

REPORT TO:	ETHICS COMMITTEE
AGENDA ITEM NO:	7 JANUARY 2020
SUBJECT:	PROPOSED UPDATES TO THE SCHEME OF CO-OPTION IN PART 6D TO THE CONSTITUTION
LEAD OFFICER:	EXECUTIVE DIRECTOR OF RESOURCES, COUNCIL SOLICITOR & MONITORING OFFICER
CABINET MEMBER:	CLLR SIMON HALL CABINET MEMBER FINANCE AND TREASURY
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATIONS

The Committee is asked to:

- 1.1 Consider the proposed amendments to the Scheme of Co-option set out in Appendix 1 hereto;
- 1.2 Consider the proposed amendments to the Code of Conduct for Co-opted Members set out in Appendix A to Appendix 1 hereto; and
- 1.3 Recommend to Full Council the adoption of the amendments to the Scheme of Co-option within Part 6D of the Constitution (which is Appendix 1 hereto); and
- 1.4 Recommend to Full Council the adoption of the amendments to the Code of Conduct for Non-Voting Co-optees and its inclusion within the Constitution as an Appendix to Part 6D of the Constitution; and
- 1.5 Recommend to Full Council the inclusion of reference, within Part 5I of the Constitution, to the application of the Code of Conduct for Members to representatives of the Pensions Board as detailed within paragraph 3.6 below and set out in Appendix 2 in this report in tracked changes.

2. EXECUTIVE SUMMARY

- 2.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This report details recommended changes to the Scheme of Co-option, Part 6D of the Constitution in order to set out the relevant rules for all Co-optees in one document and to incorporate the previously agreed Code of Conduct for Co-opted Members into the Constitution.

3. DETAIL

- 3.1 The current Scheme of Co-option covers only those co-optees who sit on Overview and Scrutiny or one of its sub-committees as required by the provisions of the Localism Act 2011.
- 3.2 Although procedures for Co-option onto other Committees which are required or permitted by statute are in place, they are not currently set out as part of the scheme of co-option and the purpose of the revisions is to incorporate these into a single document.
- 3.3 Following consideration by this Committee in December 2014, the Code of Conduct for Co-opted Members was approved by Full Council on 26 January 2015 and currently applies to all non-voting co-opted members on Council committees and any representatives on Task and Finish Groups.
- 3.4 Under the provisions of the Localism Act 2011, the Code of Conduct for Members applies to any voting co-opted members and any co-opted members on Overview and Scrutiny. In addition, the Pensions Board terms of reference expressly provide that co-opted members of the board shall abide by the Code of Conduct for Members.
- 3.5 With the revisions to the Scheme of Co-option to incorporate reference to all the various co-optees on Council committees and bodies, there is a need to clarify and update the Code of Conduct for Co-opted Members.
- 3.6 In addition, it is recommended that specific reference is included in the introductory paragraph of the Code of Conduct for Members, Part 5I of the Constitution, to Pension Board Members. The Pensions Board terms of Reference, Part 4M, specifically provides that members of/ representatives on the Pensions Board shall comply with the Code of Conduct for Members, Part 5I and therefore this single amendment is recommended for consistency purposes.
- 3.7 The Committee is therefore asked to consider the proposed amendments to both the Scheme of Co-option and to the Code of Conduct for Co-opted Members and recommend to Full Council the adoption of the amendments, including the incorporation of the Code of Conduct for Co-opted Members into Part 6D.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 There are no direct financial implications arising from this report.

5. LEGAL CONSIDERATIONS

- 5.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.

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BACKGROUND DOCUMENTS: None

APPENDICES:

Appendix 1: Proposed amendments to the Scheme of Co-option

Appendix A to Appendix 1: Proposed amendments to Code of Conduct for Co-opted Members

Appendix 2: Proposed amendment to Code of Conduct, Part 5I of the Constitution

CONSTITUTION OF THE LONDON BOROUGH OF CROYDON

PART 6D

Scheme of Co- option

- 1.1 ~~The Localism Act 2011 introduced a requirement for councils to establish a scheme of co-option for all non-elected Members with voting rights. Without such a scheme, it is no longer possible for non-elected representatives to become co-opted Members and hold voting rights. This scheme applies to all Co-opted Members whether they are voting or non-voting. The~~ The scheme does not covers the co-option of voting and independent non-voting co-opted Members onto current other Committees as detailed in sections 2 - 10 below.
- 1.2 The purpose of this scheme of co-option is to:
- ~~• Formalise the appointment of co-opted Members~~ Bring together in one document the various provisions in place for co-option across the Committees and statutory Boards of the Council.
 - Outline the role and expected contribution of co-opted Members
 - Clarify the induction to be provided to co-opted Members and the support and training to be made available
 - ~~• Provide the Scrutiny & Overview Committee with the opportunity to appoint further co-opted Members~~
- 1.3 Co-opted Members can provide scrutiny committees with outside knowledge, experience and skills that can inform the work of scrutiny the Committee and supplement the role of councillors.
- ~~1.3 In Croydon there are four co-opted Members with full voting rights required by statute: two Parent Governor representatives, a representative from the Church of England diocese and a representative from the Roman Catholic archdiocese. There are also two further co-opted Members who do not have voting rights: a teacher representative and a representative from the Healthwatch (Croydon).~~
2. **Statutory Co-opted Members on Scrutiny and Overview Sub-Committees required by Statute**
- 2.1 The Parent Governor representatives and the arch/diocesan representatives on the Scrutiny Sub-Committees exercising education function are required by law (*The School Standards and Framework Act 1998 for Parent Governors and the Education Act 1996 for Diocesan representatives*). The legislation explains that these co-opted Members will have full speaking and voting rights for any decisions relating to education and school matters. Parent Governor representatives are elected by the Borough's parent governors, but once co-opted their role is to be an apolitical voice for *all* parents in the area. The Church of England and Roman Catholic representatives are nominated by the

Bishop and Archbishop of Southwark respectively. Voting Co-opted Members on Scrutiny and Overview have the same rights of access to information as councillors, and are required to comply with the same code of conduct.

2.42.2 The Co-opted voting members are subject to the Members' Code of Conduct, Part 5I of the Constitution.

3. Non-statutory Co-opted Members on Scrutiny and Overview Sub-Committees appointed at the Committee's discretion

~~3.1 Scrutiny committees, and sub-committees, can also choose to appoint non-statutory co-opted Members.~~ Currently in Croydon there are two non-statutory co-opted Members: a teacher representative and the Healthwatch (Croydon) representative. These "non-statutory" co-opted Members do not have voting rights and are co-opted at the discretion of the Scrutiny & Overview Committee, which can also rescind the appointment if it feels it is necessary.

3.2 ~~The Scrutiny and Overview Committees, or sub-committees,~~ have the power to appoint these additional co-opted Members if it is judged that they will be beneficial to the committee as it carries out its work. Before ~~recommending appointing~~ any additional co-opted Members to full Council for appointment, the committee, ~~or sub-committee~~, should demonstrate that it has considered the composition of the local community to ensure it is as representative as possible. An over-representation of any particular specialist area should also be avoided and the elected Members of the committee should always have a majority over co-opted Members.

~~3.3 Non-statutory~~ These co-opted Members will usually (but not exclusively) be representatives of specific organisations relevant to the work of the committee. The ~~appointing-recommending~~ committee should invite the organisation to make an appropriate nomination, although a vacancy can be advertised more widely if the committee agrees it would be beneficial. Anyone who lives, works (including voluntary work) and/or studies in Croydon is eligible to be a ~~non-statutory~~ co-opted Member, except if they are a Croydon Council Member or Croydon Council Officer. In approving an appointment, the committee will be mindful of the potential for any ongoing prejudicial interests between, for example, the co-opted Member's paid employment and the work of the committee and there are declaration requirements placed on any such appointees.

3.4 These co-optees are subject to the Code of Conduct for Non-Voting Co-optees, Appendix A hereto.

4. Appointments Committee Co-opted Members

4.1 The independent voting Co-optees on the Appointments Committee are appointed to consider specified disciplinary matters.

4.2 Where the Appointments Committee is giving consideration to dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer, the Appointments Committee shall include at least two voting co-opted Independent Persons.

4.3 These co-optees are subject to the Members' Code of Conduct, Part 5I of the Constitution.

5. Ethics Committee Co-opted Members

5.1 The Independent non-voting Co-optees are required to be appointed by statute and are invited to attend all meetings of the Ethics Committee and their views are sought and taken into consideration before the Ethics Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

5.2 These Co-opted members on the Ethics Committee are subject to the Code of Conduct for Non-Voting Co-optees, Appendix A hereto.

6. General Purposes and Audit Committee Co-opted Members

6.1 The General Purposes and Audit Committee appoints two independent non-voting co-opted committee members who are permitted to be involved in respect of the Audit Functions of the committee only.

6.2 The Co-optees are subject to the Code of Conduct for Non-Voting Co-optees, Appendix A hereto.

7. Health and Wellbeing Board Members

7.1 Both voting and non-voting members of the Board are subject to the Members Code of Conduct, Part 5I to the Constitution.

8. Pensions Board Members

8.1 The Pension Board, with an independent non-voting Chair, is formed of three voting employer representatives and three voting representatives of the Pension Fund. The Board secures the effective and efficient governance and administration of the Croydon Council Pension Fund.

8.2 The terms of reference of the Pensions Board (Part 4M of the Constitution) requires that all members of the Pensions Board abide by (and sign up to) the Members' Code of Conduct, Part 5I to the Constitution.

9. Pensions Committee Co-opted Members

9.1 The Pensions committee includes 1 Staff Side non-voting co-opted member and 2 Pensioner Side co-opted Members (1 of whom is a voting co-opted member and one of whom is a non-voting co-opted member).

9.2 Staff side and Pensioners' side members are appointed on an annual basis following consultation with the Staff side and Pensioners of the Pension Fund.

9.3 Two representatives of Pensioners of the Fund are elected by ballot of Pensioners of the Fund, one of whom shall be a voting member and one of whom shall be a non-voting member. The representative with the most votes following the ballot of Pensioners of the Fund shall be the voting member. The other representative of the Pensioners of the Fund shall be non-voting.

however is permitted to exercise a vote only in the absence of, and on behalf of, the voting representative. The ballot is normally undertaken every 3-4 years.

9.4 The voting co-opted Member is subject to the Members' Code of Conduct, Part 5I of the Constitution.

9.5 The non-voting co-opted Members are subject to the Code of Conduct for Non-Voting Co-optees, Appendix A hereto.

10. Task and Finish Group Appointees

10.1 The Code of Conduct for non-voting Co-optees, Appendix 1 hereto, applies to any appointees to Task and Finish Groups.

11. Appointees to Panels/Forums

12.1 Panels and forums are not regarded as Committees of the Council, nor are appointees to such forums regarded as co-optees. As such they are not subject to the Code of Conduct requirements placed either on voting or non-voting co-optees of the Council.

4-12. Terms of Office

12.1 Subject to the requirements of the Committee in question, Co-opted Members will usually ~~be invited to be appointed~~serve for a term of office of four years ~~but be appointed annually at Full Council~~. Towards the end of a term of office, the ~~appointing relevant~~ committee will consider whether ~~that any~~ non-statutory co-opted post is still required. ~~If it is, the existing co-opted Member will be asked whether they wish to continue in their role. If it is, At this time,~~ the committee ~~may also decide to~~shall advertise the vacancy ~~more widely~~by means appropriate to the nature of the vacancy, which will usually include via the Council's website.

12.2 Non-statutory co-opted Members can be disqualified during their term of office if they do not attend four consecutive meetings of the committee to which they have been co-opted without giving an apology; if they fail to adhere to the Code of Conduct which applies to them or if they are subsequently elected as a Member of Croydon Council.

12.3 Where Co-optees ~~if they have been~~ are appointed on the basis of representing a particular organisation or group, then their term of office will also end if they resign from or are disqualified from being a Member of that organisation or representative of that group, or if that organisation/group ceases to exist.

12.4 It is the responsibility of the co-opted Member to inform the Council if a circumstance arises that they believe disqualifies them from continuing in their term of office.

12.5 Co-opted Members can also resign during their term of office if they feel that they can no longer fulfil the requirements of the role.

13.6. Non-statutory co-opted Members can also be appointed for a shorter period, for example, to be involved with a specific piece of work, ~~for example a task and finish group.~~

5-13. Powers and responsibilities

5-13.1 ~~C~~Statutory and non-statutory co-opted Members will:

- Be required to comply with the Members' Code of Conduct or Code of Conduct for non-voting Co-optees and register and declare/ register and notify disclosable pecuniary interests as required by the respective Codes.
- Be expected to agree, in writing, to abide by the Code which is applicable to them for their role
- Be entitled to speak on any matter that is discussed by the committee to which they have been appointed provided that it falls within their remit (for example on Appointments committee and General Purposes and Audit Committee, the co-optees are only appointed for specific purposes)
- Be encouraged to contribute to the development of the scrutiny-committee work programme and propose agenda items for future meetings
- ~~Have full voting rights on all education matters (excluding any non-statutory co-opted Members)~~
- ~~Be eligible to chair a scrutiny committee, sub-committee or task & finish group~~
- Be expected to attend all meetings of the committee to which they have been appointed having read the agenda papers
- Bring an external perspective to the work of scrutiny the Committee by utilising their specialist knowledge and experience
- Be expected to represent the whole community and not just one sector or viewpoint
- Act independently of party politics and lobbying interests
- Be responsible for keeping the organisation or interest they were appointed to represent informed and engaged in scrutiny the work of the Committee
- Be expected to treat other committee Members, officers and external witnesses parties with respect
- Be required to recognise that they may encounter sensitive information and to act with discretion
- Not to disclose or - other than in the performance of their role on the Committee - use exempt or confidential information
- To raise issues with the Monitoring Officer or Head of Democratic Services at the earliest possible opportunity if there are any concerns

6-14. Support for Co-opted Members

6-14.1 All co-opted Members will be provided with a comparable level of support to the elected Members. This will include:

- All summons, agendas and committee reports will be sent to co-opted Members at the same time as elected Members and will comply with the public access to information regulations
- An induction will be provided for new co-opted Members that will outline their expected contribution ~~to scrutiny~~ and familiarise them with the ~~Members'~~ Code of Conduct which applies to them in their role
- Co-opted Members will be invited to attend Member training sessions that relate to their role ~~on scrutiny~~

- Co-opted Members will not receive an allowance or salary

7.15. Why co-opt

Co-option is a way of ensuring that under represented voices are represented on Council committees. The Equality Act 2011 (section 149) places a public sector equality duty (section 146) on the council. The duty requires the Council to have due regard to *the need to advance equality of opportunity* between persons who share a relevant protected characteristic and persons who do not share it;

Having “due regard” to the need to advance equality of opportunity involves having due regard, in particular, to the need to *encourage persons* who share a relevant protected characteristic *to participate in public life* or in any other activity in which participation by such persons is disproportionately low.

LONDON BOROUGH OF CROYDON

Code of Conduct for Non-voting Co-optees

For the purposes of this Code, “non-voting co-opted Member” includes any person appointed as a non-voting co-optee on any Council Committee, or any appointee on any Council Task and Finish Group who is not a Member or Officer of the London Borough of Croydon. It does not apply to appointees to any Panels or Forums set up by the Council. It also does not apply to Members of the Health and Wellbeing Board who are instead subject to the Members’ Code of Conduct, Part 5I to this Constitution. ~~include Statutory Co-opted Members or Non-Statutory Co-opted Members appointed to Scrutiny and Strategic Overview Committee who are subject to the provisions of the Scheme of Co-option in Part 6D of the Council’s Constitution.~~

1. You are a non-voting co-opted Member of the London Borough of Croydon and as such you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty, leadership and undertake to observe this Code when acting in your capacity as a non-voting co-opted Member. On appointment, you shall provide written agreement to abide by this Code.
2. When acting in your capacity as a non-voting co-opted Member:-
 - i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate or other business or employment relationship you may have.
 - ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties as a non-voting co-opted Member.
 - iii) When carrying out your public duties you must make all choices and recommendations on merit without discrimination or bias.
 - iv) When carrying out your public duties you shall not disclose sensitive information or information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential or sensitive nature.
 - v) You are accountable for your actions to the public and you must co-operate fully with whatever scrutiny is appropriate to your role as determined by the Council.
 - vi) You must be as open as possible about your decisions and actions in your role and should be prepared to give reasons for those decisions and actions.
 - vii) You must declare any private interests, both pecuniary and non-pecuniary, which relate to your role and must take steps to resolve any conflicts arising in a way that protects the public interest. This means you shall notify the Council’s Monitoring Officer of any interests set out in paragraph 3 below.
 - viii) You must, when using or recommending the use by others of the resources of the Council, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

ix) You must promote and support high standards of conduct when serving in your public role, in particular as characterised by the above requirements, by leadership and example, including not doing anything which breaches the equalities legislation.

3. Registering and notifying interests

i) You must, within 28 days of taking on your role as a non-voting co-opted Member or on becoming aware of the interest, notify the Council's Monitoring Officer of any of the following interests you may have:

- Any matter of business which is before the Council Committee/body to which you are co-opted/appointed for consideration or decision where it either relates to or is likely to affect—

(1) any body (including any body exercising functions of a public nature or directed to charitable purposes or which has as one of its principal purposes, the influence of public opinion or policy (which shall encompass any political party or trade union)) of which you are a member or in a position of general control or management or which has nominated you for the role of co-optee; and

(2) any contract for goods, services or works made between the Council and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (1) above;

(3) any land in which you have a beneficial interest;

(4) any land where the landlord is the Council and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (1) above is, the tenant;

(5) any land in the Council's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

- Any any gift(s) or hospitality the value of which exceeds £50 and which relate to your role as a non-voting co-opted Member.

ii) _____ You may not participate in any discussion of any matter before the Committee to which you are co-opted which relates to any matter in respect of which you have notified or ought to have notified an interest as set out above.

iii) Any interests so notified to the Monitoring Officer will be retained as part of the register maintained by the Monitoring Officer for the duration of your appointment.

4. Failure to comply with this Code

Failure to comply with the requirements of this Code may result in a termination of your role as non-voting co-optee on behalf of the Council.

CONSTITUTION OF THE LONDON BOROUGH OF CROYDON

Part 5.I - Members' Code of Conduct*

1. You are a member or co-opted member of the London Borough of Croydon or a Member of the Health and Wellbeing Board or Pensions Board and as such you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and truthfulness, leadership and undertake to observe this Code when acting in your capacity as a member or co-opted member.
2. When acting in your capacity as a member or co-opted member:-
 - i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
 - ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you inappropriately in the performance of your official duties.
 - iii) When carrying out your public duties you must make all choices, such as making public appointments, determining applications, awarding contracts or recommending individuals for rewards or benefits, on merit without discrimination or bias.
 - iv) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office as determined by the Council.
 - v) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
 - vi) You must declare any private interests, both pecuniary and non-pecuniary, which relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest. This means you must register and declare the interests set out in paragraph 3 below, in a manner conforming with the procedures set out therein.
 - vii) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have

regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

- viii) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example, including not doing anything which breaches the equalities legislation and observing the Council's Protocol on Staff - Councillor Relations.

3. Registering and disclosing pecuniary and non-pecuniary interests

- i) You must, within 28 days of taking office as a member or co-opted member, notify the Council's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
- ii) In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which the Council has decided should be included in the register. For these purposes the Council has determined that you will disclose any gift(s) or hospitality the value of which exceeds £50 or multiple gifts and/or instances of hospitality with a cumulative value of £50 or more when received from a single donor within a rolling twelve month period.
- iii) If an interest described in (i) above has not been entered onto the Council's register, or is not pending inclusion on the register following your notification to the Monitoring Officer then you must disclose the interest to any meeting of the Council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹
- iv) Following any disclosure of an interest not on the Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
- v) Unless a dispensation has been granted, you may not participate in any discussion of, vote on or discharge any function related to any matter in which you have a disclosable pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions the Council places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by the Council.