

# MOPAC

**MAYOR OF LONDON**  
OFFICE FOR POLICING AND CRIME

Steve O'Connell  
Chairman of the Police and Crime Committee  
(by email)

Cc: Richard Derecki

21 December 2016

MOPAC15112016-24280

Dear Steve

## **The Role of MOPAC and the MPS in Tackling Electoral Fraud**

Thank you for your letter dated 15 November regarding the concerns of electoral fraud in London.

I must begin by reiterating my assertion that democratic institutions must be above suspicion and the importance of the way elections are carried out in a fair and democratic manner is of the utmost priority.

It is important that this issue is discussed and I am grateful for the Committee's follow up questions, in order to demonstrate the action that has and continues to be taken by the Metropolitan Police Service to tackle this.

In order to answer your questions I have sought information from the MPS, which can be found at Appendix A.

It is a matter of public confidence that the MPS are seen to investigate allegations and follow all reasonable lines of enquiry, particularly on matters of such significance as fair and democratic elections.

Yours sincerely,



Sophie Linden  
**Deputy Mayor for Policing And Crime**

## Appendix A

### Q1. How many allegations of electoral fraud and malpractice have been made in London over the past 5 years?

- In advance of the 2010 UK Parliamentary General Election of 6th May 2010, SO15 Counter Terrorism Command investigated all electoral fraud and malpractice offences. Counter allegations were made by candidates from the various political parties. These investigations did not result in any charges.
- The SCO1 Special Enquiry Team (SET) took over responsibility for investigating electoral fraud and malpractice from SO15 Counter Terrorism Command in 2013. The SET does not have access to the full breakdown of the records held by SO15 prior to this date. Since 2014 the SET has maintained an analytical data set for all allegations of electoral fraud and malpractice.

**Table showing police recorded allegations of electoral fraud and malpractice (2014-2016)**

<b>Election</b>	<b>Total number of allegations recorded</b>	<b>Number of allegations relating to Tower Hamlets</b>	<b>Number of allegations relating to other Boroughs</b>
<b>London Mayoral and Assembly Elections, 03/05/2012</b>	<b>64</b>	<b>(Data not available)</b>	<b>(Data not available)</b>
<b>Local, European and Tower Hamlet Mayoral, 22/05/2014</b>	<b>208</b>	<b>164</b>	<b>44</b>
<b>General Election, 07/05/2015</b>	<b>63</b>	<b>10</b>	<b>53</b>
<b>Tower Hamlets Mayoral (re)election</b>	<b>48</b>	<b>48 see note (1)</b>	<b>n/a</b>
<b>London Mayoral and Assembly Elections, 05/05/2016</b>	<b>17</b>	<b>0</b>	<b>17</b>
<b>EU Referendum, 23/06/2016</b>	<b>55</b>	<b>2</b>	<b>53</b>

**Note: (1)** 35 (73%) of these allegations remain unsubstantiated and were made by political parties including Labour, Conservative and Tower Hamlets First and

### Q2. What is the process for dealing with those allegations?

- The SCO1 Special Enquiry Team (SET) has primacy for all offences covered by the Representation of People Act 1983 (RPA), which includes electoral fraud and malpractice offences.
- The SET has taken a robust and proactive approach to electoral fraud, looking to proactively prevent electoral offences rather than just reactively investigate. To that end the SET has worked with partners in Territorial Policing, local authorities, the CPS and the Electoral Commission to prevent offences being committed by undertaking

preventative steps such as developing the Code of Conduct for Campaigners and training police officers with regard to their powers and understanding of the pre-election period.

- In 2014, due to the proactive approach taken by SCO1 SET to actively encourage reporting the volume of allegations reported increased significantly resulting in 208 allegations across the MPS.
- Every allegation of electoral fraud and malpractice that the MPS receives is referred to the SET. Every allegation is recorded and allocated for investigation by an experienced detective from the SET to understand what, if any, criminal offences have been committed.
- Due to the specialist and complex nature of the legislation, advice is sought at various stages of this process from the CPS Special Crime and Counter Terrorism Division. There has been insufficient evidence to bring a criminal prosecution in the vast majority of cases (see breakdown below). Following extensive investigations and reviews, no evidence has been found of an orchestrated system of electoral malpractice either by geographical location (for example Tower Hamlets) or by any specific political party.

### **Q3. What action has followed?**

#### **Case Disposal for Electoral Fraud Allegations across London in 2014:**

- 208 allegations in total
- 20 Individuals were Interviewed under Caution
- 10 Individuals received Words of Advice
- 2 Individuals received a Warning Letter
- 2 Individuals received a Police Caution
- 3 Individuals Arrested and Interviewed
- 6 files submitted to the CPS
- 2 Individuals Charged with Candidate Nomination Offences (1 Convicted; 1 CPS offered no evidence)

#### **Case Disposal for Electoral Fraud Allegations across London in 2015 (UKPGE & Tower Hamlets Mayoral):**

- 111 Allegations in total
- 1 Individual Arrested and Interviewed
- 3 Interviews Under Caution
- 12 Individuals received Words of Advice
- 6 Individuals received a Warning Letter
- 3 files submitted to the CPS
- 0 Individuals received Police Cautions
- 0 Individuals Charged
- N.B. None of the 2015 Tower Hamlets Mayoral allegations resulted in any criminal case disposal

#### **Case Disposal for Electoral Fraud Allegations across London in 2016 (London Mayoral & EU Referendum):**

- 72 Allegations in total
- 0 Individuals Arrested and Interviewed - to date
- 0 Interviews Under Caution - to date
- 3 Individuals received Words of Advice - to date

- 0 Individuals received a Warning Letter - to date
- 13 files submitted to the CPS - to date
- 0 Individuals received Police Cautions - to date
- 0 Individuals Charged - to date
- N.B. A significant number of the 2016 allegations remain ongoing, hence they have not yet resulted in a criminal case disposal

**Q4. What is the evidence threshold that is needed in order for a referral to the Crown Prosecution Service?**

- In relation to electoral fraud and malpractice allegations the Crown Prosecution Service takes primacy and is responsible for deciding if there is sufficient evidence for police to further investigate and, if so, whether it is in the public interest to prosecute in any particular case.
- To ensure consistency of approach across all forces, all allegations of electoral malpractice are dealt with by dedicated lawyers from the Special Crime and Counter-Terrorism Division (SCCTD) of the CPS, not the local CPS areas. The London office covers London, Eastern, South East and South West regions. The York office covers the remainder of England and Wales.
- When considering whether or not to charge, the CPS applies the Full Code Test, i.e. the CPS must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. In every case where there is sufficient evidence to justify a prosecution, the CPS must go on to consider whether a prosecution is required in the public interest.
- The time limit for bringing criminal proceedings, which is set out at section 176(1) of the RPA 1983, is 12 months. That time limit can be extended to 24 months upon application by a constable or Crown Prosecutor (RPA s176(2A)) if a Magistrate considers that there are exceptional circumstances and that there has been no undue delay in investigating those offences.
- Due to these statutory time limits and the need for consistency of approach across England and Wales, the SET have been encouraged to make contact with the CPS early in their investigations. These referrals are known as Early Investigative Advice. The SET have worked closely with the dedicated CPS election lawyer who has advised about the evidence required to meet charging standards, relevant offences and the correct procedures to be followed.
- The CPS is responsible for all charging decisions in relation to electoral fraud and malpractice, including cautions. Any type of positive disposal must go to the CPS via the SET. The CPS will then apply the Full Code Test as outlined above.

**Q5. With regard to the repeated allegations of electoral fraud and malpractice in Tower Hamlets, are you satisfied that the Met has done all it should have done to investigate and seek prosecutions?**

- In relation to electoral fraud and malpractice allegations in Tower Hamlets, the MPS has been both robust and proactive. As already mentioned above, proactively preventing electoral offences is always preferable to reactively investigating them for obvious reasons. To this end in Tower Hamlets the SET works with partners in Territorial Policing, SO15 Counter Terrorism Command, the local authority, the Tower Hamlets Commissioners, the CPS and also the Electoral Commission to prevent offences being

committed by undertaking preventative steps such as: Code of Conduct for Campaigners, training of police officers on their powers and the impact of purdah for police.

- In their report of 2012, the Electoral Commission made a number of recommendations to enhance existing local procedures in Tower Hamlets to address the perception of there being widespread electoral fraud. The recommendations concerning the police concerned a perceived lack of communication with complainants. This was acknowledged by SO15; when SCO1 SET took over responsibility as SPOC this was directly addressed with a public commitment to acknowledge allegations within 48 hours and update complainants regularly (every 14 days if not sooner) in the 22nd May 2014 European, Local and Mayoral Elections. This commitment has continued in all subsequent elections.
- Furthermore, the SET attends all of the London Borough of Tower Hamlets (LBTH) Electoral Planning Meetings, Candidates and Agents Briefings and Presiding Officers Training Days in conjunction with Tower Hamlets Borough colleagues in order to ensure all relevant stakeholders in the electoral process were fully briefed regarding the electoral fraud and malpractice offences. The SET also provided all stakeholders, internal and external, with the SET Mailbox and Contact Details to encourage campaigners to report offences directly to police rather than going through the media and also to ensure our MPS colleagues had an accessible contact point for guidance and advice.
- In liaison with the LBTH Returning Officer and the Tower Hamlets Borough Commander, the SET provided an input to the draft Local Protocol bespoke to Tower Hamlets for all of the candidates and parties to adhere to and to further reinforce the Electoral Commission's Code of Conduct.

**Further MPS response following HH Judge Richard Mawrey's judgement in relation to Tower Hamlets Election Petition:**

- Assistant Commissioner Helen King was appointed as NPCC lead and a Detective Superintendent was appointed as the SIO to oversee the review of the 164 allegations previously reported to police and an assessment of the new allegations identified within the Election Petition Judgment.
- Whilst the CPS have primacy under Sec 181 RPA, the police are entitled to reinvestigate any allegations deemed necessary. Neither HHJ Mawrey or the Director of Public Prosecutions referred any matter to the MPS to investigate. However, the SET reviewed the judgment to ascertain any further evidence of any new or previously investigated offences. The SET obtained a court order under s176 of the Representation of People Act (RPA) 1983 for a time extension to investigate 4 newly identified matters, and 47 RPA matters previously recorded where there may be new material. This extension was necessary to prevent the time limits for any prosecution expiring.
- In relation to the 47 RPA matters relating to polling stations, many of these were duplicate matters, leaving 36 people to be contacted. Of these, 29 witnesses spoke to police and 7 failed to respond to repeated police contact. No witness had any further information to provide which could identify persons responsible for any intimidation and/or disruption at the polling stations.
- The MPS closely liaised with CPS regarding these new investigations. A full report was submitted to the CPS in respect of the 4 new, and 47 previously reported allegations. Following CPS advice a decision was taken to conclude the MPS Election Petition review due to insufficiency of evidence for a criminal prosecution.

- In his judgement following the Election Petition, HH Judge Richard Mawrey made it clear that he used the criminal burden of proof for his findings against Mr Lutfur Rahman and Mr Alibor Choudhury. The procedural rules for this hearing allowed witnesses to provide hearsay evidence and opinion. Under the procedural rules within criminal proceedings such evidence is not allowed to be relied upon. Throughout the Election Petition hearing, a lawyer was present on behalf of the Crown Prosecution Service. Following their assessment of the evidence they did not make any referral to the MPS for investigation.

**Q6. Do you have confidence in the Met's level of resourcing and abilities to pursue effectively allegations of electoral fraud and malpractice wherever they occur within Greater London?**

- The SET is a small team of specialist detectives and acts as the MPS point of contact for electoral fraud and malpractice across all of the 32 London boroughs.
- Although a small team, the SET are part of the larger SCO1 Homicide and Major Crime Command, whose resources of 600+ detectives can be used to investigate electoral fraud if necessary. For example, one of the major investigation teams conducted the investigative review into the Tower Hamlets Election Petition to ensure there was independence to the original investigations into the 2014 Tower Hamlets elections.
- The SET are an integral part of the operational planning for all elections across London. This includes pan-London plans and local planning meetings at priority boroughs such as Tower Hamlets, where the SET works closely with the local authority and Returning Officer.
- The SET continue to deliver training and briefings to all Borough Commanders and their key staff. This includes bespoke presentations explaining electoral fraud and malpractice offences and the role of the police on duty at Polling Stations. This ensures MPS officers and staff on duty on election days understand their roles and responsibilities and are cognisant of the legislation.
- On elections days the SET are available to provide advice and attend polling stations where necessary from the commencement of polling at 7am until after polling has closed.
- The SET debriefs all elections to which all Local Authority Electoral Services Managers and Returning Officers from the 32 boroughs, Political Parties, the Electoral Commission and CPS are invited. These debriefs aim to share learning and reinforce procedures for reporting and investigating electoral fraud and malpractice.