

RESEARCH IN SUPPORT OF THE COMMITTEE'S 11TH ENQUIRY: REVIEW OF THE ELECTORAL COMMISSION

Research 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

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FINAL REPORT

Executive Summary

Mandate

- The Electoral Commission is both a regulatory and advisory body, and the recent loans episode has highlighted potential conflicts within this dual role.
- Public opinion polls on the subject of party finance do not illustrate clear preferences.
- The media plays a potentially significant role in damaging public confidence in the area of party finance.
- The current arrangements for penalising non-compliance with electoral law are arguably unworkable. The Electoral Commission is reluctant to invoke criminal proceedings, and party behaviour is negatively affected by this reluctance. As a result, civil penalties should be made available for minor breaches of legislation.
- There is a reasonable case to raise the level at which donations made to parties nationally are declared.
- The absence of caps on contributions continues to cause public disquiet.
- Proposals to reduce expenditure limits should be considered with caution, since such a move is likely to have a detrimental affect on public engagement.
- Weekly reporting of donations during election campaigns is arguably unnecessary.
- Routine reporting of donations should become more regular.
- The current differentiation between local and national spending limits is no longer meaningful.
- Imprecise legislation on loans, transparency in Northern Ireland and the permissibility of some corporate donations create difficulties for the Electoral Commission.

- The Electoral Commission has evolved from being a process-led regulator into being more of a strategic regulator, which applies a risk-based approach to regulation.
- The risk-based approach informed the Commission's stance during the loans episode. The stance taken by the Electoral Commission over the loans issue is likely to affect how it operates as a strategic operator in the future.

Governance

- The current restrictions upon the appointment of Commissioners and Commission staff in terms of prior political activity have provoked criticism – especially from political parties.
- The current restrictions are appropriate for Commissioners, but could be relaxed for Commission staff.

Accountability

- The Speaker's Committee at present does not provide an effective mechanism for accountability of the Electoral Commission.
- The Electoral Commission has enhanced its accountability by setting measurable criteria in order to demonstrate success or failure.
- The current mechanisms for accountability are focussed too heavily upon Westminster.

Mandate

The following issues have been identified as ones that present difficulties in relation to the mandate of the Electoral Commission as a regulator of elections and party political donations in the United Kingdom

The Role of Commission

A key area of concern is the ‘dual role’ currently played by the Electoral Commission. The Commission both regulates party finances and plays a role in terms of making recommendations for changes and reform in the electoral process. Whilst it is reasonable to argue that the Electoral Commission has performed both roles well to date, recent events potentially highlight conflicts within this dual role. For example, the Commission is responsible for investigating possible breaches of electoral law, whilst at the same time seeking to enhance public confidence in the political process. In recent months the Commission has involved itself in the controversy surrounding loans to political parties, which has seemingly damaged public confidence (measured by the willingness to fund parties from the public purse - see Table 1 below). At the same time, the Commission is charged with developing public confidence and improving political participation.

Table 1: Attitudes Towards Party Funding, April 2006

Q. Do you agree or disagree that public money should be used to finance political parties?

%	All	Vote Intention			
		Lab	Con	Lib Dem	Other
Agree	20	29	18	21	27
Disagree	77	69	78	75	72
Don't Know	3	2	3	4	-

Source: ICM

Notwithstanding, it is fair to say that responses to public opinion poll questions on the topic of party funding are firstly, context specific (as they are on questions regarding electoral reform), and secondly, sensitive to question wording (See Table 2). This is almost certainly a function of the broad ignorance regarding party finance identified by MORI in 2003 - only 27% of respondents reported knowing ‘a fair amount’ or a ‘great deal’ about party funding. By way of contrast, 40% had either ‘never heard of’ party funding or knew ‘hardly anything at all’. This is reinforced by the seemingly contradictory sentiments reflected in Table 3. And, when asked to choose between various competing models of party funding, some 59% of respondents favoured at least some form of public funding for political parties – 37% were opposed to any state funding (Electoral Commission, 2004: 17).

Table 2: Attitudes Towards Party Funding, June 2004

- Q1. Funding parties by voluntary donations is unfair because there is a risk that wealthy individuals, businesses and trade unions can buy influence over parties.*
- Q2. Political parties with significant public support should be provided with public funds to reduce their dependency on donations from wealthy individuals, businesses and trade unions.*
- Q3. There should be limits on how much people can donate to political parties.*

%	Q1	Q2	Q3
Agree Strongly/Slightly	73	62	74
Disagree Strongly/Slightly	18	27	15
Don't Know	9	12	11

Source: Joseph Rowntree Reform Trust Ltd/ICM

Table 3: Attitudes Towards Party Funding, May 2003

- Q1. People should have the right to make donations to the parties they support*
- Q2. It better that parties should be financed by their own fundraising, rather than being subsidised by taxpayers.*
- Q3. It makes elections unfair if one party can spend more than others.*
- Q4. Funding parties is unfair because there is a risk that wealthy individuals, businesses and trade unions can buy influence over parties*

%	Q1	Q2	Q3	Q4
Agree	79	76	74	70
Disagree	14	16	18	22

Source: Electoral Commission, 2004: 15

The media too, have a role to play in respect of damaging public confidence in the political process. During the recent loans episode, for example, the commentary in the media was, on occasions, somewhat inflammatory, often ill-informed and likely to have a detrimental effect. For example, Simon Jenkins, commentating in *The Guardian* on 29th March 2006 wrote:

'Don't give them an inch. Not one inch. They are a bunch of knaves. They have taken your power, abused it, and now they are after your money. Don't let them. I refer of course to Britain's political parties. They have been caught with their fingers in the till.'

Tim Hames, meanwhile, wrote in *The Times* (April 3rd 2006):

'A much larger crime, though, may yet be perpetrated. It is that a quiet consensus will be secured between the Prime Minister and the Leader of the Opposition that the taxpayer should be mugged in the form of a larger dose of state funding of parties. Mr Blair has more or less admitted that this is the route that he would prefer to take as long as the Tories will provide him with political cover. Mr Cameron has already shown a willingness to join in that conspiracy by putting forward an admittedly sophisticated scheme for an additional subsidy from the Exchequer to be paid for by the superficially populist notion of cutting back the numbers of MPs in Westminster'.

'Regulating political money is akin to dealing with the illegal drugs trade. To focus on the supply alone is unlikely to overcome severe addiction. The real issue is demand and how to reduce it. In a typical year the parties can make ends meet, especially with the assistance of so-called "Short" money (named after Ted Short, the Leader of the House of Commons, who introduced it at about the time that Lord Levy foisted Mr Stardust on an innocent nation). This sum has been increased so substantially since 1997 that it should really be renamed Tall money'.

There are a number of possible responses to the issue of the Commission's 'dual role'. The first would be to do nothing – based upon the fact that the Commission is performing its tasks well at present. The second would be to provide the Commission with additional resources, and define and divide these roles more explicitly. A third option would be for the Commission to concentrate principally on the regulatory function, and for the advisory function to be performed either by a new and separate body, or by existing bodies.

The advantage of a standing advisory body is that its role is continuous, and as with the Committee on Standards in Public Life, it can clarify points within its reports, respond to criticisms, and most importantly keep issues under review. Without a standing body, recommendations can be overlooked once a report is delivered (Fisher, 2002a). In addition, removing the advisory role from the Commission would mean the loss of the genuine gains made since 2001. Prior to the introduction of the Political Parties, Elections and Referendums Act (PPERA), one of the great difficulties of regulating elections and electoral law, was that it was overseen by several Departments. Placing all functions 'under one roof' therefore has a number of advantages. Equally, the 'do nothing' option may be non-sustainable, since performing the dual role with existing resources is a matter of some concern within the Commission.

Penalties (Civil and Criminal, and Role of the Police)

A particular area of concern with regard to the Commission's executive function is the issue of penalties for non-compliance. At present, the only formal sanction available to the Commission under the terms of PPERA is a criminal one (Section 150, Political Parties, Elections & Referendums Act 2000). The effects of this are several. Firstly, it means that the Commission's regulatory role may be conducted in a

less effective way, since the penalty is such that the Commission is unwilling to invoke it. In effect, there is no sanction between expressing concern about non-compliance, and referring the matter for criminal prosecution.

Secondly, it has an impact on party behaviour – either through parties’ non-cooperation, safe in the knowledge that criminal proceedings will not be brought; or potentially through difficulties in appointing or maintaining voluntary treasurers at local level who are mindful of the possible penalties. Research conducted after the 2001 election suggested that there was some ignorance surrounding the new legislation, particularly amongst voluntary constituency agents (Denver *et al*, 2002). By 2005, there was a far greater understanding, but volunteer agents were still more likely to seek guidance on matters of what counted as permissible expenditure, and the deadlines for submission of candidate expenses.¹

Finally, recent events have suggested that the point at which the Police become involved in any investigations is not clearly stipulated. In the case of loans, the police involvement occurred as a result of complaints by members of other political parties. Whilst these concerned allegations regarding the sale of honours, rather than breaches of PPERA, the impact has been that investigations by the Electoral Commission (as well as the Public Administration Select Committee) have been delayed. The police involvement is a rather novel departure and the resulting impact on the work of the Commission suggests that more clarification is required regarding the point at which any further police investigations might become necessary.

The preference of the Commission is for civil penalties to be available in minor cases, which the Commission could administer. These might include, for example, fines proportional to donations, in the case of late reporting. Furthermore, if civil penalties were introduced the difficulties outlined above would be alleviated, and there would be greater clarity regarding any point at which the Police might be involved.

Requirements of PPERA

A number of issues have emerged regarding the reporting requirements of PPERA, which may affect the Commission’s mandate.

The level at which donations are reported. Currently, donations in excess of £5,000 made nationally, and £1,000 given locally are reported to the Commission, which then publishes these data on its website. The principle of transparency in these matters has been readily accepted and now that the system is established, there is no current call for change from the parties, although it is fair to say that some party officials are hostile to the amount of information they are required to supply.

Notwithstanding, there are two potential reasons for re-examining the limit at which donations at national level are declared. Firstly, the simple process of inflation will erode the threshold such that it becomes more of a burden for parties. Secondly, this relatively low limit creates more work for the Commission and for parties. As a

¹ These differences are statistically significant, measured by Chi-Square, and compared the responses of voluntary and non-voluntary agents. Data were derived from a survey of election agents carried out immediately after the 2005 general election. For further details, see Fisher *et al* (2005).

result, there is a case to be made that the work of the Commission might be more effective if the national limit was raised to perhaps £10,000.

The size of contributions and expenditure limits. PPERA imposes no caps on contributions. The result has been continuing public disquiet over party finance, which may undermine the Commission's efforts to boost public confidence in the political system. Fisher (2002b) for example, shows that despite the transparency introduced by PPERA, the absence of caps continued to cause unease with the arrangements of party funding (though equally, it is fair to say that contribution caps would not be a 'cure' for this unease). Caps were rejected by the 2004 Commission report in part because of a lack of consensus between the parties (Electoral Commission, 2004: 87). Significantly, the Hayden Phillips enquiry has been charged with trying to broker a deal between parties on this occasion. Until, and unless there is a consensus on donation caps, the job of the Commission in promoting public confidence will be that much more complex.

At present, the principal difficulty in terms of reaching a consensus appears to be Labour's stance, which is resistant to contribution caps on the grounds that it claims they would threaten Labour's relationship with the trade unions. A good example of such a position is advanced by Keith Ewing (2002), and these arguments were reflected in Labour's evidence submitted to the Electoral Commission in 2004. In the past, it was often always argued that Labour's relationship with the unions was more than just a financial one (for an excellent example, see Minkin, 1991). Yet the current position being put forward in some quarters is that any restriction on trade union financial payments would threaten this relationship – see, for example, a recent statements by Labour chair Hazel Blears.²

In general, the position on donation caps is seen as being strongly related to discussions on expenditure levels and further state funding. Recent proposals from the Conservative Party, for example, suggest a reduction in national spending limits (Tyrie, 2006). Evidence suggests, however, that any reduction in expenditure limits should be examined with caution, since any such restriction could impact upon campaigning and political education (which enhances turnout) and would be unlikely to have any impact upon enhancing parties' routine expenditure requirements. At the national level, Fisher (2000) shows that party income is driven principally by the general election cycle. Thus, if income is largely driven by the electoral cycle, it is unlikely that parties will be able to stockpile resources for non-election years, since that would entail donors contributing in the knowledge that election expenditure (which has stimulated contributions) is to be limited. Such limitations would logically be a disincentive to make a contribution.

At the local level, there is repeated evidence that stronger campaigns enhance turnout (see, for example, Denver *et al*, 2004; Fisher *et al*, 2005). And, whilst the intensity of local campaigns is dependent to a degree on the 'free labour' provided by party activists, it is also the case that campaigns need to be well resourced in order to be successful (Denver *et al*, 2003; Fisher *et al* 2006a). Restricting campaign spending would therefore be likely to have a detrimental impact on electoral engagement.

² http://news.bbc.co.uk/1/hi/uk_politics/5043430.stm (3/6/06).

Donation reporting periods. The current reporting periods stipulate that donations should be reported to the Commission every quarter, but that during general election campaigns, the period becomes weekly. This was a well-intentioned aspect of PPERA, but in fact, is one that generates limited transparency at the time of elections. In the first instance, the weekly reporting during elections is probably unnecessary – less money is donated and at that stage, parties have difficulty spending it effectively on the election – ‘late’ money can only really be spent on newspaper advertisements (see, for example Fisher, 2001, 2005). Indeed, in the 2005 general election, whilst the Liberal Democrats were funded far more generously than in previous elections, the money was received too late for the party to set up an election campaigning infrastructure more akin to that employed by Labour and the Conservatives (and indeed the national parties in Scotland and Wales). The result was that the party spent considerable sums on national newspaper advertisements (Fisher, 2005; Fisher *et al*, 2006b)

Secondly, donations in the quarter prior the campaign are not reported until after the election. This is significant as some potentially important payments can be made at this time, but details of these are not revealed until after the political ‘moment’ of the election has passed. For example, the significant donation made to the Liberal Democrats by 5th Avenue Partners Ltd was made in the period January-March 2005, but not revealed until after the election (Fisher, 2005).

Thirdly, there is a case to be made that weekly reporting may divert parties’ attention away from campaigning, which is undesirable for both parties and voters. There is therefore a good case for re-balancing the reporting periods by abandoning weekly declaration during elections, but making routine declaration periods more frequent – either monthly, or every two months.

Differentiation between local and national spending limits. The current situation is such that national spending limits are governed by PPERA, whilst local limits are governed by legislation initially drafted in the nineteenth century (the Corrupt and Illegal Practices Act 1883). The differentiation between local and national spending limits is becoming less meaningful as parties increasingly integrate their local and national campaigns (See, for example, Denver *et al*, 2003; Fisher, 2005; Fisher *et al* 2006a; Fisher *et al* 2006b).

Two particular problems arise. Firstly, much national expenditure is now focussed on target seats in terms of the positioning of posters, regional adverts, direct mail and telephone voter identification (Fisher, 2005). Secondly, whilst the national spending period is defined as being 365 days prior to the election, that of the local campaign is typically when the Queen dissolves Parliament and parties begin naming candidates in their local campaign literature (the naming of the candidate being the trigger). Whilst the naming of a candidate is an effective criterion for determining local expenditure, it does mean that parties can spend large sums in certain constituencies before the campaign ‘proper’, but that it is only the campaign spending itself that is recorded. Parties highlighted this as being a particular problem after the 2005 general election (Fisher *et al*, 2005).

The lack of fixed-term Parliaments arguably prevents the 365-day rule being applied at local level; so two potential resolutions present themselves. Firstly, as the

Commission has suggested, the period for reporting local expenditure could be extended to four months (usually January 1st, given the typical timing of general elections). Secondly, the differentiation between local and national spending caps could be removed altogether, with the current limits for local and national spending being aggregated.

Imprecise Legislation. Rules that are imprecise or open to interpretation can present difficulties for regulators. If rules and sanctions are not applied uniformly, a regulator will always be open to the charge that it is applying rules inconsistently or favouring one group over another. The Commission has identified three particular problems in this respect.

Firstly, in respect of the current legislation, the definition of a commercial loan is unclear, presenting difficulties for both regulator and parties. If the Commission is to challenge parties to demonstrate that they have received loans on commercial terms, there are likely to be difficulties in defining precisely what constitutes a commercial basis for the loans. Indeed, even if a definition was created, it could potentially be subject to legal challenge. As a result, it is arguably preferable to remove the principle of commercial terms in defining loans in respect of the legislation.

Secondly, the Commission is anxious about the provisions for transparency contained in the Northern Ireland (Miscellaneous Provisions) Bill. The Bill proposes that from November 2007, political parties in Northern Ireland will be required to submit donation reports to the Electoral Commission in the same manner as the rest of the United Kingdom. Reports, however, will not be published until October 2010 at the earliest, to guard against the risk of intimidation of legitimate donors. The Commission is of the view that the legislation should provide it with no discretion at all during the period between 2007 and 2010 (or whenever publication begins) in order to ensure that it cannot be accused of leaking information, or applying transparency in an unfair manner.

Thirdly, there are on occasions, difficulties in clarifying the legitimacy of some corporate donations. PPERA stipulates that only companies carrying out business in the UK may make donations. However, this can present difficulties when examining newly registered companies, since there is a long lead time before accounts must first be filed at Companies House. The donation by 5th Avenue Partners Ltd to the Liberal Democrats just prior to the 2005 general election (see Fisher, 2005) is an example of such imprecision in the legislation.

Strategic Regulation

The way in which the Commission has worked to date has been driven in part by the relative youth of the legislation and of the Commission itself, and in part by changes in personnel at the Commission. For the first two years (2001-3), it could be described as a process-led regulator. Both the Commission and the parties were learning how to develop procedures in order to comply with PPERA, and the relationship between them was one of consensus and trust. This learning process was reflected in a survey of election agents carried out immediately after the 2001 election. Some 18% of agents reported having experienced significant difficulties with the new legislation, particularly in the areas of imprints on campaign literature, and the raising and

recording of funds. A general concern with an increased administrative burden was also noted (Denver *et al* 2002).

Overall, during the first two years, the Commission took the view that parties would report donations, and that it would publish these details. From 2003 onwards, the Commission took a slightly more pro-active stance – questioning parties more when regulations appeared to be habitually breached. Nevertheless, the approach was still process-led in the manner described above. The procedures-based approach was also maintained in part because of the nature of staff employed by the Commission. In many cases, the specialist experience of staff was in accounting rather than in regulation, and the result was that whilst transparency was demonstrated, there was little comment on the quality of information received from parties. In essence PPERA places the prime responsibility on the parties to be truthful, rather than on the Commission to investigate donations. The result was that the Commission would check all donations from all parties, which left little resource for comment or investigation.

A change in approach appears to have accompanied the appointment of the current Chief Executive, with the Electoral Commission now operating a more risk based approach to its regulatory role. The position now taken is that higher risks are associated with the larger parties (with a turnover in excess of £250,000) and therefore sampling of party and candidate returns takes place. Initially all donations were checked for eligibility. This was a function not only of the youth of the legislation and the Commission, but also of a desire to assist parties in adapting to the new rules. However, the Commission now plays closest attention to donations of around £50,000 and above, and contributions from new donors (the details of regular donors will not be checked each time). Other factors will also contribute to greater scrutiny being applied – for example if a party is new, or in cases where particular issues have arisen in the past. Nonetheless, the Commission acknowledges that this approach will create risks from parties whose turnover is below £250,000, since their accounts will not be audited and are less likely to employ professional accounting and financial staff, and concerns remain with regard to identifying the actual value of non-cash donations.

This risk-based approach has, in part, informed the stance of the Commission during the recent loans issue. Political parties have solicited loans for many years. However, in the post-PPERA period, the issue was initially raised as a potential problem just prior to the 2005 general election. It emerged that in the run-up to the election, the Conservatives had been in receipt of a number of loans in excess of £1 million (*The Times*, 21st April 2005). In some ways, this was nothing new – the party had for some years relied on loans from individual backers as well as some wealthy constituency associations. However, what marked these loans out was that the terms upon which these loans were made –no declaration was required, unless the loan was subsequently turned into a donation. This was potentially significant since the transparency requirements of PPERA ensure that donations are made public shortly after the donation is received. However, by making loans, the lenders and the party could avoid declaration. And, even if the loan was made into a donation and subsequent declared, the political ‘moment’ would have passed. Neither the Conservatives, nor the lenders were doing anything that contravened PPERA (provided that the loans were made on a commercial basis). However, a senior Conservative source was quoted as saying:

‘The loans are entirely legitimate and within the letter of the law, but I concede that we may be criticised for breaching the spirit of the legislation.’ And, reflecting this, the chair of the Electoral Commission declared that given that the thrust of PPERA was to generate transparency, that the position of commercial loans would be reviewed after the election (*The Times*, 21st April 2005).

The Commission’s view was that whilst this was a breach of the spirit of the law, it was not sufficiently serious at that time to warrant a swift resolution via an amendment to the Electoral Administration Bill. Instead, the Commission took the view that loans would be examined as part of its overall review of PPERA – especially as its mini review of PPERA in 2003 had not highlighted any particular problem.

The situation with regard to loans in 2006 was arguably different. Firstly, there were stories linking loans to the award of honours³. Secondly, there were suggestions that loans had been sought by parties in preference to donations.⁴ Thirdly, the sums quoted were significant compared with regular patterns of donations and expenditure.

The loans issue is likely to have an impact on the way in which the Electoral Commission operates as a strategic regulator. Effectively, the scale of the loans, and the suspicion within the Commission that the loans were not made on fully commercial terms, means that the Commission may not be as ready to simply accept the reports from parties as was the case previously – more scrutiny is likely to occur not least since the Commission will lose credibility if it publishes data which are inaccurate. As a result, the loans episode raises a key issue for the Commission in terms of whether it should be more investigative in its approach.

A further potential outcome is whether a more distant relationship between the Commission and the parties will mean that there will be greater difficulty in reaching consensus on any new proposals, particularly following the stance of the Commission in March and April 2006 and its decision to publish correspondence pertaining to the loans issue on the Commission’s website.

Governance

Restrictions on the recruitment of Commissioners and Commission staff

The principal issue of governance as it relates to party funding is the restriction upon the appointment of both Commissioners and Commission staff in terms of political party activity in the previous ten years. A criticism that has been made about this policy is that having not been involved in party activity either for some considerable period of time, or even at all, Commissioners and Commission staff do not fully understand the business of political parties and are more likely to impose unrealistic bureaucratic demands.

³ See, for example, http://news.bbc.co.uk/1/hi/uk_politics/4806602.stm (14/3/06)

⁴ See, for example, http://news.bbc.co.uk/1/hi/uk_politics/4839562.stm
http://news.bbc.co.uk/1/hi/uk_politics/4841748.stm (24/3/06).

Interviews with key party staff following the 2005 general election illustrate such views well. It is fair to say that views about the Electoral Commission are inter-linked, to an extent, with views about the provisions of PPERA. And, whilst parties appear to appreciate that the Commission is simply there to oversee the implementation of PPERA, their views on the legislation inevitably colour their perceptions. Thus, in almost all cases, parties considered the burden of PPERA, and by definition the need to comply with the Electoral Commission, as being excessively bureaucratic. One official described it as ‘a living nightmare’ with PPERA being seen as outdated – in effect, it was argued that the legislation had simply built upon outdated regulations from the nineteenth century: adding ‘nonsense upon nonsense’. Another felt that they were required to fill in forms with information that no-one wants to see, the purpose simply being to place the data on the Electoral Commission website (Fisher *et al*, 2005)

A survey of constituency agents undertaken immediately after the 2005 general election also confirms mixed views about the Commission (Fisher *et al*, 2005). Agents were asked to assess whether they thought the powers of the Commission should be enhanced, and to evaluate their experience of the role that the Electoral Commission plays. The results are shown in Tables 4 and 5. Table 4 shows a clear preference for maintaining the status quo - only 10% favoured the Electoral Commission taking a greater role in respect of elections. Notwithstanding, the experience of most agents in dealing with the Commission was generally positive. Only 9% found the Commission generally unhelpful, whilst 40% found it helpful.

These data suggest that whilst opinion of the Electoral Commission amongst party agents is not entirely negative, there appears to be a preference for dealing with those who are seen to be more experienced in party matters – a point confirmed in the same survey when 85% reported that they had found material on legal matters produced by the own party to have been most helpful, compared with only 4% who cited material produced by the Electoral Commission (Fisher *et al*, 2005)

Table 4: Assessment of Powers of the Returning Officer and the Electoral Commission by Constituency Agents, 2005

	%
<i>Powers of the Returning Officer should be increased</i>	8
<i>Powers of the Returning Officer should be maintained as they are</i>	71
<i>Powers of the Returning Officer should be reduced with the Electoral Commission taking a greater role</i>	10
<i>Don't Know</i>	11

Table 5: Constituency Agents and their Experience of the Electoral Commission

<i>Generally Helpful</i>	40
<i>Neither Helpful Nor Unhelpful</i>	52
<i>Generally Unhelpful</i>	9

The view expressed by members of the Commission is that there could be a meaningful distinction made between Commissioners and Commission staff (below the level of the Chief Executive). As far as Commissioners are concerned, it would be feasible to recruit those with a history of political activity if the Commission played a purely advisory role. However, problems would arise with the Commission's current executive role – particularly since it regulates many parties (not just the largest three) and party balance would therefore be very difficult to achieve. Moreover, there would be the risk of accusations of partisan bias.

In addition, there may be an advantage to not requiring partisan balance as is the case in similar bodies overseas (for example the Federal Election Commission) since there can be difficulties in taking executive action until partisan consensus has been reached. Equally, there is a view that not having specific expertise can be advantageous, since it allows Commissioners to 'ask the unaskable'. As result, the Commission sees the Parliamentary panel as an appropriate forum to receive parties' feedback and also engages in a great deal of consultation, not only with parties, but also with think-tanks, academics and the general public. Notwithstanding, there is some support for the idea of an advisory body for the Commission, though it should be imposed upon the Commission rather than be selected by it.

With regard to staff, it is plausible that the limit of ten years could be reduced since in some areas of recruitment (such as public affairs), the restrictions on party activity can be problematic. In addition, there is recognition that some of the bureaucratic requirements (in particular the detail required on forms) could have been made more accessible had some staff had more party experience. An alternative to previous party experience, however, would be a programme of secondment of Commission staff to parties, as practised by other regulators.

Financing

The Speaker's Committee is regarded as the most appropriate body to provide funding for the Commission.

Accountability

The Speaker's Committee

The Electoral Commission is formally accountable to Parliament via the Speaker's Committee. However, this forum is not currently regarded as constituting an effective mechanism for accountability. Problems that are highlighted include the lack of minutes being taken, the number of meetings held (of which there are too few), and

the lack of interrogation and scrutiny at these meetings. The Commission would support an enhanced role for the Speaker's Committee with more frequent engagements and more detailed discussions. Current barriers to this included the Speaker having insufficient time to chair the meetings and the Committee having an insufficiently large secretariat. The Commission feels that giving the Speaker's Committee an enhanced role would generate more support for the Electoral Commission in Parliament, and in addition, it supports further scrutiny of its annual report by the Department for Constitutional Affairs (DCA).

Corporate Plan

In addition to these mechanisms, the Commission has sought to make itself more accountable by setting targets in its corporate plan. The most recent plan, for example, highlights three targets in respect of party finance, and for each, measurable success criteria are identified (Electoral Commission, 2006):

- Increased levels of compliance with statutory financial reporting requirements;
- Increased stakeholder awareness of financial returns from political parties, third parties, permitted participants and others;
- Increased or maintained public and stakeholder confidence that the financial regulation of political activity is effective and that the Commission operates appropriately in this area.

Notwithstanding, one issue that arises is whether the accountability of the Commission is focussed too heavily on Westminster. The Commission is formally accountable to Parliament rather than to other institutions or political parties. Yet, whilst scrutiny of the annual report could also occur in the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly, it remains the case that most mechanisms for accountability are Westminster-based. Moreover, some parties play important roles in sub-national politics but do not currently hold seats at either Westminster or in the devolved institutions - UKIP is an example of such a party (holding seats at European and London levels, but not elsewhere). The Greens too, whilst holding seats in Scotland, have more significant representation at European and London levels. Beyond these levels of government, of course, are other parties who compete on a reasonably large scale with some success at local level.

Devolved institutions

Beyond the issue raised above, the existence of devolved institutions has not caused any particular difficulties.

Justin Fisher
30th June 2006

Methodology

In addition to desk research, four semi-structured interviews with Electoral Commission staff were undertaken during May 2006:

- Sam Younger (Chairman)
- Peter Wardle (Chief Executive)
- Nicole Smith (Director of Policy & Strategy)
- Hillary Mundella (Director of Operations) & Patricia Peña (Assistant Director of Regulatory Services)

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