The Association of Electoral Administrators

The Electoral Commission – Codes of Practice on spending by candidates and political parties: a consultation

INTRODUCTION

The Association of Electoral Administrators (AEA) was founded in 1987 and is the professional body representing the interests of electoral administrators in the United Kingdom. It is a non-governmental and non-partisan body and has 1,967 members, the majority of whom are employed by local authorities to provide electoral registration and election services.

The AEA supports the principle of the Codes of Practice on spending by candidates and political parties and welcomes this consultation. It is hoped that our responses to the questions outlined in our consultation response will help further improve the process in the future.

QUESTIONS

THE LANGUAGE IN THE CODES

Q1.   Are the Codes easy to understand? Are there any parts of the Codes that could be made easier to read?

It is noted that the Codes are written in a formal language as they will go through Parliament following the consultation stage. However, to some candidates they may find the language used in the Codes intimidating. The Codes should be written in a manner suitable for their audience which includes 'Independent' candidates at local elections who may not have the support mechanisms and understanding regarding funding as other candidates may have standing for political parties. It should also be accessible to parish and community council candidates who often have limited understanding of the nomination process.

The Electoral Commission already produces a series of guidance for candidates and agents for the various polls, including forms for completion in relation to spending. It is assumed that this guidance will still exist once the Codes are introduced, however, the Codes do not include any signposting or reference to the guidance and forms. Likewise, the guidance needs to signpost and reference the Codes. As a result, there is likely to be some confusion amongst candidates and political parties as there is a lot to read and clear signposting is needed so that they are aware that both guidance and Codes are available in separate documents and that both should be read. The Codes and guidance should dovetail each other with the Codes set at a high-level and the guidance providing the detail. Some of the detail in the Codes should be classed as guidance

and not form part of the Codes assuming there are going to be the two sources of information.

In addition, is it assumed that Returning Officers will signpost candidates and agents to both the guidance and the Codes?

To assist in making the Codes clearer and easier to understand, tables should be used visually setting out the information more clearly under specific headings, for example, 'Item of Spend', 'Description', 'Category'.

On page 3 of the Candidates' Code reference is made twice to "person officially becomes a candidate". To avoid confusion this should be defined more clearly in the Code. For example, in the first sentence that follows "and ends on polling day (the close of poll)" – the text in brackets clearly defines when on polling day i.e. the close of poll. Yet there is no definition as to when someone officially becomes a candidate. This could be interpreted in several ways including: when they declare publicly they are standing for the election, at the publication of Notice of Election, and immediately following the submission of their nomination papers to the Returning Officer.

It is also noted that the Codes have a 'Definition' section and the definition could also be included in that section to avoid confusion.

THE COSTS OF DIGITAL CAMPAIGNING

Q2.   Do the Codes cover all the types of spending on digital campaigning at elections?

Yes, we believe they do in as far as digital channels have developed. We would hope that the tradition of honouring the spirit of a Code would be maintained, with both candidates and political parties recognising and upholding this.

Q3.   Do you have any suggestions for improving the descriptive language in the Codes so it will better cover possible future developments in technology?

It may be that a mention of wearables, smart speakers and AI-enabled devices could be added to the point at 1.11. However, we recognise the inherent issues with including increasingly prescriptive examples, which could lead to a false impression that if a device/channel is not listed, then it is not covered by the Code.

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DECIDING WHERE TO ACCOUNT FOR AN ITEM OF SPENDING

What is candidate spending and what is party spending?

Q4.   Do the Codes make it clear which spending return should be used to report different items of spending?

Having read both the Candidates' Code and the Political Parties' Code it is not clear as to what is defined as candidate spending and what is party spending. The Codes need to be simplified so as to make them clearer and easier to understand. A suggestion would be to include a table in each of the Codes as an appendix which would reinforce the Codes visually and more clearly. The table could list all the possible items of spend for both candidates and parties with an indication in the form of a tick under the relevant column i.e. candidate spending or party spending.

Q5.   Will the Codes have any other consequences for the candidate and party spending rules?

No comment other than the Codes need to make it clear and simple as to how candidates' and party spending is defined in accordance with the spending requirements laid down by Parliament.

Q6.   Can you suggest examples of cases and circumstances that should be considered for inclusion in the Codes?

In both the Candidates' and Political Parties' Codes there is minimal mention of sharing costs between more than one candidate, something that frequently happens at local government elections and is covered in the Electoral Commission guidance.

The only mention gives Northern Ireland as an example (page 20 paragraph 1.8) yet the Codes list other election types including local elections and not just UKPGE. It may therefore be more appropriate to refer to 'electoral areas electing more than one representative' rather than the Northern Ireland example.

Throughout the Codes there are several places whereby it is written as though it is purely UKPGE guidance, yet it relates to all types of elections and therefore should reflect this.

We would encourage the Electoral Commission to review any previous issues reported to them in relation to candidates and political party spending for inclusion in the Codes as examples.

Which category should be used to report an item of spending?

Q7.   Does the candidate Code make it clear which category of spending should be used to report an item of spending?

It is accepted that the Codes are set at a higher-level than the guidance and therefore they should reflect this. However, the Codes do not acknowledge that there is further detailed guidance produced by the

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Electoral Commission which should be read in conjunction with the Codes. The Codes need to signpost and reference the further guidance and encourage that they are read in conjunction with this guidance.

In addition, as mentioned at question 4 the use of a table as an appendix would make it clearer as to which category of spending should be used to report each item.

Q8.   Does the political party Code make it clear which category of spending should be used to report an item of spending?

At present it is not clear in the Codes. However, it may be clearer as part of an overview of the system if the categories were listed including the items.

Q9.   Do you have any comments about how the Codes advise on which category should be used in the situation where two categories are relevant?

Having read both the Candidates' and Political Parties' Codes there appears to be no reference to advise on which category should be used in the situation where two categories are relevant. If it is included, it is not clear in either of the Codes.

Overheads

Q10. Do you have any comments about how the Codes deal with overhead costs?

As a way of making it clearer and easier to understand examples should be included. Alternatively, reference to examples provided in the guidance with the guidance clearly referenced and signposted.

FURTHER COMMENTS

Q11. Do you have any suggestions for other kinds of spending that should be included in more depth under the category headings?

As outlined in question 6, in both Codes there is minimal mention of sharing costs between more than one candidate, something that frequently happens at local government elections and is covered in the Electoral Commission guidance.

In addition, a review of previous issues reported to the Electoral Commission in relation to candidates and political party spending may highlight areas that need addressing within the Codes of Practice and provide examples.

Q12. Do you have any comments on the content, structure or language used in the Codes?

Please see our response to question 1 in relation to the language used within the Codes. There is also the need for the use of tables to set out the Codes more clearly and easier to understand for all candidates at all election types. The wording of the Codes is very UKPGE biased yet the Codes are for a range of election types including local government principal area and parish and community council elections. Clear referencing and signposting to the Electoral Commission guidance is also required throughout with the recommendation that the Codes and guidance are read in conjunction with each other.

Q13. Are there any further comments you would like to make about the Codes?

- **Candidates' Code Page 4 -** "Sec 81 RPA requires an agent to submit a return of election expenses" – yet no action is taken by the Crown Prosecution Service for failure to return. The Association believes that the legislation needs to change if legal proceedings are not followed through and consideration needs to be given to an alternative course of action, for example, a civil penalty together with a bar from standing as a candidate for a fixed period. The Association initially raised these issues with the Cabinet Office in January 2016 following which they confirmed they intended to conduct a review after the EU referendum. The review is still awaited.

- **Candidates' Code Page 4 -** "Sec 81 RPA requires an agent to submit a return of election expenses" - in addition as part of the review the complexity of the returns should be included as well as whether there is a need for unsuccessful candidates especially at parish and local government elections being required to submit returns. It should also be noted that at parish and community council elections election agents are not appointed. In addition, there are far fewer UKPGE candidates than local government candidates who will be reading the Codes and guidance. The Electoral Commission Report - The May 2015 UK elections: Report on the administration of the 7 May 2015 elections, including the UK Parliamentary general election highlighted that 3,971 candidates stood at the UKPGE with more than 30,000 candidates standing at the local government elections.

- **In our 2017 post-election report** "It's time for urgent and positive Government action - the AEA's review of the 2017 local government elections and the UK Parliamentary general election" we also made the following recommendation:

2017 – 26 - "A full and thorough review of the processes that deal with the recording of candidates' expenses should be undertaken, including consideration of the return to, and subsequent reporting of, expenses to Returning Officers and the possible provision of online reporting and inspection mechanisms."

Peter Stanyon

Chief Executive

31 October 2018