

# EXECUTIVE COUNCIL

## RESTRICTED

**Title of Report:** Report of the Independent Panel on Members' Remuneration

**Paper No:** 218/09

**Date:** 17 September 2009

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### 1. Purpose

1.1 This report sets out the deliberations and conclusions of the Independent Panel on Members' Remuneration.

### 2. Recommendations

2.1 That Executive Council accepts the recommendations of the Panel as outlined in Section 7 of this report.

### 3 Financial Implications summary

3.1

	2009/10 £	2010/11 £	Full Year £
Current Members Allowances Budget	135,520	141,050	141,050
<b>Additional Funding Required</b>	<b>30,000</b>	<b>60,000</b>	<b>60,000</b>
Revised Estimated Total Costs	165,520	201,050	201,050

### 4. Background

4.1 Executive Council agreed at its July 2009 meeting that an independent Panel be established to conduct a review of Members' remuneration and to consult with the public before making recommendations in time for the 2009 general election in November.

4.2 The Panel was established shortly afterwards with three members appointed by HE the Governor. However two members had subsequently to resign including the Chair Kieth Biles following his appointment as Speaker of the Legislative Assembly. The need to identify new Panel members and inevitable disruption to the work of the Panel has resulted in a significant delay in the Panel concluding its work.

4.3 The Panel has latterly consisted of Justin McPhee (Chair), Lisa Johnson and Tony Blake.

## **5. Process followed by the Panel**

5.1 The Panel initially agreed it wished to follow a logical and open minded, evidence based approach centred on four key questions:

### 1. What do Members do?

Try to define the role and the extent of responsibility and time commitment involved.

### 2. Should they be paid?

May seem self-obvious but there could be a view that the role should be voluntary with expenses only.

### 3. How should they be paid?

Consideration of the various approaches that can be adopted – fixed salary, variable allowances, earnings related approach etc

### 4. How much would be appropriate?

Based on scoping and scaling the role, what would be appropriate both in comparison with similar roles and bearing in mind the community nature of the role.

5.2 Accordingly the Panel has tried to answer these questions by gathering information and views from a wide base. This has included:

- Individual interviews with all current Members;
- Focus group with previous Members;
- Focus group of younger people in the community, felt to be a key target group;
- Consideration of information on the current scheme of allowances and data about Member time commitment and allowance claims;
- Review of data on remuneration in other Overseas Territories
- Review of role definitions/job descriptions from other territories and local authorities
- Public meeting to discuss proposals.

## **6. Conclusions of the Panel**

6.1 Having had regard to the views of the community and past and present Members the Panel have formed the view that there is no great case for substantial change from the current approach, both in terms of the method of remuneration and the overall amount.

6.2 The Panel also believe from local consultation that remuneration is not the key factor affecting the willingness of people in the community to stand for election. Consultation has tended to indicate that the time commitment, responsibility and stress of the role and affect on careers are far more important.

6.3 Based on these conclusions the Panel decided not to pursue an option, which had been favoured initially, of defining a full job description for Members and evaluating that against the Civil Service pay scheme to provide a reference point. To adopt this option would entail

a completely new approach and in any event posed practical problems since the Member role presently in the Falklands is clearly part time and also has a strong community oriented element (and so is not necessarily appropriate to evaluate with a job evaluation scheme focused on salaried professionals).

6.4 Nonetheless the Panel believes that a role description for Members is helpful; amongst other things it can help those considering standing for election to understand the full extent of the role and the pressures involved. Accordingly an outline Role Description is attached at Appendix One. It needs to be stressed that this has only been subjected to a limited amount of research and consultation and should be regarded as indicative only and benefiting from further development.

6.5 The Panel therefore believes that the current system of fixed basic allowance plus a variable element for all Members should remain. However it feels that the approach could be enhanced with a number of possible additions:

#### Pensions

6.6 It seems unfair that elected Members who may be giving up paid employment to serve the community should be faced with paying both the employees and employers element to remain eligible for the state pension scheme. So the Panel believe that the employer's contribution should now be paid by the Government.

6.7 A more difficult addition perhaps is that elected Members become eligible for membership of the occupational pension scheme FIPS, since there may be a conflict of interest given that Members determine the policy of the scheme. However on balance the Panel believe that Members should benefit from this in proportion to their total allowances.

#### Child Care

6.8 Consultation has suggested that it is unfair for Members to have to meet the cost of child care that arises from necessary attendance at meetings, and that this aspect may be a deterrent to some from standing for election. Accordingly the Panel propose that Members should be eligible to claim the cost of child care arising necessarily from attendance at meetings.

#### Additional allowance for Executive Council

6.9 The Panel believes that Members of Executive Council take on a substantially greater level of responsibility and accountability than other Members since Executive Council is now clearly responsible under the Constitution for Executive decision making. The Panel believe this should be reflected in a significantly larger basic allowance for Executive Council Members.

### Approach to determining inflationary uplifts to allowances

- 6.10 The Panel believe that it is invidious for Members to be placed in the position of determining the inflationary uplift in Members' allowances, even if decisions on this are traditionally taken with regard to the subsequent Assembly. The Panel has considered alternative formula based approaches (e.g. RPI – x%).
- 6.11 However the alternatives based on a formulaic approach contain weaknesses of their own (for example an inflation based formula could result in Members receiving an uplift when others in the community were receiving none).
- 6.12 On balance and having had regard to opinions expressed in consultation meetings the Panel have decided that a formula based approach has too many weaknesses. Instead the Panel recommends that Members' remuneration should in future be reviewed by an independent panel at the onset of a new Assembly.

### Setting new allowance rates to apply from November 2009

- 6.13 Notwithstanding that the Panel believes there is no great case for change and little support in the community for substantially larger remuneration, it feels that Members' remuneration ought to be broadly more in line with general managerial rates than is the case presently. Otherwise there may be those in the community for whom it is simply financially impossible to commit to a role which evidence shows can take up 15 – 20 or more hours per week.
- 6.14 But the Panel also feel that too much emphasis on the Daily Allowance should be avoided as there may be a perception that this could encourage over-attendance at meetings.
- 6.15 The Panel has not found readily available benchmarks but are of the opinion that middle management salaries (full time) are commonly around the £40,000 mark (£20k for a broadly half-time role). Bearing this in mind, and the wish to avoid too much emphasis on the Daily Allowance, they feel the following uplifts should be made to allowances in the new Assembly, which given the current and likely future work-load is likely to result in overall remuneration for all Members of £20k plus. This will then subsequently be subjected to the formula as above:
- Annual allowance: +30%. (£4,520.75)
  - Daily allowance: +20% (£126 per day)
- 6.16 As stated in 6.9 the Panel believe that Executive Council Members take on significantly more responsibility and would like to see this reflected in an enhanced allowance. Their suggestion is:
- Executive Council Member Allowance: +40% of the standard Annual Allowance (total of £6,329.05)

### Tidying up of regulations to reflect practice

- 6.17 It is felt that the current regulations do not reflect current practice and there is now an opportunity to bring them in to line. For example current practice is to travel Economy

unless a flight cannot arrive without 24 hours of the relevant meeting (and is more than 8 hours duration) whereas the Ordinance actually provides for Club class fares. The Panel recommends that the Ordinance is amended as soon as possible to reflect the current practice.

## 7. Summary of recommendations

7.1 The above points can be summarised in recommendation format as follows:

### Recommendation

- 1 The current general approach based on a fixed Annual Allowance plus variable Daily Allowance should be retained
- 2 The basic Annual Allowance should be increased to £4,250.75 with effect from 6 November 2009 and subject to taxation.
- 3 The Daily Allowance should be increased to £126 per day with effect from 6 November 2009
- 4 An enhanced Annual Allowance should be provided for Members of Executive Council of £6,239.05 with effect from 6 November 2009
- 5 The employer's contribution to the state pension scheme should be provided by the Government (with effect from 6 November 2009)
- 6 Members of the Legislative Assembly should be eligible to join the Government's occupational pension scheme FIPS (with effect from 6 November 2009). This would be an employers contribution of 10% on all income earned as a MLA with a 5% contribution from Members.
- 7 An allowance should be made available for child-care costs necessarily incurred in attending a meeting as a Member of the Legislative Assembly based on a refund of receipted costs from a recognised Child Care facility.  
  
[This item was not agreed. EXCO requested further work on the oversight of claims]
- 8 Relevant Ordinances and Regulations should be brought in to line with current practice particularly regarding overseas travel
- 9 The principle of a Role Description for elected Members is commended and the one provided in Appendix One accepted as a starting point for further discussion in the new Assembly.
- 10 Members' remuneration should in future be reviewed by an independent panel before a general election.

## **8. Legal Implications**

- 8.1 Recommendations 2 to 8 require legislative change before they can be implemented.
- 8.2 It should be possible for recommendations 2, 3, 4 and 8 to be implemented by the making of an order under the Elected Councillors' Allowances Ordinance 1990, to come into force on 6 November 2009. Reference recommendation 8, drafting instructions will need to be provided to the Attorney General's Chambers identifying exactly what the current practice is. It is suggested that those instructions are provided by the Chief Executive.
- 8.3 The draft order could be presented to the October meeting of Executive Council. It should be noted that the Governor is required to consult with Members of the Legislative Assembly before making such an order. Provision was made in the Finance Ordinance 2009 for increase to Members Allowances, but that provision will simply never come into force unless confirmed by resolution of the Assembly.
- 8.4 Recommendations 5 and 6 appear to require amendment of the Retirement Pensions Ordinance 1996 and the Falkland Islands Pension Scheme Ordinance 1997. This is because Members of the Legislative Council are not employed by FIG; special provision would need to be made in the law on this basis. The proposed amendments to those laws could be implemented by submission of Bills to the Legislative Assembly in November or December. It may be possible for payments to be backdated under those amended laws to have effect from 6 November 2009. It is suggested that Treasury should provide the detailed instructions for this legislative change.
- 8.5 Recommendation 7 may have to be legislated for at a later stage because the basis of the recommendation is that the proposed scheme would operate "on a refund of receipted costs from a recognised Child Care facility". There is currently no system of recognition of child care facilities, so the detail of this aspect of a scheme would need some additional work before it could be included in the legislation. It is suggested that the Chief Executive progress the work required on this to enable detailed instructions to be given for the drafting of this provision.
- 8.6 In connection with recommendation 7 generally, the provision of childcare allowances to Members draws an immediate question about the justification for such an allowance in the absence of any childcare allowances for, for example; FIG employees, or other community oriented roles (such as non-officer membership of Government advisory committees).
- 8.7 Of course this would seem to be largely a question of policy, but there is a concern that there may be wider legal implications which cannot be properly determined in the short time available to provide this advice. For example, there may be a case to be made by a person who sits as an unpaid member of a Government committee that childcare allowances payable to the male dominated Legislative Assembly are discriminatory (and history indicates that the male domination of the Assembly is unlikely to change in the near future). The likelihood of any legal challenge being made is probably minimal, but the fact that this recommendation is made against the background of an apparent absence of a clear policy for childcare assistance generally (whether in the public or private sector), indicates a potential for unfairness such that it is appropriate to raise the issue in a legal context.

8.8 For the avoidance of doubt, if childcare provision is made in accordance with recommendation 7, it should be made available regardless of the gender of the Member seeking to claim an allowance.

## 9. Financial Implications

9.1 It is impossible to calculate the total additional costs of the proposals accurately since some of the allowances are time-based and some (eg pension provision and child care) will depend on the circumstances of the members of the new Assembly. However, the following estimates have been derived based on the level of hours/days claimed by current elected members:

Recommendation	Description	Estimated Full Year Costs £
2	Increased Annual Allowance	9,280
3	Increased Daily Allowance	21,640
4	Enhanced Annual Allowance for ExCo Members	5,700
5	Employers RPC (payable by FIG) **	4,800
6	FIPS Contributions (payable by FIG – assume 10%)	16,000
Sub-Total		<u>57,420</u>

\* The figure for RPC is a maximum amount payable. In practice some members may be employed, in which case the employers RPC may be payable by their employer

9.2 In addition to the above, child care costs will be payable to eligible members. It is not possible to give an accurate estimate of what these might be. However, if an average of £2.50 per child per hour is assumed, it should be possible to finance a minimum of 1000 hours per annum from a total additional annual provision of £60,000.

9.3 The current annual budget for member's allowances, including an increase of 8.5% as agreed in the Finance Bill 2009, amounts to £135,520 (£141,050 for 2010/11 onwards). An additional annual provision of £60,000 represents an increase of 46% on the current full year cost.

## **APPENDIX ONE**

### **Independent Panel on the Remuneration of Members of the Legislative Assembly**

#### **Members' Job Description**

##### **Overview**

It is not easy to capture the full scope and pressures of the role of an elected Member in a conventional technical job description. The role of an elected Member covers a wide range of activity from law making through responding to and assisting public enquiries to taking major executive decisions. A wide range of skills is required combining people skills, the ability to absorb large amounts of complex information, representing the country at high levels internationally, formulating strategies and making difficult decisions.

People who have had experience of the role have stressed its '24/7' nature particularly in a small community where contact with constituents is continuous.

The Portfolio approach whereby Members of the Assembly take an overview responsibility for certain departments in particular requires a high degree of knowledge of the departments and taking public accountability for the work of the departments.

There are also very high expectations of Members who have to undertake an enormous amount of information analysis and contact across the whole range of community and national issues with very limited administrative support. There is considerable pressure and constant public scrutiny.

The following provides an outline of the main functions involved in the role.

##### **Specific functions**

###### **Representation**

Represent constituency views in the Assembly and assist members of the public in their dealings with government.

###### **Scrutiny**

Ensure that Government decision making and management are sound and provide value for money through scrutinising decision making and management.

###### **Legislation**

Exercise the law making powers of the Assembly under the Constitution ensuring such laws have regard to the interests and views of all sections of the Community and provide for the best outcomes for the community as a whole.

###### **Policy development**

Lead the development of policy proposals within assigned/agreed areas through chairing policy fora such as advisory committees, policy groups and working parties.

###### **Departmental role**

Take a non executive overview of several government departments including liaising with senior staff over departmental issues and liaising with and advising members of the public on individual queries and policy issues

#### Finance

As a member of the Standing Finance Committee plan the Government's finances for Assembly approval and agree major in-year budget virements. Scrutinise Government spending and financial management.

#### External relations

Represent the Islands overseas such as at the United Nations, Commonwealth Parliamentary Association, European Union, UK Government and party political conferences including attending ministerial meetings. Locally meet with visiting VIPs and liaise with bodies such as the Ministry of Defence.

#### Outside bodies

Attend and Chair outside bodies on behalf of the Government such as FIDC, FITB, FLH. The Chairing role includes regular liaison with management, organising and leading Board meetings and representing the body to other bodies.

#### Executive

If/as a member of Executive Council undertake major decision making for the Government at Executive Council meetings.