

Subject: Election Review 2016

Report to: Election Review Panel

Report of: Executive Director of Secretariat

Date: 16 June 2016

This report will be considered in public

1. Summary

- 1.1 This report provides background information to the London Assembly Election Review Panel.

2. Recommendations

- 2.1 **That the report and the discussion with invited experts be noted.**
- 2.2 **That the Panel recommends the GLA Oversight Committee to approve the appointment of David Smith (former Chief Executive of Sunderland Council) to provide expert independent advice and support.**
- 2.3 **That the Panel notes the proposal to write to all London boroughs and other relevant stakeholders for comment on the performance of London Elects in providing support to the Greater London Returning Officer.**

3. Background

Barnet

- 3.1 On the morning of Thursday 5 May 2016 problems were reported with the electoral registration lists at 155 polling stations in the London borough of Barnet, which meant that some residents were unable to vote in the Mayor of London and London Assembly elections. The supplementary register rather than the full register was supplied to polling stations. Some residents who turned up to vote and whose names were not on the register were sent away and told to return later, others were provided with alternative advice as to what to do. Following discussions between officers in the polling stations and the town hall, full registers were re-issued and had been delivered to all the polling stations by approximately 10:30am.
- 3.2 The then Chief Executive, Andrew Travers, stepped down “by mutual consent” on Monday 9 May 2016, with John Hooton, Deputy Chief Executive, acting as Interim Chief Executive while the authority recruits for a replacement. An independent investigation to look at how the situation occurred and to learn lessons from it in time for the EU referendum was launched by the London Borough of Barnet.

- 3.3 The terms of reference of the investigation covered:
- how incorrect electoral registers were provided to polling stations at the start of the Mayoral and GLA elections on Thursday 5 May 2016;
 - an assessment of the number of voters affected and the overall impact;
 - how the error was addressed on the day of the poll, including:
 - the involvement of the Greater London Returning Officer;
 - the advice and guidance provided by the Electoral Commission;
 - the arrangements that will be put in place so that this does not happen again;
 - any steps that will be taken specifically for the EU referendum in June, including liaison with the Chief Counting Officer and the Regional Counting Officer; and
 - any relevant recommendations, for example on process improvements
- 3.4 The report was published on 1 June 2016 and set out findings as to what had happened and made recommendations to the local authority to help ensure that the EU referendum runs smoothly (attached as **Appendix 1**). The report found that human error caused incomplete registers to be printed and then distributed to the Polling Stations. Subsequent checking and escalation processes which could have prevented the registers from being used on polling day did not happen. The report also proposes a wider review into the way in which elections are delivered in Barnet.¹
- 3.5 London Assembly Member for Barnet and Camden, Andrew Dismore AM, has made a submission to the Panel on the issues experienced in Barnet, including an anonymised spreadsheet of the problems that voters had reported to him and the anonymised emails on which the spreadsheet was based. The submission is attached as **Appendix 2**.

City Hall

- 3.6 The counting of votes cast in the elections of the Mayor of London and the London Assembly began on 6th May 2016, the day after polling. This process took place in three count centres across London: Alexandra Palace, Excel, and Olympia. Votes were counted electronically.
- 3.7 The 14 Constituency London Assembly Members were announced by the relevant Constituency Returning Officers. This took place at the count centres. The first final result came from the Bexley and Bromley count which was produced at 2:53pm, with the final result coming from the North East constituency at 6:33pm.
- 3.8 The declaration of the 11 London-wide Assembly Members and the Mayor of London was made by the Greater London Returning Officer, Jeff Jacobs. This took place at City Hall once all of the votes were counted. The announcement was delayed by several hours by what were described as “minor discrepancies with the Mayoral vote”. The announcement of the new Mayor was finally made at 00.18 on 7 May.

¹ <http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=174&MId=8877>

- 3.9 London Elects issued the following information explaining what had led to the delay in the announcement:
- London Elects confirmed that every vote in each constituency was scanned and registered quickly and accurately by machines provided as part of a contract with e-counting company IntElect;
 - Those votes fed into the consolidated reports for the three contests: Constituency Assembly Member; London-wide Assembly Member; and Mayoral;
 - Checks at City Hall on the Mayoral reports, highlighted some small discrepancies in the numbers for each candidate; and
 - Although these were not in any way material to the overall result, London Elects took the time, working with IntElect, to review and resolve the discrepancies.²
- 3.10 An internal review from IntElect was commissioned by the Greater London Returning Officer and an independent review of that work has been commissioned through the Greater London Authority's (GLA) internal audit processes. IntElect's review and covering letter is attached as **Appendix 3** and the draft independent review undertaken on behalf of the GLA is attached as **Appendix 4**.
- 3.11 According to the IntElect review and the subsequent internal audit review the reason for the delay in making the declaration was due to minor discrepancies in the first and second preference totals for the Mayoral candidates in the preliminary reports at constituency level. The discrepancies were between the number of first and second preferences for each candidate rather than between candidates.
- 3.12 On the night measures were taken to re-do the calculations and various checking process took place to ensure the result was robust. The declaration was then made. A number of subsequent tests, including re-running what was done on the night, confirmed that the Mayoral results as declared were in accordance with the scanned and recorded data and hence the results as reported were correct.
- 3.13 Investigations subsequently found that these discrepancies were due to a piece of computer code that incorrectly constructed the result report as it used data extracted from the raw database in an unexpected order. The reason has been identified as a pre-existing code defect which was also present in 2012, which combined with a subsequent change to the database server configuration in 2015 resulted in the ordering of the data during the calculation of the mayoral figures to be incorrect in 2016 compared with 2012 .

The Performance of London Elects

- 3.14 The running of the GLA elections is a complex and resource-heavy operation, which involves the coordination of and communication with a wide range of external stakeholders including central Government, political parties, local authorities and the media. The delivery of the elections covers a number of different projects and work-streams including applying the election law, procurement of contracts, ballot paper design, developing and delivering training, publishing voter education materials, election-day management, count day and post-count processed and resources.

² London Elects press release: <https://www.londonelects.org.uk/news-centre/news-listing/election-count-delay-explained>

- 3.15 Following the Assembly's review of the 2012 GLA elections, the GLA Oversight Committee agreed a new resourcing model for the 2016 GLA elections. The new model was designed to both draw on GLA-wide resources to provide a flexible resource to support delivery of the elections and to embed elections knowledge in permanent GLA staff. The idea was to build upon the success of the organisation in providing operational Games-time functions for the 2012 Olympic Games. There was also a desire to identify substantial financial savings.
- 3.16 The agreed model proposed that the election should be run as a project team, rather than a discrete, separate unit. It consisted of three main groups of resource; specialist project management, corporate support, additional secondments and the team expanded in role and remit in the years and months running up to the election.
- 3.17 The proposed budget for the 2016 elections (over a four year period) was set at £18 million. This figure included a cut of 10% from the 2012 figure. Much of the budget is a fixed cost, covering the fees and charges required by the boroughs.
- 3.18 The Panel is recommended to request views of how the London Elects team managed the elections from a wide range of relevant external partners including borough election managers and chief executives, election agents, the Met, the Association of Electoral Administrators, the Electoral Commission and the Open Rights Group. This part of the review would take place over a longer timescale than the first part as we would have to allow for a six-week consultation time period and many of the external partners are going to be fully engaged in the running of the EU referendum.
- 3.19 The review should seek to set out options and a recommendation for how to resource the 2020 Mayoral and London Assembly elections.

Independent expert support

- 3.20 The Electoral Commission has indicated that it would like to ensure that the Assembly's election review be adequately supported with independent expert advice. This is to ensure that the review meets the highest standards of transparency and openness. To this end the Commission has proposed that the Assembly consult with David Smith, former Chief Executive of Sunderland City Council, who has been the Returning Officer for numerous local and general elections and Regional Returning Officer for a number of European elections and for the PCC election. He has been the North East regional lead for all elections. Sunderland has had the enviable position of declaring first in recent General Elections.
- 3.21 The Panel is asked to agree in principle the appointment of David Smith to provide technical support and advice to its review, and to ask the GLA Oversight Committee to approve the expenditure.

4. Issues for Consideration

- 4.1 The following guests have been invited to attend the Panel meeting

London Borough of Barnet

John Hooton, Chief Operating Officer and Interim Chief Executive;

Stephen Evans, Interim Chief Operating Officer; and

Davina Fiore, Director of Assurance.

City Hall

Jeff Jacobs, Greater London Returning Officer;

Steve Gowers, Chief Executive Officer, DRS Data Services (IntElect);

Sian Roberts, Chief Executive, ERS Group (IntElect);

David Esling, Head of Audit and Assurance - Risk Management (MOPAC); and

Steve Snaith, Head of Technology Risk Assurance, RSM UK

5. Legal Implications

5.1 The Assembly has the power to do what is recommended in this report.

6. Financial Implications

6.1 The costs of consultancy provided by David Smith will be met from existing scrutiny budgets.

List of appendices to this report:

Appendix 1: London Borough of Barnet: Election Issue Report

Appendix 2: Submission from Andrew Dismore AM

Appendix 3: IntElect Internal Review

Appendix 4: Draft GLRO Independent Review

Local Government (Access to Information) Act 1985	
List of Background Papers: None.	
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Subject: Election Review Panel: The Provision of Expert Support

Report to: GLA Oversight Committee

Report of: Executive Director of Secretariat

Date: 30 June 2016

This report will be considered in public

1. Summary

- 1.1 This report sets out the Election Review Panel's proposal to use the services of David Smith to support its work.

2. Recommendation

- 2.1 **That the Committee approves the appointment of David Smith, former Chief Executive of Sunderland City Council, to provide consultancy support to the Election Review Panel, with expenditure up to a maximum of £8,000.**

3. Background

- 3.1 The Electoral Commission has indicated that it would like to ensure that the Assembly's Election Review be adequately supported with independent expert advice. This is to ensure that the Review, which will largely focus on the work of London Elects, meets the highest standards of transparency and openness. To this end the Commission has proposed that the Assembly consult with David Smith, former Chief Executive of Sunderland City Council, who has been the Returning Officer for numerous local and general elections and Regional Returning Officer for a number of European elections and for the PCC election. He has been the North East regional lead for all elections. Sunderland has had the enviable position of declaring first in recent General Elections.

4. Issues for Consideration

- 4.1 At its meeting on 16 June 2016, the Elections Review Panel agreed to recommend to the GLA Oversight Committee that it approves expenditure to a maximum of £8,000 (plus VAT) to carry out the necessary work to support the panel. A work specification has been agreed with David Smith which includes support for briefing, reviewing written evidence submitted and drafting any required report

- 4.2 The Assembly's Decision Making Framework includes a requirement that all four of the following criteria be considered by committees in deciding whether external technical assistance is required and appropriate on any given project:
- a) That the proposed project requiring technical assistance is clearly and tightly defined. This would ordinarily mean that the consultant would be used for a discrete piece of technical analysis or research rather than simply as an adviser for the whole of a scrutiny;
 - b) That the proposed project cannot be readily undertaken by in-house staff, either because of a lack of necessary expertise or because of a lack of capacity;
 - c) That the analysis required from consultants is not readily available and cannot be acquired elsewhere; and
 - d) That the information required from consultants would be a significant contribution to the aims of the scrutiny. Technical assistance to scrutiny committees involves in most cases the analysis of information or data provided to the committee, rather than primary research.
- 4.3 These four criteria have been addressed below:
- a) The assistance is required to review written evidence from election practitioners alongside a number of technical reports;
 - b) External support is required because part of the review is of the in-house service, London Elects, used to deliver the 2016 GLA elections;
 - c) This kind of support is bespoke and cannot be readily sourced from elsewhere given the timelines the Panel is working to; and
 - d) The support is seen as important to provide the transparency such an internal review requires.

5. Legal Implications

- 5.1 Section 59 of the Greater London Authority Act 1999 (as amended) (the GLA Act) requires the Assembly to keep under review the exercise by the Mayor of his statutory functions. Section 54(1) of the GLA Act enables the Assembly to arrange for any of its functions to be discharged by a committee or sub-committee of the Assembly or by a single member of the Assembly.
- 5.2 The Contracts Code enables the Executive Director of Secretariat to procure technical support. Under the Assembly's decision making framework the Executive Director of Secretariat can award consultancy contracts up to £50,000.

6. Financial Implications

- 6.1 All costs of up to £8,000 arising from the appointment of David Smith will be met from the 2016/17 scrutiny programme budget.
- 6.2 The contract would be let and managed in accordance with relevant GLA policies and procedures. As this project is consultancy based, the requirements of the GLA's Expenses and Benefits Framework and the Financial Regulations would also be adhered to.

List of appendices to this report:

None

Local Government (Access to Information) Act 1985
List of Background Papers: None
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Election Review Panel 2016

The panel has the following terms of reference:

- (a) To review the planning, conduct and costs of the 2016 GLA elections and identify improvements for future years;*
- (b) To identify and collate from London Elects and other stakeholders and participants, accounts and explanations for issues that arose during the election process, including the role of London Elects and the London Borough of Barnet in the 2016 GLA elections process, in order to make timely recommendations to assist the conducting of the European Union Referendum in June 2016; and*
- (c) That the Elections Review Working Group automatically be disestablished at the conclusion of its work.*

Report structure

The simplest possible report structure would be something like this – but I am open to your suggestions:

1. London Elects – how did they do?
2. Problems at Barnet
3. Problems at City Hall
4. Looking to 2020 (inc. e-counting or not?)

1. London Elects – how did they do?

Previous Elections Review Panel recommended this model of GLA staff seconding over to London Elects rather than a standing team of election experts¹. Broad consensus seems to be that they performed well (see EC report and evidence submitted to us).

Lots of positive comments across all stages – training, communications, commissioning, on the day, the actual count.

Worth reflecting on this model going forward – saved a bit of money and has embedded knowledge in the GLA. Relations with boroughs also seems to have improved (big tick) – Recommendation - good for 2020? Any tweaks/lessons learned?

2. Barnet

I'm not sure how much we need to say on this or what new we can bring to the table. Heath recommendations were accepted by Barnet and no reports of any problems at the Referendum vote. Issue of resources (and claims of maladministration), which is Andrew

¹ See Reco 5:

<https://www.london.gov.uk/moderngov/documents/s19453/Elections%20Review%20Working%20Group%20-%20Appendix%202%20-%20Report.pdf>

Dismore's key point, is going to be addressed in their wider review. But given he is an Assembly Member we will need to recognise his concerns.

There is an issue about the "state" of the register with some implication that Barnet is not looking after its ER properly and that it has failed to grow it in line with population growth – see here:

<https://barnet.moderngov.co.uk/documents/s32300/Barnet%20Election%20Issue%20Appendix%20%20Turnout%20figures%20for%202012%20and%202016.pdf>

But not sure how this is relevant to our review.

Brief overview of what happened – was an experienced team, but is the biggest electorate in London, according to benchmarking exercise in terms of resourcing they are "around the middle (of the boroughs) in relation to the number of members of staff per number of electorate".

Reason for wrong registers going out due to human error (choosing wrong option from print programme). Chances to stop wrong registers being used were missed partly because of a lack of appreciation of consequences of IER on register and failure to follow-up call from a Presiding Officer who was worried. Need to ensure that the person printing the ERs is not the one verifying if they are right or not.

In terms of recovery have to commend them for their effort, but clearly problems around communicating with public/media and with themselves internally. They got rid of recorded messages for the Referendum vote – which seems right thing to do- and set up a group text messaging service.

Also seems to have been different practices amongst POs as what to do when problems arose – yet there is clear EC guidance. Not sure how that is possible – experience and confidence of PO? Presumably everyone who turns up wanting to vote but is unable to for whatever reason should have their details taken and follow-up calls should be made when situation has been resolved.

Perhaps worth noting that in our review of the 2008 election we found that 3 polling stations in Barnet opened late due to a lack of ballot papers – see here: - but this might be being mean spirited to mention?

Barnet: Late opening of polling stations

- 3.4 Under questioning by the Chair of the Committee, the Constituency Returning Officer (CRO) for Barnet and Camden set out what had happened at the start of the polling day. "Other than matters of minutes, there were three [polling stations] that did not open for about 20 minutes." He further conceded that in the 10 years that he had been running elections he had never before been "associated with there not being ballot papers at [polling] stations." The CRO gave a number of reasons for the failure to have ballot papers ready at the three polling stations. He complained about the complexity of the ballot paper accounting and how running the current systems puts too much strain on staff who have to work long hours without respite.

He argued that “we are running a system too close to capacity”, that there “is not enough redundancy in the system that we now run in order to cope with mistakes.”

- 3.5 Further questioning however, revealed a singular major mistake which was that the CRO and his staff misallocated the required number of ballot papers to the polling stations. Polling staff who had collected their ballot papers the previous night were recalled at midnight to bring their papers back to Council offices where they had to be reallocated. It would appear that it was this process that led to the three polling stations opening without ballot papers. Whilst it does not appear that any voters were effectively disenfranchised by this error such a mistake is clearly not acceptable in any modern, mature democracy. **Greater vigilance was clearly needed and this lack of attention to detail is not acceptable.**

City Hall

Probably need to go into more detail here – setting out timeline of what happened. Jeff Jacobs covers this in his appearance at the 16 June meeting.

Need to explain the problem in layman’s terms – this is the best I’ve been able to do:

“According to the IntElect report (and this is supported by the subsequent internal audit review) the reason for the delay in making the declaration was due to minor discrepancies in the first and second preference totals for the Mayoral candidates in the preliminary reports at constituency level. The discrepancies were between the number of first and second preferences for each candidate rather than between candidates. This is set out in more detail in chapter 2 of the IntElect Report.

On the night, measures were taken to re-do the calculations and various checking processes took place to ensure the result was robust. The declaration was then made. A number of subsequent tests by IntElect, including re-running what was done on the night, confirmed that the Mayoral results as declared were in accordance with the scanned and recorded data and hence the results as reported were correct. This also has been confirmed by the internal audit review – see section 4 of the Audit Review.

Investigations by IntElect subsequently found that these discrepancies were due to a piece of computer code that incorrectly constructed the result report as it used data extracted from the raw database in an unexpected order. The reason has been identified as a pre-existing code defect. This piece of code, which was also present in 2012, which combined with a subsequent change to the database server configuration in 2015 resulted in the ordering of the data during the calculation of the mayoral figures to be incorrect in 2016 compared with 2012.

The reason that the code did not generate the discrepancy at the user testing stage was that the problem only arose at high volumes of votes. The user testing was run on a total of 180,000 ballot papers while the number of ballot papers actually counted was nearly 8 million.”

In terms of what happened to get the right result there are some issues that we need to deal with eg the Green’s concerns re-manually querying the database to produce the data required.

The issue also arises in the EC report that things were being done to the underlying data that perhaps the GLRO didn't really understand and that no-one but IntElect really knew what they were doing. Loads of testing was done on the system (I will send you the list I have from London Elects) but they didn't run the system with a sufficiently high number of ballot papers – which is what triggered parallelism. Do we have to just trust the contractors and the testing they have previously done to get the right result or do we in future need another (independent) technical expert to be available to adjudicate on what IntElects (or whoever might be the future contractor) were doing to remedy the problem?

Focus of our comments must be on the comms issue – which EC highlights and the agents also comment on in the submissions to us.

Jeff Jacobs sets out how the time passed from identification of the problem at around 5:00 to his eventual press release at 9:45. Have some sympathy for him as he describes how minutes turned into hours as they trusted IntElects to generate a solution – but there clearly was a problem here – you may have thoughts on what they could/should have done better.

Looking to 2020

Much of the evidence we have indicates that the London Elects model for delivering the GLA elections worked well. Need to quote from the evidence to support this. The big issue is whether GLA stick with e-counting (and if so what lessons we've learnt that need to be rolled into the new contract). I will send you the last CBA (done in 2014) – in the absence of us being able to do a new cost-benefit analysis (not sure we can add much to the recent one) we need to set out the major pros and cons.

Need to address EC and Open Rights Group's concerns over problems with transparency – the ORG are keen for sample checking ballots at points during the count (not sure how feasible that is). Also there must be ways to show on screens what is happening with the ballot papers as they go through the various counting stages. That might help.

The twist in the tail is of course that at present the GLA elections are slated to take place on the same day as the General Election – 4 ballot papers, 3 different election systems, different constituencies, different franchises, a potentially huge increase in the number of ballot papers the GLA system will have to cope with perhaps over 10 million ballot papers swirling around the system.

It would be good to set out a scenario of what the count would look like if we used e-counting and if we went to manual – assuming GE and GLA took place on the same day.

We will need to construct a very strong argument to support moving the Mayoral date (it could go to October 2020?) – not sure administrative detail will do it – need something that the politicians would worry about – confused political messaging/ confusion in the polling stations?

As an aside I'm trying to pull together something about counting ballot papers in polling stations which some Tories have previously mentioned (see here: <http://glaconservatives.co.uk/wp-content/uploads/2015/04/countingthecost.pdf>) I've pulled

together some info from Australia and Spain but need to do a bit more. Not sure this is going anywhere given the amount of time polling staff would have to sit around waiting for the slowest one to finish/security issues/inability of political party agents to see what was going on. But you may have thought son this too.

RD

15-09

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20th November, 2016

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