

LONDON BOROUGH OF BRENT

FULL COUNCIL – 17TH NOVEMBER 2003

REPORT FROM THE BOROUGH SOLICITOR

The Members' Allowances Scheme

1.0 SUMMARY

New regulations have recently been issued in respect of members allowances and this report proposes the adoption of a new Members Allowances Scheme in response to the new Regulations and the 3rd report from the ALG Remuneration Panel. The changes recommended to be made to the scheme reflect the new statutory provisions.

2.0 RECOMMENDATIONS

- 2.1 That the existing Members Allowance Scheme be revoked on 30th November 2003 and the new allowances scheme set out in **Appendix 1** be adopted with effect from 1st December 2003.
- 2.2 Members consider whether they feel any further revisions should be made to the scheme
- 2.3 Members agree to seek to fund the 2003/04 costs from within existing resources initially. In addition members are asked to consider a growth bid of £12k for 2004//05 as part of the budget process.

3.0 FINANCIAL IMPLICATIONS

- 3.1 The 2003/04 budget for Members Allowances is £787k, the full year costs of the revised scheme for allowances inclusive of employer's national insurance is £830k. However, there will be savings if any member holds more than one post as only one special responsibility allowances may be claimed by each member. It is expected that a number of posts will fall into this category bringing the full year costs down to £796.6k an additional £9.6k over budget. For December 2003 to March 2004 there will be additional costs of £3.2k.
- 3.2 The co-opted and independent members are a new element in the scheme and will require an additional £2.4k for a full year. If payments are made pro-rata for the financial year 2003/04 the costs will be £0.8k.

- 3.3 Therefore, there is potentially additional expenditure of £4k in 2003/04, but this need not lead to an overspend as Members Allowances are part of the overall Communications and Consultation budget. It is too early to say whether or not this cost can be met from within overall resources. However, under Financial Regulations service areas have a responsibility to ensure spend is kept within budget before seeking additional resources.

4.0 LEGAL IMPLICATIONS

- 4.1 The recently issued Local government (Members' Allowances) (England) Regulations 2003 replace all previous regulations covering allowances at Brent. They are to a significant degree a restatement in one place of existing law but do introduce a number of new provisions, principally concerning the following:
- allowances for co-opted members,
 - local determination of travel and subsistence payments,
 - pensions for councillors,
 - back dating
 - suspending allowances in cases of misconduct
 - index linking
- 4.2 Every local authority must have a scheme providing for payment of a basic allowance of the same amount to every councillor. A scheme may also provide for special responsibility allowances to be paid to councillors for certain types of roles specified in regulations and specified in the scheme. The scheme may also provide for a childcare and dependent carer's allowance, allowances for co-opted (and independent) members, travel allowances and subsistence expenses.
- 4.3 The amount of each special responsibility allowance need not be the same for each identified category of responsibility but can vary depending upon the demands of the particular role, e.g. not all committee chair posts need attract the same allowance.
- 4.4 No ceiling is imposed on the amount of basic or special allowances but they need to be reasonable in the context of the nature of the responsibilities involved.
- 4.5 Allowances schemes can be amended at any time but may normally only be revoked with effect from the start of a financial year. Whether changes amount to a revocation or are just an amendment is a question of fact and degree. There are transitional provisions in the new Regulations, which mean that the current scheme must be revoked and a new scheme introduced on or prior to 30 December 2003. Any allowance in the new scheme may be designated as payable as if the new scheme had been in force from 1st May 2003 although this is not recommended here.

- 4.6 Since 4th May 2001 local authorities have had to have regard to the recommendations of an independent remuneration panel in respect of the allowances payable to their Members when making or amending an allowances scheme. This includes recommendations about the level of basic allowance for all members, the special responsibilities for which special responsibility allowances should be paid and the level of these allowances and recommendations about childcare and dependent carers' allowances. Allowances for co-opted members and pensions for members have now been added to this list by the new Regulations.
- 4.6 A scheme may now provide for the basic and/or special allowances paid to councillors or particular post-holders to be pensionable under the LGPS but only where this has been recommended by the Independent Remuneration Panel. The issue of pensions for councillors is addressed in a separate report.
- 4.7 The Regulations provide for the Association of London Government to establish an independent remuneration panel to make recommendations to London borough councils on their allowances schemes. The Council decided to adopt the ALG Panel as its independent remuneration panel and transitional arrangements in the regulations permit this to remain as the independent panel for Brent.
- 4.8 The independent panel published its second report in August 2001 ("the second ALG report") and the recommendations contained in that report were taken into account by the Council in determining the current allowances scheme. See **Appendix 2** for a summary of that report.
- 4.9 The ALG Remuneration Panel has recently issued its third report (see **Appendix 3**) as a response to the revised regulations.
- 4.10 Any new or amended scheme must be published together with details of the recommendations of the Remuneration Panel and certain other specified information.

5.0 STAFFING IMPLICATIONS

- 5.1 There are no implications for staff arising out of this report.

DETAIL

6.0 Basic Allowances

- 6.1 There are no new provisions specifically about basic allowances in the new regulations or in the ALG report other than in respect of an increase by reference to the Local Government Pay Settlement. The previous report recommended a basic allowance of £8,500 and the latest report recommends this be uprated in line with the LGPS. If the current Brent basic allowance of £7,000 was increased in line with the LGPS the new figure (rounded) for the

basic allowance would be £7,535. Any such uprating could take place now or as at 1st April 2004.

No recommendation is made in this report with regard to the basic allowance

7.0 Special Responsibility Allowances

- 7.1 All the posts in respect of which special responsibility allowances are paid under Brent's scheme are specifically listed in the new Regulations except for the posts of Consultative Forum Chair and Whip. Payment of special responsibility allowances in respect of these roles falls to be considered under a provision in the Regulations that a special responsibility allowance may be paid in respect of "*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*" specifically mentioned in the Regulations.
- 7.2 The new Regulations are worded slightly differently from the old but the only new category of Special Responsibility allowance is "acting as a member of any committee or sub-committee that deals with any function arising under any enactment authorising the authority to license or control the carrying out of any activity". This is probably now specifically mentioned in view of the imminent transfer of liquor licensing responsibilities to local authorities but could also apply to planning committee membership.
- 7.3 The 2nd ALG report took the approach of recommending a single amount for the basic allowance and a single amount in band 4 for the Executive Leader. For other posts recommendations were made in 5 bands. The bands covered a range of figures within which it was recommended the allowances should fall. These bands were set out in the report as figures, but also as percentages of the Leader's total allowances (i.e. Basic Allowance plus Special Responsibility Allowance). For example, the ALG band 3 is set at a level which when taken together with the basic allowance represents 70-80% of the total allowance payable to the leader (SRA plus basic). The approach that was taken in reaching the figures in Brent's current scheme was to reduce the amount of the basic allowance and the Leader's allowance from those proposed in the ALG report and having reduced these, the SRAs for other posts were then determined by reference to (but not necessarily within) similar percentage bands as those recommended by the ALG. Because the starting point was lower than the ALG report i.e. the Brent leaders total allowance is lower than that recommended by the ALG, this meant the bands for all other posts were slightly different and generally lower than in the ALG report. So, for example, the deputy leader post is considered by the ALG to be a band 3 post. This would then be considered as follows:

<i>Brent Leaders allowance</i>	<i>32,000</i>
<i>Plus basic</i>	<i>7,000</i>
<i>Total</i>	<i>39,000</i>
 <i>70-80% of total</i>	 <i>27,300 to 31,200</i>

less basic of 7,000
SRA band 3

20,300 to 24,200

In the event the deputy leader SRA was set at £22,400.

- 7.5 The amount payable for individual posts in the current scheme was assessed on the basis of the particular nature and likely demands of the posts at Brent and how these compared with those described in the 2nd ALG report. See **Appendix 4**.
- 7.6 The 3rd ALG report re affirms the recommendations in its previous report that there should be five different bands of special responsibility allowance, depending on the decision making model adopted by an authority and the duties carried out by different office holders.
- 7.7 The Brent scheme provides that no member shall be paid more than one Special Responsibility allowance. This is not a required provision but it is recommended that this provision be retained in the new scheme.
- 7.8 The ALG report recommended that not more than 50% of members should normally be in receipt of special responsibility allowance. The current scheme gives an allowance to a higher percentage of members than this. The current figure allowing for some individuals currently holding 2 or more posts) is 35 which is 55.5%. The 3rd report repeats the recommendation that no more than 50% of members should receive a special responsibility allowance as the basic allowance should be high enough to cover levels of time that most members commit to their role.
- 7.9 The report also contains a summary of the level of payments under a number of London Borough schemes collated by the IDEA. The figures for Brent in the table are not correct so the accuracy of the other figures cannot be relied upon although they may give a flavour of the payments in place.
- 7.10 There are a number of posts which have been created by the new scrutiny structure which are not reflected in the existing allowances scheme.

It is recommended that these new posts, namely the Chairs of the 5 new scrutiny sub-committees, the Health Overview Panel and the BME User Forum be added to the scheme and that the allowance be paid pro rata for the remainder of the year .

- 7.11 The ALG report recommends that job descriptions for members should be used as a basis for reporting by members on their duties, objectives, activities and successes.

Job descriptions for members will be developed but it is recommended that in any event those members who receive a Special Responsibility Allowance should report at the end of each year on their activities. These reports will be presented to Full Council.

8.0 Quasi judicial bodies

- 8.1 In respect of this new specific category of special responsibility allowance referred to at paragraph 7.2 above the 3rd ALG report does not alter the recommendation in the 2nd ALG report in respect of quasi-judicial bodies. This was that where there is a sufficiently high amount of quasi-judicial work non-executive members should be paid an allowance for being on a panel appropriate to the anticipated level of work. The allowances payable to members on Licensing committee will need to be reviewed once it takes over responsibility for liquor licensing.

The current scheme does not include a SRA for members of committees that deal with these matters and no change is recommended for the time being although the position will be reviewed in the light of forthcoming changes to the licensing regime.

9.0 Co-Opted and Appointed Members

- 9.1 Under the old provisions co-opted and appointed members could only claim for financial loss, e.g. loss of earnings and expenses. Under the new regulations such members, including Independent Members of the Standards Committee, may be eligible for travel and subsistence payments set locally in respect of approved duties in the same way as councillors. Such members can also be paid a “co-optees” allowance, which could include an amount in respect of travel and expenses instead of these being claimed for separately. The co-optees allowance would be an annual allowance, and can vary between categories of co-opted members to reflect the time commitment and responsibility involved by way of meeting and conference attendance.
- 9.3 The 3rd ALG report recommends that statutory co-optees (i.e. education voting co-optees and the independent members of the Standards Committee) should be paid an annual allowance equal to £100 per meeting for the estimated number of meetings in the year of the committee(s) at which they will attend. It recommends that they have a travel allowance for all travel (but not for subsistence) on the same basis as Councillors.

It is recommended that voting co-opted members and independent members on the Standards Committee be entitled to an allowance of £400 per annum based on an amount of £100 per meeting estimated at four meetings per annum. This will be paid pro rata for the remainder of the year.

10.0 Dependants' Carers Allowance

- 10.1 The 2nd ALG report made recommendations in respect of the discretionary childcare and dependent carers allowance. This would operate as an expenses allowance in respect of costs incurred by councillors with the relevant personal responsibilities in order to enable them to attend to specified council duties. This was not adopted in Brent's scheme after the 2nd ALG

report was considered on the basis that past experience did not indicate any significant need for such an allowance at Brent although this was to be kept under review.

The same recommendations appear in the 3rd ALG Report but the position in Brent appears to remain unchanged and therefore no recommendations are made.

11.0 Travelling and Subsistence Allowance

- 11.1 Travel and Subsistence for members used to be governed by separate regulations and to be centrally controlled. Under the new regulations an authority's own scheme may pay locally determined travel and subsistence allowances in connection with duties specified in the scheme falling into categories listed in the regulation. The new ALG report suggest that if travel and subsistence is paid it should be in line with the Scheme for officers and generally not for intra borough travel other than for co-opted members. The report recommends subsistence should not be paid to co-opted members.

Very few claims for reimbursement of travel expenses are made and it is recommended that the travel allowance provisions in the Brent scheme merely be brought into line with the statutory provisions.

12.0 Operation of the scheme

12.1 Index Linking

Where a scheme provides for annual adjustment by reference to an index reliance on the index must be reviewed every 4 years. As with other aspects of the scheme regard must be had to the recommendation of the remuneration panel. The new ALG report recommends linking to the LGPS scheme which effectively means uprating by reference to the annual officer pay settlement. This is what is provided for in Brent's current scheme anyway and it is proposed that this continue in the new scheme.

The only change recommended is to make it clear that the updating provision can only be relied upon for up to 4 years i.e. the statutory requirement.

12.2 Backdating

Amendments to allowances part way through a year may now be backdated to the beginning of the year. The ALG report recommends that schemes should allow for this if the new resolution for the amendment so provides.

It is not recommended to introduce backdating.

12.3 Suspending Allowances

A scheme may now specify that where a member is fully or partially suspended from duties as a member as a result of a complaint under the

Members Code their basic and/or special allowances or other allowances may be withheld during the period of suspension. Allowances payable to co-opted members may also be suspended on those grounds. This may include reclaiming sums already paid for part of the suspension period. The ALG Report recommends that schemes should include provisions to this effect. It is recommended that all allowances be withheld when there is total suspension but the basic allowance continue to be paid where suspension is partial and that any Special Responsibility allowance be suspended to the extent that the duties to which the allowance relates cannot be fulfilled under the terms of the suspension.

It is recommended that in the case of full suspension all allowances are withheld. In the case of partial suspension the SRA is withheld in total with only the basic allowance being payable.

13.0 Civic Responsibility Payment

- 13.1 Civic responsibility payments are made under specific provisions in the 1972 Local Government Act and not under the Legislation and Regulations that cover members allowance. These provisions permit a London Borough Council to pay the Mayor and Deputy Mayor such allowances as the Council think reasonable for the purposes of enabling them to meet the expenses of their office. This is different in nature from a special responsibility allowance which is remuneration for carrying out a particular role. Civic Responsibility payments are not special responsibility allowances and they are not covered by the provision in the Brent allowances scheme that no one should claim more than one special responsibility allowance.

No recommendations are made but members may want to consider whether there is a big enough differential between the payment made to the Mayor and that made to the deputy Mayor having regard to the different duties performed by them.

15.0 BACKGROUND INFORMATION

- The Local Government Pension Scheme and Discretionary Compensation (Local Authority Members in England) Regulations 2003
- The Local Authorities (Members Allowances) (England) Regulations 2003
- The report from the Association of Local Government August 2001
- The report from the Association of Local Government 8th July 2003.
- The Local Government Pension Scheme Regulations 1997

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