
THE MATHIAS REVIEW

**An Independent Review
into the electoral reports and electoral review processes
as conducted by the
Local Government Boundary Commission for Wales**

FOREWORD

I am pleased to be able to present the report of this inquiry to the Minister for Local Government and Communities, Carl Sargeant. It has been carried out with considerable expedition, as it deals with issues which require urgent resolution.

From the outset, I have sought to compare the process for electoral reviews here in Wales with the same process elsewhere in the United Kingdom. In that regard, I am immensely indebted to the advice of my colleagues on the panel, Max Caller, Chair of the Local Government Boundary Commission for England, and Peter Mackay, Chair of the Local Government Boundary Commission for Scotland. They brought immense knowledge and experience to this inquiry, for which I am grateful. In the end, however, all the judgements and recommendations contained in this report are my responsibility.

I also wish to thank Sinéad O'Toole for providing the advice and support which was essential in ensuring this report was concluded on time.

Dwi'n falch iawn o gael cyflwyno'r adroddiad o'r ymchwiliad yma i'r Gweinidog Llywodraeth Leol a Chymunedau, Carl Sargeant. Mae'n adroddiad trylwyr ac mae angen gweithredu ar frys.

O'r cychwyn cyntaf, dwi wedi cymharu y broses o adolygiadau etholiadol yma yng Nghymru gyda gweddill y Deyrnas Unedig. Dwi'n hynod ddiolchgar i Max Caller, Cadeirydd Comisiwn Ffiniau Llywodraeth Lloegr, a hefyd Peter Mackay, Cadeirydd Comisiwn Ffiniau Llywodraeth Leol yr Alban, am eu cyngor cadarn a thrwyadl. 'Roedd eu profiad a'u gwybodaeth yn hanfodol i'r ymchwiliad. Rhaid i mi bwysleisio mae fy nghyfrifoldeb i yn unig yw bob barn a fynegir a'r argymhellion a gyflwynir yn yr adroddiad.

Yn olaf, hoffwn ddiolch i Sinéad O'Toole am ei chyngor a'i chefnogaeth i sicrhau fod yr adroddiad yn barod ar amser.



INTRODUCTION

This is the report of the independent review commissioned by the Minister for Social Justice and Local Government (as he then was) to examine the programme of electoral reviews conducted by the Local Government Boundary Commission for Wales during the period January 2009 to December 2010. In establishing this review, the Minister asked the Review Panel to make recommendations to him to ensure this cycle of electoral reviews can be completed to a high standard in time to take effect for the 2016 local government elections.

The Minister appointed Glyn Mathias to lead the review. The terms of the review are at paragraph 1.7. Max Caller, Chair of the Local Government Boundary Commission for England and Peter Mackay, Chair of the Local Government Boundary Commission for Scotland were invited to join the Panel as advisers, to contribute their expertise to the work of the review.

RECOMMENDATIONS

(The numbers in brackets refer to the paragraph numbers in chapter 4)

- The Welsh Government should consider the approach it wishes to follow for future electoral reviews. If the Minister decides the priority is to keep electoral imbalances under control on a regular and systematic basis, the 1972 Act should be amended so that such reviews are undertaken on a rolling basis without regard to having all authorities reviewed in time for an electoral cycle (4.14).
- If however, the Minister sees value in a more comprehensive review approach on the current cyclical basis, it should set out and monitor the Commission's delivery on an agreed and resourced programme. The Minister should also consider directing the Commission to use its powers of interim review to deal with particular electoral imbalances (4.15).
- As a matter of policy, the Commission should consult fully on the approach it proposes to take on electoral reviews, as a starting point to the review programme. The consultation should include the steps it proposes to take towards assessment of council size, the balance between the different criteria, the need for any increase in multi-member divisions, and the responses it expects from key stakeholders (4.7).
- Subject to 4.7, the Commission should consult on an appropriate methodology for assessing the number of councillors for each authority. It should include consideration of the approaches taken in Scotland and England (see paragraphs 3.10 and 3.11). Whatever

process is adopted, it should be clear and transparent to all stakeholders (4.8).

- The Welsh Government should abandon the requirement laid down in section 4(c) of the Directions to the Local Government Boundary Commission for Wales 2009 for a single councillor to elector ratio. It should be replaced by the process outlined in the previous recommendation for a transparent approach to assessing council size (4.9).
- The Commission should ensure there is a clear audit trail, based on minutes of decisions, legal advice and public consultation, for its approach to determining the balance of the criteria they propose to implement under Schedule 11 1A(5) of the 1972 Act. It should ensure that appropriate documentation exists to demonstrate both the way it dealt with the general criteria and how they were applied in each review (4.10).
- The Commission should adopt an appropriate methodology for assessing the desirability of multi-member divisions in each authority, as required in section 3(1) of the Ministerial Directions 2009 (4.11).
- The Welsh Government should seek, as a priority, to amend the Local Government Act 1972 to remove paragraphs 5(c) and 5(d) of Schedule 11 relating to community councils.¹ The Commission should be given power to ward community areas for the purpose of creating electoral divisions (4.12).
- The Welsh Government should consider removing the need for orders implementing community reviews to be made by Welsh Ministers. The Commission could be given an order-making power to implement community reviews, with a right of appeal to the Welsh Ministers (4.13).
- The Welsh Government should review the structure, personnel and budget of the Commission in the light of the increasing commitments faced by the secretariat (4.18).
- The Welsh Government should consider whether Ministerial Directions are a necessary addition to the requirements set out in an amended Act. While it would be sensible to retain the power to issue Directions to meet particular circumstances, it might in general be more practical, and potentially more flexible, for the Government and the Commission to conduct a public exchange of letters setting out the strategic direction of the review process (4.21).

¹ “(c) every ward of a community council having a community council (whether separate or common) shall lie wholly within a single electoral division; and
(d) every community which is not divided into community wards shall lie wholly within a single electoral division”

- As a matter of priority, the Welsh Government should appoint two new Commissioners with direct experience at a senior level of running elections or other local government experience at a corporate management level. In addition, the Government should consider exercising the power under paragraph 3(1) of Schedule 8 of the 1972 Act to appoint people with expert knowledge to advise and assist the work of the Commission (4.19).
- The Commission should improve its assessment of the risks of not meeting the timetable set by the Government, and there should be a risk analysis on a review by review basis. The Commission should make regular assessments of the resources at its disposal to ensure they are sufficient to meet the timetable (4.16).
- The Commission should engage with all 22 local authorities to ensure as far as possible that each of them puts forward electoral schemes for their own areas as part of the evidence that informs the Commission's preparation of draft proposals (4.17).
- The Commission should review its communications strategy to ensure it engages more pro-actively with all stakeholders (4.20).

CHAPTER 1 SETTING THE CONTEXT - CHRONOLOGY OF EVENTS

Background

- 1.1 The Local Government Boundary Commission for Wales (hereafter “the Commission”) has the statutory duty to conduct electoral reviews of all the principal local government areas in Wales at regular intervals. The electoral reviews include the electoral arrangements for the principal area. These arrangements include the number of councillors for the whole area; the number of councillors for any electoral division within the area; the number and boundaries of the electoral area and the name of any electoral area. In carrying out the electoral reviews, the Commission must have regard to any directions issued by the Welsh Ministers. The last set of electoral reviews started in December 1995 and was completed in December 2002.
- 1.2 On 13 January 2009 the then Minister for Social Justice and Local Government, Dr. Brian Gibbons, issued the Directions to the Local Government Boundary Commission for Wales and in the accompanying press statement said that he wanted to “restore fairness”. The Directions required that the final reports for all unitary authorities should be submitted to Welsh Ministers by June 2011.
- 1.3 On 8 December 2010 the Minister for Social Justice and Local Government, Carl Sargeant, announced that he would not make any orders implementing any of the recommendations in the electoral reviews completed to date before the 2012 local government elections.
- 1.4 At that date the Commission had completed the electoral reviews of seven unitary authorities: Neath Port Talbot, Newport, Denbighshire, Isle of Anglesey, Merthyr Tydfil, Rhondda Cynon Taf and Cardiff.
- 1.5 In the written statement to the National Assembly in which the Minister announced his decision, he said that the reason the Directions stipulated that the electoral reviews should be completed by June 2011 was to allow orders giving effect to the new electoral arrangements to be made in time for the 2012 elections. It was now clear that not all the reviews would be completed in time. He did not want what he called the inequitable situation to occur where some local authorities would conduct elections in 2012 according to the new arrangements while others were conducted according to the existing arrangements.
- 1.6 The Minister also announced that he would establish an independent review of the Commission’s programme of work to look at the policies, procedures and operation of the Commission and to identify actions to ensure that the current programme of work could be completed successfully and to a high standard in time for the 2016 local government elections.

- 1.7 In March 2011 the Minister appointed me to lead the review. I then invited Max Caller Chair of the Local Government Boundary Commission for England and Peter Mackay Chair of the Local Government Boundary Commission for Scotland to join me as advisers so that I could draw on their relevant experience of electoral reviews in their countries, where the statutory framework has evolved from ones similar to that in Wales. The objectives of the review, set by the Minister were:

Objectives of the independent review

1. To identify the reasons for the delay in the programme of reviews and assess what action the Commission took to reschedule the programme on repeated occasions.
2. To examine the methodology adopted by the Commission in the conduct of its reviews and make recommendations as to how it could be strengthened and improved in future.
3. To review the Commission's corporate policies and operational objectives as relevant for electoral reviews to ensure they are consistent with the legislative requirements, Ministerial Directions and guidance provided to the Commission.
4. To assess the Commission's quality assurance methods in the light of administrative errors made in connection with the conduct and reporting on the electoral reviews and make recommendations as to how they can be improved
5. To assess the capacity and capability of the Commission and its staff to complete the cycle of reviews in a satisfactory manner within a reasonable timescale in view of the future expansion in the work programme of the secretariat on other review programmes.

Process

- 1.8 The Panel were set a tight timetable and I was required to report by the middle of June 2011. The Panel issued a call for evidence to key stakeholders which resulted in 16 responses. One day of oral evidence sessions was held and some of the respondents to the call for evidence were invited to attend. The list of respondents, a summary of their comments and the attendees at the oral evidence session can be found at appendix 1.

CHAPTER 2 – THE EVIDENCE BASE

- 2.1 The recommendations made in this report are as a result of careful consideration of all the evidence. The Panel analysed the written evidence received, commissioned research and conducted oral evidence sessions with key stakeholders.
- 2.2 The written evidence included documents supplied by the Local Government Boundary Commission for Wales and the Welsh Government. The Panel have seen the minutes of Ministerial meetings and of Commissioner meetings, correspondence between officials of the two bodies, between the Commissioners and the Minister and other internal documents as well as the public documents, guidance and presentations produced by the Commission. We also considered, as a comparative exercise, public papers from the Local Government Boundary Commission for Scotland “*Electoral Reviews – Guidance*” and from the Local Government Boundary Commission for England “*Principal Area Boundary Reviews: technical guidance*” and “*Electoral reviews: technical guidance*”²
- 2.3 The written evidence also included the responses to the call for evidence. These consisted of responses from two community councils, four from individual councillors or groups of them, nine from unitary authorities and one from the Welsh Local Government Association.

Rallings Research

- 2.4 Research was commissioned from Professor Colin Rallings at the Elections Centre at the University of Plymouth. He conducted a statistical overview of the 10 final reports published by the Commission between August 2010 and March 2011 and the seven draft reports published between September 2010 and February 2011. His report considers the position of council size, council structure and councillor/elector ration and electoral equality before and after the electoral reviews, comments on the impact of the proposed changes and contains an evaluation of the outcomes and a comparison with England.

Council Size

² The guidance can be found here:
<http://www.lgbce.org.uk/documents/lgbce-documents/guidance/er-web-ve>
<http://www.lgbce.org.uk/documents/lgbce-documents/guidance/pabr-tech>

- 2.5 The report found that the proposals made by the Commission resulted in the total number of councillors being reduced from 972 to 914.

Council Structure

- 2.6 The report found the total number of electoral divisions proposed by the Commission fell from 687 to 527, in the 17 local authorities whose final and draft reports were reviewed. Of those divisions, the number of multi-member division increased from 198 to 247. This was a rise in the current total proportion from 32% to 47%. Currently, in those 17 authorities, the largest number of councillors elected in any one division is four. There are 15 divisions with four members. The proposals would result in this rising to 22 divisions having four members and six divisions having five members.

Councillor/elector ratio

- 2.7 The report stated that councillor/elector ratio as interpreted by the Commission was that, as far as practicable, a councillor should not represent fewer than 1:1750 electors. In a subsequent letter to the Commission in May 2009, the Minister clarified this was an aim rather than a goal. The analysis shows previously, seven councils had an average councillor/elector ratio of more than 1:1750 and ten councils had an average councillor elector ratio of less than 1:1750. The result of the proposals made by the Commission would be ten councils having an average ratio in excess of 1:1750 and seven having an average ratio of less than 1: 1750.

Electoral Equality

- 2.8 The report examined the electoral equality within a council area in two ways: it calculated the standard deviation in councillor/elector ratios in electoral division across the council and it assessed the pattern of electoral variance between the electoral divisions. Each review reduced the inequality in value of the vote between electors within a council excepting Newport. The mean variance in the electorate of divisions within a council was also reduced. The analysis showed, however, that 249 of proposed electoral divisions out of 527 (47%) were projected to have an electoral variance in excess of 10% of the county average in five years time. In 26 of these divisions, the variance was expected to be more than 25%.

Summary and evaluation

- 2.9 The report concluded that the proposals by the Commission would lead to a small reduction in the overall number of councillors. The proposals for the increase in the number of multi-member wards would lead to nearly half of all electoral divisions becoming multi-member compared with a third at present. Four-member divisions would rise from 15 to 22 and five-member divisions would rise from none to six.

- 2.10 The report noted that England has no division larger than three members. Four-member divisions are not uncommon in Scotland (following the introduction of the Single Transferable Vote) but neither country has any five-member divisions.
- 2.11 The proposals made by the Commission would have had the effect of reducing both the standard deviation in electorate between divisions in the same authority and the same mean electoral variance in each county although the average within-authority variance was projected to remain at over 10%. The analysis of past and present reviews in England suggested that a 5% average is an achievable goal without introducing large multi-member wards.

The full report is at appendix 2

CHAPTER 3 – ANYALSIS OF THE EVIDENCE

The remit of the Local Government Boundary Commission for Wales

- 3.1 The legal framework for the work of the Commission is set out in Part IV of the Local Government Act 1972 (hereafter the “1972 Act”). It puts the Commission under a duty to review the electoral arrangements of local authorities in Wales, referred to as 'the principal areas', between 10 and 15 years from start of the last review. That began in 1995 and not completed until 2002.
- 3.2 Wales is the only part of the United Kingdom which still relies on the 1972 Act, as amended by the Local Government (Wales) Act 1994 which refer to the then new 22 unitary authorities, as the legal basis for the work of its Local Government Boundary Commission. The 1972 Act was replaced in England by the Local Democracy, Economic Development and Construction Act 2009. This legislation consolidated and amended the Local Government Acts of 1972 and 1992 and the Local Government and Public Involvement in Health Act 2007. In Scotland, the relevant legislation is the Local Government (Scotland) Act 1973, as amended. In Northern Ireland the relevant legislation is the Local Government Act (Northern Ireland) 1972, as amended.
- 3.3 Schedule 11 to the 1972 Act lays down rules to be observed in considering electoral arrangements. Inter alia, the Act requires that “*every community which is not divided into community wards shall lie wholly within an electoral division*”. In other words, the Commission in Wales is statutorily prevented from dividing community areas for the purposes of drawing boundaries for electoral divisions for local authorities. This stipulation, which considerably complicates the work of the Commission, does not exist in England or Scotland.
- 3.4 Section 59 of the 1972 Act gives the government (now the Welsh Government) the power to issue directions to the Commission for guidance in the conduct of the electoral reviews. The relevant Ministerial Directions were issued in January 2009, and lay down further requirements the Commission must observe when undertaking the reviews. The Scottish Government also has the power to issue Directions, but do not necessarily use that power. Wales is the only part of Great Britain where such Ministerial Directions are issued as a matter of course on top of the statutory requirements.
- 3.5 Included in the Ministerial Directions is a statement that “*the aim should be to achieve electoral divisions with a councillor to electorate ratio no lower than 1:1750*”. The ratio gave rise to considerable confusion as to how it was to be interpreted. Wales is the only part of Great Britain which attempts to establish a single ratio of councillors to electors across all the local authorities in the country.

- 3.6 The Commission could only start work on the reviews once the Ministerial Directions had been issued in January 2009, although there was nothing to stop them making active preparations. Under the terms of the Directions, it was required to complete the task “*no later than 30 June 2011*”. The deadline of 30 June 2011 was set to allow time for the relevant orders to be made by Welsh Ministers by the end of the year, in readiness for the local government elections of May 2012. The Commission was therefore set a target of 30 months to complete 22 electoral reviews – a much shorter period than was taken by the previous cycle of reviews.

The methodology employed by the Commission

Overall policy and approach

- 3.7 At the outset, the Commission issued a guidance note to the local authorities and other interested parties. In practice this was a relatively neutral run through the criteria laid down in the statutory requirements and the Ministerial Directions. In addition, the Commission arranged meetings with stakeholders and staged a series of presentations in each local authority area in which they particularly emphasised the importance of electoral parity and the difficulties caused by the 'building blocks' they were obliged to use, namely the community areas. This was the first time such an extensive series of presentations had been undertaken by the Commission.
- 3.8 In comparison, the Commission in England³ drew up policy documents setting out the steps it proposed to take and the factors it proposed to take into consideration, and put the policy documents out for consultation. In other words, it sought to achieve a degree of consensus on their *modus operandi* as a fundamental part of their approach. The Scottish Commission has already issued a consultation document on the approach they might adopt in the review to begin in 2012/2013 to be effective for the 2017 elections there. The Commission in Wales did not undertake a similar approach. In oral evidence the Chairman of the Local Government Boundary Commission for Wales, Paul Wood, said the tight timescale that the Welsh Government had set did not permit it to do so.

Assessment of council size

³ The Local Government Boundary Commission for England held a major consultation beginning in 2010 “*On the right lines*” – a consultation on policy and procedures for principal area boundary reviews and “*Striking the right balance*” a consultation on policy and procedures for electoral reviews.

- 3.9 Section 54 of the 1972 Act requires the Commission to produce proposals which appear to it to be desirable in the interests of effective and convenient local government. In the first instance, this must involve an assessment of council size – in other words, the numbers of councillors required to represent the local authority.
- 3.10 The Local Government Boundary Commission for England, as a matter of policy, considers each local authority individually, taking into account the political management structure and the functions which councillors are required to perform, as well as the size of the electorate. They say:

“Council size is the term used to describe the number of councillors elected to a local authority. Decisions on council size are the starting point in any electoral review, since that number determines the optimum councillor: elector ratio for the purposed of achieving electoral equality....

This approach offers some practical advantages. It ensures that the statutory requirement to consider effective and convenient local government is directly and demonstrably addressed. It also ensures that everyone who wishes to propose patterns of wards or divisions, starts from a common understanding of the council size we are minded to recommend and therefore the average electoral ratio.”⁴

- 3.11 The Local Government Boundary Commission for Scotland issued a consultation paper “*Determining Councillor numbers*” in January 2011 as part of a review into the process of how it makes such determinations. This invited views on whether to continue the methodology of earlier reviews, beginning in its third review in 1996/1998 which, after consultation, applied fixed elector/councillor ratios to each of six bands of the 32 authorities. The bands are determined broadly according to electorate and population density, thereby creating different ratios of councillors to electorate according to which band they fall into. The ratios range from 1:6000 in the big cities to 1: 750 in the three island authorities, with the other four bands falling in the range of 1:2000 to 1:4000. It recognises that this methodology is different from the practice in England and says:

“There are merits in taking a uniform, objective and transparent approach to setting councillor numbers for each local authority in Scotland”....we remain of the view that our approach is appropriate for Scotland.”⁵

I understand that responses to the current consultation suggest that while there may be differences on the detail there seems to be general acceptance of the methodology, which results in Scotland having slightly fewer councillors in total than Wales, despite having 4 million

⁴ Local Government Boundary Commission for England “ *Electoral reviews: technical guidance May 2011*” page 13

⁵ Local Government Boundary Commission for Scotland Consultation Paper “*Determining councillor numbers*” page 1

electors compared with the 2.2 million here. The Commission expects to have further consultation rounds and dialogue with Scottish Ministers before confirming the approach for the reviews to be effective for 2017.

- 3.12 In comparison, the Commission in Wales had no equivalent process for determining council size. In oral evidence Mr Wood said it did seek to classify councils according to whether they were urban, rural, semi-rural or Valley, and they had examined the Scottish banding system some weeks after the review process had begun and it had “*informed their thinking*”. But there was no evidence in the Commission's documentation and minutes as to what, if any, detailed mechanism was employed to assess council size. The Commission said it had used the same process employed in the previous round of reviews. Mr Wood added:

“Given our already tight timetable, it would have been impossible to undertake any meaningful consultation on council size.”

- 3.13 The statistical overview carried out by Professor Colin Rallings showed that, in the 17 Commission reports he examined, the total number of councillors was reduced from 972 to 914. Only two of those authorities did not face a reduction. The reduction in the number of councillors was not, however, the key issue for most, if not all, local authorities. Steve Thomas, Chief Executive of the Welsh Local Government Association, said in oral evidence:

“The reduction in councillors was not the issue; it was the methodology which the Commission used. We have a lot of councillors in Wales”

- 3.14 Some authorities faced bigger reductions in numbers than others. In the final report on Newport, there was a reduction from 50 councillors to 46, the biggest departure from the ratio set down in the Ministerial Directions, according to Professor Rallings. Tracey Lee, the Managing Director of Newport City Council, said they had no idea how the Commission had come to that decision:

“Following the publication of the draft proposals we made the point to the Commission that the reduction in size would impact on the operation of the council but we did not have a conversation with the Commission before then about how the council might be run with fewer councillors”

- 3.15 It is important for the Commission to use procedures which are widely understood by those who are affected by them. Whether a procedure similar to the Scottish banding system is employed, or whether the circumstances of each council are assessed individually as in England, the process should be clear and transparent.

Electoral equality

- 3.16 Schedule 11 to the 1972 Act sets out a number of rules which the Commission is obliged to observe when carrying out electoral reviews. Rule 1A (5)(a) states that:

“The number of local government electors shall be, as nearly as may be, the same in every electoral division in the principal area.”

But there are a number of other rules, notably 1A (6):

*“Regard shall be had to -
(a) the desirability of fixing boundaries which are and will remain easily identifiable: and
(b) any local ties which would be broken by the fixing of any particular boundary.”*

- 3.17 It is an immensely complex task attempting to balance all the different rules and criteria, compounded in the case of Wales by the Ministerial Directions on top of the requirements of the statute. The principle of electoral equality is frequently in conflict with the other criteria. The guidance of the Commission in England sets out how they propose to strike the right balance:

“...our starting point is to secure equality of representation and to depart from that objective only when we have evidence relating to the other statutory criteria, for example, in order to reflect community identity and interests.”⁶

- 3.18 From the outset, the Commission set out its stall rather differently. At the series of presentations it made and in the newsletters it distributed, it stressed the over-riding importance of “restoring fairness”. This was the term employed by the Minister in the press release when the Directions were issued. On a number of occasions Mr Wood pointed to the situation where some councillors represented two, three or even over four times the number of electors than their colleagues in the same council. In oral evidence, he said:

“Right at the beginning we are talking about parity. In the presentation [made to each local authority] we explained to each individual authority the difficulties they faced, we had figures specific to each authority, it was the main point made in the presentation”

- 3.19 In correspondence dated 18 November 2009 with the Local Government Policy Division of the Welsh Government he went further describing rule 1A(5)(a):

“...it is clear we believe that, having regard to the structure and language of the Schedule, the dominant Rule is Rule 5a..... There are, it is true, other factors to be taken into account by the

⁶ The Local Government Boundary Commission for England op. cit. page 9

Commission, which are contained in Rule 6 (identifiable local boundaries and not breaking local ties), but these are expressed to be “subject to Rule 5” and are expressed in non-prescriptive terms”

- 3.20 Their legal advisor expressed the position in different terms. Roland Phillips, from the Treasury Solicitor’s Department, in written legal advice to the Commission dated 25 February 2010 wrote:

“...I am frankly uneasy about ranking the various considerations, or speaking of one consideration trumping another.....It remains a question of balancing all the factors, leading to a result which is in the interests of convenient and effective local government: parity may be dominant, but it must not be regarded as determinative in every case.”

- 3.21 In oral evidence, Mr Phillips described the apparent difference between his interpretation of the law and that of Mr Wood as a “*difference of nuance*”. The advice was given in the context of single and multi-member divisions, to which this report shall return.

- 3.22 The Welsh Government certainly thought it was more than a matter of nuance. Reg Kilpatrick, the then Deputy Director for Local Government Policy in the, Welsh Government, in a letter to the Secretary of the Commission dated 2 November 2009 wrote:

“It appears that the Commission has given precedence to the aim of equalisation at the expense of the other issues to which they are to have regard when conducting reviews.....The draft proposals appear to deviate from the terms of the direction, and in some instances a reasonable interpretation of the legislation.”

- 3.23 There is no record in the documentation supplied by the Commission as to how or when it came to its view on the interpretation of the legislation governing electoral reviews and, in particular, the relative importance of electoral parity and the other factors mentioned in the legislation. There is no minute of any discussion on the issue, and, above all, no record of any assessment made as to what would be the likely outcomes on the ground of this emphasis on electoral parity. The reaction of the local authority community was not the result of the Commission's emphasis on electoral parity as the driving factor, but the result of not being aware of what it would mean in practice, in particular the level of increase in multi-member divisions. The presentations which the Commission made to local authorities referred to the multi-member issue, as the 2009 Ministerial Directions, in contrast to those of 1995, allowed the Commission to look at multi-member divisions in all parts of Wales as opposed to selected areas. There is no record, however, of the Commission making any analysis of what its approach would produce in terms of an increase in the numbers of multi-member divisions.

The evidence given to this inquiry showed the level of surprise in the local government community at the proposals contained in the first group of reports. Ms Lee said:

“The Commission failed to manage the expectations of their key stakeholders very well.”

Multi-member divisions

3.24 The outcome of the first 17 reports, as assessed by Professor Rallings, was a significant increase in multi-member divisions. The number of multi-member divisions increased from 198 (32% of the current total) to 247 (47% of the proposed total). The number of four-member divisions went up, and for the first time in those 17 authorities, five-member divisions were introduced.

3.25 In Scotland, where the Single Transferable Vote is used for local government elections, three- and four-member divisions are universal⁷. It is fair to say however that large multi-member divisions are controversial in most parts of local government in England and Wales, where elections are by first past the post. Whereas large multi-member divisions can give greater flexibility in creating electoral equality, they are also seen as confusing to the electorate who can find it more difficult to identify with their elected councillor.

3.26 In England, the maximum number of councillors allocated to a division is three. The then Local Government Commission for England commented in guidance in 1998:

“Numbers in excess of three could result in an unacceptable dilution of accountability to the electorate.”

3.27 The Ministerial Directions of January 2009 lay a specific obligation on the Commission:

“The Welsh Ministers direct that the Commission shall consider the desirability of multi-member electoral divisions in each county council and county borough council.....”

The Directions go on to specify another obligation, that:

“A decision to alter the existing pattern of multi and single member divisions should only be taken where such proposals for alteration are broadly supported by the electorate, so far as their views can be obtained.....”

3.28 The Commission rightly points out that multi-member divisions are already a common feature across Wales. Professor Rallings found in

⁷ The Single Transferable Vote electoral system relies on multiple members being returned for each ward or constituency.

the reports on the 17 authorities he examined, there were already 198 such divisions, and that the Commission was proposing to increase them to 247. But the impact was greater on some authorities than others. In Neath Port Talbot, the total number of divisions was reduced from 42 to 25, with an increase of multi-member divisions from 15 to 20. In Newport, the proposal was for a reduction in divisions from 20 to 16, and – although there were to be two fewer multi-member divisions - two of them were to be five-seaters. Flintshire faced proposals for a reduction of divisions from 57 to 34, with an increase in multi-member divisions from 13 to 21.

- 3.29 In his written evidence Colin Everett, Chief Executive of Flintshire County Council was in no doubt about the reason for the numbers of multi-member divisions proposed for their authority:

“We believe that the dominance of this requirement (for electoral parity) has led to proposals where, in parts of the county of Flintshire, community identity is lost and has led to an excessive departure from single to multi-member electoral divisions.”

- 3.30 Not all authorities faced such radical changes, and there was some belief that the Commission had “eased off” in later reviews. But in his statistical overview, Professor Rallings concluded that there was no clear evidence of a difference of approach between earlier and later reviews.

- 3.31 The legislative presumption in Rule 1A(2) of Schedule 11 to the 1972 Act is that the Commission:

“Shall.....provide for there to be a single member for each electoral division,”

There is a requirement, repeated in the Ministerial Directions, to

“consider the desirability of multi-member divisions in each county council and county borough council”.

The Commission should therefore be able to demonstrate that it has undertaken such a consideration, firstly by determining what principles need to be examined to assess desirability and then testing those principles authority by authority. The Panel could find no evidence in the documentation that the Commission had undertaken any consideration, either of the principles of the desirability of multi-member divisions in general, or how it gave effect to any such principles as each review was examined. The Commission assert it did record such consideration in each review.

- 3.32 More difficult to assess is the implementation of the requirement in the Ministerial Directions that any changes to the pattern of single and multi-member divisions need the broad support of the electorate “so far as views can be ascertained in fulfilment of the consultation requirements in

s60 of the Act” (which relates to general consultation on draft proposals). The English Commission, for instance, does not consider that this means that a separate test of public opinion on this issue should be undertaken over and above the consultation they would normally hold on their proposals as a whole.

- 3.33 However in written evidence, Trevor Coxon, Head of Corporate and Customer Services, Wrexham County Borough Council, amongst others, argued that the Commission should have done more than it did:

“...the Commission relied on a dubious interpretation of the legislation to justify not having properly to consult on this issue where there were already some multi-member divisions.”

If the Commission’s formal consultation process is sufficiently clear on all the issues involved in the review of a particular authority, it is difficult to argue that a wider consultation should be held on this particular aspect. However, the Directions, if they are to be continued, need to be clearer about what obligation they are trying to lay on the Commission in this respect.

Community areas

- 3.34 The whole of Wales is divided into community areas, only some of which have community councils. Under the legislative rules which the Commission is obliged to follow, these community areas are the basic “building blocks” when it comes to creating electoral divisions. That is because Schedule 11 to the 1972 requires that:

1A (5) (c) – “every ward of a community having a community council (whether separate or common) shall lie wholly within an electoral division, and

(d) every community which is not divided into community wards shall lie wholly within a single electoral division.”

- 3.35 There have been a number of problems arising out of this requirement, which are peculiar to Wales. There is an obligation on local authorities to review their community areas to ensure that the boundaries are still appropriate. Few local authorities have treated this obligation as a priority, partly because such community reviews throw up contentious local issues which can be difficult to settle.
- 3.36 In their oral evidence, the Welsh Local Government Association acknowledged that delays in completing community reviews was one of the obstacles the Commission had to overcome, and too many local authorities had “fallen down” on that task. This meant that the Commission was too often faced with out-of-date community boundaries which made it harder to ensure that electoral divisions reflected real communities.

- 3.37 The Commission said it had repeatedly flagged up to the Government that this issue was going to make it more difficult to meet the timetable for the electoral reviews. In addition, they said that delays by the Welsh Ministers in making the orders implementing the community reviews had added to the problem.
- 3.38 The Government included provisions in its 2011 Local Government Measure which were intended to ameliorate the position. The Measure clarified the obligation on local authorities to carry out community reviews, as well as giving the power to the Commission to carry out such reviews on behalf of the local authority in agreement with them.
- 3.39 This fell short of giving the Commission adequate power to direct local authorities to carry out local reviews. The Commission has to seek a power of direction on a case by case basis from the Government and that has to be done in agreement with the local authority – a laborious and time-consuming process. If current arrangements are to continue, a general power of direction would be preferable.
- 3.40 The Panel received some evidence suggesting that one solution to this problem would be to conduct community reviews at the same time as electoral reviews. While this might have some advantages, it is outweighed by the disadvantages: it would introduce an element of confusion amongst stakeholders about which boundaries were being addressed at any given time; and it would run the risk that community reviews would skew the result of the eventual electoral divisions.
- 3.41 Updating the process for community reviews would, however, only be a small step towards solving the main problem. Community areas do not have as their prime purpose the formation of building blocks for electoral areas and new areas will not change this. Many community areas, even when their boundaries have been reviewed, cover significant populations, as was demonstrated to us by the Commission in relation to Flintshire, and these communities cannot be divided by the Commission. The “building blocks” which therefore form the basis for creating electoral divisions give the Commission far fewer options than their counterparts in England or Scotland.
- 3.42 In Scotland there is no reference in the relevant legislation which inhibits the Scottish Commission from splitting communities other than the requirement common to all three Commissions “*to have regard to any local ties which might be broken by the fixing of any particular boundary*”. In England, there is a specific power laid down in the 2009 Act which gives the English Local Government Boundary Commission the power to ward parishes (the English equivalent of communities) and to lay the boundary of a local authority electoral division along that ward boundary. In other words, it has the power, which the Welsh Commission does not, to divide community areas.

- 3.43 Giving such a power to the Commission in Wales would not necessarily be unpopular. Rodney Berman, the Leader of Cardiff Council, said in oral evidence:

“In order to avoid these multi-member super wards, it is nonsensical that there is no power to subdivide community areas.”

- 3.44 The Commission said they believed such a power was necessary. Steve Halsall, Deputy Secretary said in oral evidence:

“Up-to-date community reviews are not enough. There is no perfect solution, but we need the power to ward community areas.”

- 3.45 There is no question that the work of the Commission has been seriously constrained by the legislative block on crossing community boundaries, and the Welsh Government has not moved quickly enough to remedy the problem. According to the Commission, it has been the major factor in the increase in large multi-member divisions proposed by the Commission. It must also be a significant obstacle to creating electoral parity. Professor Rallings concluded that, despite the increase in multi-member divisions:

“...the LGBCW's [the Commission's] proposals still produce poorer levels of electoral equality within almost every council than is commonly achieved by their English counterparts working to a maximum of three councillors per ward/division”.

- 3.46 In Scotland, with three and four member divisions and no inhibition on crossing community boundaries, a high level of electoral parity has been achieved with only 12 divisions, out of a total of 353, showing a divergence of more than 10% from the average councillor/elector ratio in each authority.

Ratio of councillors to electors

- 3.47 The Ministerial Directions in January 2009 laid down a specific ratio defining how many councillors should represent how many electors:

“The aim should be to achieve electoral divisions with a councillor to electorate ratio no lower than 1:1,750.”

- 3.48 The objective would appear to have been a levelling down of the number of councillors in many Welsh authorities but, if that was the case, the government quickly retreated from that interpretation. It did not help that there was no obvious logic to this particular ratio. It was the same ratio used in the equivalent Ministerial Directions in 1995 and reflected the overall Welsh average of councillors to electors at that time. What its relevance was in 2009 is hard to discern, particularly as

it concealed a wide range across authorities which are very different in terms of electorate and population density.

- 3.49 It also caused a considerable degree of confusion over how it should be interpreted. The Commission decided it meant that the aim should be not fewer than 1,750 electors per councillor. Councillor Berman questioned the mathematical basis of the Commission's interpretation and argues that the Commission had got this the wrong way round. Whatever the mathematical rights and wrongs of that argument, this was one of the rare occasions when the Welsh Government supported the view of the Commission.
- 3.50 After the publication of the first three draft reports, Dr Gibbons was concerned that the ratio was being used to drive down the numbers of councillors generally. He was especially concerned about his own area, Neath Port Talbot. In a letter dated 20 November 2009, he wrote, in his capacity as constituency AM, to the Commission:

“Most worrying of all is that the main aim of the proposals is to get a ratio of one councillor to 1,750 electors. At present, the ratio is 1,733, a deviation of less than 1%, whereas the proposals set out by the Commission would create a ratio of 1,912, a deviation of greater than 9%”.

- 3.51 It is difficult to see what the Minister thought had been his original intention on the ratio, but the complaint that the Commission's proposals were in several cases leading to the ratio being exceeded was echoed by the Welsh Local Government Association who identified this happening in six authorities. The government tried to emphasise what their intention was by saying the ratio of 1:1,750 was an aim and not a target. In a letter to Mr Wood dated 7 May 2009, Dr Gibbons wrote:

“The directions are issued for your guidance and are not to be viewed as instructions.....in relation to the central issued of the councillor to elector ration the wording is identical [to the last directions]. This means that the ratio remains as the aim to be worked towards and not as a goal to be achieved in each case”

- 3.52 It had clearly not been sensible to issue Ministerial Directions which gave rise to such differing and confusing interpretations. More importantly, however, the ratio created another obstacle to achieving outcomes which met other parts of the statutory requirements.
- 3.53 The over-riding obligation placed by the legislation on the Commission is to secure “*effective and convenient local government*”, and the first step towards achieving this has to be an assessment of council size (see paragraphs 3.10 and 3.11). Both in Scotland and in England, albeit by different methods, the number of councillors allocated to each authority becomes that first step. Determining the size of the council then creates the ratio of councillors to electors.

- 3.54 This has to be a better way of determining the number of councillors in each authority. In Wales, the Ministerial Directions laid down a single ratio for the whole of the country – in other words, a single ratio for 22 authorities which can be very different in terms of electorate, population density and structure. This makes very little sense in terms of effective and convenient local government. In comparison with England and Scotland, the process is back to front.

The timetable for the electoral reviews

- 3.55 The previous cycle of electoral reviews in Wales had been carried out between 1995 and 2002, spanning the local elections in 1999. This time around the whole process was scheduled to be completed in less than half that time.
- 3.56 The Welsh Government began giving consideration of this round of electoral reviews in 2007, but the then Minister for Finance, Local Government and Public Services Sue Essex, decided to ask the Commission to postpone any work on them until after the local elections scheduled for May 2008.
- 3.57 What is difficult then to account for is the further slippage of Welsh Government's decision-making. The Commission could not begin substantive work until the Ministerial Directions had been issued, and that did not happen until January 2009. The process involved three months of public consultation on the Directions, and a further prolonged period of Ministerial consideration. The Commission was then set the deadline of completing the reviews by June 2011, for implementation in time for the local elections in 2012. In other words, the Commission was given 30 months to complete 22 reviews of local authority recommendations.
- 3.58 This timetable was described as "*achievable*" by Mr Kilpatrick but that was not the general view. The Welsh Local Government Association described the timetable as "*inevitably challenging*", and local authorities felt the result was that the timetables for individual reviews were squeezed. Gwynedd Council described the timetable as "*too ambitious*", and Newport City Council described the timetable as "*flawed and seemed to represent a fast-track approach*".
- 3.59 The standard period for a public consultation, laid down by the Cabinet Office, and the official policy followed by the Welsh Government, is for that period to last for 12 weeks. The Commission set the consultation period on their draft proposals at nine weeks, as in the previous cycle of reviews. This rarely had the desired effect and analysis of the programme shows that delays elsewhere were significantly greater than the three week saving. Further, the Commission faced calls for

extended periods of consultation, which it felt obliged to concede in a number of cases. The records show that the initial reviews broadly averaged 18 months from initiation to publication of final proposals, whilst later reviews took between 14-16 months. Eventually, in February, 2010, the Commission informed the Minister that the timetable had to be revised in the light of the experience of how long the reviews were actually taking compared to the plan.

3.60 A letter written by the Commission in December 2010 to the Minister for Social Justice and Local Government in response to the Minister's decision to not make any orders in time for the 2012 local elections outlined a number of reasons for the delays which they had faced:

- *“Requests from unitary authorities and others to extend consultation periods*
- *Unitary authorities being slow in providing electorate figures*
- *The time taken to issue Orders at the end of Community Reviews*
- *The exceptionally high level of representations, mostly from the Councils themselves*
- *The time taken to get dates for the presentations to each council area at the start of each review”*

3.61 It would be unrewarding to try and adjudicate on which of these, or other factors, was most responsible for the eventual failure to meet the deadline. The Welsh Local Government Association argued in its written evidence that the timetable was affected:

“overwhelmingly as a result of the extensive feedback and challenge to the Commission's draft, and, where completed, final proposals, as a result of concerns over the Commission's methodology”.

3.62 There is one other factor which has to be mentioned, and that is the almost total failure of Welsh local authorities to submit their own schemes for the Commission to consider. It would normally be to the advantage of a council to put forward their own proposals as the starting point for the Commission's review of their area, but there was no sufficient explanation for this widespread failure. Some authorities claimed that the nine weeks allowed by the Commission's timetable was not adequate for such a task. The result was inevitably to put greater pressure on the Commission to come up with its own proposals, a process which took up a greater time.

3.63 This is not the case in England, where it is a standard part of the process for local authorities, or the political groups on the council, to submit their own proposals. It does of course make it easier for them to do so if there is prior agreement on the size of the council. That sets the parameters for discussion about numbers of divisions and their boundaries and speeds up the process.

3.64 The Commission finally accepted in June 2010 that it was not going to make the deadline set by the Government and that five of the electoral

reviews would not be completed by the June 2011 deadline. This led the Minister, after considering his options, to make the decision not to implement any of the electoral reviews in time for the 2012 local government elections.

- 3.65 The Commission was running a risk register which, on the basis of the copy handed to this inquiry, was updated only at irregular intervals and did not appear to cover the range of risks the Commission actually faced. The issue of delays was mentioned at the quarterly liaison meetings with the sponsor department, and when reviews were delayed the Commission sought to manage the timetable by bringing forward other reviews. There is, however, no evidence of any risk analysis on a review by review basis.

The capacity of the Commission to carry out the electoral reviews

- 3.66 The Commission currently has a staff of 12, eleven of them full-time and seven of them directly employed. The cyclical nature of electoral reviews, which only come up every 10 to 15 years, mean that very few current staff have direct experience of the previous cycle. The current Secretary, for instance, was appointed in 2001 and was not involved in managing the previous cycle. The fluctuation in workload caused by the cycles of electoral reviews accentuates the difficulty of managing the staff over a prolonged period.
- 3.67 The secretariat of the Commission is shared with the Parliamentary Boundary Commission for Wales, which has a separate set of Commissioners. The Boundary Commission for Wales is now beginning work on reviewing the parliamentary constituencies of Wales under the terms of the Parliamentary Voting Systems and Constituencies Act 2011. This will inevitably constrain the capacity of the Commission to complete the remaining local government electoral reviews in good time.
- 3.68 There are three Local Government Boundary Commissioners for Wales, although there is a maximum of five provided for in the legislation. The English Commission has a chair plus eleven Commissioners, with five currently in post, while in Scotland, where the organisation is more comparable in size, there is provision for a chair, deputy chair and up to four further Commissioners, although only three are currently in post.
- 3.69 Where the commissions contrast is the relevant experience and qualifications of the Commissioners. The English Commission has three members who have been chief executives of local authorities and have been directly engaged in running elections. The Scottish Commission has four members with long experience of working in and with local government, one of whom has direct experience of electoral

administration. . By comparison, none of the Welsh Commissioners have any direct experience of running elections and only one has worked in local government.

- 3.70 Mohammed Mehmet, Chief Executive of Denbighshire County Council, said in written evidence:

“There is a fundamental concern as to the membership and expertise of the Commission. The Commission should be comprised of members with actual direct practical experience of the electoral system.”

- 3.71 The Independent Group of Members on Conwy County Borough Council (totalling 13) was even more specific. They suggested, in written evidence that:

“At least two of the Commissioners should be able to demonstrate practical experience at a senior level of the conduct of elections, and at least one should have a professional background in one of more of the following disciplines: town and country planning, geography, cartography or social demographics.”

- 3.72 There must certainly be a case for strengthening the Commission in order to permit greater involvement of Commissioners in the reviews. In the English Commission, every review has a Commissioner assigned responsibility for its conduct and progress. It should be noted, however, that in Scotland, where a more formulaic methodology is used for determining council size, individual Commissioners are not involved in local consultations or the oversight of individual reviews.

- 3.73 The budget of the Commission for the financial year 2011/12 amounts to £561,000, a sum intended to cover the costs for conducting the remaining electoral reviews. The Commission has 12 staff which includes one part time member. The Scottish Commission is expected to cost about £500,000 in current prices when its next electoral review is under way, beginning in 2012/2013, but its methodology appears to be less labour intensive than that which has been the pattern in Wales and it will have a longer timetable to work to than that required of the Welsh Commission from 2009. The English Commission has a budget of just under £2.7 million for 2011/12 with a staff of 28.

- 3.74 The Commission said it put in a request in its 2007/08 operation plan for funding to carry out the electoral reviews in 2009/10 onwards through to 2010/11, which was accepted by the Welsh Government. Because of the delay to the start of the review programme, they had to hand back an under-spend in 2008/9, and there was a small shortfall in 2009/10. The Commission did not ask for extra funding, when it became clear the timetable might not be met. Mr Kilpatrick said:

“I received no request for additional resources, particularly as the timetable began to shift back”

- 3.75 The Commission argued that extra funding would not necessarily have fixed the problem, because of the time taken to recruit and train new staff. There did appear to be a mismatch between the budget available, the actions necessary to resource the programme and the timeline. It is possible that a forward-looking assessment of risk might have prompted either action being taken to recruit and train staff in advance of the Directions within the approved budget or an earlier request for funding when the programme was falling behind, which could have made a difference.
- 3.76 Some witnesses felt the Commission did need more resources. Mr Thomas described the review process as “*underpowered and undercooked*” with not enough bodies on the ground. It was a repeated refrain from local authority witnesses that the Commission was engaged in a remote, mathematical, desk-top exercise, instead of having a greater presence in the area.
- 3.77 Particular prominence was paid by critics of the Commission to a number of factual errors made in their public reports. The Cabinet Working Group at Rhondda Cynon Taf, for instance said in written evidence that:
- “In the final proposals, within the forward by Paul Wood, Chairman, it states that it is the final proposals for Cardiff City and County Council instead of Rhondda Cynon Taff County Borough Council, and the electoral division of Llantrisant was referred to as Llantwit Fardre.”*
- 3.78 A more serious mistake was the loss and subsequent omission of a submission from two political parties in Newport, and other anomalies were also noticed. The Commission apologised for these mistakes, and said it had put in place additional quality control measures to address the issue. In evidence to this inquiry, Paul Wood said the errors had been “*exaggerated out of all proportion*”. To some extent, the factual mistakes were being used to criticize the Commission because of the widespread opposition to the results of their reviews.
- 3.79 The Commission certainly needs to put more resources, time and effort into communications. The Welsh Local Government Association said in written evidence:
- “Feedback suggests that communications and engagement with communities has on occasions been distant, with an over-reliance on postal communications and a lack of ‘on-site’ activity with communities and other stakeholders”.*
- 3.80 There were other complaints that councils were left in the dark for months about what was happening to the proposals for their area. Flintshire said they had been waiting for seven months for the final report and heard nothing, while Carmarthenshire said they had been waiting for several months for the draft proposals to be published: the

start of their review was in May 2010. In turn, the Commission complained of occasions when there was no response to their requests for meetings. The Vale of Glamorgan, amongst others, complained of the failure by the Commission to provide advance notification of the reports to the authority concerned, which in most equivalent situations would be a normal courtesy. It would appear that the Commission does need to update and modernise its communications, and the drafting of a new communications strategy would be one way of achieving that.

- 3.81 Looking forward, the secretariat of the Commission will not only have to deal with the completion of this cycle of electoral reviews, it will have to deal with the new round of reviews of Parliamentary boundaries and potentially a review of the constituency boundaries of the National Assembly as well. Mr Kilpatrick said in his oral evidence:

“The Commission is now on the cusp of a different period of its life ...one of my concerns is how this will change the way it works”

Relations between the Commission and the Welsh Government

- 3.82 It is worth beginning this section by trying to define what I mean when we say that the Commission is an independent body. First of all, as in Scotland (but not in England), the Commission is an advisory body to the Minister, and the Minister is free to accept, modify or reject the Commission's proposals. To avoid abortive work by the Commission and other stakeholders, it therefore makes sense for the Minister to give clear and public strategic guidance, whether by Directions or guidance letter towards a general policy outcome. The independence of the Commission means that Ministers should not attempt to influence the outcome of any particular electoral review for party-political ends.
- 3.83 It is apparent from the evidence that we received that the Welsh Government had set the remit for the Commission in this cycle of electoral reviews with the expectation that not very much would change. They replicated the Ministerial Directions from 1995, with only minor alterations which had been requested by the Commission, and they expected the broad range of outcomes to be similar.
- 3.84 Dr Gibbons, at a Ministerial meeting in August 2009 when things did not turn out as expected, said that the Government had no mandate for what amounted to a reform of local government.

“The Minister explained that the reviews were not intended to bring about structural changes to local government and so the terms of

*direction had been retained with a view to essentially retaining the status quo*⁸

3.85 In oral evidence to this inquiry Mr Kilpatrick said that the Commission's first three reports had come as a surprise. They were taken aback by what he called *"the radical changes not supported by local people"*; Mr Thomas said this was when *"the balloon went up"*.

3.86 The repeated refrain from Government thereafter was to ask how, if the Ministerial Directions were broadly the same as in 1995, the Commission could come up with such a different kind of result. The answer lies – at least in part - in the conflicting and confusing set of rules laid down by the Local Government Act 1972 together with the Ministerial Directions.

3.87 The legislation under which the Commission operates has remained substantially unchanged in Wales for nearly 40 years and no longer remains fit for purpose. In addition, in neither Scotland nor England are Ministerial Directions imposed in addition to the legislation. We heard considerable evidence that all this needed to be clarified. Mr Everett said in written evidence:

"greater clarity is required on the specific expectations and the specific limitations of Ministerial direction for future reviews. Differing expectation and interpretations of directions was a source of contestability"

3.88 Some key points which require clarification, amendment or modification are:

- the constraints in the 1972 Act on the Commission preventing it from dividing community areas to create electoral divisions
- the meaning in both the legislation and the directions of the "desirability" of multi-member divisions and what exactly is meant by "the broad support of the electorate"
- the ratio of councillors to electorate set out in the directions, and whether such a single ratio for all the local authorities in Wales is required in the first place

3.89 It will always be the task of the Commission – and it will remain a difficult one – to balance the range of criteria laid out in any rules. But if the legislation is amended to ensure it is sufficiently clear, there should be no need for Ministerial Directions unless there are particular circumstances which require them.

3.90 Mr Kilpatrick made the point that until now the Welsh Government did not have the competence to legislate in this area, and he subsequently confirmed that under its new legislative powers the National Assembly

⁸ *"Note of Ministerial Meeting with the Local Government Boundary Commission for Wales 17 August 2009"*

did now have the competence to reform the 1972 Act. His statement that the Welsh Government was willing to consider any changes to the legislation proposed by this inquiry was welcome.

- 3.91 The question was also raised with this inquiry about the cyclical nature of local election reviews, which Wales has in common with Scotland. In England, however, the Local Government Boundary Commission has been operating on a basis of a rolling programme of reviews divided between periodic electoral reviews which started first in 1996 and further electoral reviews which started in 2005. Further electoral reviews give the Commission the power to intervene wherever electoral imbalances build up, according to criteria which the Commission agreed after a consultative process.⁹ It has the merit of permitting the English Commission to maintain a body of expertise among its staff on a continuous basis and removes the need for the English Commission to meet difficult deadlines contingent on the electoral period.
- 3.92 The Welsh Commission does have the power under section 57(3) to conduct interim reviews of the electoral arrangements of a local authority, whether at the request of the local authority or the Minister. The Scottish Commission has the same power to undertake interim reviews if it considers that unacceptable electoral imbalances have occurred in an area between the normal cycle of reviews, and has just completed such reviews for divisions in eight authorities. Making greater use of this power might be an alternative to adopting a rolling programme of reviews as in England.
- 3.93 For the Welsh Local Government Association, Mr Thomas responded favourably to the idea of a rolling programme of reviews, saying such an incremental approach would avoid some political difficulties. Mr Kilpatrick agreed that the Welsh Government could look at more effective ways of carrying out the reviews, and this would have the merit of *“smoothing out demand”*.
- 3.94 It is useful to look at how the relationship between the Welsh Government and the Commission was managed on a routine basis. It is the task of the Minister's civil servants to strike the right balance between ensuring that the Minister's strategic objectives are met without compromising the independence of the Commission. There were quarterly liaison meetings between the Commission and its sponsor department, as well as other meetings with civil servants and occasionally ministers. This amounted to closer supervision than is the case in Scotland or England, and yet relationships reached the stage where the Minister intervened in December 2010 to announce a decision not to implement any of the Commission's reports in time for the 2012 local elections.

⁹ The criteria are that either 30% of the wards are plus or minus 10% from the council average or one ward is more than plus or minus 30% from the council average.

- 3.95 Questioned why the sponsor department had not intervened at an earlier stage, Mr Kilpatrick replied that the Commission was an independent body and it was inappropriate for the government to second-guess what they were doing. The independence of the Commission is indeed important and his answer was entirely proper.
- 3.96 It is equally proper for the Commission to pay heed to the strategic guidance offered by Ministers, or by senior civil servants on the Ministers' behalf, and this is where there appeared to be a blind spot in the Commission's thinking. Mr Wood had a particular view of what being independent meant. In oral evidence he said
- “We are an independent Commission....we do not respond to political influences - only to what is said in public”*
- 3.97 It is not helpful if the Commission is selective about the strategic guidance from the Government to which it is prepared to listen. Mr Wood's definition of what was a “political influence” as opposed to ministerial guidance does not accord with the usual conventions.
- 3.98 Judging from the evidence received by this inquiry, there has been a loss of confidence among stakeholders in the work of the Commission. It is now vital that steps are taken to restore public confidence in the Commission and maintain and strengthen the independence of a body which is a vital pillar in the democratic process.

CHAPTER 4 – CONCLUSIONS AND RECOMMENDATIONS

General conclusions

- 4.1 There are undoubtedly issues to be addressed about local government electoral arrangements in Wales. Most important of these is that electoral parity within councils is, despite the legislative requirements, much less than in England and Scotland. The policy on whether and how this issue is resolved must be driven by the democratic political process, reflected in legislation and Ministerial guidance.
- 4.2 In the Welsh context, it would not be appropriate for an advisory body, the Commission, to attempt unilaterally to establish what would be considered new policy without an explicit discussion with the Minister as to potential outcomes.
- 4.3 In this case it seems to me that the Commission decided on a more radical approach than its predecessors - operating within a similar framework of legislation and Ministerial Directions but on a tighter timetable, and therefore with insufficient resources - without spelling out the full implications to Welsh Ministers, or the local government community, and establishing that Ministers were in agreement with its intended direction and speed of travel.
- 4.4 The first draft proposals thus came as a surprise to Ministers and to the wider local government community. Once it became known that the Welsh Government had concerns, the pressures on the Commission to grant more consultation time grew, the volume of objections increased, and the timetable became undeliverable.
- 4.5 My overall conclusion therefore is that the Commission has manifestly failed to deliver the timetable it unwisely agreed to and has produced proposals which in many cases are unlikely to be acceptable. As a result it has lost the confidence of its stakeholders and is therefore not 'fit for purpose'.
- 4.6 That conclusion raises issues about both the general strategy which should be adopted in the future for reviewing electoral arrangements and what should be done now to get the current reviews back on the rails. I address these issues below.

Recommendations

- 4.7 As a matter of policy, the Commission should consult fully on the approach it proposes to take on electoral reviews, as a starting point to the review programme. The consultation should include the steps it proposes to take towards assessment of council size, the balance

between the different criteria, the need for any increase in multi-member divisions, and the responses it expects from key stakeholders.

- 4.8 Subject to 4.7, the Commission should consult on an appropriate methodology for assessing the number of councillors for each authority. It should include consideration of the approach taken in Scotland and the approach taken in England (see paragraphs 3.10 and 3.11). Whatever process is adopted, it should be clear and transparent to all stakeholders.
- 4.9 The Welsh Government should abandon the requirement laid down in section 4(c) of the Directions to the Local Government Boundary Commission for Wales 2009 for a single councillor to elector ratio. It should be replaced by the process outlined in the previous recommendation for a transparent approach to assessing council size.
- 4.10 The Commission should ensure there is a clear audit trail, based on minutes of decisions, legal advice and public consultation, for its approach to determining the balance of the criteria they propose to implement under paragraph 1A(5) of Schedule 11 to the 1972 Act. It should ensure that appropriate documentation exists to demonstrate both the way it dealt with the general criteria and how they were applied in each review.
- 4.11 The Commission should adopt an appropriate methodology for assessing the desirability of multi-member divisions in each authority, as required in Section 3(1) of the Ministerial Directions 2009.
- 4.12 The Welsh Government should seek, as a priority, to amend the Local Government Act 1972 to remove paragraphs 5(c) and 5(d) of Schedule 11 relating to community councils.¹⁰ The Commission should be given power to ward community areas for the purpose of creating electoral divisions.
- 4.13 The Welsh Government should consider removing the need for orders implementing community reviews to be made by Welsh Ministers. The Commission could be given an order-making power to implement community reviews, with a right of appeal to the Welsh Ministers.
- 4.14 The Welsh Government should consider the approach it wishes to follow for future electoral reviews. If the Minister decides the priority is to keep electoral imbalances under control on a regular and systematic basis, the 1972 Act should be amended so that such reviews are undertaken on a rolling basis without regard to having all authorities reviewed in time for an electoral cycle.

¹⁰ “(c) every ward of a community council having a community council (whether separate or common) shall lie wholly within a single electoral division; and
(d) every community which is not divided into community wards shall lie wholly within a single electoral division”

- 4.15 If however, the Minister sees value in a more comprehensive review approach on the current cyclical basis, it should set out and monitor the Commission's delivery on an agreed and resourced programme. The Minister should also consider directing the Commission to use its powers of interim review to deal with particular electoral imbalances.
- 4.16 The Commission should improve its assessment of the risks of not meeting the timetable set by the Government, and there should be a risk analysis on a review by review basis. The Commission should make regular assessments of the resources at its disposal to ensure they have sufficient to meet the timetable.
- 4.17 The Commission should engage with all 22 local authorities to ensure as far as possible that each of them puts forward electoral schemes for their own areas as part of the evidence that informs the Commission's preparation of draft proposals.
- 4.18 The Welsh Government should review the structure, personnel and budget of the Commission in the light of the increasing commitments faced by the secretariat.
- 4.19 As a matter of priority, the Welsh Government should appoint two new Commissioners with direct experience at a senior level of running elections or other local government experience at a corporate management level. In addition, the Government should consider exercising the power under 3(1) of Schedule 8 of the 1972 Act to appoint people with expert knowledge to advise and assist the work of the Commission.
- 4.20 The Commission should review its communications strategy to ensure it engages more pro-actively with all stakeholders.
- 4.21 The Welsh Government should consider whether Ministerial Directions are a necessary addition to the requirements set out in an amended Act. While it would be sensible to retain the power to issue Directions to meet particular circumstances, it might in general be more practical, and potentially more flexible, for the Government and the Commission to conduct a public exchange of letters setting out the strategic direction of the review process.

The next steps

- 4.22 The Welsh Government should move quickly to resolve the immediate issue of what happens to the current cycle of electoral reviews. Unless some early decisions are taken, the Welsh Government will risk failing to meet its own target of ensuring the electoral review programme is delivered to a high standard in time for the 2016 elections.

- 4.23 As an immediate priority, the Welsh Government should move to appoint two new Commissioners with relevant experience of running elections and should consider the secondment of staff experienced in this field to enhance the capacity of the Commission.
- 4.24 The Welsh Government should withdraw or amend the Ministerial Directions issued in 2009.
- 4.25 The Commission should reconsider its approach, taking into account the recommendations in this report. The Commission should accept that there is little point in continuing to pursue its current approach if the reports are unlikely to be accepted by the Minister. It should then consult publicly on the basis on which it then intends to proceed. The Commission should consult individual local authorities on whether the proposals for their areas are acceptable. Those reports could then continue to go forward for Ministerial approval.
- 4.26 Those proposals which are deemed unacceptable, or thought to require modification, would then be formally withdrawn. The Minister could, under Section 58 (3) of the 1972 Act, direct further reviews in those areas. The Commission would meet and review each of those local authorities on the basis of their statements of reconsideration, and publish new final draft reports for a full consultation process of 12 weeks, with the rest of the process concluded in the normal way. The Commission should begin new reviews only when this process is complete.
- 4.27 It is recommended that the Welsh Government moves as quickly as practicable to repeal or amend the relevant sections of the 1972 Act as recommended in this report. This would considerably simplify the task of the Commission and make it more likely that it would be able to achieve the target of completing all reviews in time for the 2016 local elections.
- 4.28 I am not persuaded, however, that that it is absolutely necessary to retain the target date of the 2016 local elections. It seems to me that, as in England, it is not essential that all such reviews have to be completed within an electoral cycle. As part of the legislative changes, I recommend the Welsh Government should consider moving from the current cyclical programme to a rolling programme as conducted by the Local Government Boundary Commission for England. This would then remove the necessity of achieving the target date of reviewing all 22 local authorities by 2016—and the Welsh Commission could concentrate initially on reviewing those areas where there was a *prima facie* case for remedial action to address priority issues of electoral imbalance.