

Name of meeting: Personnel Committee

Date: 25 January 2017

Title of report: (Acting) (Local) Returning Officer Fees
 – National Elections and Referendums

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan ?	Not Applicable
Is it eligible for "call in" by Scrutiny ?	Not Applicable
Date signed off by <u>Director</u> & name	Adrian Lythgo – insert date
Is it signed off by the Assistant Director - Financial Management, Risk, IT and Performance?	Debbie Hogg – Not Applicable
Is it signed off by the Assistant Director – Legal, Governance & Monitoring?	Julie Muscroft – insert date
Cabinet member portfolio	Not Applicable

Electoral wards affected: None

Ward councillors consulted: No

Public or private: Public

1. Purpose of report

- 1.1 To consider a recommendation to correct the existing contractual approach of consolidating the (Acting) (Local) Returning Officer fees relating to national elections and referenda into the Chief Executives salary, to treat them in future as separate payments.

2. Key points

- 2.1 The Representation of the People Act 1983 (Section 27(1)) has the effect of making the office of (Acting) (Local) Returning Officer totally distinct from the role of Chief Executive and the provision serves to emphasise the independence of this role.
- 2.2 The role of (Acting) (Local) Returning Officer at Parliamentary, District, Parish and Police Commissioner Elections and at any referendum held in the Kirklees area has a personal responsibility outside the jurisdiction of the Council and this personal

responsibility means that the (Acting) (Local) Returning Officer is answerable to the courts as an independent statutory officer.

- 2.3 The (Acting) (Local) Returning Officer is responsible for ensuring the proper conduct of an election/referendum in accordance with the law; this includes responsibility for all expenditure incurred for the purpose of conducting the election.

The Government is responsible for funding all national elections/referenda. In practice the Government provides advance funding (75%) for services/supplies and for (Acting) (Local) Returning Officer fees. The total amount allocated to each voting area is calculated by the Government prior to the electoral event and is based upon a range of factors including previous expenditure, electorate size; postal vote numbers; inflation and combination with other polls etc.

The Council is responsible for funding local elections; however, when a local election is combined with a national election any costs attributable to both elections is shared.

Following the election/referendum the (Acting) (Local) Returning Officer is required to submit a claim and supporting evidence to the Government to account for expenditure. All claims are audited by the Cabinet Office - Election Claims Unit. On settlement, additional funding will be provided by the Government if the spend is in excess of the advance payment or if the total spend is less than the advance payment, money will be paid back to the Government by the (Acting) (Local) Returning Officer.

- 2.4 The performance of the (Acting) (Local) Returning Officer is monitored by the Electoral Commission and (Acting) (Local) Returning Officer fees can be withheld or reduced, if after investigation his/her performance be assessed as inadequate. The Council does not have a role in assessing the performance of the (Acting) (Local) Returning Officer.
- 2.5 Traditionally a proportion (46.5%) of these (Acting) (Local) Returning Officer fees are paid back into the election staffing budget or for some national elections/referenda as a direct payment to the Deputy Returning Officer (with full delegated powers) (DRO), who is the Electoral Services Manager who works under direction of the (Acting) (Local) Returning Officer having the main responsibility for the planning, co-ordination and administration of these electoral events. At present the remaining 53.5% of these fees are paid back into the Council's budget for national elections/referenda, currently specified as being part of the Chief Executive's contract.
- 2.6 Precedent for the existing contractual approach was set by a previous Chief Executive and this was carried forward to the current Chief Executive (Adrian Lythgo) on his appointment.
- 2.7 The decisions of a (Acting) (Local) Returning Officer may, on an election petition, be reviewed by the High Court. Where an election petition complains of the conduct of the (Acting) (Local) Returning Officer, he is deemed to be a respondent to that petition (not the Council) and may, as a party to a petition, be personally liable for costs should the court so determine.

- 2.8 The current approach of consolidating the (Acting) (Local) Returning Officer fees into the Chief Executives role/salary presents an ambiguous situation in terms of provision of any clear demarcation of the role and responsibility of the (Acting) (Local) Returning Officer and those of the Chief Executive. It effectively risks making the Council responsible for the conduct of the election. This is not the intention of primary legislation.
- 2.9 The administration and combination of elections/referenda has become more and more complex and the frequency of elections/referenda has increased. Any cross constituency boundaries created as a result of the on-going boundary review will create further complexities. Elections and referenda are now often subject to intensive scrutiny by a range of stakeholders and as such the potential for election petitions may also increase.
- 2.10 The Council has no jurisdiction or responsibility over the running of elections. The factors detailed above may have created an environment which presents risk to the Council; in respect of its ability to demonstrate independence and impartiality from the role of (Acting) (Local) Returning Officer should an election petition be submitted.

3. Implications for the Council

- 3.1 The reversal of the existing approach will correct the contractual irregularity and eliminate any associated risk to the Council. There are no financial cost implications to the Council, as a result of this change.

4. Consultees and their responses

- 4.1 Sharon Salvanos, Electoral Services Manager/Deputy Returning Officer:

The impact of the recommendation in this report is that the Council will be reinforcing the statutorily separate nature of the administration of the election process at arm's length from the Council. It will also result in the Chief Executive/Acting Chief Executive receiving separate election fees to their Council salary for all UK Parliamentary, European and non-district elections, and for any national referenda.

The consolidation of national (Acting) (Local) Returning Officer fees into the Chief Executive's salary is highly unusual and, in the opinion of the Electoral Services Manager, incorrect.

The current approach creates a perception of risk to the Council; in respect of its ability to demonstrate separation from the role of (Acting) (Local) Returning Officer should the conduct of the (Acting) (Local) Returning Officer be questioned or if an election petition be submitted.

The role and responsibilities of the (Acting) (Local) Returning Officer is an entirely separate employment and is distinct from the duties as an employee of the Council and as such could not have been evaluated as part of the existing Chief Executives grade nor should it be incorporated into the Chief Executive's role or remuneration. The employment contract should only confirm that the Chief Executive will hold the statutory independent position of the (Acting) (Local) Returning Officer.

We are not aware of any other Local Authority, certainly within West or South Yorkshire that has taken this approach to national (Acting) (Local) Returning Officer fees. There are some differences across the region in that some (Acting) (Local)

Returning Officers also receive fees for their role as Returning Officer for district and parish elections. The Returning Officer for the Kirklees voting area receives no fee for district or parish elections.

5. Next steps

- 5.1 Agree to the recommendation and the revised arrangements to be separated from the contract of employment for the Acting Chief Executive and any future appointments to the role of Chief Executive.

6. Officer recommendations and reasons

6.1 That Council approve the recommendation in this report, which is that:

- In future the Chief Executive/Acting Chief Executive will receive-separate election fees to their Council salary for all national elections and/or referendums.
- A proportion (46.5%) of which will be paid back into the election staffing budget or as a direct payment to the Deputy Returning Officer (with full delegated powers) as detailed in 2.5 above.

This is for the reasons explained in the report in particular relating to the separation of the two roles.

7. Cabinet portfolio holder's recommendations

7.1 Not applicable

8. Contact officer and relevant papers

Adrian Lythgo
Chief Executive
Adrian.lythgo@kirklees.gov.uk

9. Assistant Director Responsible

Not applicable