

## Minutes of the meeting of the Electoral Commission held on Wednesday 10 November 2010 at 9.30am

Present: Jenny Watson (JW) Chair  
Baroness Browning (AB)  
Max Caller (MC)  
Tony Hobman (TH)  
David Howarth (DH)  
Ian Kelsall (IK)  
Lord Kennedy of Southwark (RK) (from 10.10 am)  
John McCormick (JMcC)  
Rt Hon George Reid (GR)

Also present: Liz Butler, Independent Chair of the Audit Committee (EB)

In attendance: Peter Wardle (PW)  
Carolyn Hughes (CH)  
Lisa Klein (LK)  
Alex Robertson (AR)  
Andrew Scallan (AS)  
Bob Posner (BP)  
Kairen Zonena (KZ)  
Joel Blackwell (JB)

Louisa Parry (LP) – for item 4  
Tom Hawthorn (TH1) – for item 8  
Mark Williams (MW) – for item 8  
Katy Bere (KB) – for item 8  
Christie Dennehy (CD) - for item 8  
Gemma Rosenblatt (GR1) - for item 8

### 1 Apologies

Henrietta Campbell for absence.

JW on behalf of all her colleagues welcomed Baroness Browning to her first formal meeting, and also Liz Butler, who was here for item 5.

## 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 DH declared that he had in the last Parliament moved an amendment in favour of introducing the Alternative Voting system. The amendment was not adopted.
- 2.4 GR declared that in his role as Chair of the Statutory Remuneration Committee for Wales, he would in January make a determination on the salary levels for Assembly members and staff, and noted that the number and costs of Assembly members and staff could be a possible factor in the Referendum.
- 2.5 It was agreed that none of these declarations made withdrawal from discussion or decision necessary.

### 3a Minutes of the Commission Board meeting of 20 October 2010 (EC95/10)

- 3.1 The reference to the number of PEF cases at paragraph 4.1 of the minutes (3<sup>rd</sup> bullet) should have read 'this year there had been 90 cases of allegations' instead of '90 live cases.'

**Agreed:** That:

Subject to the amendment above, the minutes of the Commission Board meeting held on 20 October 2010 be approved as an accurate record and the Chair be authorised to sign them.

### 3b Decision/Action tracker (EC96/10)

**Noted.**

#### 4 Update from Chief Executive for July (EC97/10)

4.1 PW highlighted key aspects and added a number of other points which had arisen since the report had been produced, as follows:

- **UKIP settlement of costs** against the Commission (para 1.6) – a full statement of costs was still awaited from UKIP’s lawyers. Lord Ashcroft had asked a Parliamentary Question about the costs of the case.
- **Public awareness campaign for the Spring 2011** polls (para 2.3): - the distribution contract for public awareness material would be signed in the next day or so, now that certain issues had been resolved. It was expected that more than 90% of households would receive the booklet (100% being virtually impossible to achieve). The biggest risk could be industrial action at the time of the distribution. Alternatives, such as inserts in free-sheets, were mooted, and staff were asked to look at fall-back arrangements and to report back to the Board.
- **Office move to 3 Bunhill Row** (para 3.2) – The move was scheduled to take place over the weekend before Christmas (Friday 17 to Monday 20 December inclusive) for part of which time the IT systems across the whole organisation would not be available. The timing of the move had been fixed to enable the organisation to have settled in and resolved any teething problems well before the Spring polls. Commissioners would receive a briefing on issues affecting them particularly, and be invited on a guided visit to the building at the time of the December Board meeting.
- **PEF case update** –  
LK gave a verbal update on the analysis of candidates’ election expenditure returns, which had resulted in 31 cases being examined more closely, of which five became case reviews. The 31 had come from a mixture of internal (checks which showed up inconsistencies) and external (journalist sources).  
The cases that incurred delay as a result of staff absence had been cleared. The pending cases were within their KPI targets except for one, which had gone over 90 days.  
LK would notify the Board when the case summary on one recently concluded was issued.
- **PEF Online** (para 1.4) – Staff were working with the parties on testing. One of the larger parties had requested more time to carry out testing and a similar request was anticipated from another. Extending this aspect of user testing might make going live with the system in December difficult to achieve. GR added that he found the system impressive, and easy to navigate and use, but also said that it was a large application, and that the demonstration had been interrupted by the system crashing. LK would keep Commissioners informed of the status of PEF Online, the launch date, and any issues which emerged over, for example, the size of the system.

- **Information Tribunal on Wendy Alexander** case – Following the hearing on 14 October, the Tribunal had now given its decision. It supported the Information Commissioner's decision to uphold the Commission's refusal to release information about who had recorded the source of a donation, but did not support the Commission in refusing to say who had provided the Commission with the information. Following this decision, it was possible that either the appellant or the ICO might appeal, for separate reasons, in which case the Electoral Commission might be joined to the appeal proceedings in one form or another. There was a 28-day window within which appeals could be lodged, and if lodged an appeal would be heard within a few months. It was agreed that JMcC and GR be kept informed of further developments.
- **Quarter 2 strategic and financial performance monitoring** (para 3.1) – PW noted that the report had been circulated to Commissioners so that they could raise any pressing issues in a timely manner. The monitoring report would be on the December Board agenda for formal scrutiny and PW noted in addition that a Commissioner reference group would be meeting in the near future to review the approach to be taken to performance measures.

**Agreed:** That:

- (a) Staff would report back to the Board on contingency plans in the event of potential disruption to the Spring 2011 public awareness campaign;
- (b) LK advise Commissioners when the investigation matter referred to above had been made public;
- (c) JMcC and GR be kept informed of developments in the Wendy Alexander Information Tribunal case;
- (d) LK keep Commissioners advised of the PEF Online launch date and any other related issues; and
- (e) Noted that more work was to be done on in-year performance measures.

## 5 Code of Conduct for Electoral Commissioners (EC 98/10)

- 5.1 JW prefaced the paper by mentioning that the Commissioners' informal meeting on 19 October had looked at a number of governance-related issues, and developed a set of principles. She would let Commissioners have a version of these shortly and there would be more opportunities to discuss how these might work in practice in due course.
- 5.2 EB said that a Code of Conduct was a good thing only insofar as it was complied with. To this end, she suggested that it would be helpful to produce the Code proper (the first eight pages) as a stand-alone document, to make it easier to use, and if possible written more simply. The appendices could be linked to rather than attached.

- 5.3 DH expressed concern that paragraph 2.6 of the Code (the section on conflicts of interest) was so broadly drawn as almost to militate against the participation of the new Commissioners. He acknowledged that there were some cases where their association with interests or people was so close as to make involvement in decision-making impossible, and withdrawal necessary, but these should be relatively few.

[RK joined the meeting at 10.10am]

- 5.4 AB noted that using people's perception as a guide to what might be considered a conflict of interest could lead to too wide an interpretation, unless it was the perception of a reasonable and fair-minded person.
- 5.5 On the question of collective responsibility, and decision-making by consensus, MC thought this should be stated clearly and explicitly. The reference in paragraph 4.3 (which pertained to confidentiality) did not do justice to the issue. Something should be added spelling out the general approach, which was one of decision-making by consensus, that individuals should not be drawn into commenting publicly on their individual position or into anything that would undermine the decision subsequently, and that everyone should support the position whether agreed with personally or not. A spokesperson should be the only person expected to comment on such things publicly.
- 5.6 There was some discussion about declaring those interests, gifts and hospitality which might be captured by declarations in other roles, and if so, was there any need to repeat them for the Commission. In addition, when could something be regarded as private and when not? There was concern about information which could be subject to an enquiry under the Freedom of Information Act.
- 5.7 However, balanced against these concerns, there was a general sense that Commissioners exercising their judgement knew when to declare and, if in doubt, should declare, or consult. If a Commissioner became aware that an earlier involvement or action thought not to warrant disclosure at the time but which had for any reason assumed a different aspect since, it should be declared at that point.
- 5.8 The issue of declaring meetings with people (on the basis that it was who you were meeting rather than the 'cup of tea' consumed that counted) should become a separate paragraph – it was wrongly positioned in the Code at present - and more done to clarify what it meant. It was accepted that it was broadly aimed at capturing contacts with people either closely involved in the sphere of the Commission's concerns, or where discussion included areas of the Commission's concerns (eg having coffee with a minister responsible for the Commission's policy area, or being asked to give advice on a Bill relevant to the Commission's area of work). This ruled out inclusion of

the many incidental and purely social contacts which all Commissioners, but perhaps more particularly former politicians, would be bound to have on a daily basis.

- 5.9 AB had declared a meeting with two of her Conservative colleagues a day or so previously, and said that she had dealt with the situation by advising her colleagues at the outset that she would need to declare the meeting.

**Agreed:** That the Code of Conduct be adopted in principle, subject to further drafting and clarification of the following points:-

- (a) producing the first eight pages of the Code itself as a stand-alone document, slimmed down and simplified where possible, with links to the more detailed guidance, and highlighting the over-riding aim of being transparent both with the world the Commission regulates, and within the Commission;
- (b) para 2.6 of the Code, on confidentiality, be elaborated to include explicit reference to the convention of collective responsibility and decision-making by consensus;
- (c) section 3 of the Code, on declaring gifts and hospitality, include a separate paragraph on declaring meetings, and the Frequently Asked Questions section of Appendix 3 (detailed guidance on declaring gifts and hospitality) be expanded to include additional examples of declaring meetings;
- (d) any points arising from consideration of the related issues at the 19 October informal meeting be worked in to the Code as appropriate; and
- (e) Commissioners be urged whenever in any doubt to consult JW, PW or KZ on any aspect of the Code.

## 6 Committee memberships and quorums (EC 99/10)

- 6.1 JW said briefly that the changes reflected the growth in the size of the Board and aimed to capture the principle of retaining balance in quorums and memberships. With the expiry of her term as a member of the Audit Committee, HC was thanked in her absence for her contribution to the work of the Committee.

**Agreed:** That:-

- (a) With the exception of (b) below, the quorum for Commission Board meetings increase from four to six Commissioners, of whom four shall be Commissioners appointed other than under Section 3A of PPERA;
- (b) The quorum for Commission Board meetings taking regulatory decisions and referendum decisions be increased from three to five Commissioners, of whom three shall be Commissioners appointed other than under Section 3A of PPERA;

- (c) The quorum of the Audit Committee remain at two Commissioners, one of whom shall be appointed other than under Section 3A of PPERA, plus the Independent Chair;
- (d) The Rt Hon George Reid be appointed to the Audit Committee in place of Henrietta Campbell whose term as a committee member has expired, for a period of 3 years or the expiry of his term as a Commissioner, whichever is the sooner;
- (e) Ian Kelsall and Max Caller be re-appointed to the Audit Committee for a further three years from 31 December 2010, to 31 December 2013, or until the expiry of their term as a Commissioner, whichever is the sooner;
- (f) The Remuneration Committee remain at three members;
- (g) Baroness Browning be appointed to the Remuneration Committee for a period of three years, to 10 November 2013, to replace Max Caller; and
- (h) The necessary changes be made to the Corporate Governance Framework and any other governance documents as necessary.

## 7 Chief Counting Officer decisions: Wales referendum 3 March 2011 and UK-wide referendum 5 May 2011 (EC100/10)

- 7.1 JW had asked for this to be a regular paper to the Board between now and the Referendums, as a way of keeping all Commissioners advised of the various decisions that she would be taking in her capacity as Chief Counting Officer. She reminded everyone that the information was not all in the public domain and should be treated as confidential.
- 7.2 In response to a question on the maximum number of electors to be allowed per polling station, AS advised that the Cabinet Office was collating data on how many local authorities currently exceeded this target, to help them with an assessment of the costs of resources needed to enable local authorities to staff more polling stations where necessary.
- 7.3 It was noted that an initial decision on the colour of the ballot paper for the AV referendum had to be revisited once it was realised that it might be the chosen colour of the 'Yes' campaign.
- 7.4 JW thanked MC for his time and effort as Deputy Chief Counting Officer (designate).

**Noted.**

## 8(a) Spring 2011 polls – reporting (EC101/10)

- 8.1 The Deputy Prime Minister had indicated that he did not support the case for a change in the law advocated by the Commission to allow for flexibility on the 10pm close of poll, one of the issues which had given rise to particular difficulties in some areas at the UK general election in May. Commissioners expressed disappointment that a potential solution had not so far been taken forward, in spite of the Commission's best efforts.
- 8.2 Turning to the proposed reporting structure, MC thought more could be done, in the outline for Chapter 4 particularly, to differentiate between the Chief Counting Officer's (CCO's) responsibilities and those of the Commission.
- 8.3 On that theme, JMcC asked whether it would not be for the Commission (rather than JW as CCO) to agree that conditions had been met to enable its qualified 'amber' support for combined polls to move to a 'green'. It was noted that the statement on preparedness had been made by the Commission itself. The Chair pointed out that from this point on, if events in the House of Lords made it likely for example that the referendum would be jeopardised for any reason, that might be something on which she would be required to make a decision as CCO. She asked whether Commissioners wanted some form of very fast consultation to be carried out, as far as circumstances permitted, to inform her decision, and there was general assent.
- 8.4 GR1 outlined briefly the information that would be gathered and analysed by research. This would be both quantitative and qualitative and include a public opinion post-referendum survey, data collection of key electoral statistics (votes cast, rejected, postal votes cast and rejected, etc), views of Counting Officers and Returning Officers, and the views of permitted participants, designated organisations, candidates and agents.
- 8.5 As part of this work, the research programme would look to assess the possible impact of combined polls - for example on voters' understanding of the issues and their ability to cast their vote effectively. JMcC welcomed this and added that it would be highly valuable in providing a significant base of data and analysis to help inform any future view on combination that the Commission would be called on to provide. TH1 referred to research expected to be undertaken (by others) on Scottish media coverage of combination which might also yield useful information.
- 8.6 PW pointed out that having moved from a position of blanket scepticism about combination of referendums with elections, towards a position whereby each proposed combination would be assessed case by case, the Commission was liable to be examined more critically on its methodology for supporting combination. To that end, it would need

to ensure that the research was rigorous and extensive enough to support such a case. This required, for example, the sample size for the public opinion survey to be large enough to enable comparisons to be made between areas with combined polls and those without.

- 8.7 Consideration was given briefly to how far it would be possible to draw any conclusions from research into the Wales referendum that could usefully inform work on the AV referendum, but it was accepted that the scope for this would be very limited.
- 8.8 Commissioners were concerned by the risk of low turnout and apparent lack of interest attracting blame, fairly or otherwise, and referred to the apparently low level of knowledge and information about the role of the Commission which had been evident in post-general election media coverage.
- 8.9 AR set out the programme of briefing, media information, and meetings with the principal political editors and other key figures planned in the run-up to the referendums in order to build awareness and understanding. Other suggested approaches Commissioners raised included getting details of and doing some similar work directly with the media teams who would be involved in the coverage, and meeting regional correspondents. JW suggested that AR use the Commissioners for the purposes of challenge, to ensure that all possible angles were covered.
- 8.10 PW said that there was a greater likelihood for the Commission to be caught in the middle of any fall-out from the referendums, where the Commission had responsibility, than there had been with the UKPGE. This included low turnout, for which the Commission did not have responsibility. In relation to any problems on the night, however, information received live from Regional Count Officers as the referendum progressed would provide useful data which could help the Commission respond authoritatively to some of the questions as they arose.
- 8.11 LK said that staff were starting to contact the lead organisations, and that this was another channel by which the Commission's role could be communicated and clarified.
- 8.12 A pack of documents on preparedness and timing of the count, and other aspects of the AV referendum, addressed to a comprehensive range of stakeholders and embargoed until the following day, were provided to Commissioners.

**Agreed:** That the proposed structure and approach for reporting on the Wales and AV referendums and the scheduled May elections be endorsed, subject to:-

- (a) a clear description of the respective responsibilities of the Chief Counting Officer and the Commission, including drawing out clearly where they split and where they overlap;
- (b) provision of detail on the nature of the research and how it will inform the assessment of the referendum and its combination with other elections, including looking at any external research being undertaken which was relevant.
- (c) providing information if it was available in the run-up to, and post-Wales referendum, that would help inform the approach to the AV referendum; and
- (d) staff consulting Commissioners as necessary to provide a challenge to planned media work.

8(b) Spring 2011 polls – current assessment of preparedness for May 2011 polls (EC102/10)

- 8.13 JW confirmed as discussed earlier that if there were changes to the Bill, she would try to convene a very fast meeting and/or canvass opinions by phone and email. She would also give some thought to how best Commissioners could be kept abreast of information which came in.
- 8.14 Commissioners discussed the process for recounts of votes for the May 2011 referendum. AS confirmed that under the PVSC Bill as currently drafted, there was no provision for a national recount: referendum agents could request a recount at a local counting area level, and Regional Counting Officers (RCOs) could instruct a local Counting Officer to recount only if there was reason to doubt the accuracy of the count in the local counting area. The Board discussed whether the CCO should be advised of all requests for recounts at local counting area to ensure consistency, or only those instances where a request had been refused. There was no limit on timing – theoretically the RCO could order as many recounts as they liked, but they must be satisfied as to the integrity of the result before declaring. Directions on how doubtful and spoiled ballot papers should be dealt with, and on the process for agreeing the verified and counted totals, would be issued to all interested parties.
- 8.15 JW advised that a Commission seminar in the New Year for RCOs on ‘running the count’ would be held, and if Commissioners thought it would be useful, a similar session could be held with the Board to walk through the count process..
- 8.16 If the Commission did make recommendations for change in the wake of the referendum experiences, then it would be necessary to do some work on international comparators, to ensure that any recommendations did not run counter to international evidence.

- 8.17 On a slightly separate issue, JW reported that at the Referendums Steering Group RCOs [designate] had raised a concern that many of those involved at local level in preparing to administer the Spring 2011 polls were also involved in overseeing significant local authority service cuts, itself a demanding process. The Commission would flag the issue with Mark Harper MP, the Parliamentary Secretary for Political and Constitutional Reform, and had already written to all local authority leaders reminding them of their statutory responsibility to staff and administer the polls, and making clear that central government would meet costs associated with the referendum.

**Agreed:** That the paper be noted, consideration be given to putting on a seminar for RCOs in the New Year on 'running the count', and Commissioners be kept regularly updated on progress.

## 9 Chair's Report (EC 103/10)

JW said that, in relation to her meeting with Tristram Hunt MP, she was gradually meeting all members of the Political and Constitutional Reform Select Committee.

## 10 Meeting wash-up (Commissioners only)

The meeting ended at 12.10 pm.

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Chair