

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 5 and 19 September 2017. Attendances:

Councillor Glazier (Chair) (2)

Councillors Bennett (1), Daniel (2), Elkin (2), Tidy (1) and Tutt (1)

1. Review of Members' Allowances

1.1 The Independent Remuneration Panel is required, by the Local Authorities (Members' Allowances) (England) Regulations 2003, to make recommendations to the Council on allowances paid to Councillors. In 2013, the Council agreed that the Panel be asked to review the Scheme every 4 years in accordance with the Regulations unless the Assistant Chief Executive considers that there is a change in circumstances that justifies an earlier review or a request is received from a Group Leader.

1.2 The Independent Remuneration Panel was appointed by the Governance Committee in April 2014 and consists of three members, Rosey Eggar, Duncan Keir and Fiona Leathers.

1.3 As part of their review the Independent Remuneration Panel took into account information provided including comparative information from other County Authorities.

1.4 Bearing in mind the uncertainties regarding elections and the importance of capturing the views of experienced Members all councillors were contacted, both before and after the County Council elections, regarding the review of the allowances scheme and given an opportunity to submit written representations and/or to make representations in person to the Panel. A summary of the written comments received is attached to the Panel's report.

1.5 A copy of the Independent Remuneration Panel report is attached at Appendix 1. The current Members' Allowances Scheme is set out in Part 6 of the Constitution.

1.6 The Independent Remuneration Panel is required to review allowances based on the facts and information provided to it. Councillors are required to give due consideration to the recommendations of the Panel but are not bound by them.

1.7 The Panel were aware of the financial constraints affecting the Council over the next four years and took the view that they would only make recommendations that would be achievable within the existing budget and for the reasons set out in paragraph 1.8 with no additional cost.

1.8 The net cost of implementing the Panel's recommendations would be met from within existing budgets. The recommended increases amount to £68,300 and are offset by a £74,000 saving in the Council contribution to the Local Government Pension Scheme for councillors who were members of the Scheme.

1.9 The Regulations allow for the Members' Allowances Scheme to make provision for an annual adjustment of allowances by reference to such index as may be specified by the authority. Where an authority has regard to an index for the purpose of annual adjustment of allowances it must not rely on that index for longer than a period of four years before seeking a further recommendation from the Independent Remuneration Panel. For the

GOVERNANCE

last four years the allowances have been indexed to the percentage increase in the salaries of managers who are on locally negotiated pay

1.10 The Independent Remuneration Panel recommend in their report that the annual increase in allowances continues to be linked to the LMG managers increase.

1.11 The Independent Remuneration Panel took the view that the basic allowance currently paid to members is comparable with other similar authorities. However, there were a number of factors considered by the Panel that resulted in the Panel recommending an increase in basic allowance. The proposed increase in basic allowance reflects a number of issues including: the aim of encouraging a broader cross section of the community to stand for election; changes in relation to the Local Government Pension Scheme; and changes in broadband/telephone line provision, home printing and subsistence after meetings.

1.12 The Panel has also proposed an increase in the Special Responsibility Allowance (SRA) payable to the Leader of the Council. This recommendation was made, following analysis of other authorities, on the basis that the current SRA to this post (being a multiplier of 2.2 of the level of basic allowance) was significantly below the range of multiplier commonly used (multipliers of between 2.8 and 3.2) and that the current SRA did not reflect the responsibility and role of the post.

1.13 In addition to Basic Allowances and SRAs, the Panel considered other aspects of the allowances scheme including subsistence levels, travel and carers' allowance

1.14 The Panel has recommended:

- a) The continued use of an index to allow for annual increases in basic and special responsibility allowances and that this index should continue to allow for allowances to be updated annually in line with the percentage increase in salaries for managers who are locally negotiated pay
- b) The basic allowance increase to £12,300
- c) The SRA payable to the Leader of the Council should be based on a factor of 2.8 of the level of basic allowance
- d) The SRA for the Deputy Leader and other Cabinet members should remain unchanged
- e) The SRA for Chairs of Scrutiny Committees and Planning Committee should remain unchanged
- f) The SRA for the Chairman and Vice Chairman should remain unchanged
- g) All other SRAs should remain unchanged
- h) The basic mileage rate and supplement for passengers should remain at 45p and 10p per mile respectively
- i) The dependent carers allowance should remain at the actual cost up to £10 per hour
- j) Co-optees should continue to be able to claim mileage for travel to meetings

1.15 The Independent Remuneration Panel recommends that all changes to allowances are effective from 8 May 2017.

1.16 The Committee recommends the County Council to:

- ☆ (1) approve the proposals set out in the report of the Independent Remuneration Panel; and

GOVERNANCE

(2) delegate authority to the Assistant Chief Executive to amend the Scheme of Allowances to reflect any changes agreed and to update the list of bodies to which the County Council makes appointments as set out in Annex 1 of the Scheme of Allowances to reflect the current position.

2. Disclosure and Barring Service Checks for Councillors

2.1 The Disclosure and Barring Service (DBS) provides a procedure through which organisations may carry out criminal record checks relating to individuals who may, on behalf of the organisation, undertake work or hold positions or responsibilities which may bring them into contact with vulnerable persons.

2.2 The Council has a duty to protect vulnerable people to whom it owes a statutory duty of care. DBS checks could provide a first level of assurance that an individual in a position of trust does not present a direct risk of harm to such individuals.

2.3 In January 2014, the Governance Committee agreed that elected Members should only be requested to have a DBS check if they are to be involved in a Regulated Activity. By the definitions of the Council's current DBS Policy Statement for *employees, volunteers, agency staff and contractors/sub-contractors* (Appendix 2, page 8), those who undertake work *for the purposes of a local authority adoption and fostering service ... and have access to personal and sensitive information about children* require a Standard DBS check. A number of Councillors fall within this category.

2.4 Certain roles may also require Councillors to have Enhanced DBS checks, for example Cabinet Members with specific responsibilities that bring them into contact with children or vulnerable adults.

2.5 The DBS system is intended to offer safeguards in relation to individuals who come into contact with young or vulnerable people as part of their role. There are various levels of checks depending on the nature of the role:

Type of check	Description
Standard check	This checks for spent and unspent convictions, police cautions, reprimands and final warnings. Cost: £26 per check.
Enhanced check	This includes the same as the standard check plus any additional information held by local police (such as complaints or third party referrals) that is considered relevant to the role. Cost: £44 per check.
Enhanced check with Barred List check	This is like the enhanced check, but includes a check of the two DBS lists of people barred from working with (1) children and (2) vulnerable adults.

2.6 DBS checks, once made, are portable in that the check can be used for other roles discharged by the individual. Where an individual moves between different roles, a new DBS certificate is not generally required unless the new role requires a higher level of check.

2.7 An overview of current practice in a range of local authorities is shown below:

GOVERNANCE

Organisation	Approach		Comment
	All Members	Panel Members	
East Sussex County Council	None	None	Current position
Surrey County Council	None	Enhanced check on Chairs only	Enhanced check on Cabinet members and Chairs of Adults' and Children's Scrutiny Committees
Brighton & Hove City Council	None	Enhanced check	
West Sussex County Council	Standard check	Enhanced check	Undertake checks shortly after elections as part of induction
Hampshire County Council	Enhanced check	Enhanced check	Undertake checks shortly after elections as part of induction
Kent County Council	Enhanced check without Barred List check	Enhanced check with Barred List check	

2.8 The number of elected Members likely to fall within the eligibility criteria over their term of office is a factor in determining whether some or all Members are DBS checked. In some authorities the majority of Councillors undertake an eligible role at some stage in their term of office; those authorities undertake checks on all their Councillors. Other authorities, who operate a more static panel membership restrict the checks to relevant Councillors.

2.9 Councillors are not required to undergo a DBS check by virtue of their role as a Councillor generally and an organisation can only ask for a check where the nature of the role makes it appropriate.

2.10 Any Councillor who undertakes the following roles in East Sussex County Council is eligible for a Standard or Enhanced DBS check:

- Members of the Adoption and Permanence Panels
- Members of the Fostering Panel*
- Members of the Corporate Parenting Panel
- Lead Member for Children and Families
- Lead Member for Education and Inclusion, Special Educational Needs and Disability
- Lead Member for Adult Social Care and Health.

(*DfE Fostering Services: National Minimum Standards guidance document mentions this role specifically in respect of fostering duties.)

GOVERNANCE

2.11 Therefore, it is proposed that Councillors who undertake the roles listed at paragraph 2.10 be required to undertake an Enhanced DBS check. Additionally, it is proposed that any other Councillor whose role is considered by the Monitoring Officer to meet the criteria should also undertake a DBS check.

2.12 It is further proposed that the DBS Policy Statement (Appendix 2) is updated to include reference to elected Members and to incorporate the changes introduced by this report including that Members who continue in a relevant role are required to undertake a new DBS check every 4 years.

2.13 In implementing this policy, the Council must guard against the potential that a DBS check may give false assurances. A DBS certificate is a reflection of data held by the police at a point in time and not a confirmation that a person does not present a risk. All existing risk management procedures will therefore remain in place.

2.14 Where a DBS check results in a positive disclosure (ie. a criminal background or details that may be of concern) the Councillor would be requested to meet with the Chief Executive and Monitoring Officer to discuss the disclosure and its impact on their suitability to undertake certain roles. If the outcome of those discussions is that there should be a restriction in their role, then this would be additionally shared with the Councillor's group leader where relevant.

2.15 The County Council will pay for Member DBS checks that are required. (£44 per Enhanced check).

2.16 The Council has a duty to protect vulnerable people to whom it owes a statutory duty of care. DBS checks could provide a first level of assurance that an individual in a position of trust does not present a direct risk of harm to such individuals.

2.17 The Committee recommends the County Council to:

☆ (1) approve that an Enhanced Disclosure and Barring Service (DBS) check be undertaken for East Sussex County Councillors whose roles are listed at paragraph 2.10 and for any other Councillor whose role is considered by the Monitoring Officer to meet the criteria that qualifies for a check; and

(2) approve that the Council's DBS Policy Statement is updated to include reference to elected Members and to incorporate the policy changes introduced by this report including that Members who continue in a relevant role are required to undertake a new DBS check every 4 years.

3. Proposed discontinuation of the Education Performance Panel, Governors Panel and Music Service Management Committee

Education Performance Panel

3.1 At the meeting of the Education Standards Panel on the 19 November 2013, it was agreed to change the Education Standards Panel and replace it with an Education Performance Panel with a fresh set of terms of reference to act as an advisory panel to the Cabinet with cross party representation to secure improvements at all key stages.

3.2 The purpose of the Education Performance Panel is to promote high standards in East Sussex schools and among other providers so that all children and young people fulfil their educational potential.

GOVERNANCE

3.3 The functions of this Panel are:

- i. To ensure improvement in the attainment and progress of pupils in East Sussex schools and other providers
- ii. To oversee the continued development of the Council Strategy for School Improvement and to monitor its implementation.
- iii. To report and make recommendations as appropriate to the Cabinet and the Children's Services Scrutiny Committee.
- iv. To identify opportunities and challenges for improving school performance arising from legislative and policy changes

3.4 The Panel, which meets three times a year, has received regular performance reports on Ofsted inspection outcomes and educational attainment, and has also received reports on specific issues such as teacher recruitment and retention.

3.5 In addition to this, reports on inspection outcomes and educational attainment are also provided to Cabinet, the Children's Services Scrutiny Committee and the Lead Member for Education and Inclusion, SEN and Disability. Furthermore, the Children's Services Scrutiny Committee, which meets four times a year, has a work programme which has regularly included scrutiny reviews of issues relating to educational attainment and performance. For example, the Committee has appointed Review Boards to undertake reviews of attainment within Early Years, Key Stage 1 and Key Stage 4. Given the direct overlap between the roles of the Children's Services Scrutiny Committee and the Panel, and that effective oversight and scrutiny is already provided by the scrutiny committee, it is proposed that the Education Performance Panel be discontinued. Should this proposal be approved, and at a time when further savings are required, discontinuation of the Panel will also have the benefit of reducing the demands placed on Members and officers.

3.6 The functions of the Panel would be accommodated through the Cabinet, the Children's Services Scrutiny Committee and the Lead Member for Education and Inclusion, Special Educational Needs and Disability meetings. Currently, reports on overall school performance, attainment and progress of pupils, and impact on the Local Authority's school improvement strategy are reported to Members at Cabinet, Children's Services Scrutiny Committee and Lead Member meetings, and this would continue. The Scrutiny Committee would continue to select topics for scrutiny review as part of its work programme. There is senior officer review through the Corporate Management Team and Children's Services Senior Managers' Team. If Members wish to look at a particular education performance issue in depth, consideration could be given to conducting a scrutiny review.

Governors Panel

3.7 In March 2016 the Governor's Panel considered proposed changes to the process for the nomination of Local Authority School Governors. These changes involved discontinuing the Panel and delegating powers to the Director of Children's Services to nominate and remove governors. The Panel resolved to continue with the current arrangements and to keep this under review pending further detail from the department on options for delegating this process to the Director of Children's Services.

3.8 It is proposed that the process for nominating Local Authority School Governors is amended for the following reasons:

- The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 stipulated that, from September 2015, the Local Authority is only required to nominate candidates to school governing boards rather than directly appointing Local Authority Governors. Governing Boards now make appointments and could decide not to accept a

GOVERNANCE

nomination.

- A governing board may only appoint one Local Authority Governor where as previously there could be multiple Local Authority Governors appointed per governing board.
- School re-constitution to meet the regulations combined with the academisation of maintained schools (academies do not need a Local Authority Governor) has seen a 54% fall in the total level of Local Authority governors required across the county. (272 in June 2014 to 125 in August 2017.)
- Currently the Governor Panel meets six times a year. Given the number of applications considered at each Panel meeting has greatly reduced, the current frequency of meetings represents an inefficient use of both Member and officer time. The alternative to this would be to reduce the number of Panel meetings a year. This would result in more efficient meetings as a greater number of nominations could be dealt with. However, as this would cause delays in filling vacancies, this option could negatively impact on the effective operation of Governing Boards. Instead, it is therefore proposed that officers consider nominations. This would mean the small numbers of applications submitted could be dealt with in a more timely and efficient way. In the current climate of recruitment concerns this would be extremely beneficial to be able to act swiftly on an expression of interest.
- Savings are required and there is reduced officer capacity to deliver support to the Panel.

3.9 It is proposed that the Governors Panel be discontinued and that the power to nominate and remove Local Authority Governors be delegated to the Director of Children's Services and that the following delegations be added to the Scheme of Delegation for that post:

3.9.1 to nominate and remove governors to those places allocated to the Local Authority for school governing boards constituted under the Regulations or the Federation Regulations, as appropriate; and

3.9.2 to consider and make decisions relating to the recruitment of governors; the payment of expenses to governors; the training of governors; and any other matters that may be referred to the Director by the Cabinet or the Governance Committee.

3.10 The current process of on-line application, including success criteria and references, will remain unchanged. Members will continue to provide oversight and scrutiny of the process. There will be regular summary reports to the Lead Member concerning vacancies, applications approved for nomination and the take up of training by Local Authority Governors. Scrutiny Members will have access to these reports and will have the ability to scrutinize issues if required.

3.11 The proposed approach will be robust and provide a more flexible, and efficient process which will result in fewer delays for applicants waiting for a decision on their application and will help ensure that Governing Boards do not have vacancies for LA governors for long periods of time. The regular reports to the Lead Member will ensure the process continues to be open to scrutiny and challenge.

Music Service Management Committee

3.12 The County Council is the Trustee for the East Sussex Music Trust which has charitable status. The Music Service Management Committee fulfils the role of trustee on behalf of the County Council.

3.13 The terms of reference for the Music Service Management Committee are as follows:

On behalf of the County Council -

- (a) in consultation with the Director of the East Sussex Music Service, to exercise oversight of the County Music Service including its strategic development, management and finances, and to monitor the level and quality of the service to its clients;
- (b) subject to the County Council's normal financial procedures and the Children's Services Department budget, to draw up and recommend to the Cabinet the budget for Music Services including that element drawn from trust funds; and

GOVERNANCE

(c) to exercise powers and duties of the County Council in its capacity as trustee of the charity known as the East Sussex Music Trust in compliance with the terms of the Trust Deed and Charities Acts.

3.14 Discontinuation of the committee was discussed in 2016 and it was agreed at that time to reduce the number of meetings to two per year. The Committee does not play an active role in the management of the music service and the service is now lead organisation for the East Sussex Music Education Hub, with responsibilities set out by the Department of Education in the National Music Plan, overseen by the Arts Council.

3.15 The Trust Deed, dated 13 May 1999, allows the County Council (as sole Trustee) to delegate to any Committee, Panel or officer of the Council to exercise any of the Trustee's powers.

3.16 The East Sussex Music Service no longer receives funding from the county council, but receives grant income from the Department for Education on behalf of the East Sussex Music Education Hub and income from traded services with parents and schools. Approval of the budget takes place at 3 levels:

- fees and charges are approved annually through the normal county council process and the budget is approved and then monitored on a monthly basis by the Children's Services Department
- the Hub board approves the budget annually
- the budget is then submitted to the Arts Council for approval and a budget monitoring report is submitted quarterly

3.17 In view of the changing role of the Service and the fact that the Music Service Management Committee does not play an active role in the management of the Service, it is proposed that the Music Service Management Committee be discontinued and that the County Council delegate to the Director of Children's Services the functions of the Committee as provided for in the Trust Deed.

3.18 Oversight of the strategic development, management and finances of the Music Service and level and quality of service provided would continue at 3 levels:

- the Head of Service will provide regular reports to the Director of Children's Services and Senior Management Team
- the Hub Board meets on a termly basis to oversee delivery of the core responsibilities as set out by the Department for Education
- the Head of Service meets on a quarterly basis with a representative from the Arts Council

3.19 The support of Members in raising and maintaining the profile of the Music Service is valued and Members would continue to be invited to Music Service concerts and events so that they are aware of achievements and can act as ambassadors for the Service.

3.20 The Music Service Management Committee has acted as trustee of the East Sussex Music Trust (Charity Number 1076180.) In 2003, the Trust sold its freehold premises to facilitate the building of a new purpose built Performing Arts Centre at Sussex Downs College, where the Music Service is now based. Due to the Trust status the service receives Mandatory Charitable Relief of approximately £28,000 pa. If the Trust was removed then the Service would lose the charity relief thus resulting in further financial commitments. In recent years Trust funds have been used to assist students to go on tours with music service ensembles.

3.21 The Committee recommends the County Council to:

GOVERNANCE

- ☆ 1) approve that the Education Performance Panel be discontinued
- 2) delegate the power to nominate and remove Local Authority governors to the Director of Children's Services as set out in paragraph 3.9 and approve that the Governors Panel be discontinued;
- 3) delegate to the Director of Children's Services authority to exercise powers and duties of the County Council in its capacity as trustee of the charity known as the East Sussex Music Trust and approve that the current East Sussex Music Service Management Committee should be discontinued; and
- 4) agree to delegate authority to the Assistant Chief Executive to amend the Constitution accordingly

4. Amendment to Constitution – Scheme of Delegation to Officers

4.1 The County Council's Scheme of Delegation provides the Director of Communities, Economy and Transport with the authority to determine planning applications, which fall to be determined by the County Council, where the proposal is considered to be in accordance with the Development Plan and the relevant and current planning policies. The proviso for this delegated authority is that less than two objections are received on the planning application.

4.2 As currently worded, the aforementioned delegated authority does not apply to applications for Listed Building Consent that are received and are to be determined by the County Council. Such applications will almost solely be for County Council proposals. This means that any application for Listed Building Consent received by the County Council has to be determined by the Planning Committee, even if no objections have been received and that the proposal is Development Plan compliant.

4.3 Historically, the County Council has received and determined very few applications for Listed Building Consent. However, in the past 2 years a number of applications have been received and determined by the County Council and a number of further such applications are considered likely in the near future. The refurbishment of Hastings Library is one example of a County Council development that has led to the need for a number of Listed Building Consents.

4.4 Often the applications received for Listed Building Consent are for relatively minor works, or alterations to the buildings in question. They invariably do not generate objections and/or very little debate when considered by the Planning Committee. All decisions taken on Listed Building Consents, by the County Council's Planning Committee over the past 5 years, have been in accordance with the case officer's recommendation.

4.5 The refurbishment of Hastings Library has demonstrated that the need for Listed Building Consent is often generated while building works are being undertaken, as amendments to an approved scheme may be required. In these cases, there is often a pressing need, from the applicant/developers perspective, for the relevant application to be determined in a timely manner. This accords with the Government's clear expectation that planning decisions are made as quickly as possible.

4.6 Inevitably, decisions taken by the Planning Committee take longer than those determined under delegated authority. Therefore, having the ability to determine certain applications for Listed Building Consent under delegated authority will be seen as a significant benefit to applicants/developers and help meet the Government's expectations around the time it takes to make planning decisions. Having this delegated authority will also ensure that the County Council has a consistent approach to the decision making

GOVERNANCE

process for all planning decisions. The proposed delegation is for planning applications where less than two objections are received. If 2 or more objections are received the matter would be considered by the Planning Committee.

4.7 There will still be occasions when there will be clear benefits and/or a democratic need for the Planning Committee to make a decision on an application for Listed Building Consent. As well as applications that generate objections, there could also be occasions where the decision to be taken is finely balanced and would therefore benefit from being taken by a Committee in a public meeting. Such applications would be referred to the Planning Committee.

4.8 In light of the above, it is proposed to add the following delegation to the scheme of delegation to the Director of Communities, Economy and Transport

“To determine applications for Listed Building consent for alterations, extension or demolition of a Listed Building under the Planning (Listed Buildings and Conservation Areas) Act 1990, where the proposal is considered to be in accordance with the development plan and current planning policies, except where two or more objections have been received within the consultation period.”

4.9 The Committee recommends the County Council:

☆ (1) to agree to agree to amend the Scheme of Delegation to Officers as set out in paragraph 4.8 above

19 September 2017

KEITH GLAZIER
(Chair)