

You are hereby summoned to attend a meeting of the

MAIDSTONE BOROUGH COUNCIL

Date: Wednesday 17 July 2019
Time: 6.30 p.m.
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Adkinson, Bartlett, Mrs Blackmore, Brice, Brindle, D Burton, M Burton, Chappell-Tay, Clark, Cox, Cuming, Daley, English, Eves, Fermor, Fissenden, Fort, Garland, Garten, Mrs Gooch, Mrs Grigg, Harper, Harvey, Harwood, Hastie, Hinder, Mrs Hinder, Joy, Khadka, Kimmance, Lewins, McKay, McLoughlin, Mortimer, Munford, Naghi, Newton, Parfitt-Reid, Perry, Powell, Purle, Mrs Ring (Mayor), Mrs Robertson, D Rose, M Rose, Round, J Sams, T Sams, Spooner, Springett, Vizzard, Webb, de Wiggondene-Sheppard, Wilby and Young

AGENDA

Page No.

1. Prayers
2. Apologies for Absence
3. Dispensations (if any)
4. Disclosures by Members and Officers
5. Disclosures of Lobbying
6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
7. Minutes of the Annual Meeting of the Borough Council held on 18 May 2019 1 - 5
8. Mayor's Announcements
9. Petitions
10. Question and Answer Session for Members of the Public
11. Questions from Members of the Council to the Chairmen of Committees

Issued on Tuesday 9 July 2019

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

12. Current Issues - Report of the Leader of the Council, Response of the Group Leaders and Questions from Council Members
13. Report of the Independent Remuneration Panel held on 24 and 25 April 2019 - Members' Allowances Scheme 6 - 27
14. Report of the Democracy and General Purposes Committee - Audit, Governance and Standards Committee - Selection Process for the Appointment of Non-Voting Parish Council Representatives 28 - 30
15. Oral Report of the Strategic Planning and Infrastructure Committee to be held on 9 July 2019 (if any)
16. Oral Report of the Communities, Housing and Environment Committee to be held on 16 July 2019 (if any)
17. Local Government and Social Care Ombudsman Public Report 31 - 47
18. Membership of Committees

The Council is asked to approve the following changes to reflect the wishes of the Leader of the Conservative Group:

Audit, Governance and Standards Committee

Delete Councillor Bartlett as a Member of the Committee and add Councillor Brindle

Economic Regeneration and Leisure Committee

Delete Councillor Cuming as a Member of the Committee and add Councillor Bartlett

Planning Committee

Add Councillor Brindle as a Substitute Member of the Committee

PUBLIC SPEAKING AND ALTERNATIVE FORMATS

If you require this information in an alternative format please contact us, call **01622 602899** or email committee@maidstone.gov.uk.

In order to speak at this meeting, please contact Democratic Services using the contact details above by 5 p.m. one clear working day before the meeting (i.e. Monday 15 July 2019). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

To find out more about the work of the Council, please visit www.maidstone.gov.uk.

MAIDSTONE BOROUGH COUNCIL

MINUTES OF THE ANNUAL MEETING OF MAIDSTONE BOROUGH COUNCIL HELD AT THE TOWN HALL, HIGH STREET, MAIDSTONE ON 18 MAY 2019

Present: Councillor Naghi (The Mayor) and Councillors Adkinson, Bartlett, Mrs Blackmore, Brice, Brindle, D Burton, M Burton, Chappell-Tay, Clark, Cox, Cuming, Daley, English, Eves, Fissenden, Fort, Garland, Garten, Mrs Gooch, Mrs Grigg, Harper, Harvey, Harwood, Hastie, Hinder, Mrs Hinder, Mrs Joy, Khadka, Kimmance, Lewins, McKay, McLoughlin, Mortimer, Munford, Newton, Parfitt-Reid, Perry, Powell, Purle, Mrs Ring, Mrs Robertson, D Rose, M Rose, Round, J Sams, T Sams, Spooner, Springett, Vizzard, Webb, de Wiggondene-Sheppard, Wilby and Young

1. PRAYERS

Prayers were said by the Reverend Ian Parrish.

2. RECORDING OF PROCEEDINGS

It was noted that the Kent Messenger Newspaper would be taking photographs during the meeting.

3. APOLOGIES FOR ABSENCE

There were no apologies for absence.

4. DISPENSATIONS

There were no applications for dispensations.

5. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

6. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

7. ELECTION OF MAYOR FOR THE ENSUING MUNICIPAL YEAR

It was moved by Councillor Mrs Blackmore, seconded by Councillor Mrs Joy, supported by Councillors Mrs Gooch, Harper and Powell, and

RESOLVED: That Marion Ann Ring, a Councillor of the Borough, be duly elected Mayor of the Borough of Maidstone until the Annual Meeting of the Council in 2020.

****THE MAYOR (COUNCILLOR MRS RING) IN THE CHAIR****

Note: Councillor Wilby entered the meeting during the speeches on this item.

8. CONGRATULATIONS TO THE MAYOR

The Mayor received congratulations on her election from scholars representing schools as follows:

Jonah Diomede	Maidstone Grammar School
Bethany Sinclair	Maidstone Grammar School for Girls
Layla-Mae Hamlett	Oaks Primary Academy

9. THE RETIRING MAYOR

It was moved by Councillor English, seconded by Councillor Newton, supported by Councillors Mrs Gooch, Round and Adkinson, and

RESOLVED: That the hearty thanks of this Council be given to Councillor David Naghi and Ms Angela Vincent for the admirable discharge of their duties as Mayor and Mayor's Escort during the past year, and for their courteous approach to all sections of the community.

10. EXEMPT ITEMS

RESOLVED: That the items on the agenda be taken in public as proposed.

11. MINUTES OF THE MEETING OF THE BOROUGH COUNCIL HELD ON 10 APRIL 2019

RESOLVED: That the Minutes of the meeting of the Borough Council held on 10 April 2019 be approved as a correct record and signed.

12. APPOINTMENT OF DEPUTY MAYOR FOR THE ENSUING MUNICIPAL YEAR

It was moved by Councillor Mrs Blackmore, seconded by Councillor Mrs Gooch, supported by Councillors Mrs Joy, Harper and Powell, and

RESOLVED: That Councillor Wendy Barbara Hinder be duly appointed Deputy Mayor for the Borough of Maidstone until the Annual Meeting of the Council in 2020.

13. MAYOR'S ANNOUNCEMENTS

There were no announcements on this occasion.

14. ELECTION OF THE LEADER OF THE COUNCIL FOR THE ENSUING MUNICIPAL YEAR

It was moved by Councillor English, seconded by Councillor Mrs Gooch, that Councillor Cox be elected as the Leader of the Council until the Annual Meeting of the Council in 2020.

It was moved by Councillor Mrs Blackmore, seconded by Councillor Brice, that Councillor Perry be elected as the Leader of the Council until the Annual Meeting of the Council in 2020.

RESOLVED: That Councillor Cox be elected as the Leader of the Council until the Annual Meeting of the Council in 2020.

15. APPOINTMENT OF THE DEPUTY LEADER OF THE COUNCIL FOR THE ENSUING MUNICIPAL YEAR

It was moved by Councillor Cox, seconded by Councillor English, and

RESOLVED: That Councillor Mrs Gooch be appointed as the Deputy Leader of the Council until the Annual Meeting of the Council in 2020.

Note: Councillors Fissenden and Wilby left the meeting at the conclusion of this item.

16. ADOPTION OF THE COUNCIL'S CONSTITUTION INCLUDING THE SCHEME OF DELEGATIONS AND RECENT UPDATES - DATED APRIL 2019

It was moved by Councillor Cox, seconded by Councillor English, and

RESOLVED: That the Constitution, including the Scheme of Delegations and Recent Updates, dated April 2019, be adopted.

17. REPORT OF THE HEAD OF POLICY, COMMUNICATIONS AND GOVERNANCE - REVIEW OF ALLOCATION OF SEATS ON COMMITTEES

In accordance with Section 15 of the Local Government and Housing Act 1989, the Council considered the allocation of seats to each Political Group in relation to its various Committees.

The Head of Policy, Communications and Governance said that since the publication of the agenda for the meeting, there had been a change in the composition of the Council, and it was now proposed that the allocation of seats on Committees be as set out in amended Appendix 1 to her report.

It was moved by Councillor Cox, seconded by Councillor English, and

RESOLVED: That the allocation of seats on Committees be as set out in amended Appendix 1 to the report of the Head of Policy, Communications and Governance circulated at the meeting.

18. APPOINTMENT OF COMMITTEES

In accordance with Section 16 of the Local Government and Housing Act 1989, the Council considered the appointments to its Committees and Substitutes.

It was moved by Councillor Cox, seconded by Councillor Brice, and

RESOLVED: That the wishes of the Group Leaders with regard to appointments to Committees and Substitutes, as set out in the schedule circulated at the meeting, be accepted with the following amendment:

Joint Transportation Board

Delete Councillor Springett as a Member of the Board and insert Councillor Brindle

MAIDSTONE BOROUGH COUNCIL ACTING AS CORPORATE TRUSTEE OF THE CHARITY KNOWN AS THE COBTREE MANOR ESTATE

19. REPORT OF THE HEAD OF POLICY, COMMUNICATIONS AND GOVERNANCE - REVIEW OF ALLOCATION OF SEATS ON THE COBTREE MANOR ESTATE CHARITY COMMITTEE

The Head of Policy, Communications and Governance said that since the publication of the agenda for the meeting, there had been a change in the composition of the Council, and it was proposed that the allocation of seats on the Cobtree Manor Estate Charity Committee be as follows:

Conservative	2
Liberal Democrat	2
Independent	1

It was moved by Councillor Cox, seconded by Councillor Mrs Gooch, and

RESOLVED: That the allocation of seats on the Cobtree Manor Estate Charity Committee be as follows:

Conservative	2
Liberal Democrat	2
Independent	1

20. APPOINTMENT OF THE COBTREE MANOR ESTATE CHARITY COMMITTEE

It was moved by Councillor Cox, seconded by Councillor English, and

RESOLVED: That that the wishes of the Group Leaders with regard to the appointment of Members and Substitute Members to serve on the Cobtree Manor Estate Charity Committee, as set out in the schedule circulated at the meeting, be accepted.

**MAIDSTONE BOROUGH COUNCIL ACTING AS CORPORATE TRUSTEE
OF THE QUEEN'S OWN ROYAL WEST KENT REGIMENT MUSEUM
TRUST**

21. REPORT OF THE HEAD OF POLICY, COMMUNICATIONS AND GOVERNANCE
- REVIEW OF ALLOCATION OF SEATS ON THE QUEEN'S OWN ROYAL WEST
KENT REGIMENT MUSEUM TRUST COMMITTEE

The Head of Policy, Communications and Governance said that since the publication of the agenda for the meeting, there had been a change in the composition of the Council, and it was proposed that the allocation of seats on the Queen's Own Royal West Kent Regiment Museum Trust Committee be as follows:

Conservative	2
Liberal Democrat	2
Labour	1

It was moved by Councillor Cox, seconded by Councillor McKay, and

RESOLVED: That the allocation of seats on the Queen's Own Royal West Kent Regiment Museum Trust Committee be as follows:

Conservative	2
Liberal Democrat	2
Labour	1

22. APPOINTMENT OF THE QUEEN'S OWN ROYAL WEST KENT REGIMENT
MUSEUM TRUST COMMITTEE

It was moved by Councillor Cox, seconded by Councillor Garland, and

RESOLVED: That that the wishes of the Group Leaders with regard to the appointment of Members and Substitute Members to serve on the Queen's Own Royal West Kent Regiment Museum Trust Committee, as set out in the schedule circulated at the meeting, be accepted.

23. DURATION OF MEETING

9.30 a.m. to 11.05 a.m.

Agenda Item 13

COUNCIL

17 July 2019

Report of the Independent Remuneration Panel held on 24th and 25th April 2019 – Members' Allowances Scheme

Final Decision-Maker	COUNCIL
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Ryan O'Connell, Democratic and Electoral Services Manager and Caroline Matthews, Principal Democratic Services Officer
Classification	Public
Wards affected	All

Executive Summary

The Independent Remuneration Panel met on 24 and 25 April 2019 to review the Members' Allowances Scheme, and the Panel's recommendations are attached to this report at Appendix A.

Purpose of Report

Decision

This report makes the following recommendations to Council:

1. That the Independent Remuneration Panel's recommendations in regard to the Members' Allowances Scheme be approved as follows:-

- 1) That the updated formula be applied to the basic allowance as implemented in March 2018 following the revised local authority profile for Maidstone (NOMIS Official Labour Market Statistics) to make it more transparent for future years. This is as follows:-

12 (average hours) x £15.26 (nomis hourly rate by place of residence for Maidstone Dec 2018) x 52 weeks (minus Public Service Discount of 45%).

This would equate to £5,237 p.a.

- 2) That the Deputy Leader be provided with a Special Responsibility Allowance in recognition of the work undertaken by this position in carrying out work delegated by the Leader. This would be £4,000 (which is 20% of the Leader's Allowance).

- 3) That the Chairman of the newly established Democracy and General Purposes Committee be provided with a Special Responsibility Allowance of £4,000 (which is 20% of the Leader's Allowance).
- 4) That the Dependent carers allowance be paid at market rates for specialist carer providers and upon receipts. The Child-care providers be paid at least the minimum living wage (as set by the living wage foundation and on production of receipts).
- 5) That travelling and subsistence should not be paid to Visiting Members who are not Committee Members or Substitute Members except where they have been specifically invited by the Chairman or Vice-Chairman to the Committee meeting.
- 6) That Members should not submit expenses claims that are more than two months old.
- 7) That role profiles are produced for a) the generic councillor role, and b) those that attract a Special Responsibility Allowance to give clarity.
- 8) That an indexation rise be continued which would be linked to staff salary increases but would not be applied to the basic allowance as the allowance is worked out on a specified formula but would rise annually based on the revised nomis rate by place of residence from the Office of National Statistics (the nomis rate is re-calculated every December).
- 9) That there should not be a Special Responsibility Allowance for Vice-Chairmen.
- 10) That the Leaders allowance remains the same and the percentage ratio remains the same for the other Special Responsibility Allowances but would now include a 2% indexation rise (applicable from 1st April 2019) and are set out below:-

Allowance	Current Amount	Recommended Amount	Comments
Basic Allowance	£5,065	£5,237 (with formula applied but an indexation rise would not apply)	55 Members
Leader of the Council/Chairman of Policy & Resources Committee	£19,610	£20,002 (*)	1 Member
Chairman of Strategic Planning and Infrastructure	£7,843	£8,000 (40% of Leader's Allowance) (*)	Committee of 9 Members

Committee			
Chairman of Communities, Housing & Environment Committee	£7,843	£8,000 (40% of Leader's Allowance) (*)	Committee of 9 Members
Chairman of Economic Regeneration and Leisure Committee	£7,843	£8,000 (40% of Leader's Allowance) (*)	Committee of 9 Members
Chairman of Planning Committee	£7,843	£8,000 (40% of Leader's Allowance) (*)	Committee of 13 Members
Chairman of Audit, Governance & Standards Committee	£3,921	£4,000 (20% of Leader's Allowance) (*)	Committee of 9 Members plus 2 Non-Voting Parish Councillors appointed by the Council for a three year term of office
Chairman of Licensing Committee	£3,921	£4,000 (20% of Leader's Allowance) (*)	Committee of 13 Members
Chairman of Democracy and General Purposes Committee	N/A	£4,000 (20% of Leader's Allowance) (*)	Committee of 9
Group Leaders Allowance	£394.74	£402.63 (*)	Based on Composition of Party x £402.63 (£14,092.05 ÷ 35, 35 being the current composition of Members excluding the Leader's party)
Co-opted Members of Audit, Governance and Standards Committee	£344	£350 (*)	Per Annum, 2 Parish Councillor Members
Independent Person for Code of Conduct Issues (Audit, Governance and Standards Committee)	£735	£749 (*)	1 Person
Chairman of Licensing Panel Hearing	£80 per session	£81.72 per session (*)	1 Member
Licensing Panel	£60 per	£61.55 per	2 Members

Hearing Members	session	session (*)	
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(*) – All rates include a 2% increase in line with the staff indexation rise (Apart from the basic allowance which is calculated on the specified formula).

Mayor’s Allowance – the Panel recommended that the Mayor’s Allowance should stay the same but with the indexation rise - £2,653.45 per annum.

Deputy Mayor’s Allowance - the Panel recommended that the Deputy Mayor’s Allowance should stay the same but with the indexation rise - £1,061.47 per annum.

- 11) That the Travel and Subsistence rates not be changed.
- 12) That the Member Development and Training arrangements remain unchanged and that all Members be encouraged to take up any training offered by the Authority to meet the defined responsibilities and competencies of the roles undertaken.

2. That the date of implementation for the new rates be as follows:-

From 1st April 2019 (retrospectively) for Basic Allowance
From 21st May 2019 for Special Responsibility Allowances

Timetable	
Meeting	Date
Council	17 July 2019

Report of the Independent Remuneration Panel held on 24th and 25th April 2019 – Members’ Allowances Scheme

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The Members’ Allowances Scheme supports and recognises the work of the Councillors.	Head of Policy, Communications and Governance
Cross Cutting Objectives	The Scheme gives clarity to the payments made to Councillors.	Head of Policy, Communications and Governance
Risk Management	No significant risks. See paragraph 5 below.	Democratic and Electoral Services Manager
Financial	The proposals set out in the recommendation can be met from within existing budgets.	Section 151 Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Democratic and Electoral Services Manager
Legal	<p>The legal framework for Members’ Allowances is established under the Local Government and Housing Act 1989, section 18. This gave the Secretary of State the power to make regulations authorising or requiring local authorities to pay a basic allowance to each councillor and special responsibility allowances to councillors with special responsibilities.</p> <p>The section was amended by the Local Government Act 2000, section 99 to allow the Secretary of State to make regulations providing for the payment of pensions, allowances and gratuities to Members and the payment of carers allowances.</p> <p>Under the Local Authorities (Member Allowances) (England) Regulations 2003, before a local authority makes or amends a scheme for Members’ Allowances, it must have regard to the recommendations made to it by an independent remuneration</p>	[Legal Team]

	panel.	
Privacy and Data Protection	No implications.	Policy and Information Team
Equalities	No impact identified as a result of the report recommendations.	Equalities and Corporate Policy Officer
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Democratic and Electoral Services Manager
Crime and Disorder	No implications.	Democratic and Electoral Services Manager
Procurement	No implications.	Democratic and Electoral Services Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 The Independent Remuneration Panel met on 24 and 25 April 2019 to review the Members' Allowances Scheme. The report of the Panel can be found at Appendix A to this report.
- 2.2 The basic allowance would not include an indexation rise as the formula applied, which was agreed in March 2018 by Council, is based on the nomis hourly rate by place of residence according to the National Office of Statistics.
- 2.3 One of the recommendations of the Independent Remuneration Panel was to afford the Democracy and General Purposes Committee Chairman a Special Responsibility Allowance on the proviso that the Panel were satisfied that the work programme for the year was significant enough to warrant a Special Responsibility Allowance. The Panel have been given a copy of the work programme and are now satisfied that the Special Responsibility Allowance should be afforded to this role.
- 2.4 It should be recognised that no Member may receive more than one Special Responsibility Allowance.

3. AVAILABLE OPTIONS

The Authority is required to undergo a four yearly independent review of its Members' Allowances Scheme and should have regard to the recommendations made in relation to it by an independent

remuneration panel as set out the Local Authorities (Members' Allowances) (England) Regulations 2003.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

The Council could choose not to adopt any of the recommendations but this is not recommended as the Local Authorities (Members' Allowances) (England) Regulations 2003 state that an Authority should have regard to the recommendations.

5. RISK

5.1 There are no risk management implications arising from this report.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 If Council were minded to approve the recommendations of the Panel then the revised figures outlined in the report would be incorporated in the Members Allowances Scheme and advertised in the local newspaper for transparency.

7. REPORT APPENDICES

- Appendix A: Report of the Remuneration Panel

8. BACKGROUND PAPERS

None



A REVIEW OF MEMBERS' ALLOWANCES FOR
MAIDSTONE BOROUGH COUNCIL

THE REPORT BY THE INDEPENDENT REMUNERATION PANEL

APRIL 2019

South East Employers
The Guildhall
High Street
Winchester
Hampshire
SO23 9GH

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Foreword

This report has been produced for Maidstone Borough Council as part of the Council's requirement to receive independent advice from its statutory advisory panel on members' allowances. The Panel met on 24th and 25th April 2019 to carry out their four yearly full review.

The membership of the Panel was Mark Palmer (Development Director, South East Employers) (Chair), Chris Hare (Kent Invicta Chamber of Commerce) and Chris Webb (Independent Member).

The Panel last met in March 2018 following their full review carried out in 2015 when the Council changed their governance arrangements to a Committee system from an Executive arrangement. As part of the recommendations made in 2015 the Panel were keen to review the arrangements in place within 18 months to 2 years once the system had been fully embedded. However, this had not been possible due to the Panel Members changing and difficulties in recruiting an Independent Person. Hence the Panel met in March 2018.

The Panel would like to thank those Members of the Council who completed the questionnaire, some 13 in all, (compared to 22 in 2015) and those Members who were interviewed and contributed to our discussions.

Our thanks also to the Chief Executive, Director of Finance and Business Improvement and the Head of Policy, Communications and Governance for agreeing to be interviewed in order that their views on members allowances and the governance arrangements could be taken into account.

Finally thanks to Caroline Matthews for providing the administrative support.

Mark Palmer
Chair
Independent Remuneration Panel

Summary of Recommendations

This summary sets out the main recommendations. The considerations that have led to these recommendations are set out in the full report.

The proposals are based on a review of background information, interviews with Councillors and Officers of the Council, a review of oral and written submissions and a review of benchmark information from other relevant authorities in the region.

The Panel took into account the statutory guidance relating to Members' Allowances which falls within the remit of the Ministry of Housing, Communities and Local Government.

Summary of Recommendations

- 1. That the updated formula be applied to the basic allowance as implemented in March 2018 following the revised local authority profile for Maidstone (NOMIS Official Labour Market Statistics) to make it more transparent for future years. This is as follows:-**

12 (average hours) x £15.26 (nomis hourly rate by place of residence for Maidstone 2018) x 52 weeks (minus Public Service Discount of 45%).

This would equate to £5,237 p.a.

- 2. That the Deputy Leader be provided with a Special Responsibility Allowance in recognition of the work undertaken by this position in carrying out work delegated by the Leader. This would be £4,000 (which is 20% of the Leader's Allowance).**
- 3. That the Chairman of the newly established Democracy and General Purposes Committee be provided with a Special Responsibility Allowance of £4,000 (which is 20% of the Leader's Allowance). This is subject to the Panel receiving a copy of the Committee Work Programme for the year and being satisfied that there is a sufficient workload to substantiate a Special Responsibility Allowance.**
- 4. That the Dependent carers allowance be paid at market rates for specialist carer providers and upon receipts. The Child-care providers be paid at least the minimum living wage (as set by the living wage foundation and on production of receipts).**
- 5. That travelling and subsistence should not be paid to Visiting Members who are not Committee Members or Substitute Members except where they have been specifically invited**

by the Chairman or Vice-Chairman to the Committee meeting.

6. That Members should not submit expenses claims that are more than two months old.
7. That role profiles are produced for a) the generic councillor role, and b) those that attract a Special Responsibility Allowance to give clarity.
8. That an indexation rise be continued which would be linked to staff salary increases but would not be applied to the basic allowance as the allowance is worked out on a specified formula but would rise every year based on the revised nomis rate by place of residence from the Office of National Statistics.
9. That there should not be a Special Responsibility Allowance for Vice-Chairmen.
10. That the Leaders allowance remains the same and the percentage ratio remains the same for the other Special Responsibility Allowances but would now include a 2% indexation rise and are set out below:-

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Chairman of	£7,843	£8,000 (40% of	Committee of 13

Planning Committee		Leader's Allowance) (*)	Members
Chairman of Audit, Governance & Standards Committee	£3,921	£4,000 (20% of Leader's Allowance) (*)	Committee of 9 Members plus 2 Non-Voting Parish Councillors appointed by the Council for a three year term of office.
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Co-opted Members of Audit, Governance and Standards Committee	£344	£350 (*)	Per Annum, 2 Parish Councillor Members
Independent Person for Code of Conduct Issues (Audit, Governance and Standards Committee)	£735	£749 (*)	1 Person
Chairman of Licensing Panel Hearing	£80 per session	£81.72 per session (*)	1 Member
Licensing Panel Hearing Members	£60 per session	£61.55 per session (*)	2 Members

(*) – All rates include a 2% increase in line with the staff indexation rise of 2% (Apart from the basic allowance which is calculated on the specified formula).

Mayor's Allowance – the Panel recommended that the Mayor's Allowance should stay the same but with the indexation rise - £2,653.45 per annum.

Deputy Mayor's Allowance - the Panel recommended that the Deputy Mayor's Allowance should stay the same but with the indexation rise - £1,061.47 per annum.

- 11. That the Travel and Subsistence rates not be changed.**
- 12. That the Member Development and Training arrangements remain unchanged and that all Members be encouraged to take up any training offered by the Authority to meet the defined responsibilities and competencies of the roles undertaken.**

Date of Implementation

The recommendations relating to the Basic Allowance should be implemented retrospectively with effect from the 1st April 2019 and all other recommendations should be implemented retrospectively with effect from the 21st May 2019.

Methodology

The Panel met at the Town Hall in Maidstone on 24th and 25th April 2019. The Panel meeting was held in private session in order that the Panel were able to interview Councillors and the Officer in confidence. The list of the Elected Members and the Council Officers that met with the Panel are provided in Appendix One.

The schedule for the two days was as follows:-

- 1)** To review background information, in particular, issues raised following the last review carried out in March 2018 and the full review carried out in March 2015.
- 2)** Interviews with Councillors and Officers of the Council (Appendix 1).
- 3)** Review of the consultation sent to Members.
- 4)** Arriving at recommendations.

Whilst the Panel reviewed a wide range of available information and interviewed a cross section of Councillors, it also considered responses received from Members in relation to the consultation document that had been circulated to all Members prior to the Panel's meeting (Appendix two). This ensured no Councillor was denied a voice in the review process. Thirteen (23%) out of a total of fifty five Councillors responded to the questionnaire.

It is from these processes and deliberations that the Panel has arrived at the recommendations set out in this report.

Principles of the Review

Before the Panel arrived at its recommendations it determined that its deliberations should be underpinned by the following principles, which took into account the current statutory provisions:-

- * The recommended allowances should be of a sufficient level that they would allow most people to consider becoming an elected Member without undue financial hardship, whilst not being at such a level that allowances would become the primary reason for standing for Council.
- * As far as possible the Panel would abide by the precedent and approach of previous reviews, except where there was a clear and prescient case not to do so.
- * The allowances should be seen as a contribution and recognition of the time and skills of councillors, not as an equivalent to a formal job evaluation exercise and salaries.
- * A healthy and resourced opposition is important in maintaining an

appropriate balance within local democracy.

- * Any recommendations should be based on a logical and transparent construction and arrived at in a way that is simple to understand.
- * Sensitivities of cost of implementation of any recommendations should be borne in mind.

The Panel has laid out a synopsis of its deliberations in this report to assist Members and the public to understand its approach. Following its deliberations, the Panel concluded that there was an appetite for small changes to the current scheme of allowances at Maidstone.

Whilst the Panel's recommendations are not mandatory, it is hoped that if the Council disagrees with the actual figures recommended, that the Council would accept the Panel's logic. The recommendations presented in this report represent the view of the Panel and not the official view of Maidstone Borough Council.

Arriving at the Recommendations

Basic Allowance

The Panel noted the statutory guidance it must pay regard to, in particular, that the authority's scheme of allowances must include provision for a Basic Allowance that is payable at an equal flat rate to all Members.

The Panel were of the view that for the sake of transparency to both Members and the public, the formula applied previously to show how the basic allowance was assessed and arrived at should be continued. Albeit that the nomis hourly rate by place of residence for Maidstone 2018 had increased to £15.26. Therefore this should be applied to the formula as follows:-

12 (average hours) x £15.26 (nomis hourly rate by place of residence for Maidstone 2018) x 52 weeks (minus Public Service Discount of 45%). This would provide a basic allowance of £5,237 per annum.

The Panel noted that in response to the question "The present level of basic allowance payable to all councillors is £5,065, do you think this is appropriate?", 69% felt the level was too low. (The consultation exercise carried out in 2015 indicated that 45% who responded considered that the basic allowance was appropriate. In 2018 73% of those consulted felt that the rate was too low).

The majority of the Councillors interviewed were strongly of the view that the Basic Allowance did not reflect the level of work carried out. The most common response was that Members spent on average 21 hours a week on Council business, compared with 2018 where the average rate was 15 hours a week and in 2015 the average rate was 26 hours a week.

The Councillors were split on this, two thirds of those who responded to the consultation felt that the basic allowance was not sufficient and that this was a barrier to attracting the right calibre of Councillor. However, the Councillors interviewed felt that if the recommendation of the Panel were to increase the basic allowance significantly then they doubted this would get voted through.

Members felt that the burden of responsibility had spread since the new Committee system. One of the aims of the Committee Review was to try to make Councillors aware of their responsibilities. Members who were interviewed felt that there were still a lot of Councillors who were not fully engaged, although active in their own Ward, they rarely participated on Committees.

Special Responsibility Allowances

The Panel was under a duty to recognise the following statutory guidance in arriving at recommendations for Special Responsibility Allowances (SRAs):

Special Responsibility Allowance (SRA) may be paid to those members of the council who have significant additional responsibilities, over and above the

generally accepted duties of a councillor. These special responsibilities must be related to the discharge of the authority's functions.

These are important considerations for local authorities. If the majority of members of a council receive a special responsibility allowance the local electorate may rightly question whether this was justified. Local authorities will wish to consider very carefully the additional roles of members and the significance of these roles, both in terms of responsibility and real time commitment before deciding which will warrant the payment of a special responsibility allowance.

It does not necessarily follow that a particular responsibility, which is vested to a particular member, is a significant additional responsibility for which a special responsibility allowance should be paid. Local authorities will need to consider such particular responsibilities very carefully. Whilst such responsibilities may be unique to a particular member it may be that all or most members have such responsibility to varying degrees. Such duties may not lead to a significant extra workload for any one particular member above another. These sorts of responsibilities should be recognised as a time commitment to council work, which is acknowledged within the basic allowance and not responsibilities for which a special responsibility allowance should be recommended.

The Panel were of the view that the current Special Responsibility Allowances should not be amended at this time as there was not any evidence to suggest that the levels of extra workload were significant enough for the levels to be increased further.

Deputy Leader

The Panel discussed with Members and Officers the level of workload that the Deputy Leader is expected to carry out through delegations from the Leader. It was a general view that the workload was extremely significant and that a Special Responsibility Allowance should be applied. The Panel, in assessing the level of responsibility, recommended that this should be set at 20% of the Leader's Allowance).

Democracy and General Purposes Committee

Since the last full review in 2015 where Maidstone introduced new governance arrangements from an Executive to Committee system, a Member led review of the Committee System recently took place and a number of recommendations came out of that review, one of those related to the merging of two Committees, Democracy and Employment Committee, into one Committee to be called Democracy and General Purposes Committee. Taking into account the feedback from Members either directly or through the consultation document the Panel considered that as the new Committee had not met, the options were to either wait twelve months to see what the Committee undertook in terms of workload or approve the allocation of a Special Responsibility Allowance subject to being appraised with a copy of the Committee Work Programme for the new municipal year and being satisfied that the probable workload for the Committee was significant enough to

attract a Special Responsibility Allowance. The Panel considered that they would approve the Special Responsibility Allowance subject to seeing a copy of the intended Committee Work Programme for the forthcoming municipal year.

Dependent Carer's Allowance

The Panel discussed whether the Dependent Carer's Allowance rates were still relevant. In discussions with Members, it was noted that the Child-Care Provider allowance was not deemed appropriate as the market rate for child care exceeded the living wage. The Panel were therefore of the view that a reasonable amount should be paid upon receipts but not exceed market rates.

The Panel considered that the Specialist Carer Provider – Currently standing at £15-£20 per hour be continued but should not exceed Market Rates. Reasonable travelling time could also be claimed by the carer.

Following comments received from Members, the Panel were mindful that this needed to be publicised more as it could be an integral consideration for anyone thinking about becoming a Councillor.

Travel and Subsistence

The Panel recommended that Members continue to be reimbursed for subsistence in the event that a meal is not provided in the course of their normal Council duties as long as it is deemed reasonable and on production of receipts.

Travelling expenses can also be claimed for public transport, taxis or car journeys. The current rate for travelling by car is 45p per mile which is in line with HMRC recommendations. Claims could only be made for travelling whilst on approved Council business which the Panel had asked to be clarified within the Members Allowances Scheme.

Visiting Members

The Panel considered whether Visiting Members should be able to claim travelling expenses. The Panel upheld the previous advice given that travelling expenses should not be paid to those Members who were not Committee Members or Substitute Members of a particular Committee except where they had been specifically invited by the Chairman or Vice-Chairman to attend.

Members Expenses

The Panel felt that the submission of expenses should be made within 2 months of the activity carried out.

Role Profiles

The Panel felt that clear role descriptions should be produced for the Leader, Chairmen and a generic role description for a Councillor in order that Members have a clear understanding of their roles and responsibilities.

Indexation Rise

In 2015 the Panel put forward a recommendation to Council that Members received an indexation rise in line with the staff pay rise increase if they receive a Special Responsibility Allowance. This is recommended to continue. The basic allowance should not attract an indexation rise as it was worked out from a specified formula but would be increased annually by the nomis hourly rate by place of residence from the Office of the National Statistics.

Special Responsibility Allowance for Vice-Chairmen

At the meeting in 2015 the Panel had recommended that there should be no special responsibility allowance for Vice-Chairmen. However, provision should be built into the Council's Constitution which allows for a Vice Chairman to be given the Chairman's allowance if the Chair is absent for a significant period of time, say 6 months. The Panel did not feel there was any evidence to suggest that this should be changed.

Member Development & Training

In 2015 the Panel felt that in the light of the new governance arrangements, all Members should receive Member development and training. Furthermore, in recognition of the increase to the basic allowance, all Members should take up current and future training development opportunities to support the revised governance arrangements. This would also assist Members to meet the defined responsibilities and competencies within the new role descriptions and responsibilities. The Panel did not consider that this should be changed.

Appendix One

Members and Officers interviewed by the Panel

Name	Designation
Councillor Martin Cox	Leader (Liberal Democrat)
Councillor Fay Gooch	Deputy Leader and Group Leader (Independent)
Councillor Fran Wilson	Councillor (Liberal Democrat)
Councillor Malcolm McKay	Councillor and Group Leader (Labour)
Councillor Steve McLoughlin	Councillor (Conservative)
Councillor Clive English	Councillor (Liberal Democrat)
Alison Broom	Chief Executive
Mark Green	Director of Finance and Business Improvement
Angela Woodhouse	Head of Policy, Communications and Governance

Appendix Two

Questions Asked on the Member Consultation

1.	Approximately how many hours do you typically spend on council business each week?
2.	How many hours each week are typically spent on Ward work each week, i.e. work that does not fall into the above category of Council business?
3.	Do you incur any significant costs which you believe are not covered by the current allowance scheme?
4.	Councillors are expected to undertake a third of the hours they spend on Council business without financial remuneration, does this seem broadly right?
5.	The present level of basic allowance payable to all Councillors is £5,065. Do you think this is appropriate?
6.	Do you feel that the current Special Responsibility Allowances are appropriate?
7.	Visiting Members cannot claim for travelling expenses to attend meetings of the Committees or Sub-Committees where they are not a member or substitute member of the Committee, do you think this is right?
8.	The allowance is currently linked to the annual pay award given to staff. Should this continue?
9.	Are there any other meetings, other than Council or Committee meetings, or meetings where a Member has been formally appointed to by the Council to attend that you feel Members should be allowed to claim mileage/subsistence for?
10.	Please use the box below for any other comments about Member's Allowances
11.	If you would be prepared to be interviewed by the Independent Panel please provide your details below

Agenda Item 14

MAIDSTONE BOROUGH COUNCIL

COUNCIL

17 JULY 2019

REPORT OF THE DEMOCRACY AND GENERAL PURPOSES COMMITTEE HELD ON 3 JULY 2019

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE – SELECTION PROCESS FOR THE APPOINTMENT OF NON-VOTING PARISH COUNCIL REPRESENTATIVES

ISSUE FOR DECISION

To agree a selection process for the appointment of non-voting Parish Council representatives on the Audit, Governance and Standards Committee, in the event of more than one candidate being nominated by Parish Councils to fill a vacancy, and consequential amendments to the Council's Constitution.

RECOMMENDATIONS MADE

1. That if more than one candidate is nominated by Parish Councils to fill a vacancy in the office of non-voting Parish Council representative on the Audit, Governance and Standards Committee, the selection process outlined below be followed culminating in a recommendation being made to the Council:

*Completion of an expression of interest form by each candidate in support of their nomination; and
Interview by the Democracy and General Purposes Committee if appropriate.*

2. That to facilitate this process, the following changes to the Constitution be agreed:

Part 2 – Responsibility for Functions

Section 2.2.9 – Democracy and General Purposes Committee

FUNCTIONS	DELEGATION OF FUNCTIONS
6. To be responsible for the appointment of independent persons to the Independent Remuneration Panel for Councillors' Allowances.	N/A

FUNCTIONS	DELEGATION OF FUNCTIONS
6. Consider applications from persons wishing to act as Independent Persons in connection with Councillor and Statutory Officer conduct; and for the Independent Remuneration Panel and make recommendations to Council to appoint such persons.	N/A
7. In the event of more than one candidate being nominated by Parish Councils to fill a vacancy in the office of non-voting Parish Council representative on the Audit, Governance and Standards Committee, to consider expressions of interest in support of the nominations, and make a recommendation to Council as to the person to be appointed. <i>Subsequent paragraphs to be renumbered</i>	N/A

REASONS FOR RECOMMENDATION

The Audit, Governance and Standards Committee now comprises nine Councillors plus two non-voting Parish Councillors appointed by the Council for a three year term of office.

The Hearing Panel, which is required to determine all complaints referred to it by the Monitoring Officer where a Member of a Council in the Borough is alleged to have breached their respective Councillors' Code of Conduct under the provisions of the Localism Act 2011, now consists of three Councillors (plus one non-voting Parish Councillor when a Parish Councillor is the subject of the complaint) drawn from the Audit, Governance and Standards Committee.

Parish Council representatives are appointed by the Council upon the nomination of the Maidstone Area Committee of the Kent Association of Local Councils (KALC) and any other Parish Councils in the Borough that are not members of KALC.

The Council agreed at its meeting on 12 December 2018 that if more than one candidate is nominated by Parish Councils to fill a vacancy in the office of non-voting Parish Council representative on the Audit, Governance and Standards Committee, then a selection process will be followed and the resulting candidate selected will be recommended to Council for appointment.

Acceptance of the recommendations will provide a transparent and consistent selection process within the Council's Constitution for the appointment of non-voting Parish Council representatives on the Audit, Governance and Standards Committee in the event of more than one candidate being nominated by Parish Councils to fill a vacancy.

ALTERNATIVES CONSIDERED AND WHY NOT RECOMMENDED

To do nothing, but the Council has agreed that if more than one candidate is nominated by Parish Councils to fill a vacancy in the office of non-voting Parish Council representative on the Audit, Governance and Standards Committee, then a selection process will be followed and the resulting candidate selected will be recommended to Council for appointment.

The Democracy and General Purposes Committee is already responsible for considering applications from persons wishing to act as Independent Persons in connection with Councillor and Statutory Officer conduct and to serve on the Independent Remuneration Panel, and making recommendations to Council to appoint such persons.

BACKGROUND DOCUMENTS

Report to Democracy Committee 3 July 2019

COUNCIL	Wednesday 17 July 2019
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Local Government and Social Care Ombudsman Public Report

Final Decision-Maker	Council
Lead Head of Service	Head of Legal Partnership and Head of Policy, Communications and Governance
Lead Officer and Report Author	Angela Woodhouse, Head of Policy, Communications and Governance
Classification	Public
Wards affected	All

Executive Summary
<p>The Local Government and Social Care Ombudsman has issued a public report following an investigation into a complaint from a local resident regarding the Housing Service. The report finds fault with the Council’s actions and sets out a number of actions that have since been implemented.</p>
Purpose of Report
Decision

This report makes the following recommendations to Council:
To accept the report and findings made by the Local Government and Social Care Ombudsman and note the actions that have been taken by the Council.

Timetable	
Meeting	Date
Council	17 July 2019

Local Government and Social Care Ombudsman Public Report

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The Council has a strategic objective on Homes and Communities complying with the recommendations from the LGSCO is supportive of this priority	Head of Policy, Communications and Governance
Cross Cutting Objectives	The report recommendations supports the achievement(s) of the cross cutting objectives for health inequalities.	Head of Policy, Communications and Governance
Risk Management	Already covered in the risk section.	Head of Policy, Communications and Governance
Financial	The actions proposed by the LGSCO can be delivered within already approved budgetary headings and so need no new funding for implementation.	Section 151 Officer & Finance Team
Staffing	The actions proposed by the LGSCO have been implemented within current resources.	Head of Policy, Communications and Governance
Legal	The LGSCO's powers to investigate the complaint and require action are set out in part III of the Local Government Act 1974. Specifically, s31 requires the Council to consider the report, take effective action to address the findings and report back to the LGSCO. Accepting the recommendations will fulfil the Council's duties under the Act. Failure to accept the recommendations would likely lead to further action by the LGSCO	Principal Solicitor (Corporate Governance)
Privacy and Data Protection	No implications	Policy and Information Team
Equalities	The recommendations of the LGSCO have been implemented to ensure the Council complies with equality requirements.	Equalities and Corporate Policy Officer

Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	No implications	Head of Policy, Communications and Governance
Procurement	No implications	Head of Policy, Communications and Governance

2. INTRODUCTION AND BACKGROUND

- 2.1 The Local Government and Social Care Ombudsman (LGSCO) is the final stage for complaints about councils, all adult social care homes and some other organisations providing local public services. The LGSCO act as an independent body established through the Local Government Act 1974 to investigate alleged or apparent service failure of maladministration.
- 2.2 Following an investigation into complaint 18 000 166 the LGSCO have issued a public report with recommended action in relation to our Housing Service. As required by legislation the Council placed a notice in the Local Press to inform the public of the issuing of the report and copies of the report have been made available for public inspection.
- 2.3 The Council is required to consider the LGSCO's report within three months of issue. The report was embargoed by the LGSCO until the 9th of May 2019 so this is the first Council meeting at which it can be considered.
- 2.4 The LGSCO report into the complaint finds that there were failures which were faults which resulted in causing the complainant who is referred to as Mr K injustice. The injustice to Mr K was the incorrect interpretation of the Council's policy when dealing with the applicant's request to review his application for housing on medical grounds. The failures caused him uncertainty as he was improperly refused access to join the Council's Housing Register.
- 2.5 Following the investigation the LGSCO recommended a number of actions which are set out in paragraph 75 of the report attached at **Appendix A**.
- 2.6 The Council has carried out all the actions as requested at paragraph 75 and the LGSCO has been updated with evidence of completion.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 Council is requested to note the report, its findings and the action taken by the Council. The fault found has not been disputed and the Housing Service has taken all actions requested by the LGSCO in the report.
 - 3.2 If the Council refuses to accept the report and findings a follow up report is likely to be issued by the LGSCO which will have to be considered by the Council.
-

4. RISK

- 4.1 There is reputational risk with the issuing of a public report by the LGSCO, but as we have implemented the actions requested, the risk has been somewhat mitigated. If no action were taken there would be a substantial reputational risk particularly as we do not dispute the fault that has been found.
-

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 A public notice was published in two local press publications in accordance with s.30 of the Local Government Act 1974 following receipt of the public report. The action taken by the Council in response to the report has been communicated to the LGSCO.
-

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The decision made by Council will be reported to the LGSCO.
-

7. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- *Appendix A: Report by the Local Government and Social Care Ombudsman - 18 000 166*
-

8. BACKGROUND PAPERS

None

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Maidstone Borough Council
(reference number: 18 000 166)**

26 February 2019

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr K	The complainant
Mrs K	His wife
L	His son

Report summary

Housing: Housing Allocations

Mr K complains about the Council's decision to refuse his application to join its housing register. As a result, he and his family continue to live in accommodation unsuitable for his disabilities.

Finding

Fault causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council take the following action.

- Provide a written apology to Mr K for:
 - not considering the failures of the Independent Medical Advisor's assessment;
 - not considering his evidence properly when assessing his application;
 - the failures with the decision letter;
 - wrongly asking him to pay £75 for a review; and
 - failing to tell him about the Independent Medical Advisor's involvement and assessment at the time of the decision.
- Carry out a review of Mr K's application at no cost to him.
- Should the outcome of this review accept his application, the Council will check its records to see if any bid he might have made for a suitable property, in his preferred areas, would have succeeded. If he would have succeeded, the Council will: offer him the next suitable property that becomes available; pay him £150 a month from the date his bid could have succeeded to the date his new tenancy starts. This payment recognises Mr K and his family living in unsuitable accommodation for longer than needed.
- Carry out a review of its allocation policy and the lawfulness of its provision about charging for a second medical assessment.
- Check its records and consider whether any other applicant may have been similarly affected by the charge. It will pay refunds where applicants were charged. It will also consider carrying out reviews of decisions where applicants did not proceed with their review request after they were told about the charge.
- Carry out training to ensure relevant officers are fully aware of the review procedure and can properly advise applicants about it.
- Carry out training to ensure relevant officers deciding applications are aware of the need to properly consider and evaluate evidence from an applicant and the Independent Medical Advisor and give applicants full reasons for their decisions.
- Make a payment of £250 to Mr K for the distress the fault caused. This payment includes recognition of his uncertainty that the outcome of his application might have been different but for the fault identified. It also includes recognition of his lost opportunity to have a review of the decision in addition to the stress, inconvenience, and frustration caused.

The complaint

1. Mr K complains about the Council's decision to refuse his application to join its housing register. As a result, he and his family continue to live in accommodation unsuitable for his disabilities.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

Housing Act 1996 (as amended)

3. Every local authority in England must have a scheme for determining priorities and the procedure to be followed in allocating housing accommodation (their 'allocation scheme'). (*Housing Act 1996, section 166A(1)*)
4. An allocation scheme must give reasonable preference to applicants in the following categories:
 - homeless people;
 - people in insanitary, overcrowded, or unsatisfactory housing;
 - people who need to move on medical or welfare grounds; and
 - people who need to move to avoid hardship to themselves or others.(*Housing Act 1996, section 166A (3)*)
5. Councils must notify applicants in writing of the following decisions and give reasons:
 - that the applicant is not eligible for an allocation;
 - that the applicant is not a qualifying person;
 - a decision not to award the applicant reasonable preference because of their unacceptable behaviour.
6. The council must also notify the applicant of the right to request a review of these decisions. (*Housing Act 1996, section 166A(9)*)

Localism Act 2011

7. Local authorities in England have a general power of competence. This gives a local authority the power to do anything individuals generally may do. (*Localism Act 2011, section 1(1)*)
8. Where a local authority provides a service to a person other than for a commercial purpose, and providing the service to the person is done, or could be done, in the exercise of the general power, the general power confers power to charge the person. (*Localism Act 2011, section 3(1) and 3(2)*)
9. The general power to charge is limited. It only applies if the service is not one a statutory provision requires the local authority to provide to the person. (*Localism Act 2011, section 3(2)(a)*)

Council Allocation Scheme

10. Maidstone Borough Council keeps a housing register of people who want to be considered for social housing. Its allocation scheme, which it introduced in April 2013, operates in accordance with the statutory provisions contained in the Housing Act 1996 (as amended). (*Maidstone Borough Council Allocation Scheme, Section 2.1*)
11. All applicants bid for properties through Kent Homechoice which is a partnership of local authorities and housing associations providing social and affordable housing in Kent.
12. Applicants have a statutory right to request a review of a decision about their application. Where an applicant wants to introduce a medical issue not previously considered under the original application, the applicant must follow the procedure set out in Section 10 (Medical Grounds). It also refers to Appendix B which lists subjects on which applicants can request a review. All requests must be made in writing. (*Maidstone Borough Council Allocation Scheme, Section 7.1*)
13. To get accepted onto the register, all applicants must meet the two qualifying criteria; these are local connection (Section 9) and housing need (Section 10). (*Maidstone Borough Council Allocation Scheme, Section 8.2*)
14. Applicants must be in housing need to access the register and must qualify for one of the reasonable preference criteria as set out in section 167 (2) of the Housing Act 1996. (*Maidstone Borough Council Allocation Scheme, Section 10.1*)
15. To qualify on medical grounds, applicants must show their current accommodation is unsuitable for their household's needs due to a medical condition. This includes those with a physical disability, mobility needs, mental illness, or learning disabilities. (*Maidstone Borough Council Allocation Scheme, Section 10.2.1*)
16. Applicants must satisfy a Homechoice officer that their current accommodation is not suitable. Documentation to support an application must be provided from an NHS medical professional, or an equivalent external agency. (*Maidstone Borough Council Allocation Scheme, Section 10.2.2*)
17. Where the Homechoice officer cannot decide if an applicant qualifies, all details are sent to an Independent Medical Advisor who assesses the application. The Independent Medical Advisor's assessment forms part of the information used to decide if an applicant qualifies on medical grounds. (*Maidstone Borough Council Allocation Scheme, Section 10.2.3*)
18. Applicants have one medical assessment for each member of the household moving with them at no cost. Further medical assessments must be paid for in full by the applicant unless there has been a significant change in the medical condition of an applicant or someone in the household. (*Maidstone Borough Council Allocation Scheme, Section 10.2.4*)
19. The fee for a medical assessment is £75. (*Maidstone Borough Council Allocation Scheme, Section 10.2.5*)
20. The Homechoice and Strategy Manager reviews whether a free medical assessment is appropriate. (*Maidstone Borough Council Allocation Scheme, Section 10.2.6*)
21. Appendix B sets out a table showing the 12 subjects that can be reviewed, the level of officer carrying it out, the time limits within which the request must be made, and the response time. The time limit for sending a review request is, with

one exception, 14 days from the decision date. (*Maidstone Borough Council Allocation Scheme*)

Statutory guidance

22. The government issued statutory guidance on housing allocations in June 2012 (*'Allocation of accommodation: guidance for local housing authorities in England'*). This states review procedures should be clearly set out and must accord with the principles of transparency and fairness. (*paragraph 5.19*)
23. It gives the following general principles of good administrative practice.
 - Applicants should be told of the timescale within which they must request a review. Twenty-one days from the date the applicant was notified of the decision is well-established as a reasonable timescale. A housing authority should retain the discretion to extend this time limit in exceptional circumstances.
 - Applicants should be told their request should be in writing, that a representative can send it on their behalf, and what information they should send with the request.
 - Authorities should consider whether to advise that provision can be made for verbal representations as well.
 - Applicants must be notified in writing of the outcome of the review which sets out the reasons for the decision.

How we considered this complaint

24. We have produced this report after making enquiries and examining relevant documents.
25. We gave Mr K and the Council a confidential draft of this report and invited them to comment. We took the comments into account before finalising the report.

What we found

What happened

26. Mr and Mrs K lived in an unadapted 2-bedroom housing association property they rented with their son L. They are both on benefits.
27. In 2015, Mr K applied to join the Council's housing register. Mr K recalls the Council accepting it on medical grounds. He bid for a 2-bedroom housing association bungalow advertised on the Kent Homechoice website in September. When he accepted the offer of the property, Mr K had a medical operation arranged which would leave him with a permanent mobility disability.
28. In November, Mr K and his family moved in and the Council removed him from the housing register.
29. After the operation in December, Mr K realised the property was not suitable for his needs. He now used a wheelchair.
30. When using the wheelchair at home, he found:
 - he struggled to access rooms because of narrow door widths which caused him to scrape his knuckles;
 - he could not completely turn around in the kitchen without removing an anti-roll bar to the rear of the wheelchair. When he removed it, he toppled backwards;

-
- while he can access the decked area in the garden, he cannot get to the rest of it because of steps. He worries about escaping through the back door in an emergency, such as a fire for example, as the decked area is not large enough to move any great distance from the house;
 - the spy hole in the front door is too high; and
 - it is difficult to use the kitchen because there is no knee space under the units. He struggles to reach the units above the worktop.
31. Mr K had several falls from his bed, breaking bones in his finger and arm. He jumps awake during the night because of pain. Mrs K started to sleep on the sofa because Mr K needed to sleep in the middle of the bed to remain safe. When Mr K woke with pain, he disturbed her sleep. Mrs K suffers from panic attacks which are made worse by lack of sleep.
32. In October 2017, Mr and Mrs K applied to join the Council's housing register. In his email to the Council, Mr K explained they needed a 3-bedroom property for medical reasons. He told the Council about the falls, his wife sleeping on the sofa, her worsening panic attacks, and the lack of space in the property for an extra bed.
33. On his application form, Mr K repeated these problems and added the garden was too dangerous for him as it sloped.
34. Later the same month, the occupational therapist issued a report which said:
- door widths in the property were suitable for indoor wheelchair use;
 - the circulation space in the property was suitable;
 - Mr K was significantly worse at night and suffered from pain;
 - he was receiving counselling for psychological distress; and
 - there was no room to put an additional bed in their bedroom because of its size and lack of space.
35. The occupational therapist fully supported Mr K's application for rehousing to a property meeting his needs which would improve his health, wellbeing, and safety. Mr K sent the Council a copy of the report.
36. In November, Mr K's doctor wrote in support of his application. This confirmed Mr K:
- has problems with recurrent accidental falls while asleep in bed;
 - suffered from pain and gave details of the type he now suffered; and
 - suffered from depression and anxiety.
37. The doctor also noted Mrs K slept in the living room as there was no space in their bedroom for an additional bed.
38. In February 2018, the Homechoice officer sent all the information Mr and Mrs K provided in support of their application to an Independent Medical Advisor. The Independent Medical Advisor works for a company providing medical advice for housing services. Its website states it charges up to £35 plus VAT per case for full advice with reasons in an individual report or £50 plus VAT for complex cases or for advice from its psychiatrists.
39. The Independent Medical Advisor assessed Mr K as not having medical priority. The case notes record of the assessment stated Mr K already lived in a

self-contained adapted bungalow with access to all normal facilities. The assessment recommended he use cot sides if he was falling out of bed and/or two single beds in their bedroom. Cot sides are raised sides fitted to a bed to stop a person falling out. The note concluded an extra bedroom was not medically essential in this case. Medical priority did not apply.

40. The Council emailed Mr K and told him he was not eligible to join its housing register. It acknowledged his medical issues but found no evidence to show he needed an additional bedroom on medical grounds.
41. On 15 February, Mr K told the Council he disagreed with its decision. He said he wanted to appeal and have it considered again. He asked for details about what he needed to do to appeal it.
42. The records show the Council received a call from Mr K four days later. An officer noted,
'I have advised that an extra bedroom isn't medically essential to this case. As per note below'.
43. The note it referred to is the case note recording the Independent Medical Advisor's assessment.
44. The Council replied to Mr K's email the following month. It explained if he wanted to ask for a review of the medical decision, he needed to do so in writing. He needed to set out the reasons why he wanted the decision reviewed and provide any further supporting evidence. It added:
'Please note that a review of this medical decision will cost £75. This is in line with the allocation policy which states:
10.2 MEDICAL
10.2.5 The fee for a medical assessment will be £75. This will be reviewed annually by the Homechoice and Strategy Manager.
If you wish to proceed with a Medical assessment review, please let us know'.
45. When Mr K complained to us, he confirmed he did not proceed with his request for an appeal because *'We are on benefits and don't have 2 ha'pennies to rub together'.*
46. Mr K also explained why he disagreed with the Independent Medical Advisor's assessment and the Homechoice officer's decision. Cot sides on a single bed are not suitable for him. This is because touching them would trigger the type of pain he now suffers from. They would also prevent him accessing his wheelchair from bed.
47. He also explained why two single beds would not help. This is because when he jumps awake with the pain, he would still disturb Mrs K. Mr K confirmed he was not visited or contacted by the Independent Medical Advisor or the Homechoice officer before the Council decided he was not eligible to join its housing register.
48. The Council relies on the Localism Act 2011 General Powers of Competency to charge a fee for a second medical assessment. It explained how it calculated the £75 fee. The Independent Medical Advisor charges £25. To this, the Council adds the time a senior officer spends preparing the case for the Independent Medical Advisor, the time taken to evaluate the assessment it receives back, and the time taken to reach a decision. It estimates the total officer time spent is an hour and a half which amounts to £57.20.

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49. The Council provided a copy of a report which sets out the reasons why it decided to make this charge. The 'Report of Head of Housing and Community Services' (20 December 2012) noted (paragraph 1.3.15):
- 'There has been a proliferation of medical applications in recent years (as applicants chase additional points) and repeated requests to review the outcome of medical assessments. This is both costly to the council as each assessment may require an independent medical officer's adjudication (for which a fee is paid) but it is also time consuming for officers dealing with repeated appeals that have no impact on the allocated points. It is proposed under the new Scheme to charge applicants who make repeated requests for medical assessments where there has been no change in circumstances based on the cost to the council'.*
50. Attached to the report was a document, 'Stage 1: Equality Impact Assessment'. This concluded the new Allocation Scheme would not:
- contribute to inequality; and
 - be discriminatory.
51. The Council argued there is no statutory requirement for a local authority to get the view of an Independent Medical Advisor when deciding a housing register application. It believes it best practice to do so which is why it does not charge for the first assessment.

Conclusions

Application assessment

52. It was for the Council to decide whether Mr K's home does not meet his needs because of his medical condition. The Council could take account of the Independent Medical Advisor's assessment, which it chose to get, but also had to take account of all the medical evidence Mr K sent.
53. When the Council reached its decision, there was no evidence it took account of the Independent Medical Advisor's failure to:
- properly consider the evidence Mr K sent about what triggered his pain when accepting the assessment's conclusion he could use narrower single beds and cot sides;
 - examine or speak to Mr K about what triggered his pain. This would have revealed touch as a trigger which a narrower single bed and cot sides would make worse; and
 - explore the size of his bedroom.
54. The Homechoice officer also failed to consider these issues. The officer also failed to weigh the evidence from Mr K against that from the Independent Medical Advisor when reaching a decision. There is no evidence the officer considered the occupational therapist report. The officer relied solely on the Independent Medical Advisor's assessment.
55. The Council's letter setting out the decision to Mr K did not:
- explain why it decided there was no evidence showing he needed an extra bedroom on medical grounds;
 - refer to the evidence he provided or how it considered it;

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- explain the Council had obtained an assessment from the Independent Medical Advisor;
 - explain the outcome of the assessment; or
 - give details about how he could review the decision.
56. There was poor communication by the Council. It failed to tell Mr K about the involvement of, and the assessment by, the Independent Medical Advisor until a telephone call 12 days after sending him its decision.
57. These failures are fault causing Mr K injustice. The injustice to Mr K is not having his medical evidence and application properly considered. The failures caused him uncertainty as he did not know whether the Council would have accepted him on to the housing register if it had properly considered his application.

Review request

58. The Council's allocation scheme states:
- applicants have a statutory right to request a review of a decision about their application;
 - only where an applicant wants to introduce a medical issue not considered before in the original application must he or she follow the procedure set out about medical grounds; and
 - the procedure about medical grounds states a further medical assessment costs £75 unless there was a significant change in the medical condition of the applicant or discretion is exercised to waive it. A further assessment is done where the Homechoice officer cannot decide if the applicant qualifies.
59. When Mr K emailed the Council to say he wanted to appeal, he was told he had to pay £75 to have a review of this '*medical decision*'. What he wanted was to challenge the Homechoice officer's decision which was based on the assessment of the Independent Medical Advisor.
60. At this point, the officer replying to his email had no information the procedure about medical grounds applied. This was because Mr K's email says nothing about him wanting to introduce a medical issue not previously considered.
61. It was fault, therefore, for the officer to ask him to pay £75. The request was premature and did not follow Council policy. The officer sending the email failed to explain the appeal procedure properly. Due to fault by this officer, Mr K lost the right to have the decision reviewed at no cost to him.
62. The officer also failed to consider whether Mr K wanted to challenge the decision on the ground both the Independent Medical Advisor and the Homechoice officer failed to properly consider his evidence. This would include, for example, a failure to consider what his GP said about his pain triggers which make the suggestion of a single bed and cot sides unfeasible.
63. This ground would not involve Mr K introducing new medical evidence. It would simply argue the evidence available was not properly considered. Under the allocation scheme, this type of challenge would not attract a new medical assessment. As such, Mr K was not required to pay a fee. This failure is fault.
64. If the Council routinely asks applicants to pay this fee on any decision where an Independent Medical Advisor gave an assessment, applicants are potentially losing their right to ask for a review at no cost. They are also potentially discouraged by the fee from pursuing their appeal further.

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65. Under the allocation scheme, all applicants get one medical assessment for each member of the household moving with them at no cost. Any further medical assessment costs £75 unless there has been a significant change in the medical condition of the applicant or someone in the household.
 66. The charge for a second assessment is likely to only affect those wishing to review an Independent Medical Advisor's assessment. This is because they would have already had a free medical assessment. Making a charge in these circumstances is the equivalent of making a charge for a review.
 67. The law states the Council must ensure its allocation scheme provides an applicant with the right to request a review of a decision about whether to allocate housing accommodation or not. It makes no mention of charging for doing so.
 68. The Council argued it can ask applicants to pay £75 in these circumstances because of the general power to charge given to it by the Localism Act 2011.
 69. The Council had to provide the review under the Housing Act 1996, not under a general power. As the review is required by statute, which makes no mention of a council charging to cover its cost, the general power does not override this duty. This means the Council had no power to charge Mr K for the second assessment in these circumstances as this amounted to charging him for a review.
 70. By making this charge, the Council is restricting applicants' rights to have a review. This is because the right becomes available only to those who can afford to pay it. This is fault.

Review process

71. The Council's allocation scheme does not comply with the statutory guidance about review procedures which requires them to be clear, transparent, and fair.
72. The allocation scheme fails to:
 - allow 21 days from the date of a decision to send a request for a review;
 - advise about the use of representatives;
 - say what information needs sending with the request; and
 - allow for verbal representations.
73. In response to the draft report, the Council made the following points.
 - The guidance does not place the same legal obligation on it as statutory regulations, for example. This is correct but there are examples of good administrative practice councils should aim for.
 - It reviewed what was a 'reasonable' period when providing a decision to an applicant. It noted the postal delivery times when considering the 21-day period. It decided its increasing use of text and email meant the timescale could be reduced to 14 days. While the Council may well have moved towards increasing its use of text and emails, this does not mean applicants have. It fails to acknowledge that applicants may have restricted access to the internet, for example, or may prefer to rely on the post.
 - It noted advice about the use of representatives was not 'conditional' and the law required an applicant to put their request in writing. It has no objection to applicants using representatives and is happy to amend its decision letters to make this clearer.

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- The guidance does not require it to allow verbal representations as part of the review process. It considered allowing verbal representations but decided it unnecessary as it would delay the decision-making process. Nor does it have the resources to enable it. While the Council stated it considered allowing verbal representations, and why it decided not to allow them, it failed to show it considered whether there were any circumstances where it was reasonable to make an exception and allow an applicant to make verbal representations.
74. We note what the Council said in its response but remain satisfied the failure to follow good administrative practice in these circumstances amounts to fault.

Recommendations

75. To remedy the injustice caused, we recommend the Council take the following action.
- Provide a written apology to Mr K for:
 - not considering the failures of the Independent Medical Advisor's assessment;
 - not considering his evidence properly when assessing his application;
 - the failures with the decision letter;
 - wrongly asking him to pay £75 for a review; and
 - failing to tell him about the Independent Medical Advisor's involvement and assessment at the time of the decision.
 - Carry out a review of Mr K's application at no cost to him.
 - Should the outcome of this review accept his application, the Council will check its records to see if any bid he might have made for a suitable property, in his preferred areas, would have succeeded. If he would have succeeded, the Council will: offer him the next suitable property that becomes available; pay him £150 a month from the date his bid could have succeeded to the date his new tenancy starts. This payment recognises Mr K and his family living in unsuitable accommodation for longer than needed.
 - Carry out a review of its allocation policy and the lawfulness of its provision about charging for a second medical assessment.
 - Check its records and consider whether any other applicant may have been similarly affected by the charge. It will pay refunds where applicants were charged. It will also consider carrying out reviews of decisions where applicants did not proceed with their review request after they were told about the charge.
 - Carry out training to ensure relevant officers are fully aware of the review procedure and can properly advise applicants about it.
 - Carry out training to ensure relevant officers deciding applications are aware of the need to properly consider and evaluate evidence from an applicant and the Independent Medical Advisor and give applicants full reasons for their decisions.
 - Make a payment of £250 to Mr K for the distress the fault caused. This payment includes recognition of his uncertainty that the outcome of his application might have been different but for the fault identified. It also includes recognition of his lost opportunity to have a review of the decision in addition to the stress, inconvenience, and frustration caused.

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76. In response to the draft report, the Council:
- agreed to provide a written apology to Mr K;
 - carried out a review of his application at no cost to Mr K. It accepted his application which it backdated to 23 November 2017. It told Mr K of this decision and he can now bid for properties;
 - reviewed 3 bedroom properties that were available from 23 November 2017 and took account of the occupational therapist's recommendations. Of the seven that became vacant, one did not meet these recommendations. All were offered to applicants with an older priority date than Mr K; and
 - to consider this report as part of the annual review of its allocation policy which was due to be completed by the end of December 2018.
77. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

78. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr K. The Council should take the action identified in paragraphs 75 and 76 to remedy that injustice.