

Appendix J

THE ROXBOURNE CASE

This lengthy Appendix is divided into four parts:

1. *Summary and Time-table of Events* This is a guide to the complicated sequence of events surrounding the Roxbourne Case. Details of each stage of the count are given in footnotes.
2. *Advice to the Petitioner from his Counsel* Editorial footnotes give information on similar petitions.
3. *The Petition*
4. *The Judgement of the Court*
5. *Similar Election Petitions, 1976-2002*

Summary and Time-table of Events

4 May, 8.00 am to 9.00 pm

London-wide polling in the Borough elections, including Roxbourne ward, Harrow.

4 May, 9.00 pm to 5 May, 3.00 am

First count of the Roxbourne votes showed R.J. Knowles and H. Underwood elected, with a tie for the third seat.¹ The first re-count showed K. Underwood also elected with a majority of 1 vote over J. Heaton.² A second re-count was demanded.

5 May, 2.30 to 4.30 pm

The second re-count would have confirmed the result of the first re-count,³ but during this count ballot papers were found for the first time that lacked the official mark. More unfranked papers were discovered on checking all ballot papers for the official mark, making a total of 11 invalid papers for this reason. The result announced by the Returning Officer had the votes on the 11 ballot papers excluded: R.J. Knowles, H. Underwood and J. Heaton were declared elected, the last with a majority of 3 votes over K. Underwood.⁴

23 May

The Petition was served upon the First and Second Respondents, and also upon the Director of Public Prosecutions, as required by law.

6 July

The Divisional Court of the Queen's Bench Division of the High Court of Justice ordered that a Special Case (a statement of facts drawn up and agreed by all parties) be lodged by 14 July.

14 July

Special Case lodged.

20 July

In the Queen's Bench Division of the High Court of Justice, Mr. Justice Thompson and Mr. Justice Donaldson ruled that the election of Heaton was void, and ordered a re-election for the third seat.

7 September, 8 am to 9 pm

Polling took place in the Roxbourne ward re-election.

7 September, 9 pm to 10.30 pm

The votes were counted and the result declared: K. Underwood was elected with a majority of 677 votes over J. Heaton.⁵

Footnotes

1. Knowles 1,499; H. Underwood 1,474; Heaton 1,457; K. Underwood 1,457; Myers 1,435; C. Davies 1,268; Forder 580; Woods 537; G. Davies 370; Colledge 262; Bolton 111; Barnes 105; Harding 105; Burton 104; Warshaw 92.

2. Knowles 1,500; H. Underwood 1,478; K. Underwood 1,458; Heaton 1,457; Myers 1,427; C. Davies 1,269; Forder 579; Woods 539; G. Davies 368; Colledge 260; Bolton 109; Barnes 107; Burton 106; Harding 104; Warshaw 90.
3. Knowles 1,502; H. Underwood 1,476; K. Underwood 1,459; Heaton 1,458; Myers 1,424; C. Davies 1,268; Forder 582; Woods 545; G. Davies 374; Colledge 261; Bolton 110; Barnes 107; Harding 107; Burton 105; Warshaw 93.
4. Knowles 1,502; H. Underwood 1,473; Heaton 1,458; K. Underwood 1,455; Myers 1,424; C. Davies 1,263; Forder 579; Woods 542; G. Davies 373; Colledge 259; Bolton 110; Barnes 107; Harding 107; Burton 105; Warshaw 93.
5. K. Underwood 1,644; Heaton 967; Colledge 288; Woods 142; Barnes 36; Hixon 8.

Advice to the Petitioner from his Counsel

IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE ROXBOURNE WARD OF HARROW BOROUGH COUNCIL ON THURSDAY, 4TH MAY 1978

and

IN THE MATTER OF KERRY UNDERWOOD

ADVICE

1. In this matter Mr. Kerry Underwood was a candidate for the Labour Party in the Roxbourne ward of the Harrow Borough Council in the Local Government Election which took place on Thursday, the 4th May 1978. After the day of the election the count duly took place. On the first count Mr. Underwood was said to have received the same number of votes as another candidate who was in joint third place. Therefore a second count took place the following day at 2.30 pm. At that count the Conservative Party took objection to certain ballot papers on the ground that they did not bear the official mark, namely the perforation, of the presiding officer at the polling station. Several ballot papers were disallowed. I am instructed that four were apparently for Mr. Underwood. As a result Mr. Underwood was not elected. I am asked to advise whether or not an application to the Election Court is likely to succeed for a declaration that Mr. Kerry Underwood is the successful candidate.
2. The law in relation to the validity of Local Government Elections is stated at s 37(1) of the Representation of the People Act 1949: "No Local Government Election shall be declared invalid by reason of any act or omission of the Returning Officer or any other person in breach of his official duty in connection with the Election or otherwise the Local Elections Rules if it appears to the Tribunal having cognisance of the question that the Election was so conducted as to be substantially in accordance with the law as to Elections and that the acts or omission did not affect its result."

The Rules set out clearly the requirements for the official mark. Rule 16(1) of the Local Election (Principal Areas) Rules 1973 states "Every ballot paper shall be marked with an official mark which shall be either embossed or perforated". Further, Rule 33(1) states "A ballot paper shall be delivered to a voter who applies therefor, and immediately before delivery (a) the ballot paper shall be stamped with the official mark, either embossed or perforated."

It therefore appears that the Rules require that the official mark must be embossed or perforated on the ballot paper. Without that official mark the ballot paper would appear to be invalid. Indeed, the Rules specifically state this in Rule 43(1) "Any ballot paper (a) which does not bear the official mark shall, subject to the provisions of this Rule, be void and not counted." For present purposes the provisions of the Rule are irrelevant. The result of the Rules is that "the absence of the official mark is absolutely fatal" (Schofield on Local Government Elections, 7th edn, p.363). Thus in the first instance the Returning Officer was correct in disallowing the ballot papers which had no official mark.
3. The second question relates to the result of bringing an Election Petition on the basis that the presiding officer at the polling station made errors which in turn resulted in disenfranchising certain voters. There is a case directly upon this point. It is Morgan v Simpson [1974] 3 All ER 722. I enclose a photocopy of this case as it sets out in detail the position and I cannot better a judgement of Lord Denning. In

particular I would refer to page 728 d-f. The fact that there was a breach of the Rules or mistake at the polls which affected the result means in my opinion that this particular Election will be declared null and void. It will therefore not be possible to obtain a declaration that Mr. Kerry Underwood is the successful candidate. If Mr. Underwood succeeds in an Election Petition the election for this particular ward will have to be carried out again.

4. I note that there are statements from a Mr. Hugh Underwood and Mrs. Eva Davies which make certain complaints of the chaotic arrangements for polling and the lack of sufficient notices. Further, there is one specific complaint of a lady voting in the wrong polling station. The Rules at Rule 21(2) state that "One or more polling stations may be provided in the same room." Schofield (*ibid*) at p.340 states that "Where this is done the lists of streets allocated to each polling station should be clearly indicated for the assistance of voters." However, I do not think that the complaints set out in the statements to which I have referred are specific enough on their own to vitiate the Election. I do not think it would be of use to make use of these complaints if a Petition is to be brought on the stronger ground of the lack of an official mark. I should also add that if these complaints were successful in such a Petition the result would be also that the Election would be declared null and void and would have to be gone through again.
5. If an Election Petition is brought and Mr. Underwood is successful, there is precedent for the "re-run" of the Election only to be in the case of the candidate in question. In other words it may only be that Mr. Underwood's seat is in contention in a new Election and the other two Councillors already elected will not have to stand again. The case of Gunn v Sharpe [1974] 3 WLR 7 is in point here, where two out of three Councillors who were originally elected had their election declared void because the majority of the voters in the ward had been effectively prevented from exercising their vote in favour of two of the three candidates of their choice, as a result of the failure to stamp the ballot papers with the official mark. It would be possible to argue this case on that basis and to try and restrict the second Election in the event of Mr. Underwood being successful. I should mention two further matters. Firstly the time within which the Election Petition can be brought is within 21 days of the Election. Secondly the Election Petitioner must give security for costs in the sum of £500 (s 119(2)(b) of the Representation of the People Act 1949).

In the circumstances I have not drafted the proceedings yet. There is time for the matter to be considered and I will draft the appropriate proceedings when those instructing me have reached their decision in the light of my advice.

Footnote 1 Morgan and others v Simpson and another (see [1974] 3 All ER 722) (National Archives reference J104/599)

This case was heard in the Civil Division of the Court of Appeal, which reversed the decision of the Divisional Court of the Queen's Bench Division of the High Court of Justice. For details of the earlier hearing see [1974] 1 All ER 241 and [1974] QB 344. Judgement was read on 18 July 1974.

The case concerned the **Greater London Council** election for the **Croydon, North-East** electoral division on 12 April 1973. The Returning Officer announced the result as:

Election	Electors	T'out	Candidate	Party	Votes	%
1973	58,784	40.2	D.H. Simpson	Lab	10,340	43.8
			Miss G.E. Morgan	C	10,329	43.7
			B.F. Steggle	L	<u>2,940</u>	<u>12.5</u>
					11	0.1

The Returning Officer rejected a total of 82 ballot papers, 44 of which were rejected for "want of official mark". A scrutiny of the papers showed that the votes on the 44 papers divided: Morgan 31; Simpson 13; Steggle 0. Therefore, if the 44 ballot papers had been included in the count the result would have been:

Election	Electors	T'out	Candidate	Party	Votes	%
1973	58,784	40.2	Miss G.E. Morgan	C	10,360	43.8
			D.H. Simpson	Lab	10,353	43.8
			B.F. Steggle	L	<u>2,940</u>	<u>12.4</u>
					7	0.0

The Appeal Court ruled that although the election was conducted in accordance with the law as to elections, breaches of the statutory rules were committed which affected the result of the election, and that Simpson had not been duly elected as a member of the Greater London Council.

The re-election for the seat was held on the 5 September 1974. The result was:

Election	Electors	T'out	Candidate	Party	Votes	%
1974 (5/9)	58,015	35.4	Miss G.E. Morgan	C	10,176	49.5
			D.H. Simpson	Lab	8,543	41.6
			J.H. Hamilton	L	1,831	8.9
					1,633	7.9

Footnote 2 Gunn and others v Sharpe and others (see [1974] 2 All ER 1058 and [1974] 3 WLR 7) (National Archives reference J104/600)

This case was heard in the Divisional Court of the Queen's Bench Division of the High Court of Justice. Judgement was read on 10 April 1974.

The case concerned the **West Midlands Metropolitan District of Sandwell** election for the **Langley** ward on 10 May 1973. The ward was to return three Councillors, and the Returning Officer announced the result as:

Election	Electors	T'out	Candidate	Party	Votes	%
1973	7,189	29.4	T.C. Sharpe	C	1,097	51.3
			J.W. Cutler	C	1,033	
			Mrs. D. Keeling	C	1,032	
			Mrs. E.M.J. Gunn	Lab	1,016	48.7
			L.W. Carter	Lab	1,009	
			R.W. Avenell	Lab	978	

The Returning Officer rejected a number of ballot papers, significantly 102 papers for "want of official mark". A scrutiny of the papers showed that the votes thereon divided: Carter 68; Gunn 66; Avenell 63; Cutler 33; Sharpe 30; Keeling 28. Therefore, if the votes on the 102 ballot papers had been included in the count the result would have been:

Election	Electors	T'out	Candidate	Party	Votes	%
1973	7,189	29.4	T.C. Sharpe	C	1,127	50.4
			Mrs. E.M.J. Gunn	Lab	1,082	
			L.W. Carter	Lab	1,077	49.6
			J.W. Cutler	C	1,066	
			Mrs. D. Keeling	C	1,060	
			R.W. Avenell	Lab	1,041	

The Court found that the failure to stamp the ballot papers with the official mark was more than a mere informality and amounted to conduct of an election which was not substantially in accordance with the law. Since the majority of voters in the ward had been prevented from effectively exercising their vote in favour of two of the three candidates of their choice, the election of Cutler and Mrs. Keeling was declared void.

The re-election for the two seats was held on 20 June 1974. The result was:

Election	Electors	T'out	Candidate	Party	Votes	%
1974 (20/6)	7,093	n/a	Mrs. E.M.J. Gunn	Lab	1,135	46.2
			J.W. Cutler	C	1,124	
			Mrs. D. Keeling	C	1,068	7.9
			L.W. Carter	Lab	1,065	
			S.R. Bates	NF	191	
			R. Churms	NF	188	

The Petition

(Originally served 23 May 1978, here as amended on 17 July 1978 pursuant to the Order made on 6 July 1978 by Mr. Justice Thompson and Mr. Justice Donaldson.)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1949

and

IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE ROXBOURNE WARD
OF THE LONDON BOROUGH OF HARROW HELD ON THE 4TH DAY OF MAY 1978

THE PETITION OF KERRY UNDERWOOD OF 202 Kings Road, Harrow, Middlesex, shows:-

1. (a) That the Petitioner Kerry Underwood is a person who was a candidate at the above election.
(b) That the Second Respondent was the Returning Officer at the said election.
2. That the election was held on the 4th day of May 1978 when Robert George Barnes, James William Bolton, Sheila Lillian Burton, Eileen Jessie Colledge, Cyril Davies, Glyn Davies, Leonard Allan Forder, Alan John Harding, James Heaton, Raymond John Knowles, Rita Myers, Hugh Underwood, Kerry Underwood, Brian Michael Warshaw and Anthony David Woods were candidates.

On the 5th day of May 1978 the Returning Officer declared that the said candidates received votes as follows:-

Raymond John Knowles	1,502
Hugh Underwood	1,473
James Heaton	1,458
Kerry Underwood	1,455
Rita Myers	1,424
Cyril Davies	1,263
Leonard Allan Forder	579
Anthony David Woods	542
Glyn Davies	373
Eileen Jessie Colledge	259
James William Bolton	110
Robert George Barnes	107
Alan John Harding	107
Sheila Lillian Burton	105
Brian Michael Warshaw	93

and that the said Raymond John Knowles, Hugh Underwood and James Heaton were duly elected.

3. That the Returning Officer declared that eleven ballot papers were rejected for want of the official mark and were duly void and not counted.
4. That in the holding of the said election breaches of the statutory rules governing the conduct of the election were committed by the Returning Officer and/or his servants or agents in that:
 - (i) the said eleven ballot papers were not marked with the official mark either embossed or perforated contrary to Rule 16(1) of the Local Elections (Principal Areas) Rules 1973
 - (ii) the said eleven ballot papers were not stamped with the official mark either embossed or perforated immediately before delivery to the voter contrary to Rule 33(1) of the Local Elections (Principal Areas) Rules 1973.
5. That four out of the said eleven rejected ballot papers contained good and valid votes for the Petitioner and none of the said eleven rejected ballot papers contained votes for the said James Heaton.
6. That the said election of James Heaton was not conducted substantially in accordance with the law as

to elections.

In the alternative:

7. That although the said election of James Heaton was conducted substantially in accordance with the law as to elections the said breaches affected the result of the said election.

And the Petitioner therefore prays:-

- A. That the said eleven rejected ballot papers should be admitted as good and valid ballot papers containing good and valid votes.
- B. That it may be determined that the said James Heaton was not duly elected.
- C. That the Petitioner was duly elected and ought to be returned.
- D. That it may be determined that the said election of James Heaton was void.
- E. That the Petitioner may have such further or other relief as may be just.

Dated this 23rd day of May 1978.

The Judgement of the Court

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1949

and

IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE ROXBOURNE WARD
OF THE LONDON BOROUGH OF HARROW HELD ON THE 4TH DAY OF MAY 1978

BETWEEN

KERRY UNDERWOOD Petitioner

and

JAMES HEATON

and Respondents

RAYMOND HILL

Thursday 20th day of July 1978

UPON HEARING the Notice of Motion dated 17th July 1978, and the Agreed Special Case dated 14th July 1978.

AND UPON HEARING Mr. Stephen Kramer of Counsel for the Petitioner, Mr. Patrick Twigg of Counsel for the 1st and 2nd named Respondents and Mr. Jeremy Connor of Counsel for the Director of Public Prosecutions.

THE COURT DOTH DETERMINE and ORDER:

- I That the Second named Respondent's servants or agents were guilty of acts or omissions amounting to breaches of the Local Elections (Principal Areas) Rules 1973 in that eleven ballot papers were not stamped with the official mark either embossed or perforated.

- ii That even though the said election of the First named Respondent was conducted substantially in accordance with the law as to elections the said acts or omissions affected the result of the said election.
- iii That the First named Respondent was not duly elected.
- iv That the said election of the First named Respondent was invalid.

AND THE COURT DOTH ACCORDINGLY ALLOW THIS PETITION and ORDER that the Second named Respondent do pay to the Petitioner and the First named Respondent their costs properly incurred in relation to the Petition including the costs of today, such costs to be taxed by a Taxing Master, if not agreed. The court expressed the opinion that the Second named Respondent Raymond Hill be not held personally liable for the said costs but that the said costs be paid by The London Borough of Harrow.

AND THE COURT DOTH ORDER that the sum of Five Hundred pounds (£500) paid into the Court by the Petitioner as security for costs be paid to the Petitioner.

BY THE COURT.

Similar Election Petitions, 1976-2002

Since the first publication of this Appendix in November 1981 (in *Harrow Votes: The London Borough of Harrow from 1978*), a full list of void and undue elections in England and Wales (since the reform of local Government in England and Wales in 1973) has become available, thereby adding to the knowledge of similar 'official mark' election petitions. Details of these petitions (omitting the Croydon, Sandwell and Roxbourne cases already discussed) are listed below with as much information as is currently known.

1. In the **Nottingham City Council** election for two councillors for **Radford** ward on 6 May 1976, the Returning Officer declared the result as:

L. Maynard (Lab) 1,475; R.B. Allsop (Lab) 1,364; G. Elliott (C) 1,361; F. Woodward (C) 1,334. Majorities 114 and 3. 8,457 electors. 35.7% t'out.

There were 39 rejected ballot papers of which a number did not contain the official mark. Upon petition the election of Reuben Bernard Allsop was declared void as the ballot papers without the official mark affected the result of the election. The new election took place on 28 April 1977 with the following result:

R.B. Allsop (Lab) 1,560; G. Elliott (C) 959; Marshall (?) 133. Majority 601. Electors and t'out not available. There was a total of 21 rejected ballot papers at this election.

2. In the **Devon County Council** election for the **Alphington and St. Thomas** division on 7 May 1981, the Returning Officer declared the result as:

Dudley J. Rogers (C) 1,519; Rodney G. Ruffle (L) 1,517; Martin Rich (Lab) 1,066; Linda E. Humphries (Ecology) 61. Majority 2. 7,828 electors. 53.3% t'out.

There were a number of doubtful papers, including 4 rejected for lack of official mark but 1 allowed by the Returning Officer where the words "Ruffle Liberal" had been written on the ballot paper. The 4 unmarked papers had three otherwise good votes for Ruffle and one otherwise good vote for Rogers. Therefore had the ballot papers been included in the count the result would have been different, i.e. a tie, and the election of Rogers or of Ruffle would then have been decided by lot under the provision of rule 45 of the Local Elections (Principle Areas) Rules 1973.

Ruffle petitioned for a declaration that the election of Rogers was invalid. On 21 December 1981 the Queen's Bench Division of the High Court of Justice (Mr. Justice Kilner Brown and Mr. Justice Mais) ruled that the ballot paper marked "Ruffle Liberal" was a valid vote (as the handwriting did not identify the voter) and that the four ballot papers rejected for want of the official mark affected the result of the election and that the election was therefore void. Rogers appealed.

The appeal, heard by Master of the Rolls Lord Denning, Lord Justice Eveleigh and Lord Justice Watkins on 10 and 11 February 1982, and reported as *Ruffle v Rogers and another* [1982] QB 1220. The appeal was dismissed with costs. (National Archives reference J104/618.)

3. In the Welsh **District Council of Meirionnydd** election for two councillors for **Aberdovey Rural** ward (ward 8) on 5 May 1983, the Returning Officer declared the result as:

Richard Jones (Ind) 489; John D. Menhinick (Ind) 348; Frederick Davies (Ind) 348. Majorities 141 and 0. 1,089 electors. 44.9% t'out.

As Menhinick and Davies had an equality of votes for the second position, for the former to have been declared elected lots would have been drawn which resulted in one vote being added to his total. Upon petition, Menhinick's election was declared void as a number of rejected ballot papers lacking the official mark affected the result of the election. The new election took place on 22 December 1983 with the following result:

John D. Menhinick (Ind) 285; David Roberts (Ind) 275; Frederick Davies (Ind) 137. Majority 10. Electors and t'out not available. (National Archives reference J104/630.)

4. In the **Hampshire County Council** election for the **Downlands** division on 2 May 1985 the Returning Officer declared the result as:

Ms. A.E. Bailey (L) 2,632; C. Wilson (C) 2,631; J. Sorley (Lab) 367. Majority 1. 11,130 electors. 50.6% t'out.

A number of ballot papers without the official mark were wrongly included in the count and this affected the result of the election. On petition the election of Ann Ellen Bailey was declared void. This appears to be a unique case.

5. In the **Oxfordshire County Council** election for the **Goring** division on 4 May 1989, the Returning Officer declared the result as:

R.M.C. Morgan (LDem) 1,542; Ms. D. Whitfield (C) 1,541. Majority 1. 6,198 electors. 49.7% t'out.

There were 9 rejected ballot papers, a number of which were for lack of official mark. The election of Robert Michael Caradog Morgan was declared void on petition as the ballot papers lacking the official mark affected the result of the election.

6. In the **Trafford Metropolitan Borough** election for the **Stretford** ward on 2 May 1991 the Returning Officer declared the result as:

Harry Walker (C) 1,827; Bernice E. Garlick (Lab) 1,822; Francis C. Beswick (LDem) 328. Majority 5. 8,040 electors. 49.5% t'out.

The election of Walker was declared void on petition as rejected ballot papers lacking the official mark affected the result. The new election took place on 5 December 1991 with the following result:

Bernice E. Garlick (Lab) 1,656; Harry Walker (C) 1,654; Francis C. Beswick (LDem) 140. Majority 2. Electors and t'out not available. (National Archives reference J104/737.)

7. In the **Three Rivers District Council** election for two councillors for the **Chorleywood West** ward on 2 May 1991 the Returning Officer declared the result as:

Peter J. Kemp (C) 789; Charles F. Downing (C) 769; William B. Cavill (LDem) 700; Derek Frankland (LDem) 698; Michael J.I. Bird (Lab) 111; Gillian Stone (Lab) 93. Majorities 89 and 69. 3,697 electors. 61.0% t'out. The first and second in the poll were to serve terms of 4 years and 1 year, respectively.

His Honour Judge Goldstone, at Watford County Court, ordered a recount on 10 May 1991 because approximately 600 ballot papers had been inadvertently omitted from the original count. The result was:

William B. Cavill (LDem) 1,023; Peter J. Kemp (C) 1,023; Derek Frankland (LDem) 1,018; Charles F. Downing (C) 1,003; Michael J.I. Bird (Lab) 144; Gillian Stone (Lab) 134. Majorities 5 and 5. 3,697 electors. 61.0% t'out.

During the course of the recount 10 ballot papers were discovered that lacked the official mark and were therefore rejected. The votes on the 10 papers split as follows: Cavill 6, Kemp 3, Frankland 7, Downing 4. At a hearing of an election petition in the Queen's Bench Division of the High Court of Justice on 26 July 1991, Mr. Justice Wright and Mr. Justice Allott allowed an extra vote for Kemp and an extra vote for Stone that arose from a previously rejected ballot paper (ballot paper no. 1552) where the elector had marked ticks against the names of Kemp and Stone and marked crosses against the names of the other four candidates. Including this ballot paper placed Kemp at the top of the poll, whereas he would have been second if the otherwise good and valid votes from the unfranked papers were taken into consideration. The judges ruled that the whole election was void because the papers lacking the official mark affected the result of the election, especially with regard to which candidate was elected for 4 years and which candidate for 1 year. The new election for the ward took place on 5 September 1991 with the following result:

Derek Frankland (LDem) 1,143; William B. Cavill (LDem) 1,142; Peter J. Kemp (C) 1,098; Charles F. Downing (C) 1,093; Gillian Stone (Lab) 103; Michael J.I. Bird (Lab) 102. Majorities 45 and 44. 3,743 electors. 62.5% t'out. (National Archives reference J104/738.)

8. In the **Dorset County Council** election for the **Lytchett** division on 6 May 1993, the Returning Officer declared the result as:

H. Selby Bennett (C) 1,315; P. Gainsford (LDem) 1,314; D. Collis (Lab) 463. Majority 1. 8,004 electors. 38.6% t'out.

The election of Harry Selby Bennett was declared void on petition as rejected ballot papers lacking the official mark affected the result of the election. (National Archives reference J104/743.)

9. In the **Scottish Borders Council** election for the **Southdean** ward on 6 April 1995, the Returning Officer declared the result as:

Tom B. Dobson (Ind) 245; Patricia C. Miller (LDem) 244; James A.S. Brown (SNP) 154. Majority 1. 1,478 electors. 43.8% t'out.

There were 5 rejected ballot papers, 2 of which were for want of official mark. It transpired that had the ballot papers been marked with the official mark the result would have been different, as the disallowed votes were found to be in favour of Miller. As a result of an election petition which was heard in the Sheriff Court, Jedburgh on 6 June 1995 the Sheriff Principal determined that Dobson had not been duly elected for the Southdean ward and ordered a fresh election. This was held on 17 August 1995 with the following result:

Tom B. Dobson (Ind) 339; Patricia C. Miller (LDem) 218; James A.S. Brown (SNP) 165; Thomas F. Tubb (C) 44. Majority 121. Electors and t'out not available.

10. In the **Falkirk Council** election for the **Laurmont East** ward on 6 April 1995, the Returning Officer declared the result as:

Francis Hodge (C) 428; Moira Fitzpatrick (Lab) 427; Gordon Hughes (SNP) 365; Ronald McArthur (L/Dem) 71. Majority 1. 3,120 electors. 40.9% t'out.

There were 4 rejected ballot papers, all of which were for lack of official mark. Two of the papers contained otherwise good votes for Fitzpatrick and the other two otherwise good votes for Hughes. Therefore had the ballot papers been included in the count the result of the election would have been different. (Further details may be found in *The Scotsman*, 8 April 1995.) As a result of an election petition, which was heard in the Sheriff Court, Falkirk on 12 June 1995, the Sheriff Principal determined that Hodge had not been duly elected for the Laurmont East ward and ordered a fresh election. This was held on 17 August 1995 with the following result:

Francis Hodge (C) 721; Moira Fitzpatrick (Lab) 527; Diana Williamson (SNP) 400; James Johnston (Ind) 46; Ronald McArthur (LDem) 32. Majority 194. Electors not available. 54.6% t'out.

11. An election of a **Member of Parliament** for the **Winchester** constituency was held on 1 May 1997. The Returning Officer declared the result as:

Mark Oaten (LDem) 26,100; Peter G. Malone (C) 26,098; Patrick Davies (Lab) 6,528; Peter Strand (Ref) 1,598; Richard J. Huggett (Ind LDem) 640; Derek Rumsey (UKIP) 476, John E.D.D. Browne (Ind) 307, Peter Stockton (MRLP) 307. Majority 2. 79,272 electors. 78.3% t'out.

A total of 55 ballot papers were excluded from the count for want of official mark, of which 18 were votes in favour of Oaten and 22 in favour of Malone. Therefore Malone would have had a majority of 2 votes had they been included in the count. On hearing an election petition in the High Court on 6 October 1997 Lord Justice Brooke and Mr. Justice Gage ordered that there should be a fresh election. The petition also stated that four voters cast tendered ballots after claiming to have been personated, but the personators could not be found and the allegation was not pursued. (See *The Times*, 2 October 1997, *The Daily Telegraph*, 7 October 1997, or *Hampshire Chronicle*, 10 October 1997, for further details.) The new election took place on 20 November 1997 with the following result:

Mark Oaten (LDem) 37,006; Peter G. Malone (C) 15,450; Patrick Davies (Lab) 944; Robin Page (Ref) 521; David E. Sutch (MRLP) 316; Richard J. Huggett (Ind LDem) 59; Rosemary Barry (NLP) 48; Roger Everest (Ind C) 40. Majority 21,556. 79,116 electors. 68.7% t'out.

(National Archives references J104/780, J104/780/1, J104/780/2.)

12. In the **London Borough of Hammersmith and Fulham** election for three councillors for the **Sands End** ward on 2 May 2002 the Returning Officer declared the result as:

Brendan J. Bird (Lab) 1,257; Jenny R. Vaughan (Lab) 1,130; Stephen J. Hamilton (C) 1,114; Colin G. Pavelin (Lab) 1,111; Mark B. Holdsworth (C) 1,061; Karen A. Woods (C) 1,058; Peter J. Hartwell (LDem) 182; Thierry R.A. Mercadier (LDem) 174; Allan W. McKelvie (LDem) 158. 6,886 electors. 37.7% t'out.

A total of 27 ballot papers were declared by the Returning Officer to be invalid, of which 17 were for want of the official mark. If the 17 papers had been included in the count Pavelin would have had more

votes than Hamilton, whose declared majority over Pavelin had been 3 votes. (Unfortunately the breakdown of the votes on the ballot papers in question is not available.) On 22 May 2002 Pavelin lodged an election petition against Returning Officer Richard Harbord and Hamilton, and also upon the Director of Public Prosecutions, as required by law. The Petition called for a scrutiny of the votes, that Stephen James Hamilton had not been duly elected and that the Petitioner, Colin George Pavelin, had been duly elected. In the alternative the Petition requested that the election of Hamilton be declared void.

A Special Case (a statement of facts drawn up and agreed by all parties) was lodged on 29 July 2002, and on 31 July 2002 the Queen's Bench Division of the High Court of Justice ruled that the election of Hamilton was invalid and ordered a re-election for the third seat. This was held on 12 September 2002 with the following result:

Colin G. Pavelin (Lab) 1,021; Stephen J. Hamilton (C) 1,017; Dugald Macinnes (LDem) 225. Majority 4. 6,676 electors. 33.9% t'out.

Note: The use of "built-in" security devices, such as watermarks or holographic foils, on ballot papers is increasing in popularity. In these circumstances the presiding officer at polling stations is not required to perforate or stamp the ballot paper upon issue to the elector. As these devices become more widespread so the likelihood of similar cases occurring in the future diminishes.