



Democracy
Volunteers

**Response to the All-Party Parliamentary Group on
Electoral Campaigning Transparency**

By Dr John Ault and Harry Busz

28th July 2019

Introduction

Democracy Volunteers welcomes the formation of the All-Party Parliamentary Group on Electoral Campaigning Transparency and the research that you are undertaking to try to improve the conduct and oversight of elections in the UK. There are many areas which will receive comment from other organisations and, whilst we might have interest in some of these, we feel it is most appropriate to deal with those specific to election observation and how it is conducted in the UK.

In general, we have a few areas on which to comment but overall we would identify topics which have not been included in the area for review as ones which are equally important, and arguably more common place, than some of the challenges that have been identified. We wish to highlight:

- The narrow focus of the review, which misses out critical issues related to electoral fraud and the Electoral Commission's interaction with these such as family voting, postal voting and misconduct in polling stations.
- That dealing with some of these 'analogue' challenges would allow authorities to deal with the failings identified by the review in the new digital age.
- That third parties can find traditional ways to influence elections such as pressuring voters with the aid of technology, for instance the challenge of digital photography, in polling booths.

Transparency

How elections are run, how campaigns are conducted and how the process is accessible to the public as well as for observation are fundamental to a transparent democratic system. We support some of the suggested aims of the APPG in creating an environment where it becomes both the norm, and the legal framework, for election expenses to be produced online for a wider audience and for parties to be required to use their imprints on online election material, in the same way that they do for printed materials.

However, we believe that these changes should be in the context of a broader review of the UK's electoral law, and whilst we concede these might be simple successes we also feel that there is a requirement to assess electoral law on a wider basis in the context of modern political campaigning, whilst still conducting elections essentially in the same manner they have been conducted for the past century.

We believe an important aspect of improving transparency is to have a greater awareness of election observation as a fundamental part of the UK's political landscape. Often election administrators are unaware that election observation is even a possibility but, used properly, it can be an added level of deterrence against election malpractice and work as an effective bulwark against inefficient election administration. It can make elections more transparent as members of the public can observe polling operations and compare them to the standards

that are expected. We would argue that the identification of unsealed ballot boxes, something that would be considered extremely concerning in less developed democracies, goes almost unmentioned in the UK on the occasions we have observed it. Allowing (and even encouraging) observation more widely would allow for greater public trust in elections, as well as for greater trust among parties and candidates due to the independent oversight which occurs during polling operations when under observation.

Whilst we concede that much of modern campaigning is done online, we also believe that some aspects of campaigning have not changed over recent years, such as election literature being given to voters. This literature can often appear in polling stations, indeed in a recent election observation in Northern Ireland, Democracy Volunteers observed election literature being left in polling booths in 19% of polling stations. Whilst this may not be seen as being as immediately as challenging to the democratic process as newer forms of campaigning, there can be little doubt it had an impact on these polling stations.¹

Deterrence

With respect to deterrence, Democracy Volunteers welcomes the expansion and clarification of the jurisdiction of the Electoral Commission. Interference, foul play and a poor understanding of electoral laws are witnessed at many of the polling stations our organisation observes.

Many of the issues which we commonly encounter, such as family voting, improper campaigning on the ground and, more recently, the use of technology in order to record one's supposedly secret ballot, pose a serious threat to the integrity and validity of elections in the UK. As such we believe, as the Electoral Commission aims to support well run elections, that these areas must be focussed on in addition to campaign finance as elections move into the digital age.

Codes of practice for campaigners

Operations concerning the ground activities of elections and referenda are overseen by the Electoral Commission through their publication, *Code of Conduct for Campaigners*, which covers electoral registration, postal voting, proxy voting and polling station malpractice. From our perspective, the advice given in this publication are of crucial importance to securing free and fair elections, and the circulation of this to political parties and candidates contesting elections is welcomed.

However, with regards to these issues the Electoral Commission has a relatively weak level of enforcement, with the document acting as a guide rather than carrying any significant legal backing through the Commission's PPERA (2000) duties. Complaints are made to local

¹ <https://democracyvolunteers.org/2019/07/02/final-report-northern-ireland-local-elections-02-05-19/>

authorities as a first port of call with the Electoral Commission acting as an advice giver. After this, criminal proceedings will be brought if the offence is deemed to be worthy of such intervention. We believe these actions are concerning as it shifts responsibility away from a central governing body leading to variance in its application and removes the expertise the Commission has, from direct investigation.

Electoral Interference

The dangers to the democratic process of modern technology are not simply limited to the impact of modern online campaigning techniques. The use of modern technology can allow for greater control over voter behaviour from outside actors.

In the recent Peterborough parliamentary by-election our observer team identified a growing practice of voters photographing their ballot papers. Whilst some have suggested this is to show their contempt for the electoral process and arguably those standing for election, this appeared to be on a more organised level than merely using social media to express discontent.

Mobile phones allow voters to not only photograph their ballots but also to disseminate that information. At present it is not illegal to take a photograph of one's own ballot paper, but it is a potential breach of the secret ballot if someone else disseminates the image. The Electoral Commission discourages the practice but is unable to legislate to limit the use of photography in polling stations. The innovation of such availability of this phone function and the ready means to communicate that to others is clearly a potential weakness of the present legislation concerning the secret ballot.

We would recommend that this is outlawed as it could be possible to check how voters have voted if some unscrupulous individual wished to do so. We believe there was evidence in the Peterborough by-election to suggest that photography was undermining some individuals' rights to have a secret ballot as this information appeared to be for dissemination rather than personal use.²

Public Engagement in Preventing Electoral Fraud

The UK's electoral framework is Victorian in origin and the details of electoral misconduct are unclear to many voters. In some cases, election malpractice is not, in reality, an intended action of the voters than conduct them. The most obvious case is that of so-called 'family voting'. This occurs when two or more voters enter a polling booth together and collaborate on how to vote. We see this a great deal in the United Kingdom. In the recent local elections in Northern Ireland, where we attended 23% of all the polling stations, we observed this in almost half of the polling stations we attended – affecting 9% of those voters we observed.

² <https://democracyvolunteers.org/2019/06/24/final-report-peterborough-parliamentary-by-election-06-06-19/>

The fact that almost 1 in 10 voters either had oversight of another's vote or could not vote in secret is clearly a challenge to our democratic process.³

What is interesting is that when we observe other European countries, this behaviour is much less common than in the UK. We believe in the cases of both The Netherlands and Finland that this is because they have public information programmes concerning this kind of unacceptable practice and signage in polling stations to discourage it.

In Finland, these forms of public engagement and electoral education are actually an aspect of secondary and adult education programmes where the public is given 'fake news' awareness so that they are more aware of the various campaign methods that are being used to affect their vote, whether legitimately or otherwise.

We believe that one of the fundamental failings of the UK's own regulatory system is that there is a presumption that the Electoral Commission is even able to conduct oversight of the electoral process when, in reality, they are only responsible for giving advice to those who actually conduct elections⁴ – the returning officers based in local councils.

The public should be a key part of the prevention of electoral fraud which is one of the reasons for the creation of the citizen observer group, Democracy Volunteers. By having greater numbers of independent observers overseeing elections there would be greater confidence in the process for voters and those conducting elections themselves.

Placing observation as a cornerstone of making elections more transparent

Election observation is an internationally accepted aspect of elections. As part of the OSCE the UK is a signatory to the Copenhagen Agreement which requires member states to issue invitations to observe elections to the OSCE/ODIHR and any other interested and qualified organisations.

The UK's Electoral Commission is responsible for administering and accrediting those who seek to be observers. The process is open to anyone who has not been subject to a conviction for an electoral offence in the past 5 years, is over the age of 16 and can produce appropriate identification. Observers must also commit not to be engaged in political activity and have to sign a declaration similar to that required of party activists attending counts and polling stations during an election.

Observation, though something which has been available to interested parties for some years now, continues to be at the periphery of electoral management. Fewer than 500 people are accredited observers in the UK, of which many are civil servants, but the potential role of

³ <https://democracyvolunteers.org/2019/07/02/final-report-northern-ireland-local-elections-02-05-19/>

⁴ Except in the case of referenda.

observers to function as part of the deterrence process, and to aid the transparency of elections, should not be underestimated. However much the powers of the Electoral Commission are extended, or increased, their capacity to assess every polling station during an election is implausible.

Whilst we appreciate that the nature of this review by the APPG is primarily aimed at newer issues which concern elections, such as the use of online campaigning and online reporting, we do feel that this is to ignore other aspects of elections which are equally under threat from interference and where transparency can be enhanced.

As things stand, election observers are afforded reasonable access to the election process in polling stations and at counting venues to check that the electoral process is being conducted properly. As has recently been discussed, especially around the Peterborough By-election, postal voting is an area which is open to some question as it can be manipulated by those that seek to affect the voting behaviour of others. We feel this constitutes a significant challenge to the electoral process and should be open to greater oversight by independent observers. At the moment voters are simply required to sign a form to state they are conducting their vote in secret, but it is impossible to check if this is the case.

Greater checks should be in place to limit the capacity for this process to be manipulated which can be independently verified by observers. Perhaps the UK should move to a position where advance voting is a possibility in the UK, reducing the necessity for postal voting.

Conclusion

We would like to thank the APPG for this opportunity to comment on this review. We would welcome the opportunity to comment further as some of our suggestions do not easily fit within some of the aspects of the review. We do feel, however, that some of the infractions we see on a regular basis are significant challenges to the democratic process and ones which should be given consideration alongside those being considered for the advent of more technologically advanced aspects of campaigning.