

# COUNCILLORS' ALLOWANCES

This advice note was written by our in-house solicitors and last updated on 1 August 2019.

<https://www.nalc.gov.uk/resource/councillors-allowances.html>

*The information and commentary in the note do not constitute legal advice for any individual case or matter. For specific advice on your circumstances, we strongly encourage you to seek tailored legal advice.*

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## Introduction

This advice note will consider the payment of allowances to local council chairmen and the different types of allowances that can be paid to councillors generally. The relevant law for England is set out in the Local Authorities (Members' Allowances) (England) Regulations 2003 ("the 2003 Regulations") and for Wales in the Local Government (Wales) Measure 2011 ("the 2011 Measure"). Unless otherwise stated, statutory references are to the 2003 Regulations.

## The parish basic allowance

A local council is able to pay a parish basic allowance ("PBA") for each year to its chairman only or to each of its *elected* members (Regulation 25). The amount payable to the chairman may differ from that of other members but otherwise the sum shall be the same for each member.

The PBA is not a salary. It is a figure, which is calculated to cover the expenses that are normally associated with the basic duties of being a local councillor. The purpose is also not to reimburse individual councillors for specific expenses. Travelling and subsistence allowances are treated separately (see paragraph 7 below). There is no set figure and amounts may differ according to local factors.

Regulation 25 (6) provides that as soon as reasonably practical after setting the levels at which the PBA is to be paid and to whom, the council must arrange for the publication in a conspicuous place for a period of at

least 14 days within the area of the council, a notice containing the following information:

- Any recommendation in respect of PBA made by the parish remuneration panel (see below).
- The level or levels at which the authority has decided to pay PBA and to which members it is to be paid.
- A statement that in reaching the decision was regarded as the recommendation of the parish remuneration panel.
- The council must keep a copy of the information referred to in the notice available for public inspection on reasonable notice (Regulation 25 (7)).
- The 2003 Regulations also require a notice to be published when the report of the parish remuneration panel is made to the council (Regulation 30). It may be possible for the two separate requirements to be satisfied by the publication of one notice with the proviso that it contains all of the required information and timescales allow it to be dealt with in this manner.

### **Parish travelling and subsistence allowance**

Regulation 26 permits a local council to pay to both elected and co-opted members allowances in respect of travelling and subsistence. This includes an allowance in respect of travel by bicycle or other non-motorised form of transport undertaken or incurred in connection with the performance of any duty within the following categories:

- The attendance at a meeting of the council or of any committee or sub-committee of the council, or of any body to which the council makes appointments or nominations or of any committee or sub-committee of such a body.
- The attendance at a meeting of any association of authorities of which the council is a member.
- The performance of duties in connection with a tender process.
- The performance of any duty which requires the inspection of any premises.
- The carrying out of any other duty approved by the council, or any duty of a class so approved, or in connection with, the discharge of the functions of the authority or of any of its committees or sub-committees.

## **Recommendations**

Regulation 25 (2) and Regulation 28 provide that where a local council proposes to pay the PBA, it must have regard to the recommendations which have been made in respect of it by the parish remuneration panel in setting the level of that allowance. The same requirement is not specified within Regulation 26, and so at face value, it would appear that the council can set the level of travelling and subsistence allowance without reference to the panel. However, in NALC's view, it would be appropriate for councils to also take the view of the parish remuneration panel into account.

## **Parish remuneration panel**

Regulation 27 states that a parish remuneration panel may be established by a responsible authority (which is defined as a district or unitary county council). In some areas, panels will not be set up as there is no duty to do so. The implication is that the panel is established when an appropriate local council makes a request to do so. The process of making such a request is not specified within the 2003 Regulations, and how this is achieved in practice will differ around the country.

The expenses of the parish panel are to be met equally by those local councils in respect of which recommendations are made (Regulation 27(4)). Although the 2003 Regulations are not specific, it may be assumed that the cost is spread between those local councils that actually make a request.

Regulation 28 provides that when convened, a parish remuneration panel will produce a report making recommendations as to:

- The amount of PBA payable to members of the local council (the council must take this into account when setting the agreed level).
- The amount of travelling and subsistence allowance payable (see above comments on taking this into account).
- Whether the PBA should be payable only to the chairman of the council or to all of the elected members.
- If the PBA is to be paid to all members, should the level to be paid to the chairman should be higher and, if so, what that higher figure should be?
- The responsibilities or duties in respect of which members should receive the travelling and subsistence allowance.

A copy of this report is sent to each council to inform them of the recommendations that have been made.

## **Levels of allowances**

Regulation 29 enables the parish remuneration panel in making its recommendations, to apply the same level to all the local councils for which it was established or else recommend different levels for different councils.

The parish remuneration panel shall express its recommendations as to the level of PBA both as a percentage of the sum that an independent remuneration panel has recommended for principal authorities (this figure can be 100%) and as a monetary figure.

## **What to do after receiving the recommendation?**

Regulations 30 and 31 provide that as soon as is reasonably practicable after receiving the report from the parish remuneration panel, the council must:

- Ensure that copies are available for public inspection on reasonable notice.
- Publish a notice in a conspicuous place for a period of at least 14 days, which:
  - States that it has received the recommendation.
  - Describes the main recommendations and specifies the recommended amounts of each allowance.
  - States that copies of the panel's report are available for inspection upon giving reasonable notice and giving details of how a request to inspect should be given.

A reasonable fee can be charged for the provision of a copy of the report.

The council is required to maintain records of payments made in respect of the allowances specifying the name of the recipient and the nature of the allowance. These records can be inspected by any local government elector for the parish without payment of a fee upon giving reasonable notice. Copies must be provided if so requested and a reasonable fee can be charged.

At the end of a year (which means any period of 12 months ending on 31 March in any year), the council must publish a notice in a conspicuous place for a period of at least 14 days stating the total amount that it has paid in the year to each councillor in respect of the PBA and for the parish travelling and subsistence allowance.

## **Election to forgo an allowance**

Regulation 32 enables a member to elect in writing to the proper officer that he or she wishes to forgo all or any part of their entitlement to the above allowances.

## **Recovery of payments made**

Regulation 25 (8) provides for the recovery of allowances already paid to a member. An authority may require that where payment of PBA has already been made in respect of any period during which the member concerned ceases to be a member of the authority or is in any other way not entitled to receive the allowance in respect of that period,

## **Chair's allowance**

S.15 (5) of the Local Government Act 1972 (s.34 (5) for Wales) remain in force. This enables a local council to pay its chair for the purpose of enabling them to meet the expenses of their office such allowance as the council thinks reasonable. This means that councils can make this payment without the need to refer to the parish remuneration panel.

## **Dependants' carer's allowance**

In England local councillors are not entitled to claim this allowance under the 2003 Regulations.

## **Tax implications**

When paying parish basic allowances to elected members, local councils are obliged to deduct income tax. HM Revenue & Customs ("HMRC") treats all councillors equally, so local councillors will be subject to tax provisions the same way principal authority councillors are. There may also be similar considerations with regard to travel and subsistence allowance in certain circumstances. Councils are advised to consult HMRC for guidance on the tax treatment of allowances. Also, advice can be requested from NALC's Accounts and Audit Advisor.

## **Councillors' allowances in Wales**

Under the 2011 Measure, the [Independent Remuneration Panel for Wales](#) prescribes the maximums for community and town councillors' allowances in Wales. Details are published in the panel's annual reports.

Each community/ town council must formally decide to apply the determinations if they decide to pay allowances. If a council does adopt the determinations, members are currently entitled to:

- £150 a year to cover telephone, IT and other costs.
- Up to £1500 for additional duties if mayor, £500 for deputy-mayor or for other roles.
- Reimbursement of travel and subsistence costs when on official business
- A financial loss allowance.
- Reimbursement of the costs of care for a dependent child or adult of up to £403 a month (including formal and informal carers, e.g. babysitters for council meetings when no one else is available to care for a councillor's child(ren)).

Councils should consult HMRC for taxation questions.