



## BRIEFING PAPER

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# Intimidation of candidates and voters

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## Summary

This briefing outlines the background to the expected new electoral offence of intimidation of candidates and the expected update of the electoral offence of undue influence. In a [written statement](#) on 9 March 2021, the Minister of State for the Constitution and Devolution, Chloe Smith MP, confirmed that the Government would legislate in due course.

The new offence is expected to tackle intimidation that aims to shut down debate but is not intended to stifle free speech. The offence will add an electoral sanction to intimidatory behaviour already illegal by preventing those found guilty from standing for office for five years. It is not designed to infringe freedom of expression under of Article 10 of the *Human Rights Act*.

This briefing also examines 'undue influence', the electoral offence of intimidating voters. The Government has also committed to clarifying this offence and extending it to intimidation of voters outside polling stations.

The offence of intimidation of candidates is being created amid wider concerns about online abuse and misinformation. The Library briefing, [Regulating online harms](#), looks at Government plans to regulate harmful content online more broadly.

Concern has grown in recent years that candidates and elected representatives are facing increasing threats, both on and offline. This is particularly the case for female and ethnic minority candidates. The murder of MP Jo Cox during the 2016 EU referendum campaign brought the issue into sharp focus.

During the 2017 General Election campaign, many candidates reported that the levels of abuse were the worst they had ever experienced. Concerns were expressed that the levels of abuse were putting people off standing for public office and it was damaging for democracy.

Following the 2017 election, the then Prime Minister, Theresa May, asked the independent Committee on Standards in Public Life (CSPL) to conduct a short review of the issue of intimidation experienced by Parliamentary candidates and public life more broadly. The CSPL report, published in December 2017, made over 30 recommendations. These were targeted at social media companies, political parties, the media and all those in public life.

One of the recommendations was that the Government should consult on a new crime in electoral law of intimidating candidates during an election period. The Committee noted that the existing criminal law was sufficient in punishing the sorts of intimidatory behaviour. However, it concluded that the threat of intimidation posed to the democratic process and the integrity of elections meant it would be appropriate to formulate a specific electoral offence. This would:

serve to highlight the seriousness of the threat of intimidation of Parliamentary candidates to the integrity of public life and of the electoral process, and will result in more appropriate sanctions. (Page 60-61)

In March 2018 the Cabinet Office responded to the CSPL report and committed to consulting on a new electoral offence of intimidation of candidates. The Government published its consultation document on 29 July 2018, [Protecting the Debate: Intimidation, Influence, and Information](#) and the response to the consultation [was published](#) in May 2019.

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In May 2019, the Metropolitan Police Commissioner, Dame Cressida Dick, [told the Joint Committee on Human Rights](#) that threats to MPs are at “unprecedented” levels and women and people from ethnic minorities were being disproportionately targeted.

In October 2019, the Joint Committee published a report, [Democracy, freedom of expression and freedom of association: Threats to MPs](#). It drew attention to the ongoing threats to MPs and people standing for office. It highlighted some progress made since the CSPL report but noted that:

The level of abuse faced by elected representatives and others in public life is now so great it is undermining their engagement with constituents, how they express themselves on social media, and carry out their democratic duties. (Page 3)

The Joint Committee said it would comment on the new offence when legislation was published.

# 1. Why are the Government legislating?

Following the 2017 General Election, the then Prime Minister, Theresa May, was asked about intimidation in the recent election campaign. At the first Prime Minister's Questions session of the 2017 Parliament she was asked "what can be done to stop such intimidation, which may well put off good people from serving" in Parliament.<sup>1</sup>

The Prime Minister subsequently requested that the Committee on Standards in Public Life (CSPL) should conduct an inquiry into abuse and intimidation experienced by Parliamentary candidates saying:

I have been horrified by stories from colleagues about the scale and nature of the intimidation, bullying and harassment they suffered during the general election campaign.

Robust debate is a vital part of our democracy, but there can be no place for the shocking threats and abuse we have seen in recent months.<sup>2</sup>

BBC Radio 5 Live surveyed MPs elected at the 2017 election. The survey received replies from 113 MPs and 51% said it was the worst campaign they had experienced and nearly all, 87%, said they had experienced some form of abuse during the campaign. MPs of all parties had been targeted.<sup>3</sup>

On the day the Prime Minister wrote to the CSPL, a debate was held in Westminster Hall on the abuse and intimidation that had been experienced by Parliamentary candidates and their supporters in the 2017 General Election.<sup>4</sup> Another debate was held in the main Chamber on 14 September 2017 on the same issue.<sup>5</sup> Many Members speaking in the debate gave graphic examples of the sort of abuse they have regularly received as candidates during elections and as Members of Parliament. This included death threats, rape threats, racial abuse, antisemitic abuse, and party-political abuse that goes well beyond robust debate with political opponents, for example targeting people because they have displayed a party election poster.

During the July debate Diane Abbot MP noted that in her experience the abuse had got worse in recent years in general and not just at election time. She highlighted, like many others, that the rise of social media and the ease of sending online messages had made things worse saying, "I think the rise in the use of online media has turbocharged abuse".<sup>6</sup>

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<sup>1</sup> [HC Deb 28 June 2017, c585](#)

<sup>2</sup> Cabinet Office press release, [Review into abuse and intimidation in elections](#), 12 July 2017

<sup>3</sup> BBC News, [MPs tell of death threats and abuse at 2017 election](#), 18 September 2018

<sup>4</sup> [HC Deb 12 July 2017, c152-71WH](#)

<sup>5</sup> [HC Deb 14 September 2017, c1041-83](#)

<sup>6</sup> [HC Deb 12 July 2017, c159WH](#)

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A Demos report on digital politics in the UK, published in 2017, noted the potential for MPs to engage with the electorate using social media saying “86% percent of British MPs are on Twitter, sending tens of thousands of tweets a year, and many are active across multiple platforms”. However, it also noted the ease with which people could dish out abuse online:

What is clear though, is that the anonymous and ‘safe distance’ nature of social media platforms allows such abuse to be handed out far less respectfully than it would usually be if delivered face-to-face.<sup>7</sup>

Amnesty International analysed nearly a million tweets from 1 January to 8 June 2017, with a focus on the six weeks prior to the 8 June UK election to find the scale of abuse against MPs. Over 25,000 abusive tweets were sent to women MPs.

Amnesty found that in the six weeks in the run up to the general election Diane Abbot received over 4,500 abusive tweets, which was 45% of the total sent to all women MPs, 10 times more abuse than any other woman MP in the run-up to the election.<sup>8</sup>

The All-Party Parliamentary Group (APPG) Against Antisemitism found in its research that abuse of candidates could also come from other candidates. The APPG commissioned an inquiry into electoral conduct in 2013 with two follow up reports in 2015 and 2017.<sup>9</sup> When launching the first inquiry the then Chair of the Backbench Business Committee, Natascha Engel said:

This inquiry is unique. It is the first-time parliamentarians have systemically analysed electoral life with a view to eliminating racism and discrimination from it. We achieved cross-party consensus on issues of vital importance to our democracy.<sup>10</sup>

Witnesses detailed incidents of intimidation, discriminatory leafleting and other campaign malpractice.<sup>11</sup>The inquiry heard evidence from a wide range of politicians and groups. Its report stated that:

We were particularly shocked by some of the electoral campaign stories that we heard during the oral evidence sessions. A key problem in addressing this issue is that it has not been the focus of any significant research.<sup>12</sup>

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<sup>7</sup> Demos, *Signal and Noise Can technology provide a window into the new world of digital politics in the UK?* May 2017, p4

<sup>8</sup> Azmina Dhrodia, *Unsocial Media: Tracking Twitter Abuse against Women MPs*, Amnesty Global Insights, 4 September 2017.

<sup>9</sup> *All-Party Parliamentary Inquiry into electoral Conduct: 2015 General Election update*, May 2015; *All-Party Parliamentary Inquiry into electoral Conduct: Final update*, July 2017

<sup>10</sup> Natascha Engel, *All-Party Parliamentary Inquiry on Electoral Conduct publish recommendations*, 29 October 2013

<sup>11</sup> *Report of the All-party Parliamentary Inquiry into Electoral Conduct*, October 2013 p10

<sup>12</sup> *Ibid*, p9

## 2. Committee on Standards in Public Life inquiry

The terms of reference for the Committee's inquiry were formally set out in the Prime Minister's letter of 17 July 2017:

To review the intimidation experienced by Parliamentary candidates, including those who stood in the 2017 General Election. The committee may also consider the broader implications for other candidates to public office and public office holders.

The review should:

- Examine the nature of the problem and consider whether measures already in place to address such behaviour are satisfactory to protect the integrity of public service; and whether such measures are (a) effective, especially given the rise of social media, and (b) enforceable;
- Produce a report for the Prime Minister, including recommendations for action focused on what could be done in the short- and long-term and identifying examples of good practice.<sup>13</sup>

Lord Bew, Chair of the Committee, called for evidence from interested parties, saying:

Public life and parliamentary democracy needs people from a diverse range of backgrounds to be willing to step forward. Abuse and intimidation cannot be acceptable within our political culture; we want to hear views on how to address this without stifling the robust debate or differences of opinion that are fundamental to our democracy.<sup>14</sup>

Political parties and social media companies were among those that gave evidence to the inquiry.<sup>15</sup>

The Committee's final report was published on 13 December 2017. It made a number of recommendations aimed at social media companies, political parties, elected representatives, the media and government.<sup>16</sup>

The Committee noted that intimidation at elections did not occur in a vacuum, saying:

This can be a result of an unhealthy public discourse of those in public life – including the media – needlessly undermining trust in public institutions, or poor standards of conduct in public life.<sup>17</sup>

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<sup>13</sup> [The Prime Minister's letter to CSPL on the intimidation of Parliamentary candidates](#), 17 July 2017

<sup>14</sup> CSPL press release, [Intimidation in Public Life: CSPL publishes terms of reference and calls for evidence](#), 24 July 2017

<sup>15</sup> [Intimidation in public life collection](#)

<sup>16</sup> [Intimidation in Public Life: A Review by the Committee on Standards in Public Life](#), 13 December 2017

<sup>17</sup> *Ibid*, p30

### Box 1: Definition of intimidation

The Committee noted it was difficult to pinpoint a definition of intimidation. For the purposes of the review the Committee's definition of intimidation was:

Words and/or behaviour intended or likely to block or deter participation, which could reasonably lead to an individual wanting to withdraw from public life.

It went on to say:

Intimidation can include physical violence, threats of violence, damage to property, and abusive online and offline communications, amongst other activities. Sometimes, the collective impact of a number of individual actions can also be intimidating, for example where people become subject to co-ordinated social media attacks.

Intimidation is different from the legitimate persuasion or influence which takes place as part of the democratic process; intimidating actions are not political pressure. Instead, they are intended and likely to cause an individual to withdraw from a public space, including social media, public events, or from public life altogether. This can have the effect of limiting freedom of expression by 'shouting down' opponents.<sup>18</sup>

The Committee heard how racist, sexist, homophobic, transphobic and antisemitic abuse has put off candidates from standing for public office. If not addressed the Committee said, "we could be left with a political culture that does not reflect the society it should represent".<sup>19</sup>

The report noted the rise of social media has been one of the most significant factors in facilitating intimidation and changing how the public interact with candidates and elected representatives. Whilst this has the benefit of allowing citizens to communicate with those standing for office and their elected representatives more directly than ever before, the Committee noted that:

The platforms are designed and optimised to generate an emotional response as this generally increases user engagement that is critical to commercial success. This can take a dark turn when that emotive content is intimidating.<sup>20</sup>

In a separate report in 2019, on local government standards, the CSPL heard evidence that suggested that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, "when it does occur, often takes similar forms and is equally severe and distressing", particularly for high-profile women in local government.<sup>21</sup>

## New electoral offence

In the Committee's view, tackling intimidation would enhance debate and scrutiny of elected representatives and allow for freedom of expression to continue to be an important part of public life:

Freedom of expression is an important part of a vibrant public life, and our democracy depends on those with different viewpoints disagreeing well. Intimidation aims at shutting down debate –

<sup>18</sup> Ibid, p26

<sup>19</sup> Ibid, p29

<sup>20</sup> Ibid, p31

<sup>21</sup> CSPL, [Local Government Ethical Standards A Review by the Committee on Standards in Public Life](#), p39



cutting off participation and engagement...Tackling this intimidation, far from threatening genuine democratic debate and scrutiny, will serve to enhance and protect it. Indeed, in order to represent all legitimate interests all voices should be heard so that the democratic process can be maintained.<sup>22</sup>

One of its recommendations was that the government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners.

The Committee's conclusion was that current range of offences were sufficient to tackle the sorts of intimidatory behaviour experienced by candidates, whether carried out online or elsewhere. However, it did hear from concerns about the "sufficiency of the current law to deal with intimidatory behaviour on social media".

The Committee summarised the existing offences in its report.<sup>23</sup> It concluded that a new electoral offence, while going no wider than existing offences would help protect democratic processes by adding an electoral sanction to any criminal sanction:

No behaviour which is currently legal should be made illegal. However, we believe that the introduction of a distinct electoral offence will serve to highlight the seriousness of the threat of intimidation of Parliamentary candidates to the integrity of public life and of the electoral process, and will result in more appropriate sanctions. We believe that specific electoral offences will also serve as an effective deterrent to those who are specifically targeting Parliamentary candidates and their supporters. .<sup>24</sup>

The Committee noted the "high evidential threshold for prosecution as well as a relatively demanding public interest test" for online abuse to be considered for prosecution. The Crown Prosecution Service's (CPS) guidance indicates the threshold when prosecuting cases involving intimidatory social media posts which fall short of being threats of violence, being considered a hate crime, or communications targeting specific individuals, such as blackmail or stalking.

The CPS' high evidential threshold required to proceed with a prosecution requires a social media post to be "grossly offensive". Hate crimes often have a disproportionate impact on the victim because they are being targeted for a personal characteristic. Prosecutors will take into account any hate crime context as appropriate when assessing whether the high threshold is met for grossly offensive material.

The high threshold for "grossly offensive" posts reflects how commonplace offensive comments are in everyday life and the need to protect the right to freedom of expression under Article 10 of the European Convention on Human Rights.<sup>25</sup> The CPS guidance says prosecutors should only proceed if they are satisfied there is sufficient evidence that the grossly offensive communication in question is the

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<sup>22</sup> [\*Intimidation in Public Life: A Review by the Committee on Standards in Public Life\*](#), 13 December 2017, p28

<sup>23</sup> *Ibid*, p58

<sup>24</sup> *Ibid*, pp59-61

<sup>25</sup> *Ibid*, pp63-4

high threshold necessary to protect freedom of expression, even unwelcome freedom of expression. The freedom of expression still allows offensive, shocking, disturbing, satirical and rude comments.<sup>26</sup>

### Other recommendations

The CSPL also echoed the [Electoral Commission's recommendation](#) that digital campaign material, including on social media, should carry an imprint to show who is responsible. Printed campaign material is already required to show this. to show who is behind the campaign and who created the materials. The Electoral Commission believes that online campaign material should be covered by the same requirement (it already is for Scottish Parliamentary elections).

The Committee also recommended that the requirement in electoral law that the home address of candidates in local council elections should no longer appear on ballot papers. This requirement had already been removed for UK Parliamentary elections. The Committee heard evidence that “had been a significant factor in enabling intimidatory behaviour, or would put them off from standing as a council candidate due to the risk of intimidation”.<sup>27</sup> This provision has now been put in place for all elections.

Other recommendations aimed at social media companies included that they must take responsibility for developing technology and the necessary options for users to tackle the issue of intimidation and abuse on their platforms. The Government's proposals for regulating online harms takes some of this work forward, although the online harm regulation will follow a different regulatory model than that proposed by the CSPL.<sup>28</sup>

The Committee made several recommendations for political parties. It said that political parties had a responsibility to:

- To show leadership in setting an appropriate tone for public debate around elections for their campaigners and supporters;
- To tackle intimidatory behaviour undertaken by their members;
- To provide support to their candidates who face intimidation during the election

In the report, Lord Bew said:

Political parties will need to work together to address intimidation in public life; they should not use this report and its recommendations for partisan purposes or political gain.” In particular, the Committee recommended party leaders should lead by example in calling out intimidatory behaviour and parties should set clear expectations about expected behaviour. The Committee also recommended that parties must recognise their

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<sup>26</sup> CPS, [Social Media - Guidelines on prosecuting cases involving communications sent via social media](#)

<sup>27</sup> [Intimidation in Public Life: A Review by the Committee on Standards in Public Life](#), 13 December 2017, p61

<sup>28</sup> Library briefing, [Regulating online harms](#)

duty of care to candidates and members and provide better support.<sup>29</sup>

The CSPL also recommended that political parties must work together to develop a joint code of conduct on intimidatory behaviour during election campaigns.

## Government response

The Government's response was published in March 2018. It welcomed the CSPL report and recognised the wide-ranging recommendations made by the CSPL:

All of us in public life have a responsibility to challenge and report intimidating behaviour wherever it occurs. We must set a tone in public discourse which is neither dehumanising nor derogatory and which recognises the rights of others to participate. These responsibilities fall on each of us as individuals and, collectively, on the political parties.<sup>30</sup>

The Government agreed that with the recommendation that it should consult on the introduction of a new offence in electoral law promised a consultation in the summer of 2018.

It noted that the current electoral offence of "undue influence" only relates to voters. Undue influence is where someone directly or indirectly makes use of or threatens to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel that person to vote or refrain from voting.<sup>31</sup>

The Government also noted that the existing offences relating to intimidation are not electoral offences. There are certain electoral offences that can be taken into account by an election court if such acts adversely influenced the election.

In May 2018 the Government asked the Law Commission to review the criminal law to assess the extent to which the current law achieved parity of treatment between online and offline offences. The ongoing work by the Law Commission is detailed on their website, [Reform of the Communications Offences](#).

On the recommendations aimed at political parties the government said it was supportive of the recommendations "but recognises that ultimately these are matters for the political parties."

**It did not propose to take up the Committee's recommendation on political parties** developing a joint code of conduct on intimidatory behaviour, saying:

This may create delays towards action by individual parties, given there are over 300 registered political parties. However, the Government does believe that, as a matter of self-regulation, each registered political party should draw up and publish a clear statement of the standards expected of its members, affiliated

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<sup>29</sup> [Intimidation in Public Life: A Review by the Committee on Standards in Public Life](#), 13 December 2017, p7

<sup>30</sup> Cabinet Office, [Government response to the Committee on Standards in Public Life Review of Intimidation in Public Life](#), 8 March 2018

<sup>31</sup> Section 115 of the *Representation of the People Act 1983*, as amended

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groups and activists, and how the party would uphold such standards in this code.<sup>32</sup>

The CSPL published an update in December 2020 which included a recommendations tracker. On developing a joint code of conduct on intimidatory behaviour during election campaigns the Committee worked with the Jo Cox Foundation to take forward this recommendation.<sup>33</sup>

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<sup>32</sup> Cabinet Office, [Government response to the Committee on Standards in Public Life Review of Intimidation in Public Life](#), 8 March 2018

<sup>33</sup> The Jo Cox Foundation and CSPL [Joint statement on conduct of political party members](#), December 2020

## 3. Proposed new law and consultation

The Government published its consultation document on 29 July 2018, [\*Protecting the Debate: Intimidation, Influence, and Information\*](#).

The consultation covered three areas:

- A new offence of intimidation of candidates,
- Clarification of the electoral offence of undue influence, and
- Digital imprints for electronic campaign material.

On the intimidation of candidates, the Government sought views on various aspects of the proposed new offence.

### 3.1 Intimidation of candidates

#### **Who should be covered?**

The CSPL recommendation for a new electoral offence was aimed at Parliamentary candidates. The Government proposed that candidates at all elections for which the UK Government is responsible for legislating should be covered.<sup>34</sup> This would be UK Parliamentary elections and all other elections in England and Northern Ireland.

Scottish and Welsh local and Parliamentary/Senedd elections are devolved. The devolved Parliaments and Governments would be responsible for legislating if they wanted to extend similar provisions to devolved elections.

The Government intends the new offence to cover campaigners and sought views on whether people agreed with this approach. The consultation notes that there is no current definition of who is classed as a 'party campaigner'. The Government said it would work with the CPS to try to establish a satisfactory and precise definition of campaigner to allow the new offence to incorporate campaigners.<sup>35</sup> This should also cover referendum campaigners.<sup>36</sup>

#### **What would the offence cover?**

The Government proposed to create the new offence on the basis of behaviours which are already illegal. The CSPL had noted that current criminal law was sufficient in covering the full range of cases of intimidation.

The new electoral offence would do this by adding an electoral element to all existing criminal intimidatory behaviour by applying at election time and where the intimidatory behaviour is against a candidate or campaigner. Adding an electoral element allows an appropriate electoral sanction to apply (see below).

The Government was clear that although this new offence would not be a 'catch all' to stifle debate and disagreement. The proposed offence

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<sup>34</sup> Cabinet Office, *Protecting the Debate: Intimidation, Influence, and Information*, 29 July 2018, p26

<sup>35</sup> Ibid, p27-8

<sup>36</sup> Ibid, p25

would be compatible with freedom of expression protected by European Convention on Human Rights. The CSPL report, as noted above, highlighted that a communication must be 'more than simply offensive, shocking or disturbing.'

The Government proposal was that the new electoral offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner. The consultation document gives the example, "a person who assaults a candidate for election should not be guilty of the new offence simply because their victim is such a candidate". Even if the offender knows the victim is a candidate the election may not be the reason for the offence. The consultation notes, "the general criminal law would, of course, continue to apply in such cases. But in our view it would not be appropriate for electoral sanctions to apply as well."<sup>37</sup>

### **When would it apply?**

The Government proposed that the new offence should apply during a regulated election period. This is the 25-working-day period from the notice of election to polling day for most local elections (for London Assembly and Mayoral elections this is 30 days). For Parliamentary elections the regulated period starts from the dissolution of Parliament or, for by-elections, the issue of the Writ. The start of the regulated period is usually the earliest someone can officially become a candidate and the regulation of election expenses and donations apply.

Many candidates know they will be standing in a forthcoming election before the notice of election. However, the Government noted that this could vary and the time period where restrictions apply would not be sufficiently clear unless restricted to the regulated period.

The Government also noted more broadly that it supported the CSPL recommendation that political parties continue to set clear expectations about behaviour of their members and supporters, prohibiting intimidatory behaviour and ask that party members to challenge intimidatory behaviour, both inside and outside of the electoral period.<sup>38</sup>

The Government proposed that the end period for the electoral offence would be seven calendar days after polling day. This proposal takes account of the different times when a term of office commences, and the time frames during which certain elected candidates must declare their acceptance of office. For example, local councillors in England take office four days after polling day and the councillor must declare their acceptance of the seat within two months.<sup>39</sup>

Electoral offences are investigated by the police and prosecution decisions lay with the prosecuting authorities in each of the legal jurisdictions of the UK.

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<sup>37</sup> Cabinet Office, *Protecting the Debate: Intimidation, Influence, and Information*, 29 July 2018, p31

<sup>38</sup> Ibid p29

<sup>39</sup> Ibid

### What would the penalty be?

Intimidatory behaviour would be subject to existing criminal law and corresponding sentence. The consultation document included a list of sanctions under the existing offences cited in the CSPL report. For example, common assault can have a maximum penalty of six months imprisonment and a fine.<sup>40</sup>

In addition, the Government is proposing an extra electoral element to act as a deterrent to intimidatory behaviour from taking place during the election period.

Certain existing electoral offences carry with them the label 'corrupt' or 'illegal' practices. Corrupt practices attract a more serious sanction. Electoral offences carry sentences in the normal way, maximum penalty on indictment for a corrupt practice is a year's imprisonment or fine or both and for an illegal practice on summary conviction is a level 5 fine.<sup>41</sup>

In addition, electoral offences labelled as corrupt and illegal practices also carry a democratic sanction. People convicted of corrupt and illegal practices are barred from holding elective office for five (corrupt) or three (illegal) years. Certain voting offences also can also carry the sanction of being disqualified from being registered as an elector or voting for a similar period.

The Government proposed that the new electoral offence should be labelled a 'corrupt' practice. This would prohibit offenders from standing for elective office for five years but the Government is not proposing to disqualify offenders from registering to vote. The consultation paper stated:

In the case of intimidating a candidate or campaigner, the perpetrator is not taking away another's right to vote but rather potentially impacting for whom they may vote. We do not propose that individuals found guilty of the new electoral offence of intimidation have their voting rights removed.<sup>42</sup>

The Fawcett Society has called for a lifetime ban from standing for elected office for those who promote violence or rape. An open letter to the Government, signed by organisations including the Jo Cox Foundation and by politicians from several parties, said:

some of those responsible for issuing threats to women have then gone on to stand for election themselves. Surely anyone who issues threats of rape or violence or who incites hatred is not fit to stand for elected office?<sup>43</sup>

## 3.2 Undue influence

The consultation also included questions on the electoral crime of undue influence. Undue influence relates to intimidation of voters. It is one of the 'classic' electoral fraud crimes that date from the Victorian

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<sup>40</sup> Ibid, p52

<sup>41</sup> CPS, [Election offences](#)

<sup>42</sup> Cabinet Office, *Protecting the Debate: Intimidation, Influence, and Information*, 29 July 2018, p24

<sup>43</sup> Fawcett Society, [Fawcett open letter calls on Government to impose lifetime ban on candidates who promote violence](#), 22 May 2019

era, when much of the law around electoral processes was first drafted. Undue influence is labelled a 'corrupt practice' in electoral law. The Law Commission summarised the offence as trying to get someone to vote in a particular way, or persuading someone not to vote as follows:

- pressure and duress - whether it involves physical violence or the threat of it;
- trickery - to cover devices and contrivances such as publishing a document masquerading as a rival campaign's; and
- abuse of a position of influence: where a special relationship of power and dependence exists between the person exerting the influence and the voter.<sup>44</sup>

The Law Commission noted that the existing offence "is poorly expressed in legislation" but that the safeguarding voters from intimidation, physical compulsion and improper pressure remains important. It had recommended in 2016 that the law on undue influence should be modernised and be restated as an offence of intimidation, deception and improper pressure on voters.<sup>45</sup>

The Commission noted:

It is thus desirable that the offence should be redrafted and modernised so it can be understood by candidates and campaigners, by police officers called upon to investigate complaints, by prosecutors who must decide whether to prosecute, and by the courts.<sup>46</sup>

The Government's consultation agreed that the offence should be retained and needed clarifying, saying the offence as currently drafted was complex and "difficult to interpret and use".<sup>47</sup> The Government asked questions on the scope of undue influence. It intended to maintain the general purpose of the offence, that it should refer to threats of violence, non-physical threats of harm, duress and should also continue to apply after polling day. For example, a person may be threatened or harmed after the election on account of having voted or refrained from voting.<sup>48</sup>

The consultation also included questions on extending the offence of undue influence to protect voters from intimidation outside polling stations. The Pickles Review into electoral fraud raised concerns about this and the uncertainty of whether an offence had been committed in such circumstances.<sup>49</sup> Pickles cited the mayoral election in Tower Hamlets in 2014, where the result was overturned as a result of electoral fraud.<sup>50</sup> One of the concerns had been the level of intimidation

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<sup>44</sup> Law Commission, Scottish Law Commission Northern and Ireland Law Commission [Electoral Law: A Joint Interim Report](#), 2016, p141

<sup>45</sup> Ibid, p150

<sup>46</sup> Ibid, p147

<sup>47</sup> Cabinet Office, *Protecting the Debate: Intimidation, Influence, and Information*, 29 July 2018, p35

<sup>48</sup> Ibid, pp36-7

<sup>49</sup> Sir Eric Pickles, [Securing the ballot Report of Sir Eric Pickles' review into electoral fraud](#), August 2016

<sup>50</sup> BBC News, [Tower Hamlets election fraud mayor Lutfur Rahman removed from office](#), 23 April 2015



of voters outside polling stations. Pickles quoted the judge in the Tower Hamlets case :

Despite clear evidence of intimidatory behaviour during the Tower Hamlets election court case, Richard Mawrey QC noted that the bar was just too high to meet the test in criminal law. He noted: "The court appreciates that many in Tower Hamlets will be disappointed, even horrified, that the 1983 Act does not penalise thuggish conduct at polling stations of the sort that occurred in 2014."<sup>51</sup>

The Government consultation asked whether intimidation at a polling station should be included in the offence of undue influence and if so whether it should "include behaviour which falls below the current requirement of physical force, violence or restraint".<sup>52</sup>

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<sup>51</sup> Sir Eric Pickles, [Securing the ballot Report of Sir Eric Pickles' review into electoral fraud](#), August 2016, p9

<sup>52</sup> Cabinet Office, [Protecting the Debate: Intimidation, Influence, and Information](#), 29 July 2018, p39

## 4. Consultation response

### 4.1 Intimidation of candidates

The Government's response to the consultation [was published](#) in May 2019.<sup>53</sup>

A total of 41 responses were received, including responses from six political parties, nine public sector and civil society organisations, local government, two social media platforms, academics, journalists, a think tank and members of the public.

75% of respondents broadly agreed with the approach set out in the consultation of applying an electoral sanction to existing offences of intimidatory behaviour, although concerns were expressed by some about the interaction of the new offence with the right to freedom of expression.

The Government confirmed it would move forward with the proposed new offence as set out in the original consultation document, although it agreed that for UK Parliamentary elections it would be appropriate to extend the period in which the new offence would apply (see below).

The Conservative Party and Liberal Democrats agreed with the new offence. Labour Party and the SNP disagreed with the concept of a new offence. The Labour Party said the proposed new electoral offence would duplicate offences. It favoured replacing the offence of undue influence to incorporate intimidation and undue influence. The SNP favoured removing the concept of corrupt and illegal practices in electoral law and instead attaching electoral consequences to sentences for other crimes if there is a proven link to elections.<sup>54</sup>

85% of respondents agreed that the offence should apply at all polls and include referendums.<sup>55</sup>

65% agreed that campaigners should be included under the proposed new electoral offence. The Association of Electoral Administrators (AEA) and some local councils suggested that Returning Officers and their staff should also be protected under the new electoral offence.<sup>56</sup> The Government reiterated it would work with the Attorney General's Office and the Crown Prosecution Service to develop a clear definition that protects campaigners but it did not think there was a need to extend the protection to Returning Officers and their staff.

71% of responses agreed with the sanction of prohibiting someone from standing for an elected office for five years (making the offence a 'corrupt practice'). Some responses were concerned that the sanction would not be a sufficient deterrent. 57% thought that the new offence should not remove an offender's right to vote. Some respondents

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<sup>53</sup> Cabinet Office, [Protecting the Debate: Intimidation, Influence and Information: Government response](#), May 2019

<sup>54</sup> Ibid, pp17-8

<sup>55</sup> Ibid, p20

<sup>56</sup> Ibid, p22

emphasised that removing the right to vote should not be used lightly as it is a fundamental right in a democratic society.<sup>57</sup>

85% of respondents agreed that the offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner.<sup>58</sup>

57% of respondents agreed that the protection should start from the period of notice of elections. 47% thought there should be a period of time before the notice of elections during which the protection should be applied. Some respondents highlighted that in practice candidates and campaigners are often actively campaigning before the regulated period and are therefore potential targets of abuse and intimidation for longer. 50% of all responses agreed with the proposal that the protection offered by the offence should end seven calendar days after the close of the poll.

### **UK Parliamentary general election candidates**

The Government agreed that the period where the new offence applies should last longer than the normal 25-day election timetable period for UK Parliamentary general elections. This would apply for the 'long campaign' regulated period.<sup>59</sup> For other elections the period when the new offence applies would be from the publication of the notice of election until seven days after the poll, as set out in the consultation document.

The 'long campaign' applies at the end of a five-year Parliament and relates to pre-election spending limits before Parliament is dissolved. The limits on campaign expenditure by individual candidates are set out in the *Representation of the People Act 1983*, as amended.<sup>60</sup>

The maximum a Parliament can run is five years (60 months after the day on which it first met). If a Parliament goes beyond 55 months, sitting MPs who intend to seek re-election and anyone who declares their intention to stand at the forthcoming election are subject to campaign spending limits in the last five months of the Parliament. This is known as the 'long campaign' and the limit the prospective candidates can spend on campaign activity and literature is set out in the legislation. The long campaign ends when Parliament is dissolved and the regulated period of the general election starts, sometimes known as the 'short campaign'. New spending limits apply for the short campaign. In the event of a 'snap' early election before the Parliament has reached 55 months in duration only the short campaign applies.

The Government response concluded, "As it is likely that campaigning will take place during the long campaign it is right that we seek to protect against intimidation during this timeframe, in addition to the notice of elections period."<sup>61</sup>

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<sup>57</sup> Ibid, pp19-20

<sup>58</sup> Ibid, p25

<sup>59</sup> Ibid, p24

<sup>60</sup> Sections 76 and 76A

<sup>61</sup> Cabinet Office, [Protecting the Debate: Intimidation, Influence and Information: Government response](#), May 2019, p25

## 4.2 Undue influence

The response attracted high levels of agreement on the proposals included in the consultation document. 100% of respondents agreed that the offence needed greater clarity to make it clear and enforceable. There was clear support for maintaining the scope of the threat of harm to a voter as set out by the Government. News Media UK argued that the redrafted offence should target more precisely threats of physical harm and abuse of position. It highlighted that any redrafting of the offence should remove any ambiguity in order to ensure that 'harm' could not extend to causing offence or hurt feelings, nor should it punish political fervour.<sup>62</sup>

The Government response set out that the revised offence will encompass:

- physical acts of violence or threat of violence;
- non-physical acts inflicting or threatening to inflict damage, harm or loss;
- actions of duress;
- actions of trickery;
- acts which are intended to cause harm;
- direct and indirect acts which cause the elector harm;
- offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm; and
- acts which are carried out before and after the election.<sup>63</sup>

83% of respondents agree that the offence should capture intimidatory behaviour inside or outside polling stations. 73% of respondents agreed that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint.<sup>64</sup>

The Government intends to include intimidation inside or outside the polling station but acknowledged drafting the offence will be complex:

In terms of how the area included in 'inside and outside a polling station' would be defined or identified, the Government is aware that this won't always be as straightforward as it may seem as a variety of buildings are used to hold polls. Polling places which house the polling stations, and the grounds they sit in, vary in size, shape and space and it is difficult to define a standard radius.<sup>65</sup>

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<sup>62</sup> Ibid, p27

<sup>63</sup> Ibid, p29

<sup>64</sup> Ibid, p30

<sup>65</sup> Ibid, p30

## 5. Joint Human Rights Committee report – the threat to MPs

In 2019 the Joint Committee on Human Rights published a report, [\*Democracy, freedom of expression and freedom of association: Threats to MPs\*](#). It drew attention to the ongoing threats to MPs and people standing for office, particularly online, and the prospect that such threats were a threat to democracy. It also examined areas of particular concern to Parliament, such as the policing in Parliament Square.

The Committee was worried about the impact this could have on MPs interaction with their constituents and with democratic engagement. It highlighted concerns about MPs no longer being able to hold surgeries where constituents could turn up without an appointment and MPs becoming less available to constituents to help or debate issues. The Committee stated, “We are not an effective democracy if MPs have to look over their shoulder before they speak or vote”.<sup>66</sup>

Like the CSPL inquiry (see below), it demonstrated the issue of abuse of MPs was part of a wider discussion on the nature of public discourse, both on and offline. The Committee highlighted:

There are many different organisations and individuals involved. They include, but are not limited to: Government; the Parliamentary authorities; the police; the Crown Prosecution Service; private sector companies such as Facebook and Twitter; political parties; and those who take part in individual and organised campaigns.<sup>67</sup>

The committee also examined the threat to MPs in line with the fundamental right to freedom of expression was central to the democratic freedom.

The Joint Committee said it would comment on the new offence of intimidation of candidates when legislation was published. It also noted, like the CSPL, that political parties play a role in preventing abuse at other times of the year and that they must implement their codes of conduct.

The Joint Committee heard examples of MPs from different parties that, “their own parties had responded to their attempts to raise concerns defensively at best and aggressively at worst”. The Committee concluded:

Political parties have a responsibility to make clear they do not endorse intimidation and abuse. They must create a climate which makes it clear that abuse is not tolerated, and failure to abide by a party’s code of conduct is dealt with robustly and speedily.<sup>68</sup>

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<sup>66</sup> Joint Committee on Human Rights, [\*Democracy, freedom of expression and freedom of association: Threats to MPs\*](#), HC 37/HL 5 2019, October 2019, p6

<sup>67</sup> Ibid, p4

<sup>68</sup> Ibid, p49

## 22 Intimidation of candidates and voters

The Government published its response to the report on 22 March 2021.<sup>69</sup> The report reiterated the Government's commitment to introducing the new offence of intimidation of candidates. It highlighted other ongoing work, including legislating for the online harms regulator and the Law Commission review of abusive and offensive online communications.

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<sup>69</sup> [\*Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's First Report of Session 2019\*](#) , HC 1317 2019-21, 22 March 2021

## 6. Further reading

Crown Prosecution Service, [\*Responding to intimidating behaviour Information for Parliamentarians\*](#), March 2019

CSPL, [\*Intimidation in Public Life: progress report on recommendations\*](#), December 2020

Department for Digital, Culture, Media & Sport, [\*Online Harms White Paper: Full government response to the consultation\*](#), 15 December 2020

Equality and Human Rights Commission, [\*Equality and Human Rights Law during an Election Period Guidance for local authorities, candidates and political parties\*](#), April 2017

[\*Joint Guidance for Candidates in Elections\*](#), produced by the National Police Chiefs' Council (NPCC) Crown Prosecution Service (CPS), College of Policing and the Electoral Commission

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