

Committee on Standards in Public Life

# Review of The Electoral Commission



Eleventh Report  
Cm 7006

## **The Seven Principles of Public Life**

### **Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.



Eleventh Report of the Committee on  
Standards in Public Life

*Chairman: Sir Alistair Graham*

# Review of The Electoral Commission

**Report**

Presented to Parliament by the Prime Minister  
by Command of Her Majesty  
January 2007  
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# *Committee on Standards in Public Life*



**Chairman:**

Sir Alistair Graham

January 2007

*Dear Prime Minister*

I have pleasure in presenting the Committee's Eleventh Report which deals with a review of the mandate, governance and accountability of The Electoral Commission, which was established in 2000 following recommendations in this Committee's Fifth Report in 1998.

The establishment of an independent Electoral Commission by your Government in 2000 was very welcome and, in the view of many commentators, overdue. We continue to believe that the Commission is a necessary and, if effective, vital part of the institutional architecture needed to support and maintain our democratic system. However, the evidence received by the Committee during our inquiry indicates that there has been a reduction in confidence in issues that underpin two key pillars of our democratic process: the integrity of our electoral administration system; and the framework for the regulation of political party funding; both of which in the Committee's view should have been the core tasks and priorities of The Electoral Commission. This has not been the case to date.

Confidence and consent in our democratic processes is the bedrock on which all public office is built. We believe that to restore confidence in these two key pillars we need an Electoral Commission that will, in future, operate as a tightly focussed, independent, strategic regulator concentrating on these two core tasks and with the necessary leadership, governance, skills and experience to perform them effectively.

We have therefore set out a package of inter-related recommendations to refocus radically the mandate of the Commission on these two core duties and to provide the framework that will enable it to deliver this successfully. In light of the core role we envisage the Commission playing as the regulator of electoral administration we have also addressed issues regarding the integrity of the electoral process itself, and recommend that a decision be made now to move to a system of individual voter registration after the next general election.

Our proposals also include a strengthening of the governance of the Commission, by the inclusion of commissioners and staff with contemporary experience of politics and the political process, and also improvements to the transparency and effectiveness of the accountability of the Commission to Parliament, principally through the Speaker's Committee.

Many of our recommendations will require legislation, which we propose should be introduced in the next parliamentary session, and are therefore directed at the Government. Some others can be achieved without legislation and are therefore directed at the either The Electoral Commission itself, or the Speaker's Committee of the House of Commons.

We are clear however that implementation of these measures will not, on their own, be sufficient to restore confidence. Government, Parliament and political parties all have their own critical role to play.

Finally, the Committee has kept in close touch with Sir Hayden Phillips who is conducting the review of political party funding on your behalf. We are confident that our proposals regarding the regulatory role of the Commission will be complementary and supportive to any changes to the regulatory framework he proposes in his final report to you.

My colleagues and I commend this report to you. We believe that the health of our democratic processes would be greatly enhanced by the adoption of our recommendations.

*Yours sincerely*  
*Alistair Graham*

**Alistair Graham**

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# EXECUTIVE SUMMARY AND LIST OF RECOMMENDATIONS

## 1. Introduction

- 1.1 The Committee on Standards in Public Life was established in October 1994 by the then Prime Minister, the Rt Hon Sir John Major. It was given wide terms of reference to examine current concerns about the standards of conduct of all public office-holders. The Committee's terms of reference were extended in November 1997, by the present Prime Minister, the Rt Hon Tony Blair MP, to include issues in relation to the funding of political parties. The Committee has published ten reports covering virtually all public office-holders and the funding of political parties.
- 1.2 The Committee's Eleventh Inquiry: *A Review of The Electoral Commission* began in February 2006 with the publication of an Issues and Questions Paper [1]. Since then the Committee has carried out a thorough process of consultation and analysis, taking oral evidence from 83 witnesses and receiving 78 submissions. In addition we have commissioned two pieces of supporting research; and Committee members visited five local authority electoral administration offices and a small group undertook a study tour of comparable institutions in Canada and the USA.
- 1.3 This, our Eleventh Report, sets out the Committee's findings in full and the associated CD-Rom includes all of the evidence, written and oral as well as the research reports and a summary of the overseas study tour. This executive summary provides an overview of the main findings and a full list of the recommendations we have made.
- 1.4 The Electoral Commission was established as an independent statutory body on 30 November 2000, following the recommendations of the Committee's Fifth Report, *The Funding of Political Parties in the United Kingdom* [2] and the subsequent commencement of the Political Parties, Elections and Referendums Act 2000 (PPERA) [3].
- 1.5 The mandate of The Electoral Commission has an impact on key issues such as electoral administration, conduct of elections and standards of propriety in financing political parties. Each of these issues has been the subject of recent public concern, and each affects the way people engage in politics and the broader question of political legitimacy.
- 1.6 For these reasons the Committee believed it was important to ask now, some five years after its creation and following the second general election to be held since its establishment, whether the Commission's current mandate, governance arrangements and accountability framework are appropriate for the purpose required of the Commission [1].
- 1.7 This inquiry is not therefore a review or stock-take of how or whether the recommendations in the Committee's Fifth Report have been implemented by the Government or others. Rather, it looks forward to ensuring that The Electoral Commission can play its important role in delivering the outcomes required from the regulatory frameworks for elections and political parties.
- 1.8 The inquiry took place against a backdrop of continuing public concerns about: the arrangements for voter registration; postal voting on demand, and the link to a number of high-profile legal cases on electoral fraud; and allegedly circumventory loans to political parties with allegations that these were connected to the awarding of honours. The latter influenced the Prime Minister's decision in March 2006 to ask Sir Hayden Phillips to undertake a review of the funding of political parties, which has yet to report [4].
- 1.9 These concerns directly relate to two key pillars of our democratic system that were constantly referred to during our inquiry and have formed the principles against which the standards we wish to see achieved in the areas of interest may be measured:

**1.10 Free and fair elections.** Effective electoral administration underpins our democracy. There cannot be democracy without elections and elections cannot be free and fair unless electoral rules are fair and coherent, unless they are properly administered and unless they are actively enforced [5]. Core functions that must be effectively undertaken to achieve this are:

- ensuring that everyone who is entitled to vote is included on the electoral register before an election and that everyone registered can exercise their vote, in secrecy if they wish. The right to register and the right to vote is an equal right for those who are eligible and should be kept as simple as possible and any barriers kept to a minimum whilst ensuring that;
- everyone not entitled to vote is excluded from the register and from voting. Voting fraud should be minimised by avoiding rules that facilitate such fraud and by proactive deterrence and enforcement; and
- determining electoral boundaries in a way that is fair to electors, non-partisan, immune from political interference and up to date with population movements [6].

**1.11 Healthy, competitive political parties.** Political parties are essential to democracy. We elect a Government through a parliamentary democracy which is not about voting on single issues but about a wide range of important choices and priorities [7]. The way in which political parties are funded, and how those funds are expended, are therefore a matter of legitimate public interest. People ask who is paying? And how much? In return for what? Is it British or foreign money? [2]. A regulatory framework for the funding of political parties has therefore been required to eradicate the grounds for criticism and suspicion which leads to public scepticism, and damages the political parties. The successful implementation of the regulatory framework, however, depends upon the approach taken by the regulator who must:

- show courage, confidence and competence in pursuing an independent and impartial approach to ensuring compliance with the regulations. It must accept that it will not always be popular with the parties and that pressure, overt and covert, will always be applied in attempts to influence its approach. It must use a risk-based approach to decisions and actions<sup>1</sup>; and, at the same time
- recognise that political parties are much more like large voluntary organisations than organisations in the public or private sector usually subject to regulation. Behind each career politician stands a regiment of dedicated voluntary party workers; even the local treasurers and election agents (who are subject to regulation) of the largest parties are mostly volunteers. The approach of the regulator must be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure.

**1.12** It is within this framework that the Committee has considered the role of The Electoral Commission.

## **2. Overview**

**2.1** The Electoral Commission is a necessary and, if effective, vital part of the modern institutional architecture needed to support and maintain our democratic system. Its creation five years ago was, in the view of many, overdue and occurred long after many comparative democracies created similar institutions.

**2.2** Since its creation the Commission has been welcomed by many electoral administrators and some politicians. Its expertise, guidance and role as a central point on electoral issues has been helpful and, without doubt, its presence has been a significant factor in highlighting the importance of electoral issues to the democratic process. All this is to be welcomed.

<sup>1</sup> Which, in this case, means where the risk of non-compliance or lack of clarity in the regulations could lead to a significant undermining of the confidence the public and political parties have in the regulatory framework.

2.3 However, in terms of the principles that are set out in paragraphs 1.10 and 1.11 above, are the **outcomes** in the period since the Commission's formation, highlighted in evidence during our inquiry, point to substantive matters of concern:

- a reduction in the confidence of the integrity of the electoral administration process. This has been caused, in part, by the introduction of postal voting on demand and subsequent incidents of electoral fraud and perceptions that this may be increasing. Added to this are concerns about the accuracy and comprehensiveness of the electoral register, and the significant variations in standards of electoral administration across the country; and
- a reduction of confidence in the framework for the regulation of political party funding and campaign expenditure, caused in part by the controversy surrounding large loans taken out by the main parties and undeclared at the time of the last general election.

2.4 Responsibility for this lowering of confidence must not be laid solely at the Commission's door. It can be argued that some changes were made against its advice, or without the safeguards they had identified and is a result of its advisory rather than regulatory role in relation to electoral administration. It can also be argued that the Commission was merely operating in the regulatory role it understood Parliament had prescribed for it, and that it is not responsible for decisions the parties themselves took in relation to their own finances.

Nevertheless the evidence received during this inquiry suggests that:

- the very wide breadth of the Commission's mandate has led to a concentration on issues such as policy development and voter participation work at the expense of a more contentious proactive regulatory and advisory role;
- that this breadth of mandate introduced potential conflicts between a clear focus on ensuring the integrity and effectiveness of the electoral process and encouraging

voter participation, combined with a wish to work closely with government on its electoral modernisation programme;

- the Commission has not fulfilled its role as a regulator of party political funding and campaign expenditure. Uncertainty over its statutory role (in PPERA) combined with a degree of timidity, has led to an administrative rather than a proactive risk-based regulatory approach. This has contributed to what the Committee regards as regulatory failure and has undermined the confidence of the public and political parties in the regulatory framework; and
- disproportionate restrictions (in PPERA) designed to protect the independence and impartiality of the staff of the Commission, have contributed to a lack of necessary expertise within the Commission for it to perform its role effectively.

2.5 The Committee's recommendations have been made to ensure that The Electoral Commission will operate as a tightly focused, independent, strategic regulator with the necessary leadership, governance, skills and experience to enhance the integrity and effectiveness of our electoral processes.

### 3. Mandate

3.1 The Commission's current mandate is too broad, diffuse and potentially conflicts with the core tasks we believe it should be in business to deliver. We therefore recommend that its statutory mandate should be amended and refocused so that the Commission's two principal statutory duties are as regulator of political party funding and campaign expenditure; and as a regulator of electoral administration; with the stated aim of ensuring integrity and public confidence in both. We recommend that certain current statutory duties of the Commission are removed or significantly curtailed so it can focus on these fundamental roles.

### *Regulation of political party funding and campaign expenditure*

- 3.2 In order to ensure that the Commission has the necessary clarity of mandate and arrangements to ensure a proactive risk-based approach to the regulation of political party finance, we make a number of further recommendations, most significantly:
- removal of any uncertainty about the regulatory role Parliament requires the Commission to play – it should no longer be required in statute to “monitor” but to “regulate”;
  - establishment of a compliance unit within the Commission, separate from the administration of the regulations, which can take prompt, proportionate, investigative action;
  - adoption by the Commission of the practice of issuing advisory opinions on areas of uncertainty and lack of clarity in the law, based upon sound competent legal advice; and
  - the introduction of a system of financial penalties which can be applied by the Commission for non-compliance, with an appropriate appeal mechanism. This would supplement the existing criminal sanctions that would continue to apply for the most serious breaches.
- 3.3 However, these measures on their own will not produce the necessary transformation of the Commission to a strategic risk-based regulator. This will also require leadership, a change of culture, and staff with the necessary specialist skills and experience to perform this role. The recommendations that result from Sir Hayden Phillips’ review may also add to the Commission’s regulatory tasks in this area and the Commission must consider carefully how best it can effectively deliver these. Where, for example, there may be a requirement for a programme of risk-based audit, the Commission must consider contracting this out to an organisation such as the National Audit Office, which already has the skills and experience in this field.

### *Regulation of electoral administration*

- 3.4 We have aimed to build upon the measures contained in the Electoral Administration Act 2006 which, for the first time, provided the Commission with a regulatory role in respect of electoral administration through the responsibility to set performance standards for local authorities. The Committee recommends that, in light of the significant concerns about the variation in standards of electoral administration, this role is strengthened and deepened. Most importantly we recommend the creation of **regional electoral officers**, as statutory office-holders in each of regions in England, and in Wales and Scotland. Their responsibility will be to monitor and report on performance standards and, in co-operation with local authorities, to drive up standards of electoral administration in each region. In extreme cases, where there has been a failure to agree or to implement measures for improvement in a particular local authority, the regional electoral officers, via electoral commissioners, should be able to request the Secretary of State to exercise powers of direction over particular electoral officers.
- 3.5 The regional electoral officers are therefore critical to the regulatory framework that we propose for electoral administration. Equally important will be the performance standards themselves which must be proportionate and based on outcomes, not process. We believe the Commission should develop these standards working closely with local authorities and also with the Audit Commission, which has extensive experience in this area. Further, the Commission, for this part of its mandate in England should be included in the ‘family’ of regulators that will come under the Audit Commission’s ‘Lead Inspectorate’ framework.
- 3.6 In light of the Commission’s regulatory role in electoral administration we have concluded that to enable a clear focus and to avoid potential conflicts, the responsibility for directing funding of electoral administration and of elections should remain with central government. However, levels of funding provided for electoral administration should form part of the Commission’s considerations when reporting on the performance of individual local authorities.

## **Electoral Boundaries**

- 3.7 The Committee agrees with The Electoral Commission that it should withdraw from all boundary-setting work. In reaching this conclusion the Committee has been guided by “if its not broken then don’t fix it”; and the current process has been shown to be impartial and independent. Nor do we believe it is necessary for the Commission to have an oversight role concerning the boundary commissions. However, we do believe that there are significant benefits from having joint secretariats of the respective parliamentary and local boundary commissions in England, Scotland, Wales and Northern Ireland.
- 3.8 During the inquiry the Committee received strong evidence pointing to deficiencies in the rules governing the review of parliamentary boundaries and the length of time such reviews take. These are serious problems which can undermine our electoral system and must be addressed. Following the recent completion of the fifth general review, the opportunity exists now for a review of the rules that could be implemented in time for the sixth general review due around 2012. We recommend that the Speaker’s Committee should commission such a review.

## **Increasing participation in the democratic process**

- 3.9 The Commission’s statutory duty – supported by a ring-fenced £7.5m per annum budget – to increase participation in the democratic process does not, in the Committee’s view, support or fit with its core regulatory tasks. It is clear that the Commission has performed this role with great professionalism and its work is widely respected by experts in this field. However the evidence of any impact of this work, in terms of increased turnout at elections, is at best mixed. Some have argued there has been negligible impact. The Commission’s own work suggests that it is competitive political parties that motivate people to exercise their right to vote. We therefore recommend that this broad statutory duty be removed from the Commission. However, we recognise the importance of creating effective public information campaigns and publicity on the mechanics of the electoral process. The Commission should retain this duty as it is clearly allied to its core role.

## **Policy development and advice**

- 3.10 In the Committee’s view, the Commission’s responsibility to develop policy on electoral matters sits uncomfortably and is potentially in conflict with its core role as a regulator of electoral matters. The Department of Constitutional Affairs now has the capacity to develop electoral policy on behalf of the Government which is wholly appropriate. This responsibility should therefore be removed from the Commission’s mandate. We strongly believe, however, that the Commission should continue to advise on the suitability of existing and new electoral legislation but in respect of its core duties – that is, to ensure integrity and public confidence in the electoral process.

## **4. Governance**

- 4.1 Striking the right balance between governance arrangements that ensure independence and impartiality, and the need for contemporary experience and knowledge of the sector, is a challenge faced by all regulators. But getting the right balance is critical. It will help secure the confidence of the public and those being regulated, demonstrate independence and impartiality, and ensure the regulator’s competence to fulfil its mandate.
- 4.2 The restrictions governing who can be an employee of the Commission or become an electoral commissioner has, in our view, led to a shortfall in experience and knowledge of the contemporary political process in the Commission. Evidence gathered during this inquiry shows that this has reduced the confidence of political parties and politicians who are subject to regulation, and this in turn has had an impact on the Commission’s effectiveness. We have therefore recommended a relaxation of these restrictions that will:
- avoid direct conflicts of interest;
  - maintain the independence and impartiality of the Commission;
  - retain the unified nature of the board of commissioners, also taking account of the devolved administrations;
  - enable the appointment of staff who have direct contemporary experience and knowledge of politics and political parties; and

- enable the appointment of a minority of commissioners who also have direct contemporary experience and knowledge of politics and political parties.

4.3 We also believe that the chair and commissioners should now play an explicitly non-executive role in their governance of the Commission. Under the chair's leadership, the commissioners must now assume collective responsibility, as non-executive board members, for setting the Commission's overall strategy and overseeing its effective delivery by the executive team. Finally, we recommend that the Speaker's Committee should oversee the process of appointing the chair and commissioners, and that these appointments are made through an open, competitive and independent process in line with the requirements of the Commissioner for Public Appointments.

## 5. Accountability

- 5.1 Establishing effective accountability arrangements for The Electoral Commission presents a particular challenge. As a mechanism the Speaker's Committee does, in principle, strike the right balance between holding The Electoral Commission to account for the use of public money in fulfilling its statutory functions and protecting its independence and impartiality from possible undue influence for partisan political electoral advantage.
- 5.2 However, evidence and experience indicates that the Speaker's Committee could operate more effectively if its deliberations were made more transparent and if more resources were made available to support it. We have made recommendations that we believe will enable this.
- 5.3 The Committee also considers that more formal arrangements should be put in place for The Electoral Commission to give a wider account of its activities to Parliament. These would significantly improve the engagement between the Commission and Members of Parliament. The Committee believes that this can be achieved if the Constitutional Affairs Select Committee (CASC) were to become the main mechanism through which the Commission can account for its performance to Parliament; and also by holding regular parliamentary debates about the Commission's work.

## 6. Integrity of the electoral process

- 6.1 Maintaining integrity in the electoral process is central to the success of the Commission's work. During the inquiry we received evidence regarding some well publicised concerns about the electoral process including:
- the introduction of postal voting on demand, the subsequent piloting of all-postal voting and the most recent changes to postal voting;
  - incidents of electoral fraud and perceptions that this may be increasing; and
  - the accuracy and comprehensiveness of the electoral register, and the system of electoral registration itself.
- 6.2 We recommend that in future The Electoral Commission must spell out, clearly and publicly to government and Parliament, if proposed changes to electoral law have the potential to undermine confidence in or the integrity of the electoral process.
- 6.3 Electoral fraud is a serious matter and the Committee believes that the political parties and Parliament should be continually vigilant about any threats to our democratic processes. Evidence presented to the Committee, and cases that have gone to court, indicate that electoral fraud is, if not entrenched, then a serious problem in certain groups, and affecting particular communities. We believe it is essential for The Electoral Commission to seek to minimise this problem as a key part of its regulatory approach. Regional electoral officers, working closely with electoral administrators, will have a critical role in identifying weaknesses in current practices and improving standards of fraud prevention and detection.
- 6.4 Finally, the system of electoral registration is perhaps the most critical element of the electoral administration process. It is therefore essential that the electoral register and the system of electoral registration retains the trust and confidence of both the electorate and political parties. There appears to be a consensus among political parties, The Electoral Commission and most electoral administrators that individual registration, as opposed to registration completed and signed by one named person in the

household, is likely to be a more accurate means of registering eligible voters. Individuals would then be responsible for their own registration in order to vote. There are however differences of view as to the pace at which such an important change should be made. We recommend that the decision should be made now to introduce a system of individual voter registration that includes an additional, objective, personal identifier, immediately following the next General Election or by 2010 at the latest.

## 7. Resources

7.1 In the current financial year (2006/07) the Commission is expecting to spend about £27.4 million under its current statutory mandate [8]. In the Committee's view, savings made from our proposals to remove or significantly curtail a number of its current statutory duties will offset the additional resources required to implement our recommendations for a strategic and proactive regulatory approach and the new framework of regional electoral officers. Clearly where functions continue but are to be transferred, such as for English local government boundary reviews, then the expenditure will also transfer, although we anticipate some savings from joint boundary commission secretariats.

7.2 The budget for increasing voter participation, £7.5m per annum, will be freed up and could be used to help fund the introduction of individual registration. The evidence received on this issue firmly pointed to increasing voter participation as being principally the responsibility of political parties. However it is unlikely that political parties have the capacity to do any more specific work in this area than they do already. Therefore, the question of some limited public funding arises. This falls clearly to Sir Hayden's Phillips' review of political party funding, whose remit includes consideration of increased state funding of political parties. The Committee has alerted Sir Hayden to its conclusions in respect of the Commission's mandate on voter participation and no doubt he will consider this issue as part of his wider review.

## 8. Conclusion

8.1 An effective Electoral Commission is a necessary and vital part of the modern institutional architecture. Its core duties should be as a regulator to ensure integrity and public confidence in the electoral process and in the framework that governs the political party funding and campaign expenditure. Through a combination of deficiencies in its current mandate, that is too weak in some areas and too broad in others, combined with a lack of courage, competence and leadership in its regulatory and advisory approach, it has not successfully performed these core duties. This has contributed to a loss of confidence by the public and political parties in the integrity of both the electoral process, and in political party funding and campaign expenditure. As to the former, the Commission should have shown greater focus and courage in alerting the risk to the integrity of the system from legislative changes, principally postal voting on demand. On the latter, its passive regulatory approach has led to regulatory failure on the issue of loans to political parties.

8.2 The Committee has therefore made a range of recommendations designed to refocus the mandate of the Commission on these two core duties and to provide the framework that will enable it to deliver this mandate successfully. Implementation of our recommendations will not, however, on their own be sufficient to avoid the problems that have arisen in the last five years.

- First, government, Parliament and political parties have a duty to heed and consider with care the advice the Commission will give on the potential impact of changes to our electoral law upon the integrity and public confidence in the electoral process; and
- Second, political parties also have a responsibility, not just to endeavour to comply with the letter of the regulatory framework, but also with the spirit of transparency that underpins it. The regulatory framework was established to help eradicate grounds for suspicions and criticism about the way they are funded; it was agreed by all parties and passed by a parliament made up of representatives of all major parties. Public scepticism is justified if parties are subsequently seen to avoid or circumvent the principle of transparency.

## References

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2. Committee's Fifth Report, *The Funding of Political Parties in the United Kingdom* (Cm 4057- October 1998).
3. Political Parties, Elections and Referendums Act 2000, c41.
4. The Review of the Funding of Political Parties: Terms of Reference available from [www.partyfundingreview.gov.uk](http://www.partyfundingreview.gov.uk).
5. Dr Michael Pinto-Duschinsky, Brunel University, written evidence to the inquiry 41/1.
6. Dr David Butler and Professor Iain McLean, Nuffield College Oxford, opening statement to the inquiry 13/07/06.
7. *The Review of the Funding of Political Parties: An interim assessment*, Sir Hayden Phillips, October 2006.
8. The Electoral Commission, 2006.



# LIST OF RECOMMENDATIONS

CHAPTER 2: MANDATE		
RECOMMENDATION	MECHANISM	TIMEFRAME
<b>Overview: principal role of the Commission</b>		
R1. The mandate of The Electoral Commission as set out in PPERA should be amended and refocused so that it has two principal statutory duties: as regulator of political party funding and campaign expenditure in the United Kingdom; and as regulator of electoral administration in Great Britain with the aim of ensuring integrity and public confidence in the system of political party funding and campaign expenditure and in the administration and conduct of elections.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
<b>Regulation of political party funding and expenditure</b>		
R2. PPERA should be amended to make it clear that the Electoral Commission has a duty to investigate proactively allegations or suspicions of failures to comply with the regulatory framework. We recommend that the term “monitor” be replaced by “regulate”.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R3. The Electoral Commission should establish a compliance unit, separate from the administration of the regulations, which can take prompt investigative action, using the powers provided in PPERA following information received either externally or internally of possible breaches of the regulatory framework. If necessary the results of any investigation should be referred to the Crown Prosecution Service. Unless there is evidence of breaches of the law, other than PPERA, the Committee would question the need for the Commission to refer any such investigations to the police.	Electoral Commission	Within one year
R4. The Electoral Commission should ensure that the compliance unit has a robust and effective system for assessing the potential seriousness and potential risk to public confidence of any allegation.	Electoral Commission	Within one year
R5. The Electoral Commission should establish the practice of issuing timely advisory opinions, based upon sound and competent legal advice, on areas of concern or uncertainty about the practical interpretation of the relevant legislation.	Electoral Commission	Immediate
R6. The Electoral Commission should decentralise responsibility for monitoring and regulating campaign and constituency expenditure in Scotland, Wales and Northern Ireland to its regional offices.	Electoral Commission	Within one year

<b>CHAPTER 2: MANDATE (continued)</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
<b>Regulation of political party funding and expenditure (continued)</b>		
R7. The Government should consider introducing a system of financial penalties, with an appropriate appeal mechanism, that could be applied by the Electoral Commission for non-compliance with the regulatory requirements. Responsibility for prosecution for criminal offences should continue to lie with the Crown Prosecution Service.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R8. If the review being conducted by Sir Hayden Phillips results in greater frequency of reporting on donations, or other additional reporting requirements, the Government should consider a lighter reporting regime for very small political parties that have no representation at European, national, devolved or local level.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
<b>Regulation of electoral administration</b>		
R9. The posts of regional electoral officers (REOs) should be established in statute, accountable through the chief executive to the electoral commissioners, with the responsibility for monitoring and reporting on the performance standards of local authorities in their region.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R10. The standards of electoral administration must be maintained in every part of Great Britain. Regional electoral officers should be appointed for Scotland and Wales with the same status, responsibilities and accountability as for each region of England.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R11. The Electoral Commission should use its powers enacted in the Electoral Administration Act 2006 to establish, monitor and report on performance standards for electoral administrators in the areas of electoral registration, the conduct of elections and minimising electoral fraud.	Electoral Commission	Within one year
R12. The Electoral Commission should make public reports on their assessment of levels of performance of electoral administrators. In circumstances where it has identified and publicised unacceptably low standards, and where there has been failure by the relevant electoral administrators to agree to implement the necessary measures for improvement, The Electoral Commission should formally request the Secretary of State for Constitutional Affairs (Secretary of State for Scotland if electoral administrator is Scottish) to exercise his existing powers of direction contained in the Representation of the People Act 1983 over the said officers. In the event that any such request is declined then the Secretary of State should be required to report to Parliament on the reasons for his refusal to exercise the power.	Electoral Commission	Within one year

<b>CHAPTER 2: MANDATE (continued)</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
<b>Regulation of electoral administration (continued)</b>		
R13. The Electoral Commission should report to Parliament annually on standards of electoral administration, including any action it is proposing to tackle areas of underperformance in relation to electoral registration, the conduct of elections and minimising the risk of electoral fraud.	Electoral Commission	First Report during 2007/08 parliamentary session
R14. The Government should consider whether Northern Ireland should adopt these arrangements once they have been successfully established in the rest of the United Kingdom.	Government to consider legislative changes	Within three years
<b>Funding of electoral administration and elections</b>		
R15. The current funding arrangements for electoral administration and for elections should be retained. The Department of Constitutional Affairs should publish annually indicative levels of local authority expenditure allocated to deliver electoral services.	Government	Within one year
R16. The Electoral Commission should consider the level of funding provided for electoral administration as part of its monitoring and reporting on the performance of individual local authorities.	Electoral Commission	Within one year
<b>Electoral boundaries</b>		
R17. The Electoral Commission should no longer have any involvement in electoral boundary matters and the provision in PPERA to allow the transfer of boundary-setting functions to the Commission should be repealed.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R18. The Boundary Committee for England should become an independent body in line with local government boundary commissions in the rest of the United Kingdom	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R19. The Parliamentary Boundary Commission and local boundary commission in each of the four home countries should share joint secretariats.	Parliamentary Boundary Commissions and local government boundary commissions	Within one year

<b>CHAPTER 2: MANDATE (continued)</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
<b>Electoral boundaries (continued)</b>		
<p>R20. There is strong case for the current legislation in relation to the conduct of parliamentary boundary work to be reviewed and where necessary amended before the commencement of the sixth general review due around 2012.</p> <p>The review should, in particular consider:</p> <ul style="list-style-type: none"> <li>• addressing the progressive inequality of electoral quotas, and increase in the size of the House of Commons that appear inbuilt to the operation of the current rules;</li> <li>• the time taken to conduct reviews, particularly in England where in addition to changes to the procedures the possibility of carrying out inquiries on a regional basis should be considered, and</li> <li>• alignment between the timing of local and parliamentary boundary reviews to ensure stable local government boundaries as the basis for each parliamentary review; and</li> <li>• the question of a role for keeping the operation of the rules under review and ensuring consistency of approach by the four Boundary Commissions.</li> </ul> <p>This review should not be undertaken by the Electoral Commission. An independent review commission for this purpose could be established, overseen by the Speaker's Committee with the outcome presented to Parliament through the Speaker.</p>	Speaker's Committee	The review to begin by the end of 2007
<b>Increasing participation in the democratic process</b>		
<p>R21. The Electoral Commission should retain a clearly defined statutory duty for the provision of public information on the mechanics of the electoral process including electoral registration procedures, how to vote and explaining any changes to the electoral system.</p>	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
<p>R22. The Electoral Commission should no longer have the wider statutory duty to encourage participation in the democratic process.</p>	Government to bring forward legislative	During 2007/08 parliamentary session
<b>Policy development and advice</b>		
<p>R23. The Electoral Commission should no longer have a role in undertaking policy development in relation to electoral legislation. This function should be the responsibility of the appropriate Secretary of State for Constitutional Affairs.</p>	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session

<b>CHAPTER 2: MANDATE (continued)</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
<b>Policy development and advice (continued)</b>		
R24. The Electoral Commission should continue to provide advice on the suitability of existing and new electoral legislation in respect of its ability to perform its two principal statutory duties.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
<b>Reporting on elections</b>		
R25. The Electoral Commission's reports on each election should cover incidents of electoral fraud and the actions taken to minimise fraud, also the effectiveness of the new provisions on postal voting on demand. This should apply in reports for the May 2007 local elections.	Electoral Commission	From May 2007
R26. The Electoral Commission's statutory remit to report on the conduct of elections should be extended to cover local elections in Northern Ireland, Scotland and Wales.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session

<b>CHAPTER 3: GOVERNANCE</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
R27. The current ban on employing individuals at the Electoral Commission who have been politically active over the previous ten years should be reduced to one year. For senior management and regional electoral officers the length of the ban should be reduced to five years.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R28. The total number of commissioners (including the chair) should be increased to ten.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R29. The current restrictions on who may become an electoral commissioner should be revised for four commissioner appointments to enable the appointment of individuals with recent experience of politics and the political process. New commissioners would be appointed as individual members of a unitary board, not as representatives or delegates of a particular political party.  On taking-up appointment, such commissioners:  (i) must not be an employee or officer of any political party and/or an elected representative (at European, national, devolved or local level) or an appointed Peer who takes the political party whip; and  (ii) would cease being a commissioner on becoming any of these during their term of office.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session
R30. The background and political experience of the four new commissioners must respectively represent the three main political parties (Labour, Conservative and Liberal Democrat) and one of the minor parties in the House of Commons. Although individuals may be encouraged to apply by political parties each post should be publicly advertised and candidates must satisfy all other criteria that apply for commissioner posts and be subject to a selection process based upon merit following the Commission for Public Appointments' Code of Practice.	Speaker's Committee	Within two years
R31. The practice of appointing a commissioner from Scotland and a commissioner from Wales who have the lead interest in Scottish and Welsh matters should continue and the Speaker's Committee should proceed with appointing a commissioner from Northern Ireland who will play a similar role to those commissioners.	Speaker's Committee	Ongoing
R32. The chair of The Electoral Commission should be a part-time non-executive role. Commissioners should also be non-executive and part-time.	Speaker's Committee	Within two years

<b>CHAPTER 3: GOVERNANCE (<i>continued</i>)</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
R33. PPERA should be amended to make clear that responsibility for the oversight of the recruitment and selection process for electoral commissioners lies with the Speaker's Committee, including setting the role specification and convening an independent selection panel. Either PPERA or the Speaker's Committee procedures should stipulate that the Commissioner for Public Appointments, Code of Practice will be followed in such appointments.	Government to bring forward legislative changes to PPERA	During 2007/08 parliamentary session

<b>CHAPTER 4: ACCOUNTABILITY</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
R34. Evidence-gathering meetings of the Speaker's Committee should be held in public and the transcripts published. Committee deliberations may continue to be held in closed session as may certain evidence sessions where the subject matter makes this necessary.	The Speaker's Committee	Immediate
R35. The Speaker should assume a role similar to that he performs for the Boundary Commissions, standing back from the day-to-day running of the Committee. A senior back bench MP, possibly from the Opposition, as deputy chair could assume the day-to-day responsibility for the Committee including chairing meetings.	Mr Speaker, the Speaker's Committee	Immediate
R36. The House of Commons Scrutiny Unit should be given a formal role to scrutinise The Electoral Commission's annual financial plans and to advise the Speaker's Committee.	The Speaker's Committee	Immediate
R37. There should be an annual debate in Parliament on the work of The Electoral Commission. It might be helpful if this followed the Commission's annual report on standards of electoral administration in the UK (R13).	The Speaker's Committee	Immediate
R38. The Select Committee on Constitutional Affairs should build upon its emerging practice of taking regular opportunities to scrutinise The Electoral Commission's policies, actions and decisions.	Select Committee on Constitutional Affairs	Immediate



<b>CHAPTER 5: INTEGRITY OF THE ELECTORAL SYSTEM</b>		
<b>RECOMMENDATION</b>	<b>MECHANISM</b>	<b>TIMEFRAME</b>
R39. The Electoral Commission should undertake detailed research into the scale of electoral fraud in the United Kingdom.	Electoral Commission	Within eighteen months
R40. The Electoral Commission should, as part of its statutory reports on the 2007 Elections, include a specific section dealing with the impact of, and any problems encountered in the implementation of the new measures on postal voting. In light of this report the Government should consider similar measures in relation to registering immediately before an election as have been put in place for Northern Ireland in the Miscellaneous Provisions (Northern Ireland) Act 2006.	Electoral Commission	By November 2007
R41. It should be a requirement that the Electoral Commission's views (see R24) on proposed primary and secondary legislation on electoral issues should accompany the draft legislation when it is introduced into Parliament.	Government	During 2007/08 parliamentary session
R42. A decision should be made and legislation developed to implement a system of individual voter registration immediately following the next General Election or by 2010 at the latest.	Government	Within one year
R43. Political parties should start discussions now in order to reach agreement on the precise form the new system may take and the measures needed to assure comprehensiveness and accuracy.	Political Parties	By 2010
R44. The Electoral Commission's implementation plan for the new system should include a focus on measures to minimise under-registration.	Electoral Commission	By 2010
R45. Any agreed system of individual registration should include at least one objective identifier such as the National Insurance number.	Government/ Political Parties	By 2010
R46. If the new arrangements in Northern Ireland, including the abolition of the annual canvass, are successful they should be adopted as part of the new system of individual registration in the rest of the United Kingdom.	Government/ Political Parties	By 2010



# CHAPTER 1

## INTRODUCTION

### The Committee and its terms of reference

- 1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon Sir John Major KG CH. Its terms of reference are:

*To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*

- 1.2 On 12 November 1997, the present Prime Minister, the Rt Hon Tony Blair MP, announced additional terms of reference:

*To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.*

- 1.3 The Committee has published ten reports. They are listed at Appendix C. Further information about the Committee is at the back of this report, which also includes its membership during this Eleventh<sup>1</sup> Inquiry.

### The purpose and scope of the inquiry

- 1.4 The Electoral Commission occupies an important position in the institutional architecture designed to secure high standards and build trust in the democratic process. The Commission was established as an independent statutory authority on 30 November 2000. This followed the recommendations of the Committee's Fifth Report, *The Funding of Political Parties in the United Kingdom* [1] and the subsequent commencement of the Political Parties, Elections and Referendums Act 2000 [2]. Through its work, the Commission has the stated aim of gaining public confidence and encouraging people to take

part in the democratic process within the United Kingdom. Unlike many electoral commissions outside the United Kingdom, it does not have responsibility for maintaining and updating electoral rolls, employing electoral services staff, or conducting parliamentary or local elections.

- 1.5 The Commission is headed by a chairman with four other commissioners, none of whom can have had any connection to any political party in the previous ten years. The Commission is not accountable to the Government, but reports directly to Parliament through a committee chaired by the Speaker of the House of Commons ('the Speaker's Committee'). The Commission has a UK-wide remit and has offices in London, Edinburgh, Cardiff and Belfast.
- 1.6 The Commission's mandate encompasses both executive and advisory functions and is wider than that envisaged in the Committee's Fifth Report [1]. The Commission is responsible for overseeing a number of aspects of electoral law: the registration of political parties; the monitoring and publication of significant donations to registered political parties; powers to investigate possible breaches of the donations regulations; the regulation of national party spending on election campaigns; and a partially commenced role in setting electoral boundaries. The Commission also has a number of roles relating to the conduct of referendums held in the UK; promoting voter awareness; advising those involved in elections on practice and procedure; and reporting on the administration of every major election.
- 1.7 In the current financial year (2006/07) the Commission is expecting to spend about £27.4 million of which [3]:
- £12.3 million is for encouraging citizen participation in the democratic process and on voter education about the electoral process;

<sup>1</sup> The Rt Hon Alun Michael JP MP joined the Committee in October 2006 and, therefore, after the completion of the public hearings and initial consideration by the Committee of their likely recommendations. As such Mr Michael agreed to act as a 'critical friend', giving advice on the emerging conclusions and recommendations. Other members of the Committee would like to express their gratitude to Mr Michael for his assistance.

- £10.1 million is for advice and guidance about registration and election management to local authorities; boundary reviews; and the development of performance standards for local authorities;
- £2.2 million is for regulatory activities concerned with the registration, funding and the expenditure of political parties; and
- £2.8 million is for administrative costs.

1.8 The executive and advisory mandate of The Electoral Commission therefore has a strong impact on issues such as electoral administration, conduct of elections and standards of propriety in financing political parties. Each of these issues has been the subject of recent public concern, and each affects the way people engage in politics and the broader question of political legitimacy.

1.9 For these reasons the Committee believed it was important to ask now, some five years after its creation and following the second general election to be held since its establishment, whether the Commission's mandate, governance arrangements and accountability framework are fit for the purpose required of the Commission [4].

1.10 This inquiry is not a review of how or whether the recommendations in the Committee's Fifth Report have been implemented by the Government or others. Rather, it is an assessment of how The Electoral Commission can best deliver the outcomes required by legislation governing elections and political parties. The second national survey of public attitudes published by the Committee in September 2006 [5] again highlighted the public's strong expectation that public office-holders should admit and, most importantly, learn from their mistakes. Our aim in this report is to do just that and in a way which bolsters a culture of continuous improvement in securing high standards, not a culture of blame.

## The inquiry process

1.11 The work of the Committee is evidence-based. Where conclusions are reached and recommendations made they are on the basis of an analysis of the evidence received

and generated during an inquiry. Evidence for this inquiry has come from three main sources: written submissions, public hearings, and specifically commissioned research. The Committee has also drawn upon its own previously published work and on relevant work published by other bodies. All sources are referenced throughout the report.

### Written submissions

1.12 With the publication of the Issues and Questions Paper [4] on 16 February 2006, the Committee invited written submissions on any or all of the selected areas (paragraph 1.9 above) and in respect of some specific questions. The paper was circulated widely to both Houses of Parliament, to members of the devolved administrations in Northern Ireland, Scotland and Wales, to all local authorities and to all registered political parties. The paper was distributed to a number of academics and other political commentators as well as to those members of the public who showed an interest in our work. The paper was also available on the Committee's website. Seventy-eight submissions were subsequently received. All written submissions can be found on the CD-ROM which forms part of this report and on the Committee's website (except, in accordance with the Committee's long-standing procedure, those which we were asked to treat as confidential or those we considered might be defamatory). A list of those who submitted written evidence is at Appendix A. The CD-ROM also contains a copy of this report, transcripts of the oral evidence and copies of the research commissioned to support the inquiry. In this report, references to the written evidence give the submission number and the page being referenced, for example, [23/4].

### Public hearings

1.13 Between June and October 2006, the Committee took evidence at 12 sessions of public hearings in London, Belfast, Cardiff, and Edinburgh. Appendix B carries a list of the 83 witnesses who gave evidence, either on their own behalf or in a representative capacity. In this report, references to the transcripts provide the date of the hearing and the paragraph number on the transcript, for example [13/06/06, 41].

## Supporting research

- 1.14 Within its modest resources, the Committee decided to commission (through a competitive process) two pieces of research covering two areas of the Commission's mandate (both published in full on the CD-ROM and on the Committee's website).
- 1.15 The first piece of research was undertaken by Dr David Butler and Professor Iain McLean of Nuffield College, Oxford on *The Electoral Commission and the Redistribution of Seats*. This was based upon an extensive reading of the Boundary Commission reports and of the academic literature. It was also informed by a one-day seminar attended by representatives of the Boundary Commissions and other stakeholders. The research is discussed in the section, *Electoral boundaries*, in Chapter 2.
- 1.16 The second piece of research was undertaken by Dr Justin Fisher of Brunel University on *Proposals for the funding of political parties in the context of The Electoral Commission's existing responsibilities for the regulation of donations to political parties*. This was based upon desk research and four semi-structured interviews with senior Electoral Commission staff. The research is discussed in the section, *Regulation of political party funding and expenditure*, in Chapter 2.

## Study visits

- 1.17 During May 2006 a small group of Committee members visited Canada and the USA to learn about the mandate, governance and accountability of comparable institutions. These were chosen because they exemplified differing approaches to both electoral administration and political party funding and campaign expenditure. A summary of the main findings from the study visit can be found in Volume 2 of the report on the CD-ROM, as well as on the Committee's website.
- 1.18 Small groups of Committee members also visited a range of local authority electoral administration offices during October and November 2006 to observe the administration and registration process at first hand. We visited the London Borough of Hammersmith, Southampton City Council, Huntingdon District Council,

Renfrewshire Valuation Joint Board and the Chief Electoral Officer for Northern Ireland.

- 1.19 The Committee would like to express its gratitude to all those who gave us their time and insights during these visits.

## Structure of the report and recommendations

- 1.20 The main part of the report is set out in the following four chapters. The first three cover The Electoral Commission's mandate, governance and accountability, respectively. The final chapter covers the Committee's observations and recommendations on some critical aspects of the integrity of the electoral process itself. There is an executive summary that includes a consolidated list of all the Committee's recommendations.

## Context of the inquiry

- 1.21 The inquiry took place against a backdrop of continuing public concerns about: the arrangements for voter registration; postal voting on demand, and the link to a number of high-profile legal cases on electoral fraud; and allegedly circumventory loans to political parties with allegations that these were connected to the awarding of honours.
- 1.22 These concerns directly relate to two key pillars of our democratic system that were constantly referred to during the inquiry and have formed the principles against which the standards we wish to see achieved in the areas of interest may be measured:
- 1.23 **Free and fair elections.** Effective electoral administration is one of the keystones of democracy. There cannot be democracy without elections and elections cannot be free and fair unless electoral rules are fair and coherent, unless they are properly administered and unless they are actively enforced [6]. Core functions that must be effectively undertaken to achieve this are:
- ensuring that everyone who is entitled to vote is included on the electoral register before an election and that everyone registered can exercise their vote, in secrecy if they wish. The right to register and the right to vote is an equal right for those who are eligible and should be

kept as simple as possible and any barriers kept to a minimum whilst ensuring that;

- everyone not entitled to vote is excluded from the register and from voting. Voting fraud should be minimised by avoiding rules that facilitate such fraud and by proactive deterrence and enforcement; and
- determining electoral boundaries in a way that is fair to electors, non-partisan, immune from political interference and up to date with population movements [7].

#### 1.24 **Healthy, competitive political parties.**

Political parties are essential to democracy. We elect a government through a parliamentary democracy which is not about voting on single issues but about a wide range of important choices and priorities. [8]. The way in which political parties are funded, and how those funds are expended, are therefore a matter of legitimate public interest. People ask who is paying? And how much? In return for what? Is it British or foreign money? [1]. A regulatory framework for the funding of political parties has therefore been required to eradicate the grounds for criticism and suspicion which leads to public scepticism, and damages the political parties. The successful implementation of the regulatory framework, however, depends upon the approach taken by the regulator who must:

- show courage, confidence and competence in pursuing an independent and impartial approach to ensuring compliance with the regulations. It must accept that it will not always be popular with the parties and that pressure, overt and covert, will always be applied in attempts to influence its approach. It must use a risk-based approach to decisions and actions<sup>2</sup>; and, at the same time
- recognise that political parties are much more like large voluntary organisations than organisation in the public or private sector usually subject to regulation. Behind each career politician stands a regiment of dedicated voluntary party workers. Even the local treasurers and election agents (who are subject to regulation) of the largest parties are mostly volunteers. The approach of the

regulator must be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure.

- 1.25 It is within this framework that the Committee has considered the role of The Electoral Commission.

### Developments since 2000

- 1.26 It is important to recognise that there have been a significant number of developments in the political and electoral environment over the last five years that have presented the Commission with some profound challenges and had a direct effect on its work. Some of these issues were unforeseen when the Commission was created; some have arisen because of legislative changes; and some have resulted from work undertaken by the Commission itself. It is therefore important to reflect upon the context in which it has operated over the last five years.

#### Legislative changes

- 1.27 Since 2000 there have been more major changes to the electoral system in the United Kingdom than at any time since the current system came into being in the 19th century. These have included:
- the introduction of postal voting on demand in Great Britain;
  - all postal ballots in parts of Great Britain for certain elections;
  - extensive piloting of different voting systems and changes to the conduct of elections;
  - the introduction of individual registration in Northern Ireland together with a number of anti-fraud measures including photographic identification at polling stations;
  - the Electoral Administration Act 2006 which among other things has given The Electoral Commission the power to set performance standards for local authorities; and
  - the Miscellaneous Provisions (Northern Ireland) Act 2006 which has abolished the annual canvass for electoral registration and given the Chief Electoral Officer for

<sup>2</sup> Which, in this case, means where the risk of non-compliance or lack of clarity in the regulations could lead to a significant undermining of the confidence the public and political parties have in the regulatory framework.

Northern Ireland powers to access data held by other public sector bodies to enable him to maintain an accurate and comprehensive register.

- 1.28 These legislative changes have had and will continue to have far-reaching implications for electoral administration throughout the United Kingdom both for electoral registration and the conduct of elections. The Electoral Commission has been a key player in advocating change and advising the Government on implementation issues.

### *Participation in the electoral process*

- 1.29 Another significant feature of the last five years has been the continuing perception of growing apathy and cynicism by the public towards the democratic process in general and traditional forms of politics in particular. Evidence cited for this are the low turnouts for the General Elections of 2001 and 2005 (59% and 61% respectively) and the continued fall in membership of all the major political parties. It is against this backdrop that The Electoral Commission has undertaken its statutory role to increase participation in the democratic process with a ring-fenced budget of £7.5 million per annum. Also the Government, and the Commission, believed that putting in place new arrangements to make voting easier (see 1.27 above) would increase turnouts and interest in the political process. The Electoral Commission played a major role advising on and implementing the 'modernisation' agenda, particularly in overseeing electoral pilots and the use of postal voting on demand.

### *Electoral fraud*

- 1.30 However, some commentators believe that a by-product of making the process of voting easier has been perceived loss of confidence in the integrity of the electoral system. The well publicised issue of electoral fraud relating to postal voting did not help this. Indeed, there were a number of major court cases where individuals were found guilty of committing electoral fraud through the abuse of postal voting.
- 1.31 Before 2000 reported instances of electoral fraud in Great Britain were extremely rare, and confidence levels in the security of the electoral process were high. Electoral fraud was perceived only as a problem in

Northern Ireland which is why the Government put in place new anti-fraud measures through the Electoral Fraud (Northern Ireland) Act 2002. However, following a number of high-profile court cases it became evident that, while not necessarily widespread, pockets of organised electoral fraud were taking place mostly in urban areas.

- 1.32 The Electoral Commission duly began working closely with electoral administrators and the police on ways of combating fraud. The Electoral Administration Act 2006 also contains a number of measures aimed at making fraud more difficult, including a new requirement for voters to provide personal identifiers if they want to vote by post.

### *Transfer of electoral policy to the Department for Constitutional Affairs*

- 1.33 For many years electoral policy was the responsibility of the Home Office which was the sponsoring department for the Political Parties, Elections and Referendums Act 2000 (PPERA). However, following machinery of government changes in 2003, responsibility for electoral policy was transferred to the new Department for Constitutional Affairs (DCA). Over the last three years the Electoral Policy Unit in DCA has expanded and developed a stronger-policy making capacity than existed when policy was the responsibility of the Home Office.

### *Loans to political parties*

- 1.34 The issue of widespread financing of political parties through substantial loans was first reported during the 2005 General Election [9] and raised concerns that, at the very least, the spirit of the rules on transparency of parties finances was being circumvented. This was one of the current concerns that led to this inquiry [4,10]. The issue became a matter of major public controversy in March 2006 when the full scale of the loans began to emerge and allegations were made of a link to the awarding of honours and the possibility that the loans were not made on commercial terms. Under PERA, the benefit accrued by loans on a non-commercial basis are treated as a donation and subject to the rules on disclosure. As a result of the controversy the Electoral

Administration Act 2006 made all loans subject to disclosure. It now appears that the total amount of loans to the main political parties current at the 2005 General Election was over £30 million, predominantly to the Labour and Conservative parties. At the time of printing this report, a police investigation continues into the allegations of a link to the awarding of honours (under the Honours (Prevention of Abuses) Act 1925) and any possible breaches of PPERA.

### *Review of the funding of political parties*

1.35 The controversy over loans to political parties resulted in the Prime Minister asking Sir Hayden Phillips to conduct a review of the funding of political parties in March 2006. The terms of reference for the review are:

*To conduct a review of the funding of political parties.*

*In particular:*

- *to examine the case for state funding of political parties including whether it should be enhanced in return for a cap on the size of donations;*
- *to consider the transparency of political parties' funding; and*
- *to report to the Government by the end of December 2006 with recommendations for any changes in the current arrangements.*

At the time of going to print, the conclusions of the review had not yet been published, although an interim assessment [8] was published in October 2006 summarising the main options under consideration. The Committee has liaised closely with Sir Hayden in order to ensure that any proposals we make concerning the regulatory role of the Commission would apply equally should the regulatory framework be extended to include any of the options under consideration.

## Summary

1.36 This inquiry took place at a time of dynamic and critical change affecting our democratic system. We have endeavoured to make our recommendations to complement recent legislative reform while seeking to ensure the maintenance of fundamental principles that have underpinned our democratic system for well over 100 years.

## The framework within which the Committee works

1.37 This Committee is an advisory body only. It reports to the Prime Minister but sets its own programme after consultation between the Committee and the Government. It has no legal powers. It cannot summon witnesses to appear before it. It has no powers of enforcement and has, therefore, no power to impose any of its recommendations.

## Acknowledgements

1.38 We would like to record our thanks to those who took the time and trouble to make a written submission, or who provided additional evidence at our request and in particular those who appeared before us to give oral evidence. We were fortunate to receive evidence from a wide range of well-informed witnesses whose experience and insights have proved extremely valuable. We would also like to thank Dr Butler and Professor McLean, Nuffield College Oxford and Dr Pinto-Duschinsky, Brunel University, for their advice and assistance in the preparation of this report.



## References

1. Committee's Fifth Report, *The Funding of Political Parties in the United Kingdom* (Cm 4057- October 1998).
2. Political Parties, Elections and Referendums Act 2000, c41.
3. The Electoral Commission 2006.
4. *Review of The Electoral Commission, Issues and Questions Paper*, The Committee on Standards in Public Life, February 2006.
5. *Survey of Public Attitudes towards conduct in public life 2006*, prepared by Ipsos/MORI for the Committee on Standards in Public Life, September 2006.
6. Dr Michael Pinto-Duschinsky, Brunel University, written evidence to the inquiry 41/1.
7. Dr David Butler and Professor Iain McLean, Nuffield College Oxford, opening statement to the inquiry 13/07/06.
8. *The Review of the Funding of Political Parties: An interim assessment*, Sir Hayden Phillips, October 2006.
9. The Times 21 April 2005.
10. The Committee on Standards in Public Life, Post Election Consultation Paper May 2005, available from [www.public-standards.gov.uk](http://www.public-standards.gov.uk).



# CHAPTER 2

## MANDATE OF THE ELECTORAL COMMISSION

### Overview

- 2.1 Defining the mandate of The Electoral Commission is at the heart of this inquiry. Ensuring the effectiveness of the Commission's governance and accountability arrangements are essential but it only matters if this body's remit is crystal clear.
- 2.2 The Electoral Commission was created following a recommendation by this Committee in its Fifth Report [1]. The Committee recommended that the primary focus of the Commission should be as the regulator of the new arrangements for party political finance. However, the mandate set by the Government for The Electoral Commission and legislated for by Parliament in Political Parties, Elections and Referendums Act 2000 (PPERA) [2] is broader than originally envisaged and very wide in scope. It ranges from the regulation of political donations and expenditure by political and third parties through to promoting greater participation in the democratic process and having responsibility for electoral policy reviews.
- 2.3 This chapter examines in detail whether the current mandate of The Electoral Commission as set-out in PERA is still appropriate, not only in relation to how effective the Commission has been but also as concerns changes in the last five years to the wider environment in which the Commission has operated.
- Record of The Electoral Commission**
- 2.4 Some evidence received by the Committee clearly indicates that The Electoral Commission has made a positive impact since its creation. In particular, its advice and guidance on electoral issues has generally been welcomed by electoral administrators and some politicians. Its presence has also helped to highlight the importance of electoral issues to the democratic process.
- 2.5 Other evidence received by the Committee, however, raises concerns about the Commission's overall impact, as follows:
- it is seen as lacking the leadership, knowledge and courage to enforce its regulatory duties in relation to political party funding and campaign expenditure;
  - it has paid too much attention to routine administration in its regulatory role at the expense of proactive, risk-based compliance work which would identify areas of the regulatory framework open to potential abuse. It has been particularly criticised in relation to how it has regulated campaign expenditure and reacted to the 'loans to political parties' issue;
  - the very wide breadth of the Commission's mandate has led to a concentration on 'softer' issues such as policy development and voter participation work at the expense of a 'harder edged', more contentious regulatory and advisory role; and
  - the breadth of this mandate has also introduced potential conflicts between encouraging voter participation – in keeping with the Commission's wish to assist the Government in the process of electoral modernisation – and focusing on the integrity and effectiveness of the electoral process.
- 2.6 The Commission did acknowledge in its evidence that sometimes it has not got the balance right, and that now is the right time to make a judgement about the direction it should follow in the future:

*I really think what we are beginning to home in on is that the core of what the Commission is better placed to do... I think that plays out in terms of a core focus on the regulation of political parties... The second is supporting improvements of standards in electoral administration.*  
[Sam Younger, Chairman of The Electoral Commission 14/09/06 233,234]

Other witnesses made the following comments:

*The Electoral Commission has actually done a very good job in its first five years, albeit under rather confused circumstances.*  
[Alan Whitehead MP 11/07/06, 127]

*We have some wide concerns about the very wide focus the Commission has...and often there is not enough attention to detail on really crucial issues.*  
[Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs and Shadow Chancellor of the Duchy of Lancaster, 15/06/06, 73]

- 2.7 The Commission has undoubtedly made some positive contributions to the democratic health of the United Kingdom over the last five years. The Committee was particularly impressed by its close work with political parties and electoral administrators in Northern Ireland, Scotland and Wales and by its effective work with electoral administrators generally. However, there is concern that the evidence does not suggest that the underlying health of the election process would be the weaker without the Commission's input. The Committee takes the view that The Electoral Commission must become a more focused regulator that stops doing a wide variety of activities and concentrates on achieving some core tasks. It believes a sharper focus on a smaller number of core functions will greatly strengthen the effectiveness of the Commission and the health of the electoral process.
- 2.8 The Committee believes that The Electoral Commission should have two principal statutory duties:
- the regulation of political party funding, third-party and campaign expenditure in the UK; and
  - the regulation of the electoral administration system in Great Britain.

- 2.9 On the basis that these are the core tasks that the Commission must perform effectively, judgement is required about how other parts of Commission's current mandate add value to these core tasks. This implies that some of the Commission's current tasks should be removed or significantly curtailed.
- 2.10 It is time for the Commission to focus on the issues that matter most; *'to do less and to do it better'* [Andrew Tyrie MP, 11/07/06, 426]. The Committee firmly believes that the acceptance of these two core statutory duties will enable the Commission to focus on restoring the health of our electoral process as a fair but robust regulator of political finance and as body capable of restoring confidence in the fairness and security of electoral administration.

## RECOMMENDATION

- R1. The mandate of The Electoral Commission as set out in PPERA should be amended and refocused so that it has two principal statutory duties: as regulator of political party funding and campaign expenditure in the United Kingdom; and as regulator of electoral administration in Great Britain; with the aim of ensuring integrity and public confidence in the system of political party funding and campaign expenditure and in the administration and conduct of elections.**

## Regulation of political party funding and expenditure

- 2.11 In this Committee's Fifth Report [1] we strongly recommended establishing a new framework, based upon the principle of transparency, to provide public confidence in the future funding of, and expenditure by, political parties. The creation of The Electoral Commission was a key recommendation – a body whose main task would be to regulate the proposed controls on political party funding and expenditure:

*The extensive changes we propose have convinced us of the need for a totally independent and authoritative Election Commission with widespread executive and*

*investigative powers, and the right to bring cases before an election court for judgement [1].*

- 2.12 The Committee clearly saw The Electoral Commission as having responsibility for the administration and enforcement required to ensure compliance with the proposed regulatory framework. It is also clear from the Government's response [3] to the Fifth Report that it accepted the Committee's recommendation to establish an independent and authoritative Electoral Commission that would have regulatory responsibility for controls on donations to political parties and limits on campaign expenditure.
- 2.13 PPERA put in place the legislative provisions for the new framework for regulating political party finances. In summary the Commission was made responsible for:
- **The registration of political parties** (and the maintenance of the registers) of political and third parties and for the wide range of elections to local government, decentralised administrations, the UK and European Parliaments. The requirement to register was introduced to minimise confusion to voters by stopping candidates attempting to impersonate mainstream parties and to ensure that the finances of all political groups are properly regulated and, once a party has registered with the Commission, it is subject to rigorous financial controls. A party may not be registered unless it has adopted a scheme, approved by the Commission, which sets out the arrangements for regulating the financial affairs of the party and their income and expenditure.
  - **The regulation of donations to political parties.** All political parties registered on the Great Britain register of parties (excluding parties registered as minor parties) are legally required to abide by the regulations on accepting and reporting donations. Political parties are required to submit a quarterly donation report to the Commission listing all donations of more than £5,000 accepted by the party's headquarters. The Commission is required to register all recordable donations.
- **Control of campaign expenditure.** PPERA limits the amount of campaign expenditure that can be incurred by political parties and third parties at general elections to the UK and European Parliaments and devolved legislatures. Under PPERA there is a ceiling on the amount of campaign expenditure that can be incurred during a 'relevant period'. It is an offence for a party to exceed the campaign expenditure limits specified. There are reporting requirements for parties contesting elections and, if expenditure is in excess of £250,000, returns to The Electoral Commission must be prepared by a qualified auditor and signed off by the party treasurer.
- 2.14 In relation to The Electoral Commission's overall regulatory role the Act [2] provides that:
- The Commission shall have the general function of monitoring compliance with the restrictions and other requirements imposed by or by virtue of Parts III to VII; and the restrictions and other requirements imposed by other enactments to election expenses incurred by or on behalf of candidates at elections, or donations to such candidates or their elections agents.*
- 2.15 The Act then goes on, as recommended in the Committee's Fifth Report, to provide the Commission with the investigative powers of inspection, entry etc in relation to fulfilling their function and which are consistent with powers provided to other regulators.
- 2.16 The purpose of this inquiry, as concerns this part of the Commission's mandate, was to determine whether, in light of the PPERA framework, The Electoral Commission has been an effective and strategic regulator of political party funding and expenditure [4].
- 2.17 Soon after the launch of the inquiry, the Prime Minister asked Sir Hayden Phillips to conduct a review of party political funding which itself had been triggered by the controversy over large loans being taken by the main political parties at the time of the last general election. At the time of publication, Sir Hayden had not published his final report, although an interim report was published in October 2006 which set out the main options for any changes to the regulatory framework under

consideration [5]. The Committee has liaised closely with Sir Hayden, who also gave evidence to this inquiry [21/09/06]. We believe that the proposals we set out in this document would apply equally (if not more so) should the regulatory framework be extended to include the options under consideration as set out in the Phillips interim report. The Constitutional Affairs Committee has also very recently published a report on the funding of political parties which covers some of the issues addressed in this inquiry [6].

### **The Commission's regulatory role**

- 2.18 The evidence received during the inquiry suggests that The Electoral Commission was broadly effective and proportionate in introducing the new regulatory requirements to political parties, under PPERA. There was also a broad consensus that, in the main, the Commission has been effective in its administration of the regulations, i.e. collection and publication of information:

*I think it has done some extremely good work in ensuring that there is more transparency around the funding of political parties.*

*[Rt Hon Hazel Blears MP, Chair of the Labour Party 15/06/06, 420]*

- 2.19 This is a considerable achievement. It is important to remember that, before PPERA, political parties had not been subject to any real regulation outside of campaign periods, and then only very light regulation. Political parties more closely resemble large voluntary sector organisations than organisations in the private or public sector and have more in common with volunteer groups such as the Scout Movement or the WRVS than with the major charities. Activities such as recruitment and training of volunteers, selection of candidates, preparing leaflets, delivering pamphlets, organising meetings and canvassing are carried out by ordinary citizens on a voluntary basis. Indeed even the local treasurers and election agents (who are subject to regulatory controls) of even the largest parties are normally volunteers. The Electoral Commission was clearly sensitive to this in its approach to establishing the practical operation of the regulatory framework.

- 2.20 The Committee has stressed this issue in its considerations. Political parties enable the electorate to vote on a range of choices and priorities, which is essential to our democracy. Party politics is a competition to serve the public interest: that is its purpose. Both the regulatory requirements and the approach of the regulator must balance public trust in the integrity and transparency of political party funding and expenditure against the burden placed upon essentially voluntary organisations.

- 2.21 Has the Commission achieved this balance? Evidence received by the Committee strongly suggests that it has been less successful in acting as an effective and strategic regulator in a manner which ensures public trust and confidence. The root of this, from the evidence we have received, appears to lie in the Commission's interpretation of its regulatory mandate in PPERA and, in consequence, its overly passive approach. Despite the clear intentions in the Fifth report and the Government's response that The Electoral Commission should be an active regulator with investigatory powers the evidence received suggests that that wording used in PPERA has led to some uncertainty as to whether this is an active or passive role:

*The role of the Commission in relation to regulation is to receive information and publish it from the political parties and to monitor the extent to which the parties comply. "Monitor" is the word in the legislation. That can be interpreted in a number of ways. It could be a pretty passive function. The basic assumption in the way the legislation is drawn is that the primary responsibility to comply with the legislation rests fairly and squarely with the parties.*

*The legislation very much puts the onus on the parties to comply and some of the information that we need, which can trigger our investigations, does not come into our possession until such time as the parties do that under the legislation. That is a pretty crucial question that there needs to be some debate about.*

*[Peter Wardle, Chief Executive, Electoral Commission 13/06/06, 165]*

- 2.22 Indeed the interpretation of the Commission's regulatory role as a passive one appears to be shared by the Government:

*The Electoral Commission's role, as set out by PPERA 2000, was not to investigate. It was simply to be a recipient of information. They were in a sense exactly the same as the Register of Companies (Companies House). That was the way they were set up. Judgements about whether or not there have been breaches of electoral law by a particular political party ultimately are not to be made by The Electoral Commission; they are to be made by the prosecuting authorities.*

[Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs 14/9/06, 147]

- 2.23 The Committee was rather surprised by this interpretation of The Electoral Commission's regulatory role. While it is correct to say that the Fifth Report advocated that the onus should be on the responsible officer in each political party to disclose information to The Electoral Commission, the report made clear that The Electoral Commission should have an active role in regulating party finance:

*We envisage that the Election Commission will have statutory powers to call for information and, where necessary, to appoint investigating officers or accountants to look into the affairs of any political party. The powers would be exercisable in case of actual or suspected failure to comply with reporting requirements. [1]*

- 2.24 Indeed, the Government's response to the Fifth Report also made clear that The Electoral Commission would:

*...investigate the financial affairs of political parties to ensure compliance with the rules on disclosure; perform a similar function in relation to the prohibition on foreign funding; receive, scrutinise and, as necessary, investigate accounts of general election expenditure by registered political parties and third parties; and receive returns, of individual candidates' elections expenses and investigate possible breaches of the spending limits.*

*As envisaged by the Neill Committee, The Electoral Commission will have wide powers to call for financial information from political parties, registered third parties and referendum campaign organisations, and to enter their premises to inspect and take copies of financial documents or records.*

[The Government's Response to the Fifth Report [3] ]

- 2.25 The investigative powers provided in PPERA would appear to confirm that this intention was reflected in the subsequent legislation. Nevertheless, in light of the evidence received, the Committee believes that PPERA should be amended to remove any uncertainty that The Electoral Commission is able to proceed and investigate allegations or suspicions of regularity failure. We believe this will remove any confusion and strengthen The Electoral Commission's regulatory role.

## RECOMMENDATION

**R2. PPERA should be amended to make it clear that The Electoral Commission has a duty to investigate proactively allegations or suspicions of failures to comply with the regulatory framework. We recommend that the term "monitor" be replaced by "regulate".**

- 2.26 In advocating this change the Committee is not suggesting that The Electoral Commission should continually, or disproportionately, intervene in the financial affairs of political parties:

*Our approach has always been that actually these are voluntary associations that ought, insofar as is compatible with the rules, to be left to get on with it and not have an organisation crawling all over them all the time.*

[Sam Younger, Chairman of The Electoral Commission 13/06/06, 224]

*I think that needs to be examined very carefully because at the same time as you want to have a nimble, if you like, and effective regulator, what you want it to be is proportionate to the issues at stake.*

[Sir Hayden Phillips, 14/09/06, 227]

2.27 The Committee takes the view that the Commission should strike a balance between expecting the political parties to disclose what is required of them and adopting a risk-based approach to ascertain those parts of the regulatory framework that might be more open to abuse or misinterpretation. Which, in this case, means where a risk of non-compliance or lack of clarity in the regulations could lead to a significant undermining of the confidence the public and political parties have in the regulatory framework. In this way, the Commission is in a position to deal with potential non-compliance before it becomes a problem. It is clear that the Commission itself recognises this:

*...in terms of the core focus on the regulation of political parties...[we are] conscious that we need to take a strategic and, in particular, a more risk-based approach than we did in the early days. [Sam Younger, Chairman of The Electoral Commission 14/9/06, 233]*

2.28 Substantiating the Committee's view, we received evidence during the inquiry concerning possible issues about compliance with the regulations that have undermined confidence in the regulatory framework. We summarise these below and make further recommendations intended to lay the basis of an effective and strategic regulatory approach for The Electoral Commission.

2.29 The issue of loans to political parties was first raised publicly in *The Times* on 21 April 2005, just before the General Election. The Conservative party was reported to have secured a number of multi-million pound loans from various individuals to help fund their General Election campaign. Before the Electoral Administration Act 2006 [7], a party did not have to declare the loan under the rules of donations provided the amount borrowed was repaid at a commercial rate of interest.

2.30 Following the publication of *The Times'* article, Dr Michael Pinto-Duschinsky wrote to The Electoral Commission seeking clarification on a number of issues, including whether it had made clear to the political parties its definition of a commercial rate of interest. The Electoral Commission's response to Dr Pinto-Duschinsky was to quote from section

50(20) (e) of PPERA which provides that any money lent to a party otherwise on commercial terms is treated as a controlled donation. This response appeared not to give a definition of the meaning of 'commercial'.

2.31 Dr Pinto-Duschinsky believes that this response did not clarify whether The Electoral Commission had issued clear guidance to the political parties, particularly on its definition of a commercial loan. He considers that such an oversight was a major failure by the Commission.

*One would have expected that with a term like 'commercial loan' The Electoral Commission would have explained what it understood to be a 'commercial loan'. I believe that a lot of trouble would have been saved had The Electoral Commission, in this case and in others, gone further to issue guidelines and advisory opinions and it would have helped the political parties and donors to make sure that they were in conformity with the law. [Dr Michael Pinto-Duschinsky 13/06/06, 20]*

2.32 Commenting on whether The Electoral Commission ought to have offered more guidance on the loans issue, Peter Wardle said:

*What we had was a piece of untested legislation with definitions that were untested and having to be quite careful as to what we said in terms of what was right or wrong in a situation where we did not want to be accused by one party or the other of coming up with an answer that may or may not have been convenient to one party or the other. We took the view that we would stand on the legislation and carry on with the view that the party had looked at the legislation, interpreted it and got on with compliance. [Peter Wardle, Chief Executive of The Electoral Commission 13/06/06, 198]*

2.33 Throughout this inquiry the Committee particularly noted the reluctance of The Electoral Commission to commit itself firmly on any given subject under its regulatory responsibilities. It is common practice with many other regulators to produce advisory opinions on subjects of uncertainty or concern.



2.34 In the same article in *The Times*, on 21 April 2005, Lord Goodhart QC, Liberal Democrat Shadow Lord Chancellor; Spokesperson for Constitutional Affairs, a former member of this Committee, was quoted as questioning whether the political parties were circumventing the spirit of the rules on transparency. Sam Younger, Chair of The Electoral Commission, was also quoted in the article as saying:

*The law does not currently require a loan made to a political party on commercial terms to be declared as a donation. However, given that the thrust of the legislation is to provide transparency, we will be reviewing this as part of our statutory report after the election.*

2.35 However, the Committee is not aware of any evidence that The Electoral Commission addressed this issue in the material it published on the 2005 General Election, or instigated any investigation into the circumstances behind the loans. On the basis of Lord Goodhart's public concerns, the Committee included the issue in its post-election consultation document on its future work-plan, the process which led to the instigation of this inquiry.

2.36 In fact The Electoral Commission does not appear to have taken any further action on this issue until it became a major controversy in 2006 when allegations were made that peerages were being given in return for loans and donations. These allegations and questions about the status of the loans under PPERA are currently subject to a police inquiry.

2.37 When asked by the Committee whether the Commission had issued guidance before or during the 2005 Election campaign, Peter Wardle replied that there was "comprehensive guidance that the Commission has issued". When pressed whether it was in place at the time he said, "Yes. I am pretty sure of that." He was then asked whether the Commission had written to the parties to say that they were worried about the way events were shaping up and to remind the parties that the guidance was available. He responded:

*No we did not...I have absolutely no doubt that any of the major political parties was in any doubt as to what the law provided and was in any doubt as to what our*

*guidance said at the time. I did not feel that it was necessary for us to go beyond that. I really did not think that the major parties, about whom these conversations were taking place, were unaware of what the law provided or of what our guidance said. There has to be a reason for us to make a public intervention in a situation like that when we are actually satisfied that the parties are aware of what the rules say. Apart from drawing further attention to it in a situation where we might well be criticised by saying, 'Why should you draw further attention to this? We know perfectly well what the rules are', there is a judgement to be taken about this. We did not at the time have any evidence to suggest that the parties were as heavily reliant across the board on loan finance as is subsequently suggested they have been. [Peter Wardle, Chief Executive, The Electoral Commission 13/06/06, 187]*

2.38 The Electoral Commission currently has separate guidance on its interpretation of a 'commercial loan' on its website in the form of a letter to the political parties sent in March 2006. The chair of the Committee wrote to Sam Younger to clarify what guidance was available to the political parties in 2005 and, if so, when it was first published. In his reply, Sam Younger indicated that the guidance available to the political parties in 2005 was the first version of the guidance which was published in 2001 and would have been made available on its website and via Commission-run training events for party officials. The guidance on loans issued by the Commission and extant before and during the 2005 General Election was [8].

*Any money lent to a party other than on commercial terms, e.g. Where a party is loaned £1m at 0% interest, and the loan is to be repaid over two years, the value of the donation would be the commercial rate of interest for a loan of £1m (not the £1m which is to be repaid), e.g. if the relevant commercial interest rate is 10%, the donation would be £100,000. [Donations to Political Parties 2.5]*

2.39 This guidance does not make clear what constitutes a commercial rate of interest. The Committee believes that the Commission should have provided guidance far earlier than it did on what it considered constituted a commercial loan. Even when

this omission was highlighted by Dr Pinto-Duschinsky the Commission did not seek to clarify the issue. By the time it had given clear guidance to the parties in March 2006 the issue was already a source of major public controversy. The evidence suggests that uncertainty over its regulatory role caused by the term “monitor” in the legislation and timidity in its failure to use the significant investigative powers provided for in the Act meant that the Commission did not investigate the loans when this first came to its attention and any investigation once the issue became a matter of public controversy was overtaken by a separate police investigation. In the Committee’s view taken together this constitutes a regulatory failure. As Dr Justin Fisher concluded in his research paper [Volume 2] commissioned by the Committee, the loans episode raises a key issue for the Commission in terms of whether it should be more investigative in its approach.

2.40 The Committee shares Lord Goodhart’s view that, by taking out large loans before the General Election of 2005 and not being open at the time about their source and size, the political parties were acting contrary to the spirit of transparency that underpins the arrangements for political party funding. Whether there was any breach of PPERA or other legislation is subject to a police investigation and may ultimately be a matter for decision by a court of law, and is not therefore an issue on which the Committee will make any comment.

2.41 The Commission’s passive regulatory approach was also raised in other evidence. This concerned the scrutiny of returns on campaign expenditure. An example brought to the attention of the Committee was the case of the Social Democratic and Labour Party (SDLP) who wrote to The Electoral Commission in August 2004 formally to raise concerns it had about the published returns for campaign expenditure incurred by other parties during the 2003 Northern Ireland Assembly election. The SDLP only received a formal reply from The Electoral Commission 12 months later in August 2005. In a further letter to the SDLP in December 2005 which the chair of the Committee read out at the Belfast Public Hearing, The Electoral Commission said:

*The starting point for the Commission’s inquiries in pursuit of its monitoring role,*

*continues to be the information which the parties themselves provide to us. We have been able to identify significant issues via this route and have had associated discrepancies corrected by the parties involved. I do not believe that moving to a different approach, where the Commission mounted investigations of parties’ affairs which did not stem directly from the examination of statutory reports, is a viable option for the Commission within the framework.*

[p122 21/06/06, 122]

2.42 The Committee raised this response from The Electoral Commission with the SDLP at the public hearing in Belfast:

*I think The Electoral Commission see themselves as having a monitoring role. We have kept saying to them that we think they need to be more robust and they have an investigative role. In the Funding of Political Parties White Paper, the Government said, as well as monitoring they should investigate the financial affairs of political parties to ensure compliance with the rules of disclosure. We clearly believe that the legislation allows for more robust and investigative laws from The Electoral Commission, and we think they have been found wanting.*

[Tim Attwood, SDLP 21/06/06, 541]

2.43 This Committee recommended in its Fifth Report that it was essential that The Electoral Commission was an independent body so that it would be perceived as impartial. Just as important, being independent would give it the authority to take difficult decisions. In the Committee’s view The Electoral Commission has been too timid in taking hard decisions and has not had the systems in place to ensure effective compliance in some key areas of the regulatory framework.

2.44 To carry out its regulatory duties the Committee believes that the Commission requires an investigative capability. Therefore, in order to be as effective as possible, a separate compliance unit should be set up to make prompt investigations of possible breaches of the regulatory framework on the basis of *prima facie* evidence, however received, of possible problems. This unit should have no role in the day-to-day work related to the administration of the regulatory controls. This is an arrangement that we understand is common among comparable regulators

of political finance [see: Summary of the Study tour to Canada and the USA, Vol 2]

- 2.45 This will also require a robust system for assessing the potential seriousness, and risk to public confidence, of any allegation before launching an investigation. The establishment of such a compliance unit, however, must not lead to widespread and numerous investigations into vexatious, trivial and politically motivated complaints.

## RECOMMENDATIONS

- R3. The Electoral Commission should establish a compliance unit, separate from the administration of the regulations, which can take prompt investigative action, using the power provided in PPERA following information received either externally or internally of possible breaches of the regulatory framework. If necessary the results of any investigation should be referred to the Crown Prosecution Service. Unless there is evidence of breaches of the law, other than PPERA, the Committee would question the need for the Commission to refer any such investigations to the police.**
- R4. The Electoral Commission should ensure that the compliance unit has a robust and effective system for assessing the potential seriousness and potential risk to public confidence of any allegation.**
- R5. The Electoral Commission should establish the practice of issuing timely advisory opinions, based upon sound and competent legal advice, on areas of concern or uncertainty about the practical interpretation of the relevant legislation.**

- 2.46 In relation to The Electoral Commission's role in regulating campaign expenditure the Committee believes that in Northern Ireland, Scotland and Wales some of its regulatory activities would be much more effective if responsibility for monitoring and regulating campaign expenditure was decentralised in those three countries.

- 2.47 As there are, in most cases, separate party structures in Northern Ireland, Scotland and Wales, experience in the devolved administrations has shown that by using locally-based people with local knowledge The Electoral Commission can build relationships with the political parties based on trust and gain a better understanding of how the system is working or if rules are being broken or unobserved. It should also help The Electoral Commission to acquire a more comprehensive knowledge of local expenditure patterns at elections.

## RECOMMENDATION

- R6. The Electoral Commission should decentralise responsibility for monitoring and regulating campaign and constituency expenditure in Scotland, Wales and Northern Ireland to its regional offices.**

## Penalties

- 2.48 Currently, the only sanctions The Electoral Commission has if parties do not comply with the legislation is to name and shame or, if the offence is sufficiently serious, to refer the matter to the Crown Prosecution Service (CPS) for a criminal prosecution. Understandably, in virtually all cases the Commission has been reluctant to refer the matter to the CPS because, usually, such a move would be out of all proportion to the offence committed and a prosecution unlikely to be judged as in the public interest.
- 2.49 In its Fifth Report the Committee made clear that The Electoral Commission should not have any substantial judicial power. The Government accepted this recommendation and the Committee continues to believe that this is the right approach. However, we did receive evidence suggesting that the Commission should be given additional powers to levy administrative financial penalties for non-compliance with the regulatory requirements that might not justify current sanctions.

*I think the question of administrative penalties is the other area we would be looking for change in the law.*

[Peter Wardle, Chief Executive, The Electoral Commission 14/09/06, 325]

- 2.50 The Committee accepts that this approach is the sensible way forward with the clear proviso that there should be an appropriate independent appeal mechanism. Such an approach would supplement the existing criminal sanctions that would continue to apply for the most serious breaches of the law.

### RECOMMENDATION

- R7. The Government should consider introducing a system of financial penalties, with an appropriate appeal mechanism that could be applied by The Electoral Commission for non-compliance with the regulatory framework. Responsibility for prosecution should continue to lie with the Crown Prosecution Service.**

#### *Smaller political parties*

- 2.51 Within any regulatory framework it is essential that there is a sense of proportionality in relation to the size of the concern being regulated. The Committee received some evidence that the current regulatory framework has a disproportionate effect on very small political parties in relation to the reporting burdens imposed by the current legislation:

*The bureaucratic burden falls disproportionately on small parties. A large established party should have no difficulty in applying its resources to meeting the accounting and other demands of the Act. A small party with limited resources invariably struggles.*

[Alliance for Green Socialism written evidence 65]

- 2.52 The Committee strongly believes that the same standards should apply to all political parties, irrespective of their size. However, we accept that there may be a case for reducing the reporting burdens (not the regulatory standards) for small parties who do not have representation at European, national, devolved or local level. This will be particularly true if the review being conducted by Sir Hayden Phillips results in greater frequency of reporting donations or other additional reporting requirements.

### RECOMMENDATION

- R8. If the review being conducted by Sir Hayden Phillips results in greater frequency of reporting on donations, or other additional reporting requirements, the Government should consider a lighter reporting regime for very small political parties that have no representation at European, national, devolved or local level.**

## Regulation of electoral administration

### *Current position*

- 2.53 As was set out in the overview to this chapter, evidence received by the Committee during this inquiry has highlighted concerns about wide variations in standards of electoral administration in Great Britain between individual local authorities:

*I think it is probably fair to say that administration varies in terms of how active it is in different parts of the country.* [Rt Hon Hazel Blears MP, Chair of the Labour Party 15/06/06, 466]

*My point about consistency between electoral officers is, I believe, very important. I think the inconsistencies are mainly put down to the diligence and culture of local authorities as to whether or not the senior officials take it seriously.* [Phil Woolas MP, Minister for Local Government 13/07/06, 105]

*A picture of patchy administration, good in some places, bad in others, is a picture I too have.*

[Lord Falconer of Thoroton 21/09/06, 3]

- 2.54 These concerns are also voiced by electoral administrators, other politicians, academics and The Electoral Commission itself and suggest that improvements are required to ensure that our electoral system continues to produce elections that are free, fair and secure and outcomes that are accepted by all.

2.55 The present arrangements for the administration of the electoral process date back to the Victorian era. Although modern electoral practice emanates from the Representation of the People Act 1983 [9] and various enactments amending it, much of the 1983 Act itself derives from legislation enacted in the 19<sup>th</sup> century. The Committee is not suggesting that the age of this legislation makes it irrelevant. But society has changed a great deal since the 1870s, not least there is a much larger population and, therefore, franchise. Having a head of household take responsibility for registering others sits rather oddly with more modern concepts of individual responsibility and equality. Individuals are asked to prove their identity when applying for or using a broad range of services both in the public and private sectors. It is, therefore, surprising that when it comes to electoral registration or voting, in Great Britain, there are virtually no safeguards to establish someone's correct identity and protect the integrity of the process.

2.56 Both electoral registration and the running of elections are conducted at local authority level. Electoral registration officers (EROs) are the officials with the statutory responsibility for the preparation and maintenance of the electoral register and lists of absent voters in their respective local areas. The appointment of an ERO is prescribed in Section 8 of the Representation of the People Act 1983 [10]. Although EROs are local government officials they are not answerable to their local authority in respect of their electoral duties but to the courts based on statute law. The statutory responsibility for preparing and conducting elections are in the hands of returning officers who are, at least in England and Wales, invariably the same individuals as EROs. In Scotland the two posts are separate as an ERO also has responsibility for property and land valuation. In Northern Ireland an independent Chief Electoral Officer is responsible for both registration and the conduct of all elections.

2.57 The cost of registration is borne by local authorities in Great Britain and by the Northern Ireland Office in Northern Ireland. The funding for local elections is borne by local government in England and the devolved administrations in Scotland and

Wales, but the cost of parliamentary elections is met from the Consolidated Fund. Funding for the elections to the devolved legislatures is the responsibility of the devolved administrations.

### **Current role of The Electoral Commission**

2.58 Until recently The Electoral Commission had no statutory role in the electoral administrative process apart from responsibility for the conduct of referendums. However, PPERA did give the Commission a statutory role to give advice and assistance to those involved in the electoral process including political parties and electoral administrators. The Commission's role in the electoral process has now changed. The Electoral Administration Act 2006 [7] has given the Commission the responsibility for setting performance standards for local authorities in relation to registration and the conduct of elections. The Act requires the Commission to consult the Secretary of State before determining the standards and laying them before Parliament.

2.59 Many of those who contributed evidence acknowledged the strengths of British electoral administration but expressed concerns about issues that they believe undermine the consistency of standards of administration throughout the country.

2.60 There are wide differences in the number of eligible individuals who are registered in each local government area. The Committee was told by witnesses that, in some local authorities, registration rates were little over 60 per cent while in others they were well over 90 per cent.

2.61 Some explanations for these inconsistencies were given to the Committee:

*Because it is carried out by a large number of local authorities, some of which are so different in shape and form and therefore resource base, there is always going to be this difference... Equally, because it is largely in terms of how the canvas is conducted, a matter of choice how much or how little, then the results are likely to be different in terms of the number of registered electors that come through that process.*

[John Turner, Chairman Association of Electoral Administrators 13/07/06, 278]

*...the register is only as good as the organisation that supports its preparation and the administration. I think, being fairly blunt about it, there is an issue of scale and it is easier for us to be able to resource the effective management of the elections process when you have more scale to be able to actually play with.*

[Ged Fitzgerald, Chief Executive, Sunderland City Council 07/09/06, 313-315]

2.62 Effective electoral administration is of fundamental importance in any healthy democracy. An effective electoral administration system should ensure:

- that those entitled to vote are included on the electoral register and that those not entitled to vote are excluded from the register (comprehensiveness and accuracy);
- that the voting process is free, fair and secure;
- the proactive enforcement of the rules to stop electoral fraud;
- a consistent approach to registration and the conduct of elections throughout the United Kingdom; and
- that electors have confidence in the effectiveness and outcome of the democratic process.

2.63 As regards under-representation of voters on the register (as evidenced by the discrepancy in percentages of eligible voters registered between local authorities) detailed research has been carried out, including by The Electoral Commission. This shows that an estimated 3.5 million eligible individuals are not registered. But there has been virtually no research into the accuracy of the electoral register. This is significant as some evidence received by the Committee from Dr Michael Pinto-Duschinsky suggests that there might be up to four million redundant names on the current electoral register.

2.64 The Committee can confirm that there are local authorities that are delivering high quality standards in electoral administration. But, as electoral administrators have testified, there are many local authorities where standards in electoral administration are low.

2.65 Having closely examined the evidence the Committee believes that while the system of electoral administration is not broke – there are some local authorities delivering high standards – it is, in some areas, in a state of serious disrepair. However, the Committee has also rejected the second option of centralising electoral administration with The Electoral Commission, believing that:

- the actual day-to-day running of registration and conducting elections should remain at a local level;
- there is no evidence to suggest that centralisation would lead to higher standards of electoral administration. If anything, evidence suggests that centralisation has not worked for other services previously delivered on a local basis;
- giving the Commission responsibility for administering electoral registration and running elections could compromise its role as a regulator. For a regulator to be effective it is preferable that it does not have an operational role in the business it is regulating, otherwise potential conflicts of interest could arise; and
- it was also made clear by the Commission in its evidence that it would not welcome being given responsibility for such a role.

2.66 The Committee has taken into account the new powers The Electoral Commission has been given in the Electoral Administration Act to set and monitor performance standards, although there is no mechanism in the Act for the Commission to enforce the performance standards, naming and shaming. It can be argued that the new changes contained in the Electoral Administration Act will enable The Electoral Commission to put in place a framework of minimum standards that will lead to greater consistency in electoral registration. However, the Committee is not convinced that, without clarifying and strengthening the Commission's current mandate and plans that it has for regional offices, the Commission will be effective in raising standards of electoral administration to a consistently acceptable level throughout the United Kingdom.

- 2.67 Under the current arrangements, there remains an underlying lack of accountability and transparency which makes it very difficult to identify poor practice and enable change to happen. The Committee strongly believes that for change to be effective there has to be a robust regulator that shines a light on bad practices and is able to ensure that the right changes are made.
- 2.68 Therefore the Committee is recommending that The Electoral Commission is given a statutory oversight and regulatory role in electoral administration to enable it to highlight where the problems are and to ensure that solutions are put in place.

### Regional electoral officers

- 2.69 Considering how The Electoral Commission might take best advantage of a responsibility for regulating electoral administration, the Committee believes that any regulatory approach must:
- be focused on outcomes not processes;
  - be based on expertise and experience of the electoral system;
  - take ownership of the processes;
  - concentrate on proactive engagement with stakeholders;
  - have awareness of regional and local variations throughout the United Kingdom; and
  - be responsive to problems and underperformance.
- 2.70 One of the main criticisms voiced about the work of The Electoral Commission during this inquiry was that it has tended to concentrate on peripheral issues rather than addressing real problems whether in its current role as regulator of political party funding or on the current state of electoral administration.
- 2.71 Following visits to Belfast, Edinburgh and Cardiff, it was clear to the Committee that the Commission has been at its most effective in the work undertaken at offices in these three countries. Good working relationships with the main stakeholders have been established and, more importantly, local knowledge has been used to good effect in highlighting problems and identifying solutions:

*From the perspective of SOLAR I would say that The Electoral Commission have fulfilled what I understand to be their mandate in terms of promoting integrity and involvement and effectiveness in local democracy. I think they have done that for providing a focus for modernisation and standardisation and simplification by all administrators in Scotland. We might not regard ourselves as iconoclasts, but we have been keen to move and modernise the electoral process and I think that the Electoral Commission has provided that focus for us, and I think it has been very effective. [Jeff Hawkins, Returning Officer, East Renfrewshire Council, 27/06/06, 331]*

- 2.72 The Committee believes that the focus of the Commission's regulatory work on electoral administration should be at regional level in England and in Scotland and Wales. This raises the question of what form this role should take.

- 2.73 When Sir Howard Bernstein, Chief Executive of Manchester City Council, was asked whether he thought there was a case for somebody from the Commission to be rooted in each of the regions to act as a regional arm of the Commission, he responded by saying:

*I think there are a number of models that you could portray. That is certainly one of them and it is one that I find most attractive because whoever discharged that regional role would need to be able to have the full authority to act for and on behalf of the Commission. I think that is quite an important principle. So whether it is a direct commissioner appointed by the Commission, whether it is somebody like me or somebody similar elsewhere in the North West appointed by the Commission, whoever it is has to be seen to be acting with the full authority of the Commission. [Sir Howard Bernstein 21/09/06, 46]*

- 2.74 The Electoral Commission has very recently announced that it intends to set up a very limited regional network in England to operate the new responsibilities placed on it in the Electoral Administration Act 2006. The Commission has also indicated that the four English regional teams would support wider corporate objectives in the same way as its current offices in Northern Ireland, Scotland and Wales. The Commission has announced that there will be a Head of the English regions and four regional officers based in the South West, the

South including London, the Midlands and the North.

- 2.75 Although the recognition of the benefits of a regional approach is welcome, the Committee does not believe such a structure is sufficient or focused to deliver the improvement in standards required. First, the proposed number of offices is too small and does not take the size of the population in England into account. Second, we believe such an approach will be too centralised and top-down to be effective. Such an approach could lead to inertia rather than proactivity and time wasted fighting for influence within the Commission's organisational hierarchy. This type of approach ultimately produces ineffective outcomes.
- 2.76 The Committee is therefore recommending the establishment in statute of regional electoral officers (REOs) accountable directly through the chief executive to The Electoral Commission who will:
- take responsibility for monitoring and reporting on the performance standards of local authorities;
  - work closely with local authorities to ensure that they were fully aware of what was required; and
  - encourage joint working to ensure the highest standards of electoral registration, the conduct of elections and identifying and eliminating electoral fraud.
- 2.77 The REOs should be appointed, after open competition, by the electoral commissioners. The REOs would report to the commissioners on the performance of the local authorities in their regional area, including the state of the electoral registers, the conduct of elections and the means to identify and tackle electoral fraud. Once all avenues became exhausted in relation to improving a local authority's performance, REOs should have the authority to recommend to the commissioners that it request the Secretary of State for Constitutional Affairs to exercise his power of direction (as set out in section 52 (1) of the Representation of the People Act 1983) over that local authority.
- 2.78 The Committee believes that the creation of REOs is essential if performance standards set out in the Electoral Administration Act 2006 are to work.

- 2.79 An effective regional structure must reflect local sensibilities. The current Electoral Commission blueprint has four regional offices in England with one each in Northern Ireland, Scotland and Wales. This is too few to ensure effective working relationships with electoral administrators in well over 400 local authorities throughout the country. Instead, we believe there should be nine REOs in England covering similar geographic units to the current Government Offices for the Regions, two in Scotland and one in Wales.
- 2.80 In Northern Ireland, REOs are not, at present, applicable as electoral administration is centralised under the Chief Electoral Officer.

## RECOMMENDATIONS

- R9 The posts of regional electoral officers (REOs) should be established in statute, accountable through the chief executive to The Electoral Commissioners, with responsibility for monitoring and reporting on the performance standards of local authorities in their region.**
- R10 The standards of electoral administration must be maintained in every part of Great Britain. Regional electoral officers should be appointed for Scotland and Wales with the same status, responsibilities and accountability as for each region of England.**

## Performance standards

- 2.81 The Electoral Administration Act has given The Electoral Commission the power to set and publish performance standards for electoral registration officers, returning officers and counting officers, relating to maintaining the electoral registers and the delivery of electoral and referendum services. When asked by the Committee at a public hearing on 21 September where he wanted to see standards improved, the Secretary of State for Constitutional Affairs replied:

*My overall concern is plainly to see two things: the highest number of people who should be registered being registered accurately and, secondly, the conduct of elections, including remote voting, being*



*done to the highest standards of administration and integrity.*  
[Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs 21/09/06, 34]

- 2.82 The introduction of performance standards is to be welcomed. However, to be effective, they must focus on achieving:
- electoral registers that are accurate and comprehensive in all parts of the UK;
  - elections that are fair and secure;
  - elections where the rules are consistently applied throughout the country; and
  - minimal electoral fraud.
- 2.83 It is also essential that electoral administrators embrace these standards not as a bureaucratic imposition but as a tool to deliver high quality electoral services. The REO's role will be vital in this respect. REOs will know the strengths and weaknesses of electoral administration in the local authorities in their region and can use that information to help target low performing local authorities.
- 2.84 Current legislation already makes provision for the Commission to set standards in relation to electoral registration and the conduct of elections but the Committee proposes that standards should also be set for minimising electoral fraud and for the funding of electoral services.

### **Electoral fraud**

- 2.85 In oral evidence to the Committee, Rt Hon Kenneth Clarke QC MP said the following:
- I would suggest that if you went back ten years ago only an eccentric would have queried the integrity and functioning of the British electoral system...it was regarded as a model for secure, free and fair elections and no sensible people doubted it.*  
[11/07/06, 436]
- 2.86 The evidence presented to the Committee suggests that this is no longer true (for more detail see Chapter 5). There have been a number of high profile fraud cases in relation to the abuse of postal and proxy voting and, following the local elections in 2006, there are a number of current police investigations into irregularities in the voting process. There was no evidence provided to suggest that fraud is endemic throughout the electoral system. However, no research has been carried out either by The Electoral Commission or others, into the scale of electoral fraud so it is difficult to be certain how widespread it is. Neither has the Commission kept any statistics relating to instances of electoral fraud since it was created. However, what evidence there is suggests it is prevalent in certain communities in the North of England, the Midlands and some London Boroughs where there are marginal wards or where there is factional infighting for control within local political parties or those communities.
- 2.87 Fraud can damage not only the integrity of the electoral system but the confidence of electors in the outcome of elections. The Committee believes performance standards should be extended to focus on minimising such fraud by ensuring that systems are put in place to identify and address weaknesses in current practices.

### **Enforcing standards**

- 2.88 It is essential that if performance standards are to work then action needs to be taken against consistent poor performers. Under current legislation The Electoral Commission has no authority to impose sanctions on poorly performing electoral administrators apart from naming and shaming:

*There is nothing whatsoever statutorily to stop us going along to the chief executive of a local authority saying 'You know and I know that we have some risk here, we have some problems here. Here, in the name of The Electoral Commission, is our advice on what you need to do about it'. It's not an insignificant thing to do and we can do that without statutory power.*  
[Peter Wardle, Chief Executive, Electoral Commission 14/09/06, 306]

- 2.89 Before reaching the stage of imposing sanctions, part of the process must entail the regional electoral officers working closely with the poor performing administrators to improve performance. Only when this fails should the possibility of applying sanctions be considered.

2.90 In the Representation of the People Act 1983 [10] the Secretary of State has a power of direction over electoral administrators. The Committee thinks that, once all other avenues have been pursued to improve performance, The Electoral Commission, following a direct recommendation from the respective REO, should recommend to the Secretary of State that he/she use their power of direction to ensure that change is implemented. A further option open to the Secretary of State would be to ask The Electoral Commission, as the responsible regulator, to decide how electoral services in that local authority should be delivered in the future. This could involve the services being operated by a nearby high performing local authority. In the event that a request from The Electoral Commission to exercise this power is declined, then the Secretary of State should be required to report to Parliament on the reasons for the refusal.

2.91 We believe the Commission should develop these performance standards working closely with local authorities and also with the Audit Commission, which has extensive experience in this area. Further, the Commission, for this part of its mandate in England should be included in the 'family' of regulators that will come under the Audit Commission's 'Lead Inspectorate' framework.

## RECOMMENDATION

**R11** The Electoral Commission should use its powers enacted in the Electoral Administration Act 2006 to establish, monitor and report on performance standards for electoral administrators in the areas of electoral registration, the conduct of elections and minimising electoral fraud.

## RECOMMENDATIONS

**R12** The Electoral Commission should make public reports on their assessment of levels of performance of electoral administrators. In circumstances where it has identified and publicised unacceptably low standards, and where there has been failure by the relevant electoral administrators to agree to implement the necessary measures for improvement, The Electoral Commission should formally request the Secretary of State for Constitutional Affairs (Secretary of State for Scotland if electoral administrator is Scottish) to exercise his existing powers of direction contained in the Representation of the People Act 1983 over the said officers. In the event that any such request is declined then the Secretary of State should be required to report to Parliament on the reasons for his refusal to exercise the power.

**R13** The Electoral Commission should report to Parliament annually on standards of electoral administration, including any action it is proposing to tackle areas of underperformance in relation to electoral registration, the conduct of elections and minimising the risk of electoral fraud.

**R14** The Government should consider whether Northern Ireland should adopt these arrangements once they have been successfully established in the rest of the United Kingdom.

## Funding of electoral administration and elections

2.92 The Committee received conflicting evidence as to how the electoral system should be funded.

2.93 The Committee recognises the wider issues raised by ring-fencing funding for local authorities and that using The Electoral Commission as a funding channel would compromise the Commission's role as regulator of the electoral administration system. Progress might be made if the Department for Constitutional Affairs were to indicate – each year – an appropriate

level of expenditure for a local authority to allocate to perform its statutory duties in relation to electoral registration and the conduct of elections. The Electoral Commission would then have the opportunity to monitor the level of funding actually allocated as part of its duty of reporting on the performance of local authorities.

## RECOMMENDATIONS

**R15. The current funding arrangements for electoral administration and for elections should be retained. The Department of Constitutional Affairs should publish annually indicative levels of local authority expenditure allocated to deliver electoral services.**

**R16. The Electoral Commission should consider the level of funding provided for electoral administration as part of its monitoring and reporting on the performance of individual local authorities.**

## Electoral boundaries

- 2.94 The Electoral boundaries of local government wards and parliamentary constituencies are the building blocks of our representative democracy. For public confidence and consent in the electoral process the way in which they are set (through periodic reviews which take account of population changes) must be demonstrably fair, impartial and independent. The UK has mostly succeeded in this respect in the last half century and the experience of other countries, where this has not been achieved, is salutatory.
- 2.95 In its Fifth Report, the Committee did not consider in detail whether the Commission should assume responsibility for parliamentary electoral boundaries, although it did note that the current system appeared to work well and that transfer to the Commission might seriously overload it, given the other responsibilities that were proposed [1].
- 2.96 In its response to the Fifth Report [3] the Government concluded that the creation of The Electoral Commission afforded an opportunity to re-examine the arrangements for the review of electoral boundaries. It proposed that the four parliamentary boundary commissions be brought under the umbrella of The Electoral Commission. In addition, it proposed that the Local Government Commission for England also be brought within The Electoral Commission and combined with the English Parliamentary Boundary Commission. Similar mergers were envisaged for setting local boundaries in devolved administrations with provision made for each administration, if it so decided, to transfer its respective local government boundary-setting functions to The Electoral Commission.
- 2.97 The Government made clear that its intention was not for these transfers to happen immediately. In the case of parliamentary boundaries, this would only take place after the completion of the fifth general review which began in 1999, and was expected to be completed in 2005. Provision for all these transfers was therefore made in PPERA [2].
- 2.98 The Local Government Commission for England was transferred to The Electoral Commission on 1 April 2002 and became the Boundary Committee for England, chaired by Pamela Gordon, Electoral Commissioner. The transfer took place during the periodic electoral review of local government boundaries in England which had started in 1996. This was successfully completed in 2004 and recommendations made to the Secretary of State in 2005, to the apparent satisfaction of those concerned. However, the devolved administrations have, we understand, indicated no desire or intention to transfer their local boundary setting functions to The Electoral Commission. Also, the fifth general review of parliamentary boundaries in England only completed its work in 2006, so no orders to transfer parliamentary boundary commissions have yet been made.
- 2.99 During this inquiry, commentators, practitioners, the Government and The Electoral Commission itself agreed that the partial merger of these functions is not sustainable. There is broad agreement that we need to establish clear and consistent boundary-setting responsibilities for the future.
- 2.100 This review of The Electoral Commission's mandate concerning the boundary commissions is therefore particularly timely – a point endorsed by Bridget Prentice MP, Parliamentary Undersecretary of State for

Constitutional Affairs, in evidence to the Committee [18/07/06, 571-573] and in the Westminster Hall debate on The Electoral Commission on 3 July 2006 [10]. The Secretary of State for Constitutional Affairs, Lord Falconer of Thoroton said in evidence to us:

*I am not sure what the answer to what we do about the boundaries is at the moment. We set off on one route in the 2000 Act and it is taking a long time to get to that particular conclusion. I think we need to look at the whole thing and review what the right way forward is.* [21/09/06, 112]

- 2.101 Concerns have also been expressed for some time, particularly by the parliamentary boundary commissions but by others as well about other aspects of this, including the rules that the Commissions follow when reviewing parliamentary boundaries; the consequent length of the review process; and the lack of sequencing between local and parliamentary reviews.
- 2.102 This is the context in which the Committee has considered electoral boundaries as part of this inquiry. To assist our understanding, we commissioned Dr David Butler and Professor Iain McLean of Nuffield College Oxford – leading experts in this field – to undertake a short piece of research in the boundary issues. We wish to record our gratitude for this very helpful work. We refer to the research throughout this section and a copy can be found on the CD-ROM of Volume 2 that accompanies this report.
- 2.103 Finally, the Committee has considered this issue in the context of our wider recommendations on the mandate of the Commission, and our recommendations on Governance contained in the next chapter.

### **The boundary-setting role of The Electoral Commission**

- 2.104 In its initial evidence The Electoral Commission indicated that it was giving further consideration to its boundary-setting role as part of a current strategic review [Sam Younger, Chair of The Electoral Commission, 13/06/06, 249]. The key issues revolved around potentially competing requirements for consistency: so called

‘horizontal’ consistency of a common approach to parliamentary boundaries by each of the four parliamentary commissions, and likewise for local boundaries; and so called ‘vertical’ consistency between the approach of each local government commission with their respective parliamentary commission (because ward boundaries are the building blocks for parliamentary boundaries). [Peter Wardle, Chief Executive Officer, The Electoral Commission, 13/06/06, 241-261]

- 2.105 The Electoral Commission subsequently wrote to the Committee concerning their developing thoughts on this issue, and this was set out more fully in their additional written evidence of September 2006:

*In summary, our view is that local government and parliamentary boundary review work should be conducted by organisations in England, Scotland, Wales and Northern Ireland which are separate from The Electoral Commission. In this context, the Commission sees its role in relation to boundary work as being more strategic than hitherto...*

*...Additionally, we see considerable merit in ensuring that a common approach is taken to parliamentary reviews in each part of the country. In this respect, the Commission is probably the best placed to take the lead and have responsibility for setting standards across the United Kingdom.* [Electoral Commission, 74/7-9]

- 2.106 The Commission also made suggestions regarding a review of the rules governing parliamentary reviews (which we cover later) and acknowledged that there might be alternative and complementary proposals.
- 2.107 Other witnesses also saw merit in a similar overarching role for the Commission or for a new body to keep the rules under review and ensure consistency of approach, in respect of parliamentary boundaries or a combined UK Parliamentary Boundary Commission. The latter suggestion is, in effect a variation of the others as, in practice, there would need to be sub-commissions for Scotland, Wales and Northern Ireland and at least one, possibly more, for England.

2.108 The Committee agrees with The Electoral Commission that it should withdraw from all boundary-setting work. This will require the transfer-out of the Local Boundary Committee for England and a removal of the provisions in PPERA allowing for the transfer of the four parliamentary commissions and devolved local government boundary functions. In reaching this conclusion, the Committee has been particularly guided by awareness that the current process has been shown to be demonstrably impartial and independent – i.e. “if it’s not broken then don’t fix it”. Also, given our strongly held view that the Commission must fundamentally refocus its efforts on the two cores regulatory roles, discussed above, we believe that any role in the setting of electoral boundaries would risk diversion from these tasks.

2.109 For these reasons we do not believe that the Commission should assume any overarching regulatory role over the four parliamentary boundary commissions. There are arguments for keeping the operation of the rules under review and ensuring consistency of approach by the four boundary commissions. However, the precise scope and scale of this role is, we believe, unclear until some of the underlying problems with the rules themselves are resolved (which appear to be the principal cause of inconsistency). We suggest that this issue (but not whether The Electoral Commission should assume any role) be considered as part of the review of the rules we discuss below.

## RECOMMENDATIONS

**R17. The Electoral Commission should no longer have any involvement in electoral boundary matters and the provision in PPERA to allow the transfer of boundary-setting functions to the Commission should be repealed.**

**R18. The Boundary Committee for England should become a separate independent body in line with local government boundary commissions in the rest of the United Kingdom.**

## Joint secretariats

2.110 There was a broad consensus that the option of merging each local government commission with their respective parliamentary commission, in the pursuit of so called ‘vertical’ consistency (as well as efficiencies) is now precluded by the devolution settlements. The difficulties with this model is that each merged Commission in Scotland Wales and Northern Ireland would have separate accountabilities and have to look in two different directions for the two operational areas [Local Government Boundary Commission for Wales 75/1]. Even in England, merger could produce potential problems given the difference in remit between parliamentary and local boundaries, in particular the requirement of the latter also to ensure effective and convenient local government [Boundary Commission for England 62/2].

2.111 The Committee also received evidence that, in practice, there was already a good degree of ‘vertical’ consistency in both Wales and Scotland because there were joint secretariats for the respective parliamentary and local boundary commissions [Susan Smith, Local Government Boundary Commission for Wales, 06/07/06 opening statement]. The benefits that can be realised from such an approach include:

- spreading the peaks and troughs of the respective (local and parliamentary) review cycles;
- improving efficiency and effectiveness since the respective Commissions can more easily share the same hard and soft intelligence;
- more stable staffing with the retention of knowledge and expertise (a problem acknowledged by The Electoral Commission as concerns the Local Boundary Committee for England); and
- costs savings.

2.112 The Committee therefore believes that this is an approach that should be adopted across the UK.

## RECOMMENDATION

**R19. The Parliamentary Boundary Commission and local boundary commission in each of the four home countries should share a joint secretariat.**

### *The rules governing parliamentary reviews*

*It is essential that the boundary-drawing process should be fair to electors throughout the UK; it should be non-partisan, immune from political interference, and up to date with population movements. The current arrangements satisfy the second and third criteria but not the first or the fourth.*

[Dr David Butler and Professor Iain McLean, Nuffield College, Oxford 13/07/06 opening statement]

2.113 There appears to be broad consensus between most academics, observers, the four boundary commissions, The Electoral Commission, and many politicians (but not, at present, the Government) of the need for a review of the rules governing the review of parliamentary boundaries, and of the time taken to complete such reviews (specifically in England). The report produced for the Committee by Dr Butler and Professor McLean contains a concise summary of virtually all of the concerns about the current rules that were raised in evidence and an analysis of underlying problems. In our view it bears careful reading and could form the basis for any review of the rules. Principally, the problems and contradictions within the current rules have led to:

- inbuilt bias that leads to an increase in the House of Commons at each review<sup>1</sup>;
- inbuilt, progressive inequality of electoral quotas which over time will significantly erode equal representation 'one vote one value', well outside accepted international norms;
- unnecessary delays in the review process – on current form the boundaries for general elections of 2008/9 and 2013/14 will be based upon electoral registers of 2000; and

- a lack of a requirement for careful sequencing of local and parliamentary reviews can add to delays and/or undermine the use of wards as the building blocks of parliamentary constituencies.

2.114 In the Committee's view, these are serious problems which must be addressed. There is an opportunity now, immediately following the fifth general review of parliamentary boundaries, for a thorough review of the rules so that any changes can be in place for the beginning of the sixth general review, due around 2012. Failure to take this opportunity could cause the continuation and deepening of these problems in our electoral boundaries into the second quarter of the century.

2.115 PPERA currently provides The Electoral Commission with the power to instigate such a review and make recommendations. In evidence [74/8] the Commission indicated it would consider the exercise of these powers following this Committee's report. However, consistent with recommendation 17 that the Commission should cease to have any role in Electoral Boundaries, we believe the Commission should not conduct such a review. The existing rules derive from the 1948 Act [11] which followed the Speaker's Conference of 1943-4. The Boundary Commission for Wales [75/2], using this precedent, suggested that an alternative to The Electoral Commission conducting such a review would be for the Speaker's Committee to be given responsibility to commission the review and for the outcome to be presented to Parliament though the Speaker (who is the ex-officio chair of each of the four parliamentary boundary commissions). This, in the Committee's view, has considerable merits.

<sup>1</sup> This was corrected, somewhat, recently by the reduction in the number of seats in Scotland from 72 to 59 under the terms of the Scotland Act 1998. This does not however remove the inbuilt bias in the rules for increases in the overall size.

## RECOMMENDATION

**R20.** There is strong case for the current legislation in relation to the conduct of parliamentary boundary work to be reviewed and where necessary amended before the commencement of the sixth general review due around 2012.

The review should, in particular consider:

- addressing the progressive inequality of electoral quotas, and increase in the size of the House of Commons that appear inbuilt to the operation of the current rules;
- the time taken to conduct reviews, particularly in England where, in addition to changes to the procedures, the possibility of carrying out inquiries on a regional basis should be considered;
- alignment between the timing of local and parliamentary boundary reviews to ensure stable local government boundaries as the basis for each parliamentary review; and
- the question of a role for keeping the operation of the rules under review and ensuring consistency of approach by the four Boundary Commissions.

This review should not be undertaken by The Electoral Commission. An independent review commission for this purpose could be established and overseen by the Speaker's Committee with the outcome presented to Parliament through the Speaker.

### Increasing participation in the democratic process

2.116 In its formal response to this Committee's Fifth Report, the Government indicated that The Electoral Commission should have an important educational role in promoting public awareness and participation in the democratic process.

*The Electoral Commission will have an important educational role in promoting public awareness of and participation in the democratic process. The setting up of a fully independent body, free of any suspicion of political partisanship, offers an opportunity to make a step change in this area. Hopefully, this work will have a contribution to make to improving the poor turnout in elections in this country compared with others [1].*

2.117 PPERA provided a statutory duty for The Electoral Commission to promote public awareness of:

- current electoral systems in the United Kingdom;
- current systems of local government and national government in the United Kingdom; and
- institutions of the European Union.

2.118 The Act also gave the Commission the duty to:

- carry out programmes of education or information to promote public awareness of the democratic process; or
- make grants to other persons or bodies for the purpose of enabling them to carry out such programmes.

2.119 There are currently two distinct parts to this role:

- highlighting to the public the mechanics of participation in the democratic process; and
- an educational and inspirational role to try and get more people involved in the democratic process.

2.120 It is important in any democratic society that individuals are made aware of the mechanics of participation in the electoral process. This involves:

- informing individuals how they register on the electoral roll, including eligibility;
- notification of impending elections; and
- the process of voting, including eligibility for postal and proxy voting.

- 2.121 Communicating this information has become even more vital over recent years because of changes in electoral legislation, the use of different voting systems in different elections held on the same day and changes to the actual voting process.
- 2.122 For example, The Electoral Commission has played and continues to play an important role in Northern Ireland. It was responsible for informing electors about the changes that came into being following establishment of the Electoral Fraud Act 2002. It ran high profile advertising campaigns on television, radio and the print media both during the annual canvass and in the run-up to elections in 2003, 2004 and 2005. Currently, it is running a campaign to inform the electorate about the changes to registration brought in by the Miscellaneous Provisions (Northern Ireland) Act 2006 [12].
- 2.123 Another example is the elections in Scotland in 2007. Here the Commission has a vital role to play to inform voters about the three different voting systems being used at the two sets of elections. Without this type of input it is clear that a significant number of voters in the case of Northern Ireland would have turned up to the polling station without any photographic identification and in Scotland it should lead to a significantly reduced number of spoilt votes.
- 2.124 The Committee believes that this area of voter education is closely linked to The Electoral Commission's core remit. As such the Commission should continue to have responsibility for promoting awareness of how to register and how to vote.

### **Voter participation**

- 2.125 This part of the Commission's current mandate evoked a significant amount of comment, particularly during the Committee's public hearings. Some witnesses commended the Commission for its work in this area.

*To me it is very much the role of The Electoral Commission. It is part of their core remit, along with regulation, to promote democracy.*  
[Bridget Prentice MP, Minister for Electoral Policy 18/07/06, 464]

In contrast to this, others were critical:

*I think this is an important issue, but I think somebody else ought to be doing it.*  
[Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs and Shadow Chancellor of the Duchy of Lancaster, 15/06/06, 174]

- 2.126 The Government's primary reason for giving the Commission this remit in PPERA was alarm at the continuing drop in turnout at various elections. Why individuals do not register or vote is a highly subjective issue. A number of reasons were put forward in evidence to the Committee including:
- disenchantment with politicians and the political process;
  - no real differences between the main political parties;
  - apathy;
  - social exclusion; and
  - the growth of individualism and the decline of communal cohesion.
- 2.127 Those who gave evidence advocating a role for the Commission in this area were primarily concerned with ensuring that individuals were encouraged to vote:

*The new Politics Network believes that The Electoral Commission has an important role to play in raising public awareness of elections and the importance of voting. This role was not effectively carried out before the creation of The Electoral Commission and it is a difficult role for the Government to perform. [24/3]*

Torfaen County Borough Council provided written evidence to say:

*The promotion of public awareness and participation in elections should rest with The Electoral Commission alone and sufficient funds should be made available to make this meaningful. [20/1]*

- 2.128 In its written evidence to the Committee, The Electoral Commission defended its role in this area while making it clear this role represented a significant shift in political culture and that not all politicians had welcomed the move. In evidence to the



Committee Andrew Tyrie MP reflected that position:

*The first area where I think a mistake has probably been made was in asking The Electoral Commission to take responsibility for voter participation. I am confident in retrospect that most people think that it should not have. I think that it is the responsibility of political parties. If people are not interested in politics it is our fault, primarily.*  
[Andrew Tyrie 11/7/06 263,265]

- 2.129 In other evidence, Rt Hon Hazel Blears MP, Chair of the Labour Party suggested a Foundation for Democracy be set up to encourage participation in the democratic process:

*The Foundation for Democracy would offer training, advice, support and material assistance for local campaigning, citizenship education and involving more people in democratic politics.*  
[Rt Hon Hazel Blears MP, Chair of The Labour Party 15/6/06, 433]

- 2.130 The Secretary of State for Constitutional Affairs took the view that it was worthwhile for The Electoral Commission to explain to electors when they should vote and how to vote but that it was not particularly worthwhile for it to get involved in wider work about democratic participation.  
[Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor, 21/9/06, 141]

- 2.131 On balance, the Committee shares the views expressed by Sir Hayden Phillips when he gave oral evidence:

*I have to say that it is up to political parties themselves to take the lead in engaging the public. That is actually what they are there for and it is a challenge to them. It is not a good thing in my view, if people reach to ask others to undertake the task of getting people to get engaged with party politics and political issues, which is what it means when you talk about in the jargon 'democratic engagement'. I would look to the parties to do this rather than a quango, however distinguished.*  
[Sir Hayden Phillips 21/09/06, 270]

- 2.132 The Commission's statutory duty, supported by a ring-fenced £7.5m per annum budget, is, in the Committee's view, not within, or supportive of, its core regulatory tasks. The evidence of any impact, in terms of increased turnout at elections is at best mixed and some have argued negligible. The Commission's own work suggests that the main reason why people choose to exercise their right to vote is related to competitive political parties and policies. We therefore recommend that this broad statutory duty be removed from the Commission.

- 2.133 The evidence provided on this issue firmly pointed to this function as being the responsibility of political parties. However, it is unlikely that they have the capacity to do more work in this area than they do already and, therefore, the question of some limited public funding arises. This falls clearly in the remit of Sir Hayden Phillips' review of political party funding, which includes consideration of increased state funding. The Committee has alerted Sir Hayden to its conclusions in respect of the Commission's mandate on voter engagement and no doubt he will consider this issue as part of his review.

## RECOMMENDATIONS

**R21** The Electoral Commission should retain a clearly defined statutory duty for the provision of public information on the mechanics of the electoral process including electoral registration procedures, how to vote and explaining any changes to the electoral system.

**R22** The Electoral Commission should no longer have the wider statutory duty to encourage participation in the democratic process.

## Policy development and advice

- 2.134 Before the provisions in PPERA came into effect, electoral policy was the responsibility of a very small unit in the Home Office, and at the time it appeared to make sense to give The Electoral Commission responsibility for developing policy on electoral matters particularly as the Government was keen to proceed with a comprehensive electoral

modernisation strategy. However, in 2003, following government changes, responsibility for electoral issues was transferred to the newly created Department for Constitutional Affairs (DCA). Since then, DCA has built up a substantial Electoral Policy Division which is responsible for government policy on most electoral matters in England and Wales.

2.135 Since its creation, The Electoral Commission has published various policy documents the most significant being *Voting for Change*, published in 2003, which made a number of recommendations for changing the electoral system in the United Kingdom. A large number of these recommendations were accepted by the Government and formed the basis of the Electoral Administration Act 2006. However, the most significant proposal, to introduce individual registration, was rejected by the Government.

2.136 In its evidence to the Committee, the Government said:

*The role of the Commission in the development of policy has probably taken on a prominence that was not expected back in 2000. Expectations about what it is able to achieve have risen as a result. At the same time it faces a number of operational challenges which would not have been foreseen in 2000.*  
[47/1]

2.137 It is clear that DCA now has the capacity to develop electoral policy on behalf of the Government and it is right and proper that they do so. The Committee also believes that The Electoral Commission must be seen to be independent if it is to carry out its regulatory functions effectively:

*It has to be, I think, a body that is separate from the policy formulation position. They can give information about things but if you want to be somebody completely separate from the political process, which I am absolutely sure The Electoral Commission should be, then it is much easier to be in that position if there is not an overlapping policy role between government on the one hand and The Electoral Commission on the other.*  
[Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs 21/9/06, 146]

2.138 The Electoral Commission itself appears to be aware that the current status quo is no longer tenable:

*Moving more into the operational area probably means pulling a little bit away from others. We would still be an influence on policy but the notion of The Electoral Commission as the sort of lead on electoral policy seems to me to be actually a bridge too far.*

[Sam Younger, Chair of The Electoral Commission 13/6/06, 95]

2.139 In addressing this issue the Committee agrees with the Government's view that it is no longer appropriate for The Electoral Commission to have responsibility for reviewing electoral policy:

*Decisions on the electoral system are political ones, and in the final analysis they must be taken by politicians.*

[Andrew Tyrie MP 35/9]

2.140 The Committee has taken this view for two major reasons:

- it is the role of government to develop policy and introduce legislation to Parliament; and
- there is a potential conflict of interest for any independent body between being an effective regulator and formulating policy that could have a direct impact on the area the body is regulating.

2.141 While the Committee is proposing that The Electoral Commission no longer take the lead on electoral policy, it firmly believes that it should have a role in providing advice on the suitability of existing and new electoral legislation. As a regulator it should, in the course of its operations, develop a thorough knowledge of what is working and what is not. If something is not working or policy proposals are likely to cause problems (see also Chapter 5, R42 p2.28), then The Electoral Commission should have a duty to make such observations public.

## RECOMMENDATION

**R23** The Electoral Commission should no longer have a role in undertaking policy development in relation to electoral legislation. This function should be the responsibility of the appropriate Secretary of State for Constitutional Affairs.

## RECOMMENDATION

**R24 The Electoral Commission should continue to provide advice on the suitability of existing and new electoral legislation in respect of its ability to perform its two principal statutory duties.**

## Election reports

2.142 In the Fifth Report the Committee recommended that The Electoral Commission should publish a report on the conduct and administration of each major election or referendum within six months of it taking place. In PPERA this was specified as reporting on General Elections, European Parliamentary Elections or elections to the three devolved legislatures.

2.143 The Electoral Commission has published a number of election reports since 2001. They have been particularly welcomed in Northern Ireland, Scotland and Wales and the evidence the Committee received indicated that, because of the various changes to electoral law and voting systems in the various elections to the devolved legislatures, those particular reports had useful recommendations to make. However, the Committee was disappointed by the standard of the Commission's report on the 2005 General Election which was not a comprehensive or considered account. It should be expected that, following the next General Election, the Commission publishes a comprehensive report in one volume on the important aspects of that election.

2.144 At the time of its Fifth Report, the Committee envisaged that such a post-election report would draw attention to any novel features of the election; also to any deficiencies that had emerged in its administration and in the law governing it. We think these reports should cover such areas but they should also include a specific section concerning incidents and allegations of electoral fraud. This section should also cover what action was taken by electoral administrators to minimise the risk of electoral fraud. Additionally, following elections in May 2007, it is essential that The Electoral Commission includes in its election reports an assessment of the provisions introduced by the Electoral

Administration Act, including the effectiveness of the provisions of postal voting on demand (see also Chapter 5, R41).

2.145 Although The Electoral Commission does not currently have a statutory duty to report on local elections, the Committee believes that the Commission's remit should be widened to cover local elections in England, Northern Ireland, Scotland and Wales.

## RECOMMENDATIONS

**R25. The Electoral Commission's reports on each election should cover incidents of electoral fraud and the actions taken to minimise fraud, also the effectiveness of the new provisions on postal voting on demand. This should apply in reports for the May 2007 local elections.**

**R26. The Electoral Commission's statutory remit to report on the conduct of elections should be extended to cover local elections in Northern Ireland, Scotland and Wales.**

## References

1. Committee's Fifth Report, *The Funding of Political Parties in the United Kingdom* (Cm 4057 – October 1998).
2. Political Parties, Elections and Referendums Act 2000, c41.
3. The Funding of Political Parties in the United Kingdom: The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life (Cm 4413 – July 1999).
4. Committee on Standards in Public Life: *Review of The Electoral Commission, Issues and Questions Paper*, February 2006.
5. *The Review of Funding of Political Parties: An interim assessment*, Sir Hayden Phillips, October 2006.
6. House of Commons Constitutional Affairs Committee, Party Funding HC 163-1.
7. The Electoral Administration Act 2006.
8. *Donations: guidance for political parties*, The Electoral Commission.
9. Representation of the People Act 1983.
10. Hansard, 3 July 2006.
11. Representation of the People Act 1948.
12. Miscellaneous Provisions (Northern Ireland) Act 2006.

# CHAPTER 3: GOVERNANCE OF THE ELECTORAL COMMISSION

## Introduction

- 3.1 In the previous chapter the Committee set out its recommendations for an amended and refocused regulatory mandate for The Electoral Commission. In this chapter we consider the governance of The Electoral Commission, which is of major importance to fulfilling its mandate effectively.
- 3.2 The framework put in place for the governance of The Electoral Commission must ensure its independence, impartiality and competence. The Commission must be governed so as to ensure the confidence of the public, of political parties and of electoral administrators who are subject to its regulatory approach. To do this it must show leadership and integrity in fulfilling its mandate.
- 3.3 This Committee's principal concern in its Fifth Report [1] regarding the governance of The Electoral Commission was to ensure that the Commission was independent of government and of political parties. From this the Committee derived a number of important principles that it believed should underpin the procedures for determining the membership of the Commission's governing body, the electoral commissioners. The recommendations made by the Committee reflected these principles, but were not prescriptive about how they might be achieved:

*R75 The Commission should be, and be seen to be, an independent and impartial body. Its members [Commissioners] should be chosen on a non-partisan basis and by means of a non-partisan procedure. Its members should nevertheless be acceptable to the leaders of the main political parties.*

*R76 The members of the Commission should be given long periods of office and should enjoy substantial security of tenure.*

*R77 The Commission should consist of five part-time members.*

- 3.4 The Government, in its response to the Committee's Fifth Report [2], accepted these recommendations and proposed that:
- there should be not less than five, but not more than nine electoral commissioners and all would be Crown appointments. The number of commissioners was increased from that proposed by the Committee to take account of the wider mandate proposed by the Government and, in particular, to deal with the prospect of the Commission assuming responsibilities for parliamentary boundaries;
  - the commissioners and the chair should be appointed under Royal Warrant. The powers of Her Majesty would be exercisable on an Address from the House of Commons, with no motion being made for such an Address without the agreement of the Speaker of the House of Commons and after consultation with the leaders of registered parties (with at least two members in the House of Commons); and
  - commissioners would be appointed for a term of up to ten years and are only removable within their period on specific grounds and then with the agreement of the House of Commons. Terms would be renewable but with the expectation that, in line with the Commissioner for Public Appointments' guidance, no-one would serve longer than ten years.
- 3.5 These arrangements were reflected in the Political Parties, Elections and Referendums Act 2000 (PPERA) [3]. However, during the course of the passage of the legislation the Government brought forward a number of important amendments that were designed to further strengthen confidence in the independent and impartial nature of The Electoral Commission. As a result PERA also provides for:

- restrictions on who can be the chair of the Commission, an electoral commissioner or the chief executive of the Commission. Restrictions include any member, officer or employee of a registered party; anyone who, in the last ten years, has been an officer or employee of a political party; and any donor in the register of donations;
- as a consequence, the chair of the Commission, an electoral commissioner or the chief executive of the Commission is required to stand down from office if he or she consents to being nominated as a candidate at a relevant election or to being included in a list of candidates at such an election; or takes up office or employment with a registered party or is named as a donor; or becomes a party member; and
- further restrictions were placed upon who could be an employee of The Electoral Commission. Except for the ban on political party membership, these mirror the restrictions on who may be commissioner or chief executive, including ceasing to be an employee if any of these restrictions occur during employment.

3.6 The first electoral commissioners were appointed in January 2001; two for a four-year term, three for a five-year term and the chairman for a six-year term. At that time, the Home Office was the lead government department for electoral matters and undertook the appointments process through open competition and an independent selection panel. In 2004 it was necessary to decide what to do in relation to the first batch of appointments due to expire – given that PPERA does not explain where the responsibility lies, nor the required process for the selection of candidates leading up to a recommendation to the Speaker. Given the statutory independence of the Commission it was felt to be inappropriate for government to take the lead and, in view of the Speaker's statutory role in the appointments process (paragraph 3.4 above), he took overall charge. A similar procedure was followed in 2005 when the second batch of appointments was due to expire. On both occasions each of the commissioners who had completed a first term was reappointed for a further term.

3.7 There are five current electoral commissioners: Sam Younger (chair), Glyn Mathias, Karamjit Singh CBE, Sir Neil McIntosh CBE, and Pamela Gordon. Peter Wardle is the chief executive and accounting officer. On 8 November 2006, the Speaker's Committee announced [4] that Sam Younger had accepted a further period of office, to expire on 31 December 2008, subject to the statutory consultation required of the registered leaders of certain political parties and the agreement of the House of Commons. The announcement made clear that the reappointment was in accordance with the Commissioner for Public Appointments' Code of Practice.

## Overview

3.8 The restrictions placed on who can be an electoral commissioner or an employee of the Commission, introduced during the passage of PPERA, are a robust (and it could be argued draconian) approach to implement the principles of membership of the Commission set out by this Committee in its Fifth Report. The measures were clearly intended to ensure that The Electoral Commission as a whole (commissioners and staff) is, and is demonstrably seen to be, independent and impartial in the discharge of its statutory functions.

3.9 It is clear, however, that the practical effect of the restrictions on commissioners and staff, the so called 'ten-year rule', is to more or less exclude anyone who has had direct experience of a political party and through that, direct involvement in the political process. As Dr Alan Whitehead MP said in reference to the restrictions on Commission staff [11/07/06, 219]:

*Bearing in mind that most employees of The Electoral Commission at middle ranking and junior level are under the age of 40, effectively that means that they are barred for life from ever being involved in the political process, which seems strange.*

3.10 A number of witnesses during the inquiry questioned whether such restrictions, although aimed at ensuring an important principle (independence and impartiality), are appropriate for a regulator which, by definition, must possess expertise, knowledge and competence of the sector to operate effectively. Comparisons have

been made with other regulators operating in similarly sensitive sectors which, although having clear rules to prevent real and apparent conflicts of interest among non-executive Board members and staff, do not preclude contemporary experience and involvement in the regulated sector. Indeed most regulators actively seek such contemporary experience.

- 3.11 The Committee's concern therefore has been to consider whether, after five years, these measures have ensured real and perceived impartiality and independence of the Commission, and helped the Commission to fulfil its statutory mandate, in particular its regulatory functions. Inevitably, our consideration of the Commission's appropriate future governance arrangements takes account of our recommendations in Chapter 2 for a clearer, refocused mandate for the Commission, including the removal of some statutory duties – in particular, any responsibility for electoral boundaries.
- 3.12 During the inquiry the Committee received a spectrum of views from witnesses about the effectiveness of the current governance arrangements for The Electoral Commission. On the issue of the current restrictions on who can be a commissioner, the views expressed were to some extent polarised. There is a clear consensus that, whatever the arrangements, a key aim should be to continue to ensure the real and perceived independence and impartiality of the Commission from government and political parties. However, views varied markedly on whether the current arrangements had delivered this in practice, particularly given the current breadth of the Commission's mandate. There was also varied comment concerning whether the competence and experience to deliver the mandate effectively may have been sacrificed.
- 3.13 In the following section we set out some of the arguments put forward and the evidence received during the inquiry, before outlining the Committee's views and recommendations on how to address the key issues.

### Restrictions on staff of The Electoral Commission

- 3.14 The evidence the Committee received during the inquiry indicates that there is a broad consensus that the current blanket restrictions, the ten-year rule, placed on employees of the Commission are disproportionate and place a significant barrier to the Commission effectively delivering its mandate. This view is shared to varying extents by the Government, the Speaker's Committee, political parties, MPs, electoral administrators, academics and commentators and includes The Electoral Commission itself [74/11]. Most witnesses expressed a view that the restrictions had created a perverse situation whereby some of the very people who have the necessary experience and knowledge that would most assist the Commission to become the effective regulator are excluded from employment.
- 3.15 This is a view that the Committee shares. We do not believe that such a blanket rule is justified, proportionate, or indeed necessary to ensure the impartiality and independence of staff employed in the Commission, or more broadly, of the Commission itself.
- 3.16 The Committee is not aware of any other regulators that have such restrictions on all staff in terms of their previous experience and employment. Such rules do not pertain among comparable overseas Electoral Commissions, such as the Federal Election Commission (USA), Elections Canada and the Australian Election Commission. As a matter of course many regulators do require a 'cooling off' period for individuals moving from a regulated body to the regulator (and visa versa). There are also strict rules to deal with real and perceived conflicts of interests once an individual is employed. However, the imposition of a blanket ten-year rule on all employees appears unprecedented.
- 3.17 Some witnesses did recognise that certain restrictions on staff might still be appropriate, in particular for the most senior members of staff. This avoids real or perceived bias and ensures that the public and political parties remained confident in the regulator's independence:
- ...we have no objection to a relaxation of the ten-year rule in relation to staff – and potentially even the removal of any restriction whatsoever. A possible model might be to apply the sort of rules that operate in respect of civil servants. The only exceptions to this might be the most senior staff of the Commission who have*

*delegated responsibility (or significant influence in) decision-making.*

[The Electoral Commission 74/11]

- 3.18 The Committee agrees that a balance needs to be struck to avoid potential conflicts of interest and/or perceptions of bias. The risk of this will be highest and potentially most damaging for the most senior executive positions in the Commission: the chief executive and members of the executive management board, who will include the regional electoral officers we recommend in Chapter 2. These positions will most influence regulatory decisions. The Committee therefore believes that restrictions should remain for these posts, but need not be as draconian as the ten-year rule. A five-year rule would be more appropriate.
- 3.19 For other staff it was suggested that the rules that operate for civil servants could apply. However, these rules [5] deal only with restrictions on political activity when already employed and for 'politically restricted' posts (which would be appropriate for The Electoral Commission). This would not therefore address the issue of any cooling-off period restriction on employees. Given the refocused regulatory mandate we propose for the Commission in Chapter 2, we believe that it would not be appropriate, for example, for a party agent to move directly from this post to deal, the next day, with regulatory matters concerning that party. For this reason, we believe a limited period of restriction is still necessary and suggest that one-year is appropriate.

## RECOMMENDATION

**R27. The current ban on employing individuals at The Electoral Commission who have been politically active over the previous ten years should be reduced to one year. For senior management and regional electoral officers the length of the ban should be reduced to five years.**

## Electoral commissioners

- 3.20 The issue of the restrictions on who can be an electoral commissioner generated some of the greatest interest and debate in this inquiry. People tended to hold strong and, at times, passionate views on the merits or

otherwise of enabling some commissioners to have direct and contemporary experience of political parties. The arguments for and against some relaxation of the ten-year rule have been laid out and there are valid points on both sides. The arguments are finely balanced and may rest upon perceptions, which are important, as much as practical realities which, ultimately, should be the main concern:

*By all means, have admirable party advisory committees who can express views, have some forum in which they can express views, but keep them absolutely off the Commission. That is the thing we both of us felt very strongly about as we talked about.*

[Dr David Butler 13/07/06, 234]

*My own view is that falling over backwards to avoid having politicians on the body, of course you must make sure party political views do not in any way intrude. Of course you must ensure the politicians cannot, as it were, dominate the body. But The Electoral Commission is engaged in seeing how the political process in part works. You should have people who have been engaged in the political process there to help you – not you but The Electoral Commission – or there will be people who say it does not have the confidence of those engaged in the process. It needs the confidence of them but it also needs the confidence of the public as well. I think you can do both.*

[The Rt Hon Lord Falconer of Thoroton QC, Lord Chancellor and Secretary of State for Constitutional Affairs 21/09/06, 168].

- 3.21 Very broadly, academics, some commentators, electoral administrators, boundary commissioners, some smaller political parties and The Electoral Commission itself believe that the ten-year rule on the appointment of Commissioners protects the independence and impartiality of the Commission (real and perceived) and should therefore remain. In summary the principal arguments put forward against any relaxation of the restrictions are:
- commissioners who have any direct affiliation, current or previous, with any political party would compromise both the real and perceived independence of the Commission. The Commission could become a forum for brokering 'deals' between the parties on key regulatory issues;



- as such, commissioners could act as representatives of their particular party's interests and, collectively, such commissioners could seek to influence the Commission as a whole in favour of political parties' interests, rather than the public interest. Electoral Commissions in other countries where the governance structure is overtly political were cited as examples;
- decisions on difficult regulatory issues – such as a decision to impose a fine (as we recommend in Chapter 2) or reference to the Director of Public Prosecutions (DPP) for a prosecution, would be tainted with the perception of possible political bias or 'quid pro quo' deals; and
- the current unitary<sup>1</sup> nature of the Commission would be undermined. Even if the rules were relaxed only for a minority of commissioners, the Commission as a governance body could be perceived, and might operate merely as a forum for representatives of particular groups to pursue their different interests, not just political parties but also local government and devolved administrations.

3.22 However, it must be acknowledged that some of those expressing these views were doing so specifically in the context of Commission's current mandate, including responsibility for electoral boundaries (for example, Dr David Butler [13/07/06, 233], and the Boundary Commission for England [5/2]).

3.23 Many of the witnesses who opposed any relaxation of the rules nevertheless recognise a shortfall in the extent to which the Commission has managed to engage with elected politicians and political parties in key aspects of its work. A number proposed the establishment of a statutory advisory group, similar to arrangements that exist in Canada and Australia [see overseas summary in volume 2]. The Electoral Commission itself clearly has concerns about this issue and, in particular, their engagement with elected representatives:

*...the one thing we [commissioners] do not have is the experience of operating as either elected politicians or actively within parties. Therefore we need to have access*

*to that expertise and experience, and that we recognise.*

[Sam Younger, Chair, Electoral Commission 14/09/06, 388]

The Commission is now making efforts to address this issue by setting up an informal advisory group which could be put on a statutory footing:

*There are various ways we have tried to plug that gap. Most recently, and I think probably this is overdue, and I hope it will work and is without prejudice to what might happen in the future either statutorily or otherwise – but we have established a small reference group of three members of the House of Lords, three members of the House of Commons, from each of the main parties.*

[Sam Younger, Chair, Electoral Commission 14/09/06, 391]

3.24 Irrespective of this Committee's conclusions about the future governance arrangements for the Commission, we believe that this is a welcome development by the Commission that should be continued.

3.25 On the other hand, all the main political parties, some MPs and commentators, and the Speaker's Committee have argued strongly for more direct contemporary political experience in the governance arrangements. Most suggest some relaxation of the ten-year rule for the appointment of electoral commissioners. Almost without exception, those who have argued for some relaxation are not seeking a majority of commissioners with such direct experience, recognising the balance to be struck and perceptions of independence. Rather they seek a significant minority that would reflect experience across the political spectrum. In summary, the principal arguments put forward are that:

- it is fundamentally untenable for a regulator to have a governing body which contains no-one with direct experience of the sector under regulation;
- for a regulator to be effective and credible it must have the confidence of those it regulates. The Commission will continue to fail to generate this confidence if its governance structure

<sup>1</sup> A board which includes different views, backgrounds and experience but in which no-one sits as a representative, far less an agent, of particular parties (in the legal rather than political sense) or organisations and where decisions are taken collegially.

does not include people with direct, contemporary political experience;

- some aspects of the Commission’s work that have led to justified criticism over the last five years would not have occurred with a governing body more in tune with the way political parties and the political process work in practice;
- true independence and impartiality is best ensured by input from experience of the various sides of politics and the political process and helps avoid unwitting bias to either the government or any particular political party; and
- the current restriction contributes to the unhelpful perception that politics is an untrustworthy and undesirable activity whose participants cannot be trusted to act in the public rather than politically partisan interest.

3.26 The Committee believes the arguments for and against some relaxation of the ten-year rule for electoral commissioners are well balanced. The Electoral Commission does appear to have established itself in the eyes of the public as a truly independent body. Experience from overseas and international best practice [6] demonstrates that independence of such bodies is highly prized and any erosion of this would be a significant loss for The Electoral Commission. However, the inclusion of direct contemporary political experience on the governing body does not necessarily imply a loss of independence [6]. The Committee has much sympathy with those who regard such claims as feeding public cynicism in politics and a perception, fuelled by the media, that politics is some sort of disreputable activity that should be avoided at all cost. This is not true and such perceptions damage public life and the engagement of the public in the political process.

3.27 The Committee has therefore focused on the competence and experience of commissioners required for the Commission to deliver its statutory mandate effectively. Some of the evidence that we have received indicates that those whom the Commission has regulated have not been uniformly confident about the commissioners’ experience of the political process, elections and political party finances in the last five

years. Indeed the Commission’s own concern about “lack of engagement with MPs and politicians more widely” is symptomatic of this shortcoming. We strongly believe that establishing confidence between commissioners and those they regulate is essential for the Commission’s future governance arrangements.

*There were other cases where I think the Commission did not understand the distinction between those things which confer advantage on a candidate in an election, and therefore should be looked at and costed by them and declared to them, and those things which are part and parcel of being a member of parliament and carrying out public duties... All of these things, I think, illustrated a lack of awareness of what went on in the real world of being a politician and not of a partisan character.*

[Rt Hon Alan Beith MP 15/06/06, 369].

3.28 The Committee also notes that the involvement of politicians in other bodies concerned with the broader regulation of politics has worked well and brought significant benefits. This is the case in the Committee’s own composition and also in bodies such as the House of Lords Appointments Commission and the Advisory Committee on Business Appointments. We do recognise that these bodies have only advisory not executive functions, unlike the Commission, and that this may argue against similar political party nominees as electoral commissioners. However, in local government, the Standards Board for England and the Audit Commission have executive regulatory powers and both have ‘political’ board members in a minority. In these cases, although nominations for suitable candidates are sought from the three main parties, the positions are also advertised and the selection process is a competitive one. In addition to requirements for political experience, successful candidates must also satisfy the criteria that apply to other ‘non-political’ board member or commissioners. These bodies have been involved in difficult and controversial issues but none of them, we believe, could be justifiably accused of a lack of independence or impartiality.

3.29 On balance therefore, the Committee believes that some relaxation of the ten-year rule is necessary to enable a minority of Commissioners to have direct, contemporary political experience. This will ensure that the Commission can operate effectively as a regulator and retain the confidence of those whom it regulates. To accommodate commissioners with experience across the political spectrum (for example from the three main parties and one from a smaller political party), the number of Commissioners would need to be increased, so that together these four posts were in a significant minority. Such an arrangement would also need to reflect some key principles to maintain the unitary nature of the board and avoid direct conflicts of interest for holders of the four new commissioner posts.

3.30 The Labour Party in its evidence [37/2] proposed that:

*the number of commissioners be increased to twelve, of which seven (including the Chairman) would be independent as set out in PPERA 2000 at present. The remaining five would be appointed on the following basis. One commissioner appointed by each of the three main parties in the House of Commons (the Labour Party, The Conservative Party, The Liberal Democrats) one commissioner appointed by the other minor parties in the House of Commons, and one commissioner appointed by the Association of Electoral Administrators.*

The Conservative Party and the Liberal Democrat Party suggested similar models. [Oliver Heald MP, Conservative, Shadow Secretary of State for Constitutional Affairs and Shadow Chancellor of the Duchy of Lancaster 15/06/06, 185; and Simon Hughes MP, Shadow Secretary of State for Constitutional Affairs and Attorney General, President of the Liberal Democrat Party 15/06/06, 308]

3.31 The Committee does not believe that direct nomination or appointment by political parties of even a minority of commissioners is the appropriate way forward. Such a mechanism might imply that these commissioners would be representatives of that particular party's interests in any Commission deliberations or decisions. This would, in our view, undermine the unitary nature of the Board of Commissioners. A number of witnesses who supported relaxation of the ten-year rule were also

cautious of representative appointments, fearing that the Commission could become a forum for party political deals without due weight given to the public interest:

*...I do not think it should be what the Germans call die Proporz. It should not all be lined up. This is my own view; I am not sure we have Hansard Society view. I think that there is a danger that you get what has happened with the Federal Electoral Commission in the States, which has really just become a forum in which the parties negotiate. It is really no more than that; it is a place, as you have no doubt observed, where the parties cut their deals. I think that would be extremely undesirable...*

*There is a danger, if the party nominees bounce in the traditional way, that you are implicitly saying to the other members of the Commission, "You sit back while the politicians do the deals". I do not think this should be a deal-led body; I think it should be a public-interest, rule-led body. That is what makes me slightly nervous about getting over mechanistic in that way. But the presence on the staff and on the Commission itself of people with political clout and nous, albeit it no longer in the middle of the fray, seems a good thing. [Lord Holme, Chairman, Hansard Society 07/09/06, 263-266]*

3.32 The Committee therefore believes that an open competitive selection process for such positions is the best approach and this could include political parties encouraging particular individuals to put themselves forward for appointment.

3.33 As we have noted, other regulators do include people with direct contemporary experience of the regulated sector on their boards although they have protections in place against conflicts of interest. Any relaxation of the ten-year rule for the Commission must ensure similar protections. Some witnesses who argued for a relaxation of the rules referred to the need to recruit commissioners with "very recent" political experience or "no longer active politicians" or those "no longer holding an official position within a political party". These views reflect the need to ensure that a commissioner does not have a direct conflict of interest with the issues or decisions dealt with by the Commission. The principal potential conflict is a direct interest in the fortunes, electoral or financial, of a particular political party.

We do not believe that this extends as far as membership of a party. But it does clearly extend to a commissioner who continues to be an elected representative of that party or an appointed official or representative (i.e. a Peer taking the party whip). These restrictions should, in our view, remain.

- 3.34 Finally, and as we highlighted in Chapter 2, there are substantial concerns about the absolute separation of political interests from the actual process of deciding electoral boundaries – as opposed to presenting evidence and making representations about them. Our recommendations here in respect of the commissioners are made in light of the recommendation in Chapter 2 that all responsibilities for electoral boundaries should be removed from The Electoral Commission.

## RECOMMENDATIONS

**R28. The total number of commissioners (including the chair) should be increased to ten.**

**R29. The current restrictions on who may become an electoral commissioner should be revised for four Commissioner appointments to enable the appointment of individuals with recent experience of politics and the political process. New commissioners would be appointed as individual members of a unitary board, not as representatives or delegates of a particular political party.**

**On taking up appointment, such commissioners:**

- **must not be an employee or officer of any political party and/or an elected representative (at European, national, devolved or local level) or an appointed Peer who takes the political party whip; and**
- **would cease being a commissioner on becoming any of these during their term of office.**

**R30. The background and political experience of the four new commissioners must respectively represent the three main political parties (Labour, Conservative and Liberal Democrat) and one of the minor parties in the House of Commons. Although individuals may be encouraged to apply by political parties each post should be publicly advertised and candidates must satisfy all other criteria that apply for commissioner posts and be subject to a selection process based upon merit following the Commission for Public Appointments' Code of Practice.**

## Devolved administrations

- 3.35 The Committee has also considered whether the current governance arrangements sufficiently take account of devolution and the Commission's UK-wide remit. Currently, there are three commissioners who take a lead interest within the Commission in each of the three devolved administrations, although they are not formal representatives. The commissioners for Scotland and Wales are from each of these countries and have respective experience and knowledge of them. The 'lead commissioner' for Northern Ireland is not from or resident in the Province, although the Commission told the Committee that it planned to recruit such a commissioner in the near future. Witnesses in Belfast also highlighted the difficulty of finding a candidate who would be perceived as impartial to all the political parties in Northern Ireland [Tim Attwood SDLP 21/06/06, 85, Richard Bullick DUP 21/06/06, 185, Sean Begley Sinn Fein 21/06/06, 377].

- 3.36 The evidence the Committee received in Scotland, Wales and Northern Ireland was supportive of these arrangements. This approach appears to have worked well and has been well received by the devolved administrations, respective electoral administrators and politicians. There were some witnesses who suggested that there should be a statutory requirement for Scottish, Welsh and Northern Irish commissioners whose role would be specifically to represent the interests of each of the three countries.

3.37 There are some similarities in these suggestions with the debate on representation of political parties and maintaining a unitary board of Commissioners as discussed above. The Electoral Commission believes the current arrangements can adequately address devolution and a regional approach in England without requiring representative commissioners and breaking the concept of a unitary board:

*I think we would all say that what the most important thing to all of us has been that every commissioner has an equal status on all issues in the sense that they come to the Commission in order to take an interest and make decisions across the full range of the Commission's activities. That said, it would be inconceivable that we would not be looking for a balance of commissioners to represent various [devolved] areas.*

*...And we also need to think in terms, particularly if we move down a regional route, of thinking about how we might reflect regions within England. So there is an awful lot of balancing work to be done. But the core of it, I think, is that you need to have a corporate body where you feel everybody both can be and is accepted as having an equal voice across the board. [Sam Younger, Chair, Electoral Commission 14/09/06, 418-419]*

3.38 In the Committee's view, the current approach strikes the right balance between reflecting devolution in the governance arrangements and maintaining a board on which commissioners are not a collection of representatives but a collegiate body.

## RECOMMENDATION

**R31. The practice of appointing a commissioner from Scotland and a commissioner from Wales who have the lead interest in Scottish and Welsh matters should continue and the Speaker's Committee should proceed with appointing a commissioner from Northern Ireland who will play a similar role.**

## The role of the chair and commissioners

3.39 Developments in systems of governance in the public and private sector have led to a clear separation of executive and non-executive roles to clarify operational responsibilities and governance accountabilities. In the Committee's Fifth Report, we envisaged that, after the initial set-up of the Commission, the chair would be a non-executive role and the chief executive would have responsibility for day-to-day decisions [1, paragraph 11.10].

3.40 In the event, setting up the Commission required the chair to take a hands-on executive role. This continues, although it has reduced over time. The current chair explained to the Committee that he was indeed now starting to take a more conventional non-executive role [Sam Younger 13/06/06, 265] and the Speaker's Committee confirmed that they were in process of considering this issue [Peter Viggers MP, 13/06/06, 428]. Given the broad mandate of the Commission, the commissioners themselves appear to have needed to take a more executive role in the early days of establishment, including responsibilities for boundaries, which required a significant commitment of time from each commissioner:

*We are not like a lot of non-executive directors. I think it is fair to say that my colleagues and I on average, and it does vary, are spending 2½ to 3 days a week on Commission business. When we were doing the local government reviews in the North of England I was more than full time. [Pamela Gordon, Electoral Commissioner, 14/09/06, 383]*

3.41 The Committee accepts that setting up the Commission, and its broad mandate, has required both the chair and the commissioners to play a greater part in the executive functions than would normally be expected from what were anticipated to be non-executive board appointments. However, now the Commission is established, and with a more focused mandate – as proposed in Chapter 2 – we believe that it is important to make the roles of the chair, commissioners and chief executive explicit. The changes we propose for the composition of commissioners require the chair to have a leading role in the governance structure. When the new

chair is recruited (within the next two years) we expect the appointment to be on a part-time basis, with remuneration reflecting this, and clearly as a non-executive role. The same should apply to the appointment of new commissioners.

- 3.42 Under the chair's leadership, the commissioners should have collective responsibility for setting the overall strategy of the Commission and overseeing its effective delivery against its statutory mandate. Advised by the chief executive, commissioners will need to take key regulatory decisions and account for the Commission's use of public funds to the Speaker's Committee and for the Commission's activities in general. The chief executive and his/her senior management must be responsible for the delivery of the overall strategy.

## RECOMMENDATION

**R32. The chair of The Electoral Commission should be a part-time non-executive role. Commissioners should also be non-executive and part-time.**

## Appointment of the chair and commissioners

- 3.43 PPERA provides that no commissioner appointments should be made without the agreement of the Speaker of the House of Commons (and after consultation by the Prime Minister with the leaders of registered parties) but it does not specify the selection process or which body has responsibility for this. Initial appointments were made by the Home Office (then responsible for electoral matters) through an open competition based on merit, which is now the established method for ministerial public appointments.
- 3.44 Both the Commission [Sam Younger 13/06/06, 269] and the Speaker's Committee [Dr Christopher Ward, Clerk to the Speaker's Committee 13/06/06, 406] gave the Committee assurances that the principles of the Commissioner for Public Appointments' Code of Practice would be followed for future commissioner appointments. However, a number of witnesses expressed concern about the transparency of the appointment and reappointment process and a lack of clarity

about who has responsibility for the process – the Commission or the Speaker's Committee?

- 3.45 The Committee believes it is important to address both the issue of responsibility and of process. Using the example of ministerial appointments, where the sponsoring department is responsible for the appointment process, then the Speaker's Committee should be responsible for commissioner appointments. The Speaker's Committee would be responsible for beginning the process in a timely manner, setting the role specifications and overseeing the open competition, which would include setting up an independent selection panel. The Speaker would then agree the selection panel's recommendation after consultation with the leaders of registered parties (with at least two members in the House of Commons). Although not a ministerial appointment, and therefore outside of the formal scope of the Commissioner for Public Appointments, the Speaker's Committee should follow the OCPA Code, including the use of an independent assessor.

## RECOMMENDATION

**R33. PPERA should be amended to make clear that responsibility for the oversight of the recruitment and selection process for electoral commissioners lies with the Speaker's Committee, including setting the role specification and convening an independent selection panel. Either PPERA or the Speaker's Committee procedures should stipulate that the Commissioner for Public Appointments, Code of Practice will be followed in such appointments.**

## Conclusion

- 3.46 Striking the right balance between governance arrangements that ensure independence and impartiality and the need for contemporary experience and knowledge of the sector is a challenge faced by all regulators. But getting the right balance is critical. It will secure the confidence of the public and those being regulated, demonstrate independence and impartiality and ensure the regulator's competence to fulfil its mandate.

3.47 Achieving this for The Electoral Commission is a particular challenge given the importance of public confidence and consent in the democratic process which it regulates and bearing in mind that the regulated sector is the political system and political parties – the source of members of the legislature(s) and executive(s).

3.48 The restrictions governing who could be an employee of the Commission or become an electoral commissioner, has left a gap in the contemporary experience and knowledge of the political process within the Commission. Evidence gathered during this inquiry shows that this gap has reduced the confidence of political parties and politicians under the Commission's regulation, and had an impact on the effectiveness of the Commission. We have recommended the relaxation of these restrictions to:

- avoid direct conflicts of interest;
- maintain the independence and impartiality of the Commission;
- retain the unified nature of the board of commissioners, also taking account of the devolved administrations;
- enable the appointment of staff who have direct contemporary experience and knowledge of politics and political parties; and
- enable the appointment of a minority of commissioners who also have direct contemporary experience and knowledge of politics and political parties.

3.49 Five years after the establishment of the Commission we also believe that the chair and commissioners should now play an explicitly non-executive role in their governance of the Commission, leaving the executive management team with day-to-day operational responsibilities. Under the chair's leadership, the commissioners must now assume collective responsibility, as non-executive board members, for setting the Commission's overall strategy and overseeing its effective delivery by the executive team.

3.50 Finally, we recommend that the Speaker's Committee should assume the responsibility for oversight of the process of appointing the chair and commissioners, and that these appointments are made through an open, competitive and independent process in line with the requirements of the Commissioner for Public Appointments.

## References

1. Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, Cm 4057, October 1998.
2. *The funding of political parties in the United Kingdom: The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life*, Cm 4413, July 1999.
3. Political Parties Elections and Referendums Act 2000, c41.
4. House of Commons Hansard, column 576, 6 November 2006.
5. Civil Service Management Code, July 2006.
6. Council of Europe – European Commission for Democracy through law (Venice Commission): *Code of Good Practice in electoral matters* (CDL-AD (2002)23rev).



# CHAPTER 4

## ACCOUNTABILITY OF THE ELECTORAL COMMISSION

### Introduction

4.1 The question “Who guards the guardians?” is one that is often posed in the context of organisations and individuals charged with regulating the activities of government bodies and elected representatives in a democratic society (for example see [1]). In a mature democracy such as the UK, systems of accountability, both to the executive (and through it to legislature) and directly to elected representatives have been developed and modified over time.

4.2 However, in the case of The Electoral Commission, charged with the regulation of key aspects of the democratic process itself, this poses a particular challenge. The regulation of party political finances and the electoral system involves potential conflicts of interest among members of the executive and the legislature – principally the House of Commons. Regulation of these areas can directly affect the political prospects of individual MPs, Ministers and their political parties. In a parliamentary democracy it is necessary for the regulator, The Electoral Commission, to be held accountable, either by the Government – and through it to Parliament – or by Parliament directly, particularly for the use of public money in fulfilling the statutory functions set for it by Parliament. But any system of accountability must also protect the Commission’s independence and impartiality from the possibility of undue influence for partisan political or electoral advantage.

4.3 The effectiveness of any accountability system for The Electoral Commission will also depend on:

- the clarity and focus of its mandate as set out in statute, for this will be the basis on which it seeks to justify resources to achieve particular outcomes, and also the basis on which it must give an account more generally on its activities; and
  - its governance arrangements, which should be designed to ensure its day-to-day independence, impartiality and competence and therefore sustain the confidence of the public and also political parties and elected representatives who are subject to its regulatory activities.
- The Committee has considered these issues in Chapters 2 and 3, and believes that the changes it has proposed to give focus and clarity to the mandate and enhanced governance arrangements will, in themselves, strengthen the effectiveness of accountability arrangements for The Electoral Commission.

4.4 During the inquiry witnesses raised four key areas where the issue of appropriate and effective accountability arrangements for The Electoral Commission were considered important:

- (i) **Accountability to Parliament for the proper expenditure of its funds** – i.e. the setting of the budget and through that oversight of the economic, efficient and effective discharge of its statutory mandate;
- (ii) **Accountability to Parliament for its general activities**, policies and decisions in discharging its statutory mandate – i.e. its overall performance;
- (iii) **Accountability to the devolved administrations**, recognising that The Electoral Commission is a UK-wide body but that its activities are a matter of legitimate interest for the devolved legislatures and that some of these activities are in areas under devolved supervision; and
- (iv) **Accountability to the political parties and electoral administrators** – i.e. to those that it directly regulates.

- 4.5 It is through the mechanisms for each of these areas, particularly i-ii, that The Electoral Commission is accountable to the public through Parliament. The Commission is also accountable to the public indirectly in the usual manner as for other public bodies, for example through annual reports and stakeholder surveys. However, for the purposes of this inquiry, the Committee has focused on the Commission's direct lines of accountability (i-iv above).
- 4.6 The Committee's approach has therefore been to examine the appropriateness and effectiveness of the current accountability arrangements for The Electoral Commission in each of these four areas, balanced against the protection of its independence and impartiality. For each area we have examined the background to the current arrangements in place before turning to an analysis of the evidence received about how well these are working in practice. As we show, there are some overlaps between each area but the principle we have adopted is that each area is potentially a separate line of accountability.

### Accountability to Parliament for the proper expenditure of funds

- 4.7 In the Committee's Fifth Report [2], the accountability mechanisms considered for the then proposed Electoral Commission were mostly concerned with setting budgets:

*One of the main prerequisites of the independence of the Commission would be its independence of budget. A body whose budget was determined through a government department and which consequently had to fight for resources against competing priorities in government could never be perceived as truly independent. We therefore believe it is essential that a mechanism should be developed for setting the Commission's budget which stresses the Commission's independence while at the same time retaining a degree of accountability to Parliament for the proper expenditure of public funds.*

- 4.8 The Committee suggested that the mechanism for setting the budget for the National Audit Office (NAO) might be a useful model. This is done through a committee of MPs, the House of Commons Public Accounts Commission, which

examines the proposed budget before submitting it to the Treasury. This parliamentary committee is distinct from the more familiar Public Accounts Committee, which uses the work of the NAO to hold the executive to account for the economic, efficient and effective use of public money.

- 4.9 In its response to the Fifth Report [3], the Government agreed with the Committee's recommendation that the Commission's budget should not be controlled by a government department and adopted the suggestion that a model similar to that used for the NAO should be put in place. The Government proposed the creation of "The Speaker's Committee" for this purpose, made up of nine members:
- six MPs appointed for the duration of the Parliament by the Speaker; and
  - three ex-officio members, one the chair of the relevant select committee and two Ministers, one with responsibility for electoral matters and one for local government matters.

The Speaker's Committee was to be tasked with examining the Commission's budget and presenting it, with any modification it saw fit, before the House of Commons. To provide assurance that the absence of ministerial departmental oversight would not lead to runaway expenditure, the Speaker's Committee, in approving the budget, was required to heed advice from the Treasury (again, this is similar to the NAO arrangement).

- 4.10 These arrangements were reflected in the Political Parties, Elections and Referendums Act 2000 (PPERA) [4], subject to one important amendment that was made during the passage of the Act [5]. The legislation was amended to provide for the Speaker to be a member and ex-officio chair of the Speaker's Committee and it was envisaged that he or she would play an active role in its day-to-day administration. By employing the constitutional impartiality of the Speaker, the intention was to reinforce the independence from party political interference in the accountability arrangements for The Electoral Commission. This is a variant of the long-standing arrangements for setting parliamentary electoral boundaries. However, as we

discuss later in this section, this has had some unintended consequences in terms of the day-to-day operation of the Speaker’s Committee.

4.11 The powers and duties of the Speaker’s Committee as set out in PPERA [4] are summarised in Table 4.1. Although the Speaker’s Committee does have some additional duties related to the number of deputy commissioners, the removal of commissioners, and the designation of the Commission’s accounting officer, its core duties and powers relate to its role to ensure that The Electoral Commission is operating economically, efficiently and effectively. Principal among these is the duty to approve the Commission’s estimate (budget) and five-year plan, and reporting

this to the House of Commons. In this role the Speaker’s Committee must consult with Treasury and receive reports from the Comptroller and Auditor General on value for money aspects of the Commission’s work. If the Speaker’s Committee decides not to follow recommendations made, it is required to explain its reasons in its annual report to the House of Commons. In Chapter 3 of this report, we have recommended that the Speaker’s Committee’s adoption of the role of overseeing appointments and reappointments of the chair and commissioners of The Electoral Commission be explicitly set out as a formal role in PPERA (Recommendation 33, page 62). This would add a further statutory duty to the list in table 4.1.

**TABLE 4.1: DUTIES OF THE SPEAKER’S COMMITTEE**

Agree with The Electoral Commission the maximum number of deputy electoral commissioners (who serve only as members of Boundary Committees).	S.15(2)
To report to the House that one or more of the statutory grounds for removal of an electoral commissioner has occurred, before making a Motion for an Address for the removal of a commissioner.	Sch 1, para 3(5)
To designate the Commission’s accounting officer and to specify his responsibilities.	Sch 1, para 19(1) and 19(2)
To receive The Electoral Commission’s annual accounts.	Sch 1, para 18(1)(b)
To report to the House, at least once a year, on the exercise of its functions.	Sch 2, para 1
To examine The Electoral Commission’s estimates; decide whether the Committee is satisfied that these are consistent with the economical, efficient and effective discharge by the Commission of its functions and modify them as necessary to make them consistent.	Sch 1, para 14(3)
To lay before the House of Commons, with or without modification, the Electoral Commission’s five-year plan.	Sch 1, para 15(4)
To consult the Treasury, and have regard to any advice it may give, before reaching decisions on The Electoral Commission’s estimates and five-year plan.	Sch 1, para 14(4) and (6); and 15
To receive the Comptroller and Auditor General’s reports on the economy, efficiency and effectiveness with which the Commission has used its resources, and to have regard to the most recent report when considering the Commission’s estimates and five-year plan.	Sch 1, para 16(1); 14(4) and (6); and 15(3) and (5)
If the Committee modifies an estimate or five-year plan, or does not follow any recommendations in a report to the Comptroller and Auditor General, or any statutory advice from the Treasury, it should include a statement of the reasons in its next report to the House.	Sch 1, para 14(6) and 15(5)

**TABLE 4.2: MEMBERSHIP OF THE SPEAKER'S COMMITTEE**

<b>Ex-officio</b>
Chair, Speaker of the House of Commons (Rt Hon Michael Martin MP)
Secretary of State for Constitutional Affairs (Rt Hon Lord Falconer of Thoroton QC)
Chair of the Department of Constitutional Affairs Select Committee of the House of Commons (Rt Hon Alan Beith MP)
<b>Appointed by the Prime Minister</b>
Minister of State for Communities and Local Government (Phil Woolas MP)
<b>Appointed by Mr Speaker</b>
Gary Streeter MP (Conservative)
Lady Sylvia Hermon MP (Ulster Unionist)
Rt Hon Gerald Kaufman MP (Labour)
Humphrey Malins MP (Conservative)
Peter Viggers MP (Conservative)

4.12 The membership of the Speaker's Committee at December 2006 is set out in table 4.2. The Speaker's Committee explained in its written evidence [39/1] that this composition reflects the fact that the Speaker has exercised his power to nominate five backbench members in a manner which *"ensures no individual political party has an overall majority, unlike the Public Accounts Commission"*.

4.13 Since the establishment of the Speaker's Committee in early 2001 it has met on average three to four times a year and published seven reports on its activities, including summary minutes of its meetings. The National Audit Office has conducted five 'value for money studies' in addition to its annual auditing of The Electoral Commission's accounts. There is an opportunity for MPs to table written Parliamentary Questions about the work of the Speaker's Committee and The Electoral Commission and, since January 2002, an opportunity for oral questions. The latter takes the form of a 15-minute period every four weeks shared with questions on the Church Commissioners and Public Accounts Commission. These oral questions are currently taken by Peter Viggers MP, a

member of the Speaker's Committee. There has also been one House of Commons debate on 3 July 2006 [6] engineered by the Speaker's Committee on the work of The Electoral Commission. The Speaker's Committee also commissioned a review by the House of Commons Scrutiny Unit into The Electoral Commission with the underlying purpose "to improve the effectiveness with which the Committee discharges its statutory duty" [7]. This review was completed in February 2006 and provided extremely useful background and evidence for this inquiry.

4.14 The House of Commons Scrutiny Unit Report made 40 specific recommendations applicable to both The Electoral Commission and to the Speaker's Committee. These were in four broad areas:

- financial planning and management (of The Electoral Commission);
- corporate planning and management (ditto);
- the role of the Treasury and the Comptroller and Auditor General (in advising the Speaker's Committee); and
- the Speaker's Committee and the estimates and five-year plan.

The report identified significant weaknesses in The Electoral Commission's budget management and monitoring, performance management and risk management. It recognised that these were not necessarily peculiar to The Electoral Commission, and were well known by the Commission, also that remedial steps were already being taken. Nevertheless, the recommendations were designed to reinforce the Commission's determination to address these concerns. The Electoral Commission accepted all the Scrutiny Unit recommendations that were directed to them [31/1] and the Speaker's Committee also confirmed that they broadly accepted the thrust of those recommendations that applied to them [Peter Viggers MP 07/09/06, 34]. The Committee endorses the Scrutiny Unit's findings and welcomes their acceptance by both The Electoral Commission and the Speaker's Committee. We consider it essential that progress in implementing these is carefully monitored by the Speaker's Committee on advice from the Scrutiny Unit (see paragraph 4.27 below).

4.15 The Committee also received additional views in evidence about whether the Speaker's Committee, as it has operated since 2001, was an appropriate and effective accountability mechanism for The Electoral Commission. Some witnesses, for example Rt Hon Rhodri Morgan AM, First Minister, National Assembly of Wales [06/07/06, 362] expressed satisfaction with the way the mechanism had operated to date. However, most witnesses considered that some significant improvements could be made to the current arrangements for

the Speaker's Committee and/or held the view that a new mechanism should be considered to address the deficiencies they identified. There was common agreement, shared by this Committee, that it is fully appropriate for The Electoral Commission's accountability to be direct to Parliament rather than to the executive through a government department:

*I do think that it is right for constitutional watchdogs like The Electoral Commission to come under Parliament not the executive. The challenge I think for Parliament is to find more satisfactory means of calling The Electoral Commission properly to account.* [Professor Robert Hazell, School of Public Policy, University College London 15/06/06, 55]

4.16 One concern raised by many witnesses was the lack of a clear mechanism for Parliament to hold The Electoral Commission to account for its policies, decisions and activities:

*The Commission's lines of accountability are opaque. It seems extraordinary that a body that is supposed to be a standard bearer for political practice should be overseen by a [Speaker's] Committee in such an obscure manner."* [Andrew Tyrie MP 35/13]

This is a gap in the current arrangements that the Commission itself recognises and would like to see addressed.

*The bit that I feel is missing is that there is no vehicle at the moment for there being a broad parliamentary interest taken in the work of The Electoral Commission, either through a select committee or through the ability to have a debate on the floor of the House. That is, I think, the bit where the gap is.* [Sam Younger, Chair, Electoral Commission 13/06/06, 3.21].

A number of witnesses proposed establishing a completely new accountability mechanism to Parliament to address both the proper expenditure of public funds, and this wider accountability issue. Suggestions ranged from transferring the responsibility to the Constitutional Affairs Select Committee, creating a new Electoral Affairs Select Committee, to creating a new Joint Committee of both Houses.

4.17 The concern raised is an important and legitimate one. However, the Committee believes that there is an important distinction between the accountability for setting and approving The Electoral Commission's budget, scrutinising its effectiveness, efficiency and economy on the one hand; and accountability to Parliament for its policies, actions and decisions on the other. Such a separation cannot be absolute and clear cut; the body responsible for the budget and effective use of that budget is bound to take account of comments and views on performance as part its scrutiny. Conversely, any wider accountability for performance is also bound to take account of the allocation and use of resources. But, in the Committee's view, there is a significant risk that if these two functions are combined in the same parliamentary committee then there would be, at the very least, a perception that The Electoral Commission's impartiality and independence could be compromised.

*That is in order to demonstrate and ensure that The Electoral Commission cannot be influenced in its regulatory or policy roles by dependence on ministers for its budget ...I want to emphasise that the statutory responsibilities of the Speaker's Committee do not include policy recommendations or policy development which the Commission may be engaged with. Those are matters for select committee scrutiny.*

[Rt Hon Alan Beith MP 15/06/06, 346 and 349]

In short, the Committee believes there would be the risk that The Electoral Commission could become unduly influenced in the way it performed its operational activities by concerns about the possible impact these might have on the setting of its budget.

4.18 For this reason the Committee does not believe that the remit of the Speaker's Committee should be extended to include wider scrutiny of the activities, policies and decisions of The Electoral Commission, nor that a new parliamentary body be created with such a combined and extended mandate. The current status and composition of the Speaker's Committee make it, in our view, the most appropriate body to continue the scrutiny of the effective, efficient and economical discharge of Electoral Commission's

statutory mandate. It is not clear to the Committee that this could be replicated in any of the alternative suggestions put forward (4.14 above), namely:

- (i) The use of the office of the Speaker (founded as it is on political impartiality) as a route into the accountability to Parliament for the proper expenditure of funds is a means of constitutionally protecting the independence and impartiality of The Electoral Commission;
- (ii) The composition of the Speaker's Committee ensures that no political party has a majority<sup>1</sup> (although this requires the continuation of the Speaker's current practice for nominating members which should be formalised in the procedures of the Speaker's Committee); and
- (iii) The inclusion of relevant Ministers with responsibility for electoral matters, although not in majority, is a necessary element in the current accountability model. In this way, the executive is included without undermining the role of Parliament or the independence and impartiality of The Electoral Commission.

4.19 However, we believe there are ways of improving the effectiveness of the Speaker's Committee and its contribution to enabling wider parliamentary scrutiny of The Electoral Commission. We consider these below and in the next section.

4.20 One of the main concerns raised by many witnesses about the current operation of the Speaker's Committee is the lack of transparency in its work. A number of witnesses pointed out that:

- none of the Committee's evidence sessions are held in public;
- transcripts of meetings are not published, only summary minutes: and
- information about the Committee, its role and reports are difficult to find on the parliamentary website.

These are significant concerns. Accountability is not effective without transparency. If Members of Parliament and the public cannot judge for themselves

<sup>1</sup> We do however recognise that the Standards and Privileges Committee does provide an example of a Select Committee where this is the case.

about the scrutiny to which The Electoral Commission is subject, then they will not have confidence in the process. Fraser Kemp MP made the point succinctly to us [18/07/06, 440]:

*My personal view is that any committee that meets in secret cannot by definition do accountability in 2006.*

4.21 However, as Peter Viggers MP made clear in giving evidence on behalf of the Speaker's Committee [13/06/06, 351], the practice of meeting in private is a consequence of the constitutional position of the Office of The Speaker, in that the holder of the office does not, by convention, make public comment. This is an unintended consequence of the amendment made to PPERA during its passage (paragraph 4.10 above). The chairman of the Committee met with Mr Speaker during the course of this inquiry to discuss this. Further discussion was held, in public, with Peter Viggers MP when he returned to give further evidence to the Committee [07/09/06, 5-9].

4.22 Here the Committee was concerned to explore whether there was scope within the procedural arrangements for the Speaker's Committee to overcome this unintended consequence without losing the benefit, identified in paragraph 4.18 (i) of the involvement of the Office of The Speaker in the accountability mechanism. The Committee had in mind an approach similar to the Parliamentary Boundary Commissions where the Speaker is also the ex-officio chair but plays no part in the day-to-day work of the Commissions. It appears that a similar arrangement would be possible, through the procedures of the Speaker's Committee, without a need to change the legislative basis of the Committee.

4.23 Such an arrangement would enable the Speaker's Committee to meet in public and for full transcripts of these meetings to be published as they are for most Select Committees. It would also bring the Speaker's Committee in line with the practice recently adopted by the Public Accounts Commission [8], the original model for the Speaker's Committee. As Peter Viggers MP [13/06/06, 411] and the Secretary of State for Constitutional Affairs have explained [21/09/06, 201] there will be some occasions, for example the appointment of commissioners, where

public meetings of the Speaker's Committee are not appropriate. However, we believe that if most evidence sessions of the Speaker's Committee were held in public and full transcripts were published this would enhance the effectiveness of the accountability mechanism and improve confidence.

## RECOMMENDATIONS

**R34. Evidence-gathering meetings of the Speaker's Committee should be held in public and the transcripts published. Committee deliberations may continue to be held in closed session as may certain evidence sessions where the subject matter makes this necessary.**

**R35. The Speaker should assume a role similar to that he performs for the Boundary Commissions, standing back from the day-to-day running of the Committee. A senior backbench MP, possibly from the Opposition, as deputy chair could assume the day-to-day responsibility for the Committee, including chairing meetings.**

4.24 Some witnesses also expressed concerns about whether the frequency and length of the Speaker's Committee meetings were sufficient for the level of scrutiny required of a public body whose annual budget had grown to well over £20 million:

*At the moment I think that the accountability arrangements are not satisfactory and I would like to see the committee meeting more frequently and in public so that we can see The Electoral Commission being held properly to account. [Professor Robert Hazell, 15/06/06, 68].*

The Electoral Commission itself noted that it would welcome more frequent interaction with the Speaker's Committee [Sam Younger 13/06/06, 324]. Peter Viggers MP told the Committee [13/06/06, 366] that some steps had been taken to address this concern by setting up an informal sub-committee that would meet more regularly to work through and prepare issues that would come forward for decision by the full Speaker's Committee. We welcome this development.

4.25 In its written evidence [47/11], the Government suggested that provision could be made for Constitutional Affairs Ministers other than the Secretary of State to attend meetings of the Speaker's Committee on his behalf. This would ease the problem of conflicting commitments which sometimes make it difficult for the Secretary of State to attend. However, Peter Viggers MP was personally concerned that such a move might be perceived as 'downgrading' the status of the Speaker's Committee [07/09/06, 19]. The Committee understands that such a provision could be made by the Speaker's Committee in its procedural arrangements, without requiring a legislative change. We therefore think that this is best left to the Speaker's Committee itself if, in light of the new arrangements we have recommended, it decides this is necessary.

4.26 In the Committee's view a matter of greater concern is the level of resources currently available to the Speaker's Committee to fulfil its accountability function. This was highlighted in evidence (for example, the Government's written evidence [47/11] and in the Scrutiny Unit Report [7]). The level of resource devoted to an accountability mechanism must be proportionate to the amount of public money it is scrutinising. The Electoral Commission is now a medium-sized public body with an annual budget well in excess of £20 million. However, the current level of administrative support available to the Speaker's Committee consists of half a committee clerk and two support staff [Peter Viggers MP 13/06/06, 436]. In the Committee's view this is not sufficient. We believe it is important that the accountability mechanism is to Parliament. But Parliament itself has a duty to ensure that an appropriate level of resource is provided to make this effective. While the Committee cannot prescribe what an appropriate level of resource would be, a comparison with that provided for Departmental Select Committees appears to us to be a reasonable benchmark.

## RECOMMENDATION

**R36. There should be an appropriate increase in the allocation of resources given to the secretariat support for the Speaker's Committee.**

4.27 As well as secretariat support the Speaker's Committee must also receive appropriate specialist financial advice to assist its scrutiny of the Commission's estimates and five-year plan. The National Audit Office is a key resource for the Speaker's Committee (through its value for money reports, and annual audit of accounts) but we believe that the Scrutiny Unit Report demonstrated the need for some additional support for the effective scrutiny of The Electoral Commission's annual financial estimates. Peter Viggers MP indicated [07/09/06, 39] that such expertise might be available from the Scrutiny Unit.

## RECOMMENDATION

**R37. The House of Commons Scrutiny Unit should be given a formal role to scrutinise The Electoral Commission's annual financial plans and to advise the Speaker's Committee.**

## Accountability of general performance to Parliament

4.28 As we have made clear in the preceding section, the Committee recognises that there will be some overlap between the scrutiny of resources and that of performance in an effective accountability mechanism. We also believe that the Speaker's Committee should play a facilitation role in this wider accountability to Parliament. There is already a mechanism for parliamentary questions on the work of The Electoral Commission. However, we were surprised to learn [Mr Viggers MP 13/06/06, 347] that at the beginning of our inquiry there had not been a House of Commons debate on the work of The Electoral Commission since it was established some five years ago. The Electoral Commission itself indicated that it would welcome such a debate as a useful contribution to their engagement with Members of Parliament:

*The area where I think we would see scope for greater parliamentary oversight than there is now, is more structured occasions on which the work of the Commission is looked at by and debated by Parliament more widely. At the moment there is no requirement that, for example, any select committee looks at the annual report and*



*that the actual Commissioner gets involved in some of the substance. There are no vehicles for a debate on the work of the Commission in Parliament. We would welcome that wider relationship with Parliament.*

[Sam Younger, Chair of The Electoral Commission 13/06/06, 299]

- 4.29 This omission was remedied on 3 July 2006 in a debate engineered by the Speaker's Committee under the 'estimate days' procedure. The debate [6] drew considerable interest from MPs and many of the issues considered in this inquiry were raised. Given the importance of The Electoral Commission to the democratic process, this is unsurprising.
- 4.30 As was made clear to the Committee either the Government or the opposition parties could, if they so wished, have allocated some of their parliamentary time to hold any number of such debates since 2000. The Committee is also mindful of the danger of artificially engineering such debates when there may be little appetite from MPs [Peter Viggers MP 07/09/06, 25]. However, the Committee believes that regular debates by the House of Commons on the work of The Electoral Commission would assist its wider accountability to Parliament and support the Speaker's Committee in its role. We believe that the more focused regulatory remit proposed in Chapter 2 will make the work of the Commission of greater, not less, interest to members. The annual report to Parliament on standards of electoral administration, including the electoral register (as we recommend in Chapter 2) could, alongside the draft five-year corporate plan, provide a suitable opportunity for such annual debates. The statutory reports by The Electoral Commission on each election, in the format we propose in Chapter 2, also offer a platform for such debates.
- 4.31 The use of the estimate days procedure to engineer a debate may not be the most appropriate route to ensure that they take place regularly. One option would be for debates to take place in Westminster Hall in the time allotted to the Government.

## RECOMMENDATION

**R38. There should be an annual debate in Parliament on the work of The Electoral Commission. It might be helpful if this followed the Commission's annual report on standards of electoral administration in the UK (R13).**

- 4.32 Although it is useful, an annual debate on the work of The Electoral Commission does not in itself provide members with a direct account of the policies, actions and decisions of the Commission. The well established mechanism for such scrutiny of public bodies is the Departmental Select Committee system. On a number of occasions, The Electoral Commission has given written and oral evidence to a variety of Select Committees.
- 4.33 However, all these were inquiries into specific policy areas; they did not seek to review more widely The Electoral Commission's policies, actions and decisions in discharging its statutory remit. A number of witnesses who expressed concern about the effectiveness of the accountability mechanism for The Electoral Commission identified this as a gap in the current formal arrangements [for example, Professor Robert Hazell, 15/06/06, 55, Oliver Heald MP, 15/06/06, 181, Simon Hughes MP, 15/06/06, 312 and Dr Alan Whitehead MP, 57/6]. Because of its independent status, The Electoral Commission has no sponsoring government department and therefore no specific Select Committee to whom it can give an account for the full range of its activities.
- 4.34 As a number of witnesses, including its Chair, Rt Hon Alan Beith MP [15/06/06, 339], explained, the Constitutional Affairs Select Committee (CASC) has the greatest interest in the work of The Electoral Commission among all the Select Committees. CASC has taken evidence from the Commission on a number of recent occasions [15/06/06, 350]. The Committee would not wish to make a recommendation that could affect the scope of the current departmental Select Committee arrangements, merely to deal with the anomaly that the status of The Electoral Commission presents. However, we do believe it would be helpful to find a

way to establish CASC as the principal Select Committee to whom The Electoral Commission would give a regular account of its policies, actions and decisions. The more focused statutory mandate proposed in Chapter 2 provides an even closer fit to policy responsibilities of the Department for Constitutional Affairs, reinforcing this argument for CASC to play a lead role in making the Commission accountable for its performance to Parliament.

## RECOMMENDATION

**R39. The Select Committee on Constitutional Affairs should build upon its emerging practice of taking regular opportunities to scrutinise The Electoral Commission's policies, actions and decisions.**

### Accountability to the devolved administrations

- 4.35 As we have already noted in Chapters 2 and 3, although PPERA [4] took account of the various devolution settlements in Scotland, Wales and Northern Ireland in setting the mandate of The Electoral Commission, the practical implications of such a body operating on a UK-wide basis have taken time to work through as the devolution arrangements themselves have begun to mature. As The Electoral Commission has developed its mandate and governance to take account of devolved practice, this has reflected on its accountability to the devolved administrations.
- 4.36 The Electoral Commission has a UK-wide remit, and electoral and political party funding law are not devolved matters. The Commission stated in its written evidence (31/11) that it has been conscious that the electoral process and political dynamics of the different parts of the UK vary considerably and that it had tried to reflect this in its work. For example, it has dedicated offices in Belfast, Cardiff and Edinburgh, and commissioners with lead responsibility for different parts of the UK.
- 4.37 The evidence the Committee received during its hearings in Edinburgh and Cardiff, from the respective electoral commissioners with lead interest indicated that the Commission had established good links with the relevant parliamentary and assembly Committees and had given evidence to these on a number of occasions [Sir Neil McIntosh 27/06/06, 309 and Glyn Mathias 06/07/06, 228]. The situation in Northern Ireland was obviously affected by the suspension of the assembly in 2002 but, as Commissioner Karamjit Singh comments [21/06/06, 222], there is no reason to expect that similar effective links would not be made as and when the assembly is restored. Witnesses in the devolved administrations generally expressed satisfaction with the way in which the Commission had sought to give an account of its activities. The Committee welcomes the steps The Electoral Commission has taken to account for its activities to the relevant parliamentary and assembly Committees in Scotland and Wales, particularly in respect of its statutory reports on election to the devolved legislatures, as well its reports on UK parliamentary and European elections. These appear to offer sufficient accountability for electoral matters which are not devolved.
- 4.38 PPERA [4] also provides for The Electoral Commission to give advice and assistance to the devolved administrations – at their request – in respect of devolved electoral functions. So far this has primarily taken the form of requests to produce reports on local government elections [Electoral Commission written evidence 48, 49 and 50]. We have recommended in Chapter 2 that such reports be a requirement (rather than an option) in the future, so as to ensure comprehensive reporting on elections in the UK. In the Committee's view it is for the devolved parliament and assemblies to decide on mutually acceptable mechanisms for The Electoral Commission to account for these reports and any other activities to the devolved administrations. The lead commissioner and regional electoral officers for Scotland and Wales we propose in (Chapter 2 paragraph 2.79) would clearly play a key role in communications with the parliament and assembly.
- 4.39 The Committee did hear arguments for a more formal accountability role for the devolved administrations [Electoral

Commission 31/13], in particular for the inclusion of the Speakers/Presiding Officers from the devolved parliament and assemblies in the Speaker's Committee [Liberal Democrat Party 46/3, and the Rt Hon Rhodri Morgan 06/07/06, 360]. However, The Electoral Commission has a UK-wide remit set by the UK Parliament. It receives its funding from the Consolidated Fund following approval by the House of Commons and is a regulator of electoral and political party funding laws which are not devolved. It is therefore appropriate that formal accountability lies with the House of Commons through the Speaker's Committee. In the Committee's view, including representatives from devolved legislatures would not be consistent with the current constitutional status of The Electoral Commission. However, in circumstances where the Speaker's Committee considers Commission work specifically in relation to the devolved administrations, it may be appropriate to involve the respective Secretary of State for the particular nation to attend that session [Government written evidence 47/11].

## Accountability to political parties

- 4.40 A successful regulator must have in place mechanisms that enable it to engage with and consult those it directly regulates. PPERA (4, section 4) provides for the establishment of a Parliamentary Parties Panel as an additional mechanism of accountability for The Electoral Commission. The panel consists of a representative of each political party, with two or more MPs, appointed by the treasurer of each party. The intention was for the panel to provide a forum for consultation between the Commission and political parties on the work of the Commission and, in particular, to enable parties to make representations to the Commission about regulatory issues. The panel was convened in February 2001 and has met quarterly since then. On a similar basis, the Commission has established panels in Scotland, Wales and Northern Ireland.
- 4.41 However, the Westminster panel has not been the means of drawing wider political input and expertise into the work of The Electoral Commission as initially expected. This was widely acknowledged in evidence [for example, the Government 47/12, The Electoral Commission 31/14, and Labour Party 37/2]. This is not surprising, and is arguably in line with the intention in PPERA, because the panel mainly comprises representatives of the parties' administration rather than politicians.
- 4.42 However, the panel does appear to have performed a valuable role as a forum for consultation and discussion about the detail of the regulatory framework, the regulatory approach of The Electoral Commission and practical issues regarding compliance with the framework [The Electoral Commission 31/14]. This level of consultation and discussion is important and we believe it is part of The Electoral Commission's accountability framework. The panel's role is likely to become more important in light of our recommendations concerning the Commission's more focused regulatory powers and of the recommendations arising from Sir Hayden Phillip's review of party political funding [9]. Discussion and engagement between The Electoral Commission and senior administrators in the parties who are responsible for compliance is clearly critical for the Commission to achieve the outcomes intended from the regulatory framework.
- 4.43 We believe it is unrealistic to expect the panel, as currently constituted, to provide wider political input into the work of the Commission; this could compromise its current effective function. We have addressed the issue of political input in other terms in this inquiry report; namely, through recommendations to improve governance arrangements and through the means of ensuring wider accountability to Parliament. We do not believe any change to the composition of the Political Parties Panel or creating additional advisory bodies, as some witnesses have suggested [Electoral Commission 31/14], would add to this objective.
- 4.44 The Electoral Commission has established the equivalent of the Westminster panel in Scotland, Wales and Northern Ireland. These have also been successful as forums for consultation and discussion and are valued by the senior party administrators. In the devolved nations, these panels also appear to have fulfilled a wider role of engagement with political parties, which is probably explained by the smaller size of political communities compared to

Westminster. The Electoral Commission should continue with these devolved equivalents of the Westminster panel. Indeed, the regional electoral officers that we recommend in Chapter 2 might consider the use of a similar model to ensure engagement and consultation with party representatives (local treasurers/agents) in their own regions.

## Conclusion

- 4.45 Establishing effective accountability arrangements for The Electoral Commission, as we have discussed, presents a particular challenge. As a mechanism the Speaker's Committee does, in principle, strike the right balance between holding The Electoral Commission accountable for the use of public money in fulfilling its statutory functions and protecting its independence and impartiality from possible undue influence for partisan political electoral advantage. The Committee believes that, to preserve this balance, it is important to separate these principal subject areas from the accountability to Parliament of the Commission's general performance.
- 4.46 However, evidence and experience indicates that the Speaker's Committee could operate more effectively if its deliberations were made more transparent and if more administrative support were made available. We have made recommendations that we believe will enable this.
- 4.47 The Committee also considers that more formal arrangements should be put in place for The Electoral Commission to give a wider account of its activities to Parliament. These would significantly improve the engagement between the Commission and Members of Parliament. The Committee believes that this can be achieved if the Constitutional Affairs Select Committee (CASC) were to become the main mechanism through which the Commission can account for its performance to Parliament; also by holding regular parliamentary debates about the Commission's work.
- 4.48 The Electoral Commission should continue to build upon the arrangements it has developed to give an account of its activities to the devolved parliament and assemblies and upon the work of the political parties
- panels as useful forums for discussing regulatory issues with political parties.
- 4.49 Overall, it is important to stress that the effectiveness of these accountability arrangements will depend upon the clarity and focus of The Electoral Commission's mandate and the extent to which its governance arrangements can sustain the confidence of the public and the political parties and elected representatives who are subject to its regulatory activities. The recommendations we make in other chapters have been prepared for this purpose.

## References

1. Ethics and Standards: An Issues and Questions Paper, Public Administration Select Committee, November 2005.
2. Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, Cm 4075, October 1998.
3. *The funding of political parties in the United Kingdom: The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life*, Cm 4413, July 1999.
4. Political Parties Elections and Referendums Act 2000, c41.
5. Amendment during the passage of PPERA to provide for The Speaker to be a member and its ex-officio Chair, Hansard 13/03/00, Column 92.
6. House of Commons debate on The Electoral Commission 3 July 2006.
7. House of Commons Scrutiny Unit Report: *Review of The Electoral Commission for the Speaker's Committee on The Electoral Commission*.
8. Twelfth Report of the Public Accounts Commission, HC216, January 2005.
9. *The Review of the Funding of Political Parties 2007*, Sir Hayden Phillips [to be published].



# CHAPTER 5

## INTEGRITY OF THE ELECTORAL PROCESS

### Introduction

5.1 The Committee has recommended in Chapter 2 that The Electoral Commission be given a clear statutory duty to be the regulator of electoral administration with the aim of ensuring that electoral registration and the conduct of elections are delivered in a consistent and effective manner across the country. Issues regarding the integrity of the electoral process itself are central to The Electoral Commission successfully performing this duty.

5.2 Since The Electoral Commission was established in November 2000 there have been some well publicised concerns about elements of the electoral process, including:

- the introduction of postal voting on demand, the subsequent piloting of all-postal voting and the most recent changes to postal voting introduced in the Electoral Administration Act 2006 [1];
- incidents of electoral fraud and perceptions that this may be increasing; and
- the accuracy and comprehensiveness of the electoral register, and the system of electoral registration itself.

5.3 The Electoral Commission has taken public positions on each of these issues some of which have created controversy in their own right. The Committee therefore believes it is appropriate to discuss the evidence received concerning these issues and to comment on how The Electoral Commission might take steps to address them as part of its new mandate proposed in Chapter 2. We also make recommendations on how to improve specific aspects of the electoral process to assist The Electoral Commission in its regulatory role.

5.4 The Committee's overriding aim in addressing the issue of integrity is to

improve confidence in the electoral process. A fundamental tenet of our democratic society, based on the universal franchise, is that voters and the political parties have full confidence that the electoral system is free, fair and secure. In the introduction to the White Paper, *Combating Electoral Fraud in Northern Ireland* [2] the Government said the following:

*Electoral abuse is an affront to democracy and the Government is determined to combat it wherever it occurs.*

5.5 The electoral system in Great Britain is based on trust. There is no checking that the names supplied at registration during the annual canvass are accurate nor is there any systematic checking of voters' identification at polling stations. In Northern Ireland the situation is somewhat different as the Electoral Fraud (Northern Ireland) Act 2002 requires individuals to prove their identity before registering or voting. There should be nothing surprising about a system based on trust; this is true of many aspects of a civil society. However, while acknowledging that most individuals are honest it is unfortunately true that a significant minority are not. Hence the increasing numbers of anti-fraud measures that have been introduced into a wide range of public services and the financial services industry. In its report [3] on the 2005 General Election the Office for Democratic Institutions and Human Rights concluded that:

*The introduction of postal voting on demand without the need to present a reason for the application, has demonstrated the vulnerability of any trust-based electoral process.*

5.6 While it is clearly imperative for as many eligible individuals as possible to participate in the democratic process, we can no longer base our electoral system on trust alone if we wish to protect the integrity of our electoral system.

## Electoral fraud

- 5.7 Electoral fraud is an affront to the democratic principle of one person one vote. If left unchecked, it will eventually undermine trust and confidence in the democratic process. In any democracy the key indicator to any election is whether the electorate consent to the outcome. Therefore it is essential that the primary task of any electoral system is to secure consent. Confidence in the integrity of the process is key to this.
- 5.8 The perceived wisdom over many years in Great Britain has been that electoral fraud was virtually non-existent. There was the odd case of electoral fraud carried out by individuals but if there was any organised fraud it never came to light. Elections were seen as free, fair and secure. However, evidence received by the Committee suggests that since the introduction of postal voting on demand there has been a growing perception that the electoral system is more susceptible to organised electoral fraud.

*If you looked at what the public view of the integrity of the voting system was, say, five years ago and what it is now, I think there is no doubt that the public have become very concerned about fraud in the electoral system and the way in which it operated over that period.*

*[Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs and Shadow Chancellor of the Duchy of Lancaster 15/06/06, 73].*

As far as the Committee is aware information about the extent of investigation and cases of electoral fraud is not collected centrally by The Electoral Commission (or any other body). In table 5.1 we have completed a list of investigations and cases of electoral fraud since 2000. This is for illustrative purposes only and is not a comprehensive list.



**TABLE 5.1 EXAMPLES OF CASES OF ELECTORAL FRAUD INVESTIGATED BY POLICE 2001–2006****(Including cases involving allegedly fraudulent electoral registration)****Completed cases as of 1 January 2007**

LOCATION	ELECTION DATE	ALLEGATION/ OFFENCE	ACCUSED	PROSECUTION	OUTCOME
Oldham Metropolitan Borough Council (Coldhurst, St Mary's & Werneth wards)	Local elections 2000	Personation offences	12 men including Labour & Liberal Democrats	Yes	11 pleaded guilty, one found not guilty. Sentences of 60 to 120 hours of community service imposed.
Burnley	General election May 2001	Twelve counts of forgery of nomination signatures	Male BNP organiser	Yes	Six months imprisonment. Barred for 5 years from standing for any electoral office
Hackney Borough Council, London (Northwold ward)	Conviction date 2001	Hundreds of forged postal and proxy votes	Conservative man and Lib Dem man	Yes	Conservative six months imprisonment, Liberal Democrat four months imprisonment
Blackburn with Darwen Borough Council (Bastwell ward)	Local elections May 2002	233 fraudulent votes	1 Labour councillor	Yes	Three years and seven months imprisonment
Havant Borough Council	Conviction date 2002	22 forged postal and proxy votes, forgery of nomination papers	One Labour councillor and three Liberal Democrats (two councillors and one candidate)	Yes	Labour man four months imprisonment. One Lib Dem two months imprisonment. Two other Lib Dems fined £200 each
Oldham Metropolitan Borough Council	Local elections 2003	Personation & conspiracy to defraud	9 people	No	File submitted to DPP but not taken forward – lack of forensic evidence
Guildford Borough Council (Morrow ward)	Local elections May 2003	Three charges of forging documents	Former Conservative councillor	Yes	Four months imprisonment

N.B. Political affiliations are shown where this information is publicly available

**TABLE 5.1 EXAMPLES OF CASES OF ELECTORAL FRAUD INVESTIGATED BY POLICE 2001–2006****(Including cases involving allegedly fraudulent electoral registration)****Completed cases as of 1 January 2007**

LOCATION	ELECTION DATE	ALLEGATION/ OFFENCE	ACCUSED	PROSECUTION	OUTCOME
Oldham Metropolitan Borough Council	Local elections 2004	Postal vote fraud	1 man	No	Man dismissed from Liberal Democrat party
Birmingham City Council (Aston & Bordesley Green wards)	Local elections June 2004	Stealing & falsifying postal ballot papers	6 Labour councillors.	Yes	Six found guilty of corrupt and illegal practices. One of those found guilty was later cleared by the Appeal Court. The election of all six councillors was annulled. The judge estimated there had been at least 1,000 fraudulent votes in Aston and 1,500 – 2,000 in Bordesley Green
Bristol City Council (Lawrence Hill ward)	Local elections 2004	Nine counts of forgery and one of conspiracy to defraud	Former Liberal Democrat councillor	Yes	Five months imprisonment
Burnley Borough Council	Local elections June 2004	167 proxy votes submitted fraudulently	2 Liberal Democrat councillors	Yes	55 proxy votes found to be fraudulent – both found guilty of submitting these votes and each defendant sentenced to 18 months imprisonment
Halton Borough Council (Castlefields ward)	Local & European elections June 2004	Multiple counts of making false statements (postal voting)	Former Labour Mayor Three relatives	Yes	Fined £3,000 (Found not guilty on two counts of Personation) Fined £2,300
Coleraine Borough Council	General & local elections May 2005	Impersonation of 15 postal votes	DUP councillor	Yes	4 months imprisonment. The irregularity was discovered during the election count and the votes were not included

N.B. Political affiliations are shown where this information is publicly available

**TABLE 5.1 EXAMPLES OF CASES OF ELECTORAL FRAUD INVESTIGATED BY POLICE 2001–2006****(Including cases involving allegedly fraudulent electoral registration)****Completed cases as of 1 January 2007**

LOCATION	ELECTION DATE	ALLEGATION/ OFFENCE	ACCUSED	PROSECUTION	OUTCOME
Stoke on Trent (Stoke North)	General election May 2005	43 Postal votes tampered with	Unknown	No	Ballot papers declared invalid and destroyed
Woking Borough Council (Maybury & Sheerwater ward)	Local elections May 2006	Personation	One man	No	The person was cautioned for personation. The borough council issued major paper on wider problems of electoral fraud in the borough

N.B. Political affiliations are shown where this information is publicly available

**TABLE 5.1 EXAMPLES OF CASES OF ELECTORAL FRAUD INVESTIGATED BY POLICE 2001–2006****(Including cases involving allegedly fraudulent electoral registration)****Ongoing or pending cases as of 1 January 2007**

LOCATION	ELECTION DATE	ALLEGATION/ OFFENCE	ACCUSED	PROSECUTION	OUTCOME
Peterborough City council (Several wards)	Local elections June 2004	Total of 40 offences including conspiring to defraud the electoral services officer and counts of making a fraudulent instrument, namely forged poll cards	3 Labour Party candidates including a former mayor	Yes	Further court hearings pending
Bradford (Bradford West)	General election April 2005	Conspiracy to defraud a returning officer	1 Conservative councillor (now an independent councillor) and 12 other people	File submitted to the CPS on 11 people	CPS reviewing case
Birmingham City Council	Local elections May 2006	190 potential illegal votes in one ward and 'peculiar anomalies' in several wards	One man and one woman (wife of Lib-Dem candidate) – not necessarily connected	Arrested on suspicion of conspiracy to defraud	On bail pending further inquiries
Derby City Council (Arboretum ward)	Local elections May 2006	Election fraud 'looking at postal votes in particular'	Unknown		Ongoing as of 1 Dec 2006, police launching investigation
Tower Hamlets Borough Council, London (several wards)	Local elections May 2006	Election fraud regarding postal voting in particular	Unknown		Election petitions concerning Bethnal Green South and Mile End wards scheduled to be heard on 29 January 2007. Also Metropolitan Police continuing a 'major investigation.'

N.B. These cases are illustrative and do not claim to be a comprehensive list

N.B. Political affiliations are shown where this information is publicly available

- 5.9 Electoral fraud can take many forms, the most common being:
- fraudulent registration where attempts are made to influence the outcome of elections by registering fictitious or ineligible individuals;
  - impersonation at the polling station; and
  - the misuse of postal or proxy votes.
- 5.10 The perennial difficulty with identifying levels of fraud is that, if successful, it goes undetected. However, evidence from a number of witnesses suggests that the systems currently in place in Great Britain to deter electoral fraud are not particularly effective. These problems arise mainly because of the issue of trust; information on registration forms provided to electoral registration officers is taken at face value as being accurate. We received evidence at public hearings and on visits to a number of electoral registration officers which confirmed that there is little or no checking of completed registration forms to ensure their authenticity. There are also virtually no checks to establish a person's identity when voting at a polling station and, despite new checks being introduced for postal voting, determined fraudsters can easily sidestep these by registering false identities on the electoral register. Concerns have also been raised about how effective new security measures may be. For example, the new provision in the Electoral Administration Act 2006 will require voters at polling stations to provide a signature before they receive their ballot paper:

*Signing for a ballot paper at a polling station is not remotely strong. This is a signature which is then not checked against any other record because no records are held, unless you are the person who signed the household form then it is possible that you could track back to that person.*  
[Andrew Scallen, Manchester City Council 14/09/06, 154]

- 5.11 However, it is also true that, if greater effort and focus is given to detecting electoral fraud, this is likely to result in an increase in the number of cases being brought to light and to a perception that fraud is a growing problem. The difficulty of establishing a reliable basis about trends of electoral fraud probably lies behind

some of the conflicting evidence the Committee received from witnesses concerning its extent:

*Electoral fraud has been overstated for some time. I think some of the issues are around culture, around the way in which different communities perceive the operation and management of elections. Some of these issues need to be treated with a degree of sensitivity.*  
[Sir Howard Bernstein, Manchester City Council, 14/09/06, 54]

*I do want to emphasis that constant cries of fraud in our electoral process in itself undermines the process and therefore being confident that we have in place a variety of systems that will reduce any opportunity for fraud is very important to give confidence back to the electorate.*  
[Bridget Prentice MP, Parliamentary Under-Secretary of State, Department for Constitutional Affairs 18/07/06, 472]

*I think that there has always been more fraud than people have recognised. The blind eye has been an aspect of the British system. So I think there has been a culture of denial and still is, among many authorities. Having said that, postal voting on demand very much added to the problems.*  
[Dr Michael Pinto-Duschinsky 14/09/06, 201]

*It is clear that confidence – and we have done a fair bit of research into this – has been damaged.*  
[Sam Younger, Chair, Electoral Commission 14/09/06, 240]

- 5.12 There has been no serious research to determine how widespread the problem is by academics or by The Electoral Commission itself. Nor has the Commission collected any statistics on the number of reported cases of fraud. The lack of proper research on electoral fraud makes it difficult for the Committee or anyone else to comment authoritatively on the scale of the problem:

*How much electoral fraud is there in the country? Nobody appears to have done any detailed research in relation to it.*  
[Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs 21/09/06, 36]

- 5.13 This is something The Electoral Commission will want to remedy, particularly in its new

role as regulator of electoral administration. The Committee recognises that such research is not straightforward but it is essential that a serious attempt is made to ascertain the scale of the problem. The Electoral Commission should, for example, work closely with the Audit Commission which has been undertaking a great deal of effective work through the National Fraud Initiative.

- 5.14 However, where fraud has been detected and prosecutions made, this has indicated problems in certain communities. Such findings are sensitive but it is essential that both The Electoral Commission and local electoral administrators address this problem as a matter of urgency. Electoral fraud should be treated as a serious matter; it undermines the principle of one person one vote which is fundamental to our democratic process.
- 5.15 The Electoral Commission has been working closely with electoral administrators and the police in the run-up to elections and issues guidance on combating fraud. The Committee welcomes this initiative but is concerned that the police might not always be primed on the intricacies of electoral law. In police investigations, electoral fraud has not been among their priorities in the past. We think it would be helpful if each police force in the United Kingdom had at least one officer with an in-depth knowledge of electoral law.

## RECOMMENDATIONS

**R40 The Electoral Commission should undertake detailed research in to the scale of electoral fraud in the United Kingdom.**

### *Northern Ireland experience*

- 5.16 Unlike Great Britain, there has always been a view that electoral fraud was a problem in Northern Ireland. Its precise extent was not known as there had been virtually no prosecutions. The perception that fraud was widespread came from anecdotal evidence and a general belief among both politicians and voters that it was a problem. The Government decided that this widespread perception was having the effect of discrediting the outcomes of elections, thus undermining the authority of elected representatives. It therefore introduced a

number of proposals in Parliament which became the Electoral Fraud (Northern Ireland) Act 2002 [4]. The main measures in the Act include:

- the introduction of individual registration;
  - eligible individuals have to provide three personal identifiers at registration: signature, date of birth and National Insurance number;
  - the three personal identifiers are also required when applying for an absent vote;
  - the requirement to provide a personal signature and date of birth when a completed absent vote is returned; and
  - the requirement for electors to provide specified photographic identification when voting at a polling station.
- 5.17 These measures were introduced in time for the 2002 annual canvass and have been in use since then for registration and at elections. The measures have been judged successful by the electorate and political parties in both combating fraud and decreasing the perception of fraud. In research produced by The Electoral Commission, 72 per cent of respondents thought the measures should reduce electoral fraud. Additionally, at the combined elections in 2005 there were no reported incidents to the police of attempted impersonation at polling stations or other fraudulent activity. In relation to absent vote fraud the chief electoral officer was able to detect and stop attempted fraud through abuse of proxy voters by checking the personal identifiers.

### *Postal voting on demand*

- 5.18 Following the introduction of the Representation of the People Act 2000 [5] (RPA) and the Representative of the People Regulations 2001, postal voting on demand was introduced in Great Britain but not Northern Ireland where the previous restrictions remained. It is now no longer necessary to state a reason for applying for a postal vote, or to obtain attestation of illness from a medical practitioner or employer. Applications may be requested and allowed for an indefinite period, a definite period or for a particular election.

5.19 The RPA 2000 also made provision for local authorities to pilot new electoral arrangements for local elections. A number of pilots were tested in May 2000 and in their review the Local Government Association found that all-postal voting was the only new electoral arrangement to have potential for significantly increasing turnout at local elections.

5.20 There were further pilots in 2003 to test alternative voting methods at local elections, including all-postal voting. Following these elections The Electoral Commission published a report [6] on the pilot schemes. The Commission found that all-postal voting was effective at boosting turnout and concluded that all-postal elections were ready to be made available at local elections in Great Britain. In making this recommendation the Commission put forward a number of pre-conditions for all-postal voting, including increasing security and proposing the introduction of individual registration that in its view should be implemented at the same time.

5.21 In its response to The Electoral Commission, the Government [7] accepted the broad thrust of the Commission's recommendations for all-postal voting as a basis for consultation.

5.22 However, the accord about all-postal voting between the Government and The Electoral Commission was to break down in 2004. In its evaluation of the elections in 2004 [8], which included piloting all-postal voting in the European elections, The Electoral Commission reversed its position on all-posting voting. It stated in the executive summary that there was strong public support for a choice in voting methods. Later, buried in the report, The Electoral Commission explained that it could no longer support all-postal voting because its recommendation in 2003 was conditional on the implementation of parallel recommendations that would have increased the security of postal voting and promoted the introduction of individual registration. The Committee takes the view that it would have been more helpful if The Electoral Commission had made clearer in 2004 that its original recommendation on extending all-postal voting was dependent on the introduction of other measures. The issue was further complicated by the controversy generated about the security of

postal voting following a number of allegations made during the elections in 2004 about electoral fraud and postal voting. These culminated in the Electoral Court convened to try a number of councillors in Birmingham on allegations of postal vote fraud.

5.23 Some of the evidence was critical about the role of The Electoral Commission played in the debate on all postal voting, citing its initial keenness for such a measure in 2003:

*I think the need to increase turnout overrode everything else and it looked an easy solution.*

[Norman Macleod, Electoral Services Manager, London Borough of Hackney 18/6/06, 130]

*I think for the very reasons that these issues were detected [in Birmingham] and there was no mechanism to do anything about it, clearly they could not go down the same path in promoting that process for local government elections or, indeed, any elections.*

[Malcolm Dumper, Democratic Services Manager, Southampton City Council 18/7/06, 127]

5.24 The debate about the pros and cons of postal voting on demand was overtaken by the verdict in the Birmingham fraud trial in April 2005 in which the Judge, Richard Mawrey QC, said the following:

*In this judgement I have set out at length what has clearly been shown to be the weakness of the current law relating to postal votes...Until very recently none of the political parties has treated electoral fraud as representing a problem...the tendency of politicians of all parties has been to dismiss these warnings as scare mongering.*

*The systems to deal with fraud are not working well. They are not working badly. The fact is there are no systems to deal realistically with fraud and there never have been. Until there are, fraud will continue unabated.*

It can be argued that this judgement was a turning point in the public perception of electoral fraud in Great Britain. The fraud cases in Birmingham showed how easily the electoral system could be corrupted and

how easy it was to steal votes though the fraudulent use of postal voting.

- 5.25 A number of witnesses at the public hearings cited the introduction of postal voting on demand as a major contributing factor to problems with the integrity of the electoral system:

*The one setback... which clearly caused a problem was the perception that postal voting might not have always been valid, honest and accurate. That is the one major setback we have had in recent years.*

[Simon Hughes MP, Liberal Democrat Shadow Secretary of State for Constitutional Affairs and Attorney General; President Liberal Democrat Party 15/6/06, 199]

*I think that postal voting unlocked a Pandora's Box that some unscrupulous people were able to exploit. The problem is when that becomes public as it did in the full light of the Birmingham cases, then it is inevitably going to knock public confidence.*

[John Turner, Chairman, Association of Electoral Administrators 13/7/06, 270]

*What makes the situation all the more serious is, to my mind, the irresponsible extension of postal voting because when you have errors on the electoral register and easy postal voting you have a dangerous, if not a lethal cocktail which amounts to extensive and almost guaranteed voter fraud. That is indeed what we are seeing many signs of, not only in the Birmingham case but much more extensively.*

[Dr Michael Pinto-Duschinsky 13/6/06, 14]

- 5.26 Polling conducted by The Electoral Commission around this year's local elections showed that 44 per cent of voters thought that postal voting was unsafe with only 37 per cent responding that it was safe. One in five voters thought that electoral fraud was a big problem with 55 per cent saying that electoral fraud was not a big problem. These figures suggest voters are concerned about the security of the electoral process through reports of electoral fraud.
- 5.27 In the Committee's judgement it was, in hindsight, a mistake to introduce postal voting on demand without any proper and robust safeguards to protect the integrity

of the voting process. The Committee accepts it is here to stay as a significant number of voters prefer to use this method of voting and, certainly for some elections, it appears to have improved turnout. The Government has also recently introduced measures in the Electoral Administration Act 2006 intended to address some of the concerns about postal voting. However, as we cover in the next section, electoral administrators have expressed some serious concerns about administering the new system and about the new security measures which they believe will not prevent fraudulent entries from being made on the electoral register.

### **Electoral Administration Act**

- 5.28 Following the General Election in 2005, the Government published the Electoral Administration Bill which included a number of anti-fraud measures but did not include a commitment to introduce individual registration or measures to improve the security of postal voting. However, following repeated attempts in the House of Lords to introduce individual registration, an amendment was accepted in the House of Commons introducing personal identifiers for absent voting.
- 5.29 The Electoral Administration Act 2006 introduced a number of measures in four key areas of the democratic process. These were:
- improving access and engagement;
  - improving confidence;
  - extending openness and transparency in party financing; and
  - maintaining the professional delivery of elections.
- 5.30 In relation to improving security and transparency, the Act introduced a number of provisions that the Government hopes will improve confidence in the integrity of the electoral system. They include:
- creating two new electoral offences to provide stronger deterrents against electoral fraud. These are for supplying false information or failing to supply information to the electoral registration officer at any time, and for falsely applying for a postal or proxy vote;



- a provision for signatures and dates of births to be made on absent vote applications and absent vote statements;
- requiring voters to sign for their ballot paper at the polling station;
- providing more time for the police to carry out investigations into electoral fraud; and
- providing for statutory secrecy warnings to accompany postal and proxy voting papers to deter anyone from unlawfully attempting to influence another person's vote.

5.31 The Committee welcomes the fact that the Government has put in place a number of measures to promote integrity in the electoral system. We particularly welcome the new offences created to deter and punish those individuals intent on defrauding the democratic process. However, the Committee has received evidence from electoral administrators including the Association of Electoral Administrators and SOLACE that the new arrangements for postal voting might not be as effective in deterring fraud as envisaged in the Act.

5.32 Electors who apply for postal votes will be required to supply a signature and date of birth but, as there will be no checks to ensure that the names on the register are correct, this would allow a determined fraudster to supply a false name at registration and then supply that name and a fictitious date of birth when an application is made for a postal vote. The Committee understands that there will be a minimum requirement for returning officers to check 20 per cent of postal votes from each bundle. If this were to happen there is a distinct possibility that many fraudulent postal votes would pass any checking mechanism. Conversely, if any questionable signatures are found in the 20 per cent, it is very likely that a candidate or agent will insist that a 100 per cent of the postal votes are checked. Added to this is the inherent difficulty of checking the validity of signatures, either manually or electronically:

*My instinct is that we ought to be moving to a point where we check all of them. I do not understand why only 20%.*  
[Sir Howard Bernstein, Chief Executive, Manchester City Council 14/09/06, 75]

5.33 The Act also introduces a late window for electoral registration. Until recently, under 'rolling' registration a person who is not on the register and who wanted to register in time for local elections in May would have had to register by early March. His or her name would then be included in the update of the register published in April. Under the new provision a person can now register up to 11 days before an election and apply for an absent vote.

5.34 During a number of visits to electoral registration officers, the Committee noted a general concern that this provision could have a detrimental effect. Registration officers fear any fraudster would decide to wait until the last moment before registering and applying for postal votes in the knowledge that the burden of work placed on electoral administrators at this stage would allow for only minimal checks.

5.35 In Northern Ireland, the Miscellaneous Provisions (Northern Ireland) Act 2006 [9] also allows a late registration window of 11 days. However, to minimise fraud, all those registering under the late window have to provide additional identification over and above the three personal identifiers and they are not allowed to apply for an absent vote. It is argued that this represents a balanced approach as it encourages participation by allowing individuals to register to vote but helps to protect the integrity of the system and diminishes the possibility of fraud.

5.36 The Committee shares some of the concerns raised by electoral administrators about the possible unintended consequences of the postal vote measures contained in the Electoral Administration Act 2006 and the potential for these to cause difficulties, particularly for the most imminent local elections in May 2007.

## RECOMMENDATIONS

**R41. The Electoral Commission should, as part of its statutory reports on the 2007 Elections, include a specific section dealing with the impact of, and any problems encountered in the implementation of the new measures on postal voting. In light of this report the Government should consider similar measures in relation to registering immediately before an election as have been put in place for Northern Ireland in the Miscellaneous Provisions (Northern Ireland) Act 2006.**

### *Role of The Electoral Commission*

5.37 The Committee believe that The Electoral Commission, as part of its future mandate, should take a leading role in maintaining public confidence in the electoral system and the outcome of elections. In written evidence to the Committee, Andrew Tyrrie MP stated:

*The primary task of The Electoral Commission must be to bolster the electorate's confidence in the democratic process and to respect the outcome of elections. In my view, the conduct of elections since The Electoral Commission's creation has resulted in diminution of that confidence. For a number of reasons, The Electoral Commission has to bear some responsibility for that.*

5.38 As we discuss in Chapter 2, The Electoral Commission has been closely identified with the Government's electoral modernisation programme and some witnesses expressed the view that this to some extent compromised its focus on the risks that the introduction of such measures might pose to the integrity of the electoral process. While it is clearly right, and desirable, for the Government to propose and Parliament to pass new measures intended to help increase participation in elections, it must also be the role of The Electoral Commission to make it clear to government and Parliament if proposed changes to electoral law have the potential to undermine this integrity and diminish confidence. A number of witnesses questioned the Commission's performance in this respect since 2000.

5.39 As we covered earlier in this chapter, The Electoral Commission made recommendations in 2003 for all-postal voting at local elections; yet 12 months later it recommended that all-postal voting should not be used at any statutory election. This about-turn has been criticised by political parties and some electoral administrators both for sowing confusion and discrediting postal voting. In evidence to the Committee, the Government blamed The Electoral Commission for confusing the issue on postal voting by merging a number of different issues in relation to security and choice, which led to a breakdown in consensus about all-postal voting.

5.40 In Chapter 2 we recommended that The Electoral Commission should continue to provide advice on the suitability of existing and new electoral legislation as part of a new mandate to perform two statutory duties. One of these is to regulate electoral registration, with the aim of ensuring integrity and public confidence in the administration and conduct of elections. When legislation is introduced to Parliament, a Regulatory Impact Assessment is included as a means of informing Parliament if the proposed legislation is likely to impose any new regulatory burdens. The Committee proposes that a similar requirement should apply to primary and secondary electoral legislation that is introduced to Parliament. This should take the form of an assessment prepared by The Electoral Commission which outline potential risks generated by the proposed measures that might damage the integrity of the electoral system; and also ways to mitigate these risks. The Committee believes that if The Electoral Commission raises objections to new electoral legislation on these grounds, then it is essential that both the Government and Parliament considers such concerns directly alongside the legislation.

## RECOMMENDATIONS

**R42. It should be a requirement that The Electoral Commission's views (see R24 Chapter 2) on proposed primary and secondary legislation on electoral issues should accompany the draft legislation when it is introduced into Parliament.**

## Conclusion

5.41 It is important that the electoral system is free, fair and secure – and seen as such. Defending the integrity of the electoral process should concern all political parties and must not be based on partisan concerns. The Electoral Commission must spell out, clearly and publicly to government and Parliament if proposed changes to electoral law have the potential to undermine confidence in or the integrity of the electoral process.

5.42 The Committee believes that the political parties and Parliament should be continually vigilant about any threats to our democratic processes. Electoral fraud is a serious matter. The Committee does not believe that it is occurring to a worrying degree in every constituency or local authority, but evidence suggests that there are a number of hot spots where electoral fraud is a problem and, if not detected and stopped, threatens to undermine confidence in the democratic system.

5.43 This is a good example of where a risk-based approach, highlighted in Chapter 2, can be very effective in identifying a problem and putting in place measures to try and rectify it. We believe it is essential for The Electoral Commission to minimise this problem as a key part of its regulatory approach. Regional electoral officers, working closely with electoral administrators, will have a critical role in identifying weaknesses in current practices and improving standards of fraud prevention and detection.

## Electoral registration

5.44 The system of electoral registration is perhaps the most critical element of the electoral administration process and underpins the most fundamental principles and therefore legitimacy of the United Kingdom's democratic processes. This foundation of our democracy serves to ensure:

- that the right to vote is available as a universal right to those who are eligible and choose to exercise it;
- that this is a personal right so that the vote is 'owned' by the eligible person on the register – and no-one else; and

- that there can only be one vote cast per eligible voter.

5.45 Therefore it is essential that the electoral register and the system of electoral registration retain the trust and confidence of both the electorate and political parties.

5.46 There has been considerable debate, comment and analysis in recent years about both the current state of the electoral register and of the system employed for electoral registration. Debate embraces The Electoral Commission through its Voting for Change [10] proposals, the Government with the Electoral Administration Act, Parliament and political parties. During the course of this inquiry the Committee received significant amounts of evidence about the current state of the electoral register in the UK. Concerns were expressed by all political parties and electoral administrators about varying levels of comprehensiveness of registration and standards of the register's accuracy across the country.

5.47 Given the fundamental importance of the electoral register, the system of registration and the statutory mandate and regulatory role we have proposed for The Electoral Commission in Chapter 2 (building upon the Electoral Administration Act 2006), the Committee feels bound to comment on this aspect of the electoral process. We will not replicate the considerable debate and analysis on this issue in recent years. Rather, we summarise the issues and the evidence we have received, and then make proposals that we consider should have support across the political spectrum.

### State of the current electoral register

5.48 As was pointed out in Chapter 2, we received strong opinions in evidence concerning the current state of the electoral register:

*The present system of how you register is indefensible, effectively.*  
[Alan Whitehead MP 11/07/06 192]

*I am in favour of individual registration. I do not know why we have not moved to that.*

[Rt Hon Kenneth Clarke MP 11/07/06, 444]

*It is totally unsatisfactory that there is no consistency across the country.*

[Bridget Prentice MP 18/07/06, 491]

- 5.49 Evidence suggested that in some parts of the country registration is carried out to a high standard while in others little time and resource is put into compiling the register. This was confirmed by our own visits to electoral registration officers during the course of this inquiry. Many politicians and others who gave evidence were concerned that large numbers of eligible individuals were not registering and that little sustained effort appeared to be made to encourage registration.
- 5.50 The Electoral Commission published a report [11] in September 2005 which estimated that around 3.5 million eligible people in England and Wales were missing from the electoral register. The report found that the majority were mostly young people living with parents, people who had moved home less than six months before the annual canvass and those renting from private landlords. It was also found that that an eligible individual's relationship with the head of household was an important predictor of non-registration.
- 5.51 A number of measures were introduced in the Electoral Administration Act to try and improve registration rates. These included:
- introducing a duty on electoral registration officers to take steps to maximise the electoral register; and
  - extending the last date someone can register after an election has been called.
- 5.52 Another major concern made in evidence to the Committee was the accuracy of the electoral register. It is important in retaining confidence in the fairness and security of the electoral process that the register only represents those individuals who are eligible to vote. Unfortunately there has been no research on the accuracy of the register undertaken by either academics or The Electoral Commission. In response to evidence presented to this inquiry the Commission has undertaken to conduct such research, which the Commission welcomes.

## System of electoral registration

- 5.53 Currently, the United Kingdom has a combination of household and individual registration in Great Britain and individual registration only in Northern Ireland. As was outlined earlier in this chapter, this differing approach emerged because the Government, following growing concern about the perceived level of electoral malpractice in Northern Ireland, introduced a number of anti-fraud measures (Electoral Fraud Northern Ireland Act 2002) including the system of individual registration. Before this, Northern Ireland also used the household registration system.

## Household registration

- 5.54 Household registration dates back to the 19th century when the vote was restricted to male householders who were liable to pay a property tax. Under the household system an annual canvass form is sent to each household by local authorities between September and November. The head of household or a named person is required to complete and return the form on their own behalf and on behalf of any eligible voters who live in the household. It is an offence not to return a completed registration form. However, there are rarely any prosecutions mainly because it is difficult to prove without doubt that an individual *has* received a registration form.
- 5.55 The Representation of the People Regulations 2001, made under the Representation of the People Act 2000, introduced significant changes to the system of registration in the UK. Before this, there was an annual qualifying date for entry onto the register and individuals who did not register would have to wait for another 12 months before registering. Similarly, those who moved house had to remain on the old area's register until the next canvass and could only vote in the previous location if an election was held. However, since 2001, the introduction of rolling registration or individual registration outside of the canvass period provided individuals with a voluntary means to get onto the register and to amend their details.

5.56 The benefits of household registration include:

- simplicity – only one person in a household needs to complete the form and, once registered, all that is required once a year is that person’s signature or, in some areas, affirmation by phone or through the internet using a security code, if details remain the same;
- familiarity – the household system has been used for many years; and
- it is likely to be more comprehensive than individual registration because many individuals do not have to do anything to get onto the register as the form is completed by the head of household.

5.57 Potential problems with household registration include:

- it can be open to abuse because the individual who signs the form has control over the information provided. Therefore, false information can be added;
- it is more likely to be inaccurate because there are no checks made on the information contained on the form – i.e. a person signing the form could quite easily submit false names;
- it removes individual voters’ personal responsibility to register; and
- it can disenfranchise individuals if the head of household does not register their names.

### Individual registration

5.58 Individual registration requires all eligible individuals to register their own names and any other details required by the registration officer personally. This is done either through the annual canvass or during the process of rolling registration. Individual registration has been adopted in Northern Ireland and applies through rolling registration in the rest of the United Kingdom.

5.59 The benefits of individual registration are that:

- in principle, it provides a more accurate reflection of eligible individuals living within the registration area;

- it requires individuals to take personal responsibility for registering;
- when combined with other measures, it is a more effective weapon against attempted fraud; and
- it treats all electors equally.

5.60 The potential problems with individual registration include:

- on introduction it is likely that the numbers registered will drop;
- without specific measures, it may increase problems in registering young people and other ‘hard-to-reach’ groups; and
- on its own it is no guarantee of preventing electoral fraud.

5.61 There is consensus among political parties, The Electoral Commission and most electoral administrators that individual registration is, in principle, a more accurate means of registering eligible voters and that it is right that individuals should take personal responsibility for registering. However, there is no agreement on when to introduce it as a full replacement of the household registration system in Great Britain.

### Evidence

5.62 The Electoral Commission has been in favour of introducing individual registration to Great Britain since it published *Voting for Change* in 2003. When the Government announced that it was not including individual registration in the Electoral Administration Bill, The Electoral Commission made clear publicly that it disagreed with the Government and that individual registration should be included in the Bill. As previewed in this chapter, it was pressure from the House of Lords during the passage of the Bill that resulted in an amendment to bring in individual registration that was accepted in the Commons. The Government’s view was that, while it accepted the approach in principle, it was not the time to introduce it because Northern Ireland experience indicated that it would in all probability lead to a substantial diminution in the numbers who register. The House of Lords dropped its amendment after the Government decided to accept an

amendment to improve anti-fraud measures for postal voting in Great Britain by introducing personal identifiers.

- 5.63 The Committee's own position on the rightness of individual registration follows close consideration of what the registration system is there to achieve and how this approach fits the purpose. The Government has made it clear that it expects the electoral register to be as comprehensive and accurate as possible – a commonly agreed objective. So the key question is whether we can achieve this goal through the current system or whether individual registration will increase the comprehensiveness and accuracy of the register?
- 5.64 Household registration has produced – when all the electoral registers in Great Britain are compared – an average figure of around 91 per cent of eligible adults registered. However, this figure masks wide discrepancies between local authority areas. The important structural problem with household registration is the difficulty of determining levels of accuracy. This is because the system relies on trusting the accuracy and comprehensiveness of the information provided by the one person in the household who completes and signs the form.
- 5.65 Individual registration would produce – as demonstrated in Northern Ireland – a much more accurate register because individuals have to engage personally in the registration process. There are of course, concerns that on introduction there will be an initial fall in the numbers registered, as happened in Northern Ireland. This has been particularly levered as an argument by those opposed to the introduction of individual registration.

### *Northern Ireland experience*

- 5.66 In Northern Ireland the introduction of individual registration in 2002 resulted in the number of names on the new register dropping by nearly 11 per cent compared to the previous register under household registration. The Government is on record as saying that this drop owed to a combination of inaccuracy resulting from weaknesses in the household-based system and the withdrawal of the 'carry forward': previously individuals on the register, who

did not re-register during the canvass, were kept on the register for a further 12 months. The Electoral Commission agreed and, following detailed research, commented that the fall did indeed reflect the removal of the carry forward which had the effect of removing inflationary factors from the register. The Commission also observed that the introduction of individual registration had a positive effect on restoring integrity to the registration process.

- 5.67 The Committee's view is that individual registration in Northern Ireland has not led to the disenfranchisement of thousands of voters, as is widely believed to be the case. There are always a significant number of individuals who, for various reasons, do not re-register during the annual canvass; therefore the withdrawal of the carry forward effectively meant that each year a sizeable number of individuals would fall off the register. There would be a similar significant reduction in registration under the household system if the carry forward was abolished.
- 5.68 The main problem with the Northern Ireland approach was the requirement on voters to re-register and provide their personal identifiers afresh each year. Eligible voters saw the process as a burden. The result was that the register continued to fall year on year, although by much smaller percentages.
- 5.69 The Government's response was to introduce new legislation through the Miscellaneous Provisions (Northern Ireland) Act 2006. This has effectively abolished the annual canvass in favour of a system of continuous registration. The Government has recognised that there is little sense in continuing to ask individuals for the same information each year, particularly as the information they have supplied, including the objective personal identifier, has been verified. This approach is also designed to reduce the burden on the individual and allow resources to be targeted more proactively on those who are not registered and those on the register who move house within Northern Ireland or leave the Province. To enable the Chief Electoral Officer to target those not on the electoral register, the Act has given him new powers to access data held by other public sector organisations.

## Way forward

5.70 Despite the simplicity and familiarity of household registration, on balance the Committee takes the view that, as there is agreement among all the major parties, it is the right time to recommend the introduction of individual registration. Due to the understandable concerns expressed by those opposed to individual registration during the passage of the Electoral Administration Act, a possible way forward is to suggest that individual registration is introduced immediately following the next General Election. This would give the political parties time to reach a consensus on the principles of the new system and on a realistic timetable for implementation. Our reasons for recommending this include:

- in a democratic society eligible individuals should take personal responsibility for registering just as they have to apply personally for other public and private services;
- the register will reflect more accurately those individuals who are entitled to be registered;
- greater accuracy will help to restore integrity to the registration process; and
- if combined with other measures, individual registration should help to minimise electoral fraud.

5.71 The Electoral Commission should have a role in facilitating agreement among political parties represented at Westminster about a plan of implementation which would take account of lessons learned from the experience in Northern Ireland. In particular, the plan should cover measures to minimise a fall in the numbers of individuals registered. This would be in line with Electoral Commission's new role as regulator of electoral administration, put forward in Chapter 2.

5.72 If individual registration is to be effective it is essential, in the Committee's view, that personal identifiers are introduced in parallel as part of the registration process.

5.73 As regards which personal identifiers are most appropriate, two options are clearly available:

- signature and date of birth, as recommended by The Electoral Commission and currently used for postal voting in Great Britain; or
- signature, date of birth and a further objectively verifiable identifier – as required in Northern Ireland – such as the National Insurance number.

5.74 The Electoral Administration Act requires those wanting to vote by post to supply two personal identifiers: signature and date of birth. This measure was put in place to try and restore public confidence in the postal voting process because of perceptions that it was leading to increased electoral fraud. As discussed earlier in this chapter, doubts have been expressed as to how effective these identifiers are in establishing an individual's true identity, and whether they are truly effective in deterring a determined fraudster. For example, signatures are notoriously subjective because they can change over time; checking signatures manually is very time-consuming and even checks made by machine still require manpower to investigate perceived discrepancies. The widespread use of signature-checking machinery would also require substantial extra funding.

5.75 On balance the Committee favours having an additional objective verifier. The National Insurance number has been used successfully in Northern Ireland where this objective check has proved to be a deterrent. It is also relatively inexpensive, costing the Chief Electoral Officer just over £10,000 to have over one million numbers checked by the Department for Work and Pensions. Those who oppose the use of such an identifier claim it is too much of a disincentive because, for many people, finding the number would be too much of an effort. There are also concerns that the National Insurance number is unreliable because there are more in circulation than there are individuals. Yet evidence from Northern Ireland, shows that having to provide a National Insurance number has not been seen as problematic and is supported by all political parties. The Committee also notes that the use of the National Insurance number as an identifier has been effective in its own National Fraud Initiative work.

5.76 The Committee advocates the use of the following measures to mitigate the fall-off in the numbers registering, following the introduction of individual registration:

- ensuring that all areas in each registration district are properly canvassed;
- promoting data-sharing within the public sector to allow electoral registration officers to target non-registered individuals; and
- for The Electoral Commission to create a high-profile advertising campaign to inform voters about the new system.

As was noted earlier in this chapter, in Northern Ireland the annual canvass has been abolished and replaced with a system of continuous registration. This has been possible because of individual registration and the objective verification with the National insurance number of each elector's identity. It is now easier for the Chief Electoral Officer to use his resources to target non-registered voters and those registered who move address. In the Committee's view if this approach proves to be successful then it should be adopted in the rest of the United Kingdom.

### Conclusion

5.77 The Committee has drawn conclusions that we believe are widely agreed across the spectrum of those involved in the electoral process, as follows:

- (i) There is a compelling case for replacing the current household system with a system of individual voter registration complemented by personal identifiers. The case is one of basic rights and responsibilities for individual citizens. It cannot be right in the 21st century for our democratic system to be founded upon a system where the 'head of household' can influence the enfranchisement of other individuals living in that property. The case is also made by the gain in integrity and confidence in the electoral administration process that such a system is likely to foster if other measures are simultaneously introduced. The new system is, we believe, essential if the Government wishes to continue with the modernisation of the electoral system

to improve accessibility and ease of voting (through postal voting on demand and possibly e-voting).

- (ii) There are legitimate concerns about the practical impact, in the short-to-medium-term, of the introduction of a system of individual electoral registration on the comprehensiveness of the register. There is some kind of election every year in the UK which stresses the importance of these concerns and the need to address them now. However, there would be demonstrable problems if new legislation is rushed and not properly thought out or if insufficient care is given to the plan of implementation and timetable.
- (iii) Fortunately, the experience of individual registration in Northern Ireland has highlighted some important lessons and shows that the system is workable, and that benefits can be realised, in tandem with good planning, sufficient resource and measures to prevent any loss of comprehensiveness.
- (iv) The debate about the introduction of a system of individual registration is heightened by concerns about the state of the current household electoral register and the variation of practice and standards across Britain. However, the measures we propose in Chapter 2, building upon the Electoral Administration Act 2006, should make a significant impact over the next two to four years and provide the framework for future successful implementation of a system of individual registration.
- (v) We believe that it is important to introduce the new system at the earliest realistic date. This demands the political will and cross-party agreement as well as the development and implementation of new legislation. In particular, there needs to be:
  - agreement on the precise form the new system;
  - preparation by The Electoral Commission, with local authorities, of a detailed implementation plan; and



- sufficient time (three to four years) to be confident that the system will be fully implemented and operating successfully for the anticipated date of the (then) next General Election.

## RECOMMENDATIONS

**R43. A decision should be made and legislation developed to implement a system of individual voter registration immediately following the next General Election or by 2010 at the latest.**

**R44. Political parties should start discussions now in order to reach agreement on the precise form the new system and the measures needed to assure comprehensiveness and accuracy.**

**R45. The Electoral Commission's implementation plan for the new system should include a focus on measures to minimise under-registration.**

**R46. Any agreed system of individual registration should include at least one objective identifier such as the National Insurance number.**

**R47. If the new arrangements in Northern Ireland, including the abolition of the annual canvass, are successful they should be adopted as part of the new system of individual registration in the rest of the United Kingdom.**

## References

1. Electoral Administration Act 2006.
2. *Combating Electoral Fraud in Northern Ireland* Cm 5080 March 2001.
3. Office for Democratic Institutions and Human Rights: United Kingdom of Great Britain and Northern Ireland General Election 2005, OSCE/ODIHR Assessment Mission Report, August 2005.
4. *The Electoral Fraud (Northern Ireland) Act 2002: An assessment of its first year in operation*, Electoral Commission, December 2003.
5. The Representation of the People Act 2000.
6. *The Shape of Elections to Come: a Strategic Evaluation of the 2003 Electoral Pilot Schemes*, Electoral Commission, August 2003.
7. *The Government's Response to The Electoral Commission's Report: The Shape of Elections to Come: a Strategic Evaluation of the 2003 Electoral Pilot Schemes* Cm 5975 September 2003.
8. *Delivering Democracy? The future of postal voting*, Electoral Commission August 2004.
9. Miscellaneous Provisions (Northern Ireland) Act 2006.
10. *Voting for Change: an electoral law modernisation programme*, Electoral Commission, June 2003.
11. *Understanding Electoral Registration, The Extent and Nature of Non-Registration in Britain*, Electoral Commission, September 2005.

# APPENDIX A

## LIST OF SUBMISSIONS

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all the submissions can be found on the CD-Rom which accompanies the report. Evidence which concerned individual cases, or has been found to contain potentially defamatory material, has been excluded. All the evidence we received (including unpublished submissions) was given due consideration in our work.

Aberdeenshire Council  
 Alliance for Green Socialism  
 Alliance Party of Northern Ireland  
 Association of Electoral Administrators  
 Association of Electoral Administrators,  
 Southern Region  
 Association of Electoral Administrators Wales  
 Dr John Baston  
 Ann Begg MP  
 Birmingham City Council  
 Sir Howard Bernstein, Chief Executive,  
 Manchester City Council  
 Bridgnorth District Council  
 Dr George Calvin  
 Lord Campbell-Savours  
 Carmarthenshire County Council  
 Jane and Stuart Carruthers  
 The Conservative Party  
 Michael Crick  
 Disability Action, Belfast  
 Dr Jim Dyer, Scottish Parliamentary Standards  
 Commissioner  
 The Electoral Commission  
 The Electoral Commission Northern Ireland  
 The Electoral Commission Scotland  
 The Electoral Commission Wales  
 Electoral Reform Society  
 Dr Matthew Flinders  
 Bob Goodhall  
 HM Government  
 Professor Robert Hazell  
 Local Government Boundary Commission  
 for Wales  
 Lord Holme of Cheltenham, Chair, and  
 Claire Ettinghausen, Chief Executive,  
 Hansard Society  
 Mark Heath, Solicitor, Southampton City Council  
 Peter Hooper  
 Kelvin Hopkins MP  
 Electoral Officer, King's Lynn and West Norfolk  
 Borough Council

Stanley Knill  
 The Labour Party  
 Returning Officer for Leicester City Council  
 The Liberal Democrats  
 William Mackesy  
 Robert Marshall-Andrews QC, MP  
 Midlothian Council  
 Dr John Marek  
 David Monks, Chair Electoral Matters, SOLACE  
 Rt Hon Rhodri Morgan AC/AM, First Minister  
 for Wales, Welsh Assembly Government  
 New Politics Network  
 The Rt Hon the Lord Owen CH  
 Parliamentary Boundary Commission  
 for England  
 Parliamentary Boundary Commission  
 for Northern Ireland  
 Parliamentary Boundary Commission for Wales  
 Joe Patterson  
 Dr Michael Pinto-Duschinsky  
 Plaid Cymru  
 The Referendum Party  
 Andrew Robathan MP  
 Scarborough Borough Council  
 Scottish Green Party  
 The Southport Party  
 Speaker's Committee, House of Commons  
 Staffordshire Morlands District Council  
 Professor John Stewart  
 The Rt Hon Gavin Strang MP  
 Andrew Stunell MP  
 Torfaen County Borough Council  
 Andrew Turner MP  
 Andrew Tyrie MP  
 West Berkshire Council  
 West Lancashire District Council  
 Dr Alan Whitehead MP



# APPENDIX B

## LIST OF WITNESSES WHO GAVE ORAL EVIDENCE

### Day 1 London 13 June 2006

Dr Michael Pinto-Duschinsky  
Sam Younger, Chairman,  
The Electoral Commission  
Peter Wardle, Chief Executive,  
The Electoral Commission  
Peter Viggers MP, Speaker's Committee  
Dr Christopher Ward, Secretary to the  
Speaker's Committee

### Day 2 London 15 June 2006

Professor Robert Hazell, School of Public Policy,  
University of London  
Oliver Heald MP, Shadow Secretary of State  
for Constitutional Affairs and Shadow  
Chancellor of the Duchy of Lancaster  
Simon Hughes MP, Shadow Secretary of State  
for Constitutional Affairs and Attorney  
General; President Liberal Democrat Party  
Rt Hon Alan Beith MP, Chair of Select  
Committee on Constitutional Affairs  
Rt Hon Hazel Blears MP, Chair of the Labour  
Party and Minister without Portfolio

### Day 3 Belfast 21 June 2006 (am)

Mark Devenport, Political Editor  
BBC Northern Ireland  
Karamjit Singh CBE, Commissioner,  
The Electoral Commission,  
Seamus Magee, Head of Office,  
The Electoral Commission Northern Ireland  
Douglas Bain, Chief Electoral Officer  
June Butler, Assistant Chief Electoral Officer  
Denis Stanley, Former Chief Electoral Officer  
John Fisher, Northern Ireland Parliamentary  
Commissioner

### Day 3 Belfast 21 June 2006 (pm)

Tim Attwood, Social Democratic and  
Labour Party  
Nuala O'Neill, Social Democratic and  
Labour Party  
Alan Ewart, Democratic Unionist Party  
Richard Bullock, Democratic Unionist Party  
Allan Leonard, Alliance Party  
Sean Begley, Sinn Fein  
Margaret Adams, Sinn Fein

### Day 4 Edinburgh 27 June 2006

Douglas Fraser, Glasgow Herald  
Sir Neil McIntosh CBE, Commissioner,  
The Electoral Commission  
Andy O'Neill, Head of Office,  
The Electoral Commission  
William Pollock, Administration Manager,  
South Ayrshire Council  
Alan Henry, Electoral Registration Officer  
for Dumfries and Galloway  
Jeff Hawkins, Returning Officer for East  
Renfrewshire Council  
Mark McInnes, Scottish Conservative Party  
Dr Derek Barrie, Scottish Liberal Democrat Party  
Mrs Lesley Quinn, Scottish Labour Party  
Peter Murrell, Scottish Nationalist Party

### Day 5 Cardiff 6 July 2006

Dr Roger Scully, University of Wales Aberystwyth  
Glyn Mathias, Commissioner,  
The Electoral Commission  
Kay Jenkins, Head of Office,  
The Electoral Commission  
Rt Hon Rhodri Morgan AM,  
First Minister for Wales  
Frank Cuthbert, Office of the First Minister  
Robert Screen, AEA, Wales  
Peter Woodward, AEA, Wales  
Matthew Lane, Welsh Conservative Party  
Dafydd Trystan, Plaid Cymru  
Jeff Canning, Plaid Cymru  
Stephen Smith, Welsh Liberal Democrat Party  
Susan Smith, Local Government Boundary  
Commission for Wales  
Edward Lewis, Local Government Boundary  
Commission for Wales

Day 6 London  
11 July 2006

Michael Crick  
Dr Alan Whitehead MP  
Andrew Tyrie MP  
The Rt Hon Kenneth Clarke QC MP

Day 7 London  
13 July 2006

Rt Hon John Spellar MP  
Phil Woolas MP, Minister of State, Department  
for Communities and Local Government  
Dr David Butler, Nuffield College, Oxford  
Professor Iain Maclean, Nuffield College, Oxford  
John Turner, Association of Electoral  
Administrators  
David Monks, Electoral Matters Panel, SOLACE  
Ken Ritchie, Electoral Reform Society

Day 8 London  
18 July 2006

Malcolm Dumper, Executive Director Policy and  
External Affairs, Southampton City Council  
Norman MacLeod, Electoral Service Manager,  
London Borough of Haringey  
Peter Stanyon, Deputy Head of Democratic  
Services, London Borough of Enfield  
James Stevens, Brentwood Borough Council  
Fraser Kemp MP, Houghton and Washington East  
Bridget Prentice MP, Parliamentary Under-  
Secretary of State, Department for  
Constitutional Affairs  
David Heath CBE MP, Shadow Leader of the  
House and Liberal Democrat Spokesperson for  
the Cabinet Office

Day 9 London  
7 September 2006

Peter Viggers MP, Speaker's Committee  
Dr Christopher Ward, Secretary to the  
Speaker's Committee  
Rt Hon Gavin Strang MP  
Lord Holme of Cheltenham, Chairman,  
Hansard Society  
Clare Ettinghausen, Chief Executive,  
Hansard Society  
Ged Fitzgerald, Chief Executive,  
Sunderland City Council  
Paul Rogerson, Chief Executive,  
Leeds City Council  
Kelvin Hopkins MP

Day 10 London  
14 September 2006

Sir Howard Bernstein, Chief Executive,  
Manchester City Council  
Susan Orrell, City Solicitor, Manchester  
City Council  
Andrew Scallen, Head of Statutory Services,  
Manchester City Council  
Dr Michael Pinto-Duschinsky  
Sam Younger, Chairman,  
The Electoral Commission  
Pamela Gordon, Commissioner, The Electoral  
Commission, and Chair of Local Boundary  
Committee for England  
Peter Wardle, Chief Executive,  
The Electoral Commission

Day 11 London  
21 September 2006

The Rt Hon Lord Falconer of Thoroton QC,  
Lord Chancellor and Secretary of State for  
Constitutional Affairs  
John Sills, Head of Electoral Policy, Department  
for Constitutional Affairs  
Sir Hayden Phillips GCB

Day 12 Belfast  
23 October 2006

The Lord Maginnis of Drumglass  
Seamus Magee, Head of Office,  
The Electoral Commission, Northern Ireland  
Dr Tony Dignan, PricewaterhouseCooper

# APPENDIX C

## PREVIOUS REPORTS BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Committee has published reports on the following subjects:

Members of Parliament, Ministers, civil servants and quangos (First Report (Cm 2850)) (May 1995);

Local public spending bodies (Second Report (Cm 3270)) (June 1996);

Local government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997);

The funding of political parties in the United Kingdom (Fifth Report entitled The Funding of Political Parties in the United Kingdom (Cm 4057)) (October 1998);

Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000).

Standards of Conduct in the House of Commons (Eighth Report (Cm 5663)) (November 2002)

Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service (Ninth Report (Cm 5775)) (April 2003)

Getting the Balance Right: Implementing Standards of Conduct in Public Life (Tenth Report (Cm6407)) (January 2005)

The Committee is a standing committee. It can therefore not only conduct enquiries into new areas of concern about standards in public life but also, having reported its recommendations following an enquiry, it has can later re-visit that area and monitor whether and how well its recommendations have been put into effect. The Committee has so far conducted two reviews, and in 2001 published a stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994:

A review of recommendations contained in the First and Second Reports relating to standards of conduct in executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and local public spending bodies (Fourth Report) (November 1997);<sup>1</sup>

A review of recommendations contained in the First Report relating to Members of Parliament, Ministers, civil servants and 'proportionality' in the public appointments system (Sixth Report entitled Reinforcing Standards (Cm 4557)) (January 2000);<sup>2</sup>

A stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994 (The First Seven Reports – A Review of Progress) (September 2001).

<sup>1</sup> This report was not published as a Command Paper.

<sup>2</sup> 'Proportionality' is a term used to describe the principle that the length and complexity of appointment procedures should be commensurate to the nature and responsibilities of the post being filled.





## ABOUT THE COMMITTEE

### Terms of reference

The Rt Hon Sir John Major KG CH, the then Prime Minister, announced the establishment of the Committee on Standards in Public Life in the House of Commons on 25 October 1994 with the following terms of reference:

*To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*

For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all non-departmental public bodies and of National Health Service bodies; non-ministerial office-holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities. (Hansard (HC) 25 October 1994, col 758)

### The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997 the terms of reference were extended by the Prime Minister:

*To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.*

The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for up to three years. Sir Alistair Graham succeeded Sir Nigel Wicks as Chairman on 26 April 2004. Sir Nigel succeeded Lord Neill as Chairman on 1 March 2001. Lord Neill succeeded Lord Nolan, the Committee's first Chairman, on 10 November 1997.

## Membership of the Committee

### Sir Alistair Graham Chairman

Lloyd Clarke QPM  
Rita Donaghy CBE  
Professor Dame Hazel Genn DBE  
Dame Patricia Hodgson DBE  
Rt Hon Alun Michael JP MP  
(from 1 October 2006)  
Baroness Maddock  
Rt Hon Baroness Shephard JP DL  
Dr Elizabeth Vallance JP  
Dr Brian Woods-Scawen DL

The Committee is assisted by a small Secretariat: Dr Richard Jarvis (Secretary), Peter Hawthorne (Assistant Secretary), Jan Ashton (Secretariat Manager), Gemma Craigan (Secretariat Coordinator) and Gloria Durham (SPS to the Chairman and the Secretary).

Advice and assistance to the Committee for this study was also provided by: Radio Technical Services Ltd for the provision of sound recording; WordWave for the provision of transcription services during the public hearings; and Giles Emerson of Words for editing the draft report.

### Expenditure

The estimated gross expenditure of the Committee on this inquiry to the end of December 2006 is £238,000.

This includes staff and administrative costs; the costs of printing the Issues and Questions paper in February 2006; the estimated cost of preparing and publishing this Report; costs associated with the public hearings throughout the summer of 2006 (eight held in London, two in Belfast, one each in Edinburgh and Cardiff); the research trip to North America, visits to returning officers and all associated sundry expenses.

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The *Eleventh Report of the Committee on Standards in Public Life* on CD-ROM uses Adobe Reader which is pre-installed on most computers and networks. If you do not have adobe reader on your computer, this CD contains installers for the Windows, Macintosh and Linux operating systems. Other versions of Adobe Reader (which are free) are available online from [www.adobe.com](http://www.adobe.com)

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