Agenda Item no. 3(a)

Minutes of the meeting of the Electoral Commission held on Wednesday 19 April 2017 at 9.30 am

Present: Sir John Holmes (JEH) Chair
Sue Bruce (SB)
Anna Carragher (AC)
Elan Closs Stephens (ECS)
Tony Hobman (TH)
John Horam (JRH)
David Howarth (DH)
Alasdair Morgan (AM)
Bridget Prentice (BP)
Rob Vincent (RV)

In attendance: Claire Bassett (CB)
Carolyn Hughes (CH)
Ailsa Irvine (AI)
Robert Posner (RP)
Craig Westwood (CW)
Kairen Zonena (KZ)
Louise Footner (LF)
Tom Hawthorn (TH1) – items 4, 5A and 6
Kate Engles (KE) – items 4, 5A and 6
Katy Knock (KK) – item 5A
Kate Shield (KS) – item 5A
Dan Adamson (DA) – item 6
Sharon Jager (SJ) – items 4 and 5A

An updated agenda was circulated to allow for an additional item 5A (ECAC 33/17) and other slight changes, resulting from the announcement the previous day of a snap United Kingdom Parliamentary General Election (UKPGE) on 8 June 2017.

1 Apologies

None.
2 Declaration of Interests

2.1 All the nominated Commissioners had stood for election, and been nominated as Commissioners by political parties that had contested recent elections and also registered as campaigners in the EU Referendum.

2.2 AC was a member of the Board of the Arts Council of Northern Ireland (which received money from the EU Peace 3 Programme, and the Corners programme for individual artists). A Trustee of the Wildfowl and Wetlands Trust, a recipient of EU funding, she had now returned to that role at the conclusion of the Referendum.

2.3 In relation to the forthcoming Northern Ireland Assembly election, AC reported that her sister was Head of BBC News in Northern Ireland.

2.4 DH in 2008 drafted and put forward in parliament an amendment to the then European Union (Amendment) Bill, proposing an EU referendum in the terms ‘Should the United Kingdom remain in the European Union?’

2.5 DH had stood for election on a manifesto supporting an in-out referendum on the European Union.

2.6 DH was a council member of Justice, an organisation which had in the past received EU funding.

2.7 DH reported that the European Parliament subsidised a regular annual visit by his Public Policy students to Brussels.

2.8 DH declared that he had been awarded a research grant of over €40,000 from the European Parliament.

2.9 JH1 was a member of the pro-Europe Conservative Europe Group, the parliamentary group Conservative European Mainstream, and of the all-party parliamentary group on Reform, Decentralisation and Devolution Group, chaired by Lord Foulkes.

2.10 TH, as a function of his role as CEO of the Occupational Pensions Regulatory Authority (OPRA) and its successor body the Pensions Regulator (TPR), had been a UK representative on the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) from 2003-2010. He chaired its Occupational Pensions committee from 2007 – 2009 and was a member of its managing board from 2009-2010.

2.11 (CEIOPS was a “level 3” committee within the Lamfalussy process of the EU. It provided advice to the European Commission, in respect of insurance and occupational pensions, on the drafting of implementation measures for framework directives and regulations and facilitated supervisory standards, guidelines and convergence in the application of regulations as well as promoting cooperation between supervisors.)
2.12 TH, as a Director of PAN Trustees Ltd, declared that clients of PAN Trustees Ltd for Independent Trustee services included the Defined Benefit Pension and Life Assurance Plan for London-based staff of the European Commission (but TH was not involved in the provision of any such services to that scheme).

3a Minutes of 22 March 2017 (EC 25/17)

3.1 The Speaker’s Committee consideration of the Commission’s Main Estimate (minute 3.1) had not taken place on 29 March as planned. The Estimate would now be amended to incorporate the resources the Commission required to support delivery of the UK Parliamentary General Election in June 2017 and would be resubmitted to the Speaker’s Committee for review and approval by correspondence.

3.2 In relation to the last bullet of minute 6.3, Principles for Political Finance Rules, and consultation with Devolved Advisory Panels, it was noted that since it had been agreed not to have such a Panel in Northern Ireland (as devolution did not apply in the same way as for Scotland and Wales), an equivalent mechanism would have to be found for conducting consultation on any political finance principles.

Agreed: That, subject to the addition of the words ‘and a Northern Ireland equivalent’ to the last bullet of 6.3, which would now read:

- If the principles were going to be published in the future, there should be consideration of whether consultation, including with the Devolved Advisory Panels and a Northern Ireland equivalent, would be beneficial and if so to what extent

the minutes of the Commission Board meeting held on 22 March 2017 be approved as an accurate record and the Chair be authorised to sign them.

3b Decision-Action tracker (EC 26/17)

Noted

4 Update from Chief Executive for April (EC 27/17)

4.1 AI reported that there were no major issues in the run-up to the May polls. CW gave early figures on the public awareness campaign for the same
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polls. Measures which could be tracked, i.e. the number of applications (rather than the number of additions to the electoral register, data for which was not yet available) showed under performance. Possible reasons discussed were the difficulty in forecasting for the first standalone local elections held under Individual Electoral Registration (IER) and the external environment affecting voter motivation.

4.2 Paras 3.13-3.15 – Political and Constitutional Affairs Committee (PACAC) report ‘Lessons learned from the EU Referendum’ - it was noted that many of the recommendations were consistent with our own. The Board discussed the recommendation on designation, and in particular PACAC’s request that the Commission should look at whether or not transparency of the process could be improved, whether designation could be earlier, and whether there should be a fit-and-proper-person test for applicants for designation.

4.3 Para 5.4 - enforcement matters – RP reported that Greenpeace Ltd had been fined a total of £30,000 for two offences, and this had been published the previous day. Meanwhile, on a separate matter, an application for a judicial review of our decision not to register a description for the English Democrats was still under consideration by the courts. Efforts were being made to speed up the decision on whether to grant leave to bring a review, in order to provide as much clarity as possible before the election.

4.4 Paras 5.12-5.13 – Welsh Government’s White Paper and Expert Panel consultation – ECS commented on our response to the Expert Panel consultation on co-terminosity and expressed disappointment that we had not been able to include more evidence around whether there were problems with differing boundaries for different polls. ECS also reported on the Welsh Government White Paper consultation and noted the proposal contained in the White Paper that local authorities could choose whether to use first past the post or single transferrable vote for local elections in their area. AI said in relation to co-terminosity that, while we ourselves had no evidence, we had been able to point the Expert Panel towards sources of evidence in Scotland. The potential for multiple voting systems to cause confusion for voters was also noted.

4.5 Paras 5.14-5.19 – Northern Ireland – the potential for a further Northern Ireland Assembly election remained, with contingency planning currently focussing on the possibility of the poll being held on 8 June, with the UKPGE, or at some other point in that month. Concerns about the impact on resourcing and how this might be perceived in Northern Ireland were discussed.

4.6 Para 5.31 – Forward Plan 2017-18 and the May Board meeting – It was noted that the May Board meeting, sandwiched as it was between two
electoral events, would go ahead but the business might be amended to take account of demands on staff.

**Noted.**

5 Chair’s and Chief Executive’s meetings (EC 28/17)

**Noted.**

5A Preparations for the UKPGE on 8 June 2017 (EC 33/17 – TABLED)

5.1 A set of slides was circulated and discussed. The slides covered; background and key dates (slides 2 and 3), governance arrangements in place to support the election (slide 4), the four main areas of work involved for Electoral Administration and Guidance (EAG, slide 6), the three main areas of work for Political Finance and Regulation (PFR, slide 8), public awareness work and considerations (slide 10), and the budget (slide 12).

5.2 For EAG, AI reported that the election timetable had been prepared and would be published that day following the vote in the House of Commons. Guidance was well-advanced and would be published before the end of the week, and supporting materials (such as forms, templates and polling station handbooks) would also be made available. Staff were drawing up an additional guidance note highlighting the particular issues of preparing for a UKPGE while managing local elections, in consultation with the Association of Electoral Administrators (AEA. This should also be published during the week. The risk profiles of areas were being developed, and would take into account as usual those areas where turnover of staff and/or lack of recent electoral practice experience meant reduced capacity. Support would be targeted to those areas where we could add value.

5.3 We would work with both the AEA and the Cabinet Office to align our communications and timetables for information to be sent so as to avoid overloading local authorities with information as far as possible. Possible arrangements for regional co-ordination were likely to involve the Electoral Commission Advisory Board.

5.4 In relation to electoral fraud, we continued to engage with higher risk areas, promoting the Code of Conduct for candidates and agents, and working in partnership with Crimestoppers to encourage reporting of
suspected fraud. Data would be collected from the police Single Points of Contact.

5.5 The timetable for statutory reporting was being considered, and while it was hoped to do something before the summer recess, the supporting research work would be unlikely to be completed in time, so supplementary reporting would be planned.

5.6 BP remarked on the particular difficulties for Returning Officers, given the timing of the election, in finding suitable polling stations and count venues during exam time. On a related point about counts, it was noted that if any RO wanted to move away from overnight counting, we would first discuss this with them to understand their reasons for it.

5.7 For PFR, RP began by commenting that his directorate had just concluded work arising from the 2015 UKPGE, which meant there was also potential for a two-year work cycle from this one. On the specifics, the registration of party names and descriptions would build up significantly in the pre-election period. Registration of non-party campaigners spending over a certain threshold (£20,000 in England, and £10,000 in Scotland, Wales and Northern Ireland) was a Commission responsibility, and a challenge for the Commission would be communicating this to campaigners who might not be aware of the rules.

5.8 The suite of guidance for candidates, agents and campaigners was ready to be published, and, following recent investigations, guidance on the difference between party and candidate expenditure would be strengthened to make it even clearer. Further factsheets might be produced to address issues which arose during the period.

5.9 The team were talking to the major parties to encourage them to share their plans, so that we could give guidance early, and make clear our expectations. As a result of the recent cases, parties were now much more aware of the rules and had been prompted to ensure they had effective governance arrangements in place to ensure compliance.

5.10 The regulated period for the election would now overlap with that for the Northern Ireland Assembly election(s) and the May polls, with the potential for further confusion, particularly among non-party campaigners where the rules were still relatively new, and awareness of them was lower. For example, non-party campaigners who had kept their spending for the first NIA election just under the registration threshold could find themselves needing to register if campaigning for the next election. It was noted that in some areas with elections for locals, Mayorals and the UKPGE, the allocation of campaign expenditure would pose a challenge. Our clear advice would be that the primary purpose of any campaign spend must be identified, and allocated to that accordingly.
5.11 The suggestion was made that we could issue a statement, based on the salience of recent (and current) investigations, about the importance for election participants of proper compliance and reporting, reinforcing the help and guidance we offered. This proposal was welcomed, and consideration would be given to how this might best be done.

5.12 Pre-poll reporting of spending would take place on a weekly basis for only the second time since the rules were brought in. Extra staff for a help line for candidates, agents and campaigners were being recruited, and arrangements made for campaign monitoring in-house (for example, by looking at news sources and social media sites, and complaints and material sent in by the public).

5.13 In the event of anyone disregarding our advice, and deliberately flouting the rules in a significant way, the use of stop notices would be considered. This would show that the rules could not be broken with impunity, and help maintain trust and confidence in the system.

5.14 It was noted that the Crown Prosecution Service decisions on the 14 or 15 files on alleged election breaches in 2015 were expected between 20 May and 12 June. If any candidates were to be prosecuted, this would not prevent them from standing for this election, but if convicted they would be disbarred from holding that office.

5.15 On public awareness and campaigns, CW reported, in addition to the information on slide 10, that we had asked if the Cabinet Office had any separate plans for an electoral registration awareness campaign and that it was hoped that the purdah period would not prevent government departments from promoting electoral registration through their channels. Other points raised during discussion included whether there would be a higher demand from overseas voters in view of the likely prominence of Brexit in the campaign, and the extent to which we utilised local and specialised media (tv and radio) for under-registered groups.

5.16 On the resources, slide 12, CH said that these were provisional figures which covered potential need. The figures did not specifically allow for a further Northern Ireland Assembly election (should one be called) but, depending on the timing of any Assembly election, the resources asked for should be sufficient to cover it. The Main Estimate had been withdrawn and would be amended with these figures, and the Speaker’s Committee’s approval sought by correspondence. The Board were asked to agree the estimated additional resource requirements.

Agreed: That:-
(a) The Main Estimate be amended by the additional estimated resources outlined at slide 12 and approved, and re-submitted to the Speaker’s Committee; and

(b) Staff be congratulated on the extent of preparedness and on the speed of their response to the previous day’s announcement.

6 Corporate Plan 2017/18 to 2021/22 (EC 29/17)

6.1 CH introduced the paper, which was shared for information and comment. CW highlighted that, as the draft Corporate Plan would have to be revised in light of a new government’s priorities, the planned launch in June would be rescheduled. The general election would also affect the timetabling of the project work currently mapped out, which would need to be reviewed and re-scheduled, and re-submitted to the Board and then to the Speaker’s Committee, once the new government’s plans were known.

6.2 Meanwhile, comments were invited on the style, tone and direction of the Corporate Plan.

6.3 A number of points were made, including:

- The foreword and introduction might be merged
- The tone of the document appeared over-gear to Westminster and did not fully reflect how the Commission was responding to devolution around the UK and the strong relationships with the devolved legislatures
- Goal One – re-word the goal where it referred to ‘every vote secure and accessible’ to make it clear that this was about ease of access of the voting system to voters, while remaining secure
- Goal One – include ‘intimidation’ with electoral fraud
- Goal One, page 12 – remove the number 15 from scheduled electoral events
- Goal One, page 12 - add automatic registration as an ambition (or on page 18)
- Goal Two – second paragraph, add mention of Northern Ireland
- Goal Two - should ‘measuring our performance’ be ‘key impacts’ (or if not ‘key impacts, then ‘impact indicators’)?
- Goal Three – last bullet, change ‘emerging’ to ‘existing and emerging’ cyber threats
- Goal Three - the introduction should include mention of international sources of evidence
• Goal Three - noting in ‘activities to achieve this goal’ the need to reflect the fact that different legislatures had different proposals for changes to electoral registration and other processes

• The devolved picture would be drawn out more strongly in the introduction, and we would consider launch events in each country

• While Appendix B was an internal working document tracking the planned project activity for the year and was useful for managing resources, something should be added to the Plan about the governance arrangements in place for project work.

6.4 The Board were pleased with the document which they thought an improvement on previous plans.

Agreed: That the amendments highlighted at 6.3 above be incorporated in the document, and the Plan with revised work programme be brought back to the Board at a date to be advised.

7 Party and Candidate Spending Controls (EC 30/17, plus background paper EC 30a/17 and research paper EC30b/17)

7.1 RP introduced the paper, the emphasis of which had changed in the light of the snap election. The next steps set out in section six of the paper would now be reviewed and changed, but sections four and five of the paper set out principles for the Board to consider in deciding what further work to undertake, and how we should address the split between party and candidate expenditure.

7.2 DH commented that:

• The balance between how money was spent had shifted and would continue to do so, with more spent on capital, infrastructure and set-up costs, while production end-costs had become much lower. The capital spending also tended to be much earlier and likely to be outside most regulated periods.

• The approach to the split between national and constituency spending now needed to involve a broader view of constituency and candidate spending, and a narrower one of national and party spending. For example constituency spend could encompass any spend aimed at a specific set of voters, and national spend that aimed at the national media.

7.3 A wide-ranging discussion included the following remarks (and responses):
There should be a mechanism for calculating staff costs and ‘knowledge economy’ costs, including the hiring in of high profile PR consultants.

KE replied that staff costs were reportable for candidates and third parties but not for parties. The recommendation to do so for parties had been included in our 2013 Regulatory Review (though not accepted by government). We had proposed two different methods, and to work up draft models with parties and campaigners.

An example of the purchase of a database of voters drew the following comments: it might not currently be captured in any spending returns; it could be hidden in spending returns; it could be used for multiple elections across several years, raising the question of how costs would be apportioned; as it was designed to target particular voters, it could be apportioned as local spend for the constituencies in question.

KE pointed out that the law required spending to be reported according to when it was used, rather than when it was incurred. This was a practical difficulty we had planned to tackle by means of the Codes of Practice being developed for 2020. We would be asking campaigners for much more information about the tools they used in their work, something we had done for the EU referendum, but not previously for elections.

Any system of attribution had to be robust enough to withstand legal challenge

How to uncover the focus on marginal seats, to be able to see where spend was targeted rather than disaggregating it (less revealingly) across every constituency?

Concern about creating a bureaucratically complicated set of returns

RP said that the heads of spending were currently very broad, and KE added that it was a question of making Codes and Regulations which got the balance right between bureaucracy and transparency.

7.4 The discussion turned towards how the phrase ‘promoting the candidate’ would be interpreted for this election, and whether for example, a letter from a party leader which did not mention a candidate by name but which was sent to several specified constituencies would be determined to be candidate spend. Equally, should a national wraparound advertisement on a local newspaper constitute candidate spend? KE added that the rules in relation to non-party campaigners did in fact include controls on targeted mailings, which acknowledged their importance. However, no such explicit controls (yet) existed for parties in PPERA.
7.5 In answer to a question about our duty to review and make recommendations on the levels for candidate spending limits, it was noted that the government could disregard our recommendation and opt for an inflationary increase (which is what it had done at our last review before the last UKPGE). Any more fundamental proposal to change the definitions of party and candidate spending would obviously need a good deal of consultation.

7.6 Other related pieces of work around party and candidate expenditure would be covered by planned work to update the supporting analysis for some of our recommendations in our 2013 Regulatory Review.

7.7 In addition to the points raised by the Board, further lessons from the 2017 election would be built into our work.

Agreed: That further work be taken forward bearing in mind the points raised during discussion.

8 Draft minutes of the Audit Committee of 21 March 2017 (EC 31/17)

Noted.

9 Draft minutes of the Remuneration and Human Resources Committee of 22 March 2017 (EC 32/17)

Noted.

10 Informal briefing on the Commission’s role in supporting elections

This item was superseded by item 5A.

11 Commissioner wash-up (Commissioners only)

The meeting ended at 12.45 pm.

__________________________________________Chair