

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>Council</b>	
<b>DATE OF DECISION</b>	<b>13 December 2023</b>	
<b>REPORT TITLE:</b>	<b>Proposed Changes to the Constitution</b>	
<b>CORPORATE DIRECTOR</b>	<b>Corporate Director of Resources and Section 151 Officer Jane West</b>	
<b>LEAD OFFICER:</b>	<b>DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER Stephen Lawrence-Orumwense</b>	
<b>LEAD MEMBER:</b>	<b>Councillor Sean Fitzsimons Chair General Purposes Committee</b>	
<b>KEY DECISION?</b>	<b>NO</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	
<b>WARDS AFFECTED:</b>	<b>All</b>	

## 1 SUMMARY OF REPORT

1.1 This report contains proposed changes to the Council’s Constitution relating to:

- 1.1.1. The number of substitutes that can be appointed to the Appointments and Disciplinary Committee. More specifically, it is proposed that the substitution pool is tripled. The changes were recommended by the Constitution Working Group (CWG) following their consideration and deliberations on 16 November 2023 and approved and recommended to Council by the General Purposes Committee on 28 November 2023.
- 1.1.2. Pension Matters. The changes are recommended by the Constitution Working Group (CWG) following their consideration and deliberations on 19 September 2023 and approved and recommended to Council by the General Purposes Committee on 9 October 2023.

## **2 RECOMMENDATIONS**

For the reasons set out in the report [and its appendices], the following is recommended:

- 2.1** For Council to consider and approve the proposed changes to the Constitution as set out in the report and appendices.

## **2 REASONS FOR RECOMMENDATIONS**

- 2.2** The aim of the proposed changes for the Appointments and Disciplinary Committee is to improve decision making by providing for more flexible substitution arrangements.
- 2.3** Following external governance reviews of the London Borough of Croydon Pension Fund carried out by Aon (Pension Fund governance advisers) and meetings of the Pension Committee and the Pension Board, a number of changes to the Constitution are proposed.

## **3 BACKGROUND AND DETAILS**

### **Pension Committee and Board**

- 3.1** Following external governance reviews of the London Borough of Croydon Pension Fund carried out by Aon (Pension Fund governance advisers) and meetings of the Pension Committee and the Pension Board, a number of changes to the Constitution are proposed.
- 3.2** The governance reviews highlighted three key issues:
  - 3.2.1** Non-councillor representation on the Pension Committee and associated voting rights;
  - 3.2.2** Pension Board member allowances; and
  - 3.3.3** Current London CIV (Collective Investment Vehicle) structures being reflected in the Constitution.
- 3.3** Generally, the function of making appointments to Council committees (both regular and substitute members) is reserved to full Council. Political groups make nominations to full Council, but cannot themselves decide the membership of committees. However, full Council is required to exercise its power so as to give effect to the wishes of the relevant political group.

## Appointments and Disciplinary Committee

**3.4** The Constitution currently makes provision for the appointment of substitute or reserve members as follows:

*“2.7 For all non-Executive Committees, the Council will appoint the same number of substitutes in respect of each political group as that group holds ordinary seats on that Committee.” (Part 4A - Council Procedure Rules)*

**3.5** According to the Constitution, the Council’s Pay Policy Statement 2023-24 and established practice, among other things, the Appointments and Disciplinary Committee (ADC) has the delegated power to carry out interviews and approve or recommend the approval (as appropriate) of appointments at director level and above.

**3.6** ADC also has the power to approve the grading and conditions of service of officers subject to the JNC Chief Executive and JNC Chief Officer conditions of service.

## 4 PROPOSALS

### Pension Committee and Board

**4.1** In basic outline, and as recorded in the Constitution, the Pension Committee (PC) discharges the functions of the Council relating to pensions matters with the support of the Pension Board (PB).

**4.2** The current membership of the PC is 8 members (4 Conservative and 4 Labour) plus:

- 1 staff side non-voting co-opted member;
- 1 pensioner side **voting** co-opted member; and
- 1 pensioner side non-voting co-opted member.

**4.3** As an exception to the general rule, section 13 of the Local Government and Housing Act 1989 allows co-opted members of the PC to have voting rights.

**4.4** To achieve a more balanced representation of other stakeholders on the PC which reflects better the membership of the Pension Fund it is proposed that:

- A non-Council employer **voting** co-opted member be appointed; and
- The staff-side co-opted member be given **voting rights**.

**4.5** As set out below, it is also proposed that textual improvements be made to the terms of reference of the PC.

The PB is not constituted as a committee or sub-committee of the Council but is a statutory non-decision making body. More specifically, it is established under section 5 of the Public Service Pensions Act 2013 and regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended). The PB assists the Council in its role

as scheme manager of the Pension Fund and to secure legal and regulatory compliance and good governance and administration of the Pension Fund.

- 4.6 The payment of an allowance to those members of the PB who otherwise act on an unpaid basis form part of the costs of the administration of the Pension Fund and is therefore a matter for the PC. The allowance recognises the time commitment the role demands as well as the experience, knowledge and skills requirements.
- 4.7 There is a section of the Constitution dedicated to the PB i.e. Part 4M – Local Pension Board Procedure Rules. There are other references to the PB in the Constitution but as explained below there is some duplication and confusion which the proposed changes address.
- 4.8 Running through the Constitution, the proposed direct, incidental and consequential changes to the Constitution are set out in the three appendices attached to this report.

### **Appointments and Disciplinary Committee**

- 4.9 In the main, one substitute for each regular member of a committee works well but is problematic for ADC.
- 4.10 Six members are appointed to ADC: three Conservative and three Labour. Both the regular and substitute Conservative members of ADC are Cabinet members.
- 4.11 However, as there are nine members of Cabinet (including the Executive Mayor), it is not currently possible to ensure that every Cabinet member is able to consider, for example, approving the appointment of an officer at director level and above even if the appointment relates to their portfolio.
- 4.12 Greater flexibility is required for ADC and it is proposed that the Constitution is amended so as to increase (by tripling) the pool of substitutes for ADC. This would then allow full Council to appoint the three other Cabinet members to ADC and thereby making it possible for a regular member of ADC to allow the relevant Cabinet member to substitute for them.
- 4.13 Of course, it affords the same flexibility to the Labour group too in relation to Shadow Cabinet membership. CWG recommended tripling (as opposed to merely doubling) the substitution pool to afford political groups the greater flexibility of appointing non-Cabinet/Shadow Cabinet members as substitutes too.
- 4.14 It is proposed that the Constitution is amended as follows:

*“2.7 For all non-Executive Committees, other than the Appointments and Disciplinary Committee, the Council will appoint the same number of substitutes in respect of each political group as that group holds ordinary seats on that Committee. For the Appointments and Disciplinary Committee, the Council will appoint the triple the number*

*of substitutes in respect of each political group as that group holds ordinary seats on that Committee.”*

## **4 ALTERNATIVE OPTIONS CONSIDERED**

### Pension Committee and Board

4.1 The proposed changes are informed by external reviews and have been developed over a period of time in discussion with the PC, PB and Pension Fund advisers. At various stages of the decision making process, if considered appropriate and relevant, alternative options were considered.

### Appointments and Disciplinary Committee

4.2 This is a common issue for councils. The solution some councils have adopted is to appoint a standing main committee and then allow that committee to appoint a sub-committee for each appointment in order to ensure that the membership of the sub-committee matches, for example, the appointment in hand.

4.3 On balance, however, that is not the preferred option because in practice it often creates as many problems as it is intended to solve. It means that for each relevant decision there has to be two separate meetings which is not an effective use of the time of members and officers and is an inefficient use of limited Council resources. Requiring some members to attend two meetings in close succession can also create availability issues.

## **5 CONSULTATION**

5.1 Consultation on the proposals for each has been with the relevant committees, the Constitution Working Group, the Executive Mayor, and the General Purposes Committee.

## **6 CONTRIBUTION TO COUNCIL PRIORITIES**

6.1 Outcome 1; Priority 4: Ensure good governance is embedded and adopt best practice.

## **7 IMPLICATIONS**

### **7.1 FINANCIAL IMPLICATIONS**

**7.1.1** There are no material financial implications related to the proposals. The payment of allowances to the Chair and certain other members of the PB give rise to a relatively small additional cost to the Pension Fund.

## **7.2 LEGAL IMPLICATIONS**

7.2.1 The law relevant to the proposed changes has been referenced in the body of the report.

7.2.2 Adopting changes to the Council's Constitution is a non-executive function reserved to full Council which is why the Committee is asked to consider the proposed changes and make a recommendation.

7.2.3 According to s9P of the Local Government Act 2000 the Council must keep its Constitution up to date.

## **7.3 HUMAN RESOURCES IMPACT**

7.3.1 There are no direct workforce implications arising from the proposed changes.

## **7.4 EQUALITIES IMPLICATIONS**

7.4.1 Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have "due regard" to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.4.2 "Due regard" is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the Council is properly aware of the effects and has taken them into account, the duty is discharged.

7.4.3 There are no equalities impacts directly arising from the proposed changes.

## **8 APPENDICES**

- Appendix A - Report, General Purposes Committee - ADC Substitution Pool Changes
- Appendix B - Report, General Purposes Committee on Pension Changes
- Appendix B1 - Various Pensions Related Proposed Changes
- Appendix B2- Part 4M Local Pension Board Procedure Rules
- Appendix B3 - PART 4N Pension Committee Terms of Reference

## **9 BACKGROUND DOCUMENTS**

9.1 None