

Minutes of the meeting of the Electoral Commission held on Wednesday 4 November 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)
Bob Posner (BP)
Vera Markos (VM)
Kairen Zonena (KZ) minutes

Ros Baston (RB) – item 4
Tony Stafford (TS) – items 4 and 5
Kay Jenkins (KJ) – item 5
Tom Hawthorn (TH) – item 10
Mark Williams (MW) – item 10

Also in attendance Jane Earl Deputy Electoral Commissioner – item 7
Joan Jones Deputy Electoral Commissioner – item 7
Peter Knight Deputy Electoral Commissioner – item 7
Archie Gall – item 7

Lisa Tolliday)– observing item 4
Jess Bishop)
Elizabeth Morrow)
Phil Thompson)
Andy O'Neill)– observing item 5
Nina Ziullah)
Gemma Rosenblatt – observing items 5 and 10
James Haddon – observing item 6 and 7
Alex Robertson (AR) – item 10

Apologies

Karamjit Singh. JW took the opportunity to advise the Board that KS had recently been appointed as Social Fund Commissioner for Great Britain and Northern Ireland. Commissioners joined with her in sending him their congratulations and good wishes in his new role.

1 Declaration of Interests

- 1.1 In relation to item 6 on the agenda, Establishment of the Local Government Boundary Commission for England – update on current activity and consideration of the draft scheme of transfer, MC would remain in the room to convey the views of the Boundary Committee for England to the Commission Board, respond to any questions, and then withdraw from the meeting during the Board's consideration of the item.
- 1.2 JW read out the following wording in KS's absence regarding an interest which had come to light. "Following the publication of the UKIP judgement KS became aware that the judgment was delivered by one of his fellow (judicial) members on another committee in an unrelated sector. He had drawn his role as a Commissioner and the Commission's regulatory responsibilities to the attention of the judge concerned who has confirmed that they have never discussed the role of the Electoral Commission or party funding issues in general or indeed where these relate to specific parties."

2a. Minutes of Commission Board meeting on 24 September (EC90/09)

Agreed: That the minutes of the Commission Board meeting held on 24 September be approved as an accurate record and the Chair be authorised to sign them.

2b. Decision/Action tracker (EC91/09)

This page containing brief details of outstanding issues and their follow-up had been introduced in response to Commissioners' request to keep track of certain issues.

Noted

3. Update from the Chief Executive (EC92/09)

- 3.1 PW orally updated his report. In relation to the Corporate Plans and Estimates, he reported that the Speaker's Sub Committee met on 26 October and had accepted the general approach the Commission had adopted with the establishment of the new Boundary Commission, although there had been some discussion on the set-up costs of the new organisation and whether there were more cost-effective measures available.
- 3.2 The Speaker's Sub Committee had also asked questions about the Parties and Election Finance Online system. PW gave an assurance to the Sub Committee that existing registers would continue robustly, and undertook to advise them if the new system looked unlikely to be able to proceed for whatever reason.
- 3.3 There was a recognition on the part of the Sub Committee that Individual Electoral Registration (IER) represented a major shift in electoral registration, with all the implications that brought with it of introducing large scale significant change. AS added that the Ministry of Justice (MoJ) project board on IER was due to meet the following week, and anticipated that they would give a clearer indication of how they saw the allocation of roles and responsibilities.
- 3.4 In response to comments by the Sub Committee about the time taken to complete major Party and Election Finance investigations, PW said an additional performance measure would be introduced to pick up the more protracted cases.
- 3.5 Revisions to the Corporate Plans and Estimates would be completed for submission to the Speaker's Committee by 18 November, ready for its meeting on 25 November, when JW, MC and PW would be present. The Treasury had yet to give its view on the budgets. JW added that a useful Hansard transcript of the meeting was available, which would be circulated to Commissioners.
- 3.6 The report by the Committee on Standards in Public Life into MPs' expenses and allowances had been published earlier that day, and an executive summary would be made available to Commissioners. The main impact on the Electoral Commission looked likely to be that candidates would be encouraged to declare outside interests and their intention or otherwise of maintaining them. The details had yet to be worked out, and the Commission might be consulted on it by the MoJ.
- 3.7 JW reported that the name of the candidate proposed to succeed KS as Electoral Commissioner had gone forward to Party leaders in Westminster for consultation. In relation to the appointment of Nominated Commissioners, the Speaker's Committee agreed to convene an appointment panel including an independent Chair, JW

and two members of the Speaker's Committee. This would give the process transparency and openness, which would be beneficial to both the Commission and the new Commissioners. The job description and person specification would be sent to Party leaders, and the appointment process would likely begin early in the new year. In answer to a question, JW confirmed that the Panel would also propose the fourth nominated commissioner selected from among candidates put forward by the smaller parties.

- 3.8 Returning to the question of PEF Online, LK reported that an extensive list of continuing problems with the system had been drawn up and discussed with the developer. The developer would be coming to work in situ at the Commission in an effort to make some progress, but if this proved unsuccessful, it would be necessary to consider what further steps should be taken.

Agreed: That Commissioners would be sent a transcript of the proceedings of the Speaker's Sub Committee of 26 October, and the executive summary of the report of the Committee on Standards in Public Life into MPs' expenses and allowances, and revisions to the Corporate Plan prior to its submission to the Speaker's Committee (by 18 November)

4. Party and Election Finance - guidance review (**presentation, tabled**)

- 4.1 RB presented a summary of the work undertaken to review and revise Party and Election Finance guidance.
- 4.2 The review has resulted in a new structure for simplified and clarified guidance, plainer language that was less legalistic and more accessible, introduced guidance tailored to specific roles, and more use of indexes and hyperlinks to aid navigation through the material. The material had been re-designed to make it visually more appealing and easier to use. Future user feedback will be obtained from different types of stakeholders.
- 4.3 Consideration is being given to whether e-learning would be a suitable addition to the guidance service.

Agreed: That the review of PEF guidance be noted and welcomed.

5. Update on referendums following Commissioner Reference Group meetings (EC93/09 presentation)

- 5.1 JW said that if agreed today the work of the reference group would provide the basis on which the Commission would publish in advance

of any future referendum its approach to inform stakeholders of our position on various issues.

- 5.2 On the issue of combined referendums and elections, the reference group considered that the evidence on issue distortion and voter interest was inconclusive, and in fact voter turnout tended to be higher in combined polls. It would therefore be difficult to adopt a general position against combination, and instead each case should be taken on its own merit. The Commission should advise on risks and how these could be mitigated. This was supported. HC requested a copy of the relevant research review.
- 5.3 On the issue of intelligibility, the group felt that as much information as possible about the Commission's preferred standards, position and approach to referendum questions should be published in advance for use by all relevant participants in drawing up the question. This would include the fact that there would be an internal assessment against the published guidelines. It was agreed that if a government simply asserted that it had had regard to the guidance and had in its view met the criteria, but the Commission considered it had not, the Commission should respond robustly.
- 5.4 It was accepted that user-testing of draft questions was the Commission's preferred position but that it would not always be possible in a very short timetable. The Commission was under a duty to give a view on intelligibility, and would wish to support a view by reference to other sources (e.g. research and user-testing of former similar questions) if user-testing was not feasible in the time available. Informal soundings should still be taken from stakeholders.
- 5.5 On the issue of the Commission as Chief Counting Officer, it was understood that the law placed the role with the Commission (specifically the Chair) but that it could be delegated to a Commissioner, or to another person. Discussion focussed on the duty to report, which lay with the Commission, and the difficulty for the Commission in reporting on itself. It would therefore be best to report on what it had done, and enable independent scrutiny of how well the process had gone. Further thought should be given and views sought on how best to achieve this (e.g. independently-chaired seminar, web-comment, or any democratic independent institutions or organisations producing a report).
- 5.6 The question arose of who should be the Counting Officer in a devolved-nation only referendum, and where the law stood in relation to Scotland. At present a referendum looked increasingly likely to be held in Wales, and less likely in Scotland. This raised the matter of differential practices depending on the extent of devolution, and it was agreed that this be brought back for further discussion early in 2010.

- 5.7 The proposals on the designation of lead campaigning organisations, grants to designated organisations, and to the public awareness activity were all supported as set out in the presentation.
- 5.8 Regarding expenditure limits for sub-UK referendums (UK-wide limits being specified in PPERA), the decision would be made by the Ministry of Justice, but the MoJ would undoubtedly ask for the Commission's views. The proposed simplified two-band approach was preferred in principle, to a complicated formula linked to vote share at the last election. Further work should be undertaken in the office to develop and test the case for the two-band approach. It was agreed that the Reference Group should look at the two-band model further and report back.
- 5.9 Commissioners thanked KJ and all the staff who had been involved in the reference group for their extensive work which had yielded fruitful results.

Agreed: That:

- (a) the proposals set out in the presentation on
- a move away from in principle opposition to holding combined referendums and elections, to judge each case on its merits with a view to identifying any risks and offering advice which will ensure that they are as well-run as possible
 - the Commission's preferred position on assessment of question intelligibility, including where possible user-testing but if not possible for any reason, other sources of evidence could be used to support the Commission's view;
 - the report which the Commission had a duty to prepare post-referendum could not reasonably include a qualitative assessment of how well the Commission had performed, and other views be sought on who could carry this out;
 - a simplified two-band approach for expenditure limits for sub-UK referendums should be developed further and tested by the Reference Group;
 - designation of lead campaign organisations be as set out in the slides;
 - grants to designated organisations be as set out in the slides; and
 - approach to public awareness activity be as set out in the slides.
- (b) Further thought be given to the implications of devolution for the role of Chief Counting Officer, and reported back early in 2010;
- (c) The Commission's position on assessing the intelligibility of questions be published by late November;
- (d) key stakeholders be asked for any views on our refreshed approach to relevant issues (including question assessment and payment of grants) with feedback to be reported to the Board and

- (e) The research review on the effect on voters of combined referendums and elections be circulated to HC.

6. Establishment of the Local Government Boundary Commission for England – update on current activity and consideration of the draft scheme of transfer (EC94/09)
- 6.1 MC had declared an interest (see above under declarations).
- 6.2 Summarising the views of the Boundary Committee for England at its meeting on 20 October on the proposed transfer arrangements, he said that the Committee wanted:
- transfer on 1 April if at all possible
 - the ability to stay at Trevelyan House beyond 1 April 2010, as a separate accounting entity, should the new accommodation not be ready
 - the door should be left open to shared provision of back-office services, though acknowledged as no-one's preferred option
 - outstanding liabilities had still to be clarified to the satisfaction of all sides.
- 6.3 MC then left the room.
- 6.4 CH brought Commission Board up to date on the latest position regarding accommodation, the recruitment of an interim Chief Executive, and quotes for back-office services. An appraisal of all options should be completed for review by mid-November and consideration of recommendations by the Commission and BCFE. It was hoped to have a decision in time to report to the Speaker's Committee meeting on 25 November.
- 6.5 PW suggested that allowing an extension of stay in Trevelyan House of up to, say, three months would probably be feasible, but that it would limit the requirement of both sides to expand. He thought that could best be dealt with by way of an exchange of letters or a memorandum of understanding, rather than in the scheme of transfer itself.
- 6.6 As far as legal liabilities were concerned, officers were examining all work streams to identify potential liabilities and clarify the position with regard to conduct of the business and cost.
- 6.7 JW suggested that in the event of a possible delay to their accommodation and provision of services, it might be necessary to consider delaying vesting day but this scenario only needed to be discussed when more was known about timescales.
- 6.8 Meanwhile the scheme of transfer should be agreed in principle, subject to further work on meeting the concerns of the Boundary

Committee in relation to a limited extension of stay at Trevelyan House and more detail on liabilities.

6.9 MC returned to the room and was advised of the decision.

Agreed: That the draft Scheme of Transfer be approved, subject to further work being carried out on an extension of stay at Trevelyan House, if needed, and subject to clarification of liability for conduct and costs of all work, to be agreed either by a suitable mechanism such as an exchange of letters or a memorandum of understanding, and subject to clarification and agreement of the detailed provision for the cash and liabilities arising from legal proceedings, and that the Chair of the Commission, after consultation with the Chief Executive, be authorised to sign the final settled form of Scheme consistent with the principles contained in the report and discussed at the meeting.

7. Discussion with Deputy Commissioners to learn about Boundary Committee preparations for the new Boundary Commission

7.1 Jane Earl, Joan Jones and Peter Knight were welcomed to the meeting by JW. Apologies were noted for Colin Mellors.

7.2 The Deputy Electoral Commissioners were heard in relation to the opportunities they felt the creation of the new Local Government Boundary Commission for England offered. Views were expressed about the importance of sticking to the planned timetable.

7.3 JW confirmed that all efforts would be made to ensure that although the timetable was tight a complete and successful transfer would take place on 1 April 2010. Work would be done to respond to the Committee's concerns, and a number of matters of detail should be clearer by the time of the project board meeting on 19 November, together with fall-back plans if needed.

7.4 Deputy Commissioners discussed their vision of the new organisation, and what it could do to deliver boundaries which were demonstrably fair, and helped get better value out of local government structures.

8. Chair's Report (EC95/09)

Noted

9. Minutes of the Boundary Committee meetings of 2 and 30 September 2009 (EC96/09, EC97/09)

Agreed: That the minutes of the Boundary Committee meetings of 9 and 30 September be noted.

10. General Election policy positions (presentation, tabled)

10.1 TH introduced the presentation, the intention of which was to support discussion of proposals for a framework to enable the Commission to prepare clear and consistent positions on key policy questions likely to arise before, during and after the forthcoming UK Parliamentary general election (UKPGE). A reference group would be convened to start to formulate views on a range of matters, to develop a set of broad principles, and to consider some of the mechanisms needed to put them into effect.

10.2 The Commission Board identified that more work would be needed to ensure all of the relevant principles were identified and clearly explained, including both international electoral standards and UK public policy principles; and the need for ongoing monitoring of the evidence base used to support policy positions.

Agreed: That:

- (a) Commission Board members feed back any additional policy questions not identified at the meeting
- (b) a reference group be set up (membership to be decided) to further develop the framework for policy development
- (c) the reference group use the framework to refine proposed positions on the policy questions
- (d) the group report back to Commission Board in 2010.

The meeting ended at 3.20pm.

Chair