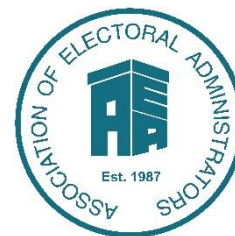


The Association of Electoral Administrators

Post-election review of the North Lincolnshire count focussing on the Broughton and Scawby ward

May 2023



1 Introduction and scope of investigation

- 1.1 On 25 May 2023, the Director of Governance and Communities at North Lincolnshire Council (NLC), at the request of the Returning Officer, approached the Association of Electoral Administrators (AEA) to undertake an independent review of the counting of the votes for the Broughton and Scawby ward of NLC following the election on Thursday 4 May.
- 1.2 The AEA's Chief Executive, Peter Stanyon, subsequently discussed the outline requirements, following which the scope was agreed.

Scope of the review

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The agreed scope was:

2.1

- To investigate the circumstances surrounding the failure to count 864 postal votes in the Broughton and Scawby ward
- To evaluate the robustness of NLC's count processes, and to seek to provide appropriate reassurance to stakeholders ahead of the next scheduled polls.

2.2 It was further agreed the following specific issues were to be considered:

- To consider the administration of the Broughton and Scawby ward count from the point ballot papers arrived, the verification process, the count, the adjudication process, and the steps then taken to formally declare the result
- To identify the points of failure, and any other potential points of failure, in the process
- To review and, if and where necessary make recommendations for improvements to, NLC's count processes so as to provide assurance to all stakeholders they are legally compliant, transparent, efficient and robust.

3 Review methodology

- 3.1 The investigation was undertaken by Peter Stanyon, Chief Executive of the AEA, who has over 35 years' experience of delivering elections.
- 3.2 He reviewed a range of documentation, including:
- The postal vote and count delivery plan
 - Staffing arrangements at the count
 - The count layout plan
 - Copies of the count paperwork for the Broughton and Scawby ward and the declaration of result of poll
 - The NLC election assurance plan.
- 3.3 He also received a copy of NLC's self-referral to the Electoral Commission, details of the legal advice received, and copies of the statements made by the key individuals involved.
- 3.4 He subsequently interviewed 14 individuals. The interviews were conducted via Teams on 29 June and 13 July.
- 3.5 We would like to place on record our thanks for the cooperative way all interviewees approached the review. All questions were answered openly and candidly, which greatly assisted our independent analysis.

Report layout

- #### **4**
- 4.1 This report considers the circumstances surrounding the error in sections 6 and 7. Several recommendations are made for consideration to improve existing NLC count processes.
- 4.2 Sections 8 and 9 consider the subsequent actions of the RO. Comments on the decisions taken are made throughout.

5 Opening statements

5.1 We wish to make the following statements at the outset:

- 5.1.1 We have found no evidence of actual or attempted electoral fraud. We are satisfied the situation that evolved in the Broughton and Scawby ward was a result of human error.
- 5.1.2 We are satisfied the error related to the Broughton and Scawby ward alone, and the electorate, candidates and agents should have confidence the results announced in the other 18 wards are legitimate. We would also like to assure stakeholders that in our opinion, the general counting processes employed by the RO at NLC are solid.
- 5.1.3 There was no one single point of failure, rather several issues that independently and collectively contributed to the outcomes.
- 5.1.4 Once the error had been identified, correct procedures were followed with regards to compliance with electoral law. There is no provision once an election result has been announced to count or re-count ballot papers.
- 5.1.5 The decisions taken immediately following discovery of the ballot papers, and those in the recovery phase, were arrived at following considered analysis of the options available, which was fully documented. At no stage were 'knee-jerk' actions taken, only considered and sensible resolutions.

6 General

- 6.1 The Broughton and Scawby ward was created by the [North Lincolnshire \(Electoral Changes\) Order 2022](#). This was the first election of two councillors to the new ward.
- 6.2 Multi-vacancy counts are more challenging to deliver than those with single vacancies. 17 of the 19 wards return more than one councillor. Despite previous experience of administering such counts, the fact this was multi-vacancy contributed to the error.
- 6.3 As was custom and practice, the RO chose to commence the count immediately the polls closed at 10.00 pm on Thursday 4 May. It did not end until approximately 07.30 am on Friday 5 May.

- 6.4 We received consistent feedback that staff, candidates, and agents were exhausted by the end of the proceedings. This was not helped by the high temperatures in the count hall throughout. We consider tiredness significantly contributed to the initial failure to count the postal votes and the subsequent uncertainty following the declaration of the result for the Broughton and Scawby ward.
- 6.5 At UK Parliamentary elections, legislation requires that all reasonable steps be taken to commence the counting of the votes within four hours of the polls closing¹. However, at all other elections, the legislative requirement is "as soon as practicable after the close of poll"².
- 6.6 Although there is limited public data available, the Press Association reported that at the May 2023 elections, 73% of the areas with polls commenced the counting of the votes on the day following the election. This compares to Electoral Commission data that shows 54% of areas did the same in 2022.
- 6.7 It is recognised the data sets are not entirely comparable as there will be differences in the areas being contested. However, the figures mirror the trend we have observed over the last few years of more ROs moving to Friday counts.

RECOMMENDATION

6.7.1 The decision as to when the verification and counting of the votes commences at each election should be made solely by the RO, as is prescribed by the relevant election rules.

Full regard should be given to the wellbeing of staff, candidates and agents when considering the timings, but in all instances the final decision should rest with the RO.

Regard should be had to issues such as:

- The duty of care the RO has towards all staff employed at the count, whether they be the core team or those employed solely to count, and to the candidates and agents

¹ Rule 45(3A), Parliamentary Elections Rules, Schedule 1 to the Representation of the People Act 1983.

² For example, rule 44(1), The Local Elections (Principal Areas) (England and Wales) Rules 2006

- The potential availability of a wider pool of talented and experienced individuals who are unable or unwilling to work through the night as count staff
- The high probability of reducing errors by tired staff in the early hours of the morning
- The ability of candidates and agents to undertake their roles in satisfying themselves as to the transparency and accuracy of the process.

7 Consideration of the failure to count all ballot papers

- 7.1 As at all elections, senior staff were trained in advance of the elections. However, the Broughton and Scawby count supervisor stated she found the paperwork 'alien', which contributed to the resulting arithmetical error.
- 7.2 There had been a change to the count process from that used at the last NLC elections, specifically with the intention of speeding matters up. Four years ago, the verification process was completed for all wards before any sorting and counting commenced.
- 7.3 On this occasion, each ward was administered independently, with the teams moving straight to sorting and counting once the verification process for the ward had been completed. We have no specific issue with the change as this system is used by many other ROs.
- 7.4 However, it led to initial confusion with some count supervisors, specifically with regards to the numbers of ballot boxes and wheelie bins at ward tables as the process continued.

RECOMMENDATIONS

7.4.1 To ensure full understanding of count processes and paperwork, the face-to-face training of count supervisors, count managers and DROs should be reviewed, and where necessary improved.

All paperwork and processes to be followed should be available and discussed so that everyone understands their own role and that of other key staff.

7.4.2 Considering the complexity of multi-vacancy counts, thought should be given to running a full 'dummy' count ahead of the next local elections.

- 7.4.3 To build assurance, understanding and confidence in counting processes, the information provided to candidates and election agents in advance of election counts should be reviewed on each occasion.**
- 7.4.4 The process for the management of full and empty ballot boxes should be reviewed to ensure count areas do not become unnecessarily 'cluttered'.**
- 7.4.5 Electoral services team members should be encouraged to visit other local authorities to help understand how best to develop processes and seek out good practices, specifically in regard to counting processes, that will be of benefit to the electors of North Lincolnshire.**
- 7.5 The 'postal vote and count delivery plan' issued to staff is extremely comprehensive. It clearly sets out the procedures that should be followed. However, we were advised that in the Broughton and Scawby ward, and on at least two other count tables, the processes diverged from the written procedures.
- 7.6 We understand the count managers were aware of such divergences, although not until the counts were well underway. They therefore took the calculated decision not to intervene. To do so was considered a greater risk to the process on those tables than to allow them to continue as they were.
- RECOMMENDATION**
- 7.6.1 To ensure effective management and oversight, the count plan must always be observed on all count tables, and measures introduced to ensure consistent and ongoing compliance.**
- 7.7 The written procedure for the multi-member ward counts provides that the ballot papers, once verified, should be placed in the wheelie bin. This effectively 'mixes' the polling station papers and postal votes, as required by law, before the 'sort and count' phase commences.
- 7.8 The 'block voting' system of counting is used where electors vote along party political lines. 'Counting sheets' are then used to calculate the votes cast on the remaining papers. We have no issue with either of those systems.
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- 7.9 The count supervisor for the ward was undertaking the role for the first time. She was appointed to the role as part of the long-standing NLC process of shadowing roles across democratic services, intended to develop greater understanding and ongoing resilience. We were advised the arrangement had worked well for several years, so no issues were expected.
- 7.10 She had attended one previous count, that for the UK Parliamentary general election in December 2019, where she shadowed another count supervisor. She commented the system of counting she had seen then, being a single-vacancy count, was different to that she experienced in 2023.
- 7.11 At these elections, she also worked as a presiding officer at a polling station. She was therefore not in attendance at the commencement of the verification process at 10.00 pm.
- 7.12 We consider this to be a key factor as although she was initially closely supervised by a count manager, and received a one-on-one briefing on her arrival, she did not receive the wider briefing given to other count supervisors.

RECOMMENDATIONS

7.12.1 Individuals should only be appointed as count supervisors where they are able to demonstrate experience of being involved in counts of the same nature, either through shadowing or as a count assistant.

Where this is not possible, the count managers should specifically be required to provide additional support and reassurance throughout the entire count.

7.12.2 Where counts are commenced immediately following the close of poll, count supervisors should be in attendance from the start.

- 7.13 She took control of her count table at approximately 10.30 pm. Prior to that point, her counting assistants worked with the neighbouring table supervisor, verifying the postal votes from across the district. This ensured they were fully employed pending her arrival.
- 7.14 She was therefore not involved in the verification of the postal votes at any stage, including those for the Broughton and Scawby

ward. Once verified, they were placed in the wheelie bin for the ward by another count supervisor.

- 7.15 Although the postal vote verification slip suggested 839 postal votes had been authorised for inclusion in the count by the postal vote opening team, 844 postal votes were found. This number was confirmed following a re-count.
- 7.16 20 further postal votes, which had been returned to polling stations throughout polling day or received following the final full opening session, were added to the wheelie bin. We are therefore confident 864 postal votes were placed in the wheelie bin, which correlates with the total entered on the 'ballot box verification sheet'.
- 7.17 The count supervisor initially administered the counting of the votes for the Town ward. As this was the first time she had undertaken the role, she was closely supervised by one of the count managers. The count was successfully delivered, following which the Broughton and Scawby ward was allocated to the table.
- 7.18 Several issues then occurred that contributed to the failure to count the postal votes.
- 7.19 The Broughton and Scawby ward count was administered adjacent to a larger ward. The polling station ballot boxes issued to that table encroached on the Broughton and Scawby ward space, resulting in the wheelie bin containing the postal votes being moved without the count supervisor's knowledge. This contributed to her forgetting to count the postal votes.

RECOMMENDATION

7.19.1 A review of the layout should be undertaken to ensure space for each sovereign count table is maximised.

- 7.20 It also appears the count supervisor for that adjacent ward was not following the written count procedures. They opted to use ballot boxes as receptacles for the polling station votes rather than immediately transferring the verified papers to the wheelie bin, as stipulated. The count supervisor for Broughton and Scawby basically copied this process rather than following that prescribed by the RO.
- 7.21 It must be noted the count supervisor was aware she could at any stage have asked the count managers for advice and guidance. However, despite her confirming they were approachable, she did

not do so as it was clear to her they themselves were under pressure to deliver results quickly. The count supervisor therefore chose not to bother them and deferred to the adjacent count supervisor instead.

- 7.22 We are aware the wheelie bins have been utilised as the 'mixing' receptacles on many occasions, without major issue. It must be noted the count procedures clearly set out the processes to be followed, and had they been, the situation that arose would have been avoided.
- 7.23 We also received feedback they are not necessarily 'user-friendly', being large and heavy. They are also opaque, which we consider introduces risk.

RECOMMENDATION

7.23.1 Consideration should be given to introducing transparent receptacles, in lieu of the opaque wheelie bins, for the mixing and storage of verified ballot papers.

- 7.24 The count supervisor administered the verification and subsequent count of the polling station ballot boxes well. In all instances, the verified totals matched the ballot paper account figures.
- 7.25 In total, 1,858 ballot papers were verified, including 864 postal votes. This means a maximum of 3,716 votes could be cast (two votes per ballot paper).
- 7.26 Nine ballot papers were rejected, equating to 18 potential votes. 1,880 votes were shared between the five candidates, with the two Conservative Party candidates being declared elected, receiving 525 and 528 votes respectively.
- 7.27 1,898 votes were therefore accounted for (18 + 1,880). Simple arithmetic shows a discrepancy of 1,818 votes. The vast majority of those will have been the votes cast by post, but a proportion will have been unused votes, i.e. where a voter chose to vote once rather than twice.
- 7.28 Once the count supervisor had completed her count, she passed the provisional result to a DRO. A cursory arithmetical check was undertaken following which the doubtful ballot papers were adjudicated on and the provisional result shared with the election agents and candidates.

- 7.29 Measures should have been in place to flag such a large discrepancy, both to the count supervisor but also to the DRO authorising the declaration of the result. The only check that appears to have been undertaken was that of a threshold figure.
- 7.30 It was stated that at first glance, the number of votes closely matched the verification number. If it had been a single-vacancy election, it would have done, but this was multi-vacancy.
- 7.31 Based on previous election results, and even considering the revision to ward boundaries, we understand the outcome was as expected.

RECOMMENDATIONS

7.31.1 At future multi-vacancy elections, the unused votes should be counted as well as those cast for candidates and marked as rejected.

This allows a true arithmetical check of the total counted votes against the number expected. There is no other accurate way that check can be done.

7.31.2 The count paperwork and subsequent validation processes should be amended to ensure the verified ballot paper and counted/rejected/unused votes totals are clearly shown and then compared to ensure accuracy of result.

- 7.32 The provisional result was, as required by law, considered by the agents and candidates. We were advised that although not rushed, the time given to scrutinise the provisional result was limited. However, it was also reported attendees were able to take photographs of the provisional result sheet, which suggests sufficient time was allocated and no pressure applied to move on.
- 7.33 The Conservative Party interviewees reported they had expressed some concern at the time that although the result was 'as expected', it 'did not look right'. They suggested the RO was 'uninterested' when informally advised.
- 7.34 None of the other agents or candidates referred to this in their evidence. It must also be noted no agent or candidate requested a formal re-count of the votes, as is their entitlement.

7.35 The RO and DROs have a different recollection of events as that expressed by the Conservative Party. They advised that to their knowledge, no one in attendance:

- Expressed concern at any time, informal or formal, as to the accuracy of the result
- The provisional result as presented was accepted, and
- Had there been any indication of doubt this would have been taken seriously and reviewed.

RECOMMENDATIONS

7.35.1 As part of the adjudication process at local government counts, in addition to the verified ballot paper total and the counted and rejected votes totals, the RO should proactively share the total number of unused votes.

7.35.2 To improve transparency and communication channels between the RO's team and the agents and candidates, a fixed location (or locations) should be designated in the count hall to administer the adjudication and provisional results processes.

7.35.3 Consideration should be given to improving accessibility to the adjudication process for agents and candidates to assist them in their role of scrutinising the provisional results.

7.36 Ultimately, the provisional result was agreed following which the formal declaration was made, at approximately 4.15 am on Friday 5 May. It was at that point the count supervisor discovered the ballot papers in the wheelie bin.

7.37 From the written evidence received and the responses to interview questions, there was significant doubt at that point as to whether the ballot papers had been included in the count or not. The count supervisor was too distressed to confirm one way or the other, and an initial check of the supporting paperwork did not immediately flag an issue.

8 Immediate actions taken

- 8.1 As part of the preliminary investigation, the papers in the wheelie bin were 'lightly sifted' by three members of the RO's senior management team to assess whether they had been counted or not. No candidates or agents were invited to observe this process, although it was undertaken in the main body of the count hall.
- 8.2 The sift proved inconclusive. Some of the votes appeared to be in batches of block vote 50's, suggesting they had been counted, but there was no certainty this was the case. However, the universal consensus was that the sift showed similar voting patterns to that of the announced result.
- 8.3 It was confirmed there is no legal provision to count the ballot papers once a result has been announced³. Section 46 of the Electoral Administration Act 2006 expressly provides that "a returning officer may not ... re-count the votes given at an election after the result has been declared."
- 8.4 Considering:
- The ongoing uncertainty as to whether the papers had been counted or not
 - The lateness of the hour,
 - The residual risk making an announcement could have on confidence in the accuracy of other counts still taking place,
 - The potential need to seek further guidance and/or direction from the Electoral Commission, and
 - The potential need to seek independent legal advice from electoral law specialists,
- the RO made the decision to take no further action at that time.
- 8.5 The ballot papers found in the wheelie bin were bagged and sealed. Focus then shifted to the live counts in other wards.
- 8.6 We understand the counts for all 19 district wards concluded at approximately 07.30 am on Friday 5 May, following which the proceedings were suspended. The counts of the town and parish

³ Legislative change would be required to permit such an action.

councils were then held later that day, concluding at approximately 5.00 pm.

9 Subsidiary actions taken

- 9.1 At 3.22 pm on Saturday 6 May, the election agent for the Conservative Party messaged the RO raising concerns the outcome in the Broughton and Scawby ward could not be mathematically correct. The RO advised he did not see that message until 9.30 am on Sunday 7 May.
- 9.2 At 9.35 am, the RO sent a holding message to the agent. He subsequently decided that as the agent had raised it directly with him, it would be best to explain the situation as far as he understood it. He did so by telephone at 12.32 pm.
- 9.3 The agent subsequently emailed the RO requesting further information. The email was timestamped at 11.40 pm on Sunday 7 May, but not read by the RO until the following morning.
- 9.4 On Monday 8 May, the bank holiday, the RO met with colleagues and ascertained the likely circumstances as to the source of the ballot papers. It was arithmetically confirmed they could not have been counted and were almost certainly the postal votes for the ward. The legal position was also checked again, confirming the correct decision not to count the papers had been taken in the early hours of Friday 5 May.
- 9.5 The RO self-referred the incident to the Electoral Commission at 11.49 am. He also, at 11.52 am, acknowledged receipt of the agent's email and advised that self-referral had occurred.
- 9.6 The decision was then taken to advise all other agents of the issue. The borough agent for the Labour Party was contacted at 3.35 pm, but no other contact details were available to the RO at that stage.
- 9.7 The RO convened a response team, which first met at 12.30 pm on Tuesday 9 May⁴. The actions already taken were reviewed, including the initial feedback from the Electoral Commission, which had been received at 11.29 am.
- 9.8 Legal opinion was obtained from a Barrister at a specialist law firm. It was confirmed the actions taken once the ballot papers were discovered were compliant with the law, and that the ballot papers should be kept securely for one year prior to being destroyed.

⁴ It subsequently met on 10 (twice), 11, 12, 15 and 17 May 2023.

Access to them should only be provided through an order of the courts.

- 9.9 It was agreed that in addition to the candidates and agents, the RO needed to communicate the situation to the electorate. On Tuesday 9 May, work commenced on drafting such a communication for the council website.
- 9.10 By close of Tuesday 9 May, all agents and candidates (except the Green Party candidate, who was out of the country) had been contacted and apprised of the situation. We understand the briefings were, in the main, received with good grace and understanding, although anger was reported as being expressed by the Conservative Party agent.
- 9.11 Over the next couple of days, requests for information and clarification were made by agents representing the Conservative and Labour Parties.
- 9.12 On Thursday 11 May, all candidates and agents were provided with:
- An advance copy of the embargoed press statement
 - A copy of the RO's self-referral to the Electoral Commission
 - A copy of the Commission's initial response, and
 - An outline of the Commission's performance standards review process.

Links were also provided to information relevant to challenging an election result, with confirmation the RO would not oppose an application to the courts.

- 9.13 One of the successful candidates subsequently queried their status as an elected member. The RO responded by email that same evening (Thursday 11 May) confirming, as things stood, they had been and continued to be duly elected. He also telephoned the two councillors on the morning of Friday 12 May, speaking to one and leaving a message for the other, to re-iterate this information.
- 9.14 The press statement was posted on the NLC website at 8.00 am on Friday 12 May. It was subsequently picked up by BBC Radio Humberside, and run as the lead story on the 11.00 am news. It was posted on the station's digital news pages at 12.00 pm, and subsequently picked up by Scunthorpe Live.

- 9.15 The response team met for the final time on Wednesday 17 May, with provision to meet again on Thursday 25 May were an election petition to be presented. This did not happen.
- 9.16 On 25 May, the Director of Governance and Communities at NLC approached the AEA to undertake this review.

10 General observations on the RO's actions

- 10.1 The steps taken by the RO once the error had been identified were sensible. General consideration and decision-making processes were thoroughly recorded, and actions arrived at in a measured manner.
- 10.2 All decisions made in the recovery phase were legally correct. There was a clear determination to do the correct thing, not take actions that would have risked further challenge and adversely affected confidence in the overall election.
- 10.3 However, some of the actions could have been undertaken faster than they were. The considered approach taken in the absence of any previously agreed communications protocol ultimately led to a week's delay in notifying the electorate, which is unfortunate.
- 10.4 We understand the reasons why the decision was taken not to advise candidates and agents at the count. The circumstances were not clear, it was late, and there was a desire not to introduce unnecessary doubt as to the accuracy of results in the other 18 wards.
- 10.5 The RO was between a rock and a hard place, with the situation unprecedented in NLC. Alongside the remaining district ward counts, there was the need to consider the counts for the parish and town councils that were to follow later that Friday, and the physical and mental states of the key players involved at the end of a long night's work in a pressurised environment.
- 10.6 There was limited opportunity on Friday 5 May, both at the district count and later that day, to properly assess the circumstances surrounding the ballot papers found in the wheelie bin. The simple fact is at that stage, it was not known whether they had been counted or not.

COMMENT

10.6.1 We consider the decision not to notify candidates and agents at that time was sensible as more questions than answers would likely have resulted.

- 10.7 However, it was known an error had occurred, and time was ticking for the submission of a potential challenge of the result. The RO has no powers to challenge their own actions, even where they know they have presided over a mistake that could call the election into doubt.
- 10.8 Any petition for challenge must be submitted to the courts within 21 calendar days of the date of the poll. It is generally recognised as a short period but is as prescribed in law. The delay in not notifying candidates, agents and the wider electorate of the error was therefore unhelpful.
- 10.9 We recognise the fact the King's Coronation was taking place on Saturday 6 May, and it was a bank holiday weekend. This may have introduced conflicting organisational priorities, but the incorrect announcement of an election result is a serious matter. For the good of public scrutiny, it is essential confidence in the integrity of the process is maintained.
- 10.10 Notwithstanding this, steps to assess the circumstances and implications should have commenced sooner.
- 10.11 It is recognised the legal opinion from the Barrister and the initial response from the Electoral Commission would not have come until Tuesday 9 May, following the bank holiday.
- 10.12 The press statement was issued to candidates, agents, and the media at the close of Thursday 11 May, embargoed until 8am on Friday 12 May. From the evidence we received, we suggest it could have been posted by Wednesday 10 May, which would have ensured clarity as to the validity of elected members.

COMMENTS

10.12.1 The initial recovery phase could have proactively commenced on Saturday 6 May.

10.12.2 The steps undertaken on Monday 8 May could effectively have occurred on Saturday 6 or Sunday 7 May, including self-referral to the Electoral Commission.

10.12.3 In addition, all candidates and election agents could have been apprised of the situation, if only as a holding communication, by close of play on Sunday 7 May, not on Tuesday 9 May as happened.

RECOMMENDATION

10.12.4 A written protocol should be developed to assist the RO and senior colleagues in dealing with situations where urgent communication is required with key stakeholders, including agents and candidates, at any stage of an election.

11 Conclusion

- 11.1 The error in the Broughton and Scawby ward is unlikely to have occurred had the documented count procedures been followed. However, the fact it did demonstrates some weaknesses in the otherwise solid processes that should be addressed.
- 11.2 The actions taken by the RO and his team in responding to the issue were thorough, considered, and well-documented. The law was upheld throughout. Decisions were taken with the primary intentions of ensuring transparency and openness, and ongoing robustness.
- 11.3 However, we believe the initial recovery phase should have been undertaken with greater speed.
- 11.4 In summary, although we believe the subsequent actions taken by the RO could have been more timely, there is no doubt they were legally compliant and well-considered throughout.

Peter Stanyon
Chief Executive

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