

HOUSE OF LORDS  
MINUTES OF EVIDENCE  
TAKEN BEFORE  
THE SELECT COMMITTEE ON THE CONSTITUTION

**REFERENDUMS INQUIRY**

WEDNESDAY 3 FEBRUARY 2010

PROFESSOR MICHAEL MARSH and DR HELENA CATT

MS JENNY WATSON, MR ANDREW SCALLAN and MS KAY JENKINS

Evidence heard in Public

Questions 156 - 208

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WEDNESDAY 3 FEBRUARY 2010

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Present

Goodlad, L (Chairman)  
Hart of Chilton, L  
Irvine of Lairg, L  
Jay of Paddington, B  
Lyell of Markyate, L  
Norton of Louth, L  
Pannick, L  
Quin, B  
Rodgers of Quarry Bank, L  
Shaw of Northstead, L  
Wallace of Tankerness, L  
Woolf, L

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Witnesses: **Professor Michael Marsh**, Professor of Comparative Political Behaviour, Trinity College Dublin and **Dr Helena Catt**, former New Zealand Electoral Commissioner and former Associate Professor, Auckland University, examined.

**Q156 Chairman:** Dr Catt and Professor Marsh, can I welcome you to the Committee and thank you very much indeed for joining us. We are being sound recorded and so I will ask you, if I may, to formally identify yourselves for the record; and if you wish to make a brief opening statement, please feel free to do so. You are under no obligation to do so.

**Dr Catt:** I am Dr Helena Catt. Most recently I was the Chief Electoral Commissioner in New Zealand; prior to that I was an Associate Professor in Politics at the University of Auckland. I will not be making a brief statement, I will just go straight to questions.

**Professor Marsh:** My name is Michael Marsh: I am Professor of Comparative Political Behaviour at Trinity College Dublin; and I will not be making an opening statement. Again, I would move to your questions rather than my views.

**Q157 Chairman:** Thank you both very much. Can I kick off by asking what you each think about the strengths and the weaknesses of referendum as an instrument of political activity? What issues do you think, if any, are appropriate for improvement?

**Dr Catt:** I think there is only one possible strength and that is that in some instances it can legitimise a question about how democracy works. So to answer your last question, I think the only time they are useful is on a question about democracy, for instance electoral system devolution. The negatives - I think there are many. I think that they polarise issues, they isolate one issue and divorce it from the relating issues. They are very expensive to do properly and if you are not going to spend the money on it, it is not worth doing it. It is very hard to take a complex issue down to a "yes" or "no" so I think that they are very hard to do well and in many subjects it is not the right answer. I would say that there are many weaknesses and very few strengths.

**Professor Marsh:** One of my colleagues wrote the other day about electoral reform in Ireland and said that if electoral reform is the answer it must be the wrong question and I feel a bit like that with referendums: if referendums are the answer then we are asking the wrong question. I think there are all sorts of apparent strengths of referendums: they involve the people widely, they allow them to have a direct say; they are clearly educative, they move us beyond narrow parties to involve everybody, just as should be done in a democracy. The unfortunate thing is that on the whole it does not do any of those things and quite often it leaves you worse off than you were before. That is probably not to say that there are not times when a referendum seems to be a reasonable safeguard for the people. There were a couple of referendums about changing the electoral system in Ireland which were defeated, and most of us would probably say it was a good thing that they were defeated as well. Most countries do not need referendums to change the electoral system; they do not have parties trying to take very narrow advantage in terms of electoral reform, as we have seen very often

in France; and I think if you do have a problem of that sort the solution is not in referendums, you just have big problems which are not solved by referendums. So generally, if your remit states shall we have referendums or not, I pass on that one.

**Q158 Lord Norton of Louth:** We have dealt with the issue, if you like, of principle, but if we come on then to the practice. If you turn to New Zealand you are in a similar situation to us in that there is no codified constitution so you have the problem of what triggers a referendum. The actual practice, if you could explain what the process is, what is the role of the Electoral Commission, and, from your point of view, what do you see as the benefits and the problems associated with the actual practice.

*Dr Catt:* There are three separate sorts of referenda in effect in New Zealand and they all have different triggers and different rules. The Citizens' Initiated Referenda is triggered by a petition from parliament but is non-binding, and is probably the best example of how not to run referenda in the world. The Electoral Commission has no role whatsoever in relation to Citizens' Initiated Referenda. The Chief Electoral Office that runs the elections, as opposed to the Electoral Commission that does education and finance control, actually does the campaign expense component to Citizens' Initiated Referenda, and the legislation there is also not one to be copied. Basically the Citizens' Initiated Referenda and legislation is problematic in every single respect. I would say that I do not think there is a single part of that legislation that works well. All other referenda are initiated by government and there is a new piece of legislation for each one, we do not have any standing legislation about how referenda are run. Each time there is a referendum they pass a piece of legislation and set out the rules for that referendum. So they have been different; the different government initiated ones have had different rules around them as to whether they are binding or not, as to whether there is a government funded education campaign, as to what role any other body has. A referendum is being proposed by the current government on the electoral system and they are

going to set up an independent panel to run the education campaign; they are not going to give that role to the electoral administration bodies. That was what happened in 1992-93 with the last votes on the electoral system. I would say that whilst Citizens' Initiated Referenda are an example of how not to do it, the referenda in 1992 and 1993 are probably an example of how to do it; that if you really do want to have a referendum, that one was done well mostly because it had a year-long, very well funded, independently run education campaign that went with it. I think that is what makes the difference and it is expensive. The regulation is ad hoc really and depends a lot on what question it is and the views of parliament at that time.

**Q159 Lord Norton of Louth:** You mentioned earlier that it depends on what the question is. Who actually decides the question?

*Dr Catt:* Parliament.

**Q160 Lord Norton of Louth:** Do you have any role in commenting on that? Is there any independent body that does?

*Dr Catt:* On the Citizens' Initiated Referenda the Speaker of the House is meant to coach the people putting it up as to how to write it well, but the problem has been that most of the people putting up questions have been quite insistent that their question is correct even when it does not meet any of the guidelines, and the Speaker has no power to make them change it. For every other one nobody has a right of comment, but in New Zealand any member of the public can make a submission to the committee that considers a piece of legislation. The only comment on how the question is written would be through that open submission process; but nobody has a right, so it is decided by parliament in effect.

**Q161 Lord Norton of Louth:** And really from what you are saying there are no generic rules.

*Dr Catt:* No.

**Q162 Lord Norton of Louth:** It is distinct to each.

*Dr Catt:* Even though there have been quite a few there is nothing that would be deemed to be tradition or norms, except possibly that they are probably doing the Independent Committee for Education on this MMP because they did it on the last one. It is kind of, “It worked last time”, so it looks like they have just blown the dust off the briefing papers from last time and brought them forward again. No, there is no generic and no tradition.

*Professor Marsh:* There are certainly things to learn from the Irish experience of referenda. I notice my colleagues were described as being “fairly positive” about the referendum experience in Ireland, and they certainly did say that, but I think the subtext in there is how on earth did they come to that conclusion because much of what they say is fairly negative. In terms of the rules governing referendums, referendums are necessary in Ireland to change the constitution and all the referendums we have are there to change the constitution. Sometimes it is because politicians decide they want to change the constitution and sometimes it is the courts that say you need a referendum; for instance, to adopt the Single European Act you need a constitutional change. In at least one case politicians were persuaded by interest groups that they needed to change the constitution and that was probably the worst case of all. In terms of running referendums, originally nothing was done at all. I think that referendum rules tend to follow rules for elections and since we really did not have any expenditure or campaigning rules for elections we did not have any for referendums. They develop slowly, as many things do, by reference to the courts and also by reference to the experience of referendums. So originally the Government would campaign for its own referendum and other people would do their best to campaign against it if necessary. That was taken to court

and the court said that it is inappropriate for the government to spend taxpayers' money putting its own point of view. It seems perfectly reasonable to me in many cases. The government spends its own money passing its own legislation and some kind of legislation is defined as constitutional and therefore it cannot spend its own money. I do not really accept that, but that is the general view. So a Referendum Commission was then set up and the Referendum Commission was one of the more ludicrous bodies. It was responsible for putting forward the case for and against. Everybody made submissions to this learned body, chaired by a High Court judge, as they always are, and they bought lots of television advertisements and you would have actors playing, "I think we should sign the Treaty of Nice because it is a really good idea because it will..." Then somebody else would say, "But I am very concerned..." And it was: who are these people? That was responsible for both informing people and giving them the views for and against. I apologise to all the learned judges here, but I think that only people soaked in the law could come up with a view that that was the way to educate the public. The final upshot of that was the total failure of the Treaty of Nice both to get any turnout and to get any support. Then they thought, "Maybe that is not a good idea and we need the Referendum Commission to inform people but we really have to leave it to the public and parties to actually move themselves and get out to argue for what they believe in." So we moved to that situation and that has been the case since. The other change we had was about access to the media and it is really laid down that access to the media really has to be equal for both sides - at least fair for both sides. What does "fair" mean? Before the last referendum on Lisbon the Broadcasting Commission said that fair does not necessarily mean equal; it is not a matter of having a stopwatch and it is not a matter of having someone to say "no" every time you say "yes", it is a little bit more flexible than that. These things are, I suppose, continually under review. Even with the same system you can get different success. For the first Treaty of Lisbon, without running ahead of myself, the

Commission was headed by a High Court judge that prepared a document of about 20 pages to explain to everybody what the Treaty of Lisbon was about and most people arrived at the vote not knowing anything about it and, perhaps accordingly, voted “no”. The next time around there was a different High Court judge. Now this one was actually very good, and it was a much shorter document and he went on radio regularly on Fridays and dealt with all the things that had been raised and said, “No, that is wrong; that is right,” and he was pretty activist and a very clear communicator; so he did a very good job and in part was responsible - in a small part - for the change in the vote. In terms of the rules governing how they work, we are still making those up as we go along.

**Q163 Lord Pannick:** What is your ideal system, if there is one, for the provision of information to the public on this? Should Government have any role at all?

**Professor Marsh:** The key thing that people need to know in an argument about a referendum question is, “Who is telling me this?” It is the basic question: “Why is this person lying to me?” You want to know. It is fair enough, I think, to have the Commission to propose some sort of document, but generally I think it is really important that when somebody puts up a poster you know who it is and when somebody is campaigning you know what they are campaigning on behalf of. The more transparency you have of funding the better and that, I think, would be the thing I would be most concerned about - not equal access time or necessarily funding equally, but that you know who is spending whose money trying to persuade me to vote “yes” or “no”, because if I do not know that then it is hard to be able to assess it. There is a lot of experimental and other evidence on how people make up their minds when they vote on all sorts of things. We know that people do not make up their minds by judiciously considering all the issues and coming to a well reasoned, rational conclusion, they tend to go on instinct, on what people call short cuts, and one of the short cuts might be: “Is the CIA funding this?” - “No”. Whatever they say - “No”.



**Q164 Baroness Quin:** Professor Marsh, following up about the Irish experience, given that there are obviously a lot of concerns about how referendums work is there any move afoot to try and limit the use of referendums or, given that that would just be seen as denying the public a voice, is it just impossible to put referendums back in the box once they are out of the box?

**Professor Marsh:** No, it is not impossible but the only way to not have referendums would be to have a referendum on not having referendums.

**Q165 Baroness Quin:** Do you have any views as to whether that might ever happen?

**Professor Marsh:** It might, but it seems unlikely that people would say, “That is great; we will give it up!” Under the first Irish Constitution we actually had Citizens’ Initiatives as well and that got quietly buried by Mr de Valera in that debate the second time around in the 1937 Constitution. I think many people feel that at times it is beyond a joke. There is a difficulty in a written constitution that requires a referendum to change it. For instance, the language of the referendum is sexist so it would be nice if it talked about men or women instead of men all the time, or that it used even more mutual language. It would take an awful lot of referendums to change. You either change every clause with a separate referendum where you have a whole new constitution with a referendum to adopt that that is probably the best way to go, to say: “There are all sorts of things wrong with this constitution, we need a new one; we can clear up all sorts of tidying things and maybe we will limit referendums as a part of that”, but I think that in the foreseeable future there is no possibility whatever that the public would put up with that because they would just assume that this was some cunning ploy by politicians again.

**Q166 Lord Wallace of Tankerness:** This seems the appropriate time to ask, because you have mentioned the Lisbon Treaty referendums, Professor Butler expressed the first time

around, in the first Lisbon Referendum, about how a “leading, flamboyant, rich man charged in and moved opinion really quite substantially”; although the second time he, “Crashed in... and had no impact at all.” Could you just comment on that and whether such interventions can be prevented, should they be prevented and has there been any New Zealand experience of one big financier, perhaps one organisation which has been able to put in substantial resources and how do we deal with that?

**Professor Marsh:** It is certainly true that Declan Ganley, the very rich businessman, had a big impact the first time and maybe he had a big impact because the politicians had gone missing, the government had its own problems, so there was a vacuum and he stepped into it and he had the money to step into it. It is almost certain that the “no” side outspent the “yes” side. That is the only time they have ever done that. And why should they not do that? Next time round the “yes” side outspent the “no” side and won; so if it was wrong the first time it was wrong the second time. He did a very good job the first time; he argued very well. I would not blame him, I would blame the complete failure of the “no” side to mount any kind of copious campaign. It seems to me very difficult, even if you wanted to do so, to prevent third parties from having a role in referendum campaigns. That is one of the arguments to have referendums, to move in outside parties, to bring in the people more widely. Some people just have more money than others and that is the nature of our society, both here and there. So it seems to me that all you can do is to try and look for some kind of transparency and a lot of the argument about Ganley was, “Where is his money coming from? Is it his money? He has all these shady links”, it was said, with the American armaments industry and we know that they do not like the EU, so is he just a voice for them?” This goes back to the transparency argument I made before that people want to know where the money is coming from. In the first referendum I think that people accepted him at face value; in the second

referendum he was much damaged really by his failure to win a seat in the European election, and by other activities.

**Dr Catt:** In the 1993 referendum in New Zealand there were a number of businessmen who heavily funded a “no” campaign, which they then lost; so the side with the most money lost, which is very, very unusual in referenda. One of the few stats that are known quite clearly about referenda is that the vast majority of the time the side spending the most money wins; so New Zealand 1993 is one of the few examples when that was not the case. I think you do need spending caps in referenda campaigns of some kind so that people cannot come in with excessive amounts of money, whatever the cap is decided it should be. Transparency is necessary as well in that kind of financing. I think one of the important things in the New Zealand case was that there was this independent government-funded education campaign alongside the “vote this way-vote that way” campaign, so there was the actual information as well as the arguments for both sides, and most of the political parties were also campaigning – mostly against a change in the electoral system as well. So there was a lot of other campaigning going on as well, but, yes, big money went in there.

**Q167 Lord Lyell of Markyate:** Looking around the world, what assessment would you make of other nations’ experience of referendums? Are there any cases that the Committee should consider as good examples of the use of referendums? I think you have already indicated that there are plenty of bad examples, but are there any of good examples?

**Dr Catt:** No, I do not think so. There are really good examples of bad ones. I think the Australian one and the republic is a fantastic example of how to ask the question to get the answer you want, in that the majority of Australians, as far as the polls say, wanted a Republic; but from the way that the question was worded and the particular option given to them a lot of people who wanted a republic did not want that form of it. I think that the referenda in both British Columbia and Ottawa on changing the electoral system are a really

good example of if you do not do a good informational campaign and you do not give voters time to think about it then it is not going to work well. So those are really good bad examples, but I cannot think of any really good examples.

***Professor Marsh:*** Broadly I would go along with that, following the comments I made earlier. I do think that it is reasonable to have referendums to set the very narrow rules of the game, perhaps on the electoral system, but if you have them on the electoral system you certainly do need a very long time to explain to people what it is, even when it seems quite simple, as it did in Ireland, and do we want the current system, which people understood, or do we want first past the post, which it does not take a rocket scientist to understand. That seemed simple enough but even that was much more complicated than it seemed. There have been referendums elsewhere on that; there have been referendums on things like voting age, although why you need a referendum on voting age I do not know. The Swedes, for instance, had three referendums on voting age: the first was, “Do we drop it from 21 to 18?” and a huge majority said “no”. About five years later, “Shall we drop it from 21 to 20?” and a small majority and a lower turnout said “yes”. Then five years later they said, “Shall we drop it from 20 to 18?” There was a lower turnout again and a smaller majority again said yes; so they finished up with it. I think that sort of exercise has much to commend it. The other one, I suppose, where you might argue that they are useful is on basic issues of nationality - “Which country should we be governed by?” - and there are times when one can see that that provides legitimacy to particular political decisions. The Good Friday Agreement referendum in Northern Ireland and in the Republic, in the Republic I think it was relatively trivial but in Northern Ireland it was quite important to get the majority, although there is still some doubt about whether it was a majority of Unionists for a majority for that, which I do think helped legitimise the views on peacekeeping. But elsewhere it is the bad things that tend to spring to mind rather than the good ones.

**Q168 Lord Woolf:** I think in many ways, Professor Marsh, you have already answered this but perhaps I should just give Dr Catt an opportunity to do so. Assuming that there is going to be a referendum do you have any principles that should be applied to the information that the electorate is given?

**Dr Catt:** I think after how you write the question the information that voters are given is the most important component of running a good referendum. I think that voters need simple, easy to understand information on what the different options are provided by an independent body, using good communication methods.

**Q169 Lord Woolf:** Such as?

**Dr Catt:** Delivered in a variety of ways. I think one of the reasons that the New Zealand one worked is partly it lasted a year. People do not go around thinking about electoral systems all the time; they need to start thinking about it. Although we had first past the post it soon became apparent that a lot of voters did not actually understand first past the post. They thought they were electing the government and they were not, they were electing their local MPs. So there was a lot of misunderstanding about even first past the post. There had to be education about that and for a different alternative to the electoral system. So there were five electoral systems being explained. A lot of it was “keep it simple” and the booklet that the information campaign had in the end had one page for the basics of each system. It was done graphically and also there were good TV ads done, there were radio debates, there were TV debates, there were lots of people who went out and did talks to Rotary, Women’s Institutes, church groups, all the local community groups. People went out and talked to them so that there was a lot of information provided in a lot of ways.

**Q170 Lord Woolf:** That was presumably by the government and the two parties? When I say “the Government”, an independent body and by the two parties?

*Dr Catt:* All of that information was the independent body, and then there were also interest groups campaigning for the status quo and for MMP, which is the option we have at the moment. A lot of politicians actually kept quiet because most of the politicians were opposed to change, but it became very clear very early on that every time a politician said, “We do not want change” another 2,000 voters decided they would vote for change. So mostly the politicians kept quiet after a while because they were seen as “if they think it is good it must be bad”. There was that kind of view going on in New Zealand politics at the time, so actually a lot of the politicians kept quite quiet. There was division inside the major parties as well; there were members of both of the major parties for change and against change, so it was not as if there was a united political party view from the major parties. Mostly it was the independent body - and it truly was an independent campaign - and then the different pressure groups that were doing the campaign and talking about it and stuff.

**Q171 Lord Woolf:** Professor Marsh, would you like to add something to that?

*Professor Marsh:* No, I have probably made all the points I want to make about education. I spoke to the parallel Committee to this one – a little bit broader and in both chambers – our Committee on the Constitution about referendums about a year ago and there were a couple of points I made that may bear repeating. One is that if you want to set up a Referendum Commission to inform people why do you pick a judge, why do you not pick a tabloid newspaper editor to do it? Or somebody whose expertise lies in communication? I think that needs to be thought about. The other point I wanted to make will come back to me in a minute, but it has just disappeared!

**Q172 Lord Pannick:** Do you have any views on the role of the United Kingdom Electoral Commission under the statutes or any views on the performance of our Electoral Commission in relation to referendums, of course?

*Dr Catt:* I think that somebody has to oversee regulation of spending and the Electoral Commission seems to be the sensible people to do that – they are doing it anyway. Somebody has to provide an independent education campaign and we feel that the Commission has good experience in that as well. I would be quite happy to see them taking on both of those roles as long as their independence in running the education campaign is guaranteed and there is no Government interference in how the education campaign is run.

*Professor Marsh:* I would go along with that. I think it is recognition of the need for some kind of regulation and quite a lot of regulation about transparency, some of which we simply do not have in Ireland at the moment, and I think that is useful to be built on. Obviously it has not worked in a lot of referendums yet so we need a bit more experience, and as a political scientist I guess I ought to know more before I talk about it.

**Q173 Lord Rodgers of Quarry Bank:** Would you say something further about multi-option referendums? I am not quite clear in my mind how it would look and what the design would be, if I may put it this way. At the moment, as you know, there is a great deal of discussion about whether the Prime Minister is proposing a referendum on what is called “fair voting” which means less unfair voting. I think that the two arguments to the present voting system might be the AV system and the other is the STV system. On the face of it, it would be quite sensible, if we want to get a clear decision of what the public have in mind, to put those two propositions on the ballot paper. Could you say a word or two about how best to design it and how effective it would be to make sure of maximum vote and a fair choice?

*Dr Catt:* The 1992 referendum in New Zealand did have such a question. It actually had two questions. The first was: “Do you want the status quo or do you want to change the electoral system?” - two options. Then the second question was: “If the system is going to be changed which of the four following options would you prefer?”, and you only got one tick so you could only choose one. As it happened one system, MMP, the one we have now, won way

ahead of everything else, mostly because it was the system that had been recommended by the Royal Commission that had investigated the question of which electoral system should New Zealand have. So it had some history and it was the only one that any pressure groups were arguing for; nobody was arguing for the other three options. It was an unusual campaign and, therefore, it turned out okay because it was way ahead. If the situation had been different and two of the systems had been very close then I do not think the next stage in the process would have had the same legitimacy. I think that there is a real legitimacy issue if you are putting up several options: who is the winner? You might want to use a preferential voting system to choose the options but then it is harder if the argument is about do we want a preferential system in elections. It might be seen as skewing the argument if you then use a preferential system in the referendum. By and large I would say avoid multi-option referenda when you can. To be slightly frivolous, the Australian example of choosing their National Anthem is a really good example of multiple choice referenda, giving everyone a result with which nobody was particularly happy. They had four options and the anthem they have now, which was not the most exciting of the ones that was on offer to them, came through the middle because people were polarised as to the other options. It is one of the few other examples of where multi options were used. So it is fraught, particularly if there is a good chance that two of the options will get quite a close result.

**Chairman:** Was that Advance Australia Fair? A final question from Lord Hart.

**Q174 Lord Hart of Chilton:** You have mentioned funding of referendums and I think from what you have said it emerges that you are in favour of the body regulating funding and the rule is that there should be clarity, fairness and transparency. Are there any other principles that you think should guide it? Dr Catt, in New Zealand there has been capping - and you mentioned capping - could you tell us a little about how capping works?



*Dr Catt:* Capping for the Citizens' Initiated Referenda. It is actually quite problematic. The pro side and the anti side are both capped. One of the problems is that the cap is ridiculously low, so it means in effect there is no campaigning it is so low. The other really big problem is that there is often more than one group on each side, but the cap says that there is this amount of money for the pro side - all of them - and this much for the anti side. So who has to choose? Who are the pro side and the anti side? In terms of administering it, it is good that it is so low because in effect nobody really does anything, so it takes the issue away, but the legislation that they will bring in for the referendum on changing the electoral system is one of the things that they are really going to have to grapple with. Are you going to let as many groups as you like do it and then how do you stop one rich group setting up ten splinter groups so that they can get round the cap? Regulating finance in elections is always fraught and people will always try and get round the letter of the law; but I still think in principle that there should be a cap on how much can be spent. It is a minefield trying to regulate it.

*Professor Marsh:* I think that the transparency and the accountability is the good thing. In an ideal world caps would be nice to ensure greater fairness, but I just think that the difficulties of dealing with that are too great and, to some degree, run counter to the purpose of having referendums, or at least to some of the apparently good things about having referendums, to bring in people in the first place. Just one other point, if I may - it flew back into my head - about information. I was talking to one of our deputies about the poor information in Lisbon 1 given to people and he complained that when he knocked on a door and said, "I have come to talk about the Lisbon referendum" people would say, "I do not want to know" and shut the door. This is one of the difficulties in informing people about referendums; they do not necessarily want to know, they have other much more important things on their mind - "*Big Brother* is just on the television; go away, I do not want to know." It does not fit too well

with some of our notions about democratic theory but I think it is like youth is wasted on the young, democracy is sometimes wasted on the people.

**Chairman:** On that note Dr Catt and Professor Marsh, thank you very much indeed for joining the Committee and for the evidence you have given.

## **Memorandum submitted by The Electoral Commission**

### **Examination of Witnesses**

Witnesses: **Ms Jenny Watson**, Chair, **Mr Andrew Scallan**, Director of Electoral Administration and **Ms Kay Jenkins**, Head of Performance and Head of Wales Office, Electoral Commission, examined.

**Q175 Chairman:** Jenny Watson, Kay Jenkins and Andrew Scallan, thank you very much for joining us this morning. We are being sound recorded and so I will ask you, if I may, to formally identify yourselves for the record; and if you would like to say a few words by way of a brief opening introductory remark, please feel free to do so.

**Ms Watson:** Thank you very much, my Lord Chairman. I am Jenny Watson and I am the Chairman of the Electoral Commission.

**Mr Scallan:** Andrew Scallan, Director of Electoral Administration and the Boundaries of the Commission.

**Ms Jenkins:** I am Kay Jenkins; I am Head of Performance and Head of the Commission's Wales Office.

**Ms Watson:** Thank you very much for inviting us to come and give evidence today. I thought it might be helpful to you if I briefly outlined the context of our involvement in referendums. We are the body that is charged with conducting referendums held under the framework established in the Political Parties, Elections and Referendum Act. In our written evidence to you we have focused on the effectiveness of that framework based on our experience to date and how we fulfil those various responsibilities. We have as an organisation recently published more information about how we intend to carry out our role in the future to make the process clear to those who might have an interest. Because we necessarily concentrate on the specifics of running a referendum as an organisation we have not looked at the wider constitutional questions which relate to referendums as to whether it is

possible or desirable to designate or design which issues should be subject to a referendum; but we can obviously see the need for such issues to be addressed, and it may be that at least a shared understanding of those issues might emerge from the deliberations of this Committee, because there is no other forum, I do not think, where at present such big picture issues are currently being considered. These constitutional issues that would have an impact on our role would, for example, include the extent to which constitutional issues are suitable issues to be addressed by referendums; whether the PPERA framework should be extended to cover other referendums or polls; whether there should be a consistent framework for all referendums run in the UK, including those run by devolved Governments; and whether what one might term lower order referendums or polls, such as community polls, should be regulated. But I should stress that those are not issues we have looked at ourselves; we have had one referendum under PPERA in the ten years of our existence. It may be in future years, when we have more experience perhaps of such referendums, assuming, that is, that more will be held, we will have more relevant experience to put towards that debate. But for the purposes of your deliberations I think it is very valuable that these issues are being raised and we will do what we can to give you what answers we can to those questions.

**Q176 Lord Norton of Louth:** To pursue the point back to the 2000 Act, you have touched upon it and you mention in your evidence as well the sorts of changes that you think might be appropriate. Would you like to expand on those? You have mentioned that you have also proposed those two to Government, to amend the Act. Can you perhaps say what response you had on that?

**Ms Watson:** I think it is important to start by saying that broadly speaking the framework works, so I would like to reassure you of that. We have tested it, albeit in a regional referendum, and it works. But there are improvements that we think could be made, and Andrew, you might perhaps listen to what I say and see if you want to supplement any of it.

For example, we would like to see Regional Counting Officers being, if you like, a layer in between the Chief Counting Officer role, which is that given to the Commission, and Counting Officers locally, to improve that local coordination and administration. We would like to see a change to the way in which Government is able to produce promotional material during a referendum period; we would like to see that amended completely to prevent that being able to happen. We would like to see a generic conduct order which would effectively lay the rules for future referendums and make sure that they are there and that everybody knows what they are and that they are very clearly set out. We would like to see aggregation of spending limits for permitted participants in a campaign, to make sure that where there are people who might be working to a common agenda we can better police that agenda. And we would like to have more powers to promote public awareness. That might be awareness of the issues in the referendum, but also awareness of the fact that a referendum is happening and that in order to vote on it you need to be on the electoral roll, which is not something that should be taken for granted. In the most recent amendments that Government has submitted to the Constitutional Renewal Bill we do see some of those things being addressed, particularly, for example, the aggregation of spending limits and powers to give us public awareness. You asked more generally about the response from Government; we would need to see referendum legislation being brought before the House in order to be able to see those things come forward and I am greatly encouraged, seeing the amendments that have been put, to think that there will be opportunities to get that framework more closely in line with what we would like. Andrew, is there anything you would like to add to that?

**Mr Scallan:** The only point to add, in relation to the management of the referendum itself, the Commission suggested that it should be very clear that the Chief Accounting Officer has a power of direction over local Counting Officers, and that was one of the issues that was

brought into the North East Referendum, but it is very clearly that it facilitates the management of the referendum.

**Q177 Baroness Jay of Paddington:** Specifically continuing with the 2004 Referendum, we heard some evidence earlier that the Electoral Commission had great difficulty in deciding between two groups who came forward to represent the “noes”, as it were, which had been officially designated as the one to carry that banner; and we have also heard, for example, this morning what people feel on the academic side about referendums in other countries – New Zealand and Ireland specifically this morning – about transparency and clarity about funding particularly and who gets the funding, and whether or not it can be influenced by individuals, et cetera, is very important. So I wonder if amongst the lessons you learnt from 2004 was one about the difficulties of designating an official group who could be funded and how much more difficult that might be if it was something which was very high profile like, for example, a referendum on Europe.

**Ms Watson:** I think it is fair to say that we found it not so difficult to designate, but those that we did not designate did not agree with our decision, and that might be a different interpretation of the situation. I think in approaching the designation process we are clear that we are looking for a campaign organisation to be a yes or no campaign that had a broad base of support and I suppose our starting position would be that that is likely to be an umbrella type of organisation which brings together perhaps a range of political views within it. From our perspective I would say that I am clear about how we would approach that; that does not mean to say that everybody will agree with the decision that we make. I would like to stress that it is not entirely a paper exercise and in such a situation were we to receive a request to be designated to the yes or no campaign we might well decide that we wanted to see people and talk to people and ask them different questions before we made that decision. In relation to the transparency of funding, it is again worth me sharing with you that

of course the grant that we give to those designated campaign organisations is not intended to cover the whole of their spend for the referendum campaign; it is designed to cover essential core costs. Again, we would want to anticipate any organisation that is designated would be able to raise funds from other sources and not public funds to work towards its campaign. Kay, is there anything that you would like to add to that?

**Ms Jenkins:** Just to add that I think on the designation process one of the lessons that we have learnt from the North East experience is that we would increase the transparency of our own decision-making process so that we would publish an application form, and indeed publish the applications that we receive on the website and make clear the criteria by which we are making our decision, so that the process is as open and transparent as we can make it.

**Q178 Baroness Jay of Paddington:** But you are neither of you concerned that in a broader referendum in terms of the numbers of people involved and the national issues concerned that you would get a substantial number of legitimate umbrella organisations competing in a way which would make it more difficult.

**Ms Watson:** That is of course possible; we could, and I think we would approach that situation as it arose on the facts. There is nothing to stop us from saying that we think there are a couple of good organisations here and you do want to go away and talk to each other and think about whether there is some kind of different organisation that you feel you might come to. It has often struck me that much of what we do around referendums is a little like the aircraft black box – it is all happening there but it is not always visible to everybody, and I think that the point Kay makes about transparency is pertinent.

**Q179 Lord Lyell of Markyate:** You talked earlier in your answer about the problem of groups with a common agenda, and then you used the expression how you would police that agenda. It did not sound terribly democratic but I assume you were just talking about the

amount of money that you could dish out. How much money were you dealing with and is that what you meant or did you want to police things more widely?

*Ms Watson:* I apologise if it did not sound very democratic. We do have a regulatory role in relation to financing of referendum campaigns, so if I might tackle that and, Kay, I might turn to you for the supplementary part. The point I was trying to make is that in a referendum campaign if you want to spend more than £10,000 in that campaign you need to register with us as a campaign organisation, and at present there is nothing in the legal framework to stop possibly hundreds of campaign organisations being set up, funded through the same route and working to a common agenda in terms of providing the question outcome. What we have said – and indeed we have seen in the amendments to the Constitutional Renewal Bill – is that we would like to see the ability to aggregate that spending so that if there are groups that are working to a common agenda, whatever that is, they have to aggregate their spending together. So, to give you a very practical example: if both of them working to a common agenda spend £50,000 they both have to declare £100,000 because that is the common spending, and that is the point I was making about the aggregated spend. Kay, do you want to add to that?

*Ms Jenkins:* Just in relation to the grants that we would give to designated organisations. One of the issues there is that we are required to pay grants to organisations which are designated the lead campaign organisations and obviously those are grants of public money. We would seek to have as much probity in that process as we can by paying 30 per cent of the grant to the organisations upfront, and look to pay the remainder of the grant after the campaign has finished, on evidence of appropriate spending, so that we can protect public money as much as we can. Obviously otherwise there is a danger of us paying the grant upfront to an organisation that is set up for the sole purpose of a referendum and then disappears afterwards.



**Q180 Baroness Quin:** Perhaps I should declare an interest as an enthusiastic campaigner on the losing side in the 2004 referendum campaign. Our previous witnesses this morning I think argued very persuasively that referendums, if they are going to be well run and seen to be valid, should be preceded by as long a period of information as possible and I wondered if this is anything that the Electoral Commission has taken a stance on?

**Ms Watson:** We certainly do not think that the period should be any shorter, but we have not taken a view on whether it should be/could be longer; whether that would help people understand it more easily. But I certainly would not want to see a shorter period than that which we currently have. I think that there is possibly a question beyond that, if I may, which is the type of information that voters would need in order to be able to make their decision, and that again comes back to the request that we would like to have a public awareness power. So it might be that you have a range of campaign material but that we could also provide information for people, possibly through a household booklet, if we thought that that was necessary.

**Q181 Baroness Quin:** Similarly, have you taken any view on the complexity of particular issues being subject to a referendum? We have talked about a lot of different referendums so far – some of them on fairly straightforward issues and some of them on extremely complex issues. Is that something on which the Electoral Commission has a view?

**Ms Watson:** It is something that we would be extremely concerned about in terms of the role that we have to give advice on the question. So it speaks to the heart of part of our role in a referendum campaign. What we would want to do in terms of giving our advice on the question for any referendum would be to test the kind of question that is put with voters, to see how they engage with it and what they think the question means; so if they vote yes or no is that what they meant to do. We would want to do a lot of plain English testing and talk to people who were accessibility specialists who could help us understand how people might

approach that question. On the broader point about the kind of topics that might be put to the referendum I think it is usually possible to make most things comprehensible but one of our concerns would be if there was a question that seemed to need a rather long preamble before it – that is something we would be keen to avoid. So you can usually reduce things to a simple question but it needs work to do it, and we would anticipate that it – which is I suppose a very practical answer to your question – would probably take us about ten weeks to do that work in order to be clear that we had been able to do the right kind of work with voters and that we had been able to be very sure that the question was comprehensible. In the North East Referendum we did suggest changes and those were, I think, almost overwhelmingly taken on board.

**Q182 Lord Woolf:** To some extent you have covered what I want to ask already, but I would like you to focus on the spending control powers that you have. Do you think that they are adequate?

*Ms Watson:* Yes. I assume, my Lord Chairman, that there is a follow up to that!

**Q183 Lord Woolf:** In order to police what you are involved in are you adequately funded?

*Ms Watson:* That is a separate question. Perhaps let me supplement my first answer. Yes, I think they are. Obviously the powers that we currently have will be supplemented with those that will come to us we hope at the beginning of July this year, through the Political Parties and Elections Act, and those are currently in a statutory instrument which is going before the House. That will give us new powers, which will apply to both elections and, for your purposes, referendums, which will include monetary penalties and which will also include a new power called a stop notice, which enables us in real time, so within a referendum campaign, to be able to intervene if we think a particular campaign organisation is likely to break the law. We did not have those powers previously and hopefully from 1 July we will

have them, and I think that gives us a very significant addition to how we can regulate. Are we funded adequately? In relation to the costs of any referendum the process for agreeing our budget is that we would need to return to the Speaker's Committee and request the funds to carry out the work on that referendum because although we can obviously project ahead and think that there might be a referendum in this year and these would be the costs that we might need, until that is certain we would not be granted those funds from the Speaker's Committee.

**Q184 Lord Lyell of Markyate:** This rather comes back to my policing question. You did not have any teeth before but now you have teeth and are you going to be able to stop people communicating their views by saying, "You have already spent everything communicating this particular type of view, or somebody else has already spent it; so shut up"?

**Ms Watson:** I do not think I would quite say that we did not have teeth but we certainly have a better set of teeth now, or we will have after July than we had in the past. That is exactly the purpose of the stop notice – to enable us to intervene in that kind of situation or possibly another kind of situation. Where we felt that the law on spending was being broken yes, it does give us the ability to do that.

**Q185 Lord Lyell of Markyate:** But what does it mean? Supposing people start writing to the newspapers saying that they want yes or no in a particular referendum, and supposing the newspaper takes it up and publicises it, how does that all fit in with your stop notices? Are you going to tell the newspapers to censor themselves?

**Ms Watson:** The regulatory framework that we have relates to those organisations that are either designated yes or no campaigns and who would have to follow a certain framework, or who are campaigners who want to spend over £10,000 in a referendum campaign and therefore would have to register with us. If they want to spend below £10,000 then that is a different scenario; but I think your question is one which goes to the heart of a free press and

we do not have the ability to say to the media, “You cannot give your opinions within a referendum campaign.” We certainly would not be able to have the ability to stop individuals writing letters to the press within a referendum campaign; indeed, I would argue that that is at the heart of the kind of debate and deliberative process that a referendum is designed to encourage. But if there were organisations who have come to us and said, “We want to be permitted participants; we want to be part of the process,” and we then think, for example, that they are acting in concert or that they are not declaring things or that they are spending in a particular way, then, yes, we would be able to intervene. Kay, I do not know if there are any practical scenarios that might illustrate that?

*Ms Jenkins:* I think that the analogy is like an election, in fact, in that there is debate about the issues in an election in the press, in the way that there would be during a referendum, that spending controls apply to candidates and parties in an election campaign and the spending controls would apply to the campaign organisations in a referendum. It is actually very similar.

**Q186 Lord Lyell of Markyate:** Buying television time as opposed to having an editorial decision to have a discussion.

*Ms Watson:* Yes.

**Q187 Lord Lyell of Markyate:** You are shaking your heads in agreement and that is what you mean?

*Ms Watson:* Yes.

*Ms Jenkins:* Any money spent on advertising, for example, would be controlled as part of the campaign spending and would be regulated.

**Q188 Lord Wallace of Tankerness:** You mentioned the testing questions and I understand that your powers extend to commenting on the intelligibility of the referendum question. But what if the position of the Electoral Commission, having done some testing, was to go back to the Secretary of State and say, “We actually think that the question is a very bad question,” and the Secretary of State said, “That is too bad, it is the one that is going on the ballot paper.” What would be your response to that? Do you think that that is an area where perhaps your powers should be extended?

*Ms Watson:* I think our view would be that it would be extremely unlikely for a Secretary of State to be in receipt of our advice with the documentation and the testing and everything that we have done being published transparently and decide not to listen to our advice, because inevitably what that does is to set up a debate between the Electoral Commission and the Secretary of State where we are effectively saying, “Your question is not the question which should be put,” and in that situation I think it would be extremely difficult for the Secretary of State to proceed.

**Q189 Lord Wallace of Tankerness:** So would become a political issue.

*Ms Watson:* It would, and I should assure the Committee that in such a situation we would be extremely robust about ensuring that our views were known and the transparency that we have already discussed I think would be helpful in that regard.

**Q190 Lord Wallace of Tankerness:** One of the other possibilities that we have discussed is the possibility of multi-option referendum and indeed I know that you have indicated in your evidence that you do not have any responsibility should any referendum take place under the auspices of the Scottish Government, where it is suggested there that there might be a multi-option referendum. Perhaps you can speak freely because you do not have a statutory role – do you have any views on a multi-option referendum?

**Ms Watson:** If I may, my Lord Chairman, whatever I say here will be taken as expressing a view on a multi-option referendum question and what we have said is that any question that would be put to the voters would be tested and our view on any question would be guided by the voters' response to such questions. Kay was indicating that she wanted to come in.

**Ms Jenkins:** I just wanted to say as well that in looking at the question we would also look from the voter perspective at how they were able to frame their answer, so that in a multi-option question we would be testing how the voter was able to answer the question straightforwardly or not.

**Q191 Lord Lyell of Markyate:** What factors do you bear in mind in appointing designated organisations and then setting them grants?

**Ms Watson:** I think I alluded to this in an earlier answer; that our premise would be to say that we would like to see organisations which could command as broad a base as possible of support and so we would be looking for an umbrella type organisation with a credible structure behind it in order to make sure that the public money that is given through the grant can be appropriately spent. As Kay mentioned earlier, we would put in place our own controls on when we might release that money to be sure about that.

**Q192 Lord Lyell of Markyate:** You are really trying to prevent some fly-by-night organisation wasting the money, are you?

**Ms Watson:** We are trying to do two things, I think. One is to make sure that the money is adequately stewarded and well spent and that the grant goes to an organisation which has the potential, through the fact that it has broader support, to raise more money to campaign effectively. But we are also trying to ensure that in any designation process, be that yes or no, that where we can those organisations which we designate have a broad base of public support. So it is a twofold aim.

**Q193 Lord Woolf:** I would like to follow up, if I may, this idea of taking into account potential voters' views of what should be the question. I am puzzled about that because it is not a matter on which voters are trained to give you a response. We have heard evidence indicating how very difficult it is to decide how the question should be framed, and if you were to go to an untutored body to find what should be the question are you not going to create problems?

**Ms Watson:** I would start personally from a slightly different premise, which is that I think most things can be explained and distilled down to a reasonably simple premise. Our reason for going to voters to say, "This is the question that has been put so far; will you help us work it through?" is precisely to see whether or not that question can be understood by what we might at one time have described as the man on the Clapham omnibus, because it is the man on the Clapham omnibus who is going to have to decide the result of the referendum. So if there is a potential for misunderstanding, much better for us to know that and test it and to give some views on that prior to, rather than putting a question that we then find has been approached in a different way by voters; and I think that is the perfectly appropriate way to conduct the testing because that is what we have to have at the end of it – a question that can be easily understood by the majority of the population. Kay, do you want to add anything to that?

**Ms Jenkins:** It might help if I explained just briefly what the process would be that we would do that. We would use a public opinion research company and we would have – I dread the term – focus groups to look at the question, and we have used that process so far in responding to draft referendum questions, and found that to be very valuable. So you have groups of potential voters looking at particular words, which to you and I may seem straightforward – the use of words like committee and council – but how those might be understood by people who are not familiar with the mechanics of Government in their every

day lives. So we will be looking at how voters would respond to the language in the question, and if they were able to make a decision based on the words that are put before them on the ballot paper.

**Q194 Lord Woolf:** Your experience is very limited in practice so far because there has really only been one relevant referendum for which you have been responsible. To what extent have you studied and heard the views of experts on the different bodies such as yours, and the problems that they have had?

**Ms Watson:** We always look for international experience and comparisons, and indeed in the working through of our approach as it is now we have looked at some international experience, and either of my colleagues may want to give more details about that. You are right to point out that we have only had one referendum in ten years, but actually that is quite a good one for the purposes of the issue that we are discussing because that did relate to an issue of Government in a particular area of England, which was not, I think it is fair to say, generally widely understood, and there was a good deal of work that had to be done to make sure that that question was as clear as it could be. So that has been quite an instructive experience. I do not want to know if you want to pick up anything more on the international side, Andrew.

**Mr Scallan:** On the international side certainly we are aware of the nature of the processes other bodies have been through. Coming back to the national picture, whilst we have only had one question that has been used in a referendum we have also been consulted by committees in local government on the wording of questions around changes in the local government arrangements and the wording of questions, and have gone through the process that Kay explained and have been accepted by CLG, although not used in any referendum; but the basis for our response to the suggested questions has been accepted.



**Q195 Baroness Jay of Paddington:** You may feel that this falls into the category of a constitutional question rather than one which you want to deal with in terms of the mechanics, but it does seem to me that talking about complexity that one of the potentially most complex situations is where you try to combine a General Election and a referendum issue, and you have said that obviously if that arose you would deal with it on a case by case basis. But you must have some views about that, which are, as it were, not theoretical because it may indeed become a very practical question?

*Ms Watson:* I am very happy to answer that question. What we would want to do in the case of the combination, whether with a UK Parliamentary General Election or any other form of combination, is to look very clearly at the situation at that time and to set out what we saw to be the benefits and the risks of such a combination, and to be very clear about how one might mitigate any risks that could arise. So to give you an example: were we to be in a situation where there was a suggestion of the combination where a new piece of electoral law was to be implemented for the first time, even at election, we might find ourselves having a more substantial risk and we might conclude – might – that that might not be able to be mitigated. But equally, we might conclude that combining might have positive benefits in terms of turnout. So I think that is the kind of pattern that we would want to look to and we would again want to be transparent in saying, “This is the situation as we see it.”

**Q196 Baroness Jay of Paddington:** But it would be in terms of mitigation of risk with which you would be primarily concerned?

*Ms Watson:* It would be the benefits of a combination and any risks and therefore what steps might be taken in mitigation.

**Q197 Baroness Jay of Paddington:** I know it is a theoretical question, but can you hypothecate about what might be those risks that you would have to deal with?

*Ms Watson:* One of them for example would be if voters in that General Election were casting their votes or there was some kind of administrative change that Returning Officers in that election might be implementing for the first time, where we might in such a situation conclude that to add a referendum on top of that might – and I stress might because we would want to look at every situation on its merits – not be desirable; or that it was a risk but it could be managed and there would be ways to mitigate that risk.

**Q198 Lord Wallace of Tankerness:** Going back to the question about getting public awareness, we heard evidence earlier this morning that in Ireland, the first Lisbon Referendum, an Irish High Court judge was in charge of the public information campaign – doubtless not a skilled communicator; and in the second one there was a skilled communicator, and it was suggested to us that that made a difference. I want to know what you think your skill sets are that you can combine the quite important work of communication along with the very important work which you do in terms of the regulation and conduct of elections. The two are quite distinct.

*Ms Watson:* Yes, they are, but – and it is perhaps very obvious to us so it is perhaps worth me explaining it for the benefit of the Committee – that kind of communication work is something that we do all the time. We are doing it now in relation to the forthcoming General Election. I am quite prepared to lay substantial sums of money on the fact that none of you will have seen any of the communication work that we are doing because you are not our target audience in terms of those who might not be on the electoral role for that registration. So, for example, we are doing work with overseas voters to make sure that they know how they can register, with service voters, with members of the Armed Forces who are going to vote perhaps serving in Afghanistan; with young people in the run-up to the election, targeting them because we know that they will not be on the register; people living in private rented accommodation who perhaps move a great deal. So although our campaigns are

generic in the run-up to the election they are heavily weighted towards those who have an under representation on the electoral register. I would say that the population of the Electoral Commission is also not our target audience – our staff, I would hope, are on the electoral register. So what we do is the same kind of thing that Kay discussed earlier on; we test those campaigns with the people that we want them to reach and we make sure that the arguments we use work with those people; we make sure that they address the problems and concerns that they have in terms of getting on to the register. So the skill set that we have is not that we are in that demographic group and therefore we understand how to put things, but that we know how to put together a good communications campaign that can be easily comprehended by those that it needs to reach, and on that I would be extremely confident because it is work that we do all of the time.

**Q199 Lord Wallace of Tankerness:** Can I just clarify, is that raising awareness of the fact that there would be a referendum on such and such a date, or do you think that that also extends to being able to present, in a balanced way but in a way which engages, the issues which are at stake in that referendum?

**Ms Watson:** The experience that we have all the time would relate to, “Here is what you have to do in order to be able to vote and actually here is how to vote,” because let us not forget that not everybody knows how to vote and people in the UK vote in many different ways at different elections. But I would not have any doubt in saying that the skills that my staff deploy in relation to that area could equally well be deployed in relation to marshalling different arguments and presenting those clearly. I am absolutely confident about that.

**Q200 Lord Rodgers of Quarry Bank:** May I turn back to the eligibility question, and I am looking at paragraph 5.4 in the document that you sent to us. In a sense we recognise it is commenting on this rather feeble way of the role, but you say here about the discussions with

key stakeholders. Let us talk about a referendum on voting. Who would you – and the Prime Minister would make a proposal as I understand it – be discussing with the key stakeholders?

*Ms Watson:* In relation to any referendum I would want to make sure that we talked to those who might be campaigning in such a referendum and to political parties, but the predominant ---

**Q201 Lord Rodgers of Quarry Bank:** Forgive me, I did not quite understand. The Prime Minister has decided to have a referendum and put forward a draft, is that right? But there are no campaigning organisations by that stage, are there?

*Ms Watson:* No, but we would have an idea. For example, in the case relating to the North East Referendum we would have spoken to a range of people who were already active, both thinking about that referendum, people know that referendum is coming. There may be organisations that might be getting themselves organised to ask us to be the no campaign and there will be people getting themselves organised to ask us to be the yes campaign, and we would want to talk to them and we would want to talk to political parties. But our primary body of evidence, to give our views on the intelligibility of the question, would be the work that we would do with voters, with plain English specialists and looking at things like the accessibility of the design of the ballot paper. So whilst I would want to have as broad a process as possible our final decision would be shaped more by the voters' experience and engagement with the question, as we could judge it. Kay, I do not know if there is anything that you want to add to that?

*Ms Jenkins:* It is really to ensure that we are not just not making a decision based on a group of officials of the Electoral Commission; that we are getting as broad a spectrum of views as we can, and that we will consult the new campaign in any particular case.

**Q202 Lord Rodgers of Quarry Bank:** In the North East when the question came forward, where did it come from? There must have been a question and you then discussed it and consulted. Where did it come from?

*Ms Watson:* From the Government.

**Q203 Lord Rodgers of Quarry Bank:** And it was submitted and how long did you have to consult before?

*Ms Watson:* Before giving our view? We will have to go away and look at precisely how long we had.

**Q204 Lord Pannick:** Can I follow-up on Lord Wallace's question about whether you should have more extensive powers to provide information to the public. I well understand the strength of the argument that of course you should have extensive powers to inform people about the existence of a referendum, how to vote and process questions. I am a bit troubled about the idea that you should be able to provide information about the substantial content of the arguments on each side. My concern is – because however hard you try these are inevitably subjective issues – about whether the Commission can maintain the appearance of impartiality in a regulatory sense if it is at the same time descending into the grubby arena of the merits of competing arguments, even if only to present them in as objective a way as you can.

*Ms Watson:* I think that is why we have said that what we would like in terms of those powers is that we would like to have to run work which is about, "There is a referendum coming; here is how you participate in it; here is how you register to make sure you can." And that we may present information in terms of wider public awareness about the issue, and that is a question that we would decide on the merits of each case. So, for example, in relation to the designation of yes/no campaigns, if we cannot designate both we cannot designate either.

So were we to find ourselves in a position where we had a lot of arguments on one side and perhaps a lot of organisations coming to us saying, “We would like to be designated on one side of the argument but we could not find anybody to designate on the other, or there was not an appropriate organisation” we cannot designate at all, and in that situation we would need to think very carefully about what we might provide to put the facts on those different sides.

**Q205 Lord Pannick:** Is that a realistic problem, though, given that one is assuming that there is a referendum? This suggests, does it not, that there is a major issue on which different views are taken and it is highly likely, is it not, that you would be able to find someone to designate it.

**Ms Watson:** I would hope and our presumption would be that we would always seek to designate and that is the posture – that we would seek to designate rather than seeking to hold that in any way for ourselves. But I could not be categorical about it, particularly given our wish to make sure that we designate organisations that have a broad base of public support. Kay, do you want to add anything to that?

**Ms Jenkins:** Just that it is a question of scale as well. In a UK-wide context it seems inconceivable that there will not be campaigners on both sides of the debate, but you could have a campaign in a region of England or within Scotland and Wales where the debate is ranged up largely on one side and not on the others, and so there is this fallback provision essentially for the Commission that in such circumstances we could step in and provide public information if it were needed. But, as Jenny said, ideally we would want to designate the campaign organisations because they are clearly the best organisations to present arguments about the issues of debate.

**Q206 Lord Shaw of Northstead:** Dealing with the possibilities of future referendums coming along, any future referendum obviously has to start in Parliament and it has to go

through the due processes there, but is Parliament limited as to what it can put in to the referendum legislation by what are the powers that you already possess? Or can it build in conditions that really go against the things that you are working for? In other words, how free is Parliament to put what it likes into the terms of the referendum?

*Ms Watson:* Parliament can decide to hold a referendum on whatever subject it would wish and our role relates to assessing the intelligibility of that question, registering the participants, acting as Chief Counting Officer in that referendum and making sure that the thing is well run. So it seems to me that those roles are quite clearly separate. Of course, we could find ourselves in a situation where we assess a question as being a bad one and I think in that case the Secretary of State would be bound to say, “Actually, I am going to listen to the Electoral Commission’s advice.” Beyond that I cannot think of anything else that I would want to stress.

**Q207 Lord Shaw of Northstead:** Timing and things like that, that that is flexible, and you just pick up the terms of the referendum and deal with it.

*Ms Watson:* Yes.

**Q208 Lord Shaw of Northstead:** How long it takes.

*Ms Watson:* The regulated period is clearly set; yes. But I should perhaps say that it is also possible for referendums to be initiated within local government and indeed one of the interesting things – and this perhaps takes me into category that I said I did not want to go into, but I shall venture there anyway – is that you can see that we have a very clear role in relation to a referendum that comes from the Westminster Parliament which related to governance in Wales, but it is possible for local people in Greater Manchester to be consulted without a congestion charge without us having any say or any oversight of that referendum

whatsoever. So I think it is important for the Committee's deliberations, if I may, my Lord Chairman, to remember that it is not only PPERA referendums that exist – there are others.

**Chairman:** Jenny Watson, Andrew Scallan and Kay Jenkins, thank you very much indeed for joining us this morning and for the evidence which you have given; you have been most generous with your time and it has been extremely helpful.