

Watching the Watchmen

The Growing Case for Recall Elections and
Increased Accountability for MPs

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About the Author

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Members of the House of Commons have long flirted with the idea of British exceptionalism—citing the UK’s role as the ‘mother of all parliaments’, its unwritten constitution, its unitary voting system, and the principle of the sovereignty of Parliament over the people—as a bulwark against the instability customarily found in other western democracies. In modern times, this argument held water as it delivered stable parliamentary majorities, peaceful transfers of power between governments, and kept in check the ideological fringes of both major political parties. The current political crisis engulfing politics in the UK has thrown this long-held belief into question, and opened the debate for reform and greater accountability in the House of Commons.

The British public’s decision to vote to leave the European Union—despite opposition from the Government, major opposition parties, financial institutions, foreign governments, and most news media—demonstrated that the UK is not immune from the wave of popular discontent that has destabilised other countries. For many, the subsequent paralysis of both parliament and polity, born out of the Government’s—and the Opposition’s—inability to reach a consensus over Brexit has revealed deeper fault lines in the British political system. Demonstrating that far from being the cause, Brexit is in fact a symptom of a much wider disconnect between representatives and those they purport to represent.

Sadly, the foundation—and strength—of the UK system as one in which Parliament stands supreme naturally lends itself to an attitude amongst some Members of Parliament of being beyond reproach. The splendid isolation and grandeur of the Palace of Westminster taken together with the long unsociable hours of sitting appears to have severed the link between Members and their constituents. Many

parliamentary conventions and much procedure is arcane, which makes it difficult even for the most ardent politically engaged citizen to follow proceedings and debates in the House of Commons. This separation between the governors and governed is exacerbated further by the limited avenues available to the public to hold those elected to account, which is exemplified by recent political scandals, including allegations of bullying and sexual harassment in the House of Commons. At the time of writing this report, no MP has been forced out of office as a result of these allegations coming to light, even though several Members have lost their party’s respective whips and are still under investigation.

In spite of the Coalition Government’s passing of narrowly defined recall legislation in 2015, the question of whether constituents should be able to recall their MPs remains a contentious and unsettled issue. Currently, recall petitions can only be triggered if an MP is convicted of a crime and receives a prison sentence; is found to have made false and misleading expenses claims; or is suspended from the House of Commons for 10 sitting days. None of these circumstances requires any consideration of constituent’s views, due to a suspension from the House of Commons being dependent solely on the recommendation of Committee of Standards (whose membership is made up of other MPs). It is therefore unsurprising that this ‘self-regulated’ version of recall had, until a few months ago, rarely been used, and until recently, was unknown to much of the general public.

This report argues that there is an urgent case for updating the 2015 Recall Act to allow constituents to recall Members of Parliament as part of a package of wider democratic reforms. Recall is not a magical solution to the current crisis, but could be a useful

democratic lever and an effective deterrent against corruption. Any proposed extension is underpinned by a sound principle, namely: if voters can be trusted to elect Members of Parliament at a General Election without bias, prejudice, or the inducement of monetary gain, then they can be trusted to judge if and when their elected representatives deserve to be recalled.

In an age where much of parliamentary legislation and business is taken up with the passing of new regulations on key industries, the professions, and sectors of the economy in an attempt to break the strangle-hold of self-regulation, MPs cannot remain exempt without facing the charge of hypocrisy.

Recommendations

This report does not seek to minimise the complexities and risks of extending recall, however it does challenge false assumptions that stymie the public's ability to change the status quo ante. After careful consideration, it recommends the following:

- That the 2015 Recall Act be amended to allow constituent-led recall of sitting Members of Parliament.
- A two-tiered recall system, which should include the introduction of a threshold of 20% of registered electors to trigger a constituent-led recall petition in a parliamentary constituency within the current six week period (tier 2), while also keeping the current 10% threshold for the criteria already set out in the act (tier 1).
- A restriction on the time between a General Election and the triggering of a recall petition set at 18 months. This restriction would not cover the current criteria for triggering recall petitions as set under the 2015 Recall Act (tier 1), therefore MPs could still be recalled under those provisions.

- A new set of criteria for a constituent-led recall petition (tier 2) which would include the breaking of a manifesto promise, the removal of the party whip, the incumbent defecting to a different party, or voting against the direct interests of the constituency (while broad this would be defined and assumed to cover the constituency's economic interests).
- The review of the current code of conduct for Members of Parliament including clarification over the distinction made between actions taken in a Member's personal and private life, and where guilt is proven extending constituent-led recall (tier 2) in cases involving physical violence or sexual harassment.
- Maintaining the current exemption for sitting Cabinet Ministers from recall (both tier 1 and 2), but strengthening the Ministerial Code to ensure that its parameters are clarified and its violations are met with swift removal from office, followed by the triggering of a recall petition if necessary.
- The extension of constituent-led recall (tier 2) to devolved administrations and regional metropolitan mayors, as well as a consultation on the viability of extending it to local councillors and other elected representatives.
- A formal and codified outline of the role, responsibilities, and duties of a Member of Parliament to be introduced alongside any amendments to the 2015 Recall Act.

I. The Appetite for Change

The House of Commons is a crucible of the elected representatives that sit within it, reflecting the collective personal and professional experience of its members. The House of Commons is more diverse today than at any period of time in its

history, with 208 female MPs, 45 LGBT MPs, 52 ethnic minority MPs, and an increased number of disabled MPs.¹ However, it also remains made up of a well-educated, middle aged, and professional political class.² Assessing educational background alone, 82% of current MPs are university graduates, with nearly a quarter (24%) of MPs attending either Oxford University or Cambridge University alone.³ Turning to the professional background of MPs prior to the most recent election, the House of Commons Research Library found that 155 MPs (24%) worked in finance and commerce; 246 MPs (38%) worked within the sphere of politics either as councillors, party officials, trade unionists, journalists, or lobbyists; and 116 MPs worked in other professions including academia, engineering, and law (18%). In comparison the number of MPs who previously worked in manual occupation stands at 7 MPs (1.1%), 9 MPs (1.4%) have previously worked in the NHS, 4 MPs were in the armed forces (0.7%), and 6 MPs in agriculture and farming (1%)⁴.

This dominance of a class of professional politicians within the House of Commons, and its suggested distance from the lives of ordinary people, is reflected in opinion polls. A recent poll conducted by the campaign group HopeNotHate found that 68% of people feel that none of the main parties ‘speaks

for them’, and three-quarters of people think that politicians put the interests of ‘big business’ before ‘people like them’.⁵

Although the current erosion of trust in our political elite appears to have reached its zenith due to Brexit, public scepticism and distrust of politicians is not new. A YouGov poll in 2014 on public attitudes towards their elected representatives found that 48% of respondents considered politicians as ‘out for themselves’ and just one in ten felt that politicians ‘do what is right for the country’.⁶ However, when compared to similar historical polls⁷ there is a noticeable decline in contemporary public support for MPs, the catalyst of which can be directly linked to the MPs expenses scandal of 2009.

The Expenses Scandal

A decade since, and the parliamentary expenses scandal is still considered the epicentre of public disillusion with their elected representatives, and was the primary motivation behind the original introduction of limited recall legislation in 2015. The former Archbishop of Canterbury Dr Rowan Williams, ten years on, described it as a watershed moment which ‘confirmed some people’s worst suspicions that people in politics are there for

1 Social background of MPs 1979-2017 , House of Commons Research Library, 12 November 2018: <https://researchbriefings.files.parliament.uk/documents/CBP-7483/CBP-7483.pdf>

2 52% (339) of MPs elected in 2017 were aged over 50.

3 Social background of MPs 1979-2017 , House of Commons Research Library, 12 November 2018: <https://researchbriefings.files.parliament.uk/documents/CBP-7483/CBP-7483.pdf>

4 Social background of MPs 1979-2017 , House of Commons Research Library, 12 November 2018: <https://researchbriefings.files.parliament.uk/documents/CBP-7483/CBP-7483.pdf>

5 State of Hate 2019 People vs the Elite?, HopeNotHate, 17th February 2019: <http://www.hopenothate.org.uk/wp-content/uploads/2019/02/state-of-hate-2019-final-1.pdf>

6 Political disaffection is rising, and driving UKIP support, YouGov, October 29, 2014: <https://yougov.co.uk/topics/politics/articles-reports/2014/10/29/political-disaffection-not-new-it-rising-and-drivi>

7 Where 36% of people in 1944 and 28% of people in 1972 felt that politicians were out to do their best for the country. Political disaffection is rising, and driving UKIP support, YouGov, October 29, 2014: <https://yougov.co.uk/topics/politics/articles-reports/2014/10/29/political-disaffection-not-new-it-rising-and-drivi>

personal gain.⁸ The former head of the Electoral Commission Jeremy Watson has stated that, ‘we cannot underestimate the damage the issue of MPs’ expenses has done to public trust not just in politicians but in politics itself.’⁹

The scandal prompted by parliamentary records of MPs’ expenses being leaked to the Daily Telegraph, led to the resignation of several government ministers and the then Speaker Michael Martin; the imprisonment of two peers and five MPs; and 392 former and current MPs being ordered to repay £1.3m in mis-claimed expenses.¹⁰ The timing of the story only amplified its damaging effect, coming off the back off the 2008 financial crisis and one year before a scheduled general election.

The extensive and frivolous nature of some of the expense claims released solidified in the mind of the public an image of MPs as out of touch and self-serving. High profile examples included an MP claiming for a ‘floating house’ for a duck pond, another for the costs of cleaning a moat surrounding his home, and another claiming the cost of someone replacing faulty light bulbs. This was not helped by the defensive and in some cases tone deaf response of parliamentarians, with one MP suggesting that

public anger over expense claims for the upkeep of his large architecturally listed home was ‘a result of jealousy’.¹¹

A YouGov Poll published in June 2009 at the height of the expenses scandal exemplified the public anger, with 91% of the public stating that they felt ‘very angry’ over the scandal and 82% supporting the statement that MPs who have been caught up in the scandal ‘should resign immediately’.¹² A poll by Ipsos Mori found that 79% of the public supported the idea of allowing constituents to recall MPs and force a by-election if authorities find evidence of wrongdoing by a sitting MP.¹³

In the weeks following, the main party leaders tripped over each other to try and demonstrate that their own party was taking the toughest action in dealing with the scandal. Extraordinarily for the time, there were increased calls for the Queen to step in and dissolve Parliament after Prime Minister Gordon Brown refused to call an early General Election, including from the Daily Telegraph that broke the story, and from the Leader of the Conservative Party David Cameron.¹⁴ This would in effect have been considered a recall of the whole House of Commons, requiring all 650 Members to

8 Expenses scandal was ‘watershed’ moment, Expenses: The Scandal That Changed Britain, BBC Two, 25th March 2019: <https://www.bbc.co.uk/programmes/p074j124>

9 MPs expenses: scandal damage ‘cannot be underestimated’ says Electoral Commission, Telegraph, 1st July 2009: <https://www.telegraph.co.uk/news/newsttopics/mps-expenses/5707050/MPs-expenses-scandal-damage-cannot-be-underestimated-says-Electoral-Commission.html>

10 Expenses: MPs must pay back £1.2m after inquiry that cost £1.1m, the Guardian, 5th February 2010: <https://www.theguardian.com/politics/2010/feb/04/mp-expenses-report-thomas-legg>

11 The Electoral Impact of the UK 2009 MP’s Expenses Scandal, Charles Pattie & Ron Johnston, Political Studies 2012 Vol 60, 730-750: https://www.researchgate.net/publication/230531174_The_Electoral_Impact_of_the_UK_2009_MPs_Expenses_Scandal

12 How is public opinion playing out over MPs’ expenses?, Mark Pack, 2nd September 2009: <https://www.markpack.org.uk/4030/public-opinion-mps-expenses/>

13 Expenses Poll for the BBC Fieldwork: 29th – 31st May 2009, Ipsos Mori: https://www.ipsos.com/sites/default/files/migrations/en-uk/files/Assets/Docs/SRI_Politics_BBCExpenses_Topline.PDF

14 MPs’ expenses: the Queen has a role to play in stabilising government, the Telegraph, 18 May 2009: <https://www.telegraph.co.uk/news/newsttopics/mps-expenses/5341739/MPs-expenses-the-Queen-has-a-role-to-play-in-stabilising-government.html> & MPs’ expenses: join our call for an immediate general election, says David Cameron, the Telegraph, 19 May 2009: <https://www.telegraph.co.uk/news/newsttopics/mps-expenses/5346263/MPs-expenses-Join-our-call-for-an-immediate-general-election-says-David-Cameron.html>

face a re-election battle.

Out of the scandal came many suggestions for radical political and constitutional reform to meet the growing public discontent and 'fix a broken political system', including reform of parliamentary committees of the House of Commons, abolition of the House of Lords, a cap on political donations, electoral reform, further devolution, and the first serious discussion around the introduction of recall.¹⁵ Gordon Brown in his speech to the 2009 Labour Party conference in Brighton, called for constituents to have the right to recall their MP where there was proven financial corruption or in cases where wrongdoing had been proven and Parliament had failed to act.¹⁶ Meanwhile David Cameron responded by calling for Tory MPs caught up in the scandal to be deselected by local party chairs and piloting the use of open primaries in the selection of Conservative Party candidates to give voters a greater say over who represents them.¹⁷

Despite many of these suggestions finding their way into the main political parties' manifestos in the 2010 General Election and the subsequent Coalition Agreement between the Conservative Party and Liberal Democrats, by 2015 it was apparent to many voters that the radical constitutional reform once promised had failed to materialise.

Promises of electoral reform through the introduction of proportional representation were watered down to a public vote on a complicated alternative vote system, once referred to by the Liberal Democrat leader and Deputy Prime Minister Nick Clegg as a 'miserable little compromise',¹⁸ which was roundly rejected by nearly 68% of the public on a low turnout of 41%.¹⁹ Wholesale devolution was shelved in favour of city and later city-region deals, leaving a patchwork of combined authorities and elected mayors across the country with relatively limited powers. The commitment to reform of the House of Lords was quietly dropped by the Coalition Government in the face of both opposition from their own backbench MPs and the Labour Party in response to the legislation's programme motion.²⁰ Similarly, the promise of constituent-led recall was yet another casualty of the Coalition Government, replaced instead with a watered down version of limited recall in 2015.

As time passed, a growing feeling emerged amongst voters that the MPs involved in the expenses scandal had largely gotten away with it, despite the MPs expenses system itself being completely overhauled. Some pointed to the small number of criminal proceedings brought against the MPs in question by the Director of Public Prosecutions (and later Labour MP) Sir Kier Starmer, as evidence of this. While

15 Nick Clegg: Bar the gates. No summer holiday before the overhaul, Nick Clegg MP, the Guardian, 27th May 2009: <https://www.theguardian.com/commentisfree/2009/may/27/nick-clegg-a-new-politics>, Gordon Brown's Labour conference speech in full, the Guardian, 29th September 2009: <https://www.theguardian.com/politics/2009/sep/29/gordon-brown-labour-conference-speech-in-full>, & A new politics: We need a massive, radical redistribution of power, David Cameron MP, the Guardian, 25th May 2009: <https://www.theguardian.com/commentisfree/2009/may/25/david-cameron-a-new-politics>

16 Brown's Labour conference speech in full, the Guardian, 29th September 2009: <https://www.theguardian.com/politics/2009/sep/29/gordon-brown-labour-conference-speech-in-full>

17 Tories to stage 'open primary', BBC News, 10th July 2009: http://news.bbc.co.uk/1/hi/uk_politics/8143468.stm

18 Nick Clegg targeted as anti-AV campaign links him to broken promises, the Guardian, 5th February 2011: <https://www.theguardian.com/politics/2011/feb/05/av-get-clegg-campaign>

19 Vote 2011: UK rejects alternative vote, BBC News, 7th May 2011: <https://www.bbc.co.uk/news/uk-politics-13297573>

20 House of Lords reform halted after largest Tory rebellion of the parliament, the Guardian, 11th July 2012: <https://www.theguardian.com/politics/2012/jul/10/house-of-lords-reform-halted>

others considered the low number of MPs (87²¹) who stepped down, or were deselected as a result of the scandal, to be a failure of adequate retribution. Perhaps the greatest confirmation of this suspicion was the continued patronage given to some of the politicians involved, which included government posts, peerages, deputy-speakerships, and honours. Even the small number of MPs who were sent to jail, such as the former Minister Dennis MacShane, have since been able to resurrect their careers as political journalists and authors.

This failure to deliver constitutional reform and a sense of justice following the expenses scandal was exacerbated by the Government's decision to impose austerity on and unpopular cuts to public services, creating a cocktail of public discontent and cementing a distrust of the political class which would later impact on the 2016 referendum on the UK's membership of the EU.

Public Perceptions and Response

Since the expenses scandal, the British public's perception of its elected representatives has been rocked further by a series of individual and systemic scandals which have drawn into question practices that were previously considered acceptable or in the least passed without scrutiny. Incidents of drunken fights between MPs on the parliamentary estate led

to concerns over the operation of parliamentary bars;²² criticism of the common practice of MPs hiring family members as staff led to a partial ban;²³ and allegations of sexual harassment and bullying of staff led to an inquiry, bringing into question the role of MPs as employers.²⁴

The ongoing sexual harassment and bullying scandal has also demonstrated the limitations of the current parliamentary and party discipline processes. Despite several members having their respective party whips withdrawn no member has faced calls within the House of Commons to resign or been subject to a recall petition as the result of a Parliamentary Standards Committee inquiry. In the case of the Conservatives, certain individuals were even reinstated to vote in the Tory leadership challenge against Theresa May.²⁵

With hindsight it is unsurprising that the referendum called by David Cameron in June 2016 on Britain's membership of the EU might be used as an opportunity by voters to express their discontent with the elected officials from whom they felt increasingly cut off. Nor is it a coincidence that the Vote Leave Campaign's central message was based on 'taking back control', which spoke directly to communities that had long felt forgotten by politicians and the subsequent identification of 2 million non-voters who, in backing Brexit, appeared

21 87 = 152 MPs announced they were retiring before the general election, of those 65 announced they would stand down before 8 May 2009 when the expenses scandal broke. Crime and Punishment the British Way: Accountability Channels Following the MPs Expenses Scandal, Valentino Larcinese & Indraneel Sircar, Department of Government, London School of Economics, November 2012: <https://ideas.repec.org/a/eee/poleco/v47y2017icp75-99.html>

22 MP Eric Joyce arrested after reports of Parliament bar fight, BBC News, 15th March 2013: <https://www.bbc.co.uk/news/av/uk-politics-21796397/mp-eric-joyce-arrested-after-reports-of-parliament-bar-fight>

23 The on MPs hiring family members only applied to MPs who were elected in the 2017 General Election onwards. Give MPs deadline on hiring relatives, campaigners urge, BBC News, 31st July 2017: <https://www.bbc.co.uk/news/uk-england-40709220>

24 The Bully and Harassment of House of Commons Staff Independent Inquiry Report, Dame Laura Cox, 15th October 2018: <https://www.parliament.uk/documents/dame-laura-cox-independent-inquiry-report.pdf>

25 Tories reinstate MPs suspended over sex allegations for confidence vote, the Guardian, 12th December 2018: <https://www.theguardian.com/politics/2018/dec/12/tory-mps-suspended-over-sex-allegations-reinstated-for-confidence-vote>

to have swung the balance.²⁶ A majority of voters cast their ballots to leave in the face of the major political parties, key business leaders, trade unions, most of the media, financial institutions, and foreign world leaders, all urging the UK to remain. This encapsulated the perceived divide between the 'governors' and the 'governed', which has become synonymous with the idea of a populist revolt against the current political class.

If Britain's vote to leave the European Union was fuelled in part by a growing disconnect between politicians and voters, then the intervening years have been characterised by an increased level of public scrutiny of the role of MPs as a deadlocked Parliament has become the battleground of Brexit. Nowhere is this more evident than in the tension between constituencies that voted one way (leave/remain) in the referendum and their respective Members in Westminster who campaigned in the opposite direction. Although MPs voted 498 to 114 in February 2017 to trigger Article 50 and start the official Brexit process,²⁷ the loss of the Conservative Government's parliamentary majority at the subsequent General Election together with the ruling of the Supreme Court that any EU Withdrawal Agreement would need to be voted on by both chambers of Parliament, increased both the power of individual MPs and their profile in the public eye. This has led not only to deadlock in Parliament over how MPs interpret fulfilling the binary referendum result but also to the fragmenting of party discipline both in the Government and the Opposition.

The House of Commons' subsequent rejection of the Government's Withdrawal Bill and its failure to ensure the UK left the EU on the March exit date set out by the Prime Minister, with or without a deal,

has created even further public disillusionment with both Parliament and the Government.

In its Democratic Audit released in April 2019, the Hansard Society found that only 25% of the British public have confidence in MPs handling of Brexit, while only 34% had confidence that MPs would act in the best interest of the public.²⁸ This poll included many 'remain' supporters who fear that the deadlock in Parliament is driving the country towards an economic cliff-edge where the UK will crash out of the EU without a deal.

Some consider polarisation over Brexit to be pushing the British political system to breaking point. However, the author of this report would argue that it has merely unearthed a natural conflict that has long existed below the surface of British political life, between an idea of popular sovereignty against that of representative democracy manifested through parliamentary sovereignty. It is this dispute which has created a gulf between the rulers and the ruled, and leads us to ask what the role of an elected representative should be.

II. Who Represents the People?

Aside from at a General Election, there remain few opportunities for the British electorate to hold their respective representatives to account. Of course, this is not a new phenomenon: Jean Jacques Rousseau observed back in 1762 that the people of England were 'free only during the election of members of Parliament', reverting back to a form of slavery outside of enacting their right to vote., suggesting a historic legacy in the Western world of anxiety

²⁶ Mathew Goodwin & Roger Eatwell, *National Populism: The Revolt Against Liberal Democracy*, Pelican Books, 2018, p. 256

²⁷ Brexit: MPs overwhelmingly back Article 50 bill, BBC News, 1st February 2017: <https://www.bbc.co.uk/news/uk-politics-38833883>

²⁸ Audit of Political Engagement 16 The 2019 Report, Hansard Society, 18th April 2019: <https://www.hansardsociety.org.uk/publications/reports/audit-of-political-engagement-16>

and tension between the governors and those they govern.²⁹ While the modern day reality may be far less dramatic than Rousseau described, owed in part to the changing role and backgrounds of Members of Parliament, there remains a clear deficit when it comes to the public's understanding of what their elected representatives do and in whose interests they serve.

Unlike other forms of employment there is no official outline of the role and responsibilities of an elected Member of Parliament. The Speaker's Conference on Parliamentary Representation (2008-2010) attempted to define the responsibilities of an ordinary backbench MP in 2010, describing them as:

'A legislator, debating, making and reviewing laws and government policy within Parliament; and as an advocate for the constituency he or she represents. The MP can speak for the interests and concerns of constituents in parliamentary debates and, if appropriate, intercede with ministers on their behalf. The MP can either speak on behalf of the constituency as a whole, or to help individual constituents who are in difficulty (an MP represents all their constituents whether or not the individual voted for them). Within the constituency an MP and his or her staff will seek to support individual constituents by getting information for them or working to resolve a problem.'³⁰

Similarly, the 2007 report from the Select Committee on the Modernisation of the House of Commons looked at the role of a Member of Parliament, listing the common tasks undertaken by members as including: supporting their party votes in Parliament; representing and furthering the interests of their constituency; representing

individual constituents and taking up their problems and grievances; scrutinising and holding the Government to account and monitoring, stimulating, and challenging the Executive; initiating, reviewing and amending legislation; and, contributing to the development of policy whether in the Chamber, Committees, or party structures and promoting the public understanding of party policies.³¹

Despite these efforts, the job of a Member of Parliament and the time they spend in Westminster or in their respective constituency remains entirely at their own discretion. While the Select Committee on the Modernisation of the House of Commons found that the average MP roughly spent just under half of their time on constituency casework—with the rest split between the House of Commons Chamber, select committees, and other duties—there continues to be a huge variation when it comes to each member's workload and priorities. For example, through anecdotal experience it is well noted that Members representing deprived urban centres spend substantially more of their time on complex case-work compared to colleagues who represent wealthier suburbs.

Similarly, technology has played its part in shaping the modern role of an MP. This is particularly evident when it comes to social media which has revolutionised the way MPs engage with constituents and reach a wider audience. Long gone are the days when constituents would have to write a formal letter or book an appointment to see their MP. For many, these avenues have been superseded by emails, Facebook messages, and tweets. Social media has become a platform for MPs to share

29 Jean-Jacques Rousseau, *The Social Contract*, Penguin Books, 1968, p. 141

30 Speaker's Conference (on Parliamentary Representation) Final Report, House of Commons, 6th January 2010: <https://publications.parliament.uk/pa/spconf/239/239i.pdf>

31 The role of the Member, Select Committee on Modernisation of the House of Commons, 20th June 2007: <https://publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/33702.htm>

campaigns, information, voting positions, and updates on their work in Parliament, however it has also stripped away the layers that historically divided the governors and the governed, giving constituents the ability to contact their MP directly and instantly to voice their support or opposition. This has had a mixed effect – on the one hand, the added benefits of encouraging political engagement between politicians and the electorate cannot be understated, however with increased disillusionment and polarisation in our politics it has also led to unprecedented levels of online abuse aimed particularly at female MPs. The frequency of aggressive twitter exchanges between MPs and their constituents appears to have become the new public discourse.

The ease with which constituents can now contact MPs, made possible through advances in technology, has also led to the amount of time an MP spends working on casework ballooning to a point where many are now diverting staff and resources away from Westminster to their constituency office just to meet the demand. In the case of many Labour Members (who overwhelmingly represent deprived areas) they simply do not have the resources to employ someone full-time in Westminster, favouring instead to keep their constituency offices fully staffed. In contrast, many of their Conservative counterparts, who have the same size budget, can boast of having most of their parliamentary staff based in Westminster.

The role, size, and membership of the House of Commons has evolved substantially from its historical roots as an advisory chamber of the English Parliament composed of land-owning commoners. Its composition has responded to changes within the membership of the United Kingdom (Irish Independence and the act of

union with Scotland); the expansion of the electorate (notably through the Reform Acts and the Representation of the People Act); and the devolution and ceding of powers (primarily to devolved nations/regions and to the EU). Historically, being a Member of Parliament was a part-time public duty to be combined with a regular day job, where the House of Commons sat late into the evening and sometimes through to the early morning. The modern MP instead is a salaried full-time profession with more ‘sociable’ working hours. It is this ‘professionalisation’ of the role that has been both a driving force for—whilst at the same time driven by—the changing background of our elected representatives.

Professionalisation of the House

As mentioned earlier, the current House of Commons is the most diverse in its history boasting more women, LGBTQ, and ethnic minority MPs than any other previous Parliament. Notably, the current Commons membership also has a higher proportion of university graduates, making it one of the most ‘educated’ classes of MPs.

One of the most substantial changes in the composition of the House of Commons has been the background of those elected. In 1979 nearly one in two MPs (44.9%) were previously employed in a discrete professional occupation, such as the legal profession, education, or medicine. Fast-forward to thirty-eight years later and the percentage of MPs from a professional occupation has fallen to just 16.2%. Similarly, the percentage of MPs from a manual work background has fallen from 15.8% in 1979 to just 1.1% today, reflecting perhaps the decline of manufacturing jobs in the UK.³²

The House of Commons today is instead increasingly

³² Social background of MPs 1979-2017, House of Commons Library, 12th November 2018: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7483>

dominated by those who have previously made their career in politics (including political advisers, political journalists, party officials, or as councillors) and those whose occupational background is primarily business; a third of Labour MPs and a quarter of Conservative MPs coming from a political background, whilst 41% of Conservative Members previously working in business.³³ While one might argue that the business leaning composition of Conservative representatives in Parliament stays true to the party's modern reputation as one that represents business interests, the rise of a professional political class presents a far more difficult challenge for the Labour Party, particularly when it has come at the expense of trade union and manual worker representation which the party was originally founded to speak for.

Similarly, the perception that membership of the House of Commons has become increasingly selective and closed off to most ordinary members of society is not helped by the fact that the current House of Commons boasts as many former lobbyists as it does former NHS staff, members of the armed forces, farmers, and social workers combined.³⁴

Of course, there has always been a political and insular class in the UK in one form or another. Historically this class was hereditary and lodged in the House of Lords, however the primacy of the Commons is underwritten by its electoral mandate. The introduction of a salary and full-time working hours for MPs, and the media itself, has led to the entrenchment of what Max Weber described as a group of people 'who live for politics and off of

politics'.³⁵

The rise of a professional political class is not limited to the UK but rather is a common feature across modern democracies underpinned by several factors, the first of which is the limited pool of people who would themselves run to be an MP. Unsurprisingly, the public's distrust of politicians and general political disillusionment feeds into the lack of public appetite for many to run for elected office. A YouGov poll commissioned by Labour MP Gloria De Piero as part of her 2012 campaign to understand 'Why Do People Hate Me (politicians)?' found that 41% of the public who stated 'they wouldn't want to stand to be an MP' agreed with the statement that the reason why is 'I don't like politicians and the way politics works', while an additional 21% supported the statement that 'being an MP isn't for people like me'.³⁶

Perhaps the greatest influence on the rise of this professional class is the sheer amount of time and money it costs to stand for selection as a party candidate, let alone running to be an MP. The political journalist Isabel Hardman in her book *Why We Get The Wrong Politicians* cites this as a huge obstacle to people getting into politics. A study by Conservative Home found that the average Conservative candidate spent £34,392 running for office, this included direct costs and lost income. A relatively modest estimation when considering the fact that many candidates are not successful on their first attempt, with some standing multiple times in different seats, resulting in some cases of an individual spending closer to £100,000 to secure a

33 Social background of MPs 1979-2017, House of Commons Library, 12th November 2018: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7483>

34 Social background of MPs 1979-2017, House of Commons Library, 12th November 2018: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7483>

35 Max Weber, *Politics as a Vocation*, 28th January 1919: <http://anthropos-lab.net/wp/wp-content/uploads/2011/12/Weber-Politics-as-a-Vocation.pdf>

36 Isabel Hardman, *Why We Get the Wrong Politicians*, Atlantic Books, 2019, p. xxxi-xxxii

seat in Parliament.³⁷

Aside from directly financing the cost of running themselves, which requires independent wealth and the self-employed status to flexibly campaign, candidates often require the backing of wealthy donors or trade union support (in the case of the Labour Party). This offers party insiders and those who have previously worked in politics a huge advantage as they are best placed to garner such support, as well as ensuring that the leadership of political parties continue to have a significant influence over who is ultimately selected as their candidates. When we consider these facts, it is par for the course that the House of Commons is increasingly made up of those from the business community (who have the independent wealth and time to finance a political campaign) and those who have worked previously in politics (and are best placed to utilise the support of trade unions and political donors).

Despite the best efforts of both major parties to increase diversity through the use of 'all women' and 'all ethnic minority' shortlists, the trend towards a professionalised political class has led to a shrinking pool from which prospective candidates are drawn. While the House of Commons in 2019 may physically be more diverse along protected characteristics than at any time in its history, it is clear that the diversity of background and life experience is in decline.

The movement towards a professionalised political class raises a significant challenge to the question of representation and accountability, as any profession has its own culture and informal set of norms and rules. The prestige of membership to the House of Commons is no different and when paired with the grandeur of the Palace of Westminster inevitably

leads to a club-like mentality, which is bolstered further by the common background and experiences many Members share. Within this context it is only to be expected that a committee of MPs might be hesitant to endorse such a mechanism.

Of course, some might consider regular elections to the House of Commons as more than an adequate check against potential political corruption or parliamentary misconduct; after all, at an election, constituents are offered the chance to deliver their verdict and if necessary replace the incumbent. However, a regular charge tabled against parliamentary elections is that the First-Past-the-Post system all but ensures a two-party system in most areas of the country (barring Northern Ireland and Scotland), maintaining safe seats, and rendering many constituents' votes worthless. Analysis of general elections of the last twenty years by the House of Commons Research Library found that on average only 95 seats (14.7%) changed hands between parties, suggesting that 85% of parliamentary seats are rarely in play at an election.³⁸

Party Fealty vs. Constituency Representative

General elections rarely become referendums on the performance of local MPs, even if some claim an enhanced majority is linked to a personal vote. Rather, they reflect the national mood, consideration of wider political issues and the record of the Government of the day. Even with the short-term re-emergence of the Liberal Democrats and the resurgence of a Eurosceptic protest party in the form of the Brexit Party, the grip of the main two parties is unlikely to weaken. This poses a particular

37 Isabel Hardman, *Why We Get the Wrong Politicians*, Atlantic Books, 2019, p. 18-19

38 General Election 2017-1997 full results and analysis, House of Commons Library & UK Election Statistics 1918-2019- 100 years of elections, House of Commons Library: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7529>

challenge for 'independent-minded' elected representatives who find themselves at the mercy of the party machine and those constituents who wish to hold them directly to account.

As early as standing for selection as a party's prospective parliamentary candidate, there arises a natural tension as to whether an elected MP should put first the interest of their constituents or their party. When it comes to the selection process, political parties continue to ensure that the process remains a relatively closed off and carefully managed affair. While local constituency party members are given a say on who the likely candidate will be, the influence of local and national party bosses, paired with affiliated groups (trade unions for Labour and business for the Conservatives), cannot be underestimated and is often the ultimate deciding factor in candidate selection.

Under this process candidates do not enjoy either the advantages presented through open primaries, (as is the case in the USA) which includes the benefit of running on their own policy platform and the opportunity to build an electoral base, or the advantages of being selected through a closed party list system (as is the case for Members of the Knesset in Israel and for the Congress of Deputies in Spain), which benefits party insiders. Instead, prospective candidates find that they must appeal to a mixture of interest groups including party insiders, affiliated stakeholders, and local community activists.

Invariably this process lends itself to individuals with a strong sense of individual candidacy but also a high level of party affinity. It is common for MPs to find themselves being tugged in different directions and repeatedly asked where their loyalties lie.

Furthermore, both primaries and a closed-party list system draw a clear distinction over the type

of representation model they reflect (individual candidacy vs. party interest). Sadly the same cannot be said for the half-way house mainstream British political parties have adopted when it comes to candidate selection, which lends itself to a level of constructive ambiguity that allows sitting MPs to claim that they have a personal and party mandate at the same time. While this contradictory view may go untested through an election campaign, it inevitably leads to conflict when MPs take their seats in the House of Commons.

On arrival at Westminster, even the most earnest and committed constituency MP can find their best efforts to represent their constituents thwarted by party loyalty and the need to contribute to the wider national debate. This was certainly the case for many of the new 2015 Labour intake, who found within days of taking their seats in the Commons that they were being asked by the whips to abstain on Tory cuts to welfare tax credits which would directly affect many of their constituents. Against the backdrop of a Labour leadership contest, it was widely considered that the interim Labour leader Harriet Harman wanted to use the abstention to signal that the Labour party understood the electorate's concerns over welfare payments, a state of play that had arguably little to do with constituency responsibilities. In the end a total of 48 Labour MPs rebelled against the whip, including 19 out of the 53 newly elected Labour MPs. The total number included leadership contender Jeremy Corbyn MP, with the vote being considered one of the turning points that led to his eventual victory and election to leader of the party.³⁹

From going to war with Iraq to the introduction of tuition fees, elected MPs find that there are difficult votes around each turn, which often pitch local constituent views or the views of a significant

³⁹ Welfare bill: Labour in disarray as 48 MPs defy whips to vote no, the Guardian, 21st July 2015: <https://www.theguardian.com/politics/2015/jul/21/labour-disarray-welfare-48-mps-defy-whips>

portion of the electorate against national party positioning. While some of these contentious issues are covered by pre-existing manifesto commitments, many require an urgent response and coordinated voting position formed between party whips and the party leadership. However, even cast iron manifesto commitments, such as the Liberal Democrats 2010 pledge to abolish tuition fees, or all three major political party's 2005 commitment to a referendum on the EU Lisbon Treaty, can end up discarded or conveniently ignored much to the chagrin of individual voters who have no way to hold MPs to account for their voting record outside of a General Election.

The Code of Conduct

The code of conduct for Members of Parliament and its enforceability has been the source of much debate since its initial introduction in July 1995. Often referred to as the 'Nolan Principles' after the first chair of the Committee on Standards in Public Life, the code of conduct outlines seven general principles of conduct which MPs are expected to observe: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.⁴⁰ Deliberately drafted to be broad and largely open to interpretation, the code is clear that it covers only the aspects of a Member's public life and does not seek to regulate their private lives, although it fails

to specify the divide between the two.

At the height of the 2009 expenses scandal, the Secretary of State for Justice, Jack Straw MP, rejected attempts to put the code on statutory footing,⁴¹ citing concerns by the clerk of the House of Commons that it could impact on MPs' freedom of speech.⁴² The application of the code continues to be a matter of self-regulation left to the Committee on Standards, whose membership is made up of sitting MPs, and the House of Commons.⁴³

Reflecting increasing polarisation and the public's frustration with the conduct of MPs, this year the number of complaints citing that MPs have broken the code of conduct submitted from members of the public is set to double. Currently 2,165 claims have been sent to the Parliamentary Commissioner for Standards this year – with 1,292 in July 2018 alone.⁴⁴

Brexit: a test of loyalties

Nowhere has this tension between the governors and the governed become more evident and exposed than the current parliamentary deadlock over Brexit. Despite parliamentary votes and individual MP mandates (544 MPs voted in favour of holding a referendum on the UK's membership of the EU in June 2015;⁴⁵ 498 MPs voted to trigger the Article 50 process for the UK to leave the EU in February 2017;⁴⁶ and 624 of the MPs returned to the House of

40 Code of Conduct, House of Commons, 24th July 2018: <https://publications.parliament.uk/pa/cm201719/cmcode/1474/1474.pdf>

41 The only part of the code currently on statutory footing is related to MPs declaring financial interests.

42 MPs' code of conduct diluted, the Guardian, 30th June 2009: <https://www.theguardian.com/politics/2009/jun/30/mps-code-conduct>

43 Code of Conduct, House of Commons, 24th July 2018: <https://publications.parliament.uk/pa/cm201719/cmcode/1474/1474.pdf>

44 Public complaints about MPs set to double this year, figures show, Politics Home, 16th April 2019: <https://www.politicshome.com/news/uk/government-and-public-sector/transparency-and-open-data/news/103297/excl-public-complaints>

45 EU referendum: MPs support plan for say on Europe, BBC News, 9th June 2015: <https://www.bbc.co.uk/news/uk-politics-33067157>

46 Brexit: MPs overwhelmingly back Article 50 bill, BBC News, 1st February 2017: <https://www.bbc.co.uk/news/uk-politics-38833883>

Commons in June 2017⁴⁷ were elected on manifestos respecting the result of the referendum), Parliament still remains woefully divided on the UK's pending exit.

Of course, blame for the current state of paralysis can be laid at many doors, including: the former Prime Minister David Cameron for failing to outline a plan in the event of a Leave Vote and then resigning; the former Prime Minister Theresa May for setting impossible deadlines, losing the Conservative's parliamentary majority, and refusing to negotiate a cross party deal; or perhaps the vague wording of the referendum itself that left the question of how the UK leaves wholly up to individual interpretation. However, an internal tension clearly lies in the simple fact that while a majority in 410 parliamentary constituencies voted to leave, prior to the referendum 486 MPs publicly supported and campaigned for the UK to remain.⁴⁸

The gulf between the views of voters and their elected representatives could in theory have been avoided if a majority of MPs had adopted a delegate model of representation, accepting on this occasion that they would vote along the lines of their constituents. Instead, many MPs have chosen to revert to a trustee model of representation, asserting that the referendum—while legal—was non-binding and that it is up to MPs to interpret how (if at all) it should be implemented. This view is built upon the idea that popular sovereignty is incompatible with parliamentary sovereignty, particularly with consideration to the conventions underpinning the UK's unwritten constitution.

Even though the logic in reverting to a trustee model in the face of the mounting ambiguity of the UK's future relationship with the EU remains sound, the arguments that have been put forward to justify it have at times been counterproductive. These include assertions that the electorate is 'poorly educated', 'was misled', or 'did not know what they were voting for'; efforts to delegitimise the result through unsubstantiated claims that the vote was rigged by foreign interference; and contentions that a second 'final' vote should be given to 'make sure' that the electorate have not changed their minds. Taken separately, one might consider individual points worthy of further investigation. However, taken together they reflect a worrying attempt to delegitimise not just the idea of popular sovereignty through referendums but the value of democratic elections themselves.

This view point is particularly exemplified by the formation of a new independent political grouping in the House of Commons, which was made up of MPs who have left the Labour Party and Conservative Party. In announcing their resignations, these MPs cited their respective parties positioning on Brexit and opposition to a second referendum as the prime motivation.⁴⁹

In the face of calls to resign and force by-elections, this new independent grouping defended their right to sit in the Commons as trustees rather than delegates. This position was summed up most notably by former Labour MP Mike Gapes who has said, 'We have a parliamentary system where people stand on the ballot paper with their name, we don't

47 All Party Manifestos at the 2017 General Election bar the Liberal Democrats, Greens, and Sinn Fein (who do not sit) held some form of commitment to respecting the referendum result.

48 How did different constituencies vote in the 2016 EU referendum?, Full Fact, 30th April 2019: <https://fullfact.org/online/referendum-results-by-constituency/>

49 The author also notes that the Labour Party's poor record on dealing with anti-semitism as another key reason for several Labour MPs (including Luciana Berger MP) resigning the whip. Seven MPs leave Labour Party in protest at Jeremy Corbyn's leadership, BBC News, 18th February 2019: <https://www.bbc.co.uk/news/uk-politics-47278902>

have party lists. I am not a delegate to be removed by a party – I am elected by my constituents’.⁵⁰

The rise of this independent grouping in Parliament, their decision not to call by-elections, and their defence that MPs are elected as individuals rather than constituent or party delegates, raises significant questions over the extent to which an MP is a product of the party machine, and more importantly, the deficit when it comes to holding individual members accountable if they resign their respective party whip. After all, all the MPs who broke off to join this new grouping stood on one of the two main party manifestos in the 2017 General Election, and in nine out of the 11 cases, were elected in ‘safe’ parliamentary seats.

Recognising this challenge to party delegacy and the democratic deficit that has been created, the Labour leadership has since committed to consultation on the extension of constituent-led recall if MPs leave the political party under whose banners they were elected.⁵¹ If adopted as a policy in Labour’s manifesto at the next General Election, it would mark the first time a political party in the UK has committed to constituent-led recall.

Beyond the granular detail, the recent state of affairs has highlighted the ambiguity that exists between when an elected representative should be expected to use their vote as a party delegate and when they should be able to ‘vote on conscience’. Other countries have sought to address this issue by ensuring a clearer distinction exists between party commitments and issues of conscience. For example in New Zealand, respective party leaders cast votes on behalf of all elected party representatives as a

block unless the Speaker of the House indicates that it is a free vote. Under New Zealand’s parliamentary system, each Member retains the right to withdraw his or her vote from the block and cast it in a different way from their respective party, however it provides a clear distinction over the role of sitting MPs.⁵²

There is a clear case for the adoption of a formal definition of the role of an MP and their responsibilities to party, constituents, and the public as a whole, alongside any movement towards citizen-led recall. Like any profession, it is only by establishing standards and the parameters of the role that voters can effectively judge the record of elected officials. Rather than restricting the important work parliamentarians undertake, it would strengthen their hand by allowing MPs to plot their achievements and successes while also creating the space for an honest discussion about their limitations.

III. The Origins of Recall

Like most of the democratic practices we enjoy today, the procedure of recall can trace its roots back to the Ancient Greek city state of Athens. In Athenian democracy citizenship guaranteed all males direct participation in public life, it was therefore impossible to remove an individual from public life without stripping them of their citizenship as well. Ostracism was introduced as a solution to this problem, a mechanism to exile citizens for ten years who were considered a threat to the state or a potential tyrant,⁵³ and in doing so an effective way of

50 Sky News Interview 13th March 2019.

51 Labour to expand democratic right to recall of MPs, Jon Trickett MP, Labour Party Press Office, 20th February 2019: <https://labour.org.uk/press/labour-expand-democratic-right-recall-mps/>

52 Parliamentary Practice in New Zealand, Chapter 17 Voting, New Zealand Parliament, 2017: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-17-voting/>

53 Aristotle, the Athenian Constitution, Chapter 22, Penguin Books, 1984, p. 64-65

cutting them off from societal affairs.⁵⁴

Each year the Athenian citizens assembly was asked if they wanted to hold an Ostracism. Under the process if the assembly voted yes, a ballot would be held two months later where citizens would carve the name of the person they wished to Ostracise on a pottery shard. The person whose name appeared on the largest number of shards would be exiled. However, as with modern day recall, a threshold of 6,000 was required for the vote to be considered legitimate, turnout was often low, and as a procedure it was triggered sparingly with the Athenian Assembly electing not to implement it every year.⁵⁵

Even then, the process of recalling someone from public life was a source of much controversy with ostracism being considered an outlier in Athenian Law as it did not require a specific charge or afford the person exiled an opportunity to mount a defence.⁵⁶ There were familiar criticisms of the process, with opponents asserting that it was open to abuse; that those voting were ignorant and in some cases illiterate; or that it allowed envious elites to manipulate the result to despatch rivals;⁵⁷ and that it was unfair, as it allowed wealthier citizens who were exiled to continue to draw income on their assets from abroad. The Athenians also understood the potential for ostracism to be influenced by a popular outcry and an upsurge of emotion depending on the events of the day. To protect against this, the vote was split over two rounds with a significant period between the decision to opt for an ostracism and the vote on the individual who would be exiled. This staggered system gave citizens the opportunity for a

'cooling off' period to reflect on their choice.

As a democratic tool ostracism fell into disuse in the Athenian city state in part due to a declining population as a result of war, which made it difficult to reach a quorum. It was replaced with the introduction of a court action called *Graphe Paranomon* around the year 415 BC, this paved the way for legal action and a form of judicial review against citizens that introduced laws that were deemed to have misled the people or corrupted the laws of the state. Rather than facing exile, individuals found guilty by their peers under *graphe paranomon* were ordered to pay a fine and if unable to do so were stripped of their voting rights.⁵⁸

The benefits and pitfalls of recalling public officials were evident even in Ancient Greece which recognised that in a democracy there should always be some form of mechanism to remove corruption from public life. While it would be some time before the concept would re-emerge, modified for a representative democratic state, even in its origins the Athenians carefully considered the safeguards necessary to prevent abuse including the requirement of a democratic ballot, a cooling-off period between rounds of voting, and threshold for a result to be met. These safeguards would become a common feature in recall legislation adopted in countries across the world.

The Use of Constituent-Led Recall Across the World

Charting the development and adoption of constituent-led recall across the world, it is evident

54 Josiah Ober, *Mass and Elite In Democratic Athens*, Princeton University Press, 1989, p. 74

55 Plutarch, *Life of Aristides*, *Plutarch's Lives*, William Tegg, 1860, p. 234 & E.S. Staveley, *Greek and Roman Voting and Elections*, Thames and Hudson, 1972, p. 89-92

56 David Stockton, *The Classical Athenian Democracy*, Oxford University Press, 1990, p. 34

57 Plutarch, *Life of Aristides*, *Plutarch's Lives*, William Tegg, 1860, p. 231 & 234

58 Mogens Hansen, *The Athenian Democracy In the Age of Demosthenes*, Blackwell, 1991, p. 205-215

that recall elections have consistently been the source of much contention, as they have often been introduced in response to growing disillusionment with elected officials and concerns of corruption. Used sparingly, often limited in many countries to regional or local officials, and as part of wider democratic reforms (which includes citizens initiatives and referendums), critics consider recall an outlier and incompatible to a functioning parliamentary democracy.

It is therefore unsurprising that the countries where recall has become a staple of democratic life have long traditions of direct democracy (Switzerland), devolved regional governments (Canada), or have written constitutions which enshrine the sovereignty of the people over their elected officials (USA).⁵⁹ As a rule, most Western European countries have avoided constituent-led recall, instead favouring regular elections as a watchman against corruption and proportional voting as a way to assuage feelings of political alienation.

As one of the first countries to adopt this practice, the USA has long been credited with the development of recall elections. Throughout the twentieth century individual states adopted variations of recall in an attempt to address widespread concern that state capitals and city halls had become 'infested with corruption'. However, the adoption of recall also reflected the American institutional belief in popular sovereignty, Hiram Johnson as Governor of California in 1911 summed up this connection when he said:

'Those of us who espouse (this feature) do so because of our deep-rooted belief in popular government, and not only in the right of people to govern, but in their ability to govern; and this leads us logically to the belief that if the people have the right, the ability, and the intelligence to elect, they have as well the right, ability, and intelligence to reject or to recall.'⁶⁰

Recall in the USA is an affair for individual states, as there is no provision at a federal level. 19 US states and the District of Columbia allow constituent-led recall of state officials, with eight requiring specific grounds to trigger a recall petition. The threshold to trigger a recall election varies from state to state, ranging between 15% and 40% of registered voters.⁶¹ Despite several high-profile attempts to recall state governors, mayors, and state representatives, recall in the USA exists primarily in local politics, with 29 US states having some form of recall for local politicians. In 2018 there were only four attempted recalls of state representatives compared to over 200 recall efforts against local officials, with city council officials and school board members the most frequent target.⁶² Some consider the volume of recall elections in the US a reflection of the raft of elected posts at every level of local and state government. Paired with the frequency of regular elections, critics question whether such a polarising mechanism is worth the expense.

Recall attempts at a state level have generally been unsuccessful. Prior to California's 2003 recall of Governor Gray Davis, the only successful recall of a

59 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

60 Recall of MPs in the UK: 'if I were you I wouldn't start from here', David Judge, Parliamentary Affairs, Volume 66, Issue 4, October 2013, p. 732-751: <https://strathprints.strath.ac.uk/40371/>

61 When citizens can recall elected officials, Direct Democracy Handbook, International Institute for Democracy and Electoral Assistance, 2008: <http://www.eods.eu/library/IDEA.Direct-DemocracyEN.pdf>

62 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

state governor took place in North Dakota in 1921. Recall attempts in Wisconsin from 2011-12 against both Democratic Senators and Republican Senators, and the Republican Governor Scott Walker, were reduced to a form of retaliation between parties who used them as an opportunity to settle political scores rather than addressing local concerns.⁶³ This recent example has reinforced the view of sceptics that recall is a process ripe for manipulation from political parties or single issue groups.

Unlike the USA, recall in Canada is substantially less polarised. Limited to the province of British Columbia, recall was introduced in 1995 as an attempt to address a series of political scandals in the Legislative Assembly. There remains no restriction on the grounds for initiating a petition, a petition can be initiated against a Member of the Legislative Assembly 18 months after they have been elected, and 40% of eligible voters must sign the petition in the specific electoral district to trigger recall.⁶⁴ The high threshold appears to have worked as an effective deterrent against party manipulation or frivolous claims since no recall petition has been successful despite 26 petitions being lodged. Some cite the popularity of additional democratic mechanisms available in British Columbia such as citizens' initiatives and referendums over recall as the likely cause.

South America has seen the largest expansion of recall with many countries emerging from military dictatorships in the 1990s opting to enshrine variations of recall in newly adopted constitutions.

For example, the Peruvian constitution calls the right to revoke and remove officials 'a fundamental right of the person'. Argentina, Columbia, Peru, Ecuador, and Venezuela all have a provision for recall either at a regional or local level.⁶⁵

Venezuela remains an outlier in that recall legislation is the broadest, applying to all elected officials with a recall petition requiring 20% of registered voters to trigger a referendum on whether the office holder should be removed. Controversially, in 2004 President Hugo Chavez was forced to fight a recall election marred with opposition allegations of fraud. Chavez survived the recall effort with 60% of the vote. In 2015 similar efforts to recall his successor President Maduro were blocked by the Venezuelan Supreme Court,⁶⁶ calling into question the revocable mandate of elected officials as outlined in the Venezuelan constitution and the country's status as a democracy.

Constituent-led recall is often conceived as a tool to remove individual elected officials before the end of their term in office, but in a few countries (Germany & Lichtenstein) it is applied to an entire elected body. In the case of Germany, the state legislature in Berlin and Baden-Wuerttemberg can be recalled in its entirety if 20% of voters initiate a recall petition and 50% of registered electors participate in the subsequent recall referendum. During a political crisis in 1981 the Christian Democratic opposition started a petition to recall the entire state legislature gaining more than the 20% required. This led to the parliament calling for an early election (the petition,

63 Recall of MPs in the UK : 'if I were you I wouldn't start from here', David Judge, Parliamentary Affairs, Volume 66, Issue 4, October 2013, p. 732-751: <https://strathprints.strath.ac.uk/40371/>

64 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

65 When citizens can recall elected officials, Direct Democracy Handbook, International Institute for Democracy and Electoral Assistance, 2008: <http://www.eods.eu/library/IDEA.Direct-DemocracyEN.pdf>

66 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

having gained its goal, was withdrawn).⁶⁷ Recall has not been used in the city-state of Berlin since, with academics pointing to the 50% turnout required for a valid result as a deterrent.

Similarly, six of Switzerland's 26 cantons allow the recall of the sitting parliament or executive, as well as the triggering of fresh elections, with the threshold for each canton varying from 4%-13% of all adult citizens. Only a dozen recalls have been initiated since 1846 and only one has been successful, which controversially involved the recall of the Aargau parliament in 1862 in response to the passing of legislation to emancipate Jews.⁶⁸ As with other notable examples, Swiss voters appear to favour other methods of direct democracy over that of recall. This may explain why as a method it has been used sparingly.

An honest assessment of the current countries that have some form of constituent-led recall illustrates that recall elections continue to be rarely used. It is limited to regional government in most cases, and remains the source of much controversy regarding cost and the potential for political parties to influence recall petitions. However, it is no coincidence that the vast majority of countries where constituent-led recall is in operation have healthy democracies, where citizens actively engage in public life through citizens initiatives, citizen assemblies, and referendums.

IV. Recall: a British Affair

When compared to the history of other countries, the British debate around recalling public officials has been a relatively short. Primarily linked to the expenses scandal, recall as a possible tool for democratic accountability was only considered in the aftermath of a 'breach of trust', with all the major political parties promising some form of mechanism, which allowed voters to kick out 'corrupt MPs'.⁶⁹ While the subsequent Coalition Agreement between the Conservatives and Liberal Democrats enshrined this campaign pledge into their programme for government,⁷⁰ the eagerness of all parties to convince the electorate of their desire to 'clean up' politics was sadly not matched by immediate action in the 2010-2015 Parliament.

Despite the Government publishing draft recall legislation in December 2011 which set out a fixed and limited version of recall, the controversial question of recall elections lingered on until the dying days of the Coalition Government when it was finally passed in 2015. Under the Government's recall proposals a sitting MP would face a recall petition in three specific circumstances, if they received:

1. A custodial prison sentence of a year or less (longer sentences automatically disqualify MPs without need for a petition);
2. Suspension from the House of Commons for at least 10 sitting days or 14 calendar days,

67 When citizens can recall elected officials, *Direct Democracy Handbook*, International Institute for Democracy and Electoral Assistance, 2008: <http://www.eods.eu/library/IDEA.Direct-DemocracyEN.pdf>

68 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

69 Conservative Party 2010 Manifesto, p. 65-66: <https://conservativehome.blogs.com/files/conservative-manifesto-2010.pdf>, Labour Party 2010 Manifesto, section 9 p. 2: http://www.cpa.org.uk/cpa_documents/TheLabourPartyManifesto-2010.pdf, & Liberal Democrat 2010 Manifesto, p. 89: <https://www.markpack.org.uk/files/2015/01/Liberal-Democrat-manifesto-2010.pdf>

70 Coalition Agreement 2010, p. 27: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

following a report by the Committee on Standards;

3. Or a conviction for providing false or misleading expenses claims.⁷¹

The justification for delay—and much of the antipathy towards the Government’s recall proposals from MPs—is best summed up by a report from the Select Committee on Constitutional Affairs in June 2012 which rebuffed the idea, concluding ‘we do not believe that there is a gap in the existing disciplinary procedures in the House of Commons which needs to be filled by the introduction of recall’.⁷² The Committee recommended that the Government abandon its plans to introduce recall and instead ‘use the parliamentary time this would free up to better effect’.⁷³

The findings reflected a general uneasiness shared by many MPs over the introduction of recall into British political life. Criticism was not limited to its introduction being considered unnecessary. Some MPs cited concerns over the lack of a clear definition on what would constitute as ‘wrongdoing’ which might lead to an MP being recalled.⁷⁴ On the other side of the argument, witnesses voiced opposition

due to the Government’s proposals falling short of the constituent-led recall that many voters expected following the expenses scandal,⁷⁵ cautioning that this would only lead to further disillusionment with politics.⁷⁶ The Committee also considered the 10% threshold the Government proposed, which would have to be reached for a recall petition to trigger a by-election;⁷⁷ the question of whether an MP receiving a criminal conviction for civil disobedience could lead to a recall petition,⁷⁸ and the security implications of organising recall elections in Northern Ireland.⁷⁹

When the Government’s recall legislation was finally considered by the House of Commons opposition from both camps remained unabated. On the one hand, Labour MP Frank Dobson argued that the Government’s recall proposals opened the door for MPs to be punished for taking unpopular but principled stands on specific issues such as abolishing capital punishment, gay rights, women’s rights, and outlawing racial discrimination, reflecting the concern that recall could lead to MPs simply refusing to vote with their conscience in the future and becoming more susceptible to a pack-like

71 Recall of MPs Act 2015: https://www.legislation.gov.uk/ukp.a/2015/25/pdfs/ukp.a_20150025_en.pdf

72 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 3: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

73 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 3: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

74 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 12-15: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

75 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 26-28: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

76 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 24: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

77 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 22: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

78 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 9-10: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

79 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 19-20: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

mentality.⁸⁰

Representing the other side and arguing for ‘proper recall’, Tory MP Zach Goldsmith and UKIP MP Douglas Carswell attempted to amend the Government’s proposals to ensure constituents, and not MPs, were the final arbiter when it came to recall. This included suggesting an amendment which would allow 5% of constituents to indicate a desire for a recall petition followed by a 50% requirement for the triggering of a recall election⁸¹. While some MPs were supportive of the idea of constituent-led recall, including future Labour leader Jeremy Corbyn and future Shadow Home Secretary Diane Abbott, many stated their opposition to ‘any mechanism that might lead to US style recall elections where big money and corporations were able to exert influence.’⁸²

In the end the passage of the Government’s recall proposals through Parliament was relatively smooth, with the Labour Party choosing not to oppose the Bill but instead to amend it at Committee of the Whole House.⁸³ Goldsmith’s attempt to introduce constituent-led recall was also heavily defeated 340 to 166 with MPs being given a free vote.⁸⁴

At the time, few considered the adoption of a restricted form of recall would likely change much, many of the witnesses that gave evidence to the constitutional committee concluded that it would

be used sparingly, if ever.⁸⁵ Many considered it an artificial change designed to fulfil the bare minimum of the Coalition partners manifesto pledges while also avoiding upsetting their own backbench MPs. The Conservative Minister in charge of the Bill, Greg Clark MP, mused that this would not be the last time that MPs would debate the merits of recall.⁸⁶ On reflection this assertion appears to contain great foresight; however, even the Minister in question could not imagine at the time how quickly it would come into use.

North Antrim: Ian Paisley Jnr MP

The first use of recall in the UK was a tough trial, with the scene set for a recall election in the Democratic Unionist stronghold of North Antrim in Northern Ireland. The suspension of the sitting MP Ian Paisley Jnr from the House of Commons for 30 days triggered the recall petition, after the Parliamentary Commissioner and the House of Commons Committee on Standards concluded that he had breached the Code of Conduct by failing to register—and thus declare—three visits to Sri Lanka for himself and his family paid for by the Sri Lankan Government, valued at over £50,000, and had been engaged in paid advocacy on the Sri Lankan Government’s behalf when he wrote to the UK Prime Minister urging him to oppose a UN investigation

80 Frank Dobson MP, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014

81 Zac Goldsmith MP, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014 & Douglas Carswell MP, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014

82 Jeremy Corbyn MP, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014 & Diane Abbott MP, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014

83 Stephen Twigg MP, Shadow Minister for Constitutional Reform, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014

84 MP recall: Zac Goldsmith’s amendment defeated, BBC News, 27 October 2014: <https://www.bbc.co.uk/news/uk-politics-29784466>

85 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 24-25: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

86 Greg Clark MP, Minister of State for the Cabinet Office, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014

into alleged war crimes in Sri Lanka.⁸⁷

After the House agreed on the report of the Standards Committee and its recommendation of suspension without a division, the Speaker gave notice of the triggering of the recall petition on 24th July 2018. The Chief Electoral Officer for Northern Ireland confirmed that the eligible electorate for the recall petition in North Antrim was 75,248, and that 7,543 signatures would be required for it to be successful.⁸⁸ Even before the first recall petition had been formally triggered, many speculated over its limited chance of success as the nearest party to the DUP in North Antrim, Sinn Fein had only got 7,878 votes in the 2017 General Election.⁸⁹

Similarly, there were concerns around security and possible voter intimidation, which was not helped by the Petition Officer's decision to only allow three signing places located in the main towns of the constituency, instead of the maximum level of ten. Both Sinn Fein and the Ulster Unionist Party were critical of this decision, stating that the number was totally inadequate for a constituency of the size of North Antrim.⁹⁰

The common view was that the initial recall petition against Paisley Jnr was likely to succeed and he would receive a 'bloody nose', however his likely

victory in the subsequent recall election was all but assured. It therefore was a surprise even to Paisley Jnr that on 24th September 2018, the Electoral Office in Northern Ireland announced that the recall petition fell short by 444 signatures, with only 9.4% of the eligible electorate signing the petition.⁹¹

Journalists were quick to jump on the result as evidence that recall had died a quick death,⁹² strangled by the straightjacket of sectarianism. Paisley Jnr described it as a 'miracle' and evidence that 90.6% of his constituents had accepted his apology over his wrongdoing. Going further, he asserted that the docking of his pay and the suspension itself were punishment enough for his breach of the Code of Conduct.⁹³

Despite the outcome, questions around the freedom of voters in North Antrim to vote unencumbered by fears of possible reprisals or intimidation persisted. While the Electoral Commission in its report on the conduct of the vote concluded that there were no significant problems in the delivery of the recall petition, Jonathan Tongue, a professor of politics at Liverpool University, questioned this assertion stating that there was 'no clinching piece of evidence either way'.⁹⁴

Tongue argued that analysis of the first recall

87 Ian Paisley: MPs vote to suspend North Antrim MP for 30 days, BBC News, 26th July 2018: <https://www.bbc.co.uk/news/uk-northern-ireland-44932312>

88 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

89 Will the right of recall ever be used?, The New Statesman, 25th July 2018: <https://www.newstatesman.com/politics/elections/2018/07/will-right-recall-ever-be-used>

90 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

91 Ian Paisley: DUP MP 'stunned' and 'humbled' at keeping seat, BBC News, 20th September 2018: <https://www.bbc.co.uk/news/uk-northern-ireland-45574495>

92 Ian Paisley has survived, but the Recall of MPs Act is dead, the New Statesman, 20th September 2018: <https://www.newstatesman.com/politics/staggers/2018/09/ian-paisley-has-survived-recall-mps-act-dead>

93 Ian Paisley: DUP MP 'stunned' and 'humbled' at keeping seat, BBC News, 20th September 2018: <https://www.bbc.co.uk/news/uk-northern-ireland-45574495>

94 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

petition could not discount the sectarian geography of the constituency, with two signing stations in predominantly Protestant and unionist towns, and one being in a predominantly nationalist and Catholic town.⁹⁵ Nor could the statement of signing a recall petition be compared to the secrecy of a ballot at an election, with all observers able to recognise an entrant as entering a signing station to unseat the incumbent MP.

Addressing the recall of Ian Paisley Jnr, Transparency International recommended at the time that if the petition failed there should be a broader consideration as to whether his actions could also constitute a criminal offence, such as misconduct in public office or a bribery offence.⁹⁶ Despite this recommendation, and fresh allegations of Ian Paisley Jnr failing to declare an additional complimentary family trip in 2016 to the Maldives paid for by the Maldivian Government, at the time of writing this report, little alternative disciplinary action has been explored.⁹⁷

The first use of recall did little to assuage the doubts of its critics. The controversy surrounding signing stations, and its ultimate failure, emphasised to many the weaknesses of the recall process, compounded by the specific difficulties of recall in Northern Ireland which were previously voiced in the Select Committee on Constitutional Reform's report. However, it is fair to presume that the first recall petition would always be a source of

contention, face teething problems, and no one can dispute the fact that constituents in North Antrim were given an opportunity to pass judgement on whether Ian Paisley Jnr should remain their MP – something that would have been inconceivable a few short years ago.

Peterborough: Fiona Onasanya MP

It would not be long before the UK received its second experience of recall, this time the battleground was set for Peterborough, a marginal seat that Labour had taken from the Conservatives in the 2017 General Election, by just 607 votes. In December 2018, the sitting Labour MP Fiona Onasanya was found guilty of perverting the court of justice by lying to police over who was behind the wheel of her speeding car in July 2017, and receiving a three-month prison sentence. After the appeal process had concluded, a recall petition against Onasanya was triggered on 5th March 2019.⁹⁸

The case of a sitting MP lying about speeding to prevent points going on their driving licence was reminiscent of a similar incident in 2013 when the former Liberal Democrat Secretary of State for Energy and Climate Change, Chris Huhne MP, resigned after pleading guilty and receiving an eight-month prison sentence for the same offence.⁹⁹ However, unlike Huhne, Onasanya rejected calls from the Labour Party to resign, contesting her

95 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

96 Is recall a useful deterrent against corruption in the UK Parliament?, Steve Goodrich, Transparency International UK, 15th August 2018: <https://www.transparency.org.uk/recall-useful-against-corruption/>

97 Ian Paisley holiday 'funded by Maldives government minister', BBC News, 26th June 2019: <https://www.bbc.co.uk/news/uk-northern-ireland-48763922>

98 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

99 Nick Clegg 'shocked' as Chris Huhne quits after guilty plea, BBC News, 4th February 2013: <https://www.bbc.co.uk/news/uk-politics-21322136>

innocence.¹⁰⁰ She continued to sit and vote as an independent MP and was the first sitting MP to go to jail in nearly thirty years.

The petition in Peterborough was open for signing from Tuesday 19th March until Wednesday 1st May, with the petition officer making provision for the maximum ten signing stations. Given the circumstances around the recall petition there was little doubt that the petition would be successful and with this expectation the Labour Party had already selected a new candidate to fight the seat a month before the petition was even open. On 1st May, the Speaker announced to the House of Commons that the petition had been successful with 19,261 signatures (27.6% of eligible voters in Peterborough) making Fiona Onasanya the first MP to be removed under the 2015 Recall Act and ensuring that the subsequent by-election on 6th June would take place.¹⁰¹

Onasanya's decision not to stand paired with the results from the recent EU Parliamentary Elections across the country—which saw the newly formed Brexit Party win the most seats—shifted the focus of the recall election away from the perceived corruption and wrongdoing of the incumbent, and onto the issue of Brexit and other more local concerns.

The consensus was that Labour would struggle to hold the seat, following a dismal showing in the EU elections and with the challenge of fighting off the Brexit Party in an area which voted over 60% to leave the EU. This was exacerbated further when allegations emerged of the new Labour candidate endorsing anti-Semitic posts online. Despite these

factors, Labour held the seat with 10,484 votes to the Brexit Party's 9,801 on a turnout of 48.3% of the electorate, helped in part by the Conservative Party's vote in the seat collapsing.¹⁰²

Labour's success in Peterborough dispelled a number of popular myths that critics of recall in the UK had previously asserted, the first of which being that recall would likely be used by voters as a blunt tool of revenge to be wielded at the incumbent party. The result in Peterborough demonstrated that incumbent parties can hold onto seats in recall elections, if quick action is taken to distance the party from the actions of the previous MP and a new candidate is fielded. Voters chose not to punish the Labour Party but instead punished the sitting MP through the successful recall petition.

Another myth that recall in Peterborough shattered was concerns around populism, and the view that recall would somehow become a bastion for charlatans and populists alike. Coming off the back of winning the EU Parliamentary Elections, surging in EU parliamentary elections, and the recall election taking place in a heavily leave seat presented a unique set of favourable circumstances for 'populist' parties that are unlikely to be replicated in future elections. Despite this context, a majority of voters decided not to vote for a populist protest party, highlighting that recall elections are no more susceptible to populist surges than normal parliamentary elections.

The final take away from Peterborough is that even by-elections triggered as a result of a recall petition cannot be insulated from national politics and the issue of the day. Nor can the removal of

100 Fiona Onasanya: Jeremy Corbyn says Peterborough MP should quit, BBC News, 20th December 2018: <https://www.bbc.co.uk/news/uk-england-cambridgeshire-46636932>

101 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

102 Peterborough by-election: Labour beats Brexit Party to hold seat, BBC News, 7th June 2019: <https://www.bbc.co.uk/news/uk-politics-48532869>

one individual who is unfit to hold public office will necessarily guarantee that their replacement will embody a voter's ideal of public service.

Brecon and Radnorshire: Chris Davies MP

Recall in the UK has not been limited just to the opposition or smaller parties in Parliament. Conservative MP Chris Davies's conviction for falsifying expenses led to the UK facing its third recall petition in the space of nine months, as well as propping up the enduring public distrust in the MP's expenses system.

Elected in 2015, Chris Davies had previously been forced by the Independent Parliamentary Standards Authority (IPSA) to repay the cost of 7,500 House of Commons envelopes costing over £5,000, which were used to send campaign surveys a week before the dissolution of Parliament for the 2017 General Election. In April 2018, IPSA referred Davies to the police accusing him of forging two invoices for £700 photographs. In March 2019, he pleaded guilty to two counts of misleading and false expenses claims, and in April was sentenced to 50 hours of community service and a £1,500 fine, this immediately triggered a recall petition.¹⁰³

The recall petition in Brecon and Radnorshire constituency was open from Thursday 9th May to Thursday 20th June, with six signing stations opened. Given the nature and profile of his case, and the continued toxicity surrounding the MP expenses scandals, the common view was that the recall petition was likely to succeed. It was therefore unsurprising when on the morning of 21st June 2019, the Speaker of the House of Commons confirmed

that the petition had been successful with 10,005 signatures (19% of voters in Brecon and Radnorshire) and a special by-election would take place set for August 1st.¹⁰⁴

Despite the election of a new Conservative Party Leader (and prime minister) the prospects of the Conservatives holding the seat appeared relatively slim, particularly given the decision by the local association to allow Davies to defend the seat and the announcement of an electoral pact between the smaller 'remain' parties to step down in favour of the Liberal Democrats (who previously placed a close second in 2017). There was also a common expectation that the Brexit Party would once again split the Conservative vote, allowing this time for a Liberal Democrat victory, which would add further pressure to the Government's dwindling majority. Predictions of a humiliating Conservative defeat however proved over enthusiastic, with Chris Davies losing the seat by just 1,425 votes to the Liberal Democrats on a turnout of 59.6%. While the Brexit Party earned 10.5% (3,331) of the votes, significantly less than expected, it was still enough to deny the Conservatives the chance to hold onto the seat. In hindsight the decision by the local Conservative Association to re-select Chris Davies may have been the marginal difference between the Conservatives holding the seat and the Liberal Democrat victory. The closeness of the result in Brecon and Radnorshire offers further evidence that recall elections cannot be excluded from national politics of the day. As with Peterborough, the recall election was set firmly in the context of Brexit and the policies of the sitting Conservative Government. This may explain why many Conservative voters elected to stick with the incumbent party despite the

103 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

104 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

conviction of the sitting MP, and why many Labour voters—with the prize of reducing the Government's working majority down to just one—opted to tactically vote for the Liberal Democrats.

Coverage of the Brecon and Radnorshire election was dominated by one narrative alone: Brexit, reaffirming that many journalists remain unsure as to how recall elections should be covered.

Following the result many media publications made little mention of the special nature of the election referring to it only as a by-election. Details such as the incumbent's conviction due to false expenses, explicitly relevant given the fact that Chris Davies stood as the Conservative Party candidate again, failed to enter the media's narrative. Instead, analysis of the recall election was firmly rooted through the limited lens of Brexit and the Government's shrinking majority. As recall elections inevitably become a more common part of political life, a generation of journalists will need to adapt to how they are covered.

Witnessing the slew of recall elections in the last few months, one would be forgiven for forgetting that the practice remains in its infancy, only coming into official use in 2016. Despite this short period of time, the first batch of recall elections have already reshaped the way the public considers the electoral cycle and solidified how the public perceives their ability to influence the behaviour of MPs. However, the prominence of these recall petitions against a small group of 'badly behaved' MPs has only highlighted further in the public mind the depth of the parliamentary inaction in dealing with MPs who have lost the whip for questionable behaviour, and the flaws in the current recall legislation which ensures they remain outside of its narrow scope.

V. Making the Case for Reform of Recall

The 2016 referendum on Britain's membership of the EU exposed a fault line in our politics that has long existed, not between those who supported remaining in the EU or those who supported leaving but rather between two distinctive views of sovereignty. Does sovereignty lie with the people or with their elected representatives in Parliament? It is this question that has been at the heart of politics on the British Isles for centuries, and the source of much turbulence and conflict.

Three years on from the referendum, the paralysis in Parliament has worn the patience of the British public thin. Already sceptical and disillusioned with the political class, the failure to implement or to agree a way forward has led to further polarisation and entrenchment as the two-party system fragments and makes way for the kind of electoral chaos commonly seen across the European continent. While the Sword of Damocles continues to hang over the entire British parliamentary system of government, many parliamentarians wilfully indulge in the notion that once the obstacle of Brexit is removed normal service will resume.

This optimistic perspective and selective reading of history ignores the complex and troubled relationship the UK has had with its European neighbours, and voters have with their elected representatives. Nor does it pay sufficient regard to the increasingly recognised and uncomfortable truth that without some form of democratic and constitutional reform in the UK, there remains a very real risk of a profound rupture between the governors and the governed.

The dysfunction of the current Parliamentary sitting has raised significant questions about the issue of representation and the ability of constituents to

hold their elected MP to account. Party discipline in both major parties has broken down with rebellions against the party whip common currency; MPs have crossed the floor defecting to other parties without resigning and calling by-elections; other MPs have lost the whip for a variety of alleged indiscretions and faced no pressure to go back and face their constituents. Within this chaos, the Government's own limited use of recall has gained prominence. However, its mixed results and the narrow terms which ensure its arbitrary use have only highlighted further the current deficit that exists in holding elected officials to account.

Reform of the current recall legislation and the introduction of constituent-led recall could offer an important step in bridging the gap between voters and their elected representatives. Although not perfect, it would be an important tool in engaging citizens directly in politics rather than resigning them to the status of mere observers.

The Principles of Recall

The justification for a right of recall is a simple one. It presupposes that if voters can be trusted to elect a Member of Parliament at a General Election without bias, prejudice, or the inducement of monetary gain, they also can be trusted to make a judgement as to whether their elected representative should be recalled. Thus the principle arguments around recall are those made about elections and democracy as a whole.

Despite much scepticism, the Government's current recall legislation has not seen constituents swayed by big money or the influence of populist protest movements. Recall elections have not cost the taxpayer significant amounts of money or led to predicted voter fatigue. Consideration of the use of constituent-led recall processes abroad shows that there is not a deluge of recall petitions clogging up

the democratic processes of other governments.

Rather, recall has come to be used sparingly, as part of a wider set of direct democratic initiatives such as citizens' assemblies and referenda.

The second principle challenged by the reform of recall is that of self-regulation, namely whether elected representatives should be trusted to police themselves. At a time when all of the political parties in the House of Commons increasingly favour regulation of key industries, from financial services to technology and media, precisely because they recognise it leads to preferring private interests over public good, self-regulation by politicians is indefensible. As a model that continues to be used the impression is given that those who hold elected office are immune from the standards and regulations they set for others.

The common and central criticism of constituent-led recall is that it might deter MPs from taking principled stands for fear of upsetting their constituents. Such a claim is hard to quantify and harder still to prove, particularly in the age of the professional politician. Many MPs cite party structures and the whipping system as the primary constraint against such stands. The proliferation of safe seats over the years has insulated a significant number of MPs from the electoral consequences of party policies and voting positions. When it comes to principled stands, MPs are incentivised not to rock the boat with either the threat of de-selection or the promise of a job on the front-bench. Instead of hindering independent minded MPs, the extension of recall could actually encourage more principled stances by increasing their 'skin in the game' and addressing the asymmetry of power between the electors and the elected. MPs would have to weigh up the merits of their vote and consider carefully views of constituents. A natural by-product of this approach would mean a stronger constituency link

between MPs and their voters, as MPs would take the time to properly consult constituents, organising public events, and surveys.

Of course, such debate recognises there should be a balance between independent agency and delegacy. The majority of MPs continue to be elected on party platforms and manifestos, rather than as independent candidates. That is why an agreement over the formal role, responsibilities, and duties of an MP is needed alongside any adoption of constituent-led recall.

Practicalities of Recall

Turning from the principles of recall to its practical implementation, there are several issues that must be addressed including the threshold needed to trigger a recall election, the circumstances for recall, whether a minimum period in post is required, whether constituents could recall sitting Ministers, and whether constituent-led recall should be extended to devolved assemblies, regional mayors, and local authorities.

i. The Threshold for a Constituent-Led Recall

A core component of recall is the threshold at which petitions can be triggered. The common view is that if it is set too high, it will be considered superficial and unlikely to ever be met, but set too low and there is a risk that a sitting incumbent could be recalled despite having a majority of the electorate's support.

Under the current 2015 Recall Act the threshold, to trigger a recall petition is set at 10% but this only applies to cases that meet the Act's narrowly drawn criteria: limited to an MP being suspended

from the House of Commons for ten sitting days; a custodial prison sentence of a year; or a conviction for providing false and misleading expenses. While replicating this threshold for 10% might offer consistency, it could be considered by some as low enough for abuse.

This report recommends that the Recall Act should be amended to allow for a second threshold set specifically for constituent-led recall at 20% of a constituency's entire electorate, which would broadly be in line with similar countries where recall is in operation.

Given that the Office for National Statistics calculates that the average size of a voting population in a parliamentary constituency in England is 72,200, under this threshold a constituency on average would require 14,400 signatures.¹⁰⁵ Organising a successful constituent-led recall petition would by no means be an easy feat to deliver within the six-week period the current legislation sets, particularly given the fact that most voters are not politically minded or members of a political party.

ii. Conditions for Constituent-Led Recall

Consideration could also be given to imposing conditionality around constituent-led recall, when it comes to the time that has passed between a General Election and calls for a recall election. Outside of the narrowly defined recall proposals currently within the 2015 Recall Act aimed at addressing corruption, there would be merits in legislating for a minimum amount of time passing after an election before constituents can recall their MP. In the Canadian state of British Columbia, no representative can be recalled until at least 18 months into their term. A similar provision could be adopted as part of a

105 Parliamentary constituencies, House of Commons Library: <https://www.parliament.uk/about/how/elections-and-voting/constituencies/>

package of amendments to the 2015 Recall Act.¹⁰⁶ Similarly, some may favour a set of criteria for constituent-led recall over a blanket application. This would require constituents to state on the petition a clear reason for recall, which could include the breaking of a manifesto promise, the removal of the party whip, the incumbent defecting to a different party, or voting against the direct interests of the constituency.¹⁰⁷ Although broad, these categories would cover a range of grievances that might merit the recall of a public official but also offer a bulwark against abuse.

There remains significant debate around the code of conduct for MPs and the distinction it draws between actions MPs take in their private and public life, particularly given the recent scandals around sexual harassment and bullying in Westminster. Many of the allegations that have since come out against various MPs have not been enough to warrant criminal investigation, let alone a lengthy conviction that would lead to a recall petition under the 2015 Recall Act. This has led to equalities groups, including the leader of the Women and Equalities Party Mandu Reid, calling for constituent-led recall to be extended to MPs found guilty of violence or harassment by the independent parliamentary commissioner for standards.¹⁰⁸

The author of this report is in broad agreement with these calls and believes that there is an urgent case for reviewing the code of conduct for MPs to clarify the distinction between private and public actions, and where guilt is proven, extending constituent-led

recall in cases involving physical violence or sexual harassment.

iii. Constituent-Led Recall and Government Ministers

The introduction of constituent-led recall poses a significant question as to whether it would cover sitting Ministers, and what implications this might have. Currently sitting Ministers are exempt from recall procedures, the Select Committee on Constitutional Reform when considering this issue argued that it would be wrong to allow a small group of constituents to remove a key Cabinet Minister or for that matter a sitting prime minister.¹⁰⁹

Acceptance and extension of this exemption would in effect create two tiers of MPs, however in reality this would formalise a division between backbench and frontbench MPs that already exists. It would instead be preferable to strengthen the ministerial code ensuring that its parameters are clarified and that violations are met with swift removal from office, thus allowing if necessary recall to take place.

iv. Extending Recall

There remains a strong case for extending constituent-led recall beyond Westminster to the devolved assemblies, regional mayors, and if necessary to local government. After all, most recall elections abroad take place at a local or regional level and the principle of recalling elected officials should apply consistently across the board. Furthermore, while the 2015 Recall Act does not include measures

106 Recall Elections, House of Commons Library, 21st June 2019: <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

107 This broad category would require further definition but the assumption would be that it applies to the economic interests of the constituency e.g. voting for policies that lead to the close of factories and loss of jobs.

108 You can expel an MP for fiddling expenses – but not violence or misogyny. Why?, Mandu Reid, the Guardian, 1st July 2019: <https://www.theguardian.com/commentisfree/2019/jul/01/mp-expenses-violence-misogyny-harassment-recall-commons>

109 Recall of MPs, House of Commons Political and Constitutional Reform Committee Report, 21st June 2012, p. 27: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf>

for devolved governments and regional mayors, the Government at the time did accept that there was a case for extension.¹¹⁰

As the demand for further transfers of power to the nations and regions becomes stronger as a result of the current political crisis, the author of this report strongly recommends that they are paired with calls for further democratic accountability that includes constituent-led recall. Public officials should not be exempt from this important level of scrutiny by virtue of holding a post sitting outside of the Palace of Westminster.

v. Recall Within the Wider Narrative of Accountability

Sadly, there is no magic bullet that can bridge the gulf that currently exists between the governors and the governed, rather than the simple adoption of a single measure it will require a whole shift in the relationship between citizens and their elected representatives, as well as the way both participate in public life.

Constituent-led recall has an important role to play in addressing the deficit in democratic accountability that currently exists in the UK parliamentary system; but, this should come as part of a whole package of democratic reforms including the adoption of citizens' assemblies and wider use of referenda.

The author of this report does not imagine it will become an ideological weapon wielded frequently, but rather an effective deterrent to be used sparingly. Recall has the potential to not only shift culture within the Westminster bubble but also the public's perception of elected representatives, encouraging both to take greater responsibility in public life. The use of constituent-led recall in other

countries has shown, that when given the option, voters are far more interested in issues pursued through citizen initiatives than the politics of personality.

Political parties must also play their part in tackling voter disillusionment. They must recognise the fact that most of the British public considers them as public rather than private entities, and therefore consider the current scandals around sexual harassment, Islamophobia, and anti-Semitism, as matters of national concern and not something that can be resolved in private amongst party elites.

There is a genuine yearning for a better class of politician and it is the responsibility of parties to meet this demand by opening up selection processes to ensure that people from all walks of life, irrespective of their personal wealth, occupation, and educational background, are able to participate in politics and run for office.

The final point is one of sovereignty, and its inference of legitimacy. Purists, who believe in the illusory and ill-defined sovereignty of Parliament or elected officials who govern in the name of the people but fear facing the electorate's wrath at the ballot box, are unlikely to be swayed by the need to extend recall arguing that the status quo works perfectly well. However, both groups ignore the fact that the legitimacy they enjoy under the current state of affairs is only made possible as a result of democratic processes which have been the cornerstone of the UK's parliamentary system of government for the last few hundred years.

It is a curious thing to argue on the one hand that Parliament remains sovereign against the Executive by virtue of its democratic mandate, but on the other that the people do not have the right outside of a General Election (made harder as a result of

110 Greg Clark MP, Minister of State for the Cabinet Office, Recall of MPs Bill, 2nd Reading, House of Commons, Hansard, 21 October 2014

the Fixed-Term Parliament Act) to recall public officials. This contradiction serves only to highlight the mountain of conventions, arcane rules, and inconsistencies the British unwritten constitution rests upon, and the sheer weight the current political crisis is bringing to bear.

Our elected representatives—the watchmen—should have enough humility, foresight, and wisdom to recognise the public mood for change and the need for reform. They should embrace rather than oppose these calls, and the extension of recall is an important first step to take.

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