

Payments to Returning Officers in Scotland



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Remit: To consider and report on communities, housing, local government, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities, Social Security and Equalities



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Introduction

- The Committee reports to the Parliament as follows—
- 2. The Committee agreed to hold a short focussed inquiry into payments to Returning Officers (RO) in response to public concern regarding the appropriateness of these payments and how they are spent. Given the imminence of next year's local government elections, the Committee agreed that the inquiry would provide a suitable forum to air in a public debate some of the issues which have been largely played out in media reports up to now.
- 3. The Committee therefore held two evidence sessions. At the first session, held on 23 November 2016, the Committee heard from academics and the Electoral Reform Society, some of which had called for change to the current arrangements. At the second session, on 30 November 2016, the Committee heard from public administrators involved in elections, including ROs. In advance of these sessions, the Committee also requested written submissions from those attending and received some further submissions from interested parties. The Committee thanks all those who provided it with written and oral evidence listed in the annexes to this report.

Background

The role of a Returning Officer

- 4. Every local authority in Scotland is required to appoint an officer of authority to be the RO for each election of councillors for the authority. This is a statutory requirement under the provisions of the Representation of the People Act 1983.
- 5. ROs are administrators whose functions of organising and administering polls, only begin ahead of an election. For each type of election (Scottish, UK or European Parliament elections) the legislation governing it will identify a person as the RO, this will usually be the person already appointed under Section 41 of the Representation of the People Act 1983 as the RO for the election of councillors.
- 6. In all types of election, the RO is **personally** responsible for the effective administration of the election, including duties related to:
 - nominations
 - the provision of polling stations
 - the appointment of Presiding Officers and Poll Clerks
 - management of the postal voting process
 - the verification and counting of votes
 - declaration of the result
 - encouraging participation of voters

- 7. Whilst the RO can appoint one or more deputes to discharge any or all of their functions, they cannot delegate their personal responsibility for delivering the election and are subject to penalties for breach of official duty provisions. If they or their appointed deputes are, without reasonable cause, guilty of any act or omission in breach of official duty, the RO (and/or the deputes) are liable on summary conviction to a fine of up to £5,000.1
- The legislation does not stipulate that the RO needs to be the Chief Executive of 8. the Council, however the Electoral Commission confirmed that this was the approach taken throughout Scotland, apart from in two local authorities where ROs have been appointed who do not also hold the job of chief executive.²
- 9. Section 27 (1) of the Representation of the People Act 1983 states-
 - It is for the returning officer as such to execute the writ for a parliamentary election, and the office of returning officer is a distinct office from that by virtue of which he becomes returning officer.
- 10. Therefore, the role is separate to the duties as a local government officer. ROs are not responsible to the council but are directly accountable to the courts as an independent statutory office holder.

Payments to Returning Officers

- Section 29 of the Representation of the People Act 1983 allows for the RO to claim charges in in respect of services rendered or expenses incurred for the efficient and effective conduct of a parliamentary election. The legislation stipulates that the maximum amounts claimable are to be set by statutory instrument, the latest relevant instruments are set out below.
- 12. For council elections, the fees for ROs are set nationally by the Scottish Joint Negotiating Committee for Local Authorities Services. These fees were last revised in 2008. Local authorities do not have to apply separately for these RO fees as they are received as part of their block grant from the Scottish Government.
- 13. For elections to the Scottish Parliament, the Scottish Parliament Elections (Returning Officer Fees and Charges) Regulations 2016 allows ROs to recover their charges for services rendered and expenses incurred provided they were necessarily rendered or incurred and do not exceed a specified total amount. In terms of the Scottish Parliament elections, the fees have to be applied for as the duties they perform for them are not part of their usual local authority duties.
- For UK elections, under section 29(3) of the Representation of the People Act 1983 (c.2) a RO may recover their charges for services and expenses, provided they were necessarily rendered or incurred for the efficient and effective conduct of the parliamentary election and the total does not exceed the overall maximum recoverable amount specified by the Minister in an order. Section 29(3A) enables

- the Minister to specify, by order, a maximum recoverable amount for particular services or expenses.
- 15. The Charges Order lists the specified services and sets out the maximum recoverable amounts for these specified services. Similarly it lists the specified expenses and the maximum recoverable amount for the specified expenses. The total of these two amounts is the overall maximum recoverable amount available for that constituency.
- 16. Schedule 1, of the <u>Parliamentary Elections</u> (<u>Returning Officers' Charges</u>) <u>Order 2015</u>, sets out the differing fees that the RO in each Scottish local authority could claim for their services relating to the 2015 UK Parliament general election. The Scotland Office is responsible for overseeing all claims, issuing advances and settling claims made by ROs in Scotland for their service relating to UK Parliament elections.
- 17. For European elections, Schedule 1 of the <u>European Parliamentary Elections</u> (<u>Returning Officers' and Local Returning Officers' Charges</u>) (<u>Great Britain and Gibraltar</u>) <u>Order 2014</u> sets out that the maximum that the RO for Scotland could claim for their services at the last European Parliament election was £12,000.

Scale of payments

- 18. Given the scale of some of the payments involved, witnesses who provided evidence to the Committee agreed that there was a case for the payments to be reviewed.
- 19. Navraj Singh Ghaleigh highlighted that the payments for ROs are per constituency, with each payment linked to electoral roll. For example, the UK parliament RO fee for Orkney and Shetland was £2500, whereas the aggregate charge for the five Edinburgh constituencies was £16,548, which is 6.6 times more. He questioned whether the payment necessarily reflected the work personally undertaken by the RO, querying whether organising an election in over sparsely populated and remote islands would be 6.6 times less intensive.³
- 20. Dr Toby James agreed, confirming that there could be further difficulties in administering rural polls, such as finding locations for polling stations and logistical issues related to remote areas of Scotland.⁴
- 21. In his written submission, Navraj Singh Ghaleigh stated that in the Scottish Parliament elections, the nominated individual will be a constituency and regional RO and will therefore be entitled to claim a fee for both roles, which were higher than the previous year's Westminster elections. He highlighted that such payments were not previously contentious, when elections took place on rare occasions, whereas now elections are taking place almost annually and the practice and procedures have become more routine.

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- 22. He also questioned whether these payments should continue, adding⁵—
 - Whilst section 27(1) of the RPA 1983 draws a distinction between the role of the returning officer and the normal employment of the returning officer, the role is essentially ex-officio. There is utility in providing some separation to protect the integrity of the ballot from undue influence, but this separation does not consequentially require substantial payments of the magnitude seen in appendices 1 and 2 of this document [Navraj Singh Ghaleigh's submission], nor does it justify additional payments for simultaneous ballots.

23. He made the points⁶—

- The 1977 Act was repealed and replaced by the Representation of the People Act 1983, but the development of the law has left residual anachronisms, namely payments to ROs and the justification of payments to prevent bias in the staff that administer the ballot.
- The continuing practice of payments for services to ROs is likely to be simply an un-reformed aspect of the Reform Act 1832 which inter alia widened the franchise and therefore introduced new and substantial costs into the electoral process.
- 24. Dr Toby James said he understood why there was public concern regarding payments to ROs, given the widespread austerity in the public sector. He stated⁷—
 - They do it independent of their position and there is a case for their being awarded money for it. There is also especially a case for reviewing that and perhaps reducing the fee or redistributing the money.
- 25. The Electoral Reform Society expressed its concern regarding the negative impact that these payments can have on the public perception of ROs⁸
 - we want to acknowledge the importance of the job of returning officer and some of the things that have been said previously about the responsibilities that are involved. We also want returning officers to be seen as ambassadors who are driven by their ambitions for democracy and by the delivery of democracy for the people. Therefore, we are concerned about the perception that people are involved in the process for high financial rewards, which is an issue of concern for the general public in the political context in which we live today.
- 26. The media concerns around payments and public confidence in the process was put to ROs and public administrators, who acknowledged that it was right to look at these issues and would be happy to participate in the process.⁹

- 27. Annemarie O'Donnell, Chief Executive of Glasgow City Council and RO confirmed 10—
 - The last thing that returning officers want is for the integrity of the election process to be undermined. All local authorities have job evaluation schemes, which we use to assess the worth of the work that staff undertake. Given the issue that we are discussing, I think that all returning officers, through SOLACE and the EMB [Electoral Management Board], would be happy to participate in an evaluation of the role of returning officers.
- 28. The Society of Local Authority Chief Executives (SOLACE) (represented by Malcolm Burr, the Chief Executive of Comhairle nan Eilean Siar) agreed that the payments to ROs should be reviewed, given that they had been in place for some time, highlighting that the expectation that depute ROs were to be rewarded from the RO's fee was "a strange and antediluvian way of remunerating public servants".¹¹
 - 29. The Committee recognises that the Scottish electoral system is exemplary and met with high accolade from other legislatures, as highlighted in evidence to this Committee.
 - 30. The Committee believes that the current system of payments to Returning Officers should end.
 - 31. We recognise that the Scottish Government has already confirmed that it is committed to consulting on electoral reform in 2016-17, given new powers devolved under the Scotland Act 2016 over the conduct of Scottish Parliamentary elections and electoral registration. We therefore recommend that the Scottish Government considers the role and remuneration of Returning Officers as part of its review.
 - 32. The Committee welcomes the willingness of the Electoral Management Board, Electoral Commission, Association of Electoral Administrators and SOLACE to take part in any review of the role of Returning Officers. We recommend that the Scottish Government should ensure that these key bodies are all consulted and involved in any future review.

Issues around transparency

33. The Committee heard that there was a perceived lack of transparency regarding how payments are claimed and reallocated, which could be fuelling a sense of mistrust in the system and be a cause of public concern.

- 34. For example, Dr Toby James highlighted that the amounts that could be claimed did not necessarily match the amount that are actually claimed. He stated that it was unclear how much of the money claimed by ROs is kept as a personal fee and how much is used for other means, such as paying junior staff and there is therefore an argument for reducing the fee or redistributing. 13
- The Electoral Reform Society agreed there should be more transparency in the process to "build as much faith as possible between the people and the democratic systems and the representatives involved in the process." It emphasised that the payments to individuals should be balanced, "so that people feel a sense of proximity to the process as a whole."14
- 36. The Electoral Reform Society added 15—
 - Politicians are subject to scrutiny in relation to pay, expenses and so on. Transparency in the structures and processes of elections is just as important, because it is about building public trust, not just in representatives and the debates that happen around an election, but in the process itself.
 - 77 We take on board some of the difficulties that might be involved, but we want transparency—not least, because we want the process to be made even more effective. We agree that returning officers have done a good job, but we want to consider how we can maximise resources. In that regard, transparency will be vital.
- 37. Dr Toby James stated¹⁶—
 - If the reality is that the money is received for electoral services and is redistributed to pay senior staff, explaining that might be a positive thing for democracy, especially in the current climate, where there is considerable concern about elites, executives and the role of Governments around the world.
- Navraj Singh Ghaleigh argued, however, that it might be difficult to make the current system more transparent, due to the "multilevel nature of electoral administration in the United Kingdom". Stating that building more transparency into the current process could lead to a "witch hunt", stating 17—
 - 77 For example, it is well known that some chief executives give the payment to charity and that, quite reasonably, other chief executives do not. You can imagine where that sort of discourse would go. Secondly, for those who do not take all the money, there would be pressure on them to do so in the future. There would be some unanticipated and deleterious consequences.
- 39. He added that, if full transparency was to be achieved, it would need a nonvoluntary scheme in which receipts are submitted. Adding that if the system was to be created today it would be different.¹⁸

40. During evidence, the ROs present did not disclose the details of how their fee was spent, for example, in relation to their charity giving, but confirmed that they had shared payment with other staff.¹⁹

Election funding information

- 41. Dr Toby James stated that there was also a lack of transparency across the wider funding of elections, given that there was no symptomatic process for collecting information on the conduct of elections and the compilation of the electoral register. He advised that the Electoral Commission could put a system in place as it had developed a methodology for making information transparent.²⁰
- 42. The Electoral Commission confirmed that it was responsible for the fees and charges that were set by the UK Parliament for the EU referendum which took place in June 2016. It confirmed that it would publish a report on how much money was spent in the referendum. In order to be more transparent, it had called on the Scottish and UK Parliament to do the same for the European, UK and Scottish Parliamentary elections in 2014, 2015 and 2016. It agreed that this information could be compiled in a way that would allow comparisons to be made and that they would be happy to be involved in the process.²¹
 - 43. The Committee agrees that the current system of payments to Returning Officers is lacking transparency, which could have an impact on people's views on the integrity of the system.
 - 44. The Committee believes that all costs associated with elections should be processed around the principles of openness and transparency in order to promote public confidence in the appropriateness of public spending.
 - 45. The Committee would welcome confirmation that the Scottish Government will work together with the Electoral Commission to ensure that information relating to future elections is open and transparent.

Independence and personal responsibility

46. It was highlighted that when acting as ROs, those appointed are performing a separate duty from their local authority duties of employment, and as a result it is appropriate that they are remunerated adequately for their services as a RO. It was argued that the fee also takes account of the fact that, as the RO, they are **personally** responsible for the conduct of the election under the relevant legislation.

- 47. The Convener of the Electoral Management Board, Mary Pitcaithly, (also Chief Executive of Falkirk Council and a RO) stated²²
 - it would be inconsistent with practice elsewhere in public life were such complex and important tasks to be undertaken without remuneration. The role is fundamental to civic life and is undertaken at the personal risk of the RO who as discussed above is answerable to the Courts for the delivery of the associated tasks. The responsibilities of the RO are over and above those of the Chief Executive of the local authority and require significant time and effort.
- The Electoral Management Board added that it was important that the role 48. maintained its independence from the local authority officer to remove any perception that the role is subject to political control.²³ This was a sentiment echoed by the Association of Electoral Administrators in their written submission to the Committee.²⁴
- The Electoral Management Board's view was that it would not be appropriate to roll up the duties into that of the Chief Executive as the legislation emphasises the separation of the role from that of the senior officer appointed and it is not part of the day job of the Chief Executive. It stressed that there is a legal separation of duties and a different set of accountabilities for each role. This was echoed by the Association of Electoral Administrators and the Electoral Commission in their written submissions. 252627
- 50. The ROs present confirmed that when undertaking the role, the responsibilities of the day job continue and it is not the case that parts of the Chief Executive's task have to be delegated to others. They told us that they would work longer weeks and sacrifice weekends in order to ensure that all tasks are undertaken.²⁸ Annemarie O'Donnell confirmed²⁹—
 - I am not looking for any sympathy, but you have to make personal sacrifices in the run-up to and preparation for elections, particularly when there is more than one poll, as we had this year. Maybe MSPs round the table have similar experiences. Those are the sacrifices of a returning officer. Personally, I make those sacrifices to ensure that the elections for which I am responsible are run with transparency, robustness and full integrity.
- Navraj Singh Ghaleigh asserted however, that local government officers are already compelled to be politically neutral under the Local Government Officers (Political Restrictions) Regulations 1990 and therefore a separate payment to emphasise this is not required.³⁰
- SOLACE agreed that the role of RO is not independent by virtue of the payment of the fees, but by Section 27(1) of the Representation of the People Act. The fees themselves are governed by Section 29 separately. It confirmed³¹—

- The act could simply declare who holds the role, provided that the independence of the role was safeguarded in law.
- 53. Dr Alistair Clark in his written submission highlighted that 32—
 - Historically, Returning Officers' roles have been statutorily independent of the post of Council Chief Executive (or equivalent) that most ROs hold. Elections are now more regular than in the past, with major electoral events in Scotland most years, in addition to recent occasional referendums. In practice, local authorities now have relatively small electoral services departments which have routinized the provision of elections, even if their capacity to do so varies to some degree according to factors like staffing, resources and so on.
- 54. The ROs present confirmed that each local authority sets its own structures for staffing elections and the responsibilities for deputy RO don't necessarily flow to a deputy chief executive and, in fact, some local authorities do not have a deputy chief executive. SOLACE confirmed that often the deputy is at service manager level and all ROs confirmed that those chosen to do particular duties were hand-picked or chosen because of years of experience for running elections. Many staff are involved in performing roles for the RO and those providing evidence confirmed that they remunerated all staff involved to emphasise the separateness of the role. 33
- 55. In terms of paying staff, Dr Toby James highlighted³⁴
 - it is worth saying that staff are routinely paid—they are not volunteers. They have permanent positions and they receive salaries. However, in electoral services across the UK, business process pressures have built up over a number of years. There has been an increase in the number of late registration applications, because the process is now online and it has become very seasonal. Everyone naturally likes to do things at the last minute, whether it is Christmas shopping or voter registration. At the same time, there has been an increase in the number of people who apply for postal votes. Therefore, there is a lot of stress in electoral services at election time, which is leading to people putting in extra time, doing extra hours and working at the weekend.
- 56. The Electoral Management Board highlighted that any perception that ROs were motivated by financial reward was incorrect given that each RO, along with other staff involved in election, is committed to ensuring that everyone who is entitled to vote can vote and people are not kept waiting in queues. The tasks were carried out with a personal commitment to upholding and enabling democracy. All the ROs present confirmed that those who were involved in the elections were remunerated and that the RO fee was not the only sum made available by Parliament to run elections and that there was a maximum recoverable amount

- which RO's could use to pay polling staff, enumerators and members of the election teams.35
- It was highlighted that whilst the roles are separate, the personal responsibility of not performing would have a reputational consequence. Annemarie O'Donnell confirmed³⁶
 - no one goes into running elections to make a career, but it can end a career. That is an important point. We have to deliver elections with precision and accuracy. If we fail to do that, our reputations and careers are jeopardised as a consequence.
- The Committee explored whether the responsibility for running elections could be 58. provided to a central body, such as the Electoral Management Board. Navraj Singh Ghaleigh and Dr Toby James both confirmed that it could be done, but adding a new layer of bureaucracy could add another layer of costs and not necessarily save money.37
- The Electoral Commission highlighted the importance of keeping the role within the local authority, stating³⁸—
 - It is important to note that, within the legal framework, there is a requirement for councils to put resources at the disposal of the returning officer to help them to discharge their function. The chief executive or another senior officer of the local authority, even when they are not acting in their usual role, will have good local knowledge and the ability to command resources, which will enable them to deliver the role on the ground. The scale of the local knowledge and experience is really important. There are about 5,000 polling stations in Scotland, and it is important to have people in each local authority who understand their area and can command the buildings and premises for that use.
- The Electoral Management Board agreed, confirming that legislatures which have used other models are looking to return to something more similar to the Scottish model as they have difficulties finding the staff, premises and enumerators required for the duties.³⁹
 - 61. The Committee recognises the high level of personal responsibility placed on Returning Officers during the election period and acknowledges the hard work and commitment shown by them. We believe it is vital that this personal responsibility remains to ensure appropriate levels of accountability.
 - The Committee agrees that the role should remain independent and outwith political control in order to maintain confidence in those carrying out the role. The Committee is not persuaded that the current system of remuneration is commensurate with the workload, responsibilities and liabilities of the role

- 63. The Committee believes that the processes of appointing Returning Officers and their roles should be reviewed and that any review should take into account the fees already available to Returning Officers to remunerate election staff, the frequency of and routineness of carrying out elections and pressure on resources elsewhere in local authorities.
- 64. The review should ensure that all staff involved in elections are remunerated appropriately.

Electoral Commission website http://www.electoralcommission.org.uk ² Local Government and Communities Committee, Official Report, 30 November 2016, c29. ³ Navraj Singh Ghaleigh written submission. ⁴ Local Government and Communities Committee, Official Report, 23 November 2016, c12. ⁵ Navraj Singh Ghaleigh written submission. ⁶ Navraj Singh Ghaleigh written submission. ⁷ Local Government and Communities Committee, *Official Report*, 23 November 2016, c2. ⁸ Local Government and Communities Committee, *Official Report*, 23 November 2016, c3. ⁹ Local Government and Communities Committee, *Official Report*, 30 November 2016, c20-23. ¹⁰ Local Government and Communities Committee, Official Report, 30 November 2016, c22. ¹¹ Local Government and Communities Committee, *Official Report*, 30 November 2016, c20-21. ¹² Scottish Government, A Plan for Scotland: The Government's Programme for Scotland 2016-17, p77. ¹³ Local Government and Communities Committee, *Official Report*, 23 November 2016, c2. ¹⁴ Local Government and Communities Committee, *Official Report*, 23 November 2016, c3. ¹⁵ Local Government and Communities Committee, *Official Report*, 23 November 2016, c6. ¹⁶ Local Government and Communities Committee, *Official Report*, 23 November 2016, c6. ¹⁷ Local Government and Communities Committee, *Official Report*, 23 November 2016, c4-6. ¹⁸ Local Government and Communities Committee, *Official Report*, 23 November 2016, c4-6. ¹⁹ Local Government and Communities Committee, *Official Report*, 30 November 2016, c25-26. ²⁰ Local Government and Communities Committee, *Official Report*, 23 November 2016, c4-6. ²¹ Local Government and Communities Committee, *Official Report*, 30 November 2016, c39-40. ²² Electoral Management Board written submission. ²³ Electoral Management Board written submission. ²⁴ Association of Electoral Administrators written submission. ²⁵ Local Government and Communities Committee, *Official Report*, 30 November 2016, c32-33. ²⁶ Association of Electoral Administrators written submission. ²⁷ Electoral Commission written submission. ²⁸ Local Government and Communities Committee, *Official Report*, 30 November 2016, c23-24. ²⁹ Local Government and Communities Committee, Official Report, 30 November 2016, c25. ³⁰ Navraj Singh Ghaleigh written submission. ³¹ Local Government and Communities Committee, Official Report, 30 November 2016, c36. ³² Dr Alistair Clark written submission. ³³ Local Government and Communities Committee, *Official Report*, 30 November 2016, c26-28. ³⁴ Local Government and Communities Committee, *Official Report*, 23 November 2016, c7. ³⁵ Local Government and Communities Committee, *Official Report*, 30 November 2016, c28 and 31. ³⁶ Local Government and Communities Committee, *Official Report*, 30 November 2016, c34. ³⁷ Local Government and Communities Committee, *Official Report*, 23 November 2016, c9. ³⁸ Local Government and Communities Committee, *Official Report*, 30 November 2016, c29-30.

³⁹ Local Government and Communities Committee, *Official Report*, 30 November 2016, c30.

Annexe A

Extracts from the minutes of the Local Government and Communities Committee and associated written and supplementary evidence

12th Meeting 2016 (Session 5), Wednesday 23 November 2016

2. Payments to returning officers in Scotland: The Committee took evidence from—

Jonathon Shafi, Campaigns Organiser, Electoral Reform Society Scotland;

Navraj Singh Ghaleigh, Senior Lecturer in Climate Law, University of Edinburgh;

Dr Toby James, Senior Lecturer in British and Comparative Politics, University of East Anglia.

Written Evidence

Dr Toby James

Navraj Singh Ghaleigh

13th Meeting 2016 (Session 5), Wednesday 30 November 2016

5. Payments to returning officers in Scotland: The Committee took evidence from—

Malcolm Burr, Chair, SOLACE Scotland;

Mary Pitcaithly, Convener, Electoral Management Board for Scotland;

Annemarie O'Donnell, Chief Executive, Glasgow City Council;

Andy Hunter, Chair, Scotland and Northern Ireland Branch, Association of Electoral Administrators;

Ailsa Irvine, Director of Electoral Administration and Guidance, Electoral Commission, Scotland.

Written Evidence

- Electoral Management Board for Scotland (also endorsed by SOLACE Scotland)
- Association of Electoral Administrators
- Electoral Commission Scotland

16th Meeting 2016 (Session 5), Wednesday 21 December 2016

4. Payments to returning officers in Scotland (in private): The Committee agreed to defer consideration of a draft report to a future meeting.

1st Meeting 2017 (Session 5), Wednesday 11 January 2017

8. Payments to returning officers in Scotland (in private): The Committee agreed to defer consideration of a draft report to its next meeting.

2nd Meeting 2017 (Session 5), Wednesday 18 January 2017

4. Payments to returning officers in Scotland (in private): The Committee agreed a draft report.

Payments to Returning Officers in Scotland, 1st Report, 2017 (Session 5)

Annexe B

List of Other Written Evidence

Dr Alistair Clark
Dr Ian Graham

