Local Government and Communities Committee

Payments to Returning Officers in Scotland

Written Submission from the Association of Electoral Administrators

The Returning Officer (RO) is a unique position set out in legislation, deliberately designed to ensure independence of this role so that it can be delivered without fear or favour. This independence is set out by Section 27(1) of the Representation of the People Act 1983.

The duties of the RO are defined in the appropriate legislation for each election type, but include the following:

- The publication of all relevant statutory notices relating to the election, for example the Notice of Election and the Statement of Persons Nominated/Notice of Poll (if a poll is needed);
- The nomination process;
- The production, dispatch and verification of postal votes;
- The identification, booking and equipping of polling places;
- The recruitment, appointment, training and remuneration of Presiding Officers, Poll Clerks and other polling staff;
- The secure transfer of ballot boxes from polling places to the count venue;
- The verification and counting of the votes;
- The declaration of the results;
- Holding for public inspection relevant documentation around the election process, including candidates’ election expenses and the marked registers.

These duties are the personal responsibility of the RO and as such are answerable directly to the courts for any question or failure in these duties. The RO is not responsible to the Local Authority, the Elected Members or the Scottish or Westminster Parliaments.

It is well explained in an extract from the London Borough of Barnet’s General Functions Committee Report on the 9th June 2016. This was a report on the Independent Investigation into Election Problems in Barnet on 5 May and the Council’s Response.

The statutory requirement for the process of administering and running elections

1.2 Elections have to be conducted outside the normal political processes. This is both a legal and common sense requirement.

1.3 The duties of a Returning Officer are separate from the duties held by that individual as a local government officer. A Returning Officer is not responsible to the local authority but is a separate legal entity to that of the Council which appointed
him/her and is directly accountable to the courts as an independent statutory office holder.

1.4 The Returning Officer is not fettered by the Council’s normal procedures in terms of conducting the election or subject to direction or instruction from members of the Council in respect of the discharge of the responsibilities falling to the statutory office. This reflects the position enshrined in statute that an independent officer is responsible for the proper conduct of the election “without fear of favour”.

As an independent role, the liabilities are that of the individual, not the Local Authority. This is demonstrated in that it is the RO that would be subject to electoral petitions within Part III of the Representation of the People Act 1983. Every RO ensures they have insurance for this very reason. If they are guilty of any act or omission in breach of their official duty then they are liable on summary conviction to a fine not exceeding £5,000 and would become accountable for the costs of re-running a poll were that the petition outcome.

It should be noted that any fee applicable to the role can also be withheld for ‘poor performance’, as determined by the Secretary of State following the advice of the independent Electoral Commission.

As a consequence of this role being independent, it would be inappropriate for any salary for a job which has been evaluated without these roles and responsibilities to be considered as appropriate remuneration for being the RO.

The RO role is a complex and high profile position and it would seem completely wrong to not be appropriately remunerated in light of the associated personal liabilities and additional workload over and above the post holder’s “day job”.

The independent designation of the role supported by the payment of a fee entirely separate to that paid for the role of a senior officer in the local authority provides security that the democratic process cannot be compromised. Separate payment reinforces the independence and the transparency that the public expects, which would not be the case if the RO was directly accountable to the very people they were ensuring were elected by the will of the electorate.

Any remuneration for any position should be regularly reviewed and evaluated and that of the Returning Officer should also be the case.

It may be that the model for the conduct of elections and the role of RO’s be delivered differently, but this would have to form a much wider investigation and consultation on the appropriateness and therefore have not commented on types of models.

While this evidence has been specifically about the RO, it would also apply to that of Counting Officers at referendums.

Andrew Hunter
Chairperson, Scotland and Northern Ireland Branch
Association of Electoral Administrators