

Evidence to
The Scottish Parliament's Local Government and
Communities Committee

Short Enquiry into Payment to Returning Officers in
Scotland

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Introduction

1. The payments received by electoral Returning Officers are being examined by the Local Government and Communities Committee. The Committee has stated its desire to consider 'how the system for the payments works in practice and consider their appropriateness'.¹ This follows concerns that have been raised in the media that they are unnecessarily receiving 'extra payouts' at a time of pressure in public sector spending.²
2. This written evidence is submitted to the Committee to provide some background to the payments, the advantages of retaining the existing system and the advantages of reform. It is drawn from the author's research on electoral administration in the UK.
3. It concludes that the Returning Officer plays an essential role in the electoral process. They face an increasingly challenging job. They have therefore been able to reclaim a fee for their services to recognise that their role is independent of their other tasks. Some Returning Officers use their fee to pay more junior staff, who work hours above and beyond their normal duties at election time, there should be caution in scrapping or making rapid reductions to it.
4. It is, however, right that the fee is regularly reviewed, especially in the context of resource constraints within electoral services and wider public sector austerity. There might be some opportunity to divert resources to other areas of elections.
5. There should, however, be a wider review of funding of elections in Scotland and the rest of the UK. Essential to this is the routine reporting of funding and spending to ensure transparency, increase public confidence and allow an analysis of areas requiring further investment or efficiency savings.

The Returning Officer Role and their Fee

6. For local elections in Scotland, Returning Officers are appointed by local authorities.³ They are also a senior local government official but are statutorily independent of government in operating in this role. The role of the Returning Officer is to ensure that the election is administered effectively. As the Electoral Commission's guidance documents, they are personally responsible for the:
 - 'publication of the notice of election
 - the nomination process
 - publication of the notice of poll and situation of polling stations
 - 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
 - the declaration of results
 - complying with any directions issued by the Convener of the EMB⁴

¹ Scottish Parliament (2016) 'Payments to Electoral Returning Officers to be examined,' <http://www.parliament.scot/newsandmediacentre/101409.aspx>, 3rd October 2016.

² BBC News (2016) 'Call to reform Scottish election chief payouts', <http://www.bbc.co.uk/news/uk-scotland-36161189>, 5th May 2016

³ Note that there are similar, but not identical arrangements for different types of electoral events. For the sake of brevity, only their role in local elections are discussed here. For example, for Scottish Parliamentary elections, see: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/192624/SP-Part-A-Returning-Officer-role-and-responsibilities.pdf.

⁴ Elections Scotland and The Electoral Commission (2016) 'Returning Officer role and responsibilities Council elections in Scotland, 4 May 2017: guidance for Returning Officers', October 2016,

7. They are therefore usually expected to perform the for the following tasks:

- 'command the required staff and resources to deliver a well-run election
- draw in the necessary support, skills and expertise from across your council
- oversee the planning, project management and risk management of the election and incorporate any lessons learnt from previous polls identify and oversee any actions necessary to mitigate any issues arising ensure that staff are appropriately trained to deliver the roles required of them
- support the staff administering the election and provide appropriate oversight of their work
- provide direction to staff, monitor progress and receive regular feedback on activities
- maintain an effective working relationship with the Convener of the EMB
- maintain an effective working relationship with the ERO
- maintain an effective working relationship with your police Single Point of Contact (SPOC)
- ensure that you account for your spending in line with council procedures'⁵

8. My research has shown that the job has become more challenging in recent years.⁶ New challenges have included:

- a. **The volume and complexity of electoral law has increased.** There has been a considerable increase in the legal complexity of elections in Britain as a result of a rise in the frequency of elections and types of elections since 1997. Across the UK, in addition to Westminster, local government, parish council, and European parliamentary elections, there are now elections for the Greater London Council, Scottish government, Welsh government, mayor and police, and crime commissioner and more frequent referenda. Many of the contests are run under a different electoral system. This has added to the complexity of election administration and makes administrative errors and poor organizational performance more likely. As one official explained during my study:

'Poll management is different . . . One year is very different from the next year. A few years ago . . . a combination of elections was the rarity. Now it's completely tipped up on its head. and there are often different laws for different types of elections.'

- b. **More stakeholders.** Electoral officials often face increased problems coordinating the rising number of actors involved in the provision of electoral services. Some staff are often reliant on a small pool of private organizations such as printers, since councils do not have in-house facilities. The outsourcing of this work has not always been successfully completed by private contractors.
- c. **Rising public criticism.** There is evidence that election administration has been increasingly politicized, with local candidates and campaigners making accusations of fraud against other candidates, or malpractice against administrators.
- d. **The role of social media.** The development of the 24/7 news media and social media have placed additional pressures on electoral administrators by amplifying any

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/214408/SLG-Part-A-Returning-Officer-role-and-responsibilities.pdf p.6.

⁵ Elections Scotland and The Electoral Commission (2016) 'Returning Officer role and responsibilities Council elections in Scotland, 4 May 2017: guidance for Returning Officers', October 2016, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/214408/SLG-Part-A-Returning-Officer-role-and-responsibilities.pdf p.7.

⁶ Toby S. James (2014) 'Electoral Management in Britain' in Pippa Norris, Richard Frank and Ferran Matinez I Coma (eds) *Advancing Electoral Integrity* (New York: Oxford University Press).

mistakes. During the Scottish Independence Referendum, there were many claims being promoted on social media that the count was being rigged, usually without concrete evidence.

9. Returning Officers are personally liable for the conduct of the poll. 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 £5,000.⁷ The fee can also be withheld for 'poor performance' at the poll.⁸
10. The job that the Returning Officer job is therefore complex, highly pressured and an essential part of the electoral process.

Support for Returning Officers

11. It is equally clear, having interviewed around 100 officials during the past few years, that the *de facto* role that Returning Officers play varies considerably. Some Returning Officers are very 'hands on'. Others, decide to delegate almost all of the tasks to other staff (although formal responsibility cannot be delegated). This is understandable given that they also undertake demanding positions as part of their public service.
12. The available support for Returning Officers has also increased. The Electoral Commission was established in 2000 and provides detailed guidance documents for Returning Officers as well as performance standards to help structure their priorities and management performance. The Electoral Management Board for Scotland was established in 2011 to co-ordinate local elections in Scotland.⁹ Returning Officers in Scotland are therefore part of a resource-rich network that provides help and support.¹⁰ The evidence is that they find this very useful. During the EU Referendum, for example, electoral officials rated the guidance from the Electoral Commission very highly.¹¹

The arguments for maintaining the existing system

13. The arguments for maintaining the existing system are as follows:
 - a. **Due remuneration for personality liability.** Returning Officers are personally liable for the conduct of the poll and they act independently of their other roles which ensures impartiality at elections. This independence is of vital importance in the conduct of elections. By being independent of their local authority they are less likely to be subject to partisan influence from elected officials.
 - b. **Due remuneration for other staff.** Research on working in electoral services has found that they can be highly pressured environments where staff work a very high

⁷ Elections Scotland and The Electoral Commission (2016) 'Returning Officer role and responsibilities Council elections in Scotland, 4 May 2017: guidance for Returning Officers', October 2016, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/214408/SLG-Part-A-Returning-Officer-role-and-responsibilities.pdf p.8.

⁸ Electoral Commission (2015) *Guidance notes on the process for investigating services rendered by an (Acting) Returning Officer ((A)RO) which may have been inadequately performed and the making of any recommendation to the Secretary of State that an (A)RO's fee should be withheld or reduced*, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/184757/Guidance-on-process-for-withholding-or-reducing-RO-fees.pdf, April 2015.

⁹ Elections Scotland (2016), 'About Us', http://www.electionsscotland.info/emb/homepage/2/about_us, date accessed 10th November 2016.

¹⁰ Toby S. James (2015) 'Assessing the independence of electoral management boards: A policy network approach', Paper for the American Political Science Conference, San Francisco, August/September 2015.

¹¹ <http://www.electoralmanagement.com/wp-content/uploads/2014/04/Clark-Jame-EUREF-Final-Report.pdf>

number of additional hours, especially around the time of an election.¹² My forthcoming book reveals that half of electoral officials considered leaving their jobs within the year running up to February 2016.¹³ Some Returning Officers pay their staff for the additional work that they do at election-time from this fee. Removing this could directly affect junior officials and have negative knock-ons for morale and equity.

The arguments for scrapping the personal fee

14. The case for scrapping, reducing or redistributing the fees paid to returning officers are as follows:

- a. **Cost cutting.** During times of financial austerity for the public sector, and concerns commonly being held by the public about levels of executive pay, it seems right that the fees that are paid should be reviewed.
- b. **Strengthening other electoral services.** There is evidence that elections are underfunded. In an evaluation of the EU Referendum, Alistair Clark and I asked Counting Officers across the UK whether they had sufficient funds to run the polling and compile the electoral register. 43% agreed that they did have sufficient funds for the poll and only 24% said that they had sufficient funds for their electoral registration work.¹⁴ The lack of funding can be attributed to a) cuts in local government budgets and b) increased costs in the business processes involved in running elections owing to the introduction of individual electoral registration¹⁵ and c) a rise in postal voting applications¹⁶. The Association of Electoral Administrators has argued that local authorities should be able to reclaim more costs from government through the Fees and Charges Order.¹⁷ There is therefore a case for redistributing some of the money from Returning Officer services to Returning Officer expenses.
- c. **Disproportionate pay.** A forthcoming study, based on a survey from February 2016, documents the average annual pay across different roles in the profession across the UK.¹⁸ The median pay bands are illustrated in Table 1. The median values, however, mask that a very significant proportion of the sample (17.5%) earn between £10,000-£19,999. In short, Returning Officers are (unsurprisingly) the better paid officials and a redistribution of funds may bring about more equitable pay.

¹² Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016, <http://www.electoralmanagement.com/wp-content/uploads/2014/04/Clark-Jame-EUREF-Final-Report.pdf>.

¹³ Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

¹⁴ Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016, <http://www.electoralmanagement.com/wp-content/uploads/2014/04/Clark-Jame-EUREF-Final-Report.pdf>.

¹⁵ Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

¹⁶ Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016, <http://www.electoralmanagement.com/wp-content/uploads/2014/04/Clark-Jame-EUREF-Final-Report.pdf>.

¹⁷ Association of Electoral Administrators (2016) *Pushed to the absolute limit*. <http://www.aea-elections.co.uk/wp-content/uploads/2016/09/aea-rep-2016-pushed-to-the-absolute-limit-the-electoral-year-never-to-forget-with-links.pdf> p.29

¹⁸ Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

Job title	Median pay band
Returning Officer	£50,000-£54,999
Democratic Services Officer	£40,000-£45,000
Electoral Services Manager	£35,000-£39,999
Assistant Electoral Services Manager	£30,000-£34,999
Electoral Registration Officer	£25,000-£29,999
Electoral Services Administrator	£20,000-£24,999

Table 1: Median annual pay for UK electoral officials. Source: Toby S. James (2016) *Comparative Electoral Management*. New York: Routledge.

- d. **Negligible job market effects.** Reducing (or eliminating) pay for additional responsibilities might be expected to reduce motivation, job satisfaction and performance for most occupations and positions. However, it is not likely to be the case for Returning Officers, given that they remain personally liable for the poll and will also be motivated by a public service ethic. There is limited research on why senior electoral officials under take this role and the effects of pay. It is likely that, most of the time, is 'part of the package' and not necessarily because they want to work on elections. A new pan-European research project will provide more information on the factors that motivate electoral officials in 2017, which will help inform this question.¹⁹

Conclusions and recommendations: more transparency

15. The Returning Officer plays an essential role in the electoral process. They have been able to reclaim a fee to recognise that their role is independent of their other tasks. This independence is vitally important. Since some Returning Officers pay allow other staff using this fee, who work hours above and beyond their normal duties at election time, there should be caution in scrapping or making rapid reductions to it.
16. It is, however, right that the fee is regularly reviewed, especially in the context of resource constraints within electoral services and wider public sector austerity.
17. Data on the money spent on running elections is not routinely collected or made available. The Electoral Commission undertook a series of surveys on the costs of elections in Great Britain from 2009-11 and reports on some electoral events such as the AV referendum.²⁰
18. There should therefore be a wider review of funding of elections in Scotland and the rest of the UK. Essential to this is the complete routine reporting of funding and spending to ensure transparency, increase public confidence and allow an analysis of areas requiring further

¹⁹ Toby S. James, Leontine Loeber, Holly Ann Garnett and Carolien van Ham (2016) 'Improving Electoral Management', *Electoral Expert Review*, in press.

²⁰ Electoral Commission (2012) 'The cost of electoral administration in Great Britain', December 2012, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0007/152899/The-cost-of-electoral-registration-in-Great-Britain.pdf; Electoral Commission (2012) 'Costs of the May 2011 referendum on the UK Parliamentary voting system. http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/153000/Costs-of-UK-May-2011-UKPVS-referendum.pdf

investment or efficiency savings. The Committee could instigate such a review and establish ways of making financial information more readily available.