

From: [REDACTED]
Sent: 30 March 2017 17:04
To: [REDACTED]
Subject: FOI 15/17 - Monitoring compliance with the rules

Dear [REDACTED]

Our Ref: FOI 15/17

Thank you for your email to the Electoral Commission dated **01 March 2017** received by the Commission on **02 March 2017**.

The Commission aims to respond to requests for information promptly and **[has done so within the statutory timeframe of twenty working days/ regrets that on this occasion we have not done so]**.

Your request is in bold below followed by our response.

You have requested:

In relation to the EC's Monitoring role for candidates and their agents from 2014-2017 with regard to elections, by-elections and referendum campaigns conducted over this period:

- 1) How many EC staff are directly involved in monitoring & compliance, their level/seniority and operating budget of the respective department(s), for each year 2014 - 2017.**
- 2) How many cases of non-compliance and potential non-compliance has the EC identified/ investigated over this period 2014 - 2017, where possible providing a brief summary & identifying case number for each case.**
- 3) Of the cases identified above, please confirm how many cases were a) closed without further action, b) remain open requiring further investigation or action by the EC and/or other agencies, c) have resulted in fines or prosecuted by the EC or other agencies**
- 4) Communications with Police, CPS, The ICO, and Cabinet Office regarding the selection of cases of non-compliance uncovered through the EC's monitoring role, which require, or may require follow up enforcement action by other agencies, and**
- 5) Communications with Government, MPs and relevant agencies in all cases in which the EC has sought additional powers from Government to monitor and enforce concerns arising through its monitoring activities for the period 2014-2017, that cannot currently be actioned by the Electoral Commission under the enforcement regime existing at the time.**

Our response is as follows:

We hold some of the information you have requested.

We understand your request to relate only to matters relating to candidates and agents, as set out in the first paragraph of your request. We have taken the period 2014-2017 to mean, for practical purposes, from 1 January 2014 to 28 February 2017.

1) How many EC staff are directly involved in monitoring & compliance, their level/seniority and operating budget of the respective department(s), for each year 2014 - 2017.

The Commission is split into four directorates, each with their own budget which is then distributed amongst the teams within the directorate. The staff responsible for our monitoring and compliance work in respect of candidates and agents fall under the Political Finance and Regulation (PFR) directorate whose budget can be seen below.

Within that Directorate, our monitoring function is part of our regulatory work as undertaken by the Regulation Team, with support from the Commission's Scotland, Wales and Northern Ireland offices and temporary staff as necessary. The Regulation Team consists of 20 members of staff across all the functions it performs.

The number of staff involved in monitoring and compliance varies across the year, and depending on electoral events taking place. Short term members of staff are sometimes recruited during significant campaign periods, and staff are also redeployed from other work at times, for example staff in our national and regional offices may assist.

PFR

	<u>14/15</u>	<u>15/16</u>	<u>16/17</u>
Pay	1,331	1,347	1,887
Non Pay	153	203	157
Projects - Pay	280	250	
	<u>1,764</u>	<u>1,800</u>	<u>2,044</u>

2) How many cases of non-compliance and potential non-compliance has the EC identified/investigated over this period 2014 - 2017, where possible providing a brief summary & identifying case number for each case.

The Commission does not have investigative or sanctioning powers in relation to candidates and agents, and has not therefore opened regulatory cases of the sort covered by our Enforcement Policy in relation to any non-compliance or potential non-compliance.

The Commission does have a duty to monitor compliance with the candidate spending rules however, and does so through sample checking of returns provided to the Commission by Returning Officers. During the specified period the Commission reviewed returns in relation to the 2015 UK Parliamentary General Election, the 2016 Scottish Parliamentary Election, the 2016 National Assembly for Wales election, the 2016 Northern Ireland Assembly election, and the 2016 London Mayoral election. The Commission did identify potential non-compliance in some returns, but these were not identified for the purposes of casework and records of the individual issues were not retained. Rather the Commission identified trends and common issues, and the extent to which they occurred that it will be seeking to address through changes to guidance or by other means. Many of the issues identified were summarised in a paper for the Commission Board on 13 April 2016, which we are disclosing to you. Paragraph 4.5 of the paper states:

'Our monitoring for the 2015 UKPGE comprised a sampling exercise of 200 returns (approximately 5% of the total received) to identify general compliance failures with a view to understanding common issues with returns and identifying appropriate action; and

consideration of what was a small number of returns where the reported spending exceeded 95% of the spending limit.'

Paragraph 4.7 lists the proportion of returns that were non-compliant in common ways:

- Confusion between the long and short campaigns - reporting of only one campaign or no indication which campaign the reported spending relates to – only 78.5% of the sample had clearly reported spending for both campaigns
- Declarations – 8% of the sampled returns did not have correctly completed declarations
- Reporting donations – 3% of the sample had not properly reported donations, for example no breakdown was provided of a total figure, or the total figure did not match the breakdown
- Use of forms – some candidates used local government election forms; others used older forms that do not distinguish between long and short campaigns. In both cases the result is that not all information is provided, even if the form is fully completed. This was a relatively rare occurrence in the sample, only 1%, but of concern because of the basic nature of the error
- General lack of complete information – many returns had omissions, albeit minor in some cases, and there was a lack of clarity in the figures provided – overall, we considered that only 64% of the sample were fully completed returns
- delivery of returns directly to the Commission – approximately 30 agents and candidates delivered their returns directly to us rather than to the ARO
- Confusion over the correct spending limit – many candidates reported spending limits ranging from zero to greatly inflated figures, as much as four times the correct limit

It is important to note that the potential non-compliances varied widely in type and significance, from minor mathematical errors to returns that were missing entirely. The Commission did not identify any issues that were of such significance as to merit notifying the police, taking into account not only the non-compliance itself, but also the context, such as the success of the candidate.

It is however a matter of public record that the Commission did inform English police and prosecutors that there may have been potential non-compliances by some candidates and agents arising from the Commission's separate investigation into the Conservative and Unionist Party's spending return for the 2015 UK Parliamentary General Election.

3) Of the cases identified above, please confirm how many cases were a) closed without further action, b) remain open requiring further investigation or action by the EC and/or other agencies, c) have resulted in fines or prosecuted by the EC or other agencies

See above. No regulatory cases were opened. The Commission does not have any power to fine non-compliance in relation to candidate spending, and the Commission does not currently prosecute cases.

4) Communications with Police, CPS, The ICO, and Cabinet Office regarding the selection of cases of non-compliance uncovered through the EC's monitoring role, which require, or may require follow up enforcement action by other agencies, and

We are interpreting 'selection of cases' here to mean simply the cases you refer to in question 3. As there were no such cases there have been no communications of the sort you ask about.

5) Communications with Government, MPs and relevant agencies in all cases in which the EC has sought additional powers from Government to monitor and enforce concerns arising through its monitoring activities for the period 2014-2017, that cannot currently be actioned by the Electoral Commission under the enforcement regime existing at the time.

In June 2013, the Commission published its '[Review of the UK's party and election finance laws – recommendations for change](#)'. Recommendations 43 and 44 were that the Commission should be given investigative powers and sanctions in relation to candidate spending and donations at specified elections. The basis for this recommendation can be found at pages 78-80. That has been the Commission's position since. The review document was sent to Parliament at the time of publication. The Commission has restated that position publicly since, in other public statements.

There have been no other communications with Government, MPs and relevant agencies other than our public statements.

I trust that this information satisfies your request. The Commission strives to be an open, transparent authority.

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: <http://www.electoralcommission.org.uk/about-us/freedom-of-information-requests/how-do-i-make-an-foi-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: <http://www.ico.gov.uk>

Yours sincerely

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Information Officer

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