

July 2009

Mark Sweeney
Head, Elections and Democracy Division
Ministry of Justice

Dear Mark

Michelle Chard, Deputy Regional Returning Officer will attend the RRO meeting tomorrow to provide feedback on the conduct of the recent European elections in the North West but I wanted to personally raise with you some particular concerns in connection with the European Electoral process. In particular I have concerns about the current legislative provisions for requesting a recount or recounts following the announcement of the provisional result.

As you know under the current legislative provisions the only persons who have a right to request a recount following the provisional result being declared are:

- Candidates
- Election agents
- Authorised counting agents (authorised under rule 33 (2) EPE Regulations)

who are actually **present** at the local count. Neither the RRO nor regional election agents (unless they are present at a local count) have any legal rights in this regard.

In my view accuracy is absolutely paramount in the context of European Elections as even small discrepancies at a local level can, when replicated over the whole region potentially impact upon the results. I was so concerned about the issue of accuracy that I incorporated the following provisions into my direction to LROs, which attempted to force LROs to undertake recounts in certain circumstances even prior to the provisional result being declared:

Before informing the RRO of the provisional result or any agents present, if the sum of the counted ballot papers for all the parties and individual candidates added to the number of rejected ballot papers do not exactly match the verification figure previously notified to the RRO ('a Variance') the LRO shall attempt to identify the reason for the Variance by:

- *Checking all boxes have been opened and that all boxes are empty*
- *Checking any storage area and any area used between the verification and count to ensure that all ballot boxes are present*
- *Checking all floors and surfaces used.*
- *Ensuring all rejected papers are accounted for.*
- *Checking the reconciliation for calculation mistakes.*

Where the reason for the variance is not identified by other means undertaking a recount or recounts of the ballot papers in the bundles i.e.

checking the correct number of ballot papers are in each bundle and that they are all for the correct party or individual candidate.

If following the above steps there is no longer a Variance then the LRO should provide the RRO with the provisional resultand can inform agents of the provisional result after 9.00pm.

*If following the above steps there is still a Variance votes should be recounted until the same figure is arrived at **on at least two consecutive occasions**.*

If this figure results in only a marginal variance and the LRO is satisfied that the figure reflects the ballots received then the LRO should provide the RRO with the provisional resultand can inform agents present of the provisional result after 9.00pm.

However if the figure results in a variance which is more than marginal the LRO should undertake an investigation as to why this may be the case and contact the RRO immediately by telephone to discuss the situation prior to providing the provisional result to the RROor informing any agents of the provisional result, even if this is after 9pm.

As soon as possible after 9.00pm the LRO shall inform the candidates and agents who are present of the provisional result for the count and give them adequate opportunity to consider whether to request a recount or recounts.

If any candidate or agent present requests a recount the LRO should carry out one recount even if there is no variance. Further requests for recounts should be granted if the LRO determines the request is reasonable. The LRO should consult with the RRO if a recount or recounts are required by candidates or agents present. If the result following any recount or recounts differs from the original provisional result the LRO should inform the RRO, candidates and agents of the new provisional result.

Notwithstanding the direction I was still faced with some LROs sending through provisional figures which varied substantially from the verification figures previously provided. In some cases these variances were in the region of hundreds of ballot papers, despite having made it clear that marginal meant a discrepancy in the region of 1 or 2 ballot papers. Although I was able to influence some colleagues to undertake recounts some LROs refused.

I would suggest that for future European Elections the law should be amended to provide for a legal right for the RRO to demand recounts once the provisional result is established.

I would also suggest that the RROs power to direct LROs should be clarified. You will recall the arguments that were put forward by certain colleagues in

the North West about the extent to which RROs can direct. For example it was suggested that a direction to check a 100% of postal votes identifiers was unlawful. Although I am clear that this interpretation is flawed (and directed that a 100% checking must take place) I would suggest that the wording of Regulation 9(3) of the EPE regulations 2004 (in connection with the giving of directions) should be clarified before the next European election so there is no doubt about the scope of the RROs power to direct.

Another problem in my view is that regional election agents have no power to request recounts unless they are present at a local count. Even the mainstream parties struggle to have counting agents at every local count and for the smaller parties and independents it is exceptionally difficult.

Furthermore in reality even when there are counting agents present at the local count they want to speak to the regional agent before deciding whether to exercise the right to request a recount. I had situations on the evening of the 7 June where the regional election agent and candidates (located at the regional allocation of seats and declaration in Manchester) were asking for recounts to take place in certain local counting areas but LROs refused as there was no agent present or they had not requested a recount when asked. Whilst I acknowledge responsibility currently lies with the parties to get their communication mechanisms in place, in my view the current arrangements cause unnecessary difficulties for the parties and delays and confusion for all involved in administering the process. In other elections recounts are usually requested because the results between candidates are close. As European Elections are delivered on a regional basis then I would suggest there is a role for regional agents in requesting recounts. There is of course a role for local agents in overseeing the process at local counts and I believe their power to request a recount should also remain.

I trust you will find these observations of assistance.

Yours sincerely

Sir Howard Bernstein
Regional Returning Officer for the North West Region