

DERBYSHIRE COUNTY COUNCIL

COUNCIL

24 March 2021

Report of the Director of Legal and Democratic Services

MEMBERS' ALLOWANCE OVERPAYMENT

1. Purpose of the Report

1.1 To invite Council to consider writing off an overpayment of basic allowances to a former councillor.

2. Information and Analysis

2.1 Members of Council will be aware that Helen Elliott, former County Councillor for Staveley, was unwell during 2020 and as a result was unable to attend any council meetings for a number of months. Unfortunately, as a result of section 85 of the Local Government Act 1972, this resulted in her ceasing to be a councillor with effect from 16 December 2020.

2.2 Information indicating this may be the case came to light at the end of January and following enquiries, this position was confirmed with Helen Elliott at the beginning of February, by which time the Council had already paid her basic allowance entitlement for December and January. Members will be aware that allowances are paid on the 15th of the month but relate to the period covering the 1st of the month to the last day of the month. The payments were made and received in good faith, because at the time both Officers and Helen Elliott were not aware of the effect of section 85. However, it has created an overpayment of £1384.45 (gross) covering the period 17 December 2020 to 31 January 2021.

2.3 Council is asked to consider whether the repayment of the overpayment of allowances should be pursued. The following factors should be taken into account by Council in making its decision:

- Allowances have been paid where there is no entitlement under the Members' Allowances Scheme after 16 December 2020.
- Officers were not aware until late January 2020, that by virtue of section 85 Helen Elliott ceased to be an elected member mid-December and the payment of allowances were made to her by the Council in December and January in good faith. As Members will be aware, in accordance with usual practice, allowances for the period 1-31 December were paid on 15

December and allowances for the period 1-31 January were paid on 15 January.

- Helen Elliott has been unwell during 2020 and was unable to attend meetings due to the seriousness of her illness.
- She was not aware until the beginning of February that she ceased to be a member mid-December and the payment of allowances were received by her in December and January in good faith.

3. Legal Considerations

3.1 The entitlement to and framework for members' allowances is set out in the Members' Allowances Scheme (Appendix 15 of the Constitution). Under the Scheme each Member is entitled to a flat rate basic allowance which is designed to cover the time commitment of all Members in all meetings including those with officers and members of the public. It is also intended to cover incidental costs such as the use of home and private telephone facilities.

3.2 The Scheme recognises part-year entitlement where the term of office of a Member begins or ends otherwise than at the beginning or end of a year. The Scheme provides that the "entitlement of that Member to a basic allowance shall be to the payment to such part of the basic allowance as bears to the whole the same proportion as the number of days during which his or her term of office subsists bears to the number of days in that year".

3.3 Paragraph 12 of the Scheme states:

"12. Recovery of Payments Made to Members

Where a payment has been made to a Member that relates to a period where either the Member concerned: -

- a) ...;
- b) or ceases to be a member of the County Council;
- c) ...;

The County Council may require that such part of the allowance as relates to any such period be repaid to the County Council. The full Council will make any such decision.

Under the Scheme, therefore, full Council has the discretion to consider whether an overpayment of allowances should be recovered from a former County Councillor. When exercising its discretion, each case would need to be determined on its own merits.

4. Financial Considerations

4.1 As set out in the body of the report.

5. Other considerations

5.1 In preparing this report the relevance of the following factors have also been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport consideration.

6. Background Papers

6.1 None identified.

7. Officer's Recommendations

7.1 That Council considers the information contained within the report and determines what action to take in respect of the overpayment of basic allowance to former councillor, Helen Elliott.

Helen Barrington
Director of Legal and Democratic Services and Monitoring Officer