

# **The 2018 English Local Elections ID Pilots and the Right to Vote: A Vote of (no) Confidence?**

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# The 2018 English Local Elections ID Pilots and the Right to Vote: A Vote of (No) Confidence?

Ben Stanford\*

## Abstract

*With further pilots having already been announced for May 2019 and a national roll-out likely to take place in the future, this article evaluates the voter ID pilots conducted in the May 2018 English local elections from the perspective of the right to vote. Representing a first in England, eligible voters in five areas were required to produce some form of ID when voting in polling stations. This attracted much criticism amidst concerns that some individuals would be disenfranchised and denied their right to vote. Reflecting upon the conduct of the pilots and the official statistics subsequently published about them, as well as the author's own observations at polling stations and other stakeholder feedback, this article argues that the 2018 pilots were too limited and inconclusive to draw any support for voter identification laws, but should the Government proceed with its proposals, **it must do so with the utmost caution to avoid disenfranchisement**. Moreover, in order to uphold the right to free elections under art.3 of the First Protocol to the ECHR, it is imperative that further research is carried out and adequate safeguards are put in place before a nationwide roll-out is considered, especially given the UK's unusual position of lacking a Government-issued national identity card.*

## (1) Introduction

In the May 2018 local elections in England, a pilot scheme with the stated aim of combatting electoral fraud was carried out which required eligible voters in Bromley, Gosport, Swindon, Watford and Woking to present some form of identification before voting in polling stations.<sup>1</sup> In the run-up to the elections, the proposals attracted political criticism primarily from opposition parties, amidst concerns that some voters would be disenfranchised and that certain groups would be disproportionately affected by the introduction of compulsory identification requirements. For example, following an urgent question on the matter to the Minister for the Cabinet Office in April 2018, the Labour Party's Shadow Minister for Voter Engagement and Youth Affairs, Cat

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<sup>1</sup> Cabinet Office, "Voter ID Pilot to Launch in Local Elections", Press Release (16 September 2017) <https://www.gov.uk/government/news/voter-id-pilot-to-launch-in-local-elections> [Accessed 12 September 2018]. One of the areas originally due to participate, Slough, withdrew from the pilot and Swindon took its place.

Smith, claimed that the pilot scheme would introduce “discriminatory measures that could disenfranchise legitimate voters who already face a multitude of barriers to democratic engagement”.<sup>2</sup> Representatives of the Scottish National Party and the Liberal Democrats voiced similar concerns during the course of the debate.<sup>3</sup> At the same time, numerous campaigning organisations and charities warned against the imposition of identification requirements at polling stations,<sup>4</sup> with the Electoral Reform Society in particular claiming that mandatory voter ID “poses more problems than solutions”.<sup>5</sup>

Although the practice is now relatively uncontroversial and even welcomed by many in Northern Ireland as a means to improve voter confidence, where voter identification has been required since 1985 and photo identification since 2003,<sup>6</sup> experience from the United States of America persistently suggests that women, the young and elderly, ethnic minorities, as well as the least well-off in society face significant burdens in obtaining suitable identification.<sup>7</sup> Whilst it may be tempting to point to Northern Ireland as a success story in respect of voter ID laws, as will be discussed later there are reasons to doubt its suitability as a comparator to England or indeed the rest of the United Kingdom. Despite these initial apprehensions, the voter ID pilots took place on 3 May 2018. Shortly after, the Cabinet Office pledged to hold further pilots in May 2019,<sup>8</sup> owing to what the Government deemed to be a successful initial round of pilots.

The human rights implications of compulsory voter identification laws have already been discussed in depth elsewhere,<sup>9</sup> insofar as art.3 of the First Protocol to the European Convention on Human Rights (ECHR) requires contracting parties to “hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”. Bearing in mind the principles underpinning art.3 of the First Protocol to the ECHR, the underlying purpose of this article

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<sup>2</sup> C. Smith, Shadow Minister for Voter Engagement and Youth Affairs, HC Deb 23 April 2018, vol.639, col.607.

<sup>3</sup> A. Thewliss, HC Deb 23 April 2018, vol.639, cols.608-609; S. Hosie, HC Deb 23 April 2018, vol.639, col.611; E. Reeves, HC Deb 23 April 2018, vol.639, col.612; G. Newlands, HC Deb 23 April 2018, vol.639, col.615.

<sup>4</sup> Electoral Reform Society, “Civil Society Coalition Demand Rethink of ‘Risky’ Voter ID Plans”, Press Release (30 July 2018) <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/civil-society-coalition-demand-rethink-of-risky-voter-id-plans/> [Accessed 12 September 2018].

<sup>5</sup> Electoral Reform Society, “Voters Locked Out: The Flaws of Voter ID in England” (April 2018) <https://www.electoral-reform.org.uk/wp-content/uploads/2018/04/Defending-the-Right-to-Vote-Voter-ID-Briefing.pdf> [Accessed 12 September 2018].

<sup>6</sup> Representation of the People Act 1983, Schedule 1, rule 37(1), as amended by the Elections (Northern Ireland) Act 1985, s.1(2); the Representation of the People (Northern Ireland) Regulations 1986 (S.I. 1986/1091) regs.2 & 13(b); and the Representation of the People (Northern Ireland) (Variation of Specified Documents and Amendments) Regulations 1991 (S.I. 1991/1674) reg.4. In respect of photo ID, the same provision in the 1983 Act was amended on numerous occasions in order to allow for a smooth transition and to gradually phase out non-photographic ID after 2002. See the Electoral Fraud (Northern Ireland) Act 2002, s.4(3); the Representation of the People (Northern Ireland) (Amendment) Regulations 2002 (S.I. 2002/1873) reg.9 & Schedule 1; and the Representation of the People (Northern Ireland) (Variation of Specified Documents) Regulations 2003 (S.I. 2003/1156) regs.3(1)(2), 3(1)(3) & 3(1)(4).

<sup>7</sup> American Civil Liberties Union, “Oppose Voter ID Legislation: Fact Sheet” <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet> (last updated May 2017) [Accessed 12 September 2018].

<sup>8</sup> Cabinet Office, “Government Commits to New Round of Voter ID Pilots at Next Local Elections”, Press Release (19 July 2018) <https://www.gov.uk/government/news/government-commits-to-new-round-of-voter-id-pilots-at-next-local-elections> [Accessed 12 September 2018].

<sup>9</sup> B. Stanford, “Compulsory Voter Identification, Disenfranchisement and Human Rights: Electoral Reform in Great Britain” (2018) 23(1) E.H.R.L.R. 57.

is to evaluate the voter ID pilots, from conception to delivery, in light of the official statistics disseminated following the pilots as well as the author's own observations and other stakeholder feedback.

In that respect, in addition to the data collated and disseminated by each respective council, the Electoral Commission produced a substantial report on the pilot scheme in July 2018 pursuant to the requirements of the Representation of the People Act (RPA) 2000,<sup>10</sup> which provides much food for thought. Moreover, this article also draws upon the author's own observations at polling stations in two of the participating areas on the day of the local elections in May 2018, each of which imposed different identification requirements.<sup>11</sup> This article also draws upon the comments and reflections of the Chief Electoral Officer of the Electoral Office for Northern Ireland (EONI), Virginia McVea, from an interview conducted in August 2018 for the purposes of this research. These experiences were invaluable to the task of attempting to better understand and appreciate the practicalities of voter identification requirements.

Following this Introduction, Section two outlines the way in which the voter ID pilots were authorised and conducted in each respective area. Section three then evaluates the success of the pilots in each participating area from the perspective of the right to vote, relying upon the official statistics subsequently published, as well as the feedback of other stakeholders and the author's own observations at polling stations. Finally, Section four concludes.

## **(2) The Authorisation and Conduct of the Voter ID Pilot Scheme**

On 14 January 2018, the Minister for the Cabinet Office made a series of Ministerial Orders authorising the voter ID pilots to take place in Bromley,<sup>12</sup> Gosport,<sup>13</sup> Swindon,<sup>14</sup> Watford,<sup>15</sup> and Woking respectively,<sup>16</sup> pursuant to his powers under section 10 of the RPA 2000. The manner in which the pilots were legally authorised in each area has, however, been criticised, with some suggesting that the Minister acted *ultra vires* by making

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<sup>10</sup> Representation of the People (RPA) Act 2000, s.10(6); Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/244950/May-2018-voter-identification-pilots-evaluation-report.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/244950/May-2018-voter-identification-pilots-evaluation-report.pdf) [Accessed 12 September 2018]. The Commission also produced reports specific to each of the five participating areas; these are available via the Electoral Commission website

<sup>11</sup> The author observed the voting process in various polling stations in Watford and Woking. The author is grateful to all polling station staff for their helpful assistance as well as the Electoral Commission for their authorisation to act as an accredited individual observer.

<sup>12</sup> London Borough of Bromley (Identification in Polling Stations) Pilot Order 2018.

<sup>13</sup> Gosport Borough Council (Identification in Polling Stations) Pilot Order 2018.

<sup>14</sup> Swindon Borough Council (Identification in Polling Stations) Pilot Order 2018.

<sup>15</sup> Watford Borough Council (Identification in Polling Stations) Pilot Order 2018.

<sup>16</sup> Woking Borough Council (Identification in Polling Stations) Pilot Order 2018.

Orders to allow the local authorities to require identification, when Parliamentary approval should have been sought instead.<sup>17</sup>

In essence, section 10 of the RPA 2000 allows the Secretary of State to make an Order which authorises pilot schemes for local elections in England and Wales, following a proposal from a local authority and the Electoral Commission.<sup>18</sup> The Act states that such a pilot scheme would allow for changes in respect of one or more of the following general ways: when, where and how voting at the elections is to take place; how the votes cast at the elections are to be counted; or the sending by candidates of election communications free of charge for postage.<sup>19</sup> Although not limiting or proscribing exactly what requirements and processes could be authorised in a pilot, the Act states that a scheme could authorise voting to take place on more than one day and at places other than polling stations, or that postal charges incurred by candidates sending election communications could be paid by the authority concerned.<sup>20</sup>

The Act's explanatory notes provide some further, helpful guidance on this matter, stating that the evaluations which must be published by the Electoral Commission after the elections must include "an assessment of the scheme in facilitating voting and (if relevant) the counting process or in encouraging voting or enabling voters to make informed decisions",<sup>21</sup> and also "a statement as to whether in the local authority's opinion: turnout was higher than it would otherwise have been; voters found the new arrangements easy to use; the new procedures led to any increase in personation or other electoral fraud; the procedures led to an increase or to savings in expenditure."<sup>22</sup> As such, this language might suggest at the outset that the purpose of section 10 of the RPA 2000 envisaged pilot schemes being authorised with a view to *enabling* wider participation, rather than *limiting* wider participation, as compulsory identification requirements may well do.

In that respect, a circular published and disseminated by the Home Office in 2000, which for the first time provided guidance to local authorities considering running a pilot scheme in an election, stated that the application to hold a pilot must give "an assurance that *no voter will be put at a disadvantage* by the proposed innovation".<sup>23</sup> Whilst this requirement seems to have mostly thwarted proposals that would have disadvantaged a particular religious group,<sup>24</sup> the imposition of additional barriers at the point of voting, such as the identification

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<sup>17</sup> P. Walker, "UK's Voter ID Trial in Local Elections Could be Illegal – Barristers", *The Guardian* (6 June 2018).

<sup>18</sup> RPA 2000, s.10(1).

<sup>19</sup> RPA 2000, s.10(2).

<sup>20</sup> RPA 2000, s.10(3).

<sup>21</sup> RPA 2000, s.10(7).

<sup>22</sup> RPA 2000, s.10(8); RPA 2000 Explanatory Notes, s.40.

<sup>23</sup> G. Howarth, Parliamentary Under-Secretary of State for Northern Ireland, HC Deb 13 January 2000, vol.342, col.489 (Emphasis added).

<sup>24</sup> Lord Bassam of Brighton, Parliamentary Under-Secretary of State for Northern Ireland, HL Deb 15 February 2000, vol.609, col.1072.

requirements imposed in the May 2018 pilots, arguably has the potential to disadvantage certain voters in other ways.

Given the nature of the proposals and the potential implications, it is also pertinent to acknowledge the impact of the Public Sector Equality Duty (PSED) under the Equality Act 2010, which requires public authorities in the exercise of their functions to have due regard to the need to “eliminate discrimination”, “advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it”, and to “foster good relations between persons who share a relevant protected characteristic and persons who do not share it”.<sup>25</sup> In light of these overarching obligations, the Equality and Human Rights Commission (EHRC) contacted the Cabinet Office in April 2018, before the voter ID pilots took place, requesting any Equality Impact Assessment undertaken by the Government, whilst also emphasising that the voter ID pilot scheme and the underlying policy should be adequately considered with sufficiently detailed analysis to determine its potential impact on equality in a national context and prior to any pilots being run.<sup>26</sup> However, subsequent correspondence between the EHRC and the Cabinet Office in April and May 2018 revealed that the Government had *not* undertaken an Equality Impact Assessment before the voter ID pilots took place. Rather, the participating local authorities had carried these out instead, which has drawn some criticism owing to the specific, continuous and ongoing duty upon Government Departments and Ministers to comply with the PSED.<sup>27</sup>

Insofar as the actual conduct of the voter ID pilot scheme is concerned, the five participating areas in the 2018 voter pilots – Bromley, Gosport, Swindon, Watford and Woking – each had particular identification requirements that eligible voters were required to satisfy to vote on 3 May 2018. Given the UK’s unusual position of lacking a Government-issued national identity card, the varying councils were afforded greater discretion about the acceptable identification than they might otherwise have been given. Individuals in Watford

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<sup>25</sup> Equality Act 2010, s.149.

<sup>26</sup> Letter from Clare Collier (Senior Principal: Legal, Equality and Human Rights Commission) to David Lidington MP (Minister for the Cabinet Office) (11 April 2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707429/20180411\\_EHRC\\_letter\\_to\\_Cabinet\\_Office.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707429/20180411_EHRC_letter_to_Cabinet_Office.pdf) [Accessed 9 October 2018].

<sup>27</sup> Letter from Chloe Smith MP (Minister for the Constitution) to David Isaac (Chair, Equality and Human Rights Commission) (23 April 2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707137/Letter\\_to\\_David\\_Isaac\\_CBE\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707137/Letter_to_David_Isaac_CBE_2.pdf) [Accessed 9 October 2018]; Letter from David Isaac (Chair, Equality and Human Rights Commission) to Chloe Smith MP (Minister for the Constitution) (14 May 2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707681/20180514-EHRC-letter-to-CO.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707681/20180514-EHRC-letter-to-CO.pdf) [Accessed 9 October 2018]; Letter from Chloe Smith MP (Minister for the Constitution) to David Isaac (Chair, Equality and Human Rights Commission) (16 May 2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707726/MFC1307-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707726/MFC1307-response.pdf) [Accessed 9 October 2018].

and Swindon were required to produce their polling cards which contained a unique barcode.<sup>28</sup> Where voters had forgotten or lost their polling cards, or in situations when the cards could not be verified, other photographic identification was accepted.<sup>29</sup> The requirements in Bromley, Gosport and Woking were more complex, as voters were required to produce a specific form of identification.

Firstly, voters in Bromley were required to produce either a UK, Commonwealth or EU passport; a UK, Crown Dependency or EU photocard driving licence; a Northern Ireland Electoral Identity Card (EIC); a biometric immigration document issued in the UK; a European Economic Area (EEA) identity card; an Oyster 60+ London Pass; a London Freedom Pass; or a PASS scheme card (national proof of age standards scheme).<sup>30</sup> If voters did not possess one of these forms of identification, they could produce a combination of two alternative forms of identification, one of which had to show their registered address.<sup>31</sup>

The requirements in Gosport were slightly different, as voters were required to produce either a UK, Commonwealth or EU passport; a UK, Crown Dependency or EU photocard driving licence; a Northern Ireland EIC; a biometric immigration document; an EEA identity card; a Disclosure and Barring Service certificate showing a registered address; a Ministry of Defence (MoD) photographic identity card; a MoD Defence Privilege Card; or a photographic travel pass from any Hampshire council.<sup>32</sup> Like in Bromley, if voters did not possess one of these forms of identification, they could produce a combination of two alternative forms of identification, one of which had to show their registered address.<sup>33</sup>

Lastly, the requirements in Woking were arguably the strictest of all, as voters were required to produce either a UK, Commonwealth or EU passport; a UK or EU driver's licence; an EEA photographic identity card; a UK

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<sup>28</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) Appendix A.

<sup>29</sup> Voters in Watford whose polling cards could not be verified were required to produce any of the following alternative forms of photographic identification: Valid British, European or Commonwealth passport; UK or EU photo-card driving licence (full or provisional); Valid credit or debit card; Biometric Residence Permit; EEA Identity Card; or a Northern Ireland Electoral Identity Card. Voters in Swindon whose polling cards could not be verified were required to produce any of the following alternative forms of photographic identification: Passport (UK, EU, Commonwealth) (can be expired or unexpired); Photocard driving licence including a provisional licence (UK, Crown Dependency or EU); Northern Ireland Electoral Identity Card; Biometric Immigration Document; EEA Identity Card. Alternatively, voters in Swindon who lacked appropriate identification could have their identities attested by two residents who vote at the same polling station, one of whom must have already voted and had their ID verified.

<sup>30</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) Appendix A.

<sup>31</sup> Specifically, these were: a valid bank or building society debit card or credit card; a poll card for the poll; a driving licence (including a provisional licence) which is not in the form of a photocard; a birth certificate; a marriage or civil partnership certificate; an adoption certificate; a firearms certificate granted under the Firearms Act 1968; the record of a decision on bail made in respect of the voter in accordance with section 5(1) of the Bail Act 1976; a bank or building society cheque book; a mortgage statement dated within 3 months of the date of the poll; a bank or building society statement dated within 3 months of the date of the poll; a credit card statement dated within 3 months of the date of the poll; a utility bill dated within 3 months of the date of the poll; a council tax demand letter or statement dated within 12 months of the date of the poll; a Form P45 or Form P60 dated within 12 months of the date of the poll.

<sup>32</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) Appendix A.

<sup>33</sup> Specifically, these were: a driving licence without photo; a birth certificate; an adoption certificate; a marriage or civil partnership certificate; a bank or building society debit/credit card. Subject to it being issued within 12 months of voting day, voters could also produce a financial statement such as a bank or mortgage statement; a council tax demand letter or statement; a utility bill; a P2, P6, P9, P45 or P60 form; or a statement of benefits or entitlement to benefits.

biometric residence permit; a Northern Ireland EIC; a Surrey Senior Buss Pass; a Surrey Disabled People's Bus Pass; a Surrey Student Fare Card; a 16 - 25 Railcard; a Rail Season Ticket Photocard; or, if the individual did not possess one of the principal forms of identification, a Local Elector Card.<sup>34</sup> Unlike Bromley and Gosport however, other non-photographic forms of identification were not permitted.

### **(3) Evaluating the Success of the Voter ID Pilot: A Vote of (No) Confidence?**

When confronted with applications concerning the right to vote under art.3 of the First Protocol to the ECHR, the ECtHR has stressed that a number of requirements must be met for any restrictions upon the right to be lawful under the Convention.<sup>35</sup> The measures taken by contracting parties such as the UK must not curtail the right to vote in a way that impairs its essence and effectiveness; the conditions imposed must be proportionate and pursue a legitimate aim; the free expression of the people must not be thwarted; the requirement must be concerned with the integrity and effectiveness of the election process; and, if relevant, the exclusion of any group of the public must be reconcilable with the purpose of Article 3 of the First Protocol.<sup>36</sup> Furthermore, although voter identification is, on the face of it, a neutral policy that would concern all eligible voters, the ECtHR has made it clear that "a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group".<sup>37</sup>

Whilst there are numerous ways to measure the success of an election from a human rights perspective, arguably the most relevant and quantifiable way of doing so amidst concerns of potential disenfranchisement concerns voter turnout, confidence in the security of the voting process, and crucially, the amount of eligible voters prevented from voting and effectively disenfranchised for failing to produce the required identification to polling station workers. In light of the fundamental principles that underpin the right to vote under art.3 of the First Protocol to the ECHR outlined above, it is essential to examine these three issues in particular in order to reach a grounded conclusion. They will help to shed some light upon the direct consequences of voter identification laws in England in a number of ways, not least of all whether such laws might impair the essence and effectiveness of the right to vote, as well as the question of whether voter identification requirements are proportionate and pursue a legitimate aim.

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<sup>34</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) Appendix A.

<sup>35</sup> B. Stanford, "Compulsory Voter Identification, Disenfranchisement and Human Rights: Electoral Reform in Great Britain" (2018) 23(1) E.H.R.L.R. 57.

<sup>36</sup> See in particular *Mathieu-Mohin and Clerfayt v Belgium* (1988) 10 E.H.R.R. 1; *Hirst v United Kingdom (No. 2)* (2006) 42 E.H.R.R. 41; *Yumak & Sadak v Turkey* (2009) 48 E.H.R.R. 4; *Sitaropoulos & Giakoumopoulos v Greece* (2013) 56 E.H.R.R. 9; *Scoppola v Italy (No. 3)* (2013) 56 E.H.R.R. 19.

<sup>37</sup> *Biao v Denmark* (2017) 64 E.H.R.R. 1 at [103]; *D.H. v Czech Republic* (2008) 47 E.H.R.R. 3 at [184]; *Adami v Malta* (2007) 44 E.H.R.R. 3 at [80].



### **(a) Voter Turnout**

Firstly, the factors that generally affect voter turnout at any given election are obviously complex, rendering a comprehensive assessment of such an issue beyond the scope of this article. Nevertheless, before exploring the results of the voter ID pilots in more detail, it will be useful to briefly consider some of the most significant and immediate factors that may have accounted to some extent for the fluctuations in turnout in the 2018 local elections when compared to the 2014 elections, when the seats were last contested.

Whilst the local elections in May 2014 were held simultaneously with the last European Parliament elections, the May 2018 polling day only covered local elections, so a higher voter turnout in 2014 might be expected when more was at stake. On a different note, there are growing concerns that so-called “voter fatigue” may be contributing to a decrease in voter turnout.<sup>38</sup> Looking at the electoral history across the five participating areas since 2014, voters have been regularly polled, on a yearly basis in some areas, in various local, county and mayoral elections;<sup>39</sup> the 2014 European Parliament elections; the 2015 and 2017 General Elections; the 2016 Police and Crime Commissioner elections;<sup>40</sup> and the 2016 EU Referendum. As a result, voter fatigue might have contributed to a decrease in voter turnout in 2018 when compared to 2014.

On the other hand, the publicity drive to raise awareness about the identification requirements in the five areas was commendable and extremely visible, prompting the managing director and returning officer of Watford Borough Council to assert, quite fairly, that there had been “good advertising” for the elections.<sup>41</sup> In that respect, according to the Electoral Commission, 86% of people who voted in polling stations in the five participating areas were aware of the need to bring identification.<sup>42</sup> As such, the enhanced efforts to inform voters about

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<sup>38</sup> P. Duncan and P. Scruton, “Voter Fatigue: Have we ever been Polled so Often?”, *The Guardian* (21 April 2017); K. Devlin, “Experts Warn Voter Fatigue Could Lead to Lower Turnout”, *The Sunday Herald* (18 April 2017).

<sup>39</sup> In Bromley, local elections were held in 2014 and 2018, whilst the London Mayoral and Greater London Authority elections were held in 2016. See London Borough of Bromley, “Past Election Results” [http://www.bromley.gov.uk/info/200033/elections\\_and\\_voting/1107/past\\_election\\_results](http://www.bromley.gov.uk/info/200033/elections_and_voting/1107/past_election_results) [Accessed 12 September 2018]. In Gosport, local elections were held in 2014, 2017 and 2018. See Gosport Borough Council, “Election Results” <https://www.gosport.gov.uk/sections/your-council/council-services/electoral-services/election-results/> [Accessed 12 September 2018]. In Swindon, local elections were held in 2014, 2015, 2016 and 2018. See Swindon Borough Council, “Councillors, Democracy and Elections” [https://www.swindon.gov.uk/downloads/20021/councillors\\_democracy\\_and\\_elections](https://www.swindon.gov.uk/downloads/20021/councillors_democracy_and_elections) [Accessed 12 September 2018]. In Watford, local elections were held in 2014, 2015, 2016, 2017 and 2018, whilst mayoral elections were held in 2014 and 2018. See Watford Borough Council, “Elections Results” <https://www.watford.gov.uk/electionresults> [Accessed 12 September 2018]. Lastly, in Woking, local elections were held in 2014, 2015, 2016, 2017 and 2018. See Woking Borough Council, “Past Election Results” <https://www.woking.gov.uk/council/election/elections> [Accessed 12 September 2018].

<sup>40</sup> With the exception of Bromley which is within the jurisdiction of the Metropolitan Police. Voters were instead invited to vote in the 2016 London Mayoral election. The London Mayor is considered to be the Police and Crime Commissioner for the Metropolitan Police District.

<sup>41</sup> R. Cusack, “Turnout up in Polling Card Pilot Areas and Down for ID Cards”, *Local Government Chronicle* (10 May 2018) <https://www.lgcplus.com/politics-and-policy/governance-and-structure/turnout-up-in-polling-card-pilot-areas-and-down-for-id-cards/7024398.article> [Accessed 12 September 2018].

<sup>42</sup> Electoral Commission, “May 2018 Voter Identification Schemes: Findings and Recommendations” (July 2018) para.1.17.

the voter ID requirements, and therefore of the election itself by default, may have accounted for a small increase in voter turnout in the 2018 local elections.<sup>43</sup>

In terms of the actual voter turnout in each of the five areas that participated in the 2018 voter ID pilots, turnout *increased* in Swindon and Watford where voters were required to produce their polling cards, when compared to the 2014 local elections when the seats were last contested.<sup>44</sup> However, turnout marginally *decreased* in Bromley, Gosport and Woking where specific forms of identification were required.<sup>45</sup> Given the complexity of the factors that invariably influence voter turnout, only some of which have been acknowledged above, it is important to treat these results with caution and avoid making any definitive conclusions about the impact of voter ID at elections. Nevertheless, given what is at stake with the risk of widespread disenfranchisement, caution is all the more necessary if attempting to point to these results as evidence that voter identification would have a minimal impact upon the turnout at more significant elections such as general elections or referendums.

As voter turnout is traditionally poor in UK local elections in comparison to general elections and referendums,<sup>46</sup> it could be safely assumed that individuals who vote in local elections are more likely to be politically engaged than those who only vote in general elections and referendums. According to the Electoral Commission and their voter survey in 2017, those who claim to “always vote” at elections are likely to have comprised the majority of voters at the local government and combined authority mayoral elections in May 2017.<sup>47</sup> Moreover, the Electoral Commission concluded that “‘always voters’ are more likely to view voting as a civic duty compared to ‘sometimes voters’, whose motivations change depending on the context of the poll”.<sup>48</sup>

As such, it might be reasonable to expect that individuals who consistently vote at local elections, as well as other elections deemed to be less significant than general elections and referendums, are more conscientious about the rules and regulations of voting than those who *only* vote in general elections and referendums. These

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<sup>43</sup> A postal survey carried out by two academics across the five pilot areas and three non-pilot areas revealed that the turnout of respondents in pilot areas was 75%, compared to 70% of respondents in non-pilot areas. Furthermore, 70% of respondents in pilot areas were contacted by a political party before the elections, compared to 68% of respondents in non-pilot areas. See L. Testa & S. Banducci, “Local Elections and Voter ID Pilots”, *Exeter Q-Step Centre* (2018).

<sup>44</sup> In Swindon turnout increased from 33% to 40%, whereas in Watford turnout increased from 37% to 39.3%. See R. Cusack, “Turnout up in polling card pilot areas and down for ID cards”, *Local Government Chronicle* (10 May 2018); N. Dempsey, “Local Election 2018”, *House of Commons Library*, CBP 8306 (14 May 2018) <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8306#fullreport> p.18 [Accessed 12 September 2018].

<sup>45</sup> In Bromley turnout decreased from 41% to 40%, in Gosport turnout decreased from 33.5% to 33%, and in Woking turnout decreased from 38.7% to 37.8%. See N. Dempsey, “Local Election 2018”, *House of Commons Library*, CBP 8306 (14 May 2018) p.18.

<sup>46</sup> See for example A. Dar, “Elections: Turnout”, *House of Commons Library*, SN/SG/1467 (3 July 2013) ch.6 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01467#fullreport> [Accessed 12 September 2018]; Electoral Commission, “Voting in 2017: Understanding Public Attitudes Towards Elections and Voting” (October 2017) [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0011/234893/Voting-in-2017-Final.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/234893/Voting-in-2017-Final.pdf) [Accessed 12 September 2018].

<sup>47</sup> Electoral Commission, “Voting in 2017: Understanding Public Attitudes Towards Elections and Voting” (October 2017) para.2.12.

<sup>48</sup> Electoral Commission, “Voting in 2017: Understanding Public Attitudes Towards Elections and Voting” (October 2017) para.2.13.

voters might therefore be more likely to ensure that they satisfied whatever the voting requirements were well in advance of polling.

Caution is also necessary when confronted with the issue of representation in the 2018 voter ID pilots, given the obvious lack of diversity in the five participating areas when compared to the overall electorate in the UK. In addition to the clear geographical limitation of the five participating areas, i.e. the fact that all five areas are located in the South of England and three had a close proximity to London, questions can also be asked about the diversity of the areas in other more subtle ways.

For example, in respect of unemployment rates, the five participating areas all had below-average percentages compared to the national average of 4.2%, with Woking being the furthest afield at 2.4%.<sup>49</sup> Furthermore, the Electoral Commission 2017 voter survey revealed that “always voters” who were, as discussed earlier, likely to have comprised the majority of voters at the local government elections in May 2017, were “more likely to be over 35 years old, white and from socio-economic group AB”.<sup>50</sup> According to the National Readership Survey of social grades in 2016, this particular combined socio-economic group comprises just 27% of the population in the UK.<sup>51</sup>

Although now slightly outdated, the 2011 Census revealed that whereas 23% of all individuals in England belonged to the AB social grade, Bromley, Watford and Woking all had a much higher percentage of individuals in the highest social grades at that time, whereas Swindon had a marginally smaller percentage, and only Gosport had a significantly lower percentage.<sup>52</sup> Voters in the AB social grade are also much more likely to vote for the Conservative Party, as demonstrated in the three most recent General Elections in 2017,<sup>53</sup> 2015,<sup>54</sup> and 2010.<sup>55</sup> More troubling however, the Electoral Commission revealed that 18% of voters in the C2DE social

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<sup>49</sup> The figures were 4.1% in Swindon and Watford, 4% in Gosport, 3.8% in Bromley and 2.4% in Woking. See M. Palese & C. Terry, “A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials”, *Electoral Reform Society* (September 2018) <https://www.electoral-reform.org.uk/wp-content/uploads/2018/09/2018-Voter-ID-Trials.pdf> p.21 [Accessed 12 September 2018].

<sup>50</sup> Electoral Commission, “Voting in 2017: Understanding Public Attitudes Towards Elections and Voting” (October 2017) para.2.13.

<sup>51</sup> National Readership Survey, “Social Grade” <http://www.nrs.co.uk/nrs-print/lifestyle-and-classification-data/social-grade/> [Accessed 12 September 2018].

<sup>52</sup> According to the 2011 Census, the figures were as follows: Bromley (30.8%), Gosport (16.6%), Swindon (21.9%), Watford (27.1%) and Woking (37.1%). See Office for National Statistics, “2011 Census” <https://www.ons.gov.uk/census/2011census> [Accessed 12 September 2018].

<sup>53</sup> Ipsos MORI, “How Britain Voted in the 2017 Election” (20 June 2017) <https://www.ipsos.com/ipsos-mori/en-uk/how-britain-voted-2017-election> [Accessed 12 September 2018].

<sup>54</sup> Ipsos MORI, “How Britain Voted in 2015” (26 August 2015) <https://www.ipsos.com/ipsos-mori/en-uk/how-britain-voted-2015> [Accessed 12 September 2018].

<sup>55</sup> Ipsos MORI, “How Britain Voted in 2010” (21 May 2010) <https://www.ipsos.com/ipsos-mori/en-uk/how-britain-voted-2010> [Accessed 12 September 2018].

grades in the pilot areas said they were not aware of the voter ID requirements in their respective areas, compared to only 9% of voters in the ABC1 social grade.<sup>56</sup>

As such, serious questions can be asked as to whether the five areas were adequately representative of the different socio-economic groups that comprise the electorate in England, in order to draw any definitive support for a wider implementation of voter ID laws. At this stage it is also necessary to recognise the importance of art.14 of the ECHR which provides that the enjoyment of human rights, such as the right to vote under art.3 of the First Protocol, must be secured without unlawful discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>57</sup> Given the low unemployment rates and lack of diversity in the five participating areas in terms of socio-economic status, and the lack of awareness about the identification requirements amongst the lower C2DE social grades, more evidence is plainly needed to demonstrate that stringent identification requirements would not have a discriminatory impact in areas with higher unemployment rates or areas with a greater proportion of voters who fall into the lower socio-economic grades.

In terms of ethnic diversity, the five participating areas were slightly more representative of the overall electorate in the UK. The 2011 Census revealed that whereas 79.8% of all individuals in England were white (English/Welsh/Scottish/Northern Irish/British), the percentages were slightly lower in Bromley and Woking, and significantly lower in Watford than England overall, meaning that there was greater ethnic diversity in those three areas, whereas the figures were much higher in Gosport and Swindon, meaning that there was less ethnic diversity in those areas.<sup>58</sup>

Bearing these issues in mind, it is perhaps surprising that the decrease in turnout was not more prevalent in the three areas with the more stringent identification requirements, where some voters faced the extra burden, however small, of obtaining acceptable identification. In comparison, eligible voters in Swindon and Watford were not required to do anything other than produce their polling cards posted directly to their address. Whilst this would obviously pose a challenge to voters without a fixed address, such as the homeless or travellers in particular, the process of registering to vote still requires eligible individuals to identify a location or address

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<sup>56</sup> Electoral Commission, "Voting in 2017: Understanding Public Attitudes Towards Elections and Voting" (October 2017) para.1.18.

<sup>57</sup> The European Court of Human Rights has accepted that placing restrictions upon who can vote may be necessary, for example, when imposing a minimum age in order to ensure the maturity of the electorate, or when restricting voter eligibility to individuals with continuous or close links to the country concerned. See *Melnichenko v Ukraine* (2006) 42 E.H.R.R. 39; *Luksch v Germany* (App. No.35385/97), decision of 21 May 1997; *Py v France* (2006) 42 E.H.R.R. 26; *Hilbe v Liechtenstein* (App. No.31981/96), decision of 7 September 1996.

<sup>58</sup> According to the 2011 Census, the figures were as follows: Bromley (77.4%), Gosport (94.5%), Swindon (84.6%), Watford (61.9%) and Woking (74.9%).

with which they have some connection, and so these voters would be more likely to face the risk of disenfranchisement at the point of registration rather than actual voting. Voters in Swindon and Watford, therefore, were not subject to the same burden as voters in Bromley, Gosport and Woking. **As such, unless adequate measures are put in place, there is a real concern that stringent voter identification requirements could exacerbate the difficulties that individuals with no fixed address such as the homeless or travellers already face, and could perhaps even be discriminatory against such individuals owing to their property status.**

Ultimately, given the complexities of voter turnout and the lack of diversity in the five participating areas, the statistics concerning voter turnout in the five participating areas do not tell us enough about the impact of voter identification laws upon the right to vote to draw any definitive conclusions. Nonetheless, whilst it is encouraging that voter turnout in Swindon and Watford actually *increased* when compared to the 2014 local elections, the fact that voter turnout *decreased*, even marginally, in all three areas where specific forms of identification were required should not be ignored, and must be taken into account when evaluating the impact of voter identification.

#### **(b) Confidence in the Security of the Voting Process**

The results in respect of confidence in the security of the voting process are, on the face of it, the strongest argument in favour of voter identification. However, to paint the full picture it is crucial to consider the views of those who voted but also those who administered the elections. In terms of voter confidence, the Electoral Commission's public opinion survey in the May 2018 local elections suggested that just 15% of respondents in pilot areas thought that there had been "a lot" or "a little" electoral fraud or abuse on 3<sup>rd</sup> May, whereas 37% of respondents in non-pilot areas thought the same.<sup>59</sup> In contrast, 43% of respondents in pilot areas thought there had been "hardly any" electoral fraud or abuse, or "nothing at all", whereas 34% of respondents in non-pilot areas thought as such.<sup>60</sup> More generally, 63% of respondents in Bromley and 57% of respondents in Gosport said that an identification requirement would make them more confident in the security of the voting system, whereas the majority of people in Swindon, Watford and Woking said it would make no difference.<sup>61</sup>

Given that combatting electoral fraud was the stated aim for the voter ID pilots,<sup>62</sup> which is obviously a legitimate aim and one essential to the task of ensuring the integrity and effectiveness of the election process, the voter

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<sup>59</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) Chart 2.

<sup>60</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) Chart 2.

<sup>61</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) para.1.77.

<sup>62</sup> Cabinet Office, "Voter ID Pilot to Launch in Local Elections", Press Release (16 September 2017).

ID pilots in May 2018 appear to have been a success and the strongest argument in support of voter identification laws from a human rights perspective.

However, other findings suggest that polling station workers are unconvinced that electoral fraud is a significant problem. Based upon a survey of polling station workers conducted in 42 local authorities which *did not* participate in the voter ID pilots in May 2018, just 1% of over 2,000 respondents reported at least one suspected case of electoral fraud.<sup>63</sup> Suspected electoral fraud was, in fact, only the eighth most commonly reported problem, after much more pronounced issues such as individuals not being on the voting register and disabled voters having difficulties completing ballot papers.<sup>64</sup> Interestingly, based upon the responses of polling station workers in local authorities that *did* participate in the voter ID pilots, an identical percentage (1%) of workers reported suspected electoral fraud.<sup>65</sup>

To put these views into perspective, there were 28 allegations of personation at a polling station across all elections in the UK in 2017, of which just one resulted in a successful prosecution and conviction.<sup>66</sup> This actually represents an improvement from 2016 when there were 44 allegations which also resulted in just one successful prosecution and conviction.<sup>67</sup>

At this stage, it is important to note that the perception of electoral fraud in Northern Ireland has historically been much more prevalent than in the rest of the UK. For example, at the 1983 UK General Election, nearly 1,000 tendered ballots had to be issued to eligible voters in Northern Ireland, as someone had already voted in their name.<sup>68</sup> At the same election, the then Royal Ulster Constabulary made 149 arrests for personation, resulting in 104 prosecutions.<sup>69</sup> Following the introduction of compulsory photographic identification in 2003, just 55 tendered ballots were issued in Northern Ireland at the 2005 UK General Election which represented a

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<sup>63</sup> T. James & A. Clark, "Voter ID: Our First Results Suggest Local Election Pilot was Unnecessary and Ineffective", *The Conversation* (1 August 2018) <https://theconversation.com/voter-id-our-first-results-suggest-local-election-pilot-was-unnecessary-and-ineffective-100859> [Accessed 12 September 2018].

<sup>64</sup> T. James & A. Clark, "Voter ID: Our First Results Suggest Local Election Pilot was Unnecessary and Ineffective", *The Conversation* (1 August 2018).

<sup>65</sup> Electoral Commission, "Polling Station Staff Survey Results" Q.17E <https://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/voter-identification-pilot-schemes> [Accessed 12 September 2018]; T. James & A. Clark, "Voter ID: Our First Results Suggest Local Election Pilot was Unnecessary and Ineffective", *The Conversation* (1 August 2018).

<sup>66</sup> Electoral Commission, "Analysis of Cases of Alleged Electoral Fraud in the UK in 2017: Summary of Data Recorded by Police Forces" (2018) [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/239973/Fraud-allegations-data-report-2017.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/239973/Fraud-allegations-data-report-2017.pdf) paras.2.9 and 2.19 [Accessed 12 September 2018]. Section 60 of the Representation of the People Act 1983 states that a person is guilty of personation if he votes as someone else (whether that person is living, dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy.

<sup>67</sup> Electoral Commission, "Analysis of Cases of Alleged Electoral Fraud in the UK in 2016" (March 2017) [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0020/223184/Fraud-allegations-data-report-2016.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0020/223184/Fraud-allegations-data-report-2016.pdf) para.1.3 [Accessed 12 September 2018].

<sup>68</sup> Lord Elton, HL Deb 19 December 1983, vol.446, col.575; S. Wilks-Heeg, "Voter ID at British Polling Stations – Learning the Right Lessons from Northern Ireland" *Manchester Policy Blogs* (1 March 2018) <http://blog.policy.manchester.ac.uk/posts/2018/03/voter-id-at-british-polling-stations-learning-the-right-lessons-from-northern-ireland/> [Accessed 12 September 2018].

<sup>69</sup> Mellor, HC Deb 18 December 1984, vol.70, col.87; S. Wilks-Heeg, "Voter ID at British Polling Stations – Learning the Right Lessons from Northern Ireland" *Manchester Policy Blogs* (1 March 2018).

“94% reduction compared to 1983”.<sup>70</sup> These figures stand in stark contrast to the 2017 General Election when, as already discussed, there was just 28 allegations of personation in the entire UK, resulting in just one successful prosecution.<sup>71</sup> Although the introduction of voter ID reforms in Northern Ireland in the 1980s may well have been a justified and proportionate response to the problem of electoral fraud, the situation in the rest of the UK today is radically different and it is much harder to justify stringent identification requirements as a proportionate response.<sup>72</sup>

Even so, whilst confidence in the integrity of the election process in Northern Ireland improved significantly following the introduction of photographic identification,<sup>73</sup> the amount of people who thought that “a lot” or “a little” electoral fraud took place in the 2017 Northern Ireland Assembly elections was, surprisingly perhaps, no less than comparable regional elections in the rest of the UK. The exact figure, 28%, was precisely the same as the proportion of people who thought “a lot” or “a little” electoral fraud took place in the English local government elections that year, and it was in fact marginally *higher* than the proportion of people who thought that “a lot” or “a little” fraud took place in the Scottish local council and Welsh local government elections.<sup>74</sup>

Ultimately, whilst the *aim* of combating electoral fraud appears to be relatively unproblematic from a human rights perspective and, in reality, it is the strongest argument in favour of voter identification laws, the fact remains that fraud and personation at polling stations is of a very low concern in the rest of the UK, both in terms of anecdotal feedback from polling station workers but also insofar as there are minimal allegations and almost zero successful convictions of the crime. Whereas the perception of electoral fraud in Northern Ireland was undoubtedly a serious problem in the past which may have justified the introduction of identification requirements, the problem has been mostly confined to that country.

Bearing in mind that one of the fundamental legal principles underpinning the right to free elections under art.3 of the First Protocol to the ECHR is that the conditions imposed upon the right to vote must be proportionate, the next section illustrates that whilst combatting electoral fraud may well be a legitimate objective, the potential

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<sup>70</sup> S. Wilks-Heeg, “Voter ID at British Polling Stations – Learning the Right Lessons from Northern Ireland” *Manchester Policy Blogs* (1 March 2018).

<sup>71</sup> Electoral Commission, “Analysis of Cases of Alleged Electoral Fraud in the UK in 2017: Summary of Data Recorded by Police Forces” (2018) paras.2.9 and 2.19.

<sup>72</sup> M. Palese & C. Terry, “A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials”, *Electoral Reform Society* (September 2018) p.18.

<sup>73</sup> As Stuart Wilks-Heeg noted, “In the early 2000s, 66% of Northern Irish electors believed electoral fraud was commonplace in some areas. By 2017, the proportion who thought at least some fraud took place was 28%, in line with the rest of the UK”. See House of Commons Northern Ireland Affairs Committee, “Electoral Registration in Northern Ireland” (2004-05, HC 131) para.7; Electoral Commission, “Post-Poll Public Opinion” (2017) <https://www.electoralcommission.org.uk/our-work/our-research/public-opinion-surveys/post-poll-public-opinion> [Accessed 12 September 2018].

<sup>74</sup> Electoral Commission, “Post-Poll Public Opinion” (2017).

consequences of harsh identification requirements when compared to the relatively insignificant problem of electoral fraud outside of Northern Ireland may be too significant to ignore.

### **(c) Rejection at Polling Stations**

The most controversial and arguably the most significant set of statistics from a human rights perspective concerns the number of eligible voters refused a ballot paper for failing to produce the required identification. Whilst these individuals were not denied their right to vote at the stage of registration, or when entering the polling station, they were effectively disenfranchised nonetheless for failing to comply with the requirements at the point of requesting a ballot paper in order to cast their vote. Initially, the non-governmental organisation Democracy Volunteers revealed that its observers at various polling stations in the five areas had witnessed 1.67% of voters being initially turned away for failing to produce the correct form of identification.<sup>75</sup> Based upon this figure, the Electoral Reform Society subsequently estimated that almost 4,000 voters in total across the five areas had been turned away at polling stations.<sup>76</sup>

These estimates have, however, been doubted by the Association of Electoral Administrators and several Members of Parliament in a recent debate.<sup>77</sup> Moreover, these figures have not been supported by the official statistics subsequently released by the five participating councils and the Electoral Commission. Whilst the statistics compiled by the various councils suggest that nearly 700 voters were initially turned away from polling stations for failing to produce the required identification, just under half later returned with the correct documentation.<sup>78</sup> Ultimately, in the areas where voters were required to produce their polling cards, 25 voters were turned away at polling stations in Swindon, representing 0.06% of all who voted,<sup>79</sup> whereas in Watford the figure was estimated at 42-66, representing approximately 0.2% of all who voted.<sup>80</sup> In the areas where a specific form of identification was required, 154 voters were turned away in Bromley, representing 0.2% of all

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<sup>75</sup> J. Ault, "Voter ID Pilot Councils: (Bromley, Gosport, Swindon, Watford and Woking) Special Report", *Democracy Volunteers* (3 May 2018) <https://democracyvolunteersdotorg.files.wordpress.com/2018/05/voter-id-pilot-areas-special-report-20181.pdf> [Accessed 12 September 2018].

<sup>76</sup> Electoral Reform Society, "Thousands of Voters Turned Away from Polling Stations in Mandatory ID Trials", Press Release (4 May 2018) <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/thousands-of-voters-turned-away-from-polling-stations-in-mandatory-id-trials/> [Accessed 12 September 2018].

<sup>77</sup> See the contributions of several MPs during the "Voter ID Pilot Schemes" debate on 6 June 2018, vol.642, cols.179WH-196WH.

<sup>78</sup> N. Dempsey, "Local Election 2018", *House of Commons Library*, CBP 8306 (14 May 2018) p.17.

<sup>79</sup> Electoral Commission, "Swindon May 2018 Voter Identification Pilot Evaluation" [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0004/244957/Voter-identification-pilot-Swindon-evaluation.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/244957/Voter-identification-pilot-Swindon-evaluation.pdf) Table 1.1 [Accessed 12 September 2018].

<sup>80</sup> Electoral Commission, "Watford May 2018 Voter Identification Pilot Evaluation" [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0005/244958/Voter-identification-pilot-Watford-evaluation.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/244958/Voter-identification-pilot-Watford-evaluation.pdf) Table 1.1 [Accessed 12 September 2018].



who voted,<sup>81</sup> whereas the figures were 54 in Gosport,<sup>82</sup> and 51 in Woking,<sup>83</sup> representing 0.4% and 0.3% of all who voted respectively.

As such, around 350 eligible voters who attempted to vote were unable to in the five areas for failing to produce the required identification. According to the Parliamentary Secretary to the Cabinet Office, this represented “just 0.06% of the electorate and 0.14% of votes cast”.<sup>84</sup> These figures do not, of course, account for those voters who simply stayed away from polling stations on the day due to their lack of appropriate identification in the first place.

On the face of it, these figures may seem trivial and dispel some doubts about the potential risk of widespread disenfranchisement. However, these results are more alarming if a similar proportion of voters were, hypothetically speaking, rejected when attempting to vote in the 2016 Referendum on the UK’s membership of the European Union, in which 28,455,402 votes were cast in England alone.<sup>85</sup> Taking the official statistics from the voter ID pilot scheme at face value, assuming at best that 0.06% of all voters would have been unable to present the required identification and did not return, this would mean that over 17,000 individuals in England may have been rejected at polling stations in the Referendum. At worst, assuming that 0.4% of all voters would have been unable to present identification and did not return, almost 114,000 individuals in England may have been rejected.

Looking at it another way, the total registered electorate for the 2017 General Election was just over 46.8 million in the UK,<sup>86</sup> meaning that if 0.06% of eligible voters were unable to vote due to a lack of identification, over 28,000 of the electorate would have been effectively disenfranchised. Although at one extreme, it is interesting to note that the smallest majority currently enjoyed by a sitting Member of Parliament is just two votes.<sup>87</sup> In that respect, 54 people were unable to vote in Gosport, which is itself also a parliamentary

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<sup>81</sup> Electoral Commission, “Bromley May 2018 Voter Identification Pilot Evaluation” [https://www.electoralcommission.org.uk/data/assets/pdf\\_file/0010/244954/Voter-identification-pilot-Bromley-evaluation.pdf](https://www.electoralcommission.org.uk/data/assets/pdf_file/0010/244954/Voter-identification-pilot-Bromley-evaluation.pdf) Table 1.1 [Accessed 12 September 2018].

<sup>82</sup> Electoral Commission, “Gosport May 2018 Voter Identification Pilot Evaluation” [https://www.electoralcommission.org.uk/data/assets/pdf\\_file/0003/244956/Voter-identification-pilot-Gosport-evaluation.pdf](https://www.electoralcommission.org.uk/data/assets/pdf_file/0003/244956/Voter-identification-pilot-Gosport-evaluation.pdf) Table 1.1 [Accessed 12 September 2018].

<sup>83</sup> Electoral Commission, “Woking May 2018 Voter Identification Pilot Evaluation” [https://www.electoralcommission.org.uk/data/assets/pdf\\_file/0006/244959/Voter-identification-pilot-Woking-evaluation.pdf](https://www.electoralcommission.org.uk/data/assets/pdf_file/0006/244959/Voter-identification-pilot-Woking-evaluation.pdf) Table 1.1 [Accessed 12 September 2018].

<sup>84</sup> C. Smith, Parliamentary Secretary to the Cabinet Office, WH Deb 6 June 2018, vol 642, col 194WH.

<sup>85</sup> BBC News, “EU Referendum Results” [https://www.bbc.co.uk/news/politics/eu\\_referendum/results](https://www.bbc.co.uk/news/politics/eu_referendum/results) [Accessed 12 September 2018].

<sup>86</sup> Electoral Commission, “Voting in 2017: Understanding Public Attitudes Towards Elections and Voting” (October 2017) Table 1.1.

<sup>87</sup> In North East Fife. See P. Gallagher, “General Election 2017: The Smallest Majorities of the Night”, *iNews* (9 June 2017) <https://inews.co.uk/news/politics/general-election-smallest-majorities-constituencies/> [Accessed 12 September 2018].

constituency. As noted elsewhere, this figure is more than the winning majority in eight parliamentary seats at the 2017 General Election.<sup>88</sup>

**(d) A Vote of (No) Confidence in Voter Identification? Lessons from Northern Ireland**

Given that the ECtHR has stated that the right to vote is not a privilege,<sup>89</sup> and that the presumption in democratic states “must be in favour of inclusion”,<sup>90</sup> any reforms which might challenge universal suffrage must always be subject to careful scrutiny. Whilst the ECtHR has afforded a wide margin of appreciate to States when it comes to organising and running electoral systems,<sup>91</sup> each must still comply with certain fundamental principles that underpin the right.

On the one hand, the increase in voter confidence in the security of the voting process is certainly the strongest argument in favour of voter identification laws, and it would appear to satisfy the requirement under the ECHR that the conditions imposed upon the right to vote must pursue a legitimate aim. Such an aim is also inherently connected to the task of ensuring the integrity and effectiveness of the election process.<sup>92</sup>

However, the impact upon voter turnout remains a grey area in need of further research to ensure that the essence and effectiveness of the right to vote for eligible voters in the UK is not impaired.<sup>93</sup> More importantly, the fact that around 350 individuals were unable to vote in the May 2018 voter ID pilots may, quite justifiably, prompt suggestions that strict identification requirements do not comply with the fundamental principle that the conditions imposed upon the right to vote must be proportionate.<sup>94</sup> The risk of disenfranchisement is even more difficult to defend in light of the fact that personation at polling stations in Great Britain is, relatively speaking, of very little concern.

Although Government Ministers have been quick to herald the pilot scheme as a success and pledged to facilitate further pilots in 2019,<sup>95</sup> the doubts expressed in this article about the appropriateness of drawing any definitive support from the 2018 pilots for a national roll-out in the future have been reinforced elsewhere. The primary recommendation from the Electoral Commission’s recent evaluation is that the Government should

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<sup>88</sup> FullFact, “Has the Government’s Voter ID Scheme Been a Success?” (27 July 2018) <https://fullfact.org/crime/voter-id-scheme/> [Accessed 12 September 2018].

<sup>89</sup> *Hirst* (2006) 42 E.H.R.R. 41 at [59].

<sup>90</sup> *Hirst* (2006) 42 E.H.R.R. 41 at [59].

<sup>91</sup> *Mathieu-Mohin* (1988) 10 E.H.R.R. 1 at [52]; *Labita v Italy* (2008) 46 E.H.R.R. 50 at [201]; *Hirst* (2006) 42 E.H.R.R. 41 at [60]–[61].

<sup>92</sup> *Yumak* (2009) 48 E.H.R.R. 4 at [109]; *Hirst* (2006) 42 E.H.R.R. 41 at [62]; *Scoppola* (2013) 56 E.H.R.R. 19 at [84].

<sup>93</sup> *Mathieu-Mohin* (1988) 10 E.H.R.R. 1 at [52]; *Hirst* (2006) 42 E.H.R.R. 41 at [62]; *Sitaropoulos* (2013) 56 E.H.R.R. 9 at [64].

<sup>94</sup> *Mathieu-Mohin* (1988) 10 E.H.R.R. 1 at [52]; *Hirst* (2006) 42 E.H.R.R. 41 at [62]; *Sitaropoulos* (2013) 56 E.H.R.R. 9 at [64].

<sup>95</sup> Cabinet Office, “Government Commits to New Round of Voter ID Pilots at Next Local Elections”, Press Release (19 July 2018).

ensure that a wider range of local councils run pilot schemes in the 2019 local elections, due to the lack of diversity in the five areas that participated in the 2018 pilots.<sup>96</sup> In that regard, it is imperative that the next round of pilots includes areas in Northern England, the Midlands and Wales;<sup>97</sup> areas with a greater proportion of voters in low socio-economic groups; areas with a greater proportion of ethnic minorities; as well as university towns and cities and areas with high unemployment rates, which the Electoral Reform Society has also advocated.<sup>98</sup>

Going forward, given the fact that voter identification is now mostly a matter of routine in Northern Ireland, it may be tempting to point to the organisation and conduct of elections there as a model of good practice to replicate. Given the likelihood that compulsory identification laws will be rolled out nationwide, it is pertinent to briefly consider some of the practical lessons that can be learned from Northern Ireland. For example, it is extremely likely, and arguably *essential* from a human rights perspective, that the Government would consider the creation of a voter identification card for those eligible voters in Great Britain who might otherwise lack appropriate identification. It is also likely that such an identification card would be issued free of charge, given that one Minister confirmed that individuals voting in the May 2018 voter ID pilots would not have to spend any money,<sup>99</sup> and the fact that the council with the most stringent requirements in the 2018 voter ID pilot, Woking, issued a “Local Elector Card” free of charge.

Such a process would be a considerable administrative and financial undertaking. In 2003-2004, when photographic identification was first required in Northern Ireland, over 89,000 Electoral Identity Cards (EICs) were issued in Northern Ireland.<sup>100</sup> Bearing in mind that the total electorate in Northern Ireland in 2003 for parliamentary elections was a little over 1.2 million,<sup>101</sup> the issuing of over 89,000 EICs represented approximately 8% of the electorate. If a similar percentage of the total electorate in England, Scotland and Wales requested a Government-issued voter identity card for the parliamentary election in 2017, when the

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<sup>96</sup> Electoral Commission, “May 2018 Voter Identification Schemes: Findings and Recommendations” (July 2018) para.1.96.

<sup>97</sup> Section 10 of the RPA 2000 only allows for pilots in England and Wales to be authorised.

<sup>98</sup> Electoral Reform Society, “Voters Locked Out: The Flaws of Voter ID in England” (April 2018).

<sup>99</sup> C. Skidmore, Minister for the Constitution (26 October 2017) Written Answer No.108103.

<sup>100</sup> These figures were obtained from the Electoral Office of Northern Ireland directly.

<sup>101</sup> The exact figure according to the Office for National Statistics was 1,218,400. See Office for National Statistics, “Electoral Statistics, UK: 2013”, Statistical Bulletin <https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/bulletins/electoralstatisticsforuk/2014-05-01#parliamentary-electors> [Accessed 12 September 2018].

combined electorate was 45.6 million,<sup>102</sup> this would mean that approximately 3.65 million cards might have been needed.

Clearly, if a national roll-out of voter identification does take place, adequate resources and infrastructure would be needed to ensure that these applications could be processed in a reasonable time to ensure that no eligible voter was disenfranchised. In light of the recent experience in Northern Ireland, and also in the USA where the courts have not looked favourably upon voter ID laws which create real or hidden financial hurdles,<sup>103</sup> the Cabinet Office would have to bear the entirety of this cost in the UK, creating obvious financial consequences in a time of significant budgetary constraint.

#### **(4) Conclusions**

This article has attempted to evaluate the success of the voter ID pilots that were conducted in five areas in the English local elections in May 2018. Bearing in mind the concerns discussed in this article, should the Government proceed to consider a national roll-out of compulsory identification requirements, it cannot credibly do so by pointing to the success of the 2018 pilot scheme alone. **Despite the legitimate rationale provided by the Government for reform and the demonstrable increase in voter confidence in the five participating areas,** voter identification laws are open to accusations of being disproportionate given the potential risk of a drop in voter turnout and the fact that several hundred eligible voters were effectively denied the right to vote in the May 2018 pilots. **Owing to the lack of diversity in the five participating areas, further research is also needed to ensure that stringent identification requirements do not discriminate against certain individuals.**

The Government must demonstrate that it has considered and adequately responded to the fundamental concerns discussed in this article and elsewhere, before contemplating a full nationwide roll-out. In that respect, it is imperative that the voter ID pilots in May 2019 involve a wider range of local councils, as both the Electoral Commission and the Electoral Reform Society have suggested,<sup>104</sup> **and that a comprehensive Government-led Equality Impact Assessment is undertaken beforehand, to better understand the impact of voter identification upon certain types of individuals and groups and to ultimately eliminate the risk of unlawful discrimination.** Given that the very purpose of a pilot is to test potential reforms, the participating councils

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<sup>102</sup> In 2017, the total electorate in England, Scotland and Wales for parliamentary elections was, respectively, 39,302,175; 3,991,372 and 2,299,189. See Electoral Commission, "2017 General Election Results" <https://www.electoralcommission.org.uk/our-work/our-research/electoral-data/2017-uk-general-election-results> [Accessed 12 September 2018].

<sup>103</sup> See *Common Cause/Georgia League of Women* 439 F.Supp. 2d 1294 (N.D. Ga. 2006); *Weinschenk* 203 S.W. 3d 201 (Mo. banc 2006).

<sup>104</sup> Electoral Commission, "May 2018 Voter Identification Schemes: Findings and Recommendations" (July 2018) p.2; Electoral Reform Society, "Voters Locked Out: The Flaws of Voter ID in England" (April 2018).

should also consider the possibility of allowing provisional ballots, as practiced in some US states, which would further reduce the risk of disenfranchisement. Ultimately, whilst the Government's stated rationale for voter identification reforms in the UK remains sound, the case for a national roll-out at this moment in time remains far from convincing.