

<b>REPORT TO:</b>	<b>COUNCIL</b> <b>11 October 2021</b>
<b>SUBJECT:</b>	<b>REVISIONS TO THE COUNCIL'S CONSTITUTION</b>
<b>LEAD OFFICER:</b>	<b>Richard Ennis, Interim Corporate Director of Resources &amp; Section 151 Officer</b>
<b>WARDS:</b>	<b>All</b>
<p><b>CORPORATE PRIORITIES 2021-24:</b> Changes to the Constitution proposed in this report will enable improvements to the Council's governance as part of the Croydon Renewal Plan.</p>	

### **FINANCIAL IMPACT**

Implementation of the recommendations within this report shall be contained within existing budgets.

### **RECOMMENDATION**

Council is recommended to:

1. Approve and make amendments to the Members' Allowance Scheme as set out in Appendix 1 to this report.
2. Approve the further changes to the Constitution as detailed in section 4 and set out more fully in Appendix 1.

## **2. EXECUTIVE SUMMARY**

- 2.1 This report updates Councillors on progress in reviewing the Council's Constitution and seeks approval for changes to the constitution, including those necessary to implement decisions elsewhere on the agenda.

## **3. BACKGROUND**

- 3.1 A proposal for a revised Members' Code of Conduct appears elsewhere on the agenda.
- 3.2 At its meeting on 16 September, General Purposes and Audit Committee agreed to recommend to Council that one independent co-opted member be retained alongside the independent Chair.
- 3.3 At its meeting on 30 September, Ethics Committee agreed to recommend to Council the adoption of a revised Members' Code of Conduct.

## 4. PROPOSAL

- 4.1 At present, Article 15 of the Constitution includes provision for General Purposes and Audit Committee (GPAC) to approve changes to the Constitution on the grounds of urgency and to submit recommendations for changes to the Constitution to Council (the Leader, Cabinet or Monitoring Officer may also make proposals for change to Council). This is not however reflected in the terms of reference of the General Purposes Committee in Part 3 – Responsibility for Functions. It is proposed to add these to the terms of reference for GPAC so that the Committee would keep the constitution under regular review and consider proposals for change (including proposals from the Constitution Working Group), prior to submission of recommendations to Full Council. The ability of the Leader, Cabinet and Monitoring Officer to submit proposals direct to Council would remain.
- 4.2 Subject to the approval of various recommendations elsewhere on the agenda, the following revisions to the constitution are also proposed at this time:
- i) Amendment of Article 2 to correctly reflect the number of Councillors per ward;
  - ii) Amendments to reflect the creation of the role of Independent Chair of General Purposes and Audit Committee (GPAC) and arrangements for appointment of the role (Article 8, Part 3, Part 4F);
  - iii) Adjustment of Part 3 – Responsibility of Functions to better reflect the role of Appointments Committee in making recommendations for appointments to Council;
  - iv) Amendment to Part 3 – Responsibility for Functions to add the role of Ethics Committee in supporting the Monitoring Officer to promote high standards of conduct and to reflect the role of the Member Development Panel in advising Ethics Committee on programmes of training for Members;
  - v) Amendments to Part 3 – Responsibility for Functions to clarify that GPAC has responsibility for whistleblowing and the Council's duties under the Regulation of Investigatory Powers Act and to add regular review of the constitution and consideration of proposals for change to the GPAC terms of reference;
  - vi) Amendment to Part 5I – new Members' Code of Conduct and guidance, as detailed more fully and for agreement elsewhere on this agenda at item 11;
  - vii) Amendment to Part 6A – to add remuneration for the independent Chair of GPAC (for audit purposes).
- 4.3 The Council is required, when making changes to its Scheme of Member Allowances, to have regard to the recommendations of the Independent Panel on the Remuneration of Councillors in London. The Panel's 2006 report made extensive reference to the basis upon which consideration may be given to

payment of allowances to Co-optees. The Panel at that time made specific reference to payment of an allowance to an Independent Chair of Audit and the basis upon which the Panel considered such provision could be made: however, this has not been reflected in more recent reports. The Panel's most recent report was published in 2018 and does not reference payments to independent co-opted members, nor for audit committee chairs.

- 4.4 The remuneration for the independent Chair of GPAC (for audit purposes) is therefore proposed on the basis that:
- it is a slight reduction in the allowance previously paid to the Chair as a Special Responsibility Allowance (now deleted), which had been set with regard to the Independent Panel;
  - no subsistence or travel allowances will be payable to the independent Chair.
  - the sum of the allowance recommended is considered reflective of the importance of the audit work which the Independent Chair will be responsible for overseeing in the role as chair. This is in light of the recommendation of the MHCLG Rapid Review in November 2020 that consideration be given to appointing a Chair from outside the majority group and the support that this role can provide to the Council's improvement journey.
- 4.5 The proposed changes to the constitution are shown as tracked changes to the relevant sections at Appendix 1.
- 4.6 Subject to the decision of Council, action will be taken in line with regulations to give notice of and publish the revised Scheme of Members' Allowances.

## **5. CONSULTATION**

- 5.1 The changes proposed in this report will enable implementation of other decisions by Council and as such have not been subject to separate consultation.

## **6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 6.1 Approved by: Matthew Davis, Interim Director of Finance

## **7. LEGAL CONSIDERATIONS**

- 7.1 The Head of Litigation and Corporate Law comments on behalf of the Interim Director of Law and Governance and Deputy Monitoring Officer that the power to co-opt persons who are not councillors onto committees appointed by the Council, under section 102(1) of the Local Government Act 1972 ("the 1972 Act"), is set out in section 102(3) of the 1972 Act. A committee appointed under Section 101 of the 1972 Act, other than a committee for regulating and controlling the finance of the local authority or of their area, may, subject to section 104 of the 1972 Act, include persons who are not members of the appointing authority.

- 7.2 Section 104 of the 1972 Act will apply to any proposed appointment under Section 102(3) above and provides that a person who is disqualified under Part V of the 1972 Act from being elected or being a member of a local authority shall be disqualified for being a member of a committee (including a sub-committee) of that authority, or being a representative of that authority on a joint committee (including a sub-committee) of the authority and another local authority, whether the committee or joint committee are appointed under this Part of this Act or under any other enactment. Part V of the Act deals, in section 80, with disqualifications from serving as a member of the Council and these requirements are applied to co-optees by virtue of Section 104 so that if any of the circumstances in Section 80 apply (or subsequently apply) to a co-optee, they are disqualified from being a co-optee.
- 7.3 By virtue of section 13(1) of the Local Government and Housing Act 1989, any co-opted member of a committee appointed under section 102(1) of the 1972 Act shall, for all purposes, be treated as a non-voting member of that committee.
- 7.4 Co-opted members are required to sign an undertaking to observe the Code of Conduct for Non-Voting Co-opted Members before acting as a co-optee.
- 7.5 In respect of proposals to amend the Scheme of Allowances for Members, Part 6A of the Constitution, the relevant provisions of the Local Authorities (Members' Allowances) (England) Regulations 2003/1021 ("the 2003 Regulations") make provision for the manner in which the Council is required to consider any changes to its Scheme of members allowances and associated decision making and publication/notice requirements.
- 7.6 Regulation 9 of the 2003 Regulations make provision in respect of allowances for co-optees and provide that the Scheme of members allowances may provide for the payment of an allowance for each year to a member in respect of attendance at conferences and meetings ("co-optees' allowance"). In relation to co-optees' allowance, the scheme shall—
- (a) specify the amount of entitlement by way of co-optees' allowance in respect of any year to which it relates; and
  - (b) provide that where the appointment of a member begins or ends otherwise than at the beginning or end of a year, his entitlement shall be to payment of such part of the co-optees' allowance as bears to the whole the same proportion as the number of days during which his term of office as member subsists bears to the number of days in that year.
- 7.7 The scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with Part III of the Local Government Act 2000 or regulations made under that Part, any co-optees' allowance payable to him in respect of the responsibilities or duties from which he is suspended or partially suspended may be withheld by the authority. For the purposes of regulation 9, "member" means a person who is not a member of the authority but who is a member of a committee or sub-committee of an authority.

7.8 Under Regulation 19 of the 2003 Regulations, before an authority makes or amends a scheme of members' allowances, the authority shall have regard to the recommendations made in relation to it by an independent remuneration panel. For this purpose the Council must have regard to the recommendations of the Independent Panel on the Remuneration of Councillors in London whose most recent report was published in 2018.

7.9 Regulation 16 of the 2003 Regulations provides that an authority shall, as soon as reasonably practicable after the making or amendment of a scheme, make arrangements for its publication by–

- (a) ensuring that copies of the scheme are available for inspection by members of the public at the principal office of the authority, at all reasonable hours; and
- (b) publishing in one or more newspapers circulating in its area, a notice which–
  - (i) states that the authority has made or amended a scheme and specifies the period of time for which the scheme has effect;
  - (ii) describes the main features of the scheme and specifies the amounts payable in respect of each allowance mentioned in the scheme;
  - (iii) describes any responsibilities or duties specified in the scheme in accordance with regulations 5(1) and 8(1) in relation to special responsibility allowance and travelling and subsistence allowance;
  - (iv) confirms that in making or amending the scheme, the authority complied with any duty arising under regulation 19 to have regard to the recommendations of an independent remuneration panel;
  - (v) describes the main features of that panel's recommendations and specifies the recommended amounts of each allowance mentioned in its report for that authority;
  - (vi) states that copies of the scheme and copies of a record kept in accordance with regulation 15(1) and (2) are available at the principal office of the authority for inspection by members of the public at such times as may be specified by the authority in the notice; and
  - (vii) specifies the address of the principal office of the authority at which such copies are made available.

7.10 The notice required must be published in one or more newspapers circulating in its area as soon as possible after the expiration of twelve months after the previous publication of such a notice, irrespective of whether the scheme has been amended during that twelve month period.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Interim Director of Law and Governance and Deputy Monitoring Officer.

## **8. HUMAN RESOURCES IMPACT**

8.1 There are no direct Human Resources implications arising from this report for Council employees. However, there may be implications for staff and the wider workforce in relation to other internal or external policies, procedures and

practices that would need to be reviewed and revised by the relevant services where appropriate.

Approved by: Deborah Calliste, Head of HR for Health Wellbeing and Adults and Children's Families and Education

## **9. EQUALITIES IMPACT**

- 9.1 As part of the review, all of the attached documents have been reviewed from an equalities perspective by the Equality & Inclusion Programme Manager. As part of the ongoing review of the constitution there will be a need to ensure that language is inclusive throughout the document.

Approved by: Gavin Handford, Director of Policy, Programmes & Performance

## **10. ENVIRONMENTAL IMPACT**

- 10.1 There is no environmental impact arising from this report.

## **11. CRIME AND DISORDER REDUCTION IMPACT**

- 11.1 There is no crime and disorder impact arising from this report.

## **12. DATA PROTECTION IMPLICATIONS**

- 12.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

No.

- 12.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

N/A.

Approved by: Asmat Hussain, Interim Director of Resources.

## **13. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

- 13.1 Changes to the constitution will enable implementation of actions within the Croydon Renewal Plan.

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**APPENDICES:** **Proposed changes and amendments to the Constitution**

**BACKGROUND PAPERS:** None.