

Meeting of the Electoral Commission

9.30am Thursday 13 December 2001, Trevelyan House

Present: Sam Younger (Chairman)
Pamela Gordon
Glyn Mathias
Sir Neil McIntosh CBE
Karamjit Singh CBE
Professor Graham Zellick

In Attendance: Roger Creedon
Peter Hodgman
Chris Welford
Nicole Smith
Rael Zackon
Seamus Magee (attended part of the meeting)
Katie Kerr (Secretary)

Note: Sections appearing in *italic bold* denote action points or decision

i Results of the Autumn Campaign

- i.i The meeting was preceded by a presentation by Richard Reeves and Ben Llewelyn of Taylor Nelson and Adrian Chapman of the COI giving the results of the Autumn campaign. Hard copies of the presentation were distributed. The results were good exceeding for the poster campaign the targets that had been set. ***The Commissioners agreed that a press notice should be issued to the trade press with the results of the campaign and that the information be shared with the DTLR and Home Office.***

1 Minutes of the last meeting

- 1.1 Paragraph 9.4 should read '...low key press statement against enquiry...'.
1.2 Minutes agreed

2 Matters Arising

- 2.1 The Speaker's Committee will meet on 13 February 2002
2.2 The DTLR's response on Policy Development Grants has been copied to the Commissioners.

- 2.3 Replies have been sent to those involved in the allegation made about the BNP. A press statement has been prepared for use in response to enquiries. No press enquiries have been received.

3 LGCE Transfer

- 3.1 On Friday 7 December Ministers signed the order transferring the functions of the LGCE to the Commission with effect from 1 April 2002.
- 3.2 It has been agreed that the Commission will remain in Trevelyan House. Additional accommodation will become available on the second floor.

4 Director's reports

4.1 Policy

- 4.1.1 The Hansard Society's Briefing, "None of the Above – Non-voters and the 2001 Election", was distributed. The full MORI report appears on the Hansard Society's Website. A further report, focusing on young people in particular, will be published in 2002.
- 4.1.2 Discussions with the GLA Assembly regarding elections to the body in 2004 are on-going.
- 4.1.3 There will be a monthly slot for oral questions in the House of Commons. The first session is scheduled for the 21st of January. Questions will be taken by a member of the Speaker's Committee, normally Alan Beith.
- 4.1.4 ***It was agreed that the Commissioners would be added to the automated list of recipients of the guidance issued by the Commission.***
- 4.1.5 The Commission's report on postal voting is scheduled for publication on 7 January 2002. It will be provided to Commissioners immediately on publication. In addition to postal voting, the report will also cover proxy voting and spoilt ballot papers. A small amount of commentary will be included but report is essentially statistical; analysis will be provided when the results of the Absent Voting Review are reported in autumn 2002.
- 4.1.6 DTLR have issued a consultation paper on the availability of a marked register for postal votes. The cost implications of the proposals are not addressed. The paper has confused some interested parties as the consultation is restricted to a very specific point that is covered by the Commission's wider reviews of electoral law and practice. A draft response will be prepared for consideration at the next Commissioner's meeting.

4.2 Registrations and Compliance

- 4.2.1 Campaign expenditure reports have been received from all parties except the Scottish National Party. The Registration and Compliance Team are in discussion with the party and expect a return in due course. The Commissioners accepted that there was no malicious intent on behalf of the SNP to flout the rules so legal action would be inappropriate, however, it should be made clear that it was expected that parties would make their returns on time. The campaigns expenditure summaries will be posted on the website on Monday 17th of December and will make clear SNP's failure to comply. The wording would be cleared with Sir Neil. ***Commissioners should be sent copies of the press notices in advance of publication.***
- 4.2.2 Andrew Lansley MP accepted an impermissible donation in June. Arrangements are being made by him to return the donation. A press statement will be required to use if enquiries are received.
- 4.2.3 Sinn Fein are hoping to open an office in London. It is likely that the facilities of the House will be made available to them without the need for them to take the oath of allegiance to the Queen. Payment of Policy Development Grants is dependent upon taking the oath.
- 4.2.4 The deadline for the return of financial schemes has passed. ***The Commissioners agreed to confirm which parties would have a scheme imposed at the Commission meeting in January.***

4.3 Media and Public Affairs

- 4.3.1 On 7th of January the creative concepts for the Spring Campaign will be presented to the Commission. The concepts will cover campaign activity throughout next year. SY will attend the presentation, other Commissioners are welcome to attend.

4.4 Strategic Planning and Resources

- 4.4.1 The DTLR have agreed to lay the Order relating to Policy Development Grants as soon as possible after the Christmas recess. The earliest the order could be made is the end of January. The Secretary of State has indicated that he is willing to implement the scheme for this year only and wishes the Commission to reconsider the formula for allocation for next year, specifically the cap on the major parties. There is a question as to whether he has the power to time limit the scheme in this way. The legal advice is that s12 of PPERA will not allow retrospective applications. Some parties e.g. the DUP may approach the Commission for financial assistance to cover costs incurred in anticipation of the scheme allowing retrospective claims.
- 4.4.2 The Comptroller and Auditor General has not yet issued a certificate in respect of the Commission's accounts for the period 1 December 2000

to 31 March 2001. The annual report will not therefore be available to be laid before the House on 17 December as planned.

4.4.3 The debate on the passage of the LGCE transfer order focused on financial issues. The Electoral Commission will not achieve any short-term savings due to the transfer but the DTLR spend will reduce.

4.4.4 The majority of vacant posts will be advertised internally (to Electoral Commission and LGCE staff) before external adverts are placed to ensure to ensure that all staff have the opportunity to apply.

4.5 Legal Services

4.5.1 Legal advice will be sought with regard to the relationship between 'parliamentary' and 'political' and the payment of Councillors. Different advisors are being used so there is a possibility of inconsistencies between the responses received. A reply is still awaited from the Speaker on the issue of BAA passes. Draft instructions on Councillors have been received from DTLR but not yet agreed.

5 Commissioners' Points

5.1 LGCE Transfer

5.1.1 ***The Commissioners confirmed PG as Chair of the Boundary Committee.***

5.1.2 ***The Commissioners delegated the process of recruiting the Deputy Electoral Commissioners to PG and RC.*** The approval of the Commissioners will be sought prior to the appointments being made.

5.1.3 ***For the purposes of continuity the Commissioners agreed the appointment of the following 3 members of the LGCE as Deputy Electoral Commissioners:***

- ***Michael Clark, for 2 years***
- ***Kru Desai, for 3 years***
- ***Robin Gray, for a period coinciding with his appointment to the Parliamentary Boundary Commission for England [Secretary's note: a period of 2 years has been agreed]***

6 Voter Awareness Campaigns Programme 2003-3 [EC92/01]

6.1 The results of the research commissioned by the Commission to indicate where campaigns could be most effectively targeted are not available yet so the campaign proposals are based upon the original Home Office plans and the Commission's awareness of the issues to date. Budgetary provisions restrict the amount of activity that can be

undertaken and led to the decision to target young persons in spring and members of ethnic communities in the Autumn. The Spring advertising will focus on registration with postal votes being largely tackled through leaflets in Post Offices. Issues such as the extent of translation, the Scottish equivalent to the citizenship programme in schools in England and the programme in Wales and Northern Ireland would need to be considered further

- 6.2 ***The Commissioners agreed there should be high level meeting with the senior political leaders in Scotland and Wales to give them the opportunity to discuss the plans for voter awareness campaigns before they are planned in detail.***
- 6.3 AH reported that she had negotiated the free distribution of leaflets in post offices, representing a saving of £1.2 Million, and the free use of 30 and 15 second 'fillers' in television advertising slots. Little resource is available in 2003/3 for tracking research but some costs are being met by using partner organisations e.g. Association of London Government. ***The Commission congratulated AH on negotiating the arrangement with Consignia.***
- 6.4 ***The Commissioners agreed the proposals as a starting point for a bid to the Speakers Committee for funding but that more information was needed before they could make a judgment on the level of resources to seek.*** SY requested that the projects be separately identified as part of the Spring campaign, Autumn campaign or as on-going activity.

7 Proposed Section 13 Activities [EC98/01]

- 7.1 A broad ranging discussion occurred. ***The Commissioners concluded that it was inappropriate to restrict the list of proposed activities because of assumed budget constraints.*** Some items on the list would be further refined to include consideration of the scope of involvement of other bodies and greater justification for the funds requested. Related political initiatives can be used to justify spend e.g. the Home Secretary's proposals in relation to citizenship and members of ethnic minority communities could be used to justify translation costs.
- 7.2 ***The Commissioners agreed a prioritised version of the list should form the starting point for developing a bid for more money. Under s13, any increase above £1.5m pa would require an order by the Secretary of State made with the agreement of the Treasury.*** The bid will be supported by objectives relating to increased voter awareness. The bid will also include reference to activities the Commission will not undertake e.g. at least initially it would be appropriate to assess what gaps there were in citizenship activities in schools rather than risk duplicating the efforts of other organisations in

this field. The bid will make it clear what can and cannot be achieved at each level of funding.

- 7.3 ***SY will arrange to meet Stephen Byers and possibly Andrew Smith, Chief Secretary to HM Treasury to encourage support for the application for additional funds.***

8 Programme Highlight Report [EC91/01]

- 8.1 NS thanked the Commissioners for their active support of the projects.
- 8.2 Due to the absence of staff the absent voting review has been delayed by a month. The Research Officer has assisted in progressing reviews but has found permanent employment so is leaving the Commission.

9 Mayoral Referendums Report

- 9.1 ***The Commissioners agreed that the report should be issued by the Commission and congratulated Sarah Gull on the draft.*** The input provided by David Monks, Chairman of SOLACE's Election Committee and the 16 Local Authorities that have held Mayoral referendums was noted.
- 9.2 ***The Commissioners agreed that, if possible, an example of publicity material that provided arguments for and against an elected mayor be included in the report in place of the existing text.*** If that was not possible, the heading for the existing text box should make clear that the arguments were not being put forward by the Commission.
- 9.3.1 An issue has been raised as to whether the declarations of identity, once separated from the ballot, should be used to compile a marked register for use by the parties. As many of the Mayoral referendums are due to be held by all postal ballot a need to issue guidance was identified. There are practical issues relating to resources and confidentiality. Pilots for the May 2002 local elections are expected to include ones relating to postal voting and the declaration of identity.
- 9.3.2 ***The Commissioners agreed that the report should include guidance that clarified the current legal position and include a reference to the Commission's review on absent voting.***
- 9.4 ***It was agreed that the preface to the section on proposed changes to legislation should make clear that DTLR have indicated that they are considering changing the regulations in relation to mayoral elections so the opportunity for changes to be implemented is available.***

- 9.5 The question used on the ballot paper is perceived to have an implicit drive to 'Yes' vote and there is no indication of the effect of a 'No' vote. ***The Commissioners agreed a change should be recommended and agreed that it was not essential to have an alternative form of words in mind in order to make the recommendation; although it would be desirable to work up some proposals to present to DTLR.***
- 9.6.1 Local authorities are barred from producing information about the referendum, other than how to vote and in response to direct questions, during the 28 days up to the date of the vote. There is anecdotal evidence that the lack of information is linked to low turnout and spoilt ballots. Local authorities had indicated that they did wish to produce unbiased information in lead up to polling day which would cover what the outcome of a 'Yes' vote and 'No' vote would be.
- 9.6.2 There was a concern that any recommendation for change in the 28 day rule may impact on other referendums. A distinction can be made in that the Commission has a role in referendums above local level. The issue of which body or individual could vet the information to be published during the 28 days before the vote to ensure it was not biased and what sanctions would be available was discussed.
- 9.6.3 ***The Commissioners agreed that there was a need for information to be provided but also expressed reservations about how this was achieved. The report should state that any relaxation in the 28 day rule should not be a precedent for other referendums. NS and SY should agree the exact form of words to be used in the report.***
- 9.7 ***The Commissioners agreed the section giving examples of good practice.***

10 Mayoral Elections

- 10.1 The DTLR have requested the Commission's views on amending the regulations.
- 10.2 ***The Commissioners endorsed RC's response to the DTLR both in the substantive points it made and its observation that the requested response time was unacceptably short.***

11 Staff Forum [EC96/01]

- 11.1 The Commissioners discussed the proposed constitution. The proposed forum is compatible with the arrangements at the LGCE. Although some staff are members of trade unions the staff had indicated at a full staff meeting that they would prefer a staff representative body rather than union recognition. It was appreciated

that if a union secured 40% support amongst the staff the union could apply for formal recognition. A separate paper on the possibility of establishing an Employment and Remuneration Committee would be prepared for a Commission meeting during the 1st quarter of 2002.

- 11.2 ***Although, it is not a matter for the Commissioners to endorse, the Commissioners indicated they supported the proposed constitution subject to the following recommended amendments:***
- ***The interpretation of 'management' to specifically include the Commissioners as well as the SMT***
 - ***SY or another Commissioner attend one meeting a year of the forum to maintain contact***
 - ***Expansion to illustrate what mechanism is in place for resolution if negotiation does not result in agreement without stating that the opportunity to put case direct to Commissioners is available as this will not encourage resolution by negotiation***
 - ***Specify that the table does not restrict items for consideration exclusively to a single category***
 - ***Section 8.1.3 to be expanded to include reference to the Commissioners not having given delegated responsibility for determining staff pay and that available resources will be a constraint***

12 Statutory Consultation [EC94/01]

- 12.1 ***The Commissioners delegated authority to RC to respond to statutory consultation on requests for all postal votes in local government ward by-elections.*** In the event that a request is likely to be refused the matter will be referred to Commissioners.

13 Referendums [EC95/01]

- 13.1 ***The Commissioners endorsed the proposal for a Referendums Project Team as it was essential that the project was appropriately resourced.*** NS indicated that she hoped that the Project Manger would have experience of running referendums at national level i.e. the Welsh, Northern Ireland, Scottish or GLA referendum. As the pool of people with this experience may be limited the post may not be openly advertised and she asked for suggestions of who to approach. The post may be available as a short term contract, consultancy or secondment from local government. Mechanisms for addressing equal opportunities with such an approach will be considered. Staff may be required in other directorates but this would be a matter for the SMT.
- 13.2 A workshop would be held with Commissioners and others, on 28 January. A contingency plan for a national referendum would not be in place for 31 March 2002 as previously intended. Some key tasks will

have been undertaken but planning over a longer period will allow the stakeholders to buy into the process.

13.3 Referendums to become a standing item for Commission meetings.

14 Conservative and Unionist Party Superannuation Fund [EC97/01

14.1 ***The Commissioners agreed that a letter should be sent enclosing RZ's advice as to why the Commission does not agree with the legal advice obtained by the party.*** The letter would also make it clear that the Commission expected any donations to the superannuation fund to meet the requirements of the Act and to be declared.

15 The Robertson Judgement

15.1 Regulation 48 of the Representation of the People (England and Wales) Regulations 2001 places a duty on Electoral Registration Officers (ERO's) to sell the register. The DTLR take the view that the regulations can be made to operate by consulting every elector as to whether they wanted their details included in the sold register. This would be done on an individual basis or through press advertisements, TV advertisements and leaflets. DTLR officials say the Government is unlikely to revoke regulation 48. ERO's would like the section revoked.

15.2 It was understood that some ERO's are now reported to be refusing to provide copies of the register to the Commission or to political parties. The duty to do so is provided for in Regulations 46 and 47. Predominantly the register is required by bodies in this section to enable them to fulfil statutory or election related duties. [**Secretary's note:** It may be helpful to note that the Commission's guidance of 30 November did in fact, and with the agreement of the legal adviser, tell EROs that they should continue to comply with their obligations to provide free copies of the register under Regulations 46 and 47.]

15.3 ***The Commissioners agreed that advice relating to regulations 46 and 47 should again be provided to ERO's and other interested parties. The advice should repeat, probably in stronger terms, that the ERO's must continue to issue free copies of the register to under regulations 46 and 47. If necessary the Commission will support ERO's defending this course of action. A warning should be included in the advice that it may be unlawful in the light of the Robertson judgment for organisations provided with the register through this mechanism to use the information for commercial purposes.***

16 Date of the next meeting

- 16.1 9.30am Wednesday 23rd of January at Trevelyan House, no meeting will be held on the preceding evening.
- 16.2 The meetings scheduled for the 9th and 10th January have been cancelled.