

Classification: Unprotected

Agenda Item no.3 (a)

Minutes of the meeting of the Electoral Commission held on Wednesday 7 December 2011 at 9.30am

Present: Jenny Watson (JW) Chair
Max Caller (MC)
Henrietta Campbell (HC)
Tony Hobman (TH)
David Howarth (DH)
Ian Kelsall (IK)
Lord Kennedy of Southwark (RK)
John McCormick (JMcC)
Rt Hon George Reid (GR)

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

Ann Blackmore (AB) – for item 6
Tom Hawthorne (TH1) – for item 6
Nina Ziaullah (NZ) – for item 6
Gemma Rosenblatt (GR1) – for item 6
Phil Thompson (PT) – for item 6
Chris Morgan (CM) – for item 6
Matt Longley (ML) – for item 6
Ailsa Irvine (AI) – for item 6

Observing: Anna Carragher (incoming Commissioner)
Sheilja Shah

Henrietta Campbell CB and Anna Carragher

This was HC's last Board meeting. On behalf of everyone present, JW thanked Etta for her contribution during her four years as a Commissioner, and said she would be much missed.

JW also welcomed Anna Carragher, who attended as an observer. She would take up her appointment as Electoral Commissioner with special interest in Northern Ireland on 1 January 2012.

1 Apologies

None.

2 Declaration of Interests

None.

3a Minutes of the Commission Board of 23 November 2011 (EC 88/11)

JMcC said that in relation to the involvement of existing Commissioners in the induction of new Commissioners (Minute 11(c)), his point had been that current Commissioners could be involved in or present at some of the induction sessions given by staff.

On the question of performance standards for Returning Officers (minute 7.4), HC said that the concern over the 15% sample size was specifically about whether it was large enough to capture a cross-section of areas, not simply those perceived to be at risk. JW additionally asked for further details to be supplied to the Board on how this would be achieved.

Agreed: That:

- (a) subject to the amendments to reflect the above points, the minutes of the meeting on 23 November 2011 be approved as a correct record and the Chair be authorised to sign them; and
- (b) further details be reported to Board of how the performance standards 15% sample size could capture performance across a cross-section of areas, not simply those thought to be at greatest risk.

3b Decision Action tracker (EC 89/11)

Agreed: That a timeframe for drawing up a document outlining the Commission's key principles and policies be provided to the Board at its January meeting.

4 Update from Chief Executive for October (oral)

- 4.1 As such a brief time had elapsed between the last Board meeting and this one, PW gave a brief oral update of two meetings of note since 23 November. The previous day had seen one of the monthly meetings of the **Elections and Referendums Steering Group** (with senior Returning Officers) and the Cabinet Office's Elections Policy and Coordination Group. We were on track to deliver our Performance Standards and Guidance by the end of December, as promised. Rules for a number of forthcoming elections had yet to be agreed and could not therefore be reflected in the performance standards. The Department for Communities and Local Government (CLG) had still not drawn up the rules for the referendum on elected mayors, and appeared to be actively considering that any resulting elections (for elected mayors) could be held in combination with Police and Crime Commissioner elections in November 2012, notwithstanding the considerable risks of such a proposal. In either case, the absence of rules at this stage continued to be a source of major concern, as was the absence of central co-ordination or oversight of the various elections being proposed by various departments. CLG was also consulting the Commission on the referendums on council tax and neighbourhood planning.
- 4.2 All **Police Area Returning Officers** had now been appointed for the Police and Crime Commissioner elections in November 2012. **User testing of the ballot papers** was under way by the Home Office. PW emphasised that user testing was particularly important to create clear and well-designed ballot papers that would maximise the likelihood of voters understanding and properly marking their ballot papers.
- 4.3 The Home Office was still considering rules on party finance, and meanwhile were considering that **public information for candidates** should be delivered by use of the internet, with those voters who were interested seeking out the information. However, as candidates' election addresses would form a key part of helping voters to understand the issues and possible reasons for voting in their area, the 'pull' approach of a website was a less secure way of raising

awareness than the inclusion of candidates' election addresses in a public information booklet sent to every elector.

- 4.4 The timing of the first PCC elections on 15 November meant that they would take place in the middle of the annual canvass, and as a result of concerns expressed by the Commission and Returning Officers, officials had advised ministers that the canvass should be brought forward to enable the elections to be run on a register that was as up-to-date as possible. Consideration was being given to the use of the power of direction by the Secretary of State on recommendation from the Commission to change the date of the publication of the register.
- 4.5 The Department for Energy, Food and Rural Affairs (DEFRA) had confirmed that **elections to two of the English National Parks Authorities**, namely New Forest and the Peak District were proposed for 2013, and 4-yearly thereafter.
- 4.6 The Cabinet Office had advised that the legislative timetable for **Individual Electoral Registration** had slipped and was now scheduled for the first half of 2012.
- 4.7 JW said that it would be necessary to find further ways to influence progress by communicating the Commission's escalating concerns over the risks of delay not just to the minister, Mark Harper, but also potentially to the Deputy Prime Minister. She wanted the Board to be aware that this was in prospect and to confirm their support for further approaches if necessary, which they did.
- 4.8 JW reported that her **meeting on Monday with the Minister for Political and Constitutional Affairs, Mark Harper**, had been extremely useful. They had agreed to schedule 6-weekly meetings with one another. In this meeting she had raised completeness of the register (in relation to moving the date of the canvass) and resources for electoral registration officers (EROs). She also explained that any power of direction given to the Commission would be about achieving better outcomes for the voter, rather than checklist-driven, and she thought this point had been heard, and referred to tangentially in the Minister's speech the following day.
- 4.9 LK gave an update on the situation regarding civil sanctions cases. At the last Board meeting 22 of the original 141 cases were still under review. This figure had reduced to eight, one of which was close to reaching its 90-day target for completion, and might not meet the target. She said that of the 141 cases considered, they concluded there had been 'no breach' in just under 50% of them. Most of those considered to have breached were not serious enough to warrant a sanction (those which were not very late, or where there was very little financial activity). Penalty notices had or were about to be issued in

five cases. Staff were considering how to report on the use of sanctions, and how it would be framed in our reporting.

- 4.10 There then followed an update on six cases currently being dealt with. LK also noted a workstream was in place to review the approach and streamline the process taking into account the lessons learnt during the first year of the new sanctions.
- 4.11 JW was advised that **formal external reporting of the Commission's use of its new sanctions powers** would take place at the time of the Annual Resource Accounts (ie June 2012). The key messages would come, via the PEF reference group, to the Board in advance of their publication.

Agreed: That:

- (a) The necessary steps be taken to impress upon the government at every level the Commission's concerns over the lack of urgency and a lack of co-ordination, and the Board be kept advised of any approaches (see also 6.3 below); and,
- (b) PEF civil sanctions reporting be considered by the reference group and brought to the Board prior to publication in June 2012.

5 Chair's Report (EC 90/11)

Included in item 4 above.

Noted

6a Electoral registration: IER trajectory (TABLED presentation)

- 6.1 NZ tabled a short presentation which captured the picture of the state of preparation for IER as presented to the Board in September, followed by a slide showing the state of preparation as at December as affected by recent developments, and the impact of those changes on the transition period from 2014 and beyond. New information was highlighted. Putting back the date of the primary legislation by a number of months would, the government argued, result in a better worked through Bill, which would therefore need less time in parliament to be passed. However, delays in policy development on issues to be included in the Bill remained a cause for concern, and raised doubts about the feasibility of the revised timetable. Meanwhile, the proposed postponement of the annual canvass in autumn 2013 to early 2014 was intended to close the window between the canvass and the election but

a delay to the write-out to all electors advising of the move to IER would negate any benefit. Delays and postponements all compressed the time available for the government to remedy any problems, as the general election in May 2015 provided a fixed point by which systems must be in place and working. These were therefore considerable risk factors. NZ reminded the Board that our response to the White Paper had asked for the government to provide an implementation plan for IER by the turn of the year, and this had yet to be done.

- 6.2 There was particular concern about the time allowed for the IT system build, test and installation (very early 2013 to very early 2014) for such a complicated system. Any slippage in those dates would pose a fundamental problem. Officials had been pressed over plans for a fall-back arrangement in the event of an IT system failure, and had not so far given any information.
- 6.3 PW suggested the approach now should be to present the Cabinet Office with the critical path as we saw it, and invite them to tell us where it was wrong. Depending on the outcome of that, by February or March of next year the Commission should be well placed to advise Ministers whether or not a Bill introduced at that stage would in its view prove to be workable. JW said that if the Board wanted further discussion on this point (if the Commission was likely to say that there were now serious risks to the delivery of the transition to IER on time) she could look for a short meeting in late January. A number of Commissioners voiced concern that the current timetable and state of development did not look promising for IER, and all agreed that the Commission needed to continue to raise this with government.
- 6.4 In response to a question about how the government seemed so far adrift of where we thought they should be in their preparations for a safe transition to IER, PW said that these issues had been pointed out repeatedly along the way. However, he would think of what further might be done to enable the points to be more effectively heard. The Commission Board would have the opportunity to discuss this further early in 2012. A clear picture of what good implementation looked like would be essential in highlighting where the risks were.
- 6b Electoral registration: Great Britain's electoral registers 2011 – research report (EC 91/11 plus TABLED presentation)
- 6.5 GR1 introduced a slide presentation which supported the paper (EC 91/11) providing an overview of the findings to be published on 14 December 2011 in a Commission report on the accuracy and completeness of Great Britain's electoral registers.

- 6.6 The slide presentation set out what was known from existing data; the approach taken to the research; the findings, and the implications for the registration system and the transition to IER.
- 6.7 The study was the first national study since the one undertaken on the December 2000 registers (which produced a completeness estimate of 91-92% for England and Wales).
- 6.8 This most recent study used the April 2011 registers and therefore the findings were not directly comparable with previous estimates based on the December registers. The April 2011 registers were found to be approximately 82% complete, which equated to around 8.5 million people not registered at that time.
- 6.9 However, extrapolating from the data collected, it was possible to estimate that the registers at December 2010 might have been between 85 and 87% complete (equating to at least 6 million people not registered).
- 6.10 JW asked the Board to consider whether any aspect of the results from the study suggested necessary changes in the Commission's activities, including to performance standards, for example, to help address falling registration.
- 6.11 In answer to questions, GR1 replied that the study sample did not allow regional variations to be measured. On the issue of how best to encourage registration, especially considering changes in life-style, she went on to say that research carried out the previous year suggested that some forms of registration might deliver better results in some areas (eg where there was a stable population, postal registration could produce high levels of registration but would be much less successful with more mobile populations, where door-knocking was often the preferred route).
- 6.12 The Board queried the reasons for the lower level of completeness. Since home movement was one of the key factors behind non-registration, should EROs be asked for their approaches to dealing with that (asking where people have come from, and passing the information back)? Or were low levels of completeness and accuracy symptomatic of higher level problems where a systematic intervention could achieve more easily what would otherwise take a great deal of fruitless effort lower down? Would performance **measures** prove a better approach than performance **standards** in moving towards the desired outcomes?
- 6.13 A large part of the underlying issues in registration were felt to relate to a declining sense of civic engagement and engagement with traditional party politics, which had a complicated set of causes, largely beyond

the Commission's sphere of influence. EROs, however, were in a position to effect some changes, and the Commission should work with them to achieve the best possible outcomes.

- 6.14 AS said that this was the first time such a study had been carried out and emphasised that the figures provided a national figure but did not provide local denominators against which individual EROs' performance could be measured. Any performance framework needed to be able to reflect a number of variables in different areas, to provide a fuller picture.
- 6.15 In relation to whether the Northern Ireland registration figure of 85% sounded about right, or whether in-depth research would reveal a lower figure, it was confirmed that a new research study of the accuracy and completeness of Northern Ireland's registers would be taking place in 2012.
- 6.16 PW reported that some Electoral Registration Officers present at the Steering Group meeting on Monday had resisted further involvement by the Commission on the basis that Chief Executives as Electoral Registration Officers were statutorily responsible, and that was sufficient. In order to move beyond this sticking point, he thought it would be important to start a more collegiate discussion with EROs and the government about how to tackle the challenge of increasing the accuracy and completeness of registration. If the problem at its simplest was that it was too easy to fall off the register when moving house, and not easy enough to get back on at the new address, had simpler, more imaginative solutions been suggested and tried? If particular groups were the most vulnerable to falling off (or not getting on) the register, how might EROs focus their efforts on those groups? The allocation of any extra resources associated with the introduction of IER needed to acknowledge the proportionately greater challenge and higher costs for some authorities compared with others. The profile of the population could prove far more important in determining cost than would be fairly reflected in a per capita allocation.
- 6.17 The power of direction/intervention was discussed, and AS outlined how the current Secretary of State direction power had been used in the past. He said it was a wide-ranging power which could be used nationally or to certain parts of the country only and had the potential to be used in relation to one authority. In considering the power of intervention the Commission had always expressed its concern to be about outcomes rather than which body should have the power to intervene and effect change. JMcC expressed concern that it was too coercive to be effective (compared to a self-motivated approach) and also carried the risk that blame for poor registration could be aimed at the Commission. There were other views that budgetary advantages and other benefits could be used as an incentive to improve

performance, and would be preferable. JW acknowledged that there might be competing risks in either having or not having a power of intervention which would need to be weighed up. There would also be a need to ensure that any approach could be tailored to the different needs of England, Scotland and Wales.

- 6.18 Intervention and direction were different terms which could not be used interchangeably. Intervention should in any case be seen – and promoted – as positive and supportive rather than punitive. The reference group could explore intervention scenarios and how they might play out. There would need to be a fall-back position and a clear estimate of the resources our preferred option would require.
- 6.19 JW, summing up, reminded the Board that IER was something the Commission had long championed, and very much wanted to see succeed. At present there was a widespread misapprehension in Parliament and elsewhere that the Commission could directly manage the implementation of IER by telling the electoral community what to do, rather than our current advisory and monitoring role. Further work needed to be done on how we communicated the extent (and limits) of our influence more effectively.

Agreed: That:-

- (a) The update on emerging policy issues relating to the introduction of IER be noted;
- (b) As part of the Commission's on-going response to current developments work be carried out to develop a critical path for IER, capturing the points made at paragraphs 6.1-6.5 above;
- (c) That our response to latest proposals should also reflect our view of the key implications for implementation;
- (d) In the medium term, consideration should be given to more detailed analysis of electoral registration data to supplement a revised approach to performance standards monitoring (with the reference group);
- (e) Further work should be undertaken to outline the different options to improve performance, including the difference between a power to intervene and a power to direct, the constraints around each option and the implications arising from them for the Commission;
- (f) The longer term electoral registration issues arising from the transition to IER should be scoped out, for further consideration by the reference group; and

- (g) Communicating our position and correcting misconceptions should be the subject of further work.

7 Annual review of the Corporate Governance Framework (EC 92/11)

- 7.1 DH noted that the PEF reference group which met the previous day had discussed the delegation of decision-making on PEF cases, and were concerned to ensure that current practice was captured accurately in the scheme of delegation. The reference group would further consider this. Appointments to the Remuneration and Human Resources Committee would need to be added, and Board agreement would be sought by email between this meeting and the next, and an addendum minute brought to the next Board.

Agreed: That:

- (a) the proposed amendments to the Corporate Governance Framework (see section 4) be approved;
- (b) Tony Hobman be appointed as Chair of the Remuneration and Human Resources Committee for three years, to 31 December 2014;
- (c) The terms of reference of the Audit Committee at Appendix G be approved;
- (d) The expanded remit, and revised terms of reference of the Remuneration and Human Resources Committee at Appendix H, be approved; and
- (e) the inclusion of the Code of Conduct for Electoral Commissioners at Appendix I of the Corporate Governance Framework be noted.

8 Meeting wash-up (Commissioners only)

At the end of the Board meeting the Commissioners held their customary meeting wash-up.

The meeting ended at 11.45 am.

Chair

Commission Board - decision by correspondence, December 2011

Appointment of Anna Carragher, and re-appointment of Max Caller, to the Remuneration and HR Committee

1. Commissioners considered the name, terms of reference and chairmanship of the Remuneration and HR Committee at the Commission Board meeting on 7 December 2011, as part of the Annual Review of the Corporate Governance Framework (EC 92/11).
2. It was proposed at the same time to re-appoint Max Caller and to appoint the incoming Commissioner, Anna Carragher, to the Committee. In order to establish exact lengths of service, it was agreed that this decision should be taken by email and reported to the next meeting of the Commission Board.
3. MC had served for four years. The terms of reference allow for a recommended maximum term of six years. MC therefore needed to be reappointed for a further two years, to 31 December 2013.
4. It had been suggested that Anna Carragher once she takes up her role also join the Committee, and she was content with this suggestion.
5. Responses were received by email from six Commissioners.

Agreed: That Max Caller be re-appointed to the Remuneration and HR Committee for a further two years, to 31 December 2013 (making his maximum recommended term of six years on this committee), and Anna Carragher be appointed for three years, to 31 December 2014.

Chair