

Elections and the role of law enforcement agencies

Sam Younger (UK Electoral Commission) at ACEEEO, Constanta, 12 September 2008

Until only a few years ago, the police took little active interest in the conduct of elections. Apart from in Northern Ireland - where an active police presence was required on polling days – there were few public order problems in Great Britain and very few cases of electoral malpractice requiring police investigation. Police forces were naturally reluctant to get involved in issues that were a matter of party political contention. And – when cases did demand police action – the expenditure in terms of time and resources seldom seemed justified by the outcome. For example, in Oldham in the north of England, a case in the year 2000 involved the seizure of nearly 1000 ballot papers; nearly 250 witness statements; nearly 400 items forensically examined; and 230 sets of fingerprints taken. Although 18 convictions were secured, the penalties did not go further than 180 hours of community service and £118 costs.

What transformed this situation was the advent of postal voting on demand from 2001 and – more particularly – a case of postal voting fraud in local elections in the Midlands city of Birmingham in 2004. This was on an unprecedented scale and attracted considerable media attention. The judge in the election court that heard an election petition challenging the result of the election in two electoral districts of Birmingham, Richard Mawrey, made the following comments in his judgement on the case: “The role of the police in monitoring electoral fraud..is, in practice, marginal...if an open-and-shut case is presented to them, they will act promptly but they cannot and, it seems, will not be remotely pro-active”. The attitude of the police, he said, “could be described as one of Olympian detachment”, adding that “ordinary rank-and-file officers are normally given no training in electoral law or in determining whether conduct might amount to an electoral offence.”

Even before the 2004 Birmingham case hit the headlines, however, the Electoral Commission had already begun working with the police, bringing officers together

with Returning Officers and their staff to identify vulnerable areas of the electoral process and to share experience and intelligence. Since 2004 the Commission, in collaboration with the Association of Chief Police Officers (ACPO), has developed a range of measures to improve police awareness and ability to tackle electoral malpractice. Regular “roundtables” for sharing experience have become a feature of the electoral cycle. Chaired by the Commission, these meetings bring together police officers, Returning Officers and their staff, representatives of the prosecuting authorities and – crucially – representatives of the main political parties, for whom cases of electoral fraud at local level pose a significant reputational risk.

Emerging from these roundtable meetings have been comprehensive joint guidance manuals from the Electoral Commission and ACPO in advance of every election. This detailed guidance is backed up by “pocket guides” given to every police officer and providing a brief summary of electoral offences and what to do about them. First produced specifically for the police, the pocket guide idea has been extended to political parties, whose workers are now supplied with pocket guides as to how to behave in relation to postal voting and this practice is based on an agreed code of conduct. In 2008 for the first time a pocket guide was piloted in Wales for Royal Mail delivery workers, setting out what they should be looking out for and whom they should contact if they saw or experienced anything suspicious. All of this guidance is backed up by regular training events for police officers, including discussion of scenarios and possible responses. Particularly important at these events is the participation not only of electoral officials, police and the prosecution service, but also representatives of political parties. Finally, in order to improve intelligence about where the pressure points are, the Commission is developing, along with the police and the prosecuting authorities, a regularly updated database of allegations of electoral malpractice at elections.

Operationally, all police forces across Great Britain have appointed a named officer as the “single point of contact” – or SPOC – on electoral malpractice issues. This is of value in providing expertise within police forces and a point of liaison for electoral officials and the Electoral Commission. Many Returning Officers now routinely

include police representatives at their pre-election briefing sessions for candidates and their agents; and in areas regarded as high risk in terms of electoral malpractice, police chiefs have become increasingly active in using local media to warn potential offenders that they will be pursued and that they will not get away with it.

In these circumstances of far greater police focus and raised public concern, a number of key cases have been prosecuted. For example, in the northern city of Blackburn, a case arising from the 2002 elections led in 2005 to a prison sentence of 43 months. The Lord Chief Justice of England and Wales, Lord Woolf, in his appeal judgement upholding the sentence, said: "It was the responsibility of the courts....to protect the country's electoral system. That was a responsibility to which the courts must attach the greatest of importance....Having regard to the nature of the offences, it was of importance that the punishment was one which would deter others from committing such offences...The sentence was passed with the primary object of deterrence". In another northern city, Burnley, two offenders were sentenced in October 2006 to 18 months each for offences committed in the 2004 local elections.

In the eastern city of Peterborough, a case arising from the 2004 elections has only recently been concluded with six people receiving prison sentences of between 2 and 15 months. One of the features of the Peterborough case has been the scale and cost of investigation – with 11,000 documents examined and 1200 witnesses interviewed at a total cost to the police of around £1 million. With so many competing priorities – not least counter-terrorism and violent crime – it is hardly surprising that some police forces ask themselves whether such intensive resource usage on electoral issues can be justified. The best response to the cost of investigation after the event is to focus on deterrence, so minimising the number of occasions on which costly and lengthy investigations are required. However, it is of the greatest importance that the improved police focus and effectiveness in preventing and detecting electoral malpractice not only continues but is developed to ensure integrity and confidence in the UK's electoral arrangements.