

# Consultation Response



## Observing at elections in the UK

Review of Electoral Observer Scheme

30<sup>th</sup> October 2018

From the Directors - John Ault, Alex Ollington and Max Wheeler

# Contents

Introduction .....	3
General Comments .....	3
Response.....	4
Response to Questions.....	4
Other Comments .....	9
Conclusion.....	10
Appendix 1: Template log for recording temporary observer access restrictions or the removal of an observer for misconduct .....	11

---

*Acknowledgements*

*We would like to thank Lesley Abdela, Lloyd Dalziel and Jim Hancock from the Democracy Volunteers advisory panel for their contributions.*

*We would also like to thank Joshua Wakeford and Nathanael Cullis for the valuable research they provided.*

---

## Introduction

This consultation is a useful process in the explanation and improvement to the regulations, organisation and conduct of election observation in the United Kingdom. Re-valuating the nature, purpose and desirability of observation is something that Democracy Volunteers welcomes and has attempted to champion since our formation in 2016.

This review is an excellent opportunity to identify the strengths and weaknesses of the present system but also, we believe, one in which the Electoral Commission could also assess the capacity to extend and encourage wider participation in election observation in the UK, whether by domestic observers, whether individual or through organisations, or international individuals and organisations. We also believe that this process should help those responsible for facilitating observations, primarily council officers and other electoral bodies, to better understand and facilitate observation in the future – and any changes that are made should be properly disseminated in updated information to those who will need to update their practices because of the changes made.

We do, however, believe that some consideration should be given as to how observation could have been extended, beyond the present access for observation, to aspects of the electoral process which are not currently open to independent observation. This could include access to training that electoral staff receive before the election, the nomination process, all aspects of tabulation as well as being able to check registers and those who apply for postal and proxy votes. These restrictions are something that observer groups, and individuals, could be given access to which could increase public trust in UK elections and to meet international standards and obligations to which the UK is a signatory.

## General Comments

Overall, we believe the present system for accrediting and facilitating observation in the UK is good. The system seems to be one that was created on the premise that the number of observers would always be limited except in the context of highly publicised electoral events such as major national referendums and general elections. Even in these contexts the previous system has been effective in accrediting observers and the process for accreditation is simple and accessible to those who wish to become observers.

On the whole Democracy Volunteers believes many of the changes being proposed by the Electoral Commission, in this review of observation, are welcome improvements to the process for observation and this response to the consultation sets these out. However, there are three areas where we would like to raise concerns: the future proposed change where observers might be ‘strongly encouraged’ to inform relevant election authorities that they will be attending polling, the rights of observers in accessing the various stages of the voting process and the present, and future arrangements concerning exclusion of observers from polling stations by electoral staff.

# Response

## RESPONSE TO QUESTIONS

*Do you have views on the Commission's proposals for clarifying and modernising the application process?*

Democracy Volunteers welcomes the move from a paper-based system to a digital application process as this will hopefully make the process easier and more accessible (especially when processing large numbers of applicants). However, we would recommend that, to maintain universal access to the application process, the paper-based system should be retained as an option to maintain access to the process for those who may not always have ready access to the digital application process.

One aspect of the current system, which Democracy Volunteers would express a concern with if ended, is the direct access to the small number of Electoral Commission officials who are responsible for the processing and issuing of accreditation. Indeed, in the past, this access has proven invaluable in the case of missing accreditation when a very large number has been applied for in a short space of time – in other words, this modernisation should not mean a loss of this direct access to the Commission team members who are directly responsible for processing accreditation, for resolving issues in short timescales.

*Do you have views on how we could further improve the accessibility of the application process?*

Democracy Volunteers is satisfied with the level of accessibility to the application process, provided that the Commission incorporates the above recommendations.

*Is there anything else we should do to clarify and modernise the application process?*

Providing information regarding the specific types of files and file sizes that the electronic process can receive would be extremely helpful in the new application process – this has sometimes prevented the simple processes from working because these are not publicised.

*Do you have any views on what additional information might be provided to electoral observers?*

Democracy Volunteers believe that the information provided to observers is sufficient to allow them to properly carry out successful observations. However, we feel that it would be

beneficial for all observers to receive a simplified version of the proposed Code of Conduct which they could take with them on their observations to clarify, for themselves and for polling station staff, their role, rights and responsibilities.

*Is there anything else we should do to clarify expectations about the role of an electoral observer?*

Whilst, in principle, we agree with the proposed change to accreditation ID badges, to help distinguish between Electoral Commission representatives and those accredited observers associated with an organisation and/or individuals, it is important that the role of accredited observers is not consequently undermined in the minds of polling station staff.

We would, therefore, suggest that the guidebook currently issued to returning officers and the polling station staff is also amended to explain the role and rights of observers in more detail. Currently, the page in the guidebook has an image of the two badges but with little description of the differences in roles of Commission representatives and accredited observers.

In the past, observers have encountered confusion in polling stations as to what function observers are present to fulfil even after explaining they are not representatives of the Commission. Whilst changing the design of the badges to make them more distinct will go some way to addressing this issue, we see it as a priority that the official guidance is also amended, and more detail provided.

*Do you have any views on how we could further improve the information made available to ensure access to and understanding of electoral proceedings?*

Democracy Volunteers is generally satisfied with the way in which the Electoral Commission helps observers access election observation and more specifically to understand the proper practice expected, in electoral proceedings, to observe. Our organisation appreciates past interactions with the Commission in answering observers' questions prior to our deployments but would be interested to know what access other organisations and observers have to ask procedural questions to the Commission before and during polling day.

In terms of improving the information available to observers about electoral proceedings, we feel it may be useful for observers, with prior consent, to be given the opportunity to attend the training sessions organised for polling station staff to better understand the process from their perspective, and to assess the quality of training which is provided to officials. For example, two observers from Democracy Volunteers were able to observe the Council's briefing of presiding officers and polling clerks before polling day in Tower Hamlets for their mayoral and council elections in May 2018 and it was invaluable in

understanding the organisation of polling day in that Borough and how staff were trained to work with new equipment and arrangements specific to that council.

*Do you have any views on our proposal to establish a voluntary feedback process for observers?*

Although Democracy Volunteers already has a well-established mechanism for reporting the findings of all its deployments, in the form of preliminary and final reports, we lodge no objection with any voluntary feedback process for observers to relay their findings back directly to the Commission. This is provided that the mechanism:

- i) requires no changes to our existing reporting procedures
- ii) requires no further time input from our observer teams during polling day and
- iii) does not restrict the scope of feedback presented to the Commission.

Democracy Volunteers values its independence from other interested groups as well as the integrity of its observations and reporting. We would, therefore, be reluctant to provide feedback to the Commission if we could not guarantee that our findings would be attributed to our organisation rather than branded as findings of the Electoral Commission and would strongly oppose our findings being amalgamated with those of other observers who may have different and possibly less rigorous standards of observation.

*Is there anything else we should do to facilitate observers providing feedback on their observations?*

As previously mentioned, Democracy Volunteers has its own mechanism for reporting which is distributed to the relevant interlocutors, the Electoral Commission as well as being released online and to the media. In terms of facilitating feedback of observations, the Commission having a formalised structure for receiving feedback, in any form, from individuals and observer groups would help facilitate the provision of feedback. For example, an agreed email address to send reports to, with a specified period in which the Commission would acknowledge the receipt of submissions, respond to findings, and show evidence that they have acted on appropriate recommendations, would be advantageous in encouraging the provision of responses.

We would also like to highlight the importance of assuring the security of this feedback system, allowing only accredited observers access to the system. This is for two reasons. Firstly, there is the possibility of the reporting of misinformation from third parties or external actors who may seek political advantage or to undermine the process entirely by their actions. Secondly, as our findings are anonymised, as to the individuals who attend individual polling stations, the system should be set up to ensure that observers can request their findings to be reported anonymously and information should not be reported in such detail as to allow either individuals, or particular polling stations, to be identified.

*Do you have any views on our proposals to improve guidance on the practicalities of being an observer?*

Regarding 4.10, Democracy Volunteers welcomes an expansion to the guidance given to observers. Particularly we welcome the redesign of the badges provided by the Electoral Commission to prevent misidentification. More information and guidance on personal safety, and the powers of electoral officials would also be of benefit, particularly to individual observers not associated with organisations such as our own.

We do, however, have some concerns to raise regarding point one – this is discussed in our response to the draft Code of Practice.

At this stage it is useful to indicate that Democracy Volunteers is a signatory of the *Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organisations*, and a member of the Global Network of Domestic Election Monitors (GNDEM). This Declaration includes its own code of conduct which all our observers are required to read, endorse and sign. This code of conduct has been drawn up and endorsed by the United Nations and numerous international signatories including the OSCE/ODIHR and the European Union, and as such, is an internationally accepted Code of Practice for domestic observers. With this in consideration, whilst we are prepared to accept and potentially sign the Code of Practice, Democracy Volunteers would question the necessity of the UK's Electoral Commission possessing its own code of conduct alongside this internationally accepted International Declaration.

*Is there anything else we should do to improve guidance on the practicalities of being an observer?*

In order to make the process as accessible as possible to individuals as well as large groups, it may be worth considering adding a 'frequently asked questions' page or a dedicated email address for general queries regarding the practicalities of election observation. Whilst we believe that it is possible to carry out a successful observation under the current guidelines and advice, additional information would undoubtedly be advantageous, particularly to assist individuals observing as individuals, as part of smaller groups and possibly international groups.

*Do you have any views on the draft revised Code of Practice?*

Democracy Volunteers is extremely concerned by section 4.5 of the code – *Advance Notification*. We believe there are both philosophical and practical concerns with this recommendation. Whilst we understand that informing councils of our intended destinations would not be a requirement, we believe, along with leading international observer groups, that one of the most effective aspects of independent non-partisan

observation is that observers can attend any polling station, at any time, allowing for a degree of 'surprise' in the process. Whilst we understand that even with the advent of more coordinated domestic observation in the UK, the likelihood of a team of observers arriving remains extremely unlikely in most areas. However, one of the key aspects of observation is that when observers do attend they receive a true perspective of the voting process rather than one that has been adapted, or even prepared for observers.

We also believe that, to produce a suitably random sample and consequently effective research, we should not disclose our route so as not to affect our data. The reliability of our data is contingent on our ability to observe the polling station, or count, in its natural, unaffected state. We believe that spontaneity and the element of surprise is key to this form of fieldwork. The wording of this section may cause observers acting alone, without the backing of an organisation, to err on the side of caution and routinely inform local officials of their visit, even if they believe it may affect their research. Democracy Volunteers understands that this may not be pleasing or agreeable to all parties concerned, but it is essential for the legitimate and proper observation of elections by independent non-partisan observers.

If this section were to be enacted, as presently drafted, we believe the UK would be out of step with international commitments and standards of observation if it were to expect observers to inform the local electoral authorities of their attendance in advance – we believe this should be deleted from the new Observer Code of Practice. We also question the efficacy of this proposal in practice as polling stations should run within the regulations whether observers are anticipated or not. Their attendance should make no difference to the way the election is run nor how polling stations are organised and/or arranged.

Further to this, Democracy Volunteers would also like to highlight the discrepancy in language used between section 4.5 in the revised Code of Practice and section 4.10 in the consultation document. The phrase, 'Strongly encouraged to tell administrators in advance' holds very different weight to suggesting it is 'good practice' as indicated by the Code of Practice.

Democracy Volunteers would also like to request further explanation regarding section 3.11 of the revised Code of Practice. Requiring observers to 'aid in maintaining the secrecy of the ballot' appears to imply that they must intervene if they see something untoward occurring regarding ballot secrecy. This is not the role of observers - if this were to become the case the role of an observer would be dramatically altered.

*Are there any other amendments you would like to see to the Code of Practice?*

Democracy Volunteers is satisfied with the rest of the contents of the updated Code of Practice.

## OTHER COMMENTS

We would like to particularly comment on sections 4.8 to 4.10 and 4.17 to 4.24 of the revised code of practice (pertaining to the exclusion of observers). Notably, on the past use of such powers. While we understand that the Electoral Commission provides an official template for a form regarding the reasons why observers may have been excluded from the premises (Appendix 1), our own observers have *never seen such a form be issued* to them despite being excluded from premises (or threatened to be excluded in the future) in a number of elections by different levels of election officers for no discernible reason other than that of being present. Furthermore, we feel that councils are often not sufficiently aware of the formal rights of observers in the electoral process and that, in some cases, the right of exclusion is used without either formal or informal reason, and in all cases without the required clear audit trail to support this decision.

We also believe that there needs to be a more formal clarification of the rights of observers in terms of where they can be within the polling station. While the direction that observers should not compromise the secrecy of the ballot is a requirement, it leaves scope for interpretation as to what this entails and does not clarify whether the observers may stand behind the desk where the staff sit, for instance. Therefore, we believe that clarification of this may be beneficial and we trust that this should be at the discretion of the observer as they will be the best placed to determine whether their position breaches the secrecy of the ballot, or not.

Democracy Volunteers has always made it a key part of the training that observers should actively avoid any activity (including where they are standing) that would compromise the secrecy of the ballot and recommends that observers move around the polling station during an observation to ensure that the secrecy of the ballot is maintained.

## Conclusion

In general, Democracy Volunteers welcomes many of the technical changes that the Electoral Commission is proposing concerning the accreditation of observers and we do not see these as being controversial in any way.

The nature of the accreditation must clearly identify observers, whether individual or organisational, whilst also plainly explaining to electoral officials, and the public, that they are accredited by the Electoral Commission to observe the election and the delineation between accredited observers and Commission staff should be clear. This clarity should also be explained in more detail in the official guidance given to election authorities.

However, this clarity must also extend to issues concerning the accessibility of polling stations to observers and the rules, which are not followed, concerning exclusion and/or proposed exclusion of observers. Although, however infrequently, observers have been challenged with exclusion, the formal process for exclusion has not been followed on any occasion which Democracy Volunteers has witnessed.

Above all, Democracy Volunteers is most concerned about the proposed change concerning the strong recommendation that observers should inform councils about their proposed deployment– we not only believe this is an unacceptable limitation on the independence of observation but also on the impact of observation to hold electoral authorities to account by acting as ‘critical friends’ to electoral authorities. Although we understand that it may be uncomfortable for electoral administrators to receive an observation mission those that have engaged with Democracy Volunteers, and evaluated our observations and recommendations openly, have been able to improve local practice and organisation. This ‘critical friend’ relationship would be lost if councils knew to prepare themselves, and their polling staff, for an observation – this advanced warning is something that is not expected in other OSCE/ODIHR counties as there is a presumption that observation is a key aspect of the electoral process – not simply an extra annoyance for electoral staff.

Finally, we welcome the opportunity to meet with the Electoral Commission concerning our thoughts on the consultation if the Commission believes there would be advantage to this following receipt of our response to the consultation.

# Appendix 1: Template log for recording temporary observer access restrictions or the removal of an observer for misconduct



## Template log for recording temporary observer access restrictions or the removal of an observer for misconduct

You must complete two copies of this form. One copy must be given to the observer, the other to the Returning Officer who must then forward a copy to their local Commission office. Once the purpose for which this form has been completed has expired, it should be securely destroyed in line with your document retention policy.

Name of election: _____
Name of Presiding Officer / Returning Officer or deputy: _____
Name of ward/division/constituency/region/parish/community/voting area/combined authority area [delete as appropriate]: _____
Name of observer: _____
Observer ID number (if known): _____
Type of restriction imposed (tick whichever is relevant):
<input type="checkbox"/> Access to a particular proceeding [specify the proceeding and give details] _____
<input type="checkbox"/> Removal of observer because of misconduct [give details] _____ _____ _____ _____