

	<h2>GENERAL FUNCTIONS COMMITTEE</h2> <h3>9 June 2016</h3>
<p style="text-align: center;"><b>Title</b></p>	<p style="text-align: center;"><b>Independent Investigation into Election Problems in Barnet on 5 May and the Council’s Response</b></p>
<p style="text-align: center;"><b>Report of</b></p>	<p>Interim Chief Executive</p>
<p style="text-align: center;"><b>Wards</b></p>	<p>All</p>
<p style="text-align: center;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: center;"><b>Urgent</b></p>	<p>Yes</p>
<p style="text-align: center;"><b>Key</b></p>	<p>Yes</p>
<p style="text-align: center;"><b>Enclosures</b></p>	<ul style="list-style-type: none"> <li>• Appendix A: Mr Mark Heath’s Barnet Elections Investigation – final report and appendices</li> <li>• Appendix B: EU Referendum Timetable</li> </ul>
<p style="text-align: center;"><b>Officer Contact Details</b></p>	<p>John Hooton, Interim Chief Executive</p>

<h2>Summary</h2>
<ul style="list-style-type: none"> <li>• This report overlays the final report and recommendations of Mr Mark Heath – the Returning Officer for Southampton – who has conducted an independent, external investigation into the problems experienced at Polling Stations in Barnet on the morning of 5 May.</li> <li>• In view of the need to understand what went wrong and put in place changes ahead of the EU referendum on 23 June, Mr Heath’s investigation was necessarily focused on the issues that led to incorrect electoral registers being sent to Polling Stations on 5 May. The Terms of Reference of Mr Heath’s investigation are set out in this report.</li> <li>• Mr Heath’s report finds that it was human error that caused incomplete registers to be printed and then distributed to the Polling Stations. Subsequently, inadequate checking and escalation processes failed to pick up this error.</li> <li>• In response to Mr Heath’s findings and recommendations, which have been accepted, this report sets out the process changes and improvements that have already been, or will be, implemented ahead of the EU referendum on 23 June.</li> <li>• Following the referendum, it has been recommended by Mr Heath that the Interim Chief Executive and Returning Officer initiate a review of the way in which elections in Barnet</li> </ul>

are delivered and how the electoral services function operates, to produce suitable recommendations on resources, future management, support arrangements, operating practices, compliance issues and responsibility/accountability for the electoral services function.

## **Recommendations**

- 1. That the Committee notes Mr Heath's report and the recommendations put forward for implementation ahead of the EU referendum on 23 June.**
- 2. That the Committee notes that the interim Chief Executive and Returning Officer has accepted all of the recommendations in Mr Heath's report, and the status of the council's implementation of these recommendations.**
- 3. That, in line with Mr Heath's recommendation, the Committee notes the intention of the interim Chief Executive and Returning Officer to initiate a review of the way in which elections in Barnet are delivered and how the electoral services function operates. Terms of Reference will be brought back to this Committee on 29 June and will include the points set out in the motion at Annual Council. The final report and recommendations will be brought to this Committee before the end of the year.**

### **1. WHY THIS REPORT IS NEEDED**

1.1 It is a statutory requirement that the process of administering and running elections is held entirely separately from politicians. During the London Mayor and GLA elections on 5 May, voters in Barnet experienced problems with voting during the morning of the elections as a result of incomplete electoral registers being sent to the 155 Polling Stations across the borough. An independent, external investigation was launched quickly, to identify what went wrong and implement changes ahead of the EU referendum on 23 June.

#### **The statutory requirement for the process of administering and running elections**

- 1.2 Elections have to be conducted outside the normal political processes. This is both a legal and common sense requirement.
- 1.3 The duties of a Returning Officer are separate from the duties held by that individual as a local government officer. A Returning Officer is not responsible to the local authority but is a separate legal entity to that of the Council which appointed him/her and is directly accountable to the courts as an independent statutory office holder.
- 1.4 The Returning Officer is not fettered by the Council's normal procedures in terms of conducting the election or subject to direction or instruction from members of the Council in respect of the discharge of the responsibilities falling to the statutory office. This reflects the position enshrined in statute that an independent officer is responsible for the proper conduct of the election "without fear of favour".

## **The appointment of the independent investigator – Mr Mark Heath**

- 1.5 The interim Chief Executive sought independent advice from London Councils on candidates to lead the investigation. London Councils recommended Mr Mark Heath, the Returning Officer for Southampton, because of his experience in running elections for more than 20 years as a Returning Officer.
- 1.6 Mr Heath, a solicitor, was selected due to his election experience. Mr Heath also serves on several Government and Electoral Commission groups on electoral law, policy and practice. Mr Heath has been responsible for all the elections run in Southampton for over 20 years, including council and parliamentary elections. He is the Regional Returning Officer for the South East Region of the UK and was responsible for the conduct of the 2009 and 2014 European Parliamentary Elections and the AV Referendum in 2011 in the South East. In addition, Mr Heath is the Police Area Returning Officer for Hampshire and as such has been responsible for the conduct of Hampshire's Police and Crime Commissioner elections in 2012 and 2016.

## **Electoral Commission Performance data for Barnet's Electoral Functions**

- 1.7 The problems which arose at Barnet Polling Stations on 5 May were unacceptable and lessons must be learned.
- 1.8 In terms of previous elections performance in Barnet, Mr Heath's report sets out the Electoral Commission performance data for Barnet which he looked at to provide context for the performance of the borough's election function. The report states that Barnet have met all (except one) of the Returning Officer and Electoral Registration Officer performance standards since 2009. The only exception relates to timing of despatch of poll cards at the 2012 GLA elections where, because of inconsistencies in guidance provided by the Commission and the GLRO, different date parameters were given in respect of poll card deliveries.

## **Investigation Terms of Reference**

- 1.9 The Terms of Reference of Mr Heath's investigation were to examine:
  - 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
  - any relevant recommendations, for example on process improvements.

- 1.10 Due to the need to identify what went wrong and implement changes ahead of the EU referendum on 23 June, and bring the findings back to this Committee ahead of that, the investigation was time-constrained and necessarily focused on these issues.
- 1.11 As part of the investigation, voters who experienced problems at polling stations on 5 May were invited to provide feedback via the council's website or over the phone. The feedback was used by Mr Heath to inform his final report and recommendations.

### **Information provided to Mr Heath and who he consulted**

- 1.12 As Mr Heath's report sets out, his investigation consulted a range of different people through various means including phone calls, written statements, background evidence and face to face interviews. A range of documentation was supplied to Mr Heath from the Barnet elections team, including written evidence from Barnet Presiding Officers. Mr Heath was also provided with a dossier of the responses collected from voters who were impacted on the day, submitted via the council's website or over the phone.
- 1.13 Mr Heath also spoke to a number of other individuals, bodies and organisations to obtain information relevant to this investigation, namely representatives of the Cabinet Office (as the Government department responsible for Elections); the Electoral Commission; the Greater London Returning Officer's Office; the Chief Counting Officer and the Regional Counting Officer for London for the EU Referendum; the Returning Officer at Camden; the Managing Director of the company that supplied the electoral management system to Barnet (Xpress); and the Association of Electoral Administrators (AEA).
- 1.14 Mr Heath has also confirmed that he was passed information by Mr Andrew Dismore, the London Assembly Member for Barnet and Camden, which included copies of correspondence received from members of the public and a summary spread sheet. This was taken into account in the investigation.

### **Indication of number of voters impacted**

- 1.15 Mr Heath's report sets out an indication of the number of voters impacted on 5 May. As the report makes clear, the information collected by Presiding Officers is not definitive but is the best indication of at least the scale of impact.
- 1.16 The spread sheet included as an appendix to Mr Heath's report shows that around 500 incidents were logged by Presiding Officers, which Mr Heath has used to conclude that the scale of the issue and the impact would appear to have been in the hundreds rather than the thousands as was initially reported.

### **Mr Heath's recommendations and the status of the council's response**

- 1.17 Mr Heath's final report and recommendations is attached at Appendix A. Mr Heath's report finds that it was human error that caused incomplete registers to be printed and then distributed to Polling Stations. Subsequently, inadequate checking and escalation processes failed to pick up this error.

1.18 The recommendations which Mr Heath puts forward are separated into those which require implementation before the EU referendum on 23 June and those to be taken forward after 23 June.

1.19 The interim Chief Executive and Returning Officer has accepted all of Mr Heath's recommendations. This section of the report sets out the council's response to the recommendations and the status of the actions that have already been – or will be – implemented before 23 June. It also makes clear the intention to conduct a full review of the way in which elections in Barnet are delivered and how the electoral services function operates, which will begin post 23 June.

## **Recommendations for 23 June**

### **Recommendation 1**

1.20 The Regional Counting Officer (London) should identify a suitable Returning Officer to support the Barnet Counting Officer in overseeing the conduct of the EU referendum on 23rd June.

### **Council response and status**

1.21 The interim Chief Executive has been in liaison with London Councils and the Regional Counting Officer and it has been agreed that John Barradell, Chief Executive of the City of London Corporation, will provide support to the Barnet Interim Chief Executive from week commencing 30 May. Mr Barradell will be based in Barnet for the equivalent of 1 day a week.

### **Recommendation 2**

1.22 The Counting Officer (and the Returning Officer identified to oversee as set out above) should work with the Regional Counting Officer (London) who will set his requirements as to additional oversight, supervision, the content of risk and project plans and other requirements as he sees fit.

### **Council response and status**

1.23 The interim Chief Executive has been in liaison with Mr Barry Quirk, the Regional Counting Officer for London. It has been agreed that Mr Quirk's team will meet on site with himself, Mr Barradell and Barnet elections team, to review the preparation for the EU referendum.

### **Recommendations 3, 4 and 5**

1.24 For the avoidance of doubt, rigorous and multiple checks must be made at all stages of the process and there must be a robust escalation process in place.

1.25 Appropriate arrangements must be made to enable Presiding Officer to check the contents of their ballot boxes and advise the elections office in case of issue, such reports must be appropriately recorded, escalated where necessary and followed up.

1.26 The Counting Officer must be informed of any issues that he should be made aware of (in accordance with a new systemic escalation procedure) at once.

### **Council response and status**

- 1.27 In relation to 5 May elections, the location for the collection and checking of the ballot boxes was changed from the North London Business Park to the 'BEST Hub' in Colindale. The change of venue was widely communicated to the Elections Project Team and Presiding Officers. However, some of the detailed implications for the change in venue on the checking processes were not widely appreciated.
- 1.28 For the referendum the individual polling station registers will be checked against the correct GLA elections register for accuracy and completeness by the Head of Electoral Services following printing and initial checks by the Electoral Registration Manager.
- 1.29 Presiding Officers (POs) will also be given additional information about their individual polling station register and trained on a process to enable them to check their specific polling station register (using provided data on the electoral franchise and appropriate markers relevant to that election).
- 1.30 For the EU referendum – and future elections - the collection of ballot boxes, ballot papers and other polling materials by POs will be brought forward so that it does not happen the day before polling day. It will be brought forward by 24 hours when compared to the previous elections, in order to give more time for checking and for any issues to be identified and reported. For the referendum, POs will collect all items on Tuesday 21 June and be asked to report any concerns or issues by midday on Wednesday 22 June. Any concerns raised by POs will be escalated to the Head of Electoral Services and the Counting Officer within one hour of being received.
- 1.31 The processes outlined above will be fully documented by the Head of Service and signed off before implementation by the Barnet Returning (Counting) Officer, the LBB Monitoring Officer.

### **Recommendation 6**

- 1.32 The Counting Officer shall ensure that robust systems are in place regarding communications between Presiding Officers, Polling Station Inspectors and the elections office on polling day.

### **Council response and status**

- 1.33 The Head of Electoral Services will ensure that there are (at least) two discrete systems in place that are capable of texting messages directly to all POs and Polling Station Inspectors simultaneously, in case the need for specific message to all POs is required at any time on polling day or the day before.
- 1.34 These are currently anticipated to include: 1) business-tariff mobile telephones with 'group-texting' capabilities (pre-loaded with all PO mobile phone numbers) 2) a web-based marketing SMS service that can send simultaneous text messages to pre-set mobile phone numbers. [*Also being investigated are the pupil's parent-texting services currently utilised by a number of Barnet schools and the Emergency Planning Messaging service used to escalate information in cases of civil emergency.*]

1.35 In addition, the number of trained Polling Station Inspectors will be increased from the usual 12, to a minimum of 15 to enable assistance to be more locally available for polling stations.

1.36 The Elections Call Centre and public helpline will be available with calls going directly to agents (and not an automated answering and messaging system) from 6:30am on polling day with a minimum of 10 agents available to take calls.

#### **Recommendations 7 and 8**

1.37 Xpress (the Election management Software supplier) should send out an appropriate communication to all Xpress users making them aware of the issue that occurred in Barnet on 5<sup>th</sup> May and the checks that should be taken to ensure this is not repeated on 23<sup>rd</sup> June.

1.38 The Chief Counting Officer should send out a similar communication to all Counting Officers (whether users of Xpress or not) so all are aware of the issue and can undertake additional appropriate checks to ensure all are printing full registers for Polling Stations.

#### **Council response and status**

1.39 This has been communicated to Xpress and they have confirmed that this will be implemented. The Chief Counting Officer will also send out a similar communication to all Counting Officers.

#### **Recommendation 9**

1.40 The Chief Counting Officer should ensure that the Regional Counting Officer (London) has sufficient resources so as to support Barnet in whatever way he deems appropriate.

#### **Council response and status**

1.41 The Barnet Returning Officer has been in dialogue with the RCO London to ensure sufficient resources are in place.

#### **Recommendations for post-23 June**

#### **Recommendation 10**

1.42 Xpress should consult with other Councils to establish what changes, if any should be made to remove the possibility of re-occurrence.

#### **Council response and status**

1.43 Mr Heath has confirmed that he taken this up with the Managing Director of Xpress, who has agreed to take this forward.

#### **Recommendation 11**

1.44 The Returning Officer should initiate a review of the way in which elections are delivered and how the electoral services function operates with a view to producing suitable recommendations on resources, future management, support arrangements, operating practices, compliance issues and responsibility/accountability for the electoral services function.

#### **Council response and status**

- 1.45 The interim Chief Executive and Returning Officer will initiate a review of the way in which elections in Barnet are delivered and how the electoral services function operates and will cover the issues set out by Mr Heath.
- 1.46 The review will be taken forward post 23 June and will involve external challenge, as well as taking account of the other advice put forward by Mr Heath. Terms of Reference will be brought back to this Committee on 29 June, and will include the points set out in the motion at Annual Council. The final report and recommendations will brought to this Committee before the end of the year.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Following the problems experienced by voters in Barnet on 5 May, it was essential to move quickly to put in train an independent, external investigation into what went wrong and what needed to be remedied ahead of the EU referendum on 23 June. The interim Chief Executive and Returning Officer sought independent advice from London Councils on who should lead the investigation. Acting on this advice, the interim Chief Executive appointed Mr Mark Heath to lead the investigation.
- 2.2 Mr Heath's report and the recommendations he has put forward have been reached independently. The interim Chief Executive and Returning Officer accept all of Mr Heath's recommendations. As this report sets out, changes have already been put in place against the recommendations for action before 23 June, and a full review of electoral services will be taken forward post-23 June.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 An investigation into the problems of 5 May was clearly needed. The alternative option would have been to conduct the investigation in house. However, this was not considered due to the need for an experienced, independent investigator to give credibility to the investigation, determine what went wrong and put forward recommendations. It was essential that this was an independent investigation to give confidence to the council, Members and voters.
- 3.2 Another alternative would have been for the independent investigator to have been drawn from outside local government, for example by appointing a QC. However, given the need for a rapid review to inform the EU referendum, it was considered that an experienced local government returning officer would be better placed to review and make recommendations to that timescale.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 All of Mr Heath's recommendations have been accepted. This report sets out how a number of the recommendations have already been implemented, and this will continue ahead of the EU referendum on 23 June to ensure the process is robust. The wider review into electoral services will begin post-23



June, with Terms of Reference brought back to this Committee on 29 June and final report before the end of the year.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

5.1.1 It is a council Corporate Priority to ensure fairness in decision making. In line with this, it is essential that electoral processes are robust and fair to all in Barnet. In response to Mr Heath's investigation, this report sets out the changes that have been made and the further work which will be undertaken to ensure future elections in Barnet are conducted appropriately.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 All actual and necessary costs of the EU referendum are met by the Cabinet Office and so it is not anticipated that any additional resources will be required for the EU referendum. However, the cost of local elections are met by the Council and so any recommendations coming out of the planned wider review may lead to increased costs. The Council is obliged to meet any additional requirements the Returning Officer considers necessary.

5.2.2 Increases in on-going costs in relation to local elections will be reported and agreed as part of the detailed review brought back to GFC later this year.

5.2.3 The cost of the 5 May elections investigation will be finalised once the investigation has been completed, the findings have been reported to the General Functions Committee and the input of the independent investigator is no longer required. This one-off cost will be met from the risk reserve.

### **5.3 Social Value**

5.3.1 Not applicable.

### **5.4 Legal and Constitutional References**

5.4.1 Under paragraph 3 of the European Union Referendum Act 2015 (the 2015 Act), the Counting Officer is the person who, by virtue of section 35 of the 1983 Act is the returning officer for the Council elections. The Returning Officer role carries with it a personal responsibility.

5.4.2 The Council Constitution, Responsibility for Functions, Annex A sets out the terms of reference of the General Functions Committee, which include responsibility for 'Elections in general.'

5.4.3 This report concerns a key decision, being one which is significant in terms of its effects on communities living or working in an area comprising two or more wards in accordance with section 6.5 of the Responsibility for Functions in the Council Constitution.

5.4.4 The recommendations set out in this report are considered to be urgent as the consideration of the independent investigator's findings and implementation of any recommendations arising must take place immediately in order for the action plan to be implemented in advance of the EU Referendum on 23 June 2016. The Chairman of the General Functions Committee and Interim Chief Executive have both agreed that the report is urgent.

5.4.5 In accordance with section 6.10 of the Responsibility for Functions, this report may not be referred up to the committee's parent body (Council) as it is classified as urgent for the reasons stated in paragraph 5.4.4 of this report.

## **5.5 Risk Management**

5.5.1 This report notes the recommendations made by the independent investigation. The point of the investigation was to identify what went wrong and learn from it, and so the actions detailed in the recommendations are designed to identify and minimise any risks.

## **5.6 Equalities and Diversity**

5.6.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies **to have due regard** to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

5.6.2 The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies and the delivery of services.

5.6.3 While it was clearly unacceptable that any registered voter should have been denied the opportunity to vote, there is no evidence that the problems on 5 May disproportionately affected any of the groups protected under the Equality Act.

## **5.7 Consultation and Engagement**

5.7.1 The Electoral Commission were consulted on Mr Heath's appointment and the Terms of Reference of the investigation. These were also set out publicly via the council's website. As part of the investigation, voters who were impacted were invited to submit their feedback via the council's website or over the phone.

## **5.8 Insight**

5.8.1 Not applicable.

**6. BACKGROUND PAPERS**

None