

Minutes of the meeting of the Electoral Commission held on Tuesday 7 September 2010 at 9.30am

Present: Jenny Watson (JW) Chair
Max Caller (MC)
Tony Hobman (TH)
Ian Kelsall (IK)
John McCormick (JMcC)

In attendance: Peter Wardle (PW)
Carolyn Hughes (CH)
Stephen Rooney (SR)
Lisa Klein (LK)
Bob Posner (BP)
Kairen Zonena (KZ)
Joel Blackwell (JB)

Tom Hawthorn (TH1) – for item 5
Gemma Rosenblatt (GR) - for item 5
Will Reburn (WR) – for item 5
Adrian Fryer (AF) – for items 6 and 7
Michael Gallagher (MG) – for items 6 and 7
Natalie Birtle (NB) – for item 9
Clinton Proud (CP) – for item 11
Louisa Parry (LP) – for items 11 and 12

1 Apologies

Henrietta Campbell for absence.

Stephen Rooney, Director of Communications

This was SR's last full Board meeting, and JW said on behalf of the Board how much the Board had valued Stephen's work as Director of Communications, would miss his contribution and wished him well in his future role at the Civil Aviation Authority.

2 Declaration of Interests

- 2.1 The Chair declared to the Board that from 1996 to 1998 she was employed by Charter88, an organisation which no longer existed but which at the time campaigned for constitutional change, including voting reform. She was initially employed as a Press Officer and towards the end of 1997 became the Campaign and Communications Manager. She was not the principal spokesperson for the organisation, but might on occasion have been quoted in a professional capacity on this issue. Since leaving the organisation she had had no personal involvement in any campaign for voting reform. The Chair also declared that the Welsh arm of Charter88 was part of the 'yes' campaign during the last Welsh referendum in 1997.
- 2.2 IK declared that he had been Director for CBI Wales during the 1979 Wales Referendum and that CBI Wales had supported the 'no' campaign.
- 2.3 It was agreed that these declarations did not make withdrawal from decision or discussion necessary.

3a Minutes of the Commission Board meeting of 7 July (EC67/10), 19 July (EC68/10), 16 August decision by correspondence (EC 69/10) and 23 August 2010 (EC 70/10)

- 3.1 In relation to minute 2, a correction to the amendment of the May minutes, TH asked for a change to reflect the fact that in his new role as Chief Executive of the Consumer Financial Education Body, the Treasury was the department with primary interest, and in that capacity he had and would continue to have contact with the Financial Secretary to the Treasury, Mark Hoban.

Agreed: That:

- (a) the minutes of the Commission Board meeting held on 7 July 2010 be approved as an accurate record and the Chair be authorised to sign them, subject to an additional change correcting the description of the Consumer Financial Education Body's relationship to the Treasury (also to be amended in the 26 May minutes); and
- (b) the minutes of 19 July, decision by correspondence of 16 August and minutes of 23 August all be agreed and the Chair be authorised to sign them.

3b Decision/Action tracker (EC71/10)

Agreed: That:

- (a) the Reference Group on Enforcement Policy would continue to work on risk profiling, and then conclude at a date to be identified; and
- (b) in relation to the Reference Group on Complete and Accurate Registers, it was noted that a full discussion on registration and IER was scheduled at the October meeting.

4 Update from Chief Executive for July (EC72/10)

4.1 PW highlighted key aspects of the Chief Executive's report. These included:

- Wales Referendum (para 2.1) – The Commission's assessment of the intelligibility of the Wales Referendum question was published on 2 September and had been met with a fairly favourable reception.
- Spring 2011 polls (Para 2.4) – Commissioners noted that the first meeting of the Steering group to ensure the successful delivery of the spring 2011 polls would be taking place on 9 September and would begin consideration of the appointment of Regional Counting Officers for the referendum on the UK parliamentary voting system.
- Electoral participation expansion (Para 2.5) – Discussions had taken place with the Cabinet Office on the expanding opportunities for electoral participation set out in the Coalition programme.
- Individual Electoral Registration (IER) (Para 2.6) – It was noted that the Government was considering how to implement its commitment to speed up the implementation of IER. There was likely to be change in advance of the 2015 UKPGE. PW stated that he was not overly concerned by the pace of advancement proposed by the Government in principle, but careful consideration would need to be given to a range of issues.

4.2 LK briefed the Board on the context surrounding the decision to develop PEF Online and provided an update on its progress. Commissioners noted the three remaining stages in the process: completion of the system build; data migration; and political party user-testing. The Board was provided with the current total budget and noted that the project was on target for completion by the end of the year. In response to a question on the project's expected benefits, it was agreed that figures would be provided so that the benefits stated in Appendix B could be adequately quantified and the costs of political parties not using it could be made clear.

4.3 Commissioners were provided with a verbal update on current PEF cases.

- 4.4 PW confirmed that the National Audit Office's value for money study in 2010-11 would be the Electoral Commission's contribution to well-run elections over the last ten years. More information on the form and extent of study would be provided shortly to the Audit Committee and would be circulated to Commissioners as it became available.

Agreed: That:

- (a) in relation to Appendix B (quantitative benefits of PEF Online), figures be applied to the benefits so that their success could be assessed, and the costs of political parties **not** using it could be made clear; and
- (b) noted that the National Audit Office's value for money study in 2010-11 would be the Electoral Commission's contribution to well-run elections over the last ten years, and that further detail on the form and extent of the study would be circulated to Commissioners as it became available.

5 Well-run referendums (EC 73/10)

- 5.1 TH¹ introduced the report. Commissioners were invited to discuss the draft outcomes and indicators for well-run referendums set out in the paper and to consider what post-referendum reporting would look like.
- 5.2 Commissioners commented on the large number of indicators attached to the key referendum outcomes outlined in Appendix B. Commissioners noted that a number of the indicators could be viewed as being out of the Commission's direct control. The Board discussed whether a degree of rationalisation was needed and whether the indicators should concentrate on voter experience. It was agreed that the number of indicators would be reduced to focus on measures that ensured the Commission was fulfilling its role operationally and indicators that focused on the outcome for voters during a referendum. Commissioners acknowledged that certain indicators where the Commission could not control delivery could be retained to allow the Commission to analyse and capture data in order to comment on the performance of the overall regulatory framework.
- 5.3 The Board considered the Commission's post-referendum reporting strategy in the event of the poll for a referendum being held on the same day as scheduled elections. The Board discussed whether to publish separate reports on each electoral event taking place in May 2011 or a single report that referenced each event. It was clear from the discussion that a certain amount of repetition would be unavoidable. It was agreed that combination analysis would be required but that a report on the UK parliamentary voting system referendum and separate reports on each of the Wales, Northern Ireland and Scottish elections should be published.

- 5.4 Commissioners emphasised the wish for the report to be supported by research samples of sufficient size in the different areas to enable conclusions to be drawn about the effects of combination in each area. The Board acknowledged that this would take time and it was agreed that production of the reports would be scheduled for September 2011, to enable the research findings to be married up with other data received in the months following the election.
- 5.5 Updates on the timing and structure of the reports, and any prospective academic interest in the issues, would be included in future information packs to Commissioners.

Agreed: That:-

- (a) the number of indicators be reduced and focus on the voter's experience (although other indicators would be retained for operational purposes);
- (b) production of the report be scheduled for September 2011, to enable the research findings to be married up with other data received in the months following the election, to include an overarching report on the UK parliamentary voting system referendum and separate reports on each of the Wales, Northern Ireland and Scottish elections (supported by research samples of sufficient size in the different areas to enable conclusions to be drawn about the effects of combination in each area), and recognising that there would inevitably be areas of overlap between the reports; and
- (c) updates on the timing and structure of the reports, and any prospective academic interest in the issues, be included in future information packs to Commissioners.

6 Referendums: designation (AV) (EC 74/10)

- 6.1 AF presented the procedure to be used for designation at the referendum on the UK parliamentary voting system. Commissioners were in agreement that the overall approach to designation for the Wales referendum be re-affirmed for the parliamentary voting system referendum. In relation to potential conflict of interest, the Board confirmed its view that the participation of the Commission Chair in the Commission Board's decisions on designation would not create a conflict of interest with the Chair's role as CCO
- 6.2 The Commission Board agreed that JMcC should be the Commissioner on the designation interview panel for the referendum on the UK parliamentary voting system.

Agreed: That

- (a) The overall approach to designation for the Wales referendum be re-affirmed for the referendum on the UK parliamentary voting system, including, in relation to potential conflict of interest, the Board's view that that the participation of the Commission Chair in the Commission Board's decisions on designation would not create a conflict of interest with the Chair's role as CCO; and
- (b) John McCormick be appointed to the Commissioner position on the parliamentary voting system referendum designation panel.

7 Referendums: Grants (UK-wide and Wales) (EC 75/10)*

- 7.1 Commissioners discussed in detail the calculations and assumptions underlying the level of grants for both referendums, set out in Appendix A. Whilst acknowledging that the cost assumptions were not an exhaustive list of what the grant could be used for, it was agreed that levels and assumptions contained in the Appendix be reconsidered. Concern was expressed over the economies of scale assumptions made in the report. It was agreed that the comparative costs for the UK and Wales referendums be checked to ensure that the assumptions for economies of scale were correct. The amended paper would be circulated to Commissioners for decision by email by the end of September.
- 7.2 The Board discussed the issues surrounding eligible expenditure and the safeguards in place as set out by the grant payment terms and conditions. The Board agreed with the approach to pay the grant in instalments for both the Wales and UK-wide referendums. Commissioners asked that the report be amended to clearly emphasise the safeguards and assurances put in place by the Commission to ensure responsible use of grant funds by designated organisations. The principle of a ceiling on staff costs as described at paragraph 4.20 of the paper was approved.
- 7.3 The Board discussed the proposal to exempt specialist campaigning software from eligible expenditure. Consideration was given to the view that designated organisations closely aligned with political parties would have access to specialist software via the parties, and that this could disadvantage organisations without that party link. However, the Board supported the view that specialist software went beyond the basic infrastructure principle outlined in the Neill Report.

Agreed: That:-

- (a) The levels and assumptions contained in the Appendix be considered further and reframed, and in particular the comparative costs for the UK and Wales referendums be checked to ensure that the assumptions for economies of scale were correct;

- (b) for the purposes of the grant only general office software would be considered as eligible expenditure, not specialist campaigning software;
- (c) the principle of a ceiling on staff costs as described at paragraph 4.20 of the paper be approved;
- (d) payment of grant by instalments be agreed;
- (e) the safeguards in place to ensure that grant was properly claimed and spent be made more prominent; and
- (f) the re-worked paper be circulated to Commissioners by email by the end of September for decision.

* **See addendum minute on page 12 below.**

8 Party Registers – implications of the Bromsgrove case (EC76/10)

Deferred to the October meeting of the Commission Board due to pressure of other business on the agenda.

9 UKPGE Candidate campaign expenditure cases (EC 77/10)

- 9.1 NB introduced the report and set out the proposed framework for handling allegations of breach of the rules on candidates' campaign expenditure. The Board noted that the anticipated influx of cases following the May UKPGE had not so far occurred.
- 9.2 The Board considered and agreed the strategic framework for referral of cases to the relevant prosecutorial authority by delegating authority for referrals to the Chief Executive.
- 9.3 Delegated decisions would be reported to Commissioners by email. Commissioners asked that a progress report on the new approach be presented to the Board by January 2011.
- 9.4 The Board noted that these rules came under the Representation of the People Act (RPA) which prescribes a higher level of sanctions (presumably because wrongdoing was seen as potentially directly affecting the result of an election). It was suggested that further thought be given to the wider issue of the range of criminal and civil penalties across the PEF area at a future strategic discussion of this aspect of the Commission's work.

Agreed: That:

- (a) the strategic framework at Appendix A of the paper for referral of candidate campaign expense cases to the relevant prosecutorial authority be agreed;
- (b) the decision on whether to refer or not be delegated to the Chief Executive;
- (c) delegated decisions be reported to Commissioners by email

- (d) a progress report on the new approach be presented to the Board by January 2011; and
- (e) staff should consider how to facilitate a discussion of the wider issue of the sanctions regime across the PEF area, at a future strategic discussion.

10 Implications of the Supreme Court judgement on the UKIP forfeiture case (EC 78/10)

- 10.1 LK provided an overview of the recent Supreme Court judgement in the UKIP forfeiture case and set out the implications for future forfeiture cases.
- 10.2 The Board considered the judgement's implications and discussed the Commission's next steps. It was noted that the Commission's draft enforcement policy would be amended to reflect the implications of the judgement. Commissioners asked that they be kept informed of the impact of the amended policy on the five current cases involving impermissible donations from individuals which had been delayed pending the UKIP decision.
- 10.3 The Board was in agreement that the Political Parties Panel (PPP) should be given a brief update about the Commission's view of the implications of the Supreme Court judgement (but did not feel in general that this was something requiring Board approval).
- 10.4 It was agreed that the Committee on Standards in Public Life (CSPL) be asked to consider whether the current test of the permissibility of individuals remained appropriate, as part of its forthcoming review of party funding. The CSPL issues and questions paper for the review would be circulated to Commissioners next week.
- 10.5 Commissioners agreed that the option to explore with the Cabinet Office the prospects of amending PPERA should not be dismissed outright but that inviting the CSPL to consider the current process as part of its review of party funding should be the first step. It was agreed that suggesting an amendment to the Parliamentary Voting Systems and Constituencies Bill to restate it for the referendum only was not appropriate.

Agreed: That:-

- (a) the implications of the judgement for future forfeiture cases involving impermissible donations from individuals be noted;
- (b) it be noted that the Commission's draft enforcement policy would be amended to reflect the implications of the judgement, and might need to revisit the question of how the forfeiture regime would interact with the new sanctions available under PPE Act;

- (c) Commissioners would be informed of developments in relation to the five current cases involving impermissible donations from individuals which had been delayed pending the UKIP decision;
- (d) the Committee on Standards in Public Life be invited to consider whether the current test of the permissibility of individual donations remained appropriate, as part of its forthcoming review of party funding;
- (e) the PPP be given a brief update about the Commission's view of the implications of the judgement; and
- (f) the questions paper expected to be issued by CSPL next week be circulated to Commissioners in an information pack.

11 Supplementary Estimate 2010-11, Corporate Plan 2011-12 to 2015-16 and Main Estimate for 2011-12 (EC 79/10 and tabled handout)

(a) Supplementary Estimate 2010-11

- 11.1 CH introduced the report and explained the reasoning behind the probable request for a supplementary estimate for 2010-11. CP outlined the estimated additional costs arising from a public awareness campaign for the proposed referendum on the UK parliamentary voting system in May 2011. The Board noted the likely need to commit to significant expenditure in advance of the passing of the legislation bringing the referendum into effect. The Board considered the potential financial risk involved and accepted the current planning assumption.
- 11.2 It was noted that the Scottish Parliament elections would be added to the 2011 list of event specific expenditure on p8 of Appendix A.

(b) Corporate Plan 2011-12 to 2015-16

- 11.3 The Board discussed the proposed format and approach taken in the draft Corporate Plan. JW asked that the relevant reference group meet to consider the performance indicators to be outlined in the plan in due course. Commissioners were invited to submit further comments on the draft Corporate Plan to LP.
- 11.4 Commissioners discussed whether the Corporate Plan gave a sufficiently strategic vision of the sort considered at the Board's planning day in June. It was agreed that further thought be given on how to convey this more effectively.

Agreed: That:-

- (a) the potential need for a Supplementary Estimate for 2010-11 be submitted to the Speaker's Committee as noted in Appendix A, updated to reflect:-

- (i) the latest discussions as to the booklet distribution options, the need to commit expenditure in advance of the legislation and the associated risk;
- (ii) that, as advised by Treasury, a Supplementary Estimate will not be prepared until the Spring Supplementary Estimate timetable, and then only if the Commission cannot find further savings to offset the referendum costs;
- (b)** the Board approve the planned spending for 2011-12 to 2015-16 and the proposals for planned savings of 27% in core costs over the period 2011-12 to 2014-15 as set out in Appendix B and note that the IER costings had been reviewed and updated as requested by Commission Board in March;
- (c)** the draft Corporate Plan 2011-12 to 2015-16 be approved for submission to the Speaker's Committee in support of the Commission's estimate of resources, and any comments be passed to LP for incorporation into the further revisions;
- (d)** a reference group should meet on a one-off basis to consider the draft corporate plan in more detail, and in particular to consider the measures of performance for 2011-12, and how best to reflect the strategic context in the plan
- (e)** further thought be given to how to convey the Commission's overarching strategic long-term position.

12 Performance, Risk and Finance report – Quarter one 2010-11 (EC 80/10)

- 12.1 LP introduced the report and explained the new format, which was well received by Commissioners.
- 12.2 Commissioners questioned the high residual score of 9 attributed to the IER strategic risk in the quarterly highlight report. The Board was reminded that the report covered the quarter one period and PW confirmed that the score reflected the fact that at that point in time (June 2010) there was still little clarity about the government's intentions; there had been progress in discussions with the government during the summer.
- 12.3 Commissioners requested that a brief narrative be included with each risk in order to allow for a better understanding of the mitigations.

Agreed: That a brief narrative be added to the risks, and it be noted that the next quarterly report would be circulated to Commissioners at the end of quarter 2, immediately following its consideration by the Executive Team (rather than waiting for the next Board meeting).

13 Chair's report

Noted

14 Forward Plan of Board agendas to May 2011 (EC 82/10)

Agreed: That the forward plan of Board business be agreed as set out in the paper, and circulated to staff accordingly.

15 Audit Committee draft minutes of 30 June 2010 (EC 83/10)

Noted.

16 Meeting wash-up (Commissioners only)

The meeting ended at 3.20pm.

Chair

ADDENDUM – REVISED REPORT

Referendums: Grants (UK-wide and Wales) (EC 75a/10)

As agreed (item 7.3(f) on page 7 above), a revised paper (EC75a/10) was circulated to Commissioners by email on 29 September. Responses received from five Commissioners concurred with the revised recommendations, and it was therefore **agreed** that:

- (a) The revised proposals for the level of the grant to be made available to designated organisations in the UK-wide referendum on the parliamentary voting system be agreed on the basis of **fixed costs of up to £70,000 in total plus variable costs of £28,000 per week**, of which staff costs make up £3,000 per week, and the Welsh referendum on increased powers for the National Assembly for Wales on the basis of **fixed costs of £10,000 and variable costs of £5,500 per week**. For comparison, the recommendations in EC75/10 and in this paper are

	EC75/10	This paper
UK referendum (assuming a 13 week period)	£385k	£430k
Welsh referendum (assuming a 12 week period)	£95k	£80k

- (b) Approve the announcement of the grant levels to coincide with the publication of the Commission’s guidance update for campaigners in mid-October.

Jenny Watson, Chair