

Minutes of the meeting of the Electoral Commission  
held on Wednesday 2 December 2009, London

Present: Jenny Watson (JW) Chair  
Henrietta Campbell (HC)  
Max Caller (MC)  
Ian Kelsall (IK)  
John McCormick (JMcC)

In attendance Peter Wardle (PW)  
Clare Ettinghausen (CE)  
Carolyn Hughes (CH)  
Lisa Klein (LK)  
Stephen Rooney (SR)  
Andrew Scallan (AS)  
Vera Markos (VM)  
Kairen Zonena (KZ) minutes

Tony Stafford (TS) – item 4  
Michael Gallagher (MG) – item 4  
Louisa Parry (LP) – item 6

Also in attendance Elizabeth Morrow )– observing item 4  
Donna Huggett )  
Jerome Mallon )  
Louise Rodger )  
Adrian Fryer )  
Gemma Rosenblatt )  
Joe Hewton )  
James Haddon – observing item 6  
Helen Reeves – observing item 7

**Apologies**

Jenny Watson for lateness, and Karamjit Singh for absence.

**Chair**

Since the Chair was unavoidably delayed, Commissioners nominated MC to take the Chair for that part of the meeting before JW arrived.

**Head of Strategy/Secretary to the Commission - Vera Markos**

It was noted that this was VM's last meeting before leaving for a new job at the Financial Services Authority. The Board wanted to record their thanks for her work for the Commission and wished her well in her new role.

**Max Caller in the Chair**

1 Declaration of Interests

None.

2a. Minutes of Commission Board meetings of 4 and 10 November (EC98/09)

**Agreed:** That:-

- (a) the minutes of the Commission Board meeting held on 4 November be approved as an accurate record and the Chair be authorised to sign them; and
- (b) it be noted that the minutes of 10 November were in the process of being finalised and would be submitted to the next meeting on 14 January 2010.

2b. **Decision/Action tracker (EC100/09)**

**Agreed:** That:-

- (a) the addition of Commissioner Reference Groups to the tracker be noted;
- (b) an action be added to the Referendums Reference Group to reflect the fact that it was to consider the issue of who should produce a post-Referendum report if the Commission acted as Chief Counting Officer.

3. Update from the Chief Executive (EC101/09)

- 3.1 PW orally updated his report. He gave some background to proceedings at the Speaker's Committee meeting on 25 November, which had been broadly positive. The Treasury had indicated that the draw-down of the supplementary estimate should not take place before around February (when the Spring Supplementary Estimates round takes place). The need to press on with expenditure on the set-up costs for the Local Government Boundary Commission was likely to result in delays to other projects (potentially some pre-general election public awareness work, and a Contact and Case Management System). Executive Team were considering the implications and would

report back to the Board. The Hansard transcript of the proceedings would be sent to Commissioners in an information pack in due course.

- 3.2 As promised in paragraph 3.22 of the Chief Executive's update, an information paper about preparations for a UK Parliamentary General Election had been circulated separately to Commissioners by email in advance of the meeting. PW said that time would be set aside at the January meeting to discuss preparations for a UKPGE. In response to a question on lessons from the internal evaluation on the EC's verification of Returning Officers' (ROs) and Electoral Registration Officers' (EROs) assessments of their performance against the EC standards, AS replied that there would be greater standardisation in the verification process and that in future there would be moderation of the verification assessments to make the process more rigorous.
- 3.3 Commissioners discussed PEF Online, including the options for the short and medium term, and the realistic likelihood of a satisfactory resolution. LK advised that a meeting was due to take place with the contractors' chief executive on 9 December, following which it was expected that the future of the contract would be clearer. If on the basis of that meeting and in the opinion of the Executive Team it proved neither possible nor worthwhile to continue, or there was felt to be a significant risk of the system being completed but not sufficiently robust, there were several alternative options available. These would address the fact that the current system was reaching the end of its life, and action was needed to ensure that the registers were fit for the forthcoming general election period. In the longer term, alternative approaches to the issues that PEF Online was trying to address would be considered.
- 3.4 PEF Online was acknowledged to be a significant risk for the Commission, and PW undertook to keep Commissioners informed.
- 3.5 During the course of the meeting it was learnt that the Commission's appeal against the High Court judgement on the Boundary Committee for England's structural review local government in Suffolk had succeeded, and costs had been awarded in favour of the Commission. A copy of the judgement and the statement released by the Commission was made available to Commissioners shortly afterwards.

**Agreed:** That:

- (a) Commissioners would receive a transcript of the proceedings of the Speaker's Committee meeting of 25 November as part of an information pack;
- (b) it be noted that a discussion on preparations for a UKPGE would be included on the January agenda;
- (c) Commissioners would be updated on the implications of the decision not to draw-down additional 2009-10 funding until the time of the Spring Supplementary Estimates round; and
- (d) Commissioners be kept informed of the status of PEF Online.

4. **Party and Election Finance information session (presentation, tabled); and enforcement policy consultation (EC102/09 plus consultation document, presentation tabled)**

**Information session**

- 4.1 TS presented a summary of the provisions of the Political Parties and Elections Act 2009, and the changes it introduced to the party and election finance regulatory regime.
- 4.2 After a brief synopsis of the key changes to investigatory powers and civil sanctions (anticipated to commence on 1 July 2010), and how it was proposed to put these into practice, Commissioners considered the following points:
- Reporting and monitoring of investigations – the quality assurance flowchart brought to the June meeting gave an indication of how that would work, but further detail of volumes of workload and performance against timescales was needed
  - The issue of the involvement of nominated commissioners in the discussion of PEF cases would be part of subsequent discussions on a further review of governance necessitated by the arrival of nominated commissioners.
- 4.3 It was agreed that the Commissioner reference group on key performance indicators (KPIs) would examine the level and frequency of information reported to the Board relating to workload and performance on PEF cases.

(Jenny Watson arrived at 10.45am and took the Chair at 11am)

- 4.4 TS then went through the changes affecting transparency (increases to the permissibility and reporting thresholds for donations and loans, and new registration requirements for unincorporated associations) due to commence on 1 January. Secondary legislation to clarify definitions, such as for gifts, relating to the new unincorporated association provisions was expected sometime before May 2010. The implications for the Commission included provision of new registers, forms and guidance. PW pointed out that we had committed to monitoring the implications of Parliament's decision to raise the permissibility threshold for individual donations from £200 to £500. This would involve comparison of income in parties' statement of accounts, to identify where

significant unreported funding occurred and enable consideration by the Commission of the impact of this change on transparency in party funding.

- 4.5 In relation to the changes affecting integrity, it was noted that from 1 January 2010 members' associations without a treasurer receiving reportable donations or loans would have to nominate a 'responsible person'. Donors of more than £7,500 would have to declare if the money was theirs and if not, then whose; and they would have to declare if they were domiciled in the UK for tax purposes; commencement of these provisions was not expected until the summer of 2010 at the earliest. It was noted that whether donations had been channelled through an agent depended on the specific facts of each case, and could be hard to prove in some cases.

### **Enforcement policy**

- 4.6 A discussion then took place on the enforcement policy, with a (tabled) slide presentation which had been slightly expanded from the circulated version. The consultation on the draft enforcement policy and concurrent qualitative research work with volunteer party treasurers and members of the public found that these groups agreed that the proposed sanctions were more just and actionable than existing ones, and would work regardless of party size. Responses to the consultation were being shared with the Ministry of Justice (MoJ) which was drafting the Statutory Instrument (SI) that would detail the offences and contraventions to which the new sanctions could apply, the value of the penalties, appeal periods and when the new arrangements would take effect. Responses to the consultation would inform the Commission's final published enforcement policy, which would have legal effect. It was expected that if the approximate timetable outlined in the presentation was followed, the new powers and sanctions would come in from 1 July 2010. The timetable included an opportunity for Commission Board to sign-off the final policy by April 2010.
- 4.7 Feedback was due to be given to the MoJ by mid-December, and two issues for discussion included the structure and value of fixed penalties, and a possible cap on the value of variable penalties. For submitting a statutory return up to 28 days late, a single-tier fixed penalty of £200 had been proposed and consulted on. After 28 days, a variable penalty could be applied. The amount would depend on factors such as the length of time, and whether it was the first or a repeat occasion. Consultation showed that the figure of £200 for a fixed penalty was broadly accepted, though several responses suggested it might be too low for larger parties and could possibly be based on the turnover of the offender instead, or could be replaced by a two-tier penalty (one suggested £500 for parties and £100 for accounting units, and another £750 for large central parties and £150 for others). The MoJ had indicated that any significant change in the proposals at this stage - for example a two-tier system - would need to

be supported by powerful arguments as there would not be time to consult separately on this approach.

- 4.8 On reflection, the Board agreed that we should continue to propose a single tier for fixed penalties of £200, while making it clear in the final version of the enforcement policy that the Commission would have scope to use other sanctions, such as discretionary requirements, where this was justified, e.g. in cases of repeated late reporting within the 28-day timeframe. The final version of the policy would set out clearly how we would use a single tier of fixed penalties as one strand of our proportionate approach.
- 4.9 In relation to variable penalties, a link to the transaction value (from 25%-200%) had been proposed, but the MoJ was considering imposing a cap to address concerns about unlimited variable penalties. Consultation responses had highlighted concerns about ability to pay.
- 4.10 It was agreed that variable penalties were intended primarily for deterrent rather than punitive purposes. Such fines could also be accompanied by a compliance notice. A lower minimum value for variable penalties than the 25% of transaction value proposed in the consultation would provide maximum flexibility in taking a proportionate approach to each case. JW asked for views on whether the Board could accept a cap being placed on the value of variable penalties. A cap would be likely to require the Commission to refer some breaches for criminal prosecution, because it would be unable to impose a variable penalty high enough to reflect the gravity of the breach. However, a cap would reflect the fact that political parties rely on donations, and could address concerns about potentially unlimited fines that might otherwise affect Parliament's willingness to agree to the SI. There was general agreement that a cap of the order of £20,000 would be acceptable, since it would give the Commission sufficient flexibility to use a variable penalty for the majority of cases of late reporting, based on the historic value of late-reported donations but that this would need to be kept under review to ensure it remained proportionate.
- 4.11 The Commissioner reference group, currently comprising JMc and KS, would review the version to go before Parliament in mid-February. As KS was leaving in mid-January it was agreed that the new Commissioner would be asked to join the reference group in place of KS and it would be helpful to add a third Commissioner to the group for continuity [subsequently decided to be HC].
- 4.12 TS then turned to the longer term questions of risk profiling, decision-making and sanctioning criteria, disclosure policy and ability to pay, which would need to be addressed before the enforcement policy was finalised.

- 4.13 Risk profiling included both 'hard' and 'soft' data, much but not all of which might be in the public domain. The hard data was intended to be used to produce a risk score or rating to inform audit work, while the soft data would inform the Commission's prioritisation of advice and guidance work. Some of those consulted had expressed concern about the accessibility of such information under Freedom of Information, and the uses to which it might be put by opponents.
- 4.14 It was agreed that risk profiling was useful to inform the Commission's audit approach and use of resources and also to support proactive prevention guidance work with higher risk parties or accounting units. Caution should be exercised in using any hearsay evidence even as soft data, and reassurance could be given by publicising the type of information which risk assessments were based on. It was noted that it was thought unlikely that such information would be released under a Freedom of Information request. The reference group should consider worked examples of what this would look like with existing parties and information. It was, however agreed that our final statement of policy on risk assessment would be published separately from the enforcement policy, with which it had been combined for consultation purposes.
- 4.15 TS said that several responses to the consultation had taken the opportunity to raise concerns with the Commission's recently agreed disclosure policy, particularly the decision to proactively announce investigations. In relation to proactive disclosure, SR confirmed his view that it was preferable in the political environment from a practical point of view to disclose proactively rather than to be reacting to media enquiries, and that it should be supported by annual reporting. LK noted that it could be argued that proactive disclosure of investigations could result in increased attention to allegations that had not yet been proved and suggested that the Commission disclosure policy may benefit from being kept under review.
- 4.16 There was agreement that the proactive disclosure approach remained appropriate, but that also greater prominence should be given to the conclusion and results of investigations. This would help counter the lack of confidence revealed in public opinion surveys that breaches were not acted on or punished.

**Agreed: That:-**

- (a) the Commissioner reference group on key performance indicators reconvene to examine the level and frequency of monitoring information on the new powers and sanctions to be reported to the Board;
- (b) in relation to the enforcement policy, the relevant Commissioner reference group be increased by one person to provide continuity for the imminent departure of KS [subsequently agreed as HC] and the appointment of the new Commissioner to the group;

- (c) staff should provide further feedback to the Ministry of Justice on the contents of the Statutory Instrument and work with the reference group to revise the enforcement policy, taking into account the views expressed by the Board on the outstanding issues, including the value of fixed penalties (paragraph 4.8 above) and the calculation of variable penalties (paragraph 4.10 above);
- (d) in relation to risk profiling, staff and the reference group review and restate the Commission's approach, rationale, and information on which profiles are based, including confidentiality, for further consideration by the Board, and produce samples with existing lower risk parties to demonstrate how it would work. The work on risk assessment would be published separately from the enforcement policy; and
- (e) the wider lessons learnt from the research into the draft enforcement policy and the wider consultation exercise, and how it might feed into work to support treasurers, for example, be brought back to the Board in due course for further discussion.

(No item 5 on the agenda)

## 6. Performance, risk and finance report 2009-10 – Quarter 2 (EC103/09)

- 6.1 Commissioners praised the report and its structure, and the number of targets met. It was agreed that Appendix B, which outlined the different types of risks monitored by the Commission, while useful, could now simply be reported annually in the end of year performance report.
- 6.2 In relation to the target for stakeholder correspondence, it was agreed that while most stakeholders had either an acknowledgement or a substantive reply within five days, performance needed to improve. SR confirmed that steps had already been taken to more securely capture all stakeholder correspondence round the country, and monitor response times.
- 6.3 Strategic risk 16, concerning Returning Officers' (ROs') performance and allied risks, had improved, and it was suggested that the improvement could usefully be reported to the relevant local MPs.

### **Agreed:** That:-

- (a) the report be noted and commended;
- (b) Appendix B (the classification and movement of risk within the Commission) now be reported annually only ; and
- (c) AS arrange to communicate improvements in ROs' performance to local MPs where relevant.

7. Corporate governance annual review (EC104/09 and presentation)

7.1 During discussion the following points were made:

- Para 3.1 of Appendix A (Governance Framework, **calling of extraordinary meetings**) should be amended to read “lodging with the *Chair or the Chief Executive*” (amendment in italics)
- Appendix B, Scheme of Delegation, ‘**significant publications**’ – PW asked to produce a list (not necessarily exhaustive) of what constituted significant publications, for inclusion in an information pack
- **Commissioner reference groups** should stay ad hoc, and be separately mentioned in the governance framework; should be given a scope, or set of outcomes (including a clear indication of whether their task was to reach decisions, or to bring options to the wider Board for decisions), an approximate timescale, and an idea of the stages at which they should report back to the Board; and should include the right staff with the right level of seniority
- The principle of introducing an **independent Chair of the Audit Committee** was supported, on the basis that it would occur following the Audit Committee’s review of the annual report and accounts for the current financial year (due to take place in June 2010). The **Remuneration Committee** be invited to consider with the current Chair of the Audit Committee appropriate terms of appointment, role description and fee, and once resolved a discussion be undertaken with a single candidate, the current independent member, (recently subjected to a rigorous recruitment process)
- The **Remuneration Committee** terms of reference were endorsed but numbers remain at three until the number of Commissioners had increased, when the size would be considered again
- Noted **further work** to be undertaken on conflicts of interest, Commissioner code of conduct
- Agreement to the consequential changes arising from the **creation of the Local Government Boundary Commission for England** and the transfer of the Boundary Committee for England from the Electoral Commission
- **Level and accessibility of Board papers** broadly right, but further thought should be given to how Commissioners could more easily access background papers and previous minutes, and consideration should be given to whether papers could be despatched earlier
- Amendments to Appendix E (corporate governance framework – **personal liability of Commissioners** etc) – accepted
- **Nominated Commissioners** – it was noted that the only real difference between types of Commissioner was based on the process by which they would be appointed to the role, and the provisions governing their eligibility. Once appointed, there was no

particular legal distinction between Commissioners on the basis of which appointment process had brought them to the Board. There would be a discussion in the new year to consider induction of nominated Commissioners, to include consideration of how to ensure a corporate and cohesive Board, together with the impact and implications for Board meetings, issues for Code of Conduct and declaring interests and the ways of working with a significantly expanded size of Board.

- 7.2 VM, explaining the next steps, said that the revisions to the Corporate Governance Framework would be incorporated and the latest version published. Further work would take place before the next Board discussion on this issue, and changes arising from that meeting and from the transfer of the Boundary Committee made as appropriate.

**Agreed:** That:-

- (a) the proposed amendments to pages 21, 24 and 26 of the Governance Framework relating to Party and Election Finance regulatory decisions attached at Appendix A be adopted, together with an additional amendment at paragraph 3.1 of the Corporate Governance Framework to clarify the calling of extraordinary meetings;
- (b) changes to the Scheme of Delegation be made as proposed at Appendix B as a result of increased delegation to the Chief Executive,
- (c) the post of Independent Chair of the Audit Committee be approved in principle, and the Remuneration Committee consider the question of role description, fee and term of appointment and make recommendations, with a view to interviewing a single candidate for the role, for appointment in July 2010;
- (d) membership of the Audit Committee be expanded to include one nominated commissioner;
- (f) the Terms of Reference of the Remuneration Committee be approved as set out at Appendix D, but that it remains at three Commissioners for the time-being;
- (g) the proposed wording change to pages 12 and 15 of the Governance Framework on personal liabilities of Commissioners and political activities as set out at Appendix E be approved;
- (h) a list of significant publications be included in the next Commissioners' information pack;
- (i) consideration be given to making further information on Board papers more easily accessible and where possible searchable on the intranet
- (j) consideration be given to whether Board agenda and papers could be despatched earlier;
- (k) the further governance discussions scheduled for a later Board meeting include induction, the impact of the increase in Board size on how it works, conflicts of interest, and how to create a cohesive and corporate entity.

8. Chair's Report (EC105/09)

JW reported that her meeting with Francis Maude MP had been delayed until the following Monday, 7 December.

**Noted**

9. Draft Minutes of the Audit Committee of 3 November 2009 (EC 106/09)

Noted.

10. Minutes of the Boundary Committee meetings of 20 October 2009 (EC107/09)

**Agreed:** That the minutes of the Boundary Committee meeting of 20 October be noted.

The meeting ended at 2.30pm.

---

Chair