

---

**From:** FOI  
**Sent:** 30 March 2023 17:12  
**To:** [REDACTED]  
**Subject:** FOI 022-23 - Response  
**Attachments:** FOI-022-023 Queries relating to counts and covid.pdf

Dear [REDACTED],

**Our ref: FOI 022-23**

Thank you for your email to the Electoral Commission received 03 March 2023.

The Commission aims to respond to requests for information promptly and has done so within the statutory timeframe of twenty working days.

Your request is shown below followed by our response.

***Please disclose, preferably by PDF, information (and its date if held) sent to the Commission relating to any Covid outbreak since the pandemic began that affected any election centre or counts. Realised request may mean more than I intended it to cover which isn't about entire elections/their postponing which affected every election centre and count in them (and therefore affects any election centre or counts). I am not seeking information for example from the Government to the Commission about that but instead information about any outbreak that has affected specific election centres or counts, supplied by local authorities that a particular election centre has been affected or a count or the counts in one but a communication that lists a number of individual centres or counts that have been affected whether by the same Covid outbreak or another one, or other ones, is included in the request.***

We clarified this question and you responded:

***The request relates to any communications from any local authority relating to the impact of Covid-19 on a specific count(s) or venue(s). This includes multiple issues mentioned in one communication and multiple issues with counts at the same venue or venues.***

***The timeframe for these communications is from March 2020 (when England first went into Lockdown) to the date the request was received (3 March 2023).***

Our response is as follows:

We hold some of the information you have requested.

We have not received any queries relating to changing or moving a count venue because of any covid outbreak.

We have a small number of queries logged relating to covid and counts, and these related to potential changes to the appointment of count agents if the appointed person contracted covid, the minimum numbers of count agents who could be appointed, and queries around social distancing guidelines and requirements at counts.

These queries were received either via email or telephone and were logged in our query database. We have extracted the information from the database into the attached document. We have redacted the names of individuals for privacy purposes; however, the relevant local authority is provided.

The extraction of people's names is in line with the Freedom of Information's section 40 exemption, which states that personal data, as defined by the Data Protection Act 2018, is exempt from release where releasing it would breach one of the data protection principles. This includes names and contact details of individuals in some instances. The individuals in some cases are junior staff members and they would not reasonably expect their information to be released.

I trust that this information satisfies your request.

The Commission strives to be an open, transparent authority and I trust that this information satisfies your request. If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at: <https://www.electoralcommission.org.uk/freedom-information/make-a-freedom-information-request>.

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website: <https://ico.org.uk>.

Warm regards

**Information Team**

[FOI@electoralcommission.org.uk](mailto:FOI@electoralcommission.org.uk)

**The Electoral Commission**

[electoralcommission.org.uk](https://electoralcommission.org.uk)

## Queries relating to counts and covid

We have not received any queries relating to changing or moving a count venue because of any covid outbreak.

We have a small number of cases logged and detailed below relating to covid and counts, and these related to potential changes to the appointment of count agents if the appointed person contracted covid, the minimum numbers of count agents who could be appointed, and queries around social distancing guidelines and requirements at counts.

### **Case 1: Appointment of Counting agents in a covid situation (CAS-85705-B5N3Y0)**

Email enquiry received 8 January 2021 from (Southend Borough Council)  
[xxxxx@southend.gov.uk](mailto:xxxxx@southend.gov.uk):

“Re our conversation, I have searched for the calculation for the counting agents and have copied the following text (below) from an older version of the Commission’s Candidates and Agents guidance. It seems that the law prescribes who are entitled to be present (as per bullet points). It also refers to a calculation for the counting agents and my question is whether this calculation is enshrined in law. I am raising the question as the recent EC supplementary guidance states: “Where space is limited in your venue, you could consider whether limiting the number of counting agents appointed per candidate is an option for safety reasons.”

“Count procedure 6.16 Other than the Returning Officer and their staff, the following people are entitled to attend the count: • candidates and one other person chosen by each of them • the candidate’s election agent • any appointed counting agents • any accredited election observers • representatives of the Electoral Commission 140 139 Except in the limited circumstances where an elector has been granted a waiver and is not required to supply a signature. 140 Rule 44(2), Local rules. 63 Chapter 6 – The poll and count 6.17 The Returning Officer may also permit other people to attend the count at their discretion, but is not obliged to do so. The decision of the Returning Officer as to who may attend the count is final. 6.18 **The maximum number of counting agents to be appointed by each candidate will be determined by the Returning Officer, but will be no less than the total number of counting assistants divided by the total number of candidates.** The number permitted will be the same for each candidate. Further information on the appointment of counting agents can be found in Chapter 1, ‘Introduction’.

A couple of supplementary questions: if the calculation referred to above comes out at say 2.35 would you round down. This has never been an issue as even if it came out at 2.1, I would tend to look at this generously and round up to 3 as the discretion of the Returning Officer can be used. If the calculation does have some legal basis then it would be useful to know if you would apply the normal mathematical logic i.e round up if 2.5 or above to 3, but less than 2.5 but above 2 then round down to 2. Another dimension to this is that we have 17 ward areas. We have taken a uniform approach in the past having regard to the calculation so that all the candidates are treated same in terms of their allocation. However, it would be useful just to be clear how the calculation should be applied i.e is it the total number counting assistants (for the Borough count in its entirety) divided by the total number of candidates across the Borough or should the calculation be applied to each of the 17 ward areas (number of candidates in a ward divided by the number of counting assistants in a ward area) which would inevitably mean that some wards would have a different entitlement to others?

I would not have raised these questions as we have an agreed process for the counting agent entitlement (which is quite generous), but it would be helpful to obtain some clarity as we will be under pressure to limit the number of persons in the count hall.

Answer provided by email 11 January 2021 by xxxxx@electoralcommission.org.uk:

You've got a number of questions in your email which I hope I have managed to cover below.

### **1 – legal basis.**

The formula has a legal basis - Rule 27(4), Principal Areas Rules 2006:

*4) The returning officer may limit the number of counting agents, so however that—*

*(a) the number must be the same in the case of each candidate; and*

*(b) the number allowed to a candidate must not (except in special circumstances) be less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.*

*For the purposes of the calculations required by this paragraph, a counting agent who has been appointed for more than one candidate is a separate agent for each of the candidates by whom he has been appointed.*

Things to think about: In the current situation Coronavirus would be the special circumstances. If you were to reduce the number of counting agents then a) it would need to be the same number of counting agents for each candidate, b) Using your risk assessment and space calculations where you have a concern about numbers and keeping a safe distance then you would need to document your decisions and let candidate and agents know up front what your plan is.

You could reduce numbers by making sure that people observing only observe the processes they are entitled to observe eg stage two count for PCC only the counting agents for the candidates left in the contest are allowed to observe. You could do this by colour co-ordinating badges or wristbands. However, it is important to remember that all counting agents are entitled to come to the verification.

### **2 – rounding up or down**

Our advice on rounding up or down is that you will need to round up as the number of counting agents can't be less than that figure. e.g. if you formula gives you 1.3 then the minimum will be 2.

### **3 – calculating numbers by ward area**

You could calculate the number of counting agents by ward area if it helps the situation. Again just make sure candidates and agents know what you are doing.

Our supplementary guidance on verification and count adds a bit more detail of things you need to consider which might be helpful:

#### **Determine the number of counting agents per candidate?**

o You will need to ensure that your set-up of the venue and processes enables oversight of all counting tables and adjudication areas without compromising safety. This will include an assessment of the numbers of attendees that your lay-out can safely accommodate, which in turn will help you determine the number of counting agents that can safely attend the verification and count.

o You should also liaise with PARO, CAROs and County ROs to ensure that you are aware of the number of counting agents that have been appointed by them for the relevant polls in your electoral area and may require access to your verification and count, in addition to counting agents appointed for local elections.

o Where space is limited in your venue, you could consider whether limiting the number of counting agents appointed per candidate is an option for safety reasons. In making this decision, you will need to take into account the implications of allowing fewer agents to attend and whether your decision will enable sufficient scrutiny of the verification and count process. Candidates', agents' and counting agents' scrutiny at the verification and is an essential part of the verification and count process and gives assurance that an accurate result is produced. Whatever decision you make, the maximum number of counting agents appointed per candidate must be same in each case.

o Where you decide to limit the number of counting agents allowed to attend the count, you should engage with candidates and agents at an early stage to inform them of the decision and the factors considered in reaching your decision, including how you have implemented any relevant public health advice. You should also fully document all stages of your decision making for audit trail purposes.

If you want to talk this through any more or think of further questions please let me know.

## Case 2: Limiting attendance at the Count during Covid pandemic (CAS-86442-P1C1J5)

Email enquiry received 3 March 2021 from (Warwick District Council)  
xxxxx@warwickdc.gov.uk:

"I have been asked to write to you in advance of our meetings next week so you can have some thinking time before responding.

Reading the guidance from the EC for the count and planning our counts in Warwickshire we would appreciate some guidance based on the legislation requirements for candidates/agents/counters agents and spouses to attend.

We are content that we can accommodate the candidate with one other representative for them at each count. This based on keeping the 2m social distancing in place for counters but also observers and you can't allow the usual shoulder to shoulder of candidates looking over a table of counters. We plan to have a counter per table (with between 6 and 12 counters per division) and within a zone allowing the candidates an agents for that area. This clearly is less than set out within the law but will we be able to justify any challenge to this based on covid regulations i.e. we assume covid takes precedent?

I appreciate any speeches by the candidates is our discretion and we intend a blanket ban on these with the exception of the PCC who will take the oath of office. We will also not be having results screens in place to reduce the potential gathering of groups and will have a no entry zone by the stage for results to be announced."

Answer provided by email 3 March 2021 by xxxxx@electoralcommission.org.uk:

"Thanks for your e-mail.

As you know the law provides that certain people have the right to be present at the election count. This includes Candidates, the Candidate's election agent, their appointed Counting Agents and one guest per candidate. Commission representatives and other accredited observers are also allowed to attend. .

The purpose of the legislation is to allow those standing for election to observe the proceedings and ensure that the relevant procedures are followed in a thorough and transparent manner. We do not believe that the Returning Officer could decide to exclude the Candidate or their Election Agent from the count , save in the most exceptional circumstances but s/he could decide not to allow Candidates to bring a guest and/or spouse. In addition the law allows the Returning Officer to limit the number of counting agents. However the number of counting agents allowed for each candidate must be the same and, unless there are special circumstances, must not be less than the number obtained by dividing the number of counting assistants (i.e. those staff counting the ballot papers) by the number of candidates. When determining the maximum number of counting agents, each candidate should, as far as possible, be permitted to appoint sufficient numbers of counting agents to enable full and proper scrutiny of the verification and count processes. However the Returning Officer must have regard to the capacity of the venue to ensure that the relevant social distancing and other Covid related considerations are complied with. As we understand your proposal it would result in each candidate having less than the number produced by the formula mentioned above but this would be justified by the Returning Officer on the basis of the public health advice in regard to the capacity of the Count venue. .

In our supplementary guidance to Returning Officers on Covid related issues and the Count we strongly suggest that if the RO is intending to limit attendance at the count, they should engage with candidates and agents at an early stage to inform them of the decision and the factors considered in reaching their decision, including how the RO has implemented any relevant public health advice. We also suggest that the Returning Officer should also fully document all stages of their decision making for audit trail purposes.

Hope that answers the question.”

### **Case 3: Restriction of number of count agents attending the count - covid mitigations (CAS-92109-Y3P7F8)**

Email enquiry received 18 March 2022 from (London Borough of Tower Hamlets) xxxxx@towerhamlets.gov.uk:

“The question I’m asking is the counting agent allocation

I get the formula but can the RO reduce the numbers of CA’s based on what he considers to be safe. I get the candidates getting access and EA’s but can the CA’s be determined by the RO if he considers that transparency isn’t being compromised by having lower numbers that what is expected.”

Answer provided by email 18 March 2022 by xxxxx@electoralcommission.org.uk :

“As you have noted, there is a formula set out in legislation for the appointment of counting agents. The legislation does however allow for the limiting of the number of counting agents permitted to attend the verification and count where there are ‘special circumstances’ (see 27(4)(b) of the Local Elections Rules 2006). In the supplementary Covid-considerations guidance that we published for Returning Officers in the run up to the May polls last year, we said the following:

- o Where space is limited in your venue, you could consider whether limiting the number of counting agents appointed per candidate is an option for safety reasons. As set out in Part C of our core guidance for Returning Officers .....the law does allow for the limiting of the number of counting agents permitted to attend the verification and count where there are special circumstances, and whilst it is important to ensure candidates and agents are able to fulfil their scrutiny role, you should consider health and safety implications when setting the maximum number. It is our view that a decision to limit numbers using this provision where it is necessary in order to ensure adherence to coronavirus public health advice and to ensure the safety of all those involved is likely to be regarded as such a special circumstance.
- o In making this decision, you will need to take into account the implications of allowing fewer agents to attend and whether your decision will enable sufficient scrutiny of the verification and count process. Candidates’, agents’ and counting agents’ scrutiny at the verification and is an essential part of the verification and count process and gives assurance that an accurate result is produced. Whatever decision you make, the maximum number of counting agents appointed per candidate must be same in each case.
- o Where you decide to limit the number of counting agents allowed to attend the count, you should engage with candidates and agents at an early stage to inform them of the decision and the factors considered in reaching your decision, including how you have implemented any relevant public health advice. You should also fully document all stages of your decision making for audit trail purposes.

If you want to have a read of the full Covid-considerations document for verification and the count that we published last year, it is here –

<https://www.electoralcommission.org.uk/sites/default/files/2021-07/Verification%20and%20Count%20considerations%20for%202021%20polls%20-E%20version%20with%20March%20updates.docx>



#### **Case 4: Count agent unable to act – has covid (CAS-93019-F2P6Y0)**

Telephone enquiry received 3 May 2022 from Havant Borough Council (case summary details):

“A count agent has Covid so will be unable to attend this week's local government count. Can someone else be appointed in their place?”

Answer provided by telephone 3 May 2022 by Electoral Commission (case summary details):

“Yes a new appointment may be made. Pointed xxxxx to para 1.70 of part 2b of the C&A guidance on appointment of PV, polling and count agents:

If an agent dies or becomes incapable of acting, you may appoint another agent in their place by submitting the relevant appointment form to the Returning Officer. Any new appointment in these circumstances must be made without delay.”

## Case 5: Managing the consequences of a small count venue (CAS-85794-T0H8T1)

Enquiry received by email 19 January 2021 from (Forest of Dean District Council) xxxxx@fdean.gov.uk :

“I had a meeting yesterday at my count location to produce a plan layout for the forthcoming verifications and counts.

We had indicated we would do mini counts by division. We have PPC, plus 8 county divisions, 2 district ward by elections, 7 parish/town council elections and one NDP. I have calculated that the number of candidates, election agents and verification agents (allowing 1 verification agent per candidate) for each division is between 33 and 39. I have been advised that the maximum number of people I can get into the room under the covid restrictions is 55 thus allowing 18 counting staff. The room is 14m x 37m. This being the case I will only be able to verify one division at a time.

Have you had any discussions with other EAs with this same problem? is there any further restrictions I can impose on the number of people allowed to attend? I have included candidate, election agent (if applicable) one counting agent for each type of election.

Your comments would be very much appreciated.”

Answer provided by email 19 January 2021 by xxxxx@electoralcommission.org.uk:

“I’m really sorry to say that there is no easy solution to the problem you have described below. It’s such a difficult situation for Returning Officers given the volume of polls being delivered coupled with the pandemic restrictions. I would say that administrators are now beginning to look at the fine detail of the counts, as you are doing, and certainly I have come across other local authorities who will need to stagger their verifications, as they don’t have the capacity to accommodate all of their observers at one time – and of course the verification is a particular pinch point, when all of the candidates and agents for each of the polls in the electoral area are entitled to attend. I haven’t personally come across other ROs who can only accommodate the verification of one division at a time, but that doesn’t mean to say that there aren’t others in that same situation.

I am guessing that there is no possibility of you having access to a larger count venue? When we spoke on the phone the other day, you mentioned verification and counting across 2 rooms at Oaklands. Do you have the ability to use other rooms in addition – either at the snooker centre or at another venue? There is nothing to prevent multiple venues from being used, provided that there is clear communication and transparency on what is being verified and where. And however and wherever your verification and count are run, early communication with the candidates and parties is going to be key in order to manage their expectations.

In answer to your question, there is no legal provision to further reduce the minimum of individuals who are entitled to attend the count. The candidate and election agent are legally entitled as well as count agents. As we’ve set out in our supplementary guidance document on the count, the Returning Officer may limit the number of count agents per candidate in special circumstances, provided that the number per candidate is the same. I realise that you have already factored this into your calculation, but this is just to confirm to you that it is only count agents for whom the Returning Officer has the discretion to limit numbers.

I know that your verification is due to take place on the Friday morning – if additional room space cannot be found, can you begin the verification earlier?

I'm sorry not to be coming up with a brilliant solution, but am just running through the basics in my mind.

We will continue to reflect the challenges that we know that Returning Officers are experiencing in our conversations with Cabinet Office and Govt.

Please get back in touch again as and when you need.”

## **Case 6: Venue for verification and count (CAS-87488-R6T1K4)**

Telephone enquiry received 8 April 2021 from Worcester City Council (case summary details):

“xxxxx said they've booked the local leisure centre as it was the best and largest they could find. The centre will be keeping the gym and the pool open during the days and she wanted to check that this will be fine for them to still use the venue. They've also booked a security service to ensure that the areas they are using will be kept entirely separate from public areas.”

Answer provided by telephone 8 April 2021 by Electoral Commission (case summary details):

“Discussed, advised her that in 'normal times' the venue would be keeping these areas open and that wouldn't be a problem. Nothing in legislation has changed the only difference now is that there is the pandemic. Advised we have produced extra supplementary guidance to assist ROs with decisions on how to manage their venues, and forwarded this to her.”

**Case 7: Effect of a person attending the verification subsequently being diagnosed with coronavirus (CAS-86214-F2X2M5)**

Enquiry received initially by telephone 19 February 2021 from Mid Devon District Council (case summary details):

“xxxxx is concerned about the impact of a staff member or observer at the verification being diagnosed with coronavirus shortly after the event. Would everyone who had attended the verification be required to self-isolate? If so, it could impact on the rest of the count events - eg Saturday or Monday PCC count. It would be difficult to have a such a large number of reserve staff in place, for this event, including senior staff??”

Answer provided by email 22 February 2021 by xxxxx@electoralcommission.org.uk :

“I told you that I would mention to xxxxx your very sensible question about an individual at the verification being diagnosed with coronavirus and the extent of the impact this would have on other attendees at the count – including the effect on availability of staff to take part in counts on subsequent days because of any requirement to self-isolate.

We think this is definitely a question on which your public health colleagues will need to provide some input. Given that your verification will be carried out with social distancing and use of PPE, your public health colleagues would be the best people to advise which other individuals who had attended the verification would be required to self-isolate - eg whether the need to self-isolate would be limited to particular individuals or whether it would be a broader requirement for attendees to self-isolate. I expect your colleagues would need to see your proposed count plan, but their input at this point would potentially help you to shape your verification and count arrangements and to minimise risk if a person attending the verification did subsequently test positive for the virus.

I’m not sure if you will have seen the supplementary document we have recently published on considerations for the verification and count at the May 21 polls, which is here -

<https://www.electoralcommission.org.uk/sites/default/files/2021-02/Verification%20and%20Count%20considerations%20for%202021%20polls%20-E.docx>

Please don’t hesitate to email or ring again with any further thoughts or questions.”