



**WOKINGHAM
BOROUGH COUNCIL**

**REPORT OF THE
INDEPENDENT REMUNERATION PANEL
TO REVIEW PAYMENTS TO MEMBERS AS
NON-EXECUTIVE DIRECTORS OF
WBC TRADING COMPANIES**

**FOR SUBMISSION TO THE EXECUTIVE
30 JUNE 2016**

Members of the Independent Remuneration Panel

David Jones (Chairman) has worked for Waitrose for 33 years and has fulfilled a number of senior roles in retail, commercial and personnel sectors. He is currently the Partnership Registrar based at Waitrose's head office in Bracknell. He is an Independent Member and Deputy Chairman of the Bracknell Forest Council Standards Committee and previously was the Chairman of the Thames Valley Police Authority's Standards Committee. He is also fulfils the role of an Independent Person for Wokingham Council.

Barry Cochrane (Vice Chairman) has been a resident of Wokingham Borough for 23 years and has a 40+ year career in the design and implementation of information management solutions for both the public and private sector. Barry started his career within the Civil Service working with the RAF, Royal Navy and NHS. This was followed by a number of Europe Middle East Africa (EMEA) roles for companies delivering business efficiency through effective use of information. This included three startups taken through to Initial Public Offering (IPO). Barry is a member of ARMA International and promotes the adoption of robust records management policies and systems.

Nikki Measures has been a resident of Wokingham Borough for the last 12 years. She qualified as a Chartered Accountant at the National Audit Office before moving into training and human resources. She is currently a senior HR Manager. Nikki has numerous links with the community through her children's schooling and extra-curricular activities.

Malcolm Saffin has been a resident of Wokingham Borough for 20 years. He is an Actuary and has spent most of his career in the pensions and reward functions of very large UK companies; including being Group Head of Reward and Pensions at Standard Chartered Bank, Amersham and Cable & Wireless. Malcolm set up his own consulting business in 2010. Malcolm is married to Sarah, who has lived in Wokingham for most of her life, and they have two daughters aged 11 and 7.

Brian Shearing has been a resident of Wokingham Borough for more than 34 years. Brian is a graduate in Mathematics and Statistics and holds fellowships in the Chartered Insurance Institute, the Pensions Management Institute and the Institute of Directors. For 25 years he was employed by companies within the financial services sector – life assurance companies, fund management, pensions and banking. For the last 23 years he has run his own management consultancy specialising in the provision of services to financial institutions. He was a Governor of Waingels Copse School (now Waingels College) until 2000.

Support

Colm Ó Caomhánaigh, Democratic Services Officer
Governance and Improvements Services
Wokingham Borough Council
Shute End
Wokingham
RG40 1WQ
Tel: 0118 9746059
colm.ocaomhanaigh@wokingham.gov.uk
website: www.wokingham.gov.uk

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1. Executive Summary

- 1.1. In September 2015, the Terms of Reference of the Independent Remuneration Panel were extended by Council to include consideration of the level of remuneration payable to Members who are Non-Executive Directors (NEDs) of Council-owned companies. This is the Panel's first report on that matter.
- 1.2. Since 2012, when the Council first established positions of Member Non-Executive Directors, remuneration has been set at £6,095 per annum. This was determined following an analysis which benchmarked the positions against similar roles on NHS bodies and judged the responsibilities and demands to be somewhere between that of Planning Committee Chairman and Executive Member, who receive Special Responsibility Allowances of £5,000 and £10,000 per annum respectively.
- 1.3. The Panel researched the approach taken by other Councils that have Member NEDs, sent a questionnaire to WBC's Member NEDs and examined documents that outlined the roles as well as legislation on Council-owned Companies.
- 1.4. Having identified the main issues, the Panel then met with most of the Members who responded to the questionnaire and also the Leader of the Council and the Leader of the Opposition.
- 1.5. Following those meetings the Panel decided on the following recommendations.

2. Recommendations

2.1. The Panel recommends to the Executive that:

- 2.1.1. it be noted that the current payment of £6,095 per annum to Members who are Non-Executive Directors (NEDs) is reasonable;
- 2.1.2. a Non-Executive Director who receives a Special Responsibility Allowance as an Executive Member should not receive a payment for the NED position in order to comply with the Council's Constitution and the legislation on Local Authority Companies;
- 2.1.3. the NED payments should not be strictly linked to the Special Responsibility Allowances although legislation puts a maximum limit on the payments.
- 2.1.4. job descriptions for the NED positions should be agreed by the Council's Companies and published so that the Panel can recommend appropriate payments that will be transparent.
- 2.1.5. the Independent Remuneration Panel should review the payments to Member NEDs as part of its annual review of Member Allowances.
- 2.1.6. the Independent Remuneration Panel be requested by the relevant Council Company to recommend a level of payment for any new Member NED position that is created with a different job description from any existing positions.
- 2.1.7. the Panel will review the Constitutional provision that "Members of the Executive can only receive one Special Responsibility Allowance" in its next annual review.

3. Introduction

- 3.1. Wokingham Borough Council, at its meeting on 17 September 2015, amended the Terms of Reference of the Council's Independent Remuneration Panel to enable the Panel "to consider any request from a Local Authority Trading Company owned by Wokingham Borough Council to review the level of remuneration payable by that company to its Member Non-Executive Directors (NEDs)."
- 3.2. On 24 September 2015 the Panel received a written request from WBC (Holdings) Limited, the parent company of all of the Council's Trading Companies, to "review, now and on an annual basis, the remuneration paid to (Member) Non-Executive Directors".
- 3.3. On 30 December 2015 the Panel received a written request from the Council Leader, Councillor Keith Baker, to review the situation whereby any Executive Member who is a Non-Executive Director of a Council Trading Company does not receive a payment for carrying out that role.
- 3.4. This report reviews the current payments and outlines how the Panel plans to deal with the issue on an annual basis going forward. This report will be submitted to the Council's Executive which deals with matters relating to the Council-owned Companies.

4. Background

4.1. Ownership

Wokingham Borough Council owns the following companies that the Panel has been asked to consider:

WBC (Holdings) Ltd (the parent company)

- Optalis Ltd
- Wokingham Housing Ltd
 - Loddon Homes Ltd (a subsidiary of WHL, established to act as a Registered Provider of affordable homes).

4.2. Legislation

The Local Authorities (Companies) Order 1995 regulates companies owned by local authorities. The following provisions are of particular relevance to the Panel's work in that they ensure that a Member NED cannot be paid more for that role than they are paid for a comparable duty as a Councillor:

Requirements applicable to regulated companies

5.—(1) A regulated company shall not—

(a) in respect of the carrying out of any relevant duty, pay to a regulated director remuneration in excess of the maximum amount;

(b)...

(c)...

(2) ...

(3) In this article—

(a) for the purposes of paragraph (1)(a), the maximum amount is the greatest amount which would for the time being be payable by the relevant authority in respect of a comparable duty performed on behalf of that authority, less any amount paid by that authority in respect of the relevant duty to the regulated director in question;

(b)...

(c) "regulated director" means a director of the company who is also a member of a relevant authority; and

(d) "relevant duty" means a duty carried out on behalf of the company.

4.3. The role of Non-Executive Director

4.3.1. The Institute of Directors describes the role in general as "to provide a creative contribution to the board by providing objective criticism". NEDs are appointed to bring to the board "independence, impartiality, wide experience, special knowledge and personal qualities".

4.3.2. There is no legal distinction between executive and non-executive directors, though the latter clearly “cannot give the same continuous attention to the business of the company”, according to the Institute.

4.3.3. At its meeting on 26 July 2012, the Council’s Executive accepted a report from the Council’s Strategic Director for Resources entitled “Approval of Director’s Remuneration”. This described the “role and/or duties” of the Council Trading Company NED as “Monthly meetings of the board and decision-making at board meetings - 12 meetings per annum”.

4.3.4. Recently, WBC (Holdings) Co. Ltd. adopted the document “GOP 8.0 Director Selection, Performance and Remuneration Policy” and this includes a basic role description and skills of the Non-Executive Director. The full document is attached to this report as Appendix G. The role description is in Appendix 5 of that document.

4.4. Current payments

4.4.1. The 2012 report recommended that Member NEDs receive a payment of £6,095 per annum. At the request of the Executive, the Council’s companies proceeded to pay the Member NEDs this amount.

4.4.2. The Panel has also been informed that a Member who is an NED of two Council-owned companies receives only one payment of £6,095 per annum.

4.4.3. The amount of the payment has not changed since 2012.

4.5. Appointment of NEDs

4.5.1. The policy on appointments is set out in the document “GOP 8.0 Director Selection Performance and Remuneration Policy” as follows:

<p>2. Selection</p> <p>2.1 Non-Executive Directors</p> <p>2.1.1 Appointments as a Non-Executive Director will depend on the skills gap within a Board of Directors and whether to advertise or approach suitable known candidates will be the decision of that board.</p> <p>2.1.2 All appointments on subsidiary companies will be subject to approval of WBC (Holdings) Limited.</p> <p>2.1.3 Appointments to WBC (Holdings) Limited will be subject to the approval of the Leader of the Council.</p>

5. Work Programme

5.1. Panel meetings

5.1.1. The Panel met on four occasions to discuss payments to Member NEDs:

- 22 September 2015
- 27 October 2015
- 17 November 2015
- 11 January 2016

5.1.2. At the meeting on 17 November, the Panel met with individual Member NEDs who had responded to a questionnaire from the Panel as well as the Leader of the Council and the Leader of the Opposition. It was clear from this series of interviews that there was a unanimous welcome for the referral of this issue to the Independent Remuneration Panel.

5.2. Research undertaken

5.2.1. At the request of the Panel, Council Officers contacted other local authorities in England that had Council-owned companies to inquire as to what they paid Member NEDs, if anything, and to ask them to explain the rationale for the payment or non-payment.

5.2.2. Responses were received in respect of 16 Local Authority companies (see Appendix F). The result was a wide range of payments from zero to £15,000 per annum. Very little information was received on the rationale for payments although in some cases the Councils did have an estimate of the hours per month or days per year likely to be required in the roles.

5.3. Questionnaire to Member NEDs and follow-up meetings

5.3.1. Having identified the main issues, the Panel devised a questionnaire to get the views of the nine current Member NEDs. It was based on a similar questionnaire sent to Members when the Panel previously reviewed Member Allowances. Six Member NEDs responded and all indicated an interest in meeting the Panel to discuss their views further. Four of them were available to meet the Panel on 17 November 2015.

5.3.2. The questionnaire is in Appendix E. A summary of the responses is in Appendix D.

6. Issues

6.1. The first two meetings of the Panel identified the main questions to be addressed in relation to Member NEDs. These were:

6.1.1. Is the current payment appropriate?

6.1.2. Is it correct to link the payment to the system of Special Responsibility Allowances used to determine payments for Members with significant responsibilities in addition to those covered by the Basic Allowance?

6.1.3. Should there be one fixed payment for all NEDs or should the amount vary according to the specific role?

6.1.4. What information is available to assess the roles?

6.1.5. How should the Panel review payments in the future?

The request from the Leader of the Council received on 30 December 2015 introduced another question to be considered:

6.1.6. Should an Executive Member who is also a Member NED get payments for both positions? (Currently they do not.)

6.2. Is the current payment appropriate?

6.2.1. The Panel examined the basis for the current payment. The decision was made by the Council Executive on the basis of a report received from the Strategic Director for Resources.

6.2.2. At the time (2012), there were not many Council-owned companies around the country with which comparisons could be made. The report compared the role of Non-Executive Director to

- other Member roles on the Council for which Special Responsibility Allowances are paid and
- the roles of NEDs on various National Health Service bodies.

6.2.3. Special Responsibility Allowances are defined as multiples of an SRA unit which is currently valued at £5,000. The report concluded that the role of NED fell somewhere between that of Executive Member, currently paid 2 x SRA per annum, and Chair of the Planning Committee, currently paid 1 x SRA per annum. It also showed that NHS NEDs were paid annual amounts ranging from £6,096 to £10,000.

6.2.4. Five of the six NEDs who returned the Panel's questionnaire also valued the role of NED between 1 and 2 SRAs.

6.2.5. A view was expressed in the discussions with NEDs that the rate of pay should be the same as for non-Member NEDs. However, others stated that they regarded such a role as part of the public service expected from an elected Councillor and that the payment should be less than the market rate. The Panel agreed with the latter view.

6.2.6. The Panel therefore concluded that the current payment of £6,095 per annum was not unreasonable.

6.3. Is it correct to link the payment to the system of Special Responsibility Allowances?

6.3.1. There were varying views expressed in the questionnaire responses and in the discussions with NEDs on this matter. Some NEDs believed very strongly that the NED role could not be compared to other Member roles on the Council and that a more business-oriented skill-set was required. Others were of the view that people are accustomed to the SRA being the unit of payment for Members with extra responsibilities and that this should continue to be the case with NED positions.

6.3.2. The Local Authorities (Companies) Order 1995 in determining that “the maximum amount (payable) is the greatest amount which would for the time being be payable by the relevant authority in respect of a comparable duty performed on behalf of that authority” certainly indicates, in the view of the Panel, that a link to SRAs is necessary only to determine a maximum level of payment.

6.4. Should there be one fixed payment for all Member NEDs or should the amount vary according to the specific role?

6.4.1. Currently all Member NEDs are paid the same amount per annum, although the Panel is aware that it was decided to make a lower payment of £3,000 for NEDs of Loddon Homes Limited while the company was seeking registration but it has since been increased to the full payment following registration.

6.4.2. Many of the NEDs interviewed confirmed that the time and responsibilities involved could vary significantly with the role and supported the principle of the payments being varied. Some also indicated that any one role could vary in commitment over time depending on the phase of development of the company e.g. start-up phase or growth phase.

6.4.3. While supporting the principle of varied payments, the Panel is mindful that, in the interests of fairness and transparency, they would need to be based on job descriptions and performance management criteria. A policy on performance management has recently been adopted by the Holding Company and can be seen in Appendix G.

6.5. What information is available about the roles?

6.5.1. Concern had been expressed, notably by the Leader of the Opposition, about a lack of information about the roles and the appointments. A recent letter of appointment outlining the role and responsibilities to the appointee and draft job descriptions were made available to the Panel.

6.5.2. As indicated above, the Panel would need such documentation to determine specific payments for specific roles and would therefore like to see such documentation in place for all NED positions. The Panel is also of the opinion that such documentation should be available in the public domain so that everyone can see the basis on which payments have been set.

6.6. How should the Panel review payments in the future?

6.6.1. The Panel reviews Members' Allowances annually. That review can be extended to include payments to Member NEDs.

6.6.2. If any Member Non-Executive Director position is created with a different job description from existing positions, the Panel can respond to a request from a Council Company to set an appropriate payment for the new position.

6.7. Should an Executive Member who is also a Member NED get payments for both positions?

6.7.1. The original (2012) report to the Executive on NED payments did not address this question. It was only at a later stage that the issue arose with the appointment of an Executive Member as a Non-Executive Director.

6.7.2. The Company decided to follow the precedent for Special Responsibility Allowances (SRAs) set in the Council Constitution. Section 2.2.5.2 includes the following "Members of the Executive can only receive one Special Responsibility Allowance."

6.7.3. As already stated above, the legislation links the maximum payment for a Member NED to payments "in respect of a comparable duty performed on behalf of that authority". Therefore in the view of the Panel, the Company was correct to decide not to make a payment to an Executive Member given that the same Member could not receive a second SRA payment for a comparable duty.

6.7.4. This situation can only be changed if the Council decides to allow payment of a second SRA to Executive Members. This would require a change to the Council's Constitution. In this regard, it may be useful to note that the other five Unitary Councils in Berkshire do not allow any Member to receive more than one SRA.

7. Conclusions

7.1. The Panel reached the following conclusions:

- 7.1.1. The current payment of £6,095 to Members who are Non-Executive Directors is not unreasonable and should continue until more detailed information is available on the individual roles.
- 7.1.2. An Executive Member should not receive an NED payment if they are appointed to such a position in order to comply with the Council's Constitution and the legislation on Local Authority Companies.
- 7.1.3. With regard to the Panel's annual reviews in the future-
 - The NED payments should not be strictly linked to the Special Responsibility Allowances but legislation puts a maximum limit on the payments.
 - The Panel believes that the payments could be varied according to the role provided that job descriptions and performance management criteria are available to assess the roles.
 - The job descriptions and performance management criteria should be publicly available so that the setting of payments is transparent.
 - The Panel can review Member NED payments as part of its annual review of Member Allowances.
 - The Panel can deal with any request from a Council Company to set a payment for a new position as it arises.
 - The Panel will review the Constitutional provision that "Members of the Executive can only receive one Special Responsibility Allowance" in its next annual review.

TERMS OF REFERENCE

WOKINGHAM BOROUGH COUNCIL'S INDEPENDENT REMUNERATION PANEL

Purpose

The Independent Remuneration Panel is established in accordance with Part 4 of the Local Authorities (Members' Allowances) (England) Regulations 2003.

The Panel shall produce a report making recommendations:

- 1 as to the responsibilities or duties in respect of which the following should be available:
 - a Special Responsibility Allowance;
 - b subsistence and travel allowances; and
 - c co-optees' allowance;
- 2 as to the amount of such allowances and as to the amount of Basic Allowance;
- 3 as to whether dependants' carers' allowance should be payable to Members of the Council, and as to the amount of such an allowance;
- 4 as to whether, in the event that the scheme is amended at any time so as to affect an allowance payable for the year in which the amendment is made, payment of allowances may be backdated in accordance with regulation 10(6) of the Local Authorities (Members' Allowances) (England) Regulations 2003;
- 5 as to whether adjustments to the level of allowances may be determined according to an index and if so which index and how long that index should apply, subject to a maximum of four years, before its application is reviewed;
- 6 as to which Members of the Council, if any, are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972; and
- 7 as to treating Basic Allowance or Special Responsibility Allowance, or both, as amounts in respect of which such pensions are payable in accordance with a scheme made under section 7 of the Superannuation Act 1972.
- 8 to consider any request from a Local Authority Trading Company owned by Wokingham Borough Council to review the level of remuneration payable by that company to its Member Non-Executive Directors.

Once the Council receives a copy of a report made to it by the Independent Remuneration Panel, it shall, as soon as reasonably practical:

- 1 ensure that copies of that report are available for inspection by members of the public at the main Council Offices and on the Council's website; and
- 2 publish in one or more newspapers circulating in its area, a notice which:
 - a states that it has received recommendations from the Independent Remuneration Panel in respect of its scheme;
 - b describes the main features of that Panel's recommendations and specifies the recommended amounts of each allowance mentioned in the report;
 - c states that copies of the Panel's report are available at the main Council Offices for inspection by members of the public at such times as specific in the notice; and
 - d specifies the address of the Council Offices at which such copies are made available.

The Council shall supply a copy of a report made by the Independent Remuneration Panel to any person who requests a copy and who pays to the Council such reasonable fee as may be determined.

Before the Council makes or amends its scheme for the payment of allowances to Members, it must have regard to the Independent Remuneration Panel's recommendations to it on the scheme.

Appendix B: Copy of Letter from Holding Company

From: Andy Couldrick

Sent: 24 September 2015 11:41

To: Colm O Caomhanaigh

Subject: RE: IRP re non-Executive Directors of council owned companies ~[UNCLASSIFIED]~

I am instructed by Wokingham Holdings Co Ltd to write to the Independent Remuneration Panel formally to request that the panel review, now and on an annual basis, the remuneration paid to Non-Executive Directors of the following companies, all wholly owned by Wokingham Borough Council:

- Wokingham Holdings Co Ltd (the parent company)
 - Optalis Ltd
 - Wokingham Housing Ltd
 - Loddon Homes Ltd (a subsidiary of WHL, established to act as a Registered Provider of affordable homes)

This review could include a recommendation as to how the remuneration might be benchmarked on an ongoing basis, to ensure parity with similar roles

I hope this is sufficiently clear: I would, of course, be happy to meet with the panel to assist them in their work

Many thanks

Andy

Andy Couldrick

Chief Executive
Wokingham Borough Council
Shute End
Wokingham
RG40 1BN

Appendix C: Copy of email from Council Leader

From: Keith Baker [mailto:keith@bakersat33.co.uk]

Sent: 30 December 2015 13:14

To: Colm O Caomhanaigh

Subject: Can you pass this onto the IRP

Hi

At the moment if an Executive Member is appointed to any of our companies they do not get any remuneration. This was fine as an initial position but did need a review at sometime. I think that time has come for two reasons:

1. There is only one such person (Anthony Pollock) so it does not have such an impact if changed
2. Anthony has been intimately involved, as chairman, in the turnaround of Optalis as his note below indicates. There will be changes to the Board hopefully in the New Year where an Independent Chairman will be appointed and Anthony will drop back to a finance oriented councillor NED

Clearly this is advance notice of what I will be asking for when you start your work looking at all remuneration in the New Year.

Rgds

Keith

Appendix D: Summary of questionnaire responses

Comments have been edited where necessary to protect anonymity. Where two or more similar comments were made by different NEDs, this is indicated by (x2, x3 etc.)

Other activities related to the role

- To be Chairman
- Think about permutations, options and opportunities, pretty much every day, even when on holiday.
- Interview panel to appoint new MD
- Background/technical reading and research to keep up with changes (x2)

Comments on ratio figure

- It is difficult to quantify the role of a director of a company against that of a council appointment. Directors have a legal liability to act on behalf of a company while acting in the best interests of shareholders. There are potential very draconian penalties for any irresponsible actions that a normal member is not subject to. (x3)
- It is a much more responsible role than being a member of the Executive. The Officer and corporate support for a member of the Executive far outweighs the support a NED gets. (x2)

Comments on time spent in the role

- The role can vary so very difficult to quantify but one must give as much time as the task requires (x2)
- The time I have set out (4.5 hours per week) equates to about one half day a week. If you work this up based on 35 hours per week it equates to £46,000 pa which I think is fair as one will not have to do the same hours on an ongoing basis.
- if I was unable or unwilling to undertake the role then I would stand down from the position.
- During the first 2.5 years the time commitment was very much greater as the company faced many challenges in establishing a degree of independence from WBC.

Do you feel the current allowances scheme fairly meets the expenses you incur in performing your duties and responsibilities in this role?

- The duties far exceed those of a normal member and in my opinion a member of the Executive and as such it is unreasonable to expect one to be remunerated appropriately.
- The system also must recognise the different roles of the NED which can be anything from Chairman, Vice Chairman to a Chairman of a group within the company (Audit) to a normal member.
- I would not want to receive any further allowance as the Council needs to be careful with its resources.
- I am using my commercial experience for the benefit of the company. We are building a company from scratch, there are only a handful of people who can do this. We all have individual skill-sets which, when combined, make this whole enterprise possible.
- I think the original figure was a fair starting point but 4 years on a figure of 2xSRA would now be appropriate.

Have you incurred losses for which you have not been recompensed?

- As a Councillor I am committed to the success of the businesses so any additional time must be given as and when appropriate.
- I am certainly not doing this for the money, but because I believe passionately in the concept, and the future gains for WBC, if we can get this right.

Was the NED Allowance a relevant consideration in deciding whether to take up this role?

Please explain further.

- I did want to play a major part in setting up WHL but I did expect to be compensated for the time/work involved. (x2)
- The fact that someone is paid places a responsibility on them. In addition it allows assessment in the role to be on a sounder footing
- If there was not some form of Allowance I don't think taking this position would have been overly tenable. I feel the allowance currently paid is about right.
- I have always accepted that by choosing to be both a councillor and a NED of a council owned company, that the allowance I receive will be a fraction of the earnings associated with similar roles and responsibilities in the commercial world.

Are you aware of any instances where the Allowance has influenced prospective Councillors in their decision on whether to take up such a role?

- I have seen reluctance from a Councillor to relinquish a role, even though another Councillor was better qualified for the position, due to his desire to retain the Allowance.
- Having the requisite experience may not have been a consideration in previous appointments.

What one thing would you like to change about the NED allowance?

- The suitable remuneration of expenses is an acknowledgement of the skill and expertise applied to the role.
- Ensure that both external (truly independent) and internal (i.e. WBC member) NED appointments in the same company are all remunerated at the same level. At the same time the allowances should reflect the very different nature of the council companies. For example Loddon Homes has no staff, has just been established and has the potential to grow significantly, whereas Optalis has been established 4 years and has 450 staff and is a more mature business that will grow at a more steady rate. These differences need to be factored in and regularly reviewed as the companies evolve.

Do you have any other comments you would like the Independent Remuneration Panel to take into consideration about NED Allowances?

- Only that their function should not be tied to the political thinking around allowances but need to be realistic as within the system one has to look at attracting NED's from outside the council to serve on the companies and to tie this down may detract from the companies abilities to draw on the best available. It has a commercial value as well as a political dimension to this and this should be recognised. (x2)
- Payment of Market rate salaries and allowances is important to get the best and most experienced resources engaged.

Appendix E: Questionnaire sent to Member Non-Executive Directors (attached)

Appendix F: Spreadsheet with research of other councils (attached)

Appendix G: WBC (Holdings) Ltd. document "GOP 8.0 Director Selection, Performance and Remuneration Policy" (attached)