

BRIDGEND COUNTY BOROUGH COUNCIL

MEETING OF COUNCIL

10th July 2006

**REPORT OF THE DEPUTY CHIEF EXECUTIVE AND EXECUTIVE
DIRECTOR OF RESOURCES**

ELECTORAL SERVICES INVESTIGATION

1. Purpose of Report

- 1.1 To advise Council of the conclusion of the above investigation(s) and of the steps taken in response to the findings. The report is intended to provide Members with information on the outcome of the investigation. Members will note the need to protect the lawful process both internally and in the criminal jurisdiction, and therefore all Members are reminded of the absolute importance of maintaining the confidentiality of the evidence provided in the appendices (as opposed to the headline issues covered in this report and the report of the Electoral Commission). The Criminal and employment procedures require absolute confidentiality and should not be discussed by Members.

2. Background

- 2.1 Members will recall reports on the 20th July and 12th October and the 7th December 2005 in respect of the above. At the 1st meeting the Chief Auditor had commenced a preliminary investigation into accounting anomalies within the Electoral Services section, as a result of information provided within the Whistle blowing policy. The Council approved the recommendation to arrange, by agreement or otherwise, for the appointment of a designated independent person for this purpose in accordance with the Local Authorities (Standing Orders) Regulations 1993; and to seek the agreement of the other employees who are subject to investigation for the appointment of the independent person as investigatory officer in connection with the investigations relating to them.
- 2.2 At the October meeting Members were informed that an independent investigator has been appointed by agreement, the appointed person being Tim Kerr QC. Mr Kerr is appointed by of the Office of the Deputy Prime Minister to the list of persons authorised to undertake this function.

- 2.3 The December report identified additional issues that had been raised in relation to an alleged missing ballot box. It was necessary for the Authority to commence a further investigation of these issues and to inform the police that the investigation was being undertaken. This was due to the possibility of criminal offences being uncovered. The police have been content for the investigation to continue.
- 2.4 The investigation required many staff to be interviewed. Given the nature of the issue, it was agreed to confirm to witnesses that provided the employee did not take a part in any wrongdoing, no action will be taken against them due to not having made the wrongdoing known at the time if indeed the employee understood that such actions amounted to wrongdoing.
- 2.5 Due to the nature of the additional factors, involving the operation of elections and in particular the operation of the count, the Authority had asked for the assistance of the Electoral Commission which had agreed to assist and advise the Authority during the investigation.
- 2.6 The investigation had involved the Chief Executive and members of staff. It was originally considered appropriate for the Independent Person appointed to investigate the Chief Executive to undertake the investigation of the employees. This position was later reviewed due to the changing nature of the investigation and subsequently the Independent Person was instructed only to investigate in relation to the Chief Executive. The usual contractual processes were applied to the two employees.

3.0 Current situation

- 3.1 In respect of the Chief Executive, Tim Kerr has provided a report for Council. The report determines that no action be taken in respect of the Chief Executive.
- 3.2 The internal report has also been concluded. Whilst it was established that there was no evidence to support a missing ballot box, other issues arose and were investigated which are identified later in this report. Employees have been disciplined in accordance with the disciplinary policy of the Authority. The determination may be subject to appeal.
- 3.3 Now that the investigation is concluded it is intended to provide the investigation reports and findings to the police for consideration of criminal offences. It is also intended to recover overpaid monies.

4.0 Jurisdiction

- 4.1 It is important for Members to recognise that not all of the election functions are the responsibility of the Local Authority. Where officers undertake responsibilities it may not be always be actionable by the Authority. The issues are a matter of statute and contract law.

- 4.2 The legislative and contractual provisions are complex but, broadly the effect of these is that the Returning Officer, whilst appointed by Council, is not accountable to the Authority in relation to the undertaking of much of those duties but, is accountable to the Authority for the management of his/her staff.
- 4.3 Employees who undertake election duties under their employment contract are naturally responsible to the Authority under that contract and may be held responsible to the Authority for actions taken outside that employment.

5.0 Investigation Findings (Tim Kerr)

- 5.1 Mr. Kerr was provided the internal investigation undertaken by the Authority and therefore the financial issues are identified in both reports. Members will be aware that the appointment was made under Statutory provision for the purpose of ensuring independence in the investigation
- 5.2 Mr Kerr has determined that the evidence supports the proposition that there were shortcomings in the Chief Executive's performance in relation to the 2004 elections; that these fall within the extended statutory meaning of the word "misconduct" in regulation 3(2)(d)(i) of the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202 ("the 1993 Regulations"); but that in all the circumstances it would not now be "appropriate", within the meaning of regulation 3(2)(d)(ii) of the 1993 Regulations, for any disciplinary action to be taken against the Chief Executive.
- 5.3 Mr. Kerr clarifies that there is no definition of "misconduct" in the 1993 Regulations, nor in the equivalent 2001 regulations applicable in England, nor in the forthcoming 2006 Regulations which from 3 July 2006 will replace the 1993 Regulations in Wales. However there is a definition of "disciplinary action" which incorporates the word "misconduct" and in his view leads to the conclusion that "misconduct" bears an unusually wide meaning including, rather surprisingly, cases of poor performance and even cases of breakdown in working relationships for which the officer concerned bears little or no blame.
- 5.4 Mr. Kerr finds the Chief Executive to blame (in relation to the financial issues), to a degree, in respect of the 2004 combined elections, but not in respect of the 2003 National Assembly of Wales elections. He confirms that the evidence supports the proposition that, to the extent indicated above, Mr Lewis has committed "misconduct" in the extended statutory sense of the term, but, stresses, only in the sense of failure to detect and prevent irregularities caused by the direct actions of staff under his line management in the case of the 2004 combined elections; and not in the ordinary English meaning of the word "misconduct", namely conduct reflecting adversely on Mr Lewis' honesty and integrity.

5.5.1 Mr. Kerr has concluded not to make any recommendation under regulation 3(2)(d)(ii) of the 1993 Regulations (as to disciplinary sanction) and therefore the matter is concluded.

6 Internal investigation

6.1 An investigation has been carried out internally in respect of members of staff other than the Chief Executive. The Electoral Commission was asked to assist in this investigation to provide both expertise and independent consideration of available evidence. The report of the Electoral Commission identifies numerous examples of poor practice in relation to the operation of elections. The report acknowledged that some degree of human error and variable practice might emerge in any instance where a local authority electoral services unit was subject to the level of scrutiny as was the case here. Nevertheless the report concluded that specific instances of poor practice in BCBC have been beyond what might be generally regarded as acceptable margins of error in the administration of elections.

6.2 A summary of the report, taken from the investigation report in respect of the Election Commission findings is set out below.

Welsh Assembly Election 2003:

Bridgend:

- ***Constituency and Regional:*** The Statement as to Postal Ballot Papers is incorrectly completed;
- ***Constituency:*** *There* is a discrepancy between the total figure on the Declaration of Result of Poll, and the total on the Verification Sheet, suggesting that 205 more votes were counted than were received into the verification process;
- ***Regional:*** There was a minor discrepancy between the figures for total votes verified and the total on the Declaration of Result;

Ogmore:

- ***Constituency and Regional:*** the Statement as to Postal Ballot Papers has been incorrectly completed;
- ***Constituency:*** there is a discrepancy between the total on Declaration of Result and the total verified, suggesting that 93 fewer votes were counted than had been verified;
- ***Regional:*** there is a discrepancy between the total on the Declaration of Result and the total verified, suggesting that 26 fewer votes were counted than were verified.

The Parliamentary (General) Election 2005:

. ***Bridgend Constituency:*** the Declaration of Result shows a total of 270 rejected votes but does not break this figure down into the various categories.

The 'Combined' Election 2004:

- Statements as to Postal Votes for all wards have been completed incorrectly and with omissions; and appear to be photocopies of a form which had been signed and dated in advance by an employee, who has incorrectly signed as 'Returning Officer';
- The Verification Sheets have been poorly or inaccurately completed with some including postal votes and others not;
- There were unacceptable discrepancies in the following wards:
 - Llangeinor
 - Llangynwyd
 - Nantymoel
 - Newton
 - Nottage
 - Ogmere Vale
 - Rest Bay
 - Ynysawdre
 - Porthcawl West
 - Porthcawl East
 - Pontycymmer
 - Penyfai
 - Pendre

6.3 The report discusses the possibility that the discrepancies arose wholly or in part because in these wards the total figure for postal votes was not recorded, or added to the verified figures for the polling stations, but the postal ballot papers were nevertheless physically added to the count. Therefore although the verification sheets were not completed properly all votes were counted.

6.4 In Llangeinor, Llangynwyd, Nantymoel, Porthcawl West, Pontycymmer and Pendre wards the difference between the total recorded verified votes and the total votes counted exceeds the eventual margin by which the seat was won, and therefore it is only the assumption that the postal votes were not recorded but were nevertheless physically added to the count, which saves the result in these particular wards from being in doubt.

6.5 In the wards Nottage, Ogmere Vale and Porthcawl East, even after the postal votes were added, the discrepancy exceeds the margin by which

the seat was won and therefore the lack of procedural propriety is more worrying. The result of these elections is not open to challenge.

In the remaining wards the margin by which the seat was won was substantial enough for the above problems not to have had any effect, but the discrepancies remain unexplained.

7 Financial Issues:

7.1 The Internal report identifies the following issues: -

The NAW Election - 2003:

7.2 All financial dealings were effected through 3 HSBC bank accounts with no involvement of the BCBC financial systems. An advance of just under £98,000 was received into the account on 25 April 2003. All cheques drawn on these Accounts were signed by employees and not the Chief Executive.

7.3 The relevant regulations - SI 3053/2002 National Assembly for Wales Election - establish the maximum amounts reclaimable in respect of election administration fees. The Regulations specify various different 'heads of claim', with maximum amounts which can be claimed in each case. The claim made under each head of expense was always at least for the prescribed maximum amount, and in some cases in excess of that maximum.

7.4 After actual expenditure, the residual amount, being the difference between total actual expenditure and the statutory maximum allowable expenditure, has been divided precisely in the ratios 40:40:20. Using this formula payments have been made to individual employees £18,892.40; £18,892.40; £9,446.20. These payments were net of tax. The total gross amount was £52,479.06. Unless allocated properly within established budget heads funding should be returned to the funding agency.

7.5 However it was not clear from the claim that money had been distributed in this way. The relevant amounts were 'fed back' into the various heads of expenditure and disguised as being e.g. Supervision of Delivery of Poll Cards; Printing of Ballot Papers; etc. Certain of these heads of expenditure have been claimed twice, first by making a specific costed claim; and then again as part of the justification for the divided up residue.

7.6 Payments to the employees had been made within days of the election, rather than awaiting agreement and approval by WAG of the claim. In

fact, WAG has not approved the claim, but has challenged the accounting and is asking for repayment of £10,949.00.

- 7.7 There is reference in correspondence to there having been re-counts in both Bridgend and Ogmore constituencies, which attracts an extra allowance of £468 in each case. This had not been included in the original claim, and had not been mentioned previously. From evidence it was established that no re count had taken place.

The European Parliamentary, County Borough, and Community Councils Elections 2004 - 'the Combined':

- 7.8 Two of these three elections were funded by BCBC and the third, the European Parliamentary Election, by the Department of Constitutional Affairs. The elections took place on Thursday 10 June 2004
- 7.9 Costs of the verification were required by the Regulations to be divided equally between the three elections, and this was undertaken.
- 7.10 A claim was submitted by Electoral Services for expenses incurred in administering the European element of the Combined elections. This claim is still being processed but enquiries of DCA suggest that a repayment in the region of £3,500 is likely to be claimed by DCA
- 7.11 Payments to staff were £15,906.92; £15,906.92 and £7,998.46 totalling £39,812.30. These were gross amounts, before deduction of tax. Again the division was 40:40:20 and again payment was made very soon after the date of the election. These payments were clearly intended to claim the maximum amount available regardless of legitimate expenditure.

The Parliamentary Election 2005

- 7.12 This election was run by Electoral Services on behalf of, and fully funded by, the Department of Constitutional Affairs. All financial dealings were undertaken through the Elections bank accounts, without any input from BCBC finance systems.
- 7.13 No accounts for electoral administration expenditure have been submitted to the DCA for approval. Nevertheless, payments to individual staff members have been made as before. The ratio for division was different this time, £5,175 (50%) £2,587 (25%) £2,070 (20%) and £517.50 (5%) Additionally, payments of £590; £350; £400; and £300, totalling a further £1,640, were made to those same persons respectively. These payments were again clearly intended to claim the maximum amount available regardless of legitimate expenditure.

8 CONCLUSIONS:

8.1 The internal investigation makes the following conclusions: -

The Disparities Errors and Omissions in the Results:

- 8.2 In the Welsh Assembly Election, there were substantial errors in all the administrative processes apart from the minor discrepancy for the Bridgend Regional. In all cases the margins between first and second candidates were sufficient for the discrepancies not to affect the result but, (except for Bridgend Regional) these errors were beyond acceptable margins. The Electoral Commission describes this performance as being below an acceptable standard.
- 8.3 The fact that the winning margins in the 2003 Assembly and 2005 General elections were sufficient for any doubt to be resolved, is no mitigation, for apart from the fact that those margins could not have been predicted with certainty in advance, there could also have been an impact on candidates at the lower end of the poll. Disparities of the order which have been revealed could very easily have resulted in candidates wrongly losing their deposit although this did not in fact take place. As for the County Borough elections there is greater concern. As a consequence of the errors and omissions made at the time of the Count, the result in 3 wards cannot be shown in the clear way in which application of proper procedure should allow. The outcome of an election can only be challenged by way of electoral petition within 21 days of the election, after which the result stands irrespective of any later doubts raised.

Financial Issues

- 8.4 During the elections which took place in 2003, 2004 and 2005 a total of £104,191.00 was paid to individual employees. This is a gross figure and includes sums which would have been acceptable and/or properly due. It is established that in each case the individual in receipt of these extra payments was a salaried employee of BCBC, who remained on salary throughout the periods of elections.
- 8.5 The way these payments were calculated was based on an assumption that where the Regulations prescribed a maximum allowable sum, there was an entitlement to that sum, irrespective of the actual expenditure incurred. However the wording of the Regulations is clear – it is actual expenditure and fees, either at the prescribed or reasonable rate.

Post investigation actions

- 8.6 It is not proposed to minimise the importance of the issues raised in this report. It is of some comfort that those issues were identified due to the internal controls of the Authority via the Whistleblowing Policy.

- 8.7.1 It is identified in Tim Kerr's report, that the Chief Executive had identified problems in the Electoral Services Unit. As a result of these concerns a Business plan was developed and subsequently the advice of an independent consultant, George H Coates, ACIS, Democratic Services Consultant and expert was commissioned. The results of that audit is appended to this report.
- 8.7.2 As part of that audit the consultant produced a recovery plan intended to ensure implementation of the recommendations in his report with allocated timescales.
- 8.9 In recognition of the NAW election in May 2007 the consultant also helpfully produced an election dairy and action sheet to assist details preparation for that election.
- 8.10 The election service has been transferred to the Legal Services Department and work is being undertaken in the development of an updated business plan which addresses practices and places a greater emphasis on consulting with Community Councils and it is proposed to consult with all political parties well in advance of the National Assembly election to obtain suggestions for improvement of the service.
- 8.11 Staffing levels have been strengthened and planned specialist training has been provided and will continue to be provided.
- 8.12 The electoral services will now be integrated with the existing performance management systems within the legal services department and will be subject to the provisions of the law Society's Lexcel practice standard and IIP. The Unit will be under the direct management of the Monitoring Officer. Therefore the problems identified in the two reports will be rectified and systems applied to ensure that these issues cannot be repeated, particularly in relation to the integration of the electoral services financial procedures with those of the Authority and best practice in relation to electoral administration at polling stations and the count.

RECOMMENDATIONS

1. **To note the report in relation to the report of Tim Kerr**
2. **To note the report in relation to the internal investigation**

Contact officer

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Background documents

None other than those identified within the report or exempt under Sch 12A 1972 Local Government Act

