

THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

THE GRAHAM COMMITTEE

**The Commonwealth Club
25 Northumberland Avenue
London, WC2N 5AP
Thursday, 21 September 2006
Afternoon Session**

Members Present: Sir Alistair Graham (Chairman)

Rita Donaghy CBE
Baroness Maddock
Dr Elizabeth Vallance
Dame Patricia Hodgson DBE
Dr Brian Woods-Scawen DL
The Rt Hon Baroness Shephard of Northwold JP DL
Professor Dame Hazel Genn CBE

Secretariat: Dr Richard Jarvis
Peter Hawthorne

Witnesses: The Rt Hon Lord Falconer of Thoroton QC,
Lord Chancellor and Secretary of State for
Constitutional Affairs
John Sills, Head of Electoral Policy, Department
for Constitutional Affairs
Sir Hayden Phillips GCB



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1. SIR ALISTAIR GRAHAM: Secretary of State, thank you very much for coming to talk to us today. We very much appreciate that. As you know we are carrying out a review of the work of the Electoral Commission and your ministerial colleague Bridget Prentice kindly gave evidence back in July, outlining the government's views on the Commission's performance since it was created. We would like to use this session to discuss with you some views and ideas that have come out of the evidence we have received and that we might take into account in preparing our final report. You said to me earlier you did not have any introductory remarks that you wanted to make.
2. The first area that we wanted to explore with you was the area of electoral administration because we have received quite a lot of evidence that has suggested to us that the effectiveness at local authority level of electoral administration is very uneven across the country. You may have one local authority who have on their register, say, 60% of the census data while another local authority may have over 100%. This seems a very wide variation and we wondered really what your view was of how election administration is dealt with at a local level.
3. THE RT HON LORD FALCONER OF THOROTON QC (Lord Chancellor and Secretary of State for Constitutional Affairs): A picture of patchy administration, good in some places, bad in others, is a picture I too have. The specific statistics may not be the only guide because in some parts of the country it would be much easier to get correlation between 100% of the people who live there and 100% registration simply because there is less movement, etc, but broadly I agree with your analysis, patchy administration. I do not come to the conclusion from that that the Electoral Commission should therefore take over administration of elections. I think the right course is for them to perform a regulatory and advisory role. They should be able to set standards, they should be able to help seeing them enforced, but I am not in favour at the moment of them taking over the administration.
4. SIR ALISTAIR GRAHAM: Then who is accountable and who is overall responsible for the accuracy of our electoral registers?
5. LORD FALCONER: It is the electoral registration officer in the particular place. He is responsible to a local authority. As far as the system is concerned, it is my department that is overall responsible for the system. If, for example, this Committee takes the view that administration should be handed over to somebody else then you would, in effect, be saying we, as a government, have come to the wrong conclusion about the system. As you can see, I disagree with that particular proposition. My department is responsible for the system; individual performance is individual EROs responsible to local authorities.
6. SIR ALISTAIR GRAHAM: Do you think that the Electoral Commission should be playing a more proactive role in this particular area? The recently carried Electoral Administration Act gives them a new role in setting performance standards. Do you think that is enough? If a local authority is failing in its responsibility to carry out suitably high standards of electoral

administration, who intervenes to put that right?

7. LORD FALCONER: Should they be more proactive? They should be taking all appropriate steps within their powers to try and drive up standards. That means, it seems to me, setting standards, speaking directly to individual areas if they think it is not working, if necessary seeking to get a direction from central government for a particular local authority to do something differently. How proactive they have to be obviously depends upon the individual problems in an individual place. Parliament has given them more powers in the recent Act; they should use them but as regulator not as actual doer. They have to act in co-operation with my department, in terms of expenditure of money, in terms of detailed discussion of individual areas where there is a problem, and I have power to give directions where appropriate.
8. THE RT HON BARONESS SHEPHARD OF NORTHWOLD JP DL: I am sorry, I do not understand who “they” is in the Lord Chancellor’s answer. Are you referring, when you say “they”, to the Electoral Commission or to local authorities?
9. LORD FALCONER: I was referring to the Electoral Commission.
10. BARONESS SHEPHARD: Thank you.
11. SIR ALISTAIR GRAHAM: The Electoral Commission, if they now have this performance standard setting role under new legislation, if they are going to be proactive do you think it would help, for example, if they had regional electoral officers who could work more closely with local authorities to try and ensure these higher standards are met?
12. LORD FALCONER: I do not know. I think you would have to ask them that. They have to decide how they think it is best to raise standards in a regulatory role. If that means, for example, monitoring every single relevant authority that is actually doing the administration then so be it. If that requires, in your phrase, a regional officer in every region for the Electoral Commission then that might be the way to do it. I think it would be disastrously misguided of me to start suggesting to the Electoral Commission who they should employ and what their structure should be to try to drive up standards.
13. SIR ALISTAIR GRAHAM: You said the end of the process might be if the local authority is not meeting the standards that have been set by the Electoral Commission. Presumably there may have been some dialogue about all of this and it is still not meeting the appropriate standards. Is their next step to set a case out to you for a direction to be issued to that local authority?
14. LORD FALCONER: Yes. The Secretary of State has power to give directions where appropriate and if there was a proper case made then no doubt I would give such a direction.

15. SIR ALISTAIR GRAHAM: Has that ever happened?
16. LORD FALCONER: It has never happened since I have been there. I do not think it has ever happened.
17. SIR ALISTAIR GRAHAM: Is that because nobody has really been looking closely at what standards are like in local authorities?
18. LORD FALCONER: I think that may be part of the reason. I think there has never been a sense of there being a sufficiently independent take on what has been happening in a particular place to justify the giving of such a direction. I think it would be regarded as a pretty serious step to take. I think having an independent - and I use the word loosely - regulator like the Electoral Commission may make it easier to do in the future.
19. SIR ALISTAIR GRAHAM: If the case is set out by the Electoral Commission and forwarded to your officials who presumably consider it and then put it before you as to whether a direction should be issued, do any other processes have to take place alongside that or is that a sufficient process?
20. LORD FALCONER: I am not aware of any statutory process and neither are my officials, who are likely to know more about it than I would. If there is anybody that it looked appropriate that one should consult at the time, not referred to in statute, then no doubt I would consult where appropriate. The process would plainly involve the Electoral Commission making a case, the Secretary of State then forming a view, having taken advice, and then no doubt giving the relevant authority the opportunity to respond before giving the direction.
21. SIR ALISTAIR GRAHAM: One of the issues that has come up is this question of funding. For example, as far as implementing the provisions of the Electoral Administration Act are concerned I think a sum of money, something like £21 million, was made available through the rate support grant mechanism for implementing the provisions of the Electoral Administration Act.
22. LORD FALCONER: That is correct, yes.
23. SIR ALISTAIR GRAHAM: We have taken evidence from representatives from the Association of Electoral Administrators and it is clear that in some cases local authorities are very diligent in making the funding available to meet their statutory requirements. Others, we are told, the money may get hijacked for other purposes because understandably at a local authority level there are all sorts of pressing priorities which may mean that the money may not get to what clearly your department intended it should do for the purposes of implementing the Act. Can you do anything about that?
24. LORD FALCONER: First of all, yes, I agree with what you are saying that in some cases the money is used for other purposes. I assume the basis of that is that if you are in some parts of the country the burden of trying to get

as full a registration as possible is hugely greater than if you are living, as I said earlier on, in a very settled part of the country where people hardly move and they are much more likely to fill in forms. I can quite understand that there will be some local authorities who think this is just money being wasted, being spent on that. That would be quite rare, I think. If there are cases where the money is not being spent when it should be, that is much more of a problem. The question can we do anything about it? As a principle we are not particularly in favour of too much ring-fencing in relation to money being given to local authorities.

25. SIR ALISTAIR GRAHAM: For example, we interviewed two chief executives last week, one from Leeds and one from Sunderland. We raised the issue of would it be more sensible if the funding was channelled through the Electoral Commission rather than going through the rate support grant. They were in favour of that; they thought that would be a sensible approach.
26. LORD FALCONER: I can understand them saying that because the consequence would be, whether they lived in Tunbridge Wells - and I say that with the greatest respect to Tunbridge Wells - or whether they lived in Liverpool, it would all go to that particular process because it would all come from the Electoral Commission. It would not come through the local authority.
27. SIR ALISTAIR GRAHAM: The argument I think they put was that electoral administration was rather different from any other form of local authority service and therefore you could make an argument out for the funding being channelled through the Electoral Commission. To be fair, we also had the Chief Executive from Manchester who was opposed to that, felt it was better going through the rate support grant arrangements that operate for local government.
28. LORD FALCONER: I am of the view it should continue to come from central government, not come through the Electoral Commission because I do not think at the moment we should give the Electoral Commission the role of actually channelling the money to the actual administrators. We think it should still come from central government. I favour the approach taken - I did not know he had given this evidence - by the Chief Executive of Manchester but it might be for different reasons.
29. SIR ALISTAIR GRAHAM: If there was widespread evidence that local authorities were not spending the sort of funding that one might have expected from the funding made available, is that something the Electoral Commission should alert you, as the DCA, about and for you to take some form of action?
30. LORD FALCONER: Yes, I would certainly think that. They have a role to ensure that standards are being kept up. If the position is that money is being wrongly - and I underline wrongly - diverted from promoting, for example, procuring proper registration in a particular area and as a result registration is falling below unacceptable standard, that is most certainly something they should look at and they should most certainly alert us to. But I would not be expecting them to alert me to say that there is a place where

registration is at the highest possible level by any reasonable standards and as a result 20% of the money given to that particular local authority for registration is being used on education or used on a better environment. I would not have any objection to that whatsoever. So I think, as ever, the critical test is not precisely are they spending all the money given but what are the outcomes being achieved in that particular place? If outcomes are low and not all the money is being spent that is not acceptable.

31. SIR ALISTAIR GRAHAM: As we know, the Electoral Administration Act requires the Electoral Commission to set performance standards. Is there clear agreement between the Department for Constitutional Affairs and the Electoral Commission about where those standards should be set?
32. LORD FALCONER: There is constant discussions between my department and the Electoral Commission. There is not any disagreement between us about what sort of standards should be set. There needs to be more detailed discussion before they identify what those standards are but there is no disagreements between the two.
33. SIR ALISTAIR GRAHAM: Do you have, as Secretary of State, clear priorities in this particular area where you are anxious to see performance standards drive up standards of consistency?
34. LORD FALCONER: I have not addressed the issue in terms of precisely what areas they should be. My overall concern is plainly to see two things: the highest number of people who should be registered being registered accurately and, secondly, the conduct of elections, including remote voting, being done to the highest standards of administration and integrity. Those are my two aims in relation to the setting of the standards. The precise detail, for example, the printing of ballot papers, how many polling stations there are in a particular place, the nomination process, etc, whether or not there needs to be standards set in specific areas, that is very much a matter, I believe, to be left to those on the ground, who have professional experience, and my officials, who have expert experience. I have set out clearly the obvious aims that those standards have to deliver.
35. SIR ALISTAIR GRAHAM: Thank you very much. I wonder if we could move on to another area where we have had some contradictory evidence and that is in the area of electoral fraud. Of course, there have been a number of fairly high profile cases. I was just looking at some of the comments made by the judge in the Birmingham prosecution in which he said, for example, "In real terms the policing of electoral fraud is minimal to the point of being almost non-existent". Later on he referred to an election in the Bordesley Green ward in Birmingham. He said, "The best estimate I can give is that the number of ballot papers bearing bogus votes cannot be less than 1,500 and may well be over 2,000. As many as half of the votes of the winning candidates may have been fraudulent, certainly over one-third". Birmingham was one case; there have been cases in Blackburn, Oldham, Hackney, Peterborough. Given the difficulty of bringing an election petition that people think fraud, do you think there is a substantial issue to get to grips

with here?

36. LORD FALCONER: I think it is a very important issue to get to grips with and what Richard Mawrey said about the two wards that he was dealing with in Birmingham is a very, very serious matter. Could I leave Northern Ireland out of what I am saying? This is primarily addressed to Scotland, England and Wales. How much electoral fraud is there in the country? Nobody appears to have done detailed research in relation to it. The petitions over the last five years are basically minimal in number. You will have the figures but there were none in 2001, one in 2002, none in 2003, three in 2004, two in 2005 and four in 2006, every year being relevant because there are local authority as well as general elections.
37. What do those who think about electoral fraud think? There are a variety of comments. The President of ACPO, Chris Fox, said, "Electoral fraud is extremely rare but, given the recent publicity around the electoral fraud in Birmingham, we need to ensure that the public and voters of this country have full trust in the system and faith that the election on 5 May will be free and fair". That was a remark obviously before the general election in 2005.
38. I am not aware of any across the board statistical study but on the basis of what those who know have said, on the basis of the number of petitions, my view is fraud, insofar as it exists and it does exist, tends to be in the postal voting area, not in the actual voting in person. Although it happens and in some parts of the country may be significant, it is not so widespread that it has a significant effect right across the board on elections. I think we, as a government, need to take all the steps that we can to ensure that it is as difficult as possible to commit a fraud but without making it unduly difficult either to register or vote. We, as a government, have taken quite a large number of measures because we think it is pretty important to try and deal with it but also try to keep it in perspective.
39. SIR ALISTAIR GRAHAM: There has been some evidence that some people feel that what appeared at the time to be a bit of a headlong rush into postal voting on demand put the system at greater risk and certainly raised some questions about public confidence of the electoral system. Would you share that view?
40. LORD FALCONER: I think things got rather muddled in relation to it. The three elements in it were the Electoral Commission making a recommendation about there should be an all-postal pilot in relation to, I think it was, European elections; the House of Lords backing the Electoral Commission; and the government taking a different view. That then raised questions in the public mind about postal voting. I think most people who have looked at those places where not postal voting on demand but all-postal voting took place generally regarded fraud as not being a particular issue in those particular all-postal voting places. It became a political issue because there was a disagreement in the Lords.

41. Accompanying that then came the Mawrey judgment in the Birmingham cases and people have put together two things. One, the government being keen in that political debate on all-postal voting and the other the Birmingham thing, whereas in fact the Birmingham thing has absolutely nothing to do with that political battle about all-postal voting. So, two things got mixed up in one but the consequence was that because of the reporting, because of what Richard Mawrey said - and the reporting was legitimate and what Mawrey said was legitimate - people now have a greater concern about postal voting than perhaps is necessarily borne out by the evidence of postal voting fraud.
42. SIR ALISTAIR GRAHAM: You did accept some amendments to the Electoral Administration Bill which in effect bring in a new system whereby I think the intention is from January next year, if you want to apply for a postal vote you have to provide a signature and your date of birth.
43. LORD FALCONER: That is right. What we were keen to do throughout this process, and we were trying to do it in an as un-party political way as possible, is to try to reach a system whereby you did get greater security for postal voting but at the same time not reduce the number of people who register. The big issue from our point of view in the government was if you required individual registration and everybody in the household had to sign, there was a fear that would reduce the number of people who would be registered. I live in a household with two teenage children and two more coming up. The two teenage children are away quite a lot because they are at university or going to university. It has been much easier to get them on to the electoral register by filling in the form myself. I think that is an experience reflected quite a lot across the country. If you required them to sign as well that might have reduced the chances of them getting on to the register but I recognise the problem about postal voting which is where the fraud, if there is any, takes place.
44. Murray Elder's proposal that you require a signature and a date of birth on the form before you allow somebody a postal vote seemed a sensible compromise. You have got some degree of security, greater than you otherwise had, without reducing the number of people who are registered. It has come out in the evidence before you, everybody right across the political spectrum quite rightly is concerned about people not being registered and particularly among those who are young.
45. SIR ALISTAIR GRAHAM: Can I just explore how this new system is going to operate from January 2007. I have a postal vote at the moment. At some point I will have to apply again, I understand, for a postal vote.
46. LORD FALCONER: As I understand the way that it works, if you are on the register and signed already and you have a postal vote then you are okay. However, if I am on the register and I want a postal vote and I have not had a postal vote before, I have to apply and give my date of birth as well and there has to be a signature and in return I will get a postal vote. The register will then contain my signature and the date of birth.

47. SIR ALISTAIR GRAHAM: So, if I am on the register at the moment will I never have to fill a form in with my signature and date of birth?
48. LORD FALCONER: If you want a postal vote and you have not already given a signature then you will have to apply, signing with your date of birth.
49. SIR ALISTAIR GRAHAM: When the postal voting was expanded to postal voting on demand you did not have to give a date of birth or signature even, I do not think, did you?
50. LORD FALCONER: You certainly did not but you did, I think, in practice in almost every case have to give a signature because you had to apply for a postal vote.
51. SIR ALISTAIR GRAHAM: Will that be retained for the purposes of checking postal votes in the future, the signature that people may have given?
52. LORD FALCONER: You will have already registered, put aside postal vote, with your signature, I would imagine.
53. SIR ALISTAIR GRAHAM: Is the signature retained at local level for that purpose?
54. LORD FALCONER: It is, yes.
55. SIR ALISTAIR GRAHAM: So, in fact, all of the people who currently have a postal vote, providing they have given a signature at some point, do not have to do so in the future?
56. LORD FALCONER: If they have a permanent postal vote, that is correct. You do not have to reapply.
57. SIR ALISTAIR GRAHAM: Does that not mean that the system is not going to be fully effective?
58. LORD FALCONER: The whole problem the Electoral Commission was raising was the fact that you could get a postal vote without having a signature to compare it against. If you have actually registered yourself, as opposed to being registered by the head of the household, then there is a signature there. What the Electoral Commission were arguing was there are people who can get a postal vote without ever having given a signature to start with. Assume that you are the head of the household, which may or may not be right in your case, you will have given a signature and that would not cause any problem as far as the Electoral Commission is concerned. Have I got that right? No, I have got that wrong. You do have to reapply. The EROs will write out to all on the postal vote register in January 2007. So forget what I have just said.
59. SIR ALISTAIR GRAHAM: That is why I was probing you a bit because I had been told that you did have to apply. Can we go on to when an election comes and people like myself and all the people who have reapplied have to

give a second signature when they actually go through the postal voting process. How is the comparison of signatures to take place, by a manual process or is it going to be a machine process?

60. LORD FALCONER: I think it will be a manual process.
61. JOHN SILLS (Head of Electoral Policy, Department for Constitutional Affairs): It will be a mixture. There is technology but it will depend on the scale really, I think. The bigger the scale the more you will need technological means to do it.
62. SIR ALISTAIR GRAHAM: When we took evidence from the Chief Executive of Manchester, for example, he did not seem absolutely clear but we spoke about the possibility of using equipment and technology that is currently used in the banking system as far as signatures are concerned. I would just like to be clear whether your department thinks that technology is widely available for the purposes? His preference was to have a 100% check, whereas I think the department have said that the minimum check should be a 20% sample. Is that right?
63. JOHN SILLS: That is correct, yes.
64. LORD FALCONER: Shall John come and sit beside me so that he can give evidence formerly?
65. SIR ALISTAIR GRAHAM: Sorry, could you just explain who you are.
66. JOHN SILLS: I am John Sills. I am the Head of Electoral Policy in the Department. What we are proposing is that in the first year, given the timing and so on, there should just be a minimum of 20% but it is a minimum. Some may feel they should do 100% because they feel there is more of an issue. The technology? There are a lot of suppliers looking at this and they are pretty confident that they will be able to provide the necessary technology.
67. SIR ALISTAIR GRAHAM: There has been nothing tested yet, has there?
68. JOHN SILLS: There have been some pilots. There was a pilot in Newham, for example, in the May elections and that worked very well.
69. SIR ALISTAIR GRAHAM: Did it alert any question marks over the postal votes?
70. JOHN SILLS: It did lead to a number of ballots being taken off, yes.
71. SIR ALISTAIR GRAHAM: What is your aim for this technology to be available on a nationwide basis?
72. JOHN SILLS: I think by the time of the next general election the aspiration would be that anyone who wants to do and needs to do 100%

should be able to do so.

73. SIR ALISTAIR GRAHAM: What will be the requirement of local authorities? Are you saying you can choose between 20% and 100%?
74. JOHN SILLS: That is what the regulations will say.
75. SIR ALISTAIR GRAHAM: That is a matter for them?
76. JOHN SILLS: Yes.
77. SIR ALISTAIR GRAHAM: What about the role of the Electoral Commission in terms of electoral fraud? If they are setting performance standards, is one of the performance standards that they have adequate control arrangements to ensure that electoral fraud should not take place?
78. LORD FALCONER: If there were areas where there was a real risk of fraud and they chose 20% rather than 100% and upon looking at the particular place that looked an inadequate sample, of course that would be a perfectly legitimate thing for the Electoral Commission to draw our attention to. As to what the right figure between 20% and 100% might be for everybody, I think that could potentially be an area for the Electoral Commission to set a standard but they would have to decide that, after seeing how it operated in practice, I suspect.
79. SIR ALISTAIR GRAHAM: Would you expect each local authority to be going through some risk assessment process for the possibility of electoral fraud and then putting in place satisfactory arrangements in line with that risk assessment?
80. LORD FALCONER: I would, yes. What that risk assessment would involve would have to be something proportionate to the level of risk in the particular place and I suspect that different areas would have different levels of risk on the basis of what had gone on as they would see it in the past. For example, the area where Mr Mawrey gave a judgment, you might think that might be an area where the risk would be regarded as higher than in other parts of the country. You would have to make a legitimate and proportionate assessment of what the risk was.
81. SIR ALISTAIR GRAHAM: Would you not expect, as there have been a series of criminal prosecutions in places like Peterborough, Hackney and elsewhere, that the Electoral Commission has a job to learn lessons from the experience of those criminal prosecutions to set performance standards to try and minimise fraud under the new postal voting arrangements?
82. LORD FALCONER: Of course, yes. If you are saying, "Look what happened in these prosecutions, look what the particular sorts of fraud were", yes, of course, they should. I was trying to make a slightly different point which would be the risk in one place of fraud would be different from another. But I completely agree with you that the Electoral Commission, and indeed my

officials, have a responsibility to learn all the lessons that can be learned from the various prosecutions which inevitably reveal the sorts of fraud that have been going on.

83. SIR ALISTAIR GRAHAM: Obviously, you accepted the amendment from Murray Elder. You could make arguments that people are used to giving all sorts of information these days for different purposes. Do you think having more rather cast iron identifiers would strengthen the system and strengthen public confidence in the system without necessarily undermining accessibility?

84. LORD FALCONER: I think signature and date of birth is something that is broadly accessible to everybody. Obviously, your own signature and your date of birth is something that it is easy to put in a form. I think if you said - and this was the other one that was in play for a period of time - the national insurance number, that would not be a sensible one to adopt because for many people it is an effort to find their national insurance number. It is not something that people in this country by and large remember and it is not something that is written on a huge number of documents all over your house at the time that you are filling in your registration form. I would regard using the national insurance number as being too much of a disincentive.

85. SIR ALISTAIR GRAHAM: We have it in Northern Ireland, do we not?

86. LORD FALCONER: You do, that is correct.

87. SIR ALISTAIR GRAHAM: Why is one thing right for Northern Ireland and not for the rest of the UK?

88. LORD FALCONER: You will know this much better than I and I do not seek to draw necessary conclusions from that but the consequence of introducing identifiers there was the number on the register went down very dramatically. Whether it went down because there were a large number of people who should not have been on the register in the first place or whether it went down because of the identifiers I do not know. I think the problems that Northern Ireland were addressing are different from the problems that we are addressing in the mainland. I think throughout the course of the debate about what to do for identifiers in England, Wales and Scotland most people took the view that we should be wary about treating Northern Ireland as an appropriate guide for what to do about England, Wales and Scotland.

89. SIR ALISTAIR GRAHAM: We took evidence in Northern Ireland and I think the view of many people there was the reason why it went down was there were people on the register who should not have been there and they did, over a period of time, fairly quickly build it up to, I think, over 90% which gives some comfort. They are using the national insurance number and I am still a bit unclear why the national insurance number can work in Northern Ireland but it could not possibly work elsewhere.

90. LORD FALCONER: I am not an expert on the extent to which there was electoral fraud in Northern Ireland. I have heard it said that electoral

fraud in Northern Ireland may be of a different sort and possibly even of a different scale to what was going on in England, Wales and Scotland but I do not know. My own view, which I strongly hold, is I would be strongly against the use of the national insurance number here because I am pretty sure it would have a detrimental effect on registration when registration is too low anyway. I do not believe that you need the national insurance number to give proper confidence to people that the postal voting system is secure enough when you have got the signature and the date of birth, which is the current position. I think a balance has to be struck. It was not a balance actually being struck by the Electoral Commission; it was a balance ultimately being struck by Parliament.

91. SIR ALISTAIR GRAHAM: Just to summarise, before I move on to the issue of boundaries and boundary commissions in a moment. You are absolutely clear that the Electoral Commission does have a significant role to play in trying to ensure that performance standards are in place which will minimise electoral fraud?
92. LORD FALCONER: Absolutely. They have to make judgements about that. That plainly would be one of the most important roles that the Electoral Commission could have in relation to ensuring the standards are kept. As I said at the outset, proper administration but high standards of integrity are one of the things that we want these performance standards to deliver.
93. SIR ALISTAIR GRAHAM: Given the amount of publicity that there was, as you said, fairly or unfairly about electoral fraud, do you think it would be sensible for them to produce regular reports touching on this issue?
94. LORD FALCONER: The more I have been involved in this particular job, attempts to improve standards in public life very often have the effect of reducing confidence in public life. I think a balance has to be struck.
95. SIR ALISTAIR GRAHAM: I hope that was not a comment on the Committee on Standards in Public Life.
96. LORD FALCONER: No, it was not. Everybody is keen, I think, to improve confidence in the electoral system. Constant reporting on things which might often reveal that there is not that much of a problem often have the reverse effect. I think it is for the Electoral Commission to judge how often they report on those sorts of issues. They should report in a way that makes sure there is total transparency about the way that the system works but they should be careful to ensure that a balanced view comes.
97. SIR ALISTAIR GRAHAM: There is a danger, is there not, that silence is a sign of a complacency and denial there is a problem where there may be a real problem?
98. LORD FALCONER: You know that the Electoral Commission reports on all major elections; they have to report in relation to all major elections. The extreme would be imagine if you reported on every council by-election

and said at the end of every report, "There was no fraud in this by-election". That would have the quite contrary effect to that which was intended. It is a matter of balance.

99. DR ELIZABETH VALLANCE: Just before we leave it, could I pursue slightly the issue of identifiers. It ties in quite neatly with what you are saying about confidence. How far would you agree that the identifiers themselves really are not that important but they are symbolic rather than substantive in an electoral system that fundamentally is based on trust?
100. LORD FALCONER: I would not agree with that at all. The only point of putting in the identifiers was to provide some degree of security.
101. DR ELIZABETH VALLANCE: Security or confidence?
102. LORD FALCONER: Security, I think. The fact that you have to give your signature and have to give your date of birth will, I think, increase actual security. I would not have supported doing it unless I thought it did have a material effect on security. You could not introduce something saying, "Actually, this has no effect on security but we are doing it to give people confidence that we are doing something".
103. DR ELIZABETH VALLANCE: Do you accept that it might be the case?
104. LORD FALCONER: I think people would have realised that that was the position. We live in a world, rightly, where it is utterly public what the pros and cons of particular policy steps are.
105. SIR ALISTAIR GRAHAM: Can we move on to the issue of boundaries, which we are interested in. The Electoral Commission came to give evidence to us last week and it now advocates four separate boundary commissions for each part of the UK with the Commission taking a strategic oversight role. Do you support that view?
106. LORD FALCONER: The four separate ones they are proposing being one for England, one for Scotland, one for Wales and one for Northern Ireland, each one doing both parliamentary elections and local elections. That seems to me to be, in principle, sensible and that plainly was what was envisaged in part in PPERA which was trying to streamline the way that it was done. I am not quite sure what their strategic role would involve and I am not quite sure why you would need a fifth body as well in that respect.
107. SIR ALISTAIR GRAHAM: Yes, that is the point we are trying to explore. What added value would there be in them having this overall strategic oversight?
108. LORD FALCONER: This is an impertinent answer but I think you would have to ask them rather than me in that respect.

109. SIR ALISTAIR GRAHAM: So you are not wedded to such an approach?
110. LORD FALCONER: I am not wedded but I think quite a lot more further thought is required before we reach conclusions in relation to the boundary approach.
111. SIR ALISTAIR GRAHAM: Another option that has been suggested is for the parliamentary and local government boundary commissions in each of the four home countries to remain separate but to share a common secretariat, keeping the Electoral Commission really out of this altogether. Do you see some real advantage with the Electoral Commission staying out of the boundary business altogether?
112. LORD FALCONER: I am not going to be terribly helpful on this. I am not sure what the answer to what we do about the boundaries is at the moment. We set off on one route in the 2000 Act and it is taking a long time to get to that particular conclusion. I think we need to look at the whole thing and review what the right way forward is. I am not very keen to express views at this particular stage on what the right policy is.
113. BARONESS SHEPHARD: If I could just ask what you think the problems are currently with the boundary commissions and whether there is indeed a seething mass of discontent around the drawing of parliamentary and local council boundaries?
114. LORD FALCONER: I am not sure there is a seething mass of discontent but there are a lot of bodies involved. We have ended up with the Electoral Commission being the local election boundary commission and there being a parliamentary boundary commission as well for the same area. It just looks a very confusing system. The implication of your question is are these boundaries being badly set by all these bodies, I do not get. I hear about individual cases, but of course one would. I do not get the sense there is any remote lack of either propriety or quality in relation to the process but it does look a messy structure, although messy structures may not be the worst things in the world.
115. SIR ALISTAIR GRAHAM: As part of this inquiry we commissioned some work by David Butler as far as the rules governing how boundaries are decided and he has made quite a powerful case that the rules we have operating in the United Kingdom for setting of parliamentary boundaries really do not meet international standards because you can have this widespread variance. The one always quoted is the Western Isles having 20,000-odd and the Isle of Wight with over 100,000, these sort of wide extremes. Do you think there is a case for reviewing those rules?
116. LORD FALCONER: I do not feel there is, no. It seems to be extraordinarily sensible that the Isle of Wight should be one parliamentary constituency and the Western Isles should be another. If the numbers were such in the Isle of Wight that it should be two constituencies maybe but it

seems to me we have a pretty flexible system that takes account of the population numbers but also geographical sensibility. It would be very unsensible for the Isle of Wight to be part of another constituency, is my feeling.

117. SIR ALISTAIR GRAHAM: I quoted the extremes but David Butler deals more with the mainstream issues as far as the question of size of constituencies are concerned in terms of population. If you get it wrong then it does mean in some parts of the country some person's vote is more important than somebody else's, does it not?

118. LORD FALCONER: There is not an absolute right or wrong answer in relation to this. It is not done in our country by mathematical rigidity and I think that is the right way to do it. You have to trust somebody at the end of the day to make what are quite tricky judgements. Saying there is not a seething mass of discontent, it has been going on like for this for quite some time, suggests to me that broadly the system works.

119. SIR ALISTAIR GRAHAM: The Boundary Commission have to operate under clear rules on these matters, do they not?

120. LORD FALCONER: Yes. I am saying there is rules that they have inevitably got to give some considerable area for discretion because we are not operating on a mathematical basis. There are obviously guidelines.

121. SIR ALISTAIR GRAHAM: I suppose the argument is about the size of the discretion. What about the length of the process in reviewing boundaries? Do you have a view about that?

122. LORD FALCONER: When you say the length of the process, it takes longer in some cases than in others. It depends if the appeal process is used. Some cases are more difficult than others. I appreciate you can end up with the boundary being "in the wrong place" for perhaps too long a period of time but you have to strike a balance, do you not, between giving every interest the opportunity to put its point of view and the period of time it takes to go through that.

123. SIR ALISTAIR GRAHAM: So you have no current concerns about that at this time?

124. LORD FALCONER: There may be individual cases where it has taken too long and I would like to see some sort of process whereby it does not take too long. I do not have the impression that it habitually takes too long.

125. SIR ALISTAIR GRAHAM: Could I move on to the issue as far as policy advice is concerned. The written evidence on behalf of the government suggested that it would be better for the government to take sole responsibility for the policy formulation in relation to electoral matters. Do you see any role for the Commission in future as far as policy matters are concerned?

126. LORD FALCONER: You have seen our evidence. I very much agree with our evidence that the Electoral Commission has ended up in a difficult place for a body that is completely independent. It has to be, I think, a body that is separate from the policy formulation position. They can give information about things but if you want to be somebody completely separate from the political process, which I am absolutely sure in terms of the process the Electoral Commission should be, then it is much easier to be in that position if there is not an overlapping policy role between government on the one hand and the Electoral Commission on the other. So the message of our evidence was policy formulation should be for the government. Let all political parties say how wrong it is if they think it is. Let it be debated in Parliament, changed in Parliament, let other bodies say how wrong or how right it is, but if you have a regulator, which effectively is what the Electoral Commission is, then in a sense you are better off staying out of the policy formulation business, it seems to me.

127. In a sense it is the classic role that the courts have always performed. They have to make judgements about who is behaving well and who is behaving badly. If we want the Electoral Commission to say which local authorities are doing a good job and which are doing a bad job, if we want them to evaluate how much fraud or how little fraud there is in the system, then they are far better off doing it having not expressed a view upon what the right policy is to start with.

128. SIR ALISTAIR GRAHAM: Presumably they do have a role in terms of the lessons learned from their experience which may impact strongly on policy issues. If, for example, they are making some assessment about how the new system of postal voting is operating with the changes brought in by the recent legislation and they come to some view that the system is not working very well or that the identifiers are not appropriate, it would presumably be appropriate for them to produce a report, both to Parliament and yourselves, saying, "We think there needs to be a change in policy".

129. LORD FALCONER: Postal voting is a very good example. Suppose there is a judgement that has to be made about the extent to which you require identifiers that will increase security but it might have an effect on registration. That seems to me to be the ultimate balance that the policymaker, whether it be the executive in proposing the change or Parliament in deciding upon it, has to make. The mistake is for the Electoral Commission to say where the balance should be struck. What the Electoral Commission could do in time is say, "Here are all the statistics we have got on the effect of identifiers on postal voting". Suppose the statistics showed that registration went up and fraud went down, then they should present that evidence; they should make whatever objective deductions on what the effect had been on the basis of that material and that is plainly of relevance. It is an objective statement of what had happened. It is not, as happened in the identifier thing, saying where they thought the judgement should be made. It is essentially a judgement issue, that one.

130. The other example given in the evidence which is quite significant is they were all for all-postal voting in certain sorts of election at one stage. There was then a to-do over a long period of time and now they are against all-postal voting. That might be a legitimate change but it is not a change based upon a scientific assessment of how particular elections had gone. It is a change based upon seeing the mood change and the mood quite legitimately changed because people thought the public want a choice in how they vote, which seems a perfectly legitimate view. It is not good for a body like the Electoral Commission to be moving around like that.
131. SIR ALISTAIR GRAHAM: I understand the point that you are making there but you would not want to constrain them from doing the proper analytical work their regulatory function involves and drawing sensible conclusion from those that may have an impact on future policy.
132. LORD FALCONER: Of course I would not and I do not want to be too rigid about where the line is drawn in relation to that. They are writing a report on every major election. They should be reading, the example you gave, every court judgment about problems in relation to fraud. They should be reading any police reports that are given and they can draw a conclusion in relation to that. That seems to me a slightly different sort of role than these quite big issues where they are making judgements.
133. SIR ALISTAIR GRAHAM: Somebody told me they had produced 188 reports since they got off the ground. There are one or two other areas we would like to explore with you. I am now going to pass over to my colleague Rita Donaghy.
134. RITA DONAGHY CBE: The first area I want to cover, Secretary of State, is on the increasing participation role that the Commission has. There is a distinction between informing the public about how to register, how to vote, explaining any changes to the system, and trying to increase participation by promoting the importance of voting. Would you think that the emphasis ought to be on the former rather than the latter and would you agree with the point of view that was put to us by some witnesses that the latter, the importance of voting, is not appropriate for the Electoral Commission? It is really a role for political parties and others to promote.
135. LORD FALCONER: I have a slight sort of third way on this one. I think they should definitely encourage people to register. I think they should definitely tell people how to vote. In the context of specific elections I do not have any objection to them saying, "The general election is on 5 May, use your vote". I have no problem with those three sorts of advertising. I think, outside the context of a particular election, material that says, "You should engage in democracy" in a variety of ways is probably not something that is appropriate for them but I do not want to rule out, indeed I would support them, urging people to vote in specific elections. When you go to the cinema during general election times I used to see films made by the Electoral Commission about the importance of democracy. I have no problem with that if it is saying, "And you have got a general election coming the day after

tomorrow, vote in it”.

136. SIR ALISTAIR GRAHAM: There is another way of drawing a distinction, other than the way you have suggested. For example, I think in the Scottish Parliament elections they are going to have three types of voting system because they have local government elections at the same time. Do you see it as their job to actually educate the public in Scotland in terms of how those different systems are going to operate?
137. LORD FALCONER: In terms of public information films about how to vote I think it is a matter for them and the Scottish executive to reach an agreement about how they are going to dispose their funds in relation to giving appropriate public information about how to vote. I do not have any objection to them doing it but it should be part of a concerted campaign with the relevant executive.
138. BARONESS MADDOCK: In terms of increasing participation, do we not need to be quite clear with the Electoral Commission whether it is their job or not? You have just given us the example of the Electoral Commission actually getting involved over the postal vote issue. They got involved in that, did they not, precisely because they thought it might increase the turnout and the participation?
139. LORD FALCONER: Yes, but it seems to me there is nothing wrong with the Electoral Commission wanting to increase participation or wanting to increase registration.
140. BARONESS MADDOCK: I think we need to be clear about it because at the moment it is their job to do that and they have gone on to do other things. You are still saying that perhaps they ought to be involved in it but we do need to be clear, I think.
141. LORD FALCONER: What I am saying in answer to Rita’s questions are I think it is a worthwhile thing for them to do to have public information films saying, “Vote on 5 May” and explain how to vote. I do not think it is a particularly worthwhile thing to do more general advertising about democratic participation.
142. RITA DONAGHY: Thank you. Perhaps I can move on to the regulation of political party funding and expenditure. Do you think the Commission has been a successful regulator in this area?
143. LORD FALCONER: The role of the Commission has been to be the receptacle of information given to them by political parties and to enforce PPERA 2000 and they have been perfectly successful in that respect, I think. There has been no criticism of the way that they have done their job at all. Is there something underneath the question? Is the question is the limited role of the Electoral Commission a sufficient one to regulate political parties?

144. RITA DONAGHY: If you want to expand on any area?
145. LORD FALCONER: No, I will steer clear of that one if I may.
146. SIR ALISTAIR GRAHAM: There clearly are some views in the evidence we took in some of the areas like Belfast that, for example, if they had intelligence about some improper expenditure taking place that was in conflict with the law they were not terrible proactive. They waited for the information to come in before they actually did any detailed examination. They did not have any proactive role in going to check whether there had been inappropriate expenditure under the appropriate legislation. Just as you might say on the controversy that developed as far as political parties and the loans they took that they might have been more proactive in giving some advice in that area, might they not?
147. LORD FALCONER: They are not the prosecuting authority. The Electoral Commission is not the prosecutor in relation to any breaches of electoral law. The Electoral Commission's role, as set out by PPERA 2000, was not to investigate. It was simply to be the recipient of information. They were in a sense exactly the same as the Registrar of Companies. That was the way that they were set up. I think you might take a view that system had problems in it but I think it is very hard to criticise the Electoral Commission for doing precisely what they were asked to do. Judgements about whether or not there have been breaches of electoral law by a particular political party ultimately are not to be made by the Electoral Commission, they are to be made by the prosecuting authorities. The extent to which they should have reported it to the prosecuting authorities is a judgement for them. I do not think that route is a legitimate area for criticism of the Electoral Commission.
148. RITA DONAGHY: The Commission has actually said to us that they would like to see PPERA amended to make it clear that it has a proactive role in the enforcement of the party funding regulations and not just a monitoring function. Is this a change you would support?
149. LORD FALCONER: I think we have got to wait for your next witness, Sir Hayden Phillips. That is an area to take up with him. In relation to party political funding you will know the issue of reporting on that has been handed over to Sir Hayden.
150. RITA DONAGHY: What is your view about the suggestion that the Commission should issue advisory opinions on the interpretation?
151. LORD FALCONER: Advisory opinion? For the purpose of political parties knowing how to deal with their obligations in relation to funding?
152. RITA DONAGHY: If necessary.
153. LORD FALCONER: They are doing that already, are they not?

154. RITA DONAGHY: Getting legal advice in a particular area, for instance.
155. SIR ALISTAIR GRAHAM: For example, they did not issue an advisory opinion about what might be acceptable as a commercial loan. Do you not think they would have saved the political parties from some difficult issues if, in fact, they had given some guidance?
156. LORD FALCONER: I think from time to time they have given guidance about how you comply as a political party with the reporting obligations. That seems to me to be only sensible because people will ask you all the time, "What does this mean in practice?" I see no objection to them giving guidance if they think it is helpful to assist those who have got to make reports to them. Whether it goes wider than that, I would not like to comment.
157. RITA DONAGHY: The Commission also wants to undertake a review at the appropriate time. Do you think this should be a job for your department rather than the Commission?
158. LORD FALCONER: The review is bound to consider the role of the Electoral Commission, is it not? So, how can they do that review? You cannot review yourself. If they are part of the whole process then it is quite difficult, is it not?
159. RITA DONAGHY: Can I move on then to some overall matters? The evidence we have received from many stakeholders is that they have principal focus in two areas: (1) the effective regulator of the electoral system, and (2) the effective regulator of political parties and expenditure. A lot of the other areas perhaps should be pared down. Is that the view that you share?
160. LORD FALCONER: I see that as being a very clear and attractive focus for the Electoral Commission and because there is a bit of uncertainty about other bits of the role, I think clarity in the role is very, very important. I think there is not quite clarity, for the reason we have just discussed, about their regulator in relation to party political funding. As I say, PPERA creates them as somebody who is the recipient of disclosure but they are not, in reality, there to as it were police the whole system. So, I think there needs to be a bit more clarity about that second role.
161. RITA DONAGHY: If its mandate remains virtually the same, is there not a risk that the Commission will not be as effective because it will still contain some of these wider issues? You yourself said that you thought that its education role was a slightly wider one than just a "how to" and the importance of voting also ought to remain part of its remit. Do you think that would still be a danger; that its role would be too diffuse?
162. LORD FALCONER: I do and I think the problem of a lack of focus in certain areas and uncertainty about the boundaries is a problem.
163. SIR ALISTAIR GRAHAM: So, if we were to recommend that there are a couple of core tasks for the Commission in terms of a regulator as far as

party political funding is concerned and the donation area and the issue of expenditure, and secondly, ensuring that the electoral administration system works well. If we recommend that they should concentrate on those two core tasks, would you be comfortable with that approach?

164. LORD FALCONER: Subject to this caveat: that there is no resolution yet to be reached about how party political funding is to be dealt with and to be policed. So, although I completely agree with the second - regulator of electoral administration - I also see that they have a role in relation to party political funding. That needs to be better defined which can only be done after Hayden has reported and the government have responded. But subject to that very important caveat, yes, I would be comfortable with that recommendation.

165. RITA DONAGHY: I am going to move on to governance. The Committee has received quite a bit of evidence suggesting that there should be political representatives appointed as commissioners but always as a minority of the Commission. What is your view on this?

166. LORD FALCONER: If there was a cross-party consensus about that and you were able to do it, first of all without the party political commissioners being in any sense a majority, and secondly, the people were acceptable, I myself think that needs to be very seriously looked at. I think one of the things the Electoral Commission has got to do is to regulate an electoral process which means dealing with the political parties who are involved in it. The more the Electoral Commission understands that, the better.

167. SIR ALISTAIR GRAHAM: Are there not other ways of achieving that? I have been surprised on this particular issue about the level of passion that it has raised. Some people are very strongly in favour of such an arrangement because they think it would strengthen the understanding of political processes at a grassroots level. Some other people - including the Commission themselves - are very passionately against it. Is it not possible to devise some other statutory advisory commission in which there could be political representation rather than making them full commissioners?

168. LORD FALCONER: I wish to avoid passion if I possibly can in relation to this, but I have never known an organisation that is supposed to be regulating somebody that keeps off the person or people they have most got to deal with. Can you imagine a body regulating doctors that had not one doctor on it? Can you imagine a body regulating lawyers that did not have one lawyer on it? Can you imagine a body regulating estate agents that did not have an estate agent on it? It indicates a view that people have about politicians that is so wrong, in my view. My own view is that falling over backwards to avoid having politicians on the body, of course you must make sure party political views do not in any way intrude. Of course you must ensure the politicians cannot, as it were, dominate the body. But the Electoral Commission is engaged in seeing how the political process in part works. You should have people who have been engaged in the political process there to help you - not you but the Electoral Commission - or there will be people who

say it does not have the confidence of those engaged in the process. It needs the confidence of them but it also needs the confidence of the public as well. I think you can do both.

169. SIR ALISTAIR GRAHAM: There is some experience of similar type bodies in other countries where, if you have political nominations, some of the argument takes place between the political parties rather than acting as a truly independent body. The fear of everybody is that if you have significant political representation - even as a minority - that it will undermine perhaps in a genuine sense or in a perceived sense, the independence of the Electoral Commission.

170. LORD FALCONER: Take the issues we have been talking about this afternoon. Issues like postal voting. Do you think having one person saying, "I am not sure that we should have any identifiers" and somebody saying, "We should have lots of identifiers" would have undermined the Electoral Commission in its internal deliberations? What about reporting of funding issues? Do you think it would have helped to have had somebody who understood how political parties raise money?

171. SIR ALISTAIR GRAHAM: Why do you think the Commission feels so strongly about it?

172. LORD FALCONER: I do not know. I think they are worried about public standing I think is their issue.

173. DR ELIZABETH VALLANCE: But are they not also worried about the fact that the Commission as it stands at the moment has no representatives, and that by their nature, politicians on the Commission would have to be representatives? In other words, at the moment it is what one could call a "unitary board". People are there to give their experience and are not there as anybody's representative, far less, agent.

174. LORD FALCONER: No. You might be on because you had once been a politician and in order to be fair there would have to be a Labour, a Tory and a Liberal Democrat politician, but you would not be there representing the Liberal Democrats or the Labour party on the Commission. You would be there because of your standing. Your previous experience had been this. Then you would perform a role as a commissioner with a duty to act appropriately as a commissioner.

175. DR ELIZABETH VALLANCE: Could you not do that in an advisory capacity?

176. LORD FALCONER: With respect, you are standing on your head again to try and avoid having a politician involved.

177. DR ELIZABETH VALLANCE: Perhaps you are standing on your head in order to make sure that the perception, again, is very clean which is clearly

what the Electoral Commission are worried about.

178. LORD FALCONER: That is what is so offensive about the position, which is you cannot trust even somebody who might no longer be in active politics to take an independent view about it. You ask yourself why politicians are in low standing in relation to public life, but it is not surprising if that is the attitude taken: that you have got to keep them at arms length from the Electoral Commission.
179. DR ELIZABETH VALLANCE: It is “chicken and egg” as you are describing.
180. LORD FALCONER: It is not “chicken and egg” at all. Why do you say it is “chicken and egg”?
181. DR ELIZABETH VALLANCE: In the sense that presumably the reason why the Electoral Commission feels so strongly about this is they feel that they cannot actually maintain their perception of being independent if they have politicians as commissioners.
182. LORD FALCONER: That may be the reason that they are giving, but supposedly the Electoral Commission have politicians on the Commission and then people regard it as doing a good job. What then would the effect be?
183. SIR ALISTAIR GRAHAM: Would you have any time bar on this? If one was to go down the route you are suggesting that we might have nominees, could they go straight from a general election to applying and sitting on the Commission? Would you have any time gap between playing a powerful active political role and sitting on the Commission?
184. LORD FALCONER: I myself would not necessarily have a time bar. I think it would almost certainly be wrong to have somebody who is currently engaged in active politics on behalf of a particular party but I would not set a time bar from the time that you ceased before you could sit on the Commission.
185. RITA DONAGHY: With the Commission staff, as opposed to the commissioners, would you be relaxed about a bar on political participation being abolished or reduced from --
186. LORD FALCONER: I would be. There is a five-year period now, is there not?
187. SIR ALISTAIR GRAHAM: Ten year.
188. LORD FALCONER: Ten years. To treat people like semi-criminals because they have been in politics - ten years has gone by - is ridiculous. Absolutely ridiculous. The odd thing about it is people sitting at this table in front of me have been engaged in active politics and the one thing you would not find among people who have been active politically is any sort of

corruption. Indeed, quite the reverse. The idea that you cannot even work for this organisation unless you stop being a member of a political party for ten years seems to me to be a little bit over the top.

189. SIR ALISTAIR GRAHAM: You have been very passionate and powerful about --
190. LORD FALCONER: It is entirely objective.
191. SIR ALISTAIR GRAHAM: I might have misheard but it sounded passionate. On the Judges Appointment Commission you put all sorts of limitations of people who can go on there, have you not?
192. LORD FALCONER: Because they are appointing people to particular jobs. You cannot appoint someone who wants a job to be appointing. That seems to be a completely different issue from regulating the electoral process.
193. SIR ALISTAIR GRAHAM: I think many people might argue the same as far as regulators are concerned.
194. LORD FALCONER: If a particular politician was once in politics, is no longer engaged, it seems to be perfectly legitimate that they can assist and be very effective as a commissioner. Judges have often been lawyers and are quite good at spotting what particular things lawyers are trying to achieve so someone who had been engaged in active politics but is no longer would be quite good at helping the Commission in working out what is going on.
195. SIR ALISTAIR GRAHAM: Okay.
196. RITA DONAGHY: I am moving now finally to the accountability framework. We spent quite a bit of time asking about the role of the Speaker's Committee and the accountability of the Electoral Commission to the Speaker's Committee and perhaps through the Audit Commission or the Standing Committee on Constitution and the clarity, or lack of. Would you welcome arrangements that might be put in place to allow evidence sessions of the Speaker's Committee, for instance, to be more frequent and to be held in public and to have clearer lines of accountability through that body?
197. LORD FALCONER: The Speaker's Committee, of which I am a member, focuses on finance and the appointment of commissioners. Our accountability comes through Mr Peter Viggers answering questions in the House of Commons on behalf of the Committee. It is quite difficult to see it as being appropriate for there to be sessions in public when we are talking to each other about who might be a commissioner, or about detailed issues of finance. Plainly there has got to be full accountability on how the Commission has spent its money. I think on finance and appointments the Speaker's Committee works well, is an effective body; it ensures high standards as far as the Electoral Commission is concerned. I think that the broader issues - how do you have accountability on, for example, the policy that the Electoral Commission takes - it is very difficult to have detailed accountability on that

when the whole intention of the Electoral Commission is it should be an independent body not accountable to any minister.

198. RITA DONAGHY: Do you think there is a more streamlined role for the Constitutional Affairs Select Committee, for instance, to be doing what you have just referred to?

199. LORD FALCONER: I think it is entirely a matter for the Constitutional Affairs Select Committee. If it wants to raise questions about the way the Electoral Commission is performing its role, it should certainly see it, have sessions in relation to it. I am not quite sure what more structured role one is thinking of. The Constitutional Affairs Select Committee does extremely well investigations into and relationship between parliament and the judges. The judge is not in any way being accountable to that Committee, but having a relationship with that Committee and quite often coming along and giving public evidence about particular issues. That relationship with the Electoral Commission would be a good relationship but I do not see it as involving formal accountability of any sort to that Committee.

200. RITA DONAGHY: Going back to the issue of the Speaker's Committee, there is a transparency issue. You indicate the role in finances works very well. I think witnesses have said that it is a slightly odd set up when there are not published minutes; people really have no knowledge of the effectiveness of that particular role. It is going back to how do you create a system where you can prove through some transparent means --

201. LORD FALCONER: There are minutes but they are not published. Would it be appropriate, for example in relation to appointments, for the deliberations of the Committee to be published?

202. RITA DONAGHY: No.

203. LORD FALCONER: That does not feel appropriate to me. On finance it is not so difficult. One could envisage us indicating what our concerns were about particular bits of expenditure. But, by and large, the relationship we have had with the Electoral Commission has been good, if and insofar as there have been concerns about finance, I do not remember them as being particularly serious. Though I can envisage that one could publish more about our deliberations in relation to that.

204. RITA DONAGHY: It is a question: who regulates the regulator? I think that is what we are trying to get at. If the Speaker's Committee is confining itself to appointments and finance, is there not a wider role for monitoring how the Electoral Commission carries out its business and whether it does so effectively?

205. LORD FALCONER: You have always got this tension where you have got a body that is intended to be absolutely independent. I keep coming back to this analogy but you have got the same dilemma with judges. They have got to perform their role independently. The whole purpose of the Electoral

Commission is that it should be independent of both the executive and the people who have been elected to some extent. If you want to change its remit, that is a policy issue that has to be debated between the political parties.

206. SIR ALISTAIR GRAHAM: The Speaker's Committee meets for an hour three times a year. It is legitimate when very substantial amounts of public funds are involved to ask whether that arrangement is an effective "holding to account". Without undermining anybody's independence, whether you could devise more effective monitoring and transparency arrangements than we currently have.

207. LORD FALCONER: The alternative is that you give a minister the power to dish out the money and he is then fully accountable. But that would be undermining independence.

208. SIR ALISTAIR GRAHAM: I think there may possibly be ways of trying to strengthen that arrangement without going down either of the routes you have suggested.

209. LORD FALCONER: I am not sure that it is causing much practical difficulty at the moment.

210. SIR ALISTAIR GRAHAM: We have had the Electoral Commission for five years yet we have only had one debate I think in the House of Commons - quite recently - about the work of the Electoral Commission. It was a regular debate but it does prompt the question: why was that not happening on a more regular basis which is why we have had fairly substantial evidence that the current arrangements could be improved.

211. RITA DONAGHY: That is the end of my questions.

212. SIR ALISTAIR GRAHAM: Secretary of State, thank you very much. Those were the issues we were anxious to explore with you. Thank you for being so open and occasionally passionate. We very much appreciate that you spared the time to come and see us.

213. LORD FALCONER: Thank you.

214. SIR ALISTAIR GRAHAM: Sir Hayden Phillips, we are very grateful that you have agreed to come and talk to us today. We are obviously very interested in the work that you are doing on state funding of political parties and how it fits into our review of the Electoral Commission. Obviously we have touched on issues in relation to regulation of the current rules on party funding. We are grateful for the piece of paper that you put into us, which we have all had an opportunity to read. Our questions today to you will be very much focused on your views of the role of the Electoral Commission as a regulator of the funding regime for political parties and the implications that any changes you might recommend will have on the role of the Commission. Was there anything you wanted to highlight as far as your introductory

statement is concerned?

215. SIR HAYDEN PHILLIPS: I do not think so, Chairman. Thank you very much. I have given you the note about what I have been asked to do and how I am going about it. I am in mid-course, as it were, in the middle of consultations and discussions with a wide range of people. I just want to add and say to the Committee, and it has not been said publicly before, that what I plan to try to do in mid-October is to publish something which is a sort of interim assessment of how I see where the issues are, what the arguments are, what the pros and cons are, what the risks of different courses of action are, so that we can try to stimulate some further public interest and debate and comment before I get into November, which is a period I imagine of intensive consultation with the political parties to see whether we can achieve some form of consensus in this very important area. That is all I want to say.

216. SIR ALISTAIR GRAHAM: Perhaps a follow-up point on what you have just said there, is there any significance in the fact that you are going to produce, if you like, a discussion which may lead to some debate after the political parties have held their conferences rather than before? You might have thought the logical thing was to do it before so part of that debate could take place at the conferences?

217. SIR HAYDEN PHILLIPS: It is partly practical in the sense that there is an enormous amount of work to do and, frankly, if I was to have done it before we would have had to have got it out quite early in September for it not to have been right at the last minute. The second thing, I think, is what I would not want to happen given the nature of the document which I intend, which is very much an overall assessment of the issues and the arguments, is for anything that I said at that stage to become an issue during the party conference season. I think that would be a disadvantage to the course of the work. So, there is both a practical issue and then I rationalise it also to say I think it works out best that way because it means that if the parties want to discuss these issues in the conference they can do so on their own terms rather than mine.

218. SIR ALISTAIR GRAHAM: We have been very struck by the terms of reference that have been set for your review which, on a narrow sort of reading of the terms of reference, could be simply saying, "Look at the case for increased public funding in return for a cap on donations". However, the objectives you have outlined for the review imply that you wish to look at the full range of regulatory options, including further controls on expenditure. You have this duality of approach: one set out in the terms of reference; one set out in your objectives that you have given us. Does this mean to say you think your terms of reference were inappropriate?

219. SIR HAYDEN PHILLIPS: No, I do not think so. Close textual scrutiny leads me to place the greatest weight on the first few words: "To conduct a review of the funding of political parties" and then the "in particular" indicates some of the things which at the time they were issued seemed to be current important issues. I have treated this as an invitation properly to look at the

funding of political parties overall because, indeed, that is what you have to do if you are going to come out with any sort of sensible conclusion. So I do not think there is a conflict there and I think it is very important that people do not feel that somehow there is an “automaticity” built in because of the way the terms of reference are constructed, that somehow I am simply going to come up with a state funding solution. That is not the way I am approaching this at all.

220. SIR ALISTAIR GRAHAM: But they still look a bit odd, do they not, particularly when the Government Minister, Jack Straw, the Leader of the House of Commons, who is the lead person I think as far as this particular review is concerned, has so publicly come out against the idea of a cap on donations, which he clearly sees would be very difficult to regulate.
221. SIR HAYDEN PHILLIPS: I think what I have been asked to do is to look at all these issues, and there are obviously differing views about a range of strands of work that lie in looking at party political funding. I will cover the issue of caps on donations and the pros and cons of that. My view is that I am going to take an independent view of those issues as well as being asked to do something which is rather unusual in these circumstances, which is, having formed a view about the issues and done the research, to try to see whether there is any chance of a consensus among the political parties about the way forward. That is an important and interesting thing to do on an important subject.
222. SIR ALISTAIR GRAHAM: From the perspective of your work that you have been carrying out over the last few months, what do you think are the qualities required for an effective regulator of political funding and expenditure?
223. SIR HAYDEN PHILLIPS: A lot depends upon the sort of system you have for funding political parties. I think the first comment I would make is that I think it is arguable that some of the difficulties that have arisen over the last nine months or a year are in a sense - and some people put this point to me quite strongly - the result of increased transparency and regulation beginning to work and that they are, as it were, the growing pains of a new system that came in after the 2000 Act was passed. I think to some extent there is some evidence for that. I think the expectation on the whole now for both the parties themselves and quite a large number of the public is that they would be looking for a regulatory system which was able to move in and try to prevent things happening rather than simply dealing with things after the event. Now, precisely how that should work and what the powers of that regulator might be I do not know. As I say in my note, I think it is very important and this is something that the Committee is looking at as well as myself, and what I hope quite openly is that there can be a good deal of co-ordination and complementation between what I recommend and what you recommend about the role of the Electoral Commission. I think there is an expectation that (a) the process of transparency should be re-examined and taken further where that is thought to be necessary; and (b) that the regulator should, in the jargon,

be able to be more proactive than perhaps has been the case in the past.

224. SIR ALISTAIR GRAHAM: Yes. It is interesting, though, because we have explored the loans to political parties issue which has caused such difficulty for all of the political parties, really. Was that a case where if the Electoral Commission had moved in at an earlier stage giving some tough warnings to the political parties it might have saved the political parties getting into the difficulties that they did and causing some of the possible loss of confidence in the current system that has arisen from that?

225. SIR HAYDEN PHILLIPS: I suppose it might have done, but what seems clear to me from that whole saga is that it was not clear that that is what they should have done. Nor was it clear that they necessarily could have done it. There are differing views about that. I think the next stage of development, Chairman, in relation to the regulatory authority is to be clearer across the board as to both what acceptable practices are and are not and the degree to which the regulator can move in where allegations are made or where they suspect there may be problems being made on a prima facie basis. They have to have some reason for doing so rather than simply going on fishing expeditions. I think that that needs to be quite seriously examined. I will obviously look at that, but your Committee will be looking at that as well, so that we can try to get some sort of better fit between the nature of the funding system for political parties and the way it is regulated.

226. SIR ALISTAIR GRAHAM: Do you anticipate, then, if taking the approach that you have just outlined that you want to try and head off problems before they arise rather than waiting until they hit the system, that the Commission is likely to need stronger regulatory powers?

227. SIR HAYDEN PHILLIPS: It might well need to do so. One of the arguments put to me is that during the election period, for example - and maybe that is quite a long period - there ought to be greater frequency of reporting. It has also been put to me that, indeed, they should be able to move in where they think there is a risk of regulation, rules and other things being breached. I think that needs to be examined very carefully because at the same time as you want to be able to have a nimble, if you like, and effective regulator, what you want it to be is proportionate to the issues at stake. Getting that right, as we all know from many walks of life, is not always easy, particularly where, for example, you might be saying, "We should have controls at a constituency level as well as controls nationally". You have to recognise that that might turn out to be a disproportionate amount of bureaucracy on a political system which still, in many respects, relies on voluntary activity and people giving their time and their expertise free of charge. You have to think about the nature of that and whether you actually are starting to lay too great a burden on people. I think when I am talking about proactive regulation and an expectation that they should be able to move in, I think you have to be very careful to make sure that you do it in such a way that it is done sensitively and proportionately.

228. SIR ALISTAIR GRAHAM: Yes. It has been perhaps slightly surprising since your review started there have been a number of people saying instead of putting the emphasis on cap on donations, we should really be putting the emphasis on reducing expenditure that has just got out of hand as far as elections in this country are concerned. Do you think that is going to involve a different sort of role by the Electoral Commission?
229. SIR HAYDEN PHILLIPS: I think wherever in the future it is agreed that there should be different or new controls, clearly there is going to be a role for the regulator there in making sure that they are properly policed and kept to. That will apply to expenditure controls. It would apply to donation controls if they come out of this. It will apply to the frequency of reporting. It may apply to any new areas where people feel loopholes have been created that might be closed. I think when you look right across the board of the various strands of work involved in party funding, you are going to have to make an assessment about what the appropriate regulatory regime will be. The more change there is, the more change there is likely to be for the regulator.
230. SIR ALISTAIR GRAHAM: I think Gillian wanted to raise a question as far as possible controls of expenditure between elections.
231. BARONESS SHEPHARD: Obviously public attention is focused on what happens in elections and what monies political parties get in before elections in order to help them fight those elections. Of course, there is quite a lot of concern within political parties about parliamentary money which is used in nakedly political ways to further political purposes within constituencies between elections. Are you looking at that at all?
232. SIR HAYDEN PHILLIPS: When you say “parliamentary money” I need to get clear in my mind what you mean.
233. BARONESS SHEPHARD: Secretarial allowances and so on.
234. SIR HAYDEN PHILLIPS: Those sorts of things. I think it is important that I try to see whether I cannot cover the various sources of funds which, as it were, if I can put it this way, the state provides and now it provides quite a lot. If you add up Short and Cranborne money, the value to parties of free election broadcasts, the value to parties of free distribution of literature both during elections and some of it outside of elections, I think the public would be quite surprised at how much public money goes here. That is not to say that is a good or bad thing; I am making no judgement about that, but I think the facts are not generally known. There is also concern - and you are right about this - that expenditure takes place - I will not say from what sources - well before an election period takes place, particularly in, say, marginal constituencies. I am grown-up enough to realise that that is probably quite sensible from the political parties’ point of view because it is in those constituencies that an election battle in a year or two or three years’ time is going to be won. I think that does need to be looked at and you have to make a judgement as to whether there should not be some forms of controls on what you might call campaign expenditure beyond the defined periods that

now exist.

235. If you look at the structure of the existing legislation, you can see its 19th century origins quite clearly. It is about defined election periods and it is about candidates. As a matter of common sense, most people, I imagine, would feel that electoral periods are rather longer than perhaps they used to be and that whether a candidate exists or not, there is political activity in constituencies. Therefore, you do have to ask yourself the question about whether the structure of regulation and control should be defined to those things that are now in the Act, i.e. electoral periods and candidates, or whether it should be widened. In saying that, I am not indicating that that is a conclusion I am urging everyone to come to because I am very conscious that not everyone agrees with that view. I am also very conscious that if you do that, particularly at constituency level as I said earlier, you may be placing burdens on people in a disproportionate way and you may not get real value out of the effort you put into it. But to the extent I am agreeing in saying that I do think that needs to be looked at and I will do my best to see whether we can come up with some views and suggestions here that will be helpful. Again, I come back to the fact that if you do that sort of thing you have to be very aware of the practicalities.

236. BARONESS SHEPHARD: I will merely add that at the moment the systems in place for determining whether parliamentary monies are being inappropriately used for political campaigning are very much in the nature of "sitting next to Nellie" and depending on whistle-blowers and the sergeant-at-arms coming in and saying, "How many stamps have you used?" This sort of thing is very rickety. You will know this, I am sure, but it does seem to me to be a question that should be asked while you are undertaking this review.

237. SIR HAYDEN PHILLIPS: I will certainly ask it. I am conscious, as you will know I am, that parliament is very jealous of those matters of expenditure which it controls and would want to make sure that its authority was not undermined in any way. I am very sensitive to that.

238. SIR ALISTAIR GRAHAM: Would such regulation possibly cover where a political party decides to have a disproportionate investment over a specific period well before the election is called in, say, marginal constituencies because that is where they think they will get the greatest positive return in electoral terms, and yet some parties may be in a stronger position to be able to put that into investment in those marginal constituencies in the run-up to an election than other parties? Do you think that is included in your review as a suitable area for possible regulation of expenditure?

239. SIR HAYDEN PHILLIPS: I know that what is proportionate, Chairman, in this area depends very much on the eye of the beholder and which particular point of view they are taking. It has certainly been put to me in the course of my discussions that there is a concern that people might be able because of the resources at their command to put quite large efforts into constituencies well before the election period of control actually begins. This

is, indeed, something I see that I should have a look at because if people raise these issues they clearly are worried about them, rightly or wrongly I do not know, but I need to have a look at that. So that will form part of the examination.

240. SIR ALISTAIR GRAHAM: In terms of the functions of the Electoral Commission towards political parties, do you think it would help if, in fact, from time to time the Commission were to publish advisory opinions about possible grey areas of the law? What comes to mind, for example, clearly at the time the political parties were negotiating loans to help the funding of the last general election, the Electoral Commission has told us that it had some warning about the possibility of loans, though I suspect it did not know the scale on which, as we subsequently found out, the loans were being used to finance party political expenditure. That might have been an area, for example, they could have given an advisory opinion as to what constitutes a commercial loan and how the Commission would view such a commercial loan. That might have avoided some of the difficulties that subsequently arose. Do you think that is the sort of thing that it would be helpful for the Commission to issue such advisory opinions?

241. SIR HAYDEN PHILLIPS: I may be wrong, but I think the legislation does allow them to do some things of that nature now. I am sure I shall be corrected; a note will fly to me in a moment saying, "Hayden, that is completely untrue". If I have got that wrong, it does seem to me, taking the general principle that sometimes prevention is better than cure, that if they do not have that capacity now we should look seriously at recommending whether or not they should have it in the future. Now, you have to be careful here. As I say, we do not want regulators just simply going on fishing expeditions. They have to have some grounds that can be made public and clearly openly defended for taking action in this area. But I would have thought that was the sort of development which would help public confidence and it would also help, I think, political parties who might feel that things could have been pointed out to them earlier. Simply complaining after the event, when people were in knowledge that something was going on that might be questioned, has not actually helped them either. So I do not think there would be any particular disadvantage either from the public or the parties' point of view provided the grounds for intervention were open, defensible, clear and evidence-based.

242. SIR ALISTAIR GRAHAM: Presumably giving those opinions, like in the area that I have spoken about, might well have ensured that they were clearer about what their regulatory role may be at a later date?

243. SIR HAYDEN PHILLIPS: I agree with that. I am comforted by the informal advice that has passed me by just now that the Electoral Commission does give guidance and can give guidance. I think it is really a question of being able --

244. SIR ALISTAIR GRAHAM: You are one up on the Lord Chancellor because he did get something wrong.
245. SIR HAYDEN PHILLIPS: Oh, that could never be possible! Given my past, I would not dream of commenting on that, as they say in the famous programme. No, but I think that what you are saying is really if they do have that capacity what those of us who are now looking at this area need to do is to form a view about the basis on which that is exercised and try to make sure that we are in the prevention business rather than waiting before it is too late both for public confidence and, I believe, for the political parties themselves.
246. DR ELIZABETH VALLANCE: I was just going to say that I thought that the parallel which had been suggested to us, the example was a commercial one with the FSA, say, they themselves do something similar with chief executive letters and it does seem to have acquired over time a certain status, which means that although they are in some ways unofficial, in fact people take them very seriously. I think it is something like that that perhaps we had in mind.
247. SIR HAYDEN PHILLIPS: I see. I agree with you. I think they are taken very seriously and in the part of my life that is in the private sector I am very clear about the change that has come over the regulatory system there and the degree to which actually I think people recognise that there is some bureaucracy involved. There will always be complaints about regulation, but it is all about reputation. You are trying to protect the reputation of the system; you are not necessarily trying to attack any particular individual. I think once people grasp that what regulation is about is the reputation of the system and the public confidence in it, then I hope one could construct something that might, indeed, Chairman, be a bit more nimble in prevention rather than just in cure.
248. SIR ALISTAIR GRAHAM: Do you think there are any other ways that the current regulatory framework could be improved to provide transparency for donations and expenditure?
249. SIR HAYDEN PHILLIPS: I think that if we get to a point where it is decided - when I say "we" I mean here the parties, the government, and if we can find a consensus here that would be very good - that we are going to introduce, as it were, new sets of controls, then I think you are going to be looking at areas that have hitherto not been regulated to the same extent being regulated more fully. Precisely what they will be frankly I think I would prefer to think about in the context of the substance of what the recommendations are going to be about change, if there is to be change in the party funding system, rather than in a sort of abstract way about the nature of a regulator. As I say, a number of people put to them the point about a greater frequency of reporting and if you are going to have different controls on donations and loans, more information about the sources of those. These are sensitive issues and you have to be satisfied also not just that the regulatory framework is clear but that the organisation you are asking to do it is sensible about the way it goes about it. That is about leadership and the

cultural ethos of the institution, so it is not just about the regulatory powers themselves. That may be something on which the Committee rather than I should form a view.

250. SIR ALISTAIR GRAHAM: In terms of donations and a possible cap on donations, has that policy option really been scuppered because of the trade union problem as far as the Labour Party is concerned?

251. SIR HAYDEN PHILLIPS: I do not know, is the answer to that question. I am fortunately at the stage where I do not have to come to a judgement about whether it is all good news or all bad news or whatever it is. There are various problems around caps on expenditure as well as caps on donations. You have to decide the level, you have to look at the risk of avoidance, you have to decide whether you are going to close off every conceivable loophole or whether you are not going to close off every conceivable loophole and lay down some principles which the regulator can follow to try to keep people on the straight and narrow without having legislation the size of a finance bill. You can see my prejudices against having legislation the size of a finance bill.

252. I think, though, that as far as caps on donations are concerned, people have concerns about two sets of things. One is the risk of evasion at whatever level you set them. I know that is something that a number of people are concerned about, a number of people from the academic field are concerned about, and certainly some of the evidence from foreign countries, particularly from the United States, does not fill one with tremendous optimism about people's ability to keep to that. I think it is quite difficult to draw lessons from foreign jurisdictions, particularly from the United States where the culture of how things are gone about is quite different and where, of course, you can buy television advertising time in a way that you cannot in this country. I am not contemplating suggesting we should do anything different. That creates a political culture and a spending culture which I think is rather different. But there is the risk there that caps on donations will simply be evaded by those who have the wealth to distribute it in a way which is not done directly, and that is something that has to be thought through and weighed and thought about.

253. The second area obviously of difficulty is if you apply caps on donations literally to organisations and individuals and then if you include the trade unions in the definition of "organisation" you raise questions not just about the flow of funds which has been traditional for the Labour Party, but you may raise questions about the nature of the constitutional relationship within the Labour Party between the trade unions and the Labour Party. There are certainly strong views held about the fact that the state, as it were, should not be intervening in that construction and that has to be weighed as well in this. That is quite a tricky area but what I am hoping is that we can display what the issues are there and try to discuss all that in a rational way against a background I think in which there is some public expectation, rightly or wrongly, that caps on what individuals can give should exist. I do not think there has been any great deal of thought given to caps on what organisations or trade unions can give, and I think the debate has got to move on to think

seriously about that sort of thing.

254. SIR ALISTAIR GRAHAM: In the Committee's Fifth Report, it came to the conclusion that there was no appetite from the public to significantly finance the activity of political parties through the taxpayer. Do you think public opinion has moved on since then?
255. SIR HAYDEN PHILLIPS: I think there was a populous poll some time in April or early May - I cannot precisely remember when - when rather to my surprise there was an indication of a shift in public opinion to be less hostile to public funding of political parties than had been the case before. I think what you have to do is to lay out the case and just see what people think about it. There are those who say to me that as a matter of principle, since it is our civic duty to vote and since it is in the national interest that people vote and that political parties under our parliamentary democracy are the way in which we provide both a legislature and a government, it is perfectly sensible as a matter of principle that public funding should go to political parties in the public interest. There is an argument that lies in that area.
256. Whether that would have much resonance with the public at the moment I do not know, but there is another issue as well. If you actually were to move to a position on which donations were capped at a relatively low level, whatever that may be - and what that is, is arguable - even though you might reduce allowable expenditure, I think parties would find there was a funding gap which they would not necessarily, at least in the short term, have any means of bridging, in which case you would have to consider simply because of the funding gap whether or not it was legitimate and desirable that that should be filled by some greater measure with public funds than now exists. Those are the sort of arguments now that I would like to try to make sure get properly debated and thought about so that there is a real discussion of those issues and the pros and cons of that.
257. SIR ALISTAIR GRAHAM: One of the influential factors here in coming to the conclusion about funding that gap, is it just that there is a consensus between the political parties in discussions with you that that is a legitimate role for state funding or are there some other tests out there in the public that need to be met before you think this is a reasonable and credible thing to recommend?
258. SIR HAYDEN PHILLIPS: I am well away from a position in which I would ever get near to saying it is a reasonable and credible thing to recommend. That is further down the track. No, I do not think it is a matter just for the political parties, by no means, which is why, as I said at the beginning, I want to try to put into the public domain in mid-October my own assessment of what the issues are and where the arguments are so that one hopes that through press commentary and public response we may get a clearer view about whether people really understand what the issues are and how they feel about them. That is a part of the process which both the political parties need to hear about and that I need to hear about in my discussions with them. I want to make it quite clear I do not see my job as being one in

which I go into a room with a number of political parties and emerge with a piece of paper or without a piece of paper and say to the British people, "Look here, look what I have for you. This is absolutely fantastic" because that would not be at all acceptable. I think it needs to be absolutely clear when we come to the end game of this review that everyone has done their best to get the real issues out into the public domain so that those who wish to form an opinion about them have a reasonable chance to do so.

259. SIR ALISTAIR GRAHAM: Once you have published your sort of exploratory document, Green Paper, whatever you might like to call it, before you come to a view about your final recommendations, what sort of process do you intend to go through to get a good feel of what the public response is to the issues that you have raised?

260. SIR HAYDEN PHILLIPS: I think essentially there are three sets of processes here, some of which are touched on in my introductory document. We shall certainly try to encourage very positively people to respond to us directly, whether in writing or on the website or by engaging with us on our online forum for debate, which I am glad to say works pretty well and people show interest in engaging in that way. Secondly, the Electoral Commission have been doing work on both quantitative and qualitative surveys of public opinion in this area, and I do not need to replicate those. I hope they will go on doing that during this period and that information will pick up public reaction to the information that I have put in the public domain. What I will then need to consider is whether - and I want to wait to see what the reaction is - there is anything further that my review ought to do in engaging the public directly about these things or whether that would be sufficient. My sense is that we will be able to get some quite good indications of where public opinion lies in these matters and form a judgement about it. If there is more that should be done in that area, no doubt you, Chairman, and others will urge me to do it with great vigour.

261. SIR ALISTAIR GRAHAM: How influential will public opinion be in shaping your recommendations?

262. SIR HAYDEN PHILLIPS: I think that really depends on what the public opinion is. If there are very clear messages coming through about different aspects of the funding of political parties that will be very, very important, indeed. Obviously in my discussions with the political parties we need to take account of that because at the end of the day if there is going to be effective change in this area and it is going to be done on the basis of some form of agreement, there has to be the political will to achieve that. That political will has clearly got to reflect what the public will find acceptable. So I would have thought that the best judgement we can make about how the public feel about these issues is a very important ingredient in the eventual solution.

263. DAME PATRICIA HODGSON DBE: Forgive me for reverting to the subject that we were talking about just before this one: donations, caps on donations, sources of funding for electoral or political activity and elections, and some comments that you made both about that and also about the degree

of regulatory powers and activity that might be appropriate depending on where your final recommendations come down. It is a comment, really, rather than a question, although it is a comment you might wish to comment on yourself. That is, for my sins I spent some few years as a regulator in a field that, of course, because it was broadcasting related to moguls who have very strong political opinions and politicians who I was constantly in receipt of letters from No. 10 and such. I suppose I learned two things. One was that it had been believed in the 1980s and early 1990s that our culture in this respect was very different from America. One or two people in broadcasting took the gamble that it would not turn out to be so very different and were proved right. The other was that the attempt to regulate such people ends in tears because they are quicker and cleverer and better resourced than any regulator can ever be.

264. The conclusion I came to over time was that the things that worked were to get the structure as close to right as it could possibly be, simple but as close to right as it could possibly be, and that then the transparency did far more for you than rules. Rules kept you in front of the lawyers in crowded rooms that bored everybody else rigid and the people you were perhaps trying to nudge towards one kind of behaviour were not a bit put off, they just had better lawyers than you did; whereas structures that contained their activities and transparency were really the most effective.

265. SIR HAYDEN PHILLIPS: I have two comments on that. When I referred earlier to not wanting to produce a system that resulted in legislation that looked like a finance bill, I meant what I said. I very much agree with you. I think that is absolutely right, which is why I am rather cautious about saying what the regulatory system should be like until we decide what the substantive system should be like. In other words, you do the substance first, decide what funding arrangements are acceptable and reasonable, what the structure of party political funding in this country should be, and then you say to yourself, "If you get that right and you have the right amount of transparency and if you can manage it without being at a disproportionate burden of reporting and regulation in itself, then you can rely on a few key principles". But then you do need, do you not, a sensitive and nimble regulator who knows the field well and has the confidence of those whom he or she is dealing with. If you can get that scenario as nearly right for our time as possible - because it will never be right and someone else will be asked to review it in 10 or 20 years' time - I think we would agree you have done the best job you can. Once we get down the road of page after page of what you can and cannot do, then you are into a different sort of relationship between those being regulated and the regulator.

266. As an area of real difficulty in the party funding field, I give an illustration of this as were you to have some more taxpayers' money going into this, it is public money, it needs to be properly accounted for. How far down the road do you go in prescribing what you can and cannot spend it on? Then how far down the road do you have to go in the detail of that definition to avoid people trying to get round the edges? Not necessarily badly trying to get

round the edges, just trying to get round the edges.

267. SIR ALISTAIR GRAHAM: This is particularly difficult in the campaign expenditure area.

268. SIR HAYDEN PHILLIPS: Yes. There are those who take the view that a good deal of the expenditure of political parties outside of election campaigns as such is in the public interest. It is something which is a good thing. At what point does, as it were, public interest expenditure by political parties turn into campaign expenditure? Why are we saying that campaigning in a general sense is bad? It seems to me that it is absolutely right that at all times and places intelligent, modern political parties should be seeking to persuade me that their arguments and their policies and their competence is to be eventually voted for. I think when you have a situation like that you need to think very carefully, first of all, about the structure, as you say, then about the proportionate nature of how you regulate that. If you are a lifelong civil servant, as I once was, you are very conscious of the risks of gold-plating of regulation and rules.

269. SIR ALISTAIR GRAHAM: Thank you for that. There are just a couple of other areas we would like to explore with you. One of the areas that clearly everybody is currently concerned about is the levels of participation in the democratic process and engagement with the political parties. Currently, the Electoral Commission has responsibility for trying to increase participation. We have had witnesses who have said they support a role in terms of the Commission explaining to the public at large what the voting system is, how it is, and possibly similarly in registering for the purposes of voting. But they are a bit more sceptical about really whether increasing participation should be the role of an independent body like the Electoral Commission, that really when you get down to it, this is an issue for the political parties. Do you have a view on that?

270. SIR HAYDEN PHILLIPS: I have some personal views. That issue is absolutely central to what this Committee is looking at. I have a rather old-fashioned view, I have to say, that I think it is up to the political parties themselves to take the lead in engaging the electorate. This may be terribly old-fashioned but I make no apology for that. That is actually what they are there for and it is a challenge to them. It is not a good thing, in my view, if people reach to ask others to undertake the task of getting people to get engaged with party politics and political issues, which is what it means when you talk about in the jargon "democratic engagement". So my prejudice, as it were - I would not dignify it as much more than that - is to say I would look to the parties to do this rather than a quango, however distinguished.

271. The second thing I would say is that in my experience it is quite difficult to ask a body to be both a regulator in the sort of way we have been talking about in this conversation, and also a champion of that which it is regulating. I think you are asking someone to be rather too schizophrenic necessarily to be effective on both fronts. I think it is cleaner, personally, to say to yourself I think what we need here is someone who does regulation well and a body

which also has responsibilities for the operation of elections in certain circumstances, rather than to clutter it with another task. As I say, this does not form part of my report. You asked my opinion; I have given it.

272. SIR ALISTAIR GRAHAM: But what is perhaps relevant to your report, if, in fact, you were to say or this Committee was to say on the reasons you have just outlined, "We do not think that it is a reasonable or sensible thing to give this task to the Commission" is it, therefore, reasonable to give some form of financial assistance to the political parties to help them to fulfil that role or is it just inherent in the role they have to carry out anyway and, therefore, it is not relevant to give them specific funding?

273. SIR HAYDEN PHILLIPS: I think a question that one should put - and perhaps I ought to put it; perhaps the Committee ought to put it - to political parties is how far do they feel in the modern world that they are actually engaging in that public interest process of trying to get people interested in what they are saying other than in the ways in which people do: by making speeches, by going on television, or whatever it is. There is an important issue about what we might call the localisation of politics. This probably shows my age. I actually believe that local activity and local engagement by political parties can be a valuable and quite important thing. I think that if there is a definable, clearly in the public interest activity for political parties in this area of democratic engagement, then it seems to me perfectly legitimate to examine the question of whether or not that should be supported by some form of public funding.

274. However, you are then back to the question of how you define that, how you police that so that money does not leak over the border into something illegitimate, and it seems to me you do not come to a judgement about that until you have actually seen that you could make it work and it would be effective and it would not be disproportionate. I think if you are going to argue that case you then have to be prepared to say, "We should look at whether or not there are activities here that are sufficiently in the public interest as opposed to the interest of one political party that you should fund it".

275. SIR ALISTAIR GRAHAM: One aspect of participation is the very basic step of registering at a local level to go on the electoral register. We know in many areas many people do not register for a whole complex myriad of reasons. Do you think that is an area that political parties perhaps could do more and perhaps that would be a legitimate area for some public assistance to help them fulfil that role?

276. SIR HAYDEN PHILLIPS: I think in this area you are pushing at the fringes of my thought processes now, but I will do my best. I think there is a clear public interest in making sure that people register. If there is reluctance for that to be done and it has to be energised, then that is something which is in the public interest to energise it. Whether you look at political parties to take the lead or whether you look at local authorities to take the lead is, I think, a relevant question here. I am conscious that in the United States the main engine for people registering to vote are the political parties themselves. It

runs the risk that what they do is focus on getting the vote they want rather than on the registration of electors. I think that while you can argue that political parties have a part to play in this, I think you have to think quite carefully, particularly if you are saying that public funding should support that activity, whether they are absolutely the right people to be in the lead.

277. SIR ALISTAIR GRAHAM: There is a difference between being in the lead and being in possibly a supportive role, is there not?

278. SIR HAYDEN PHILLIPS: There is. One of the things I think I am saying as a, in a sense, challenge to the political parties is to say I actually believe that party politics is a competition for public service. Another old-fashioned way to put it, but I actually believe that is what it is about. That is in the interest of all the voters, all the electors. What one wants to see more of is good party political activity on the ground in the places where people live. That is clearly linked to the registration issue. If people are interested and engaged in the way in which party politics is presented to them locally and it covers the issues that matter, then they are more likely to register. I think there is a supportive role here, but I think that one needs to think quite carefully, particularly if public funding is involved, where you are really going to put the lead role and what part political parties can play in that. It is possible here that the lessons from the United States may be relevant for once.

279. SIR ALISTAIR GRAHAM: I do not know if my colleagues have any further questions, but if not those were the areas that we were anxious to cover with you at this stage, Sir Hayden. We are obviously interested in seeing the document that you are going to produce in mid-October and I hope we can keep in touch in terms of the progress of our respective inquiries so that we are not too much out of sync.

280. SIR HAYDEN PHILLIPS: Chairman, thank you very much. As you know, I agree with that. I think it is quite important for the reasons that Patricia mentioned also that somehow we try to make sure that the work I am doing and the work the Committee is doing can be co-ordinated and made complementary in a sensible way. I think that will actually be in the public interest and I do not think that is sort of collusive or secretive.

281. SIR ALISTAIR GRAHAM: Thank you very much. That brings us to the end of our public hearings as far as this particular inquiry, apart from a brief hearing in Northern Ireland. So, thank you, everybody.