

PERSONATION AT POLLING STATIONS:

PROTOCOL FOR WORKING WITH POLICE SCOTLAND TO GATHER EVIDENCE TO SUPPORT CRIMINAL INVESTIGATIONS WHILE FACILITATING THE CONDUCT OF THE POLL AND THE VERIFICATION AND COUNTING OF BALLOT PAPERS IN ACCORDANCE WITH THE LAW

PURPOSE

This paper provides guidance for Returning Officers and Counting Officers from the Electoral Management Board for Scotland (EMB). It proposes a protocol for circumstances where it is suspected that there has been a case of personation. It is intended to supplement other guidance already produced by the Electoral Commission and Police Scotland.

“Personation” is an electoral offence where a person votes for another person or their proxy without lawful authority. This offence applies regardless if the person or the proxy being personated is living, dead or fictitious.

Unless a lawful proxy appointment is in place, it is an offence for any individual to vote as another registered elector, either by post or in person at a polling station. It is also an offence for someone to vote as a proxy if they are not the lawfully appointed proxy. The offence of personation also applies to any person who aids or assists an individual to vote for another without lawful authority.

This protocol outlines an approach to allow the Police to gather evidence to support an investigation into the allegation of personation, while allowing the continued conduct of polling and facilitating the verification and counting of votes by the Returning Officer / Counting Officer in accordance with the law.

BACKGROUND

Occasionally there are cases of suspected personation at polling stations. In many cases the cause may be the result of a clerk marking off the wrong voter from the register. However there may be occasions on which the issue may be an attempt at personation to effect electoral fraud.

Returning Officer / Counting Officers have discussed the specific issues with the local Police Scotland Single Point of Contacts (SPOCs) to identify a preferred approach to dealing with such cases. There has been no clear or consistent protocol in place for how such cases should be handled, although the Electoral Commission have given advice in specific cases.

This paper aims to provide clarity in approaching such cases so that the key steps do not need to be worked out on the ground on each occasion. The principles are identified and then the specific steps to be taken are presented.

The purpose of the proposed protocol is:

- to allow polling to continue;
- to preserve useful evidence to support any Police Scotland investigation that might be pursued; and
- to facilitate an accurate, transparent and legal verification/count.

PRINCIPLES

Where there are suspicions that an electoral offence may have been committed, the Returning Officer / Counting Officer has a duty to cooperate with Police Scotland in the investigation into the allegations, supporting and assisting in the ongoing prevention, detection and prosecution of fraud. However, whatever is done in that respect must be balanced with the need to deliver a secure electoral process: ballot papers must be counted accurately, securely and such that the secrecy of an individual's vote is preserved. In trying to assist the investigation, processes will still need to be conducted in accordance with the legal requirements for running the poll.

This protocol therefore aims to promote and protect:

- **The secrecy of the ballot** – is the foundational principle of British democratic practice. It should never be publicly revealed how an individual has voted. This is outlined in Section 66 of the Representation of the People Act 1983 (and equivalent provisions)
- **Confidence in the result** – the fundamental aim of the Returning Officer / Counting Officer is to deliver an accurate result that will be trusted. All aspects of the planning, communication and execution of the election need to be focussed on this.
- **Consistency** – wherever possible there should be a consistent approach across all electoral regions, constituencies and within all constituencies. This prevents systematic or procedural elements that might provide actual or perceived bias in the application of the rules and in the approach to investigating fraud.
- **Accuracy of the count** – counts must be undertaken so as to provide an accurate result. Systems and protocols need to be applied such that the all of the papers can be accounted for and all votes can be counted including the used, the unused and the spoilt papers. Clear processes that support a transparent audit trail need to be applied.
- **Preservation and custody of evidence** – while being included in the count, whatever materials Police Scotland may require for any subsequent investigation need to be extracted and held, initially by the Returning Officer / Counting Officer, in such a manner that they are not contaminated so that future forensic investigations will be supported, until the necessary warrants/orders are obtained by Police Scotland.

RESPONSIBILITY

The Returning Officer / Counting Officer has overall responsibility for the delivery of an election. The Returning Officer / Counting Officer is usually a senior council employee, generally the Chief Executive. However, while undertaking this role they are independent of the local authority and carry personal responsibility and liability for the conduct of the election. As such, the decisions of a Returning Officer / Counting Officer are final and only subject to challenge by an election petition to the Court of Session or, in the case of a local government election, the Sheriff Principal. A referendum can only be questioned by Judicial Review after the result.

The Returning Officer / Counting Officer, and not Police Scotland, therefore, has ultimate authority in matters related to the conduct of an election and the associated processes including the count. However, Returning Officer / Counting Officers will always wish to work closely with Police Scotland and cooperate to support Police Scotland's criminal investigations without compromising their own responsibilities and duties as Returning Officer / Counting Officers.

THE POLLING STATION

The procedures at the polling station are already covered in [Police Scotland's Guidance on Preventing and Detecting Electoral Fraud in Scotland \(April 16\)](#). This protocol, issued by the EMB, should help to raise the profile and consistency of approach across Scotland.

At a polling station, if suspicions of personation are aroused when issuing a ballot paper, the Presiding Officer should put the statutory questions to a person applying for a ballot paper. The Candidates and agents, polling agents and referendum agents may make allegations of personation and may require the Presiding Officer to put the statutory questions to an elector or proxy when they apply for a ballot paper.

If the voter confirms that they are the person named on the register and asserts that they have not already voted, the Presiding Officer **must** issue the person with a ballot paper. No proof of identity or poll card has to be produced (unless it is a proxy voter). The only exception is in the case of an anonymous elector who must show their poll card in order to vote.

If the Presiding Officer has reason to believe that the offence of personation has been committed, or if a candidate, election agent or polling agent declares to the Presiding Officer that they believe this to be the case, the Presiding Officer should refer the matter to the Returning Officer / Counting Officer and directly to the Police.

The individual must be allowed to vote if they answer the prescribed questions satisfactorily even if they are subject to an allegation of personation by a candidate or their election agent or if they are arrested on the grounds that they are suspected of committing or of being about to commit such an offence.

ADVICE FOR PRESIDING OFFICERS

The Electoral Commission and Police Scotland have developed a protocol to guide Presiding Officers on how to approach suspected cases of personation. This is Appendix C in the joint document [Guidance on Preventing and Detecting Electoral Fraud in Scotland](#)

Presiding Officers are advised to consider their own safety and the safety of all other people present as a priority particularly where there is a reasonable expectation of a confrontation. Confrontation should be avoided, but the Presiding Officer should consider how they can assist in any Police Scotland investigation, gathering and recording as much information about the suspect as possible e.g. recording a full description of the suspect, recording details of any companions, recording registered numbers of vehicles and preserving items touched by a person involved in an incident, if it is safe to do so, until the arrival of a police officer.

Where personation is suspected, Presiding Officers and Poll Clerks are strongly advised to refrain from asking anything other than the statutory questions.

INITIAL CONTACT WITH ANY SUSPICIONS REGARDING PERSONATION

The first port of call for Presiding Officers to inform of any suspicions regarding personation should be the Returning Officer / Counting Officer. This is consistent with the approach that Presiding Officers take before issuing a tendered ballot paper.

As soon as personation is suspected, the Presiding Officer should contact the Returning Officer / Counting Officer or his/her Deputies to brief them on the issues, then the Returning Officer / Counting Officer should contact the SPOC and discuss what further action should be taken. Note that Police Scotland should always be contacted immediately by the Presiding Officer if there is concern that there is any threat to the safety of the polling staff or the ballot box.

On the basis of initial discussions, it may be that the Returning Officer / Counting Officer is content that the issue is a simple case of administrative error where the Poll Clerk has marked off the wrong voter and so no police involvement is required. However, where there is a suspicion that an individual has intentionally voted as someone else then this should be reported to Police Scotland for investigation. Police Scotland will gather evidence to investigate further in order to support a potential prosecution. This evidence will include the ballot paper that was issued to and used by the individual suspected of personation.

THE RECORDING OF EVIDENCE AT THE POLLING STATION

[Appendix C of the Police Scotland Guidance](#) explains the procedure in detail. The procedure should be put into context, however, as the “suspect” is not necessarily the person in front of the Presiding Officer at the time when suspicion arises: it may be an individual who has voted earlier in the day.

A template statement supporting an allegation of personation is contained in Appendix C of the guidance. Completion of this formal template by witnesses at the polling station may be possible at quiet times, but, at busy times, this could impede the conduct of the poll. In the first instance, the Presiding Officer should record details in their log book including time of the incident, answers to statutory questions, descriptions of the individuals etc.

IDENTIFYING THE BALLOT PAPER ISSUED TO THE INDIVIDUAL SUSPECTED OF PERSONATION

Using the Corresponding Numbers List (CNL), it should be possible to identify the number of the ballot paper issued to the individual suspected of personation.

This is an important piece of evidence that Police Scotland may wish to use in their investigations. This ballot paper number should be recorded by the Presiding Officer in their log book and passed to the Returning Officer / Counting Officer and to Police Scotland, if requested by them.

POLICE SCOTLAND DISCUSSION WITH RETURNING OFFICER / COUNTING OFFICER AND PRESIDING OFFICER

Based on their initial discussions with the Presiding Officer and Returning Officer / Counting Officer, Police Scotland may decide to instigate a formal investigation of the suspected personation. The Returning Officer / Counting Officer needs to be advised by their SPOC as early as possible so that suitable arrangements may be made for transport of the ballot box and at the count.

TRANSPORT OF BALLOT BOX TO THE COUNT

At the close of poll, the ballot box containing ballot paper(s) in question should be sealed as normal and the usual processes for recording the numbers of seals in the presence of candidates, agents and polling agents applied. However, police officers may wish to accompany the box to the count. This will be determined by the SPOC who will communicate the decision with the Returning Officer / Counting Officer and Presiding Officer. In any case, there always need to be clear rules in place to document and record the custody of all boxes during transit from the polling place to the count venue, preserving a clear audit trail and “chain of custody”.

COMMUNICATION WITH CANDIDATES AND AGENTS

As early as possible, candidates, election agents and counting agents present at the count should be briefed on the proposed course of action. The procedure and its purpose should be clearly explained by the Returning Officer / Counting Officer and ensuring that the investigation is not compromised, candidates, election agents and counting agents should be given the opportunity to witness all stages of the handling of the box, its contents and the extraction of any papers as evidence. Openness about the issue and a transparency of the processes should be achieved wherever possible. Any perception of secrecy or covert dealings with a ballot box could arouse suspicion and criticism from agents and observers and promote conspiracy theories in relation to the conduct of the count. Candidates and agents have a legal right to be present to oversee proceedings relating to the count and Returning Officers / Counting Officers will wish to take actions that will promote confidence in the process.

The names of those present should be recorded by the Returning Officer / Counting Officer and they should be advised that they are present in an observer role only and are not taking any part in any investigation.

The Returning Officer / Counting Officer following consultation with Police Scotland may consider releasing a media statement to explain what actions have been taken.

EXTRACTION OF BALLOT PAPER(S) AS EVIDENCE

- Immediately on arrival at the count venue, the ballot box should be taken to an area where candidates, election agents and counting agents are able to witness the extraction of ballot paper(s). This may be a table within the usual counting area or a separate room may be chosen.
- In the presence of candidates, election agents and counting agents, the ballot box is opened by two senior members of the election team, wearing latex gloves and the ballot paper(s) emptied onto the table, still folded and face down where possible.
- The empty box should be shown to any candidates / agents who are witnessing the process.
- The two senior officers should be given a note of the ballot paper number(s), provided by the Polling Station staff to extract, but without information or knowledge as to who the ballot papers were attributed to.
- There should be no means available to identify the elector details for the ballot papers extracted. The CNL is sealed separately in order to protect the secrecy of the vote. No

attempts should be made by those witnessing the extraction to ascertain any ballot paper numbers. All those present are covered by the Requirement for Secrecy.

- The ballot paper(s) relating to the suspected personation should be extracted. Depending on the number of papers in the box, this may take some time and it should be clearly communicated to observers what is happening.
- When the paper(s) is identified, any mark on the face of the paper(s) showing the clear intention of the voter should be recorded by the Returning Officer / Counting Officer. The extracted paper(s) should then be placed into evidence bags which would be supplied by Police Scotland. (If the intention of the voter is not clear the paper would need to be adjudicated or rejected by the Returning Officer / Counting Officer in front of the relevant candidates and agents.)
- The evidence bags should be sealed and retained separately and securely by the Returning Officer / Counting Officer and only released to Police Scotland for their investigation on production of a court order. Returning Officer / Counting Officers must be served with the court order before opening and releasing any material from a sealed packet(s) to Police Scotland. The Returning Officer / Counting Officer must only release the material specified in the court order.
- The Returning Officer / Counting Officer's staff extracting the material specified in the court order will be required to provide their details to Police Scotland and make a formal statement as to their involvement in the process.
- Once the material specified in the court order has been extracted, the remaining papers should be returned to the ballot box.
- The box should then be sealed with fresh seals and the seal numbers recorded. Care should be taken to ensure that no papers have been missed or dropped on the floor. The sealed box can then be allocated to a table for verification.
- The ballot box contents can only then be verified (including the number of the ballot paper(s) that have been extracted) and the contents recorded. As part of the verification process the contents of the ballot box should be mixed with the contents of other ballot boxes.
- During the counting of votes, the votes cast on the extracted ballot paper(s) that had been recorded, should be included in the count and a note taken that it has been removed.
- If the suspect paper was rejected at adjudication it should be counted and recorded with the other rejected papers but a note taken that the paper itself has been removed.

WHERE THE CONTENTS OF A WHOLE BOX ARE REQUIRED AS EVIDENCE

This protocol assumes that it has been possible, using the CNL, to identify the individual ballot paper(s) in the ballot box which should be extracted as evidence. The ballot paper(s) can then be extracted and the ballot box treated as normal, with that ballot paper accounted for at the verification and count even though it is not within the ballot box.

It may be that it is not possible to identify specific papers, for example where there is suspicion of systematic fraud on behalf of a poll clerk, such that **all** the contents of the ballot box become suspect. The requirement remains to mix ballot boxes before counting. However, the mix could be with one ballot box with the smallest number of papers to count, and the count arrangements

adjusted accordingly. Alternatively, we will know the numbers on the ballot papers issued to the polling station and that record could be used to identify the papers which may be tainted once a court order is granted and implemented. This issue will need further consideration and an incident specific procedure may be drafted.

PRESERVATION OF THE SECRECY OF THE BALLOT

The Returning Officer / Counting Officer has a duty to preserve the secrecy of the ballot. The secrecy of the ballot is the foundational principle of British democratic practice. It should never be publicly revealed how an individual has voted.

Returning Officer / Counting Officers should be aware that the steps above might strictly be seen as a breach of the secrecy of the ballot. In choosing to apply this protocol Returning Officer / Counting Officers would wish to view this potential breach in the context of the broader responsibility to deliver a poll in the interest of the voter and to support the subsequent investigation of and prosecution of the serious crime of electoral fraud. It may be that Returning Officer / Counting Officers would have to defend such a decision in court if challenged.