

Committee on Standards in Public Life review of Intimidation of Parliamentary candidates: Call for Evidence

Electoral Commission response

September 2017

Introduction

1. This paper sets out the Electoral Commission's response to the Committee on Standards in Public Life's (CSPL) call for evidence on the Intimidation of Parliamentary candidates.
2. The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity. We work to support well-run elections and referendums in the UK, offering support and guidance to those involved, including political parties, candidates and non-party campaigners.
3. Through our regulation of political finance, we work to make sure people understand the rules and take proactive steps to increase transparency, ensure compliance and pursue breaches. This includes:
 - Registering political parties
 - Publishing information about donations and loans, parties' accounts and campaign spending
 - Providing advice and guidance to help people understand the party and election finance rules
 - Investigating allegations of non-compliance with the party and election finance rules
 - Advising government on proposed changes to the rules and making recommendations for change
4. While we have responsibilities to monitor and take all reasonable steps relating to compliance with the candidate expenses and donations rules at elections, investigations into alleged breaches by individual candidates and related prosecutions under the Representation of the People Act 1983 (RPA) are the responsibility of the police and prosecutors. Similarly, police forces are responsible

for investigating specific allegations of abusive or intimidating behaviour directed towards candidates or other campaigners in order to determine whether offences may have been committed.

5. The Electoral Commission is committed to the United Kingdom's strong tradition of free elections, which are an essential part of a healthy democracy. It is important that people should be able to stand for election and campaign without the fear of abuse or intimidation. We do not believe it would be appropriate for the Commission to investigate specific allegations or incidences of intimidation of parliamentary candidates, given the existing role and responsibilities of police forces and prosecuting bodies and the Commission's role in overseeing and regulating the UK's political finance rules.

6. Our submission responds to four specific questions included in the call for evidence which are relevant to the Commission's role and experience:

1. What is the nature and degree of intimidation experienced by Parliamentary candidates, in particular at the 2017 General Election?

4. Is existing legislation sufficient to address intimidation of Parliamentary candidates?

5. What role should political parties play in preventing the intimidation of Parliamentary candidates and encouraging constructive debate?

6. What other measures might be effective in addressing the intimidation of Parliamentary candidates, and candidates for public offices more broadly?

7. Our response draws on themes and issues highlighted in feedback that we received in response to a survey of candidates at the June 2017 UK Parliamentary general election, as well as responses from a similar survey carried out with candidates at the May 2017 Scottish local council elections.

1. What is the nature and degree of intimidation experienced by Parliamentary candidates, in particular at the 2017 General Election?

8. Following the announcement of the June 2017 UK Parliamentary general election we were contacted by the secretariat for the All-Party Parliamentary Group on Anti-Semitism who asked us to collate information about any issues relating to the abuse of candidates in order to update their [2013 inquiry into electoral conduct](#). After the election on 8 June, we passed on information about a small number of issues that had been reported to the Commission during the campaign, and these were reflected in the Group's July 2017 report: [All-Party Parliamentary Inquiry Into Electoral Conduct: Final Update](#).

9. Also after the election, we undertook a survey of candidates to understand their experiences of standing for election, as we have done at previous elections. This

was the first year that we asked candidates about intimidation and we therefore hold no comparative data from previous years.

10. Of the 3,304 candidates who stood, we received feedback from 780 candidates (24%). From this total, 13 responses included references to issues of intimidation, and we have summarised below the themes highlighted in those responses. To encourage honest feedback, in both the survey and interviews, the Commission assured candidates that any information supplied would remain confidential. The comments highlighted below therefore seek not to identify any individuals.

11. Four responses raised general concerns that intimidation had taken place, including posters being ripped down and vandalised, false allegations made over the internet and malicious statements made about candidates, but they did not provide any specific examples or details.

12. Five responses identified what appeared to involve first-hand experience of intimidation:

- Two respondents said that they had been intimidated and received threats at their own homes.
- One respondent said they were harassed by attendees at the count.
- One respondent said they were subjected to covert and overt bullying, dirty tricks and misogyny.
- One respondent said that another candidate was rude and aggressive to them at the count.

13. The remaining four responses highlighted concerns that others had experienced intimidation: two respondents said that their tellers had been subject to intimidation and abuse; one respondent said that one of their volunteers had been assaulted delivering leaflets; and one respondent said that attempts had been made to intimidate other candidates in order to make them stand down.

14. Following the May 2017 Scottish council elections, we issued a survey to candidates, and additionally conducted some in-depth interviews. Of the 2,572 candidates who stood for election, we received survey feedback from 796 (31%). References to intimidation were made by eight respondents across the survey and interviews. We have summarised below the themes highlighted in those responses.

15. Three responses raised general concerns relating to online threats, attempted intimidation and threats made by one candidate to another who opposed them, and a perceived general increase in the threat towards politicians. No specific examples or details were provided in these cases.

16. Four responses identified what appeared to involve first-hand experience of intimidation:

- One respondent said that they felt very intimidated before the election and were verbally abused by party activists from another party.

- One respondent said that they were told not to attend candidate meetings and that they were bullied online by former members of their own party, with misleading statements being made about them during the campaign.
- One respondent said that activists for another party were telling voters outside polling stations not to vote for them, as well as making threatening and harassing statements in the press and on social media.
- One respondent noted they had experienced intimidating and threatening behaviour whilst out campaigning.

17. One further response highlighted concerns that campaigners from another party were being derogatory about people from their own party at the count.

4. Is existing legislation sufficient to address intimidation of Parliamentary candidates?

6. What other measures might be effective in addressing the intimidation of Parliamentary candidates, and candidates for public offices more broadly?

18. Our response addresses questions 4 and 6 together. There is currently no specific electoral legislation that seeks to address the intimidation of candidates at UK elections; however, there are a range of offences set out in electoral law, primarily in the Representation of the People Act 1983 (RPA 1983) that relate to conduct during elections. Many of these offences have not been properly reviewed or updated since they were first created (in the 1800s or earlier) and many, as well as being out of date, contain highly complex drafting and are spread over many different pieces of legislation.

19. The UK's Law Commissions have recently reviewed electoral laws and have proposed reforms to update, simplify and consolidate them (see Chapter 11 of their [2016 Interim Report](#)). Implementing these proposals would make it easier for everyone to understand and comply with these laws, and for the police and prosecutors to enforce them. The Electoral Commission therefore continues to urge the UK Government to do so. This reform project would also present an opportunity to consider whether, in addition to clarifying and strengthening existing offences, there are any gaps in the law where additional offences may be useful.

20. For example, section 115 of the RPA 1983 specifies an offence of exerting undue influence on voters (for example, by threatening or using violence) – this is a particularly complex provision that the Law Commission proposes to reform. There is no similar offence relating to the intimidation of candidates. It may be that there is no need for such an offence as the general criminal law might be sufficient. While it is beyond the Commission's expertise and remit to comment on the sufficiency of the general criminal law, it may be useful for the CSPL review to seek expert advice from police forces and prosecutors.

21. In some instances, electoral law does specify offences in respect of behaviour that could also amount to an offence under the general criminal law. This is often because electoral offences have special consequences, in that their commission could invalidate the election result and result in the person convicted losing their elected office and/or being subject to a period of disqualification from being registered as an elector, voting in an election and standing for election (section 173 RPA 1983). It may be that similar special electoral consequences could act as a deterrent to abusive behaviour in relation to candidates and campaigners.

22. A further current offence under electoral law which it may be useful to consider is that of making false statements of fact about the personal character or conduct of a candidate (section 106 RPA 1983). As the Law Commissions' noted in their [2014 electoral law reform consultation paper](#), "Any person can commit this offence, but it is plainly targeted at rival candidates and those affiliated to their campaign". The Law Commissions also noted that Section 106(3) expressly provides that a person making or publishing any false statement of fact may be restrained by interim or perpetual injunction.

23. One specific reform that the Electoral Commission has recommended since 2003 – and which the Law Commissions have also proposed – is to update the law so that it takes appropriate account of online material, including social media. There is currently a requirement to include an 'imprint' on printed 'election material' (defined as material intended to promote or procure the election of a candidate) (section 110 RPA 1983). This is important to ensure campaigners are accountable for spending on regulated campaign material, but it also allows members of the public to identify who is responsible for the material. The Electoral Commission and the Law Commissions have recommended that the imprint requirement should be extended to online material.

5. What role should political parties play in preventing the intimidation of Parliamentary candidates and encouraging constructive debate?

24. The Electoral Commission has worked with registered political parties since 2004 to develop and agree a [voluntary Code of Conduct for Campaigners](#) in relation to electoral registration, postal voting, proxy voting and polling stations, which provides a guide for campaigners, electoral administrators and police forces to what is, and is not, considered acceptable behaviour at polling stations and in the community during the lead-up to polling day. This includes guidance about acceptable campaign activity near to polling stations, but does not include provisions relating to the content of campaign speech or material.

25. We support the important role of campaigners in encouraging people to participate in elections and referendums. It is equally important, however, to ensure that the activities of campaigners do not bring into question the integrity of the electoral process. Although political parties cannot be held wholly responsible for the actions of all their supporters – particularly those who are not candidates or party members – we continue to argue that registered political parties and candidates can

still do more to take responsibility for the actions of their supporters to prevent electoral fraud.

26. We encourage political parties to incorporate compliance with the Code of Conduct for Campaigners into their own existing internal codes and disciplinary processes for their members and candidates, and we have seen evidence that some parties have taken action against members who are found to have breached the Code.

27. As reflected in our response to [Sir Eric Pickles' review and recommendations](#) on electoral fraud 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.

28. 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.

29. While the Code of Conduct for Campaigners does not include provisions which are directly relevant to the CSPL's current enquiry, we would be happy to provide further information about how we review and monitor the effectiveness of the Code including seeking input and buy-in from political parties.