

Minutes of the meeting of the Electoral Commission held on 13 September 2004 in London

Present: Sam Younger (SY) (Chair)
Pamela Gordon (PG)
Glyn Mathias (GM) – by video link from Cardiff
Sir Neil McIntosh (NM) – by video link from Edinburgh
Karamjit Singh (KS)

In attendance: Roger Creedon (RC)
Jacqui Dixon (JD) (for items 1 & 2)
Nicole Smith (NS) (for items 1 & 2)
Rael Zackon (RZ) (for items 1 & 2)
Doug Stewart (DS) (for items 1 & 2)
Scott Walters (SW) (for items 1 & 2)
Charmaine Colvin (CC) (for items 1 & 2)

1. Information leaflet

1.1 NS noted that Commissioners had previously concluded that they would like staff to prepare a draft of a leaflet outlining the key arguments for both outcomes for use in the event that designation was not possible (making use of the powers available to the Commission under the Regional Assemblies (Preparations) Act 2003). NS reported that staff had developed drafts for this purpose and had concluded that it would be difficult to ensure that the material was sufficiently neutral to maintain public confidence in the Commission's independence. Moreover, to the extent that it was possible to provide guidance to voters about where to find further information about the arguments this need not wait until – nor be contingent on – the designation process.

1.2 The Programme Board had therefore approved a proposal not to proceed with a specific leaflet in the event of non-designation, but to include as much information as possible in the main 'Referendums

Awareness Leaflet' being sent by the Commission to all electors in the region.

1.3 The Commissioners noted the position.

2. Designation

2.1 SY reminded Commissioners that it had been decided to take a three stage approach in respect of the applications:

- i. Prior to reaching any substantive conclusion on the merits of any application, to consider first, in relation to each application, whether there was sufficient information on which to reach a conclusion as to the statutory test set out in subsection 109(4): whether each applicant organisation could be said adequately to represent those campaigning, and, if not, whether to ask an applicant for further information;
- ii. as soon as sufficient information was available in respect of any given application, to consider each application in isolation, and reach a conclusion as to whether the applicant adequately represented those campaigning for the outcome in question; and
- iii. having reached a conclusion in respect of each applicant organisation in respect of stage (ii), if more than one organisation met the statutory test under subsection 109(4), then to consider further the applications of those organisations, to determine which of them, according to the requirement in section 109(5), represented those campaigning for the respective outcomes to the greatest extent.

2.2 At the previous meeting it had been agreed that one applicant (North East Says No) had already provided sufficient information on which to reach the conclusion that it adequately represented those campaigning. The first consideration for this meeting was to reach conclusions in this respect in relation to the other three applicant organisations, all of which had been asked to supply additional information to clarify points in their original applications. The

Commissioners confirmed that they had all received the additional information provided by Yes 4 The North East, BNP and North East No Campaign.

2.3 **Yes 4 The North East**

Details of the information requested from this applicant are attached.

2.3.1 The Commissioners considered that the additional information received from Yes 4 The North East did answer the questions which they had raised, and they were satisfied that the responses demonstrated an effective organisational structure and planning to deliver campaign messages. The evident emphasis in the material on directly running a campaign, rather than working through other campaigning organisations did not materially weaken the clear evidence the application now contained that the applicant had in place sufficient organisational structure and planning.

2.3.2 The Commissioners agreed that the applicant did adequately represent those campaigning for a Yes vote, as it had now provided sufficient information to satisfy Commissioners as to the three guidelines set out in paragraph 4.3 in the Explanatory Notes. They therefore agreed to designate Yes 4 The North East as the organisation representing those campaigning for a 'yes' outcome, subject to their being able to designate an organisation to represent those campaigning for a 'No' outcome.

2.3.3 The Commissioners went on to consider the question of adequacy in relation to each of the three applications on the 'no' side, in isolation.

2.4 **BNP**

Details of the information requested from this applicant are attached.

2.4.1 Commissioners had previously concluded that sufficient information had been provided to satisfy them that the BNP's campaign messages

embraced a sufficient range of reasons for supporting a 'no' outcome (the second of the three factors in paragraph 4.3 of the Explanatory Notes). The further information supplied also provided a sufficient basis, on balance, on which to conclude that there was effective organisational structure and planning to deliver campaign messages. However, the Commissioners considered that the BNP had supplied very little further substantive information about the range of support they could demonstrate, including the representativeness and membership of those offering support, especially the three North-East based organisations referred to in the application as supporting it. It was also noted that no other registered permitted participants were supporting their application for designation. The additional information seemed to confirm that the campaign was rooted largely in the BNP itself, and there was no evidence of a broader representative base.

2.4.2 The key issue was therefore representative quality and breadth, as reflected in the range of support for this applicant. The Commissioners considered that, in view of the evident narrowness of the range of its support, the BNP's application did not demonstrate an adequate capacity to represent a range of those campaigning for a 'no' outcome. Consequently, the Commissioners concluded that the applicant did not adequately represent those campaigning for that outcome.

2.5 **North East No Campaign**

Details of the information requested from this applicant are attached.

2.5.1 Commissioners had previously concluded that sufficient information had been provided to satisfy them that the North East No Campaign messages embraced a sufficient range of reasons for supporting a 'no' outcome (the second of the three factors in the Explanatory Notes). Further information had been sought in respect of the other two guideline factors. The Commissioners considered that the additional information received from the North East No Campaign did respond satisfactorily to the questions raised. The information strengthened the

application in this regard, so that it now demonstrated adequate organisational capacity and planning to deliver campaign messages, although delivery remained contingent on resources being made available. Clear evidence of support from a range of third parties previously cited in the application had been provided, although it was noted that one of the letters was unsigned. On this basis, and taking into account the information also provided in the original application, Commissioners were satisfied that the applicant organisation had demonstrated an adequate range of support. The Commissioners also noted the unsolicited letter from the Liberal Party.

2.5.2 Having considered in turn the three factors set out in paragraph 4.3 of the Explanatory Notes, the Commissioners concluded that the applicant organisation did adequately represent those campaigning for a 'no' outcome.

2.6 **Designation for the No campaign**

2.6.1 As there were two organisations which Commissioners had decided adequately represented those campaigning for a 'No' vote (North East Says No and North East No Campaign), SY clarified that the decision-making process would now move into the third stage, and consider which of those two organisations represented to the greatest extent those campaigning for a 'no' outcome.

2.6.2 NS referred Commissioners to the guidance on this matter set out in paragraph 4.3 of the Explanatory notes, and specifically the fact that the Commissioners had previously agreed on the need to consider further at this stage the range of an applicant's supporters and the range of reasons for supporting the outcome.

2.6.3 SY asked each Commissioner to offer their views in turn. There was agreement that there was no evidence that the range of reasons given by one applicant was any better than the other. The discussion

therefore focused mainly on the relative range of support demonstrated by the two applicant organisations.

2.6.4 The Commissioners recognised that they were considering two very different types of application, with different strengths and weaknesses.

2.6.5 Commissioners agreed that North East Says No had garnered a broad range of support, including two political parties, the business community and a number of professional interest groups. It was noted that the relative weakness in the application was the lack of evident grassroots support, but the application made clear that plans were in hand to address this. In a short time, the applicant had created a strong base of support. The applicant had also showed shown that it had the capacity, structure and planning in place, and had addressed the running of a campaign in an effective way.

2.6.6 With regard to the North East No Campaign, Commissioners agreed that the applicant organisation could demonstrate a range of involvement at local level but had not generated a wide range of more institutional support. Although it had been in existence for over two years, and had an established media profile, the applicant had failed to attract support from organisations such as political parties. It was noted that the campaign plans of the North East No Campaign also appeared to be heavily reliant on the leadership of the individual associated with this application. Commissioners recognised the potential benefits of a grassroots-based campaign, but also bore in mind that the statutory rest required particular consideration to be given to the extent to which the applicant organisation represented those *campaigning* in support of the outcome.

2.6.7 On balance, and with particular regard to the greater range of support the applicant had evidently gathered, the Commissioners concluded that the North East Says No campaign was the organisation that represented to the greatest extent those campaigning for a No vote.

2.7 Conclusions and next steps

2.7.1 DS outlined the arrangements for advising the applicants of the Commissioners' decision, and for the press presentation on 14 September. It was noted that applicants had given some information in confidence, particularly concerning campaigning plans. It was agreed that any organisation or individual outside the Commission who wanted information about the applications should contact the applicant organisation. However, further consideration would be given in advance of future referendums as to the scope for making more information publicly available. .

2.7.2 The Commissioners agreed to designate :

i) Yes 4 The North East as the organisation representing those campaigning for a for the 'Yes' outcome, as it adequately represented those campaigning for that outcome, there were no other applications made in respect of that outcome, and the Commissioners had also concluded that they could designate an organisation on the other side; and

ii) North East Says No as the organisation representing those campaigning for a 'No' outcome, as, on balance, it represented to the greatest extent those campaigning for that outcome.

3. Restructuring

3.1 Commissioners discussed the email of 10 September from RC describing the restructuring plans and the timetable for making an announcement to staff. RC explained that since Commissioners discussed the proposals earlier in the year further thought had been given within SMT to the senior management structure. The new chart

reflected those discussions. In addition to the creation of a post to oversee operations and to deputise for the CEO there would also be additional posts to strengthen middle management. These would be phased in over time as funds became available.

3.2 The following points were made in discussion

- The role of head of operations in relation to boundary work needed to be clarified
- The new CEO needed to be involved in implementing the deputy post: the focus of that role should be as head of operations
- Further work should be undertaken to clarify the role of Deputy Commissioners. A formal protocol should be agreed
- Important that the changes are not perceived as downgrading the role of the devolved offices
- A paper should be put to Commissioners in due course on implementation costs

3.3 **Commissioners agreed that the note to staff announcing the changes should be issued after Deputy Commissioners had been briefed at their meeting on 16 September.**