

## **Report**

**By**

**Sheriff Principal N.A. Ross**

### **On an Inquiry into the provisional recommendations of Boundaries Scotland relating to Scottish Parliament Constituencies of East Lothian and Midlothian North and Musselburgh**

**9 January 2023**

1. On 1 September 2022 Boundaries Scotland (the “Commission”) commenced the Second Review of the constituencies and regions of the Scottish Parliament, in accordance with its obligations under Schedule 1 of the Scotland Act 1998. The Commission published their provisional proposals, which can be found at [www.boundaries.scot](http://www.boundaries.scot). Responses were invited from the public. All representations were considered. The Second Review relates only to boundaries for Scottish Parliament elections, and does not alter the boundaries of local government areas, or affect present arrangements such as council services, health services, council tax, school catchments or community councils
2. Following responses to the proposed boundary changes of the constituencies of East Lothian and Midlothian North and Musselburgh, the Commission arranged for a local inquiry to be held. By letter dated 6 December 2023 I was appointed in terms of Schedule 4, paragraph 4 of the Local Government (Scotland) Act 1973 to act as Assistant Commissioner for the purposes of hearing submissions at that inquiry.

3. The local Inquiry was held at Musselburgh Race Course, Linkfield Road, Musselburgh on 7 December 2023. Members of the public and representatives of interested bodies attended and made submissions. A full list of those who made submissions is contained in the Appendix to this report. The evidence at the Inquiry was recorded by shorthand writers. The transcript of the evidence has been made available to me for the purposes of preparing this report.
4. This report is prepared in terms of section 21(2) of the Local Government (Scotland) Act 1973.

### **Provisional Recommendations for East Lothian and Midlothian North and Musselburgh**

5. In its statement read out at the start of the Inquiry, the Commission noted that it developed its provisional proposals by grouping council areas so that each grouping was entitled to a whole number of parliamentary constituencies. It identified that the combined grouping of West Lothian, City of Edinburgh, Midlothian and East Lothian council areas should be represented by 12 constituencies. There are currently 11 constituencies which cover these areas, although one constituency also contains part of Scottish Borders council area which is not in this proposed grouping.
6. The Commission identified that two of the existing parliamentary constituencies, namely East Lothian, and Midlothian North and Musselburgh, had electorates with a variation from the electoral quota in excess of +10 per cent. The electoral quota is calculated from the number of local government electors within the 70 constituencies in mainland Scotland, divided by 70. The electoral quota is presently 59,902 electors. The Venice Commission (Code of Good Practice in Electoral Matters) is an

internationally-recognised standard. It provides that an electorate within plus or minus 10 per cent of the electoral quota is acceptable with a maximum deviation of 15 per cent, except in special circumstances. In the case of East Lothian Council area, the electorate has grown from 72,960 electors at the last review, to 88,539.

7. The Commission therefore proposed an East Lothian constituency which did not include the towns of Musselburgh and Prestonpans. It also proposed a Midlothian North and Musselburgh constituency which contained the communities of Prestonpans and Musselburgh (from East Lothian) and Dalkeith (from Midlothian) and Portobello (from City of Edinburgh). The Commission took account of the fact that the proposed constituency of Midlothian North and Musselburgh would straddle three council areas, but decided that the proposal should be subjected to public comment on the proposals or any alternatives which might be suggested.

### **Responses to initial consultation**

8. Following consultation, the Commission received 70 written responses from people and bodies within the constituencies covering the East Lothian area. East Lothian Council objected to the proposals. Under the terms of the legislation, if a council objects to a proposed constituency within its area then a local inquiry must be held. That council stated that ideally the council area would be coterminous with an East Lothian constituency, but acknowledge that electoral parity was a factor in constituency design. They pointed out that the proposed changes to the west of the East Lothian area risked breaking strong community ties. More than 50 of the other responses opposed placing Prestonpans in the proposed Midlothian North and Musselburgh constituency. Reasons included that it broke existing local ties between

Prestonpans and neighbouring towns, villages and communities; that it is difficult for elected members to represent a constituency which contained parts of three different council areas; and that it appeared that Prestonpans was effectively being removed from East Lothian.

### **Statutory Framework**

9. The Commission has a statutory duty to apply the provisions of the Scotland Act 1998, Schedule 1, as amended. Schedule 1, paragraph 3(2) sets out four rules for conducting the present review. These rules can be paraphrased as follows:-

Rule 1 - So far as is practicable, regard must be had to the boundaries of local authority areas.

Rule 2 - The electorate of each constituency is to be as near the electoral quota as is practicable, while having regard to Rule 1. The Commission may depart from Rule 1 if it thinks that it is desirable to do so to avoid an excessive disparity between the electorate of a constituency and the electoral quota or between the electorate of a constituency and that of neighbouring constituencies.

Rule 3 - The Commission may depart from the strict application of the preceding rules if it considers that special geographical considerations, including the size, shape and accessibility of a constituency, make a departure desirable.

Rule 4 - The Commission must take account, so far as it reasonably can, of inconveniences attendant on altering constituencies and of any local ties which would be broken by doing so.

10. These rules will inevitably sometimes conflict. The Commission must exercise its discretion in deciding the appropriate weight of each rule in any given constituency.

The approach of the Commission has been to seek a balance between these rules, and to apply the same, so far as practicable, in a consistent way.

### **Submissions made at the local inquiry**

11. Colin Beattie MSP spoke of his experience as member for Midlothian North and Musselburgh. He was the first MSP for that constituency when elected in 2011. He had found it difficult to deal with two different communities and councils, with different cultures and processes. They had handled this by treating the two areas separately. This would be exacerbated with the current proposals spanning three council areas, which did not have a lot of interchange amongst them. Councils worked in isolation. In addition the constituency was essentially rural in nature at present. An increased focus on Dalkeith, Musselburgh, Prestonpans and Portobello would change that into an essentially urban constituency. There is no community of feeling amongst the communities of Midlothian, East Lothian and Portobello. It would be necessary to deal with each community in isolation. People would be upset at the disruption of communities, and Musselburgh was an example of where this had been done in the past, which still caused bad feeling. The areas were different, and practical difficulties would arise in an MSP dealing with three different councils. Mr Beattie felt that areas were being amalgamated which could not be fitted elsewhere. The remedy was not obvious, but might involve the whole of the South of Scotland being reallocated.
12. Councillor Norman Hampshire gave evidence for East Lothian Council. He accepted that there was no obvious solution to redrawing the boundaries, but submitted that the case was not strong enough to justify straddling three council boundaries. The

preferred solution for East Lothian Council was that Prestonpans should remain within the East Lothian constituency. East Lothian is predominantly rural, with six main towns, namely Musselburgh, Prestonpans, Tranent on the western side and Haddington, North Berwick and Dunbar to the east. There was strong community and social cohesion within the villages and towns. The New Midlothian North and Musselburgh constituency would straddle East Lothian, with part of Edinburgh East, making it the only constituency in Scotland to include parts of three council areas. There were also economic considerations with development sites. He sought respect for existing communities and an avoidance of the confusion and administrative burden which would follow the proposed changes. The catchment area for a major secondary school, Preston Lodge, would be split across different constituencies. Were Prestonpans to remain in East Lothian, this would lead to a large electorate of around 67,500, which was not the largest of the proposed new Scottish constituencies. The new proposals were not supported by natural geographical features. He identified further consequential changes for other constituencies outside the area. Cllr Hampshire's evidence was augmented by Mr Edwards, an advocate who appeared for the Council, and Mr Grilli. They helpfully illustrated the practical consequences by reference to marked maps, and added detail in relation to individual areas within the constituency. Mr Edwards took a point of law, in which he submitted that the Commission were obliged to give primacy to rule 1 (set out above) when faced with a conflict with the other three rules. Rule 1, if implemented, would allow Prestonpans to remain within East Lothian. The resulting electorate, of approximately 67,500, was within 15 per cent of the electoral quota, an acceptable

result. There were larger constituencies within Scotland, in Inverness and Nairn and Glasgow East. The Commission had not given written reasons for their preferences.

13. Iain Gray gave evidence. He was formerly MSP for East Lothian between 2007 and 2021, and currently Chair of the local Labour Party. They had consulted approximately 540 local members. Their view was that the proposals breached three of the four rules, and he was particularly concerned at the removal of Prestonpans from the East Lothian Constituency. He agreed with the description of East Lothian as a network of strong and highly interconnected communities, which included Prestonpans. Connections were by geography, local administration, local services and local public transport, and they looked eastwards, not towards Midlothian. The proposed new boundary would cut off strong ties with communities along the coast. The proposed dividing line did not reflect any natural boundary. Further, it cut across the site of the former Cockenzie power station, one of the most important strategic economic development sites in Scotland. This was at a key planning and development stage, and it made no sense to split representation. Mr Gray gave examples of confusion across council boundaries, such as confusion in school catchment areas and provision of dental services. His view was that straddling three council areas would be harmful to maintaining a clear relationship between electorate and politicians. There was no advantage to having two MSPs potentially to cover the same school or medical services as parliamentary rules prevented, or at least hindered, one MSP addressing an issue already taken up by a neighbouring constituency MSP. Mr Gray accepted that there was no obvious alternative solution, but emphasised that the objection was made on the basis of quality of representation,

not just quantity. A higher electoral quota was preferable to a constituency with increased complexities of representation across local authority boundaries.

14. Mr Weddell gave evidence, representing the Pennypit Community Development Trust in Prestonpans. He emphasised the close community links within Prestonpans, and gave illustrations. He agreed that the proposals only appeared to follow one of the four rules. He was able to give illustrations about the future likely electorate within the area. This was because of a large amount of building in the area. There were 697 new houses to be built at Dolphinston, another 1,450 houses in Wallyford, 140 within Musselburgh, 250 houses at Carberry Braes and a planning permission for a further 1,700 houses outside Musselburgh. He accepted that the Commission were limited to considering current figures, but the future electorate would become relevant before the next election.

15. Mr Tosh gave evidence representing the Scottish Conservative and Unionist Party. He was formerly an MSP for South of Scotland. He was supportive of 12 constituencies to allow the 711,592 electors within the four local authorities under discussion to be included within the electoral quota. He did not accept the East Lothian Council submission that rule 1 should take precedence over the other rules. That rule required regard to be had to local authority boundaries, but did not prevent them being crossed. He illustrated this with historical examples. The present exercise is not merely a numbers game, but an important part of ensuring that democratic rights can be exercised fairly. Previous reviews have successfully reflected this. He discussed the present Second Review by reference to wider Scottish examples. It was not possible to reflect estimated future figures. East Lothian Council area was already too large, and the present proposals were not merely arbitrary. He



did seek that the boundary around Wallyford be redrawn to include the whole of that community. He agreed with concern about breaking existing ties between Cockenzie and Port Seton. That, however, might be addressed by transferring not only Prestonpans, but also Cockenzie/Port Seton, to the new constituency.

Alternatively, Prestonpans could be left alone but Tranent and Elphinstone transferred. It was acceptable to draw a boundary between Prestonpans and Tranent, as distinct towns separated by the A1. That reflected recent planning developments.

School catchment areas were, in other areas, crossed by electoral boundaries.

16. Dr Johnston-Smith represented Prestonpans Community Council. He also emphasised the close community ties within the ward of Prestonpans. The community council had elected to object to the separation of Prestonpans from the neighbouring communities of Port Seton, Cockenzie, Longniddry and now Blindwells, a community set to grow dramatically over the next 10 years. The issue was the practical one of trying to identify which representative to speak to about issues. Social media posts illustrated confusion in identifying the correct representative. It appeared that the separate identities of the communities had not been taken into account. There would be practical difficulties travelling to different centres to meet different representatives. Place attachment was important, as it promoted community cohesion, wellbeing, prosperity and more, particularly where communities included areas of multiple deprivation. The name would be misleading, as 26,604 voters, approximately 45 per cent, would not reside in Musselburgh or Midlothian North. The community council believed, however, that it was not their function to suggest alternatives, and did not do so.

17. Councillor Brook Ritchie gave evidence as one of the ward councillors for the Preston, Seton and Gosforth ward. She referenced the evidence given by Mr Gray and Cllr Hampshire, and supported the evidence given by Dr Johnston-Smith. It was important to acknowledge the historical ties of the communities, as well as practical issues such as area partnerships and funding, particularly the future of the Cockenzie power station site. The development of the latter will attract much attention from communities surrounding it, which would now be in separate constituencies. Separately, many of the areas of multiple deprivation would be pushed together, while the wealthier areas of East Lothian would be grouped together. Distribution of resources may be an issue, and tends to shift over time according to the changing character of a location. Local issues would also be artificially dealt with in separate constituencies, when they were of considerable importance to the whole community. Preston Lodge High School had made efforts to bring communities within catchment together, and these proposals split that catchment. Councillor Ritchie adopted the same proposed solution as East Lothian Council, and had worked on those proposals.
18. The foregoing summary does not include the written submissions made by a number of parties. These submissions were previously made to the Commission and are separately available for them to consider. They were not part of the local inquiry meeting.

### **Overview of issues**

19. The submissions reflected an overall concern about the proposed boundaries, particularly as they affect the communities of Prestonpans, Cockenzie and Port

Seton. The proposed boundaries would also create difficulties within the constituency of Midlothian North and Edinburgh.

20. In relation to Midlothian North and Edinburgh, the most significant issue was that the proposed new boundary would straddle three local council areas. The majority of the submissions emphasised the difficulty created when parliamentary constituencies did not align with local council areas. While there was general recognition that alignment was difficult to achieve in practice, it was very rare for more than two local council areas to be covered by a single parliamentary constituency. Some of those appearing were able to speak from experience about practical difficulties which they had encountered in dealing with different cultures and processes across different councils and communities. This would be exacerbated if the constituency spanned three, not two, council areas. The likely difficulties included difficulties of communication, identifying representatives, and practical co-operation.
21. Some of these issues would be particular to the elected MSPs, and related to the requirement for increased administrative arrangements to engage the differing requirements and approaches of local councils and disparate areas. However, members of the public would also be affected, as they would require to identify which was the correct representative to approach in relation to a local issue. The theme was that straddling three areas would be harmful to maintaining a clear relationship between electorate and politicians.
22. Further, the altered boundary which included Prestonpans would serve to change the nature of the constituency from essentially a rural one to essentially an urban one. It would simultaneously have the opposite effect for East Lothian. There was

also reference to the differing economic resources between the two constituencies, which would be altered. These factors might be seen to bring with it a change in focus of policy and priorities.

23. In relation to cross-boundary issues, a number of points arose. Almost every speaker expressed concern about the breaking of existing local ties. Connections were not only historical due to the nature of those communities, but also related to links through local administration, local services, local transport and the like. The community of Prestonpans, for example, tended to look eastwards for their ties, not towards Midlothian. The proposed boundary would cut those strong ties. The nature of these community ties is difficult to measure, but nonetheless there was clearly a view that community ties were considered significant by the local electorate. One example was the splitting of the catchment area of Preston Lodge High School, which ran contrary to the efforts of the school to bring disparate communities together.
24. A significant point appeared to be the effect on the site of the former Cockenzie power station. That site is said to be an important site of economic development, and was at a key stage of planning and development. Unity of representation was felt to be important, but the boundary ran between the nearby communities.
25. Some submissions raised the question of future development of the area, with new or expanded communities likely to significantly alter the electorate in the next few years. This is beyond the remit of the Commission, which is required to have regard to the existing population only.
26. The challenge which faces the Commission is to draw boundaries within the area to allow the proposed constituencies to contain similar numbers of electors. None of

those appearing were able or willing to identify an alternative route for the proposed boundary between these two constituencies. Two submissions proposed that Prestonpans remain within East Lothian. It was recognised that this would lead to a large constituency electorate of around 67,500, which is within 15 per cent deviation from the electoral quota and permitted by the Venice Commission. Another speaker suggested that transferring not only Prestonpans, but also Cockenzie/Port Seton, to the new constituency, to minimise split of community ties, or alternatively that Prestonpans could be left alone but Tranent and Elphinstone transferred.

27. I have considered whether to make recommendations, but I also do not see any clear method of meeting these conflicting points. It is ultimately for the Commission to exercise their statutory discretion to identify a practical solution.

28. For completeness, there was a submission on behalf of East Lothian Council that rule 1 of the four rules takes primacy over the rest, and accordingly that the Commission was obliged to give priority to mirroring the local authority boundaries and less effect to electoral quotas, geographical features and local ties. I would not support that position, at least in the absence of wider legal debate. No supporting authority was presented, and such primacy is not imposed by the Scotland Act 1998. The rules contain several qualifications, which appear to recognise that the exercise is highly fact-specific. Rule 1 is to apply, but only so far as practicable. Rule 2 applies, but again only so far as practicable. Practicability is not defined. Rule 3 expressly contemplates departure from rules 1 and 2. Rule 4 is again qualified by reasonableness. I would not express a legal opinion in the context of this fact-finding inquiry. The application of these rules is for the Commission to decide upon.

REPORTED BY

N.A. Ross

## **Appendix**

### List of those giving evidence at the Inquiry (in order of presentation)

Colin Beattie, MSP for Midlothian North and Musselburgh

Councillor Norman Hampshire, Council Leader, East Lothian Council, Dunbar and East Linton ward

Carlo Grilli, East Lothian Council

Denis Edwards, advocate, for East Lothian Council

Iain Gray, representing East Lothian Constituency Labour Party. Former MSP for East Lothian (Constituency) 2007 – 2021 and Edinburgh Pentlands (Constituency) 1999 – 2003

Brian Weddell, member of public. Chair Pennypit Community Development Trust

Murray Tosh, representing the Scottish Conservative and Unionist Party. Former MSP for West of Scotland (Region) 2003 – 2007 and MSP for South of Scotland (Region) 1999 – 2003

Sarah Souness, member of public

Dr Johnston-Smith, representing Prestonpans Community Council

Councillor Brooke Ritchie, East Lothian Councillor, Preston/ Seton/ Gosford ward