



COMMITTEE ON STANDARDS IN PUBLIC LIFE

Review of Electoral Commission

RESPONSE BY SOLACE

SOLACE (Society of Local Authority Chief Executives and Senior Managers) is the representative body for senior strategic managers working in the public sector. The Society promotes public sector management excellence and provides professional development for its members who come from all areas of the public sector. Whilst the vast majority of its members work in local government it also has members operating in senior positions in health authorities and central government. SOLACE spans all of the United Kingdom, having membership in Northern Ireland, Wales, Scotland and England.

Members are drawn from a variety of professional backgrounds and are:-

- local authority Chief Executives (the bulk of whom are Returning Officers/Electoral Registration Officers)
- senior executives of local authorities (or other related organisations)
- members of related international organisations
- past service members

SOLACE is uniquely placed as a professional organisation to take an overview of all public sector issues, especially those in local government and not simply electoral issues. In particular, the Society is interested in all new management/leadership developments to improve service to the public and responding to numerous central government initiatives.

The Society organises its work into a number of programme areas and one of these is Electoral Matters. A panel of experienced practitioners meets regularly to discuss and comment upon current issues and problems; this panel is chaired by David Monks, Chief Executive of Huntingdonshire District Council, who has been a Returning Officer/Electoral Registration Officer for more than 20 years.

Returning Officers

Although this evidence will make some general points later, the Society is particularly interested in connecting upon the area referred to the Committee's report as "the status, training and capacity of Returning Officers."

The historical origins of the role go back to the Middle Ages as the following (edited) paragraph from Parker's Law and Conduct of Elections explains:-

*"When, at the end of the thirteenth century, it first became the practice for the Sovereign to summon a Parliament, members of that Parliament were summoned by means of royal writs which were directed to the sheriff of each county as the executors of all royal writs. Each sheriff was responsible for returning the writ by entering in it the names of the persons who were to serve in Parliament on behalf of that county. This is the likely origin of the name 'returning officer'. At that time, the procedure by which the persons, who were to serve in Parliament were selected was not prescribed, and the sheriff was probably able to exercise some discretion in the selection of members. However, as early as the fifteenth century, laws were passed to ensure the returning officer made a proper return of the persons elected. The problem of returning officers making improper returns still existed at the end of the seventeenth century when the **Parliamentary Elections (Returns) Act 1695** was enacted to try to prevent false returns. In addition, the **Parliamentary Elections Act 1695** for the first time make substantial provision as to the manner in which a parliamentary election was to be conducted to ensure that this was in public. The nomination of candidates and the poll continued to be conducted in public until the passing of the **Ballot Act 1872** which Act introduced the secret ballot. The **Ballot Act 1872, Schedule 1**, made detailed provisions for the conduct of elections and thereby imposed detailed rules in respect of the conduct of returning officers. The substance of most of those rules remains in force today, re-enacted as the **Representation of the People Act 1983 Schedule 1 ('the Act of 1983')**. However, the sheriff is no longer responsible for the actual conduct of parliamentary elections, although in county constituencies in England and Wales he remains nominally the returning officer.*

***The Representation of the People Act 1983** consolidates the **Representation of the People Act 1949** and various enactments amending it. That Act of 1949 was itself a consolidation of earlier legislation. Much of the 1983 Act derives from legislation enacted in the nineteenth century. As respects parliamentary elections, the three principal Acts were the **Ballot Act 1872** (from which the rules in Schedule 1 to the 1983 Act derive), the **Parliamentary Elections Act 1868** (from which much of Part III of the 1983 Act derives) and the **Corrupt and Illegal Practices Prevention Act 1883** (from which much of Part II of the 1983 Act derives)"*

The description of this essentially Victorian legislation points to the key fact that the role of the Returning Officer is a Victorian one with nineteenth century rules delineating its duties and responsibilities. Victorian Town Clerks are hardly similar to modern 21st Century Local Government Chief Executives!! Contemporary Chief Executives are managers working at the political interface between elected members, central government and their professional staff for which they are 'Head of Paid Service' (another statutory role).

Moreover, the style and content of Chief Executive work is entirely out of character with the arcane and archaic electoral rules that still govern the conduct of elections in this Country. The modern manager Chief Executive deals with Local Area Agreements, partnership working, total quality management, CPA's etc., which are entirely different. Even the lawyer Chief Executives (about 20% of the total number of Chief Executives) find difficulty interpreting and applying the electoral rules. Indeed, many Chief Executives do not wish to carry out these duties (a personal responsibility as explained later) as they find the Returning Officer role totally incongruous with their mainstream work.

Electoral law and process in this Country is a corpus of very technical rules (with virtually no application or relevance to modern information technology) and the scope for error is considerable. Thus, all local authorities (not Returning Officers) employ specialist staff whose primary responsibility is to be knowledgeable in this area and, basically, carry out the electoral process albeit under the overall control of the Returning Officer. The Electoral Commission recognised this in their report on the 2004 Welsh local elections:-

"It is important to recall that the administrators who manage the day-to-day election planning are generally not senior management staff. Returning Officers are Chief Executives or other senior officers with many other responsibilities and priorities. In Wales, as in England, few Returning Officers would describe themselves as 'hands-on' (although there are those who are) and, understandably given their broader responsibilities, tend to be involved in key decisions only. Electoral administrators, on the other hand, are obliged to spend their time administering complex processes aimed at meeting legal requirements and deadlines, rather than considering broader strategy and wider issues beyond delivering an election."

The issues are highlighted to introduce the question – 'What is the relationship between the Electoral Commission and Returning Officers?' Certainly, it is the view of SOLACE that this relationship could be strengthened and possibly made more formal; that is not to say the current relationship is anything but cordial and co-operative. However, it does rely heavily on particular personalities and much informal contact – albeit that such individuals have worked reasonably successfully together. (The Commission probably has a closer relationship and more contact with the AEA as representing staff who carry out all the detailed work).

Thus, Returning Officers are invited to participate in Electoral Commission working groups (training, performance standards, etc.) and an Electoral Commission representative is always invited to the SOLACE Electoral Matters Panel meetings. Nevertheless, the Society would wish to put forward a suggestion that could modernise the electoral process and, hopefully, improve performance.

The idea to be considered and discussed would be for Returning Officers to be employed by the Electoral Commission when carrying out electoral duties. At the moment they operate as independent contractors and, therefore, have, for example, to secure their own insurance against all claims. This is becoming more and more problematical (virtually impossible for the last European Elections) and exposes Returning Officers in a personal capacity to substantial risk (some Chief Executives cite this as a contributory factor in their reluctance to be Returning Officers). If, alternatively, they were employed by the Electoral Commission then they could receive an indemnity from the Commission or be covered by their insurance (assuming such could be obtained).

Other advantages would ensue. A closer working relationship would surely develop better and more organised training (led by the Commission) for Returning Officers leading to higher skill levels – not to mention more organised networking amongst Returning Officers to build up good communications, team spirit and a corpus of knowledge.

SOLACE as a professional society seeks to cover all key issues for Chief Executives (not just elections) and election work 'jostles' for attention within a busy work menu for these local authority managers. The Society offers some training (together with other providers) but there is nothing systematic and formalised as could only result from an employment contract. It is envisaged that this would be a parallel employment contract and Chief Executives would continue to be employed by their local authorities for their mainstream work. Inevitably, such a change would require primary legislation, preceded by both research and substantial consultation.

Again, if this were to be established it could lead to a different type of funding of election (and electoral registration?) work. This is a problem at present and many in local government feel that election work is underfunded. Essentially, local authorities pay for their own elections and central government 'funds' parliamentary elections (though many argue that there are invisible local subsidies and overall funding is inadequate). Funding received from government for registration work is through the national grant system subject to all the vagaries and complexities of that process, not to mention local political decision making. Local authority finances are always – and will continue to be – under pressure and funds received compete with other services – some would argue that they lose out significantly.

If funding were to be totally channelled and controlled through the Commission then hopefully some of these problems could be addressed and the matter be more transparent as well as accountable. As the Committee note in para 2.16 of their report, proposals for Returning Officer payments to be transferred to the Commission have not yet been implemented, but the suggestions put forward in this evidence go considerably further. (SOLACE, with others such as CIPFA, is researching aspects of election funding at present).

If the Commission / Returning Officer relationship were to be formalised then the advice and reports currently produced by the Commission would surely receive a higher profile. Huge amounts of information pass across the Chief Executive's desk (or more likely now through his or her PC or Blackberry) and the Commission's reports have to compete with government circulars, audit commission papers, LGA advice etc. As the committee note at para 2.23 of their report, the Electoral Commission is viewed as a source of electoral knowledge in the UK, but it is not always clear that such information reaches all Chief Executives sufficiently.

The Society recognises that such a proposal as this requires considerable research and discussion to develop but would encourage the Committee to lead on such work as described in para 1.16 of the report. It is positively suggested that this be the next logical step to take leading to legislative change.

Other General Points

1. The Society believes that the Electoral Commission should be independent of Government, but there should be some obligation on the part of the legislature to adopt its recommendations into law – the democratic system should be above politics and any particular partisan considerations.
2. Serious consideration should be given to appointing Commissioners who have had some active political experience at both local and/or National level. That would give the Commission valuable insight and knowledge that it only gains from advisory sources at present.
3. Funding of political parties should continue to be transparent.
4. The Society holds regular (monthly) meetings with a Minister at the DCA to discuss difficult issues such as postal vote fraud. We hold – unlike others, including the Electoral Commission – the clear view that party workers should not return postal votes as this simply leads to allegations of malpractice from other parties. Several SOLACE members have negotiated much stronger (than the national document prepared by the Commission) local protocols to achieve this aim.
5. The Society would support individual voter registration but recognises the practical problems that could ensue (considerable voter disappearance from the register) and in a pragmatic way understands the government's attitude to this matter; it is understood that the Commission take a different view.