

Maintaining order and preventing undue influence outside polling stations

Background

1. Good order should be maintained outside polling stations to ensure that people who want to vote can enter without any hindrance. On occasion, however, incidents do arise in the vicinity of polling stations leading to complaints and allegations being made to the police and/or the Returning Officer (RO).

2. This document is designed to help the police think about how best to approach the issue of policing polling stations and offers some practical steps to help them reduce the likelihood of problems arising and deal with any that occur. It is aimed at the force election single point of contact (SPOC) but it may be of use to the RO, Presiding Officers, poll clerks and other staff of the RO. It should be read in conjunction with section 3 of the *Code of conduct for campaigners: postal voting, proxy voting and polling stations*.¹

Note: Previously this advice was presented here under the heading *Maintaining order outside polling stations*. The purpose of this advice note is to ensure that:

- good order is maintained outside polling stations;
- every effort is made to avoid voters being subjected to undue influence when trying to enter the polling station to cast their vote; and
- tellers² are able to fulfil their important role.

It has recently been highlighted³ how difficult the RPA (1983) section 115 offence of undue influence is to apply when voters consider that they are intimidated or harassed outside a polling station when arriving to vote. There are two separate issues that should be considered:

¹ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/179741/Code-of-conduct-for-campaigners-2015.pdf

² Tellers are an established part of the democratic process although they have no standing in law. Tellers are usually volunteers for candidates, parties or campaigns who are positioned outside a polling station to ask voters for their elector number to see whether their supporters have turned out. This activity is not illegal and may help to increase turnout by allowing campaigners to contact electors who have not voted. However, tellers may be seen as impeding, obstructing or intimidating electors on their way into the polling station/place. Any decision regarding the location or behaviour of tellers is a matter for the Presiding Officer and RO, and tellers must comply with their instructions.

³ See *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB) paragraphs 163 – 169 and 575 – 624. <http://www.bailii.org/ew/cases/EWHC/QB/2015/1215.html>

- People gathering outside a polling station

If a lot of people gather outside a polling station to the extent that voters cannot get in without difficulty, then consideration should be given to the use of public order powers to disperse those who do not need to be there.

- Undue influence of electors wishing to vote

If there is any indication from voters or other campaigners that people may have been subject to undue influence or intimidation then be clear about how you deal with it with reference to the specific offence

If undue influence outside polling stations is not given prominence in the briefing for police officers then there is a danger that it may take place unseen and unchecked.⁴

Overarching principle/priority

3. The priority for the police is to protect the right of voters to freely cast their votes, and also the right of campaigners to campaign. Any police action should be clear that these priorities are protected.

4. The process of going in person to a polling station to cast a vote is seen by many as not only a civic duty but also a social event. It is an opportunity to meet friends, neighbours and even a candidate or an agent before or after casting their vote. This interaction is a natural part of a democratic society and should not be discouraged. This should be a primary consideration for the RO, Presiding Officers, candidates, agents, tellers or police officers before action is taken to disperse people who may congregate outside a polling station.

5. To some people a group of people outside a polling station may seem to be innocent and without malicious intent. However, others may perceive it as threatening and obstructive. The situation may become aggravated where, for example, there is close political rivalry, with one side being suspicious of the actions of another or simply wishing to present the other party in a bad light. It is difficult to decide how best to respond to such a situation without offending one side or the other. The clearest guide is that the interests of the voter must take priority.

Potential offences

6. While there is an offence of undue influence, there is a range of other powers available to the police when considering how to address such incidents. Some examples include:

⁴ Please note that the Electoral Commission has published a set of do's and don'ts for tellers which should be included in any briefing to ensure that any intervention is appropriate:
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/102858/fact-tellers-dos-and-donts-rc-ca.pdf

- Highways Act 1980 – section 137 – obstruction of the highway
- Public Order Act 1986 – sections 4, 4A and 5 – threatening behaviour/harassment
- Criminal Justice Act 1988 – section 39 – common assault/battery
- Offences Against the Person Act 1861 – section 47 – assault causing actual bodily harm
- Criminal Damage Act 1971 – sections 1, 1(2) and 2 – damage to property
- Common law power of arrest – in relation to breach of the peace.

Working to prevent incidents outside polling stations

7. Those standing for election, their supporters and others campaigning at elections or referendums are likely to be committed to doing all they can to encourage electors to turn out to vote. Following the publication of the notice of election or referendum, the Electoral Commission recommends that ROs arrange a meeting with candidates, agents, tellers and campaigners at the earliest opportunity following the publication of the notice of election or referendum to communicate the same message to all concerned. This will ensure that everyone is aware of the local circumstances and conducts their campaign within the same guidelines. An early meeting may pre-empt problems by providing an opportunity to discuss campaigning in and around polling places and the conduct of tellers. Guidance should be distributed at pre-election/referendum meetings.

8. Specific preparations that may help to prevent or deal with issues are suggested below:

- The SPOC should agree the approach to be adopted and the standards of acceptable behaviour with the local authority contact, parties, candidates and campaigners before the election.
- Police presence is essential at those polling stations deemed by the SPOC and the local authority contact to be at high risk of electoral malpractice.
- At polling stations where the RO and the SPOC have identified a significant risk of unacceptable behaviour by campaigners around the immediate entrance, they may consider using hazard-warning tape to mark out an area around the entrance that should be kept clear to allow people to access the building.
- At polling stations in areas deemed to be at high risk of undue influence, the SPOC and the local authority contact may consider the merit of using CCTV coverage (where installed) and/or body-worn video cameras.
- The SPOC may ask the local authority contact to see whether Presiding Officers can monitor and assist the police with information on alleged incidents outside their polling station.
- If they are unable to speak to all participants at a candidates and agents meeting organised by the RO, the SPOC may contact agents for each party or candidate before the poll to seek their advice in helping to prevent issues

involving their supporters that may arise before or during the poll, and on what they are prepared to do to speedily resolve any issue that does arise.

- An appropriate police presence is essential at those polling stations deemed to be at high risk of electoral malpractice by the SPOC and the local authority contact.
- The SPOC should agree with the local authority contact how quickly operational support should be deployed to resolve an incident at or in the vicinity of a polling station. This may vary according to the identified level of risk.

What to do when there are concerns about maintaining order or preventing undue influence outside a polling station

9. Everyone – Presiding Officers, police, candidates, agents, tellers and electors arriving to vote - should be alert to whether voters are affected by the behaviour of campaigners or others outside polling stations.

10. Any complaint about behaviour in the vicinity of a polling station should be directed to the relevant Presiding Officer in the first instance so that the matter can be dealt with and monitored by the polling station staff. However, while Presiding Officers have responsibility for ensuring that electors are given an opportunity to cast their vote in a free and fair manner, their power to act does not go beyond the polling station.

11. If it is not possible to contact the Presiding Officer, or the matter cannot be resolved by the Presiding Officer to the complainant's satisfaction, contact should be made with the RO or a member of the RO's staff.

12. The RO or their staff may try to resolve the matter by a direct approach to those causing concern. If this is not possible the RO or their staff should contact the candidate, the candidate's agent or, if the candidate is standing for election on behalf of a political party, that party's officers, and advise the police.

13. It may be that a complaint is made directly to the SPOC or the local police. If the informal actions outlined above do not resolve the problem, it would be appropriate to consider the use of police powers or to ask people to move.

14. The evidence gathered to date supports the view that no person has been prosecuted for undue influence during the past 10 15 years. It is most likely that remedial action by the police, for example, asking people to move, has had the desired effect without the need to resort to prosecution.

15. Presiding Officers and ROs have been advised that, if they are in doubt, they should consider what a reasonable observer would think. This consideration should be applied to the actions of anyone in the vicinity of a polling station.

16. This advice note acknowledges the value of having separate SPOCs for electoral fraud and operational matters and recognises that their roles may overlap.