

Confirmed on 12 August 2004.

Minutes of the meeting of the Electoral Commission held on 15 July 2004 in London.

Present: Sam Younger (Chair) (SY)
Pamela Gordon (PG)
Glyn Mathias (GM)
Sir Neil McIntosh (NM)
Karamjit Singh (KS)

In attendance: Roger Creedon (RC)
Jacqui Dixon (JD)
Roger Gough (RG)
Chris Welford (CW)
Rael Zackon (RZ)
Kate Sullivan (KBS)
Mark Stratton (MS)
Jennifer Gaughan (JG)
Martine Padwell (MP)
Patricia Pena (PP)
Doug Stewart (DS)
Simon Partlett (SP)
Steve Evison (SE)
David Mahon (DM)
Ann Devine (AD)
Phil Allen (PA)
Chris Morgan (CM)

1. Minutes of the meeting of 17 June 2004

1.1 The minutes of the meeting of the Electoral Commission held on 17 June 2004 were agreed, subject to:

Paragraph 6.3: insert at beginning 'While recognising the practical problems this raised', and add after first sentence 'The Commission would prefer orders to wait until the completion of the evaluation'.

Paragraph 8.2: the third sentence in the third bullet point should read:

'This might be important, for example, if the form lacked signed supporters'.

- 1.2 SY advised that no further action would be taken on the proposed event on 8 September.
- 1.3 SY and PG agreed the formal response of the Commission on the draft order relating to referendum explanatory materials. The order had been laid on 8 July.
- 1.4 The Commission's statement on the evaluation of the June 2004 pilots would be circulated to Commissioners.

2. Minutes of the meeting of 1 July 2004

- 2.1 The minutes of the meeting of the Electoral Commission held on 1 July 2004 were agreed, subject to:

Paragraph 1.2: add 'and public reaction' to the end of the sentence.

Paragraph 1.3: add reference to the definition of choice, and multi-channel voting, which must include polling stations.

Paragraph 4.2: note that the approach was not to seek criminal action.

Paragraph 4.3: the letter should advise that enforcement action was being considered, but that the party had the possibility of deregistering.

Paragraph 6.4: add after 'Freepost' in fourth bullet point 'in local elections'.

Paragraph 6.5: Add after second bullet point ' there is no proposal to withdraw from PDGs, but there may be better mechanisms'.

- 2.2 SY advised that ODPM had given consent for the by-election pilot in Darlington, and that there was another request for a pilot in Chester-le -Street. SY will write again to the Minister.
- 2.3 The Outreach Team would be taking over the rooms previously booked at the party conferences for referendums briefings, for their event.

3. Planning cycle 2004/5

- 3.1 JG presented the report. The timetable for the proposed planning cycle envisaged the strategy away-days taking place in July/August; however for this year some modification would be required. On 6 September, the Commissioners would be discussing the Commission's mission, vision, values and aims. The November way-days would remain the diary for this year.

- 3.2 JG indicated that the first draft of the Corporate Plan for 2005 onwards would be available in early October. This would enable Commissioners to consider the plan at the November strategy event, together with the outline budget proposals.
- 3.3 RC advised that the Speaker's Committee had approved the current Corporate Plan at their meeting on 14 July.
- 3.4 **The Commissioners agreed the interim planning timetable for 2004/5, and the recommendations concerning arrangements for the meetings with the Speaker's Committee.**

4. Pilots evaluation: update

- 4.1 KBS and MS gave a presentation on progress on the evaluation of the June 2004 pilots, highlighting the policy background on postal and absent voting, the information and comments being received, and the key outcomes identified so far.
- 4.2 SY stated that many of the issues are about postal voting in general, rather than specifically about all-postal ballots. The Commission needs to address both the underlying confidence issues in relation to postal, and remote, voting as well as the practical aspects. PG reiterated that multi-channel voting is the stated objective, although voting in local government elections may need to be reconsidered, where the Commission had supported the idea of postal voting.
- 4.3 The Commissioners considered it inconceivable, and unrealistic, that postal voting on demand should, or could, be withdrawn. However there is significant variance in promotion of postal voting by local authorities, and a differing level of service delivery. With regards to all-postal voting, the Commission must reconsider the position of those who feel deprived of choice in voting methods. Issues of fraud and intimidation had to be addressed, as well as the different offences needing to reflect the different circumstances of voting by postal ballot or at a polling station. Further development of postal voting should wait for the resolution of the question of offences, operational matters and resourcing, particularly of local authorities whose goodwill is stretched to the limit.
- 4.4 With regard to the comprehensive review of the legal framework for absent voting, RZ advised that the Law Commission would normally take one to two years for such a project, but there may not be the time for such an exercise, given the potential date of the next General Election and the Government's clear intention to continue with remote voting.
- 4.5 In terms of turnout, there was a higher turnout in the pilot areas, but the increase was not as pronounced as previously. The impact of

combined elections, the profile of European issue, and sentiments concerning the Iraq war, had to be considered.

- 4.6 SY stated that postal voting was popular and its benefits must be acknowledged; however a model had to be developed which allowed genuine choice to the voter. The issue was one of sequencing. There are short-term and long-term matters to be resolved. There was a need to rebuild the political consensus, and public confidence, in the postal voting process, before it is developed further.
- 4.7 **The Commissioners noted the current position of the evaluation process, and the issues which had been raised, and thanked KBS and her team for an impressive piece of work.**

5. Publication of the Commission's views on the conduct of regional referendums

- 5.1 DS and KBS presented the report on behalf of NS, which outlined the proposed timetable and handling arrangements for the publication of the Commission's views on the conduct of regional referendums. An amending order must be laid on 6 September; the planned publication date for the statement was 13 September, to accompany the reports on the June 2004 pilots. Any changes to the order would require drafting time ahead of introduction.
- 5.2 The Commissioners discussed the implications of maintaining the timetable for publication of both the reports and the statement on 13 September, including the possibility of the cancellation of referendums, campaign spending, and the administration of the referendums. In answer to a question on the evaluation plan, KBS stated that originally the Commission had agreed to share a draft of the overarching report with the Government Project Board before it was submitted to Commissioners. It was agreed that, in the circumstances, this was no longer appropriate, and RC would write to ODPM and DCA officials accordingly.
- 5.3 SY stated that the Commission should not give the Government information on its conclusions in advance of publication. However if the Commission published its report and any statement in PDF version on the web-site on 27 August, the Government would have time to prepare an amending order by 6 September.
- 5.4 RC and KBS advised that it would be possible to publish the overarching and regional reports electronically on 27 August. This would enable the Commission to provide the information earlier than planned, for the benefit of Parliament. It would be possible at the same time to publish a statement which reflected the key issues from the evaluation report as applicable to the referendums.

- 5.5 SY proposed that certain media be briefed prior to 27 August, and a note be sent to the Government and Opposition spokesmen concerning the publication date.
- 5.6 **The Commissioners agreed that the Commission's reports on the June 2004 pilots and any views on the conduct of regional referendums should be published on the web-site on 27 August 2004, and that the Government and Opposition spokesmen be advised accordingly.**

6. Implementation of County PERs

- 6.1 RC presented the report which outlined the issues relating to the implementation of county periodic electoral reviews. The deadline for orders to enable elections to be held in May 2005 was a significant but not an overriding factor. There were three complicating factors:
- Certain parish orders made by ODPM, of which the relevant BCFE review was not able to take account
 - Errors in district orders
 - The balance between coterminosity and electoral equality
- 6.2 RC explained that, although the paper usefully sets out the general approach which the Implementation Team were taking, each review would be looked at on a case-by-case basis. RZ agreed and advised that the reference in the paper to a general approach should not be taken as contradicting the requirement to consider each case on its merits.
- 6.3 The Commissioners acknowledged the desirability of implementing change in 2005, but were clear that they should not close the option of asking the Boundary Committee to carry out a further review where, for example, there had been a serious error. It was agreed that where there was an error in a electoral change order for a district council, the question as to whether an amendment order should be made will be considered on a case-by-case basis.
- 6.4 **The Commissioners noted the report as a valuable information paper.**

7. Referendums: designation

- 7.1 DS advised the Commissioners that two workshops had been held in each region for campaigning organisations. The workshops covered designation and grants. There was at least one applicant in each

region for each outcome; the Yes campaign appeared to have a more coordinated approach.

7.2 RZ offered some observations from the legal perspective, which should also promote helpfulness to applicants:

- Decisions must be rational and procedurally sound. A decision would be liable to be quashed if it took into account irrelevant considerations or failed to take into account relevant considerations. A court would not substitute its own judgement for that of the Commission. The process could not be exhaustive, but it needed to be fair.
- Applicants were entitled to know how applications would be assessed. It would be best to adopt, and inform applicants of, a clear interpretation of 'represents', and of 'those campaigning', though all considerations relevant to the statutory requirements must be taken into account. It would also be best to have a clear means of deciding whether an application represents 'adequately', and, if so, 'to the greatest extent' those campaigning for an outcome.
- 'Range' seemed likely to be a relevant element within several of any criteria or set of considerations. 'Competence' seemed a relevant consideration as well as ranges of support and of representation of others who did not support an application. No single consideration should be overriding.

7.3 The Commissioners agreed that criteria should be short and tightly worded. SY suggested that the definitions could be as follows:

- 'Those campaigning' would include permitted participants, and representative organisations which campaign but are not registered
- 'Representation' would relate to:
 - i) the range of those listed as associated with the applicant
 - ii) the range of those expressing support
 - iii) the range of reasons for supporting an outcome which are embraced by the applicant's campaign
 - iv) the organisation, structure and planning the applicant has in place to get the message across to voters

7.4 SY also outlined a proposed procedure for considering with applications, as follows:

- the Commission will expect to rely on what is on the application form.
- if follow-up information is required, it will be asked of all applicants for one outcome in one region. Precise timings and

dates will be provided to all applicants in advance of applications.

- The Commission will take a small random sample of support, and test by telephone or e-mail. There will be a presumption that false claims will lead to refusal.
- A contextual briefing was required for each region; it was proposed that BBC political editors in each region be asked to provide 2000 words. The Boundary Committee staff would be able to provide information on each region. This information is needed as soon as possible, for the Commission meeting on 12 August. The appropriate use of this information would need careful consideration.

7.5 SY asked DS to write up these proposals, with a commentary on the criteria, to be sent to Commissioners by e-mail for sign-off by 23 July.

7.6 **The Commissioners agreed the proposals for the criteria and process, as set out in paragraphs 7.3 and 7.4 above, and requested that the appropriate sections of the explanatory notes be rewritten accordingly and forwarded to Commissioners by e-mail for approval by 23 July 2004.**

8. Referendums compliance and enforcement strategy

8.1 CW presented the report, which was based on existing processes and procedures. The strategy proposed a risk-based approach, which was now used by all regulatory authorities. The Commissioners suggested a number of amendments. References to 'fines' in Appendix 2 should be replaced by 'penalties'.

8.2 The agreement of the Commissioners was required for any enforcement action. It was noted that the timetable proposed for the enforcement process would not necessarily fit into the timetable for Commission meetings; it may be necessary to discuss any cases by conference call.

8.3 It was proposed to put the strategy on the Commission website on 26 July. RZ was requested to review the document before 23 July.

8.4 **The Commissioners agreed the approach set out in the strategy, subject to the amendments discussed, and review by the Legal Adviser.**

9. Directors reports

9.1 The Commissioners received the Directors' reports for the quarter from April to June 2004, and noted the following additional information:

Boundary Committee:

- Planning was in progress for the electoral reviews for unitary authorities following the referendums
- PIDs for the evaluation of the PER process and the transfer of functions from the Parliamentary Boundary Commissions would be provided to Commissioners for information
- The ODPM had accepted all the recommendations of the LGR report, with a minor alterations relating to Ormskirk
- The staff were to be congratulated in the completion of the LGR process

Corporate Services:

- The pay deal for staff for 2004/5 had been concluded
- The Corporate Plan had been agreed by the Speaker's Committee on 14 July 2004
- Alternative accommodation was being sought for the London and Edinburgh offices
- A new payroll provider had been engaged

Legal:

- Staffing issues
- Implications of the proposed electoral reform legislation

Policy:

- The draft response to the consultation on CORE would be considered by Commissioners on 29 July, along with the response to Ofcom on party political broadcasting
- The report on the public affairs audit would be available in August

Registration and Compliance:

- The changes to the political map of Northern Ireland
- The Conservative Party would be moving to Victoria Street at the end of July

Secretariat:

- The increase in Commissioners' fees had been agreed on 13 July; action was being taken to ensure that backdated fees are paid as soon as possible
- The Business Team were working well, and were about to take on further responsibilities

- The Implementation Team now reported directly to the Chief Executive, with line management being provided by the Head of Boundary Policy and Planning.

9.2 The Commissioners noted the Directors' reports.

10. Devolved offices report

10.1 The Commissioners considered the report from the devolved offices for the quarter April to June 2004. The following additional information was given:

- KS advised that he had given evidence to the Select Committee
- There was a 2% decline in registration in Northern Ireland
- NM reported that the meeting of the Scottish PPP with the returning officers had been successful
- Andy O'Neill had met the President of the Canadian Law Commission to discuss electoral reform and Scotland's experience of proportionate representation
- GM advised that there would be a seminar on 16 July on the report on the Welsh local government elections in 2004.
- There had been a 38% turnout in Ceredigion, and a 'no' vote in the mayoral referendum. In the absence of any information available locally, the Commission had put advertisements in the local press.

10.2 The Commissioners noted the devolved offices report.

11. Boundary Committee: Electoral Reviews 2003/4

11.1 SP and CM gave a presentation, summarising the report from the Boundary Committee on the electoral review recommendations and the feedback from the survey of stakeholders.

11.2 The key issues in respect of the electoral review recommendations included:

- The PER programme had not been completed by May 2004, due to LGR work
- There was little reduction in Council size in the district councils
- There was an increase in two member wards outside London, and three member-wards inside London
- There had been a decrease in the number of wards in district councils
- There was a demonstrable, significant improvement in electoral equality

- 11.3 PG stated that it was difficult to get councils to justify their existing size, or to consider an alternative size. There were some significant variations in council size across England. Electoral equality in the counties would always be in wider ranges; multi-members divisions could hold down the variances.
- 11.4 The stakeholder survey was qualitative research, which included the following key issues:
- Confusion about the statutory criteria
 - The role of the local authority in consultation
 - Issues from previous surveys, for example, mapping, parish council contact
- 11.5 PG added that this had been a difficult year, and the staff were to be congratulated for their efforts. She commended the approach of the stakeholder survey to the Commission. There were a number of issues for review, and the results of this report would be a useful starting point for the evaluation of the PER process.
- 11.6 **The Commissioners noted the report, and thanked the staff for their work.**

12. Matters for information

- 12.1 The Commissioners received the following items for information:
- PPP minutes of 18 May 2004
 - Northern Ireland elections: candidates expenses
 - Statement of accounts: annual report
 - Policy development grants
 - Electoral figures for Devon, Derbyshire and Surrey
 - Schedule of meetings 2004/5
- 12.2 An additional meeting was agreed for 13 September 2004, to make a final decision on designation. Arrangements would be made for NM to take part in the meeting by video-conferencing from the Edinburgh office.

