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This submission relates to question 2 of the consultation paper. I draw upon my experience of sitting in on most of the hearings of the Birmingham Election Court in 2005, on which I have written an article that will appear in Parliamentary Affairs later in this year.

There are two general issues arising from those hearings that have implications for the mandate of the Electoral Commission. The first is the lack of readily available information on the operation of the procedures for detecting fraud and for challenging elections whether on the grounds of fraud or for other reasons. There is a lack of information available on the number and nature of prosecutions and of election courts held. This neglect of the need for information reflects a general problem of the lack of a continuing review of the extent of fraud and of other defects in the electoral process.

The importance of the integrity of the electoral process suggests the need for an annual record of prosecutions and of election petitions and election courts held, that could appropriately be published by the Electoral Commission as part of general extension of its mandate to report on the extent of fraud and of challenges to the integrity of the electoral process. While this could be regarded as covered by the mandate set out at Para 2.24 of the consultation paper, it is of such importance as to merit separate emphasis.

Secondly there are problems with the operation of election courts that require review. There are difficulties in the procedures for electoral petitions that lead to election courts being set up. The time allowed for a petition is too limited (normally 21 days after the election) given the need to collect convincing evidence... The actual and potential costs can be a severe deterrent. In 1948 The Committee on Electoral Reform recommended that the costs to petitioners should be reduced by placing responsibilities in the hands of a public official once a prima facie case had been established arguing "Irregularities in elections should not be regarded as a private wrong which an individual must come forward to remedy, but as attempts to wreck the machinery of representative government and as an attack upon national institutions which the nation should concern itself to repel" No action was taken on this recommendation, but there is a strong case for the responsibilities recommended being given to the Electoral Commission.

There is a general need to review the procedures of electoral courts, many of which date back to the 1860s. In particular there is the issue of whether given the form of proceedings being of petitioners versus respondents, the wider public interest can be neglected. The Electoral Commission could be given

responsibilities: - To keep under review the workings of electoral courts; to have the right to review the general conduct of an election in a particular area because of the wider public interest involved.