

From: Graham Gibbens, Chairman of the Electoral and Boundary Review Committee

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To: Electoral & Boundary Review Committee – 23 September 2013

Subject: Review of the County Council Elections 2013

Classification: Unrestricted

Summary: This report assesses the role and responsibilities of the County Returning Officer (CRO) in co-ordinating the County Council Elections in May 2013 and makes a number of recommendations as to future practice.

1. Introduction

(1) 2013 was the first year since 1993 that the County Council Elections were not combined on the same day as any other major elections, which together with a number of other factors set out below, led to a significant re-evaluation and elevation of the County Returning Officer's (CRO) role as the co-ordinator of the elections during the 18 month period immediately prior to election day. The factors that influenced the CRO's approach to this year's County Council Elections can be summarised as follows:

- (a) The designation by the County Council in December 2011 of the Director of Governance & Law as CRO, which led to a root and branch review of election planning, processes, finance and documentation;
- (b) The significant increase in importance of the regulatory and supervisory role of the Electoral Commission (EC), particularly in relation to the establishment and monitoring of national performance standards for Returning Officers;
- (c) The findings of the Kent Audit review of Kent County Council Elections in 2005 and 2009, published in December 2011, which made a number of specific recommendations in relation to:
 - (i) the submission of accurate and detailed election cost estimates from the District Councils;
 - (ii) the standardisation of expenditure returns from the District Councils to substantiate claims;
 - (iii) clear advice and guidance to District Councils on the treatment of VAT;
 - (iv) the sign-off process within each District Council for all election claims; and
 - (v) the imposition of a specific deadline for the submission of all election accounts from District Councils.

- (d) The previous absence of any meaningful involvement of elected Members in discussing and endorsing the planning framework within which the CRO performed his role and the importance of clear Member-level approval via this Committee for capping the fees and charges claimed by the District Councils for various aspects of the election;
- (e) The absence of any procedural guidance, documentation or governance regarding the conduct by the County Council of its election processes, including the monitoring of expenditure incurred by District Councils; and
- (f) The need for the County Council's working relationship with the District Councils in relation to elections to be restored, re-negotiated and set on a firm, uniform and constructive footing.

2. Election Planning and Co-ordination

(1) The Electoral Administration Act 2006 gave the EC extensive powers to set and monitor performance standards for electoral services. Under these provisions, the EC may:

- (a) determine and publish standards of performance for relevant electoral officers in Great Britain (Electoral Registration Officers, Returning Officers and Counting Officers);
- (b) direct relevant officers to provide the EC with reports regarding their performance against the published standards; and
- (c) publish its assessment of the level of performance by relevant officers against the published standards.

(2) In March 2009, the EC published performance standards for Returning Officers (ROs) and reported on the performance of ROs following the European Parliament Elections in 2009 and the UK Parliamentary Election in 2010. Following a period of consultation with the Secretary of State and key stakeholders, revised performance standards were issued in December 2011, which coincided with the County Council's decision to designate the Director of Governance & Law as CRO.

(3) Underlying the EC's performance standards framework is a focus on the way in which ROs carry out their functions with a view to ensuring that elections are conducted with the interests of the voters in mind and in line with a set of key principles for each election, which are as follows:

- (a) **Participation:** it should be straightforward for people to participate in elections, whether campaigning or voting; and people should be confident that their voice counts;
- (b) **Trust:** people should be able to trust the way elections work; and
- (c) **No undue influence:** there should be no undue influence in the way elections work

(4) The performance standards aim to focus on outcomes rather than simply on the completion of various processes. However, the timely and effective completion of some key processes with measurable outputs is predictive of well-conducted elections. The standards therefore seek to measure outputs, which if achieved, will deliver certain outcomes. The specific areas covered by the performance standards are as follows:

- (a) Planning and Organisation
- (b) Administering the Poll
- (c) Absent Voting
- (d) Verifying and counting the votes
- (e) After the declaration of the results

(5) There are 10 key performance standards, which include 37 specific requirements in total. The EC provides advice and guidance to ROs to assist them in meeting the standards and the performance framework is now an integral part of the administration of elections.

(6) With regard to the County Council Elections in May 2013, the CRO engaged with the District Councils at a very early stage in the election planning process. Shortly after the County Council decision on his appointment, in February 2012, a meeting was held with the Chairman and Vice Chairman of the Kent Association of Electoral Registration Officers and Staff (Kent AEROs) to discuss the revised EC performance standards issued in December 2011 and the Kent Audit review of the previous County Council Elections in 2005 and 2009. This was an extremely positive meeting in terms of the CRO setting out his expectations of the District Councils and to listen to the feedback from the District Councils in relation to the County Council's role and responsibilities for previous elections and what the expectations on the CRO were going forward. Early agreement was secured that the CRO and Districts would adhere to the processes and information gathering exercises required by the EC, as set out in the revised performance standards and related documents.

(7) In March 2012, the CRO hosted a meeting with the Kent AEROs and secured agreement to the planning process and associated documentation (Project Plan and Risk Register), which were based on the EC specimen documents. A discussion also took place on the findings of the Kent Audit review of the County Council Elections in 2005 and 2009, which were important to ensure that previous problems were not repeated. As a direct result of implementing the Kent Audit recommendations, the following new arrangements were agreed by all 12 District Councils in Kent, and put in place for the 2013 County Council Elections:

- (a) The advance payments made to District Councils for their work on the elections were in accordance with EC guidance and based upon detailed cost estimates being supplied;
- (b) The format for submitting election expenditure returns was defined by the County Council so that all District Councils were working to a consistent level and expectation;

- (c) A deadline was set for District Councils to submit their final accounts following the elections, so that the final total costs could be verified and audited and final accounts paid in the same financial year as the elections took place; and
 - (d) Clear definitions of the limits and detail of allowable expenditure were provided by the County Council following Member approval via this Committee. In particular, KCC specified how District Councils should deal with VAT, which was dealt with inconsistently in previous elections.
- (8) Regular liaison and contact with key personnel at the District Councils was maintained throughout the planning period and further meetings were held as necessary (September 2012 and February 2013). The timing of the Police and Crime Commissioner Elections in November 2012 was not ideal in terms of enabling the District Councils to have as much preparation time as they might have liked towards the end of 2012 for the County Council Elections, but the CRO was satisfied with the way the District Councils planned for the elections and organised their resources. As part of the EC's monitoring process, the CRO met with the EC's regional manager in March 2013 to discuss the approach being taken to planning and organising the elections. The regional manager was entirely satisfied with the CRO's arrangements and confirmed that they met with the EC's full endorsement.
- (9) The Head of Democratic Services provided invaluable support for the CRO in his duties and was responsible for much of the day-to-day contact with the Deputy Returning Officers (DROs) and their staff in the 12 District Councils, responding to queries and chasing documentation and responses to information requests.
- (10) The documentation that the District Councils were responsible for completing helped to establish a clear timeline of tasks and responsibilities and provided a useful checklist for the CRO. This approach ensured that election planning was on track and that the directions issued by the CRO were being applied consistently across the 12 District areas. The monitoring returns from the District Councils also gave advanced warning of potential problems, which the CRO was able to use to intervene and help resolve, such as the availability of alternative venues for use as polling stations.
- (11) In summary, the CRO's approach to planning and co-ordinating the County Council Elections in May 2013 was robust and thorough, but did not require from the District Councils any more information than they would have had to supply to the EC for any other major elections. The documentation issued to the District Councils for completion during the planning process followed as closely as possible the EC templates and regular contact and liaison with the DROs was maintained throughout the pre-election period and any problems were dealt with swiftly and effectively.

3. The verification and count

- (1) One of the early key tasks for the CRO after his appointment was to determine the start time for the verification and counting of the votes for the County Council Elections to enable the District Councils to book appropriate

venues. In considering his decision, the CRO sought the views of the 12 District and Borough Councils in Kent and also discussed the matter with his counterparts in other County Councils and the Principal Area Returning Officer (PARO) for the Police and Crime Commissioner Elections in Kent and Medway. Of the 12 District and Borough Councils in Kent, 9 wanted to begin counting the votes on Friday morning and 3 preferred Thursday night, immediately after the close of poll. Whilst the CRO was conscious of the eagerness of both elected Members and political parties for the election results to be announced as soon as possible after the close of poll, there were other factors that outweighed this argument for an overnight count, including:

- (a) Those Councils with two-Member electoral divisions, which can take significantly longer to count than those Councils with all single divisions;
 - (b) The health and safety of key election staff, some of whom could be on duty for 24 hours or more if there was an overnight count; and
 - (c) The need for complete accuracy, which is enhanced by having fresh counting staff the following day.
- (2) Accordingly, the 12 DROs were advised in December 2012 that arrangements should be made in each District and Borough Council area for the County Council Election count to begin at 9.00am on Friday 3 May 2013.
- (3) All of the 12 District counts were well-organised and ran well. A security incident caused a slight delay at the Canterbury count but apart from this all other results were announced in a timely fashion and there were no reported complaints about any of the district counts.

4. Candidates' Nomination Papers

- (1) In the run up to the elections, the CRO received a number of allegations from members of the public about the accuracy and validity of some of the candidates' nominations for one political party. As is normal with allegations of potential electoral fraud, the complaints were referred to Kent Police.
- (2) The Committee is advised that when a Returning Officer receives a nomination form, they are legally required to consider those papers at face value. The Returning Officer is not permitted to investigate candidates or their particulars, other than to consider the papers submitted and ensure they are in order. Any candidate standing in a local government election is permitted to give a commonly used name. If they do, this name is used in place of their full name on official statements, election notices and ballot papers. Case law and guidance from the EC requires that this name is considered only at face value. Indeed, in its guidance to Returning Officers, the EC states:

"It is not for you as Returning Officer to decide whether the given commonly used name is a 'name' as such or to embark on any enquiries. It is the candidate's responsibility to complete the nomination form and to be satisfied that the given commonly used name is a name that they genuinely commonly use."

(3) The CRO was satisfied that the DROs involved had complied fully with electoral legislation, case law and EC guidance and there was full co-operation with the Kent Police investigation. It is understood that an individual was charged with offences under electoral legislation relating to these nominations.

5. Rejected Postal Votes and Spoilt Ballot Papers

(1) Two of the factors relating to the counting of the votes that often attract interest and comment are the number of postal votes that are rejected and the number of rejected or spoilt ballot papers.

(2) Returned postal ballot packs must be rejected and ballot papers should not be included in the count if the signature and/or date of birth supplied by voters and supplied with their postal vote cannot be matched with those previously provided by the voter and held on the Electoral Registration Officer's (ERO) records. This security measure is intended to prevent postal voting fraud and there is currently a requirement for ROs to carry out this check on a minimum 20% sample of postal ballot packs at each opening session, although in Kent (which is common elsewhere), ROs checked 100% of postal vote identifiers at the County Council Elections.

(3) Nationally, for the elections held in May 2013, a total of 53,000 postal votes were reported by ROs as having been rejected as invalid or otherwise not forwarded to the count, which represents 2.9% of postal votes returned in England. This overall rejection rate compares to 4.7% for the November Police and Crime Commissioner Elections; 4.6% for the May 2012 local government elections; and 7.6% for the May 2012 mayoral referendums. For the Kent County Council Elections in May, a total of 2,855 returned postal votes were rejected, which represent 2.9% of all postal votes returned.

(4) At the May 2013 elections, approximately 21% of rejected postal ballot packs in England did not contain either or both of the elector's signature and date of birth. However, it continues to be the case that the most common reasons why returned postal votes are not included in the count are because either or both of the signature and date of birth provided by the voter do not match the records held by the ERO. For the elections held in England, this figure was 54%. The proportion of postal votes rejected as a result of the ballot paper being missing accounted for 9%; and missing postal vote statements accounted for 16% of those rejected in England. For the Kent County Council Elections in May, the proportion of postal votes rejected as a result of the ballot paper being missing accounted for 9%; and missing postal vote statements accounted for 12% of those rejected. Kent's figures are therefore entirely consistent with the national average.

(5) The EC advises that checking the personal identifiers on all returned postal ballot packs will become a legal requirement, which is expected to be in place for elections held from 2014 onwards. The EC also says that while it is clearly important that measures are in place to detect and prevent postal voting fraud, it is also important to ensure these measures do not inadvertently prevent those who simply make mistakes on their postal voting statements from casting their vote. The EC believes that allowing EROs to tell electors that their postal

vote statement has been rejected and where appropriate request a refreshed specimen signature, would help address this problem.

(9) All candidates may be present or appoint agents to be present when postal votes are opened and may challenge a decision of the DRO or their staff to reject a postal vote.

(10) A ballot paper can be rejected at the count by the DRO for one of the following reasons:

- (a) The want of the official mark;
- (b) Voting for more candidates than entitled;
- (c) The ballot paper is unmarked or void for uncertainty;
- (d) The voter could be identified

(11) Nationally, the number of ballot papers that were rejected at the count represented a small proportion of the total number of ballot papers cast. For local government elections in England, 0.5% of ballot papers were rejected at the count. These rejection rates are broadly in line with previous similar elections. In Kent, the proportion of ballot papers rejected was 0.35%. As with rejected postal votes, candidates and their agents are given the opportunity to challenge a decision of the DRO to reject a ballot paper at the count.

6. Polling Day

(1) With such thorough planning and excellent support from the District Councils, polling day itself went according to plan and there were no reports of any significant problems. The CRO and Head of Democratic Services were both contactable from 6.30am to midnight on polling day for DROs and other election staff in case assistance or advice was required, but nothing of significance arose. All of the ballot boxes were secured by the District Councils after the close of poll either at the relevant District count venue or a holding venue prior to transport to the count centre the following morning.

(2) Each DRO ensured that appropriate staff not directly employed at polling stations finalised arrangements for the verification and count the following day.

7. The Election Results System

(1) As a result of the feedback about the slowness in displaying election results on the KCC website in 2009, a system was procured for the 2013 elections at a cost of £7,000 from a company that has provided this type of system to numerous other local authorities. The system was hosted by the company using its own server arrangements. The aim of this system was to ensure that results were displayed on the KCC website and at all of the count venues (with a rolling programme) within five minutes of them being announced by members of KCC staff uploading them at the count venues. The website and rolling electronic display would show the map of Kent's electoral divisions changing colour as the results were announced with a ticker tape display across

the bottom of the screen giving details of the results that had been declared and also a graph showing swing and a table showing losses and gains for each political party. The system was rigorously tested, including stress testing for volume of "hits" and connectivity at all 12 count venues. The company's test results showed that the system worked well and it confirmed that it was capable of taking the capacity that was likely to be put on it from Kent. Election results would also be available via mobile devices and again this was fully tested prior to 3 May 2013.

(2) On 3 May 2013, it became clear by 08:00 that the company engaged to supply the system did not have, or had not arranged, sufficient server capacity to fulfil all the election results systems that they were supporting across the country and were trying to increase this capacity. There had already been problems overnight at the Essex County Council count and they were experiencing similar difficulties in other counties, including Devon. The company managed to give KCC enough capacity to run the results rolling programme in the Seminar Lecture Theatre in Sessions House and in 3 of the 12 Count venues across the County, but this was not sufficient to feed the web page on the kent.gov website. By 09:30 on 3 May 2013 there were no functional results for kent.gov and nothing to display at the majority of the count venues. There was also no access to the system via mobile devices. To the credit of officers in digital services, ISG and Democratic Services, contingency arrangements were immediately put in place with digital services building a web page showing the Kent electoral divisions marked on a map, and a table of the parties showing number of seats held/lost. Democratic Services then used the Committee Management System, which has a basic election results element, to feed these web pages. This meant inputting all of the 403 candidates details and the results as the day went on, so it was not possible to do this as quickly as uploading the results from the count venues as they were announced. ISG officers ensured that the count venues, which did not have the live feed from the original system, displayed the kent.gov web page or information from the BBC showing the County Council election results.

(3) Following an internal investigation, the company that produced the election display system for KCC was informed on 3 June 2013 that the failures with the system on 3 May were so significant that the Council was terminating the contract immediately and would not be making any payment for the system. The company has not challenged the contents of this communication.

(4) Looking forward to 2017, the CRO intends to work with the suppliers of the Council's Committee Management system with a view to developing an alternative system for displaying the election results, thus avoiding the need to engage a third party.

8. Candidates' expenses

(1) In accordance with sections 81 and 82 of the Representation of the People Act 1983, agents for candidates standing at local government elections are required to submit a spending return and declaration to the Returning Officer within 35 calendar days of the election results being declared. This deadline was 7 June 2013. A separate declaration by each candidate must be submitted within 7 working days of the spending return being submitted.

Whether or not a candidate has been elected, failure to submit a spending return or declaration without an authorised excuse is a criminal offence, even if it is a nil return indicating that no money was spent on the election campaign by a particular candidate.

(2) As at 10 June 2013, some 64 agents' spending returns and candidates' declarations were outstanding out of a total of 403 candidates. The CRO sent chasing letters to those affected and, by 25 July, all outstanding documentation had been received, was in order and made available for public inspection in accordance with the legislation.

9. Election cost estimates and accounts

(1) One of the main recommendations from the 2011 Kent Audit review of the County Council elections in 2005 and 2009 was to ensure that any advance payments made to the District Councils were in accordance with EC guidance and based upon detailed cost estimates being supplied prior to payments being made. In addition, it was recommended that the format for submitting election expenditure returns should be defined by the CRO so that all District Councils were working to a consistent level and expectation and that a deadline was set for District Councils to submit their final accounts following the elections, so that the final total costs could be verified and audited and final accounts paid in the same financial year as the elections took place.

(2) In October 2012, the CRO appointed the Chief Executives of the 12 District Councils in Kent as Deputy Returning Officers (DROs) for the County Council Elections and in doing so, required DROs to prepare and submit for approval detailed cost estimates for their District's share of the County Elections. Unlike in previous years where a 90% advance of the costs was paid to each District Council, the CRO followed the guidance from the EC and only made advance payments equating to 75% of each District's estimate (except for one District Council, which was only given a 60% advance payment because of the very late submission of accounts for the 2009 elections). In addition, DROs were supplied with a detailed electronic claim form for all of their election costs, to ensure a consistent approach to maintaining financial records.

(3) Detailed estimates of cost were received from all 12 District Councils in late 2012 and early 2013, which together totalled £1,748,407. A 5% contingency was added to this sum to give an overall budget for the election of £1,835,827. In consultation with the DROs, the deadline for final accounts to be received has been set for the end of November 2013. To date, five District Councils have submitted their final accounts and these are in the process of being checked and audited before any final payments are made. It is not anticipated that the final cost of the County Council elections will exceed the detailed estimate.

10. Electoral Commission report on the May 2013 Elections

(1) The EC produced a report on the administration of the elections held in England in May 2013. The key findings of the report, which was issued in July 2013, are as follows:

- (a) EC research with voters shows very high levels of confidence, with nine in ten voters saying that they were confident that the elections were well run; and 97% of polling station voters and 96% of postal voters saying that they were satisfied with their experience of voting. This reflects positively on the work of Returning Officers and their staff to deliver a high-quality service to voters this year.
- (b) Just under 18.4m people were registered to vote in the elections held across England on 2 May. A total of 5.68m ballot papers were at the count, representing a turnout across the country of 31%. In Kent, the overall turnout was 29%.
- (c) In relation to postal voting, a total of 2.71m postal votes were issued – 14.8% of the electorate. Turnout among postal voters was 67% and postal votes accounted for 31% of all votes at the count. In Kent, 152,121 postal votes were issued and 100,315 were returned, which accounted for 28% of the total votes cast in the elections.
- (d) More than 9,500 candidates contested 2,300 seats in 34 local authorities in England. In Kent, 403 candidates contested 84 seats.

(2) The EC report also stated that there were a range of approaches from CROs in managing the elections. These ranged from CROs having significant involvement and seeking to manage the administration of the elections through detailed instructions to DROs, to DROs making their own detailed arrangements for the delivery of the poll with only minimal oversight by the CRO. The EC research suggests that these differing approaches can work equally well, so long as the CRO has put in place appropriate mechanisms for assuring themselves that all voters and those standing for election receive a consistently high-quality service.

(3) In relation to the performance of DROs, the report concludes that the elections were well run, with the majority of DROs meeting the agreed EC performance standards. In Kent, all 12 DROs fully met the EC performance standards in all 10 of the specific areas measured.

(4) The EC is undertaking a consultation exercise for a revised performance management framework for Returning Officers with a view to having a new framework in place by December 2013. KCC will be involved in this review.

11. Feedback from the District Councils

(1) The CRO was keen to ensure that the 12 District Councils in Kent were given an opportunity to provide feedback on KCC's approach to co-ordinating the elections, so that lessons learned can be applied for future elections. The written and oral feedback received was overwhelmingly positive and, as discussed with the Chairman and Vice Chairman of the Kent AEROs in July 2013, will undoubtedly shape the approach for co-ordinating future elections. A summary of some of the specific points is as follows:

- (a) The documentation relating to the planning and organisation of the election provided by the CRO demonstrated that there was genuine

interest in the election and there was commitment to providing support to electoral administrators. The documentation was useful, clear and easy to understand;

- (b) Support provided by the CRO and his staff when needed was extremely helpful and any e-mails sent were responded to promptly;
- (c) Some of the documentation, such as the CRO Directions, could have been set out in a clearer format, e.g. chronologically rather than by subject heading;
- (d) Late changes to the scale of fees and charges and instructions to District Councils should be avoided in future unless absolutely necessary and for good reasons;
- (e) The KCC staff present at the counts were helpful and courteous;
- (f) The KCC Scale of Fees and Charges should be approved at least 6 months before the County Council Elections in 2017 and future years to enable District Councils to appoint and train election staff (and to be able to confirm fees at recruitment stage); and
- (g) The CRO should issue standard wording for the various election notices in future years, some of which were worded differently across the 12 District Councils.

12. County Returning Officer

(1) At its meeting on 15 December 2011, the County Council agreed to designate the Director of Governance & Law as the County Returning Officer. At its meeting on 28 November 2012, this Committee requested the Corporate Director of Human Resources to undertake a review of the CRO remuneration immediately following the May 2013 County Council Elections. This review is dealt with as part of a separate report elsewhere on the agenda.

Recommendation(s): The Committee is invited to note and endorse the actions of the County Returning Officer in conducting the 2013 County Council Elections, as set out in the report.

Background Documents:

- (i) **“Performance Standards for Returning Officers in Great Britain” - published by the Electoral Commission in December 2011**
- (ii) **“Kent County Council Elections 2005 and 2009” – a report issued by Kent Audit in December 2011**
- (iii) **“Local Elections May 2013” – a report published by the Electoral Commission in July 2013**
- (iv) **Electoral Commission Project Plan and Risk Register template documents**

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