Agenda Item no. 3(a)

Minutes of the meeting of the Electoral Commission held on Wednesday 14 September 2016 at 9.30 am

Present: Jenny Watson (JW)
Anna Carragher (AC)
Gareth Halliwell (GH)
Tony Hobman (TH)
John Horam (JH)
David Howarth (DH) (until 12.45 pm)
John McCormick (JMcC)
Alasdair Morgan (AM)
Rob Vincent (RV)

In attendance: Claire Bassett (CB)
Carolyn Hughes (CH)
Bob Posner (BP)
Andrew Scallan (AS)
Craig Westwood (CW)
Kairen Zonena (KZ)
Kay Jenkins (KJ) – item 4
Louise Edwards (LE) – items 4, 7 and 8
Katy Thomas (KT) – items 4, 9 and 11
Kate Engles (KE) – items 4 and 11
Emma Hartley (EH) – item 6
Ashleigh Yardy (AY) – item 6
Jenny McKenzie (JMcK) – item 7
Tom Hawthorn (TH1) – items 7, 8 and 11
Barbara Lines (BL) – item 8
Richard Jordan (RJ) – items 8 and 11
Megan Phillips (MP) – item 8
Andy Zuill (AZ) – item 9
Christopher Owen (CO) – item 11
Mark Williams (MW) – item 11
Adrian Fryer (AF) – item 11
Elena Crini (EC) – item 11
Ben Hancock (BH)
JW welcomed Craig Westwood, the new Director of Communications, to his first Board meeting.

1 Apologies

Bridget Prentice.

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 JW declared that her partner was a Board member (and therefore also a Council member) of the European Council on Foreign Relations, a pan-European forum for discussion of EU foreign policy. ECFR took no organisational position on the UK’s membership of the EU but members of either the Council, which included politicians from a range of parties from across the EU, or the organisation’s staff, might have made arguments for or against Britain leaving the EU.

2.3 JW declared that Global Dialogue, a charity chaired by her partner, had registered with the Commission as a non-party campaigner.

2.4 JW reported that her sister, who had previously been an Assistant Borough Commander in the Metropolitan Police, was currently deployed in a non-operational role with the Met.

2.5 JW was acquainted with Brendan Barber through the Public Chairs’ Forum of which they were both members, and he had joined the board of the Remain (pro-EU) campaign.

2.6 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.

2.7 JMcC, having previously declared his friendship with Nigel Smith once it was known that his advice had been sought by referendum campaigners, since understood that he had supported the Vote Leave campaign.

2.8 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?’

2.9 DH had stood for election on a manifesto supporting an in-out referendum on the European Union.
2.10 DH was a council member of Justice, an organisation which had in the past received EU funding.

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

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

2.13 JH 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.

2.14 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.

2.15 (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.)

2.16 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).

2.17 During the meeting, at item 7, The Commission as Prosecutor, it was noted that the nominated Commissioners had all had links to political parties which might be affected by the proposals.

It was noted that if any Commissioners had a link or connection with any donors appearing on the reported register of donors, these should be declared.

3a Minutes of 20 July 2016 (EC 70/16)

Agreed: That the minutes of the Commission Board meeting held on 20 July 2016 be approved as an accurate record and the Chair be authorised to sign them.

3b Decision/Action tracker (EC 71/16)

Noted.
4 Update from Chief Executive for September (EC 72/16)

4.1 Para 1.20 – **Reporting on the May 2016 polls** – the report on the London elections had noted certain issues, but an underlying point which should not be missed was that some of the problems strongly highlighted the need to validate electronic systems, transparently. Whether there was a role for the Commission in that should be considered. The issue as a whole would be incorporated into the work on modernising elections.

4.2 Paras 1.26 – 1.33 – **UK Parliamentary Boundary Review** – the Boundary Commission had been required by statute to base its review on data from the electoral registers published by 1 December 2015. The Commission had recommended that Parliament should consider whether it would be more appropriate in future (ahead of the next scheduled review of UK Parliamentary constituency boundaries which would use the December 2020 registers) to base constituency and boundary reviews on electorate data taken from the registers used for elections instead. A House of Commons Library briefing had estimated the difference in the distribution of the 650 seats between the nations and regions of the UK had the Boundary Commissions used the registers from the June 2016 referendum instead of the 1 December 2015 registers. Staff would check those calculations and advise the Board accordingly – see now below.

[NB: post-meeting note – the briefing estimated that using June 2016 registers instead of the December 2015 registers would give London two more seats (from 68 to 70); the South West would have one more (53 to 54); Northern Ireland one fewer (17 to 16); and Scotland two fewer (53 to 51)]

4.3 Paras 2.3 – 2.8 – **Modernising Electoral Registration Programme (MERP) and pilots** – the Board heard in more detail the work that was being done with the Cabinet Office to work through programme planning and governance issues. The last two weeks had seen some welcome improvement. But if this trend did not continue, and the effectiveness of the programme was thought to be at risk, we would raise our concerns in the appropriate quarter. Any letter of concern would be circulated to the Board.

4.4 In terms of the wider civic society and social engagement agenda promoted by the new Minister, these were early stages but there appeared at present to be a disinclination by civil servants to look at work we had done in this area.

4.5 Programme 3 – **EU Referendum** – the Commission’s report on the EU Referendum had been published the previous day, to positive coverage. KJ would keep the Board informed of any response to our key recommendations in future Updates. A proposed round table where we and the UK Statistics Authority would invite the Advertising Standards Authority, Ofcom and the
Committee on Standards in Public Life to consider how to contribute to future debate about a “truth commission”, was noted with interest.

4.6 Programme 4 – PEF Development – aspects of projects were highlighted which would support earlier Board decisions (for example, standardisation of political parties’ Statements of Account, agreed by the Board but delayed for a number of reasons, could be aided by a regulation specifying the type and form of information to be submitted). Development of PEF Online, a new project workstream, would enable the system to better fit current requirements and be easier for users to access and use. This would have cost implications, which would be assessed.

4.7 Programme 5 – Strategic Review – since the time of writing, when there had been 60 consultation responses from external stakeholders, KJ reported that that figure had now risen to 120. Some 70 staff had attended the workshops offered. CB confirmed that the Pickles review on electoral fraud would form part of the input.

4.8 Para 6.2 – Scotland – the further oral update on Scottish Parliament discussions on electoral matters reported that:

- Scottish Government intended to publish for consultation a draft Referendum Bill, to be ready for introduction should they conclude that independence was best to protect Scotland’s interests in the EU. This was imminent, and press comment referred to within the parliamentary year.

- Scottish Government also intended to consult on the new powers in the Scotland Act 2016 regarding elections, and this was likely to take place sooner rather than later.

- An order amending the rules for the May 2017 Council elections would be finalised soon and placed before the Scottish Parliament.

- JMcC and the Head of Electoral Commission Scotland were due to meet Derek MacKay, Cabinet Secretary, Finance and Constitution, on 15 September, after which they would know more. They would also take the opportunity to raise the issues in the Scottish Parliament May 2016 report and the Law Commissions’ recommendations.

4.9 Para 6.13 – investigations update – a confidential update was provided, to be summarised separately in a confidential minute.

Agreed: That the question of validation of software and systems increasingly used for many aspects of elections be included in work on modernising elections.
5 Chair’s and Chief Executive’s meetings (EC 73/16)

5.1 JW reported on a useful meeting with Chris Skidmore MP, Parliamentary Secretary, Cabinet Office, on 3 August. She and CB had taken the opportunity to raise the risks of duplication of work (see also 4.4 above).

5.2 A meeting with two of the London Borough of Tower Hamlets interim Commissioners, including Max Caller, former Electoral Commissioner, enabled JW and AS to set out fully our current work on electoral fraud, and to discuss our recommendation for ID in polling stations.

5.3 CB and BP met a government regulatory specialist on 24 August and heard how other regulators were reviewing and transforming their role, and the government’s view of the regulatory sector. This was timely in relation to the strategic review.

Noted.

6 May 2017 polls – public awareness (EC 74/16)

6.1 EH introduced the paper, highlighting the fact that it would be the fourth public awareness campaign which had been run since the introduction of online electoral registration in Great Britain. Partnership working had proved extremely successful, and we would be looking for another media opportunity along the lines of Gogglebox and Hollyoaks. Much of the core material for the three distinct areas (England, Wales and Scotland) would be common to all three, and then tailored for national circumstances. There would be a micro-campaign for service voters.

6.2 CW underlined the fact that the iterative nature of campaigns enabled us to build on previous successes and refine them in the light of lessons learnt, with the aim of extending our reach and effectiveness. There was a continual process of checking back to ensure that changes had been made where experience had suggested it. With partners, he noted that there was considerable activity at the front-end to contact and build relationships, and bring people on board. The focus then shifted to maintaining those relationships on a light-touch basis.

6.3 Points touched on included:

- the relatively high cost of the Scotland campaign (due to the fixed costs of the pamphlet against a small population and geographical spread, and also to these being the first elections for the newly lowered voting age)
- The success of the EU Referendum neon sign, its visual appeal, high recognition and adaptability, and whether we could come up with an
equivalent. CW mentioned that we had asked our media agencies to see whether it worked equally well in all formats, and if not, how to overcome that.

- Registration information in booklets leading to (problematic) repeat registrations, and taking particular care (in the absence of an on-line look-up of the sort we advocated) with wording in the booklet to avoid replicating the problem
- JMc was pleased to see the additional measures to tackle the peculiarities of the two different voting systems in Scotland and was interested to see how past experience had informed our approach this time
- The need for stretching but realistic targets

Agreed: That, noting and incorporating as necessary points made at 6.3 above:-

(a) The proposed approach to public awareness for the May 2017 polls be approved as set out in the paper, including the budget;

(b) The outline content of our information booklet for the Scottish local government elections be approved; and

(c) The intended approach to planning for a possible UK Parliamentary General Election in May 2017 be noted and endorsed.

7 The Commission as a Prosecutor (EC 75/16)

7.1 BP set out the background to the paper, and outlined the development of the Commission’s regulatory and sanctioning powers. This began in 2000, when there was early caution about the arrival of a new political regulator, and at a time when it was unusual for many regulators to prosecute. In 2007 a Committee on Standards in Public Life report criticised the Commission for not being a sufficiently effective regulator and this gave rise to recognition of the need for greater investigatory powers and civil sanctions, which in turn was given life in the form of the Political Parties and Elections Act 2009. Meanwhile, then as now, for various reasons, attempts to encourage the police to prosecute had met with no success, and of the 80-plus criminal offences in PPERA, none had ever been prosecuted. One of the reasons for this could be that the police were reluctant to venture into the realm of politics.

7.2 The PPE Act 2009 was a significant milestone, and the investigatory powers it conferred were fully consistent with those of a prosecutor. Sanctions were greatly increased, but still modest in relation to the offences.
7.3 During recent years it had become increasingly common for regulators to prosecute their cases.

7.4 The proposals in the paper were primarily for England and Wales, as Scotland had a different judicial code, with investigations being dealt with by the Procurator Fiscal. However, AC suggested that if pursued, any proposals should with the necessary care cover Northern Ireland, too. BP further drew the Board’s attention to the fact that the proposals concerned political finance, rather than Representation of the People Act (RPA) 1983 offences. Any proposals would be brought back to the Board before formal external consultation.

7.5 LE then outlined the regulatory gaps that becoming a prosecutor would fill, and the types of offences which would be covered, such as failing to respond to statutory notices, impermissible donations, and false declarations. It would increase our range of enforcement tools, and enable us to differentiate better between different ends of the offence scale (from unfortunate but inadvertent, to criminal intent). We would continue to work just as closely with the police as we did currently.

7.6 Proposals would be underpinned by a published Prosecutions Policy behind which would be a strategy setting out our approach, and by clear, transparent enforcement and sanction processes – an extension of our existing processes, rather than new ones. The policy would align with the Code for Crown Prosecutors (provided by the CPS), and the CPS’s published agreement with a range of prosecutors.

7.7 The proposals had the in-principal support of the CPS and the National Police Chiefs’ Council.

7.8 Resource implications would include staff training (of the sort used by the police) on conducting investigations. We would learn from the experience of the police. Our approach to building our own prosecutions and prosecuting experience would be set out in our strategy, building up in a managed way to avoid over-extending ourselves.

7.9 The ability to prosecute had in other fields helped regulators drive up standards, often without needing to go to court but merely by having the ability to do so if needed.

7.10 In discussion, the following was noted:

- Prosecuting would mean a difference in sanctioning powers (access to the much greater sanctions available through a court) – which could include confiscation orders, unlimited fines (ie no arbitrary cap), and in extreme cases up to a year in prison. However, civil sanctions would continue to be the mainstay of our enforcement policy.
• Steps to encourage police to prosecute had been taken over a period of time and at high level (including the MPCC, and the DPP), with no success

• Prosecutions could be of either organisations or individuals

• The early days of prosecuting cases would be carefully managed, and the rationale agreed as part of the under-pinning strategy (eg by number, complexity, type)

• Accusations of bias (why pursue one and not the other) were a risk, as now, and accountability and transparency in our policy and our communications would be central to handling that

• Resources were a risk, and also a legitimate consideration in deciding how to limit the number of cases we took on – one regulator recently, for example, planned for two cases per year

• The regulated community might be more vigorous than many in defending their corner because of what was at stake, and might engage in escalation by appeals

• If a case were escalated, costs would need to be managed

• Governance arrangements for these decisions would be part of any scoping exercise

• We would need to carefully manage expectations

• Raising the existing £20,000 cap on fines would be beneficial

7.11 Further points were: it was understandable that the police would be reluctant to prosecute these cases, as their framework for what to pursue and priorities were so different. That left a regulatory gap, and if we did not fill it, who would? Many of the risks raised during discussion were what we already faced as a regulator – the main change would be that we were adding to the remedies.

7.12 It was agreed to proceed as recommended and scope the proposals, bearing in mind the current gaps in regulation, the importance of maintaining and improving public confidence in the regulation of political finance, and the prospect of bringing about greater accountability and compliance. A number of points raised during discussion would be dealt with at the next stage, which would form part of the strategic review. That would provide an opportunity to inform the Speaker’s Committee.
Agreed: That:

(a) Subject to (b) below, a project to scope out the development of the capability to conduct criminal investigations and prosecutions of PPERA offences where civil sanctions were either not available or in certain cases, not appropriate, be approved, together with a strategy for when we would pursue prosecutions, to be considered as part of the strategic review; and

(b) Points made during discussion be covered in the above work, namely, inclusion of Northern Ireland in the proposals, further exploration of risks, escalation of cases/management of resources and expectations, and the governance arrangements for prosecutions; and

(c) The matter be brought back to the Board in the new year for discussion and agreement about whether to take this work to the next stage.

8 Monitoring Higher Risk Electoral Fraud Areas (EC 76/16)

8.1 TH1 set out the background to our work. Over time we had gradually done more to support and monitor electoral fraud prevention and detection in areas considered at higher risk of allegations of electoral fraud. Since 2013 we had proactively moved beyond guidance, advice and support in response to public and political concerns, while recognising that public perception and concern significantly overstated any available evidence about the scale of electoral fraud. However, it was acknowledged that perception of fraud was a problem in itself.

8.2 We had targeted our efforts, researched and studied to understand what the risk factors were, and the work, plans and activity needed to respond and as far as possible prevent it.

8.3 Another major area of change was the way we communicated what we had done, and how we targeted areas. There were pros and cons of focussing on particular areas (the impact on those areas of being named, while recognising where the work needed to be done), and we had been adapting to that as sensitively as possible. Considerable work had been done in those areas by Returning Officers, police, and at national level by agreeing with political parties a Code of Conduct for candidates and campaigners. Securing follow-through with candidates and campaigners at local level proved more of a challenge for parties. The police were also constrained by the definition of offences, the need for the police and CPS to meet the public interest test, and competing pressure for resources between other policing priorities. Importantly, communication by police forces about their investigations was
sometimes too limited, and this was something we were taking up with them at the highest level.

8.4 TH1 invited feedback from the Board about areas where we could do more or less, or do things differently. A detailed response to the Pickles recommendations would be prepared for the next meeting.

8.5 In response to questions, TH1 gave an example of what we did to understand the risk of fraud in specific areas, which involved travelling to relevant areas and meeting key partners including the RO and police force single points of contact to jointly assess risk and evaluate their plans. CB added that there were very good examples of local, focussed partnership work to tackle fraud, with our support and guidance, and it was disappointing to know that we were criticised for being passive when this was far from the case.

8.6 In relation to the question of what we should do more or differently, the following were suggested:

- Identify what on Pickles’ list we would do next, and cost all the suggested actions for the Commission
- Review the ‘at risk’ list for which local authorities could be removed, and consider that the downside of lists is that they could divert attention from problems happening elsewhere

8.7 TH1 suggested that one option might be to carry on doing much of the same work, but talking about it differently, or making the list less public. However, there was still significant intrinsic value in saying what we were doing, and it was recognised that openness was best. If local partners owned and managed communication locally, it would also have a significantly different feel and impact.

8.8 Answering a point about how we could deal with factors beyond our control, CB referred to static and dynamic risk, and our ability to recognise and respond with a properly differentiated approach. How we engage with local authorities and the role of performance standards would be part of the strategic review.

8.9 JW spoke of the importance of communicating what we were doing both as a deterrent, and because it helped quantify and aid understanding of the problem. DH suggested that opening our message with a reassurance that fraud was not widespread could be counter-productive and tended to belie the considerable work we were doing. Making reassurance our first point would incline people to think that we could not possibly take fraud seriously, or understand the problem. It prevented an appreciation of just how seriously we did take it, and how much we were doing. He subsequently referred to the problem of the ‘dark figure’ of fraud – the unknown extent of fraud beyond the available data on allegations made to the police – which might feed the perception of fraud, and suggested that an audit of available research should
be done. TH1 pointed out that we had assembled more evidence and research about electoral fraud than perhaps any other electoral body in the world.

8.10 CB added that we needed a better understanding of the misconceived perception of fraud, to know how best to tackle it.

8.11 In relation to work being done in certain communities, there were good educational initiatives (focussed for example on women, or on the Biraderi, or clan-based, system, including the Commission’s own research), and ROs locally were sharing best practice more widely.

8.12 However, it should be noted that the body of evidence we had assembled on electoral fraud showed that voters were the victims of fraud, and that the perpetrators tended to be campaigners, including those who exploited cultural traditions to commit fraud. The real challenge was for political parties to seize the problem and make some headway with it, which they had so far struggled to do.

8.13 AC pointed out that there was very little about fraud at the point of registration. TH1 reassured the Board that risk factors relating to electoral registration fraud post-IER were taken into account in our assessment and monitoring of local areas, and were also covered in our comprehensive guidance for EROs and police forces.

8.14 Anyone wanting to observe an Integrity Round Table or the annual police force training seminar was invited to advise CB who would try to arrange it.

Agreed: That, pending the preparation of the Board paper to October responding to the Pickles’ Review recommendations:-

(a) We continue to monitor the planning and delivery of fraud prevention and detection activities in areas where there was a higher risk of allegations of electoral fraud, and continue to communicate our work publicly ahead of electoral events to provide assurance for voters and campaigners;

(b) We keep under review the areas where there was a higher risk of electoral fraud, to ensure our resources – and those of police forces, EROs and ROs – were focused in the right places; and,

(c) The above-mentioned Board paper include consideration of risks of responding (or not responding) to any specific Pickles recommendations, any associated costs, an indication of those that would require legislation, and responses to points raised during discussion about messaging, reviewing the lists of areas considered to be at higher risk of allegations (and the criteria for removal of named areas), and fraud at the point of registration post-IER.
9  Quarter 1 Performance and Finance Report (EC 77/16)

9.1  KT thanked those Commissioners who had been involved in commenting on the quarterly report format for their input, and reminded the Board that further work was being done on Key Performance Measures but that the existing KPMs would remain in place for this year.

9.2  TH asked for the short- and long-term absence to be included, as had been discussed (so that the distorting effect of one or two long-term absences could be separated out and a truer overall picture seen).

9.3  JW said that the report was a great improvement, and thanked Commissioner contributors and the Finance and Planning teams for their work.

Agreed: That, subject to the separation of short- and long-term sickness referred to above in the next quarter’s report, this quarterly report be noted.

10  Draft minutes of 30 June Remuneration and HR Committee (EC 78/16)

10.1  TH noted that while the reasons for delays in the HR Plan were known and understood, it would now be reported regularly in the Chief Executive’s Update as a way of ensuring regular oversight and monitoring. It had also been identified as a risk for the register. The arrival of the incoming Head of Human Resources would be welcomed.

Noted.

11  The Road to PPERA, and how we got there (EC 79/16 – presentation, TABLED)

The presentation was noted and discussed. NB: the presentation, notes and a further reading list were circulated to Commissioners after the meeting.

12  Meeting wash-up (Commissioners only)

The meeting ended at 1.30 pm.

_________________________________________ Chair