



Local election petitions

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A local election petition has been brought following the elections on 22 May 2014 in Tower Hamlets seeking to have the election of the mayor, Lutfur Rahman, declared void.

This note gives details of the different electoral offences and the procedure for bringing a local election petition. It also gives brief details of previous allegations of electoral abuse in Tower Hamlets.

Library Standard Note 5751, *Election petition: Oldham East and Saddleworth*, gives details of the use of the Parliamentary election petition process after the general election in 2010 and Standard Note 6255, *Election offences since 2010*, provides a chronology of allegations of electoral malpractice from 2010 to date.

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1 Local government election petitions

Local government election petitions may question whether a successful candidate was, at the time of the election disqualified or was not duly elected (*Parker's Law and Conduct of Elections*, paragraph 19.2). The Electoral Commission guidance for candidates for local elections in England and Wales lists the grounds for a local election petition:

- the successful candidate was disqualified at the time of the election
- the successful candidate was not duly elected
- the election was invalidated by corrupt or illegal practices
- the election was invalidated because of general corruption or the employment of a corrupt canvasser/agent.¹

For local elections the petition must be presented by four or more voters who voted or who had the right to vote at the contested election or by one of the unsuccessful candidates.

An election petition must be in a form prescribed by the relevant Rules and must be submitted within a set time. For local elections it is within 21 days after polling day. There are exceptions to the time limit for lodging a petition; petitions relating to payment or other rewards made in relation to corrupt or illegal practices must be filed within 28 days of the alleged payment or reward. For petitions relating to corrupt or illegal practices that come to light from returns or declarations relating to the successful candidate's expenses, these must be filed within 14 days of the filing of the return.

The trial of a petition takes place in open court without a jury and is tried by one judge qualified to hear the case taken from a rota. The judge, sitting as a Commissioner in the Election Court, must have 10 years High Court experience and not be resident in the local government area to which the petition relates. The court has the same powers as those of a Parliamentary election court.

At the conclusion of the trial the court must determine whether the person whose election or return is complained of, or any and what other person, was duly returned or elected, or whether the election was void in the same way as for a Parliamentary election petition. For local government election petitions the election court must notify the High Court of its determination. This must be sent to the Secretary of State by the High Court.

The Electoral Commission has published guidance about election petitions on its website. See p9 of Section F of the [guidance](#) for Returning Officers at local elections in England.

2 Election offences

The *Representation of the People Act 1983* defines most of the electoral offences and these are classified as either corrupt or illegal practices. The Electoral Commission gives details of the penalties:

Corrupt practices are indictable with a maximum penalty of imprisonment for one year and/or a fine, except for the offences of personation, making a false application to vote by post or proxy and interfering with communications relating to postal or proxy votes or containing a postal ballot paper, where the

¹ Electoral Commission, *Local Elections in England and Wales; Guidance for candidates and agents, Part 6 of 6 – After the election result*, p5

maximum penalty is imprisonment for up to two years and/or a fine. Illegal practices are summary offences and the maximum penalty is a £5,000 fine.

3.7 Prosecutions under RPA 1983 must be brought within 12 months of the offence being committed. 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.²

There is a useful [summary of electoral offences](#) on the Electoral Commission's website.

The Commission and the Association of Chief Police Officers have published [Guidance on preventing and detecting electoral fraud](#); the latest edition was issued in February 2014. The guidance lists the key electoral offences and penalties in Section 3; Appendix A to the guidance sets these out in more detail.

2.1 Falsely applying for a postal vote

The Electoral Commission / ACPO [Guidance on preventing and detecting electoral fraud](#) provides details of this offence:

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 or money or property to which a person is not entitled. Specifically, it is an offence to:

- Apply for a postal or proxy vote as some other person (whether living, dead or fictitious), or otherwise make a false statement in connection with an application for a postal or proxy vote.
- Induce an Electoral Registration Officer or a Returning Officer/Counting Officer to send a communication relating to a postal or proxy vote to an address that has not been agreed by the voter.
- Cause such a communication not to be delivered to the intended recipient.

3.16 It is also an offence to aid, abet, counsel or procure the commission of the above offences.

The Electoral Commission has also published a Code of Conduct for campaigners about postal voting, proxy voting and polling stations. (This Code of Conduct is also available as Appendix H to the Electoral Commission / ACPO guidance.) The Code has been agreed by the political parties represented on the House of Commons Parliamentary Parties Panel and is endorsed by the members of the Electoral Commission's UK Electoral Advisory Board of senior Returning and Electoral Registration Officers and Electoral Integrity Roundtable. Under the Code, candidates, campaigners, agents and canvassers are discouraged from handling postal votes.

3 Tower Hamlets

3.1 Previous allegations of electoral abuse

There have been allegations of electoral abuse at previous elections in Tower Hamlets.

² [Guidance on preventing and detecting electoral fraud](#), Electoral Commission and ACPO, February 2014

The *Times* reported in April 2006 that the police were investigating postal vote fraud in East London where it had been alleged that hundreds of postal votes had been diverted from residential tower blocks. The claims had been made by Respect and other parties fighting local elections in Tower Hamlets where postal vote applications had nearly doubled since 2005.³

In April 2008 the Joseph Rowntree Reform Trust published a report, *Purity of elections in the UK: causes for concern*. The report had been commissioned to 'review the extent to which there is evidence of electoral principles and processes being undermined in the UK'. The report noted the effect of the *Biraderi* ('brotherhood') system on electoral practices in some British Asian communities. Dr Stuart Wilks-Heeg, the author of the report, acknowledged that this issue required further and more detailed research and that much of the existing knowledge depended heavily on largely anecdotal evidence but said that "it has been widely suggested that the *Biraderi* system disenfranchises voters, given the combination of a patriarchal clan system and widespread use of postal voting, in which ballot papers are completed within the family home, or, in some cases, taken to a central facility (so called 'voting factories') for completion by party representatives". The report also noted that the Metropolitan Police had suggested

.. that there is evidence "within the Bengali community in Tower Hamlets" that electors have been persuaded to re-direct their postal ballots to another address or to hand them over to party representatives.⁴

In May 2010 the *Independent* reported that one of its reporters was assaulted by a number of youths shortly after investigating allegations of electoral fraud in Tower Hamlets.⁵ The reporter was investigating allegations that a number of electors had been falsely registered at the address of a Labour local election candidate. There were a number of postal vote fraud allegations in London and four of these were in Tower Hamlets where 3,123 late postal vote registrations had been received before the 2010 general election.

The *Evening Standard* reported in February 2012 that 'dozens of flats' in Tower Hamlets were occupied by up to eight people per bedroom according to the electoral register.⁶ The Electoral Commission reviewed electoral registration procedures in March and 127 names had to be removed from the register.

In April 2012 Labour and Conservative councillors in Tower Hamlets had written to the Electoral Commission giving details of instances where they alleged electoral fraud had occurred. The councillors said they were concerned about the unprecedented number of households which had recently signed up for postal votes in the borough and also about reports that postal votes were being collected from voters. The Commission issued a statement and said it had passed on the allegations to the police.⁷

The police launched an investigation into allegations of electoral fraud in Tower Hamlets in March 2014. Press reports suggested that there had been claims that 'bogus workers',

³ Councils are investigated for postal vote fraud, *Times*, 27 April 2006

⁴ *Purity of Elections in the UK: Causes for Concern* by Stuart Wilks-Heeg, Joseph Rowntree Reform Trust, 2008

⁵ Police investigate electoral fraud claims after journalist is beaten up, *Independent*, 5 May 2010

⁶ Mayor voter fraud fears, *Evening Standard*, 21 February 2012

⁷ *Electoral Commission statement on allegations of electoral fraud in Tower Hamlets*, 26 April 2012

believed to be supporters of Independent mayor, Lutfur Rahman, posed as housing staff whilst canvassing residents.⁸

3.2 The elections on 22 May 2014

Intimidation at polling stations and at the count

There were allegations of intimidation at the elections in Tower Hamlets.⁹ The Electoral Commission's Code of Conduct for campaigners about postal voting, proxy voting and polling stations covers campaigning outside polling stations:

3.1 Campaigners should be allowed to put their messages to voters on polling day, including in public spaces outside polling places.

Polling station staff and police officers should not seek to discourage or remove campaigners who are otherwise peacefully communicating with voters, as long as they are not within or impeding access to the grounds of the polling place. Campaigners should be careful, however, to ensure that their approach is proportionate and should recognise that groups of supporters may be perceived as intimidating by voters.

3.2 Campaigners should keep access to polling places and the pavements around polling places clear to allow voters to enter.

The Presiding Officer is responsible for maintaining order in the polling place, and campaigners who appear to be impeding access by voters to a polling place may be asked to move by polling station staff or police officers.¹⁰

There have also been allegations of intimidation of staff counting the votes at the count venue. The Electoral Commission's [guidance](#) for Returning Officers at local elections in England and Wales sets out who is allowed to attend the count; it is the Returning Officer's responsibility to make sure that anyone attending does not interfere with or compromise the secrecy of the vote and they are legally required to make such arrangements as they think fit to ensure that all attendees are provided with a copy of the relevant secrecy requirements.

Schofield's *Election Law* states that the Returning Officer must give the candidates' counting agents

...all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as he can give them consistently with the orderly conduct of the proceedings and the discharge of his duties in connection with those proceedings.

Schofield's also notes that there can be problems with counting agents:

Some returning officers insist on making counting agents remain seated opposite the counting assistants. This tends to create orderliness in an atmosphere of excitement and tension. Some agents maintain that "oversee" means standing behind the staff and looking over their shoulders, but this can be objectionable to the staff and impede them in their work. There would

⁸ 'Bogus officials canvassed for mayor' before East End ballot, *Evening Standard*, 25 March 2014

⁹ Election watchdog to probe Tower Hamlets count delays: councillors complain of heavy handed tactics at polling stations in the East London borough, *Independent*, 28 May 2014

¹⁰ Code of Conduct for campaigners about postal voting, proxy voting and polling stations, Appendix H to [Guidance on preventing and detecting electoral fraud](#), Electoral Commission and ACPO, February 2014

appear to be nothing to support this latter interpretation of the word “oversee”. Returning officers should make it clear that counting agents are only entitled to observe the count and should not handle any of the papers.¹¹

3.3 Electoral Commission review

The Electoral Commission issued a [statement](#) on 27 May 2014 saying it would review events at the count in Tower Hamlets:

There have also been concerns expressed about voter intimidation, although the police have so far received no criminal allegations relating to activity at polling stations in the borough from either campaigners or voters.

An Electoral Commission spokesperson said: “Everyone should be able to vote free from intimidation and be confident that their vote is safe.

“It is also important that elections produce results voters can have confidence in and that candidates know the outcome as soon as possible. Clearly there have been issues at the Tower Hamlets count and we need to make sure we understand what happened, and the reasons for it, before reaching any conclusions.

“As part of our review we will be talking to the Returning Officer and Regional Returning Officer. We will be looking closely at what happened during the count, as well as the planning that took place beforehand.¹²

The Electoral Commission’s review was published on 1 July 2014.¹³ A [press notice](#) issued by the Commission summarised its findings:

The report identified two main factors that led to the count being delayed:

- Access to the count venue on Friday 23 May: delays in allowing count staff and those entitled to attend the verification and count meant that verification was delayed by approximately two and a half hours.
- Inadequate resource management during the verification and count on Friday 23 May and Saturday 24 May, and on Sunday 25 May: in addition to the significant delay to the start of the verification process on Friday 23 May, the number of count staff available was insufficient either to recover from the initial delay or to manage the number of ballot papers to be verified and counted within the Returning Officer’s planned timetable.
- The Commission’s report makes clear that underlying both of these main factors were plans for the management of the verification and count on Friday 23 May which proved inadequate for the number of ballot papers to be counted and the intense focus of candidates and agents on the count process. Full details of the factors that caused the delay are set out in Chapter 4 of the report.

The Commission called for immediate and sustained action “to provide reassurance to voters, candidates and campaigners that future election counts will be well-managed and

¹¹ Schofield’s *Election Law*, 11-006

¹² [Electoral Commission statement on Tower Hamlets](#), 27 May 2014

¹³ [Delays at the verification and count for the May 2014 elections in Tower Hamlets, report of the Electoral Commission’s review](#), Electoral Commission, July 2014

efficiently delivered” and recommended that the Returning Officer should publish his overall plans for the management of the count at the 2015 General Election by the beginning of December 2014. The Commission also recommended that:

To ensure transparency of communication between counting staff and other attendees at the count (including counting agents) the Returning Officer should make clear in instructions to those attending any count that any such communication should take place in English only.

Those attending the count should commit to behaving according to the rules set out in advance by the Returning Officer and should immediately accept any instruction from the Returning Officer if he considers their behaviour unacceptable.¹⁴

3.4 Election petition in Tower Hamlets

On 17 June 2014 it was announced that an election petition had been filed seeking to have the election of the Tower Hamlets mayor, Lutfur Rahman, declared void. The *Local Government Chronicle* gave further details:

An activist has filed a High Court petition seeking to have the election of Tower Hamlets LBC mayor Lutfur Rahman declared void.

Andy Erlam, who stood in last month’s council election for the Red Flag Anti-Corruption Party – which he recently formed – has issued an election petition with three other local voters asking for last month’s mayoral election to be ruled invalid. It does not mention the simultaneous election for the council.

The petition is directed at both Mr Rahman (Ind) and the council’s returning officer John Williams. The petition alleges Mr Rahman “and/or his agents” were guilty of electoral fraud including impersonation, casting votes in the name of people not entitled to vote and acquiring voting papers and casting them fraudulently.

It goes on to state that Mr Rahman or his associates made false accusations of racism against Labour mayoral candidate John Biggs and employed people to engage in corrupt activity around and in polling stations.

The petition claims that Mr Williams permitted agents of Mr Rahman to unlawfully enter polling stations and leave campaign materials in polling booths.

It also states Mr Williams allowed mayoral supporters who were not entitled to be present to attend and impede the count.

In a statement, Mr Williams said: “I cannot comment on the specifics of the election petition that pertain to my role as I am taking legal advice and will be responding as necessary to the court.

“However I can say that the measures put in place to manage the May 2014 elections in Tower Hamlets were the toughest available within the limits of the current law and I have worked closely with the Electoral Commission and Metropolitan Police to combat fraud and investigate thoroughly any allegations that were made through our new dedicated reporting procedure.”

¹⁴ *Action needed to restore confidence in Tower Hamlets election counts*, Electoral Commission news release, 1 July 2014

He said 84 allegations of unlawful or corrupt practice were passed to the police, which had found eight worthy of investigation.

The Electoral Commission is separately investigating the election's conduct.

[...]

Mr Erlam unsuccessfully contested a council seat in May. The Red Flag party website describes him as having been a Labour supporter for 40 years who now prefers to work independently, and as a former political adviser to the minister for housing in 2009-10, when the post was held by former local government minister John Healey.

Mr Erlam said the petition is not connected to or financed by Labour and is backed by supporters of many parties.

The fund to which donations to fund the court case are invited is held by law firm Steel and Shamash, whose website describes it as "solicitors to the Labour party". Mr Erlam said he had chosen the firm "despite the Labour connection as it's one of the best".¹⁵

On 29 July 2014 the High Court rejected a request by Lutfur Rahman to have the election petition against his election in May dismissed. An Election Commissioner will now be appointed by the High Court to hear the petition later in the year. The High Court ordered the petitioners to provide more information about their allegations so that the Mayor and the returning officer, John Williams, can respond to the claims.¹⁶

4 Local election petition in Birmingham 2005

An election court was convened in February 2005 to try the election petitions brought in the wards of Bordesley Green and Aston under section 127 of the *Representation of the People Act 1983*. The petitions alleged that the Labour Party respondents and their agents had engaged in systematic and organised fraud of postal votes in the local elections held on 10 June 2004. The petitioners challenged the election of the three Labour councillors in each ward.

Richard Mawrey QC, sitting as a Commissioner in the Election Court, delivered his judgments on 4 April 2005. He found that the elections for both wards were void because of the 'corrupt and illegal practices' on the part of the respondents and reported to the High Court that for both wards:

'I found that corrupt and illegal practices have extensively prevailed at the election of the authority for which the election was held...In summary, there was extensive personation by the fraudulent alteration of postal ballots improperly obtained from the true voters for the same ends...'¹⁷

As a result of the judgments the election of each of the councillors was declared void and under the provisions of section 160 of the *Representation of the People Act 1983* the

¹⁵ Court asked to declare Tower Hamlets mayoral election void, *Local Government Chronicle*, 17 June 2014

¹⁶ *Muslim mayor's vote-rigging trial goes ahead, High Court rules*, Times Online, 29 July 2014

¹⁷ Judge Richard Mawrey's reports to the High court of Justice in the matter of the Representation of the People Act 1983 and in the matter of local government elections for the Bordesley Green Ward and the Aston Ward of the Birmingham City Council held on 10 June 2004, 4 April 2005

councillors were barred from standing for re-election and from being registered as an elector, for a period of 5 years from the date of the report of the election court.

One of the councillors found guilty of corrupt and illegal practices in relation to the local election in the Bordesley Green ward, Muhammed Afzal, subsequently appealed against the Election Court's judgment. The Court of Appeal quashed the part of the Commissioner's decision which found Afzal guilty, identifying procedural shortcomings in the way in which the case was made against him.¹⁸

¹⁸ Court of Appeal (Civil Division) Decision[2005] EWCA Civ 647