



SELECTION AND MEMBER SERVICES COMMITTEE

Friday, 11th May, 2012

1.30 pm

Swale 1, Sessions House, County Hall, Maidstone



KENT COUNTY COUNCIL

SELECTION AND MEMBER SERVICES COMMITTEE

AGENDA

**Friday, 11 May 2012, at 1.30 pm
in the Swale 1, Sessions House,
County Hall, Maidstone**

Ask for: **Andrew Tait**
Telephone: **01622 694342**

Membership (9)

Conservative (7): Mr P J Homewood (Chairman), Mr P B Carter, Mr M C Dance,
Mr A J King, MBE, Mr B J Sweetland, Mr M J Whiting and
Mrs J Whittle

Liberal Democrat (1): Mrs T Dean

Labour (1) Mr G Cowan

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Membership
To note the appointment of Mr M C Dance to the Committee.
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes - 14 March 2012 (Pages 1 - 4)
5. Members' Expenses management action plan (Pages 5 - 14)
6. Transport for Members (Pages 15 - 30)
7. Other Items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services

Wednesday, 2 May 2012

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

SELECTION AND MEMBER SERVICES COMMITTEE

MINUTES of a meeting of the Selection and Member Services Committee held in the Swale 2, Sessions House, County Hall, Maidstone on Wednesday, 14 March 2012.

PRESENT: Mr P J Homewood (Chairman), Mr P B Carter, Mr G Cowan, Mrs T Dean, Mr A J King, MBE, Mr K G Lynes, Mr B J Sweetland, Mr M J Whiting and Mrs J Whittle

IN ATTENDANCE: Mr G Wild (Director of Governance and Law), Ms N Major (Head of Internal Audit), Mr P Sass (Head of Democratic Services), Mr P D Wickenden (Democratic Services Transition Manager) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Minutes

(Item 3)

RESOLVED that the Minutes of the meetings held on 18 November 2011 and 1 December 2011 are correctly recorded and that they be signed by the Chairman.

2. Report by Kent Audit on Members' Expenses

(Item 4)

(1) The Committee agreed to the Leader of the Council's suggestion that a special meeting of the Committee should be arranged in April 2012 in order that the issue of Members' expenses (including County Cars and the External Auditor's reports on the objection to the accounts in 2010/11) could be considered in its entirety. It was noted by the Committee, however, that based on the findings of the Internal Audit review, substantial assurance had been given that the current system for review, approval and monitoring of Members' Expenses and related expenditure was adequate to ensure that all payments made were accurate and bona fide.

(2) The Head of Internal Audit responded to questions from Members of the Committee and offered to write separately on those which remained outstanding.

(3) RESOLVED that:-

(a) the report from Kent Audit be noted; and

(b) consideration of its recommended actions be postponed pending a separate meeting of the Committee in April 2012, in order that the issue of Members' expenses can be considered in its entirety.

3. New Governance Arrangements for Kent County Council

(Item 5)

(1) A report by the Leader of the Council and the Director of Governance and Law had been circulated to all Members of the Committee shortly before the meeting.

(2) The Committee agreed that the report was too voluminous for it to be given full and mature consideration. The Leader of the Council therefore offered the Leaders of the two Opposition Groups (and any other Member) the facility to give their detailed views for consideration by Cabinet prior to publication of the County Council agenda on Tuesday, 20 March 2012. The Committee also requested that the Appendix containing the proposed changes to the Constitution should show exactly where those changes had been made, i.e. text inserted and deleted.

(3) RESOLVED that receipt of the report be noted and that the Leaders of the Opposition Groups be offered the facility to give their detailed views for consideration by Cabinet prior to publication of the County Council agenda on Tuesday, 20 March 2012.

4. Use of County Cars by Members

(Item 6)

(1) In response to a question from the Leader of the Opposition, the Head of Democratic Services informed the Committee that there was a system for the calculation of reimbursement for the occasional private use of County Cars by the Leader of the Council and he agreed to provide her with its details.

(2) The Committee agreed that the report on Members' expenses to the special meeting in April 2012 would contain a detailed proposal for the calculation of the reimbursement for the occasional private use of County Cars by Members.

(3) RESOLVED that:-

(a) the current position be noted; and

(b) the report on Members' expenses to the special meeting in April 2012 will include a detailed proposal for the calculation of the reimbursement for the occasional private use of County Cars by Members.

5. Use of Social Media: Streaming of Questions into Committees

(Item 7)

(1) The Committee agreed to request the Head of Democratic Services to report to the special meeting of the Committee in April 2012 on potential technological methods for interacting with the people of Kent. This should include consideration of Mr Lynes' suggestion of trialing the technology during local Democracy Week in the Autumn of 2012.

(2) RESOLVED that:-

(a) the current position be noted; and

- (b) the Head of Democratic Services be requested to report to the April 2012 meeting of the Committee on potential technological methods for interacting with the people of Kent through the democratic process.

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By: Peter Homewood, Chairman, Selection & Member Services
Committee
Geoff Wild, Director of Governance and Law

To: Selection and Member Services Committee – 11 May 2012

Subject: Members' Expenses management action plan

Classification: Unrestricted

Summary This report invites the Committee to consider the review undertaken by Kent Audit of Members' Expenses, together with the recent review of similar matters by the external auditor and seeks the Committee's views on and endorsement of the management action plan.

1. Background

1.1 As an addition to the original Annual Audit Plan for 2011/12, it was agreed that an audit of Members' Expenses and other expenditure incurred on behalf of Members, for example the use of County Cars, would be undertaken to ensure the system was robust. The overall objective of the audit was to provide assurance that the current system for review, approval and monitoring of Members' Expenses and related expenditure was adequate to ensure all payments made are accurate and bona fide.

1.2 Based on their findings, Kent Audit has confirmed that it is able to give **substantial** assurance that the current system is adequate to ensure that all payments made are accurate and bona fide. However, a number of management recommendations have been made.

1.3 Overlapping this review by Kent Audit, the external auditor dealt with a formal objection to the Council's accounts for the year ended 31 March 2011 relating to the payment of Members travelling expenses and other associated travelling costs. The objector asked the District Auditor to issue a public interest report. In summary, the Audit Commission did not find any evidence of fraud or deliberate abuse by any Member, nor evidence of deliberate circumvention of the Council's policies for personal gain. The external auditor did not issue a public interest report.

1.4 The report did highlight, however, some weaknesses in the Council's arrangements for Members' allowances and expenses, including the operation of the County Car Scheme. The report confirmed, however, that the Council had already responded quickly to the issues identified.

1.5 It was the decision of this Committee at its meeting on 14 March 2012 to defer consideration of the recommended actions pending the meeting today, which enables the Committee to look at the issue of Members' expenses in their entirety. The recommendations from both the Kent Audit Review and the Audit Commission review have been combined into a single management action plan

(see **Appendices 1 and 2**) and the Committee is invited to comment upon and endorse the recommendations in the plan.

2. Recommendations

The Committee is invited to comment upon and endorse the management action plan on Members' Expenses and travelling costs.

Contact Details:

Peter Sass
Head of Democratic Services
peter.sass@kent.gov.uk
(01622) 694002

Background Papers:

Kent Audit Review of Members' Expenses – 2012

Audit Commission report on Members' Expenses and other travelling costs

KENT AUDIT

Appendix 1 Management Action Plan

Finding	Recommendation	Priority (H/M/L)	Management Response	Accountable Officer	Implementation Date
1. Guidance, Information and Support					
The Members' Handbook does not correspond with the latest version of the Council's Constitution. Specifically those areas that are incorrect are, the allowance payable for mileage expenses, the time limit under which claims for expenses can be made, members allowances and the contact details for any queries that a Member may have when completing their expense claims.	The Members Handbook should be updated to reflect Appendix 7 of the Council's Constitution.	L	This recommendation is accepted in full.	Peter Sass – Head of Democratic Services	By the end of March 2012
2. Guidance, Information and Support					
Neither the Constitution nor the Members' Handbook makes reference to the requirement for VAT petrol receipts to be submitted with mileage claims.	The Constitution and Members' Handbook should be updated to reflect the requirement for mileage claims to be supported with VAT petrol receipts for the months claimed.	L	This recommendation is accepted in full.	Peter Sass – Head of Democratic Services	By the end of March 2012
On testing of expense claims, for both manual and self service submissions, not all Members had submitted petrol receipts, and in some cases on self service, had indicated receipts were available, but had still not submitted them.	A memo should be issued to Members with effect from 1st April 2012 that the receipt indicator should only be ticked on self service when they have a valid VAT petrol receipt which would cover the journeys claimed for.	L	This recommendation is accepted in full.	Peter Sass – Head of Democratic Services	By the end of March 2012
3. Guidance, Information and Support					
Testing of expense claims identified that not all Members make use of	Consideration should be given to requesting Members to use	L	This recommendation	Peter Sass – Head of	By the end of March 2012

KENT AUDIT

Appendix 1 Management Action Plan

Finding	Recommendation	Priority (H/M/L)	Management Response	Accountable Officer	Implementation Date
<p>electronic diaries. In addition to this not all councillors provide view only access to their outlook calendars, therefore making reconciliation of the Members' whereabouts to their expenses difficult for officers.</p>	<p>electronic diaries and allowing access to officers on the Members Desk. This would enable the organisation to utilise automated processes, including the Modern Gov system expenses module which allows expense claims to be created automatically from diary entries. This could be useful if a decision is made to implement this module to streamline the process and improve efficiency. It would also assist the Members' Service desk with sample checking of expense claims.</p>		<p>will be discussed with Members.</p>	<p>Democratic Services</p>	
4. Guidance, Information and Support					
<p>A review of the officers guidance, highlighted that it states that claims should only be paid if less than three months old. The guidance should also state that the spot checking should be rotated to ensure that each Member has a claim checked in detail at least once per financial year. Interviews with the Members' Desk officers also confirmed that a paper based system was in place to monitor which Members had been spot</p>	<p>The officers' guidance notes should be updated to reflect the Council's Constitution and legislation, and to reflect the changes in the spot checking process. Monitoring of which Members claims have been spot checked should be held electronically, in an area that can be access by all those officers likely to complete the testing going forward.</p>	<p>L</p>	<p>The recommendation in respect of updating the guidance notes is accepted in full.</p> <p>The process for spot-checking Members' claims will be discussed with Members.</p>	<p>Peter Sass – Head of Democratic Services</p>	<p>By the end of March 2012</p>

KENT AUDIT

Appendix 1 Management Action Plan

Finding	Recommendation	Priority (H/M/L)	Management Response	Accountable Officer	Implementation Date
checked so far that year (the process had only been in place since October 2011) unfortunately, the paperwork had been mislaid and they were unable to evidence which claims had been checked.					
5. Review and Approval					
Of the 67 manual claims in the sample, the majority were reviewed, however not all were signed approved for payment by the Head of Department.	The Head of Department should sign off all manual claims until the self service function is mandatory.	M	This recommendation is accepted in full.	Peter Sass – Head of Democratic Services	By the end of March 2012
6. Review and Approval					
For the sample of claims tested, there was insufficient detail to assist approvers in determining whether claims were appropriate.	More detail should be provided for the purpose of the journey, and post codes should always be provided, particularly when claims are not for journeys to county hall.	M	It is accepted that Members should always provide sufficient detail on their claim forms to enable them to be checked and authorised and Members will be reminded to do so.	Peter Sass – Head of Democratic Services	By the end of March 2012
7. Review and Approval					
Testing undertaken of mileage claims highlighted small inconsistencies (under and over) in the number of miles claimed compared to AA route planner (allowing for a margin of 10% either way).	Member Services Desk officers responsible for reviewing expense claims should check distances claimed ensuring consistency by using the same route planner. 10% allowance should be given to allow for variances in routes taken. The route planner used should be	M	This recommendation is accepted.	Peter Sass – Head of Democratic Services	By the end of March 2012

KENT AUDIT

Appendix 1 Management Action Plan

Finding	Recommendation	Priority (H/M/L)	Management Response	Accountable Officer	Implementation Date
	communicated to Members to ensure that they are fully aware of the methods used to validate their claims.				
8. Review and Approval					
Testing highlighted a small number of instances for journeys undertaken to represent the Council at outside bodies. It is our understanding that these expenses may be claimed from the outside body where there are resources available to do so. For example where a Member is a school governor the school may have a policy to pay expenses.	Members appointed to outside bodies to represent the Council should claim expenses directly with that body where there is a provision to do so. Member guidance should be updated to reflect this recommendation.	M	This recommendation is accepted.	Peter Sass	By the end of March 2012
9. Review and Approval					
Testing of all Members' expense claims paid between April 2011 and November 2011 identified 28 instances where claims had been paid that were beyond the four month limit.	No claims should be paid if the date of the expense incurred is outside the agreed time scale in accordance with Regulation 14 of the Local Authorities (Members' Allowances) (England) Regulations 2003 and in line with the Councils' Constitution.	M	This recommendation is accepted.	Peter Sass – Head of Democratic Services	By the end of March 2012
10. Review and Approval					
At the time of the audit in January 2012, officers in the Member Service Desk were spot checking claims that had already been processed and paid for November	Expenses should not be processed until they have been through the spot checking process. Claims should be reviewed with sufficient time to	M	This recommendation is accepted, although it is suggested that the detailed spot checking of claim forms should	Peter Sass – Head of Democratic Services	By the end of March 2012

KENT AUDIT

Appendix 1 Management Action Plan

Finding	Recommendation	Priority (H/M/L)	Management Response	Accountable Officer	Implementation Date
2011. The officer responsible advised that due to resourcing issues the claims were often difficult to verify prior to payment.	verify and still enable the expense payment to be processed by the cut off date as indicated on KNet.		involve a different, randomly selected 10 % sample of all claims submitted each month.		
11. Monitoring and Reporting					
Currently Members expenses are published yearly, breaking down types of expenses and allowances claimed. Senior officers' expenses are published more frequently.	Consideration should be given to publishing details of Members' expenses more frequently to provide greater transparency.	L	This will be discussed with Members.	Peter Sass – Head of Democratic Services	By the end of March 2012
12. District Auditor's Findings & Recommendations					
<p><u>County Cars Policy</u></p> <p>The District Auditor published his detailed findings on this issue in a report to Governance and Audit Committee on 18th April 2012. He confirmed on rare occasions following completion of County business a Member had used a Council Car for minor diversions in connection with his private business.</p> <p>The District Auditor also confirmed there was no evidence of fraud or deliberate misuse by any Member and had seen no evidence of deliberate circumvention of the Council's policies for personal gain.</p>	Review the County Cars policy to consider and clarify 'private use' and journeys from 'home to County Hall' taking into account advice from HMRC.	H	<ol style="list-style-type: none"> 1. This recommendation is accepted. 2. The Council has suspended use of county cars for private purposes. 3. Processes for booking and recording use of county cars have been improved. 4. Advice is awaited from HMRC such that the review can be completed and reported to Members. 	Geoff Wild – Director of Governance and Law	Immediately on receipt of HMRC advice

KENT AUDIT

Appendix 1
Management Action Plan

Finding	Recommendation	Priority (H/M/L)	Management Response	Accountable Officer	Implementation Date
13. District Auditor's Findings & Recommendations					
<p><u>Publishing of County Cars costs</u> The Council's usual practice has been to publish the total costs of payments to Members without reference to the costs of the County Cars. That is the basis of the figure currently shown on its website and in its annual Statement of Accounts. The District Auditor published his detailed findings on this issue in a report to Governance and Audit Committee on 18th April 2012.</p>	<p>Consider including the cost of the County Cars within the total costs of Member allowances published on the Council website and within its annual statement of accounts.</p>	<p>M</p>	<p>The cost/benefit of this recommendation will be carefully considered before a final decision is reached.</p>	<p>Andy Wood – Corporate Director of Finance and Procurement</p>	<p>30 April 2012</p>

Assurance Level	Definition
Full	The controls evaluated are well designed, appropriate in scope and applied consistently and effectively. Any issues identified are minor in nature and should not prevent objectives being achieved.
Substantial	The controls evaluated are generally well designed, appropriate in scope and applied consistently and effectively, but weaknesses have been identified that require management attention. These issues increase the possibility that objectives may not be achieved.
Limited	Some controls evaluated are generally well designed, appropriate in scope and applied consistently and effectively. However, issues of poor design, gaps in coverage or inconsistent or ineffective implementation have been identified that require immediate management attention. The issues identified, if unresolved, mean that objectives may not be achieved.
No Assurance	Expected controls are absent, or where evaluated are flawed in design, scope or application. The auditor is unable to form a view as to whether objectives will be achieved.

OR:

Opinion	Definition
Compliant	The area assessed meets all the requirements of the legislation, regulation, policy or other guiding documentation.
Not compliant	For the area assessed there are requirements of the legislation, regulation, policy or other guiding documentation that have not been met.*

Priority Rating		Definition
● ● ●	High	<p>Immediate management action is required to remedy a serious failure of internal control that has led, or may lead, to one or more of the following:</p> <ul style="list-style-type: none"> • Substantial loss of resources. • Serious failure to comply with legislation and/or Council Policy. • Significant reputational damage for the Council, involving national media. • Significant adverse regulatory impact, such as a national report, intervention or suspension of services.
● ●	Medium	<p>Timely management action is required to remedy weaknesses in internal control that could lead to one or more of the following:</p> <ul style="list-style-type: none"> • Loss of resources. • Failure to comply with some aspects of legislation and/or Council Policy. • Reputational damage for the Council, involving local or regional media • Adverse regulatory impact, such as loss of external ratings or negative local report.
●	Low	<p>Management action is suggested to improve the quality and/or efficiency of the control environment of the Council.</p>

By: Peter Homewood, Chairman of the Selection and Member Services Committee
 Geoff Wild, Director of Governance and Law

To: Selection and Member Services Committee – 11 May 2012

Subject: Transport for Members

Summary: This report invites the Committee to review its policy on the use of the County Car fleet. In addition, the report invites the Committee to determine the most appropriate route and timetable for financing the replacement of the existing car fleet when the existing cars will be at the end of their useful life (2015 at the earliest).

Background

(1) The County Council has operated a minimal fleet of cars for use by Members and senior officers since the 1960s. The service is available to all 84 Members but is primarily for the civic duties of the Chairman and Vice Chairman of the Council and the work of the Leader, Deputy Leader and other Cabinet Members. Over the years, the Council has used different methods of procurement for its vehicles, i.e. by both lease and direct purchase, and has sought to reduce the cost of the service down to the absolute minimum. Continuing efforts are being made to reduce costs wherever possible and to make best use of what is an invaluable and value-for-money service.

(2) At its meeting on 13 July 2011, this Committee endorsed the principle of providing a car service on the grounds that it is an efficient means of travel, and in many cases cheaper than public transport and taxis, given the demands on Members' and senior officers' time. It is particularly efficient and effective given the size of the County Council's area, the ability for senior Members and Officers to undertake official work whilst travelling, (rather than driving themselves) and the value for money achieved when two or three individuals travel together to meetings, as is often the case. The service is also available for any Member who may be temporarily incapacitated and cannot use their own car, perhaps as a result of hospital treatment. The annual mileage for all four cars in 2010/11 was 64,692. Assuming a 10% reduction in this figure to reflect the amount of time the cars had no passengers, the cost of the journeys in Members' expense claims alone would be in the region of £26,000, which represents a significant proportion of the total cost of running the service

(3) The total cost of providing the County Car service in 2010/11 was as follows:

Vehicle repairs and maintenance	£7,063
Fuel	£9,222
Congestion Charges	£833
Drivers' costs	£34,057
Administrative costs	£13,823
Total	£64,998

NB Should Members use their own vehicles £26,000 of this cost would be paid out through members travel claims plus potential car parking costs, congestion charges etc.

Policies on using the cars

(4) The Council's policy in relation to County Cars has been most recently reviewed in 1997, 2002 and 2005 (see **Appendix 1**).

(5) The policy agreed in July 2005, which was reaffirmed by this Committee in July 2011, was as follows:

- (i) Members wishing to use the cars whilst undertaking official duties may do so in accordance with the policy adopted by Selection Committee on 22 July 2005. This specifies that any requests from Members and the Chief Executive for use of a car to assist them in carrying out their official duties will be acceded to. When making such a request, the purpose of the journey must be specified and a record of this is retained.*
- (ii) Optimum use of all the fleet vehicles will be made on a daily basis, using a number of sessional drivers, based on a common-sense assessment of the relative importance of each journey. This supersedes the previous policy dated April 2002, which was based on priority users.*
- (iii) If no fleet car is available, Members are asked to use their own car or train/bus wherever possible. If a Member does not have his/her own car available or easy access to train/bus services, taxis may be used to travel to the nearest appropriate railway station or bus stop. Taxis should not be used for the entire journey if train or bus can be used for a significant part of it. Subject to these guidelines, the Member Services Unit can book taxis for Members, but Members are responsible for paying the fare direct to the driver. Reimbursement of car expenses, train, bus and taxi fares should be claimed in the normal way at the end of each month.*
- (iv) Cars may be made available for high status VIP visitors when it appears to the Chief Executive* that it would be in the interests of the County Council to do so. Costs will normally be re-charged to the appropriate Directorate.*

(6) At its meeting on 13 July 2011, this Committee made the following decisions:

- (a) the principle of providing a car service be agreed on the grounds that it is an efficient means of travel, given the demands on Members' and Chief Officers' time;*
- (b) the service should continue to be made available for any Member who may be temporarily incapacitated or who does not drive;*
- (c) the Head of Democratic Services be requested to submit a report to the Committee on an annual basis, showing the costs incurred by Members using the County car service and taxis;*

- (d) *the variable costs of the service be reduced by at least 10% by the end of March 2013; and*
- (e) *the Deputy Leader be asked to report further to the Committee outlining options for the creation of a Sinking Fund to enable the purchase of new cars in 2015 and on the recharge costs whenever a county car is diverted for personal business.*

(7) In addition to options for financing the replacement of the cars in 2015 at the very earliest, which is dealt with later in this report, further investigations since the July 2011 meeting have revealed a number of other issues that could affect both Kent County Council and its Members, such that a review of the existing policy by Members is now necessary.

Home to County Hall journeys

(8) The 2005 policy superseded previous policies from 1997 and 2002. The previous policies are attached at **Appendix 1**. In relation to home to County Hall journeys, both the previous policies contained the following wording:

“Members are requested not to use chauffeur-driven cars for normal home to County Hall journeys except in special circumstances (e.g. illness, non-availability of own car or public transport facilities)”

(9) For some reason, this was omitted from the 2005 and 2011 versions of the policy and the Committee is asked to consider whether the wording used in 1997 and 2002 should be re-inserted into the policy, or whether home to office transport for Members should be expressly permitted and, if so, in what circumstances. The Committee will be aware, for instance, that it is custom and practice for the Chairman of the County Council to be driven to and from their home to County Hall each day for meetings and formal engagements, yet there is no (and never has been any) specific provision for this in the Council’s policy. In addition, there are occasions where a Member will travel home directly from an official engagement late in the evening, leaving their own car at County Hall. In these circumstances, the Committee is asked to consider whether the use of a County Car for home to County Hall journeys on the following day should be provided for within the policy.

Supporting the Chairman/Vice Chairman of the Council or Leaders Duties

(10) In addition to considering the use of the County Cars for home to County Hall travel for the Chairman, the Committee is asked to consider whether it would be appropriate for a County Car to be used on occasions if the Chairman’s spouse/partner or other guest needed to be collected or taken home in connection with a specific event during the day, where they are unable to travel with the Chairman. This can be the case where the Chairman has more than one official engagement on a particular day and is travelling from one to another directly; not all of the Chairman’s official engagements require their spouse/partner to be present. This is on occasions also the situation for the Vice Chairman and the Leader of the Council

Use of taxis by Members

(11) The Members' Allowances Scheme allows Members to use a taxi for official journeys "if the use of public transport or the Member's own car is impracticable", and then only if the Member concerned pays for the taxi fare themselves and claims it back via the expenses system.

(12) In addition, as set out in paragraph (5), above, the current County Car protocol provides that:

"...Subject to these guidelines, the Member Services Unit can book taxis for Members, but Members are responsible for paying the fare direct to the driver. Reimbursement of car expenses, train, bus and taxi fares should be claimed in the normal way at the end of each month."

(13) These suggest that the use of taxis by Members should be the exception rather than the rule and should not be provided or paid for in advance on Members' behalf by the Council, both of which happen in practise at the moment. It is, however, the case, that taxi fares can often be up to 25% cheaper if booked directly from County Hall rather than by individual Members and it is recommended that the policy should be worded in such a way to allow the direct booking of taxis in order to achieve the best value for KCC.

(14) The Committee is recommended to agree:

- (a) what the Council's policy should be on the use by Members of taxis;
- (b) whether or not there should be an expectation of exceptional use of taxis by Members; and
- (c) whether or not all taxi fares should be paid by the Member concerned and claimed back via the expenses system on the production of a valid receipt, or whether it should also be possible for the Council to book and pay for taxis on behalf of Members.

Private use of County Cars

(15) On a number of occasions in the last three years, one Member of the Council has used a County Car to attend to private business en route to an official KCC meeting or involving a short diversion. Members will be aware that this matter has been investigated thoroughly by the Council's external auditor, who has confirmed that there has been no deliberate wrong-doing by the Member concerned and the cost of all private journeys/diversions has been reimbursed to the Council to the satisfaction of the Section 151 Officer.

(16) The Council's external tax advisers (RSM Tenon) have warned that anything more than incidental use of a County Car by any one Member for private purposes could create a taxable benefit for all users of the cars. The external tax advisers have confirmed that it would be difficult to justify that any private uses of the County Cars are merely incidental journeys in relation to the tax rules on pooled cars. In addition, any private use of a KCC car can be very difficult to justify to the public, irrespective of any subsequent reimbursement of the costs of the private element of the journey. As mentioned in paragraph (5) above, the current protocol provides that "Members wishing to use the cars *whilst undertaking official duties* may do so in accordance

with the policy". Accordingly, the Committee's views are sought on whether there should be an explicit restriction on the use of County Cars for anything other than official business or whether very occasional incidental private use of the County Cars is acceptable in circumstances where the Member concerned would be otherwise prevented from performing their official KCC duties effectively without such a facility. If the Committee supports the inclusion in the policy for the very occasional and incidental private use of County Cars, the Section 151 Officer will provide an appropriate formula for the future.

Formal advice from the Council's external tax advisors

(17) In reviewing its policy on Member transport, the Committee should note the questions that the Council has raised with its external tax advisors, as follows:

- (i) The interpretation of HMRC guidance in relation to the taxation of home to office travel allowances. In particular, how narrowly and prescriptively the provision of paragraph 115 of the HMRC guidance (see **Appendix 2**) should be applied to determine whether or not a Member's home can be considered to be a place of work for tax purposes. This should be seen in the context of the very varied practise nationally and the lack of relevance the definition has with the workload of a modern-day councillor;
- (ii) How the provision by the Council to Members of home to office transport, either by County Car or taxi should be regarded for tax purposes;
- (iii) How the use by Members of County cars for private journeys should be regarded for tax purposes, bearing in mind the strict rules applying to pooled cars, dealt with specifically in sections 167 and 168 of the Income Tax (Earnings and Pensions) Act 2003, which mean that private use of a pooled car is only permitted if five separate conditions are met, including that the private journey is merely incidental to the official use of the car; and
- (iv) Whether and how any arrears of tax would be expected to be recovered. In particular, whether the County Council would be expected or able to pay for Members' arrears of tax, and/or whether any personal payments of arrears by Members could be spread over time.

(18) The Section 151 Officer has been liaising with the Council's tax advisors in relation to these issues and the latest response is attached at **Appendix 3**.

Replacement of the existing cars

(19) As reported to the Committee in July 2011, the council's existing fleet comprises three 6-year old Volvo S80s and a 14-year old Volvo Estate. An analysis has been undertaken, which shows that, on average, the cars are used for approximately 44% of the time between 6.00am and midnight each working day. The three S80s were originally leased to the Council over a four-year period but were purchased by the County Council at the end of the lease period in 2009 at a total cost of £20,620. The Volvo Estate is currently worth only a few hundred pounds. There are no plans to renew any of the fleet until at least 2015, despite the fact that the mileage on each of the four cars exceeds 100,000, as the Council expects each of its cars to do a

minimum of 250,000 miles before being replaced. It may well be that not all four cars are replaced, depending on their use.

(20) In relation to their eventual replacement, it is recommended that direct purchase is ruled out on the grounds of cost; therefore the creation of a sinking fund is not recommended. It is proposed, instead, that at the appropriate time, new leases are entered into for the provision of new vehicles. The Committee is advised that, with effect from 2012/13, the sum of £15,000 per year has been allocated to a repairs and renewals fund for Member transportation costs.

(21) The Committee will also be aware that the County Council has agreed a 15% reduction in the cost of operating the Member car fleet (£10,000) from 2012/13 as part of its Medium Term Plan for 2012/15 and those savings will need to be taken into account when determining the future strategy for Member transportation.

Recommendations

(22) The Committee is recommended that:

- (i) Travel by taxi or County Car between a Member's home and County Hall should be regarded as an exception to normal travelling arrangements for all Members and only authorised in the following specific circumstances:
 - a. To drive the Chairman of the County Council or their spouse/partner or other guest from home and back for the purposes of attending any formal meetings or engagements that the Chairman is required to attend on behalf of Kent County Council as part of their official duties;
 - b. Where a Member is ill or incapacitated; and
 - c. On limited occasions where, on a short-term basis, the Member's own vehicle or normal mode of travel is unavailable for any reason, including the non-availability of public transport;
- (ii) All taxi fares for official journeys should be paid by the Member concerned and claimed back via the expenses system on the production of a valid receipt except where the County Council is able to secure a cheaper alternative by booking direct;
- (iii) Occasional and incidental private use of the County Cars be permitted in order to support the effective undertaking of official duties by Members based on a formula to be provided by the Section 151 Officer;
- (iv) The renewal of the existing cars at the appropriate time (2015 at the earliest) by way of leasing an appropriate number of vehicles depending on usage, as described in paragraph 23 above; and
- (v) The County Council works through the Local Government Association to resolve the outstanding issues with HRMC

Peter Sass
Head of Democratic Services
01622 694002
peter.sass@kent.gov.uk

COUNTY CAR POLICIES FROM 1997, 2002 and 2005

Appendix C1
1997

Use of Members' Car Fleet Guidelines

1. Chauffeur-driven cars are primarily provided for use by the Chairman and Vice Chairman of the County Council, Committee Co-Chairman and the Leader of the opposition group when on official business (i.e. approved duty) but, when not required for this purpose, are available for use by other Member in the following circumstances:

- (a) to attend an approved duty (as specified in the Members' Handbook), although Members are requested not to use chauffeur-driven cars for normal home to County Hall journeys except in special circumstances (e.g. illness, non availability of own car or public transport facilities); and
- (b) where it would be inappropriate for a Member to use their own or public transport; and
- (c) during normal working hours.

2. Outside normal working hours, and during the day if no Members' car is available, Members are asked to use their own car or train/bus wherever possible. If a Member does not have his/her own car available or easy access to train/bus services, taxis may be used to travel to the nearest appropriate railway or bus stop. Taxis should not be used for the entire journey if train or bus can be used for a significant part of it. Subject to these guidelines, the Member Services Unit can book taxis for Members, but Members are responsible for paying the fare direct to the driver. Reimbursement of car expenses, train, bus and taxi fares should be claimed in the normal way at the end of each month.

3. Exceptions to the guidelines set out above require the approval of the three Group Leaders.

4. Bookings of chauffeur-driven cars should be made with Terry Barton, the Chauffeur Administrator (01622 694440). In order that the most efficient use can be made of the car fleet, when making a booking all Members are asked to:

- (a) give the purpose of their journey as well as details of date, times and destination;
- (b) not specify a particular car or chauffeur;
- (c) be flexible about collection/drop-off times, wherever possible; and
- (d) be willing to share a car with another Member travelling in the same direction.

Policy on Use of Members' Cars and Chauffeurs

1. Primary use if for Members on approved duty in accordance with the guidelines agreed by the Selection Sub-Committee.
2. The Chief Executive is entitled to use one of the chauffeurs for journeys on official business.
3. Cars/chauffeurs can be made available for high-status VIP visitors when it appears to the Chief Executive that it would be in the interest of the County Council to do so. Cost will normally be re-charged to the appropriate department.
4. Cars/chauffeurs can be made available to Chief Officers in the following circumstances:
 - (a) for official functions where the Chief Executive agrees that it is appropriate for chauffeur-driven transport to be provided;
 - (b) when the cars/chauffeurs are not required for a higher/priority use; and
 - (c) the department concerned to bear the full cost of the transport provisions.
5. The priority order for use of cars/chauffeurs is Chairman, Vice-Chairman (when acting on behalf of the Chairman), Labour and Liberal Democrat Group Leaders, Chief Executive, Committee Co-Chairmen, Conservative Group Leader, other Members in accordance with the agreed guidelines, others.

Agreed June 1993

Updated October 1995

2002 Policy

Use of Members' Car Fleet

Guidelines for Members

1. Chauffeur-driven cars are primarily provided for use on official business by the most senior Members of the County Council in accordance with an agreed order of priority. However, when not required for this purpose, cars are available for use by other Members in the following circumstances.

- (d) For a journey on official business, although Members are requested not to use chauffeur-driven cars for normal home to County Hall journeys except in special circumstances (e.g. illness, non-availability of own car or public transport facilities); and
- (e) where it would be inappropriate for a Member to use their own or public transport; and
- (f) during normal working hours.

5. Outside normal working hours, and during the day if no Members' car is available, Members are asked to use their own car or train/bus wherever possible. If a Member does not have his/her own car available or easy access to train/bus services, taxis may be used to travel to the nearest appropriate railway station or bus stop. Taxis should not be used for the entire journey if train or bus can be used for a significant part of it. Subject to these guidelines, the Committee and Member Services Unit can book taxis for Members, but Members are responsible for paying the fare direct to the driver. Reimbursement of car expenses, train, bus and taxi fares should be claimed in the normal way at the end of each month.

6. Exceptions to the guidelines set out above require the approval of the three Group Leaders.

7. Bookings of chauffeur-driven cars should be made with Grigorios Vrakopoulos, the Chauffeur Administrator (01622 694440). It is essential that bookings should be made as early as possible in advance of the date a vehicle is required. In order that the most efficient use can be made of the car fleet, when making a booking all Members are asked to:

- (e) give the purpose of their journey as well as details of date, times and destination;
- (f) not specify a particular car or chauffeur;
- (g) be flexible about collection/drop-off times, wherever possible; and
- (h) be willing to share a car with another Member travelling in the same direction.

Policy on Use of Members' Car Fleet

Chauffeur-driven cars are provided for use on official business by Members and Officers in accordance with the following order of priority:

1. Council Chairman (or Vice-Chairman when acting on behalf of the Chairman)
2. Leader of Council (or Deputy Leader when acting on behalf of the Leader)
3. Leader of the Opposition (or Deputy Leader of the Opposition when acting on behalf of the Leader)
4. Cabinet Members
5. Leader of other opposition group(s)
6. Labour Spokesmen (Shadow Cabinet Members)
7. Chairmen of Ordinary and Policy Overview Committees
8. Liberal Democrat Spokesmen
9. Other Members

(Guidelines on use by other Members are set out in the attached Annex)

10. Chief Executive
11. Other Officers in the following circumstances:
 - (a) for official functions where the Chief Executive agrees that it is appropriate for chauffeur-driven transport to be provided;
 - (b) when the cars/chauffeurs are not required for a higher priority use; and
 - (c) the directorate concerned to bear the full cost of the transport provision.

NB. Cars/chauffeurs can be made available for high-status VIP visitors when it appears to the Chief Executive that it would be in the interest of the County Council to do so. Cost will normally be re-charged to the appropriate department.

2005 Policy

Protocol Governing Reimbursement of Non-Routine Member Expenses and Use of Car Fleet

Member Expenses

1. Following the adoption of the new Allowances Scheme at the Annual Meeting of the Council on 26 May 2005, Members receive a basic allowance of £12k p.a. This builds on the decision of the Council on 19 July 2001 that the basic allowance “should be set ... in recognition of expenses needing to be incurred on personal computers, telephones and other home office equipment and routine subsistence on KCC duties”. Members are reminded in their Handbook that “travel expenses will be reimbursed for any journey on Council duties between premises as agreed for tax purposes” and that **“no other allowances are payable”**.
2. When Members incur “unavoidable costs related to overnight stays, excluding normal subsistence”, reimbursement will be made through their expense claim forms on production of a receipt (as explained in the Members’ Handbook).
3. When Members incur expenditure at official meetings, the relevant Directorate will normally reimburse the Member direct on production of a receipt. However, these occasions would normally be expected to be very rare, since the majority of official meetings are arranged by, and invoiced to, KCC and allow the Council to recover VAT for the expenditure.
4. On the few occasions when it is deemed necessary for leading Members to officially host a function with cross-KCC interest, at their own expense, the only avenue for reimbursement is via the Official Hospitality budget. Applications to charge functions to this budget require the approval of the Chief Executive.
5. When incurring non-routine travel and subsistence (including business-related hospital functions), Cabinet Members should normally make arrangements in advance through officers of the relevant Directorate, thus enabling best value to be achieved; the VAT from the bills to be retrieved; and the cost to be charged to the correct budget. In cases where this is not possible, Cabinet Members should claim reimbursement of the expenditure by submitting full details, together with receipts, to the relevant Managing Director, who will be required to keep a detailed record for audit purposes.

Use of KCC fleet cars

6. Members wishing to use the chauffeur-driven cars whilst undertaking official duties may do so in accordance with the policy adopted by the Selection Committee on 22 July 2005. This specifies that any requests from Members and the Chief Executive for use of a car to assist them in carrying out their official duties will be acceded to. When making such a request, the purpose of their journey must be specified and a record of this is retained.
7. Optimum use of all the fleet vehicles will be made on a daily basis, using a number of sessional drivers, based on a common-sense assessment of the relative

importance of each journey. This supersedes the previous policy dated April 2002, which was based on priority users.

8. If no fleet car is available, Members are asked to use their own car or train/bus wherever possible. If a Member does not have his/her own car available or easy access to train/bus services, taxis may be used to travel to the nearest appropriate railway station or bus stop. Taxis should not be used for the entire journey if train or bus can be used for a significant part of it. Subject to these guidelines, the Committee and Member Services Unit can book taxis for Members, but Members are responsible for paying the fare direct to the driver. Reimbursement of car expenses, train, bus and taxi fares should be claimed in the normal way at the end of each month.

9. Cars/chauffeurs can be made available for high-status VIP visitors when it appears to the Chief Executive that it would be in the interest of the County Council to do so. Cost will normally be re-charged to the appropriate department.

Geoff Wild
County Secretary and Monitoring Officer

19 January 2006

Extract from the guidance issued by the Office for the Deputy Prime Minister

The Local Government Councillors and Civic Dignitaries in England: ODPM guidance: Part Two: Taxation of Members' Allowances and Expenses (EIM65970)

The taxation of travelling expenses for Councillors is set out in the guidance issued by the Office of the Deputy Prime Minister. On the specific point of Councillors travelling from their home, the guidance confirms that the payments are taxable unless the Councillor routinely carries out representative duties on behalf of the Council at home. The relevant paragraphs of the guidance are numbers 114 and 115 and these are out below:

Travel and subsistence allowances

114 As elected representatives, councillors are accepted as normally having two places of work - at the council offices and in their electoral area. Often councillors need to use their own homes to see constituents. Where a councillor does use his or her own home to undertake representative duties on behalf of the council, an allowance paid for travel between home and the council offices or some other place on council business is included in the calculation under the rules described at paragraph 126(viii) (relief for expenses).

115 If it is not necessary for a councillor routinely to see constituents at home, any allowance paid for travel between home and the council offices will be taxable in the normal way. The fact that a councillor chooses to do some work at home - for example reading council papers or completing correspondence - does not make that home a distinct place of work for the purpose of claiming tax relief on travel expenses. However, an allowance paid for travel between home and any place that is a temporary workplace will also be included in the calculation at paragraph 126(viii).

Report from the Section 151 Officer in relation to Member transportation, based upon discussions with the Council's Tax Advisors, RSM Tenon

County Cars

When a car is made available to an employee/Member the company car rules mean that a taxable benefit arises unless any private use of the car is not permitted and does not in practice happen.

However where the Council makes a car available under the statutory 'pool car' rules and the following conditions are met then no taxable benefit arises:

- (a) the vehicle must have been included for the year in a car pool for the use of Members and officers and actually used by more than one of those Members/officers by reason of their employment and not ordinarily used by one of them to the exclusion of the others, and
- (b) any private use of the vehicle in the year by an employee was merely incidental to his other use of it, and
- (c) the vehicle was not normally kept overnight at or near any of the residences of the employees concerned

The pool car rules apply to the car not the individual and if breached a taxable benefit will arise for all of the users of that vehicle in proportion to their usage.

Where a car is purchased primarily for business use but private use is also allowed then recovery of VAT is blocked.

If a car is purchased for business use only such as a 'pool car' then VAT levied on the purchase price may be recovered by the authority. If subsequently there is a change in use of that vehicle such that private mileage is allowed a refund of VAT to HMRC is necessary based on the market value of the vehicle at the time of the change.

Travel to County Hall in Members own cars

Any expense payments, including payments related to business travel to Members is taxable. However, they are entitled to relief from tax for the full cost they are obliged to incur travelling to or from a place they have to attend in the performance of their duties – as long as the journey is not ordinary commuting or private travel.

Travel from home to Members normal place of work (County Hall) is deemed ordinary commuting and hence subject to tax unless it can be shown that the Members home is also a place of work. HM Revenue & Customs will accept that a Members home is a place of work if they routinely see constituents at home. If it is not necessary for a councillor routinely see constituents at home, any allowance paid for travel between home and County Hall will be taxable in the normal way.

The reason that HMRC allow Members to claim relief from tax when constituents are seen routinely at home is that HMRC consider that the Member is performing 'substantive duties' at home, over and above what might be considered convenient. HMRC consider that emails, correspondence and reading papers are not 'substantive duties'.

In the absence of seeing constituents at home Members need to show that the work they do at home for KCC are 'substantive duties' and this will be difficult for two reasons. Firstly tax relief for travel expenses is notoriously restrictive. Secondly the notes about Councillors expenses in the HMRC manual were prepared by the Association of Local Councillors and cover all Councils and it would be difficult for KCC to get them changed unilaterally.

A possible approach for change is to prepare a paper showing how much work the Members do at home and in their constituency compared with their KCC work overall. The cooperation of other councils should be sought for them to provide their own figures. The combined results could then be used by the LGA as a basis for discussion with HMRC for a review of paragraphs 114 and 115 of the notes.

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