

**Guidance on the
Performance SRA:
Criteria, and Absences -
Excused and Unexcused**

For

Ashfield District Council

A Report by the

**Independent
Remuneration Panel**

**Dr Declan Hall (Chair)
Janet Richardson
Martin Rigley MBE**

March 2017

The Context

1. In the last Members' Allowances Review (see July 2016 Report) the Panel recommended that in return for a reduction of the Basic Allowance by £500 a Performance SRA of £500 be established that is paid annually in arrears only when a Member has attended 70% of their scheduled meetings and mandatory training events for that year.
2. This recommendation was accepted by the Council (21 July 2016) with an implementation date of 29 May 2017. At the same meeting it was further resolved that "the Standards and Personnel Appeals Committee be given the remit to account for genuine or 'excused' absences".
3. This remit was considered in depth by the Standards and Personnel Appeals Committee on 12 December 2016 and a number of practical considerations were raised. In particular, the Committee determined that clarity was required on how the Performance SRA would be administered and on the criteria for excused and unexcused absences. So as to obtain a wider perspective the Panel has been tasked with considering the issues raised by the Standards and Personnel Appeals Committee to enable the Monitoring Officer to report back at its next meeting on 27 March 2017.

Terms of Reference

4. As the Panel had made the original recommendation and partly to bring an 'independent' perspective it was asked to provide appropriate draft guidance and criteria for excused and unexcused absences for the Monitoring Officer to take the Standards and Personnel Appeals Committee on 27 March 2017 for its consideration.
5. In arriving at its recommendations and draft guidance the Panel was asked to take into account the issues raised by the Standards and Personnel Appeals Committee (12 December 2016).

The Panel

6. Ashfield District Council reconvened its Independent Remuneration Panel and the following Panel Members carried out its independent review; namely:
 - Dr Declan Hall: Independent consultant specialising in Members' allowances and support, former academic at the Institute of Local Government, The University of Birmingham
 - Janet Richardson: Manager of a local charity and a resident of Ashfield

- **Martin Rigley MBE**: CEO of Lindhurst a local engineering company, Chair of Skills & Employment Board Nottingham & Nottinghamshire, Chair of Advanced Engineering Local Enterprise Partnership (LEP) and a local resident
7. The Panel was supported by Mike Joy, Scrutiny Manager (including Democratic Services) at Ashfield District Council, who was the organisational lead in facilitating the work of the Panel.

Process and Methodology

8. As the terms of reference fall outside the 2003 Regulations and advice was being sought on what is in effect an administrative issue the Panel operated as a 'virtual' Panel. The Chair of the Panel took the lead in researching the issue, including attending a briefing session with Officers at the Council Offices Kirkby-in-Ashfield on 3rd March 2017. Subsequently a draft guidance was produced by the Chair for the Independent Remuneration Panel to comment on.
9. The full range of written information received and considered by the Panel is listed in the appendices as follows:
- **Appendix 1:** Draft Guidance on the Performance SRA: Definitions, Criteria, Excused and Unexcused Absences
 - **Appendix 2:** List of information and evidence that was reviewed by the Panel
 - **Appendix 3:** Officers who briefed Panel

Consideration of Issues raised by Standards & Personnel (Appeals) Committee

Purpose of the Performance SRA

10. Being a Councillor is about more than just attending meetings; the role as community leader and local champion is equally important but it is at meetings of the Council and its committees where issues are debated and formal decisions and recommendations are made. If a Member is not attending the majority of their scheduled meetings and training events they are not representing the interests of their constituents and the council in general to the best of their ability.
11. The Panel recommended the Performance SRA not as a bonus but to introduce an element of remuneration that goes some way to recognise where some Members are not demonstrably putting in as much as others. The data maintained by the Council on Members attendance shows that from 1 March 2016 to 28 February 2017 all but a handful have attended at least 70% of their scheduled meetings; before taking potentially excused absences into account. Consequently, the general presumption is that nearly all Members will qualify for the Performance and it is only equitable that the few that do not are penalised.

Taking the Issue out of Members remit

12. One of the issues raised by the Standards and Personnel Appeals Committee concerned the appropriateness of a Council Committee taking the decision what constitutes an excused and unexcused absence, in effect councillors policing councillors. Thus it was further resolved that the as part of these proposals the Monitoring Officer, rather than the Standards and Personnel (Appeals) Committee "would be responsible for reviewing the reasons for absences in line with the criteria to be agreed by the Committee and to determine if the Performance Element of their allowances payments should be paid to the individual Members in such case."
13. The Panel notes the wishes of the Standards and Personnel Appeals Committee and the recommendations contained in this report and the accompanying draft guidance have borne this in mind.

Appeals Mechanism - too burdensome

14. Yet there was a view that an appropriate council committee such as Standards and Personnel Appeals Committee should retain the right to determine appeals against a decision of the Monitoring Officer on whether a Member qualifies for an excused absence.
15. The Panel has not accepted that an appeals mechanism is required as it cuts across the overarching wish of the Standards and Personnel Appeals Committee to take the process out of Members' hands. Moreover, it would introduce an extra administrative level into the process which would make it over complicated.

Producing Quarterly Attendance Reports

16. Every quarter a summary of all Members Attendance records will be sent to relevant Group Leaders or where a Member is not part of a political group then to the individual, so they are aware of any issues on an on-going basis rather than in hindsight thus enabling them to take remedial action accordingly.

Meetings that are counted for attendance purposes

17. In line with the principle of keeping the process as straightforward and administratively simple as possible the Panel reiterates that the meetings that are to be included for attendance purposes are:
 - All scheduled meetings which a Member is scheduled to attend for each municipal year
 - All mandatory training events which a Member is required to attend

18. In deciding whether the 70% threshold has been reached thus triggering the Performance SRA all of the meetings listed above should be included in the total expected number of meetings.

Members with differential workloads - a group and individual choice

19. The latest attendance data (1 March 2016 to 28 February 2017) shows that Members have differential workloads, with expected attendance ranging from 13 to 39 meetings. This could lead to a situation where a Member is paid the Performance SRA by attending fewer meetings than another Member who is not paid the Performance SRA although the latter may have actually attended more meetings. I.e., attending 60% of 39 meetings is still attending more meeting than a Member who attends 70% of 13 meetings.
20. It is hoped that any individual who stands for Council has satisfied themselves that they are able to commit to the time required to fulfil all their duties and in particular to those committees and panels to which they are appointed and mandatory training events. Moreover, the group has the main say in determining to which committees it appoints its members.
21. Thus the Panel is not making any recommendation in this regard on the basis that workloads are the responsibility of individual Members and their respective party groups. It is beyond the remit of the Panel to make recommendations to how the Council is currently organised.

Defining Attendance - Keeping it simple

22. In making its recommendation for the Performance SRA the Panel based it on attendance at scheduled meetings and mandatory training events as it is the most simple and straightforward aspect of a Member's performance that can be measured. The Standards and Personnel Appeals Committee raised the issue of whether there should be a minimum period of attendance at each meeting for it to count. There was concern that individuals might come to the start of the meetings and then leave before the meeting had ended, sometimes for a given reason, sometimes for no given reason.
23. On the other hand, the Committee was keen to ensure that the administration of the Performance SRA is not too bureaucratic or burdensome. A view originally expressed by the Panel's Report July 2016. The expectation is that a Member will attend their meetings in full. The data shows that out of the 922 meetings that Members were scheduled to attend between 1 March 2016 and 28 February 2017 that on only 24 occasions, or 2.4%, did a Member leave before it ended. To require an attendance to be counted by being there for the whole meeting would be an over bureaucratic approach to address what is a negligible issue. **The Panel does not recommend that attendance to the end of a meeting is monitored and is not a requirement for it to count for the Performance SRA.**
24. However, at a future review the Panel will revisit the issue to ascertain whether attending meetings to the end has remained a non-issue.

Clarifying excused absences

25. In the July 2016 Report the Panel recommended that genuine or 'excused' absences were to come under the following categories:
- Illness/physical incapacity
 - Family/domestic emergency
 - Officially representing the Council in another forum
26. The Panel has set out below further clarification on what this will mean in practice.

Illness/physical incapacity

27. This category should include where a Member reports in, 'sick' either before a meeting or within 5 working days of missing a meeting. Asking for a doctor's sick note or letter to provide evidence of being ill would be too bureaucratic and the Panel is content that Members should be able to self report illness or a physical incapacity.
28. The Council has a responsibility under the Equalities Act (2010) to ensure that where a Member has a disability that they receive the support to fulfil their duties including attendance at meetings. Thus an excused absence does not include a pre-existing but relatively stable condition as in these cases the onus is on the Member and Council to ensure the Member has the necessary support to attend their scheduled meetings. If there was a detrimental or debilitating change in a pre existing condition this would come under the category of illness.
29. An excused absence due to illness/physical incapacity should be no longer than 6 months.

Family/domestic emergency

30. This should include where a Member suffers bereavement of a close family member for up to a period of 30 days. Additionally, where a close family member has an accident and an elected Member is required to visit them at a doctor's or hospital should also count as an excused absence.
31. It should also include domestic emergencies such as calamitous accidents at home e.g., flooding, home break in, or some such similar one off incident that requires immediate attention. It should not include having to wait for an appointment for a repairmen or home delivery of an item. Nor should it include caring for dependants, there is a Dependants' Carers' Allowance in place for this scenario.

Officially representing the Council in another forum

32. It is appropriate that where a Member is representing the Council in another forum, defined as those outside bodies as set out in the Constitution to which the Council is required to appoint Members or where a Member is otherwise formally required to represent the Council in an official capacity such as the Nottinghamshire Leaders Board or Nottinghamshire Police and Crime Panel (PCP) then it can count as an excused absence. On such occasions the prime onus may be on the relevant Member to ensure the interests of the Council are represented externally.
33. It should not include meetings of other Councils such as where a Member is also a Nottinghamshire County Council or Parish Council Member. It is incumbent upon the Member to ensure they have the capacity to attend meetings of all councils they may be elected to and in the case of Nottinghamshire County Council they are in receipt of a Basic Allowance from that Council in any case so that would amount to being paid twice if that was excused.
34. Nor should an excused absence include those outside bodies where a Member also receives an additional remuneration, for instance, if that became the case at the Nottinghamshire PCP.

Family Absence

35. The Panel did not address family absence in its original recommendation regarding the Performance SRA. Although, unlike in Wales, there is no statutory right to family absences for Members it does not preclude the Panel from adding this category to cover excused absences. These type of excused absences should include:

Maternity Absence

36. Where a Member has or is expecting a child it is reasonable to be excused from meetings as long as the Monitoring Officer is notified no later than 15 weeks before the expected birth or as soon as reasonably practicable.
37. The maximum period for maternity leave should be 26 weeks starting no earlier than 12 weeks from the expected birth or as soon as reasonably practicable by giving written notice to the Monitoring Officer but starting no later than the day after the day on which childbirth occurs.

Newborn Absence

38. This is where the child's father has or expects to have responsibility for the upbringing of the child, or is married to, civil partner or partner of child's mother and has or expects to have main responsibility for the upbringing of the child. A Member's entitlement to newborn leave is two consecutive weeks not beginning before the child is born or ending later than 56 days after that date.

Adopter's Absence

39. This is where the Member is the child's adopter. In this instance the Member will be entitled to two consecutive weeks excused absence starting no earlier than the date of adoption and ending no more than 56 days after that date.

New Adoption Absence

40. Where a Member is married, the civil partner or the partner of the child's adopter and has main responsibility for the upbringing of the child. Entitlement is two consecutive weeks starting no earlier than the date on which the child is placed with the child's adopter and ending no later than 56 days from that date.

Addressing Other Issues raised - unexcused absences

Sending apologies

41. Sending apologies does not constitute an excused absence; it would defeat the purpose of the original recommendation. Where a Member knows they will be unable to attend a meeting they are still expected to send their apologies.

Work commitments

42. Work commitments do not constitute excused absences. If it was the case it would mean a Member being paid twice - for their work and for non-attendance at a meeting. It is expected that Members are able schedule their work commitments around their meetings schedule as far as practically possible.

Holiday commitments

43. Again, it is expected that Members are able schedule their holiday commitments around their meetings schedule. Moreover, apart from Planning, council meetings are not scheduled during peak holiday periods.

Representing constituents

44. The Panel had some sympathy with classifying representing constituents as an excused absence but decided against it. Not only is it difficult to validate whether a Member has been called urgently to represent a constituent the Panel is also satisfied that by setting the qualifying bar for the Performance SRA at 70% attendance it creates sufficient headroom for this and other types of unexcused absences without unduly penalising Members.

Substitutes

45. The Standards and Personnel Appeals Committee specifically raised the issue of what should happen when a Member sends a substitute to a meeting they cannot make. The Panel is not recommending that where a Member sends a

substitute that it counts as an excused absence nor should it be counted as one of the annual number of meetings the substitute is scheduled to attend. If such an arrangement was in place it could be open to manipulation.

Predetermined or a declarable pecuniary interest

46. Where a Member is attending a meeting and has a predetermination or a declarable pecuniary interest they will still have to attend the meeting and step out when required and back in when the topic has been addressed. So in effect it is a non-issue, for the relevant Member their attendance at such meetings would be counted against the 70% attendance target.

Implementation

47. **The Panel recommends that the Performance SRA and accompanying Guidance are implemented from the start of the 2017/18 municipal year.**

APPENDIX 1:

Draft Guidance on the Performance SRA: Definitions, Criteria, Excused and Unexcused Absences

1. Introduction: The Performance SRA

Being a Councillor is about more than just attending meetings; the role as community leader and local champion is equally important but it is at meetings of the Council and its committees where issues are debated and formal decisions and recommendations are made. If a Member is not attending the majority of their scheduled meetings and training events they are not representing the interests of their constituents and the council in general to the best of their ability.

Consequently, a Performance SRA of £500 is paid annually in arrears only if a Member attends 70% of their

- Schedule meetings and
- Mandatory training events.

2. Role of Monitoring Officer

The payment of the Performance SRA is the responsibility of the Monitoring Officer who must be satisfied that a Member has reached the 70% threshold after taking into account any excused absences. The Monitoring Officer will also determine whether a Member who has missed one or more of their scheduled meetings and mandatory training events is given an excused absence.

3. What counts as an attendance

Where a Member is predetermined or has a declarable pecuniary interest they will be counted as being in attendance.

In determining whether 70% of scheduled meetings and mandatory training events have been attended excused absences are counted as being in attendance and unexcused absences do not count as an attendance.

4. Producing Quarterly Attendance Reports

So as to provide an early warning where a Member is not on schedule to reach the 70% attendance threshold quarterly reports are to be produced summarising each Members Attendance for that quarter. They will be sent to the relevant Group Leaders and respective Member or just to the Member if they do not belong to a political group, so they are aware of any issues regarding their attendance enabling them to take remedial action accordingly.

5. Excused Absences

There are four categories of excused absences from scheduled meetings and mandatory training events that will count towards the 70% threshold:

- Illness/physical incapacity
- Family/domestic emergency
- Officially representing the Council in another forum
- Family leave

Illness/physical incapacity

A Member is required to self report sickness, long term illness or onset of physical incapacity to the Monitoring Officer, before the relevant meeting or within 5 working days of missing a meeting.

An excused absence due to long term illness/physical incapacity can be no longer than 26 weeks.

Examples of an excused absence under this category can include:

- Flu/Cold or onset of another illness
- Incapacitating accident or other accident that requires attendance at a doctor or hospital
- Long term debilitating illness such as a chronic disease
- Detrimental change in a pre existing condition such as a physical disability

Family/domestic emergency

In the case of a death of a close family Member an elected Member can receive bereavement leave for up to a period of 30 days starting no later than the date of the funeral of the close family member on the condition that the Monitoring Officer has been notified no later than 7 days after the date of the funeral.

One off excused absences will be given for other family/domestic emergencies that include:

- An accident requiring attendance of a close family member at a doctor and/or hospital
- Calamitous accidents at home e.g., flooding, home break in, or some such similar one off incident that requires immediate attention.

Officially representing the Council in another forum

Where a Member is representing the Council in another forum, defined as those outside bodies as set out in the Constitution to which the Council is required to appoint Members or where a Member is otherwise formally required to represent

the Council in an official capacity then they are to be counted as excused absences. Examples of these types of meetings also include

- The Nottinghamshire Leaders Board
- The Nottinghamshire Police and Crime Panel (PCP)
- The LGA
- The East Midlands Regional

Family Absence

Members can apply to the Monitoring Officer for a leave of family absence under any of the 4 categories listed below:

- **Maternity Absence:**

Where a Member has a newborn child they can take maternity leave for a maximum of 26 weeks on the condition the Monitoring Officer has been given written notice no later than 15 weeks before the expected birth or as soon as reasonably practicable.

Maternity leave can be taken no earlier than the start of the sixteenth week before the expected birth and no later than 26 weeks after the date of birth.

- **Newborn Absence**

Newborn leave can be applied for via the Monitoring Officer where a Member is a newborn child's father or expects to have responsibility for the upbringing of the child, or is married to, civil partner or partner of child's mother and has or expects to have main responsibility for the upbringing of the child.

A Member's entitlement to newborn leave is two consecutive weeks not beginning before the child is born or ending later than 56 days after that date.

- **Adopter's Absence**

A Member can apply for adopter's leave where they adopt a child. The Member is entitled to two consecutive weeks of adopter's leave starting no earlier than the date of adoption and ending no more than 56 days after that date.

- **New Adoption Absence**

Where a Member is married, the civil partner or the partner of the child's adopter and has main responsibility for the upbringing of the child they can apply via the Monitoring Officer for new adoption leave. Entitlement is two consecutive weeks starting no earlier than the date on which the child is placed with the child's adopter and ending no later than 56 days from that date.

The onus is on a Member to satisfy them self and the Monitoring Officer that they meet the conditions of each of the four categories under which they may seek one

or more excused absences. They shall also inform the Monitoring Officer of any change in circumstance and/or condition as soon as practically possible.

6. Absences that are not excused

Members should note that the following are specifically excluded from being counted as excused absences:

- Meetings of other Councils such as where a Member is also a Nottinghamshire County Council or Parish Council Member.
- Meetings of any outside body that the Council may appoint a Member to and where they also receive an additional remuneration.
- Routine domestic commitments such as appointments for repair or delivery men at a Member's residence
- Caring for dependants
- Sending apologies
- Work commitments
- Holiday commitments
- Representing constituents
- Sending substitutes
- By virtue of having a pre-existing physical handicap

APPENDIX 2

LIST OF INFORMATION REVIEWED BY THE PANEL

1. Terms of Reference
2. Ashfield District Council Members' Members Allowances Scheme 2016/17
3. Ashfield District Council Publication of Members' attendance DATE
4. Minutes of Council meeting DATE
5. Minutes of Standards and Personnel Appeals Committee DATE
6. Independent Remuneration Panel, Review of Allowances, July 2016 Report
7. Copies of Members' Allowances schemes from other relevant councils where similar provisions are in place, namely:
 - Will list when I finish adding to list
8. Welsh Statutory Instrument 2013 No. 2901 (W. 280). Local Government, Wales: The Family Absence for Members of Local Authorities (Wales) Regulations 2013

APPENDIX 3

OFFICERS WHO BRIEFED THE PANEL

Ruth Dennis	Assistant Chief Executive (Governance)
Mike Joy	Scrutiny Manager
Robert Mitchell	Chief Executive