



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Formal response to the Electoral Commission consultation on new performance standards for Returning Officers

1. Introduction

- 1.1. The Association of Electoral Administrators (AEA) was founded in 1987 and has since established itself as a professional body to represent the interests of electoral administrators in the United Kingdom. It is a non-governmental and non-partisan body and has 1774 members, the majority of whom are employed by local authorities to provide electoral registration and election services.
- 1.2. The AEA encourages and provides education and training in electoral administration, in addition to a range of commercial and professional services.
- 1.3. The key **aims** of the AEA are to:
 - a. contribute positively to electoral reform within the UK;
 - b. foster the advancement of consistent and efficient administration of electoral registration and the conduct of elections in the UK;
 - c. raise the profile of electoral administration both within the UK and internationally;
 - d. enhance and maintain the AEA's reputation as the leading professional body for electoral administrators within the UK.
- 1.4. The AEA supports and advocates two key principles set out by Gould (Independent Review of Scottish Parliamentary and Local Government Elections, Ron Gould, 2007) in his report on the 2007 elections in Scotland, namely that:
 - all those with a role in organising elections should consider the voters' interests above all other considerations: and
 - electoral legislation should not be applied to any election held within 6 months of the new provision coming into force.
- 1.5. In considering the proposed approach to performance standards and how it would work, we comment on a number of overarching points as well as on the

particular questions and issues suggested by the Electoral Commission in its consultation paper.

2. Overarching principles and issues

- 2.1. As the professional body representing electoral administrators, the AEA has long supported the principle and practice of performance improvement. The AEA believes that electors should receive a consistently high quality of service wherever they are within the United Kingdom and we support this through training and education for electoral administrators.
- 2.2. Consistency has to be seen in the context of a highly devolved structure for electoral registration across Great Britain. What constitutes a high-quality service in one area may not be appropriate in another because of differences in geography and demographics.
- 2.3. The AEA welcomes the more flexible approach being proposed by the Electoral Commission in the consultation paper. There is a recognition that Returning Officers will need to plan and make decisions according to what is appropriate for their particular local circumstances. It will then be for the Returning Officer to explain their decisions locally.

3. Outcomes

- *Does the framework focus on the right outcomes?*
 - *Is what the framework lists as being what the RO needs to do the right indicator of whether the key outcomes can be delivered?*
 - *Will the information outlined in the framework indicate whether the key outcomes can be delivered?*

- 3.1. The Electoral Commission sets out the following outcomes in the consultation paper:
 - Voters are able to vote easily and know that their vote will be counted in the way that they intended.
 - It is easy for people who want to stand for election to find out how to get involved, what the rules are, and what they have to do to comply with these rules.
- 3.2. These would appear to us to be sensible outcomes which Returning Officers and their staff should aim to deliver. The first outcome supports the Gould principle of putting the voter at the heart of the electoral system.
- 3.3. However, it should also be recognised that Returning Officers and their staff are not alone in having responsibility for delivering these outcomes. A clear

and simplified legal framework will be crucial in ensuring that voters and candidates understand the processes with which they are required to engage, for votes to be counted in the way that voters intended, and for candidates to stand for election in full compliance with the rules.

3.4. It follows that other agencies also have a role to play in delivering these outcomes, not least the UK Parliament, Cabinet Office (and other Government departments) in drafting and passing legislation in good time ahead of elections; the Law Commission in reviewing electoral law; and the Electoral Commission in providing:

- public awareness information and campaigns;
- guidance and support for Returning Officers and their staff; and
- guidance and support for candidates and agents.

3.5. The standards divide the overarching outcomes into sub-outcomes. So, in relation to **Performance standard 1: Voters**, the first outcome is:

“Voters receive the information they need, in an accessible format and within time for them to cast their vote.”

3.6. The activities listed as indicators that this outcome is being delivered focus on planning, evaluation of previous activity, and monitoring the production of voter-facing materials in order to ensure accuracy and quality. This seems appropriate and relevant.

3.7. The second sub-outcome is that:

“Voters are satisfied with the experience of voting.”

3.8. This is a rather vague and imprecise outcome and we are not clear as to how voter ‘satisfaction’ is being defined here or, indeed, how it can be properly measured. Therefore, we are not certain how the Electoral Commission proposes assessing that this outcome has been delivered in relation to a particular Returning Officer’s performance.

3.9. The Electoral Commission carries out survey work to assess voter confidence in the voting process. However, the feedback is given at a national rather than a local level.

3.10. In addition, any feedback as to voter ‘satisfaction’ would need to be evaluated within the context of what is allowed by electoral law. Voters may have expectations about the voting process that cannot be met within the current electoral framework. For example, voters may consider that they would prefer to vote online even though this is not currently possible.

3.11. The indicators and evidence required by the framework for this outcome focus on accessibility, staffing of polling stations, training of staff to deliver a quality service and timeliness of the delivery of postal votes. These would appear to us to be sensible measures of the accessibility of the process - in other words that 'voters are able to vote easily' should they wish to do so. It might be more appropriate therefore to use those words from the overarching outcome here rather than refer to some undefined 'satisfaction' as an outcome.

3.12. The third sub-outcome is that:

"Voters have confidence that their vote will be counted in the way they intended."

3.13. The indicators focus on having robust auditing processes for the receipt and opening of returned postal votes; having processes to ensure that any integrity issues are identified and addressed; maintaining the secure storage of voting materials; providing sufficient resources to ensure that the verification and count are timely and that the results are communicated in a clear and timely manner.

3.14. These would all seem sensible indicators of a robust process. However, there is no reference to the accuracy of the result which does appear to us to be an omission. Whilst timeliness is relevant, the accuracy of the result is paramount. However, accuracy is picked up in performance standard 2 which focuses on those people wanting to stand for election. We recommend that the same wording is used in relation to delivering voters' confidence in the process, namely that Returning Officers will need to,

"Ensure count processes are designed and managed to secure an accurate result, with a clear audit trail."

3.15. We consider that, if a result is challenged and is found not to be accurate, this can do more to damage voter confidence in the electoral process than a count taking longer than voters and participants, including the media, might ideally want.

3.16. In ***Performance standard 2: Those who want to stand for election***, the over-arching outcome is described as follows:

"Ensuring that planning for and delivery of the poll enables people who want to stand for election to find out how to get involved, what the rules are, and what they have to do to comply with these rules."

3.17. On the face of it, this outcome seems entirely focused on the provision of information to prospective candidates and support during the nomination process. This is reflected in the first sub-outcome. It does not address at all

the issue of participants' confidence in the process or in the result, however this is reflected in the second sub-outcome:

"Candidates have confidence that the process is managed well and have confidence in the results."

- 3.18. It would seem logical to include this sub-outcome in the wording of the overarching outcome.
- 3.19. The first sub-outcome within this standard relates to the provision of information to candidates and agents. This requires that Returning Officers provide information on the election process and campaign expenditure through briefings and "ensuring [candidates and agents] are issued with written guidance". The main source of such information is the Electoral Commission's guidance which is only available online.
- 3.20. Given that the Electoral Commission does not consider it necessary to provide Returning Officers with printed copies of the guidance to distribute, and given the current financial environment within local government, it would be helpful if, in either the standard or the supporting guidance to Returning Officers, it can be made clear that the Returning Officer can direct candidates and agents to the Electoral Commission's online guidance rather than having to provide printed copies at local expense. Any such reference could include a facility for printed copies of the Electoral Commission guidance to be provided by the Returning Officer on request. Ideally, we consider that it would be more beneficial to all concerned to return to the previous arrangement whereby the Electoral Commission provided its guidance in hard copy format.
- *Will the framework help to ensure a consistent high-quality service for voters and those standing for election?"*
- 3.21. We welcome the recognition in the consultation paper of the current high standard of service being provided, and the high levels of public confidence that the 2013 elections were well run. We believe that, with some amendments as suggested in this response, the framework should support the continuing delivery of a high-quality service for voters and for those standing for election.

4. Reporting and data

- *Is the information set out in the new framework currently produced by the RO and would there be any difficulties in supplying any of the information?*
- *How should the information provided to demonstrate how the outcomes can be met be reviewed?*

- Is a risk-based approach to collecting information from ROs the right one?

- If so, are there specific factors that should be taken into account in assessing risk?

- Are there other options beyond e-mail submission for how we collect and review information that can be explored (such as through face-to-face discussions)?

- Would provision of the information represent an additional cost for the RO?

- 4.1. The AEA supports a risk-based approach to collecting information from Returning Officers. The proposed factors are a good starting point. The other key factor in the current climate might be that of insufficient resources, particularly in terms of staffing. The proposal to also carry out limited random sampling of other Returning Officers seems sensible.
- 4.2. The new approach will lift the burden of reporting from the majority of Returning Officers and their staff. For those within the sample, it is essential that the timescale for reporting is made available well in advance. However, we note that the new framework envisages that some Returning Officers may be asked to report at fairly short notice should issues emerge in the run up to an election.
- 4.3. In asking a sample of Returning Officers and their staff to report and particularly where 'issues' are considered to be emerging, the Electoral Commission should recognise that reporting may itself add a burden within a situation that may already be difficult or where resources may be an issue. Therefore, help should be offered throughout the process should it be required in order to support the delivery of the relevant information, planning tools and reporting.
- 4.4. There is merit in exploring the use of face-to-face discussions as part of the information gathering process. However, the status of such discussions between Electoral Commission staff and the Returning Officer and their staff should be clearly delineated. The discussion including learning points, advice, observations and action points should be recorded and that record agreed by both parties.
- 4.5. There should be no sense of such visits taking on an 'inspection' status as we believe this could be detrimental to the process and to the fostering of constructive relationships. The timing of any visits should be by agreement with the Returning Officer and their staff and should take account of the pressure of work in the run-up to any election.

- 4.6. Any such visits should be undertaken by staff with sufficient knowledge and experience of electoral administration to enable them to ask the right questions, to identify relevant issues, and to be able to offer meaningful advice.
- 4.7. We do not have data that suggests the provision of the information required by the proposed framework will result in additional costs for the Returning Officer. However, the Electoral Commission might wish to monitor this aspect by specifically asking the question as part of the performance standards returns.

5. Support and 'best practice'

- *Will the framework help to identify ROs that need support, and what are the best mechanisms for delivering this support?*
 - *Do you have any views on the best mechanisms for identifying, recognising and sharing good practice?*
 - *What principles could be applied as part of the criteria for deciding when practices are 'best practice'?*
- 5.1. We are unclear as to how the Electoral Commission will always be able to identify where there are emerging 'issues'. See also the point made at paragraph 4.6 above. Whilst we recognise that a risk based approach should free up resources to provide more support, we would welcome an assurance by the Electoral Commission that it has sufficient staff with knowledge and experience of electoral administration issues to deliver the framework.
- 5.2. The AEA is founded on the principle of sharing 'best practice' across its members through a regional network including face-to-face Branch meetings and via the website, training, the Qualification, the National Seminar and Annual Conference. Use of group discussions, Branch training and workshops are all valuable ways of identifying and disseminating 'best practice'. There are other local networks which may also present similar opportunities. We also make materials available via the AEA's website.
- 5.3. Returning Officers not in the sample for reporting against the standards may wish to volunteer to be assessed or may wish to offer examples of their local practice to be considered for recognition as 'best practice'. This might usefully be added to the roles of the Elections, Referendums and Registration Working Group (ERRWG) and the Electoral Advisory Board (EAB) - with the former discussing in detail the practice examples put forward and then making recommendations to the EAB to endorse those deemed to be 'best practice'. This approach would use and build on the roles of existing bodies rather than creating any new structures.

- 5.4. Examples and acknowledgement of 'best practice' might be included in the Electoral Commission's reporting on elections with detailed information and resources (such as case studies) highlighted via the bulletins and available on the website.
- 5.5. Regarding the principles to be applied as part of the criteria for deciding when practices are 'best practice', the Gould principles should provide the starting point. Clearly, to be 'best practice' any activity must be lawful. Other principles ought to cover areas such as the effective and innovative utilisation of resources (best value); building or utilising effective community relationships and networks; innovation; and practicality.
- 5.6. Any case studies should include a description of the challenge being addressed (e.g. the driver for the activity), the financial costs, number and type of staff required to deliver the practice, training implications, and time taken to develop and deliver the initiative as well as any benefits, efficiencies or savings achieved. Any appropriate documentation or materials produced should be made available.

6. Office holders with a power of direction

- *Is the new framework appropriate for use at elections with a statutory office holder with a power of direction?*
 - *Will the proposed framework be effective in monitoring the performance of statutory office holders with a power of direction?*
- 6.1. The AEA welcomes the proposed extension of the framework for monitoring the performance of statutory office holders with a power of direction with the inclusion of **Performance standard 3 - Coordination and management of the poll**. We assume that all Regional Returning Officers will be assessed against this standard, and that a risk-based approach is not being proposed. Will that also be the case in respect of Police Area Returning Officers at the next Police and Crime Commissioner elections? Additionally, although County Returning Officers do not have a power of direction for County Council elections, there does appear to be a need to include them in the performance standards framework.
 - 6.2. See our comments below on the assessment process and in particular the proposal for a panel. Within those proposals, who would provide that oversight in respect of assessments of the Regional Returning Officers' performance? Might there not also be a place for feedback from local Returning Officers on the performance of the Regional Returning Officer for their area? Similarly, in respect of other statutory office holders with a power of direction.

- 6.3. The sub-outcome for the standard focuses on local Returning Officers having plans. This is not so much an outcome as activity which might deliver a particular outcome - e.g. that of well run elections.
- 6.4. We would recommend inserting 'well run' or 'effectively' into the sub-outcome as follows:

"To ensure that local ROs have the necessary plans and arrangements in place to *effectively* conduct the elections in their area"

- 6.5. The information required should specifically require the provision of any directions to the Electoral Commission, or at least a discussion about the wording of these to ensure that they are lawful and achievable. This would mitigate the risk of unlawful directions and would highlight in advance if any of the directions might conflict with Electoral Commission guidance. The aim should be to prevent a situation where local Returning Officers are deemed to have failed standards as a result of following directions.
- 6.6. In addition, there needs to be coordination between statutory office holders with a power of direction and the Electoral Commission as regards the provision of information, plans and other documentation. The AEA has previously received reports of uncoordinated requests creating an additional burden.

7. Assessment

- *Do you have any views on our proposed approach to making assessments of performance?*

- 7.1. It is proposed that there might be a panel comprising members of the EAB and ERRWG that would consider the assessments and in particular anywhere it appears that a Returning Officer may not meet one or more of the standards. The Convener for Scotland and the Regional Returning Officer for Wales should be represented on any such panel.
- 7.2. We recognise that this measure is in part meant to mitigate the possibility of instances (as has previously been the case) where the Returning Officer disagrees with the assessment. In such cases, the AEA Board recommended that should be an appeals mechanism that has the confidence of Returning Officers and the Electoral Commission¹:

".... we would recommend consideration of an independent appeal / review process in respect of the Commission's determination on disputed performance."

¹ The AEA Board passed this motion at its meeting on 10 July 2013.

7.3. We believe this area of the new framework should be explored further to ensure that there is confidence in the resulting processes for arriving at and being able to challenge assessments.

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