

Electoral Commission response to Sir Eric Pickles' review and recommendations on electoral fraud

17 October 2016

Introduction

1. The Electoral Commission welcomes the publication by Sir Eric Pickles of the report and recommendations from his review of electoral fraud. They are an important contribution to the ongoing debate about how to tackle electoral fraud and improve confidence in elections in the UK.
2. Electoral Registration Officers, Returning Officers, police forces and the Commission have made significant progress in improving the response to electoral fraud during the last 15 years. There is, however, always more that could be done to tackle electoral fraud, including by the Commission, and this response sets out the work that we will continue to deliver and identifies new work that we will now plan to help prevent electoral fraud at future elections.
3. This will include continuing to ensure that Electoral Registration Officers, Returning Officers, police forces and prosecuting authorities are well-equipped to prevent electoral fraud and to detect and prosecute offenders if fraud is committed. It will also include ensuring that voters understand their fundamental rights to vote in secret and without interference or undue influence, and that campaigners and others understand there can be no place in UK elections for behaviour which prevents voters freely exercising those rights.
4. There is also more that Governments can do to help tackle electoral fraud, including bringing forward changes to legislation that the Electoral Commission and the UK's Law Commissions have previously recommended. We are pleased that Sir Eric's report has supported and reiterated many of these recommendations, including our recommendation for voters to provide proof of their identity in polling stations, and we are keen to work with Governments to help implement these important changes to the law.
5. While the UK and Scottish Governments are currently considering how to take forward the Law Commissions' recommendations, we would also support bringing forward legislation to clarify and strengthen electoral fraud offences in advance of any proposals to implement the Law Commissions' other recommendations.

6. Sir Eric’s report concludes that “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”.

7. We agree with this conclusion, but we remain concerned about the evidence from research with voters, which highlights an underlying perception among a significant proportion of the population that electoral fraud is a problem. Our research has also shown that unacceptable activity which many people consider electoral fraud – including pressure and intimidation both in the home and outside polling stations – may not be reported by victims. A key focus for our work in future will, therefore, be to help improve awareness among voters who may be more vulnerable so that they can recognise, challenge and report electoral fraud, including through our partnership with Crimestoppers, the anonymous crime reporting charity.

Background

8. The UK Government announced on 13 August 2015 that the then Prime Minister had asked the Government’s Anti-Corruption Champion, Sir Eric Pickles MP, to conduct a review of electoral fraud in the UK. The review began with the publication of its terms of reference and invited interested organisations and individuals to submit evidence by 8 October 2015. The UK Government indicated that a report would be provided to the Prime Minister by the end of 2015, making recommendations and proposals for change.

9. The Electoral Commission welcomed the announcement of the review, and made clear that we would submit evidence. We sent the Commission’s submission to Sir Eric on 1 October 2015, and published it on our website at the same time.¹ Our submission covered:

- Evidence about electoral fraud in the UK
- Changes to legislation and policy since 2000
- Roles and responsibilities for preventing and detecting electoral fraud
- Lessons from the May 2014 elections in Tower Hamlets and the subsequent election petition
- Our suggestions for further changes to legislation, roles or practice and guidance

10. On 12 August 2016, Sir Eric submitted his report and recommendations to the Prime Minister, and they were also published on the UK Government’s website.²

11. We have set out below the Electoral Commission’s response to the policy, legislative and practical recommendations which Sir Eric has identified. Some of these are for the Electoral Commission, police forces, Electoral Registration Officers and Returning Officers to take forward, but many would be the responsibility of the

¹ Electoral Commission (October 2015) [Written evidence submitted by the Electoral Commission to Sir Eric Pickles’ review of electoral fraud](#)

² Sir Eric Pickles MP (August 2016) [Securing the ballot: Report of Sir Eric Pickles’ review into electoral fraud](#)

UK and Scottish governments and parliaments (reference to “governments” in this response refers to the UK Government and the Scottish Government). We will continue to work together with them to develop robust and well-evidenced proposals for changes to legislation which might be required to implement recommendations.

12. We are currently carrying out a review of the Electoral Commission’s strategy and priorities for the next five years, and we expect this to consider further our remit and responsibilities in relation to tackling electoral fraud, including whether the Commission could play a different role in tackling electoral fraud in future.

Our response to the recommendations

Polling stations

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.

13. We would welcome any proposals to ensure that Returning Officers and police forces have the right powers to manage behaviour in and around polling stations, to ensure that voters can access polling stations without intimidation or harassment.

14. Our guidance for Returning Officers and polling station staff already sets out the powers available to maintain order in polling stations, including powers to remove members of the public from polling stations.³ We will continue to emphasise in our guidance the powers already available to Returning Officers and polling station staff to deal with public order issues and instances of alleged undue influence, as well as the standards of behaviour that are expected of campaigners.

15. Guidance for police forces produced jointly by the Electoral Commission and the College of Policing also sets out the powers available to police officers to maintain order outside polling stations.⁴ This sets out the relevant offences under electoral law and the range of public order powers available to police officers. We updated this guidance ahead of the May 2016 elections to reflect serious issues raised in the judgment in the Tower Hamlets election petition, and we will continue to keep it under review and updated ahead of future elections.

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

³ See, for example, Appendix 6 of the [Handbook for polling station staff](#) published by the Electoral Commission

⁴ [Maintaining order and preventing undue influence outside polling stations](#), published by the College of Policing as part of the [Authorised Professional Practice on Policing Elections](#)

16. We agree that electoral law should include offences specifically designed to deter and punish intimidation and coercion of voters, which can be used by police forces and prosecutors in addition to general public order offences. We also agree with the Law Commissions' view that the offence of undue influence "currently covers the direct or indirect infliction or threat of force, violence, restraint, damage or harm to induce or compel a vote or non-vote" and that "a more clearly defined offence of undue influence would suffice to deter the use of voter intimidation as a campaign tactic."⁵

17. We would therefore support a revised and more clearly defined offence of undue influence, which should be developed and implemented through the Law Commissions' electoral law reform project.

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.

18. We advise voters ahead of elections and referendums, including through press releases and social media, that they should not take photos inside the polling station as they could potentially breach the secrecy of the ballot requirements. Our guidance for Returning and Counting Officers also advises that they should not allow photographs to be taken inside polling stations.

19. We would, however, support clarification of the current legislation and offences protecting the secrecy of the ballot,⁶ to ensure that they clearly apply to actions which aim to coerce voters into taking a photograph or other recording of a completed ballot paper. We also support clarifying the secrecy provisions to ensure that they apply to postal ballot papers completed outside a polling station (see our response to Recommendation 18, below).

20. A similar proposal was made by the UK Law Commissions in their 2014 consultation on electoral law. In our March 2015 response to that consultation, we identified some practical questions about enforcing the prohibition on using cameras in a busy polling station, especially given the proliferation of smartphones with cameras. While we suggested that it might be more logical to prohibit the display of photographs portraying a completed and visibly complete ballot paper, we also recognised that Presiding Officers may find it simpler to enforce an absolute prohibition on the use of cameras in polling stations than attempting to ascertain the circumstances of individual incidents.

21. It is, however, unclear how the offence recommended by Sir Eric would apply to the ultimate perpetrator of an incident designed to record the image of a completed ballot paper in order to coerce or intimidate a voter, rather than to innocent victims of that pressure. A poorly drafted offence could discourage victims of electoral fraud from reporting crimes against them. Governments should consult police and

⁵ Law Commissions (2016) [Electoral Law An Interim Report](#), paragraph 11.35

⁶ As set out in [section 66 of the Representation of the People Act 1983](#)

prosecutors to ensure that any offence did not inadvertently penalise voters and discourage them from reporting of allegations of fraud committed against them.

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.

22. We agree that polling station staff should use English (or Welsh) as the default language when assisting or giving instructions to electors. This would ensure transparency in proceedings, and would enable any observers or polling agents present in the polling station to monitor the voting process. We will make this explicit in our guidance.

23. Evidence from our research with voters and campaigners from British Pakistani and British Bangladeshi communities suggests, however, that some voters may be more vulnerable to electoral fraud precisely because of their limited English language skills.⁷ Our research found that, in some areas, the reciprocal and hierarchical nature of kinship networks may mean pressure can be put on people to vote for particular candidates or parties in a way that means they either feel they have, or in fact, have no individual choice. The research also found that low levels of literacy and a lack of English language skills may exacerbate these vulnerabilities.

24. Returning Officers should consider carefully what appropriate support should be provided to voters in these circumstances. Standard **written** guidance (rather than advice provided orally) about the voting process and the secrecy of the ballot in languages other than English, for example, may help some voters without raising concerns about transparency and the potential for electoral fraud. Returning Officers are already required to provide notices setting out guidance for voters in every polling station,⁸ and they are also required by law, where they consider it appropriate to do so, to ensure that notices are translated or provided in another format.⁹ Written guidance may not be sufficient or appropriate for some electors, however, and so an absolute prohibition on the use of languages other than English or Welsh could mean that at least some eligible electors would be unable to vote in a polling station.

25. Some of the concerns identified by Sir Eric which underpin this recommendation may also be addressed by polling station staff ensuring that voters go to the polling booth individually (unless they have gone through the formal process of requesting the assistance of a companion due to a disability or inability to read or write). We have addressed this in response to Recommendation 5, below.

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

⁷ See the summary of the research in our briefing on [Plans for tackling electoral fraud ahead of the May 2015 elections](#), published in January 2015. The full studies are also available on our website: [Elections, voting and electoral fraud: An exploratory study focusing on British Pakistanis and Bangladeshis](#); [Understanding electoral fraud vulnerability in Pakistani and Bangladeshi origin communities in England: A view of local political activists](#)

⁸ See, for example, the [Representation of the People Act 1983, Schedule 1 Appendix of forms](#)

⁹ See, for example, the [Representation of the People Act 1983, section 199B](#)

26. We support this recommendation. There should be no need for voters to go to the polling booth with someone else, unless they have gone through the formal process of requesting the assistance of a companion due to a disability or inability to read or write.

27. When we update our polling station training resources for the May 2017 polls, we will seek to enhance our existing guidance to address this point more clearly.¹⁰ Enforcing this rule may require sensitive handling by polling station staff, but it is important that all those involved in administering elections take appropriate steps to protect the secrecy of the ballot and the right for voters to make their own choice without pressure from others.

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.

28. We support this recommendation, and we have provided guidance on the layout of polling stations in our handbook for polling station staff for many years. Our guidance makes clear that the issuing table, polling booths and the ballot box should be situated in such a way that maintains the privacy of and secrecy of voting for all voters and also prevents any voter from leaving the polling station without passing the polling station staff and the ballot box.

29. Our polling station handbook, which is issued to staff in polling stations, provides example layouts as a guide.¹¹ We will, however, re-inforce this guidance by adding it as an item for polling station inspectors to double-check in our checklist for polling station inspectors.

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.

30. We support further consideration of this recommendation. We agree that requiring those handing in postal ballot packs at polling stations to provide staff with an explanation and a signature would be more transparent and provide a more robust audit trail than at present.

31. Governments should, however, consider whether this additional transparency and audit trail would be sufficient to deter potential fraudsters, and whether a limit on the categories of people who can hand in completed postal ballot packs (and a limit on the number which can be handed in) would disadvantage voters who have a genuine need for assistance.

¹⁰ See our website for details of these resources: <http://www.electoralcommission.org.uk/i-am-a/electoral-administrator/local-elections-in-england-and-wales>

¹¹ See, for example, page 8 and Appendix 11 of [Handbook for polling station staff](#)

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.

32. In January 2014, following our review of electoral fraud vulnerabilities, we recommended that electors should be required to show photographic proof of their identity before they can be issued with a ballot paper at polling stations for elections and referendums in Great Britain, as they are already in Northern Ireland and many other countries.¹²

33. Our review concluded that polling station voting in Great Britain remains vulnerable to personation fraud. There are currently few checks available at polling stations to prevent someone claiming to be an elector and voting in their name. We are concerned that polling station voting could become more vulnerable to fraud now that the electoral registration system has been tightened up following the introduction of individual electoral registration.

34. We restated this recommendation in our submission to Sir Eric's review, and in December 2015 we published a further report setting out a number of options for implementing a proof of identity scheme. This included indicative costs for each option, and recommendations for our preferred implementation approach.

35. We therefore support Sir Eric's recommendation that Governments should consider the options for electors to be required to produce personal identification before being issued with a ballot paper and voting at polling stations. We would also support proposals from the UK and Scottish governments for legislation to implement our recommendation. We would welcome a formal response from the UK Government to our own recommendation made more than two-and-a-half years ago, including responding to our proposed implementation options.

36. We agree that measures should enhance public confidence, be proportional and practical. Any scheme must take account of the likely impact on the accessibility of the voting process, either for all electors or particular groups of electors, and should include measures to minimise any adverse impact. We have recommended that any proof of identity scheme is backed by a free of charge and easily obtainable Voter Card, which would be similar to the Electoral Identity Card Scheme in Northern Ireland.

37. We would, however, have significant reservations about any scheme that did not require voters to provide **photographic** proof of their identity. This is because non-photographic identity documents, such as utility bills would not offer the same level of proof of identity as photographic ID, and would still enable personation to be

¹² Electoral Commission (2014) [Electoral fraud in the UK Final report and recommendations](#)

committed relatively easily, since there would be no face-to-face authentication of identity required.

38. We note that Sir Eric has suggested piloting one or more options in specific areas where there is a higher risk of electoral fraud allegations as a possible initial step, using provisions in Section 10 of the Representation of the People Act 2000. We would assess any proposed pilot scheme carefully, particularly to ensure that there was a realistic prospect of achieving robust evaluation findings which would be needed to inform any future legislation required for the implementation of a scheme across Great Britain.

Registration

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

39. The Electoral Commission's published guidance for Electoral Registration Officers already makes clear that, when making a determination on the residence requirements, they need to consider the particular circumstances of each applicant, including the purpose for which they are present at a particular address and/or the reasons they are absent.¹³ We keep our guidance under review and will consider, with input from Electoral Registration Officers, whether further guidance is required to improve practice, including identifying particular circumstances that may prompt investigation by Electoral Registration Officers.

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.

40. We support this recommendation. Our March 2015 response to the UK Law Commissions' consultation on electoral law also outlined our support for the proposal that the law on residence for electoral registration purposes (including what factors should be considered by Electoral Registration Officers) should be restated clearly and simply in primary legislation.

41. We would also support changes to legislation which would explicitly acknowledge the possibility of satisfying the residence test in more than one place, so that the law is clear and unambiguous about the criteria to be used for registering at a second residence.

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

42. We agree that there should be clear and consistent guidance for Electoral Registration Officers to support them if the legislative framework for determining

¹³ See paragraphs 3.12-3.13 of [Guidance for Electoral Registration Officers Part 2 – The registration framework](#)

residence is changed. We will work with the UK and Scottish governments to agree whether guidance on any new legislation would best be delivered by the Commission or by the relevant Ministers.

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.

43. Requiring applicants to provide a previous address in their electoral registration application is an important feature of the registration system. It enables the Electoral Registration Officer for the area where the applicant may previously have been registered to remove an out-of-date entry from the register, reducing the risk of their details being used to commit electoral or other fraud.

44. We agree that registration application forms should make clear that providing this information is mandatory, and note Sir Eric's recommendation for a reason to be given in cases where the applicant does not supply a previous address. While this may help improve the provision of information about an applicant's previous address, it would mean adding further fields to an already lengthy electoral registration application form. Governments should instead consider requiring Electoral Registration Officers to contact applicants where this information has not been provided in order to establish their previous address before granting their application. Governments will, however, need to consider the potential impact on participation by people applying to be included in the electoral register, and on resource requirements for Electoral Registration Officers.

45. We keep our guidance under review and will consider, with input from Electoral Registration Officers, whether further guidance is required to improve practice, including identifying particular circumstances that may prompt the Electoral Registration Officer to seek further information.

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.

46. We support this recommendation. We have previously highlighted some of the risks associated with the current distributed approach to compiling electoral registers by individual Electoral Registration Officers for each local authority, including that there is no facility for Electoral Registration Officers to routinely check the nationality of registration applicants. We would support the UK and Scottish governments undertaking work to establish how to provide Electoral Registration Officers with a practical facility to check the nationality given on registration applications in future (see also our response to recommendation 15, below).

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.

47. We note that the design and wording of registration application forms currently specified by the Electoral Commission and approved by Ministers for Electoral Registration Officers to use in Great Britain already contain this information:¹⁴

Your nationality

If you have more than one nationality, please include them all. If you are a Commonwealth citizen you can only register to vote in the UK if you have leave to enter or remain in the UK or do not require such leave. We may check your immigration status with the Home Office before we include you on the electoral register.

And:

I understand that it is an offence knowingly to provide false information in this form and if convicted I may be imprisoned for up to six months and/ or face an unlimited fine.

48. We will continue to keep the design and wording of electoral registration forms under review, and will consider whether it is possible to communicate this information more clearly.

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.

49. While Electoral Registration Officers currently have powers to require applicants to provide evidence of their nationality before determining their registration application, this is largely carried out on an exceptions basis where there are clear grounds to indicate that the applicant may not be entitled to be registered (or only entitled to be included in the register of local government electors).

50. The security and accuracy of electoral registers would be further improved if nationality checks were automatically built into the application process, for example by comparing applications against nationality data held as part of the DWP Customer Information System. We recommended this improvement in our July 2016 report on the accuracy and completeness of the registers in Great Britain and the transition to individual electoral registration.¹⁵

¹⁴ See, for example, the forms available to download from the [register-to-vote.gov.uk](https://www.register-to-vote.gov.uk) website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/549388/register_to_vote_living_in_england_and_wales.pdf

¹⁵ Electoral Commission (July 2016) [The December 2015 electoral registers in Great Britain – Accuracy and completeness of the registers in Great Britain and the transition to Individual Electoral Registration](#)

51. We would therefore support the Government exploring the extent to which these checks could be undertaken in an automated way as part of a wider programme of work to improve the 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.

52. This recommendation is not for the Electoral Commission to take forward, but we would work with the UK and Scottish governments to consider any practical implications for Electoral Registration Officers.

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.

53. We would support further investigation of this issue by the UK Government, in partnership with police forces and prosecutors, although we note that the time and IP address of the device used to submit registration applications using the online registration service is already recorded by the digital service, and are forwarded together with the necessary registration details to the Electoral Registration Officer.

54. Some police forces have already indicated that the IP address used to make applications may be of limited investigative value.

Postal voting

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.

55. We support this recommendation, which reflects Recommendation 5-1 made by the Law Commissions earlier this year in their review of electoral law. 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.

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).

56. We have considered recommendation 19 together with recommendation 20 below.

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.

57. We do not believe it is appropriate for campaigners to be directly involved in the administration of the voting process, including completing absent vote applications and postal ballot packs, because of the direct risk of electoral fraud and also because of the perceptions of voters themselves that such activity is inappropriate. We have worked hard to encourage political parties to take this seriously and comply with our voluntary Code of Conduct, and we have made clear in our statutory election reports where we have found that parties or campaigners have not complied with the Code.

58. We think that it is important to clarify some of the offences connected with postal voting, which could achieve the outcome which the review seeks and have the advantage of applying also to family members. We have, however, previously highlighted two areas of potential difficulty with any proposal to ban political campaigners/activists from handling completed postal votes and postal vote envelopes.

59. 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 still leave a wider range of formal participants comparatively unregulated, although the benefits of having clear, well-thought through definitions may outweigh this risk.

60. Second, while new offences may succeed in deterring inappropriate activity by unscrupulous campaigners, they may also have the effect of deterring the provision of legitimate support and help to voters. For instance, by preventing people who have volunteered to do campaign activity from providing such assistance to friends or family members.

61. Careful consideration would need to be given to these issues before any decision is taken to introduce new offences relating to the handling of completed postal ballot packs by campaigners. While Sir Eric’s report suggests that the Law Commissions did not consider it impossible to overcome the difficulty in defining campaigners for the purpose of greater regulation, we think it is also important to take into account their final conclusion on this issue:

“These concerns, and on occasions objections, have led us to conclude that there should not be regulation of any of the activities mentioned in question 6-7 in our consultation paper. Against the current background, where postal votes count as long as they reach the returning officer (no matter how), and where disabled and elderly voters are not provided with public assistance to complete absent votes, we do not think that regulation through the criminal law is the answer.”¹⁶

¹⁶ Law Commissions (2016) [Electoral Law An Interim Report](#), paragraph 6.90

62. Our second response to the Law Commissions' substantive consultation, submitted after the May 2015 elections, highlighted the Commission's view that it is important to clarify some of the offences relating to postal voting:¹⁷

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.

63. We will continue to assess the effectiveness of the voluntary Code of Conduct for Campaigners and consider any new evidence which suggests that the introduction of new offences is necessary to address a significant vulnerability. We will also 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.

64. 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.

¹⁷ Electoral Commission (2015)

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.

65. We support this recommendation. In our written evidence submitted to Sir Eric Pickles' review of electoral fraud, we said that there were further opportunities for improving the security of current postal voting processes – this should include examining the rules on waivers and attestations. We had previously highlighted this area to the Law Commissions for consideration as part of their review of electoral law, although they will not consider issues of policy. We would support the Government in examining the options.

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.

66. Our October 2015 submission to Sir Eric's review highlighted a number of possible changes to the requirements for postal voting which should be considered further, including whether it is appropriate to continue to allow applications to be made for permanent postal votes for all elections. We support the proposal to ensure that voters are given the opportunity to review and confirm their status as postal voter after their initial application, and will work with the UK and Scottish governments to consider the practical implications of this proposal for voters and Electoral Registration Officers.

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.

67. We support this recommendation. However, for any additional information on the secrecy of the vote and how to report electoral fraud to have the most impact, we believe it should ideally be part of the instructions for completing the postal voting statement and ballot paper. While the instructions are actually prescribed in law, it is common for Returning Officers to provide additional instructions in the form of a visual guide to help voters complete and return their postal ballot pack. We will therefore recommend in our guidance that Returning Officers provide this additional information as part of these instructions.

Proxy voting

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.

68. We support this recommendation. The Commission has recommended that all voters, including people voting as a proxy on behalf of another elector, should be required to show photographic proof of their identity before they can be issued with a

ballot paper at polling stations for elections and referendums in Great Britain, as they are already in Northern Ireland and many other countries.

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

69. We would be happy to work with the UK and Scottish governments to consider whether there is a case for further powers for Electoral Registration Officers in this area, bearing in mind the need to ensure that any (explicit) powers of enquiry would work in practice.

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.

70. We would be happy to work with the UK and Scottish governments to consider further the implications of changing the deadline in this way, given the need to maintain the accessibility of the process for electors while ensuring that Returning Officers are given sufficient time to check emergency proxy applications.

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.

71. We support this recommendation, which is consistent with our previous recommendation on the clarification of offences relating to compelling someone to apply to vote by post or appoint a proxy (or to prevent them from doing so) against their will and in relation to altering an elector's completed absent vote application form.

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

72. We do not support this recommendation. Given that the application form to appoint a proxy already requires the applicant to state their relationship with the proposed proxy and to provide the reason why they cannot attend their allocated polling station (and for applications to appoint a proxy for a definite or indefinite period can also require an attestation) we do not see what additional protection this proposal would offer for voters or Electoral Registration Officers. In contrast, we think that this proposal may disadvantage some electors with a genuine need to appoint a proxy.

Election counts

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.

73. The Electoral Commission has provided comprehensive guidance for Returning Officers on planning and delivering elections counts for a number of years.¹⁸ This guidance includes advice about the layout of count venues and the management of people who are entitled to attend the count. We will continue to keep this guidance under review with Returning Officers and electoral administrators, and will consider whether the existing guidance could be enhanced to reflect the concerns identified in Sir Eric's report.

74. As part of our delivery of the June 2016 EU referendum, we collected data relating to the delivery of the poll, particularly the verification and count stages for every voting area. We are now exploring how the analysis of this data can help to identify count methods used by Counting Officers which deliver efficient and accurate counts, to inform the development of further practical guidance on the management of counts for sharing with electoral administrators as part of the Commission's suite of guidance and support.

Election petitions

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.

75. The UK's Law Commissions have made a number of proposals for reforming the procedures and rules for challenging elections in their February 2016 Interim Report on Electoral Law, following consultation with a wide range of stakeholders including political parties, election lawyers and police forces. We note that some of Sir Eric Pickles' recommendations dealing with election petitions are based on the Law Commissions' proposals. We strongly support the implementation of the Law Commissions' report – which proposes many other much-needed changes to electoral law – and of their proposals for reforming election petitions in particular.

76. We support this recommendation, as we did in our March 2015 response to the Law Commissions on a similar proposal raised in their consultation on electoral law. We believe that the proposal that legal challenges should be dealt with in the UK's ordinary civil court system would allow the general procedural rules to be applied to election petitions, with a small number of specific procedural provisions being set out in primary electoral legislation. This would bring a number of benefits, including allowing any party to apply for a petition to be struck-out because it discloses no reasonable grounds. This would allow unmeritorious petitions to be filtered out at an early stage (if a party decided to make such an application), which seems better to

¹⁸ See, for example, [Part E – Verifying and counting the votes, UK Parliamentary general election in Great Britain on 7 May 2015: guidance for \(Acting\) Returning Officers](#)

us than requiring a flawed petition to continue to a full consideration of its merits unless a party can argue that there has been a procedural flaw.

77. We also support the law clearly setting out a single right of appeal. In our March 2015 response to the Law Commission consultation, we set out our opinion that appeals should be available on both points of law and facts (rather than just points of law, as recommended by the Law Commissions). We therefore support Sir Eric Pickles' recommendation that appeals should be available on both points of law and facts, which is consistent with our own views. While we recognised that there was a strong argument to disregard appeals on points of fact - namely that the facts should have been established during the trial and to revisit them in an appeal would lead to delay in the determination of the appeal and a resulting lack of certainty in the election outcome – we felt that there was a strong counterargument that any error of law or fact should be capable of being rectified by appeal in order to protect the interests of the losing party (there are severe consequences of being found to have committed an electoral offence by an election court) and to ensure that the election result is correct and commands public trust. In our view both errors of law and fact should be capable of being corrected on appeal for these reasons.

78. We therefore requested in our March 2015 response to the Law Commissions consultation that they give consideration to whether it would be more appropriate for appeals to be possible on both facts and law and we are pleased that Sir Eric Pickles report has made a similar recommendation. We also note that following their consultation the Law Commissions decided to recommend that appeals should be capable of being brought on both points of law and fact in their February 2016 Interim Report. However, thought should be given to how to prevent this causing unreasonable delays; for example, there would presumably need to be a stage where permission to appeal is sought to ensure that any appeal has merit before it progresses to a full consideration.

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

79. We support further consideration by the UK and Scottish governments of this recommendation. For local elections at least four electors need to bring the challenge (section 128 of the Representation of the People Act 1983), whereas for UK Parliamentary elections only one elector is required (section 121). It would be sensible to standardise the number of people who can bring a challenge for all elections.

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.

80. We support this recommendation, as we did in our March 2015 response to the Law Commissions' consultation. It would allow administrative errors that affected the result of the election to be rectified where the Returning Officer knows that a mistake has been made which affected the result of the election, without the need to persuade a voter or candidate to bring a petition. This means that mistakes could be

rectified through a Returning Officer's petition in cases where no one else may be willing to bring a petition.

81. In our March 2015 response to the Law Commissions' consultation, we asked that further consideration be given as to whether it would be possible to include protections within a reformed electoral law framework to ensure that Returning Officers are not themselves placed under inappropriate pressure not to initiate a petition where one might be merited. Public scrutiny and accountability of Returning Officers for their decisions may be sufficient, but it would be helpful to consider whether there are any equivalent or comparable protections for other holders of public office.

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

We would support further consideration of this recommendation, and would be keen to discuss further with Government.

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.

82. As stated in our March 2015 response to the Law Commissions' consultation, we support this recommendation, which we hope will reduce the financial barriers that currently deter the bringing of petitions. The Law Commissions' 2016 Interim Report states that private individuals who bring a legal challenge which a court considers has merit, and should be heard in the public interest, should not risk financial ruin when doing so. Protective costs orders are the law's existing mechanism for limiting costs exposure in advance of public law proceedings. The Law Commissions' recommended removing all doubt as to their availability by providing, in legislation if necessary, for courts to have powers to make protective costs (or expenses) orders.

83. We also believe that financial obstacles built into the current system should be reduced, including reducing the initial costs of bringing a petition and reducing the cost and length of the proceedings.

84. We further believe that the Government should consider making legal aid more available for all parts of the petition proceedings.

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.

85. We believe that this recommendation merits further consideration and we would be happy to work with the Government to consider fully the implications of changing the system in the way proposed.

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.

86. We support this recommendation. There should be sufficient time for the challenger to bring a challenge, considering the need to gather evidence and take advice. This should be balanced against the need for the validity of the election to be resolved as soon as possible.

87. The current 21 day time limit allows insufficient time in which to present a petition in the UK, as petitions are heard in a formal court system which requires the petitioner to initially expend approximately £5,500 in payments to the court, a figure that will increase as the petitioner is likely to incur the cost of obtaining legal advice. A period of 21 days is not long to raise such funds, nor does it provide much time to collect evidence, prepare the petition and comply with the procedural requirements of bringing a petition. We are also concerned by the fact that the time limit cannot be extended.

88. Comparable states such as Australia (40 days) and New Zealand (28 days) allow their petitioners more time than petitioners are given in the UK. It is also concerning that the grounds of a petition cannot be altered as new information that casts doubt on the validity of an election comes to light.

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

89. The standard of proof required to successfully overturn an election result should be considered within the context of the Law Commissions' wider reform of electoral law, which the UK Government should take forward as part of implementing the Law Commissions' recommendations.

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.

90. We support this recommendation, which is consistent with the recommendation made by the UK Law Commissions in their February 2016 Interim Report.

91. The petitions process does not deal with complaints about electoral administration that do not affect the election outcome, and there should be a system that allows complaints about electoral administration which do not seek to challenge the result of the election to be made and properly responded to. We agree that extending the relevant Ombudsmen's remits to cover Electoral Registration Officers and Returning Officers would be the most straightforward way to achieve this.

92. This recommendation, along with the others based on the Law Commissions' proposals, should be implemented through the Law Commissions' electoral reform project.

Nominations

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

93. We support this recommendation to review the law relating to nominations to consider whether Returning Officers could be given explicit powers to reject 'sham' nominations, which the Law Commissions have already raised in their interim report in February 2016.

94. In our March 2015 response to the Law Commissions' consultation, we agreed that giving Returning Officers greater flexibility and power to reject 'sham' nominations would help to protect the integrity of and confidence in the electoral process. We did, however, caveat our response to note that such a power would be inconsistent with the general requirement for Returning Officers to take nominations at face value and, therefore, careful consideration of the practical implications of such a proposal would be needed, including consultation with Returning Officers and electoral administrators.

Offences

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

95. We agree that the UK and Scottish governments should review the level of the penalties for electoral offences, and this should be undertaken as part of the electoral law reform programme proposed by the UK Law Commissions in their February 2016 report.

96. In their Interim Report, the Law Commission recommended a maximum sentence of ten years' custody should be available in cases of serious electoral fraud as an alternative to recourse to the common law offence of conspiracy to defraud. We supported this recommendation on the basis that will provide adequate sentencing powers in the most serious cases. Consideration will need to be given as to which offences this maximum sentence should apply to.

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

97. This recommendation has also been considered by the UK's Law Commissions in their review of electoral law. Our view, set out in our March 2015 response to the Law Commissions' consultation, is that the law should regulate the exercise of abuse of any position of influence to persuade a person to vote for a particular candidate or to not vote at all. We were not, however, persuaded of the need to create a specific new 'abuse of influence' offence which would cover spiritual or religious influence but instead suggested that this should form part of a reformed undue influence offence.

98. We support the Law Commissions' recommendation 11-4 from their February 2016 interim report:

Recommendation 11-4: Undue influence should be restated as offences of intimidation, deception and improper pressure. Pressure will be improper if:

(a) it involves the commission or threat of commission of an illegal act;
or

(b) a reasonable person would regard it as improperly infringing the free exercise of the franchise.

99. We agree that the UK and Scottish governments should reform the offence of undue influence, and this should be undertaken as part of the electoral law reform programme proposed by the UK Law Commissions in their February 2016 report.

Higher risk areas

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.

100. Our submission to Sir Eric's' review fraud set out the Electoral Commission's overall approach to supporting and monitoring police forces and electoral administrators to prevent and detect electoral fraud.¹⁹ In addition to our general guidance for all Electoral Registration Officers, Returning Officers and police forces, we also work more closely to monitor planning in areas where there is a higher risk of fraud allegations and where we expect more action to be taken to tackle electoral fraud:

- We analyse ward-level electoral data and local political intelligence, to identify any potential risk areas and issues
- We review and assess electoral fraud prevention plans drawn up by Returning Officers and police forces, and provide feedback where appropriate
- We meet police force Single Points of Contact (SPOCs) and electoral administrators throughout the year to build relationships with them and to help identify and share possible improvements and innovations we have observed from other areas
- We monitor media coverage and potential allegations in these areas throughout the year, with a particular focus during scheduled elections

101. In December 2014, ahead of the May 2015 UK Parliamentary general election, we held a well-attended seminar for Returning Officers for areas where there is a higher risk of electoral fraud allegations and their police force counterparts. The seminar helped Returning Officers and police forces to identify and share fraud prevention and detection approaches which had been successfully adopted at previous polls. Our experience since 2013 has been that Returning Officers and

¹⁹ Electoral Commission (October 2015) [Written evidence submitted by the Electoral Commission to Sir Eric Pickles' review of electoral fraud](#), see page 26

police forces in areas which have experienced cases or serious allegations of electoral fraud in the past recognise the risk to future elections, and have developed new approaches to preventing and detecting fraud beyond those which are in place in areas where there may be a lower level of risk.

102. Our work with Returning Officers and police forces in these areas, including the December 2014 seminar, also supported the distribution by the Cabinet Office of £0.5m in grants to local authorities for fraud prevention work ahead of the 2015 elections. We encouraged the take-up of this grant and made recommendations to the Cabinet Office on the merits of proposed schemes. We assisted with the wider circulation of how well these schemes worked to other Returning Officers following the self-evaluation the work by Returning Officers and police forces.

103. We are currently planning our approach to supporting and monitoring the work of Electoral Registration Officers, Returning Officers and police forces in areas where there is a higher risk of electoral fraud allegations, ahead of elections in May 2017 and beyond. In doing this we will build on lessons learned from previous elections, and the learning from these areas has also been incorporated into our general guidance for planning by all Electoral Registration Officers, Returning Officers and police forces to prevent electoral fraud. In particular we will consider what role we should play in bringing together Returning Officers for areas where there is a higher risk of electoral fraud allegations to share insights and learning, building on the seminar we held in December 2014.

Governance and oversight

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.

104. We have considered recommendation 43 in conjunction with recommendation 44, below.

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.

105. Introducing these recommendations Sir Eric's report says that:

"The Electoral Commission continues to act 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)"

106. This is a significant misunderstanding of the Commission's role and status. The Electoral Commission is an independent statutory body which reports and is formally accountable to the UK and Scottish Parliaments. Proposals contained within the current Wales Bill mean that the Commission is also likely to be formally accountable to the National Assembly for Wales from 2017. Our statutory duties, which include keeping electoral law under review, providing advice and guidance and setting and monitoring performance standards for Returning Officers and Electoral Registration Officers, have been specified in legislation approved by those Parliaments. We have provided independent advice to legislators on the implications of policy proposals put forward by governments since we were established in 2001.

107. The fifth report of the Committee on Standards in Public Life, which originally recommended the establishment of an Electoral Commission in 1998, made clear the need for "a body responsible for overseeing the conduct of elections which is entirely independent of the government of the day and the political parties."²⁰

108. We would therefore have significant concerns about the implications of any proposals to transfer to a government department the Commission's existing functions of monitoring and reporting on the performance of Electoral Registration Officers and Returning Officers and reviewing electoral law. Given the close scrutiny which the delivery of electoral administration rightly receives from all political parties, it would be difficult to ensure that performance monitoring would remain (or would continue to be perceived as) independent and impartial, regardless of the political party composition of government.

109. We would nevertheless welcome the opportunity to consider specific and constructive proposals for changes or additions to the extensive work that the Electoral Commission already carries out to help prevent and detect electoral fraud, as set out in our submission to Sir Eric's review. We intend ourselves to review the Commission's remit and responsibilities in relation to preventing electoral fraud, as part of a strategic review of our functions and priorities. We will consider whether there are changes to the Commission's activities which could significantly improve our response to electoral fraud, which will inform the development of our strategic work plan for the five year period from April 2017.

110. We will continue to keep our performance standards framework under review, and are working with stakeholders to explore alternative methods to measure completeness and accuracy of electoral registers to ensure the standards are outcome focused.

²⁰ Committee on Standards in Public Life (1998) [Fifth Report – The Funding of Political Parties in the United Kingdom - Full Report](#), paragraph 11.3

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.

111. The Electoral Commission's submission to Sir Eric's review set out our current role in supporting and monitoring those who are involved on the frontline in identifying, investigating and prosecuting cases of electoral fraud. We provide advice to the police, electoral administrators and other stakeholders on ways to prevent and detect electoral fraud, based on the good practice we have identified through working with partners across electoral administration and the justice system.

112. Pages 27 and 28 of our submission²¹ set in detail out the range of activities we already carry out, including work carried out in partnership with the National Police Chiefs' Council, to ensure that electoral fraud is seen as a significant issue, and that there is a consistency of approach and response across police forces. This includes a twice-yearly roundtable meeting and an annual training seminar which the Commission organises jointly with the National Police Chiefs' Council, to which all police forces are invited and which officials from the UK Government's Cabinet Office and the Scottish Government also attend. The National Police Chiefs' Council's lead officer for electoral fraud issues also ensures appropriate communication with Chief Officers ahead of elections and referendums.

113. Sir Eric's report also suggested that police forces should meet the Parliamentary Parties Panel to discuss electoral integrity issues and build on the existing engagement with the police and local authorities. Senior officers from the parties represented on the Parliamentary Parties Panel have attended the twice-yearly roundtable meeting and the annual training seminar for police forces for many years (along with officials from the UK and Scottish governments), and they have also delivered briefing sessions at the training seminar to give police forces the perspective of campaigners.

114. We are confident that electoral fraud is seen as an important issue by police forces across the UK, as shown by the continued strong attendance from almost all territorial police forces at the annual training seminar. We nevertheless recognise that there have been specific instances where some complainants have not been satisfied with investigations carried out by police forces in response to allegations of electoral fraud, and that trust and confidence in police forces is not as strong as it should be in some areas. We would welcome the opportunity to discuss with governments, police forces and Returning Officers what further improvements could be made to improve leadership, coordination and training for police forces.

²¹ Electoral Commission (October 2015) [Written evidence submitted by the Electoral Commission to Sir Eric Pickles' review of electoral fraud](#)

115. Our submission to Sir Eric's review suggested that there was scope for further work which could be carried out by police force leaders to improve confidence and provide assurance that allegations of electoral fraud are taken seriously:

"In order to improve confidence and provide assurance that allegations of electoral fraud are taken seriously and dealt with appropriately by police forces, the National Police Chiefs' Council and the College of Policing should undertake a national review of police approaches to preventing, detecting and investigating electoral fraud. An open and transparent review could identify areas of current good practice, and could also allow concerns about the approach to dealing with particular types of cases of alleged electoral fraud to be considered from a professional policing perspective.

Inviting comments and evidence from members of the public, ROs and EROs, political parties, candidates and campaigners would enable the NPCC to ensure broad involvement in its review, and publishing its conclusions and any lessons or recommendations for change could help to improve confidence in the future. A review could also consider the role of other organisations including the Independent Police Complaints Commission, the Police Investigations & Review Commissioner, the Police Ombudsman of Northern Ireland, Her Majesty's Inspectorate of Constabulary and Her Majesty's Inspectorate of Constabulary in Scotland, and how the Electoral Commission might work with them in the future."²²

116. We would be keen to work with the National Police Chiefs' Council, the College of Policing and any other relevant professional body to take forward such a review.

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 coordinating complex cases of electoral fraud, especially where it interacts with other financial or benefit fraud.

117. We would welcome further consideration by the National Crime Agency and the National Police Chiefs' Council of any opportunities for further joint working, and we would be keen to provide input and support to any such review.

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.

118. We support this recommendation. The roles of Electoral Registration Officers and Returning Officers as statutory office holders, independent from local authorities and central government, are crucial to ensuring well run elections which are free from electoral fraud. Electoral Registration Officers and Returning Officers must have the appropriate skills, authority and resources to develop and oversee the implementation of plans which can deliver robust election processes.

²² Electoral Commission (October 2015) [Written evidence submitted by the Electoral Commission to Sir Eric Pickles' review of electoral fraud](#), see page 17

119. Our guidance for Electoral Registration Officers and Returning Officers provides detailed advice about how to deliver these important statutory functions, taking into account the wider political and structural context. We also support Returning Officers through the delivery of briefings focusing on key issues in advance of electoral events.

120. We will explore how we can enhance this guidance to enforce the overarching skills and authority that are required to properly oversee and manage elections and electoral registration. We will also review how we provide guidance, training and support to Electoral Registration Officers and Returning Officers to help improve their skills. Our strategic review is also considering the way we carry out our functions and priorities to support electoral processes.

121. The Commission also has a role in setting and monitoring performance standards for Returning Officers. At scheduled elections we monitor Returning Officers, using a risk-based approach which will include the previous experience of the Returning Officer, to indicate if there are any issues which may suggest that a Returning Officer would benefit from the provision of general or targeted guidance or support. When a Returning Officer is selected for monitoring we will request further information from them relating to their planning for a poll; this will either be in the form of their planning documentation or a structured conversation(s) about what they have in place to do this. Where the information provided highlights issues which may impact on the successful delivery of the poll, we will seek to provide additional guidance and support in order to correct or mitigate these as soon as practicable.

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.

122. We support this recommendation. The Electoral Commission advises Electoral Registration Officers and Returning Officers that, while they may not be covered by current Freedom of Information legislation, they should always endeavour to release information consistent with the requirements of the legislation, in the interests of transparency and public confidence.

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.

123. The Electoral Commission's published guidance for Returning Officers already sets out advice about how to manage the reporting of allegations of electoral fraud and referrals to police forces.²³ This includes a suggested agenda covering key issues that Returning Officers should consider at any pre-election planning meeting with their local police force Single Point of Contact Officer, which is also set out in the Authorised Professional Practice for policing elections published by the College

²³ See, for example [Part B – Planning and organisation UK Parliamentary general election in Great Britain on 7 May 2015: guidance for \(Acting\) Returning Officers](#), paragraphs 6.8 to 6.14

of Policing.²⁴ The Authorised Professional Practice for policing elections also includes a template memorandum of understanding between Returning Officers and police forces on joint planning for elections and reporting and investigating electoral fraud allegations.²⁵

124. As we set out in our submission to Sir Eric's review, the Electoral Commission has worked with the election-related crime lead for the National Police Chiefs' Council (formerly ACPO, the Association of Chief Police Officers) to collect data from police forces about cases of alleged electoral fraud which have been reported to them. We receive monthly returns from all 45 territorial police forces across England, Scotland, Wales and Northern Ireland, and each year we have published an analysis of this data alongside the raw data in .csv and Excel formats.²⁶

125. We would welcome the opportunity to discuss with the governments, police forces and Returning Officers what further improvements could be made to the guidance provided by the Commission and the College of Policing to help address this recommendation.

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.

126. This recommendation is not for the Electoral Commission to take forward, but we would be keen to discuss with the UK and Scottish governments any potential implications for the role of Electoral Registration Officers and Returning Officers and their relationships within local government executive structures, particularly as Combined Authorities with directly-elected executive mayors become more common.

²⁴ [Force election SPOC/local authority contact checklist](#)

²⁵ [Template memorandum of understanding on joint planning for elections and reporting and investigating electoral malpractice](#)

²⁶ See the comprehensive electoral fraud data and analysis page on our website at <http://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/data-and-analysis>