

## Postal and Proxy Voting Procedures

### RECOMMENDATION

- 1.1 To note the procedures for managing postal and proxy votes
- 1.2 To ask political group leaders, independent councillors and election agents to sign a protocol on postal and proxy voting based on the Electoral Commission Code of Conduct and the Birmingham local protocol.
- 1.3 To request the Council's political parties and independent members and election agents for candidates at Council elections, to sign the protocol at the time for the appointment of election agents under the election timetable.

### SUPPORTING INFORMATION

- 2.1 At its meeting on 22 November 2006, Council passed the following resolution:

**Resolved that the recent conviction of two Liberal Democrat councillors for vote rigging raises serious concerns about the integrity of the postal vote process.**

**In this particular case, the two Liberal Democrat councillor in Burnley took advantage of an all postal vote to secure a victory at a Local Government election by illegal use of postal proxy votes.**

**The Judge in the case said these were serious offences and sentencing is due on 23 November.**

**In view of the damage caused to public confidence in the postal voting process by fraudulent actions of Liberal Democrat councillors, urgent action needs to be taken in Derby to protect public confidence in the postal vote system in Derby.**

**Council therefore asks the Director of Corporate Services to:**

- 1. Prepare robust and clear guidance on postal and proxy vote procedures.**
- 2. Prepare a report to Council clearly laying out the procedures in the city so that Council can be as confident as it can that such abuses cannot occur in Derby,**
- 3. Prepare a Good Practice Protocol that Council will require to be signed annually by all political parties and independents which will bind them to lawful, honest and best practices regarding postal and proxy votes.”**

- 2.2 With regard to paragraph 2. of the resolution, the procedures for processing postal and proxy votes are laid down in legislation. Electoral Registration Officers and Returning Officers are also given guidance by the Electoral Commission and the Association of Chief Police Officers. The Electoral Administration Act 2006 has introduced a range of measures to help prevent or detect electoral fraud, especially in relation to postal and proxy votes. These measures are summarised in Appendix 2. The most significant of these measures is the introduction of personal identifiers (signature and date of birth) on postal vote applications which will be checked against identifiers on a statement accompanying the completed postal ballot.
- 2.3 The application of the legislative requirements in Derby should provide a robust system for managing postal and proxy votes. In addition, we have recently purchased a new electoral computer system and entered into a contract for certain ballot services (printing, scanning etc.) for the May 2007 Council elections. In drawing up the specifications, and selecting the suppliers, we have paid particular attention to the need for effective security controls.
- 2.4 We have a good working relationship with Derbyshire Police who have nominated a Single Point of Contact for electoral matters. We refer allegations or suspicions of electoral fraud to the police at the earliest opportunity.
- 2.5 With regard to paragraph 1. of the Council resolution, robust and clear guidance on postal and proxy vote procedures exists in the Electoral Commission’s Guide to Candidates and Agents for the May 2007 local elections, a copy of which will be given to all candidates at the Council elections.
- 2.6 With regard to paragraph 3. of the Council resolution, the Electoral Commission has agreed nationally with the larger political parties a voluntary code of conduct for political parties, candidates and canvassers

on the handling of postal vote applications and postal ballot papers. The latest version is reproduced as Appendix 3. We have always given a copy of this code to all candidates at Derby elections.

- 2.7 Following high profile cases before an election court, Birmingham City Council drew up its own local protocol for the May 2006 elections. Birmingham's protocol, attached as Appendix 4, complements the Electoral Commission code but it is more restrictive and it also covers proxy voting applications.
- 2.8 Given the terms of the Council resolution, I consider that the Council should ask political parties and independent members to sign both the Electoral Commission code and the Birmingham protocol, the latter suitably adapted to the Derby context. Although paragraph 3. of the Council resolution talks about the protocol being signed annually by political parties and independents, I feel it would be good practice for this also to be undertaken by each election agent acting for a candidate at Council elections.

<b>For more information contact:</b>	Steve Dunning. Tel: 01332 255462 email <a href="mailto:steve.dunning@derby.gov.uk">steve.dunning@derby.gov.uk</a>
<b>Background papers:</b>	None
<b>List of appendices:</b>	Appendix 1 – Implications Appendix 2 – Security measures Appendix 3 – Electoral Commission Code of Conduct Appendix 4 – Birmingham City Council local protocol

## **IMPLICATIONS**

### **Financial**

1. None.

### **Legal**

- 2.1 The requirements relating to postal and proxy votes are set out in the Representation of the People Acts, the Electoral Administration Act 2006 and associated regulations.
- 2.2 The signing of the proposed protocol on postal and proxy voting will be voluntary. The Council cannot compel a political party or candidate to sign it. If all legal requirements are met, the Returning Officer must accept a nomination as a candidate at a local government election.

### **Personnel**

3. None.

### **Corporate Themes and Priorities**

4. None

**Postal and Proxy Voting Security Measures**

Summary of integrity provisions included in the Electoral Administration Act 2006:

- collection and verification of personal identifiers for absent voting
- ability to check signatures and dates of birth on applications with any other signatures or dates of birth held by the Electoral Registration Officer, or by the local authority in records that the Electoral Registration Officer is authorised to inspect<sup>1</sup> for the purposes of their registration duties
- requirement for a reason to be given if an elector wants their postal vote sent to an address other than the address at which they are registered (now in place for all postal voters)
- requirement for the outcome of all postal voting applications to be acknowledged
- an increase in the length of time available for the police to carry out investigations into electoral fraud
- introduction of a new offence – where an individual applies for a postal or proxy
- vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, induces an Electoral Registration
- Officer or Returning Officer to send a postal vote or associated communication
- to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient<sup>2</sup>
- a new procedure for electors who attend polling stations, and who claim not to
- have applied for a postal vote, to be offered a tendered ballot paper
- a new procedure for electors attending polling stations, who have lost or not received their postal ballot papers, to be offered a tendered vote after 5pm on polling day
- a new procedure for an elector to confirm with the Returning Officer that their
- returned postal vote has been received
- the production of a marked postal voters list, available for inspection after
- the election

## **Electoral Commission code of conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers in England and Wales**

### **Introduction**

1. Political parties, candidates and canvassers play a vital part in elections, not least through encouraging voting. With the increasing popularity of postal voting there is a need to ensure that traditional standards of political propriety observed at polling stations are carried through to the postal voting context.

### **Key principles**

2. All political parties, candidates and canvassers handling postal vote applications and postal ballot papers will adhere to the following two key principles:
  - Candidates and supporters should assist in the efficient and secure administration of elections and uphold the secrecy of the ballot.
  - No candidate or supporter should place themselves in a situation where their honesty or integrity – or that of their party or candidate – can be questioned.

### **What the law says**

3. An individual may only vote once for each contest in each election and not for more than the number of seats available in that election.
4. A voter's signature or mark must always be their own.
5. An individual may not vote for, or as, someone else unless they are formally appointed to act as their proxy. If an individual steals someone else's vote they may be prosecuted for making a false statement, forgery, using a false instrument or pretending to be someone else (personation).
6. An individual may not exert, or attempt to exert, undue influence to persuade or force someone to vote, not to vote, or to vote a certain way. Someone who prevents or deters the voter from freely exercising their right to vote, or attempts to do so, may be found guilty of undue influence.
7. It is an offence to offer money, food, drink, entertainment or other gifts to persuade someone to vote, or not to vote.
8. It is an offence to falsely apply for a postal or proxy vote (absent vote) as some other person. It is also an offence to otherwise make a false statement or otherwise induce the Returning Officer to either send a postal ballot paper or other election mail to an address which has not been agreed by the person

entitled to the vote, or to cause a postal ballot paper not to be delivered to the intended recipient.<sup>1</sup>

9. It is an offence to supply false information to the Electoral Registration Officer for any purpose connected with the registration of electors.<sup>2</sup>

### **Applications for postal voting**

10. If you develop a bespoke application form, it should conform fully with the requirements of electoral law, including all the necessary questions and the options open to electors.
11. Electors should be encouraged to ask for the postal vote to be delivered to their registered home address, unless there are compelling reasons why this would be impractical. Such reasons must be stated on the application form.
12. Because of the risk of suspicions that the application may be altered and the risk of the application form being delayed or lost in transit, the local Electoral Registration Officer's address should be the preferred address given for the return of application forms.
13. If an intermediary address is used, forms should be despatched unaltered to the relevant Electoral Registration Officer's address within two working days of receipt.
14. If you are given a completed application form, you should forward it directly and without delay to the local Electoral Registration Officer.
15. The Electoral Registration Officer may check the signature on an absent voting application against any other copies of the elector's signature or date of birth which they hold or is held by any authority which they are authorised to inspect.<sup>3</sup>
16. The Electoral Registration Officer must confirm in writing to all successful applicants that they will receive a postal ballot.

**See later section on 'Election offences and penalties' for further information on specific electoral and general offences of which you should be particularly aware.**

### **Postal voting ballot papers**

17. You should not touch or handle anyone else's ballot paper. If you are asked for assistance in actually completing a ballot paper, you should always refer the voter to the Returning Officer's staff at the elections office who can arrange a home visit if necessary. Assistance will also be available for electors at polling stations.

18. It is absolutely clear that anyone acting on behalf of a party should not solicit the collection of any ballot paper. Wherever practical, the voter should be encouraged to post or deliver the completed ballot paper themselves.
19. It is recognised that people working for a party may be approached by a voter who is unable to post their ballot paper or make arrangements for it to be returned in time. If you are asked to take the completed ballot paper, you should ensure that the voter has sealed it first and then post it or take it to a polling station or office of the Returning Officer immediately, without interfering in any way with the package.
20. If you are with a voter when they complete their ballot paper, remember they should complete it in secret. Equally, you should ensure that the voter seals the envelopes personally and immediately. If you are asked to give advice, it is acceptable and often helpful to explain the voting process but do not offer to help anyone to complete their ballot paper.
21. If you are in any doubt about the probity or propriety of your actions, you should ask yourself the question, '**What would a reasonable observer think?**' This code has been prepared based on this test, as advocated by the Third Report of the Committee on Standards in Public Life.<sup>4</sup>

**December 2006**



## **Election offences and penalties**

There are a number of specific electoral offences and some general offences of which candidates, agents and supporters should be particularly aware during their campaign. This is not intended to be a comprehensive list and independent legal advice should be sought if necessary.

Details are given in brackets about in which court the offence may be tried and the maximum applicable penalty. Prosecutions under the Representation of the People Act (RPA) 1983 must be brought within 12 months of the commission of the offence. However, if there are exceptional circumstances and there has been no undue delay in the investigation the time limit may be extended to not more than 24 months after the offence was committed. Any application to extend the deadline must be brought within one year of commission of the offence.<sup>5</sup>

### **Bribery**

A person is guilty of bribery if they directly or indirectly give any money or procure any office to or for any voter, in order to induce any voter to vote, or not vote, for a particular candidate; or to vote or refrain from voting.<sup>6</sup> (Offence may be tried in Magistrate's or Crown Court/one year on indictment and/or an unlimited fine).

### **Treating**

A person is guilty of treating if either before, during or after an election they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.<sup>7</sup> (Offence may be tried in Magistrate's or Crown Court/one year on indictment and/or an unlimited fine).

### **Undue influence**

A person is guilty of undue influence if they directly or indirectly make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote.<sup>8</sup> This latter offence can also be committed where a person intends to impede or prevent the free exercise of a vote even where the attempt is unsuccessful.<sup>9</sup> (Offence may be tried in Magistrate's or Crown Court/one year on indictment and/or an unlimited fine).

### **Secrecy**

Everyone involved in the electoral process should be aware of the secrecy of the ballot and should not breach it. The Returning Officer will give everyone who attends the opening or counting of ballot papers a copy of parts of Section 66 of the RPA 1983. (Offence will be tried in Magistrate's Court/£5,000 fine or six months' imprisonment).

### **Personation**

It is an offence to commit, aid, abet, counsel or procure the offence of personation.<sup>10</sup> This is where any individual votes as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed as a person guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force. (Offence may be tried in Magistrate's or Crown Court/two years on indictment and/or unlimited fine).

### **False registration information and false postal/proxy voting application**

It is an offence to supply false information in relation to the registration of electors to the Electoral Registration Officer. It is also an offence to provide false information in connection with an application for a postal or proxy vote. False information includes a false signature.<sup>11</sup> (Offence will be tried in Magistrate's Court/six months' imprisonment and/or £5,000 fine).

### **False application to vote by post or by proxy**

It is an offence to falsely apply to vote by post or proxy with the intention of depriving another person of a vote or gaining a vote to which a person is not entitled.<sup>12</sup> (Offence may be tried in Magistrate's or Crown Court/two years' imprisonment and/or £5,000 fine).<sup>13</sup>

### **Multiple voting and proxy voting offences**

There are various offences regarding multiple voting and proxy voting including voting by post as an elector or proxy when subject to a legal incapacity to vote; voting more than once in the same or in more than one local election area; applying for a proxy without cancelling a previous proxy appointment, and inducing or procuring another to commit one of the above offences.<sup>14</sup> (Offence will be tried in Magistrate's Court/£5,000 fine).

There are also a number of non-electoral offences which may be relevant, for example:

- making a false statement under the Perjury Act 1911
- forgery
- using a false instrument under the Forgery and Counterfeiting Act 1981
- conspiracy to defraud
- perverting the course of justice

## **Birmingham City Council Elections: 4 May 2006**

### **Local protocol for candidates, agents and canvassers on postal and proxy voting**

#### **Introduction**

This Local Protocol lays down a set of standards of behaviour in relation to absent voting which has been agreed locally by those actively involved in contesting the above elections. These standards should be read in conjunction with the Code of conduct, agreed by the main political parties and published by The Electoral Commission. However, in Birmingham, participants have voluntarily agreed to accept more stringent limitations on their conduct. The protocol will be reviewed following these elections.

#### **Local context**

At recent elections the total number of postal votes has exceeded 70,000. Allegations of electoral fraud have been made connected to postal voting, particularly following the local elections in June 2004 which resulted in legal challenges to the results in the Aston and Bordesley Green Wards. The Court voided those elections and fresh elections were held in July 2005. The current number of postal voters in the City is (approx.) 53,000.

#### **Key principles**

1. Candidates, agents and canvassers have a vital role to play in encouraging electors to vote. Promoting postal and proxy voting is consistent with this role.
2. Candidates, agents and canvassers should **not** touch or handle anyone else's postal ballot paper, before or after it has been marked, or act as courier for it irrespective of whether it is sealed in an official envelope.
3. Candidates, agents and canvassers are encouraged to assist in the process by alerting the Returning Officer/Election Office to any incidents where an elector is having difficulty understanding the process or arranging the return of their postal vote.

#### **Actions**

**Applications to vote by post or proxy:** Candidates, agents and canvassers may:

- advise electors that they may apply to vote by post, or to appoint a proxy to vote for them;

- advise electors that applications to vote by post or proxy should be returned without delay, direct to the local Electoral Registration Officer at the Elections Office, 150 Great Charles Street, Birmingham B3 3HS;
- advise electors that they must give a reason if they request that their ballot paper be sent to a different address;
- advise electors that the deadline for **new** applications to vote by post is 5pm on 18 April 2006;
- advise electors that the deadline for **new** applications to vote by proxy is 5pm on 25 April 2006;
- advise electors that in the event of becoming physically incapacitated after 5pm on 25 April 2006 they may appoint a proxy as long as they apply before 5pm on polling day. This application must be attested by a qualified person and must declare when the incapacity occurred;
- advise electors that the Electoral Registration Officer will confirm to them at their registered address that their application to vote by post or proxy has been allowed.

**Before polling day**, candidates, agents and canvassers may:

- remind postal voters they should seal their postal ballot paper and declaration of identity in the envelopes provided and
  - post it back to the Returning Officer; or
  - deliver it to the Elections Office, 150 Great Charles Street, Birmingham B3 3HS, before or on the day of the poll; or
  - take it to their local polling station (this applies ONLY on the day of the poll);
- remind electors that a friend or relative may assist with the return of their postal ballot<sup>1</sup>;
- advise electors that if they have not received their postal ballot, or subsequently lost it or their declaration of identity or envelopes; they may apply, giving a valid reason, for a replacement pack. They should be advised to consider if they should collect the replacement in person rather than rely on there being enough time for one to be sent by post;
- advise electors that if they have any query they may contact the Elections Office on 0121 303 2731, [elections@birmingham.gov.uk](mailto:elections@birmingham.gov.uk) or in person at the Elections Office, 150 Great Charles Street, Birmingham B3 3HS.

**On polling day**, candidates, agents and canvassers may:

- remind postal voters they may take the return envelope (containing the marked ballot paper and declaration of identity) to:
  - their local polling station; or
  - the Elections Office, 150 Great Charles Street, Birmingham B3 3HS;

---

<sup>1</sup> In extreme circumstances, where the elector is unable to make any other arrangements, advise electors to contact the Elections Office to arrange for a Council officer to collect the postal vote. This facility will be available until 9pm on polling day.

- remind electors that a friend or relative can do either of the above for them<sup>1</sup>; and
- take an elector or their friend or relative to their preferred place of deposit of their postal vote.

#### Queries

- In the event of any query regarding this Local Protocol please contact the Elections Office on 0121 303 2731, [elections@birmingham.gov.uk](mailto:elections@birmingham.gov.uk) or in person at the Elections Office, 150 Great Charles Street, Birmingham B3 3HS.

## Birmingham City Council Elections: 4 May 2006

### Local protocol for candidates, agents and canvassers on postal and proxy voting

#### Preamble

We recognise that there is a lot of public concern both nationally and locally about the security of postal votes. We recognise that fraud, and actions which may give rise to a perception of fraud, can affect public confidence in the electoral process.

We want to work together to do all that we can to ensure that public confidence is maintained in the electoral process and the use of postal and proxy voting.

#### Agreement

We the undersigned therefore agree to follow the Birmingham City Council Local Protocol during this election and to continue to work together to achieve high public confidence in future elections.

WARD .....

Name	Signature	Party and capacity (candidate/agent)

## **Birmingham City Council Elections: 4 May 2006**

### **Local protocol for candidates, agents and canvassers on postal and proxy voting**

#### **Preamble**

We recognise that there is a lot of public concern both nationally and locally about the security of postal votes. We recognise that fraud, and actions which may give rise to a perception of fraud, can affect public confidence in the electoral process.

We want to work together to do all that we can to ensure that public confidence is maintained in the electoral process and the use of postal and proxy voting.

#### **Agreement**

We the undersigned therefore agree to follow the Birmingham City Council Local Protocol during this election and to continue to work together to achieve high public confidence in future elections.

<b>Name</b>	<b>Signature</b>	<b>Party and capacity (candidate/agent)</b>