

SELECTION AND MEMBER SERVICES COMMITTEE

Wednesday, 21st October, 2015

2.30 pm

**Council Chamber, Sessions House, County Hall,
Maidstone**





AGENDA

SELECTION AND MEMBER SERVICES COMMITTEE

Wednesday, 21 October 2015, at 2.30 pm Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone: **03000 416749**
Hall, Maidstone

Tea/Coffee will be available 15 minutes before the start of the meeting

Membership (9)

- Conservative (5): Mrs A D Allen, MBE (Chairman), Mr P B Carter, CBE, Mr G Cooke,
Mr M C Dance and Mr B J Sweetland
- UKIP (2) Mr R A Latchford, OBE and Mr B E MacDowall
- Labour (1) Ms A Harrison
- Liberal Democrat (1): Mrs T Dean, MBE

UNRESTRICTED ITEMS

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

Webcasting Notice

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By entering the meeting room you are consenting to being filmed. If you do not wish to have your image captured please let the Clerk know immediately.

- 1 Substitutes
- 2 Declarations of Interests by Members in items on the Agenda for this meeting.
- 3 Minutes - 22 May 2015 (Pages 7 - 10)
- 4 Dates of meetings in 2016

Wednesday, 13 January 2016
Wednesday, 2 March 2016
Wednesday, 20 April 2016
Thursday, 23 June 2016
Tuesday, 27 September 2016
Thursday, 17 November 2016

All meetings scheduled to commence at 2.30 pm

- 5 Report of the Member Remuneration Panel (Pages 11 - 16)
- 6 Data Controllers Registration (Pages 17 - 28)
- 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
03000 416647

Tuesday, 13 October 2015

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KENT COUNTY COUNCIL

SELECTION AND MEMBER SERVICES COMMITTEE

MINUTES of a meeting of the Selection and Member Services Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Friday, 22 May 2015.

PRESENT: Mrs A D Allen, MBE (Chairman), Mr M A C Balfour (Substitute for Mr P B Carter, CBE), Mr G Cooke, Mr M C Dance, Mrs T Dean, MBE, Ms A Harrison, Mr R A Latchford, OBE, Mr B E MacDowall and Mr B J Sweetland

IN ATTENDANCE: Mr G Wild (Director of Governance and Law), Mr A Wood (Corporate Director Finance and Procurement), Mr P Sass (Head of Democratic Services), Mr P D Wickenden (Democratic Services Manager (Members)) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS**7. Minutes - 5 March 2015**
(Item 3)

RESOLVED that the Minutes of the meeting held on 5 March 2015 are correctly recorded and that they be signed by the Chairman.

8. Proposed changes to the Constitution
(Item 4)

RESOLVED that approval be given to:-

- (a) the amendments to paragraph 2.2. of Appendix 4 Part 2 of the Constitution in relation to filming at meetings, as set out on paragraph 11 of the report;
- (b) the proposed revisions to paragraphs 6.34 to 6.36 of Appendix 4 Part 6 of the Constitution in relation to the recording of Executive Officer decisions, as set out in paragraph 17 of the report;
- (c) the proposed addition of paragraphs 6.37 to 6.43 of Appendix 4 Part 6 of the Constitution in relation to recording Non-Executive Officer decisions, as set out in paragraph 22 of the report; and
- (d) the proposed changes to paragraph 1.17 (6) of Appendix 4 Part 1 of the Constitution in relation to County Council Questions, as set out in paragraph 24 of the report.

9. Members' Allowances and Expenses 2014/15

(Item 5)

(1) The Corporate Director of Finance and Procurement referred to the County Council's tax liability for existing and former elected Members' home to office travel for the period 1 April 2009 to 31 March 2013. He tabled a working document which set out a rough calculation of the amount any Member should pay if they wished to contribute a personal share of the County Council's payment to HMRC out of the overall figure of £179k. This figure included the sum of £35k in respect of former Members of the Council.

(2) Following the decision of the County Council the previous day that Members would follow the advice of the Section 151 Officer, the Corporate Director stated that his advice would be that each Member and surviving former Member should be written to with an indication of the amount that would be appropriate (dependent on their personal financial circumstances) if they wished to contribute their personal share but stressing that any such contribution would be entirely voluntary.

(3) Mr R Latchford asked for an overall figure of the amount voluntarily paid by Members and former Members to be provided to the Committee at a later stage.

(4) Mrs T Dean moved, seconded by Mr B MacDowall that any Member who requires use of a taxi for health reasons be required to provide a medical certificate after a period of six weeks' usage.

Lost 3 votes to 6.

(5) RESOLVED that:-

- (a) the publication of the allowances and expenses for 2014/15 be approved as detailed in Appendix A of the report and as required by the Local Authorities (Members' Allowances (England) Regulations 2003;
- (b) the publication of the costs of the County Car service and taxis for Members for 2014/15 be approved as set out in Appendices B and D of the report; and
- (c) it be noted that each Member and surviving former Member will be written to by the Corporate Director of Finance and Procurement with an indication of the amount that would be appropriate (dependent on their personal financial circumstances) if they wished to contribute their personal share to the County Council's backdated tax invoice, but stressing that any such contribution would be entirely voluntary.

10. County Car Service - Discussion paper on the present condition of the existing fleet

(Item 6)

(1) Mr G Cooke moved, and it was duly seconded that the offer by Barretts to provide a civic car for the 2015/16 Municipal Year be accepted under the terms offered in paragraph 3 (7) of the report and that the Volvo Estate be mothballed during this period.

Carried 6 votes to 2 with 1 abstention

(2) RESOLVED that the offer by Barretts to provide a civic car for the 2015/16 Municipal Year be accepted under the terms offered in paragraph 3 (7) of the report and that the Volvo Estate be mothballed during this period.

11. Local Pension Board
(Item 7)

(1) In agreeing the recommendations of the Head of Democratic Services, the Committee agreed that the Group Leaders be written to with a request for nominations to fill the Elected Member nominations.

(2) RESOLVED that the Group leaders be requested to make nominations to fill the two Elected Member places on the Local Pension Board as KCC employer representatives and that one of these will be the Chairman of the Board.

12. Appointment of Trustee to the Molyneux Almshouses, Rusthall
(Item 8)

RESOLVED that Ms Carolyn Cohen be appointed as the County Council's representative on the Body of Trustees of the *Molyneux Almhouses* for the remainder of the Council's term, whereupon the position will be reviewed.

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By: Peter Sass, Head of Democratic Services
To: Selection and Member Services Committee –21 October 2015
Subject: Report of the Member Remuneration Panel
Summary: Attached is the report of the independent Member Remuneration Panel referred to the Committee by the County Council for the consideration by the Committee in discussion with the Panel Members.

1. Report of the Member Remuneration Panel

- (1) At the County Council meeting on 17 September 2015 the decision was taken to refer the report of the independent Member Remuneration Panel to the Selection and Member Services Committee for a discussion with the Panel.
- (2) A copy of the report of the Independent Member Remuneration Panel is attached. The independent Panel Members Mr John Ogden (Chairman), Mrs Sharon Addis and Mr Steve Wiggett will be present at the meeting.

2. RECOMMENDATION

The Committee is asked to consider and comment on the report and make recommendations to the County Council.

Paul Wickenden
Democratic Services Manager (Members)
Tel: 03000 416836

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By: The Member Remuneration Panel

To: County Council – 17 September 2015

Subject: Members' Allowance Scheme

Summary: This report sets out the views of the independent Member Remuneration Panel, who have reviewed the Members' Allowance Scheme following the County Council's request on 21 May 2015 that the Panel give consideration to recommending a mechanism for the Members' Allowances Scheme to be index-linked with effect from 1 April 2016.

1. Introduction

- (1) Following the County Council's request on 21 May 2015 that the Panel give consideration to recommending a mechanism for the Members' Allowances Scheme to be index-linked with effect from 1 April 2016, the Panel met on 30 July 2016.
- (2) The Panel had already considered the issue very thoroughly before reaching its conclusions and the recommendations contained in its report to the County Council in May.
- (3) The Panel would like to place on record that as 'lay people' it takes great care and diligence on behalf of the residents of Kent in conducting its role as an independent Panel for Member Remuneration.

2. Background

- (1) In view of the County Council's request, the Panel would wish to remind the County Council of the work undertaken to formulate its conclusions and recommendations.
- (2) Before submitting the Panel report to the County Council in May, the Panel interviewed each Group Leader individually to seek their views on the appropriateness of the Members' Allowances Scheme, both in terms of the Basic Allowance paid to all elected Members and the Special Responsibility Allowances (SRAs).
- (3) The Panel was specifically asked to consider whether the level of allowances was appropriate and whether allowances should rise annually in line with an appropriate index. The Panel noted the background to recent changes to the scheme as follows:

"In 2011 the County Council agreed to make voluntary reductions to both the basic and Special Responsibility Allowances (SRAs) of 1.5% and 2.66% respectively, as a contribution to revenue budget reductions. The Panel noted that these reduced allowances were still being paid, which had resulted in a reduction in the total cost of the Members' Allowances Scheme of £80,000 per year."

- (4) The Panel recognises that the County Council no longer has a “cost of living” increase for staff pay. All pay increases are dependent on performance. The “pot” used to pay performance awards is usually around 2.5% of the total pay bill, with those assessed as achieving the required standard receiving an award of around 2% (higher for those assessed as performing above the required standard or outstanding). The pay scales are uplifted each year, usually by around half the value of “achieving” i.e. around 1%, although this depends on what can be afforded within the budget.
- (5) The Office for National Statistics also produces statistics on wage increases. The average public sector increase excluding bonuses is currently 1%.
- (6) The Panel noted that a number of other local authorities linked their Members Allowance Scheme to an index, for example Consumer Price Index (CPI) Retail Price Index (RPI) or staff pay.
- (7) In preparing its report to the County Council in May, the Panel commissioned research into allowance schemes at other local authorities, including the County Council’s statistical neighbours, to compare the amount paid to Members as a Basic Allowance and as SRAs.
- (8) The Panel also asked for research to be conducted into the changes in Her Majesty’s Revenue and Customs (HMRC) personal income tax levels during the period 1 April 2008 to 31 March 2015, to establish what impact these changes had on personal disposable income during this period. The Panel acknowledged that every elected Member’s individual circumstances are personal to them, but in real terms there had been changes to the tax threshold before basic rate income tax is paid which in practice will have been of benefit to the majority (if not all) elected Members.
- (9) Throughout their deliberations, the Panel has been mindful of the potential public perception that surrounds allowances and expenses payable from taxpayers’ money to elected Members in a period of austerity.

3. Conclusions

- (1) The Panel has reconsidered all the information it had to formulate its report to the County Council in May, including additional information made available to the Panel from:
 - (a) Other local authorities;
 - (b) Further detail on the Average Weekly earnings published by the Office for National Statistics (paragraph 2(5) above);
 - (c) Further detail on the use of CPI as an index in the preparation of the County Council budget;

- (d) Further detail on the Total Contribution Pay scheme for rewarding staff within the County Council; and
 - (e) The recent announcement that Members of Parliament had been awarded over a 10% increase raising the salary for a backbench Member of Parliament to £74,000.
- (2) The Panel was unanimous in agreeing to reaffirm its view that the existing Members' Allowances Scheme was intended to cover the full four-year term from May 2013 to May 2017 and, therefore, any index-linking mechanism should only be introduced for the new Council in May 2017 and not before.
- (3) The Panel reached this conclusion based on evidence from other local authorities and the annual surveys from South East Employers and other organisations, which confirmed that Kent County Council's Basic Allowance and SRAs remain in the upper 10% of all local authorities across England.
- (4) The Panel also considered the fact that the Basic Allowance several years ago included £1,000 for each Member to provide their own IT equipment, which was replaced by direct KCC provision some years later but without a proportionate reduction in the Basic Allowance, which had in the Panel's opinion been a contributory factor in the level of the Basic Allowance remaining as one of the highest in the country.
- (5) The Panel reaffirmed its view that a link to staff pay was the most logical index to apply to the Members' Allowance Scheme. The Panel considered the County Council's scheme of 'Total Contribution Pay' for rewarding staff based on their performance and noted the percentage increase that staff had received based on the performance level of 'achieving' in each year since 2012.
- (6) Because of the voluntary nature of the role of an elected Member, the Panel is of the opinion that 4/5ths of the percentage increase for 'achieving' (in accordance with the Total Contribution Pay Scheme) should be applied to the Members' Allowance Scheme from May 2017 for both the Basic Allowance and SRAs.
- (7) The Panel is of the firm opinion that the Members' Allowances Scheme adopted by Kent County Council for the four-year period from May 2013 to May 2017 should remain in place for the full term, but that the Scheme applicable from May 2017 to May 2021 should include provision for index-linking the level of both the Basic Allowance and SRAs, with the mechanism being 4/5ths of the percentage for the 'achieving' level within the County Council's Total Contribution Pay scheme for KCC staff each year.

Mr J Ogden
Chairman

Mrs S Addis

Mr S Wiggett

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From: Gary Cooke, Cabinet Member for Corporate and Democratic Services
Geoff Wild, Director of Governance & Law

To: Selection and Member Services Committee – 7 October 2015

Subject: Register of Data Controllers.

Classification: Unrestricted

Summary: The Data Protection Act 1998 requires persons and organisations who process personal information to notify the Information Commissioner's Office of that processing. This report outlines the implications for KCC and notifies the Committee of the Cabinet Member's decision taken on 29 September 2015.

Introduction

1. The Data Protection Act 1998 (the Act) requires persons and organisations who process personal information to notify the Information Commissioner's Office in the form of a registration.
2. Section 1 of the Act defines a "data controller" as "a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed."
3. Kent County Council is a data controller for the purposes of the Act and has therefore registered.

Advice to elected and prospective councillors

4. The Information Commissioner's Office has published a document entitled *Advice for elected and prospective councillors (Appendix 1)*. This sets out a requirement for elected Members to register separately.
5. The Advice document sets out that that elected Members (when acting as Members of the Council) may have access to and process personal information in the same way as Council employees and therefore there is no requirement for Members to register in their own right because they are carrying out the local authority's functions and are covered by the Council's registration.
6. The same principle applies when Councillors are acting on behalf of a political party. In such circumstances, they are able to rely upon the registration made

by their party. Members acting or campaigning as an independent Councillor need to register in their own right.

7. The crucial area requiring individual registration by Members is when they represent residents of their division. This can cover matters such as timetabling surgery appointments or taking forward complaints made by local residents.
8. The Data Protection Act specifies that it is an offence to fail to register when required to do so.

Registration of County Council Members

9. The Information Commissioner's Office has produced a standard form for registration by Councillors. The cost of registration is £35 per year.
10. The expense of registration is a necessary one which most elected County Councillors have to incur. However, there is no lawful impediment to the County Council meeting the cost of registration for each Member as part of their overall responsibilities, and there are already a number of district and borough councils in Kent that do this for their Members.
11. In order to ensure full compliance with the Data Controller requirements of the Data Protection Act, the Cabinet Member for Corporate and Democratic Services took the decision on 29 September 2015 that each elected Member of the Council would be registered as a data controller with the Information Commissioner's Office with the registration fee being paid on their behalf by the County Council. This registration will be renewed on an annual basis. The record of decision is set out at **Appendix 2**.

Recommendations:

12. The Committee is recommended to note the decision taken by the Cabinet Member for Corporate and Democratic Services set out at **Appendix 2** of the report.

Contact details:

Peter Sass
Head of Democratic Services
peter.sass@kent.gov.uk
(03000) 416647

Background Papers: None



Information Commissioner's Office

Advice for elected and prospective councillors

Data Protection Act

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Introduction

1. The Data Protection Act 1998 (DPA) is based around eight principles of good information handling. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it
2. An overview of the main provisions of the DPA can be found in [The Guide to Data Protection](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help data controllers to fully understand their obligations and promote good practice.
4. This guidance aims to provide elected and prospective councillors with advice on how the DPA applies to them.

The role of the councillor

5. Councillors are likely to have three different roles:
 - As a member of the council, for example, as a cabinet member or a member of a committee.
 - A representative of residents of their ward, for example, in dealing with complaints.
 - They may represent a political party, particularly at election time.

Use of personal information

6. When councillors consider using personal information, they should take into account the context in which that information was collected to decide whether their use of the information will be fair and lawful, as required by principle 1 of the DPA:
 - Where a councillor is representing an individual resident who has made a complaint, the councillor will usually have the implied consent of the resident to retain relevant personal data provided and to disclose it as appropriate. The resident will also expect that the organisations (including the local authority) who are the subject of the complaint will disclose personal data to the councillor. If

there is any uncertainty regarding the resident's wishes, it would be appropriate to make direct contact with the resident to confirm the position.

- Sensitive personal information is treated differently; for example, where consent is being relied on this should be explicit in nature. However, in the context of a complaint, councillors – and organisations making disclosures to them - will usually be able to rely on the Data Protection (Processing of Sensitive Personal Data)(Elected Representatives) Order 2002 as a condition for processing.
- Personal information held by the local authority should not be used for political purposes unless both the local authority and the individuals concerned agree. It would not be possible to use a list of the users of a particular local authority service for electioneering purposes without their consent. An example would be using a local authority list of library users to canvass for re-election on the grounds that the councillor had previously opposed the closure of local libraries.
- When campaigning for election as the representative of a political party, candidates can use personal information, such as mailing lists, legitimately held by their parties. However, personal information they hold in their role as representative of local residents, such as complaints casework, should not be used without the consent of the individual.
- When campaigning for election to an office in a political party, councillors should only use personal information controlled by the party if its rules allow this. It would be wrong, for instance, to use personal information which the candidate might have in their capacity as the local membership secretary, unless the party itself had sanctioned this.
- Candidates for election should be aware that political campaigning falls within the definition of direct marketing. Consequently, they should have regard to the requirements of the DPA (in particular section 11) and the Privacy and Electronic Communication (EC Directive) Regulations 2003 which set out specific rules that must be complied with for each type of marketing communication. For further information on this, the Information

Commissioner has produced Guidance on Political Campaigning which is available on our website.

Multi-member wards

7. In some types of local authority, councillors are elected under a multi-member system where more than one councillor represents a particular ward.
8. As a result, there may be situations where a councillor who represents a resident may need to pass on that particular individual's personal information to another councillor in the same ward. The councillor will only be allowed to disclose to the other ward councillor the personal information that is necessary:
 - to address the resident's concerns;
 - where the particular issue raises a matter which concerns other elected members in the same ward; or
 - where the resident has been made aware that this is going to take place and why it is necessary.

If a resident objects to a use or disclosure of their information, their objection should normally be honoured.

9. The councillor should not pass on personal information which is not connected to the resident's case.

Example

A resident asks one of the councillors in a multi-member ward for help about teenagers acting in an intimidating way in the area. The councillor wishes to share the resident's complaint with the other ward councillors because it is an issue of general concern.

The councillor lets the resident know that he wants to give the details of their complaint to the other ward councillors and why he wants to do that, rather than giving a general description of the complaint to other ward councillors.

If the resident objects, then his wishes are respected and only the general nature of the complaint is shared.

Notification

10. In considering whether they need to register their processing with the Commissioner, councillors must first decide in which role they are processing personal information:

- **As a member of the council**

Councillors may have access to, and process, personal information in the same way as employees. In this case it is the council rather than the councillor that determines what personal information is used for and how it is processed. For example, if a member of a housing committee has access to tenancy files to consider whether the local authority should proceed with an eviction, the councillor is carrying out the local authority's functions and so does not need to register in their own right.

- **As a representative of the residents of their ward**

When councillors represent residents of their ward, they are likely to have to register in their own right. For example, if they use personal information to timetable surgery appointments or take forward complaints made by local residents.

- **As a representative of a political party**

When acting on behalf of a political party, for instance as an office holder, councillors are entitled to rely upon the registration made by the party.

When individuals campaign on behalf of political parties to be the councillor for a particular ward, they can rely on the parties' registration if the party determines how and why the personal information is processed for the purpose of their individual campaigns.

If a prospective councillor is not part of any political party but campaigning to be an independent councillor for a particular ward, they need to have their own registration.

11. There is an exemption from registration where the only personal information which is processed takes the form of paper records.

12. A standard form for registration by councillors has been created to simplify the procedure.

Offences

13. The DPA contains a number of criminal offences, including:
 - Failure to register when required to do so. For example, a councillor who holds computerised records of residents' details for casework purposes would commit an offence if they had not registered this use of personal information.
 - Making unauthorised disclosures of personal information. For example, a councillor who discloses personal information held by the council to their party for electioneering purposes without the council's consent could commit an offence.
 - Procuring unauthorised disclosures of personal information. For example, a councillor who obtains a copy of personal information apparently for council purposes, but in reality for their own personal use (or the use of their party), is likely to have committed an offence.

Security

14. Councillors should be aware that they need to arrange for appropriate security to protect personal information. They must take into account the nature of the information and the harm that can result. They should consider what technical and organisational measures, such as use of passwords, computer access privileges, procedures and staff training, are appropriate to keep the information safe. Councils should also take appropriate measures in the same way.

More information

15. Additional guidance is available on [our guidance pages](#) if you need further information on other parts of the DPA.
16. If you need any more information about this or any other aspect of data protection, please [contact us](#), or visit our website at www.ico.org.uk.

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KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY:

Gary Cooke, Cabinet Member for Corporate and Democratic Services

DECISION NO:

15/00087

For publication

Non-Key decision

Data Controller Registration for Elected Members

Decision:

As Cabinet Member for Corporate and Democratic Services, I agree:

- (a) that each elected Member of the Council be registered as a data controller with the Information Commissioner's Office;
- (b) that each elected Member's registration fee be paid on their behalf (or reimbursed if already paid by the member themselves) by the council and their registration renewed on an annual basis for so long as they remain an elected Member.
- (c) that all elected Members are informed of the proposed actions set out above.

Governance:

The Executive Scheme of Delegation for Officers set out in Appendix 2 Part 4 of the Constitution (and the directorate schemes of sub-delegation made thereunder) provides the governance pathway for the implementation of this decision by officers. In this instance, the Head of Democratic Services will be the lead officer seeking to ensure that all such steps as are necessary to implement the decision are undertaken.

Reason(s) for decision:

The decision is necessary in order to ensure full compliance with the Data Controller requirements of the Data Protection Act 1998

Cabinet Committee recommendations and other consultation:

The decision is not 'Key' or 'Significant' and therefore there is no requirement that it be considered by a Cabinet Committee; moreover, given the importance of statutory compliance in these areas it is not practical to delay the decision in anyway and therefore it will also not be subject to the usual call-in procedure.

A report for information will be considered by the Selection and Members Services Committee on 21 October 2015.

Any alternatives considered and rejected:

Not funding the registration of elected members was considered and rejected as it exposed elected members to unacceptable risk and was not in line with the practice of several other Kent authorities where registration had already been undertaken and funded.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

None

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signed

29/9/2015
.....
date