

**INVESTIGATION REPORT
LONDON BOROUGH OF BARNET
COUNCIL MEETING 2ND JUNE 2014-
Reports on Political Proportionality and Members Allowances**

Claer Lloyd-Jones, LLB Solicitor

**PREPARED FOR ANDREW TRAVERS
CHIEF EXECUTIVE, LONDON BOROUGH OF BARNET**

August 2014

**Claer Lloyd-Jones & Associates Limited
39 Calthorpe Street
London WC1x0JX
T: 07813621107
E: claer.lloyd-jones@hotmail.com**

Report Contents

1.	Executive Summary	3
2.	Terms of Reference	4
3.	Methodology	5
4.	Background and context	6
5.	Findings	12
6.	Recommendations	14
7.	Conclusion	15
	Appendix One	17
	Evidence:	
	Interviews	
	Documents	

1. Executive Summary

- 1.1 I was appointed to be the external independent investigator at Barnet on Friday 20th June 2014. I was asked to investigate and establish the facts around the processes leading up to and after the presentation of reports to the Annual Meeting of the council on 2nd June 2014.
- 1.2 Barnet is keen to understand how it came about that two reports presented to Councillors as part of the agenda for that Annual Council meeting were incorrect or misleading. These reports were the 'political proportionality report' and the 'members allowances report'.
- 1.3 The voting on 'wrong' reports, and the subsequent unraveling of the decision-making structure caused Barnet to be mocked in the local press with headlines using words such as "*disgrace*" and "*chaos*". No Local Authority would wish to be subject to such avoidable public criticism.
- 1.4 The truth is more complex. There was a general risk of underperformance in the area of Barnet's governance, culminating in these 'wrong' reports, due to a combination of factors:
 - There is no-one who understands local government law in depth at Barnet. Barnet employs no lawyers.
 - There are staff in key roles in the Governance structure in Barnet who are inexperienced in governance matters.
 - There was no clear protocol for clearing council reports through taking external legal or other specialist advice.
 - Barnet was moving to a very different Constitution at the Annual Council and needed to have given detailed consideration to the implications of moving back to the Committee system. It is not just a question of making amendments to the Constitution.
- 1.5 Legal Advice was requested on both the reports, but was not forthcoming on either in time for them to be printed. No-one at Barnet queried this or noticed anything was wrong.
- 1.6 This report examines these events and makes recommendations.
- 1.7 I find that there was a joint but not necessarily equal responsibility on Barnet's Governance Team as well as the Council shared Legal Service with Harrow, HBPL, for allowing the reports containing incorrect advice to be presented to Councillors as though they were correct.

2. Terms of Reference

2.1 The chief executive has set the following terms of reference for this investigation:

- a) To investigate and establish the facts around the processes leading up to the production of reports for the Annual Council Meeting.
- b) To consider the conduct and capability of the members of staff involved within the Council's Assurance Service and Shared Legal Service, and to indicate any action which the Council should consider.
- c) To make recommendations to strengthen future governance arrangements.

2.2 This report concentrates on the first of those, on a) above. It does make some findings in relation to capability of Barnet staff members, but the Council's HR advisers will need to look at issues relating to conduct of staff which therefore falls outside the scope of this report.

2.3 A subsequent report will address the longer term implications and make some practical suggestions as to how Barnet's governance arrangements can be strengthened.

3. Methodology

3.1 With the help of Chief Executive of Barnet, we identified a list of 9 relevant people to interview. A list of those people is to be found in Appendix One. I interviewed those 9 people personally and took my own notes. No-one else was present at those interviews, except in the case of the interviews of Hugh Peart and Jessica Farmer where they were accompanied by Iain Miller, a partner at Bevan Brittan, who took a note.

3.2 I would like to thank everyone I interviewed who made themselves available sometimes at very short notice.

3.3 I undertook to all who I interviewed that what they told me and our discussion would remain confidential. I have therefore been able to obtain some candid information about what happened. If individuals are quoted in this report it is with their consent, or because that information is already in the public domain.

3.4 I have also been given a large number of documents to read, some of which are confidential. I have read them carefully and have felt able to quote from those documents where the information itself is in the public domain.

3.5 I have used my own judgement and experience to reach the conclusions and recommendations in this report, based on the evidence I have collected and the perceptions of the witnesses I interviewed. Where accounts conflicted about a particular event, I have relied on my own judgement and experience to reach a particular conclusion.

3.5 I am grateful to all the staff at Barnet who have given their time to help me with this investigation, and in particular Kar Lai Lee and Nichola Felstead.

3.6 If I have misunderstood anything, or misrepresented anything, the fault is entirely mine.

4. Background and context

4.1 Barnet has undergone huge changes in the last 2 to 3 years. It has fully embraced the concept of the commissioning council and has let large contracts for council services to external providers. It has restructured its internal staffing resources to reflect the commissioning model. It has changed its Leadership and has a relatively new Leader and a relatively new chief executive. It has moved back to the Committee system from Leader and Cabinet with effect from June 2014. Arguably, these changes have yet to settle down and bring stability to the Council's processes. However, despite the revolution undergone by the Council, Barnet has been subject to little successful challenge. This fact arguably shows that the risks have been well managed.

4.2 The risks inherent in any change process are present in Barnet and include the loss of corporate memory through changing relevant staff, putting Barnet in the position where 'it does not know what it does not know'.

4.3 The Council was keen to externalise Barnet's legal work along with other of its corporate services, and a solution had been found in principle in early 2012 through discussion with Harrow, one of Barnet's neighbouring boroughs. The Legal work was transferred to the Shared Legal Service with Harrow, Harrow and Barnet Public Law (HBPL), with effect from 1st September 2012 for an initial period of 5 years. The decisions to enter into the shared legal services arrangement were made by Barnet and Harrow separately on 4th April 2012. Barnet delegated all its legal functions to Harrow using section 101 of the Local Government Act 1972. This means that whilst this decision is in force only Harrow will be able to make decisions about Barnet's legal function.

4.4 The Inter Authority Agreement (IAA) which governs the joint legal service provides that legal work done by Barnet's Monitoring Officer (MO) or Director of Corporate Governance (or successors), is excluded from the IAA unless a further agreement is made (see 4.13 below).

4.5 The IAA provides that Barnet's legal work will be undertaken by HBPL and defines those categories of work. Corporate Governance work includes – 'Advice to Council, Cabinet, Committees.....to the extent that it is not excluded' (by being MO or DCG work). The Barnet MO was also to be the legally qualified professional client in Barnet for the purposes of monitoring the IAA.

4.6 HBPL is ambitious and confident about its future. It has already taken on a private sector legal partner, Bevan Brittan. It has applied to the Solicitors Regulation Authority to become an Alternative Business Structure (ABS). The approval for an ABS licence has now been granted with effect from 1st

December 2014. The ABS will be a separate legal identity to Harrow and I am told it would become a wholly owned Harrow Company. The management of the ABS is yet to be settled, although Barnet need not be involved in its management. HBPL also anticipates through its business plan that it may work for another or more than one other local authority.

4.7 Barnet's governance structure and arrangements changed in April 2013 as part of the restructure of the Council. The new structure contains no post of Director of Corporate Governance. In May 2013 Barnet's legally qualified MO left the Council. He had been the Director of Corporate Governance in the previous structure and was the last lawyer employed by the Council. The other Barnet in-house lawyers had transferred in September 2012 to HBPL.

4.8 There is no legal requirement to appoint a lawyer as MO, although in practice most Local Authorities do so by appointing their most senior lawyer to the role. Often the MO will sit on the top table as one of the most senior group of officers. The role was created in 1989 by the Local Government and Housing Act, although it received prominence from 2000 onwards when MOs dealt with the Standards Regime introduced under Part 111 of the Local Government Act 2000. They serviced the compulsorily established Standards Committees, and handled complaints of poor behaviour against councillors. The Localism Act 2011 considerably watered down the local government standards regime and thereby reduced the perceived significance of the MO in many authorities. However, it should be remembered that the role of the MO extends not just to governance and member behaviour but also to vires issues eg is the Council using the correct law? Is its exercising its discretion lawfully, appropriately and reasonably? Will this change programme lead to any unintended legal problems?

4.9 During 2013 Barnet appeared in cases which on occasion reached the High Court and/or the Court of Appeal. It lost the case on one of those. High level legal advice needs to be made available to the most senior officers and members during and before decisions are made internally, assessing the risk of legal challenge. This is a role usually carried out by the MO.

4.10 The MO's statutory role remains as the person who polices the lawfulness of an authorities conduct and decisions. In extremis, the statute enables the MO to issue a report to full council which has the effect of an injunction. Barnet may need to reassess how this role is carried out in Barnet.

4.11 It is unclear whether the advantages of appointing a shared legally qualified MO with Harrow were looked at before the departure of the Barnet MO. There are examples in London of where shared legally qualified MOs work well and where they have come into existence by the voluntary departure of one or other Borough MO.

4.12 The new MO in Barnet is the Director of Assurance, an accountant. She was appointed in April 2013. The Assurance Group was newly set up as part of the Council's restructuring arrangements and includes Barnet's

Governance team (BG) who are responsible for democratic, committee and members services. This includes all the administration, publication and compliance arrangements around the Agendas and reports for decision-making at committees and full Council. The MO is also responsible for Legal Services provided by HBPL. The MO role is no longer part of the corporate management of the Council because the role is not part of the top table of the most senior officers. However this MO role is part of the corporate arrangements by having a dotted line of accountability directly to the Chief Executive.

4.13 A side Agreement to the IAA was drafted at this time which adds acting as DMO, corporate, governance and MO support to the services to be provided under the IAA. This agreement remains unsigned by Harrow. It is imperative for the document to be signed as much of the work it refers to is being carried out in practice.

4.14 Despite the Side Agreement remaining unsigned, it seems to have been agreed by Harrow and Barnet in practice. In practice, HBPL have implemented the changes required by Barnet from no longer employing any lawyers. They have been providing support to the MO eg in redrafting the Constitution, they have been acting as DMO in the absence of the MO, they have given support to the MO in clearing reports for Council, the Harrow MO attends Barnet Council call-over meetings and attends Barnet Council Meetings. I have no doubt that his role there should be to provide the same level of legal advice and support to Councillors and Senior Officers in Barnet as he would do at Harrow Council meetings.

4.15 Since the beginning of the shared legal services arrangement HBPL have been providing a very rigorous clearing system for Committee reports. It has a spreadsheet arrangement keeping track of who was allocated the work, and ensuring that the 5 clear working days performance standard is adhered to.

4.16 HBPL is monitored quarterly at a meeting attended by officers including the 2 MOs and the 2 Chief Executives. HBPL is viewed as successful in dealing with the vast bulk of transactional legal work. However, there is feedback that they can be slow, and that they spend little time at Barnet outside of pre-arranged meetings. There had also been some discussion that a number of corporate lawyers would stay on site at Barnet. I was told that these lawyers would be treated as Barnet's lawyers under section 113 of the Local Government Act. However, this has not happened and there is a perception in Barnet that HBPL do not give Barnet the same priority as Harrow, due to not being on site and therefore not being available for the quick advice and discussions that tend to take place in corridors and at water coolers. These criticisms may not be well known in Harrow.

4.17 During Autumn and Winter 2013, a member led panel at Barnet devised a new Constitution which would implement alternative arrangements. This meant a move away from a Cabinet and scrutiny system back to a committee system. It required "unlearning" the 2000 Act. Political

proportionality on the new Committees, and a change in Members Allowances, could (and should) have been brought to members' attention by officers as part of that process. BG and HBPL were both involved in advising members throughout that process, which is regarded as having been successfully supported by those officers.

4.18 The Annual Meeting of the Council on June 2nd 2014 took place only 4 working days after the Council elections on 22nd May. This must have put pressure on all the staff involved because it meant preparing election result-sensitive reports very quickly. Planning for this meeting therefore should have started very early to minimize the risk of reports being wrong.

4.19 The Annual Meeting was due to be a particularly important meeting because of a number of significant events:

- Election of a new Mayor for the Council
- Election of a new Leader of the Council for a period of 4 years
- Commencement of a new Constitution reintroducing a new committee structure
- Appointment of Committee chairs and membership of all new committees reflecting group size and status after the council elections on May 22nd and giving effect to the political proportionality principles contained in the 1989 Act.
- A new members allowances scheme reflecting the new roles in the Constitution

4.20 The legal principles of political proportionality are to be found in sections 15-17 of the Local Government and Housing Act 1989. In essence, it requires that the majority of the number of seats on a committee should reflect the political group that holds a majority on the Council, to ensure that political groups have proportionate representation overall. These rules can be disapplied from a committee or sub-committee if there is a unanimous vote at full council.

4.21 The legal requirements to be reflected in the members' allowances scheme are to be found in the Local Authorities Members Allowances (England) Regulations 2003. Regulation 5 covers the basic allowance and a scheme is required to be made before 31st March each year.

4.22 Neither of the reports dealing with these two issues was correct. Below I set out the chronology of events which explains how this all came about in 2014.

4.23 Chronology of events (2014) :

- 29th April – Barnet Governance (BG) requests legal advice from HBPL by email about payments to councillors/members allowances- advice given

- 16th May- Further advice requested by BG and given from HBPL on members allowances noting that scheme expired on 31st March
- 16th May – draft political proportionality (PP) report sent by email from BG to HBPL. No numbers against Committees as election not held yet. *“can you let me know asap if you have any comments”*
- 16th May – HBPL internal email allocating report to lawyer and asking *‘can you look at this please?’*
- 20th May – Legal advice from HBPL to BG and AT on only 60 as opposed to 63 councillors being elected on 22nd May due to Colindale ward election being delayed to June 26th. This is not in response to draft report sent by BG on 16th May. The advice quotes the need to have majority on committees from political group holding 31 seats.
- 20th May – email HBPL to BG – asking for BG to call HBPL re PP report- no response and no follow up
- 22nd May – Election- 60 rather than 63 councillors elected as Colindale election delayed to 26th June. 32 Conservative, 27 Labour, 1 Lib Dem
- 27th May- Draft PP report (with numbers) sent by BG to group leaders and political assistants. No comments received from HBPL
- 29th May – Draft PP report (with numbers) sent to HBPL by BG
- 29th May- HBPL internal email sending draft PP report (with numbers) to allocated lawyer
- 30th May – BG sends draft Members Allowances report to Leader of Council cc HBPL
- 2nd June – BG prints reports without legal clearance. Taken to Council.
- 2nd June - Pre-meeting with Mayor, and Barnet and Harrow MOs.
- 2nd June - Council meeting itself described as a *‘shambles’* because for example not all members had the same papers and amendments.
- 13th June – Advice from HBPL to AT that decision made by Barnet re Members Allowances are lawful- further report will go to July Council
- 13th June – AT asks HBPL for advice reviewing PP

- 16th June – Advice HBPL to AT PP report wrong so committees cannot go ahead. AT asks for advice from Leading Counsel
- 17th June – James Goudie QC instructed and advises: Calculations for committee memberships are wrong, errors should be corrected asap, no proceedings of committees will be invalidated in the meantime due to the savings provisions in the 1972 Act.
- 17th June- AT advises all members of James Goudie's advice and that he will appoint an external reviewer
- 20th June – AT advises all members that all meetings will go ahead except Pensions, and external reviewer appointed. Brief for the external review is set.
- 26th June – Colindale election – 3 Labour members elected. C = 32, Labour = 30, Lib Dem = 1
- 15th July – Council meeting subject to a very tight procedure and process, takes reports on Members Allowances and PP – all reports cleared by James Goudie QC

5. Findings

5.1 In this part of the report I answer some key questions that have arisen or have been asked by people during the course of this investigation, and then I provide my findings, based on the facts as I have found them. Recommendations follow in the next section.

5.2 Who is responsible for Council reports?

Barnet's governance team and their line manager, the MO are responsible for the production of Council reports. They need to be quality controlled and BG must control the process of ensuring quality. The reports need to be correct, in the correct format, containing the financial, legal and other relevant advice, meet the correct deadlines and preferably be in plain English.

5.3 Who is responsible for the correctness of council reports?

BG must own the quality control process and inform all others affected by it of deadlines and expectations. A failure to reply by a key contributor should not be taken that the contributor has no comments. The failure to reply should be escalated to the MO and Chief Executive if necessary. If the failure is by an external contractor, this may constitute a breach of contract.

5.4 Was 2nd June Council any different due to it being the Annual Meeting?

Yes – the Annual Meeting is a mixture of formal events, such as the election of the Mayor, and decisions which open the municipal year such as election of the Leader, establishing the members allowance scheme and memberships of committees and external bodies. An early draft agenda and early draft reports are essential to ensure all involved appreciate the significance of the Annual Meeting. Annual Meetings are often described as too long and too boring. This describes a meeting that has usually been so well prepared that nothing is left to chance.

5.5 What were the risk issues? How can they be mitigated?

Barnet failed to recognize when things are going wrong and how they could be put right. It failed to anticipate how much time and what effort needed to be put into getting the issue right first time. The risks could be minimized through

clear roles, systems and processes, combined with experience and judgement. These risks remain.

5.6 Why was the Council given wrong advice on Political Proportionality and members allowances?

Both reports were repeated from previous reports and therefore did not address current legal issues which had arisen in the meantime, and were not subject to legal scrutiny as to whether they remained correct.

In the case of political proportionality, the report which went to the Annual Meeting was copied from the previous year's Annual meeting. The 2014 situation was different in two key respects a) in 2013 Barnet had a cabinet and scrutiny structure, so there were fewer committees which were non-executive because all executive decisions were taken at Cabinet, b) The Conservative group, Labour group composition was 58.73% to 34.92%. With 10 member committees, a 6 - 4 split was therefore correct.

In June 2014 the proportion held by political groups after the election was much closer - 54.25% to 45.76%. Therefore, in order to reflect the fact that the conservatives have a majority of seats, albeit a reduced majority, they must have a majority on each committee. Changing 6-4 to 5-5 failed to reflect that principle.

The 2014 Members Allowances scheme needs to reflect the new political managements arrangements of Chairs of Committees, rather than Cabinet postholders. The 2010 scheme had not been taken to Council for annual decision since it was made, had not considered the London Councils Independent Remuneration Panel findings, and had actually expired on 31st March 2014. None of this was made clear in the June 2nd report. However, the Harrow MO advised that the subsequent report to July 15th Council would be able to make a new lawful scheme.

5.7 Is Barnet at longer term risk in its legal and governance arrangements?

Yes, probably. Barnet must make some changes in its governance and legal arrangements to ensure that it has access to pro-active professional and expert advice at all relevant times in future. In this way it can rebuild the trust and confidence of members and officers in those services.

Findings

5.8 I find that Barnet's Governance Team were responsible for the reports being sent to print in their incorrect form and subsequently voted on by members at June 2nd Council meeting. Members were not advised that the reports had no legal clearance, and the form of the report gave no indication of whether the report had been cleared or not.

5.9 I also find that Barnet's Governance team were jointly responsible with the shared legal service, HBPL, for those reports going to print containing misapplications of the correct law, and allowing members to vote on them as

though they were correct. Copies of the reports had been sent to HBPL at an early stage. They gave no comments or advice. The Harrow MO attends Barnet Council meetings in order to advise the MO and Chief Executive.

5.10 I further find that Barnet is at risk of a subsequent similar governance failing. There are changes that need to be made to both the IAA and Barnet's internal governance arrangements to prevent this. There are options that are available to Barnet to facilitate those changes. My subsequent report will address those.

6. Recommendations

6.1 That BG implements the same high level of control over its council reports as it does over other Committee reports.

6.2 That it takes early legal advice before drafting reports, as well as taking legal advice for clearance purposes.

6.3 That HBPL provides early legal advice outlining the legal principles to be involved in council reports.

6.4 That HBPL extends its actions of clearance within 5 days towards council reports in the same way as it does towards committee reports.

6.5 That BG informs HBPL well in advance of the subject matter of reports likely to be submitted to council meetings.

6.5 That Barnet and Harrow review and sign the 2nd or side agreement to the IAA.

6.6 That Barnet looks carefully at the options to strengthen its governance arrangements, including looking at the contract with HBPL, addressing the issue of professional clienting of the IAA, addressing the issue of lawyers not being on site at Barnet, considering the implications of having exercising s101 of the Local Government Act 1972 to delegate all its legal functions to Harrow.

7. Conclusion

7.1 Barnet Council was ridiculed in the local press for finding itself in the position of having misapplied the political proportionality rules and thereby failing to keep member decision-making safe from challenge. The Chief Executive was subsequently given advice that committees that were not properly and lawfully constituted, an could not continue to meet and make decisions prior to the next Council meeting on July 15th. Leading Counsel's opinion was taken and he advised that although the political proportionality rules had been misapplied, the committees could continue to meet and make lawful decisions due to the savings provisions in the Act. Leading Counsel's opinion was preferred.

7.2 The facts leading up to these events demonstrate that there was no clear protocol or process between Barnet Governance Team and HBPL for providing legal clearance of council reports to ensure that they were correct. In the case of both the political proportionality report and the members allowances report, legal advice was asked for from HBPL. It was not forthcoming, and the absence of legal advice in the reports was not escalated nor chased by Barnet Governance Team.

7.3 The risk of either of those reports being wrong was therefore high, given that Barnet does not employ any lawyers itself, and the relevant governance staff responsible for these reports are relatively inexperienced.

7.4 This high reputational risk to the council was multiplied by the change to alternative political management arrangements, ie a return to the Committee system. This risk was further aggravated by a very close election result.

7.5 Mitigation of the risk would necessitate early consideration of the legal principles, and close and careful attention being paid to the compilation of reports, in draft, and when submitted to council for decision. This would require at the very least, close collaboration between HBPL and Barnet Governance Team.

7.6 All parties involved were capable of spotting that something was wrong with the reports, but no-one did. To those members involved, the perception was that no-one was in charge.

7.7 I find that Barnet's Governance Team were responsible for the reports being sent to print in their incorrect form and subsequently voted on by members at June 2nd Council meeting. Members were not advised that the reports had no legal clearance, and the form of the report gave no indication of whether the report had been cleared or not.

7.8 I also find that Barnet's Governance team were jointly responsible with the shared Legal Service, HBPL, for those reports going to print containing misapplications of the correct law, and allowing members to vote on them as though they were correct. Copies of the reports had been sent to HBPL at an early stage. They gave no comments or advice. The Harrow MO attends Barnet Council meetings in order to advise the Barnet MO and Chief Executive.

7.9 In order to prevent the risk of some other governance failing attributable to the absence of legal advice or misapplication of legal advice, a number of changes need to be made to both the IAA and to Barnet's internal governance arrangements.

Appendix One – Evidence

Interviews:

Andrew Travers - Chief Executive, London Borough of Barnet
Maryellen Salter – Director of Assurance and Monitoring Officer, London Borough of Barnet
Councillor Richard Cornelius - Leader of the Council, London Borough of Barnet
Councillor Alison Moore – Leader of the Opposition, London Borough of Barnet
Andrew Nathan – Head of Governance, London Borough of Barnet
Matthew Rose – Political Assistant, Conservative Group, London Borough of Barnet
Hugh Peart – Director of law and Corporate Governance, London Borough of Harrow
Jessica Farmer – Head of Practice, HBPL, London Borough of Harrow
James Goudie QC – 11 Kings Bench Walk

I also spoke with Paul Najsarek, interim Head of Paid Service at London Borough of Harrow, but this was by way of update, and was not an interview.

Documents

Proportionality Report taken at June 2nd 2014 Council meeting
Draft report with no numbers of members dated 16th May 2014
Draft report with numbers of members dated 29th May 2014
Emails from Andrew Travers to members about the developing situation
Email exchanges between HPBL, Barnet Governance team, Barnet MO, Andrew Travers
Advice from James Goudie QC dated 17th June 2014
Miscellaneous press cuttings
Constitution of London Borough of Barnet

Report on Members Allowances to Council dated
Draft Members Allowances report 29th April 2014
Various emails between HBPL, Barnet Governance team, Barnet MO, Councillors and Political Assistants

Committee report to Barnet Council establishing the shared legal service 4th
April 2012
Committee report to Harrow Council establishing the shared legal service 4th
April 2012
Inter Authority Agreement re HBPL 17th August 2012
Committee report to Barnet Council establishing Deputy Monitoring Officer as
HBPL- 29th January 2013
Unsigned and undated Side agreement re Deputy Monitoring Officer and
additional support to Barnet Monitoring Officer
HBPL Business Plan 2014-17