

The Recall of MPs Act 2015: Petitions, Polls and Problems

JONATHAN TONGE

Abstract

Under the terms of the Recall of MPs Act 2015, there have been three recall petitions brought against MPs who have committed misconduct. The outcomes have been variable. The first petition failed to attract enough signatures to trigger a by-election. The second led to the unseating of the MP, who declined the opportunity to stand in the subsequent by-election. The third led to the removal of the MP and an unsuccessful candidature to regain his seat at the by-election. Variation has not been confined to outcomes. There have been differences in how the legislation has been implemented—in terms of the ease of access of constituents to the recall petition. This article suggests that in the interests of fairness and transparency, there is a strong case for adjusting the legislation to ensure national standardisation of local implementation.

Keywords: recall, MPs, petitions, signatures, by-elections

Introduction

THE RECALL OF MPs Act 2015, which allows for the removal of an MP by the public, has now been brought into play on three occasions. The Act facilitates the opening of a six-week petition of recall in a constituency if its MP has received a prison sentence (custodial or suspended); is convicted of providing false or misleading information for allowance claims under the Parliamentary Standards Act 2009; or is barred from the House of Commons for ten sitting days, or fourteen calendar days. The petition needs to be signed by a minimum of 10 per cent of the MP's constituents to trigger a by-election, in which the unseated MP is entitled to participate. This article examines the first three recall petitions triggered by the 2015 Act. The first case failed to generate a by-election owing to insufficient signatures, but the following two applications both created contests. One saw the ousted MP declining to stand, whilst the other saw the electoral defeat of the recalled MP. As the Recall Act bares its teeth, this article highlights its merits but also suggests that aspects of the legislation require tweaking, particularly

regarding the need for cross-constituency standardisation of procedures.

The cases so far: three petitions; two by-elections; any number of petition stations

The Recall of MPs Act came into force in March 2016, the legislation having been introduced by the 2010–15 Conservative–Liberal Democrat coalition. Its origins lie in the parliamentary expenses scandal which erupted in 2009 and the lack of sanction available at the time to electors. Survey evidence indicated that an overwhelming majority of the public viewed the right of recall of MPs as a 'good idea'.¹ There was cross-party support for the concept, with Labour having pledged, in the party's 2010 election manifesto, that 'MPs who are found responsible for financial misconduct will be subject to a right of recall'.² The Act gives electors this right, via a by-election, if 10 per cent of constituents sign a petition initiated following the parliamentary suspension, serious criminal conviction or expenses fraud of their MP. It did not appear a high hurdle.

In terms of the politics of the petition, the 2015 Act allows for campaigning. Individuals, political parties or businesses can register as campaigners by notifying the Petition Officer (the Returning Officer in the constituency) in writing, provided they are UK based. They do not need to be registered in the constituency in which the petition is in place. A spending limit of £500 for non-registered campaigners and £10,000 for registered campaigners applies. However, they are prohibited from commenting on the petition's progress or signatories.

July 2018 saw the Act's first deployment, after the Democratic Unionist Party (DUP) MP for North Antrim, Ian Paisley, was suspended from the House of Commons for thirty sitting days. The sanction, approved by the House, followed undeclared holidays in Sri Lanka and 'paid advocacy' on behalf of the Sri Lanka government which had paid for the holidays.³ Paisley lobbied against a United Nations resolution condemning human rights abuses by the Sri Lankan government during its conflict against the Tamil Tigers. The length of Paisley's ban reflected that the Commons had found him guilty of serious misconduct and ensured the launching of a petition under the legislation. The Speaker formally notified the Chief Electoral Officer for Northern Ireland of the outcome, obliging her to set up a petition, open for six weeks, within ten working days.

The petition opened on 8 August and closed on 19 September, available to sign by post or between 9am and 5pm at petition stations, with opening hours extended to 9pm on two occasions. With the constituency electorate numbering 75,430, the 10 per cent requirement meant 7,543 signatures were needed to trigger a by-election. However, the recall petition failed, with 7,099 signatures received—only 9.4 per cent of the electorate and 444 short of the required minimum. Paisley was free to return to the Commons following his suspension, without further sanction. There were several explanations. Considerable affection for the Paisley brand name remained in evidence in North Antrim: since Ian Paisley's father won the seat in 1970, the majority enjoyed firstly by Paisley senior and then Paisley junior always exceeded 10,000. Paisley junior won a 20,643 majority and secured 59 per cent of the total vote in 2017.

North Antrim is the second most unionist constituency, in terms of vote share, in Northern Ireland; 66 per cent Protestant, with a 73 per cent unionist vote in 2017.⁴ Given the rural nature of the constituency and its sectarian geography, with most towns largely Protestant, the use of only three petition stations rather than the maximum permissible total of ten appeared surprising. The mainly Protestant towns of Ballymoney and Ballymena were two petition sites, with the other the mainly Catholic nationalist Ballycastle, isolated on the coast. In the 2017 general election, fifty-three polling stations were used in the constituency. The Ulster Unionist Party leader, Robin Swann, claimed that only opening three petition stations was 'totally inadequate for a constituency the size of North Antrim', adding that in limiting their opening hours, 'the Electoral Office has shown little regard to people in daytime employment'.⁵

Given that anyone entering a petition signing station is engaging in an action known to all observers, there was clear need for sensitivity in terms of locations, especially considering Northern Ireland's divisions. Yet there were enough potential opponents of Paisley to have made the recall petition work, given that 19,939 constituents had voted against him only sixteen months earlier, with a 22 per cent nationalist vote. Sinn Féin and the Alliance Party registered as official campaigners in favour of the petition, but spent little and were hidebound by the secrecy rules regarding the petition's progress. For those not wishing to sign the petition at a station 3,233 postal 'votes' were issued, yet 1,000 were not returned. This 31 per cent non-return rate greatly exceeded the figure at the 2017 general election, when only 9.9 per cent of postal votes issued were not returned.⁶ Proxy petitioning was permitted, but only ten constituents used this option. Turnout was clearly low overall and was reported afterwards by the Electoral Commission's observers as having been very low during the middle weeks of the campaign. The Commission concluded that 'there may have not been a strong awareness amongst electors of the recall petition throughout the whole six-week period'.⁷ A brief flurry of activity at either end of the petitioning period was evident.

Peterborough was the site of the second recall petition, after the city's Labour MP, Fiona Onasanya, was convicted of perverting the course of justice and jailed for three months in January 2019. Onasanya had denied driving a car which received a speeding ticket in 2017. Under the requirements of the Recall Act, the petition to unseat her was delayed until her appeal against the conviction was dismissed in March 2019. Onasanya had continued as Peterborough MP despite being expelled from the Labour Party. The recall petition required 6,967 signatures to pass the 10 per cent threshold. This proved a low bar, since nearly 28 per cent of constituents (19,261) signed. Peterborough is a predominantly urban constituency requiring only modest travel to circumnavigate. The Petition Officer nonetheless deployed the maximum of ten petition stations, allocating each elector a station and offering extended signing hours each week, beyond the minimum legal requirement of 9am to 5pm, on Tuesdays (7am opening) and Thursdays (10pm closing). This was a far more extensive deployment of stations and a more generous provision of opening times than had been evident in North Antrim. Both Labour and the Conservatives registered as parties campaigning for the success of the petition, as did the Unite and Communication Workers trade unions, along with one individual in a private capacity. Deselected and heavily petitioned against, Onasanya declined to contest the by-election as an independent. She had captured the seat for Labour from the Conservatives in 2017 by a majority of 607 votes. Her replacement, Lisa Forbes, held the seat in the recall by-election by 683 votes over the Brexit Party.

In Brecon and Radnorshire, a by-election was triggered after 19 per cent of constituents signed a petition to recall the Conservative MP, Chris Davies. The MP was convicted in March 2019 of submitting, and attempting to submit, false invoices for his office. He had split the £700 cost of photographs for the office between two budgets with fake invoices. The MP was fined £1,500, ordered to pay £2,500 in legal costs and required to undertake fifty hours of community service. Given that this a conviction relating to parliamentary allowances, the Recall Act was triggered even though no

custodial or suspended sentence was involved. Six petition stations were used across the constituency from 9 May to 20 June 2019. With Brecon and Radnorshire being the largest geographical constituency of any in Wales or England, there was at least a case for the use of the maximum number of petition stations. In the event, the requirement for 5,303 signatures to trigger a by-election was comfortably exceeded, with 10,005 received, 19 per cent of the electorate. Parties attempted to engage in the limited campaigning, with the Liberal Democrats, Labour and Plaid Cymru registered as campaigners for the petition to be endorsed, and the Conservatives campaigning against.

Despite his conviction, Chris Davies was re-adopted by the local association as Conservative candidate to fight the by-election. He had captured the seat from the Liberal Democrats in 2015, turning a 3,747 Liberal Democrat majority into one of 5,102 for the Conservatives, on a 11 per cent swing. In 2017, Davies extended the Conservatives' majority to 8,038. However, the recall election confirmed the petition's unseating, with the Liberal Democrats taking the seat by a margin of 1,425 votes over the Conservatives, a 12 per cent swing on a big by-election turnout of almost 60 per cent. Ascertaining the impact of Davies' conviction is impossible. The Conservative candidate avoided several local hustings, but the Conservatives may have been more impaired by the presence of the Brexit Party, which received 3,331 votes—more than double the winning majority. Plaid Cymru and the Greens did not contest the by-election, in order to bolster the chances of the Liberal Democrats as a party committed to preventing Brexit. However Plaid Cymru had won a mere 1,299 votes in 2017 and the Greens had not contested the seat.

The case for standardising rules of implementation

Table 1 provides a summary of the petition cases thus far, showing the variation in implementation of recall petition stations and outcomes.

The most glaring issue is the lack of standardisation in the number of petition

Table 1: Recall of MPs Act petitions by constituency

Constituency	Electors	Petition stations	% electors signing petition	Average % of electors per signing station	Petition station per elector	Petition station per sq km	By-election
North Antrim	75 428	3	9.4	3.1	1: 25,142	1: 462	No
Peterborough	69,673	10	27.6	2.8	1: 6,967	1: 20	Yes
Brecon & Radnorshire	53,030	6	18.9	3.3	1: 8,838	1: 501	Yes

stations used. North Antrim, with the largest number of electors of the three cases, used fewest. Given the sectarian geography and rural nature of the constituency, this was an unacceptably low deployment of stations, a clear outlier at one petition station per 25,142 electors, albeit offering slightly greater geographical density than that in the Brecon and Radnorshire case. Risibly, the analysis of the North Antrim petition by the Electoral Office for Northern Ireland claimed that there was 'no evidence that an increased number of signing places would have contributed to a different result at the end of the recall petition'.⁸ There was only no evidence because there had been no previous recall petitions. The two subsequent cases provide evidence that using more petition stations entices more petitioners.

Across the three cases, there is an average of approximately 3 per cent of electors signing a petition per signing station. Whilst caution is needed over this figure given postal petitioning, the differences in terms of average percentage of electors per signing station are modest across the three constituencies (0.5 per cent). One might tentatively conclude that the higher the number of stations, the greater the percentage of electors signing the petition, by 3 per cent per station. For electoral contests other than general elections, turnout falls with greater distance from polling stations, the effect discernible at over 500 metres in European elections and 600 metres in local contests.⁹ Whilst this has yet to be tested for petitions, the effects may be greater, given the increased distance from a petition station for most electors compared to their polling station. Use of a fixed number of petition stations, the maximum of ten, seems logical, to keep travel times to a

minimum. In Brecon and Radnorshire there were 155 fewer petition stations than polling stations used for the 2017 general election and some petitioners faced a thirty-minute, fifteen-mile journey.¹⁰

Less important, but also logical, might be a standardisation of opening hours. For an election, there are fixed opening hours for polling stations, of 7am until 10pm, so it might be sensible to do likewise with petition stations, albeit with less lengthy hours. The early start and late closure on designated days each week, as seen in Peterborough, could be replicated. Whilst there are cost implications given the Peterborough petition reportedly cost £500,000, these could be offset by a shorter signing period of one month, rather than six weeks.¹¹ The alternative is to move to an exclusively postal vote.

The legislation on what can, or cannot, be disclosed in respect of the progress of the petition could also be adjusted. It is right that reports of progress of the petition should be prohibited, as this could clearly affect its outcome. What is less apparent is why individuals should be at risk of sanction, a fine or imprisonment of up to six months, by commenting on who has signed the petition, provided that the individual being discussed consents to such discussion. The real case for secrecy lies in ensuring that petition stations are discreet but easily accessible, given that those turning up to vote and all others present know what political act they are about to commit. This, admittedly, is not easily achieved and is perhaps another argument in favour of an all-postal operation, in which a petition form is sent to all electors and individuals decide whether to sign and return the form.

A further problem of the Act is perhaps its limited scope. There remains no formal sanction for dereliction of duty by an MP. There have been instances, such as in the case of the MP for Sheffield Hallam, where the MP has been largely absent from parliamentary votes or constituency service. However, the restrictions upon circumstances in which a petition can be triggered mean that constituents are left helpless. Furthermore, without clear rules—such as an MP being absent from a fixed percentage of Commons votes—there is a risk of the politicisation of petition-triggering.

Conclusion

The Recall of MPs Act 2015 is an important piece of legislation allowing recourse to action in the event of serious misdemeanours by their elected representative. This offer of recall of elected representatives outside elections is available in only thirty democracies and has quickly become effective.¹² The 2015 Act was balanced, in that powers granted to electors give them the chance to reflect upon the conduct of their MP in instances of serious, proven misconduct, whilst allowing the MP the opportunity to be reinstated by popular will. The legislation has already achieved significant results. A return to the previous state whereby MPs were entirely protected from electoral sanction outside a general election is clearly not going to happen. The question begged is how to tweak the current situation.

The problems with the 2015 Act relate less to its intentions than to the autonomy afforded to its implementation. The conduct of elections is nationally regulated and locally delivered. Whilst the principles of the Recall Act are similar, the framework is looser. Petition Officers can determine the number of petition stations, their times of opening and the resources dedicated to its processing, whilst there remains a lack of clarity over what can be reported regarding the petition. Given that this flexibility can shape outcomes, it risks local decision making being criticised as political on what ought to be neutral territory. It may be that the North Antrim case was an outlier, an unsuccessful petition owing more to the distinctiveness of Northern Ireland's politics

than procedural issues. However, if there is conjecture that procedures influence outcomes, then that is unsatisfactory, thus strengthening the case for standardised rules and uniform implementation at the expense of the whims of local interpretation.

Notes

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