

The Electoral Commission – The Story So Far

Presentation Given At A Meeting Of The H S Chapman Society

Nicole Smith, Director of Policy and Strategy at the Electoral Commission addressed members of the HS Chapman Society when it met in the House of Lords on 11th October. Sam Younger, Chairman of the Commission, also attended the meeting.

Role of the Electoral Commission

Nicole said that she is often asked why the Commission has done some things and conversely why the Commission has not done other things. The answer is that the Commission does not do anything outside of its statutory remit, and has to make judgements about how best to use limited resources for the wide range of activities that do fall within its remit.

The need for a Commission came about as a result of the decision to legislate for financial regulation of political parties. However, the statutory remit of the Commission goes beyond regulation. It has statutory powers or duties to educate and inform the public; to regulate parties and candidates and referendum campaigners; to advise on the modernisation of electoral law, electoral administration, electoral broadcasting and electoral boundaries; and to oversee the conduct of referendums. Unlike Commissions in other countries the UK Electoral Commission does not run elections.

The Commission's educational duty is to promote public awareness of democratic systems and institutions. Generally speaking, there is no duty to persuade people to vote because a range of other factors affect that outcome; however the recent Regional Assemblies (Preparations) Act did place a duty on the Commission to encourage voting.

The Commission's advice to broadcasters is limited to rules and conditions surrounding party political broadcasts. There is no duty to give general advice and indeed the Commission always recognised that it is important not to leap into areas that are outside their remit.

The current corporate aims of the Commission are:

- To promote and maintain transparency in the financial affairs of political parties and others involved with elections
- To review the administration and law of elections and encourage best practice
- To encourage greater participation in and increased understanding of the democratic process
- To ensure the Commission is able to undertake the effective conduct of a referendum
- To provide for electoral equality in each local authority area in England, whilst also reflecting community identity.

Nicole stressed that Commissioners have taken the view that the public is the Commission's first priority, although the Commission obviously has a range of other stakeholders including electoral administrators and political parties.

Everything they do and all their plans for the future depend upon research and evidence obtained. For example, in assessing all-postal voting the Commission asked the public for their views to ascertain the level of public confidence and support. Similarly, when reviewing voting age, they found that whilst the campaigners were convinced that the voting age should be lowered, young people themselves were evenly split over the question of giving votes to sixteen year olds. That said, the Commission cannot be guided by public opinion alone.

Whilst the Commission are independent of Government and other vested interests, they do work in partnership with other bodies to achieve shared objectives and they are certainly not just pursuing their own agenda.

Criticisms of the Electoral Commission

Criticisms of the Electoral Commission were acknowledged, although it has to be said that many of the criticisms are contradictory. For example, some electoral administrators say that the Commission does not pay enough attention to them whilst others complain that the Commission is always breathing down the neck of administrators. As to the complaint from some electoral administrators that the Commission does not listen to them, Nicole explained that the Commission has many stakeholder groups to consider in addition to administrators. The Commission's priority is to keep the public in the forefront when balancing the different needs of administrators, political parties and the general public - but it is always keen to hear the views of those working at the front line.

Nicole also acknowledged that people are confused as to who does what now that there are two government departments involved in electoral matters in addition to the Commission. The Commission agrees that there is a need to establish clarity, as they themselves find it confusing dealing with two government departments.

In response to the suggestion that the Government ignores the Commission, Nicole explained that they meet with Ministers or Government officials weekly and are represented on all relevant project boards. The Government has yet to respond to the Commission's recommendations for electoral reform, but the Commission is working with the Government on preparations for a Reform Bill and the Commission's recommendations are expected to form the basis of this major reform programme. Nevertheless, recent public disagreements between the Commission and Government have served to demonstrate that the Commission is independent.

The Commission is also aware of criticism that it produces too many glossy brochures. The Commission has adopted this house style for publications because accessible and attractive documents help communicate their message better, and the costs are not significantly different from plainer publications. The aim is for the Commission's publications to be read by a wider audience than would usually read such documents.

Another difficult area for the Commission is how and when they should give advice. Some have suggested that the Commission should offer more legal guidance. Nicole pointed out that, as the Commission has no powers of direction over Returning Officers or EROs, any legal advice they offer is not binding. Indeed, they recognised

that the Commission's advice is not always followed, which raises questions about the validity of issuing advice.

Achievements of the Electoral Commission

An enormous amount of work has been undertaken in connection with the financial affairs of political parties. The Commission has created and maintained registers of over 200 parties; routinely published donation reports every 3 months; and completed over 1000 compliance reviews.

They created and maintained the register of permitted participants for the North East Regional referendum, designated the Yes and No organisations and established a claims unit for referendum fees and charges.

The Boundary Committee and staff that deal with local government boundary reviews have also been extremely busy. Since the Commission assumed responsibility for local government boundaries in April 2001 they have completed the Periodic Electoral review programme covering final recommendations for 119 reviews. They have also conducted local government reviews in the three English regions that were expected to have regional referendums.

When it comes to elections, the Commission's work is prodigious. They have written four statutory reports on major elections, including elections in Scotland, Wales and Northern Ireland; evaluated over 100 pilot schemes and commented on over 30 draft regulations. Another major area of work has been the policy reviews that have led to around 150 recommendations for changes to the legal framework for elections.

The Commission is responsible for developing a training strategy for Electoral Services and in this respect they will build on the experience gained from the training programmes for the European Parliamentary Elections, Northern Ireland Assembly elections and the North East regional referendum.

Work with the general public includes an extensive research programme, national advertising campaigns and community outreach initiatives.

Challenges

Nicole saw the Commission's key challenge as maintaining independence of their approach and opinion whilst continuing to nurture effective relationships with stakeholders. They also need to maintain their independence from Government whilst still aiming to influence policy. They acknowledge that they are working with partners who are under-resourced at a time when elections, electoral law and electoral services generally are changing at a rapid pace. In such a climate, it has to be accepted that consensus may not be realistic on all issues.

Where Next?

There is no complacency at the Commission. They are undertaking an internal review of their vision, mission and aims so that they offer a consistent message to the outside world. In addition, they are investing in more effective 'stakeholder relationships' in an effort to develop relationships that have greater substance than the issue and receipt of circulars. It is appreciated how important it is that their work programme is

focussed and well communicated. Feedback from others and even a formal external review would be welcomed by the Commission.

Questions

The Chairman of the Electoral Commission, Sam Younger fielded questions from the audience.

Sam acknowledged that the Commission's original recommendations for all-postal local elections were wrong. In defence of the recommendations, they were always conditional on individual electoral registration. The Commission believed that the Government should have dealt with the underlying legislation before extending the scale of all-postal voting significantly; that is why the Commission wanted the all-postal pilots restricted to a smaller number of regions. That said, the Commission's role is advisory and the people they are advising are permitted to take a different view. The Commission's advice was certainly central to the debate.

Another questioner asked who is responsible for giving legal advice on electoral matters. Sam's response was that within Section 10 of PPERA the Electoral Commission can give advice on their areas of expertise, but such advice could not be binding. He acknowledged that it was unhelpful when the Government circulated advice that conflicted with the Commission's views. They intend to work through the issue with Government Departments to see how they can avoid giving conflicting advice in future.

Sam maintained that the Electoral Commission is good value for money. They have a core staff of about 150 of which significant numbers, up to about 50 people, have been working on boundary matters. He reiterated Nicole's suggestion of a regular external review that would look at the Commission's remit. Others need to be involved in deciding what the Electoral Commission should be doing in 10 years time.

Editor's Note - Update on External Review

The H S Chapman Society, supported by the Hansard Society, is taking forward plans for an external review of the Electoral Commission. The Society will be hosting a seminar for interested bodies in early February. Sam Younger is preparing a paper for circulation in advance of the seminar. Attendance will be by invitation and those invited to attend will include: chairs of the constitutional committees of the House of Lords and House of Commons; representatives of the Speaker's Committee; academics; practitioners (AEA and SOLACE); representatives from the Office of the Deputy Prime Minister and the Department for Constitutional Affairs; and the designated solicitors and treasurers of the main political parties.