

**Report into issues relating to the
conduct of the count for the elections
for the Thurrock Parliamentary
constituency and Thurrock Borough
Council on 6th May 2010**

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Report into issues relating to the conduct of the count for the elections for the Thurrock Parliamentary constituency and Thurrock Borough Council on 6th May 2010

Part 1 - Introduction

1. At and following the count for the elections for the Thurrock Parliamentary constituency on 6th May 2010, there was criticism about the length of time taken to declare the result. The criticism was largely made by candidates and agents present at the count and was then covered extensively in the local media.
2. In essence, the draft result was available at around 6.00 a.m. but was so close that it produced a request for a recount which was then undertaken. At the end of that process, there was a further request for a recount and a second recount took place. The result was finally announced at around 10.08 a.m., some 12 hours after the count had started. The result was published on the Press Association website at 10.14 a.m. ¹
3. A contributory factor in the criticism that was made at the count and since that time undoubtedly arises from the fact that the Acting Returning Officer had indicated that the result would be available around 3.00 a.m. This information is confirmed by reference to the Press Association information about expected times of declarations of results for the General Election where the Thurrock result was anticipated at 3.30 a.m. ²
4. As a result of the criticism mentioned in paragraph 1, the Council decided to undertake a review of these matters. The review is being led by Tasnim Shawkat, the Head of Legal Services and Monitoring Officer at the Council. As a result, an approach was made on 13th May to the Chairman of the Solace Electoral Matters Panel who, in turn, asked me if I could undertake the independent review. I was approached by the Council with a view to carrying out a review into the conduct of the counts for the two elections on 6th May. On 20th May, I was formally appointed to undertake the review. By way of background, I am the Chief Executive of the Association of Electoral Administrators. Until 2004, I was the Returning Officer and Electoral Registration Officer for the City of Norwich. It should however be noted that my appointment was on the basis of an independent individual and not in any representative capacity.
5. The terms of reference for the review are simple and straightforward, namely, to inquire into the time taken to complete the count.

¹ http://election.pressassociation.com/Constituencies/live_results.html

² http://election.pressassociation.com/Declaration_times/general_by_time.php

Part 2 – Background

Methodology

6. In terms of conducting the review, the following methodology was employed:

- a) collation of relevant written material relating to the arrangements and plans for the count;
- b) the instructions from the Head of Legal Services and the Initial Assessment paper she had prepared;
- c) copies of media reports about the count;
- d) personal interviews with the interim Chief Executive, the Head of Legal Services (Acting Returning Officer) and the Elections Team Manager.

Administrative Background

7. For the purposes of the elections for the Council, the Head of Legal Services of the Council had been appointed as the Returning Officer and Electoral Registration Officer (ERO) under the appropriate provisions within the Representation of the People Act 1983. Because of the appointment, that officer automatically becomes the Acting Returning Officer for the Parliamentary election held within Thurrock.

Part 3 – The Legal Position

The Returning Officer

8. Each Council is required to appoint one of its officers as the Returning Officer for the purposes of local government elections at principal area level and to appoint one of its officers as the Returning Officer for the purposes of any parish council elections within the borough's area.³ The Council is also required to appoint one of its officers as the Electoral Registration Officer.⁴ As explained above, the Electoral Registration Officer of the Council becomes the Acting Returning Officer for the purposes of the conduct of UK Parliamentary elections.⁵

9. The Council which has appointed that officer is required to provide the officer with sufficient resources to conduct local government elections and to pay the costs thereof.⁶ In terms of UK parliamentary elections, the costs are borne by Government through the Consolidated Fund.

10. The Returning Officer may appoint deputies to assist with the conduct of the election. Such deputies may be appointed with "full powers" (i.e. the power to undertake any duties which are formally the responsibility of the Returning Officer) or with "limited powers" (i.e. the powers specifically identified in the form of appointment).⁷

Relationship of Returning Officer to the Council

11. As noted above (paragraphs 8 and 9), a Council has to appoint one of its officers as the Returning Officer for its elections (or parish council elections) and then provide the necessary resources to allow that officer to properly conduct the election. Once appointed, the Returning Officer is in a statutory office and has a separate legal entity to that of the Council which appointed him/her. The same principle applies to that officer's appointment to the role of Acting Returning Officer (ARO) as it is held directly by virtue of the officer's appointment as Electoral Registration Officer.

12. On this basis, it could be suggested that 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 or favour".

³ Representation of the People Act 1983 (RPA), section 35(1)

⁴ RPA 1983, section 8

⁵ RPA 1983, section 28

⁶ RPA 1983, section 36(4)

⁷ RPA 1983, section 35(4)

The Count

13. The Parliamentary Election Rules provide that the ARO is required to conduct the count as soon as practicable after close of poll.⁸ However, a new duty was added by the Constitutional Reform and Governance Act 2010 which was enacted shortly before the dissolution of Parliament in the second week of April. The new duty on AROs is to take reasonable steps to begin counting the votes on ballot papers for UK Parliamentary elections as soon as practicable within four hours of the close of poll. This relates to the actual counting of the votes and not to the verification process. Where combined polls for the Parliamentary election and Council elections had taken place, the verification process for both elections had to be completed before the counting of the votes at the Parliamentary election could be commenced.

14. Clearly, the definition of what is practicable depends to a very large extent on the particular issues relating to each constituency. It is not possible therefore to arrive at a one size fits all answer to this question. A prudent ARO will have wanted to give due consideration to all the various issues that apply to his/her constituency and the options available before reaching a decision on this matter. Ultimately, the ARO needed to decide whether to conduct the verification and count immediately after close of poll on Thursday night or to complete some activities before conducting the actual count on Friday.

15. The factors to be considered in reaching a decision on this point were many and varied. However, the main issue was whether it was possible to comply with new requirements imposed by the amendment within the 2010 Act whilst, at the same time, complying with the detailed requirements of the Parliamentary Election Rules relating to the procedures to be followed at the count.

16. In essence, the practical considerations arising from those procedures rested on the fact that ballot boxes would be returned to the count centre between 10 p.m. and perhaps as late as 11.30 p.m. and the additional fact that postal votes accompanying them would need to be taken for opening and checking as soon as practicable. The time that is needed for that process and the receipt and management of returned ballot boxes, the opening and the separation of ballot papers and subsequent verification was always going to be difficult to estimate. The ballot papers in each ballot box for the two elections had to be separated and counted, and reconciled to the ballot paper account(s). This is the verification stage of the count.

17. Additionally, the unused parliamentary and local election ballot papers have to be counted and also reconciled to the ballot paper account(s). This, in itself, is a time consuming exercise particularly at combined polls. The postal vote

⁸ Parliamentary Election Rules, Rule 44(1)

checking and verification processes also needed adequate and appropriate accommodation, staffing and supervision.

18. In an Issues Paper produced in October 2009 by the Association of Electoral Administrators on this point it said that "it can be expected that the verification of the ballot papers for the parliamentary election and local elections (where there are combined polls), could take between three and five hours, suggesting that any subsequent counting may not start until perhaps 3 a.m. or later". Clearly, if that estimate is correct, it is unlikely that the result would have been available as early as had been intimated by the ARO (see paragraph 3).

Part 4 – The Issues arising at the Count

19. In undertaking the review, there were a number of key issues which needed investigation. These were:

- the arrangements for the count made by the Acting Returning Officer
- the plan for conducting the count including the procedures to be followed
- the staffing and supervision arrangements for the count
- the decision to hold the count on the night of 6th/7th May 2010
- other issues from the Initial Assessment paper
- any contributory or associated factors which had a direct relationship to the subject of the review.

20. As mentioned in paragraph 6, an Initial Assessment paper has been prepared and published. I decided therefore that a sensible way forward for the review was to consider the findings in that report and to comment appropriately on those findings in terms of those areas that are covered by the terms of reference for the review.

Part 5 – The Findings of the Review

Introduction

21. The main findings of the review are set out below. The findings are based on the results of:

- (1) the interviews undertaken;
- (2) examination of the documents provided to me as part of the review;
- (3) consideration of media and other reports about the count;
- (4) the Initial Assessment paper.

22. In the main, I have been able to corroborate the information provided to me at interviews, mainly through written material. In essence, there is little dispute about the main facts of these matters.

Initial Assessment paper

23. The Initial Assessment paper (IAP) outlines a number of reasons why it is felt that the count took longer than expected. I have examined these by reference to the documents which have been provided to me and as a result of discussions with the Acting Returning Officer and her staff. The facts of the matter and the issues which arise are dealt with in the following paragraphs.

Receipt of ballot boxes/Start of the verification process

24. I understand that it has been the practice at Thurrock to wait for all ballot boxes to be received before any are passed to the counting assistants for the verification stage of the count to begin. This means that the verification cannot start until the last ballot box is received. This practice, of course, immediately builds a delay into the count and the Acting Returning Officer (ARO) estimates that this delay could have been anything between one hour and one and a half hours.

25. In my experience, I have never known such a practice to be followed. The normal practice is to issue ballot boxes for verification as they arrive to ensure that counting assistants are fully employed at all times and to speed up this part of the count process. This is the most effective and efficient way to undertake the verification stage. The IAP accepts that the current practice needs to be reconsidered and replaced by another system that allows verification to begin as soon as ballot boxes arrive at the count centre.

Timing of the count

26. The ARO had previously considered counting on Friday morning. However, once it was clear that Parliament intended to legislate with a view to encouraging overnight counts, she consulted further with the staff and made the decision to count immediately the polls closed.

27. If the count had taken place on Friday morning, it would have allowed the staff to make preparations for the verification to start immediately at the appointed time. Although it is then probable that the length of the count would have been shorter as there would not have been the one/one and half hour delay, by definition the result would have been declared later than it actually was.

Counting process

28. It is clear from the IAP that the verification and count took longer than anticipated because of the way in which the counting was undertaken. The process which had been agreed was not universally followed with some tables counting the papers several times rather than following the usual approach in terms of numbers of papers found at the end of each separate count. It is suggested in the IAP that the reason for this was that teams were "counting and recounting at least twice and sometimes up to nine or ten times before passing the ballot papers onto the count supervisor. It has been reported to me that sometimes they were doing these repeated counts because the observers, candidates and agents were suggesting the count, the first, second or third time, was not accurate."

29. This should have not been the case and I deal with this matter in more detail in the next section. The ARO estimates that a further delay of about another hour and a half to two hours was caused by this particular over cautious checking practice that was being carried out. The fact that this happened at all raises questions about the nature and make up of the supervising team and the role that the members of that team had in terms of managing the process.

Counting agents

30. The law provides that a candidate may appoint counting agents to attend at the count on his/her behalf.⁹ In the Guidance for Candidates and Agents issued by the Electoral Commission it says "The main role of a counting agent is to oversee the counting process on your behalf and make sure that it is undertaken in an orderly, accurate and correct manner. Counting agents will not participate directly in the counting process as they are only there to observe the proceedings. Counting agents may however draw to the attention of count staff

⁹ Parliamentary Election Rules, Rule 30

any doubtful ballot papers and request that the (Acting) Returning Officer mark on a rejected ballot paper the words 'rejection objected to' if they do not agree with their decision." ¹⁰

31. In terms of the legal duties and rights of counting agents, they can be summarised as follows:

Duties

- must comply with the requirements of secrecy
- must not interfere with the votes

Rights

- can be present at the commencement of the count
- can affix seal on adjournment of count
- can check the verification stage
- can ensure that candidate's papers are sorted correctly
- can draw attention to doubtful papers
- can object to the rejection of a ballot paper

32. Clearly, by reference to the guidance issued by the Electoral Commission and the legal provisions relating to counting agents, there is no right for a counting agent to require a recount of votes at any of the stages of the count, i.e. verification, sorting or counting. The only right to request a recount is that provided to either the candidate or the election agent before the result is declared.¹¹ The involvement of counting agents in the counting process as described in paragraph 28 should not have happened and had an adverse effect on the progress of the count and undoubtedly affected the length of time it took.

Staff training and briefing

33. I am advised that the count supervisors were trained and that detailed instructions were prepared for this purpose. However, there is some doubt as to whether copies of these instructions were provided to the supervising team and it appears that the instructions were not available at the count.

34. The counting assistants were not trained or provided with written instructions. Similarly, I have not been provided with any such instructions. In the place of such instructions, the plan was that the counting assistants were meant to be briefed by the count supervisors as to their duties and the processes to be followed before the commencement of the count. I am advised that the counting assistants were briefed as planned in the way indicated above and that further briefings took place at various stages of the count.

¹⁰ Guidance for candidates and agents (Electoral Commission), paragraph 2.42

¹¹ Parliamentary Election Rules, Rule 46

35. In the Electoral Commission guidance, it says "Before the commencement of the proceedings, the count supervisors and counting assistants should be briefed. It should be clearly explained to them what they are required to do, and any previously circulated written instructions should be reinforced. Staff should then be deployed in accordance with the count plan in preparation for the arrival of the ballot boxes." ¹²

36. The fact that counting instructions and procedure flow charts were not available at the count also contributed to the delays. In the IAP, the ARO suggests that this may have added another hour to the count process.

Number of staff/Turnout

37. 64 counting assistants were used at the count. No more could be accommodated because of the space available at the count venue. Nearly 50% of the counting assistants had not been employed at the polling stations. The turnout at the parliamentary election in the Thurrock constituency was 59.14% which was lower than the average turnout. Some 45,800 ballot papers were counted. By way of comparison, the count for Norwich North constituency used 60 counting assistants who counted some 42,600 ballot papers, a very similar ratio of counting assistants to ballot papers (715 in Thurrock compared to 710 in Norwich North). The Norwich North count took 4¼ hours compared to the first count at Thurrock which took some 8 hours.

38. Although Thurrock had the added complications of local elections and a close result, the fact that similar counts took such different times rather indicates that the planning and processes used at Thurrock were not as robust and as effective as those used at Norwich North. The delays at the former which have been identified in this report also explain the stark difference in timings between the two counts.

39. Generally speaking, the number of counting assistants employed at the count was of the right order and would stand up to comparison with arrangements made for similar counts elsewhere. If there is any suggestion that the number of counting assistants should be increased for future counts, it would be necessary to use a larger venue to accommodate the additional staff and the appropriate increase in the number of counting agents entitled to attend the count.

¹² Guidance for Acting Returning Officers (Electoral Commission), Part E, page 5, paragraph 3.2

Timings

40. The actual times for the various activities forming part of the count appear to be:

6 May

- a) 10.00 p.m. – Close of poll
- b) 11.30 p.m. – Verification stage started

7 May

- c) 4.45 a.m. – Verification stage completed
- d) 7.45 a.m. – Parliamentary election draft result available
- e) 8.00 a.m. – First recount starts
- f) 9.15 a.m. – Second recount starts
- g) 10.00 a.m. – Provisional result accepted by candidates/agents
- h) 10.08 a.m. – Declaration of result
- i) 10.30 a.m. – Local election count started
- j) 12.20 p.m. – First local election result declared

41. Most of the above times are approximate as detailed times were not specifically recorded. However, they are largely accepted as being reasonably accurate having been largely assembled from various computer records recording each stage of the count. They also accord with times mentioned in various media reports. It is clear from the above that the estimated times predicted by the ARO before the count were not achieved and this accords with the points made in paragraphs 3 and 18 above.

42. Although the count at Thurrock took much longer than had been anticipated and was one of the last to be declared of those counts that took place overnight on 6th/7th May, it was by no means the last. Reference to the Press Association website (see footnote 1) shows that declarations at several other counts which had been started immediately after close of poll were made after the Thurrock result. This rather indicates that other returning officers, particularly where there were combined polls, encountered similar difficulties to those experienced at the Thurrock count.

Number of ballot boxes

43. The law permits the ARO to choose whether to use the same ballot boxes for both elections at a combined poll or to use two different ballot boxes, one for the parliamentary election and one for the local election.¹³

¹³ Representation of the People (Combination of Polls) (E&W) Regulations 2004, Schedule 2, paragraph 7.

44. In this case, the ARO chose to use one box. The main issue which arises in terms of this decision is whether that decision led to any delays in terms of the verification process. In the IAP, the ARO says "that having a combined ballot box did not contribute to any significant extent to the delay. Sorting out the parliamentary and local ballot papers took less than half an hour and it would have taken us the same amount of time to correct any mistakes which are inevitable if two separate ballot boxes are provided".

45. There is no right or wrong answer to this particular issue. Practice varies from place to place with the decision often being made as a result of previous practice or experience. The Electoral Commission does not recommend one system as preferable to the other. I would concur with the ARO's conclusion that the single box system is unlikely to have added any delay to the process given the fact that all boxes at a combined poll have to be opened and verified regardless of the system chosen and before the counting of the parliamentary election ballot papers can begin.

Contributory/Associated Factors

46. There is one other important factor which needs to be taken into account as part of this review. This relates to the use of staff who have been employed on polling station duties during the day to act as count supervisors or counting assistants. Such staff will have started their day prior to 6.00 a.m. They will then have worked 15 hours at the polling station before finishing their duties some time after 10.00 p.m. By definition, such staff are likely to be tired and fatigued.

47. It seems to me that it is neither in the best interests of those staff or the efficient conduct of the count to then use them as part of the count process. They are not likely to be at their best and the longer the count goes on, the worse the situation is likely to become. It is important at the count that there is close attention to detail and that the process is conducted as efficiently as possible. The use of staff who have been at work for a period which could be as long as 24 hours is hardly likely to meet the above criteria. As noted in paragraph 34, this approach to using some staff for both functions also had an adverse effect on the training/briefing system for counting assistants. Additionally, it prevented a prompt start to the verification stage as some of the count supervising team were not present to manage the allocation and supervision of the ballot boxes to the counting tables.

Part 6 – Conclusion

48. Looking to the future, this report contains six recommendations which I believe, if implemented, will enhance the future conduct of counts in Thurrock. In essence, the delays within the adopted count process, which are recorded in this report, explain why it took so long to complete the verification and count stages. These were largely:

- as a result of the original decisions made about the process itself; or
- because staff working on the count did not follow the count instructions; or
- a lack of firm management at the count in respect of the relationship between those undertaking the count and the counting agents.

49. The issues of resources for the count, management arrangements and clear unambiguous lines of responsibility need to be addressed. In addition, it is essential that all those working at the count have received proper training and are given clear and detailed instructions about the nature of their duties and the processes to be followed. Attention to detail is critical to good electoral administration. The recommendations which I make need to be implemented to ensure that similar problems do not occur in the future.

50. Finally it has to be said that errors in electoral administration are generally unforgiving and that those errors can result in an election petition and a possible order to re-run the election. This was not the case insofar as this count was concerned. Indeed, any errors made were largely ones of process and arrangements. I could not find any evidence to suggest that the legal provisions relating to the conduct of the count were not followed. In terms of improvement, therefore, it is important that the management arrangements, procedures and processes for the conduct of future counts are thoroughly reviewed and the recommendations set out in the following Part of this report are aimed at assisting that review process.

Part 7 – Recommendations

51. That the process for conducting the verification stage of counts be reconsidered with a view to using a new system based on a secure and effective way of receiving ballot boxes and issuing those boxes for verification without delay.

52. That the instructions for count supervisors be reviewed to ensure that the count is conducted in strict accordance with those instructions and that the members of that team are given sufficient and appropriate authority to ensure that this is the case.

53. That a written note of the procedures to be followed at the count is provided to counting agents including an explanation of the duties and rights of those agents.

54. That all staff to be employed at the count should be provided with written instructions, with copies being available at the count.

55. That further consideration be given as to the appropriate venue for the count in Thurrock particularly in terms of the recommendation set out in paragraph 51 above.

56. That the practice of using staff as count supervisors or counting assistants for overnight counts, who have also been employed at polling stations on the day of poll, be discontinued.

John Turner

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