

| ELECTIONS COMMITTEE | | |
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| Report Title | Referendum on the alternative voting system 5 May 2011- review | |
| Key Decision | n/a | Item No. |
| Ward | n/a | |
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| Class | Part 1 | Date: 7 November 2011 |

1. Purpose

This report reviews the arrangements for the Referendum on the alternative voting system which took place on 5 May 2011

2. Recommendation

That the Committee note this report.

3. Introduction

- 3.1 The referendum in the London Borough of Lewisham (LBL), as in most of London, was a relatively straightforward affair with no particular issues being identified at a local level. However issues were identified outside of London where there were various combinations of elections which mirrored the complexity LBL and other London authorities saw in the May 2010 parliamentary, mayoral and council elections.
- 3.2 The Electoral Commission, who had legislative responsibility for the conduct and delivery of the election published "Referendum on the voting system for UK parliamentary elections –Report on the May 2011 referendum in October."
- http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/141328/Final-PVS-report.pdf
- 3.3 The Association of Electoral Administrators (AEA) published its report "The administration of the referendums and elections across the UK in 2011" in July.
- http://www.aea-elections.co.uk/downloads/reports/aea_election_referendum_report_2011.pdf
- 3.4 Both summarised the referendum on the 5 May as being remembered for the political outcome, not with any issues connected with the

administration of the polls that took place that day. Outside of London the referendum was held at the same time as national elections in Scotland, Wales and Northern Ireland as well as local government elections in England and Northern Ireland. In Wales there was a referendum on the law making powers of the National Assembly for Wales on 3 March ahead of the 3 May referendum.

3.5 The main recommendations coming out of these reports reflect national issues more than any local issues for LBL and London and were similar to those resulting from the May 2010 elections in LBL and London as a whole. The key recommendations are:-

- Bring forward legislation to require that electoral law, including any directions issued by those empowered to give such directions which have the force of law, cannot be applied to any referendum or election within six months of the new provisions coming into force. This recommendation was originally contained in “Independent Review of Scottish Parliamentary and Local Government Elections” published in 2007 by Ron Gould more commonly known as the Gould report.

The Parliamentary Voting System and Constituencies Act (PVSCA) did not become law until it received Royal Assent on the 16 February 2011 and until then there was speculation that a clause added in the House of Lords would enable the referendum to take place up any day up to the 31 October, might succeed in being added to the Act.

- Timely publication of the Fees and Charges Order. Whilst an indication of likely funding had been received early in the process, the Order only came into effect on the 5 April 2011, and only then were detailed guidelines published.
- Support the proposed Law Commission review and simplification of electoral law.
- Thoroughly examine and change, where necessary, the rules relating to combination of polls and absent voting, for polls being held on the same day
- Review the Code of Conduct for political parties, candidates, canvasses and campaigners with regard to absent voting and prescribe a postal voting application form.
- Review the current absolute requirement to count the unused ballot papers as part of the verification process so that the requirement would only be carried out in certain prescribed circumstances.

4 Permitted participants

At a referendum there are no candidates. However there were four permitted participants who campaigned in accordance with their views. They were: Conservative and Unionist Party; Labour No to AV; No Campaign Limited and Yes in May 2011 Ltd. The DCO at LBL held a meeting for permitted participants as directed by the EC but which only one group attended.

5. Turnout and result

5.1 The franchise for the election was the eligible parliamentary electorate which excluded citizens of the EU (those marked with a G or K) in the register of electors. In the LBL counting area there were 172,573 eligible voters, of which 21,410 were postal voters and 174 were proxy voters.

5.2 The turnout for the referendum in LBL was 33.2%, 44,030 votes were cast in polling stations and 13,264 votes were cast by post, the total votes cast being 57,294. The turnout for London as a whole was 35%. London had a lower turnout than many other places across the UK largely due to the fact that the referendum was not combined with any other elections as in other regions. The national turnout was 42.2%, with the result being 13,013,123 (67.9%) people voting "no" and 6,152,607 voting "yes" (32.1%). In LBL the result was 28,929 (50.7%) voting "no" and 28,184 (49.3%) voting yes.

6. Postal votes

6.1 The postal vote issue was outsourced to the printers Financial Data Management Limited (FDML). The DCO had piloted the outsourcing of postal votes at both Ladywell and Bellingham by elections in 2010 and was satisfied with their security and quality assurance testing. The DCO and ESM also visited FDML's premises prior to mailing to conduct random sample checks and inspect the process.

6.2 In accordance with EC instructions 100% of personal identifiers on returned postal votes were checked. Whilst the statutory requirement is to check 20% LBL has always conducted 100% check, even though financing assumptions by the Cabinet Office assume only 20%.

7. Yes to Fairer Votes Postal vote campaign

7.1 One issue that surfaced very late in the day was that the campaign group Yes to Fairer Votes (Y2FV) produced and mailed its own postal vote application form. This was communicated to Electoral Registration Officers (EROS) at the end of March 2011. In London it was calculated that 1,258,133 postal vote application forms were sent to 22% of the electorate. In LBL we were told that the form had been sent to 56,000 voters, 33% of the eligible electorate.

- 7.2 If there had been a significant response to this campaign it would have put pressure on the registration team shortly before the postal voting cut off time. Whilst we build contingency into the process, the scale of this operation was unprecedented and not planned for.
- 7.3 We had a number of complaints from voters who already had postal votes in place that the ERO was supporting the Y2FV campaign as the return address was the ERO's office. It also meant that postal voting stationary requirements had to be revised upwards at very short notice. In some cases Y2FV had obtained the business response mailing codes of local authorities or their free post address. This did not happen in LBL but we had a significant number of forms returned where no stamp was affixed and we had to bear the cost. The advice received from the EC was that we should not refuse them but we could not claim the cost.
- 7.4 The application form provided by Y2FV did not conform to our standards and our software providers had to provide an emergency fix so that we could scan the barcodes and capture the signatures and dates of birth on these forms. The application was for the referendum only which caused administrators outside London problems where there were combined elections.
- 7.5 Y2FV had approached the EC who confirmed to them that their form met the relevant legal requirements. However the EC stated that they do not as a matter of principle formally approve forms. They also said they could not share this type of campaign information with EROs as it was confidential.
- 7.6 The Y2FV postal vote campaign is driving the recommendations for a prescribed postal voting form and the issue of practical guidelines to campaign groups to ensure that any future such mailings are targeted effectively, do not duplicate existing arrangements and the costs are paid for by the campaign group in question.

8. **Polling Places**

- 8.1 109 Polling places were used at this election. Of these five were Portakabins. There were no reports of any incidents at polling stations nor were there any complaints about accessibility or facilities in general at any of our polling places by members of the public, presiding officers (POs) and visiting officers (VOs).
- 8.2 We do have robust contingency arrangements in place to cover the opening or failure to gain access to a polling station. It should be noted that we had to use our standby locksmiths to gain access to Downham Community Centre following a call from the PO at 06.00am on the day of poll that the caretaker had not arrived to open the premises.

8.3 There was also a problem at the new polling station at Hatcham Oak Children's Centre in Walbuton Road in Telegraph Hill Ward, which replaced Haberdasher Aske's Hatcham College in Pepys Road, where the security firm did not arrive until just before the opening of poll at 07.00 to open the premises. We mobilised our mobile polling station, the Sure Start bus which we equip as a polling station. The bus arrived at the polling station at the same time as the security firm who had been separately contacted by us. Fortunately we did not have to use the bus but it demonstrated the contingency plan worked.

8.4 Our POs and VOs are trained to commence issuing ballot papers at 7am if necessary using the boot of their car until such time as help arrives.

9. **Polling Station Staffing**

9.1 The polling stations were staffed in accordance with the Electoral Commission directions: one Presiding Officer and one poll clerk for polling stations with up to 1000 electors; one additional poll clerk for polling stations with up to 1750 electors and one further poll clerk must be appointed for up to the maximum of 2,500 electors. The number of poll clerks employed at the referendum, 231, contrasts with 188 used at the European election in 2009 and 330 used at the May 2010 elections.

9.2 We appointed 18 new POs for the referendum, following a review of staffing after the May 2010 elections. Each of the new POs was interviewed by the Electoral Services Manager (ESM) to assess their suitability. Training was given by the DCO to all POs and VOs as required by EC direction. LBL have a policy of compulsory attendance at training sessions before confirming appointments - no training no job.

9.3 We used 18 VOs, one per ward. Their role was to inspect the set up of polling stations and provide feedback on their suitability, carry emergency equipment, provide advice to staff and collect postal votes handed in at polling stations during the day and be available to provide assistance in emergencies. The EC direction was for VOs to visit polling stations twice – our VOs were instructed to visit three times to minimise the impact of having to deal with postal votes at the close of poll.

10. **The Count**

10.1 As mentioned above we used Forest Hill School as the count centre which proved to be an acceptable venue, with sufficient access and space for counters and the observers attending. Prior to the count taking place successful tests had been carried out by the ESM with the RCO's regional count centre at the GLA to test transmission and results collation systems.

- 10.2 The EC directed that all unused ballot papers returned from polling stations had to be counted and reconciled with ballot paper accounts. This process commenced at Forest Hill on the 5 May at 22.00 hrs, concluding at 01.30 on the 6 May when postal votes handed in at polling stations, which had been checked at the Town Hall, arrived at the Count venue.
- 10.3 The EC directed that verification of the votes cast for the referendum had to be completed by 13.00hrs on the 6 May. The counting of the votes could not then commence before 16.00 hours on the 6 May. The CCO made this decision based on the fact that there were combinations of elections running outside London and did not want the count of the referendum to delay the announcement of Local Council elections results. For London and LBL this meant that we did have a gap in the middle of the day. As we were offsite we had to ensure that counters remained in situ throughout the period and pay them accordingly.
- 10.4 The verification and count were concluded well within the times directed by the CCO with LBL reporting its verification result at 11.49 and its final result at 18.20. Five London Boroughs missed the verification deadline. The DCO's count objective was to achieve an accurate result. The DCO for the LBL counting area reported a final result with a variance of only +1 over the verification total. We therefore met the EC deadlines and provided an accurate result.

11. **Financial Implications**

- 11.1 The Charges Order for the referendum allocated £338,992 to LBL. We have subsequently submitted a claim to the Elections Claims Unit (ECU) for £321,964. This awaits approval.
- 11.2 Our claim included items that supported a robust contingency plan for the count which was required by the EC and a further direction by the EC to complete verification by 13.00hrs and recommence the count at 16.00 hours. The ECU is part of the Department of Communities and Local Government (DCLG), but comes under direction from the Cabinet Office. The latter have taken over from the Ministry of Justice (MOJ) the whole process of electoral reform and the running of national elections and national referendum. The ECU, we believe under the direction of the Cabinet Office, refuses to pay any cost associated with standby/contingency arrangements. As we were using Forest Hill School as the count centre, where they do not have any emergency back up power supplies, the DCO decided to adopt our normal practice of hiring a generator and providing emergency lighting. Whilst the sums in question are not large, £757, it highlights a disconnect between what is required as good practice, and in this case a direction which if not complied with could lead to a breach of statutory duty, and what can be claimed as "necessary expenditure".

12. Legal Implications

- 12.1 The legal basis for the referendum and the voting system are set out in the PVSCA 2011. Its late passage into law created the problems outlined above.
- 12.2 The Political Parties, Elections and Referendums Act 2000 (PPERA 2000) provides the legal framework for referendums. It appoints the Chair of the EC or someone appointed by the Chair as the Chief Counting Officer (CCO). Jenny Watson, Chair of the EC, thus became the CCO.
- 12.3 The role of the CCO is to certify the number of ballot papers counted (verification) and the total number of votes cast in favour of each answer in the referendum at a national level. The CCO has powers of direction which have the force of law. Counting Officers are appointed at a local level to fulfil the same function as the CCO but at the authority level.
- 12.4 The CCO created the role of Regional Counting Officer (RCO), the regions being the European parliamentary regions, so LBL came within the remit of the RCO for London and the CCO nationally. The RCO was also given powers of direction. The CCO appointed Barry Quirk as the RCO for London. The RCO in turn enlisted the support of the experienced London Elects team at the GLA to assist him in his regional responsibilities. The RCO is funded separately to those funds provided to the CO to run the referendum at a local level. Given that Barry Quirk was appointed RCO, Kath Nicholson was appointed Deputy CO to run LBL's counting area.
- 12.5 Section 63 of the Representation of the People Act 1983 (RPA1983) makes the CCO, RCO, CO or any deputies appointed by them subject to the offence of breach of statutory duty, This applies to failure to comply with directions given by the CCO and/or the RCO as much as it does to any act of parliament or statutory instrument applicable to the referendum.
- 12.6 In all the CCO issued 208 directions. Whilst some of them were known about in December 2010 the vast majority were not finally codified until the end of January 2011 before the PVSCA became law.
- 12.7 Many of the directions merely replicated what was required in legislation where duties of the CO were prescribed. Some had the impact of reducing local flexibility. For instance the legislation requires poll cards to be sent out as soon as practicable after the Notice of Referendum is published, or postal votes to be sent out as soon as practicable after 5pm 11 working days before poll. LBL adopt these practices as a matter of course but the EC prescribed the exact dates

on which mailing should take place with the unintended consequence that printers and the post office were deluged on certain dates. The belief is that the legislation was framed in such a way to give some local discretion to avoid these issues.

- 12.8 The sheer volume of directions and guidance, coupled with the EC requirement to provide real time performance monitoring often meant that Electoral Administrators were having to provide reports at times when they should have been focussing on practical and operational issues relating to the referendum.

13. **Crime & Disorder Implications**

There are no crime and disorder implications arising.

14. **Equalities**

There are no equality implications arising.

15. **Environmental Implications**

There are no environmental implications arising

16. **Background Documents and Originator**

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