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Commissioner Day notes: 17 July 2019 You are in the Electoral Commission Board section Home How we make decisions Electoral Commission Board On this page Apologies Managing regulatory risk First published: 27 November 2019 Last updated: 22 January 2020 Meeting overview Date: Wednesday 17 July 2019 Location: Boothroyd Room, 3 Bunhill Row, London Who was at the meeting Who was at the meeting John Holmes, Chair Sarah Chambers Elan Closs Stephens Alasdair Morgan Rob Vincent Stephen Gilbert Alastair Ross Joan Walley Bob Posner, Chief Executive Ailsa Irvine, Director, Electoral Administration and Guidance Craig Westwood, Director, Communications and Research Kieran Rix, Director, Finance and Corporate Services Louise Edwards, Director, Regulation Dan Adamson, Head of Monitoring and Enforcement Majella La Praik, Head of Registration and Reporting David Meek, Senior Advisor, Governance Apologies Anna Carragher and Sue Bruce gave their apologies. The Chair congratulated Rob Vincent on the recommendation from the Speaker's Committee that his term as Commissioner be renewed. Managing regulatory risk The Director of Regulation introduced the item and gave an overview of the investigative and regulatory work we undertake. We had refreshed our approach in recent years to ensure that our quality assurance framework kept pace with changes to our investigative and regulatory processes. The Regulatory team separated decisions in any process to avoid risk of pre-judgement. It also ensured separation between officers that considered evidence, and provided evidenced recommendations and more senior managers to take decisions. The Board heard about how staff were recruited and trained in the Enforcement team. The Enforcement team sought people with investigative experience and a familiarity with objective decision-making. Like all staff, enforcement staff were required to declare their political interests. Staff were also required to sign a conflict of interest declaration for each individual investigation case, in addition to codes of conduct and information management systems and processes that governed how we manage cases and conflicts of interest. The Board received an overview of the structure of the directorate, and the way the teams were managed so that no individual member of staff made a decision on their own. There were always checks and balances and review by other people during the process. The Chief Executive noted that we reflected best practice across other regulatory and investigative bodies. Consistency and quality were ensured through the use of the Quality Management System, as well as written processes that everyone in the team was familiar with and followed. The Board received a brief summary of recent legal challenges to our findings. This included a small number of challenges to registrations we had processed, and three enforcement cases. The courts had generally concluded, on the basis of our robust recording of decisions and the reasoning that supported these decisions, which left no room for ambiguity, that our findings were legally sound. The Chief Executive explained that the Enforcement team worked closely with the in-house Legal team, and where appropriate with other teams across the organisation. As a result of changes to the sanctions regime in 2010 we had implemented three layers of decision-making (Enforcement Manager – determination of offence; Sanctions Adviser – initial sanction notice; Director of Regulation – final sanction notice). There could be a risk of the perception of partiality, as there was some cross-over in line management and the decision-making, but this was carefully controlled to keep any risks to a minimum. The recent successes that we had achieved in court indicated that suitable checks and balances were in place. The Board discussed the merits of decision-making processes used by other organisations, such as independent panels. We had considered introducing such panels, but it was not deemed necessary at this time. This might be

reconsidered if appropriate. The Board commented that the reputational consequences of our regulatory findings could have a greater impact than our fines. There could be issues in determining what cases needed to go to an independent review. There was a discussion on how we could ensure any independent process would be seen as unbiased. The Chief Executive told the Board that the Commission was not subject to institutional bias in favour of finding people guilty of committing an offence. The Board heard that the mind-set of a good investigator was attaining satisfaction from getting to the bottom of a case, rather than a bias towards what that outcome was. The Director of Regulation explained that the team culture and training, and the written procedures, emphasised searching for evidence - including evidence that suggested no offence had been committed. This influenced how we collected evidence and built a case. The Board sought assurance on how staff were insulated from outside pressure applied on the Commission. One way this was managed was by limiting the number of names in the public domain. There was also a concerted effort to match the intensity of case-loads across the team. The Board considered whether some of our public comments might imply that we were pleased to issue fines, and noted that we did try to temper this by emphasising our desire for compliance. We also published investigations where no fines were levelled, but these did not get as much media attention. We did not routinely publicly report on the occasions where we identified compliance needs and where the issue was resolved before an investigation was required. The Board was taken through a case study of how a new party was registered, how that party was monitored, and how monitoring and enforcement of that party's regulated activities would be conducted. The Board heard about an internal quality assurance process for registration which we followed when registering parties, including considering the case for and against registration. The registration officer recommended whether to register the party. This decision was then peer-reviewed, before the written assessment was considered by the Director of Regulation who provided an initial view. An approval board, made up of seven heads from across different teams at the Commission, then provided their considered views as to the decision, which were communicated to the Director of Regulation to make a final decision. The Board heard of the methods we used when monitoring campaigners, and how this monitoring was used to build intelligence reports. These reports could then be used to compare against the returns that we received from parties, to assist with our compliance work. The Board heard about how potential compliance issues were assessed, where a written record was created that can be referred to at a later date. The Enforcement Team manager would usually decide whether the matter should proceed to an investigation. Routinely an investigation would include writing to the party to obtain evidence. We always considered any mitigating circumstances. We considered a sanction once an initial determination of an offence had been made by the Enforcement Team manager. There was a legal process to follow when imposing sanctions. The Sanctions Adviser proposed a sanction and the recipient could make representations before a final decision was taken. The Director of Regulation would not be involved in a case until it was due for his/her review, and would recuse himself or herself from a decision when appropriate. The Board explored how we protected ourselves from accusations of inconsistency in the application of sanctions. We had been challenged by some parties that felt that fines appeared inconsistent, but this was usually explained by differences of fact in the case. We kept records of every case which could be used to help understand previous decisions. Work had begun to ensure that institutional knowledge of past sanctions was not concentrated in individual members of staff. The Board asked about the compliance checks of financial returns from

parties, and whether we had a process that ensured that all parties were checked within a given timeframe. The Head of Registration and Reporting noted that we knew which parties we expected to submit a financial return and always checked that those parties had indeed submitted. As part of developing our strategic regulatory approach, we planned to move to more strategic systematic reviews of the compliance of parties. The Chair questioned how we responded to cases which arose from the public or media. The Board heard that over the past 12 years we had gone from the majority of cases being responses to external allegations, to the majority of cases being responses to information we had identified. There would always be allegations that come to light through other means, such as investigative journalism, for example if they had information that we could not reasonably have known. The Board heard that we had a separate process for sharing evidence with the police. The decision to refer a matter to the police was taken by the Chief Executive, on the recommendation of the Director of Regulation and the Legal Counsel. We set out our reasonable grounds for the referral and asked what the police needed from us to take the case forward. The Board heard of our relationships with other regulators to ensure that we kept pace with best-practice. The Board suggested considering using other regulators as peer-reviewers. The Board discussed the requirements for taking on prosecutions. We were building the infrastructure to become a prosecutor. We were also consulting on a prosecutions policy. We had discussed the resource implications of this additional work with the Speaker's Committee. After the end of the discussion on managing regulatory risk, the Board received a brief update from the Chief Executive and the directors on areas of Commission business, including appearances before select committees and devolved legislatures, and publications of reports. There was an update on litigation in which the Commission was involved. The Chair then provided an update on the Four Countries electoral commission conference. Issues discussed included foreign interference, cyber security, digital campaigning and use of social media, voter ID, automation of electoral processes, avoiding undue influence of money, and advance voting. The meeting finished at 4.25pm