

Appendix 2  
Investigation Report



# The Association of Electoral Administrators

Independent investigation into the Yorkshire Coast Destination Business Improvement District Ballot

Peter Stanyon, Chief Executive



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## 1. Introduction

1.1. At its full Council meeting on 4 November 2019, Scarborough Borough Council (SBC) passed a resolution that:

“In the interests of prudence and good practice this Council instigates an independent and impartial investigation of the role of Scarborough Borough Council in carrying out the DBID ballot and that SBC urges the Yorkshire Coast BID Company and its predecessor, the DBID Board, to participate fully in that investigation.”

1.2. On 15 November 2019, Nick Edwards, a Director of SBC, commissioned the Association of Electoral Administrators (AEA) to undertake that investigation, which I, as Chief Executive, personally undertook.

1.3. I was supplied with Terms of Reference that included the following instructions:

- a) Did SBC carry out the ballot process in accordance with the DBID regulations?
- b) Is there any evidence to demonstrate that there was a material irregularity in the carrying out of the DBID ballot, and, if so, what was this irregularity?
- c) Is there any evidence to demonstrate that the secrecy of the ballot was compromised?

In his instructions to me, Mr Edwards also advised that the above instructions were not exhaustive and that were the investigation to identify any other area of concern relating to the proper conduct of the DBID ballot and SBC’s role in administering it, then that area should be reviewed and reported on.

## 2. Background

- 2.1. The Welcome to Yorkshire Coast Tourism Advisory Board commissioned the Mosaic Partnership to undertake a feasibility study into the establishment of the Yorkshire Coast DBID in the summer of 2015. The study findings were presented in December 2015 after consultation with local businesses and partners, including SBC.
- 2.2. This led to the establishment of a Task Group, which was comprised of public and private sector partners and included SBC representation, to develop the business plan ahead of a ballot of ratepayers of those hereditaments<sup>1</sup> entitled to vote.
- 2.3. Although it is not within the Terms of Reference to evaluate whether the original decision to establish the DBID was appropriate or not, there are some issues that are, in my opinion, directly relevant to my investigation.
- 2.4. The ballot was undertaken in November 2018, closing on 29 November 2018.

## 3. Methodology

- 3.1. I have conducted this review through a combination of written evidence and face-to-face and telephone interviews. I have asked for and been provided with a range of supporting documentation.
- 3.2. I have had the full cooperation of SBC staff involved in the development of the DBID and the subsequent ballot as well as the Yorkshire Coast Bid Company (YCBC). All my requests for information have been responded to positively, fully and effectively.
- 3.3. Prior to visiting Scarborough, I undertook desk-based research to attempt to understand the potential issues with the DBID ballot. This analysis identified several areas I needed to investigate further, and which are considered in this report.
- 3.4. On 4 and 5 December 2019, I met with representatives of the Yorkshire Coast Levy Payers Association (YCLPA), SBC and the YCBC. The meetings helped clarify the main issues of concern with the process.

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<sup>1</sup> Hereditament in this context means non-domestic ratepayers in the DBID area

- 3.5. On 18 December 2019, I was approached by Mr Edwards with a suggestion that a “call for evidence” from interested parties be arranged. I agreed with his suggestion, which led to the investigation period being extended to 14 February 2020 in order that submissions could be made to me by 31 January 2020.
- 3.6. Attached as Appendix A is a list of individuals I have communicated with or who have submitted evidence as part of the investigation.

## **4. Analysis of issues identified**

### **4.1. The DBID area**

- 4.2. It is generally agreed that the DBID area is large. Many of the respondents to the call for evidence cited the geographical spread and the seeming lack of clarity over the distribution of levy funds across the area as a major concern.
- 4.3. No clearly defined map of the DBID area appeared to be publicly available before the ballot. It was reported to me that a “poorly-defined” google map, with boundary lines running through hereditaments, was released on the YCBC website after the ballot had been concluded. In the opinion of one business owner, the boundary lines on the map did not follow recognised routes such as water courses or footpaths, seemingly being drawn “to include properties the DBID thought would increase their revenue”.
- 4.4. I was advised by the YCBC that the DBID area was originally defined through the publication of a street list. This was a conscious decision on the Task Group’s part as it was considered a clearer way of identifying the large geographical area than reliance on a map. However, concerns were raised with me that this approach meant there was a lack of definition of the area, particularly in respects to streets that ran into / out of the identified area.
- 4.5. It was reported to me that the online map posted on the YCBC website had been updated in January and October 2019. At the time of writing this report, the link to it on the website is broken. The link to the street list does however work.

### **4.6. The feasibility report**

- 4.7. The feasibility report clearly sets out the case for the DBID and provides details of the consultation processes undertaken to

support the recommendation that "a DBID would be viable for the area"<sup>2</sup>.

- 4.8. Concerns were expressed to me that when the feasibility report was published, it gave only percentage responses to the consultation rather than actual numbers of businesses in support of or against the proposals. The report advises that 25% of businesses responded to the consultation exercise, provides percentage breakdowns for various considerations by business sector and records statistics of attendees at some of the various workshops and presentations.
- 4.9. I was also advised that some of the appendices to the feasibility report were initially not released because of commercial sensitivity and that when they were, "several businesses that are listed as supporting the BID have categorically denied they gave it a 'thumbs up'". I have not been able to ascertain whether concern was expressed by such individuals at the point the appendices were released.
- 4.10. Evidence supplied to me by the YCBC provided details of the consultation steps taken both in respect of the feasibility study and the subsequent sharing of the business plan. On the face of it, the consultation exercise appears to have been comprehensive.
- 4.11. I understand that the feedback provided to the Task Group members by the YCBC when undertaking the original consultation exercise was that, with a couple of exceptions, businesses were generally supportive of the initiative. There did not appear to be any indication that there was a large volume of businesses that were unhappy with the proposal for a DBID at either the feasibility stage or when the business plan was developed. It was not until after the vote that the YCLPA made representations to SBC and appealed to the Secretary of State.
- 4.12. However, while accepting that consultation had taken place, the YCLPA advised that at many of the workshops and consultation meetings, the attendance of potential levy payers was in the minority. One example given to me suggested a 20% levy payer representation at an event, with the remainder representing the DBID proposer / Task Group or non-levy payers.

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<sup>2</sup> Yorkshire Coast Destination Business Improvement District Feasibility Report – Mosaic Partnership – December 2015

#### 4.13. **Business plan**

- 4.14. Once the feasibility study had been completed, the Task Group further developed the DBID proposals with the continued support of the Mosaic Partnership. Several refinements were made to the original proposals, particularly in respect of the definition of the DBID area and the inclusion or otherwise of those businesses that were classed as rural instead of coastal.
- 4.15. The consultation exercise led to the development of the business plan that was subsequently shared with potential levy payers in the DBID area.
- 4.16. A number of responses to the call for evidence identified that the business plan was not readily identifiable as such to some recipients, as demonstrated by "... nothing to make it stand out, nothing to show importance that it would be an extra tax, nothing that makes me think I need to view, read this, make sure I understand it ...". Responses also suggested that even where they had seen it, many business owners did not feel they were made fully aware of the implications of the proposal being approved.
- 4.17. The business plan does refer to the levy in two separate places, being covered in detail under the section "How are BIDs funded" on page 28<sup>3</sup>. Whether that information is clear to the reader is obviously a matter of opinion.
- 4.18. The YCLPA also supplied me with details of a consultation it had undertaken that showed a majority of those surveyed (304 of 444 respondents (68%)) did not receive the business plan.

#### 4.19. **Revised business plan**

- 4.20. On 11 October 2018, five working days before the Notice of Ballot needed to be sent to voters, Redcar and Cleveland Council withdrew its area from the DBID. The reason for this decision has been explained to me and was, in my opinion, entirely valid even though there are differences of opinion as to the rationale.
- 4.21. However, this decision meant that the business plan needed to be amended to reflect the reduced geographical area of the DBID and the effect on the revenues that would be raised if voters approved the scheme. I was assured by the YCBC that the revised business plan had been made immediately available on the DBID proposer's website. Copies were emailed to all businesses that, as part of the

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<sup>3</sup> Yorkshire Coast Business Improvement District – Business Plan

original consultation exercise, had consented to their contact details being retained.

- 4.22. However, it is clear from the call for evidence that many businesses were unaware of the revised plan.
- 4.23. I was advised that at this point, the SBC Electoral Services Team suggested to SBC management that, because the change to the business plan was so close to the ballot commencing, consideration be given to delaying the ballot by the 15 working days permitted by the regulations<sup>4</sup>. However, that suggestion was not acted upon for reasons that are unknown, and the ballot proceeded on the timetable as originally planned.
- 4.24. **The list of hereditaments**
- 4.25. A key issue throughout my investigation has been the creation of the list of hereditaments for the development of the DBID proposals and the subsequent creation of the list of eligible voters.
- 4.26. The regulations<sup>5</sup> require the relevant billing authorities, in this case SBC and East Riding District Council (ERDC), to prepare and supply, in data form, a document showing the name of each non-domestic ratepayer and the address. The document must also provide the rateable value of each hereditament owned by them in the defined geographical area in order to develop the DBID proposals.
- 4.27. SBC provided the data to the Mosaic Partnership on 4 September 2015, which was used to develop the outline DBID proposals. A second cut of data was supplied on 15 February 2018 and was used to further develop the DBID proposals and to undertake the consultation exercise with businesses.
- 4.28. The eligible businesses were defined in the DBID proposal document that remains available on the YCBC website. If the DBID were to be approved, only those businesses with a rateable value of £12,000 or above and considered to carry on the business of tourism would be required to pay the levy. The applicable sectors were also listed in the feasibility report, for example accommodation, car parking and entertainment and leisure.
- 4.29. As the consulting partners, the Mosaic Partnership undertook the cleansing exercise of the data supplied by SBC and made the

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<sup>4</sup> Paragraph 2(2) of Schedule 2 to the Business Improvement Districts (England) Regulations 2004

<sup>5</sup> Regulation 2(1) of the Business Improvement Districts (England) Regulations 2004



classification of businesses to be included by reference to those identified by the District Valuer, an organisation which is independent of all other stakeholders involved.

- 4.30. I was made aware of concerns as to the classification of some businesses as tourism for inclusion as levy payers, for example a funeral director. From information supplied to me by SBC, I am generally satisfied that the classifications were technically correct in that they are defined by the District Valuer, not SBC or the DBID proposer. The fact that a funeral director was included is as a result of its classification as retail by the District Valuer, a sector identified in the bid proposal.
- 4.31. SBC advised me that "Mosaic obtained a full list [of non-domestic ratepayers] and removed the sectors and locations that were not in the proposal. That list was sent to Elections and reviewed by Finance (it met their expectations)".
- 4.32. **Preparation for the ballot**
- 4.33. SBC's Returning Officer for local government elections was designated by the regulations as the ballot holder<sup>6</sup>.
- 4.34. The delivery of BID ballots is often sub-contracted to an external supplier with suitable expertise rather than delivered through the local authority's Electoral Services Team. However, the report considered by SBC's Cabinet on 11 April 2017 made it clear that "there will be a requirement for Electoral Services to oversee and carry out the ballot process."
- 4.35. Although similar to the delivery of elections, there are technical differences with the administration of BID ballots that require careful consideration. I understand that on becoming aware of the Cabinet report, the Electoral Services Team expressed concern to management that they did not have any working knowledge of such ballots.
- 4.36. It is important to note that the drafting of the Cabinet report was done during preparation for the unscheduled UK Parliamentary General Election on 8 June 2017, when the attention of the Electoral Services Team was focussed on safely delivering that poll.
- 4.37. Reassurance was subsequently provided that appropriate support would be available through the Mosaic Partnership, who had been involved in the development of BID ballots elsewhere.

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<sup>6</sup> Regulation 6 of the Business Improvement Districts (England) Regulations 2004

- 4.38. On 18 May 2018, a teleconference discussion took place between the Electoral Services Team and the Mosaic Partnership during which I have been told advice was provided as to the basic voting processes and timescales agreed as to the key event drivers. Mosaic subsequently sent through templates and sample documents used in previous BID ballots and responded to several questions put to them in June 2018. These were answered to the initial satisfaction of the Electoral Services Team.
- 4.39. On 28 June 2018, the Electoral Services Team was supplied with a copy of the notice of intention to conduct a ballot, which had been supplied to SBC as the billing authority by the DBID proposer<sup>7</sup>.
- 4.40. To proceed to a ballot requires the DBID proposer to send to the relevant billing authority a notice in writing requesting it to instruct the ballot holder to hold a DBID ballot<sup>8</sup>. This had originally been promised to the ballot holder on 20 September 2018 but was not actually provided until 11 October 2018, following the withdrawal of Redcar and Cleveland Council.
- 4.41. The Notice of Ballot was published on time on 18 October 2018. Copies of the Notice were issued by post to each hereditament on the list of voters.
- 4.42. **The list of voters**
- 4.43. The regulations make it clear that the ballot holder is responsible for the preparation of the list of persons entitled to vote<sup>9</sup> from information provided to them by the relevant billing authority<sup>10</sup>. However, technical guidance issued by the Department for Communities and Local Government (DCLG) states that "The local authority is responsible for drawing up the list of voters. They will use the list prepared by the BID proposer, having validated a proportion of the entries to ensure their accuracy"<sup>11</sup>.
- 4.44. The initial preparation in this case was undertaken by Mosaic acting on behalf of the DBID proposer.

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<sup>7</sup> Regulation 3(2) of the Business Improvement Districts (England) Regulations 2004

<sup>8</sup> Regulation 4(2)(a)(ii) of the Business Improvement Districts (England) Regulations 2004

<sup>9</sup> Paragraph 3(b) of Schedule 2 the Business Improvement Districts (England) Regulations 2004

<sup>10</sup> Regulation 11 (1)(b) of the Business Improvement Districts (England) Regulations 2004

<sup>11</sup> Paragraph 43. of the Business Improvements Districts Guidance and Best Practice – Department for Communities and Local Government – March 2015

- 4.45. The data was originally promised to the ballot holder on 4 October 2018 but was not received until 12 October 2018, primarily because of the decision taken by Redcar and Cleveland Council to withdraw from the scheme. This was very late in the process and prompted the Electoral Services Team to suggest to SBC management to delay the ballot by the 15 working days permitted by the regulations<sup>12</sup>, a suggestion that was not acted upon.
- 4.46. The data initially received was not in a usable format. Additional 'cleansing' was required to correct some fields, including addressing issues.
- 4.47. Once all cleansing had been completed, the list of voters contained 1,354 hereditaments.
- 4.48. The regulations themselves are not specific as to which address the Notice of Ballot and ballot papers should be sent to. Different interpretations can be taken.
- 4.49. Regulation 11(1)(a) states that the relevant billing authority shall "prepare a document showing (as far as the relevant billing authority is able to ascertain from its non-domestic rates billing records at that time) the name of each non-domestic ratepayer and the address and rateable value of each hereditament which is occupied, or (if unoccupied) owned, by him in the geographical area to which any BID proposals ... relate."
- 4.50. The ballot holder must then prepare a list of persons entitled to vote from that document. "Prepare" is not defined in the regulations.
- 4.51. There has, in my opinion, been an inconsistent approach in respect of interpretation of this provision.
- 4.52. Certain hereditaments, such as car parks and wireless stations, are not "bricks and mortar" buildings in the traditional sense and are unlikely to have letter boxes through which the Notices of Ballot and the ballot papers could be delivered. A decision was therefore taken to direct the paperwork for those types of hereditament to the ratepayer's correspondence address, which was also clearly identified in the data file. This included the hereditaments owned by SBC.
- 4.53. The actual hereditament address rather than the ratepayer's correspondence address was used for every other property. It was

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<sup>12</sup> Paragraph 2(2) of Schedule 2 to the Business Improvement Districts (England) Regulations 2004

reported to me that in some such cases, there was no delivery point available at the hereditament.

- 4.54. It was also reported that in some instances, even where there was a bill payer's name on file, the Notices of Ballot and ballot papers were marked for the attention of 'The Owner/Occupier', potentially rendering them as 'junk mail'. This was a point made by several respondents to the call for evidence.
- 4.55. **Delivery issues**
- 4.56. In the case of both the Notices of Ballot and the ballot papers, SBC's standard postal despatch mechanisms were used, through TNT as the downstream access provider into the Royal Mail system. 1,354 documents were provided in each case to SBC's post room by the ballot holder, but no specific receipt was issued for them by TNT. They were simply added to the daily post sent by the local authority. Whilst there is no requirement to have a receipt for the mailings, it is generally considered good practice.
- 4.57. I received comments that the correspondence was not clearly identifiable as being of importance, "looking like junk mail". The YCLPA consultation results suggest that 251 of 443 respondents (57%) did not receive a ballot paper.
- 4.58. The Notices of Ballot were despatched in plain white C5 envelopes, with no specific messaging printed on them.
- 4.59. On request, I was provided with the artwork used for the outgoing ballot paper envelopes. In my opinion, the printed envelopes clearly identify that a ballot paper is enclosed.
- 4.60. I understand that 61 Notices of Ballot and 42 ballot papers were returned by Royal Mail to the ballot holder as 'undeliverable'.
- 4.61. Eight ballot paper envelopes were returned after the close of the ballot (5:00pm on Thursday 29 November 2018) so could not be included in the counting of the votes. They were not opened.
- 4.62. There was no process in place to attempt a re-delivery of the 'undeliverable' documents. The regulations are silent on what to do in such cases and indeed, in electoral law, the Returning Officer is expected to do nothing with them.
- 4.63. However, in BID ballots undertaken in other local authority areas, efforts have been made to re-direct such ballot papers in the interests of effective participation.

- 4.64. The actual turnout of 29.17% was comparable with that in other BID ballots.
- 4.65. **Secrecy of the ballot**
- 4.66. The regulations<sup>13</sup> are quite clear that every person involved in the issue, receipt and counting of the ballot papers shall maintain secrecy of the ballot process at all stages. There is however no penalty within the regulations for failing to abide by this requirement.
- 4.67. I was advised of concerns that the secrecy of the ballot had been compromised based on information in communications that were issued by the DBID proposer throughout the ballot period.
- 4.68. Breach of secrecy is a serious matter. The contention being made was that the information allegedly leaked could only have come from the opening of the postal voting envelopes. I therefore sought clarification from all involved as to whether this occurred or might have occurred.
- 4.69. I was satisfied with the assurances given. Access to the opening process was limited to four SBC officers, all employed in the Electoral Services Team, all of whom were fully aware of the secrecy requirements. The opening processes and maintenance of the recording spreadsheet were all done in a secure area. At no stage was any person other than those identified above party to any part of the opening process.
- 4.70. One of the peculiarities of these ballots is that the DBID proposer is focussed on generating support for the proposal. Although the regulations are silent on the issue, technical guidance issued by the DCLG states that "... the ballot holder may report to the BID proposer during the ballot which ballot papers have been received"<sup>14</sup>. While this guidance directly conflicts with that applicable to statutory elections, it is published and therefore applicable.
- 4.71. The ballot holder issued four updates to the DBID proposer: on 8, 13, 16 and 20 November 2018. I was assured that no information as to whether the votes had been cast in support of or against the proposal was issued, purely confirmation in spreadsheet format as to which hereditaments had voted and those that had not.

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<sup>13</sup> Paragraph 6 of Schedule 2 the Business Improvement Districts (England) Regulations 2004

<sup>14</sup> Ballot Principles – Page 13 of the Business Improvements Districts Technical Guide for Local Authorities – Department for Communities and Local Government – March 2015

- 4.72. After considering concerns being expressed, the Returning Officer took the decision to not release further updates throughout the remainder of the process. It is possible that this decision may inadvertently have added to the impression that the actual details of how votes were being cast had been released by the ballot holder.
- 4.73. The DBID proposer, through the Task Group members, used the information from the four updates to contact those who had not voted to encourage them to do so. This included text messaging some business owners.
- 4.74. It was also confirmed to me that meetings between Task Group members and business owners took place at SBC offices throughout the voting period. Information was shared as to how voting was understood to have gone with the primary goal of increasing the yes vote.
- 4.75. In undertaking this lobbying exercise, the Task Group members used information they had previously been supplied with as to voting intention, or from businesses who had already voted. I am also certain that in some cases, the information used was not accurate.
- 4.76. I am entirely satisfied that no information as to actual votes cast was disclosed and that there was no secrecy breach by the ballot holder.
- 4.77. **Voting by SBC**
- 4.78. Several respondents made the point that although DCLG guidance states that "BIDS are business led partnerships", SBC had a disproportionate influence over the result based on the number of hereditaments it owned. In the opinion of many, this was unfair.
- 4.79. I am aware that in some other BID areas, the local authorities opted not to participate in ballots, leaving the decision to businesses.
- 4.80. The decision of SBC to participate does not contravene regulations.
- 4.81. Further concerns were raised as to the process for appointing the person responsible for casting SBC's votes and the method in which they should.
- 4.82. I was advised by SBC that "The votes were cast by the Leader of the Council, the Portfolio Holder for Finance and the Director for Tourism, given both Article 7 of the Council's Constitution and

Cabinet's resolution on 16 May 2017 to delegate authority to that Director to make arrangement to carry out the ballot. The decision on how to vote was based on the contents of the business plan and the approval to support the DBID at its [the Cabinet's] meeting on 16 May 2017."

- 4.83. SBC further advised me that the minutes of the Council meeting held on 1 July 2019 state that "The Cabinet resolved on 16 May 2017 to support Welcome to Yorkshire Coast Tourism Advisory Boards request for the Council to be the accountable body for the DBID, to fund a contribution of £15,000 and to delegate authority to the Director with management responsibility for tourism in consultation with the Portfolio Holder for Tourism and Culture to agree the terms under the scheme and to make arrangements for carrying out the ballot. This authority extended to the casting of the Borough Council's votes as part of the ballot. The constitutional mechanism for such a delegation is found at Schedule 3 of Part 3 of the Constitution, the Scheme of Delegation to Officers."
- 4.84. It has been submitted to me that video-evidence of that Cabinet meeting indicates members did not expressly make that decision. However, as the issue is not directly applicable to the Terms of Reference of the investigation, I did not request a copy of the recording. Being in the minutes of the Council meeting of 1 July 2019, it is an approved public record. I must therefore consider it a true reflection of that meeting, with no record of it having been challenged at the time.
- 4.85. **Attendance at the counting of the votes**
- 4.86. Concerns were raised with me as to who attended the counting of the votes. The regulations state that "no person other than the ballot holder and his clerks may be present at the counting of the votes, unless permitted by the ballot holder to attend"<sup>15</sup>, which gives the ballot holder full authority to invite any person he or she wishes to.
- 4.87. I was advised that the ballot holder issued a media release inviting any interested parties to attend at the count to witness proceedings, effectively offering free and unfettered access, subject to abiding by the secrecy provisions. I was subsequently advised that in addition to the staff administering the proceedings, eight other individuals were present: four from the Task Group; one from

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<sup>15</sup> Paragraph 14(2) of Schedule 2 the Business Improvement Districts (England) Regulations 2004

local radio; one from the Local Democracy Reporting Service; and two SBC officers.

- 4.88. I am satisfied that the counting process was both accurate and conducted in accordance with the secrecy provisions. The ballot papers had been opened in secrecy by the ballot holder prior to the count (in order to record the details of the hereditaments that had voted) but at the count itself, so as to maintain secrecy, the names of the hereditament owners were covered as the bundles of ballot papers were checked and counted.
- 4.89. **Appeal to the Secretary of State**
- 4.90. It is outside the scope of the Terms of Reference to question whether the Secretary of State acted correctly in turning down the appeal lodged by the YCLPA in accordance with the regulations<sup>16</sup>.
- 4.91. A number of concerns were raised with me as to how the decision that the 5% petition threshold of the numbers of persons entitled to vote in the ballot was not achieved, of alleged irregularities in the identification of levy payers and in the role of SBC and the DBID proposer in the process.
- 4.92. Part of the appeal process was for the Secretary of State to notify SBC, as the billing authority, and the DBID proposer of the appeal and to provide a copy of it to them, which included the signatories to the appeal.
- 4.93. On 25 January 2019, DCLG officials requested the Electoral Services team to undertake validity checks on the list of signatories. On 4 February 2019, SBC provided its initial calculations, but with caveats that it had doubts over the validation checks that had been applied. This resulted in 4.43% of eligible voters (in this case individual business owners, not hereditaments) having correctly signed the appeal.
- 4.94. On 6 February 2019, DCLG officials provided further clarification on the required approach to establishing the validity of the petition but, after further correspondence, agreed on 26 February 2019 that given the close margins, they themselves needed to conduct the checks and be confident of the validity. Ultimately, the Secretary of State concluded that the 5% threshold had not been achieved but did not notify the final percentage.
- 4.95. The YCBC came to the same conclusion ahead of the Secretary of State's decision based on its analysis of the names of the

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<sup>16</sup> Regulation 9 of the Business Improvement Districts (England) Regulations 2004



petitioners. I am satisfied it was not involved at any stage of the formal validation process.

- 4.96. Without being party to the full reasons why the appeal was turned down, I am unable to comment other than that the same doubts as to the legitimacy of the list of voters raised in section 4.42. were raised by the YCLPA.

## 5. Conclusions

- 5.1. I must firstly state that in my opinion, the Business Improvement Districts (England) Regulations 2004 do not provide a clear framework for the delivery of various processes. The regulations allow for a great deal of interpretation where prescription would be more effective. The direct conflict of some key provisions with election law is unhelpful and confusing.
- 5.2. The fact the DCLG has issued two different sets of technical guidance to be read alongside the regulations demonstrates that the legislation is lacking. This lack of certainty as to the correct processes to follow has, in my opinion, contributed significantly to the issues identified and contributed to the mistrust in the DBID ballot outcome.
- 5.3. Before turning to the three specific instructions posed by the Terms of Reference, I wish to make the following comments:
- 5.3.1. An assumption was made at the outset that SBC's Electoral Services Team was capable of delivering the DBID ballot. I do not believe that enough consultation was undertaken with the team to confirm this. The team are highly competent in delivering statutory elections but BID ballots are different and a team with greater experience is likely to have made different decisions, as identified below.
- 5.3.2. There is no evidence that SBC contemplated outsourcing the ballot to an external provider with extensive BID ballot experience. This is something I believe should have been considered.
- 5.3.3. The team was put under additional pressure because of the late decision by Redcar and Cleveland Council to withdraw from the process. This led to the late delivery of the list of potential voters to the ballot holder, which therefore meant that limited checking of that list was

possible ahead of the Notices of Ballot being despatched. In the circumstances, I believe the ballot should have been delayed by the 15 working days permitted by the regulations to enable more thorough checking.

- 5.4. **Did SBC carry out the ballot process in accordance with the DBID regulations?**
- 5.5. Much of the process of administering a BID ballot is similar to that at elections, which SBC's Electoral Services Team are highly competent at.
- 5.6. However, BID ballots are different in many areas. A thorough understanding of the regulatory processes involved is essential, something the team stated at the outset it did not have. That is not a criticism of the team: it is a basic fact.
- 5.7. The team was therefore heavily reliant on the guidance and advice of Mosaic, who have been involved in other BID ballots. I have concerns however that the advice, guidance and support provided by Mosaic was not as thorough as that the team required.
- 5.8. That said, on the evidence presented to me, I am satisfied that the ballot process was generally undertaken in accordance with the processes prescribed by the regulations. That does not however mean I consider the ballot was administered as well as it might have been, for several contributing factors, which are dealt with below.
- 5.9. **Is there any evidence to demonstrate that there was a material irregularity in the carrying out of the DBID ballot, and, if so, what was this irregularity?**
- 5.10. I have not identified any specific material irregularity in the carrying out of the DBID ballot, but I do have significant concerns as to parts of the process.
- 5.11. There are several steps that could have been done better. In listing them, I stress that the team's lack of experience in administering DBID ballots and the reliance on advice from Mosaic was fundamental.

#### **List of voters**

- 5.12. I have significant concerns in respect of the list of voters. As would be expected, Mosaic produced the list of eligible hereditaments from data provided by SBC (and ERDC) and submitted it back to SBC. I am generally satisfied that the correct hereditaments were

identified from the Valuation Office classifications, despite concerns being raised with me to the contrary as part of the call for evidence.

- 5.13. The list of voters submitted by Mosaic to the ballot holder was done far too late, just seven days before the Notices of Ballot were required to be despatched. This put the Electoral Services Team under unnecessary pressure.
- 5.14. In the data produced by SBC, the names of the bill payers were listed against each hereditament. In addition, the bill payers' correspondence addresses were shown, which in some cases were different.
- 5.15. The regulations are clear that the ballot holder must "prepare" the list of voters from the documents provided to it. However, apart from making some essential addressing corrections, the Electoral Services Team used the list as provided by the DBID proposer. This is not unreasonable, but had they been given more time for further analysis, it is likely that the concerns I have identified below would have been addressed.
- 5.16. I have two concerns with the list of voters. First, that the list did not consistently include the names of the bill payers where they appeared in the original data. When the data was cleansed, they were replaced with the words 'Owner/Occupier'.
- 5.17. In the interests of encouraging participation, the names where known should have been used.
- 5.18. Second, I have significant concerns as to the inconsistent way in which the list was filtered.
- 5.19. The list classified hereditaments differently, with car parks and wireless stations having their Notices of Ballot and ballot papers sent to correspondence addresses whereas all others were sent to hereditament addresses. This had a disproportionate effect on those hereditaments belonging to the local authorities involved.
- 5.20. This classification, although not in direct contravention with the regulations, is in my opinion incompatible with the ballot being administered in a consistent and fair manner. This is particularly relevant in this DBID ballot as many of the owners will not have been at the hereditament address when the ballot was being undertaken, the tourist season having ended. This point was made to me in several responses to the call for evidence.

- 5.21. I consider that a more experienced ballot holder would have ensured a consistent approach and taken the decision to send all voting materials to the same classification of address. I would suggest that as the address used for all other council correspondence rather than the hereditament address. This would have ensured consistency throughout the ballot.

### **Delivery issues**

- 5.22. I have no reason to doubt that 1,354 Notices of Ballot and, subsequently, ballot papers were produced by the Electoral Services Team. I also have no reason to doubt that they were entered into the postal system through SBC's post room.
- 5.23. However, I consider the failure to obtain a receipt from the service provider (TNT) for the 1,354 envelopes for the Notices and ballot papers as an error of judgement. It is standard practice to do so with the issue of postal ballot papers at elections in order to provide a clear audit trail.
- 5.24. Once the ballot papers were in the postal system, there was little the ballot holder could do to facilitate their delivery. It is fair to assume they will have been delivered in good faith.
- 5.25. Several submissions were made that they had not been received but equally, the post-ballot statistics show that many were, with the turnout of 29.17% comparable to other BID ballots.
- 5.26. The covering envelope indicated that it contained a ballot paper. However, although the design of the envelope was reasonably clear, I can understand it being overlooked or treated as 'junk mail' where it was addressed to 'The Owner/Occupier'.
- 5.27. I believe the ballot papers were, in the main, delivered but in many cases were not recognised for what they were and therefore not acted upon.

### **Undelivered envelopes**

- 5.28. 42 ballot paper envelopes were returned to sender as undelivered. No process was put in place to attempt redelivery
- 5.29. The DBID ballot process took place over an extended time-period allowing plenty of time to deal with such non-deliveries. Nothing was done that breached regulations but this links to the fact that an inconsistent approach was used in respect of the ballot paper delivery address. I would suggest that in the interests of transparency and inclusiveness in the DBID process, good practice

would have been to re-direct the undelivered ballot paper envelopes to the correspondence address on file.

**5.30. Is there any evidence to demonstrate that the secrecy of the ballot was compromised?**

5.31. For the reasons set out in paragraphs 4.65. to 4.76., I do not consider that the secrecy of the ballot was compromised. I asked specific questions of each of the key participants and they each independently gave me the assurances I required.

5.32. In my opinion, the returned ballot papers were handled correctly. No one other than the Electoral Services Team was present at the opening of the envelopes or the collation of the recording spreadsheet. I am satisfied that each member of that team is aware of the need to maintain secrecy at all times, being a standard practice at elections, with criminal liability for breach.

**5.33. Other issues identified**

5.34. There are a few issues that do not fall directly within the Terms of Reference, but which developed as consistent themes throughout my investigation. I would therefore like to make the following comments.

**Communication**

5.35. I have reservations as to the effectiveness of communication channels used throughout the initial consultation process and in respect of the sharing of the business plan.

5.36. I am surprised a map of the DBID area was not readily available throughout.

5.37. I am also not convinced that the revised business plan was communicated to all 1,354 businesses remaining in the DBID area following Redcar and Cleveland Council's withdrawal. This was imperative as it made fundamental changes to the original proposal.

5.38. I have no doubt that the Task Group did undertake a consultation exercise, as demonstrated to me by information provided by the YCBC and by some respondents to the call for evidence. However, I received numerous submissions from local businesses that they had either not been aware of the DBID or, where they were, the full implications had not been sufficiently explained. This has been supported by the survey results presented to me by the YCLPA.

- 5.39. In view of the size of the DBID, I would have expected to see greater emphasis on ensuring that potential levy payers were made aware of both the benefits and implications before the voting period commenced and encouraged to participate in the ballot.
- 5.40. In my view therefore, communication between the DBID proposer and the levy payers has been lacking throughout.

### **Ongoing management of the DBID**

- 5.41. Several concerns were raised with me as to the ongoing management and organisation of the DBID. These conflicted with the information provided to me by the YCBC, who are satisfied the governance arrangements are robust.
- 5.42. I would encourage the YCBC to actively engage with the business community it represents in order to address any ongoing concerns.

## **6. Summary**

- 6.1. I have come to the following conclusions:
- 6.1.1. The Business Improvement Districts (England) Regulations 2004 should be reviewed by government as they are poorly drafted, which has led to several of the issues experienced in this DBID.
  - 6.1.2. SBC should have better evaluated the capability of its Electoral Services Team to undertake the DBID ballot. Consideration should have been given to outsourcing the ballot to a more experienced provider or ensuring that the team received the necessary training to equip them on this new area of work.
  - 6.1.3. On Redcar and Cleveland Council's withdrawal, the ballot should have been delayed by the 15 working days permitted by the regulations to enable more thorough checking of the list of voters and communication of the revised business plan.
  - 6.1.4. The ballot process was generally undertaken in accordance with the processes prescribed by the regulations. That does not however mean the ballot was administered as well as it might have been.

- 6.1.5. In order to encourage participation, the ballot papers should have been addressed to the named bill payers in every possible case, not to the 'Owner/Occupier'.
  - 6.1.6. For the same reason of encouraging participation, in all cases the ballot papers should have been sent to the bill payer's correspondence address, not the hereditament address (unless that was the same). The inconsistent approach followed was inappropriate.
  - 6.1.7. A process should have been agreed as to how to deal with undelivered ballot papers.
  - 6.1.8. A receipt for all mailings should have been obtained for audit purposes.
  - 6.1.9. There was no evidence that secrecy of the ballot had been compromised but the DBID proposer should have been clearer as to where they derived the information, they were using to encourage a positive outcome.
- 6.2. In summary, I have found no evidence that SBC breached the Business Improvement Districts (England) Regulations 2004 in administering the DBID ballot. I consider that although there are lessons to be learnt, the regulations were adhered to.
  - 6.3. The regulations provide for an appeals process against the ballot, to the Secretary of State<sup>17</sup>. This process was pursued but was unsuccessful.
  - 6.4. Even though I believe the administration of the ballot could have been improved, and no doubt will be at future ballots, there is no other apparent mechanism for requiring or allowing a re-ballot. This is something many respondents wanted but unfortunately is not provided for in the regulations.
  - 6.5. SBC may terminate the DBID arrangements in accordance with prescribed requirements<sup>18</sup>. However, the regulations only permit the billing authority to do so where it considers "the BID body will have insufficient finances to meet its liabilities" or "the authority is unable ... to provide works or services which are necessary for the BID to continue."

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<sup>17</sup> Regulation 9 of the Business Improvement Districts (England) Regulations 2004

<sup>18</sup> Regulation 18 of the Business Improvement Districts (England) Regulations 2004

- 6.6. It would be for SBC to consider whether the provisions of regulation 18 apply.
- 6.7. On the basis that there is no provision for a re-ballot, I strongly urge that communication channels be reevaluated, and active steps taken to reengage the YCBC with the business community it represents.

**Peter Stanyon**  
**Chief Executive, Association of Electoral Administrators**

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### **The Association of Electoral Administrators**

Founded in 1987, the Association of Electoral Administrators (AEA) is the professional body representing the interests of electoral administrators in the United Kingdom, working independently of government. Key objectives include fostering the advancement of consistent and efficient administration of electoral processes, raising the profile of electoral administrators and contributing positively to electoral reform.

With just under 2,000 members, the majority of whom are employed by local authorities to provide electoral registration and election services, the AEA is uniquely placed to comment on the challenges faced by electoral administrators in delivering safe and secure electoral processes to UK citizens.



Director, SBC

Tourism and Marketing Officer, SBC

Democratic Services and Corporate Modernisation Manager, SBC

Electoral and Democratic Services Officer, SBC

Local Taxation Manager, SBC

Chief Executive, YCBC

Director, Mosaic Partnership

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