

Classification: Unprotected

Agenda Item no.3 (a)

Minutes of the meeting of the Electoral Commission held on Wednesday 26 October 2011 at 9.30am

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

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

Tony Stafford (TS)
David Aikin (DA) – for item 4
Natalie Birtle (NB) – for item 4
Samantha Mills (SM) – for item 6
Matthew Longley (ML) – for item 6
Louise Rodger (LR) – for item 7
Steve Goodrich (SG) – for item 7

Observing: Karim Aziz (KA) – for item 6

1 Apologies

Apologies were received from Henrietta Campbell, Tony Hobman and Lisa Klein.

2 Declaration of Interests

- 2.1 JW declared that a close friend of hers was the incoming Parliamentary and Health Service Ombudsman. If a protracted discussion developed in relation to correspondence with the Parliamentary and Health Service Ombudsman on a particular matter (para 4.3 of the Chief Executive's Update), she would not participate in the discussion and would leave the chair.

3a Minutes of the Commission Board of 21 September 2011 (EC 70/11)

At paragraph 7.1 the reference to First Minister should be changed to 'Scottish Government.'

Agreed: That, subject to the substitution at minute 7.1 of the words 'Scottish Government' for 'First Minister,' the minutes of the meeting on 21 September 2011 be approved as a correct record and the Chair be authorised to sign them.

3b Decision Action tracker (EC 71/11)

Noted.

4 Update from Chief Executive for October (EC 72/11)

- 4.1 PW said that the revised **Returning Officer performance standards** (paras 1.18-1.19) were intended to provide consistency across a range of different types of election, and enable the Commission proactively to seek assurances. The responses from the consultation, which closed on 14 October, were now being analysed and proposed revised standards would be brought to Board in November, and be finalised by the end of the year.
- 4.2 **Three election reports** had been published in the previous week, with reasonably good coverage of the key issues in each area. JW reported back on the launch activity and contacts she had had with politicians and officials in Westminster, Cardiff and Belfast, which had been broadly positive.
- 4.3 The **Localism Bill** (paras 1.5-1.9) included provision for referendums, and the Commission had been asked to assess two questions. The

Commission's mounting concern about shortage of time between the legislation being enacted and when the first referendum on council tax might be held was being raised at Ministerial level.

4.4 AS also mentioned that the Commission had been contacted by the Department for the Environment, Food and Rural Affairs for advice in relation to possible **elections to English National Park Authorities** in 2013.

4.5 **Referendum expense claims** (para 1.16): efforts continued to urge Counting Officers to submit their claims prior to the deadline of 5 January 2012 and to work with the Electoral Claims Unit to manage the processing of the claims. In addition to the issue of the superannuation contributions (para 1.17) and that it appeared likely that the majority of claims will now be received close to the deadline, other potential issues to resolve include claims that have been submitted that are poorly completed or are incomplete and that analysis of the early claims appears to indicate that a significant number of claims may be settled at an amount lower than the cash advances to Counting Officers in May 2011 (made at 75% of the estimated funding requirement in line with practice by government at elections) which would result in the need to recover overpayments from Counting Officers. The issues identified to date would be taken up with the Cabinet Office to assist in refining the process and estimated costs in advance of the Police and Crime Commissioner elections in 2012. The Commission would also produce a full report on the process in autumn 2012.

4.6 On the issue of the proposal to "**opt-out**" of the electoral register contained in the draft legislation on **Individual Electoral Registration (para 2.1)**, PW reported that signs were promising for a move away from the government's earlier position to make registration discretionary, but it was still not certain what the final position would be. Meanwhile, it was understood that some of the government's reluctance to retain the 2014 electoral canvass related to cost, and that there might be room to re-examine that point. JW added that there was still much to be done: in spite of the Commission's success in gaining recognition of the risk to completeness of the register through the "opt-out", there were still numerous other issues of considerable importance, and of cross-party concern, which were as yet poorly recognised.

4.7 It was noted that the **Committee on Standards in Public Life (CSPL)** report now looked likely to be published in November rather than October.

4.8 NB updated the Board on four current **Party and Election Finance matters** (para 4.2. The Board asked to be updated on two of them.

- 4.9 On the operation of the new **civil sanctions for late reporting** which came into effect on 1 December 2010, NB advised that there had been 141 cases. In 35 of these cases it was determined that there was a breach of the rules as the returns were late, without reasonable excuse. In 25 cases it was determined that there was no breach of the rules and in 42 cases no determination as to breach was made. The reasons for 'no determination' varied but in a number of cases the parties had de-registered prior to conclusion of the case review and it was not considered in the public interest to make further enquiries or take further action to reach a determination. Thirty nine cases were awaiting determination or under review. A further 15 cases where a breach had been found were awaiting a decision on the appropriate sanction. NB said she hoped to clear the backlog by the end of November, and was exploring ways to deal with cases faster including using experience gained on dealing with the first set of cases. It was not straightforward to give an age to the cases, as for example some quarter 1 returns had not been reported until August, so some of the delay was due to the extent of lateness, not simply delay in processing once received. NB would provide an update to the November Board meeting on progress with clearing this backlog. The PEF regulatory/monitoring reference group would consider what information on trends it would be useful to provide to the Board.
- 4.10 PW reported, in relation to **correspondence with the Parliamentary Ombudsman** (para 4.3), that he now had a meeting scheduled the following week with Ann Abrahams, the Parliamentary Ombudsman, and he would report back to the Board in due course.
- 4.11 JW reported that the name of a candidate to replace Baroness Browning had gone forward from the Appointment Panel to the Speaker's Committee and would be considered on 9 November, and if agreed be followed by the statutory consultation with Party leaders.

Agreed: That:

- (a) The Board's thanks be conveyed to staff for their excellent work on the election reports;
- (b) Updates be provided to the November Board on two of the PEF cases discussed, and on the backlog of civil sanctions; and
- (c) PW report further on his meeting with the Ombudsman.

5 Commission Enforcement Policy (EC 73/11)

It was noted that when the policy was next reviewed the role of Board members in the decision-making process would be explored.

Agreed: That approval for the enforcement policy appended to the paper be affirmed.

6 Public awareness activity for Police and Crime Commissioner elections (November 2012) (EC 74/11)

- 6.1 AR reminded the Board that postponement of the Police and Crime Commissioner (PCC) elections to November 2012 would necessitate a stand-alone public awareness campaign as activity could not now be combined with public awareness taking place around elections in May 2012.
- 6.2 In outlining the likely content of the campaign, AR highlighted three elements of information voters needed in order successfully to cast a vote (how to vote, what they would be voting on and why they should vote). He explained that the Commission's campaign would cover the first two of these, i.e. how to cast a vote under the proposed system, and what the vote was to be cast on. SM referred the Board to the scenarios outlined in the paper which provided more detail on the likely shape of the Commission's campaign and asked for their approval to proceed on this basis.
- 6.3 SM explained that it was difficult to be more specific about what the Commission's public awareness work would entail (hence the need to provide a range of scenarios) until the Home Office had clarified their own plans for public awareness activity.
- 6.4 SM informed the Board that the Home Office had stated their intention to carry out a public awareness campaign to explain why people should vote for PCCs. The Home Office indicated that they were also considering a campaign: to motivate candidates to stand. The Commission had raised a number of concerns with Home Office officials. The Commission's concerns stemmed from two related issues: the effectiveness that any campaign (from Government or an independent organisation) would have in motivating people to vote and the risk that this diverts public funding from providing voters with information about the candidates and parties standing in the election; and the questions that a Government sponsored campaign might create about propriety and neutrality ahead of an election. It was noted that these arguments relate to elections held at any time, not just the Police and Crime Commissioner elections.
- 6.5 It was explained that evidence indicated that a campaign – whether from Government or an independent organisation – which encouraged people to vote was likely to have little impact. It was felt that resources would be better focussed on making sure that a mechanism would be in place to ensure voters had direct access to information from candidates.
- 6.6 There would also be concerns if the Home Office actively encouraged candidates to stand. It would be difficult to see how this could be done

in a way that would not leave the Government open to suggestions that this activity favoured one party over another, particularly if, for example, some parties were to choose not to stand their own candidates at the elections.

- 6.7 SM asked the Board to consider how the Commission should pursue their concerns with the Home Office. The Board agreed these concerns should be raised robustly with the Home Office.
- 6.8 AR explained that he had previously written to Home Office officials to suggest that they should consider a booklet which would be sent by Police Area Returning Officers (PAROs) to every household. As well as information about the elections and how to vote in them, this would also contain messages from the candidates and would be similar to the approach taken in London and at other Mayoral elections. It should be noted that providing this opportunity for PCC elections would present challenges of its own and that there would be a range of different issues that would need to be addressed before secondary legislation was laid including: election timetable, funding, clear rules and requirements for the content of the candidate mailing, print and postage capacity and support and guidance for PAROs. If the Government decided not to have candidate booklets at the elections it would be important to continue to push for an alternative mechanism to be put in place to ensure voters had enough information about the candidates standing in their area to participate with confidence in the elections.

Agreed: That:

- (a) The recommended approach to the Commission's public awareness campaign be approved as set out in the paper, and subject to any adjustments which became necessary as the Home Office's intentions became clearer;
- (b) The Home Office be advised of the Commission's view that it (the Home Office) should not undertake either a motivational public awareness campaign encouraging voters to vote for PCCs or a campaign to encourage people to stand as candidates;
- (c) The Home Office be urged to consider instead how it can support candidates in reaching voters, including reaching a clear view, quickly, on the Commission's proposal for allowing candidates to include messages in voter information booklets;
- (d) The Commission's concerns over delays to secondary legislation and their impact on the production of a candidate booklet be communicated to the Minister;
- (e) Police Area Returning Officers be advised of the Commission's position and what it has done to communicate this to the Government; and
- (f) The update to the Speaker's Committee at the end of October set out the current position and our concerns.

- 7 Political Parties, Elections and Referendums Act regulatory review update (EC 75/11 plus TABLED slide presentation)
- 7.1 TS briefly introduced the slides: slide 1, aims and approach, by reviewing experience looking for ways to make the current framework more effective and reduce burdens; slide 2, set out timings for the work (including workshops with the parties) with a final report due in June 2012; slide 3, donations and loans - some emerging issues; slide 4, donations and loans – reporting burdens; and slide 5, referendums.
- 7.2 Any straightforward ways to reduce the current burdens, or make the rules work more effectively which did not require changes to legislation could be put into effect before the final report, subject to the consent of the political parties where necessary.
- 7.3 The Board stressed that beyond improvements to process, the questions ‘are we clear what the aims of the current system are?’ and ‘how well does the current system fulfil the aims?’ should also be asked and answered. In some cases, such as transparency of donations and loans, the intentions of the current rules were clear and they were working effectively, with the exception of some issues around the definition of permissible donors. In other areas such as the rules on campaign spending by parties and third parties, it was less clear whether the rules were achieving the key aims.
- 7.4 The Commission’s written evidence to CSPL in 2010 had touched on the lack of clarity on the purpose of spending limits, and it would be appropriate to flag such issues as part of the regulatory review. TS said that the Board’s recently adopted principles of Trust, Participation and No undue influence, provided a vehicle to do that in a more rounded way than in the Commission’s CSPL evidence, which had focused on matters of workability. JW said the political parties should be invited to engage in discussion of the intentions underlying the current rules and of how well the rules fulfil those intentions.

Separately, but during this item, the following was mentioned:

- 7.5 An issue was raised about the regulation of fundraising in anticipation of the Scottish referendum. Donations to registered parties would be reportable in the usual way. The rules for referendum campaigners would be set in the enabling legislation. The Commission’s starting point was that the PPERA rules were an appropriate model for regulating major referendums, subject to the changes recommended in the Commission’s recent report on the referendum on the UK Parliamentary voting system, which included the introduction of an element of pre-poll donation reporting. It would also be necessary to consider the length of the regulated period, and the scope for unregulated campaigning before the period begins. JW suggested that

a reminder of the donation reporting rules for registered parties could usefully be issued through the Commission's Scotland office.

Agreed: That:

- (a) The scope of the regulatory review be noted, and should include analysis how well PPERA aims are being achieved;
- (b) Any immediate improvements identified during this process which were supported by the parties and could be implemented in advance of the final report, be taken forward accordingly, subject to Board approval as necessary; and
- (c) The reference group consider how the Board should be kept informed between now and the final report.

8 Chair's Report (EC 76/11)

8.1 Taken in conjunction with the Chief Executive's update, above.

9 Meeting wash-up (Commissioners only)

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

The meeting ended at 11.55 am.

Chair