

Referendum on the voting system for UK Parliamentary elections

Guidance notes on the process for withholding payments for services that have been inadequately performed

March 2011

Introduction

1.1 The Commission has the discretion to withhold payment of fees for services rendered in respect of the referendum which, in its opinion, were inadequately performed by counting officers in Great Britain or by Regional Counting Officers¹.

1.2 This document sets out the Commission's procedure in cases where services may have been inadequately performed by these counting officers or Regional Counting Officers.

Process

1.3 If a performance issue is identified by the Commission, the Commission will take the following steps:

- On being alerted to an issue the Director of Electoral Administration of the Commission will first have a conversation with the relevant counting officer or Regional Counting Officer to explain any concerns and discuss relevant background to the performance issue.
- If the performance issue has not been satisfactorily resolved as a result of the conversation, within two days of the conversation the Director of Electoral Administration of the Commission will write to the relevant counting officer or Regional Counting Officer formally setting out the issue and the reasons for concern.
- The counting officer or Regional Counting Officer may then make written submissions to the Director of Electoral Administration of the Commission, which must be received within ten days from the date of his letter. These may include any explanation or mitigating circumstances together with any relevant supporting evidence. Alternatively the counting officer or Regional Counting may make a request to attend a meeting in person to make their submission. In some cases it may be necessary for the Director of Electoral Administration of the Commission to request further information or explanation which must be submitted within a further ten days of any such request.
- Once he has received all relevant information, the Director of Electoral Administration of the Commission will decide within one week from the date of receipt of such information whether the service was inadequately performed. Where he concludes that a service was inadequately performed the Director of Electoral Administration of the Commission will determine a reasonable fee for the service taking account of all the circumstances.

¹ Paragraph 20(3) of Schedule 1 to the Parliamentary Voting System and Constituencies Act 2011

- Within two days of making his decision, the Director of Electoral Administration of the Commission will write to the relevant counting officer or Regional Counting Officer informing them of his decision and the reasons for it.

Factors to take into consideration in assessing whether a service was inadequately performed

1.4 Each situation will need to be considered on its own merits taking into account the particular circumstances in each case. However, the following factors will be relevant to the Commission in deciding whether a particular service was inadequately performed and, if it was, in identifying a reasonable fee for the service in question:

- the way in which the service was performed and the nature of any act or omission giving rise to concerns about the adequacy of performance;
- whether there has been an act or omission that may amount to a failure to comply with a statutory duty without what is, in the Commission's opinion, reasonable cause;
- whether the counting officer or Regional Counting Officer complied with the directions issued by the Chief Counting Officer;
- where there has not been compliance with a direction issued by the Chief Counting Officer, whether a request for an exception was made;
- the impact of the act or omission in question;
- any steps taken to address the impact of the act or omission; and
- any other mitigating factors.

Challenging the Commission's Assessment

1.5 If a counting officer or Regional Counting Officer believes that the Commission has failed to take into account all relevant factors they can ask the Chief Executive of the Commission to review the decision. Any application for review must be received within ten days of the date of the decision letter.

1.6 Any request for a review should identify the reasons why the review is requested.

1.7 The review will be conducted within 21 days of the request for the review and the counting officer or Regional Counting Officer may be asked to attend in person.