

OVERVIEW AND SCRUTINY COMMITTEE- 2 NOVEMBER 2020

FEEDBACK FROM THE SCRUTINY TASK GROUP-SPECIAL RESPONSIBILITY ALLOWANCES

Background

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 payments could be made to those Members who are appointed to outside bodies as non-executive directors or trustees.
2. Members acknowledged the complexities of the issue and decided therefore that a scrutiny task group would be the most appropriate way in which to give consideration to this matter.
3. The One Page Strategy for the Scrutiny Task Group was approved by O&S at its meeting on 24 February. Due to the unforeseeable disruptions due to Covid 19, the Scrutiny Task Group did not hold its first meeting until 22 October.
4. This note provides the Overview and Scrutiny Committee with feedback from this meeting.

Membership and Terms of Reference

5. Membership of the Task Group:
Councillor Martin Horwood (Chair)
Councillor Wendy Flynn
Councillor Dennis Parsons
Councillor Diggory Seacome

Officers:
Sarah Farooqi, One Legal
Bev Thomas, Democratic Services
6. Ambitions agreed by the O&S committee:
 - Understand the options and restrictions relating to payments of Special Responsibility Allowances to members who are appointed to outside bodies as non-executive directors or trustees.
 - Look at what other authorities do.
 - Consider the budget implications of any payments.
7. Outcomes desired by the O&S Committee:
Make recommendations to the Independent Remuneration Panel regarding payments of Special Responsibility Allowances to members who are appointed to outside bodies as non-executive directors or trustees, taking into consideration the limitations, restrictions and budget implications.

Feedback from the first meeting

8. The STG considered the following advice from the Legal Officer which it wishes to share with all Members of Overview and Scrutiny :
9. 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.

Request from the Scrutiny Task Group to the Overview and Scrutiny Committee

10. At its meeting the STG considered the current list of outside bodies upon which CBC have nominated Member representatives. In light of the advice received from One Legal the STG ruled out recommending an SRA be considered by the IRP for those Members who were appointed as Directors (for example, the airport) or Trustees (for example, the Cheltenham Trust) for companies or charities as Cheltenham Trust) as the payment of a SRA would not be permitted under the Regulations. 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 ones that councillors or cabinet members could be expected to attend anyway in the course of their duties.
11. 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.
 - Cheltenham Recovery Task Force
 - Communities Partnership
 - District Councils' Network
 - Gloucestershire Airport Consultative Committee
 - Gloucestershire Playing Fields Association
 - Twinning Association Executive Committee
 - UBICO

The STG would like to highlight at this stage however that these bodies were not where Members held the role as director or trustee, as this would be beyond the remit prescribed by the Overview and Scrutiny Committee.

12. **The STG therefore would like to request O&S to consider if it wishes the group to progress any further work in this regard.**

Cllr Martin Horwood (Chair)