

Cheltenham Borough Council
Council – 7 December 2020
Special Responsibility Allowances and Outside Bodies

Accountable member	Chair of Overview and Scrutiny, Councillor Chris Mason
Accountable officer	Bev Thomas, Democratic Services Team Leader
Ward(s) affected	All
Key/Significant Decision	Yes
Executive summary	Having considered the recommendations of the Independent Remuneration Panel (IRP) in December 2020, some members of Council raised the issue of whether under the scheme for Special Responsibility Allowances (SRA) payments could be made to those Members who are appointed to outside bodies as non-executive directors or trustees. Overview and Scrutiny set up a Scrutiny Task Group to consider the complexities of the matter. This met in October and reported back to O&S at its November meeting.
Recommendations	To note the report
Financial implications	There are no implications arising directly from this report. Contact officer: Martin Yates, martin.yates@publicagroup.uk, 01242 264200
Legal implications	There are no implications arising directly from this report. Contact officer: Sarah Farooqi – One Legal sarah.farooqi@tewkesbury.gov.uk (01684) 272012
HR implications (including learning and organisational development)	There are no implications arising directly from this report. Contact officer: Contact officer: Julie McCarthy HR Manager Julie.mccarthy@publicagroup.uk Tel 01242 264355
Key risks	The determination of allowances is a sensitive subject both from the perspective of Councillors themselves and the public who elect them. In view of this it is important that any scheme adopted is objectively reasonable and based upon some logical and fair mechanism.
Corporate and community plan Implications	It is important for the effective functioning of the council that councillors are paid a basic allowance to support them in carrying out their work they do as local councillors. It is also important to recognise that some councillors with additional duties and responsibilities should receive a Special Responsibility Allowance for the extra work in relation to this. Contact officer: Richard Gibson, Strategy and Engagement Manager, Richard.gibson@cheltenham.gov.uk

Environmental and climate change implications	There are no implications arising directly from this report. Contact officer: Gill Morris, Client Officer Gill.morris@cheltenham.gov.uk , 01242 264229
Property/Asset Implications	There are no implications arising directly from this report. Contact officer: Dominic Stead, Head of Property and Asset Management Dominic.Stead@cheltenham.gov.uk , 01242 264151

1. Background

- 1.1 Having considered the recommendations of the Independent Remuneration Panel (IRP) in December, some members of Council raised the issue of whether under the scheme for Special Responsibility Allowances (SRA) payments could be made to those Members who are appointed to outside bodies as non-executive directors or trustees.
- 1.2 The matter was referred to the Overview and Scrutiny (O&S) Committee.
- 1.3 Members acknowledged the complexities of the issue and decided therefore that a Scrutiny Task Group (STG) would be the most appropriate way in which to give consideration to this matter.
- 1.4 The One Page Strategy for the STG was approved by O&S at its meeting on 24 February, but due to the unforeseeable disruptions due to Covid-19, the STG did not hold its first meeting until 22 October 2020.
- 1.5 The STG considered the following advice from the Legal Officer:
- 1.6 The Local Authorities (Members' Allowances) England Regulations 2003 SI 2003/1021 (LAMA) set out a framework for the creation, implementation and amendment of schemes of allowances for Members and co-optees of local authorities.

Regulation 4 provides for the payment of an allowance in respect of each year to each member of an authority and the amount of such an allowance shall be the same for each such member. Regulation 5 makes provision for the payment, each year of an allowance to such members of the authority as have such special responsibilities in relation to the authority as are specified in the scheme. This is referred to as the special responsibility allowance (SRA).

Payments in relation to attendance on outside bodies are only likely to fall under either regulation 5(d) or (i). Under regulation 5(d) an SRA can be paid where a member is "representing the authority at meetings of, or arranged by, any other body". Under Regulation 5(i) an SRA can be made if a Member is carrying out such other activities in relation to the discharge of the authority's functions as require of the member an amount of time and effort equal to or greater than would be required of him by any one of the activities mentioned in sub-paragraphs (a) to (h) (whether or not that activity is specified in the scheme).

The key point to note is that in relation Regulation 5(d) to enable a payment to be made under this provision the Member must be 'representing the authority'. To trigger regulation 5(i) a Member needs to be undertaking activities in relation to the 'discharge of the authority's functions'.

There are a number of different types of outside body and roles that a Member may become involved in, either independently or, as a representative nominated by the Council. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed.

When a Member takes up a position as Director or Trustee of an outside body they attend Board meetings in their capacity as a Director or Trustee of that body. A Director or Trustee will be

expected (and indeed will have legal duties) to look after the bodies' interests and to further its aims and not the authority's aim. Whilst Members may take their knowledge of the authority with them to an outside body Members must take decisions without being influenced by the fact that they are a Member of the authority. A Member is not therefore not representing the authority or discharging an authority's function and consequently when undertaking the role of Director or Trustee on an outside body neither regulation 5(d) or 5(i) is triggered and a SRA cannot be paid.

In respect of other roles that Members undertake on outside bodies where the Member is either representing the authority or discharging a function of the authority consideration could be given as to whether or not a SRA could be paid. The Independent Remuneration Panel would need to consider whether or not the appointment to an outside body leads to a significant additional responsibility for which a SRA could be paid.

1.7 The STG considered the current list of outside bodies upon which CBC have nominated Member representatives.

2. Reasons for recommendations

2.1 In light of the advice received from One Legal the STG ruled out recommending a SRA be considered for those members who were appointed as Directors (for example, the Airport) or Trustees (for example, the Cheltenham Trust) for companies or charities as the payment of a SRA would not be permitted under the Regulations.

2.2 The STG also ruled out recommending that the IRP consider the payment of a SRA where it was felt that attendance at the outside body did not seem onerous or were not organisations that councillors or cabinet members could be expected to attend anyway in the course of their duties.

2.3 As a result of this exercise the STG compiled a list of 7 outside bodies which could be actively considered by the group to potentially meet the criteria of receiving a SRA and these included:

- Cheltenham Recovery Task Force
- Communities Partnership
- District Councils' Network
- Gloucestershire Airport Consultative Committee
- Gloucestershire Playing Fields Association
- Twinning Association Executive Committee
- UBICO

2.4 On the basis that none of the member representatives on these bodies held the role of Director or Trustee, the STG asked the O&S Committee to consider whether it wished the group to progress any further work in this regard.

2.5 This was considered by the O&S Committee at their meeting on the 2 November 2020 (see the draft minutes at Appendix 2).

2.6 The O&S Committee were of the opinion that no further work should be undertaken as none of the bodies for which SRAs were potentially payable were bodies where members had been appointed as non-executive directors or trustees; and it had been these bodies, specifically, that Council had asked the O&S Committee to consider.

3. Alternative options considered

3.1 The alternative would have been for O&S to ask the STG to continue their work and look at the 7 outside bodies identified at 2.3, however, these member appointments were not as directors or trustees.

4. Consultation and feedback

4.1 Based on the advice received from One Legal the STG ruled out recommending a SRA be considered for those members who were appointed as Directors (for example, the Airport) or Trustees (for example, the Cheltenham Trust) for companies or charities as the payment of a SRA would not be permitted under the Regulations.

4.2 For the same reasons outlined by the STG, the O&S Committee resolved that no further work should be undertaken by the STG and as a consequence would be making no recommendations to the Independent Remuneration Panel (IRP).

5. Performance management –monitoring and review

5.1 The Members Allowance Scheme will continue to be monitored by Democratic Services and any issues arising will be raised with IRP when necessary.

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Appendices	1. Risk Assessment 2. DRAFT O&S minutes – 2 November 2020 3. Feedback from SRA task group – 2 November 2020
Background information	1. Council minutes – 16 December 2019

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk					
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register	
	Paying member allowances where there is no legal basis to do so.	Chief Exec	Nov 2020	5	1	5	Accept	Ensuring legal input into member allowance reviews	Nov 2020	Democratic Services Team Leader		

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close