

## Notional spending: How does it work for candidates and agents

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In July 2018, the Supreme Court considered how the notional spending rules worked for candidates and agents. Specifically it considered whether authorisation by the candidate or their agent was required for notional spending.

This factsheet is for, candidates, agents and political parties who would like further information about the rules following on from the Supreme Court judgement, which confirmed the current interpretation on how notional spending works for candidates and agents.

This document explains our view on how these rules work. Our view was upheld by the Supreme Court.

### What are the circumstances the court considered?

The court was looking at the operation of section 90C of the Representation of the People Act (RPA) 1983.

The RPA sets out the rules for candidates and agents and section 90C deals with notional spending on behalf of a candidate. Notional spending means goods or services transferred to you, or provided to you for your use or benefit for free or at a discount.

The court confirmed that notional spending must be declared as an election expense in the candidate's return even if the notional spending has not been authorised by the candidate, the candidate's agent or someone authorised by either or both of them, *R v Mackinlay and others (Respondents)*, UKSC 42, 25 July 2018.

The court was clear however that this required some positive steps on the part of the candidate or agent before the spending would need reporting.

## Is that different from local non-party campaigner spending?

Yes. Local non party campaigner spending is spending by someone else promoting your candidacy and is covered by the rules set out in section 75 of the RPA.

The amount that can be spent on this 'local campaigning' without authorisation from the candidate or agent is limited to

- £50 plus 0.5p per local government elector in the ward who is registered to vote on the last day for publication of the notice of election in the ward in local elections
- £700 in parliamentary general elections.

## When is something notional spending?

The court confirmed that notional spending occurs when 3 conditions are met:

- The spending is on an election expense within the categories listed in the rules
- The goods or services are transferred or provided for the use or benefit of the candidate free of charge or at a discount of more than 10 per cent
- They are made use of by or on behalf of the candidate.

We clarify the third of these conditions in this factsheet.

Where all three of these are satisfied, an "appropriate amount", if more than £50, is treated as an election expense incurred by the candidate. The

appropriate amount is the amount which is reasonable to reflect the candidate's use of the item, as a proportion of either:

- the market value of the item (where it has been provided free of charge), or
- the value of the discount (where some of the item's cost is actually incurred by/on behalf of the candidate).'

Notional spending that is over £50 is also a donation.

## What does 'made use of by or on behalf of' mean?

'Made use of' means more than to receive a benefit from, or even to be aware of. The candidate or agent has to have some active engagement in the spending activity.

Notional spending is a donation, so there will be receipt and acceptance.

If you, as candidate or agent, accept a donation and the other conditions of notional spending are met, this will ordinarily be sufficient to show that you are aware of it and sufficient to show that you have 'made use' of it.

This would need to be reported in your candidate return as notional spending and a donation.

### Some examples:

#### Example 1

A third party hires a bus and has it painted urging voters to vote for you in the coming election.

You are not approached by the third party although you are aware of what it is doing. You have no involvement in the third party's activities.

This is non-party campaigning: your campaign is receiving a benefit from the activity but although you were aware of it you have not made use of it.

If the third party has spent more than the legal limit on this activity without your authorisation, it may have committed an offence under s75 of the RPA.

### **Example 2**

Your local party produces a leaflet pointing out the voting record of your opponent on local issues for the local elections in the ward where you are standing.

The cost of the leaflet is £100 to produce. The party distributes the leaflets without your knowledge and you are not aware of their distribution until after it has occurred.

This is non-party campaigning: your campaign is receiving a benefit from the activity but although you were aware of it you have not made use of

This will mean the party is subject to the non-party campaigner limit, and if it exceeds that limit the party may have committed an offence. The party may also have to complete a return of its own under s75. The rules about returns under section 75 differ according to the type of election.

### **Example 3**

Your party tells you that it has paid for and is now going to distribute leaflets promoting your candidacy in local elections in your ward.

The value of the leaflets they have paid for will be £150. You thank them for doing so and the party organises the distribution.

You have actively acknowledged the activity of the party and once the leaflets are distributed you will have received and accepted the donation.

You have done more than benefit from the distribution of the leaflets, you have made use of them as part of your campaign.

This must be reported in your candidate return as a donation from the party to your campaign and as notional spending by the party on your behalf.

### **Example 4**

Your party tells you that it has paid for and is now going to distribute leaflets promoting your candidacy in your constituency at a general election.

The value of the leaflets they have paid for will be £1000. You tell them that you do not want them to distribute the leaflets, that you already have your campaign spending planned.

The party distributes the leaflets anyway.

The spending is spending by the political party under the non-party campaigner rules in the RPA. It does not need to be put on your candidate spending return either as notional spending or as a donation.

This will mean the party is subject to the £700 limit, and if it exceeds that limit the party may have committed an offence. The party may also have to complete a return of its own under s75. The rules about returns under section 75 differ according to the type of election.

### Example 5

Your party has a bus that is used to transport the party leader around constituencies at an election. The bus is painted in the party colours and has a call to vote for the party on the sides.

You are sent an itinerary and can see that they are visiting your constituency. You already have an event planned in the constituency on that day. You do not change your plans for that day and do not contact anybody about the itinerary.

You are aware of the event, but decide not to attend. You have not actively participated or accepted a donation of the activity.

The bus tours your constituency and the party leader gives a speech on national policy, urging local voters to vote for the party. This is neither candidate spending nor spending under the non-party campaigner rules in the RPA. This is because it is not promoting you as a candidate. This is spending on behalf of the party and must be reported in the party return.

If the leader gave a speech covering local issues and specifically urged voters to vote for you, this would be spending under section 75. The party may have committed an offence if it has spent more than £700. The party may have to complete a return of its own under s75.

### Example 6

Your party has a bus that is used to transport the party leader around constituencies at a general election. The bus is painted in the party colours and has a call to vote for the party on the sides.

You are sent an itinerary and can see that they are visiting your constituency where the leader will speak to voters. You have been invited to the event along with candidates from the surrounding constituencies.

You accept an invitation to the event.

The leader of the party gives a speech that covers national policies and mentions each candidate individually at the end of the speech.

A portion which is reasonable to reflect your use of the costs must be reported in your candidate spending return.

## How we can help

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You can contact us on the phone number below or via email on the address below. We are here to help, so please get in touch.

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