

Classification: Unprotected

Agenda Item no.3 (a)

Minutes of the meeting of the Electoral Commission held on Wednesday 21 September 2011 at 9.30am

Present: Jenny Watson (JW) Chair
Max Caller (MC)
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)

Louise Parry (LP) – for items 6 and 9
Nina Ziaullah (NZ) – for item 8
Tom Hawthorne (TH1) – for items 8 and 9
Mark Williams (MW) – for item 8
Kate Brightwell (KB) – for item 8
Tony Stafford (TS) – for item 9
Gemma Rosenblatt (GR1) – for item 9

Observing: Pranita Bhargava (PB) – for item 8

1 Apologies

Apologies were received from Henrietta Campbell.

The Board sent its congratulations and best wishes to Clare Ettinghausen on the birth of her baby girl.

2 Declaration of Interests

2.1 There were no declarations of interest.

3a Minutes of the Commission Board of 1 August 2011 (EC 61/11)

Agreed: That the minutes of the meeting on 1 August 2011 be approved as a correct record and the Chair be authorised to sign them.

3b Minutes of the Remuneration Committee of 5 July 2011 (EC 62/11)

Agreed: That:-

- (a) A date be arranged for a meeting of the Remuneration Committee before the end of the calendar year;
- (b) The Chair would propose a new chair of the committee, and membership, at the November Board; and
- (c) The minutes be noted.

3c Decision Action tracker (EC 63/11)

Agreed: That:

- (a) it be noted that a Reference Group on assurance and monitoring of regulatory decision-making in the PEF area was being proposed for 25 October 2011; and
- (b) Commissioners' appreciation of the quality of the papers for the Complete and Accurate Registers reference group meeting in August, and the value of the discussion, be communicated to those staff who had participated.

- 4 Update from Chief Executive for September (EC 64/11)
 - 4.1 Committee on Standards in Public Life (para 1.3): LK advised the Board that the publication of the CSPL report on political funding had been postponed to a date as yet unknown.
 - 4.2 Standardised statements of accounts (para 1.5): In response to a query it was confirmed that enforcement cases were reviewed to identify if there were categories or patterns of non-compliance and this information was used when reviewing guidance and other support to parties.
 - 4.3 Welsh Language Board report on the Commission's role in the disqualifications in Wales (para 2.6): the report had been received that day. The Commission would respond to the Welsh Language Board by the end of October.
 - 4.4 Referendum expense claims (para 2.7-2.9): the Commission was exerting as much pressure as it could to get claims in and paid, and had formally raised with the Department of Communities and Local Government the ramifications of unresolved issues around superannuation. In spite of this it was still a high risk that the claims would not be completed in time, for reasons beyond the Commission's control, and it was agreed that PW should make the Speaker's Committee aware of the issue.
 - 4.5 Elections and Referendums Steering Group and performance standards (paragraphs 2.11-2.13): PW reported on the meeting of the group that had taken place the previous day.
 - 4.6 Police Reform and Social Responsibility Bill – public awareness campaign (para 2.20): it was noted that the date of the first elections for Police and Crime Commissioners would be 15 November 2012 and that the Commission was having discussions with the Home Office regarding plans for a public information campaign. AR undertook to report back to the Board about these discussions and Commissioners were invited to feed in any comments to AR. It was also noted that a suggestion had been made that elections for mayors may be held on the same day (following referendums proposed to be held in May 2012 in the Localism Bill) as the PCC elections, and AS was asked to write to the Cabinet Office seeking clarification and setting out the Commission's concerns regarding such a proposal.
 - 4.7 Speaker's Committee (para 3.3): approval had been sought from the Speaker's Committee for the Commission's public awareness plans for May 2012 and a formal response was awaited.

- 4.8 Commissioner recruitment (para 3.2): JW hoped to be able to announce the name of Henrietta Campbell's recommended replacement in early-mid October. The appointment process for both successor candidates (HC and Baroness Browning) would hopefully be sufficiently far advanced to allow the candidates to be able to attend and observe Board meetings towards the end of the calendar year. RK expressed disappointment at the time it had taken the Committee to progress the appointment of Baroness Browning's successor.
- 4.9 LK gave an update on three current **PEF cases**. It was proposed that in future LK would consider the extent to which information on cases could be provided in writing, in advance; this could be considered as part of the Reference Group work on Board assurance in the PEF area. LK also gave a brief update on PEF Online and arrangements for post-project enhancements. It was suggested that the ongoing contact with parties on their use of PEF Online could usefully be supplemented by setting up a formal user group.
- 4.10 It was noted in response to questions on the cases dealt with under the new sanctioning powers and procedures that the work of the PEF Reference Group would include monitoring and assurance in connection with decision-making below Board level.

Agreed: That:

- (a) PW write to the Speaker's Committee setting out the risks facing the Commission on referendum expense claims, and that the letter be circulated to Commissioners for information;
- (b) AS write to the Cabinet Office setting out the Commission's concerns over risks associated with any move to hold Mayoral elections on the same day as the November 2012 PCC elections
- (c) LK to ask the PEF Online project board to consider the benefits of establishing a PEF Online user group to include representation from political parties, and report back to Commissioners; and
- (d) LK would confirm the proposed meeting date of Tuesday 25 October for the PEF Reference Group to consider assurance and monitoring (members: JMcC, TH, DH and HC).

5 Commission Enforcement Policy (EC 65/11)

Agreed: That the item be deferred to the October Board, and that the paper EC65/11 be re-circulated with the enforcement policy as a paper attachment.

6 Q1 Performance, finance and risk – monitoring report (EC 66/11)

- 6.1 The advantages of having a systematic way for Board members to raise current events that might result in issues or risks for the Commission was discussed. It was proposed that one method could be to include such a discussion as part of the Chief Executive's or Chair's report at each meeting.

Agreed: That:

- (a) In future quarterly reports, the staff turnover figure be broken down into fixed term and permanent staff; and
- (b) JW and PW consider a way for current issues and risks to be flagged on a regular basis, for the Board.

7 Chair's Report (EC 67/11)

- 7.1 JMcC noted that a recommendation for the post of Convener of the Electoral Management Board for Scotland had been sent to the Scottish Government. JW and JMcC had recently had a chance to discuss the future role of the EMB for Scotland with Mary Pitcaithly, the current Convenor and had stressed that the Commission was keen to support its development.
- 7.2 DH mentioned that the outgoing Liberal Democrat Chief Executive had raised with him concerns about third party expenditure, especially that involved in campaigns against opposing candidates. This sort of expenditure might increase if regulation of party spending was tightened.
- 7.3 JW confirmed that this had been emphasised in evidence to CSPL. It also needed to be very much to the fore in setting up the spending framework for Police and Crime Commissioner elections.
- 7.4 JW promised to circulate to Commissioners the transcript of the Commission's appearance before the Political and Constitutional Reform Committee on 17 September, where she said they had had a positive reception.

Agreed: the transcript of the Commission's appearance before the PCR Committee on 17 September be circulated to Commissioners.

8 Individual Electoral Registration – response to the Government’s White Paper (EC 68/11 and TABLED presentation, IER Trajectory)

- 8.1 NZ introduced a two-slide presentation which was a highly condensed graphic representation of the activities involved in implementing IER. There were many dependencies and uncertainties. This was an attempt to identify, plan and track everything, including the points at which continuing uncertainty became a more serious risk.

[TH left the meeting for the remainder of this debate]

8.2 Points raised during discussion included:

- Concern about the capacity of Electoral Registration Officers to implement the changes, especially in smaller districts and the need to ensure that funding from central government was directed to electoral registration and not subsumed within money allocated to local authorities.
- The IT system needed to deliver IER would rely on the interface between several major systems, and represented a considerable risk in terms of its scale and complexity. The project was owned by the Cabinet Office. It would be necessary to track the level of confidence at each stage, and for a fall-back plan that did not rely on IT to be drawn up
- Political parties might well end up with more complete registers than the registration authorities
- The Commission’s influencing strategy should appeal to local government in every sphere (including former local government participants sitting in Parliament) – the more places the risks and issues could be raised, this would help to raise the level of government attention and focus on the issues
- The words ‘power of intervention’ might explain better than ‘power of direction’ the Commission’s intention that it should step in only when necessary, or as a last resort
- Further work should be done on what such a power would entail, how we would use it, and how it would work in areas where statutory officers had a similar power
- Work needed to be done to make a detailed assessment of everything that EROs would have to do to support IER implementation, and the associated costs, to enable the Commission to gauge whether the level of resources to be made available would be appropriate

- The Commission should confirm the need to retain the 2014 canvass, to ensure that the register used in the transition year was as complete and accurate as possible and be emphatic about excluding opt-out in the move to IER

8.3 The deadline for response to the White Paper was 14 October, but Mark Harper MP, Parliamentary Secretary (Political and Constitutional Reform), Cabinet Office, was not due to give his evidence until 13 October, and our response would need to take into account his submissions. Meanwhile, the Board were content for JW to hold discussions where needed to weigh the risks of a harder edged approach, and depending on the outcome, shape the final response accordingly.

Agreed: (a) That the Chief Executive in consultation with the Chair be authorised to agree the Commission's final response to the Government's White Paper on IER, based on paragraphs 4.1 to 4.6 of the Board paper (EC68/11), and subject also to (a)1-(a) 5 below:-

1. The Commission's response being clear about the need to retain the 2014 canvass and rejecting the opt-out proposals;
2. Safeguards be sought for the management and delivery of the IT system for IER, including: instituting formalised confidence testing of each stage; and, ensuring development of a fall-back plan ready to be put in place should the IT fail to work or be implemented as envisaged;
3. Flagging up the prospect that political parties might have more complete registers than registration officers and the associated risks of such a scenario;
4. That consideration should be given to the Political and Constitutional Reform Select Committee exercising oversight of the introduction of IER ;

(b) The performance standards work incorporate the points raised during discussion and included at paragraph 8.2 of the preamble; and

(c) The handling approach take into account points raised at 8.2, particularly the fifth bullet point, and 8.3, and Commissioners to advise AR of the names of any particular contacts they suggest in relation to the Commission's influencing strategy.

9 Electoral Commission: future direction (EC 69/11, and Annexes A, B, C, and D)

Corporate Plan

- 9.1 The outline corporate plan was well received by Commissioners who considered that it reflected the away day decisions. Points raised included:
- Re-order the bullet points to start from general and move to specific
 - 'values' and 'how we work' should describe reality, not perception
 - The five programmes should be managed as a coherent whole, rather than simply constituent parts
 - Consider organisational development as an additional strand of work to review the culture of the organisation including the approach and skills required to work in accordance with the Commission's values. Approach to these issues could be explored further by the Remuneration Committee.
 - 'impartial' could lead to unintended behaviours
 - Review the language used in some areas to minimise the risk of being misconstrued

Annex B – How well do UK elections meet the Commission's principles and objectives?

- 9.2 LK and AS outlined for the board their assessment of how the Commission's principles of participation, trust and no undue influence were achieved at present in the areas of elections and party funding.

Participation

- 9.3 There was generally good information and consensus on how well the Commission met the high-level principles articulated by the Board for elections; but less for party and election finance. For the PEF area, LK outlined what was known, what wasn't known, and what steps were being taken to fill the gaps in knowledge. In areas where we had good information about user perceptions (for example, around use of our guidance, and referendum processes) we had been able to make evidenced changes or promote recommendations for change. However, there were gaps in what was known of the perceptions of some political actors (including those registering parties, third party campaigners, independent candidates) regarding the ease – or otherwise - of participating in regulated activity. Of these, LK considered the gap with the biggest impact was the effect of regulatory burdens.

9.4 In terms of elections and electoral registration, there was far more information, and fewer gaps. However, some areas, where there wasn't necessarily a high level of publicly expressed concern, might warrant more attention, such as the number of postal votes rejected by Returning Officers, the lack of a requirement for ID in polling stations, or information about those who do not vote and do not register to vote.

9.5 Points raised included:

- party membership and the level of uncontested seats could be viewed as indicators of healthy participation. International or historical comparators could be explored
- measures of satisfaction with the Commission were sometimes less helpful than those of satisfaction with the wider system
- when considering prioritising the gaps in information, if the information sought did not relate to issues the Commission could influence, then the value of collecting it may be limited
- information was needed on those who did not participate, in order to establish the reasons for it, and what could be done

Undue influence and Trust

9.6 The effect of undue influence on the electoral process was generally small, judged by the low number of prosecutions for related offences. But undue influence on voting was both harder to define, and harder to assess: there was a fine line between due influence (the essence of politics) and undue influence (politics did not happen in a vacuum) and this gap needed to be identified and defined. According to records maintained by the police, there wasn't a significant level of reporting of offences of this sort. Allegations of undue influence were made but then failed to be substantiated. The Joseph Rowntree Trust had reported on the question of undue influence as a cultural issue within certain communities.

9.7 Undue influence in party and election finance was closely linked to the principle of trust. Transparency is the keystone of the current framework. Some aspects of political funding that were not currently regulated – most notably the absence of caps of donations – clearly lead to a public perception that undue influence was a concern, as demonstrated by recent research done by CSPL. People did not always know how money was spent by those we regulate, and work could be done to accompany statements of account with more narrative drawing out the headlines.

9.8 Other gaps included: information on the impact of lobbying; and targeted national party spending in marginal seats. Third party campaigning was also a difficult area particularly in relation to

identifying and controlling such expenditure pre-emptively in the run-up to polling day.

- 9.9 The Commission's evidence to CSPL had highlighted the gaps in the current rules, while noting those elements of the system that do appear to work. There appeared to be some gaps between the Commission's view of the overall robustness of the system and public perceptions. Possible causes of this could be miscommunication about the issues and risks, or genuinely differing views about problems with the current system.
- 9.10 Many of these issues were being addressed by the current CSPL review, which had been in progress for over a year. The Commission's review of PPERA, scheduled to produce recommendations for change in Spring 2012, would also help to assess how far the current legislation succeeded in fulfilling the policy aims underlying its creation.
- 9.11 A further point to be considered was that public perception of even isolated incidents of fraud could have a disproportionate impact.
- 9.12 The October follow-up planning day would look at prioritisation of existing and planned work over the next five years, based on the assumption that work would be carried out within existing resources.

Agreed: That:

- (a) the approach to reflecting the Board's awayday discussions in drawing up plans for 2012-13 and beyond, be broadly agreed as outlined in the paper, and that the areas identified in the paragraphs above be used in shaping and developing future work;
- (b) the outline Corporate Plan be amended to take into account the points made at paragraph 9.1; and
- (c) further detail would be brought back to the 25 October awayday, based on a plan of work within existing resources.

10 Meeting wash-up (Commissioners only)

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

The meeting ended at 2.45 pm.

Chair