this area of law in 2012<sup>6</sup>.

5.4.2. The Law Commissions' main suggested solution is to allow us to bring petitions as a public interest petitioner. We can see the benefits of the proposal. There would be a single UK-wide independent body with relevant expertise (i.e. the Electoral Commission) that would be empowered to bring petitions where there appeared to be a public interest to do so. However, having carefully considered this proposal and reflected on others' consultation responses, we are of the view that there is a better way to address this problem and also a better role for the Electoral Commission, which we set out in detail below.

5.4.3. Petitions fall into three categories, i.e. petitions that allege that:

- The returning officer or a member of their staff has made an error in the administration of the election.
- The elected candidate was not eligible to be elected.
- The elected candidate or a supporter has committed a corrupt or illegal practice.

5.4.4. The Law Commissions propose to allow returning officers to bring petitions. Returning officers would be in the best position to know whether there has been an error in the administration of the election and so to bring petitions falling within the first of the three categories above. We do not administer elections so would not have as much access to the relevant information. However, there may be a risk that some petitions would not be brought by the returning officer for various reasons, including that the returning officer did not consider that they had made an error (when in fact they had) or did not want to admit administrative failings.

5.4.5. On the second ground, a returning officer is also more likely to be aware of the ineligibility of the elected candidate than us. Returning officers may be prepared to bring these cases; we are aware of one instance where a returning officer, knowing that an elected candidate was ineligible, was frustrated that he could not do anything to enforce the law except try to persuade others to bring a petition. Nevertheless, there may also be reluctance by some returning officers who are concerned about the impact that bringing a petition on such grounds would have on their independence (this would apply equally to a petition brought by the Electoral Commission or an Electoral Commission panel).

5.4.6. It is an offence for a candidate to make a false statement as to their eligibility to be elected in their consent to nomination form; if convicted,

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<sup>6</sup> Electoral Commission, [Challenging Elections in the UK](#) report.



the candidate would lose the elected office<sup>7</sup>. Therefore, candidate ineligibility could be dealt with by way of a criminal prosecution rather than an election petition. However, the offence only applies if the statement was made with the knowledge that it was false. It may be that this offence could be widened so that it is an offence simply to falsely state that you are eligible to be elected. It is arguably inappropriate for this offence to have a requirement for knowledge of the falsity of the statement as this could allow a candidate to avoid committing an offence due to a lack of knowledge of the relevant statutory provisions or how they impact on their position. It is the candidate's responsibility to ensure that they are eligible and they should be accountable for falsely claiming this to be the case.

5.4.7. Alternatively, it is arguable that should there be mechanism for filtering out disqualifications prior to the printing of ballot papers at an election<sup>8</sup>. Although there is a long-standing position in the UK that issues of candidate ineligibility are not enquired into until after the election, this is not necessarily the best approach. There are sometimes concerns that an obviously ineligible candidate is allowed to stand for election and to be elected and can only be removed from office by legal action after the election. However, if these matters were decided on prior to the election there would be a need to ensure that such matters do not impair the administration of the election. In any event, a candidate's disqualification may only become apparent after the election.

5.4.8. In respect of both of the first two grounds for bringing a petition, if the returning officer did not bring a petition it should be open for candidates and electors to do so and, to ensure that they are able to, the financial and other obstacles built into the current system should be reduced. This includes reducing the initial costs of bringing a petition and reducing the cost and length of the proceedings. It also possibly includes considering making legal aid more available and changing the rules on costs at the end of the petition, for example making protective costs / cost capping orders more readily available at the outset of the proceedings<sup>9</sup>. It also includes making the petition procedures more straightforward and less onerous, including by clarifying the grounds for bringing a petition.

5.4.9. We consider that the returning officer is best-placed to bring petitions on the first ground. On the second ground the position is more complex and there are a few options but we consider that if candidate eligibility was to remain a matter for the petition system, it would be sufficient for returning officers, candidates and electors to be able to bring petitions. In

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<sup>7</sup> Section 65A RPA 1983.

<sup>8</sup> We recommended this in our *Standing for Election in the UK* report (January 2015) (pages 91-96) [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/180458/Standing-for-Election-in-the-UK-report-Jan-2015.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/180458/Standing-for-Election-in-the-UK-report-Jan-2015.pdf)

<sup>9</sup> This could include exploring whether some of the provisions applying to the funding of judicial review proceedings, for example in Part 4 of the Criminal Justice and Courts Act 2015, might be suited to election petition proceedings.

both cases there does not appear to us to be a strong argument for another petitioner to be able to bring petitions.

5.4.10. This leaves petitions where there are allegations that corrupt or illegal practices have been committed by the candidate or supporters. A returning officer, as the independent official running an election, may feel reluctant to intervene in such matters as it could jeopardise his/her reputation for impartiality. Also a returning officer is unlikely to feel in a good position to decide on whether there is sufficient evidence that such a practice has been committed and whether there is a public interest to bring this to a court's attention as it is unlikely that the returning officer would have sufficient information to make that judgment and such considerations are well outside a returning officer's existing statutory functions.

5.4.11. If we were able to bring a petition we would be in a similar position to the returning officer; we would be wary of intervening due to the risk of undermining our reputation for neutrality and we would be unlikely to be the best-placed body to make decisions about whether there is evidence of illegality and whether there is a public interest in bringing a challenge as this would not accord with our existing statutory functions in the area of electoral administration.

5.4.12. Instead, these are properly matters for the police and prosecutors (the Crown Prosecution Service, the Public Prosecution Service in Northern Ireland and the Crown Office and Procurator Fiscal Service in Scotland). The role of a public interest petitioner under the Law Commissions' proposals in cases where there are allegations of corrupt or illegal practices would be to gather the necessary evidence and weigh up both whether there is sufficient evidence that such a practice has been committed and also whether there is a public interest in legal action being taken. These are matters for police and prosecutors.

5.4.13. When deciding on whether to prosecute an alleged offence prosecutors apply a two-stage test, namely:

- is there sufficient evidence (for example is there enough admissible and reliable evidence) to provide a realistic prospect of conviction, and
- if yes, is it in the public interest to prosecute<sup>10</sup>?

5.4.14. Only if the answers to both questions are 'yes' will a prosecution be brought. This seems to us to be similar to the test that a public interest petitioner would need to apply when deciding whether to bring a petition alleging illegality by candidates or supporters.

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<sup>10</sup> CPS, *Code for Crown Prosecutors*,  
[https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/codetest.html](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html)

5.4.15. In these cases we consider that prosecutors should be the guardian of the public interest as they are best qualified to make these judgments.

5.4.16. In addition we also consider that there are a number of difficulties with the proposal of appointing the Commission as public interest petitioner.

5.4.17. Firstly, as mentioned above, the role of initiating public interest petitions could have an impact on perceptions of our political neutrality. Our work in electoral administration, which consists of preparing guidance on which elections are run and monitoring and reporting on elections, demands complete neutrality. Any accusations that we were favouring one party or another in bringing a petition could damage our reputation for independence.

5.4.18. The Law Commissions seek to deal with this problem in their consultation paper. They state that one option would be for an independent expert to be appointed from an Electoral Commission panel to consider whether a petition should be brought in the public interest. They add that

If the independent expert concludes that the threshold for doing so is met, the Electoral Commission would be obliged to initiate an election petition. This would effectively shield the Electoral Commission from the concerns outlined above because the decision that the public interest justified bringing a petition would be made by an independent and expert person<sup>11</sup>.

5.4.19. However, it is likely that there would still be questions about our decision to refer a case to that panel and also about whether that panel was truly independent of us. If we referred a case to a panel, this would be likely to attract considerable media interest and the perception would be little different than if we had brought a challenge ourselves.

5.4.20. Also, we assume that our role would not be confined to bringing a petition and would extend to contesting the petition as the petitioner through every stage including the trial. This would seem to increase the risk of our reputation for impartiality being undermined and, given that many election petitions last for around a year and can be highly adversarial, our reputation for impartiality could be questioned over a long period.

5.4.21. If we were to lose the petition, having expended public funding for a year or so, there could be severe criticism of the Electoral Commission both in terms of acting in a biased manner in pursuing a

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<sup>11</sup> Law Commissions, *Electoral law reform consultation paper*, p. 315.

political party / candidate in respect of allegations that were ultimately unproven and also in terms of wasting public money. Therefore, we may become overly cautious resulting in less matters being petitioned than is appropriate.

5.4.22. Secondly, the Law Commissions' proposals, in our view unrealistically, envisage a public interest petitioner only being called on to act in the last resort, where no one else has the resources to bring a petition. In practice we expect that almost every allegation of administrative error, ineligibility or illegality in the campaign would be directed to us in the first instance as it would be a way to challenge an election without any expense. In each case we would be the body acting in effect as a filter to decide which cases get brought and which do not, in considering the merits of each case. We would not be able to take on such a role without further funds. In any event, regardless of the impact on public funds, the Electoral Commission acting as a filtering mechanism does not appear to us to be the best way to address the problem identified by the Law Commissions, when returning officers will be able bring petitions on administrative matters and prosecutors will make decisions on criminal allegations. However, it may be argued that if, for example, there is to remain a time limit within which petitions can be brought by candidates, the aggrieved person(s) may need to make a decision on whether to proceed before the public interest petitioner has made a decision – this may lead to some petitioners not waiting for us to complete our investigation and instead bringing a petition themselves within the 21 days.

5.4.23. Thirdly, a public interest petitioner could breach the principle that there should be equality of arms between the rival candidates in an election. A public interest petitioner would be able to draw on public funds to bring and pursue a petition, including access to specialist legal advice. The elected candidate, who would be a respondent to the petition, might have little or no adequate sources of funding. The public interest petitioner would effectively be throwing its weight behind a losing candidate, in his/her struggle to get elected, in opposition to the winning candidate. In our experience an election petition is to a large extent seen as an extension to an election campaign in which two candidates continue their attempts to be elected through a judicial process. It could be argued that the same difficulty would be raised by giving the returning officer a power to bring petitions on administrative matters. However such petitions are unlikely to be as keenly contested as petitions alleging illegality and would not result in a candidate losing the right to stand for election and vote. In many cases (but not all) the returning officer would be acting with the support of all the candidates in seeking to get the result corrected. As for the criminal law, it has safeguards to deal with any concerns relating to the equality of arms including the availability of legal aid and various procedural safeguards such as the right to appeal on facts and law, which are absent in the petition process.

5.4.24. Fourthly, in deciding whether a petition should be brought, or whether we should refer the case to a panel, we would need to carry out some sort of investigation into the allegations to ascertain their credibility. If there was a panel to make the final decision, the panel member would need to investigate. This would take time and our view is that petitions already take too long to be resolved. A preliminary pre-petition process to test its credibility would seem likely to lengthen this period.

5.4.25. Fifthly, there would be a need to be satisfied that a threshold test was met, i.e. that a petition should be brought because of the nature and credibility of the allegations and the risk of loss of confidence in elections if the result was not challenged. A petition may allege that multiple electoral offences have been committed, as was the case with the Tower Hamlets petition. There would be difficulties in carrying out an investigation into such allegations and making a decision about whether to bring a petition. We (or the panel) would be unlikely to be in possession of the information needed to assess whether a petition should be brought. It is not clear what investigatory powers we would be given or whether we would have to rely on the police. Also, any role that we or our panel would have to investigate and make a decision about whether to bring a petition would overlap with the police's role to investigate and the prosecutor's role to decide on whether to prosecute in respect of the same matter. How would these overlapping roles be managed in practice?

5.4.26. It is also unclear how the panel system, if favoured, would work. Who would sit on this panel and what powers, staff and funds would it have? What relationship would it have to the Electoral Commission?

5.4.27. **Therefore, building on the proposals for reform outlined by the Law Commissions, our view is that a more robust option for reform would be to split the petition process into two:**

- **A process for the quick and effective resolution of allegations that a mistake was made in the administration of the election, which affected the result, or that the winning candidate was not eligible to be elected<sup>12</sup>. These allegations could be brought to the relevant court's attention by the returning officer, a candidate or an elector. We would advocate reducing the financial deterrents to ensure electors and candidates could bring petitions, where the returning officer did not, subject to there being a way to filter out complaints without merit.**

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<sup>12</sup> As discussed above, the best way to deal with candidate ineligibility may be to either address this before the election or leave it to prosecutions for the offence for making a false statement, provided that the requirement for knowledge of the falsity of the statement was removed from the offence.

- **All allegations that a candidate or supporter has committed a corrupt or illegal practice should be for the police to investigate and prosecutors to prosecute. Electors and candidates could bring private prosecutions, albeit that this would require special provision in Scotland, or they could challenge the prosecutor’s decision not to prosecute.**

5.4.28. A similar approach was initially favoured by the Law Commission of England and Wales<sup>13</sup>.

5.4.29. **We would also support the Electoral Commission being given a role in intervening to assist the court, at its request on any issues raised in proceedings that are within our expertise. This would allow the Commission to contribute its expertise in electoral law and practice to assist the court in its consideration of a petition or criminal trial.** There is precedent for such an approach. For example, the Court of Appeal has a power to direct the Criminal Cases Review Commission (CCRC) to investigate and report to the Court on any matter if it appears to the Court that:

- it is relevant to the determination of an appeal (which ought to be determined),
- investigation by the CCRC is likely to result in the Court being able to resolve it, and
- the matter cannot be resolved by the Court without an investigation by the Commission<sup>14</sup>.

5.4.30. Under the above proposals the civil petition process would only deal with allegations of administrative error by the returning officer or his/her staff that affected the election result or an allegation that the winning candidate was ineligible to be elected.

5.4.31. Any allegations of corrupt or illegal practices would be for the police to investigate and prosecutors to prosecute under the ordinary criminal law. As is already the case, if a winning candidate was found guilty under the criminal law, the law would provide for his/her office to become vacant and for the candidate to be disqualified from standing for election or voting for a specified number of years.

5.4.32. If anyone else was convicted there would be a need to determine whether this should lead to the election result being

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<sup>13</sup> Law Commission, *Eleventh Programme of Law Reform*, page 14, [http://lawcommission.justice.gov.uk/docs/lc330\\_eleventh\\_programme.pdf](http://lawcommission.justice.gov.uk/docs/lc330_eleventh_programme.pdf) The Law Commission stated that ‘It may well be appropriate to distinguish between true electoral criminality, and provide for its prosecution using the ordinary processes of the criminal law, and essentially public law functions, which could be dealt with by way of judicial review or statutory appeal’.

<sup>14</sup> Section 23A of the Criminal Appeal Act 1968 and section 15 of the Criminal Appeal Act 1995.

overturned, which under the current petition process would be the case if the corrupt or illegal practice was committed by an agent of the candidate or by anyone else if such practices extensively prevailed and could reasonably be supposed to have affected the election result. The law could provide for the winning candidate's office to become automatically vacant if any of the candidate's statutory agents are convicted. If there was a question about whether some other person who was convicted was an 'agent' of the candidate or whether such practices extensively prevailed and could reasonably be supposed to have affected the result, the law could provide for the matter to be automatically referred to the High Court (the Court of Session in Scotland), i.e. the court that would determine petitions, to make a decision as to the impact on the election result. There would be a need to ensure that the relevant evidence and arguments were swiftly presented to the High Court to ensure that it could quickly and effectively rule on such matters.

5.4.33. If a candidate or elector was unhappy with a prosecutor's decision not to prosecute he/she could challenge that decision by way of judicial review or bring a private prosecution (although we understand that this may require special provision in Scotland).

5.4.34. The advantage of this reform would be that there would be a clear separation of responsibility between:

- returning officers, candidates and electors who would be responsible for bringing challenges to an election based on administrative error and candidate ineligibility<sup>15</sup>, and
- prosecutors who would be responsible for bringing prosecutions where there have been allegations of illegality.

5.4.35. The current system, in our view unreasonably, expects private individuals (candidates and electors) to bring challenges on all grounds, including alleging the commission of corrupt or illegal practices. There has been increasing concern, especially in the light of the Tower Hamlets petition decision, that it is no longer acceptable that private individuals (four electors in the Tower Hamlets case) should bear the burden of exposing electoral fraud and overturning an election. Our proposal would shift this burden to returning officers (in respect of administrative issues) and prosecutors (in respect of illegality). It would also reduce the financial barriers to make it easier for electors and candidates to bring petitions on administrative matters and questions of candidate eligibility, in cases where the returning officer does not do so.

5.4.36. Also, at present prosecutors are in an unusual position wherever there are allegations of corrupt or illegal practices after an election. They have the option of prosecuting but there is also the possibility that a

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<sup>15</sup> Please see footnote 8.

candidate or elector will bring a petition. Prosecutors' current roles are not clear in these cases. Should they wait to see if a petition is brought and, if one is brought, should they take the matter no further? What should prosecutors do when a petition is determined? If someone is reported guilty of a corrupt or illegal practice the prosecutor may consider that there is nothing to be gained from a prosecution (as a penalty will already have been imposed) and that in any event a prosecution would be problematic given that a court has already decided that the practice has been committed to the criminal standard of proof. If someone is found not to be guilty by the election court the prosecutor may consider that there are no reasonable prospects for a conviction.

5.4.37. There is also a difficulty with the fact that under the existing system the election court, which is a civil court, decides whether someone is guilty of a corrupt or illegal practice (a civil court will also be deciding on such matters under the Law Commissions' proposals). Although this would not constitute a criminal conviction, the public perception is likely to be the same as if there had been a conviction. Also, the civil court imposes severe penalties, arguably as or more severe than a criminal court may impose, including removal from elected office and disqualification from seeking elected office and from voting for a specified number of years (and a significant financial penalty in being ordered to pay other parties' costs, which can amount to a six figure sum). The civil court does so without applying the procedures that would apply to criminal proceedings, which are designed to ensure that defendants get a fair trial, and without any right of appeal on the facts. We are aware of instances where the election court's procedures have been found to fall short of the required standard for deciding on a person's guilt<sup>16</sup>. Also, we understand that legal aid to pay for legal representation would not be available to respondents to defend themselves<sup>17</sup>. The above puts the civil court's decision at risk of being found to be unlawful<sup>18</sup>.

5.4.38. Furthermore, it is essential that elections are decided properly. Where there are allegations of what amounts to criminal conduct that could undermine the validity of an election, the Commission would want these allegations to be determined rigorously by a criminal court.

5.4.39. An additional problem is that where a matter proceeds down the criminal route by way of a prosecution (as opposed to an election petition) and where someone other than the candidate is convicted of an

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<sup>16</sup> *R (on the application of Khan) v Election Commissioner* [2005] All ER (D) 203 (Oct) and *R (on the application of Afzal) v Election Court and others* [2005] EWCA Civ 647. This is discussed in more detail in our [Challenging Elections in the UK](#) report (pages 51 to 53).

<sup>17</sup> Electoral Commission, *Challenging Elections in the UK*, page 29.

<sup>18</sup> The above draws on Grist, R. Challenging elections in the courts, *Public Law* 2015, Jul, pp. 375-385.



electoral offence, there is no action that can be taken against the candidate. The time for issuing a petition (21 days) will have passed and there is nothing in the law that provides for the candidate to lose his/her elected office where someone else has been convicted of an electoral offence relating to the candidate's election, even if that person was close to the candidate, for example one of their statutory agents. This is at odds with the law governing election petitions as under an election petition a candidate will lose his/her elected office and face various disqualifications where either (1) an agent is found guilty of a corrupt or illegal practice or (2) such practices, although not committed by the candidate or an agent, have extensively prevailed and could reasonably be supposed to have affected the result. The failure to provide for this in respect of criminal convictions is a clear gap in electoral law and one that undermines trust in the electoral process. An elected person will be able to serve a full term despite an agent(s) or supporter(s) being convicted of electoral offences in connection with facilitating the elected person's election.

5.4.40. Our proposal would address these difficulties. Firstly, the civil petition process would no longer deal with allegations of corrupt or illegal practices; these would be for the criminal courts. Prosecutors could follow their normal procedures and decide firstly whether there was sufficient evidence that an electoral offence had been committed and secondly whether it was in the public interest to prosecute. Secondly, criminal proceedings would safeguard the right of the accused to a fair trial and the right to appeal. Thirdly, our proposal would ensure that all convictions for electoral offences would be referred to the civil court to assess whether there was a need to rule the election to be void because the person was either an agent of the candidate or where offences extensively prevailed and could reasonably be supposed to have affected the result.

## 5.5. Counter-arguments

5.5.1. One argument against our proposal is that prosecutors may decide not to prosecute allegations even where there was a public interest in doing so to ensure the election result was valid. It could be argued that prosecutors do not have the resources to prosecute all cases and may prioritise non-electoral cases (e.g. serious offences to the person). It could be said that prosecutors will not always seek to protect electoral integrity, unlike a public interest petitioner (albeit as mentioned above, a public interest petitioner may have other reasons for being reluctant to take on a case, for example relating to its need to remain politically neutral). It may be that a candidate or supporter will be given a caution rather than being prosecuted even though there is strong evidence that an offence has been committed and therefore the election result should be overturned.

5.5.2. However, if the only way for an election to be overturned was by way of a prosecution (not also by a petition), we would expect that prosecutors

would give considerable weight to this when applying the public interest test. We also note that under the current CPS Code of Crown Prosecutions, for example, the public interest test includes specific consideration of the 'impact on the community'. We assume that the possibility of electoral fraud and, especially, the impact on the election result of a successful prosecution would invariably weigh heavily in favour of requiring a prosecution.

5.5.3. Another concern is likely to be that if someone other than the candidate or statutory agent was prosecuted, there would need to be a separate consideration in a different court as to whether the convicted person was an 'agent' of the candidate or whether offences extensively prevailed and could reasonably be supposed to have affected the outcome. This could add to the length of time during which an election result would be uncertain. Also, as previously noted, at present the conviction of a person other than the candidate cannot currently invalidate the election; the election can only be invalidated in these circumstances at present by a decision on an election petition. There is a 21 day time limit for bringing an election petition, whereas a prosecution can be brought within one year. However, we do not consider this to be a significant change. The automatic referral of a matter to the civil court and its consideration would not seem to us likely to be a time-consuming process. Also, the conviction of a candidate following a prosecution that is brought within one year will already lead to the election being overturned; our proposal extends this to convictions of others but only in cases where this would already be case following an election court decision – in doing so it deals with the gap in electoral law outlined above.

5.5.4. Another objection may be that our proposal is seen as diminishing the ability for an elector and candidate to challenge an election. It should be noted that in England and Wales anyone can undertake a private prosecution. Private prosecutions are not allowed in Scotland except in a few exceptional circumstances so the right for electors and candidates to prosecute may need to be written into Scottish law. So private prosecutions could be instituted, although it would be hoped that they would not be necessary as prosecutors should be bringing prosecutions wherever there was a public interest to do so to clarify the validity of the election and sufficient evidence. In addition, prosecutors' decisions are subject to judicial review.

5.6. The need to ensure that criminal law enforcement is able to effectively deal with matters that could impact on the result of an election

5.6.1. It is important that where allegations of what are currently termed corrupt or illegal practices are made, they are treated seriously, properly investigated and (where appropriate) referred to the relevant prosecutor. This will be even more so, if the only way for an election to be overturned because of their commission is by way of a conviction (rather than also by way of a petition).

5.6.2. The police are responsible for investigating these offences. Every police force in the UK has an identified Single Point of Contact Officer (SPOC) for these electoral offences, who provides specialist support and advice to investigators. In addition, the Independent Police Complaints Commission (IPCC) provides oversight of the police complaints system in England and Wales and sets the standards by which the police should handle complaints. In order to ensure the independence of the investigation, the IPCC was also called on to investigate allegations of electoral offences in respect of two winning police and crime commissioner candidates following their election in 2012.

5.6.3. We have no statutory role in the investigation of corrupt or illegal practices, unlike the offences applying to political party and election finance that are set out in the Political Parties, Elections and Referendums Act 2000. However, we have taken on an informal role to support SPOCs and promote transparency in this area, without specific legislative functions. This includes:

- Providing support to SPOCs in the form of providing guidance<sup>19</sup> and running training sessions, in partnership with the National Police Chiefs' Council (NPCC). We also assist SPOCs with specific queries.
- Organising and chairing an Electoral Integrity Roundtable forum where those with experience of dealing with electoral malpractice or who have introduced an innovative approach to help improve the integrity of elections can meet and discuss key issues.
- With assistance from the NPCC and SPOCs, collecting and analysing data on allegations of electoral fraud and publishing an annual report on cases of alleged election fraud.

5.6.4. This work helps to ensure that SPOCs are able to take appropriate action to identify and investigate possible corrupt or illegal practices. We also facilitate the sharing of best practice through the Roundtable and promote transparency. We consider that the above will help to ensure that electoral law enforcement cases are dealt with properly, although it may be appropriate for our role to be set out in legislation.

5.6.5. Nevertheless, there may be occasions where there are concerns that allegations of electoral offences have not been taken seriously enough or properly investigated. In such cases the first step would be for the concerned person to complain to the police force involved. The police may be able to resolve the complaint by providing information or explanation but if it needs to be looked into it will be recorded and given formal consideration under the Police Reform Act 2002. If the police do

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<sup>19</sup> Guidance for England and Wales is published on the College of Policing's website at: <https://www.app.college.police.uk/app-content/policing-elections/>

not record the complaint or, in some circumstances, if the complainant is unhappy with the way the complaint has been handled, the complainant can appeal to the IPCC<sup>20</sup>.

5.6.6. It would seem to us that the above is sufficient to support those investigating corrupt or illegal practices, promote transparency, ensure accountability and provide a means to resolve concerns that an electoral matter has not been properly dealt with. However, it may be useful to ensure that there is greater awareness of the right to complain, if necessary to the IPCC, where there are concerns about an investigation.

5.6.7. The prosecution of alleged corrupt or illegal practices under the RPA 1983 is the responsibility of the Crown Prosecution Service in England and Wales, the Public Prosecution Service in Northern Ireland and the Crown Office and Procurator Fiscal Service in Scotland. These prosecutors, on a case being passed to them by the police, decide if there is sufficient evidence to secure a conviction and, if so, whether it is in the public interest to prosecute the case.

5.6.8. We argue above that prosecutors are in a better position to take a decision on whether to take action on allegations of such practices than the Electoral Commission acting as a public interest petitioner. However, our proposal would diminish the right of electors and candidates to challenge an election on this basis as they would not be able to bring a petition on grounds of corrupt or illegal practices, although they would be able to bring a private prosecution. If there were concerns that prosecutions were not being brought where they should be, electors' trust in the electoral process could be undermined.

5.6.9. We consider that we could potentially make a valuable contribution. We would be well-placed to provide information and views as to whether there is a public interest to prosecute in electoral cases, primarily to ensure that the impact of a conviction on the election result is taken into account. We may also be particularly able to assist where the allegations relate to persons other than the candidate or agent, as there would need to be consideration given to whether offences, if proven, could reasonably be supposed to have affected the result as this is part of the grounds for annulling an election. Our role would assist prosecutors by providing information that would relate to the 'impact on the community' element of the public interest test.

5.6.10. **Therefore, we propose that we should be formally consulted by prosecutors before they decide on the public interest test and that our response should be taken into account by prosecutors. This could be written into the law but could be dealt**

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<sup>20</sup> This paragraph draws on: IPCC, *A guide to the police complaints system*, January 2013, [https://www.ipcc.gov.uk/sites/default/files/Documents/publications/A\\_guide\\_to\\_the\\_police\\_complaints\\_system\\_leaflet.PDF](https://www.ipcc.gov.uk/sites/default/files/Documents/publications/A_guide_to_the_police_complaints_system_leaflet.PDF)

**with instead in prosecutors' internal policies or procedures or through memoranda of understanding.**

5.6.11. This role would not seem to us to be as likely to undermine our impartiality as would be the case if we were required to act as a public interest petitioner. This is because we would not be making any comment on whether we thought that an offence had been committed (the evidential test); we would only be commenting on whether there was a public interest to prosecute, for example to clarify the result of the election (the public interest test). However, there would be other implications for us in taking on this role; for example we would need some additional resources.

5.6.12. Irrespective of whether we were given the above role, it seems to us that it would almost always be in the public interest to prosecute in cases where the prosecutor has decided that the evidential test is met and where it is alleged that the candidate or an agent has committed an electoral offence. This is because the importance of clarifying the election's validity would be an overriding factor. **Therefore under our proposal we would expect the law or prosecutors' policies or procedures to make it clear that where an allegation that a candidate or agent has committed an electoral offence passes the prosecutors' evidential test there will be a strong presumption that it is in the public interest to prosecute because, if a conviction is secured, the election result will be void.**

5.6.13. However, the election will also be void if other persons are convicted, if offences extensively prevailed and if they could reasonably be supposed to have affected the result. **Therefore we would also expect the law or prosecutors' policies or procedures to make it clear that in such cases where allegations pass the evidential test there will be a strong presumption that it is in the public interest to prosecute because, if a conviction is secured, the election result will be void.**

5.6.14. There are other safeguards that would help to ensure that anyone who was concerned about a prosecutor's decision on whether to prosecute could raise their grievance. Firstly, they could bring a private prosecution against a candidate or other person whom they believed had committed an offence. Secondly, in certain circumstances they could complain using the prosecutor's internal complaints procedures and, if the complainant remains dissatisfied, to the Independent Assessor of Complaints for the Crown Prosecution Service, Scottish Public Services Ombudsman or the Independent Assessor of Complaints for the Public Prosecution Service in Northern Ireland. Thirdly, someone could seek to challenge a prosecutors' decision by way of judicial review. It may be that the awareness of these mechanisms would need to be increased under our proposals. However, we would hope that it would not be necessary for individuals to take such action, as we would expect police and prosecutors to be taking the necessary action.

## 5.7. Reforms that are required regardless of whether or not there is a public interest petitioner

5.7.1. As noted in this paper, we consider that the Law Commissions have highlighted a significant flaw in the existing election petition system, namely its reliance on individuals to bring challenges despite the inaccessibility of the petition system, and we will work with the Law Commissions to ensure that the most robust solution to this problem, along with the other problems relating to the election petition system, are identified. For the reasons we have set out our view is that the best way for allegations that corrupt or illegal practices have been committed to be dealt with is by police and prosecutors, rather than by way of an election petition brought by individuals or a public interest petitioner. Therefore we support splitting the current petition process into a civil and criminal process, as set out elsewhere in this paper. We accept that this would be a significant change to electoral law and that under this proposed system it would be important to make sure that allegations that could impact on the result of the election are taken forward properly.

5.7.2. If the Law Commissions do not support our preferred option for reform it is likely that a number of the problems with the existing petition system that are referred to above will remain unresolved. There will remain an overlap and lack of clarity as to the role of the petition system and the role of prosecutors and the criminal courts. A civil court will continue to be deciding on matters of guilt and imposing severe penalties without the protections and robust consideration provided for in criminal law. There will be no way to consider the validity of an election where someone other than the candidate has been convicted of an electoral offence in connection with the election, even if one of the candidate's statutory agents is convicted (unless an election petition has been brought).

5.7.3. In respect of the problem referred to in the Law Commissions' consultation paper relating to the need to ensure that petitions are brought where there is a public interest to do so, we do not support the Law Commissions' provisional solution which is for us to be given the role of a public interest petitioner. This is for the reasons explained in the previous section of this paper. However it is important that ways are found to address or mitigate this problem. Whichever proposal is ultimately recommended, we would support:

- Requiring returning officers to bring petitions where they consider that they or another person working on the election has made a mistake.
- Significantly reducing the financial barriers that currently deter the bringing of petitions. This includes significantly reducing the up-front fees for bringing a petition; election petitions are matters of public interest, so requiring around £5,000 up front from the petitioner is not in our view justified and is well out of step with

comparable countries. It also includes ensuring that a petitioner does not incur considerable costs in bringing a petition, even if it proves unsuccessful, for example through the use of cost capping provisions. This may increase the number of petitions brought but flawed petitions could be filtered out using normal court processes (i.e. applications for strike out) or a special filtering process.

- Making the procedure for bringing and pursuing a petition less onerous and more straightforward. This includes clearly setting out the grounds for bringing a petition.
- Updating and clarifying electoral offences so that it is easier to establish whether an offence has been committed.
- Ensuring that petitions are determined without delay and much more quickly than at present. The longer the petition process, the more costs parties will incur and the more likely that those wishing to bring well-founded petitions are deterred from doing so.
- Allowing the Electoral Commission to intervene in petition proceedings, at the court's request, to assist in the consideration of any matter of law or practice.

5.7.4. This would go some way to addressing the problem but would not fully do so. The onus would still be on individuals to bring challenges to elections, effectively acting to police elections, except in cases of administrative error. As stated above, our view is that it should not be for individuals to effectively be required to police corrupt and illegal practices by bringing petitions as this role should instead be performed by police and prosecutors.

## **6. The proposal that there should be a means of reviewing complaints about elections which do not aim to overturn the result. Review could be carried out by the Ombudsman, another Returning Officer or the Electoral Commission (set out in paragraphs 13.43-13.44 of our response)**

6.1. The petitions process does not deal with complaints about electoral administration that do not affect the election outcome. The Law Commissions note in their consultation paper that councils' internal complaints mechanisms do not extend to complaints about the conduct of the returning officer, the electoral registration officer, or their staff due to their status as independent statutory officers. The Local Government Ombudsman in England and Wales similarly takes the view that he cannot investigate complaints concerning elections or electoral registration. There is no express legislative exclusion of electoral administration from the jurisdiction of the Ombudsman; rather the conclusion has been reached that complaints about electoral administration do not concern the exercise by local authorities of their administrative functions.

6.2. Both the AEA and ourselves have suggested that there should be a system that allows complaints about electoral administration to be made and properly responded to. The Law Commissions consider that returning officers should, in the first instance, be able to deal with complaints themselves and to investigate them to the extent they can and respond in writing. If the complainant is not satisfied with the response, the Law Commissions put forward three options for the independent consideration of the complaint:

- escalation to the relevant Ombudsman,
- review by an adjacent Returning Officer or Regional Returning Officer, or
- consideration by the Electoral Commission.

6.3. The Law Commissions invited views on the best option. They added that whatever the venue of the complaint, the focus should be on learning lessons from maladministration and meeting voters' concerns. The aim should be to regain voters' confidence in the outcome of the election, the integrity of the election process and the ability of electoral administrators to learn from mistakes.

6.4. In our response we supported the proposal to make provision for the consideration of electoral complaints. We did not express a view as to which of the three above options was best but we did state that if the Law Commissions develop this proposal further we would be happy to consider whether a role in dealing with complaints could be developed alongside, or incorporated within, our existing performance standards functions.

6.5. It may be helpful to set out what we currently do. Currently, where we receive what are essentially complaints from voters, we follow up with the relevant electoral registration officer or returning officer before responding to the voter. On occasion we may make recommendations to the electoral registration officer or returning officer about changes to practices resulting from this and could provide them with support to make these changes (as part of undertaking our general guidance role), but we cannot compel changes. These arrangements are done informally, without being underpinned by express statutory provisions.

6.6. On the basis that complaints will relate to how electoral registration officers and returning officers are exercising their functions as independent electoral officers, rather than being complaints about maladministration directed to the council, it may be that we should be the body that considers complaints (following consideration by the electoral registration officer or returning officer concerned). We have expertise in electoral matters across the UK and already to some extent carry out this role informally.

6.7. However, there is a potential conflict between our guidance and support role (both in providing general guidance on running the polls and in providing



particular advice and support to help electoral registration officers and returning officers deal with specific emerging issues) and adjudicating on complaints that may relate to electoral registration officers or returning officers following our advice. The option of review by another returning officer may also give rise to conflict given the trend towards greater collaboration between local authorities in election delivery.

- 6.8. There is also an argument that complaints are better dealt with the relevant Ombudsmen. The Ombudsmen would be able to provide a more independent review of a complaint, given our functions in providing guidance and advice to those running registration and elections. Also, as the joint response from various UK Ombudsmen states, it is also in line with existing processes and procedures. Most complaints about local authorities are under the jurisdiction of the existing Ombudsman. Local authorities already have established processes in place for signposting people to the relevant ombudsman, in some cases backed by a legislative requirement, so extending this to complaints about the returning officer's functions would not be burdensome. Although elections are delivered by independent officers, it would seem possible to extend the Ombudsman's remit, especially given that election staff work in the local authority.
- 6.9. A further problem is that we are subject to the (Parliamentary) Ombudsmen's jurisdiction ourselves, so our handling of a complaint could be referred to an Ombudsman, which would add complexity to the system.
- 6.10. If the relevant Ombudsmen were given the role of considering electoral complaints there would be a need to address any overlap or duplication between this role and our role in monitoring the performance of electoral registration officers and returning officers. We consider that these two roles would not conflict; the Ombudsmen would be dealing with a complaint from one individual to provide them with a remedy and suggest improvements where necessary, whereas we would be monitoring and reporting on all officers' performance in order to improve standards across the UK.
- 6.11. However, consideration should be given to how these two roles work in practice. There is a real benefit as that our performance standards would complement the Ombudsmen's consideration of complaints as it would give a framework for well-run registration and elections against which allegations of maladministration could be assessed.
- 6.12. **We have concluded that extending the relevant Ombudsmen's remits to cover electoral registration officers and returning officers would be the most straightforward way to achieve what we and the Law Commissions' want, and would be a good fit with our existing role and approach.**